NO. 93800-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JONATHAN SPRAGUE,

Petitioner,

v.

SPOKANE VALLEY FIRE DEPARTMENT,

Respondent.

AMICUS CURIAE BRIEF
WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION

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I. INTRODUCTION AND INTEREST OF AMICUS

This case involves a fire department Captain's religious proselytizing in the workplace. None of the briefs submitted thus far discuss the potential impact of a manager's evangelism upon subordinate employees' right to enjoy a workplace free from religious discrimination and harassment. Workplace religious expression in general requires the careful balancing of rights. A manager's evangelism creates special concerns for the rights of employees who have different religious beliefs and practices. Because the words of a manager potentially have the weight of the employer behind them, subordinate employees may well believe that they have no choice but to give audience to, or even act in conformity with, their boss's proselytizing. Thus, the decision the Court makes in this case will necessarily affect the rights not only of other employees in Captain Sprague's workplace but also throughout workplaces in Washington, public and private.

The Washington Employment Lawyers Association ("WELA") has approximately 180 members who are admitted to practice law in the State of Washington and who primarily represent employees in employment law matters. WELA advocates in favor of employee rights in recognition that employment with dignity and fairness is fundamental to the quality of life. WELA is a chapter of the National Employment Lawyers Association.

II. SUMMARY OF ARGUMENT

The Washington Law against Discrimination ("WLAD"), Title VII of the Civil Rights Act of 1964, and the First Amendment all protect the right of employees to discuss religious issues in the workplace and to evangelize their own beliefs. That does not mean every employee has the right to proselytize any time, any place, and in any way he or she chooses. To be sure, a managerial employee does not forfeit all of his or her religious rights by assuming a position of authority over other employees. With that greater power, however, also comes a greater responsibility for enforcing the employer's obligation to provide all of its employees with a workplace free from religious harassment and favoritism.

Religious harassment causes an actual injury in the form of an altered work environment that is not only subjectively experienced by the plaintiff but also would be objectively injurious to a reasonable person. As this Court's precedents recognize, a manager's conduct can far more readily create an unlawful work environment than the actions of non-supervisory employees. Therefore, an employer may be legally required to restrict workplace religious expression and proselytizing, especially by managers, in order to safeguard the equal employment rights of other employees. In some circumstances, employers may limit workplace

proselytizing that does not rise to the level of an actionable harassment or discrimination without violating the rights of the evangelizing employee.

The First Amendment no more protects a hostile or discriminatory work environment based on religion than one based on sex or race. There is no First Amendment right to engage in religious proselytizing where it constitutes illegal harassment or discrimination. To recognize constitutional protection for such religious speech would eviscerate the WLAD and Title VII in both the public and private sector.

Where an employer may or must draw the line in a particular case, or with a particular employee, depends on a variety of factors including the position of the employee; the nature of his/her religious expression; who will be exposed to it; where it occurs; its frequency; and whether anyone has objected to it. The Court should decide this case in a manner that ensures that all employees receive equal treatment in the workplace regardless of their religious beliefs, or lack thereof.

III. ARGUMENT

A. The WLAD and Title VII Require Employers to Proscribe Religious Proselytizing that Creates a Hostile or Discriminatory Work Environment.

Religious pluralism is fundamental to our national identity. *State v. Arlene's Flowers, Inc.*, --- Wn.2d ---, 389 P.3d 543, 563 (2017) (citing *Employment Div., Dep't of Human Resources of Oregon v. Smith*, 494

U.S. 872, 888 (1990)). The Washington Constitution prohibits "plac[ing] the imprimatur of the state on a particular religious doctrine, or the preference of religion over no religion." *State ex rel. Gallwey v. Grimm*, 146 Wn.2d 445, 468, 48 P.3d 274 (2002). The secular principle that all religions are created equal and non-religion is no less valuable a way of life than a religious life can conflict with the fundamental teachings of particular religions. Some religions consider their beliefs to be the "one, true way," and that adherents of other religions or non-believers will suffer eternal damnation. Some religions "direct adherents to teach the religion's moral lessons, rules of conduct, and eternal values." *Sprague v. Spokane Valley Fire Dep't*, 196 Wn. App. 21, 36, 381 P.3d 1259 (2016) (Fearing, J., dissenting). "Since a person of faith spends much time with his or her coworkers, fellow employees often become the focus of sermonizing." *Id.* Therein lies the problem, particularly where, as here, the workplace proselytizer is a manager.

"The laws against workplace discrimination and harassment set forth an explicit, well-defined and dominant public policy." *Int'l Union of Operating Engineers, Local 286 v. Port of Seattle*, 176 Wn.2d 712, 721, 295 P.3d 736 (2013). This Court has repeatedly "held that WLAD contains a clear mandate to eliminate all forms of discrimination and that the purpose of the law is to deter and to eradicate discrimination in

Washington." *Id.* (internal quotations omitted). That includes "the right to obtain and hold employment without discrimination." *Id.* (quoting RCW 49.60.030(1)). The antidiscrimination laws also "create an affirmative duty" for employers to prevent workplace harassment. *Id.* at 722. The WLAD expresses "[a] public policy of the highest priority." *Id.* (internalquotation omitted.).

The essence of unlawful workplace discrimination under both federal and state law is that some employees are treated less favorably than others in the "terms or conditions" of their employment based upon a prohibited characteristic such as religion. *Blackburn v. State*, 186 Wn.2d 250, 258, 375 P.3d 1076 (2016). Both Title VII and the WLAD also prohibit "harassment based on a protected characteristic that rises to the level of a hostile work environment." 186 Wn.2d at 260. Generally, an employee must show the harassment was (1) unwelcome, (2) was because of a protected characteristic, (3) affected the terms and conditions of employment, and (4) is imputable to the employer. *Id.*

Washington law has long held that when a manager personally participates in the creation of a hostile work environment, his or her actions are always imputable to the employer. *See, e.g., Glasgow v. Georgia-Pacific Corp.*, 103 Wn.2d 401, 407, 693 P.2d 708 (1985); *Robel v. Roundup Corp.*, 148 Wn.2d 35, 48, 59 P.3d 611 (2002). The reason for

imputing liability to the employer is that a manager's actions inherently affect the terms or conditions of a subordinate's employment.

Judge Fearing's dissent noted that the "religious devotee encourages, and sometimes nags, coworkers, with promises of happier days, a fuller life, and eternal salvation, to adopt a different lifestyle." 196 Wn. App. at 36. He even recognized that such "proselytizing may annoy some coworkers." *Id.* With all due respect, the fact that "Washington proudly tolerates different religious views and braves open discussion of religion," *id.*, does not adequately address the very real threat of discrimination and harassment posed by workplace proselytizing, particularly by managers. Like many churches, workplaces are hierarchies. *See, e.g., Francom v. Costco Wholesale Corp.*, 98 Wn. App. 845, 859, 991 P.2d 1182 (2000). Supervisors and managers exercise considerable power over the livelihoods and lives of subordinate employees. In this case, there exists a para-military chain of command.

A public employer may not consistent with the First Amendment prohibit all religious advocacy in a public workplace. *Tucker v. State of Cal. Dep't of Ed.*, 97 F.3d 1204, 1209-1214 (9th Cir. 1996). Title VII and the WLAD require both public and private employers to accommodate the religious practices of their employees. 42 U.S.C. § 2000e(j); *Kumar v. Gate Gourmet, Inc.*, 180 Wn.2d 481, 506, 325 P.3d 193 (2014). This duty

of accommodation sometimes requires employers to allow their employees to engage in religious expression in the workplace. *See, e.g.*, *Kumar*, 180 Wn.2d at 503-03; *Dixon v. The Hallmark Cos.*, 627 F.3d 849, 855-56 (11th Cir. 2010). An employee does not, however, have an absolute right to engage in workplace religious expression in any way, any time, or any circumstance.

A private or public employer may deny a requested religious accommodation where it imposes an undue hardship on the conduct of the employer's business. 42 U.S.C. § 2000e(j); *Kumar*, 180 Wn.2d at 502 ("an undue hardship' results whenever an accommodation requires an employer] to bear more than a *de minimis* cost." (internal quotation omitted)). An employer's own legal obligations and its duty to protect the rights of others may also defeat an employee's claim for religious accommodation. *Id.*; *Peterson v. Hewlett-Packard Co.*, 358 F. 3d 599, 607 (9th Cir. 2004).

Venters v. City of Delphi, 123 F.3d 956 (7th Cir. 1997), shows how a manager's strongly held religious convictions can result in the employer's unlawful treatment of subordinate employees. Venters had been a municipal police department radio dispatcher. Six years into her employment the city hired a new police chief, Ives. He "was a born-again Christian who believed that his decisions as police chief should be guided

by the principles of his faith, and that he had been sent by God to Delphi to save as many people from damnation as he could." *Id.* at 962. Ives "continuously interjected religious observations and quotations from the Bible, and spoke to Venters about her salvation in a manner that led her to conclude that Ives considered her immoral." *Id.* Ives provided her with a copy of the Bible and other religious materials. *Id.* at 963.

"Although Venters considered these religious lectures unwelcome, she was afraid to express her desire to be left to her own religious views, and at times even tried to appear interested in Ives' conversation and to ask questions about his faith in order to placate him." *Id.* Venters refrained from making her own religious views known because she believed that if she had contradicted her manager or asked him to stop lecturing her she would have risked being fired. *Id.* Ultimately, Ives told Venters that she had to choose God's way if she wanted to continue working in the police department. *Id.* at 964. Eight months later Ives terminated her for alleged poor performance. *Id.* at 964-65.

Venters brought both First Amendment and Title VII claims against the City. The Seventh Circuit ruled that regardless of whether Venters could prove her termination was unlawful, the manager's proselytizing may well have violated her constitutional and civil rights. "Venters has alleged that she was repeatedly subject to workplace lectures

by Ives on his views of appropriate Christian behavior, to admonitions she needed to be 'saved' and faced damnation, and to rather intimate inquiries into her social and religious life." *Id.* at 970. "A jury could find that by requiring Venters to submit to these religious dialogues by means of intimidation, Ives engaged in the kind of coercion proscribed by the establishment clause...." *Id.* The court also held that the coercive nature of the manager's proselytizing was also potentially a violation of Venters's own religious rights. *Id.* at 970-71. "Venters had a right under the free exercise clause to work for the City of Delphi without being compelled to submit herself to the religious scrutiny of her supervisor." *Id.* at 971. The court also held that Venters stated claims for religious discrimination and harassment in violation of Title VII. *Id.* at 971-77.[1]

Chalmers v. Tulon Co. of Richmond, 101 F.3d 1012 (4th Cir. 1996), is another case where a supervisor unlawfully imposed her religious beliefs on others in the workplace. The supervisor had written evangelical letters to her manager and a subordinate employee. The subordinate was convalescing at home after giving birth out of wedlock. *Id.* at 1016. The

[1] *See also Milwaukee Deputy Sheriffs Ass'n v. Clarke,* 513 F. Supp. 2d 1014, 1022 (E.D. Wisc. 2007) (ruling that religious proselytizing directed by supervisors constituted an endorsement of religion in violation of the establishment clause); *Terveer v. Billington*, 34 F. Supp. 3d 100, 116-17 (D.D.C. 2014) (plaintiff stated Title VII religious discrimination claim based on supervisor's proselytizing). *See also Tucker*, 97 F.3d at 1214 ("There is a greater likelihood that materials posted on the walls of the corridors of government officers would be interpreted as representing the views of the state than would private speech by individual employees walking down those same corridors").

supervisor wrote to her that God "doesn't like when people commit adultery. You know what you did is wrong, so now you need to go to God and ask for forgiveness." *Id.* The subordinate employee told company management that she had been "crushed by the tone of the letter." *Id.* The employer terminated the supervisor because she had "caused a negative impact on working relationships, disrupted the workplace, and inappropriately invaded employee privacy." *Id.* at 1017.

The Fourth Circuit held the employer had no duty to accommodate the supervisor's actions. *Id.* at 1021. "In a case like the one at hand...where an employee contends that she has a religious need to impose personally and directly on fellow employees, invading their privacy and criticizing their personal lives, the employer is placed between a rock and a hard place." *Id.* The employer's toleration of such actions would invade the religious freedom of other employees and could have "constituted religious harassment." *Id.* That the proselytizing employee was a supervisor "heightens the possibility that [the employer] would appear to be imposing religious beliefs on employees." *Id.* In addition, supervisors have a responsibility to "promote harmony in the workplace." *Id.* at 1020. Thus, the employer was within its rights to terminate the supervisor for her religious conduct without any prior warning. *Id.* (Captain Sprague received numerous warnings. 196 Wn. App. at 24-25.).

The religious expression of non-supervisory employees can also create a discriminatory or hostile work environment. In *Peterson v. Hewlett-Packard Co.*, 358 F. 3d 599 (9th Cir. 2004), the employer adopted a diversity campaign and displayed posters encouraging diversity. One of the posters portrayed a "Gay" person and included a description of that person's interests, as well as the slogan "Diversity is Our Strength." *Id.* at 601. Peterson describes himself as a "devout Christian," who believes that homosexual activities violate the commandments contained in the Bible and that he has a duty "to expose evil when confronted with sin." *Id.* In response to the "Gay" poster, Peterson posted three Biblical scriptures on an overhead bin in his work cubicle. *Id.* The scriptures were printed in a typeface large enough to be visible to co-workers, customers, and others who passed through an adjacent corridor. *Id.*

Peterson's direct supervisor removed the scriptural passages after determining they violated the company's harassment policy. *Id.* at 602. After several meetings with management, Peterson reposted the scriptures and was fired. *Id.* He filed a suit alleging a violation of Title VII. The district court granted Hewlett-Packard's motion for summary judgment and the Ninth Circuit affirmed. *Id.* The court ruled that "an employer need not accommodate an employee's religious beliefs if doing so would result in discrimination against his co-workers or deprive them of contractual or

other statutory rights. Nor does Title VII require an employer to accommodate an employee's desire to impose his religious beliefs upon his co-workers." *Id.* at 607 (internal citation omitted).

Captain Sprague's emails were not as extreme as the police chief's conduct in *Venters*, the supervisor's letter in *Chalmers*, or the posters in *Peterson*. But some of his postings raise serious questions about his ability to discharge his supervisory duties impartially and work cooperatively with co-workers who don't share his religious beliefs:

> We are finishing up the series on fellowship by looking at the toughest group for us to deal with on a personal basis: nominal Christians.... What are we to do? How can we work with them to get the job done as brother firefighters, yet still follow the Scriptural mandates regarding backsliding brothers in Christ?
>
> *But actually, I wrote to you not to associate with any so called brother if he is an immoral person, or covetous, or a reviler, or a drunkard, or a swindler—not even to eat with such one. (1 Corinthians 5:11)*

Sprague, 196 Wn. App. at 44 (Fearing, J., dissenting). Moreover, "Sprague's postings could lead non-Christians to feel marginalized. . . ." *Id.* at 35 (Lawrence-Berrey, J., concurring). Sprague's posting questions whether he and others who share his beliefs can work with firefighters who don't. Firefighters often face life or death situations and depend on each other for their very survival.

The fire department allowed Sprague "to evangelize at work to the extent the proselytization did not disrupt business." 196 Wn. App. at 38 (Fearing, J., dissenting). It also permitted Sprague to speak "during work hours, of his faith and his desire that others enjoy salvation through Jesus Christ." *Id.* Although one employee asked to be removed from the list of employees who received Sprague's messages, no one complained to the fire department. *Id.* at 48 (Fearing, J. dissenting). The absence of a formal complaint, however, does not mean that the fire department's hands-off policy towards Sprague's evangelism, other than on the email system, complied with the department's obligations under the WLAD to provide a work-environment free from discrimination and harassment.

The Spokane Valley Fire Department had a legal responsibility to protect its employees from a hostile and discriminatory work environment based on religion. Its duty to monitor, and if necessary restrict, Captain Sprague's religious expression to his subordinates did not depend on whether other firefighters complained about his proselytizing. As *Venters* recognizes, subordinate employees may well feel they have no choice but to listen to a manager's evangelism for fear of losing their jobs. Moreover, where a manager is involved in unlawful harassment, a formal complaint is not a prerequisite to employer liability. *See Glasgow*, 103 Wn.2d at 407.

Venters recognizes that religious proselytization in the workplace requires courts to draw careful lines that are cognizant of the rights of both the evangelizer and other employees. That is true in both the public and private sectors. "Context matters." *Burlington N. & Santa Fe Railway Co. v. White*, 548 U.S. 53, 69 (2006). Relevant factors include not only whether the evangelizer is a manger or supervisor, but also the content of the religious expression, the audience, where the expression occurs, its frequency, and whether anyone has objected to the speech.

It is one thing for a manager to tell subordinates of the joy that his or her religious beliefs will bring. It is quite another for a manager to tell subordinates that they will be condemned to eternal damnation if they don't convert. Statements of this nature can easily rise to the level of actionable harassment. *See Loeffelholz v. Univ. of Wash.*, 175 Wn.2d 264, 275-77, 285 P.3d 854 (2012).

A manager who targets his or her subordinates for religious lectures creates a far greater risk of unlawful discrimination and harassment than one who discusses religion with a cross-section of employees who express their willingness to participate. Proselytizing during work time or while performing supervisory functions creates a much greater danger that a manager will try to impose his or her religious beliefs on subordinates than a lunchroom or water-cooler discussion does.

Moreover, if employees understand that the best way to stay in the good graces of their manager is to attend the boss's preferred church on Sundays that necessarily discriminates against employees who have conflicting religious beliefs and practices.

Habitual workplace evangelism can more readily create a hostile work environment based on religion than a one-time discussion. Finally, while the absence of employee complaints does not necessarily mean that a manager's proselytizing was welcome, objections from subordinate employees will provide an employer with an immediate imperative to ensure the workplace is free from religious favoritism or hostility.

In sum, employers must take affirmative steps to ensure that one employee's religious proselytizing does not become another employee's hostile or discriminatory work environment especially where the evangelizing employee is a manager.

B. The First Amendment Does Not Prevent Employers from Proscribing Religious Discrimination and Harassment and also Allows Employers to Restrict Religious Proselytizing that Falls Short of Creating an Unlawful Work Environment.

Nearly a half-century ago, the United States Supreme Court "made it clear that employees could not be forced to relinquish their First Amendment rights simply because they had received the benefit of public employment." *Tucker v. State of Cal. Dep't of Ed.*, 97 F.3d 1204, 1210 (9th

Cir. 1996) (citing *Pickering v. Bd. of Ed. of Township High School Dist. 205*, 391 U.S. 563 (1968)). As noted earlier, a public employer may not prohibit all religious advocacy in the workplace. *See Tucker,* 97 F.3d at 1211-14. But the First Amendment does not prevent an employer from proscribing and punishing illegal harassment. A contrary rule would seriously undermine the ability of employers to prevent workplace discrimination and take remedial action against harassing employees.

Courts have uniformly held that employers may proscribe speech that creates an unlawful work environment without running afoul of the First Amendment. *E.g., Boothe v. Pasco Cty., Fla.,* 757 F.3d 1198, 1210-1212 (11th Cir. 2014) (no First Amendment violation in punishing memorandum calling for retaliation against employees for filing EEOC charges); *Baty v. Willamette Indus., Inc.*, 172 F. 3d 1232, 1247 (10th Cir. 1999) ("We note that the Supreme Court has strongly suggested that Title VII, in general, does not contravene the First Amendment"); *Robinson v. Jacksonville Shipyards, Inc.*, 760 F. Supp. 1486, 1535 (M.D. Fla. 1991) ("the pictures and verbal harassment are not protected speech because they act as discriminatory conduct in the form of a hostile work environment"); *Jenson v. Eveleth Taconite Co.*, 824 F. Supp. 847, 884 n. 89 (D. Minn. 1993) ("Title VII may legitimately proscribe conduct...which create[s] an offensive working environment. That expression is 'swept up' in this

proscription does not violate First Amendment principles."). *Accord City of Bellevue v. Lorang*, 140 Wn.2d 19, 26, 992 P.2d 496 ("The First Amendment does not bar the State from outlawing speech based harassment.")

Venters v. City of Delphi, 123 F.3d 956 (7th Cir. 1997), holds that the First Amendment does not relieve a public employer of its duty to prevent employee religious proselytizing from creating unlawful working conditions:

> Whatever the First Amendment may have entitled Ives to believe, to say, or to do, it did not permit him as a public official to require his subordinate to conform her conduct and her life to his notion of "God's rule book." It did not allow him to condition her continued employment on the state of her "salvation." It did not grant him license to make highly personal remarks about the status of her soul when informed that these remarks were unwelcome.

Id. at 977 (internal citations omitted).

In other words, the government as employer can restrict religious speech that would be fully protected outside the workplace in order to prevent unlawful workplace harassment and discrimination, just as the government can restrict certain types of speech regarding race or gender within the workplace. Displays of pornographic or racist material, for example, might enjoy strong First Amendment protection outside the workplace. The government can, however, lawfully prohibit such speech

activities in both public and private employment when they create an unlawful work environment. The elimination of illegal harassment and discrimination from the workplace in all its forms is not simply a legitimate government concern; it is a compelling government interest. *See, e.g., Int'l Union of Operating Engineers, Local 286 v. Port of Seattle*, 176 Wn.2d 712, 721, 295 P.3d 756 (2013).

A public employer can also restrict religious proselytizing that does not rise to the level of illegal discrimination or harassment without violating the First Amendment. When the employer may do so depends on a balancing of the free speech rights of the employee against the "interest of the State, as an employer, in promoting the efficiency of the public services it performs through it employees." *Pickering v. Bd. of Ed. of Township High School Dist. 205*, 391 U.S. 563, 568 (1968). The employer bears the burden of proving that the balance of interest weighs in its favor. *Johnson v. Multnomah County, Or.*, 48 F.3d 420, 422 (9th Cir. 1995). To prove that an employee's speech interfered with working relationships, the government "must demonstrate actual, material and substantial disruption, or reasonable predictions of disruption in the workplace." *Robinson v. York,* 566 F. 3d 817, 824 (9th Cir. 2009) (internal quotation omitted).

The weight of the government's burden depends on the nature of the employee's expression and the degree to which it addresses a matter of

public concern. *Connick v. Meyers*, 461 U.S. 138, 152 (1983). The greater the First Amendment protection afforded the speech, the greater the showing of disruption is required to proscribe it. *Id.* Certain types of speech, *e.g.*, whistleblowing, are entitled to paramount protection.[2] This case does not involve whistleblowing or allegations of official negligence or mismanagement.

Other factors relevant to the government's burden under *Pickering* include whether the employee's expression impairs "harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, or impedes the performance of the speaker's duties...." *Benjamin v. WSBA*, 138 Wn.2d 506, 517, 980 P.2d 742 (1999) (internal quotation omitted). In addition, "speech may be more readily subject to restrictions when a workplace audience is 'captive' and cannot avoid the objectionable speech." *Erickson v. City of Topeka, Kan.*, 209 F. Supp. 2d 1131, 1138 (D. Kan. 2002).

[2] *See also Johnson*, 48 F.3d at 427 ("[T]he County does not have a legitimate interest in covering up mismanagement or corruption and cannot justify retaliation against whistleblowers as a legitimate means of avoiding the disruption that necessarily accompanies such exposure"); *Hufford v. McEnaney*, 249 F.3d 1142, 1149 (9th Cir. 2001) ("[I]n a whistleblowing context the presence or absence of disruption is not entitled to the same weight as it is in a *Pickering* analysis where the employee's speech involves mere criticism of the visions or policies of management"); *Rivero v. City and County of San Francisco*, 316 F.3d 857, 866 (9th Cir. 2002) ("[T]he state's legitimate interest in 'workplace efficiency and avoiding workplace disruption' does not weigh as heavily against whistleblowing speech as against other speech on matters of public concern"). On the other hand, purely personal workplace grievances are not matters of public concern. *E.g.*, *Desrochers v. City of San Bernadino*, 572 F.3d 703, 709 (9th Cir. 2009). Employee speech critical of department functioning may or may not be a matter of public concern, depending on its content and context. *Id.* at 709-17; *Robinson*, 566 F.3d at 822-23.

In sum, public employers can lawfully restrict workplace religious proselytizing as long as they act consistent with the *Pickering* balance. Independent of *Pickering*, the First Amendment does not relieve a public employer of its affirmative duty to prevent and remedy religious discrimination and harassment, even where that requires proscribing and punishing workplace religious proselytizing.

IV. CONCLUSION

The court of appeals' opinions focused on Captain Sprague's First Amendment rights. This Court's opinion should recognize the potentially profound consequences of this case for the rights of all employees to enjoy a work environment free from religious discrimination and harassment.

Respectfully submitted this 1st day of May 2017.

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CERTIFICATE OF SERVICE

I certify that on the 1st day of May, 2017, I caused a true and correct copy of WELA's Motion for Leave to File Amicus Brief and WELA's Amicus Curiae Brief to be filed with the Clerk of the Court, and served on the following via U. S. Mail and electronic mail:

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