

NO. 24-506

IN THE SUPREME COURT OF THE UNITED
STATES

J. Michael White, *et al.*,

Petitioners,

v.

Lindsay Davis, *et al.*,

Respondents.

*On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Eleventh Circuit*

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Petitioner Michael White created a web of interconnected entities, including the other Petitioners (collectively referred to as “White”), to develop and operate a private sewer system near Lake View, Alabama. Pet. App. A., at 4a. Soon after the construction of the sewer system, Lake View approached White to discuss providing sewer services to the citizens of Lake View. *Id.* White agreed to do so, and as part of the agreement, White financed the construction of a collection system for Lake View. *Id.* Lake View then created a public corporation under the laws of Alabama called the Government Utility Services Corporation (“GUSC”) that became indebted to White for the construction costs of the collection system, and Lake View also agreed to transfer and, in fact, transferred its franchise rights and rights over Lake View’s sewer system to the GUSC. *Id.* As part of the agreement, the GUSC had the ability to transfer any unpaid and uncollectable customer accounts to Lake View. *Id.* On the same day, the GUSC agreed to transfer and, indeed, transferred these franchise rights and rights over the sewer system to White. *Id.* at 4a-5a. Like the agreement between the GUSC and Lake View, the agreement between White and the GUSC allowed White to transfer any unpaid and uncollectable debts to the GUSC, with the GUSC then becoming immediately responsible for paying 90% of the uncollectable debts to White. *Id.* at 5a.

Over time, the GUSC defaulted on its financial obligations to White which led to a series of forbearance agreements, and ultimately to the final forbearance agreement. *Id.* In the same meeting that ratified the final forbearance agreement, the GUSC also adopted White’s Wastewater Standards “as they exist, and as they may be changed or amended from time to time” by White. *Id.* These Wastewater Standards allowed for the disconnection of a

customer's water service, even though White was not affiliated in any manner with the water provider, by the installation of a lock on the residence's water valve on the customer's property. *Id.* The Standards provided that notice must be first given to the customer by the presentation of credentials prior to entry on the property. *Id.* These Standards also permitted the assessment of harsh, expensive fines and penalties which could not be disputed unless the full charges were paid, partial payments were not accepted. *Id.* at 6a. Due to this manner of handling disputed charges and the wildly steep fines, a customer could quickly find themselves in a mound of debt for erroneous charges with no manner of redress as fully paying the charges would become near impossible. *Id.*

This spiraling debt hit each of the Respondents in this case. *Id.* All Respondents had their water services terminated by White without notice. *Id.* at 6a-8a. White based the terminations on alleged outstanding balances which the Respondents could not dispute without fully paying the erroneous charges, per the Wastewater Standards. *Id.* The partial payments of the Respondents were rejected and eventually the alleged debt of the Respondents, combined, climbed to almost \$500,000. *Id.*

Before carrying out the water lockouts, the GUSC significantly encouraged, adopted, and ratified the collection practices of White which directly caused the due process violations. *Id.* at 13a.

After a jury trial, the following damages were awarded. Davises - \$1 in nominal damages and \$375,000 in punitive damages for the federal due process claim, \$1 in nominal damages and \$30,000 in punitive damages for the trespass claim, and \$100,000 in compensatory damages and \$1,000,000 in punitive damages for the outrage claim. *Id.* at 9a.

Slones - \$1 in nominal damages and \$665,000 in punitive damages for state law deprivation of property rights claim, \$1 in nominal damages and \$105,500 in punitive damages for the nuisance claim, \$1 in nominal damages and \$30,000 in punitive damages for the trespass claim, and \$100,000 in compensatory damages and \$500,000 in punitive damages on the outrage claim. *Id.* at 9a-10a.

Lawrences - \$1 in nominal damages and \$450,000 in punitive damages for federal due process claim, \$1 in nominal damages and \$702,000 in in punitive damages for the state law deprivation of property rights claim, \$1 in nominal damages and \$55,500 in punitive damages for the nuisance claim, \$1 in nominal damages and \$30,000 in punitive damages for the trespass claim, and \$100,000 in compensatory damages and \$500,000 in punitive damages on the outrage claim. *Id.* at 10a.

The Petitioners fail to appreciate the contrasting treatment between compensatory damages and punitive damages as opposed to nominal damages and punitive damages when determining whether an award of punitive damages is excessive, which will be discussed further below. *See* Pet. 5, 6, 9-11.

ARGUMENT

The Petitioners failed to present any compelling reason for this Court to grant its Petition. *See* Rule 10. The court of appeals did not depart from precedent of this Court when it found a sufficient symbiotic relationship between the GUSC and White. This argument attacks the factual findings of the court of appeals. Additionally, the proportionality guidepost of *Gore* has been generally given less consideration when nominal damages are awarded by courts of appeals, and there is no circuit split on this issue. In the Petition, the Petitioners consistently mischaracterize

the nominal damage awards as compensatory damages. Therefore, there is no compelling reason for this Court to entertain this Petition, and the Respondents respectfully request this Court to deny the Petition.

I. The court of appeals made no factual error by finding a sufficient symbiotic relationship between the GUSC and White nor did it depart from precedent of this Court.

White first argues that the court of appeals erred by finding a symbiotic relationship between White and the GUSC sufficient to invoke a § 1983 claim. Pet. 6-9. This argument challenges the factual findings of the court of appeals, which generally is not reviewed by this Court. *See* Rule 10. Nevertheless, sufficient facts existed for the court of appeals to conclude such.

This Court has affirmed that a private actor can be considered a state actor when “there is a sufficiently close nexus between the State and the challenged action of the [private actor]...,” *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) and when the “State has so far insinuated itself into a position of interdependence with the [private actor] that it was a joint participant in the enterprise.” *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 357-58 (1974). This precedent was not disturbed when the court of appeals decided *Focus on the Fam. v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263 (11th Cir. 2003).

In *Focus on the Family*, 344 F.3d at 1278, the Eleventh Circuit found ample evidence that the state was acting through a private entity which caused harm to the plaintiff, rather than the private entity independently harming the plaintiff while under contract with the state. While the mere fact that a state actor contracts with a private entity does not in and of itself confer state action upon the private entity, when the state contractually requires the private entity to

take particular actions, then the required action taken by the private entity is sufficient for the nexus/joint action test to be satisfied. *Id.* at 1278-79. “[W]hen there is record evidence that the state itself unmistakably directed the private actor to take particular actions,” this test is sufficiently satisfied. *Id.* at 1279. In *Focus on the Family*, this Court found that the nexus/joint action test was satisfied when the state actor “established explicit rules for determining the acceptability of an advertisement” and retained final decision-making authority. *Id.* at 1278-79. This analysis does not depart from the precedent of this Court.

In this case, several events and facts establish the symbiotic relationship between the GUSC and White. First, the GUSC adopted and ratified White’s Wastewater Standards on their own initiative, the same Standards that White used to deprive the Respondents of due process. This is not an instance where the GUSC merely regulated White. Instead, the GUSC and White adopted and ratified the same Standards by which the sewer system would be operated and managed.

In addition, White presented past due accounts to the GUSC for the GUSC to take over collection efforts per the agreement between the GUSC and White, and White demanded the GUSC pay the amounts owed to White. In response, the GUSC forced White to carry out collection measures per the Standards, as the GUSC did not acknowledge the debts as uncollectable. In fact, the GUSC ordered White to terminate the water services of the customers, including Respondents, to further pursue collection activities. In coercing White to pursue the unlawful collection measures, the GUSC saved itself from having to pay White 90% of the past due accounts which totaled over \$130,000 at that point in time. White did not initially choose to initiate the collection measures in the Wastewater Standards; instead, White attempted to pass

the debt onto the GUSC. However, the GUSC forced and ordered White to pursue further collection activities through water lockouts and rejected the tendered past due accounts. The GUSC's significant encouragement and order to carry out these measures directly resulted in the due process violations. As a result, sufficient facts existed in this case to support the finding of a symbiotic relationship between the GUSC and White, and the court of appeals did not err in finding so.

II. There is no circuit split concerning the proportionality guidepost of *Gore* as it relates to the ratio of nominal damages to punitive damages.

On the outset, the Petitioners aggregate all the damages awarded to the Respondents in an attempt to inflate the ratio between the awarded nominal and compensatory damages and punitive damages. Pet. 10. The court of appeals rejected this aggregation, found the Petitioners did not present any legal support for aggregating the claims, and took each claim's award and compared them separately. Pet. App. A, at 25a-26a. Again, the Petitioners fail to provide any legal support to this Court to support such an aggregation.

Additionally, the Petitioners' fixation on the ratio guidepost is not helpful in this case as mostly nominal damages, instead of compensatory, were awarded and a rigid mathematical application of the ratios has been consistently rejected by this Court.¹ See *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003) ("We decline again to impose a bright-line ratio which a punitive damages award

¹ The Respondents' outrage claims were the only claims that the jury awarded compensatory damages. In their Motion for Remittitur at the district court level, the Petitioners conceded that the awards for the outrage claims were not disproportionate. Pet. App. A, at 38a.

cannot exceed”); *BMW v. Gore*, 517 U.S. 559, 582 (1996) (“Of course, we have consistently rejected the notion that the constitutional line is marked by a simple mathematical formula....”). Instead, especially in cases where nominal damages are awarded, courts of appeals have either disregarded the ratio guidepost or compared potential harm to the plaintiffs to the awarded punitive damages. See Pet. App. A, at 22a; *Jester v. Hutt*, 937 F.3d 233, 242 (3d Cir. 2019) (“Both *Gore* and *State Farm* strongly suggest that following this guidepost [(proportionality)] does not apply to nominal awards”); *Arizona v. ASARCO LLC*, 773 F.3d 1050, 1058 (9th Cir. 2014) (“Because nominal damages measure neither damage nor severity of conduct, it is not appropriate to examine the ratio of a nominal damages award to a punitive damages award”); *Saunders v. Branch Banking & Trust Co.*, 526 F.3d 142, 154 (4th Cir. 2008); *Patterson v. Balsamico*, 440 F.3d 104, 121 n.11 (2d Cir. 2006); *Romanski v. Detroit Entm’t, L.L.C.*, 428 F.3d 629, 645-48 (6th Cir. 2005), cert. denied *Detroit Entm’t, L.L.C. v. Romanski*, 549 U.S. 946 (2006); *Williams v. Kaufman Cnty.*, 352 F.3d 994, 1016 (5th Cir.) (“[A]ny punitive damages-to-compensatory damages ‘ratio analysis’ cannot be applied effectively in cases where only nominal damages have been awarded....”). “This approach to nominal awards is consistent with [this Court’s] treatment of certain modest compensatory awards.” *Jester*, 937 F.3d at 242. In *Gore*, this Court explained that “low awards of compensatory damages may properly support a higher ratio than high compensatory awards, if, for example, a particularly egregious act has resulted in only a small amount of economic damages.”² *Gore*, 517 U.S. at 582.

In this case, the court of appeals compared the potential harm suffered by the Respondents to the awards of punitive damages. Pet. App. A, at 22a-23a Using this analysis, the ratios in this case are reasonably proportionate

² The Petitioners have not challenged the court of appeals’ analysis on the egregious or reprehensible acts of the Petitioners.

and are single digit multipliers. *See* Pet. App. A, at 37a (In this case, the district court found single digit multipliers when comparing harm to punitive damages); *State Farm*, 538 U.S. at 425 (“Single-digit multipliers are more likely to comport with due process....”). Therefore, the court of appeals did not err when it upheld the challenged punitive damages awards. As a result, since the court of appeals did not depart from this Court’s precedent and no circuit split exists related to this issue, the Petition is due to be denied.

CONCLUSION

The Petition fails to provide any compelling reason for this Court to consider the issues presented within the Petition. The court of appeals did not depart from any precedent of this Court and no circuit split exists to these issues. The court of appeals followed the precedent of this Court and found from the facts that a sufficient symbiotic relationship existed between the state and White in order to consider White a state actor. Additionally, the proportionality guidepost of *Gore*, and its progeny, were not disturbed by the court of appeals, and the court of appeals followed its sister circuits in lessening the significance of this guidepost when nominal damages were awarded and focused on the other guideposts of *Gore*, which were not challenged in the Petition. Therefore, the Petition is due to be denied, and the Respondents respectfully request this Court to deny the Petition.

Respectfully submitted,

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