No. 20-159

In The
Supreme Court of the United States

JOHN DEVOS,

Petitioner,

v.

RHINO CONTRACTING, INC.,
AND
SPECIAL COMPENSATION FUND,

Respondents.

AND

RIVERVIEW HEALTH, BLUE CROSS BLUE SHIELD MN/BLUE PLUS, AND ALTRU HEALTH SYSTEM,

Intervenors.

On Petition For A Writ Of Certiorari To The Supreme Court Of Minnesota

WILG'S *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

KATHLEEN G. SUMNER, *Amicus* Chair
WORKERS' INJURY LAW & ADVOCACY GROUP
LAW OFFICES OF KATHLEEN G. SUMNER
204 North Boca Bay Lane, Unit B
Surf City, NC 28445
336.294.9388
sumnerlaw@aol.com

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

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WILG supports the petition of Petitioner John Devos to the United States Supreme Court to grant his writ of certiorari to review the judgment of the Supreme Court of Minnesota in this case.

STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae, Workers' Injury Law & Advocacy Group [WILG], is a national non-profit membership organization dedicated to protecting and advocating for the rights of injured workers throughout the United States. WILG represents the interests of millions of workers and their families who, each year, suffer the consequences of workplace injuries and illnesses. WILG works principally to assist attorneys and non-profit groups in advocating for the rights of injured workers through education, communication, research, *amicus curiae* briefs, and information gathering. WILG, founded in 1995, represents an important national voice for injured workers. WILG's members are committed to improving the quality of legal representation to those employees, regardless of legal status,

[1] Under S. Ct. Rule 37.2(a), written consent of all parties has been provided. *Amicus curiae* provided timely notice to all counsel of record of its intention to file an *amicus curiae* brief. Under S. Ct. Rule 37.6, *amicus curiae* states that no counsel for a party has authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than the *amicus curiae*, its members, or its counsel, has made a monetary contribution to this brief's preparation or submission.

who are injured on the job, or who are victims of occupational disease, through superior legal education and through judicial and legislative activism. Workers' compensation, a form of social insurance, provides medical care and monetary compensation for employees who are injured in the course and scope of employment, while abrogating the employee's right to sue their employer for the tort of negligence.

WILG has substantial common interests in ensuring that the rights of injured workers are not further diminished through the depletion of the "Grand Bargain" struck on behalf of employees and employers throughout the United States. This "Grand Bargain" substitutes a remedial social insurance system to provide injured workers with fair and adequate benefits in exchange for the waiver of tort claims and trial by jury.

WILG members have substantial common interests in ensuring that the rights of injured workers are not diminished further by their inability to receive benefits contemplated by the bargain, consistent with the workers' compensation acts and the jurisprudence and public policy of the United States and pursuant to the purpose and policies underlying every workers' compensation act throughout the nation. The exclusivity provisions of all the Workers' Compensation Acts throughout the nation act as the cornerstone of these state acts, which further necessitates the ability to obtain sufficient benefits which fulfill the promises of the bargain. Thus, WILG has a fundamental interest in this petition.

WILG suggests to the Court that MINN. STAT. § 176.041(5b) impairs the Grand Bargain in that it effectively discriminates and denies Constitutional Due Process and Equal Protection against temporary employees who work in Minnesota, are hired in North Dakota, and employed by North Dakota employers—but not employers of any other state. This statutory provision conflicts with the basic premise underlying our judicial system, and the various workers' compensation acts, which encourage broad coverage of workers and of work-related injuries and diseases; substantial protection against interruption of income; provisions for sufficient medical care and rehabilitation services; encouragement of safety; and an effective system for delivery of benefits and services.

INTRODUCTION

While compensation schemes differ between jurisdictions, they generally provide for weekly payments in place of wages, payment and reimbursement of medical expenses, and payments to the dependents of workers killed during employment. Cash benefits are established by state formulas with maximum benefit levels. Benefits are administered on a state level, primarily by the state administrative agencies. It is these benefits under each State Act that are being whittled down.

Workers' compensation acts across the country create heavily bureaucratic, adversarial systems that

generally short change injured workers. Widman, A., WORKERS' COMPENSATION: A CAUTIONARY TALE, p. 2 (2006). To the extent that workers' compensation rate reductions have occurred, such reductions come at the expense of the injured workers, because lawmakers slash benefits and push many of the injured workers out of the system and into other social programs, such as Social Security Disability, Medicare, Medicaid, and private health insurance, now including the Affordable Care Act. Widman, A., WORKERS' COMPENSATION: A CAUTIONARY TALE, p. 2 (2006).

"Workers' compensation is an unfortunate example of how a seemingly fair program can be manipulated by political forces into a nightmare for those it was originally meant to help. Once an area of law is removed from the civil justice system, it becomes more vulnerable to money, politics, and influence-peddling. This happens either through aggressive industry lobbying of legislators, political influence on the agencies charged with implementing the system, or orchestrated media efforts. All have happened to workers' compensation." Widman, A., WORKERS' COMPENSATION: A CAUTIONARY TALE, p. 3 (2006).

Currently, the avarice of compensation insurance carriers is influencing the state legislatures, which in turn are slicing and dicing benefits to employees, while providing limited liability for employers and carriers. "Once a workers' compensation act has become applicable either through compulsion or election, it affords the exclusive remedy for the injury by the employee or the employee's dependents against the employer and

insurance carrier. This is part of the *quid pro quo* in which the sacrifices and gains of employees and employers are to some extent put in balance, for, while the employer assumes a new liability without fault, it is relieved of the prospect of large damage verdicts." 6-100 LARSON'S WORKERS' COMPENSATION LAW § 100.01.

"The operative fact in establishing exclusiveness [of jurisdiction] is that of actual coverage, not of election to claim compensation in the particular case." 6-100 LARSON'S WORKERS' COMPENSATION LAW § 100.01. Even if an employee has never made an application for compensation, the employee's right to sue his or her employer at common law is barred by the existence of the compensation remedy. *Sedore v. Sayre*, 119 N.Y.S.2d 204 (Sup. Ct. 1953). If the Compensation Commission has made a valid and unappealed award for compensation, this is *res judicata* on the issue of coverage, and is binding on the court in which the employee attempts to bring his or her common-law suit. *Riggins v. Stong*, 238 A.D.2d 950, 661 N.Y.S.2d 170 (1997); *Ogino v. Black*, 304 N.Y. 872, 109 N.E.2d 884 (1952).

As early as 1972, our government, under the Nixon Administration, appointed a bi-partisan commission that produced a unanimous Report of the National Commission on State Workers' Compensation Laws. The Commission declared that "[t]he inescapable conclusion is that State workers' compensation laws in general are inadequate and inequitable. The report listed nineteen 'essential recommendations,' all of which focused on expanding benefits to workers:

eight recommendations dealt with expanded coverage; nine with increased disability benefits; and two with improvements to medical and rehabilitation benefits." McCluskey, Martha T., *The Illusion of Efficiency in Workers' Compensation "Reform,"* 50 Rutgers L. Rev. 657 n. 88-89 (1998), citing, "The Report of The National Commission on State Workmen's Compensation Laws," Washington D.C., July 1972. The commission was made up of representatives from business, labor, insurance, the medical profession, academics, and the public. These recommendations were to further the following goals:

- Broad coverage of workers and of work-related injuries and diseases;
- Substantial protection against interruption of income;
- Provision of sufficient medical care and rehabilitation services;
- Encouragement of safety;
- An effective system for delivery of benefits and services.

"The Report of The National Commission on State Workmen's Compensation Laws," Washington D.C., July 1972. The rights of injured workers continue to be legislatively diminished in the workers' compensation arena. Preserving the rights of injured workers requires vigilant protection, particularly the rights of our most vulnerable workers, who have limited benefits under workers' compensation that are continuously

being diminished through legislation in violation of intent and purpose of the Grand Bargain originally struck between labor and management.

SUMMARY OF THE ARGUMENT

The precedent set forth in MINN. STAT. § 176.041(5b), if it is allowed to stand, will allow other states an unfettered ability to outsource their workers' compensation responsibilities and shift their responsibilities to other states, thereby creating litigation between states as to which jurisdiction bears the ultimate responsibility for workplace injuries and thereby further diminishing the Grand Bargain.

Historically, the Grand Bargain, since 1910, has involved a *quid pro quo* between the employer and the employees in a no fault system. However, the benefits to the employee continue to be eroded, deleted, diminished, and undermined. Where the Grand Bargain has been abrogated, an exclusive remedy cannot be maintained if there is insufficient return. This historic compromise provided that employees would relinquish their right to sue their employers in exchange for guaranteed wage replacement and medical benefits from a no fault system in exchange for employer immunity from most tort claims.

Subsequent to the National Commission's report in 1972, the adequacy of benefits defined by statute improved. "The Report of the National Commission on State Workmen's Compensation Laws," Washington

D.C., July 1972. However, the continued use of workers' compensation systems as a political football to reduce costs for employers, negatively impacted, and continues to negatively impact, injured workers. Given the economic impact of the COVID-19 pandemic, deterioration and reduction of workers' compensation benefits obtained as part of the Grand Bargain will only be exacerbated.

MINN. STAT. § 176.041(5b) is unique because it makes special provision for employers from a single state. Thus, if a worker who is employed by a North Dakota employer is injured while engaged in temporary work in Minnesota, the exclusive remedy is under the North Dakota workers' compensation system, even if the injured worker resides in Minnesota. No other state outsources its workers' compensation benefits to a single other state this way. Should the statute be upheld, it will provide a model for other states seeking to outsource their responsibility for workplace injuries to other states in an improper and unconstitutional manner.

REASONS FOR GRANTING THE PETITION

I. IF THE PRECEDENT SET FORTH IN MINN. STAT. § 176.041(5B) IS ALLOWED TO STAND, OTHER STATES WILL BE UNFETTERED IN THEIR ABILITY TO OUTSOURCE THEIR WORKERS' COMPENSATION RESPONSIBILITIES AND SHIFT THEM TO OTHER STATES, CREATING LITIGATION BETWEEN STATES AS TO WHICH JURISDICTION BEARS THE ULTIMATE RESPONSIBILITY FOR WORKPLACE INJURIES, AND THEREBY FURTHER DIMINISHING THE GRAND BARGAIN

Over the last three decades, there has been unremitting pressure among the states to contain workers' compensation costs by reducing benefits to injured workers or by eliminating compensation altogether for whole classes of claims and claimants. *See* Spieler, Emily A., *(Re)assessing the Grand Bargain: Compensation for Work Injuries in the United States*, 1900-2017, 69 Rutgers L. Rev. 891 (2017); Grabell, Michael & Berkes, Howard, *Insult to Injury: America's Vanishing Worker Protections*, ProPublica, https://www.propublica.org/series/workers-compensation (October 19, 2017) (exploring the declining adequacy and political attacks on workers' compensation); Grabell, Michael, *Insult to Injury: U.S. Lawmakers Call for More Oversight of Workers' Comp*, ProPublica, https://www.propublica.org/series/workers-compensation (October 21, 2015) (state workers' compensation laws are no longer providing adequate levels of support and compensation for workers

injured on the job; thus, costs are increasingly being shifted to the American taxpayers to foot the bill).

"The COVID-19 pandemic has created countless challenges for state policymakers across the country. Among those is the role that workers' compensation insurance plays in helping workers infected with the disease." Cunningham, Josh, *COVID-19: Workers' Compensation*, NCSL, https://www.ncsl.org/research/labor-and-employment/covid-19-workers-compensation (August 28, 2020) (COVID-19 pandemic presents a unique circumstance where the many jobs that are not typically considered hazardous have suddenly become very dangerous for the workers). Although 14 states have taken action to extend workers' compensation coverage to include COVID-19 as a work-related illness, coverage is generally limited to first responders and health care workers. There is a plethora of state legislation proving coverage that has either failed or is pending for various types of workers. *Id*. The pressure to contain workers' compensation costs will only increase as a result of the continuing COVID-19 pandemic. [2]

This ongoing inexorable reduction or elimination of benefits calls into question the fundamental basis of

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[2] "NCSL is tracking legislation, executive orders and other administrative policy changes that directly address workers' compensation coverage of COVID-19." Josh Cunningham, *COVID-19: Workers' Compensation*, NCSL, https://www.ncsl.org/research/labor-and-employment/covid-19-workers-compensation (August 28, 2020) (COVID-19 pandemic presents a unique circumstance where the many jobs that are not typically considered hazardous have suddenly become very dangerous for the workers).

the "Grand Bargain," in which injured workers, in essence, were provided "limited but reasonably predictable benefits . . . under a strict liability system," which provided "immunity from tort for employers." Spieler, Emily A., *(Re)assessing the Grand Bargain: Compensation for Work Injuries in the United States*, 1900-2017, 69 Rutgers L. Rev. 891, 908 (2017).

The Minnesota statute at issue here is unique. It makes a special provision solely for employers from one state, North Dakota. MINN. STAT. § 176.041(5b) specifically provides, *inter alia*, that where a worker, even if he or she is a bona fide resident of Minnesota, is injured while engaged in temporary work in Minnesota, the exclusive remedy is under the North Dakota workers' compensation system, if he or she is employed by a North Dakota employer. Under this statute, a Minnesota resident injured in Minnesota while working on temporary assignment for a North Dakota company is denied a remedy under the Minnesota workers' compensation system, as well as a tort remedy in the Minnesota courts. No other state outsources its workers' compensation benefits to a single other state in this way or considers it an adequate alternative remedy for being shut out of its courts. If this statutory provision is allowed to stand, other states will no doubt be encouraged to outsource their workers' compensation obligations to other states in a similar manner, further eroding the basic premise of the Grand Bargain.

A. The "Grand Bargain" Historically

Justice Ginsburg, speaking for the Court, correctly notes that:

> "The invention of workers compensation as it has existed in this country since about 1910 involves a classic social trade-off or, to use a Latin term, a *quid pro quo*. . . . What is given to the injured employee is the right to receive certain limited benefits regardless of fault, that is, even in cases in which the employee is partially or entirely at fault, or when there is no fault on anyone's part. What is taken away is the employee's right to recover full tort damages, including damages for pain and suffering, in cases in which there is fault on the employer's part." P. Lencsis, WORKERS COMPENSATION: A REFERENCE AND GUIDE 9 (1998) (hereinafter Lencsis).

Howard Delivery Serv. v. Zurich Am. Ins. Co., 547 U.S. 651, 662-63 (2006). "The workers' compensation system . . . constitutes a grand bargain in which injured workers forego the possibility of larger awards potentially available through the tort system (the *quid*) in exchange for a no fault system that provides more certainty of an award (the *quo*)." *Satterlee v. Lumberman's Mut. Cas. Co*., 2009 MT 368, ¶ 56, 353 Mont. 265, 222 P.3d 566 (Mont. 2009) (Morris, J., dissenting). "The employee gives up the right to sue the employer for negligently inflicted injuries, in exchange for sure and certain benefits for all workplace injuries, regardless of fault." *Fleck v. ANG Coal Gasification Co.*, 522 N.W.2d 445, 453 (N.D. 1994). The critical element for this

"Grand Bargain" is that both the employer and the employee receive benefit from this "no fault" system. Employee benefits, however, continue to be eroded, deleted, diminished, and undermined.

The Supreme Court of Oregon explained that as an integrated system of social welfare legislation, workers' compensation embodies two principal social policy purposes. "These can be characterized as the social bargain and social insurance purposes. . . . The impetus, of course, was to alleviate the plight of injured workers who often suffered without remedy under the common law. This purpose has been characterized as a 'socially-enforced bargain which compels an employee to give up his valuable right to sue in the courts for full recovery of damages . . . in return for a certain, but limited, award. It compels the employer to give up his right to assert common-law defenses in return for assurance that the amount of recovery by the employee will be limited.'" *See Woody v. Waibel*, 276 Or. 189, 195 n. 6, 554 P.2d 492, 495 n. 6 (1976) (quoting *Van Horn v. IAC*, 219 Cal. App. 2d 457, 467, 33 Cal. Rptr. 169, 174 (1963)). Since the benefits of the "Grand Bargain" for employees continue to be eroded, deleted, diminished, and undermined, the loss of the valuable right to sue in the courts for full recovery of damages now becomes the only available remedy for these injured employees.

"[T]he legal theory supporting such exclusive remedy provisions is a presumed 'compensation bargain,' pursuant to which the employer assumes liability for industrial personal injury or death without regard to fault in exchange for limitations on the amount of that

liability. The employee is afforded relatively swift and certain payment of benefits to cure or relieve the effects of industrial injury without having to prove fault but, in exchange, gives up the wider range of damages potentially available in tort. . . . The function of the exclusive remedy provisions is to give efficacy to the theoretical 'compensation bargain.'" *Shoemaker v. Myers*, 52 Cal. 3d 1, 801 P.2d 1054, 276 Cal. Rptr. 303, 1990 Cal. LEXIS 5490, 90 Cal. Daily Op. Service 9247, 20 A.L.R.5th 1016, 6 I.E.R. Cas. (BNA) 1, 90 Daily Journal DAR 14558, 55 Cal. Comp. Cases 494 (Cal. 1990).

WILG respectfully submits that the provision at issue in the case at bar is similarly invalid whether analyzed under the access to courts provision of the Minnesota Constitution or the Due Process Clause of the XIV Amendment to the United States Constitution. This provision of the Minnesota workers' compensation law no longer provides an adequate remedy to the injured employee who is injured working in Minnesota while working for a North Dakota employer.

B. Essential Elements of the Grand Bargain

The "Grand Bargain" was established based upon concerns about the destitution and poverty caused by ever-increasing numbers of workplace injuries, and the size and the unpredictability of jury awards in lawsuits brought by injured employees. This perfect storm brought the parties together in an effort to establish a

no fault workers' compensation system. This historic compromise provided that employees would relinquish their right to sue their employers in exchange for guaranteed wage replacement and medical benefits from a no fault system. This compromise system was intended to be a self-contained system for dealing with the social, economic, and legal problems associated with workplace injuries and death. Moreover, by making the costs of workplace injuries and deaths more predictable and by placing these costs upon employers, employers would, at least in theory, have an incentive to reduce the number and severity of workplace injuries.

The benefits that are provided to employees under workers' compensation laws are obtained in exchange for employer immunity from most tort claims. Copeland, John D., *The New Arkansas Workers' Compensation Act: Did the Pendulum Swing Too Far?* 47 Ark. L. Rev. 1, 41 (1994). There are only a few limited exceptions to the exclusivity rule. *Id*. The most common exception is for an employer's intentional torts. *Id.* "If an employer intentionally harms an employee, the employee is not limited to workers' compensation benefits, since injuries resulting from an employer's intentional misconduct are not the result of an accident." *Id*. (*citing Hesket v. Fisher Laundry & Cleaners Co.*, 217 Ark. 350, 230 S.W.2d 28 (1950)). The exclusivity doctrine has protected employers even in extreme cases involving reckless and wanton disregard for workers' lives. *See*, *e.g.*, *Briggs v. Pymm Thermometer Corp*., 537 N.Y.S. 2d 553, 556 (N.Y. App. Div. 1989).

Temporary total disability benefits, provision of vocational rehabilitation services and retraining to assist the injured employee to return to work earning the same wages earned at the time of injury, fully compensated medical treatment for the injury and its *sequale*, compensation for partial wage loss, and compensation for permanent partial impairment, *inter alia*, are the benefits awarded to the injured employee, once the injury was determined to be compensable.

C. The National Commission Reforms

Subsequent to the National Commission's report, the adequacy of benefits defined by statute improved. "The Report of the National Commission on State Workmen's Compensation Laws," Washington D.C., July 1972. For example, 1) States moved to mandatory workers' compensation laws;[3] 2) The majority of states raised the maximum for total disability benefits to one hundred percent of the state average weekly wage; 3) All but two states calculate the weekly benefit at two-thirds or higher of the pre-injury weekly wage. Spieler, Emily A., *(Re)assessing the Grand Bargain:*

[3] Texas is the only remaining state that allows employers to choose whether to opt into the workers' compensation system; however, the Oklahoma Supreme Court ruled the opt-out law unconstitutional in 2016. Kersey, Laura, *Alternative Workers Compensation Mechanisms—What's Happening With Opt-Out?* NCCI, https://www.ncci.com/Articles/Pages/II_Insights_Opt-Out (December 15, 2017) (Texas continues as the only opt-out jurisdiction, although legislation in Oklahoma, Tennessee, South Carolina, Arkansas, and Florida have failed).

Compensation for Work Injuries in the United States, 1900-2017, 69 Rutgers L. Rev. 891, 932 (2017).

D. Reversing Course, 1990 Onward

The historical *quid pro quo* of all workers' compensation systems in the United States reflects the essence of the Grand Bargain. This Court in *N.Y. Cent. R.R. Co. v. White*, 243 U.S. 188, 203-04 (1917) specifically found the New York workers' compensation law constitutional. The Court noted that it is permissible to require an employer to contribute "a reasonable amount, and according to a reasonable and definite scale, by way of compensation for the loss of earning power" for the injured employee. *N.Y. Cent. R.R. Co. v. White*, 243 U.S. 188, 203-04 (1917). It is clear, however, that the continued use of workers' compensation systems as a political football to reduce costs for employers, regardless of the negative impact on the injured workers, is likely to continue. Spieler, Emily A., *(Re)assessing the Grand Bargain: Compensation for Work Injuries in the United States*, 1900-2017, 69 Rutgers L. Rev. 891, 1008 (2017).

Given the economic impact of the COVID-19 pandemic, the deterioration and reduction of workers' compensation benefits obtained as part of the Grand Bargain will only be exacerbated. Spieler, Emily A., *(Re)assessing the Grand Bargain: Compensation for Work Injuries in the United States*, 1900-2017, 69 Rutgers L. Rev. 891, 1008-09 (2017).

E. MINN. STAT. § 176.041(5b) Is an Improper and Unconstitutional Delegation to North Dakota to Determine What Constitutes an Adequate Substitute Remedy for Workplace Injuries to Certain Minnesota Residents Occurring in Minnesota

The intent of MINN. STAT. § 176.041(5b) may be consistent with the efforts of other states to enact more restrictive provisions intended to contain workers' compensation costs; however, it is unique because it makes special provision solely for employers from a single state. It provides that if a worker who is employed by a North Dakota employer is injured while engaged in temporary work in Minnesota, his or her exclusive remedy is under the North Dakota workers' compensation system, even if the injured worker resides in Minnesota. Under this statute, a Minnesota resident injured in Minnesota while working on temporary assignment for a North Dakota company is denied a remedy under the Minnesota workers' compensation system, as well as a tort remedy in the Minnesota courts. No other state outsources its workers' compensation benefits to a single other state this way, or considers it an adequate alternative remedy for being shut out of its courts. Should the statute be upheld, it will provide a model for other states seeking to outsource their responsibility for workplace injuries to other states in an improper and unconstitutional manner.

The Equal Protection issues raised by the statute are well addressed in Mr. Devos' petition to this Court. As *Amicus*, WILG addresses the larger implications with respect to the "Grand Bargain" if the statute serves a model for other states. WILG respectfully submits that there is a serious and substantial question as to whether the Minnesota statute comports with the Due Process Clause of the XIV Amendment and other basic constitutional principles that require an adequate substitute remedy for the elimination of tort liability.

Constitutional challenges to increasingly restrictive workers' compensation provisions appears to be increasing. *See* Spieler, Emily A., *(Re)assessing the Grand Bargain: Compensation for Work Injuries in the United States*, 1900-2017, 69 Rutgers L. Rev. 891, 954-55 (2017). For example, in *Protz v. Workers' Comp. Appeal Bd. (Derry Area Sch. Dist.)*, 161 A.3d 827 (Pa. 2017), the Supreme Court of Pennsylvania held that by requiring physicians, in assessing permanent impairment, to employ "the most current edition" of the American Medical Association (AMA) *Guides to the Evaluation of Impairment*, the Pennsylvania legislature unconstitutionally delegated lawmaking authority to the AMA.

By the same token, it appears that the Minnesota General Assembly has improperly and unconstitutionally delegated to North Dakota the determination of what constitutes an adequate substitute remedy for workplace injuries to certain Minnesota residents occurring in Minnesota. It is generally recognized that

Minnesota's workers' compensation benefits are more generous than those of North Dakota. *See Cook v. Minneapolis Bridge Const. Co.*, 43 N.W.2d 792, 793 (Minn. 1950); *see also* Hass, Dean J., *Falling Down on the Job: Workers' Compensation Shifts from a No-Fault to a Worker-Fault Paradigm*, 79 N.D. L. Rev. 203, 297 n. 17 (2003) (discussing North Dakota's supposition that lower benefits put it at a "'competitive advantage' over neighboring Minnesota"). It is entirely possible, if not probable, that the disparity in benefits between the two states will increase in the future. Yet the Minnesota legislature has provided that for Minnesota residents like Mr. Devos, who suffer workplace injuries in Minnesota, North Dakota workers' compensation law—whatever it may be at the time—provides the exclusive remedy for their injuries. It is impossible to determine whether the North Dakota workers' compensation laws provide an adequate substitute remedy for tort liability in Minnesota without knowing what those laws may be. WILG respectfully submits that the Minnesota legislature may not constitutionally outsource that determination to North Dakota.

This case has implications far beyond the specific issue presented in Mr. Devos' petition. If MINN. STAT. § 176.041(5b) is allowed to stand, other states will have the unfettered ability to outsource their workers' compensation responsibilities in a similar manner. This will not only create unnecessary litigation between states as to which jurisdiction bears the ultimate responsibility for workplace injuries; it will also upset

the current workers' compensation system, and further diminish the Grand Bargain.

CONCLUSION

WILG respectfully submits that Mr. Devos' petition for a writ of *certiorari* should be granted.

Respectfully submitted,

Dated: 9 September 2020

KATHLEEN G. SUMNER, *Amicus* Chair
WORKER'S INJURY LAW &
ADVOCACY GROUP
204 North Boca Bay Lane, Unit B
Surf City, NC 28445
336.294.9388
sumnerlaw@aol.com