No. 103519-5

SUPREME COURT OF THE STATE OF WASHINGTON

ASSURECARE ADULT HOME LLC; ASSURECARE ADULT FAMILY HOME CARE LLC; ASSURECARE FAMILY HOME CARE LLC; MARCELINA S. MACANDOG; and GERALD MACANDOG,

Defendants-Petitioners,

v.

JOCYLIN BOLINA; ADOLFO PAYAG; MADONNA OCAMPO; HONORINA ROBLES; HOLLEE CASTILLO; and REGINALD VILLALOBOS,

Plaintiffs-Respondents.

BRIEF OF AMICUS CURIAE WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION

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IDENTITY AND INTEREST

The Washington Employment Lawyers Association ("WELA"), a chapter of the National Employment Lawyers Association ("NELA"), is an organization of Washington lawyers devoted to protecting employee rights. WELA frequently appears before this Court as amicus curiae in cases involving workers' rights issues. WELA submits this brief in support of Plaintiffs-Respondents Jocylin Bolina, Adolfo Payag, Madonna Ocampo, Honorina Robles, Hollee Castillo, and Reginald Villalobos ("Caregivers").

INTRODUCTION

WELA agrees with and adopts Caregivers' argument that the Minimum Wage Act's (MWA) live-in exemption violates the Washington Constitution's Privileges and Immunities Clause. Caregivers work in an occupation that is dangerous to life or deleterious to health and therefore have a fundamental right to MWA protections. Yet the live-in exemption grants Defendants a privilege or immunity from providing these workers MWA

protections, without a reasonable basis. The Court should accordingly conclude the exemption violates article I, section 12 of the Washington Constitution as applied to home health caregivers.

The Court should also reject Defendants' proposed analytical approach to Caregivers' as-applied challenge because it is at odds with the Court's approach in *Martinez-Cuevas v. DeRuyter Bros. Dairy*, 196 Wn.2d 506, 475 P.3d 164 (2020). Defendants ask the Court to conclude that home health caregiving is not dangerous because Caregivers allegedly did not report a high number of injuries. In addition to being factually incorrect, this myopic approach ignores abundant research that shows home health caregiving is one of the most dangerous occupations and ignores the Court's reasoning in *Martinez-Cuevas* where it considered the dangers of the relevant industry in general rather than to discrete parties. The Court should confirm this analytical framework.

Further, WELA supports and supplements Caregivers' argument that the as-applied invalidation of the live-in exemption should apply retroactively. Defendants wholly fail to address how they satisfy the relevant test. Even if they did, this case does not warrant a departure from the presumption of retroactivity.

STATEMENT OF THE CASE

WELA joins in the Statement of the Case in Plaintiffs-Respondents' answering brief filed on June 11, 2025.

ARGUMENT

I. The trial court properly analyzed the as-applied challenge consistent with *Martinez-Cuevas*.

Part of this Court's inquiry is whether Caregivers constitute the type of worker protected by article II, section 35 of the Washington Constitution because the working conditions are dangerous to life or deleterious to health. *See Martinez-Cuevas*, 196 Wn.2d at 520. Defendants argue that home health caregiving is not dangerous as evidenced by Caregivers' alleged lack of

work-related injuries. This assertion is not supported by the record. But more importantly, it is at odds with this Court's analysis in *Martinez-Cuevas*, which instead focused on the dangerous nature of the occupation generally.

In *Martinez-Cuevas*, the Court considered whether an MWA exemption was unconstitutional under the Privileges and Immunities Clause as applied to dairy workers. 196 Wn.2d 506. In its analysis, the Court considered the dangerous nature of dairy work generally. *Id.* at 520-21. It concluded that "dairy work is some of the most hazardous in the United States." *Id.* In reaching this conclusion, the Court reviewed the injury rate for Washington's dairy industry compared to the agricultural sector generally and to other state industries. *Id.* To the extent the Court considered the plaintiffs' specific injuries, it did so to buttress the conclusion that dairy work is dangerous. *See id.* at 520 ("DeRuyter milkers constitute the *type* of workers protected by article II, section 35 because they worked long hours in

conditions dangerous to life and deleterious to their health." (Emphasis added.)).

Martinez-Cuevas therefore instructs that the proper analytical focus is on the dangers of the occupation as a whole and not on the specific dangers of a particular workplace for particular workers. However, Defendants advocate for an approach that would require a plaintiff to prove actual, in-fact past harm to show their occupation falls within the ambit of article II, section 35. This approach would produce arbitrary and impractical results because a law's constitutionality could vary widely from person-to-person and case-to-case. While evidence of plaintiffs' work-place injuries can bolster the theory that the occupation is dangerous, it is not necessary nor the primary focus in assessing the dangerous nature of the occupation.

The trial court properly applied *Martinez-Cuevas* to analyze whether the home health caregiving industry is dangerous to life or deleterious to health. *See* Clerk's Papers (CP) at 629-30. Similar to the reasoning in *Martinez-Cuevas*, the trial

court's reasoning was based on undisputed evidence in the record that this occupation is particularly dangerous. For instance, data from Washington's Labor & Industries (L&I) from 2017 to 2021 shows that home health caregiving[1] had an allowed claims rate "more than 40% higher than the rate for the Healthcare Industry as a whole and all industries statewide overall." CP at 537.[2] And the compensable claims rate for this industry was "about 33% higher" than those for all industries statewide and "25% higher than the Healthcare Industry as a whole." *Id.*[3]

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[1] L&I groups industries that "share similar risks" for data collection purposes because "[e]mployers with similar risks tend to have workplace injuries with similar frequency, severity, and cause." WAC 296-17-31011; CP at 442-43, 459. Adult family homes are grouped with "group homes, treatment centers, houses, shelters, halfway houses . . . [a]ssisted living facilities, and retirement and continuing care communities." CP at 535-37. These locations have residents that "often need some degree of medical monitoring and oversight, personal care, treatment, training, or supervision," including requiring "assistance due to illness, advanced age, physical or mental disabilities, dementia, homelessness or youth at risk, mental health concerns, or chemical dependency." WAC 296-17-31011.

[2] Allowed claims include claims involving medical treatment without time loss from work and "claims where the worker was injured seriously enough to qualify for wage replacement or disability benefits." CP at 537.

[3] Compensable claims include only those claims "where the worker was injured seriously enough to qualify for wage replacement or disability benefits." CP at 537.

Caregivers' expert Dr. David Grabowski, a Harvard Medical School professor of healthcare policy, reviewed L&I's data and confirmed that "claim rates are higher for direct caregivers relative to other industries." CP at 452, 463. According to L&I data, from 2017 to 2021, the adult family home (AFH) risk class experienced "8.2 injuries per 100 [full-time equivalent] workers," compared to an injury claims rate of 4.8 for "healthcare industry workers broadly" and 4.6 for "all industries statewide." CP at 463-64. Thus, the injury rate for the AFH risk class "was more than 70% higher than other healthcare industries or all industries statewide." *Id.* Recent data from the U.S. Department of Labor and U.S. Bureau of Labor Statistics also show that caregivers in retirement communities and assisted living facilities for the elderly experience some of the highest rates of nonfatal occupational injury and illness across all industries. CP at 450.

In addition to workplace injury statistics, studies further show that home health caregiving is particularly dangerous.

"Health care workers face a number of serious safety and health hazards," including "workplace violence; lifting and repositioning patients; chemical and drug exposure; and respiratory and other infections." *Nursing Homes and Personal Care Facilities*, OSHA (2023), https://www.osha.gov/nursing-home; CP at 66 n.39. The "most prevalent hazards" with working in nursing homes and personal care facilities include musculoskeletal disorders, bloodborne pathogens and needlesticks, tuberculosis, violence from patients, slips, trips, and falls, Methicillin-resistant Staphylococcus aureus (MRSA), and exposure to chemicals and hazardous drugs. *Hazards and Solutions*, OSHA, https://www.osha.gov/nursing-home/hazard-solutions; *Home Health Care Aides: Occupational Health and Safety Challenges and Opportunities*, AM. INDUSTR. HYGIENE ASS'N 5 (Aug. 5, 2021), https://aiha-assets.sfo2.digitaloceanspaces.com/AIHA/resources/White-Papers/Home-Health-Care-Aides-Occupational-Health-and-Safety-Challenges-and-Opportunities-White-Paper.pdf (AIHA);

CP at 66 n.39, 442-44 (stating home healthcare workers are at high risk for work-related musculoskeletal disorders, falls, violence injuries, sharp injuries, bloodborne pathogen exposures, and infection hazards), 460-62, 538.

Dr. Grabowski agrees that AFH caregivers "face a high risk of occupational injuries," such as "workplace assaults, occupational injuries, and infections." CP at 461. "For example, many residents are unable to independently transfer (e.g., walk on their own from a bed to a chair) and are dependent on staff to complete this activity." *Id.* And caregivers suffer workplace injuries from tasks including "manual lifting, repositioning in bed, catching patients when they fall, transporting from one location to another, and aiding with toileting." *Id.*

Moreover, research shows "[h]ome health care aides . . . are placed in situations where health and safety hazards are often not in their control and can present a myriad of dangers," presenting "unique exposures as [caregivers] go into multiple homes per day." AIHA at 6. "Some of the more unique exposures

as compared to the rest of the health care sector include over the road vehicle accidents (e.g., driving to multiple homes each day)[, i]nfections, cigarette smoke (secondhand smoke), pests (e.g., cockroaches and bed bugs), and pets (e.g., bites and tripping hazards)." *Id.*

Home health caregivers also face violence from patients and their family members. *Id.* at 5. Data from 2012 to 2016 shows that "[h]ome care aides' experiences of work-related violence were so severe and frequent as to rank third among all Washington state workers' compensation claims for in-home services," which "doubled since the previous 4-year period." CP at 443.

Dr. Grabowski similarly reported that "[c]aregivers are also at high risk of injury due to assaults from residents." CP at 461. "In a national survey of nursing assistants working in nursing homes, roughly one-third experienced a physical injury from a resident assault over the prior year." *Id.* And "[t]hose caregivers who had to provide mandatory overtime were more

likely to be assaulted." *Id.* In "another national study, residential care settings without skilled nursing (like an [AFH]) had the *highest rate* of intentional injuries among all health care workers." *Id.* (emphasis added). "Caregivers at these residential care settings experienced 44.07 intentional injuries per 10,000 workers" as compared to "hospital workers[, which] had 5.59 such injuries and nursing homes[, which] had 10.64." *Id.* These acts of violence "were significantly associated with greater stress, depression, sleep problems, and burnout." AIHA at 5.

Home healthcare workers also "experienced a mean of 5.0 days of poor mental health per month, significantly more than all other occupations in the survey." *Id.* at 7. "Almost a third (32%) reported being diagnosed by a medical professional with a depressive disorder, including major and minor depression," which "was significantly more than all other occupations combined." *Id.*

While home health caregiving generally is a highly dangerous occupation, live-in home health caregivers or

caregivers who work 24-hour shifts are at even greater risk for workplace injuries and illnesses. A California study reported that "[c]aregivers who work live-in or 24-hour shifts do not get sufficient sleep" due to "the frequent night interruptions. CP at 471. Caregivers "complain of trouble falling and staying asleep because they must stay alert" for their patient's nighttime needs. *Id.* "Numerous research studies link working the night shift to sleep problems, overall poor health, depression, and increased risk for workplace injuries." *Id.*

Defendants did not present any evidence to dispute that home health caregiving is particularly dangerous. To the contrary, Defendants' evidence supports the trial court's ruling. Defendants submitted a declaration from a purported expert, Mariann McKee, who owned and operated Washington AFHs. CP at 600-01. McKee agrees that "[i]t is no secret that the Health Care industry, is prone to injuries." CP at 607. Indeed, she definitively declared that "[t]he industry, largely led by women, who are tasked with bending, stooping, transferring, and

managing patients with Dementia and physical impairments *are going to get hurt*." *Id.* (emphasis added). McKee even provides a personal anecdote, describing how she suffered her first back injury while in nursing school, maneuvering a patient in a wheelchair. *Id.* According to McKee, her "story is *not* atypical" as "[e]ach year, there are injuries to those who are providing care." *Id.* (emphasis added).

Citing McKee's report, Defendants claim that while some home health caregivers suffer work-related injuries, the rate of those injuries is less than other caregivers. Pet'rs' Br. at 10. This allegation is not supported by the record. But more crucially, McKee's report does not support Defendants' allegation. In her report, McKee states that in the 2022 fiscal year, L&I approved 126 claims for workplace injuries to Washington Home Health Aides. CP at 580. Whereas, in the same time frame, L&I received 206 reports of injuries to Childcare workers. *Id.* As noted by Caregivers, these numbers—for which McKee provides no source of authority—do not shed any light on how the *rate* of

injury compares between home health-aides and childcare workers. *See* Resp'ts' Br. at 27. Also, the alleged number of home health-aide injuries only includes those that resulted in an *approved* L&I claim, while the alleged number of injuries for childcare workers was based on those *reported* to L&I. CP at 580. On its face, without any further scrutiny, these data points do nothing to dispute or contradict the record evidence showing that home health caregivers disproportionately suffer from higher rates of workplace injuries and illnesses. And again, even McKee agrees that workers in the healthcare industry "are going to get hurt." CP at 580.

The unrebutted research and data in the record establish that home health caregiving is dangerous to the health of caregivers. And Caregivers in this case presented evidence of their own workplace injuries that buttresses this conclusion. *See* CP at 464-69 (collecting Caregivers' description of workplace injuries consistent with injuries associated with the occupation). While evidence of Caregivers' specific injuries is unnecessary to

determine whether the industry as a whole is dangerous, it certainly provides additional support.

Caregivers experienced back, neck, shoulder, and hip injuries, i.e., musculoskeletal disorders, from their work duties, such as lifting patients off the bed, picking them up when they fell, and helping them in the shower. CP at 464-67, 85, 98, 105, 121-22, 130, 140-41. Caregivers have also been assaulted by patients prone to physical violence due to dementia, Alzheimer's, or mental illness. CP at 468, 86, 98-100, 106, 122-23, 130, 141. And Caregivers were exposed to highly contagious and transmissible infections and illnesses, such as hepatitis and MRSA. CP at 468-69, 85-86, 99, 106, 123, 141. Because Caregivers were responsible for administering medicines through needles, like insulin shots, they were at greater risk of exposure to blood-borne pathogens. CP at 86, 99, 124. Multiple Caregivers accidentally pricked themselves with used needles after administering medicine or testing glucose levels. CP at 86, 124, 141. One Caregiver resorted to using alcohol to clean the

wound because he was not provided any information on how to treat the exposure. CP at 86. Caregivers were also routinely exposed to bodily fluids, such as urine, feces, and blood. CP at 86, 99, 106, 124, 141. And during the pandemic, Caregivers were exposed to COVID-19. CP at 107. One Caregiver contracted COVID-19 at work, was hospitalized due to the severity of her symptoms, and continues to suffer long-haul COVID-19. CP at 107-08, 461-62 (explaining how nursing-home work was the most dangerous job in the U.S. during the pandemic).

Some of these workplace injuries have resulted in permanent disability, including the inability to walk or bend over. CP at 467-68, 105, 107-08, 120-21, 126. And Caregivers report experiencing serious physical and mental health problems from extreme stress, like depression, weight loss, and high blood pressure. CP at 87, 125. They also report the physical dangers of working in a home setting. For instance, some Caregivers report working in homes with mold issues that went unaddressed and structural tripping hazards, such as uneven floorboards and loose

floor vents. CP at 87, 124. Caregivers further suffered from severe lack of sleep and the associated negative consequences to their health. They stated their "sleep was almost always interrupted," and they were "exhausted" and "sleep-deprived most of the time." CP at 472-73, 84, 106, 129, 140. This severe and chronic lack of sleep resulted in poor "physical and emotional health," including stress headaches, getting sick, impaired eyesight, depression, and anxiety. CP at 84-87, 129, 140, 472-73.

Because "the undisputed evidence proves that people in this line of work are at serious risk of musculoskeletal injuries, assaults at the hands of combative patients, and potentially heightened exposure to infectious agents," the Court should affirm the trial court's holding that home health caregiving is deleterious to Caregivers' health and falls within the Washington Constitution's dangerous employments clause. CP at 628-30. Thus, Caregivers have a fundamental right to the protections of the MWA, and the MWA's live-in exemption grants Defendants

a privilege or immunity from those protections in violation of article I, section 12 of the Washington Constitution.

II. The Court should retroactively apply its holding that the live-in exemption is unconstitutional as-applied to home health caregivers.

A. Retroactivity is properly before the Court.

While the trial court refrained from ruling on retroactivity, this Court should decide the issue. First, it is ripe for resolution. The parties briefed their retroactivity arguments, and unlike in *Martinez-Cuevas* where the Court declined to address retroactivity, the party seeking review here raised the issue in their motion for discretionary review. *See* Motion for Disc. Review at 3; *Martinez-Cuevas*, 196 Wn.2d at 525 n.4 (declining to address retroactivity where "[n]either party raised this issue in its statement of grounds for review").

Second, it is appropriate for—and even incumbent upon—the Court to address retroactivity. "By its very nature, the decision to apply a new rule prospectively must be made in the decision announcing the new rule of law." *Lunsford v.*

Saberhagen Holdings, Inc., 166 Wn.2d 264, 279, 208 P.3d 1092 (2009).

Third, the Court should correct the trial court's mistaken understanding of the applicable retroactivity test. While the trial court refrained from ruling on retroactivity, it was not silent on the issue. And its comments reveal a misunderstanding of the law. Specifically, the trial court, citing *Bond v. Burrows*, 103 Wn.2d 153, 690 P.2d 1168 (1984), indicated that it would examine the financial and administrative hardship to Defendants as a result of retroactive application. CP at 635 n.6. However, financial hardship, without more, is insufficient to justify departing from the general rule that a new decision applies retroactively. *See, e.g.*, *McDevitt v. Harborview Med. Ctr.*, 179 Wn.2d 59, 75, 316 P.3d 469 (2013). Further, *Chevron Oil*, not *Burrows*, sets out the applicable retroactivity test. *See Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-07 (1971), *overruled in part*

by Harper v. Va. Dep't of Taxation, 509 U.S. 86 (1993);[4] *Lunsford*, 166 Wn.2d 264. The Court should, at minimum, clarify the appropriate test.

B. Departure from the presumption of retroactive application is not warranted.

As a general rule, "a new decision applies retroactively to both the litigants before the court and in subsequent cases." *Martinez-Cuevas*, 196 Wn.2d at 533 n.5; *Lunsford*, 166 Wn.2d at 268 n.1 (describing the "default rule of retroactivity"); *Harper*, 509 U.S. at 94.

The Court may use its "equitable discretion" to depart from the presumption of retroactivity "in exceptional cases" where the Court invalidates a law that was justifiably relied on

[4] In *Harper*, the U.S. Supreme Court held that when it applies "a rule of federal law to the parties before it," every court must give that decision retroactive effect. 509 U.S. at 89. The Court clarified that courts may not invoke the *Chevron Oil* test to justify prospective-only application in such cases. *See id.* Similarly, in *Beam Distilling*, the Court abandoned selective prospective application, under which a court applies a new rule retroactively to the parties before it but prospectively to all others. *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 543 (1991); *see also Lunsford*, 166 Wn.2d at 274. *Chevron Oil* otherwise remains good law, and this Court has continued to endorse the *Chevron Oil* retroactivity test. *See, e.g.*, *Lunsford*, 166 Wn.2d 264; *McDevitt*, 179 Wn.2d at 75.

and where retroactive application would be substantially unfair. *Martinez-Cuevas*, 196 Wn.2d at 533 n.5. To assess whether departure is warranted, the Court applies the three-part test articulated in *Chevron Oil*. *Id.*; *McDevitt*, 179 Wn.2d at 75. The Court considers whether "(1) the decision established a new rule of law that either overruled clear precedent upon which the parties relied or was not clearly foreshadowed, (2) retroactive application would tend to impede the policy objectives of the new rule, and (3) retroactive application would produce a substantially inequitable result." *Lunsford*, 166 Wn.2d at 271-72. If all three conditions are met, the Court may depart from the presumption of retroactivity. *Id.* However, prospective-only application is "rare." *McDevitt*, 179 Wn.2d at 75.

While Defendants, as the party advocating prospective-only application, bear the burden of overcoming the retroactivity presumption, they fail to discuss the applicable test at all. For this reason alone, the Court should decline to depart from the default retroactivity rule. Further, applying the *Chevron Oil* test shows

that this case is not a rare and exceptional case that merits prospective-only application.

First, this decision will not establish a new rule of law that overrules clear precedent upon which the parties relied. The Court's ruling will not overrule any precedent on the question of whether the MWA's live-in exemption is unconstitutional as-applied to home health caregivers. The only analogous precedent is *Martinez-Cuevas*, which held that such an exemption was unconstitutional. Indeed, this decision was clearly foreshadowed by *Martinez-Cuevas*.

Martinez-Cuevas involved an as-applied challenge to the applicability of a parallel MWA exemption that also exempted a category of workers in a dangerous field from MWA protections. It established that article I, section 12 and article II, section 35 of the Washington Constitution make it unlawful to exempt from MWA protections employees who work in employments that are dangerous to life or deleterious to health. *Martinez-Cuevas*, 196 Wn.2d 506. Here, the uncontroverted evidence shows that the

healthcare industry is one of the most dangerous professions, and home health caregiving is even more dangerous due to the unique hazards of providing care in patients' homes and to the lack of infrastructure, equipment, resources, and support found in formal healthcare settings. *Supra* Part I. Even Defendants' expert acknowledges that the healthcare industry is inherently dangerous to the health of its workers. CP at 580. *Martinez-Cuevas* clearly foreshadowed the constitutional infirmity of MWA exceptions that deprive highly dangerous professions from its protections.

Second, retroactive application of the Court's decision in no way impedes the policy objectives underlying the invalidation of the MWA's live-in exemption as-applied to home health caregivers. The core purpose of the MWA is to "safeguard the health, safety, and general welfare of Washington citizens." *Martinez-Cuevas*, 196 Wn.2d at 521 (citing RCW 49.46.005(1)). These protections guard against ""the evils and dangers resulting from wages too low to buy the bare necessities of life and from

long hours of work injurious to health.'" *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 870, 281 P.3d 289 (2012); *Martinez-Cuevas*, 196 Wn.2d at 521. Article II, section 35 ensures that MWA protections extend to Washington workers in dangerous occupations. *See Martinez-Cuevas*, 196 Wn.2d at 521-22. Retroactively applying the Court's decision to Caregivers who were denied these protections does not impede this constitutional promise to safeguard the health and safety of those whose work exposes them to significant risk. Indeed, retroactive application "will *further*, rather than impede, the policy objective of the decision" because it will give Caregivers "a remedy for this constitutional wrong." *See id.* at 533.

For years, Caregivers have been denied minimum wage, overtime pay, and paid sick leave protections to which they were entitled under Washington's Constitution. As a result, Caregivers have suffered the consequences of earning an unlivable wage and working long hours that are injurious to their health. They worked long, physically and mentally taxing shifts, averaging

between 13 to 24 hours. *See, e.g.*, CP at 83 (18 hours), 84 (24 hours), 103-04 (20 hours), 119 (13-15 hours), 128-29, 472-73. And they were paid a flat daily rate of $100 to $145, regardless of hours worked. CP at 96, 128, 139; *see* Pet'rs' Br. at 21 (acknowledging they do not "account for monetary wage requirements under the MWA"). In addition to being overworked and underpaid, Caregivers have suffered physical and emotional work-related injuries and illnesses, some of which have caused permanent and total disability and many of which were caused or exacerbated by long working hours. *Supra* Part I.

Applying MWA protections retroactively to Caregivers will further, not impede, the policy objective of protecting our most at risk workers from the harms associated with unlivable wages and long hours, by compensating them for working under these dangerous conditions without MWA protections.

Third, retroactive application would not produce a substantially inequitable result for Defendants or other AFHs that have denied their live-in home health caregivers MWA

protections. Since November 2020, nearly five years ago, employers have been on notice that, under the Washington Constitution, MWA protections apply to those who work in dangerous jobs. And the type of work performed by Caregivers is known to be one of the riskiest occupations in the country. *Supra* Part I.

Additionally, the three-year statute of limitations significantly limits the reach of this Court's ruling, to Defendants' benefit. *See* RCW 4.16.080. Requiring that Defendants pay up to three years of wages owed to their employees is not an inequitable result, and it certainly is not substantially inequitable where Defendants were put on notice by *Martinez-Cuevas* nearly five years ago.

Moreover, Defendants' assertion that they provided Caregivers room and board as non-monetary wages does not render retroactive application inequitable, particularly given the

conditions of the alleged accommodations.[5] Multiple Caregivers stated they were not provided a room and were required to sleep on a recliner or on the floor in the common areas of patients' homes. CP at 83, 103-04. Providing inadequate and undignified accommodations does not make it unfair to require Defendants to pay wages that were unconstitutionally denied.

Defendants, citing *Burrows*, advocate for prospective-only application based on alleged "justifiable reliance on a statute which is presumptively constitutional." *See* 103 Wn.2d at 164. First, any such reliance is not justifiable where *Martinez-Cuevas* clearly foreshadowed the statute's constitutional infirmity.

[5] The trial court indicated it thought the value of room and board would be relevant "to whether the Plaintiffs received less compensation than the MWA requires." CP at 634 n.5. This is not necessarily true, and the Court should clarify that Washington regulations permit deductions from wages only in specific circumstances where the deduction is "expressly authorized . . . in writing and in advance," for the exclusive benefit of the employee, for "spending money that would have been spent regardless," and where "the employer derives no financial benefit from such deduction." *See* RCW 49.52.060; WAC 296-126-128; Dep't Lab. & Ind. Admin Policy ES.A.5 ¶ 2 (2023). No court has held that room and board deductions are eligible to be taken as deductions below minimum wage, and regardless, the record in this case does not suggest any (much less all) of these conditions were met.

Second, *Burrows* does not stand for the general proposition that prospective application is warranted where a party justifiably relies on a presumably valid statute. There, the Court recognized that prospective application was appropriate in two distinct instances that are not relevant here: (1) to "avoid imposing undue administrative or financial burdens on agencies of local government" and (2) in cases involving state taxes or tax assessment procedures where taxpayers or the tax authority justifiably relied on a presumptively valid statute. *Id.* at 163. The Court then concluded it was appropriate to prospectively apply its ruling invalidating a tax statute where the retailer and Department of Revenue relied on the statute *and* where retroactive compliance with the ruling was virtually impossible. *Id.* at 164. No similar challenges exist here.

Defendants next cite *Lunsford* to argue that prospective application is appropriate "so as not to 'jeopardize the massive contractual and governmental enterprises done under its protective shield.'" Pet'rs' Br. at 32 (citing *Lunsford*, 166 Wn.2d

at 273 n.10 (quoting *State ex rel. Wash. State Fin. Comm. v. Martin*, 62 Wn.2d 645, 663, 384 P.2d 833 (1963)). Contrary to Defendants' argument, Washington has not adopted a general rule that a decision will only apply prospectively where it will negatively impact an entity's finances. Rather, the Court has acknowledged that in cases involving "property, contracts, and taxation where parties had vested interests," it has applied a retroactivity test not derived from *Chevron Oil*. *Id.* at 273. Specifically, in those cases, the Court has "look[ed] to whether the parties justifiably and reasonably relied on our prior decisions when entering the transaction." *Id.* For instance, in *Martin*, the Court's retroactivity analysis considered whether the parties justifiably relied on clear precedent in a case involving taxes. 62 Wn.2d at 663. It concluded that prospective-only application of its decision was appropriate because the parties justifiably relied on, i.e., acted under the "protective shield" of, precedent that is directly on point and that, as a result of *Martin*, was overruled. *Id.*

Defendants here cannot make a similar reliance argument. Defendants did not rely on clear precedent nor act under the "protective shield" of such precedent when it denied Caregivers MWA protections. And, more importantly, because this case does not involve property, contracts, or taxation, the justifiable reliance inquiry is inapplicable.

Defendants next cite *In re Marriage of Anderson*, 134 Wn. App. 506, 141 P.3d 80 (2006), to argue that retroactive application is inappropriate where it would generally cause hardships and inequities. The nature of the hardship at issue in *Anderson*, however, made retroactive application of the new rule uniquely inequitable. There, retroactive application would have stripped a stepparent of his visitation rights where he played an important role in the child's formative years and exercised his visitation rights for many years after the dissolution of his marriage. *Anderson*, 134 Wn. App. at 507, 512. The alleged financial inequity that Defendants complain of is incomparable

to the inequity in *Anderson* that warranted departure from the default rule of retroactivity.

CONCLUSION

WELA urges the Court to affirm the Superior Court's decision and retroactively apply its decision.

I certify that, in compliance with RAP 18.17, the relevant portions of this brief contain less than 5,000 words.

RESPECTFULLY SUBMITTED, this 1st day of August 2025.

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