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NO. 96990-6

SUPREME COURT OF THE STATE OF WASHINGTON

NICOLE BEDNARCZYK, AND CATHERINE SELIN,
INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

Appellants,

v.

KING COUNTY, A MUNICIPAL CORPORATION,

Respondent.

**RESPONDENT KING COUNTY'S ANSWER TO WASHINGTON
EMPLOYMENT LAWYERS ASSOCIATION AND FAIR WORK
CENTER'S AMICI CURIAE MEMORANDUM IN SUPPORT OF
PETITION FOR REVIEW**

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TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. ARGUMENT..... 1

A. There has been no systemic exclusion from jury service..... 1

**B. There is no implied disparate impact claim under RCW
 2.36.080(3)..... 3**

**C. Jurors are not employees under the Washington Minimum
 Wage Act..... 3**

III. CONCLUSION 5

TABLE OF AUTHORITIES

Washington Cases

Anfinson v. FedEx Ground Package Sys., Inc., 174 Wn.2d 851 (2012).. 3,4
Bolin v. Kitsap Cty., 114 Wn.2d 70 (1990)..... 4

Federal Cases

Brouwer v. Metropolitan Dade Cty., 139 F.3d 817, 819 (11th Cir. 1998). 4

Supreme Court Cases

Ballard v. United States., 329 U.S. 187, 189 (1946)..... 2

Statutes

RCW 2.36.030 3, 5
RCW 2.36.055..... 2
RCW 2.36.080(3)..... 1, 3
RCW 49.46.010(3)..... 3, 5
RCW 51.08.178 5

Court Rules

GR 18..... 2

I. INTRODUCTION

The Washington Employment Lawyers Association and Fair Work Center (collectively Amici) raise three issues which have been thoroughly addressed by the parties in this case. First, jurors are provided the opportunity to serve on a jury. There is no statutory guarantee of actual service and there has been no systemic exclusion from service. Second, as the Court of Appeals correctly found, there is no implied disparate impact claim under RCW 2.36.080(3). Finally, jurors are not employees under the Washington Minimum Wage Act. As these issues have been thoroughly addressed by the parties in prior materials, a brief response follows.

II. ARGUMENT

A. **There has been no systemic exclusion from jury service.**

Petitioners have not been excluded from jury service. To the contrary, both were summonsed and given the opportunity to serve – one actually served. Neither has there been a systematic exclusion of low-income persons from jury service. While there is a policy of excusing potential jurors in some instances *when they request to be excused*, Petitioners' and Amici's attempt to equate that excusal with exclusion was rejected by the Court of Appeals and should also be rejected by this Court.

Each year, King County receives a jury source list from the Washington Administrative Office of the Courts (AOC) that includes the

county's registered voters, licensed drivers, and identicard holders. CP 128; RCW 2.36.055; GR 18. County staff reviews the jury source list and removes duplicates and invalid entries. The resulting list is King County's master jury list. CP 128. The master jury list is certified by King County Superior Court, filed with the county clerk, and then used by both the Superior Court and District Court to summons jurors. *Id.*; RCW 2.36.055; GR 18. Petitioners have not challenged the source list or the master jury list and that fact distinguishes this case from those cited by Amici.

In *Ballard v. United States*, women were systematically and intentionally excluded from the panel of grand and petit jurors. 329 U.S. 187, 189 (1946). This is not the fact pattern in the pending case. In *Ballard*, women were not included in the pool from which jurors were called. They were never called for service and therefore never given the choice to either serve or to request to be excused. These facts distinguish *Ballard* such that its holding is not applicable here.

At no point in King County's process are jurors systemically excluded based on economic status. Though a juror's request to be excused from jury service may be motivated by his or her economic status, it does not mean that the juror was *excluded from service by the County* based on that status. The juror was excused because he or she requested to be excused. As the Court of Appeals correctly held, excusal does not equate

to exclusion.

B. There is no implied disparate impact claim under RCW 2.36.080(3).

The Court of Appeals found that “[b]ecause an implied cause of action and remedy of increased juror pay is not consistent with the legislative intent or the underlying purpose of the statute, the Appellants have failed to demonstrate that RCW 2.36.080(3) creates an implied disparate impact cause of action based on jury pay.” Slip Op. p. 8. Contrary to the assertions of Amici, there is no disparate impact claim under RCW 2.36.080(3). Moreover, neither Petitioner presents facts that fall within the ambit of RCW 2.36.030 – even if a cause of action existed – because neither has been excluded from service.

C. Jurors are not employees under the Washington Minimum Wage Act.

An individual is not an “employee” for purposes of minimum wage if “an employer-employee relationship does not in fact exist.” RCW 49.46.010(3)(d). Such is the case with jurors.

Amici cite to *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851 (2012), to argue that the definition of an employee under the Washington Minimum Wage Act is “broad.” Br. of Amicus at 9. In fact, the issue in *Anfinson* was whether FedEx drivers were employees under

the WMWA or independent contractors. The court interpreted the WMWA's definition of "employee" for purposes of this question only and in analyzing the statutory definition of "employee" specifically stated that it was "subject to multiple exceptions not relevant here." *Anfinson*, 174 Wn.2d at 867. In the present case those exceptions are relevant, specifically, the exception where no employer-employee relationship exists.

Amici incorrectly argues that jurors meet the economic dependence test set forth in *Afinson*. To the contrary, jurors are not, and cannot be, economically dependent on a court that summons them for service. Prospective jurors are drawn at random from eligible community members and there is no guarantee of serving on a jury, or the length of service. They do not voluntarily serve, but are compelled to do so. Considering these and other factors in the context of the economic realities test, the Eleventh Circuit held "there is no indicia of an employment relationship between state court jurors and [the] county." *Brouwer v. Metropolitan Dade Cty.*, 139 F.3d 817, 819 (11th Cir. 1998) (internal citations omitted).

Finally, the Supreme Court's decision in *Bolin v. Kitsap Cty.*, 114 Wn.2d 70 (1990), does not affect the status of jurors under the Washington Minimum Wage Act. The *Bolin* decision is limited to the Industrial

Insurance Act (IIA), which defines “employees” differently than the WMWA. *Compare* RCW 51.08.178 *with* RCW 49.46.010(3).

III. CONCLUSION

The Court of Appeals correctly held there is no private cause of action under RCW 2.36.030 and that neither Petitioner has been excluded from jury service. Petitioners have no claim under RCW 2.36.030 or the WMWA which is inapplicable to jurors.

DATED this 14th day of June, 2019.

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Respectfully submitted,

/s/ Heidi Jacobsen-Watts

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CERTIFICATE OF SERVICE

I, NADIA RIZK, hereby certify that on June 14, 2019, I electronically filed the foregoing with the Clerk of the Court for the Washington Supreme Court by using the Washington State Appellate Courts' web portal system.

I certify that all participants in the case are registered electronic users and that service will be accomplished by the appellate portal system.

Dated this 14 day of June, 2019 at Seattle, Washington.

/s/ Nadia Rizk
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KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION

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