

No. 86793-3

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SUPREME COURT OF THE STATE OF WASHINGTON

JOSE GUADALUPE PEREZ-FARIAS, *et al.*,

Plaintiffs-Appellants,

v.

GLOBAL HORIZONS, INC., *et al.*,

Defendants-Appellees.

On Certified Questions from the United States Court of Appeals
for the Ninth Circuit
No. 10-35397

On Appeal from the United States District Court
for the Eastern District of Washington
No. 2:05-cv-03061-RHW

**PLAINTIFFS-APPELLANTS' ANSWER TO *AMICUS CURIAE*
ASSOCIATION OF WASHINGTON BUSINESS**

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I. INTRODUCTION

Statutory damages play a vital role in protecting important public rights in our democracy and legal system. The Washington Legislature has the constitutional power to enact legislative remedies, including statutory damage provisions, to protect those public rights where it is difficult to place an exact dollar figure on their value. The Workers submit this response to the *amicus curiae* brief filed by Association of Washington Business (“AWB”) because its position, if accepted, would effectively abolish the Legislature’s power to enact statutory damage remedies.

II. ARGUMENT

A. **Washington’s Public Policy on Punitive Damages Has No Bearing on the Interpretation of the Statutory Damages Provision of FLCA.**

AWB takes the position, without citing any authority for such a conclusion, that fixed statutory damage awards are *per se* contrary to Washington’s public policy because they can be awarded as an alternative to actual damages, even where actual damages are not proven. AWB Brief at 8 (“Washington public policy does not support monetary punishment that is mathematically unrelated to the actual harm suffered by a plaintiff.”). If AWB’s position were adopted, every Washington statute that contains a fixed statutory damage provision as an alternative to actual

damages would immediately be invalidated. *See* Workers' Opening Brief at 31-32 (listing numerous state statutes with statutory damage provisions). AWB's position is not the law, nor is it consistent with longstanding public policy.

Statutory damages and even punitive damages are allowed where expressly authorized by the Legislature. *St. Louis, I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63, 66 (1919) ("the power of the state to impose fines and penalties for a violation of its statutory requirements is coeval with government; and the mode in which they shall be enforced . . . are merely matters of legislative discretion.") (citation omitted); *Winchester v. Stein*, 135 Wn.2d 835, 858; 959 P.2d 1077 (1998) ("Punitive damages are allowed when expressly authorized by the Legislature.").¹ FLCA statutory damages, and all the statutory damages provisions referenced by the Workers in their prior briefing cited above, are remedies created by the Legislature. As such, they are not subject to the rule against non-legislatively created damages.

¹ FLCA provides for fixed statutory damages, not punitive damages. RCW 19.30.170(2); *see also State v. WWJ Corp.*, 138 Wn.2d 595, 606 n. 8, 980 P.2d 1257 (1999) (distinguishing a punitive jury award from statutorily imposed civil penalties).

B. Established Case Law Demonstrates *Williams*, Not *Gore*, Is The Proper Test To Evaluate Statutory Damage Awards.

The proper due process test for determining the constitutionality of a statutory damages award is set forth in *St. Louis, I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63 (1919). As outlined in the Workers' prior briefs, the *Williams* test has been adopted by the First, Sixth, and Ninth Circuits, and was unanimously adopted by the Illinois Supreme Court. Workers' Opening Brief at 22, 26-29 & 32-35. Neither the Growers nor their *Amici* cite any case law in which a court, having been briefed on both *Williams* and *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), has ruled that *Gore* applies to statutory damage awards.²

Despite this reality, AWB nonetheless writes, “[T]here is no uniformity around the country on which standard applies.” AWB Brief at 9. The Illinois Supreme Court rejected the corporate defendant’s argument that *Gore* should apply to statutory damage awards because the company failed to “cite [any] supporting authority in his brief.” *In re*

² AWB cites an inapposite Rule 23 class certification appeal in which the plaintiff sought both statutory damages and punitive damages. *Parker v. Time Warner Ent’t Co., L.P.*, 331 F.3d 13 (2d Cir. 2003). The Second Circuit did not state a preference for *Gore* over *Williams* in that case, and had no need to do so, because discovery had yet to take place and no statutory damages had been awarded. Moreover, there is no indication that issue was central to the appeal as the focus was whether the district court erred by failing to grant class certification.

Marriage of Miller, 879 N.E.2d 292, 305 (Ill. 2007). This Court should reach the same conclusion.

AWB next argues that this Court “implicitly adopted the [*Gore*] framework” in *State v. WWJ Corp.*, 138 Wn.2d 595, 980 P.2d 1257 (1999). AWB Brief at 10. AWB implies that this Court considered and rejected the *Williams* test as the ruling in *WWJ* was made “without any reference to *Williams*.” *Id.* at 12. AWB’s implication is misleading and incorrect. The reason *Williams* was not discussed in the *WWJ* case is that neither party cited *Williams* in their briefing, and the *Williams* case was never mentioned at oral argument.³

Finally, AWB, in a footnote that is nearly an entire page in length, alternatively argues that this Court should look at case law decided under the Eighth Amendment’s Excessive Fines Clause. AWB Brief at 15 n. 1. It is well-established, however, that “[t]he Excessive Fines Clause was intended to limit only those fines directly imposed by, and payable to, the government.” *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 268 (1989) (holding Excessive Fines Clause does not apply to damage awards between private parties). Here, the Eighth

³ Workers’ counsel have confirmed this by reviewing the *WWJ* briefing available on Westlaw and the archived oral argument available at TVW’s website, http://www.tvw.org/index.php?option=com_tvwplayer&eventID=1999010005A.

Amendment has no application as the proposed statutory damage award would go directly to the farm workers who were unlawfully denied work or unlawfully fired, not the government.

III. CONCLUSION

Contrary to AWB's unsupported argument, the Washington Legislature has full constitutional authority to enact statutory damage remedies to protect important public rights. Moreover, the case law is well-settled; courts analyzing statutory damage awards have unanimously followed *Williams* and rejected *Gore*. Now that this issue has been fully briefed, the Workers respectfully request that this Court follow the established case law and adopt the *Williams* test for evaluating statutory damage awards.

DATED this 27th day of April, 2012.

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CERTIFICATE OF SERVICE

I certify that on the 27th day of April, 2012, I caused a true and correct copy of the Plaintiffs-Appellants' Answer to *Amicus Curiae* Association of Washington Business to be served on the following persons by First Class U.S. Mail:

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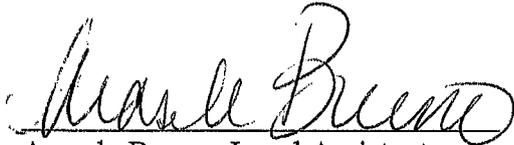
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Dear Clerk of Court: Enclosed for filing please find the Plaintiffs-Appellants' Answer to Amicus Curiae Association of Washington Business in Perez-Farias, et al. v. Global Horizons, Inc., et al., Case No. 86793-3. Thank you.

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