

1 ROBERT W. FERGUSON
2 Attorney General
3 COLLEEN M. MELODY
4 PATRICIO A. MARQUEZ
5 Assistant Attorneys General
6 Civil Rights Unit
7 800 Fifth Avenue, Suite 2000
8 Seattle, WA 98104
9 206-442-4492

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 YAKIMA NEIGHBORHOOD
11 HEALTH SERVICES, a Washington
12 nonprofit corporation,

12 Plaintiff,

13 v.

14 CITY OF YAKIMA, a Washington
15 municipal corporation,

16 Defendant.

NO. 1:16-cv-03030-TOR

AMICUS CURIAE BRIEF OF
THE ATTORNEY GENERAL
OF WASHINGTON

09/15/2016 at 10:30 a.m.
Without Oral Argument

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I. INTRODUCTION

Washington State has a strong public policy against disability discrimination in housing. The Washington Law Against Discrimination (“WLAD”) contains broad antidiscrimination protections that protect residents from discriminatory action by municipalities. In its summary judgment brief, the City of Yakima (“Yakima”) asks the Court to exempt municipal land use decisions from the WLAD. The City’s proposed construction conflicts with the text of the WLAD, its mandate of broad construction, the analogous provision of the federal Fair Housing Act, and caselaw interpreting both statutes. The Court should reject Yakima’s proposed construction because the WLAD covers municipal land use decisions.

II. FACTUAL AND PROCEDURAL BACKGROUND

Yakima Neighborhood Health Services (“YNHS”) is a non-profit organization serving the medical, dental and health needs of the broader Yakima community, and provides resources and access to resources to the community’s homeless and pre-homeless population. YNHS alleges that the homeless people it serves are commonly people with mental or physical disabilities. *See* Am. Compl. ¶ 5.5 (Mar. 10, 2016), ECF No. 4.

1 In 2014, YNHS submitted a land use application seeking approval from
2 defendant Yakima to operate a community resource center for the homeless at a
3 former grocery store in the Small Convenience Center Zone in Yakima. *See id.* at
4 ¶¶ 3.3, 3.9. YNHS alleges the resource center would provide a range of services,
5 from case management to employment assistance, and would also include
6 approximately 30 units of transitional housing. *See id.* at 1-2, ¶ 3.6. YNHS
7 alleges that despite the determination of a City Hearing Examiner that the
8 proposed land use was a permitted use in the Small Convenience Center Zone,
9 the City Council reversed the Hearing Examiner's determination and adopted a
10 new ordinance to enable it to reject YNHS's application. *See id.* at 1-2, ¶¶ 3.12-
11 3.18. YNHS alleges that Yakima's actions are discriminatory and violate the
12 WLAD, RCW 49.60, and the federal Fair Housing Amendments Act, 42 U.S.C.
13 § 3601, *et seq.*, among other violations.
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19 Yakima moves for summary judgment of YNHS's WLAD claim for
20 alleged lack of evidence of disparate impact, while simultaneously moving for
21 dismissal of that claim on the basis that the WLAD does not reach government
22 conduct in zoning and land use decisions. *See* Def.'s Mot. for Summ. J. at 18-20
23 (Jul. 25, 2016), ECF No. 17.
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1 **III. IDENTITY AND INTEREST OF *AMICUS CURIAE***

2 The Attorney General is the legal adviser to the State of Washington. *See*
3
4 RCW 43.10.030. The Attorney General’s constitutional and statutory powers
5 include the submission of amicus briefs on matters that affect the public interest.
6 *See Young Ams. for Freedom v. Gorton*, 588 P.2d 195, 200 (Wash. 1978).

7
8 The Attorney General has an interest in protecting the public interest,
9 including the public’s right to be free from unlawful discrimination. *See City of*
10 *Seattle v. McKenna*, 259 P.3d 1087, 1091-12 (Wash. 2011) (Attorney General’s
11 “general powers and duties” including “discretionary authority to act in any
12 court, state or federal, trial or appellate, on a matter of public concern”) (internal
13 quotation marks omitted); RCW 49.60.010 (Legislative finding that
14 discrimination “threatens not only the rights and proper privileges of [state]
15 inhabitants but menaces the institutions and foundation of a democratic state”).
16 This case presents issues of significant public interest, including the scope of the
17 laws protecting Washington residents from discrimination.
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22 **IV. ISSUE ADDRESSED BY AMICUS**

23 Whether the WLAD applies to government land use and zoning decisions.
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V. ARGUMENT

Yakima asks the Court to construe the WLAD narrowly and exempt municipal land use decisions. Yakima claims that “[t]he WLAD simply does not work the way the FHA [Fair Housing Act] does,” contending that “[n]othing in the WLAD operates in a manner akin to the FHA’s broad effect on government conduct in zoning and land use decisionmaking.” Def.’s Mot. for Summ. J. at 19 (Jul. 25, 2016), ECF No. 17. This is a misstatement of the law. Yakima’s zoning and land use decisions fall within the broad, protective scope of the WLAD and the Court should decline to create a “zoning and land use” exception.

A. The WLAD Is Materially Identical to the Fair Housing Act

The applicable provision of the WLAD is nearly identical to the federal Fair Housing Act:

WLAD	Fair Housing Act
<p>It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, marital status, sexual orientation, race, creed, color, national origin, families with children status, honorably discharged veteran or military status, 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: . . . (f) [t]o discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling, to any person; or to a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or to any</p>	<p>. . . it shall be unlawful – . . . (f) (1) [t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of – (A) that buyer or renter, (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that buyer or renter.</p> <p>42 U.S.C. § 3604(f)(1) (emphasis added)</p>

1 person associated with the person
2 buying or renting.

3 RCW 49.60.222(1)(f) (emphasis added)

4 This has been the case since 1993 when the WLAD was amended “to make
5 [it] substantially equivalent to the [Federal Fair Housing Amendments Act of
6 1988] by . . . (3) adding *all substantive rights, protections and remedies* of the
7 federal law” House Comm. on Trade, Econ. Dev. & Hous. and Senate
8 Comm. on Labor & Commerce, Final Bill Report, H.R. 53-2, 1st Sess., at 1-2
9 (Wash. 1993) (emphasis added). Thus, the WLAD’s housing discrimination
10 protections are designed to be at least as broad as the Fair Housing Act.
11
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13 **B. The Fair Housing Act Prohibits Municipal Zoning and Land Use**
14 **Decisions That Discriminate Against Members of a Protected Class,**
15 **Including People with Disabilities**

16 The Fair Housing Act makes it unlawful to “make unavailable or deny” a
17 dwelling because of membership in a protected class. 42 U.S.C. § 3604(a). It is
18 well established that zoning and land use decisions violate the Fair Housing Act
19 if they “contribute to ‘mak[ing] unavailable or deny[ing]’ housing” because of
20 membership in a protected class, including disability. *See Pac. Shores Props.,*
21 *LLC v. City of Newport Beach*, 730 F.3d 1142, 1157 (9th Cir. 2013) (quoting
22 42 U.S.C. § 3604(f)(1) (citing *City of Edmonds v. Wash. State Bldg. Code*
23 *Council*, 18 F.3d 802, 805 (9th Cir. 1994)); *San Pedro Hotel Co., Inc. v. City of*
24 *Los Angeles*, 159 F.3d 470, 475 (9th Cir. 1998) (explaining that the Fair Housing
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1 Act “applies to municipalities,” including when a municipality applies its “health,
2 safety, and land use regulations and policies”).

3
4 Municipalities are liable under the Fair Housing Act if they employ zoning
5 practices that have the intent or effect of discriminating against protected groups.
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7 *See, e.g., Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252,
8 271 (1977) (remanding for determination whether the Village’s zoning decision
9 constituted racial discrimination in violation of the Fair Housing Act); *Pac.*
10 *Shores Props.*, 730 F.3d at 1157 (holding “the circumstances surrounding the
11 enactment of the [city’s] Ordinance” raised a triable fact issue of whether the city
12 was “motivated by a desire to discriminate against the disabled”); *Texas Dep’t of*
13 *Hous. and Cmty. Affairs v. Inclusive Cmty. Project*, 135 S. Ct. 2507, 2518
14 (2015) (holding that disparate impact claims are cognizable under the Fair
15 Housing Act because the phrase “otherwise make unavailable” encompasses the
16 consequences of an action in addition to the actor’s intent).

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20 **C. The WLAD Prohibits Any “Person” – Which Includes Cities – From**
21 **Making Unavailable or Denying a Dwelling to Members Based on**
22 **Their Protected Class**

23 As set forth above, the relevant WLAD provision is materially identical to
24 the Fair Housing Act. Under the WLAD, it is unlawful for any “person” to “make
25 unavailable or deny” a dwelling. RCW 49.60.222(1)(f). The term “person” is
26

1 defined to include “any political or civil subdivisions of the state and any agency
2 or instrumentality of the state or of any political or civil subdivision thereof.”
3
4 RCW 49.60.040(19). Nothing in this language indicates that the reach of the
5 WLAD was intended to be narrower than the analogous federal provision, and
6 such a construction would conflict with the Legislature’s direction that the
7 WLAD be construed broadly.¹ *See* RCW 49.60.020 (declaring that the WLAD
8 “shall be construed liberally”); *Shoreline Cmty. Coll. Dist. No. 7 v. Emp’t Sec.*
9 *Dep’t*, 842 P.2d 938, 945 (Wash. 1992) (noting that a statutory mandate of liberal
10 construction requires courts to view with caution any construction that would
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13 ¹ Such an interpretation would also conflict with the Legislature’s clear
14 intent to prohibit charter cities, like Yakima, from engaging in discriminatory
15 treatment of residential structures occupied by people with disabilities.
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18 No city may enact or maintain an ordinance, development
19 regulation, zoning regulation or official control, policy, or
20 administrative practice which treats a residential structure
21 occupied by persons with handicaps differently than a similar
22 residential structure occupied by a family or other unrelated
23 individuals. As used in this section, “handicaps” are as defined
24 in the federal fair housing amendments act of 1988 (42 U.S.C.
25 Sec. 3602).

26 RCW 35.63.220. Notably, this statute was enacted in 1993, the same year the
WLAD was amended to make it “substantially equivalent” to the federal Fair
Housing Amendments Act of 1988. *See id.*

1 narrow the coverage of the law). *See also Lodis v. Corbis Holdings, Inc.*, 292
2 P.3d 779, 788 (Wash. Ct. App. 2013) (explaining that the WLAD’s liberal
3 construction mandate makes its scope broader than federal law); *Marquis v. City*
4 *of Spokane*, 922 P.2d 43, 50 (Wash. 1996) (stating that “there is no provision in
5 the federal law that sets forth the equivalent of the broad language of [the
6 WLAD]”).
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9 As would be expected, then, courts have construed the materially identical
10 provisions of the WLAD consistent with the FHA. For example, in *Children’s*
11 *Alliance v. City of Bellevue*, 950 F. Supp. 1491, 1493, 1495 n.3 (W.D. Wash.
12 1997), the court granted summary judgment under the FHA and the WLAD
13 against the City because its zoning decisions constituted disability discrimination.
14 *Id.* at 1493-94 (declaring invalid an ordinance that placed restrictions on group
15 homes serving disabled youth, preventing “beds for homeless youth” from being
16 located in residential zones). In doing so, the court reasoned that its “conclusions
17 regarding the claims based on 42 U.S.C. §§ 3604(a) and 3604(f)(1) apply equally
18 to the claims arising under the Washington Law Against Discrimination,
19 RCW 49.60.222.” *Id.* at 1495 n.3. *See also Sunderland Family Treatment Servs.*
20 *v. City of Pasco*, 26 P.3d 955, 957 (Wash. Ct. App. 2001) (agreeing that city’s
21 denial of an “application for a special use permit to operate a group care facility
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1 for handicapped youth” violated the Washington Housing Policy Act and leaving
2 undisturbed the trial court’s finding that the city’s decision also violated the
3
4 FHA, WLAD, the Americans with Disabilities Act, and the Rehabilitation Act of
5 1973).

6 As the Washington Supreme Court recently confirmed, “Washington
7
8 courts often look to federal case law . . . when interpreting the WLAD[’s]”
9 provisions containing “similar statutory language.” *Blackburn v. State of*
10 *Washington*, No. 91494-0, slip op. at 8 (Wash. July 28, 2016)². Based on the text
11
12 of the federal and state laws, caselaw construing both statutes, and the WLAD’s
13 mandate of broad construction, the Court should decline Yakima’s invitation to
14 narrow the WLAD and exempt Yakima from coverage.

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25 ² Available at:
26 [https://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion&filena
me=914940MAJ](https://www.courts.wa.gov/opinions/index.cfm?fa=opinions.showOpinion&filena me=914940MAJ).

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VI. CONCLUSION

For the foregoing reasons, the Attorney General respectfully urges the Court to hold that the WLAD applies to government land use and zoning decisions, including the ones at issue in this litigation.

RESPECTUFLY SUBMITTED this 15th day of August 2016.

ROBERT W. FERGUSON
Attorney General

s/ Patricio A. Marquez
PATRICIO MARQUEZ, WSBA #47693
COLLEEN MELODY, WSBA #42275
Assistant Attorneys General
Civil Rights Unit
Attorneys for Amicus Curiae
Attorney General of Washington

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 15, 2016, I electronically filed the
3 foregoing with the Clerk of the Court using the CM/ECF system which will send
4 notification of such filing to the following:
5

6
7 G. Richard Hill, WSBA #8806
rich@mhseattle.com
8 Ian S. Morrison, WSBA #45384
imorrison@mhseattle.com
9 McCullough Hill Leary, PS
10 701 Fifth Avenue, Suite 6600
11 Seattle, WA 98104
12 (206) 812-3388
13 Attorneys for Plaintiff
Yakima Neighborhood Health Services

14 Kenneth W. Harper, WSBA #25578
15 kharper@mjbe.com
16 Menke Jackson Beyer, LLP
17 807 N. 39th Avenue
18 Yakima, WA 98902
19 (509) 575-0313
Attorneys for Defendant
City of Yakima

20
21 DATED this 15th day of August, 2016, at Seattle, Washington.

22
23 s/ Patricio A. Marquez
24 PATRICIO MARQUEZ, WSBA #47693
25 COLLEEN MELODY, WSBA #42275
26 Assistant Attorneys General
Civil Rights Unit
Attorneys for Amicus Curiae
Attorney General of Washington