IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-1470
District Court Case No. 4D05-4729

LARRY LINER, ETC.,
Appellant,

vs.

WORKERS TEMPORARY STAFFING, INC.,
Appellee.

ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL

INITIAL BRIEF OF LARRY LINER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES **PAGE**

TABLE OF AUTHORITIES (Continued)

FEDERAL CASES **PAGE**

STATE CASES

TABLE OF AUTHORITIES (Continued)

STATE CASES **PAGE**

TABLE OF AUTHORITIES (Continued)

STATE CASES **PAGE**

FEDERAL STATUTES

TABLE OF AUTHORITIES (Continued)

FEDERAL STATUTES **PAGE**

STATE STATUTES

TABLE OF AUTHORITIES (Continued)

STATE STATUTES **PAGE**

STATE RULES

OTHER AUTHORITIES

INTRODUCTION

This is an appeal from a trial court order and a district court decision declaring unconstitutional Florida's Labor Pool Act (the "Labor Pool Act" or the "Act").[1] The Act was enacted in 1995 as important and necessary remedial legislation to protect day laborers by prohibiting labor pool companies from overcharging them for goods and services. The Florida Legislature made an express finding that the Act was "necessary to provide for the health, safety and well-being of day laborers throughout the state and to establish uniform standards of conduct and practice for labor pools in the state."[2] If a labor pool violates the Act, it must pay the aggrieved day laborer the greater of actual damages or $1,000 per violation.[3]

In this case, the relevant section of the Act limits the amount that labor pool companies can charge day laborers for transportation:

> No labor pool shall charge a day laborer more than a reasonable amount to transport a worker to or from the designated worksite, but in no event shall the amount exceed the prevailing rate for public transportation in the geographic area.[4]

This provision thus focuses on each charge to each day laborer (rather than on the labor pool's entire workforce), and offers two alternative tests to determine

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[1] § 448.20, *et seq*., Fla. Stat. (2003).

[2] § 448.21, Fla. Stat.

[3] § 448.25, Fla. Stat.

[4] § 448.24(1)(b), Fla. Stat. Unless otherwise stated, all emphasis in this brief is added.

whether a transportation charge violates the Act: the first test is a subjective one (whether the door-to-door transportation fee was "reasonable"), and the other is objective (whether the charge was more than the prevailing rate for public transportation in the geographic area). The objective test thus broadens the analysis to "the geographic area."

The Plaintiff in this case, Larry Liner (a day laborer), alleged that the Defendant company, Workers Temporary Staffing ("WTS") (a labor pool company), violated the Act by charging its temporary workers more than the prevailing rate for public transportation in Broward County when it transported those workers within that county. Although the Plaintiff alleged a violation of the objective standard—charges in excess of the "prevailing rate for public transportation in the geographic area"—the trial court decided to evaluate WTS's charges based on the subjective ("reasonable amount") standard, by inexplicably focusing on what private limousines and other forms of non-public transportation would charge to transport a day laborer door-to-door, to and from each separate designated worksite.

The Plaintiff's claims were limited to transportation within Broward County. Plaintiff did not allege that WTS had violated the Act when it provided inter-county transportation or transportation in other counties. Both the trial court and

the district court nonetheless focused on charges for inter-county travel and charges in other counties.

From these premises, the courts found the Act unconstitutional because it purportedly contained ambiguities that rendered it unconstitutionally vague (R. 7544-754). The trial court also found that the Act violated WTS's due process rights because of the Act's purportedly excessive penalties. (R. 7545-7548).

STATEMENT OF CASE AND FACTS

The Plaintiff filed a class action complaint against WTS alleging that the labor pool company had violated Section 448.24(1)(b), by overcharging its day laborers for transportation between WTS labor halls and worksites *within* the following four *separate* geographic areas: Broward, Brevard, Marion and Volusia Counties. (R. 1-11).[5] Shortly thereafter, WTS filed a counterclaim seeking declaratory relief, (R. 594-606), alleging that sections 448.24(1)(b) and 448.25 were unconstitutional under the Due Process Clause. (R. 602-606).

On February 14, 2005, the trial court entered a case management order that called for the Plaintiff to first establish at an evidentiary hearing that he had an individual claim under Sections 448.24(1)(b) and 448.25 of the Act before he could proceed with class discovery. (R. 689-691). The court also asked the parties

[5] The Plaintiff amended this complaint on August 5, 2004, (R. 23-43), reiterating that his claims were that WTS overcharged him within each geographic area.

to specifically address the meaning of the Act's prohibition against charging more than "the prevailing rate for public transportation in the geographic area," and to argue whether or not this prohibition applied to the Plaintiff's individual claim.

On June 6, 2005, the Plaintiff filed his Second Amended Class Action Complaint (R. 1903-1917), limiting his claims to transportation within Broward County, and alleging:

> (a) WTS was a "labor pool" (R. 1908 at ¶¶7-8);
>
> (b) WTS operated a "labor hall" (*Id.* at ¶¶8, 27);
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> (c) the Plaintiff performed "day labor" for WTS between December 2002 and March 2004 (*Id.* at ¶¶9-10, 28);
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> (d) the Plaintiff performed such "day labor" within Broward County, Florida (*Id.* at ¶9);
>
> (e) WTS transported the Plaintiff to and from designated worksites within Broward County, Florida (*Id.* at ¶28);
>
> (f) in transporting the Plaintiff to and from these designated worksites, WTS charged the Plaintiff: (i) $1.50 one way for transportation from a designated worksite and a WTS labor hall; (ii) $1.50 one way for transportation from a WTS labor hall and a designated worksite; and/or (iii) $3.00 round trip between a designated worksite and a WTS labor hall (*Id.* at ¶¶16, 28);
>
> (g) since October 1, 2000, public transportation within Broward County, Florida has cost $2.50 for unlimited, all day travel, and $1.00 for travel one way on the Broward County Transit system (*Id.* at ¶¶14, 29); and
>
> h) the prevailing rate for public transportation in the geographic area in which WTS employed the Plaintiff and other Day

> Laborers during the Class Period was, and is, $2.50 for unlimited, all day travel, and $1.00 for travel one way (*Id.* at ¶¶15, 29).

The purpose of the Plaintiff's second amendment was to limit his claim under the Act to only those WTS transportation charges for travel between WTS's *Broward County* labor halls and worksites *within Broward County*. He thus alleged that Broward County was the relevant "geographic area" for purposes of his claim under Section 448.24(1)(b) of the Act. He also alleged the relevant "prevailing rate for public transportation" in that geographic area was the Broward County Transit ("BCT") rate for bus travel.

I. THE EVIDENTIARY HEARING

On November 14-16, 2005, the trial court conducted the evidentiary hearing required by the February 2005 case management order. (R. 689-691). The issues to be decided at the hearing were the constitutionality of Sections 448.24(1)(b) and 448.25; whether WTS was liable to the Plaintiff under the Act; and whether a carpooling arrangement mandated by WTS exempted the company from Section 448.24. (R. 7544). The parties stipulated after the close of evidence that the Plaintiff's court-required preliminary showing would not prevent subsequent class certification if WTS failed to prevail, but that the court's findings would act as final judgment as to the issues of WTS's liability to the Plaintiff. (T. 604-611).

A. The Plaintiff's Evidence

At the evidentiary hearing, the Plaintiff presented the following evidence:

1. The Plaintiff testified that he was homeless, worked as a day laborer for WTS (T. 263-264), and that he and other labor pool workers were essentially powerless to stand up to WTS for fear they would be prevented by WTS from working on a particular day (T. 270-273). He also presented evidence that on 177 occasions WTS charged him more for transportation to and from WTS's Broward County worksites than the prevailing rate for public transportation within Broward County (*i.e.*, the BCT rate). (T. 72-79, 264-270; Pl. Ex. 29).

2. The Plaintiff played audiotape statements made at an April 19, 1995 Senate Judiciary Committee meeting by Florida Senator Daryl Jones (D-Miami), a co-sponsor of the Labor Pool Act. Senator Jones was heard commenting that the phrase "prevailing rate for public transportation in the geographic area" meant "government subsidized" transportation and, more specifically, "we're looking at the bus." (T. 58).

3. The Plaintiff admitted into evidence the dictionary definitions of the words "prevailing" and "public," terms the trial court had judicially noticed. (T. 70-72).

4. The Plaintiff's counsel read into the record excerpts from the deposition testimony of Grady Booth, WTS's Broward County labor hall branch manager. (T.

72-89). Booth testified that WTS charged its day laborers $1.50 for one-way and $3.00 for round-trip transportation to and from WTS worksites, *including those within Broward County*. (T. 77).

5. The Plaintiff submitted evidence demonstrating that, of all the possible modes of "public transportation" available within Broward County, the bus was by far the most "prevailing." The Plaintiff provided the court with the Broward County Annual Ridership Reports that calculated a total of 134 million people rode BTC buses from June 2000 through June 2004. (T. 96-97). By comparison, the Plaintiff showed that during the same four-year period only 29 million people rode in taxi cabs in Broward County (T. 234), fewer than 4 million rode the Tri-Rail (T. 160-161; R. 1978-1990), and somewhere between 15,600 and 37,920 rode in van-pools. (T. 225; Pl. Ex. 24).

6. The Plaintiff also presented evidence demonstrating that it would have cost him an average of over $48.00 per day to ride a taxi cab[6] to and from his WTS Broward County worksites (from an average daily wage of $56.32).[7] (T. 250, 266-

[6] According to Broward County Administrative Code §37.2, taxi cab rates in Broward County were $1.50 for the first 1/8th of a mile, $0.25 for each additional 1/8th of a mile, and $0.30 for each one minute of waiting time. (T. 253-254). Broward County bus rates set by Broward Administrative Code §37.22, are $1.00 for a regular one-way fare with free transfers onto other buses, and $2.50 for an all-day pass. (T. 100-101; Pl. Exs. 12-13).

[7] This evidence was substantially supported by the Defendant's own transportation expert, Molly Hughes, who testified that it would cost the Plaintiff

270, 288-292, 521; P. Exs. 26, 29-30). If the Plaintiff had used a van pool,[8] it would have cost him between $400 and $1,100 per month (or, between $19.05 and $52.38 per day, based on a 21-day working month), plus additional costs like gasoline, tolls, and parking. (T. 177-178, 184-185).

B. WTS's Evidence

The evidence WTS produced at the evidentiary hearing did not directly address the constitutionality of the Act, but instead focused on: 1) comparing WTS transportation charges to other types of transportation modes; 2) the Plaintiff's failure to object to being overcharged by WTS; and 3) the financial consequences to WTS should it be held liable under the Act.

For instance, Mark Lang, WTS's chief executive officer, testified that he believed WTS's transportation charges were "reasonable" under the Act when compared to door-to-door forms of transportation. (T. 329, 354-355). However, Grady Booth, WTS's Broward branch manger, testified that day laborers really had only four transportation options: They could take the WTS van, ride with a co-worker, drive themselves, or take the bus. (T. 77-79). Finally, the company's chief financial officer, Mike Stanley, testified that he would recommend that WTS

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an average of $31.99 per day to get to and from the worksites using a taxi cab. (T. 423).

[8] Cathleen McIntyre of VPSI, Inc., a van pool program operator, testified that day laborers were not good candidates for the van pool program because many of them are homeless and they do not know their work destinations on a consistent basis. (T. 181-182, 194-197).

declare bankruptcy if the Plaintiff and each member of the class prevailed under the Act. (T. 526-563).

To explain its take on Sections 448.24(1)(b) and 448.25, WTS turned to its transportation expert Molly Hughes. (T. 368-443, 463-469). Hughes testified that she researched specific WTS jobsites that the Plaintiff worked in Broward, *Miami-Dade, and Palm Beach Counties*, and the possible modes of transportation the Plaintiff could have used to get to and from those South Florida jobsites. (T. 375, 422). Ms. Hughes concluded it would have cost the Plaintiff an average of approximately $32.00 per day to take a taxi cab (as part of a combination with other forms of transportation),[9] to and from these locations. (T. 423). Hughes also testified that in her view *there was no "prevailing rate" for public transportation* in Broward County, or in any other Florida county. (T. 445).

Finally, WTS called William Sorrells, a long-time employee of BCT, to testify. (T. 470-477, 481). Mr. Sorrells acknowledged that every county in South Florida represents a *separate and distinct geographic area*, (T. 479), and that each county sets its own bus rates and creates its own bus routes. (T. 479-480). Sorrells admitted that there is no one single "rate" for public transportation for all of South Florida, but that each county sets its own separate rate. (T. 480).

[9] For example, bus, then taxi. (T. 423).

II. Trial Court Declares Sections 448.24(1)(b) and 448.25 Unconstitutional and Enters Final Judgment for WTS on Liability

The trial court found that WTS had charged the Plaintiff $1.50 for one-way, and $3.00 for round-trip, and that this amount was more than Broward County bus travel, which was only $1.00 for one-way and $2.50 for all-day bus fare within the county. (R. 7543-44). However, the court also made factual findings about transportation *outside* of Broward County. For example, the court described the cost of public bus travel in *Miami-Dade* and *Palm Beach* counties, and the inter-county cost of travel between these counties and Broward County. The court then compared *those* costs to WTS's transportation charges, which the court found were less expensive. (R. 7544).

A. The Trial Court Dissects Section 448.24(1)(b) and Finds "Ambiguities"

Rather than read the terms "prevailing rate for public transportation in the geographic area" together, the trial court began its analysis by interpreting "public transportation" as if that term had been used in a vacuum. Since the Legislature did not define that term in the Act, the court found that "public transportation" should be broadly interpreted to include "taxis, limousines, tri rail, van pools, etc."—each of which, the court noted, would be more expensive to the Plaintiff than the amounts WTS charged. (R. 7546).

Having decided that "public transportation" could mean even a *privately owned and operated limousine*, the court then asked, "Does this mean the prevailing rate of public transportation to the worksite?" (R. 7546-7547). The court decided that it must, stating "[t]hat to compare a non-existent bus route to the 'reasonable amount to transport a worker to or from the designated worksite' is to compare, as Gloria Steinham [*sic*] once did, fish to bicycles. Surely the Legislature meant available public transportation to the *worksite*." (R. 7547).

Thus, under the court's analysis, the proper comparison for whatever charge WTS or other labor pool companies might impose is whatever means of transportation directly served *each individual worksite* – an interpretation that completely ignores the legislative mandate that no such charge could be more than the prevailing rate for public transportation in the geographic area, period. Based on its misconstruction of the actual language in the Act, the court then ruled that the term "public transportation" was ambiguous because some forms of public transportation, like the bus, *do not service some WTS worksites*. (R. 7547).

Having untethered the concept of "public transportation" from the crucial words "prevailing rate" and "geographic area", the trial court determined that WTS would be required to conduct "a comparison of the cost charged by the labor pool to deliver workers to the worksite as compared to the cost of *public transportation*

to deliver workers to the worksite."[10] (R. 7548). The court found this comparison unworkable because 60% of the WTS worksites the Plaintiff worked were not serviced by buses and by necessity the Plaintiff would have required more expensive limousine or taxi service to reach them – in other words, WTS did not violate the Act because, while the bus charged less for transportation and was the prevailing form of public transportation and in the geographic area, *the bus did not provide door-to-door transportation and therefore could be ignored*.[11]

The trial court finally turned to the term "geographical area," but dismissed the Plaintiff's assertions that "geographic area" meant Broward County, where the Plaintiff alleged the overcharging incidents occurred, and which was, as Mr. Sorrells has testified, its own separate and distinct geographic area. (T. 479, R. 7547). The court instead accused the Plaintiff of preserving his claim by "cherry picking" Broward County where he had a claim because bus fare was less than

[10] The trial court commented during closing arguments that such an analysis would render the Labor Pool Act completely unworkable (*i.e.*, unconstitutional) because it would require a case-by-case, jobsite-by-jobsite determination of the "prevailing rate for public transportation." (T. 699).

[11] (R. 7547). The court also found that WTS serviced, and the Plaintiff worked, within the tri-county area and that, of 23 WTS worksites the court sampled, 14 were not serviced by bus routes and for those that were, a "large percentage" of those had no early morning bus service that could get the Plaintiff to work on time. (R. 7544). The Plaintiff testified he took the bus to WTS worksites approximately thirty percent of the time, but there was no evidence that the Plaintiff was docked pay in those instances where he arrived at a worksite late by bus. (T. 277).

what WTS charged, as opposed to suing where he had no claim because WTS had not violated the Act elsewhere.[12]

The court believed that "geographic area" could mean the entire area serviced by WTS, or all the areas worked by the Plaintiff—even though day laborers like Plaintiff are hired daily, paid daily, and discharged daily.[13] (R. 7547). In any event, the court concluded that WTS should not be charged with guessing which of these possible meanings applied. *Id*.

At the end of its statutory interpretation, the court addressed the term "prevailing rate," acknowledging that its analysis was dependant on two assumptions: 1) the relevant "public transportation" was not limited to bus travel,

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[12] The court summarized the Plaintiff's case:

> In order for Mr. Liner to prevail on his claim based on these facts 'public transportation' must mean travel exclusively by bus. Any other form of public transportation would be more expensive than that charged by WTS. Even the bus in combination with any other form of public transportation would be more expensive than that charged by WTS. Further, in order for Mr. Liner to prevail, the 'geographic area' referenced in the statute must be limited to Broward County. If the geographical area is expanded to include either Miami-Dade or Palm Beach Counties or both, then the amount of money charged by WTS would be less—hence no violation.

(R. 7545).

[13] The Act itself focuses on the individual laborer and the charge to him for one-way transportation—not the labor pool's charges to its employees as a whole:

> No labor pool shall charge <u>*a*</u> day laborer more than <u>*a*</u> reasonable amount to transport a worker to or from <u>*the*</u> designated worksite, but in no event shall <u>*the*</u> amount exceed the prevailing rate for public transportation in the geographic area.

§ 448.24(1)(b), Fla. Stat.

and 2) that the term "prevailing rate" must apply to the cost of public transportation *to each discrete worksite*. (R. 7547). Under these self-imposed restrictions, the court concluded that WTS would necessarily be charged with knowing beforehand what forms of public transportation would service its worksites and how much that transportation would cost. (R. 7547). The court concluded that this, along with the Act's perceived ambiguities, would put WTS in an impossible position that unconstitutionally deprived it of adequate warning and fair notice of the Act's prohibitions.[14]

B. The Final Judgment, Holding That Plaintiff Did Not Establish His Claim under the Labor Pool Act

The trial court concluded that WTS was entitled to a final judgment because the Plaintiff was unable to establish liability, listing the reasons for its decision: 1) the term "public transportation" was not limited solely to bus travel; 2) the Act compared the costs charged by WTS with the costs the day labor would incur to reach each discrete worksite; and 3) the term "geographic area" applied to the tri-county area because this was the area that was serviced by WTS and worked by the Plaintiff—although the Plaintiff limited his claims to the charges he and others received for transportation within the specific geographic area of Broward

[14] The court also objected to the Act's penalties, finding them excessive and a violation of WTS's due process rights. (R. 7548).

County.[15] The court, however, explained that even if "geographic area" meant Broward County, the Plaintiff's claim would still fail, presumably, because in no instance would the Plaintiff himself be able to use the BCT bus to reach any of WTS's Broward County worksites.[16]

On appeal, the Fourth District agreed with the trial court that the Labor Pool Act is unconstitutional, but limited its published opinion to holding that the terms "reasonable amount," "public transportation" and "geographic area" are too vague to pass constitutional scrutiny.

SUMMARY OF ARGUMENT

The Plaintiff alleged that WTS violated the Act each time it charged a day laborer for transportation within Broward County because WTS charged more than the BCT bus rate—the most frequent, or common, rate for public transportation in that geographic area.

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[15] WTS also transported workers through a carpooling arrangement whereby one of its workers drove his own vehicle. WTS charged each worker traveling by carpool a $1.50 one-way, or $3.00 round-trip fee, which it would then pay to the driver. (R. 7548). It was WTS's position that the company was exempt from the Act in such instances because it did not profit from the deducted transportation charges. The trial court rejected this argument, noting that the Act specified *charging* transportation fees, not keeping those fees, which WTS clearly did and could not thus be exempted. (R. 7549). WTS has cross-appealed this portion of the final order. (R. 7559-7567).

[16] The trial court was again mistaken—as noted in footnote 10 above, the Plaintiff testified that he had taken the bus to WTS's Broward County worksites roughly one-third of the time.

The trial court's conclusion that "public transportation" under the Labor Pool Act means private taxis and limousines is inconsistent with the remedial purpose of the Act; it would mean that the Act permitted labor pools to charge a worker more than half of his daily pay, just to get to work. The idea that "public transportation" means door-to-door transportation also excises an entire clause from the Act: "in the geographic area." And the idea that the charge a labor pool is permitted to impose should be compared to a *combination* of transportation services providing door-to-door transportation ignores the Act's express focus on a single "prevailing rate for public transportation" as the relevant comparator.

The *statutory* remedy for violations of the Act does not violate Due Process because, among other reasons, it is not the result of a fact-finder's caprice—but a legislative determination. Courts have upheld similar legislative determinations where justified by public policy. This court should as well.

In finding Due Process violations (and alternatively finding a lack of liability for the same reasons), the trial court and the Fourth District failed to read the terms of the Act together, failed to seek a constitutional construction of the Act, and failed to construe the Act liberally to advance the remedy that the Florida Legislature intended. This Court should quash, reverse and remand to the trial court for further proceedings.

ARGUMENT

This appeal is before the Court as a matter of right. Both the trial court and the Fourth District held that the Labor Pool Act is unconstitutional. The Fourth District's determination was much more limited, but the Plaintiff recognizes that this Court can affirm the trial court's decision regarding the Act's constitutionality for reasons not addressed by the district court. In addition, the arguments for finding the Act constitutional largely—but not entirely—subsume the arguments regarding the district court's decision. To limit that redundancy, the Plaintiff will first address the broader spectrum of constitutional and statutory construction issues presented by the trial court's order, and then address the three discrete bases for the district court's decision.

I. PRESUMPTIONS, PRINCIPLES OF CONSTRUCTION, AND STANDARD OF REVIEW IN THIS APPEAL

A. Statutory Construction in General

"[I]t is a well-settled principle of statutory construction that 'all parts of a statute must be read together in order to achieve a consistent whole.'"[17] "It is also a basic rule of statutory construction that 'the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a

[17] *Borden v. East-European Ins. Co.*, 921 So. 2d 587, 595 (Fla. 2006) (quoting *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992) (emphasis omitted)).

statute meaningless.'"[18] These basic principles have particular force here because the legislation at issue is remedial, and the trial court has declared the legislation unconstitutional.

B. The Florida Labor Pool Act Is Remedial Legislation

Remedial legislation "should be liberally construed so as to suppress the evil identified by the Legislature, and to advance the remedy intended."[19] In its statement of legislative intent, the Florida Legislature expressly found that the Labor Pool Act was "necessary to provide for the health, safety and well-being of day laborers throughout the state and to *establish uniform standards* of conduct and practice for labor pools in the state."[20] The Legislature further mandated that the Act "shall be carried out in accordance with this purpose."[21] The Act is thus remedial legislation[22] and should be liberally construed.

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[18] *Borden*, 921 So. 2d at 595 (quoting *State v. Goode*, 830 So. 2d 817, 824 (Fla. 2002)); *see also P.D. v. Dep't of Children & Families*, 866 So. 2d 100, 102 (Fla. 1st DCA 2004) ("Under principles of statutory construction, a court may not generally ignore or delete words used by the Legislature in a statutory provision absent a finding that 'the words at issue are so meaningless or clearly inconsistent with the legislative intent that they should be ignored as mere surplusage.'" (quoting *Greenberg v. Cardiology Surgical Ass'n*, 855 So. 2d 234, 237 (Fla. 1st DCA 2003)))

[19] *Connor v. Div. of Elections*, 643 So. 2d 75, 77 (Fla. 1st DCA 1994); *see also Golf Channel v. Jenkins*, 752 So. 2d 561, 565-566 (Fla. 2000) ("liberally construed in favor of granting access to the remedy provided by the Legislature").

[20] §448.21, Fla. Stat.

[21] §448.21, Fla. Stat.

[22] *Adams v. Wright*, 403 So. 2d 391, 394 (Fla. 1981) ("A remedial statute is 'designed to correct an existing law, redress an existing grievance, or

C. Statutory Construction in a Constitutional Challenge

Florida courts are "obligated to construe statutes in a manner that avoids a holding that a statute may be unconstitutional."[23] Indeed, they are expected "to adopt a reasonable interpretation of a statute which removes it farthest from constitutional infirmity."[24] This Court has described this commitment to statutory construction as a "fundamental principle."[25]

The court has accordingly provided three "canons of construction to be followed in interpreting statutory acts."[26] The first: "[o]n its face every act of the Legislature is presumed to be constitutional."[27] The second: "every doubt as to its constitutionality must be resolved in its favor."[28] The third: "if the act admits of two interpretations, one of which would lead to its constitutionality and the other to its unconstitutionality, the former rather than the latter must be adopted."[29] Thus "[t]o uphold a statute in the face of a constitutional challenge, a court may place a saving construction on the statute when this does not effectively rewrite the

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introduce regulations conducive to the public good.' It is also defined as '(a) statute giving a party a mode of remedy for a wrong, where he had none, or a different one, before.'" (internal citation omitted)).

[23] *State v. Giorgetti*, 868 So. 2d 512, 518 (Fla. 2004).

[24] *Tyne v. Time Warner Entm't Co.*, 901 So. 2d 802, 810 (Fla. 2005) (quoting *Corn v. State*, 332 So. 2d 4, 8 (Fla.1976)).

[25] *Id.* (quoting *Corn*, 332 So. 2d at 8).

[26] *Giorgetti*, 868 So. 2d at 518.

[27] *Id.* (quoting *Gray v. Central Fla. Lumber Co.*, 104 Fla. 446, 140 So. 320, 323 (1932)).

[28] *Id*. (quoting *Gray*, 140 So. at 323).

[29] *Id*. (quoting *Gray*, 140 So. at 323).

statute."[30]

In this case, the trial judge found that the Labor Pool Act was unconstitutionally vague and thus violated the due process protections of the state and federal constitutions. In *Scudder v. Greenbrier C. Condo. Ass'n*,[31] this Court addressed a vagueness challenge to a statute that allowed for assessment of reasonable transportation charges to the members of a condominium association. In rejecting that challenge, the Court described the statutory construction principles that apply where, as here, the challenged statute is civil—not penal:

> Statutes must be clearly worded so that persons of common intelligence have fair warning of what is prohibited, required or permitted. The test utilized to determine the vagueness of a statute, therefore, is whether the statute is specific enough to put persons of common intelligence and understanding on notice of the proscribed conduct. Moreover, it is this court's obligation to find the statute constitutional if the application of ordinary logic and common understanding would permit the same. Most vagueness challenges are directed at penal statutes, and thus, *an even greater latitude is afforded civil statutes in light of a vagueness challenge.* Therefore, any doubts as to the constitutionality of the statute must be resolved in favor of its constitutionality.
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> * * *
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> *Merely because the statute in question was subject to differing interpretations throughout litigation does not render it unconstitutionally vague.*[32]

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[30] *Fla. Dep't of Children & Families v. F.L.*, 880 So. 2d 602, 607 (Fla. 2004) (citing *Firestone v. News-Press Pub. Co.*, 538 So. 2d 457, 460 (Fla. 1989); *State v. Stalder*, 630 So. 2d 1072, 1076 (Fla. 1994)).

[31] 663 So. 2d 1362 (Fla. 4th DCA 1995)

[32] *Scudder*, 663 So. 2d at 1367-1368; *cf. State v. Wershow*, 343 So. 2d 605, 610 n.1 (Fla. 1977) (in assessing vagueness challenge, "we perceive the test to

In short, a non-penal statute challenged on vagueness grounds is entitled to the full presumption of constitutionality enjoyed by statutes challenged on other grounds.

D. Standard of Review

This is an appeal from an order declaring the Labor Pool Act unconstitutional. The standard of review is *de novo*.[33]

II. THE FLORIDA LABOR POOL ACT IS CONSTITUTIONAL, AND WTS VIOLATED IT

A. The Trial Court's Conclusions Resulted From Three False Premises and a Failure to Read the Terms of the Labor Pool Act Together.

The trial court's order relied on three erroneous premises: First, the court believed that the term "geographic area" in the Labor Pool Act simultaneously meant all the places that the labor pool was providing transportation to all its workers. Second, the court believed that the "prevailing rate" for public transportation meant the rate for door-to-door transportation throughout that "geographic area." Third, the court believed that "public transportation" meant all forms of transportation available to the paying public—including private limousines and taxis. These errors occurred because the court failed to accept the limits of the Plaintiff's claim, to read the terms of the Labor Pool Act together, to

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be much less severe where the maximum penalty is loss of an office or position. Penal statutes must meet a higher test of specificity.").

[33] *Zingale v. Powell*, 885 So. 2d 277, 280 (Fla. 2004).

give effect to each word the Legislature chose for the Act, to seek a constitutional construction of the Act, or to construe the Act liberally "so as to suppress the evil identified by the Legislature, and to advance the remedy intended."[34]

B. The Relevant Transportation Charge From the Labor Pool Company, and What That Charge Is Compared To Under Florida Labor Pool Act

The relevant provisions of the Labor Pool Act limit the amount a labor pool may charge a given day laborer to transport him to or from a designated worksite:

> No labor pool shall charge **a** day laborer more than **a** reasonable amount to transport a worker to or from **the** designated worksite, but in no event shall **the** amount exceed the prevailing rate for public transportation in the geographic area.

§ 448.24(1)(b), Fla. Stat. Thus, the Act does not focus on a labor pool's charges to its employees *as a whole*, but on each individual day laborer and the amount of the charge to him. Indeed, the Act does not even focus on the cumulative charge by *day* for the individual day laborer—but on the event for which the individual day laborer is charged. Thus, if a day laborer gets his own ride to the worksite, but labor pool transportation to the labor hall at the end of the day, that charge for returning is discretely subject to the Act's limitations.

As for those limitations, the Act contains both a subjective and an objective standard for transportation charges:

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[34] *Connor*, 643 So. 2d at 77.

> No labor pool shall charge a day laborer more than a reasonable amount to transport a worker to or from the designated worksite, but in no event shall the amount exceed the prevailing rate for public transportation in the geographic area.[35]

Subjectively, the labor pool's charge is compared to what is "reasonable" for transportation "to or from the designated worksite." Objectively, the labor pool's charge is compared to "the prevailing rate for public transportation in the geographic area." The objective standard is thus not tethered to the actual door-to-door transportation, but to "the geographic area" where that transportation was provided.

C. A Geographic Area Has Boundaries, and Broward County Is the Relevant Geographic Area In This Case

The Labor Pool Act prohibits any labor pool from charging "[m]ore than a reasonable amount to transport a worker to or from the designated worksite, but in no event shall the amount exceed the prevailing rate for public transportation in the *geographic* area." §448.24(1)(b), Fla. Stat. The Florida Legislature thus chose not to say simply "area" in the Labor Pool Act, but "*geographic* area."[36] Webster's defines "geographic" as "belonging to or characteristic of a particular region" and "of or relating to geography." WEBSTER'S THIRD NEW INTERNATIONAL

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[35] § 448.24(1)(b), Fla. Stat.

[36] Every word in a statute must, where possible, be given effect. *Hechtman v. Nations Title Ins.*, 840 So. 2d 993, 996 (Fla. 2003) ("It is an elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage").

DICTIONARY, UNABRIDGED (Merriam-Webster 2002). Thus, unlike a mere "area," a "*geographic* area" generally has recognized boundaries—like a state, a county, or a municipality.[37]

Indeed, if the Florida Legislature had meant for the objective prong of the Act to only apply where there was door-to-door public transportation, it would have likely left out the phrase "in the geographic area" and said:

> No labor pool shall charge a day laborer more than a reasonable amount to transport a worker to or from the designated worksite, but in no event shall the amount exceed the prevailing rate for public transportation.

Or the Legislature could have enacted language reading:

> No labor pool shall charge a day laborer more than a reasonable amount to transport a worker to or from the designated worksite, but in no event shall the amount exceed the prevailing rate for public transportation for the same journey.

But the Legislature chose to *expand* the scope of comparison from a charge for transportation "to or from the designated worksite" to "the prevailing rate for public transportation in the geographic area."[38]

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[37] Within their contexts, two medical service statutes do provide a different statutory definition for "geographic area." Specifically, subsections 641.19(9) and 641.47(9), Florida Statutes, define "geographic areas" for Health Maintenance Organizations and Health Service Programs as follows: "'Geographic area' means the county or counties, or any portion of a county or counties, within which the health maintenance organization provides or arranges for comprehensive health care services to be available to its subscribers."

[38] § 448.24(1)(b), Fla. Stat.

The operative complaint alleged that WTS violated the Act by charging its temporary workers more than the prevailing rate for public transportation within Broward County. The complaint limited its claims to those transportation events that occurred wholly within the county. The complaint did not allege that WTS violated the Act when it provided transportation in other counties, or when it provided transportation between counties. Seeking to certify a class of similarly situated workers, *the complaint relied solely on the objective prong of the Act*. The complaint did not rely on the other prong of the Act's prohibition, which hinges on whether the door-to-door transportation was subjectively reasonable. The trial court nonetheless decided that it should look to all places that WTS provided transportation—not where the complaint alleged WTS had actually violated the Act—and that the "prevailing rate" should be the charge one would incur for door-to-door transportation.

D. The Meaning of Public Transportation Under the Act

The term "public transportation," as used in the Labor Pool Act, is clear from common usage, from legislative history, and from the identical usage found in statutes. The term "public" means "of affecting, or concerning the community or people, connecting with or acting on behalf of the people, community, or government." WEBSTER'S II NEW COLLEGE DICTIONARY 895 (1995). "Transportation," likewise means the "act of transporting or the state of being

transported" and a "means of transport" (conveyance from one place to another) for "goods, materials, or passengers." *Id*. at 1172; *see also* WEBSTER'S NEW MILLENNIUM™ DICTIONARY OF ENGLISH, PREVIEW EDITION (v 0.9.5) (2003, 2004) (defining "public transportation" as "any form[s] of transportation that charge set fares, run fixed routes, and are available to the public such as buses, subways, ferries, and trains").

The Labor Pool Act's use of the term "public transportation" thus applies to the publicly-owned or regulated transit systems, and makes the rates or charges commonly used by these transit systems the standard for charging day laborers.[39] This plain meaning is in conformity with the legislative intent of the Labor Pool Act to protect the welfare of day laborers by ensuring that they are not charged exorbitant rates for transport to and from designated worksites, which, as WTS's witnesses conceded, would take place if private forms of transportation were included in this definition. Indeed, were "public transportation" to mean, for example, limousine or airline service, labor pools such as WTS could presumably charge day laborers hundreds of dollars each day for transportation—in most, if not all, cases exceeding the daily wage earned by the day laborers. The Florida Legislature did not intend such an absurd result.

[39] In this case, the prevailing rate of public transportation comes from the bus system operated and provided within Broward County by Broward County Transit (BCT) system. (T. 96-97, 160-161, 225, 234; R. 1978-1990; Pl. Ex. 24).

Where, as here, the statute is clear and unambiguous and the plain meaning comports with the legislative intent, there is little need for courts to look further interpreting the statute, and the plain meaning should control. *See State v. Burris*, 875 So. 2d 408, 410 (Fla. 2004) (citing *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So. 2d 297, 303 (Fla. 2002) ("the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent")). To the extent there is any ambiguity, however, Florida Statutes generally use the term "public transportation," and its near equivalent, "public transit" in an identical fashion, and both are commonly used to mean public-owned or controlled transport systems. For example, subsection 125.01(1)(l), Florida Statutes, gives county commissioners the power to provide "public transportation systems." *See also* §§ 125.0103(1)(b), 163.043(1)(b), Fla. Stat. (reserving to local governments the power to set rates for "public transportation"). Section 163.566, Florida Statutes, defines "public transportation" for regional transportation authority purposes as:

> transportation of passengers by means, without limitation, of a street railway, elevated railway or guideway, subway, motor vehicle, motor bus, or any bus or other means of conveyance operating as a common carrier within the regional transportation area, including charter service therein.[40]

[40] Subsection 163.3164(28), Florida Statutes, defines "projects that promote public transportation" as those:

> that directly affect the provisions of public transit, including transit terminals, transit lines and routes, separate lanes for the exclusive use

Also, Chapter 334, Florida Statutes, addresses "public transportation," though it does not provide a specific definition in that chapter.

The only possible alternate meaning for "public transportation" is suggested by Chapter 341, Florida Statutes, which addresses "public transit." In Chapter 341, in the context of the Florida Public Transit Act, the term "paratransit" is included under "public transit," and defined as:

> those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and the provider of the service. Paratransit service is provided by taxis, limousines, "dial-a-ride" buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature.

§ 341.031(5), Fla. Stat. For two reasons, the Court should find this provision inapplicable to the situation controlled by the Labor Pool Act, and rely instead on the commonly understood meaning of the term "public transportation."

First, as discussed in the section below, such forms of transportation are clearly not the "prevailing" method of paid transportation in Broward County. Second, the Labor Pool Act was passed as remedial legislation with the express intent of promoting and protecting the "health, safety and well-being" of day

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> of public transit services, transit stops (shelters and stations), office buildings or projects that include fixed-rail or transit terminals as part of the building, and projects which are transit oriented and designed to complement reasonably proximate planned or existing public facilities.

laborers. § 448.21, Fla. Stat. It thus must be construed to limit the costs that labor pools could charge for transportation. Yet, to allow labor pools the option of charging day laborers fees similar to taxis or limousines would allow labor pools to charge workers more than half their daily pay.

Allowing labor pools such leeway in charging for transportation to worksites would render the Labor Pool Act meaningless and reduce the transportation cost provision to useless "surplusage." *Cf. Hechtman*, 840 So. 2d 993 at 996. ("It is an elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage."). Courts should reject an interpretation not required by plain meaning that leads to an absurd result. *See State v. Goode,* 830 So. 2d 817, 824 (Fla. 2002) ("[A] basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless."). Under commonly accepted rules of statutory interpretation, as well as logic, this expanded definition cannot reasonably apply to the transportation cost provision of the Labor Pool Act as intended by its drafters.

Finally, the legislative history for the Labor Pool Act supports the plain meaning and intent of its terms and clearly identifies a publicly-subsidized system as the "public transportation" that the Florida Legislature contemplated when it

passed the Labor Pool Act. Specifically, during the Senate Judiciary Committee's April 19, 1995 hearing concerning the Labor Pool Act, the following exchange occurred between the Chairman of the Committee and Senator Daryl Jones, a co-sponsor of the Act:

MR. CHAIRMAN: * * * Page 3, lines 29-30, strike all of said lines and insert subsection B, "more than a reasonable amount to transport a worker to or from the designated worksite, but in no event shall the amount exceed the prevailing rate for public transportation in the geographic area" or, and that's conforming to the house bill. Any questions?

SENATOR JONES: Basically, we used to have a limit of $1.00 on transportation, but now we changed it to accommodate this. It's a reasonable rate.

MR. CHAIRMAN: But not to exceed the cost of taking the bus or taxi cab even, I suppose, that's public transportation, isn't it?

SENATOR JONES: Yeah.

SENATOR DUDLEY: And that can get pretty expensive. Okay. Without objection.

SENATOR JONES: We're looking at the bus.

SENATOR DUDLEY: We say the lowest – maybe we can say the lowest _____. On page 4, lines 9 through 10, strike all of said lines.

SENATOR JONES: Public transportation.

SENATOR DUDLEY: Pardon?

SENATOR JONES: ***Public transportation -- government subsidized***.

(T. 69).

The commonly understood, plain meaning of the term "public transportation" suggests publicly owned transit. The trial court's alternative interpretation—including taxis and limousines—would frustrate the remedial intent of the Legislature to provide real protections to day laborers and render the provision meaningless. This Court should accordingly find that the term "public transportation," as used in the Labor Pool Act, means the publicly owned or regulated transit system providing the prevailing method of transportation in the relevant geographic area. In Broward County, that "prevailing" method of transportation is the BCT bus service.

E. The Term "Prevailing Rate" Is Commonly Understood as One Comparable to Others Providing a Similar Service

Webster's defines "prevailing" as "most frequent," or "generally current." WEBSTER'S II NEW COLLEGE DICTIONARY at 876 (1995). The term "rate" is likewise defined as "a charge or payment calculated by means of a particular ratio or formula." *Id*. at 919. Reading these dictionary definitions together with the surrounding language in the Labor Pool Act, it is clear that "prevailing rate" in the Act means the single most frequent, current price fixed for public transportation. Further, the Act does not prohibit charges exceeding the *highest* rate, or the *lowest* rate, for public transportation in a geographic area: it prohibits charges exceeding

the *prevailing* rate. And in the Labor Pool Act, the word "prevailing" is married with "rate"—not "rate**s**"—so there can be only *one* prevailing rate in a geographic area. That rate is, by definition, the single "most frequent" or common one. The evidence presented to the trial court established that the most common or frequent rate in Broward County is the bus rate provided by BCT. (T. 96-97, 160-161, 225, 234; R. 1978-1990; Pl. Ex. 24).

The use of the term "prevailing rate" in other statutes, both state and federal, substantiates this comparative definition. For example, section 776.207, Florida Statutes, deals with voluntary binding arbitration of medical negligence claims, and provides that for the pay of arbitrators: "In setting the schedule, the chief judge [of each circuit] shall consider the *prevailing rates* charged for the delivery of professional services in the community." Likewise, Rule 4-7.10(b) of the Rules Regulating The Florida Bar prevents the use of the term "clinic" or "legal aid" by attorneys unless "the lawyer's practice is devoted to providing routine legal services for fees that are lower than the *prevailing rate* in the community for those services."

The United States Code has used the term "prevailing rate" to define the payment schedule for federal employees. *See* 5 U.S.C. §§ 5341, 5349. The term is used to mean that federal employees should be paid a similar amount to other employees similarly situated. *See, e.g., Adams v. United States*, 810 F.2d 1142,

1143 (Fed. Cir. 1987) (discussing the limits to comparability standard for federal employees).

The plain meaning of the term "prevailing rate," together with its use in statutes, both make clear that a comparable price is required for transporting day laborers. The comparison, according to the Labor Pool Act, must be with rates for "public transportation." Nonetheless, the trial court worked from a premise that the statute compelled computing transportation rates to each and every work site—which public transportation simply does not do. By adopting such a premise, the court's misinterpretation results in the Act being unworkable, absurd, and a violation of notice and due process.

According to WTS's expert Molly Hughes, for example, this door-to-door analysis permits charges of over $30 per day. (T. 423). But the Labor Pool Act is remedial legislation designed to *protect* day laborers, who earn minimal income.[41] The trial court's construction of the Act's price limits would defeat the Act's remedial purpose. Additionally, computing amounts could well be unknowable until the morning of a job and would certainly provide no uniform standard—as the Act expressly requires.[42] By comparison, if the statute is interpreted by identifying

[41] The Plaintiff earned approximately $6.00 an hour. (T. 266-270, 521; Pl. Ex. 29; E. Ex. 26).

[42] §448.21, Fla. Stat.

the single "prevailing rate" as a uniform standard in the geographic area, the amount is knowable, predictable, and rational to charge day laborers.

When a logical result is available that produces a constitutional statute with rational results that are consistent with the articulated legislative intent to protect day laborers, the court must chose that result. An interpretation using plain meaning effectuates the Labor Pool Act and renders it constitutional. The trial court's decision striking the Act as unconstitutional ignores an entire clause in order to interpret the statute as vague and unconstitutional.

F. The Statutory Remedy for Violations of the Labor Pool Act Does Not Violate Due Process

The damages of $1,000 per violation provided by the Labor Pool Act are statutory damages. In this case, the Florida Legislature, as lawmaker, assigned set statutory damages for violation of the Labor Pool Act. *See* §448.25, Fla. Stat. Contrary to the trial court's holding that such damages are unconstitutional under the Due Process Clauses, various statutes with similar statutory damages provisions have been upheld in Florida, at the federal level, and in other states.

i. Statutory Damage Remedies Similar to that Provided for in the Labor Pool Act Are Common in Both State and Federal Law, and Have Been Upheld and Applied by Courts

Statutory damages are a relatively common feature in state and federal law. They appear particularly in areas where the actual, compensatory damages are likely to be very small, but the conduct is judged by the Legislature to be socially

harmful and requiring deterrence. *See Texas v. Am. Blastfax, Inc.*, 121 F. Supp. 2d 1085, 1090 (W.D. Tex. 2000) (statutory damages intended to "address and deter overall public harm").

The Florida Consumer Collection Practices Act, for example, provides for recovery of actual damages plus statutory damages of up to $1,000 for violations of that act. *See* § 559.77, Fla. Stat. A prior version of the statute, which provided for $500 statutory damages, was upheld as constitutional by this Court. *See Harris v. Beneficial Fin. Co. of Jacksonville*, 338 So. 2d 196 (Fla. 1976), *cert. denied*, 430 U.S. 950 (1976).

A useful example of legislative policy seeking to deter violations in this manner concerns unauthorized personal wiretaps. Such conduct is penalized both under Florida and federal law. *See* § 812.15(10), Fla. Stat.; 18 U.S.C. § 2520. In a recent Tennessee case, a court upheld statutory damages against a violator for a single illegal wiretap of a spouse. *See Robinson v. Fulliton*, 140 S.W.3d 312 (Tenn. Ct. App. 2003). Specifically, the court recognized the intent of the Legislature to provide a major deterrent, upholding the damages of $10,000 per incident for one occurrence as not excessive. *Id.* at 321-22 (noting that the unambiguous language of the statute in question supported interpreting it broadly

to implement its remedial purpose). The Tennessee statute is similar to the Florida statute with regard to its statutory damages.[43] *Cf.* § 812.15(10), Fla. Stat.

Further, the Cable Communication Policy Act, 47 U.S.C. § 605(e)(3)(B)(i) & (ii), provides for civil actions by "persons aggrieved" and allows courts to award statutory damages for violations "in a sum of not less than $1,000 or more than $10,000, as the court considers just." Courts have repeatedly upheld these statutory damages as just. *See, e.g.*, *Nat'l Satellite Sports, Inc. v. Eliadis, Inc.*, 253 F.3d 900, 917-18 (6th Cir. 2001) (upholding statutory award even where violation was not willful); *DirecTV, Inc. v. DeCroce*, 332 F. Supp. 2d 715, 718-19 (D.N.J. 2004) ("the minimum statutory damages award . . . will compensate DirecTV

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[43] *See* TENN. CODE ANN. § 39-13-601(a)(1) (forbidding the intentional interception of "any wire, oral, or electronic communication," or the disclosure of such communications). Tennessee makes such unauthorized interceptions or disclosures a felony, subject to a fine up to $3,000 and between one and six years imprisonment. *See* TENN. CODE ANN. §§ 39-13-604, 40-35-111. The Tennessee statute also allows those whose communications are intercepted to recover by civil action:

> (1) The greater of:
> (A) The sum of the actual damages, including any damage to personal or business reputation or relationships, suffered by the plaintiff and any profits made by the violator as a result of the violation; or
> (B) Statutory damages of one hundred dollars ($100) a day for each day of violation or ten thousand dollars ($10,000), whichever is greater; and
> (2) Punitive damages; and
> (3) A reasonable attorney's fee and other litigation costs reasonably incurred.

TENN. CODE ANN. § 39-13-603(a) (emphasis added).

adequately for any loss it suffered, punish defendant for his alleged wrongdoing, and serve as a sufficient deterrent to defendant and others"); *DirecTV v. Spillman*, No. Civ. A. SA-04-82-XR, 2004 WL 1875045, at*3 (W.D. Tex. Aug. 23, 2004) (interpreting the provision).

The Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1854(c)(1), is, in many ways, comparable to the Labor Pool Act because it seeks to protect a class of people on the bottom economic rung with relatively little education, from exploitation by unscrupulous employers.[44] This act allows courts to award both actual damages and statutory damages of up to $500 per plaintiff for each violation of the statute. Explaining the purpose behind the provision, one court noted, "[t]he civil remedy was provided not only to compensate injuries, but also to promote enforcement of the Act and deter violations." *Martinez v. Shinn*, 992 F.2d 997, 999 (9th Cir. 1993) (quoting *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1309 (9th Cir. 1990)). In *Shinn*, the separate acts that

[44] The Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1801, *et seq.*, is the major federal law protecting migrant agricultural workers. The act provides for registration of both employers and workers, and mandates that employers disclose to workers written information about wages, hours, working conditions and housing, including any deductions from wages (29 U.S.C. § 1831(a)); any transportation provided must meet safety standards (29 U.S.C. § 1841); and any housing provided must likewise meet safety and health standards (29 U.S.C. § 1823). The act provides for administrative penalties of up to $1,000 per violation. 29 U.S.C. § 1853(a). Finally, the act provides for a private right of action by aggrieved persons, and allows recovery of damages "up to and including an amount equal to the amount of actual damages, or statutory damages of up to $500 per plaintiff per violation . . . ." 29 U.S.C. § 1854(c).

triggered liability included 1) failure to disclose terms of employment in writing; 2) failure to keep required records; 3) failure to pay wages when due; 4) failure to post Labor Department information prominently; 5) failure to keep terms of working agreements; and 6) retaliatory firing of plaintiffs. *See id.* The court awarded a total $64,000 in statutory damages to forty plaintiffs, which was upheld as reasonable and in keeping with other comparable awards. *See id.* at 999-1000; *see also Wales v. Jack M. Berry, Inc.*, 192 F. Supp. 2d 1291, 1309-10 (M.D. Fla. 2000) (applying statutory damage provision together with provision capping statutory damages at $500,000).

Federal law also provides that, where goods are falsely offered for sale as Indian-produced, the affected tribe or Indian arts and crafts organization may recover treble actual damages or "in the case of each aggrieved Indian, Indian tribe, or Indian arts and crafts organization, not less than $1,000 for each day on which the offer or display for sale or sale continues." 25 U.S.C. § 305e(a)(2). A federal district court recently upheld the statutory damages provision in that statute, finding that the $1,000 penalty applies to each type of good offered for sale.[45] *See Native Am. Arts, Inc. v. Bundy-Howard, Inc.*, 168 F. Supp. 2d 905, 912-13 (N.D. Ill. 2001).

[45] Moreover, in *Kehoe v. Fidelity Fed. Bank & Trust*, 421 F.3d 1209 (11th Cir. 2005), *cert. denied*, 126 S. Ct. 1612 (2006), the Eleventh Circuit, while not specifically addressing a constitutional challenge to the Driver's Privacy

In sum, there are many analogies to other cases where courts recognized the reasonableness of civil penalties comparable to or even more severe than the statutory damages mandated under the Labor Pool Act, where a Legislature (like the Florida Legislature in this case) had determined that certain conduct was harmful or noxious. The Labor Pool Act is not an arbitrary or capricious whim, but rather a carefully drafted policy determination that penalizes and deters harmful and predatory conduct by labor pools against disadvantaged day laborers.

The $1,000 statutory damages provided for in the Labor Pool Act are well within the range of similar remedial statutes. The statutory damages imposed by the Act are reasonable considering the need for deterrence and the disparity in power between the day laborers and the labor pools. The Legislature, as a matter of public policy, has assigned a value to violations of the Labor Pool Act. Both the requirements and the penalties provided for in the Labor Pool Act are clearly defined, and are rationally related to the permissible legislative goal of providing "for the health, safety, and well-being of day laborers throughout the state and to establish uniform standards of conduct and practice for labor pools in the state . . ." § 448.21, Fla. Stat. The legislative determination is reasonable, and this Court should uphold its constitutionality.

Protection Act, 18 U.S.C. §2721, *et seq*., nonetheless permitted a plaintiff to sue to collect *$2,500 in statutory damages* for a single violation of the act, even in the absence of any proof of actual damages.

ii. Statutory Damages Are Not the Same as Punitive Damages

While there can be circumstances in which statutory damages might be so large and disproportionate as to violate substantive due process, those circumstances do not exist in this case. *See St. Louis, Iron Mt. & S. Ry. Co. v. Williams*, 251 U.S. 63, 66 (1919) (statutory penalties may not be "so severe and oppressive as to be wholly disproportionate to the offense and obviously unreasonable"). However, statutory damages do not need to be "confined or proportioned" to actual damages. *Id.*

Recent United States Supreme Court cases have called into question certain punitive damages awarded by juries, but punitive damages *awarded by juries* are distinguishable from statutory damages assigned by statute. *See, e.g. BMW of N. Am. v. Gore*, 517 U.S. 559 (1996); *State Farm Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003) (both invalidating punitive damage awards on substantive due process grounds). In its analysis of punitive damages in *Gore*, the Supreme Court was largely concerned about lack of notice as to possible penalties, noting:

> Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose.

517 U.S. at 574; *see also Campbell*, 538 U.S. at 417-18 (citing *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432 (1994) (noting the Supreme Court's concern about too broad jury discretion and a lack of instructions or other guidance)).

The $1,000 per violation in statutory damages that the Labor Pool Act provides as a remedy is an "application of law, rather than a decisionmaker's caprice." *Campbell*, 538 U.S. at 418 (quoting *Gore*, 517 U.S. at 587 (*Breyer, J.*, concurring)). Concerns with respect to punitive damages awards are not present with regard to the Labor Pool Act—where the Legislature has placed labor pools on notice (for nearly ten years) both as to impermissible conduct and as to penalties for noncompliance.

The logic for imposing set statutory damages substantially greater than actual damages is analogous to statutes in areas such as environmental law and sexual harassment where legislators conclude that financial payment by violators, whether by means of civil penalties (*i.e.*, fines), statutory damages or punitive damages, must be significant enough to be a deterrent to a given action.[46] This deterrence is a relatively common feature of Florida law. For example, subparagraph 812.15(10)(c) and (d), Florida Statutes, provides statutory damages for unauthorized reception of private communications, with damages ranging from

[46] *See U.S. EEOC v. W&O, Inc.*, 213 F.3d 600, 616 (11th Cir. 2000) (upholding punitive damages more than 26 times that of compensatory damages); *Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1338-39 (11th Cir. 1999) (upholding punitive damages at a ratio of 100 to 1 in environmental pollution context). The Eleventh Circuit in *Johansen* found this ratio "justified by the need to deter this and other large organizations from a 'pollute and pay' environmental policy." 170 F.3d at 1339. In *Celli v. City of St. Augustine*, 214 F. Supp. 2d 1255, 1262 (M.D. Fla. 2000), the court found that damages of $23,500 against the city for an ordinance forbidding street performances which was imposed on a plaintiff for a single afternoon were not excessive.

$250 to $10,000 for each communications device, with the possibility of up to $50,000 for willful violations. Likewise, section 320.667, Florida Statutes, provides for triple damages in cases of motor vehicle fraud.[47]

In other words, a remedy that compels a polluter, for example, to pay only the cost of cleanup may not be a significant deterrent or a significant penalty as a matter of public policy. Here, the Legislature recognized that actual damages against a labor pool company for overcharging transportation costs would be insignificant and determined that more substantial financial consequences for such violations were appropriate. Other states have similar labor pool damages provisions. *See* GA. CODE ANN. § 34-10-2 (absolutely forbidding any transport fees, as well as check cashing fees).[48]

To the extent that WTS attempts to argue that the aggregation of statutory damages caused by its systematic violation of the Labor Pool Act somehow gives it a means of avoiding liability, such an argument was recently addressed and

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[47] Another case of deterrence, though not in the area of statutory or punitive damages, comes from set fines or civil penalties payable to the state. An example of this is found in section 376.12, Florida Statutes, which sets a schedule of liability for cleanup costs for vessels that illegally discharge pollutants, depending on the cargo and the size of the vessel. *Cf.* ALASKA STAT. § 46.03.758(b), setting statutory penalties for oil spills entering water environments ($10/gallon for spills in freshwater; $2.50/gallon for spills in estuaries; $1/gallon for spills in open seas).

[48] The Georgia provision does not allow set statutory damages, but makes violations a criminal misdemeanor, punishable by $1,000 fine or twelve months imprisonment. *See* GA. CODE ANN. §§ 34-10-4 & 34-10-5.

rejected. Specifically, in the context of a motion for class certification and concerning the constitutional impact of substantial financial consequences on defendants, the Eleventh Circuit recently stated:

> Because considering the financial impact of a judgment presupposed success on the merits and requires the trial court to express an opinion on the harshness *vel non* of a particular remedy prior to trial itself, it ought to be allowed only in extreme cases. More importantly, however, if [defendants'] fears are truly justified, the defendants can blame no one but themselves. ***It would be unjust to allow corporations to engage in rampant and systematic wrongdoing, and then allow them to avoid a class action because the consequences of being held accountable for their misdeeds would be financially ruinous***. We are courts of justice, and can give the defendants only that which they deserve; if they wish special favors such as protection from high – though deserved – verdicts, they must turn to Congress.

Klay v. Humana, Inc., 382 F.3d 1241, 1274 (11th Cir. 2004).

III. THE TRIAL COURT'S FINDING THAT WTS DID NOT VIOLATE THE LABOR POOL ACT WAS BASED ON THE SAME ERRORS DISCUSSED ABOVE

The trial court also found that, even if the Labor Pool Act is constitutional, the Plaintiff could not establish a claim against WTS. This alternative basis for a WTS judgment rested entirely on the court's earlier conclusions that bus travel was not the relevant form of public transportation, that the Labor Pool Act's objective test for transportation charges required a comparison of actual charges to third-party *door-to-door* charges, and that the relevant geographic area in this case meant the tri-county area. For the reasons discussed above, each of these premises was wrong, and the Plaintiff can prove his case.

IV. THE FOURTH DISTRICT'S DECISION

Much of what Plaintiff would say about the Fourth District's opinion has already been said above. He will accordingly limit his discussion of the opinion to three discrete points:

A. The *Liner* Opinion Conflates the Labor Pool Act's Alternative Standards for Transportation Charges: One Is Subjective, One Is Objective, and They Are Distinct Limitations.

The *Liner* opinion's first attack on the Labor Pool Act is that the term "reasonable amount" is too vague to pass constitutional scrutiny. (Opinion at 5). Whether that is true has no bearing on this appeal, however. The Act contains two limitations on the amount that a labor pool may charge a worker for transportation: one subjective, one objective:

> No labor pool shall charge a day laborer more than a reasonable amount to transport a worker to or from the designated worksite, *but in no event* shall the amount exceed the prevailing rate for public transportation in the geographic area.

§448.24(1)(b), Fla. Stat. (2003). The first limitation hinges on whether the amount the labor pool charges a worker for door-to-door transportation is subjectively "reasonable." The second limitation compares the amount of that charge to an objective standard: "the prevailing rate for public transportation in the geographic area."

The Fourth District's opinion provides guidance for future litigants who might otherwise attempt to sue a labor pool based on the subjective reasonability prong of the Labor Pool Act. That guidance has no applicability to this appeal, however, because Plaintiff has sued under the second prong, which utilizes the objective standard.

B. The Term "Public Transportation" Is Not Unconstitutionally Vague If Read With Its Surrounding Terms.

The Fourth District held that "public transportation" is too vague a term for a person of common intelligence to know what it means. The term does not exist in the abstract here, however. The context and words surrounding the term determine its meaning.

Under the Act's objective prong, each day that a day laborer works for a labor pool, the labor pool is barred from charging that laborer more for transportation to "the designated worksite" than "the prevailing rate for public transportation in the geographic area."[49] § 448.24(1)(b), Fla. Stat. (2003). Liability thus turns on which "rate" is the most frequent—or prevailing—rate for public transportation within the "geographic area" where the day laborer was transported.

[49] Unlike the subjective prong of the Act, the objective prong does not look to the actual door-to-door transportation provided and whether it was "reasonable." Instead, the objective prong looks out more broadly, to "the geographic area" in which the labor pool provided the day laborer transportation, and asks whether the charge was more than the prevailing rate for public transportation.

Plaintiff's complaint limited the claims to transportation that occurred wholly within Broward County. Within Broward County subsidized bus travel is, by far, the most commonly used form of public transportation: 134 million people rode BTC buses from June 2000 through June 2004 (T. 96-97); during same four-year period, fewer than 4 million rode Tri-Rail (T. 160-161; R. 1978-1990), and between 15,600 and 37,920 rode in van-pools (T. 225; Pl. Ex. 24). While Plaintiff disagrees that taxicabs are "public transportation" under the Act, even if they *were* included within that definition, over 80% of all public transportation in Broward would still be bus travel.

It is a fundamental principle of statutory construction that, "[e]very statute must be read as a whole with meaning ascribed to every portion and due regard given to the semantic and contextual interrelationship between its parts."[50] It is equally fundamental that a statute must be construed to preserve its constitutionality if such a construction is possible, and that a remedial statute must be liberally construed to serve its purpose.[51] Rather than reading the language of the Act in context, the Fourth District's analysis excises "in the geographic area" and "prevailing rate" from "public transportation." By doing so, the decision renders the Act illogical, unworkable and unconstitutional.

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[50] *Fleischman v. Dep't of Prof'l Regulation,* 441 So. 2d 1121, 1123 (Fla. 3d DCA 1983), *review denied*, 451 So. 2d 847 (Fla. 1984).

[51] *Adams v. Wright,* 403 So. 2d 391, 394 (Fla. 1981).

The Fourth District indicates that Plaintiff argued bus travel is the only form of government-subsidized transportation that could ever furnish the prevailing rate in a given geographic area. But Plaintiff certainly acknowledges that the prevailing rate for public transportation could also come from a metro system, a train system, or even a trolley system. Indeed, there could be a county or municipality that set a single rate for multiple forms of transportation. In such a case, there would be a dominant rate for public transportation, but it would not be furnished by a single form of transportation.

C. The Term "Geographic Area" Is Not Unconstitutionally Vague: Public Transportation is Operated By Local Governments, and the Most Proximate Local Government Encompassing the Transportation at Issue Defines the Boundaries of the Relevant "Geographic Area."

The Labor Pool Act provides:

> No labor pool shall charge a day laborer more than a reasonable amount to transport a worker *to or from the designated worksite*, but in no event shall the amount exceed the prevailing rate for public transportation *in the geographic area*.

§448.24(1)(b), Fla. Stat. (2003). The Fourth District found the term "geographic area" too vague to pass constitutional muster. The term, however, is not unconstitutionally vague when read within the context of the Labor Pool Act.

The term "geographic area" is tied to "public transportation" and refers to where the transportation in question took place. Public transportation is subsidized

and operated by local governments. If more than one local government's boundaries completely encompass the transportation that allegedly violates the Act, then the logical construction of the Act refers to the boundaries of the most proximate local government.

Applying this reasoning, if a transportation occurred wholly within a city, it would make more sense to use the rate that prevailed in the city instead of the rate that prevailed in its surrounding county (assuming the two rates were different). Similarly, if a transportation occurred wholly within one county, but crossed through one or more cities, then the county's rate would be more logical. In the same vein, if transportation crossed through one or more counties, the plaintiff would have to prove that the overall rate that prevailed for that combined geographic area was less than the sum the labor pool charged for that transportation.

The Fourth District took issue with Plaintiff's position because he limited his claims to only those transportation events that occurred wholly within Broward County. The court suggested that the relevant geographic area should possibly be other counties or combinations of counties, since the labor pool in that case also operated in other counties. The suggestion disregards the *daily* nature of day labor, the plain language of the Act, and a plaintiff's duty not to allege violations he knows did not occur.

Labor pools hire day laborers on an irregular basis, and the employment ends whenever the temporary assignment for which the individual worker was hired ends. Indeed, that is the statutory definition of day labor. § 448.22(2), Fla. Stat. (2003). Perhaps for this reason, the plain language of the Labor Pool Act treats each transportation event for each day laborer *discretely*. There simply is no macro-analysis under the Act. The only issue is whether transportation for a given worker on a given day to a given worksite violated the Act. And the Act goes so far as to even analyze transportation each way for each worker.

The Fourth District's focus on transportation that WTS provided Plaintiff on days when he worked outside of Broward County is thus stunningly misplaced. The Plaintiff alleged that WTS only violated the Act when it provided him transportation that occurred wholly within Broward County. Had the Plaintiff persisted in allegations that WTS violated the Act when it transported him county-to-county, or within other counties, he may have properly been sanctioned for frivolous litigation.[52]

[52] *Liner* may be the first reported decision in which a plaintiff was criticized because he failed to pursue a claim he thought had no merit.

CONCLUSION

The Court should reverse the trial court's order declaring the Labor Pool Act unconstitutional and finding WTS not liable under the Act—and remand this case for further proceedings.

Respectfully submitted,

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