NO. 102392-8

SUPREME COURT OF THE STATE OF WASHINGTON

RHETT GREENFIELD,

Petitioner,

v.

DEPARTMENT OF LABOR & INDUSTRIES OF THE STATE OF WASHINGTON,

Respondent.

ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

Christina K. Dallen
Assistant Attorney General
WSBA No. 49513
PO Box 40121
Olympia, WA 98504-0121
(360) 586-7719
OID No. 91022

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

I. INTRODUCTION

In seeking retroactive payment for his nonprofit volunteer work, Rhett Greenfield asks this Court to rewrite Washington law. The Minimum Wage Act (MWA) expressly excludes from coverage any individual who gratuitously provides their services to a nonprofit. Greenfield volunteered for the ACLU of Washington in hopes he would eventually secure a paid position. When his hopes did not pan out, he demanded that the ACLU pay him for his volunteered time. But as the Court of Appeals determined, Greenfield's subjective desire for permanent employment did not create a retroactive payment obligation. Because he had volunteered his services without pay, promise of pay, or promise of future employment, Greenfield fell squarely within the MWA's exemption for nonprofit volunteers.

Greenfield's petition fails to identify any issue warranting this Court's review. Contrary to his assertions, federal law cannot displace the requirements of an

unambiguous state law exemption. Washington courts routinely apply the MWA's statutory exemptions in determining whether individuals are covered employees, and the Court of Appeals' examination of the nonprofit volunteer exemption adheres to customary statutory interpretation principles. The Court's decision creates no conflicts with decisions of any other appellate court. Nor does its fact-dependent application of the exemption raise any issue of substantial public interest.

This Court should deny review.

II. ISSUE

RCW 49.46.010(3)(d) exempts from the MWA "[a]ny individual engaged in the activities of . . . [a] nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously." Greenfield offered his services gratuitously at a nonprofit for ten months without pressure or coercion. Was Greenfield exempt from the MWA under the exemption for gratuitous services to a nonprofit?

III. STATEMENT OF THE CASE

A. Overview of Applicable Law: The MWA Excludes Some Categories of Individuals from its Coverage

The MWA establishes minimum employment standards for certain workers in Washington. RCW 49.46. Among other provisions, the MWA describes employers and employees subject to the Act, establishes minimum wages due to employees, and accords employees other rights and benefits. *See, e.g.*, RCW 49.46.010, .020, .130.

The MWA applies only to "employees," which are defined in RCW 49.46.010(3). The statute explicitly exempts some categories of individuals and workers from the definition of employee and therefore from the MWA's provisions. RCW 49.46.010(3)(a)-(p). One of the explicit exemptions in the MWA is for "[a]ny individual engaged in the activities of [a] . . . nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously." RCW 49.46.010(3)(d).

Washington's Wage Payment Act (WPA) allows workers to file wage payment complaints with the Department of Labor and Industries, including complaints for violations of certain provisions of the MWA. RCW 49.48.083. The WPA requires the Washington Department of Labor and Industries (L&I) to investigate the worker's complaint and determine whether the alleged employer owes wages to the worker. RCW 49.48.083.

B. Greenfield Volunteered with the ACLU to Support Its Mission and in Hopes that Volunteering Would Lead to Employment

The ACLU is a nonprofit that defends civil rights and civil liberties. CP 1148-49. It engages volunteers as summer interns, in law student programs, on intake lines, as volunteer attorneys, and on special projects. CP 1149-50. Volunteers may decide to work with the ACLU for a variety of reasons, including as a resume builder, to get references for law school or graduate school, to give back and support the ACLU's mission, and because they "are passionate about the things [the

ACLU does] and they want to be involved and make a difference." CP 1153.

Rhett Greenfield wanted to be part of that mission—he "wanted to contribute to an organization that has historically upheld important principles and achieved meaningful gains within the court system." CP 502. When he moved back to Washington and was determining whether to attend law school, he applied to an intake counselor intern position at the ACLU. CP 502, 1379-80, 1408-09. Greenfield hoped that the position would help him obtain full-time, gainful employment with the ACLU. CP 1308, 1388.

The advertisement for the intake counselor opening stated that it was an internship, and did not indicate it was a paid position. CP 501-02, 730, 1042, 1179. Greenfield had previously held other unpaid internships, as well as internships that only offered a stipend. CP 1307, 1371-72. Once Greenfield began the internship, he received an orientation packet that explained it was a volunteer position. CP 1182.

During his internship, Greenfield worked as an intake counselor, answering a phone line where members of the public could find out about community resources for various legal and non-legal issues. CP 1175. None of the ACLU's volunteer interns were paid wages. CP 1150-51, 1153, 1172, 1273-74. Some may have received academic credit or a token stipend, but these were not wage-earning positions. CP 1150-51, 1172-74. Greenfield would later acknowledge that the ACLU never promised (or even suggested) that he would be paid for his internship. CP 1371-74. No one coerced or pressured Greenfield into volunteering for the intake coordinator internship; rather, he choose to volunteer to determine if he wanted to go to law school and because he believed in the ACLU's mission. CP 502, 1379-80, 1387-88, 1408-09.

In his ten months as an intake counselor with the ACLU, Greenfield was never paid, never sought payment, and never filled out any employment paperwork or tracked his hours. CP 1172-74, 1177, 1275, 1303, 1371-74, 1385-86. Nor did

anyone at the ACLU ever tell him he would be paid or that he was guaranteed a job. CP 499-505, 1173-74, 1274, 1303, 1372-74, 1379, 1381.

Nonetheless, Greenfield hoped the position would lead him to a paid position with the ACLU in the future: "I expected the position to translate into full-time, paid employment ('payment,' 'remuneration')." CP 584; *see also* CP 1388. He communicated this desire to the ACLU repeatedly. CP 584, 1307-08, 1316-17.

Before his internship, Greenfield had applied for a paid position with the ACLU. CP 1158-1160. He was not selected for that position. *Id*. During his internship, he also applied for a paid position with the ACLU as a legal assistant. CP 1162-63. He was not a successful candidate for that position either. CP 375. After his internship ended, he continued to apply for open, paid positions with the ACLU but was not hired for any of those jobs. CP 375, 1164-66, 1313.

C. L&I Issued a Determination of Compliance Because Greenfield Provided Services Gratuitously for a Nonprofit

A few months after his internship ended, Greenfield filed a worker's rights complaint with L&I. CP 373-74. When Greenfield filled out his complaint, he did not list a pay rate or how much he believed he was owed, and he did not indicate whether he was fired or quit his job. CP 373-74, 1197-98. Rather, Greenfield contended that he was guaranteed employment at the conclusion of his internship and suggested that, in his view, he was entitled to pay for the internship as well. CP 373-76. Greenfield explained: "I worked at the ACLU-WA as an 'Intake Counselor,' an unpaid internship that I believed would lead to a full-time position at this specific employer. I was never paid, nor was I hired. None of this was consensual." CP 373.

L&I investigated his wage complaint, obtaining information from both Greenfield and the ACLU. CP 314-606, 1194-1210, 1212-21. The L&I investigator found no evidence

that anyone at the ACLU had indicated that Greenfield would be paid for his intake counselor work or that he would receive a paid position. CP 1203-04. After completing the investigation, L&I issued a Determination of Compliance. CP 289-91.

D. The Office of Administrative Hearings, the Superior Court, and the Court of Appeals All Determined that the MWA Did Not Apply to Greenfield

Greenfield appealed the Determination of Compliance. CP 292-313. After a hearing on the merits, an administrative law judge issued an initial order affirming L&I's decision. CP 172-82. The ALJ concluded that:

> [Greenfield] choose to work gratuitously for ACLU-WA as an intake counselor for several months, during which time no formal employer-employee relationship was established. Under RCW 49.46.010(3)(d), [Greenfield] was not an employee and ACLU-WA did not violate any wage payment laws by not paying him for his volunteer services.

CP at 180.

Greenfield petitioned for the Director's review of the initial order. CP 45-77. The Director performed a de novo review and then adopted the findings and conclusions of the

initial order. CP 41-44. Greenfield petitioned the superior court for judicial review. CP 17-26. The superior court affirmed the Director's order. CP 1505-07.

Greenfield appealed to the Court of Appeals, which affirmed again that Greenfield was not an employee of the ACLU because he met the RCW 49.46.010(3)(d) statutory exemption by providing his services gratuitously to a nonprofit. *Greenfield v. Dep't of Lab. & Indus.*, 27 Wn. App. 2d 28, 30, 54, 531 P.3d 290 (2023). Although the application of the exemption was determinative, the Court of Appeals also examined Greenfield's arguments regarding internship exemptions and determined he also would have been exempted as an unpaid intern. *Id.* at 52-54.

Greenfield petitions this Court for review.

IV. ARGUMENT

The Court of Appeals' analysis of the MWA's nonprofit volunteer exemption neither conflicts with existing law nor raises any issue of substantial public interest. Because

Greenfield raises no issue warranting review, this Court should deny his petition.

A. The Court of Appeals' Routine Analysis Adheres to Traditional Statutory Interpretation Principles, Raising No Issue of Substantial Public Interest

The MWA exempts numerous workers from its requirements, and Washington courts have routinely been called upon to examine the extent of the statute's coverage. At issue here is an explicit exemption for individuals who provide their services gratuitously to nonprofit entities like the ACLU. RCW 49.46.010(3)(d). The exemption is unambiguous, and as the Court of Appeals properly determined, under the statute's plain language, it expressly excludes nonprofit volunteers like Greenfield from the MWA's coverage.

Nothing about the Court of Appeals' unremarkable analysis warrants this Court's review. As is proper in statutory interpretation, the court first looked to the exemption's plain language when determining its meaning. *Greenfield*, 27 Wn. App. 2d 28 at 44-45. The MWA's "employee" definition

excludes "any individual engaged in the activities of . . . [a] nonprofit organization" when: (1) the individual's services "are rendered to such organizations gratuitously" or (2) "where the employer-employee relationship does not in fact exist." RCW 49.46.010(3)(d).[1] As the Court of Appeals explained, "[t]he disjunctive 'or' indicates there are two ways an individual might fall within the exemption: either when an employer-employee relationship does not exist . . . or [when] an individual provides his or her services gratuitously."

---

[1] RCW 49.46.010(3)(d) provides in full:

> Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency, or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are rendered to such organizations gratuitously. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this section or for purposes of membership or qualification in any state, local government, or publicly supported retirement system other than that provided under chapter 41.24 RCW.

Greenfield, 27 Wn. App. 2d 28 at 49. Citing this Court's recent decision in *Rocha v. King County*, 195 Wn.2d 412, 421, 460 P.3d 624 (2020), the court explained that "[i]f one of the conditions is met, there is no need to address the other condition." *Id.*

The Court of Appeals then turned to whether the exemption applied to Greenfield, looking first to its second clause regarding persons who "gratuitously" provide their services. RCW 49.46.010(3)(d). Citing the dictionary, it noted that "[g]ratuitous" means "given freely or without recompense : granted without pay." *Greenfield*, 27 Wn. App. 2d 28 at 50-51 (citing Webster's Third New International Dictionary 992 (2002)). The court explained that "Greenfield provided his services as an intake counselor to the ACLU without pay, or any promise of future pay or a paid position, for 10 months." 27 Wn. App. 2d 28 at 50-51. Because Greenfield performed these services "without pay, promise of pay, or promise of future employment," the court held that he had rendered the

services gratuitously. *Greenfield*, 27 Wn. App. 2d 28 at 51-52. Accordingly, the court ruled, he fell within the exemption for nonprofit volunteers under RCW 49.46.010(3)(d).[2] *Id*.

The Court of Appeals' unremarkable conclusion does not merit review. Greenfield asserts that the court's decision runs contrary to the requirement that the MWA be construed liberally. *See* Pet. 11. But courts do not resort to this canon of construction when a statutory provision is unambiguous. *City of Bellevue v. Raum*, 171 Wn. App. 124, 155 n.28, 286 P.3d 695 (2012). Greenfield quibbles with the Court of Appeals' use of the dictionary to determine the meaning of "gratuitous" (Pet. 17), but it is well established that when the Legislature has not

[2] Having determined that Greenfield fell within the exemption for nonprofit volunteers, the Court of Appeals made no final determination regarding whether an employer-employee relationship existed for purposes of the exemption's second category of excluded workers. But after analyzing the issue, the court explained that, "even assuming Greenfield did not provide services gratuitously, his claim of an employment relationship still fails under both *Anfinson* and *Benjamin*." *Greenfield*, 27 Wn. App. 2d 28 at 52.

defined a term, a "court will give the term its plain and ordinary meaning ascertained from a standard dictionary." *State v. Watson*, 146 Wn.2d 947, 956, 51 P.3d 66 (2002). Greenfield offers no contrary definition of "gratuitous" that would support his claim. *See* Pet. 1-23.

The Court of Appeals did not improperly ignore the federal Fair Labor Standards Act (FLSA), as Greenfield suggests. *See* Pet. 14-16. Rather, as the court correctly explained, "Washington courts are not bound by federal cases interpreting the FLSA, especially when the MWA departs from the FLSA." *Greenfield*, 27 Wn. App. 2d 28 at 51. A court will consider interpretations of FLSA provisions only when there are comparable MWA provisions; when state law differs from federal law, it will not. *See Carranza v. Dovex Fruit Co.*, 190 Wn.2d 612, 619-20 n.5, 416 P.3d 1205 (2018).

Here, because the federal FLSA has no comparable exemption for nonprofit volunteers (*compare* RCW 49.46.010(3) *with* 29 U.S.C. § 203(e)), federal decisions

interpreting this law provide no helpful guidance. The FLSA cannot create an employee under the MWA where the specific language of an exemption excludes the individual. In addressing Greenfield's contention that a non-analogous FLSA provision should limit the nonprofit volunteer exemption to only "specific kinds of nonprofit organizations," the Court of Appeals explained that "the plain language of RCW 49.46.010(3)(d) does not support Greenfield's assertion" about the exemption's meaning. *Greenfield*, 27 Wn. App. 2d 28 at 51.

As the Court of Appeals correctly determined, RCW 49.46.010(3)(d)'s unambiguous language reflects the Legislature's unmistakable intent to exclude nonprofit volunteers from coverage under the MWA. Its routine analysis adheres to well established statutory interpretation principles and raises no issue of substantial public interest.

B. The Court of Appeals' Decision Does Not Conflict With Any Washington Appellate Court Decision

Greenfield's insistence that this Court disregard the statutory exemption and instead analyze whether he was "employed" by the ACLU creates no conflict justifying review. *See* Pet. 12-14, 16-17. As this Court has explained, courts do not apply alternative tests for determining employment relationships when an MWA exemption plainly controls. *Rocha*, 195 Wn.2d at 423. Thus, the Court in *Rocha* determined that it "need not reach the 'economic realities test' because we find jurors are exempt from the MWA under its express provisions." *Id*. Insofar as Greenfield contends that the Court of Appeals' interpretation of the nonprofit volunteer exemption conflicts with other Washington appellate decisions that have employed different tests for assessing employer-employee relationships in other contexts, *Rocha* forecloses such argument.

Nor does the Court of Appeals' decision run afoul of any other Washington decision. In searching for conflict, Greenfield

points to a single decision involving whether double damages were available for an employer's unlawful withholding of wages. Pet. 17-18 (citing *Durand v. HIMC Corp.*, 151 Wn. App. 818, 214 P.3d 189 (2009)). In assessing whether the plaintiff-employee was entitled to double damages and attorneys' fees under RCW 49.52.070, the *Durand* court noted that an "employee is not entitled to such a benefit if he 'knowingly submitted to [the employer's] violations.'" 151 Wn. App. at 833. On the other hand, the court explained, "[a]n employee does not 'knowingly submit' to unlawful withholding of wages by staying on the job even after the employer fails to pay." *Id*. at 836-37. In analyzing these factors, because there was no dispute that the employee expected to eventually be paid, the court determined that he had not knowingly submitted to a wage violation. *Id.* at 833-34, 836-37.

The *Durand* Court's analysis of willfully withheld wages has no application here. In *Durand*, there was no question the worker was an employee, and it was undisputed that he was

owed at least some wages by his employer. *Durand*, 151 Wn. App. at 826-27. Thus, the court addressed only the standard for determining whether withholding the undisputed wages was willful and subject to double damages. *Id.* at 832-34. The question of whether he remained on the job without pay related only to this issue. *Id*.

By contrast, Greenfield was not an employee. He neither sought nor was promised wages during his time volunteering for the ACLU. CP 499-505, 1174, 1274-75, 1303, 1307-09, 1371-74. There were no promised wages to withhold and no unlawful withholding to "submit" to under the *Durand* analysis. The length of time Greenfield gratuitously provided his services to the ACLU is significant only in so far as it confirms that he was not promised pay and did not expect to be paid. The Court of Appeals appropriately considered this as evidence of the gratuitous nature of Greenfield's services. *See Greenfield*, 27 Wn. App. 2d 28 at 50-51. Nothing in its analysis conflicts with *Durand*.

C. Alternative Tests for Unpaid Internships Do Not Create a Reviewable Conflict or Issue of Substantial Public Interest

Much of Greenfield's brief is dedicated to chronicling trends in federal law for unpaid internships. Pet. 18-21. But these federal tests do not apply when an unambiguous MWA exemption controls. Nor is reliance on FLSA-based tests appropriate when federal law contains no analogous provision for nonprofit volunteers. The Court of Appeals did not err in declining to apply Greenfield's various suggested tests, and its decision raises no issue of substantial public interest.

First, an analysis of Greenfield's "employment" under an intern/trainee test is inappropriate when a specific MWA exemption applies. *See Rocha,* 195 Wn.2d at 423. As discussed above, RCW 49.46.010(3)(d)'s plain language for nonprofit volunteers applies to Greenfield, so no other test for employment—including state or federal internship tests—is applicable or appropriate. *Rocha* is clear that when a MWA exemption applies, the analysis ends. *Rocha,* 195 Wn.2d at 423.

Second, the use of a federal test for employment is inappropriate where, as here, the terms of the MWA and the FLSA differ. *See Carranza*, 190 Wn.2d at 619-20. Neither the FLSA nor its derivative federal internship tests provide any helpful guidance when the FLSA contains no comparable exemption for nonprofit volunteers. *Compare* RCW 49.46.010(3) *with* 29 U.S.C. § 203(e); *see Carranza*, 190 Wn.2d at 619-20. As explained above, the FLSA cannot create an employee under the MWA where the specific language of a state law exemption excludes the individual.[3]

Finally, contrary to Greenfield's assertion, the Court of Appeals' decision does not conflict with any L&I guidance. *See*

[3] In most circumstances, the FLSA does not apply to nonprofit and charitable organizations like the ACLU. 29 U.S.C. § 203(s)(1)(A), 206(a), 207(a); CP 1148-49. So even if the Court were to look to that law, Greenfield's time with ACLU would not be subject to his proposed federal internship tests. *See also* U.S. Dep't of Lab., Wage & Hour Div., Fact Sheet #14A: Non-Profit Organizations and the Fair Labor Standards Act (FLSA) (2015), https://www.dol.gov/agencies/whd/fact-sheets/14a-flsa-non-profits.

Pet. 22-23. The L&I policy applicable to nonprofit volunteers is ES.A.1. CP 1210, 1213. Under this policy, individuals at nonprofits are considered volunteers "when their services are offered freely and without pressure or coercion, direct or implied, from an employer." Pol'y ES.A.1 at 3-4. Because the Court of Appeals determined that Greenfield offered his services without pay, promise of pay, or promise of future employment, it concluded he was a volunteer. *Greenfield*, 27 Wn. App. 2d 28 at 51-52. Nothing about this analysis is inconsistent with L&I's policy.

No other L&I policy applies to nonprofit volunteers in Washington. Greenfield references an L&I publication about unpaid internships, noting its description of a seven-factor test for determining if the intern is an employee. *See* Pet. 22-23 (citing Unpaid Internships 101, https://www.lni.wa.gov/forms-publications/F700-173-000.pdf).[4] But again, this alternative

[4] L&I published this document in March 2022, nearly two years after it issued the June 2020 determination of

employment test does not apply when an individual gratuitously offers their services to a nonprofit—the specific exemption at issue here. *See Rocha* 195 Wn.2d at 423. And in any event, as the Court of Appeals correctly explained, even if this test did apply, its factors showed no employer-employee relationship when Greenfield worked without expectation of compensation or promise of a job. *Greenfield*, 27 Wn. App. 2d 28 at 52-54.

The Court of Appeals properly determined that the MWA did not apply to Greenfield's nonprofit volunteer work, and its fact-specific analysis raises no issue of substantial public interest. *Id*. at 54.

V. CONCLUSION

Greenfield's petition raises no issue warranting review. Because the Court of Appeals' analysis raises no issue of substantial public interest and conflicts with no Washington appellate decision, the Court should deny review.

---

compliance. So for this reason as well, Greenfield's reliance on the publication is improper.

This document contains 3390 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 17th day of November.

CHRISTINA K. DALLEN
Assistant Attorney General
WSBA #49513
Office ID #91022
Office of the Attorney General
Labor and Industries Division
7141 Cleanwater Drive SW
P.O. Box 40121
Olympia, WA 98504-0121
(360) 586-7719

NO. 102392-8

SUPREME COURT
OF THE STATE OF WASHINGTON

RHETT GREENFIELD, Petitioner, v. WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES, Respondent.	DECLARATION OF SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the state of Washington, declares that on the below date, I served the Department's Answer to Petition for Review and this Declaration of Service in the below described manner:

E-Filing via Washington State Appellate Courts Portal:

Erin L. Lennon
Supreme Court Clerk
Washington State Supreme Court

//

//

E-Mail via Washington State Appellate Courts Portal:

Rhett Greenfield
rhett.greenfield@gmail.com

DATED this 17th day of November, 2023, at Olympia, Washington.

Debora A. Gross

DEBORA A. GROSS
Paralegal
(360) 586-7741

ATTORNEY GENERALS' OFFICE, L&I DIVISION, OLYMPIA

November 17, 2023 - 4:45 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,392-8
Appellate Court Case Title:	Rhett Greenfield v. Department of Labor and Industries
Superior Court Case Number:	22-2-04045-4

The following documents have been uploaded:

- 1023928_Answer_Reply_20231117153229SC775990_0336.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was DeptsAnsPFR.pdf

A copy of the uploaded files will be sent to:

- liolyce@atg.wa.gov
- lniolyeservice@atg.wa.gov
- rhett.greenfield@gmail.com

Comments:

Sender Name: Deb Gross - Email: deb.gross@atg.wa.gov
Filing on Behalf of: Christina Kevan Dallen - Email: christina.dallen@atg.wa.gov (Alternate Email:)

Address:
P.O. Box 40121
Olympia, WA, 98504-0121
Phone: (360) 586-7707

Note: The Filing Id is 20231117153229SC775990