

No. 17-35898

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FAIR HOUSING CENTER OF WASHINGTON,

Plaintiff-Appellee,

v.

BREIER-SCHEETZ PROPERTIES, LLC, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

No. 2:16-cv-00922-TSZ
The Honorable Thomas S. Zilly
United States District Judge

**BRIEF OF AMICUS CURIAE STATE OF WASHINGTON IN
SUPPORT OF PLAINTIFF-APPELLEE AND FOR AFFIRMANCE**

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I. INTRODUCTION

Defendants-Appellants Breier-Scheetz Properties, LLC and Frederick Scheetz (collectively “Breier-Scheetz”) do not dispute that their housing policy had a disparate adverse impact on families with children. The only question is whether in response to Plaintiff-Appellee Fair Housing Center of Washington’s (“FHCW”) motion for summary judgment, Breier-Scheetz presented objective, admissible evidence that the occupancy restriction was a business necessity, sufficient to create a genuine issue of material fact on that issue and avoid judgment for liability under the Fair Housing Act (“FHA”), 42 U.S.C. §§ 3601-3619, the Washington Law Against Discrimination (“WLAD”), Wash. Rev. Code §§ 49.60.010-.505, and the fair housing provisions of the Seattle Municipal Code (“SMC”), SMC 14.08.010-.215.

The State of Washington submits this amicus brief to ensure that this Court correctly interprets the WLAD and to urge that the District Court’s summary judgment be affirmed under the WLAD. Washington law permits a housing provider to employ a policy with a disparate impact on families with children only upon proving a “business necessity.” *See Shannon v. Pay ‘N Save Corp.*, 709 P.2d 799, 806 (Wash. 1985). To meet this rigorous standard, Breier-Scheetz is required to prove that its policy “significantly correlates with the

fundamental requirements” of its business as a housing provider. *Id.*; *see also Fahn v. Cowlitz Cty.*, 610 P.2d 857, 864 (Wash. 1980), *as amended* (Jan. 21, 1981) (“*Fahn I*”) (to establish “business necessity” defense under the WLAD, “the burden is great”). Breier-Scheetz made no such showing. Accordingly, based on these robust protections under the Washington law, this Court should affirm the District Court’s judgment under the WLAD as well.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

The State of Washington submits this amicus curiae brief under Federal Rule of Appellate Procedure 29(a). The Attorney General of Washington’s constitutional and statutory powers include the submission of amicus briefs on matters that affect the public interest. *See Young Americans for Freedom v. Gorton*, 588 P.2d 195, 200 (Wash. 1978). The Attorney General has a strong interest in ensuring the correct interpretation of the statutes it enforces on behalf of the state. The Attorney General also has an interest in protecting the public interest, including the public’s right to be free from unlawful discrimination. *See City of Seattle v. McKenna*, 259 P.3d 1087, 1091-92 (Wash. 2011) (Attorney General’s “powers and duties” include “discretionary authority to act in any court, state or federal, trial or appellate, on a matter of public concern”) (internal quotation marks omitted); Wash. Rev. Code § 49.60.010 (legislative finding that

discrimination “threatens not only the rights and proper privileges of [state] inhabitants but menaces the institutions and foundation of a free democratic state”).

In particular, as relevant here, the State of Washington has a strong public policy against discrimination in housing, including discrimination against families with children. This case considers the appropriate burden a housing provider must bear under the WLAD after a plaintiff demonstrates that a housing policy has a disparate adverse impact on families with children. It raises issues of significant public interest, including the scope of the laws protecting Washington residents from housing policies that discriminate based on familial status, the requirement that a housing provider justify a policy’s disparate adverse impact by proving a business necessity for the challenged policy, and the quality and nature of proof the housing provider must offer to meet Washington’s rigorous “business necessity” standard.

III. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Breier-Scheetz does not dispute that its policy of restricting the rental of its fifty-seven 425-square-foot studio apartments to single occupants has a disparate adverse impact on families with children. *See* ER 91 (“Defendants concede that FHCW has established . . . a prima facie case of disparate impact

discrimination.”). Instead, it argues that it should be permitted to employ its discriminatory policy because (1) the Granada Apartments had one electric meter, one water meter, and one gas meter for the entire building, but allowing multiple persons to occupy a studio apartment would require a separate meter for each apartment to ensure fair billing for utilities; and (2) the studios were configured to accommodate only one person each. ER 97-98; *see also* ER 88-89 (Declaration of Frederick Scheetz, repeating the same assertions). Breier-Scheetz failed to submit any objective evidence, however, to prove that the occupancy restriction was significantly correlated with the fundamental requirements of its business as a housing provider. *Id.* Breier-Scheetz’s evidence in support of its business necessity defense was limited to one declaration stating the personal opinions of the company’s owner. ER 87-89.

The District Court found that Breier-Scheetz’s proffered reasons for the policy were insufficient to justify the undisputed disparate adverse impact and did not create a triable issue of fact on the question of business necessity. ER 4; ER 8; ER 15-16. With regard to Breier-Scheetz’s claim that the restriction was necessary to ensure fair billing for utilities, the District Court found that Breier-Scheetz had submitted no evidence of a business necessity and that its argument about fair billing was an arbitrary, post hoc justification for the discriminatory

policy. ER 16-17. The District Court observed that even with the current occupancy restriction, some tenants would invariably pay more than their “fair share” of utility costs based on different levels of utilities used by different tenants. ER 16. Further underscoring the lack of objective evidence for Breier-Scheetz’s claim of business necessity, the District Court also found:

[E]ven assuming that the removal of the occupancy restriction would exacerbate the “free-rider” problem, and there is *no evidence in the record* that would support such a conclusion, defendants have not shown that installing new meters is necessary Defendants have *offered no evidence* that abolishing the occupancy restriction without installing new meters would result in any financial hardship, either through the loss of current or prospective tenants, or due to increased cost of operation. . . . Defendants’ proffer of Mr. Breier-Scheetz’s *subjective judgment* that installing new meters for each apartment would be necessary if the occupancy policy were removed, *without any objective evidence* in support of that judgment, is not sufficient to rebut plaintiff’s prima facie case of discrimination.

ER 16-17 (emphasis added) (citations omitted).

With regard to Breier-Scheetz’s claim that the occupancy restriction was a business necessity because of how the apartments were configured, the District Court again found that Breier-Scheetz had provided no objective evidence for that claim, but had simply made a subjective, conclusory assertion that the apartments were too small. ER 17-18. After noting that the Seattle Municipal Code allows multiple individuals to occupy much smaller apartments, the

District Court concluded that Mr. Scheetz's subjective judgment that the apartments could not accommodate more than one person was again insufficient, and did not constitute objective evidence of a business necessity as required to avoid summary judgment. ER 18.

Accordingly, the District Court found that Breier-Scheetz failed to produce objective, admissible evidence that would allow a reasonable trier of fact to find that the occupancy restriction was a business necessity, and that Breier-Scheetz was therefore liable for housing discrimination based on familial status under the FHA, the WLAD, and the SMC. ER 18; ER 13 n.3.

IV. ARGUMENT

A. The WLAD Is a Broad and Protective Remedial Statute that Prohibits Disparate Impact Discrimination on the Basis of Familial Status.

1. The WLAD Provides Broad Anti-Discrimination Protections.

The WLAD is a broad, independent statute that is designed to prevent and eradicate discrimination because of “race, creed, color, national origin, *families with children*, sex, marital status, sexual orientation, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.” Wash. Rev. Code § 49.60.010 (emphasis added). As the Washington

Supreme Court has emphasized, “the purpose of the WLAD – to deter and eradicate discrimination – is a policy of the highest order.” *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 59 P.3d 655, 666-67 (Wash. 2002) (citations omitted), *cert. denied*, 538 U.S. 1057 (2003).

Since 1949, long before the FHA was enacted in 1968, the WLAD has protected Washington residents from discrimination on the basis of race or other protected characteristics. *See* 1949 Wash. Sess. Laws, ch. 183, §§ 1-14, 506-18. From the beginning, the WLAD has always included a statutory mandate requiring broad application and liberal construction of its provisions. *Id.* § 12 at 517 (requiring that the WLAD “shall be construed liberally for the purposes thereof”); *Blackburn v. State*, 375 P.3d 1076, 1080 (Wash. 2016) (discussing the WLAD’s long history and statutory mandate requiring liberal construction) (citations omitted). In order to achieve the WLAD’s remedial purposes and liberal construction mandate, Washington courts have also consistently held that any exceptions to liability under its antidiscrimination provisions are narrowly construed. *See, e.g., Fraternal Order of Eagles*, 59 P.3d at 667; *Phillips v. City of Seattle*, 766 P.2d 1099, 1102 (Wash. 1989). This statutory

mandate, now codified at Wash. Rev. Code § 49.60.020, is a pillar of Washington’s law.

Based on this liberal construction mandate, Washington courts have consistently interpreted the WLAD more broadly and protectively than the corresponding federal civil rights laws to ensure that Washington residents are protected. As the Washington Supreme Court observed in *Kumar*, “[w]here this court has departed from federal antidiscrimination precedent . . . it has almost always ruled that the WLAD provides greater . . . protections than its federal counterparts do.” *Kumar v. Gate Gourmet, Inc.*, 325 P.3d 193, 198 & n.14 (Wash. 2014) (citing cases); *see also Blackburn*, 375 P.3d at 1080 (federal cases, “while a source of guidance, . . . are not binding,” and when applying the WLAD, Washington courts will “adopt those theories and rationale which best further the purposes and mandates of our state statute”) (quoting *Grimwood v. Univ. of Puget Sound, Inc.*, 753 P.2d 517, 520 (Wash. 1988)).

This principle that the WLAD should be construed more broadly than the corresponding federal civil rights laws to protect Washington residents has been consistently recognized and applied by Washington courts. *See, e.g., Lodis v. Corbis Holdings, Inc.*, 292 P.3d 779, 788 (Wash. App. 2013) (rejecting federal standard developed under Fair Labor Standards Act and applying a more

protective standard under the WLAD, citing the WLAD’s “liberal construction mandate”); *Martini v. Boeing Co.*, 971 P.2d 45, 53 (Wash. 1999) (declining to follow federal cases interpreting Title VII of the Civil Rights Act in determining remedies for disability discrimination under the WLAD, noting that Title VII does not “contain a direction for liberal interpretation, such as is the mandate in Washington’s law against discrimination”); *Marquis v. City of Spokane*, 922 P.2d 43, 49 (Wash. 1996) (declining to adopt reasoning of federal cases under Title VII in sex discrimination context because “there is no statutory provision [in Title VII] requiring liberal construction,” adding that “we view with caution any construction that would narrow [the WLAD’s] coverage”); *Allison v. Hous. Auth. of City of Seattle*, 821 P.2d 34, 40 (Wash. 1991) (stating that but-for causation standard developed under Title VII case law was “not dispositive, because Title VII does not contain a provision which requires liberal construction for the accomplishment of its purposes,” and concluding that the WLAD required “a more liberal standard of causation”); *see also Kahn v. Salerno*, 951 P.2d 321, 326 n.2 (Wash. App. 1998) (“[B]ecause our law against discrimination contains a provision requiring liberal construction not contained in Title VII, we are not bound by federal law.”).

Further, even when a provision of the WLAD has a close federal analogue, there is generally “no provision in the federal law which sets forth the equivalent of the broad language of [Wash. Rev. Code §] 49.60.030(1).” *Marquis*, 922 P.2d at 50. Under the WLAD’s declaration of rights provision, entitled “Freedom from discrimination – Declaration of civil rights,” the Washington law guarantees that “[t]he right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right.” Wash. Rev. Code § 49.60.030(1). The statute then enumerates a non-exclusive list of civil rights that are specifically guaranteed under the WLAD, including the right to “engage in real estate transactions without discrimination, including discrimination against families with children.” *Id.* § 49.60.030(1)(c).

Thus, while the WLAD and the FHA both prohibit housing discrimination based on familial status, *compare id.* § 49.60.222(1)(f) *with* 42 U.S.C. § 3604(b), the WLAD goes further and expressly guarantees this protection as one of the enumerated “civil rights” of all Washington residents to enjoy “freedom from discrimination.” Wash. Rev. Code § 49.60.030(1)(c);

see also Parents Involved in Cmty. Sch. v. Seattle Sch. Dist., No. 1, 285 F.3d 1236, 1254-55 (9th Cir. 2002) (recognizing the general rule that state anti-discrimination law can be more protective than corresponding federal law, and pointing to ways in which the WLAD’s prohibitions against discriminatory employment practices go beyond the protections of Title VII as an example).

2. The WLAD Prohibits Discrimination Against Families with Children in Housing.

As relevant to this case, the WLAD make it unlawful for any person “because of . . . *families with children status* . . . [t]o discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling, to any person” Wash. Rev. Code § 49.60.222(1)(f) (emphasis added). This provision closely tracks the FHA. *Compare* 42 U.S.C. § 3604(b) (corresponding provision of the FHA providing that it shall be unlawful “[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling . . . because of . . . *familial status* . . .”) (emphasis added).

The definitions of “families with children status” and “familial status” under the WLAD and the FHA, respectively, are also nearly identical. *Compare* Wash. Rev. Code § 49.60.040(13) (defining “families with children status” to include “one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such

individual or individuals . . .” and “any person who is pregnant”) *with* 42 U.S.C. § 3602(k) (defining “familial status” to include “one or more individuals . . . who have not attained the age of 18 years . . . domiciled with . . . a parent or another person having legal custody” and “any person who is pregnant”).

However, unlike the FHA, the text of the WLAD expressly requires that its anti-discrimination provisions must be liberally construed to protect Washington residents, *see* Wash. Rev. Code § 49.60.020, and this liberal construction mandate is buttressed by a separate declaration of civil rights including a statutory guarantee of freedom from discrimination in real estate transactions, including discrimination against families with children. *See id.* § 49.60.030(1)(c).

Under these circumstances, because the WLAD’s liberal construction mandate and its mandate requiring the protection of enumerated civil rights of Washington residents require greater protection than the corresponding federal civil rights law, Washington courts will “adopt those theories and rationale which best further the purposes and mandates” of the WLAD, *Blackburn*, 375 P.3d at 1080 (quoting *Grimwood*, 753 P.2d at 520), and conclude that “the WLAD provides greater protection than its federal counterpart[.]” *Kumar*, 325 P.3d at 198 & n.14; *see also Lodis*, 292 P.3d at 788 (rejecting federal anti-

discrimination standard and applying a more protective standard under the WLAD); *Martini*, 971 P.2d at 53 (same); *Marquis*, 922 P.2d at 49 (same); *Allison*, 821 P.2d at 40 (same). This principle applies here where, as discussed below, Washington imposes a rigorous “business necessity” standard which requires a housing provider to justify a policy that has adverse discriminatory effects by showing that the policy “significantly correlates with the fundamental requirements” of its business. *Shannon*, 709 P.2d at 806.

3. Under the WLAD, Housing Policies with Unjustified, Adverse Discriminatory Effects Are Unlawful.

In addition to providing explicit protections against familial status discrimination, the WLAD allows discrimination to be established based on a policy’s disparate adverse impact, without requiring proof of discriminatory intent. *See, e.g., Kumar*, 325 P.3d at 204 (“this court has held that the WLAD creates a cause of action for disparate impact”); *Mendoza v. Rivera-Chavez*, 945 P.2d 232, 235 (Wash. App. 1997) (applying disparate impact analysis to claims for employment and insurance transaction discrimination, holding that exclusion of “migrant workers” had “an adverse disparate impact on Hispanics who comprise nearly all the group engaged in seasonal agricultural labor”), *aff’d on other grounds*, 999 P.2d 29 (Wash. 2000); *Oliver v. Pac. Nw. Bell Tel. Co., Inc.*, 724 P.2d 1003, 1005 (Wash. 1986) (“Discrimination claims under [the WLAD,

Wash. Rev. Code §] 49.60 may be brought under one of two theories, either ‘disparate impact’ or ‘disparate treatment’”) (citing *Shannon*, 709 P.2d at 806, and *Fahn I*, 610 P.2d at 864). Compare *Texas Dep’t of Housing and Cmty. Affairs v. Inclusive Communities Project*, 135 S.Ct. 2507, 2521 (2015) (reaffirming disparate impact standard under the FHA).

While disparate impact claims under the WLAD have arisen most often in cases involving employment discrimination, Washington courts have consistently applied disparate impact analysis to other types of discrimination under the WLAD as well. See, e.g., *Mendoza*, 945 P.2d at 235 (insurance transactions); *Fell v. Spokane Transit Auth.*, 911 P.2d 1319, 1331 n.33 (Wash. 1996) (public accommodations). In keeping with this practice of recognizing disparate impact analysis and applying it to all forms of discrimination under the WLAD as claims have arisen, a Washington court would apply disparate impact analysis to the housing discrimination claim here.

The Washington Court of Appeals’ reasoning in *Tafoya v. State Human Rights Comm’n*, 311 P.3d 70 (Wash. App. 2013), as amended (Nov. 13, 2013), is also instructive. *Tafoya* involved a housing discrimination claim under the same provision of the WLAD, Wash. Rev. Code § 49.60.222, at issue in this case. *Id.* at 76-77. The question was whether a landlord’s sexual harassment of

a tenant was sufficiently severe and pervasive to constitute sex discrimination in housing under the WLAD. *Id.* Because no prior Washington case had addressed sex discrimination in the housing discrimination context, and because in both contexts the WLAD uses the same language prohibiting discrimination in the “terms or conditions” of the relationship (i.e. whether it be a housing relationship or employment relationship), the court looked to and followed the standards used by Washington courts under the WLAD in employment discrimination cases. *Id.* (citing Wash. Rev. Code § 49.60.222(1)(b), which prohibits discrimination “in the terms, conditions, or privileges” of real estate transaction relationship); *compare* Wash. Rev. Code § 49.60.180(3) (prohibiting discrimination “in compensation or other terms or conditions” of employment relationship). Following the same approach, a Washington court would also apply the disparate impact analysis in this housing context.

B. Under the WLAD, a Housing Policy with a Disparate Adverse Impact May Be Justified Only Through Objective Evidence of Business Necessity that Significantly Correlates with the Fundamental Requirements of the Housing Provider’s Business.

Based on the WLAD’s strong statutory mandate and Washington case law, once the plaintiff establishes a prima facie case that a housing policy has a disparate impact on a protected group or category of persons, the burden shifts

to the defendant to prove a “business necessity” for the challenged policy that “significantly correlates with the fundamental requirements” of its business. *Shannon*, 709 P.2d at 806; *see also Kumar*, 325 P.3d at 202 (to defeat prima facie disparate impact claim under the WLAD, defendant must prove that challenged policy constitutes a “business necessity”).

The Washington Supreme Court’s decision in *Shannon* illustrates the “business necessity” standard applied to WLAD claims. There, the Supreme Court held that in order to establish a “business necessity” for a challenged employment policy in light of a plaintiff’s prima face case of disparate impact discrimination, the defendant was required to “prove” that the policy “significantly correlates with the fundamental requirements” of its business. *Shannon*, 709 P.2d at 806. Similarly, in *Fahn I*, the Washington Supreme Court held that the defendant was required to “prove” that the challenged job requirement was a “business necessity.” *Fahn I*, 610 P.2d at 864. On remand following the decision in *Fahn I*, the defendant “conceded that it could not show a business necessity for a height regulation requiring all applicants to be at least 5 feet 9 inches tall.” *Fahn v. Cowlitz Cty.*, 628 P.2d 813, 814 (Wash. 1981) (“*Fahn II*”). Here, to justify its occupancy policy under the WLAD in the face of FHCW’s undisputed prima facie evidence of disparate adverse impact, Breier-

Scheetz must meet the same demanding standard requiring “proof” of a “business necessity.”

Further, to establish a business necessity defense, it was not enough for Breier-Scheetz to offer speculative or conclusory assertions in defense of its occupancy restriction. Rather, Breier-Scheetz was required to submit proof of the claimed business necessity in the form of objective, admissible evidence. *See, e.g., Shannon*, 709 P.2d at 806 (requiring defendant to “prove” business necessity defense “by professionally accepted measures”); *Fahn I*, 610 P.2d at 865 & n.4 (requiring defendant to provide objective “proof” that its policy “constitute[d] a business necessity”); *see also* 28 C.F.R. § 100.500(b)(2) (“A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative.”).

Washington cases discussing business necessity in the context of disparate treatment claims provide further guidance as to the application of the business necessity defense.¹ In *Hegwine*, for example, the Court offered the following

¹ *See Hegwine v. Longview Fibre Co., Inc.*, 172 P.3d 688, 696 n.8 (Wash. 2007) (in disparate treatment case alleging discriminatory failure to hire because of pregnancy, Washington Supreme Court used same “business necessity” standard developed in *Shannon*, explaining that “[a]lthough *Shannon* defines ‘business necessity’ in conjunction with a disparate impact claim, the basic definition of business necessity can be applied to disparate treatment claims, albeit with a different burden of proof allocation”).

example of what might support a business necessity defense to a pregnancy discrimination claim: “[A]n employer hiring workers into a training program that cannot accommodate absences for the first two months might be justified in refusing to hire a pregnant woman whose delivery date would occur during those first two months.” *Hegwine*, 172 P.3d at 696 (quoting Wash. Admin. Code § 162-30-020(3)(b)). Similarly, in *Magula v. Benton Franklin Title Co., Inc.*, 930 P.2d 307 (Wash. 1997), the Court observed that a business necessity defense to a claim for disparate treatment based on marital status could “include[] those circumstances where an employer’s actions are based upon a *compelling and essential need* to avoid business-related conflicts of interest . . .” *Id.* at 310 n.2 (emphasis added) (quoting Wash. Admin. Code § 162-16-150). And in *Kastanis v. Education Emp. Credit Union*, 859 P.2d 26 (Wash. 1993), the Court held that “a factual showing of business necessity was required” and that the “employer’s unsupported belief” was insufficient. *Id.* at 34 Again, consistent with *Shannon*, the WLAD’s business necessity defense would require the defendant to provide objective evidence establishing that the challenged policy or practice “significantly correlates with the fundamental requirements” of its business. *Shannon*, 709 P.2d at 806.

In short, under the WLAD, once a plaintiff establishes that the defendant's housing policy had a disparate adverse impact on a protected group or category, such as the undisputed disparate adverse impact that Breier-Scheetz's occupancy restriction had on families with children, the defendant must justify the disparate impact by submitting proof providing objective, admissible evidence of a business necessity for the challenged policy that significantly correlates with the fundamental requirements of its business.

C. Breier-Scheetz Failed to Provide Objective Evidence of a Business Necessity for Its Policy that Significantly Correlates with the Fundamental Business Requirements of Its Business, and Thus Failed to Meet the WLAD's Rigorous Business Necessity Standard.

Applying these standards, the District Court's summary judgment order should be affirmed under the WLAD. Because Breier-Scheetz conceded that its occupancy restriction had a disparate adverse impact on families with children, *see* ER 91, the only question remaining under the WLAD is whether the reasons Breier-Scheetz proffered for the occupancy restriction constituted *proof* of a *business necessity*, through *objective* evidence, that *significantly correlated with the fundamental requirements of its business* as a housing provider. *Shannon*, 709 P.2d at 806. Plainly, Breier-Scheetz did not meet this rigorous standard.

The conclusory assertions presented in Mr. Scheetz's declaration were speculative and subjective. *See* ER 88-89. Although Mr. Scheetz offered his personal opinion that the studios are only large enough for one person, and though he made an unsubstantiated claim that allowing a child in any of those units would require the entire building to be retrofitted for individual utility meters, such statements do not approach the sort of objective, admissible evidence that a reasonable trier of fact could rely upon to find that the occupancy policy was a business necessity under the WLAD. *See* ER 87-89; ER 97-98. Accordingly, the District Court properly found that Breier-Scheetz failed to answer FHCW's prima facie case of disparate impact discrimination, and the District Court's judgment that Breier-Scheetz violated the WLAD should be affirmed. *See* ER 18; ER 13 n.3.

V. CONCLUSION

The State of Washington respectfully requests that this Court affirm the District Court's judgment that Breier-Scheetz's housing policy discriminated against families with children, in violation of the WLAD, Wash. Rev. Code § 49.60.222(1)(f).

RESPECTFULLY SUBMITTED this 21st day of May, 2018.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a), I certify the following:

This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because it contains 4543 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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DECLARATION OF SERVICE

I hereby certify that on May 21, 2018, the foregoing document was filed with the Clerk of the United States Court of Appeals for the Ninth Circuit via the Court's CM/ECF system, which will send notice of such filing to all counsel who are registered CM/ECF users.

Dated this 21st day of May, 2018.

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