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Supreme Court No. 96267-7

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

JOSE MARTINEZ-CUEVAS, et al.,

Petitioners,

v.

DERUYTER BROTHERS DAIRY, INC., et al.,

Respondents,

and

WASHINGTON STATE DAIRY FEDERATION
and WASHINGTON FARM BUREAU,

Intervenor-Respondents.

**RESPONDENTS AND INTERVENOR RESPONDENTS'
JOINT ANSWER TO AMICUS BRIEF OF THE WASHINGTON
EMPLOYMENT LAWYERS ASSOCIATION**

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I. INTRODUCTION

The Amicus Brief of The Washington Employment Lawyers Association (“WELA” or “WELA Brief”) simply repeats the arguments made by the Petitioners. It is a well-established rule that amici curiae must avoid repetition of matters in other briefs. Because WELA merely reiterates Petitioners’ arguments, the Court should disregard WELA’s analysis.

II. ARGUMENT

An amicus curiae brief must “assist the appellate court.” RAP 10.6(a). It must also “avoid repetition of matters in other briefs.” RAP 10.3(e). Consequently, an amicus curiae brief “must be more than a mere reiteration” of a party’s argument. II WASHINGTON APPELLATE PRACTICE DESKBOOK § 19.4(4) at 19-6 (4th ed. 2016).

WELA’s brief does not assist this Court because it is nothing more than a reiteration of Petitioners’ arguments. WELA claims that the farmworker overtime exemption burdens a fundamental right within the meaning of Article I, Section 12. WELA Br. at 2. However, not only is this incorrect, it does not assist the Court in its consideration of this case because WELA solely offers repetition of Petitioner’s arguments.

In a misguided attempt to bolster Petitioners' brief, WELA tries to argue, just as Petitioners did, that a "right to work and earn a wage" is implicitly included in the "fundamental rights of state citizenship" outlined by this Court in *Vance*.

However, as Intervenor-Respondents pointed out in their response to Petitioners' identical argument, the right to engage in a transaction and the question whether the legislature may prescribe terms and conditions regulating that transaction are two entirely different issues. Intervenor-Respondents demonstrated this point by considering each and every one of the rights derived from *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902), identified by the trial court in this case. *See* Intervenor-Respondent's Br. at 17-19. Each one is *extensively* regulated by the legislature.

Further mimicking Petitioners, WELA argues that, via the farmworker exemption, the Washington Legislature has "effectively decided that the right of farmworkers to work and earn a wage is worth less than that of other citizens." WELA Br. at 9.

This argument (made first by Petitioners) ignores the fact that from 1959 until today, the legislature has exempted vast swathes of the workforce from eligibility for overtime pay. As a consequence,

substantial portions of the work force are not eligible for overtime pay: more than one out of every six workers otherwise eligible for overtime are exempt under the “white collar” (executive, administrative and professional) exemptions alone,¹ without regard for the numerous other exemptions. *See* Intervenor-Respondents Br. at 3-5. Moreover, it was not until 1959 that Washington enacted statutory law that granted *anyone* the right to overtime as a matter of Washington law. *See* Petitioners’ Br. at 17. A right cannot be “fundamental” when it did not exist, for anyone, for more than half of Washington’s history.

III. CONCLUSION

Amicus briefs that shed new light on the issues properly before the Court can assist the Court in resolving difficult questions. Amicus briefs that simply repeat arguments already made by parties, however, provide no such help. The WELA brief does not assist this Court’s determination. For this reason, the Court should decline to adopt any portion of the WELA’s analysis.

¹ 84 Fed. Reg. 10,900, 10,930, Table 10, Mar. 22, 2019.

DATED: October 7, 2019.

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I certify that at all times mentioned herein, I was and am a resident of the state of Washington, over the age of 18 years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, Washington 98101.

On October 7, 2019, I electronically filed the foregoing document with the Supreme Court by using the Supreme Court's electronic filing portal. Participants in this case who are registered eportal users will be served via that system:

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