

No. 79209-7

SUPREME COURT
OF THE STATE OF WASHINGTON

GENE CHAMPAGNE, CARY BROWN, ROLAND
KNORR, and CHRISTOPHER SCANLON,

Plaintiffs/Petitioners

v.

THURSTON COUNTY, a political
subdivision of the State of Washington,

Defendant/Respondent

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SUPREME COURT
STATE OF WASHINGTON
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ON PETITION FOR REVIEW FROM
COURT OF APPEALS, DIVISION II

BRIEF OF *AMICI CURIAE*

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King County Bar Association's Newcomer's Wage Claim Project
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I. Statement Regarding Identity and Interest of Amici

Amicus Centro de Ayuda Solidaria a los Amigos (CASA) Latina is a community-based organization located in Seattle, Washington that empowers Latino immigrants through educational and employment opportunities. CASA Latina operates a day laborer dispatch center in downtown Seattle. Since the Day Workers' Center opened in July 1999, over 1000 workers per year have registered to work through the Center. Last year, CASA Latina dispatched workers to 9,314 temporary jobs and helped 112 workers find permanent jobs.

Immigrant workers are typically employed in non-union, manual labor jobs and frequently complain to CASA Latina that their employers delay paying rightful wages or refuse to pay them at all. In addition, many workers receive little or no overtime pay, even though they work many more than forty hours a week. Many employers refuse to pay wages owed until confronted by workers who understand how to enforce their wage rights and have the support to be able to do so.

The vast majority of workers that CASA Latina assists live without savings and subsist paycheck to paycheck. Even a short delay in receiving their wages causes them extreme hardship and threatens their abilities to provide for the most basic needs of their families. Workers who do not receive timely payment of wages have been evicted because they cannot pay their rent. Unfortunately, wage theft is prevalent among immigrant workers, particularly day laborers. According to a 2006 national study, almost half of the 2,660 day laborers surveyed experienced at least one

instance of nonpayment or underpayment of wages in the two months prior to being surveyed. Abel Valenzuela Jr. et al., ON THE CORNER: Day Labor in the United States 14-15 (2006), <http://www.sscnet.ucla.edu/issr/csup/pubs/papers/item.php?id=31>.

CASA Latina assists workers who have been exploited by their employers by teaching them how to enforce their wage rights and by recruiting pro bono attorneys to represent workers on wage claims in cooperation with the King County Bar Association. Last year, CASA Latina assisted workers in approximately 100 cases of unpaid wages and was instrumental in getting over \$60,000 in due and owing wages paid to exploited workers.

Eliminating the cause of action for the delayed payment of wages will adversely affect CASA Latina's work. CASA Latina often uses the prospect of legal action and exemplary damages to encourage employers to settle out of court and pay wages without additional delay. Absent a clear legal obligation to pay their workers in a timely manner, many employers will have no incentive to settle and some will indefinitely delay payment. A decision of this Court that employers do not violate the law by refusing to pay wages due and owing in a timely fashion will directly undermine CASA Latina's primary mission of securing safe, good-paying jobs for the workers it serves.

The Washington Employment Lawyers Association (WELA) is a non-profit professional association comprised of attorneys, law professors, paralegals and law students devoted to the promotion of employee rights.

WELA's mission is to enforce and advance employee rights, in recognition that employment with dignity and fairness is fundamental to the quality of life. WELA does this by promoting and increasing public awareness of the rights of individual employees; enhancing the quality of legal representation of employees; advocating for employee rights before courts and legislative bodies; and assisting and supporting members in their practice of plaintiffs' employment law. A fundamental component of fairness in the employment relationship is that workers be compensated for all hours worked in a prompt and timely manner. A decision allowing for late payment of wages without consequence would have a substantial negative impact on numerous clients WELA members represent.

The King County Bar Association's Newcomers Wage Claim Project is a partnership between the Newcomers Resource Project and *amicus curiae* CASA Latina. Cases are referred to the Newcomers Wage Claim Project by advocates at CASA Latina and are placed with volunteer attorneys. A ruling from this Court that would allow late payment of wages to moot civil actions would negatively impact the Wage Claim Project's ability to enforce Washington's wage laws. Without the specter of attorney's fees and double damages, volunteer attorneys would have few tools available to convince employers to comply with the laws.

The National Employment Law Project (NELP) is a non-profit legal organization with over 30 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP's areas of expertise include the workplace rights of low-wage

workers under federal employment and labor laws, with a special emphasis on wage and hour rights. NELP has litigated and participated as *amicus* in numerous cases addressing the rights of workers under the Fair Labor Standards Act and related state fair pay laws. NELP also provides legal assistance to labor unions and community worker organizations regarding the workplace rights of immigrant and low-wage workers.

NELP works to ensure that all workers receive the basic workplace protections guaranteed in our nation's labor and employment laws; this work has given us the opportunity to learn about job conditions around the country in garment, agricultural, construction and day labor, janitorial, retail, hospitality, domestic and home health care, poultry and meat-packing, high-tech, delivery and other services. We have seen low wage pay, below minimum wage pay, lack of health and safety protections and work benefits and rampant discrimination and mistreatment of workers in these jobs. Late payment is a particular problem in low-paying jobs; employers often require workers to work one or two initial weeks for no pay as a "training deposit;" employers fail to pay workers several weeks in a row, promising but failing to catch up in wage payments. These late payments create terrible hardships for workers and their families.

A decision of this Court that employers do not violate the law by refusing to pay wages due in a timely fashion would undermine NELP's and our constituents' goals of securing safe, good-paying jobs for all workers.

II. Statement of the Case

Petitioners, employees of the Thurston County Sheriff's Office, asserted claims for late payment of overtime wages under Washington's wage laws: the Minimum Wage Act, RCW 49.46; the Wage Payment Act, RCW 49.48; the Wage Rebate Act, RCW 49.52. Without briefing or argument on the issue, the Court of Appeals, Division Two, erroneously held as a matter of law that Petitioners have no remedy because a "delay" in payment does not violate the statutes. In doing so, the Court of Appeals rejected applicability of the Washington Department of Labor and Industries' time-of-payment regulation, WAC 296-128-035, requiring payment of all wages owed within a specified time period. Affirmance by this Court would negate the private civil enforcement mechanisms upon which these statutes depend, because 1) an employer could simply "delay" payment of wages without incurring liability, 2) an employer faced with litigation could moot an underpaid or unpaid employee's claim simply by paying wages owed at any time prior to entry of judgment, and 3) aggrieved employees, who could not recover double damages and attorney's fees, could not afford to assert their rights to timely payment of wages.

III. Argument

Washington's wage laws, which courts liberally construe to the benefit of Washington's workers, rely heavily on private civil enforcement. The Washington Legislature has equipped wage earners with important tools to effectuate that enforcement: awards of attorney's

fees and costs for successful claimants and exemplary damages against employers who willfully fail to pay employees their wages owed. Those tools will be rendered useless if employers can moot legitimate wage claims by paying back wages months or years late, retroactively transforming an illegal "withholding" into a mere "delay." There is no meaningful distinction between these terms; unscrupulous employers should not be allowed to benefit from the unlawful conduct of floating employees' wages for an unspecified amount of time without fear of any greater repercussions than a possible interest payment. As explained below, the greatest impact of such a holding would be on those with the least power and resources to assert their rights.

The Court should hold that "delay" in violation of Washington's wage statutes and time-of-payment regulations is actionable "withholding" of wages.

A. Washington's Wage Statutes Provide a Comprehensive Scheme To Ensure Payment of Wages Through Private Civil Enforcement.

This Court has long recognized the "comprehensive scheme to ensure payment of wages" enacted by the Washington State legislature, *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 157, 961 P.2d 371 (1998); see also *SPAEA v. Boeing Co.*, 139 Wn.2d 824, 831, 991 P.2d 1126 (2000). The Minimum Wage Act (MWA), RCW 49.46, the Wage Payment Act, RCW 49.48, and the Wage Rebate Act, RCW 49.52, together "indicate[] a strong legislative intent to assure payment to employees of wages they have earned." *Schilling*, 136 Wn.2d at 159.

Washington has a "long and proud history of being a pioneer in the protection of employee rights." *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 300; 996 P.2d 582 (2000).

To give practical meaning to the MWA, the Legislature has given the Department of Labor and Industries rule-making authority to promulgate regulations that have the force of law. RCW 49.46.040(3) and (4). Moreover, all three statutes unambiguously provide a remedy when an employer pays something less than the full amount of wages owed. RCW 49.46.090 ("Any employer who pays an employee *less than wages* to which such employee is entitled...shall be liable...") (emphasis added); RCW 49.48.010 ("It shall be unlawful for any employer to withhold or divert *any portion of an employee's wages...*") (emphasis added); RCW 49.52.070 ("Any employer...who shall violate any of the provisions of subdivisions (1) and (2) of RCW 49.52.050 [prohibiting wage rebates and willful withholding of any part of an employee's wages] shall be liable in a civil action..."). Compare with *Champagne v. Thurston County*, 134 Wn. App. 515, 519, 141 P.3d 72 (2006) ("[U]nder Washington's wage-and-hour laws, employees are entitled to damages only where an employer has paid *no* compensation to an employee.) (emphasis in original.)

So strong is the public policy in favor of prompt payment of wages that the Legislature saw fit to provide for criminal penalties for those who willfully withhold wages: "Any employer or officer, vice principal or agent of any employer" who "[w]illfully and with intent to deprive the employee of any part of his wages, [pays] any employee a lower wage

than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract" is guilty of a misdemeanor, RCW 49.52.050(2).

Washington's wage laws are not self-enforcing; they are remedial statutes that expressly anticipate enforcement through civil action by private attorneys. All three statutes provide for attorney's fees in order to "provide incentives for aggrieved employees to assert their statutory rights..." *Hume v. Am. Disposal Co.*, 124 Wn.2d 656, 673, 880 P.2d 988 (1994); RCW 49.46.090(1), 49.48.030, 49.52.070. Where an employer willfully withholds wages due under "any statute, ordinance or contract" in violation of RCW 49.52.050(2), RCW 49.52.070 provides an award of "twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable sum for attorney's fees."

In sum, the Washington State legislature enacted a comprehensive scheme to ensure employees will receive timely payment of all wages earned and to provide employees with a remedial private civil enforcement mechanism to pursue compensation from employers who violate the law.

B. Washington Law Sets Deadlines for Payment of Wages Owed.

Washington's Wage Payment Act, RCW 49.48, mandates payment of all "wages due [an employee] on account of his employment . . . at the end of the established pay period" when the employment relationship terminates. RCW 49.48.010; *Pope v. University of Washington*, 121 Wn.2d 479, 489, 852 P.2d 1055 (1993). For paying wages to current

employees subject to the MWA, the Department of Labor and Industries adopted WAC 296-128-035 to establish *when* those wages are due.¹ An employer violates the law if it pays wages beyond the timeframes established by the regulation.

“When reviewing a regulation, ‘[a] court must give great weight to the statute’s interpretation by the agency which is charged with its administration, absent a compelling indication that such interpretation conflicts with the legislative intent.’” *Marquis v. City of Spokane*, 130 Wn.2d 97, 111, 922 P.2d 43 (1996); *see also Alpine Lakes Protection Society v. Washington State Dept. of Nat. Res.*, 102 Wn.App. 1, 14, 979 P.2d 929 (1999) (“Reviewing courts nevertheless give substantial weight and deference to an agency’s interpretation of the statutes and regulations it administers, and the agency’s interpretation should be upheld if it reflects a plausible construction of the language of the statute and is not contrary to legislative intent.”).

Under WAC 296-128-035, only wages earned during the last seven days of the pay period may be paid in the following pay period to employees, like those in this case, who are paid on a monthly basis. *Id.* at 035(5); *see also*, WAC 296-128-035 (2006) (prior version). Recent amendments to the regulation ensure that employees paid any less frequently than on monthly intervals “shall” be paid “no later than ten

¹ Employers not covered by the MWA may still be subject to the pay interval requirements of WAC 296-126-023 (for workers covered by the Industrial Welfare Act, Chapter 49.12 RCW) or WAC 296-131-010 (agricultural workers). *See note to WAC 296-128-035(1).*

calendar days after the end of the pay period.” WAC 296-128-035(4). In all cases, “an employer shall pay overtime wages . . . on the regular pay day for the pay period in which the overtime wages were earned” unless the employer can show that the correct amount of wages cannot be determined prior to the regular pay day. *Id.* at 035(6). In no event can overtime be paid later than the following regular pay period. *Id.* These rules may only be superseded by a properly-negotiated collective bargaining agreement, and regular wages must nevertheless be paid at “no less than minimum wage” and at “no longer than monthly intervals.” *Id.* at 035(8).²

When interpreting an administrative regulation, the Court’s “primary goal is to determine and give effect to the agency’s intent and the regulation’s underlying policies.” *Clark v. City of Kent*, 136 Wn. App. 668, 672, 150 P.3d 161 (2007). The Department’s intent in promulgating WAC 296-128-035 is to establish clear time limits for paying wages. In order for these detailed regulations to have any meaning, there must be a point in time at which wages become “withheld,” subjecting an employer to liability. The appellate court decision in this case subverts, rather than effectuates, the agency’s intent by denying employees a cause of action when employers pay earned wages when *they* choose, rather than when the law requires.

² The old WAC, in place at the time the events giving rise to this lawsuit occurred, provided no such exception.

Cases interpreting the Fair Labor Standards Act (FLSA),³ 29 U.S.C. § 201 *et seq.*, and state courts interpreting their own wage and hour laws provide additional guidance that the logical, identifiable point when an employee's cause of action begins is the date the minimum wage or overtime pay is due. *See, e.g., Biggs v. Wilson*, 1 F.3d 1537 (9th Cir. 1993) (holding that wages are 'unpaid' under the FLSA unless they are paid on the employees' regular payday); *Brooks v. Vill. of Ridgefield Park*, 185 F.3d 130, 135-36 (3d Cir. 1999) (noting that if the determination of when overtime wages must be paid were left to the employer, that would permit "employers to withhold overtime compensation for some undefined period of time without incurring any legal liability and employees would be left with no recourse during this delay"); *Parow v. Howard*, 17 Mass. L. Rep. 149 (2003) (holding that a class of employees whose employer paid overtime up to four months late but prior to the institution of litigation was entitled to damages and attorney's fees); *Smith v. Superior Court of Los Angeles*, 39 Cal. 4th 77, 137 P.3d 218 (2006) (holding that a temporary employee is entitled to remedies for late payment of wages after job separation).

C. RCW 49.52 Provides Double Exemplary Damages for Violations of the MWA and Rules Adopted Thereunder.

In holding that the corrections officers in *Champagne* had no cause of action, the Court of Appeals found that employees cannot claim

³ Because the MWA is based upon the FLSA, federal authority under the FLSA often provides helpful guidance. *Drinkwitz*, 140 Wn.2d at 298; *Stahl v. Delicor of Puget Sound*, 148 Wn.2d 876, 885, 64 P.3d 10, 14 (2003); *Innliss v. Tandy Corp.*, 141 Wn.2d 517, 524, 7 P.3d 807 (2000).

damages under Chapter 49.52 RCW for violations of the MWA and stated that the pay interval requirements in WAC 296-128-035 cannot be enforced under that chapter. *Champagne*, 134 Wn. App. at 519, n.5. The language of the statute and the holdings of this Court show otherwise.

As noted above, RCW 49.52.050(2) prohibits willful withholding of wages that an employer "is obligated to pay [an] employee by *any* statute, ordinance or contract." (emphasis added.) RCW 49.52.070 provides double exemplary damages for violations of RCW 49.52.050(2). This Court has repeatedly recognized the availability of double damages under RCW 49.52 for violations of the MWA. *See, e.g., Schilling*, 136 Wn.2d 152 at 162 (citing with approval an award of double damages for refusal to pay overtime wages in *Department of Labor and Indus. v. Overnite Transp. Co.*, 67 Wn.App. 24, 34-36, 834 P.2d 638 (1992), *rev. denied*, 120 Wn.2d 1030, 847 P.2d 481 (1993)); *Bostain v. Food Exp., Inc.*, 159 Wn.2d 700, 723, 153 P.3d 846 (2007) (double damages not awarded under 49.52 RCW only because there was a bona fide dispute as to application of overtime provision of the MWA).

Moreover, in *Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 50 P.3d 256 (2002), this Court held that RCW 49.52.050(2) and 49.52.070 provide double damages for workers who are willfully denied rest breaks in violation of *rules* adopted under a different statute -- the Industrial Welfare Act, Chapter 49.12 RCW:

Although WAC 296-126-092 [the rest break rule] is a regulation and not a statute, RCW 49.52.050(2) is applicable in this case

because “properly promulgated, substantive agency regulations have the “force and effect of law.”

146 Wn.2d at 848, (quoting *Manor v. Nestle Food Co.*, 131 Wash.2d 439, 445, 932 P.2d 628, 945 P.2d 1119 (1997) (internal quotation marks omitted).

Because WAC 296-128-035 is a substantive rule to ensure timely payment of wages that was properly adopted by the Department of Labor and Industries under the authority of the MWA, a willful violation of the rule subjects an employer to double damages under RCW 49.52.070. An employer who withholds wages is liable for twice the amount of wages withheld plus attorney’s fees and costs.

Further, wages that are not paid on time as required by law are undoubtedly “withheld” under RCW 49.52.070. The term “to withhold” means “to retain in one’s possession that which belongs to or is claimed by or sought by another” and “to refrain from paying that which is due.” Black’s Law Dictionary 1777 (4th ed. 1968); *see also, Biggs v. Wilson*, 1 F.3d at 1539 (interpreting FLSA, the Ninth Circuit held: “If a payday has passed without payment, the employer cannot have met his obligation to ‘pay’ [the minimum wage].”); *Schilling*, 136 Wn.2d at 159 (RCW 49.52 “must be liberally construed to advance the Legislature’s intent to protect employees and assure payment”). The double damages remedy under RCW 49.52 applies to the timely payment requirement under the MWA.

D. The Appellate Court Nullified Civil Enforcement by Allowing Employers to Moot Wage Claims Through Tardy Payment.

The Court of Appeals held that there is “no statutory remedy for...alleged ‘delay’ in payment of overtime and additional wages.” *Champagne*, 134 Wn. App. at 519.⁴ This holding eviscerates the civil enforcement mechanisms of the wage and hour statutes, because an employer may simply “delay” payment of wages until faced with litigation; presumably, by paying wages owed plus interest at any time prior to entry of judgment, the employer may moot an underpaid or unpaid employee’s claim. A broad affirmation of the appellate court in this case would create a huge loophole in the wage statutes: willful violations of the statutes and regulation would be capable of repetition but would elude review.

These concerns are well-founded. The Washington Court of Appeals Division Three recently reversed a judgment in favor of employees on a prevailing wage claim on mootness grounds, even though the employer withheld payment until nearly a year after the employees filed suit. *Morrison v. Basin Asphalt*, 131 Wn. App. 158, 161-62, 127 P.3d 1 (2005). The *Morrison* court concluded, without elaboration, that attorney’s fees were not available under RCW 49.48.030, “because the employers admitted they owed the prevailing wage and paid it, albeit after

⁴ The court stated “under Washington’s wage-and-hour laws, employees are entitled to damages only where an employer has paid *no* compensation to an employee. Such is not the case here, however, because, as Correction Officers acknowledge, the County did pay them their due wages.” *Champagne*, 134 Wn. App. at 519. (emphasis in original, internal citation omitted).

this case was filed.” *Id.* at 166. Employees who were forced to litigate to enforce their rights were not made whole.

As evidenced by *Morrison* and the present case, courts could declare a wage controversy resolved once an employer pays back wages plus interest. In other words, these cases stand for the faulty proposition that claims based on violations of the time-of-payment regulations become moot if the employee is *eventually* paid. In general, “[a] case is considered moot if there is no longer a controversy between the parties, if the question is merely academic, or if a substantial question no longer exists.” *Hough v. Stockbridge*, 113 Wn. App. 532, 536, 54 P.3d 192 (2002). Where employers owe exemplary damages and attorney’s fees under RCW 49.52, 49.46, and 49.48 because they failed to pay their workers on time as required by law, the case cannot be moot. Further, declaring a wage controversy resolved once an employer pays wages plus interest⁵ is contrary to the “continuing and substantial public interest” exception to the mootness doctrine adopted by this Court. *See In re Pers. Restraint of Mines*, 146 Wn. 2d 279, 285, 45 P.3d 535 (2002). Where a case involves a question of substantial public interest that is likely to recur, and where authoritative determination for the future guidance of public officers is desirable, mootness does not apply. *Id.*

Here, a matter of vital public interest—timely payment of wages—hangs in the balance. Likelihood of recurrence is nearly guaranteed,

⁵ The Court of Appeals in the present case gave no indication that it would have even required payment of interest for late payment of wages.

especially if this Court issues an opinion that can be read to condone “delay” as being something other than illegal withholding. Both private and public attorneys general alike, and the Department of Labor and Industries, would benefit enormously from clarity on this issue, and employers would be on notice that late payment is actionable. As a matter of fairness and to serve the public interest, this Court should reject the appellate court’s holding that “delay” is not actionable so long as the employees are eventually paid.

E. Equity and Fairness Demand Timely Payment.

The timing of when wages must be paid, and an employer’s accountability for meeting those requirements, is not merely academic for the class of workers that the wage-and-hour laws were enacted to protect. Low-wage or low-income workers “depend on receiving their paychecks ‘today’ instead of ‘tomorrow.’ Even a slight delay can make the difference between subsistence and doing without, between paying the rent and being evicted.” Craig Becker, *The Check is in the Mail: Timely Payment Under the Fair Labor Standards Act*, 40 UCLA L. Rev. 1241, 1245 (1993). As the United States Supreme Court has recognized, even a temporary delay may “as a practical matter drive a wage-earning family to the wall.” *Id.* (quoting *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 341-42 (1969) (discussing the Federal Fair Labor Standards Act (FLSA))). The remedies available under the FLSA including *presumed* double damages, like the remedies under RCW 49.52, were intended to compensate workers

for the harm caused when payment of their wages are delayed. 40 UCLA L. Rev. at 1252.

It is inequitable for employers to "delay" payment without consequences. During the period prior to payment, the employer had the benefit of the moneys owed. Employers should not be allowed to float wage payments in the hopes that some employees will not seek to enforce their rights under the wage laws. A powerful disincentive is needed to deter such conduct.

F. "Delay" Disproportionately Affects Clients of Amici.

As explained above, under the holdings of *Morrison* and the Court of Appeals in this case, an unscrupulous employer could "delay" the payment of wages until, forced to defend litigation, the employer pays up, rendering the lawsuit moot. The employee would not be entitled to double damages, and no attorney's fees would be awarded. This creates a large disincentive for private attorneys to take wage cases of any size on a contingent basis. A contingent fee would be taken from the delayed payment of wages and, even in the best case scenario, the employee would be left far less than whole.

The greatest impact would be on claims of under \$10,000. Not only would these cases become financially unviable, under RCW 4.84.250, .270 and .280, a prevailing defendant in an action for damages claims of under \$10,000 are entitled to "a reasonable amount to be fixed by the court as attorneys' fees." A wage claimant wrongfully denied wages could end up *owing* money in a case rendered moot by an

employer's tardy payment of wages, followed by a petition for the employer's attorney's fees. Employers could also use the implied or explicit threat of these attorney's fees provisions to deter lawsuits in the first instance, essentially leveraging their attorney's fees against the wage rights of the employee.

Such a situation has already occurred. *See Backman v. Northwest Publishing Ctr. LLC*, No. 06-2-34405-7 SEA. In *Backman*, the Superior Court granted summary judgment to defendants once all wages had been paid after commencement of the lawsuit, even though the plaintiff argued that there had been willful delay. Defendants then moved for and received an award of attorney's fees.

Clients of *Amici Curiae* CASA Latina and King County Bar Association's Newcomer's Wage Claim Project more often than not have "small-value" wage claims, often no more than a few hundred dollars.⁶ Pro bono collaborating attorneys are often able to convince a recalcitrant employer to pay wages owed by explaining the potential consequences of litigation and judgment in favor of the wage claimant. Without the civil enforcement tools of double damages for willful withholding of wages and attorney's fees, there will no incentive for employers to pay now rather than later, and the effectiveness of programs such as those run by *Amici* will be undermined. This is particularly true because of the threat that the employees could become responsible for reverse attorney's fees.

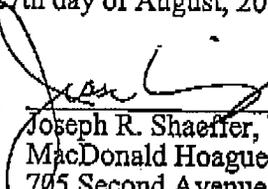
⁶ These claims, of course, are "small-value" in the eyes of RCW 4.84.250 *et seq.*, not in the eyes of the low-income wage claimant who lives paycheck to paycheck.

IV. Conclusion

Amici Curiae respectfully request this Court to follow its precedent in *Wingert* and recognize a right of action for violations of Washington's time-of-payment regulation, WAC 296-128-035.

Respectfully submitted this 27th day of August, 2007.

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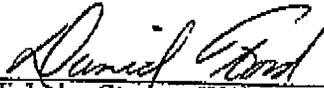
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WELA Chair per authorization for WSBA#27751

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CERTIFICATE OF SERVICE

I, Jennifer King, declare under penalty of perjury as follows:

1. I am now, and have been at all times herein mentioned, a citizen of the United States and resident of the State of Washington, over the age of eighteen years, not a party to the above-captioned action, and competent to testify as a witness.

2. I am employed with the law firm of MacDonald Hoague & Bayless, 705 Second Avenue, Suite 1500, Seattle, Washington 98104-1745.

3. On August 27, 2007, I caused to be served a true and correct copy of the document to which this Certificate is attached on the following parties via electronic mail:

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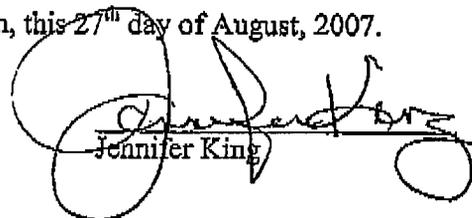
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County

Counsel for Respondent Thurston
County

The foregoing statements are made under penalty of perjury under the laws of the State of Washington and are true and correct.

Signed at Seattle, Washington, this 27th day of August, 2007.


Jennifer King