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

REPLY BRIEF OF LARRY LINER

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REPLY POINTS

Mr. Liner will limit this reply to three points:

1. Looking Through the Wrong End of a Statutory Microscope . . .

In its answer brief, WTS tries to prove things that Liner does not contest: that it operates in more than one county; that relevant public transportation under the Act is not automatically "bus travel;" that the Broward bus system goes outside of Broward; and that Liner could not realistically use bus travel for many of the routes that WTS used when it transported him. But none of this matters one whit under the plain language of the Act.

Fundamentally, the tense of the Act's relevant provision requires a court to evaluate an individual worker's claim from the perspective of that worker—and to treat each challenged transportation charge as a discrete event. Nothing in the language of the Act subjects the individual's claim to a macro-analysis of all the transportation that his employer provided its workers at its various worksites:

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

§ 448.24(1)(b), Fla. Stat. (emphasis added.); *cf. Smith v. City of Jackson*, 544 U.S. 228, 236 n.6 (applying similar analysis to text of Age Discrimination in Employment Act of 1967 to draw distinction between provision concerning employees as a whole and provision concerning individual employees).

In addition, the legislature chose to use the "prevailing rate for public transportation in [a] geographic area" as an objective outer limit of what is reasonable to charge a worker for transportation. The legislature could have alternatively used the price of a gallon of gasoline, any other item that reasonably correlated to the expense of transportation, or even used a fixed sum (as it did 10 years later). But nothing in the language of the Act requires a worker to prove that public transportation could have taken him on the precise route that he traveled with his employer. The legislature *could have* used the unadorned phrase "public transportation" or the detailed phrase "public transportation for the same travel." With such language, however, there would have been no objective standard for many transportation events. Yet that nullifying interpretation of the Act is precisely the construction that WTS urges this Court to adopt.

Reading the Labor Pool Act as WTS prefers may indeed render the Act unworkable and unconstitutional. But reading the Act as it is actually written makes the meaning of the terms clear, especially if those terms are construed together. Given the strong presumption in favor of constitutionality that applies to statutory analysis, the Act is not unconstitutionally vague.

2. Recent Amendments to the Labor Pool Act Do Not Mean that the Labor Pool Act is Unconstitutional

The Labor Pool Act was passed in 1995. In 2006, the Florida Legislature voted to change the Act—altering the maximum charge from "the prevailing rate

for public transportation in the geographic area" to a statewide $1.50 maximum for one-way transportation. Relying on *Lowry v. Parole and Probation Commission,* 473 So. 2d 1248 (Fla. 1985), WTS contends that the 2006 amendment supports its argument that the 1995 Act is unconstitutionally vague: "Through the enactment of this amendment, the Florida legislature at least tacitly, if not overtly, conceded that the terms 'geographic area," 'public transportation' and 'prevailing rate' were vague and failed to establish uniform standards for labor pools in the state." Answer Brief at 3-4; *see also id.* at 45 ("court has right, in arriving at the correct meaning of prior statute, to consider subsequent legislation" (citing *Lowry,* 473 So. 2d at 1250)).

WTS's reliance on *Lowry* is misplaced. In *State Farm v. Laforet*, 658 So. 2d 55, 62 (Fla. 1995), the Court distinguished *Lowry* and rejected the argument that WTS currently makes as "absurd:"

> The Laforets, citing *Lowry v. Parole and Probation Commission,* 473 So.2d 1248 (Fla.1985), and other cases, also argue that the Legislature was perfectly within its rights to clarify its intent and to apply the statute retroactively. We did state in *Lowry* that a clarifying amendment to a statute that is enacted soon after controversies as to the interpretation of a statute arise may be considered as a legislative interpretation of the original law and not as a substantive change. *It would be absurd, however, to consider legislation enacted more than ten years after the original act as a clarification of original intent; the membership of the 1992 legislature substantially differed from that of the 1982 legislature*.

Id. at 62 (emphasis added).

The Court recognized in *State Farm v. Laforet* that changing legislatures mean the passage of time extinguishes the relevance of subsequent amendments to prior acts. The principle certainly applies in this case. Indeed, given current term limits, the 2006 legislature is not merely substantially—but *completely*—different from the 1995 legislature that passed the Labor Pool Act. An amendment made 10 years after the Act's passage has no legal relevance to its original construction.

3. WTS Ignores Florida Law on the Use of Statements by Co-Sponsors to Determine Legislative Intent.

WTS suggests that the Court should disregard the committee statements of Senator Jones, the original Labor Pool Act's co-sponsor, as merely "30 seconds worth of audio taped Judiciary Committee hearing conversation." (Answer Brief at 32). But Florida courts consider such comments important legislative history that is useful in construing statutes. *See, e.g., Asphalt Pavers v. Dept. of Revenue,* 584 So. 2d 55, 58 (Fla. 1st DCA 1991) ("The statement of a sponsoring legislator is admissible to clarify ambiguity in legislative intention."); *Lloyd v. Farkash,* 476 So. 2d 305, 307 & 307 n.2 (Fla. 5th DCA 1985) ("'[U]nder a more modern view courts have looked to statements by legislators, particularly the bill's sponsor and the committeeman in charge of the bill, to find the intended meaning of ambiguous statutory provisions.'" (quoting Sutherland, *Statutes and Statutory Construction,* §§ 48.13-.15 (4th ed. 1984)); *Public Health Trust of Dade County v. Lopez,* 531

So. 2d 946, 948-49 (Fla. 1988) (after using statements of sponsoring representative in committee meeting to explain purpose of 1985 revision of homestead exemption amendment, supreme court noted that it looked to plain meaning to get interpretation, but then said: "We are fortified in our conclusion by the legislative history of the amendment."); *Magaw v. State*, 537 So. 2d 564, 567 (Fla. 1989) (court used the debate on floor of the House to discuss *intent of sponsor* for bill amending statute defining manslaughter by intoxication for auto drivers, § 316.193, Fla. Stat.); *State v. Gethers*, 585 So. 2d 1140, 1141-42 (Fla. 4th DCA 1991) (court used statements of sponsors about whether unborn children were covered by the child abuse statute; court drew the statements from a Comment in the Florida State Law Review, which included statements made by the sponsor in the committee hearing); *Bolden v. State Farm Auto. Ins. Co.*, 689 So. 2d 339, 342 (Fla. 4th DCA 1991) (court looked to tapes of committee hearings to support interpretation of the PIP statute; the content of the committee hearing involved questions from the committee to staff & the answers about the effect of the language).

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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