DISABILITY LAW — OBESITY — WASHINGTON SUPREME COURT HOLDS OBESITY IS AN IMPAIRMENT. — *Taylor v. Burlington Northern Railroad Holdings, Inc.*, 444 P.3d 606 (Wash. 2019).

For a long time, obesity was perceived as a personal and moral failing — the result of poor decisionmaking by an individual.[1] But over the last two decades, the medical community has changed its views on obesity and has begun to recognize it as a disease.[2] Recently, in *Taylor v. Burlington Northern Railroad Holdings, Inc.*,[3] the Washington Supreme Court held that obesity is always an impairment under the Washington Law Against Discrimination[4] (WLAD), significantly expanding disability protections in the state.[5] A month before *Taylor*, the Seventh Circuit had interpreted similar language in the Americans with Disabilities Act[6] (ADA) to hold that obesity is not an impairment.[7] By embracing medical consensus and adopting a per se rule that classifies obesity as a disability, the *Taylor* court adopted the best approach to combat obesity discrimination, and one that federal courts ought to follow.

In 2007, BNSF Railway Company (BNSF) offered Casey Taylor a position as a technician, contingent upon a physical exam.[8] The exam determined that Taylor met the "minimum physical demands of the essential functions" of the job,[9] but with a body mass index (BMI) of 41.3, Taylor was deemed severely obese.[10] BNSF informed Taylor that it could not determine whether he was physically qualified for the job due to health risks associated with obesity, but it offered to reconsider if Taylor paid for medical testing or if he lost ten percent of his weight and kept it off for six months.[11] In 2010, Taylor and his wife sued BNSF[12] in state court alleging that BNSF's refusal to hire him was based on a perceived disability — obesity — in violation of the WLAD.[13] BNSF

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[1] *See* Jeffery Sobal, *The Medicalization and Demedicalization of Obesity*, *in* EATING AGENDAS: FOOD AND NUTRITION AS SOCIAL PROBLEMS 67, 69 (Donna Maurer & Jeffery Sobal eds., 1995).

[2] *See, e.g.*, REPORT OF REFERENCE COMMITTEE B OF THE AMERICAN MEDICAL ASSOCIATION HOUSE OF DELEGATES 2013 ANNUAL MEETING 588–89 (2013) [hereinafter AM. MED. ASS'N]; WORLD HEALTH ORG., OBESITY AND OVERWEIGHT 2 (2003).

[3] 444 P.3d 606 (Wash. 2019).

[4] WASH. REV. CODE ch. 49.60 (2018).

[5] *See Taylor*, 444 P.3d at 617.

[6] 42 U.S.C. §§ 12101–12213 (2012).

[7] *See* Richardson v. Chi. Transit Auth., 926 F.3d 881, 891 (7th Cir. 2019).

[8] *Taylor*, 444 P.3d at 608–09.

[9] *Id.* at 609.

[10] *Id.* (quoting Taylor v. Burlington N.R.R. Holdings, Inc., 904 F.3d 846, 848 (9th Cir. 2018)). Per BNSF's policy, a BMI over forty was grounds for further screening. *Id.* (quoting *Taylor*, 904 F.3d at 848).

[11] *Id.*

[12] The opinion and this piece refer to the railroad company and the holding company collectively as "BNSF." *See id.* at 609 n.2.

[13] *Id.* at 606, 609.

removed to the District Court for the Western District of Washington.[14]

In the district court, BNSF moved for summary judgment, arguing that obesity should not be recognized as a disability "unless caused by a physiological disorder."[15] The WLAD defines "disability" as "a sensory, mental, or physical impairment that: (i) [i]s medically cognizable or diagnosable; or (ii) [e]xists as a record or history; or (iii) [i]s perceived to exist whether or not it exists in fact."[16] Since BNSF had determined that Taylor was obese, the issue turned on whether obesity was an impairment under the statute.[17] The definition of an impairment "includes, but is not limited to: [a]ny physiological disorder, or condition . . . affecting one or more of the [listed] body systems."[18] The statute does not define "physiological disorder."[19] Finding no Washington law on the issue, Judge Robart turned to federal precedent interpreting the ADA, which "Washington courts find . . . persuasive in interpreting the WLAD."[20] The court then sided with the majority of federal courts in holding that obesity is not an impairment — and thus not a disability — unless it is caused by an underlying physiological condition.[21] Ultimately, the court dismissed the case with prejudice,[22] and Taylor appealed.[23]

A panel of the Ninth Circuit found itself unable to determine the issue on appeal.[24] The court discussed various authorities that may help answer the question,[25] and it certified the following question to the Washington Supreme Court: "Under what circumstances, if any, does obesity qualify as an 'impairment' under the [WLAD] . . . ?"[26]

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[14] *Id.* at 609.

[15] Taylor v. Burlington N.R.R. Holdings, Inc., No. C11-1289, 2016 WL 632077, at *3 (W.D. Wash. Feb. 17, 2016).

[16] WASH. REV. CODE § 49.60.040(7)(a) (2018).

[17] *See Taylor*, 2016 WL 632077, at *5.

[18] WASH. REV. CODE § 49.60.040(7)(c). The statute lists a dozen body systems that can meet this requirement. *Id.* § 49.60.040(7)(c)(i).

[19] *See id.* § 49.60.040(7)(c)(i).

[20] *Taylor*, 2016 WL 632077, at *5 (first citing Davis v. Microsoft Corp., 70 P.3d 126, 132 (Wash. 2003); then citing Clarke v. Shoreline Sch. Dist. No. 412, 720 P.2d 793, 803 (Wash. 1986); and then citing Fey v. State, 300 P.3d 435, 452–53 (Wash. Ct. App. 2013)).

[21] *See id.* at *8.

[22] Taylor v. Burlington N.R.R. Holdings, Inc., No. C11-1289, 2016 WL 865350, at *2 (W.D. Wash. Mar. 7, 2016). The court also rejected Taylor's claims of disability discrimination due to knee and back problems, *id.*, and of veteran-status discrimination, *Taylor*, 2016 WL 632077, at *9.

[23] *See* Taylor v. Burlington N.R.R. Holdings, Inc., 904 F.3d 846, 848 (9th Cir. 2018).

[24] *Id.* at 849. The court found that "the ADA's coverage of obesity is an open question in [the Ninth Circuit]," *id.*, and that "the WLAD is *at least* as broad as the ADA," *id.* at 848. The court thus determined that the question should be certified to the Washington Supreme Court. *Id.* at 849.

[25] *See id.* at 849–53. These include the statutory text, *id.* at 849–50, the text of the ADA, *id.* at 850, the EEOC's interpretation of the ADA, *id.* at 850–51, other circuits' interpretations of the ADA, *id.* at 851–52, a Montana Supreme Court decision interpreting a similar Montana law to include obesity as a disability, *id.* at 852 (quoting BNSF Ry. Co. v. Feit, 281 P.3d 225, 231 (Mont. 2012)), and "Washington's [b]road [i]nterpretation of the WLAD," *id.* at 852–53.

[26] *Id.* at 853.

The Washington Supreme Court answered that obesity is always an impairment under the WLAD.[27] Writing for the court, Chief Justice Fairhust[28] found that obesity is a "physiological disorder, or condition" affecting several statutorily defined body systems, and thus is an impairment under state law.[29] The court began by defining the relevant statutory language[30] and summarizing the legislative and judicial history of the WLAD,[31] concluding that the legislature was intentional in adopting a broad definition of disability, and that it explicitly rejected the notion that the WLAD should be constrained by the ADA.[32] Finding a broad legislative mandate and relying extensively on medical evidence, the court then determined that obesity is a "physiological disorder, or condition" for WLAD purposes.[33] First, the court held that obesity is physiological in nature, according to the *Webster's* definition of "physiology," and that it is a medically recognized "disorder."[34] Citing an amicus brief, a position statement of the American Association of Clinical Endocrinologists, and a resolution of the American Medical Association,[35] the court also found "overwhelming consensus in the medical community that obesity is a disease in and of itself."[36] This consensus further supported the conclusion that obesity is a physiological disorder under the statute, given that a "disease is commonly understood to fit within" the dictionary definition of "disorder."[37] Further determining that obesity is a condition for purposes of the WLAD,[38] and that it affects several of the statutorily defined body systems,[39] the court concluded that obesity is an impairment.[40]

Finally, the court addressed counterarguments raised by BNSF and amici. First, the court rejected the argument that recognizing obesity as a disability would have a stigmatizing effect on people living with

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[27] *See Taylor*, 444 P.3d at 617. Quoting from the Washington Supreme Court opinion, the Ninth Circuit vacated the district court's grant of summary judgment on Taylor's obesity claim and remanded the case. Taylor v. Burlington N.R.R. Holdings Inc., No. 16-35205, 2020 WL 496312 at *1–2 (9th Cir. Jan. 30, 2020).

[28] Justices Johnson, Madsen, Owens, Stephens, Wiggins, and González joined the opinion.

[29] *Taylor*, 444 P.3d at 617 (quoting WASH. REV. CODE § 49.60.040(7)(c)(i) (2018)).

[30] *See id.* at 610.

[31] *See id.* at 610–11. The court also discussed the role that the Washington State Human Rights Commission — the agency tasked with administering the WLAD — played in defining key statutory terms like "disability" and "condition." *See id.* at 610–11, 614.

[32] *See id.* at 611.

[33] *Id.* at 612–15.

[34] *Id.* at 612–13.

[35] *Id.* at 613–14.

[36] *Id.* at 613.

[37] *Id.* at 614.

[38] *Id.* at 614–15.

[39] *Id.* at 615.

[40] *Id.*

obesity.[41] Second, it addressed the argument that weight is merely a physical trait and not an impairment, responding that: "Obesity is not a physical trait. It is a disease."[42]

Justice Yu[43] dissented.[44] First, she listed the points on which she agreed with the majority: obesity does not have to be caused by a separate physiological disorder or condition to be an impairment; obesity is a physiological disorder or condition and not merely a physical trait; and obesity "is not merely the status of being overweight."[45] Then, pointing to disagreements within the medical community about how to measure obesity[46] and to the statutory requirement that "one or more specified body systems [be] *actually* impaired,"[47] she criticized the majority for establishing a per se rule that does not require individual inquiry.[48] Finally, she found that the court's broad holding may have unwanted implications beyond employment — specifically that people attempting to comply with the law might "offend[] some patrons by assuming they are disabled because of their weight or risk[] opening themselves up to liability to patrons who claim their disability should have been 'obvious' from their appearance."[49] Ultimately, Justice Yu argued that obesity is a disability only if it "impairs one or more [statutorily listed] body systems."[50]

Obesity discrimination is a pervasive and underexplored issue that the courts can and should address. By embracing the medical consensus, courts can recognize that obesity is a complicated medical condition and not a personal failing, thus fighting prejudice. Though this approach is controversial because it may entrench a sense of "otherness," it remains the best way for courts to combat prejudice and discrimination. Admittedly, the category of "obese" is imprecise, and some people who are obese may not be impaired, but the *Taylor* court's approach remains preferable to an individualized inquiry that would place an undue burden on plaintiffs. Though the federal courts resist this approach, medical consensus does have a role to play in interpreting disability antidiscrimination statutes. By embracing medical consensus and adopting a per se rule extending antidiscrimination protections to people living with obesity, the *Taylor* court adopted the best approach to combat obesity discrimination, one that the federal courts ought to follow.

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41 *Id.* at 616 ("It is difficult to see how protection under the WLAD will produce more psychological harm than is caused by [open discrimination].").

42 *Id.* (citing EEOC v. Res. for Human Dev., Inc., 827 F. Supp. 2d 688, 691 (E.D. La. 2011)).

43 Justice McCloud joined the dissent.

44 *Taylor*, 444 P.3d at 617 (Yu, J., dissenting).

45 *Id.* (quoting *id.* at 612 (majority opinion)).

46 *Id.* at 617–18, 617 n.1.

47 *Id.* at 618; *see also* WASH. REV. CODE § 49.60.040(7)(c)(i) (2018).

48 *See Taylor*, 444 P.3d at 618–19 (Yu, J., dissenting).

49 *Id.* at 619.

50 *Id.*

Weight bias[51] remains a pervasive stigma, with a 2008 study reporting that over forty percent of people with a BMI of forty or above have faced perceived discrimination due to their size.[52] In the words of one woman living with obesity: "Society expects you to feel inferior if you are overweight."[53] Disability antidiscrimination laws can and should serve to combat obesity discrimination. As the majority in *Taylor* pointed out, the legislature "intended to adopt a broad and expansive definition of 'disability'" in the WLAD in order to protect people with medical impairments from discrimination.[54] Though the ADA does not use the same broad language, it was likewise motivated by a recognition that "discrimination against individuals with disabilities persists in such critical areas as employment"[55] and that, unlike other protected classes, "individuals who have experienced discrimination on the basis of disability have often had no legal recourse."[56] These rationales apply with equal force to obesity discrimination. First, the medical community has recognized obesity as an impairment that is largely out of an individual's control.[57] Second, obesity discrimination is especially significant in the employment context, where those living with obesity are less likely to be hired, earn less than their peers, and are more likely to be reprimanded.[58] Third, like the discrimination that the ADA sought to eliminate, obesity discrimination currently lacks sufficient avenues for

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[51] Weight bias includes "negative attitudes and stereotypes about individuals with obesity, as well as weight-based discrimination." Sarah Nutter et al., *Framing Obesity a Disease: Indirect Effects of Affect and Controllability Beliefs on Weight Bias*, 42 INT'L J. OBESITY 1804, 1804 (2018).

[52] *See* Tatiana Andreyeva et al., *Changes in Perceived Weight Discrimination Among Americans, 1995–1996 Through 2004–2006*, 16 OBESITY 1129, 1132 tbl.2 (2008). The proportion of those reporting discrimination increased as BMI increased, with 14.3% of those in the 31–33 range reporting discrimination compared to 62.9% of those in the 45 or above range. *See id.* Professor Tatiana Andreyeva's study found an increase in perceived body-size discrimination between 1996 and 2006, *see id.* at 1132, and a recent study suggests that implicit biases may have increased further since then, *see* Tessa E.S. Charlesworth & Mahzarin R. Banaji, *Patterns of Implicit and Explicit Attitudes: I. Long-Term Change and Stability from 2007 to 2016*, 30 PSYCHOL. SCI. 174, 188–89 (2019).

[53] Carol A. Johnson, *Personal Reflections on Bias, Stigma, Discrimination, and Obesity*, *in* WEIGHT BIAS: NATURE, CONSEQUENCES, AND REMEDIES 175, 179 (Kelly D. Brownell et al. eds., 2005) [hereinafter WEIGHT BIAS]; *see also id.* at 178 ("I truly believed, deep in my heart, that I was not as good as the thinner girls. . . . Only by losing weight could I become their equal.").

[54] *Taylor*, 444 P.3d at 611. Indeed, the legislature recognized that "[a] disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job." WASH. REV. CODE. § 49.60.040(7)(b) (2018).

[55] 42 U.S.C. § 12101(a)(3) (2012).

[56] *Id.* § 12101(a)(4).

[57] *See, e.g.*, AM. MED. ASS'N, *supra* note 2, at 588–89; *see also Taylor*, 444 P.3d at 612–14 (cataloging medical organizations that support this classification).

[58] *See* Janna Fikkan & Esther Rothblum, *Weight Bias in Employment*, *in* WEIGHT BIAS, *supra* note 53, at 15, 15–16.

redress in American courts.[59] Therefore, the values underlying the ADA and the WLAD weigh in favor of extending statutory protection to victims of obesity discrimination.

The best approach to reducing obesity discrimination is to follow the medical community's lead by recognizing obesity as a medical condition. Though any antidiscrimination protections would be beneficial, medicalizing obesity could also reduce prejudice against obese people. The World Health Organization classified obesity as a disease in 2000,[60] and the American Medical Association followed suit in 2013.[61] Recognizing obesity as a disease has also involved recognizing its multifactorial causes, "including genetic, environmental, physiological, and psychological factors."[62] Acknowledging these factors could diminish obesity bias by establishing that obesity is a disease largely outside of an individual's control.[63] Indeed, "[o]ne of the best-established relations in the [field] . . . is that attributions of controllability — seeing fat people as responsible for their weight — is an excellent predictor of prejudice."[64] Therefore, by embracing the "overwhelming consensus in the medical community that obesity is a disease in and of itself,"[65] the Washington Supreme Court took a significant step in combatting obesity discrimination.

Though the medicalization[66] of obesity may reduce explicit prejudice, it remains controversial as it may preserve or entrench implicit biases. Professor Abigail Saguy argues that the term obesity "implies a medical frame"[67] that "reinforces . . . unwanted difference"[68] because even if it does not place blame, it "label[s] a person as biologically flawed."[69] In contrast, Professor Jeffery Sobal argues that the

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[59] *See* Rebecca Puhl, Opinion, *Weight Discrimination Is Rampant. Yet in Most Places It's Still Legal.*, WASH. POST (June 21, 2019, 11:55 AM), https://www.washingtonpost.com/outlook/weight-discrimination-is-rampant-yet-in-most-places-its-still-legal/2019/06/21/f958613e-9394-11e9-b72d-d56510fa753e_story.html [https://perma.cc/TU55-56H9]; *cf.* Richardson v. Chi. Transit Auth., 926 F.3d 881, 888 (7th Cir. 2019) (holding that obesity may not give rise to an ADA claim unless caused by an underlying physiological condition).

[60] *See* WORLD HEALTH ORG., OBESITY: PREVENTING AND MANAGING THE GLOBAL EPIDEMIC 1, 4, 6 (2000).

[61] *See* AM. MED. ASS'N, *supra* note 2, at 588–89.

[62] Jeffrey I. Mechanick et al., *American Association of Clinical Endocrinologists' Position Statement on Obesity and Obesity Medicine*, 18 ENDOCRINE PRAC. 642, 644 (2012).

[63] *See* Nutter et al., *supra* note 51, at 1805. Professor Sarah Nutter and her colleagues also found that labeling obesity as a disease had a direct positive effect on people's "affect," or emotions, toward people with obesity. *See id.* at 1808.

[64] Christian S. Crandall & April Horstman Reser, *Attributions and Weight-Based Prejudice*, *in* WEIGHT BIAS, *supra* note 53, at 83, 83.

[65] *Taylor*, 444 P.3d at 613.

[66] Medicalization is "a process by which nonmedical problems become defined and treated as medical problems, usually in terms of diseases or disorders." Sobal, *supra* note 1, at 69.

[67] ABIGAIL C. SAGUY, WHAT'S WRONG WITH FAT? 5 (2013).

[68] *Id.* at 151.

[69] *Id.* at 152.

medicalization of obesity is a solution to prejudice and that whatever stigma or moral judgment remains around obesity today is "a vestige of the overwhelming interpretation of obesity *in the past* as a moral and not medical problem."[70] Sobal and Saguy's arguments can be reconciled — medicalization may reduce *explicit* obesity discrimination grounded in moral blame while entrenching an *implicit* sense of "otherness."[71] Though the implicit biases caused by the medicalization of obesity are incredibly prevalent in the medical community,[72] leading to some harmful effects for those living with obesity,[73] the courts are not properly equipped to handle them. The law is much too blunt a tool for this task. Embracing the medicalization of obesity best allowed the court to tackle what it is equipped for: preventing explicit prejudice and discrimination.

Not everyone who may be classified as obese will be impaired, but the court's per se rule remains appropriate because the alternative — an individualized test — would place an undue burden on plaintiffs. In her *Taylor* dissent, Justice Yu was primarily concerned with the need for an individualized test that would limit stigma.[74] Instead, she would require that anyone suing for discrimination due to obesity prove that their obesity impairs one or more of the statutorily defined body systems.[75] Part of the reasoning behind Justice Yu's concern is that BMI is an imperfect measure of obesity and its health outcomes.[76] There are indeed many people whose BMI would label them as obese but who are able to maintain a full and active lifestyle.[77] However, these people may still face discrimination because of a *perceived* disability. By requiring plaintiffs to prove their body systems are *actually* impaired, Justice Yu would render the statutory phrase "perceived to exist whether or not it exists in fact"[78] moot and would place a significant burden on plaintiffs.

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70 Sobal, *supra* note 1, at 84 (emphasis added).

71 *Cf.* Charlesworth & Banaji, *supra* note 52, at 188–89 (finding a decrease in explicit bodyweight bias and an increase in implicit bias).

72 *See* Gary D. Foster et al., *Primary Care Physicians' Attitudes About Obesity and Its Treatment*, 11 OBESITY RES. 1168, 1173 (2003) (finding that over half of physicians "viewed obese patients as awkward, unattractive, ugly, and noncompliant"); *see also* Janice A. Sabin et al., *Implicit and Explicit Anti-fat Bias Among a Large Sample of Medical Doctors by BMI, Race/Ethnicity and Gender*, PLOS ONE, Nov. 2012, at 1, 6 (finding that medical doctors' "implicit and explicit attitudes about weight follow the same general pattern [as the general population]").

73 "Experience of stigma in health care settings may lead people to delay or forgo essential preventive care," SAGUY, *supra* note 67, at 142, and those who do seek medical care are often underexamined by physicians who assume their ailments are due to their size, *see id.* at 142–43.

74 *Taylor*, 444 P.3d at 617 (Yu, J., dissenting).

75 *See id.* at 618.

76 *See id.*; *see also* SAGUY, *supra* note 67, at 7–8.

77 *See, e.g.*, John Brant, *Ultra*, RUNNER'S WORLD (June 20, 2018), https://www.runnersworld.com/runners-stories/a21070665/ultra [https://perma.cc/WVQ7-4GSM] (profiling an obese distance runner).

78 WASH. REV. CODE § 49.60.040(7)(a)(iii) (2018).

The nuances between Justice Yu's dissent and the majority opinion are eclipsed by the federal courts' rejection of the medical consensus.

Medical consensus ought to play a role in how federal courts interpret the ADA. A month prior to the *Taylor* decision, the Seventh Circuit held in *Richardson v. Chicago Transit Authority*[79] that obesity is not an impairment under the ADA unless caused by an underlying "physiological disorder or condition."[80] The court in *Richardson* "join[ed] the Second, Sixth, and Eighth Circuits,"[81] reflecting consensus among federal circuits confronting the issue.[82] Amicus briefs argued that obesity, as a disease, "is *in and of itself* a physiological disorder and therefore a physical impairment," but the court found that argument unpersuasive because "[t]he ADA is an antidiscrimination — not a public health — statute."[83] However, medical consensus *is* relevant to the implementation of the ADA because it proves that obesity discrimination is based on a medical disability and not merely a physical trait. Thus, federal courts should consider medical evidence when interpreting the ADA because it informs whether a condition, like obesity, is an impairment.

Obesity discrimination remains a pervasive problem in society and in the workplace today. Extending antidiscrimination protections to people living with obesity would alleviate at least some of this discrimination and would signal that weight bias is not acceptable. The *Taylor* court extended these protections by embracing the medical recognition of obesity as a disease. The medicalization of obesity remains controversial as it may entrench a sense of "otherness," but embracing it allows courts to combat prejudice by dispensing with the notion that people are responsible for their obesity. *Taylor* will allow residents of Washington living with obesity to bring claims when faced with discriminatory practices, and it is the best way to provide people living with obesity the antidiscrimination protections they need.

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[79] 926 F.3d 881 (7th Cir. 2019).

[80] *Id.* at 888. Mark Richardson, a bus driver, sued his former employer, after supervisors found that his obesity made him unable to safely operate the buses. *See id.* at 884–85.

[81] *Id.* at 887–88.

[82] *See* Morriss v. BNSF Ry. Co., 817 F.3d 1104, 1109 (8th Cir. 2016), *cert. denied*, 137 S. Ct. 256 (2016); EEOC v. Watkins Motor Lines, Inc., 463 F.3d 436, 443 (6th Cir. 2006); Francis v. City of Meriden, 129 F.3d 281, 286 (2d Cir. 1997). *But see, e.g.*, Velez v. Cloghan Concepts, LLC, 387 F. Supp. 3d 1072, 1076 (S.D. Cal. 2019); McCollum v. Livingston, No. 14-cv-3253, 2017 WL 608665, at *35 (S.D. Tex. Feb. 3, 2017). The Washington Supreme Court could have followed these same circuit decisions, and indeed BNSF asked it to do so. *See* Brief of Appellees on Certified Question at 17–18, *Taylor*, 444 P.3d 606 (No. 96335-5). The statutory language at issue in the two cases is virtually identical. *Compare Richardson*, 926 F.3d at 886–87, *with Taylor*, 444 P.3d at 610. However, the court chose not to, emphasizing the legislature's declaration that the WLAD offers "protections that are wholly independent of those afforded by the [ADA]." 2007 Wash. Sess. Laws 1387.

[83] *Richardson*, 926 F.3d at 891. The court also found that recognizing obesity as a physiological disorder would have the "unavoidable, nonrealistic result" of recognizing that all people with obesity — up to 39.8% of American adults by the court's estimate — automatically have an ADA impairment. *Id.* This slippery slope argument has little traction. If a third of Americans used wheelchairs, no one would reasonably argue that including them under the ADA would be "nonrealistic."