STATE OF MICHIGAN

IN THE SUPREME COURT OF MICHIGAN

Appeal from the Court of Appeals

BRUCE WHITMAN,

Plaintiffs-Appellant,

SCt No: 143475

vs

CITY OF BURTON and CHARLES SMILEY

Defendants-Appellees,

/

BRIEF ON APPEAL

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

STATEMENT OF QUESTIONS INVOLVED

I. Did *Shallal v Catholic Social Services of Wayne County*, 455 Mich 604 (1997), correctly hold that the primary motivation of an employee pursuing a whistleblower claim must be a desire to inform the public on matters of public concern, as opposed to personal vindictiveness, where the statutory text of the Whistleblower Protection Act contains no such "motive" or "intent" requirement?

Plaintiff-Appellant and Michigan Association for Justice, as Amicus, say No.

INTRODUCTION

Following a jury verdict in Plaintiff's favor, Defendants moved for judgment notwithstanding the verdict, asserting that Plaintiff had not established a *prima facie* case of termination in violation of the Whistleblower's Protection Act. Relying wholly on *Shallal v Catholic Social Services of Wayne County*, 455 Mich 604 (1997), the Court of Appeals granted Defendants' motion on the basis that when Plaintiff reported Defendants' violation of the law, he had not done so with "good faith" or an altruistic motive.

The Michigan Association for Justice, however, argues herein that *Shallal*'s holding that the primary motivation of an employee pursuing a whistleblower claim must be a desire to inform the public on matters of public concern, as opposed to personal vindictiveness, is contrary to the unambiguous terms of the WPA and subverts its ultimate purpose – to protect the public against government violations of the law, and to protect the integrity of the law, by protecting those who report such violations. Further, *Shallal* and the present case are contrary to Supreme Court precedent which has consistently declined to read non-statutory terms into the Act either to expand or contract the Act's coverage.

STATEMENT OF FACTS

Amicus Michigan Association for Justice relies on Plaintiff-Appellant's Statement of Facts and supporting attachments to its brief and hereby incorporates them herein. For the purposes of this brief, the relevant facts are that the Defendants violated Local Ordinance 68-C through an agreement not to pay out unused vacation time earned by City officers. Plaintiff-Appellant Bruce Whitman reported this violation to City officials, the City Attorney, and Defendant-Appellee Mayor Burton and informed them that he was going to report to the City Council. Thereafter, Defendants-Appellees terminated Whitman's employment.

After the jury returned a verdict, the trial court denied Defendants' motion for JNOV. The Court of Appeals overturned the trial court's denial relying wholly on *Shallal v Catholic Social Services of Wayne County*, 455 Mich 604 (1997).

ARGUMENT

I. *SHALLAL V CATHOLIC SOCIAL SERVICES OF WAYNE COUNTY* WAS WRONGLY DECIDED: THE WHISTLEBLOWER'S PROTECTION ACT CONTAINS NO LANGUAGE REQUIRING THAT A WHISTLEBLOWER MUST ACT WITH, OR WITHOUT, SPECIFIC MOTIVATION IN ORDER TO BE PROTECTED

In *Shallal v Catholic Social Services of Wayne County*, 455 Mich 604 (1997), this Court considered the scope and application of Section 2 of Michigan's Whistleblower Protection Act where plaintiff had threatened to report, but had not actually reported, illegal activities by her supervisor. Applying the *McDonnell Douglas* burden shifting standard, the Court found that plaintiff had met the first element, protected activity, but not the third, causation.

As to protected activity, this Court held that under the WPA's express terms, plaintiff was not required to actually report illegal activity. The majority expressly rejected the dissent's position that plaintiff had not engaged in protected activity because she had not actually reported the illegal activity; had not called her state representative; had not reported after her termination; and had not said that she had decided to report. "Not one of these things", the Court held, "are required by the statute," grounding its holding in express statutory terms and declining to import additional requirements.[1] *Shallal*, *id* at 619.

And, similarly, in holding that plaintiff had not established causation, *Shallal* offered a straightforward ruling:

> [W]e hold that plaintiff failed to establish a causal connection between the protected activity and her firing because she knew that she was going to be fired before she confronted her supervisor; thus, she used the information she had about the illegal activities as guise to force the defendant to allow her to keep her job.

Shallal, 455 Mich at 615 (emphasis added). Logically, then, there could be no causal connection between the decision to fire and the threat to report, as the decision to fire had been made prior to

[1] *Shallal*'s further holding that Plaintiff had established a question of fact that she was "about to report", with its discussion of *qui tam* actions, has no bearing on the holding that the express terms of the WPA do not require an employee to actually report illegal activities in order to engage in protected activity.

the protected conduct. But, in later discussion, the *Shallal* Court, while not abandoning this finding, reached far beyond the statutory terms, and the straightforward logic of its holding, to import a motive requirement into the WPA. *Shallal* at 621. Citing only to two Federal District Court opinions[2] – both decided without benefit of any guiding precedent from this Court – the *Shallal* Court opined:

> Many courts have held that a plaintiff is precluded from recovering under a whistleblower statue when the employee acts in bad faith. The primary motivation of an employee pursuing a whistleblower claim "must be a desire to inform the public on matters of public concern, not personal vindictiveness."

Shallal, *id* at 621, *quoting Wolcott* 691 FSupp at 1065. But neither *Melchi* nor *Wolcott* can bear the weight of this statement, *infra*. Moreover, nothing within *Shallal*'s holding references the WPA or any prior holding of this Court. And while the *Shallal* Court reiterated its key finding as to causation, "[f]urthermore, it is clear that the decision to fire plaintiff was made before her threat to Quinn," the Court, then went beyond what was necessary to decide the case before it. *Id* at 622. *Shallal*, insofar as it requires an employee to act from a particular motive and to report a matter of "public concern", was wrongly decided and should be overturned.

A. The Plain Language Of The WPA Does Not Contain An "Altruistic Motive" or "Public Interest" Requirement

Shallal adds at least two additional terms to the statutory text: that the employee be 1) acting from an "altruistic motive" and 2) reporting a "matter of public concern".[3] *Shallal*, 455 Mich at 621. *Shallal* is contrary to the plain language of the WPA.

It is axiomatic that where statutory language is unambiguous, the Court "presume[s] that the Legislature intended the meaning clearly expressed – no further judicial construction is

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[2] *Melchi v Burns Int'l Security Services, Inc,* 597 FSupp 575 (ED Mich, 1984); *Wolcott v Champion Int'l Corp,* 691 FSupp 1052 (WD Mich, 1987).

[3] As set forth herein, both of these additional elements were decisive in the Court of Appeals' decision in this case.

required or permitted, and the statute must be enforced as written." *DiBenedetto v West Shore Hosp,* 461 Mich 394, 402 (2000) (emphasis added). This Court has relied on this principle of statutory construction in any number of cases, including in interpreting and applying the WPA, *infra.*[4] Section 2 of the WPA provides that:

> An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

MCLA § 15.362. Upon "examining the plain language of the statute", it is clear that *Shallal*'s "primary motivation" and "public interest" requirements have been imported whole-cloth into the statute. *DiBenedetto*, 461 Mich at 402 ("We begin by examining the plain language of the statute").

There is simply no language in the WPA which requires a Court, or jury, to ascertain the plaintiff's motive in order to determine whether he or she engaged in protected conduct under the Act or whether he or she was terminated because of that protected conduct. There are whistleblower statutes which contain a textual "good faith" motive requirement. *See*, e.g., Minn Stat § 191.932(1)(a) ("the employee, ... in good faith, reports a violation or suspected violation"); NDCC § 34-01-20(1)(a) ("the employee, ... in good faith, reports a violation or suspected violation"); NH Rev Stat § 275-E:2(I)(a) ("[t]he employee, in good faith, reports...what the employee has reasonable cause to believe is a violation of any law or rule"). Other whistleblower statutes do not contain a "good faith" motive requirement. *See* e.g., OH ST

[4] Plaintiff-Appellant's Brief On Appeal contains a lengthy listing of prior decisions of this Court regarding statutory interpretation and the plain language of the statute.

§ 4113.52(B) ("no employer shall take any disciplinary or retaliatory action against an employee for making any report authorized" by the statute); IL ST Ch. 740 § 174/15 ("An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency"); TN ST § 50-1-304(b) ("No employee shall be discharged or terminated solely for refusing to participate in, or for refusing to remain silent about, illegal activities"). Like these latter statutes, Michigan's WPA does not contain a motive requirement.

Moreover, there is no requirement in the WPA that an employee, in reporting violations of law, also be reporting "on matters of public concern". The unambiguous text of the WPA clearly identifies the public concern at issue: violations or suspected violations of law. Accordingly, in reporting a violation or suspected violation, an employee is *ipso facto* reporting on a matter of legislatively identified public concern. No further inquiry is necessary. *Shallal*'s extra-statutory "public concern" requirement is nonsensical and, as *Whitman* illustrates, lends itself to undermining the legislative purpose of the WPA. The Court of Appeals used *Shallal*'s "public interest" language to weigh what it saw as competing public interests, an exercise in which the WPA's legislative determination was outweighed by the Court of Appeals' supposition as to where the "real" public interest lay, *infra*.

B. This Court Has Repeatedly Rejected Injecting Extra-Statutory Language Into The WPA

This Court has, in the past, found the language of Section 2 clear and unambiguous and declined to read into the WPA terms that are not within the statutory text. In *Dolan v Continental Airlines/Continental Express*, 454 Mich 373, 380 (1997), this Court held that a plaintiff who reported potential violations of the law by third parties was entitled to WPA protection. In so doing, the Court rejected the holding by the Court of Appeals that "in order for the WPA to apply, the violation or suspected violation must be committed in the course of doing

business." *Id* at 379 *quoting Dolan v Cont'l Airlines*, 208 Mich App 316, 320 (1995). Although this Court recognized that "[f]requently, a close connection exists between the reported violation and the employment setting," there is "no such limitation...found in the statute." *Id* at 381 (emphasis added). Accordingly, plaintiff's report of potential violations by third parties unrelated to her employer was protected conduct within the unambiguous language of WPA. p. 382.

In *Chandler v Dowell Schlumberger Inc*, 456 Mich 395 (1998), this Court held that the WPA does not protect an employee fired because of the erroneous perception that he reported a violation of the law. Holding that the WPA must be enforced according to its terms, the *Chandler* Court held: that, while "[t]he Legislature can and may rewrite the statute,...we will not do so." *Id* at 406. The Court "reaffirm[ed] the broad protection given to those employees who engage in protected activity", i.e., who report or about to report violations of the law. *Id.*

In *Brown v Mayor of Detroit*, 478 Mich 589 (2007), this Court rejected a requirement that an employee, to be protected by the WPA, must have reported violations to an outside agency or higher authority.

> The statutory language in this case is unambiguous. The WPA protects an employee who reports or is about to report a violation or suspected violation of the law or regulation to a public body. The language of the WPA does not provide that this public body must be an outside agency or higher agency or higher authority. There is no condition in the statute that an employee must report wrongdoing to an outside agency or higher authority to be protected by the WPA.

Brown, 478 Mich at 594. (emphasis added). The *Brown* Court also rejected a requirement that the employee's reporting must be outside his or her job duties. "There is no limiting language that requires that the employees must be acting outside the regular scope of his employment. ... The statutory language renders irrelevant whether the reporting is part of the employee's assigned or regular job duties." *Id* at 596. Similarly, there is no requirement in the WPA that an

employee must act from an altruistic motive when reporting wrongdoing and the plain, unambiguous language of the WPA renders an employee's motivation for reporting irrelevant.

C. The Only "State Of Mind" Requirement In The WPA Is That An Employee Cannot Make A Knowingly False Report

At most, the WPA denies protections to employees who make knowingly false reports of illegal conduct. MCLA § 15.362 ("unless the employee knows that the report is false"). But this limited and specific language cannot be squared with *Shallal*'s expansive holding. To the extent that "unless the employee knows that the report is false" implies any "good faith" motive, it is textually limited to the employee's knowledge, *vel non*, of the truth of his or her report. Instructive here is the Federal Court decision unexamined, and implicitly rejected, in *Shallal*, *Melchi v Burns Int'l Security Services, Inc,* 597 FSupp 575 (ED Mich, 1984).

The *Melchi* Court acknowledged that it could find no "Michigan case law construing the Act and its protections." *Melchi*, 597 FSupp at 581. It therefore analogized to the anti-retaliation provisions of the Elliott-Larsen Civil Rights Act and Title VII, finding that the statutes shared the same goals, seeking "to protect the integrity of the law by removing barriers to employee efforts to report violations of the law." *Id.* Though the statutes shared the same goals, the *Melchi* Court recognized that they did not share the same language. Rather, the WPA expanded its protections to reports of "suspected violations" of the law and denied its protections to those who made knowingly false reports. It was in this context that the *Melchi* Court discussed the requirement that an employee be acting in "good faith". *Melchi*'s "good faith" analysis applies to statutory language not at issue here: whether the employee seeking protection made a knowingly false report or not. That specific statutory language, the *Melchi* Court held, required it to determine whether "the plaintiff held a subjective good faith belief that the employer had violated the law." *Melchi*, 597 FSupp at 583. Otherwise, the Court held, an

employee could use the WPA "in a purely offensive manner by reporting violations known to be false" – conduct expressly excepted from WPA protection by the language of the statute. *Id.* (emphasis added). There is nothing in the statute which requires that a plaintiff who engaged in protected conduct, i.e., "reports or is about to report...a violation or a suspected violation of a law", must have a particular motive in doing so – and *Melchi*'s textual reading does not support that conclusion. But under *Shallal*, and now *Whitman*, *Melchi*'s "good faith" language became wholly divorced from any statutory moorings.

D. *Shallal* Improperly Inserted A Motive Requirement

Wolcott v Champion Int'l Corp, 691 FSupp 1052 (WD Mich, 1987), began the unmooring. Applying the *McDonnell Douglas* burden shifting, *Wolcott* held that plaintiff had established the first two elements of the *prima facie* case, he had engaged in protected activity and had been terminated, but could not satisfy the causation prong. *Wolcott*, 691 FSupp at 1059. This was so, the Court held, because plaintiff's job was slated for elimination prior to plaintiff's protected conduct: plaintiff did not report violations "until it became apparent that he and others might lose their jobs due to circumstances unrelated to the violations." *Id.* As in *Shallal*, *supra*, this is a straightforward causation analysis: if the termination decision is made prior to the protected activity, that later protected activity cannot provide a basis for the termination.[5] This is not a remarkable analysis[6] and *Wolcott* relied on it throughout, including in stating that plaintiff's

[5] Thus, any "good faith" language is properly regarded as dicta as well as outside the statutory text.

[6] *See* e.g., *Vanderlaan v Michigan Med, PC*, 300660, 2012 WL 284580 (Mich Ct App Jan 31, 2012) finding no causation where "[p]laintiff has not presented any evidence illustrating that, before the board expressed its intention of terminating him, defendants had notice that he was about to report the compliance issues to a public body"; *Gale v Michigan State Univ*, 282411, 2009 WL 387714 (Mich Ct App Feb 17, 2009) finding no causation where "plaintiff's main supervisor had made the decision to terminate her employment before she reported").

claim similarly failed under the pretext prong: "defendant has more than rebutted any presumption of retaliation by offering evidence that the phase-out of plaintiff's position was contemplated long before plaintiff engaged in activities protected under the Act." *Wolcott* 691 FSupp at 1059 n4. What is remarkable is that *Wolcott* chose to far beyond this analysis.

As did the *Melchi* Court, *Wolcott* acknowledged that it was deciding the case before it without benefit of this Court's guidance. *Wolcott*, 691 FSupp at 1058. But unlike *Melchi*'s limited application of "good faith" to plaintiff's knowledge, *vel non*, of falsity, *Wolcott* did not – indeed cannot – ground its expansive motive requirement in the WPA. In language since expanded in *Shallal* and *Whitman*, *Wolcott* held that a plaintiff seeking WPA protection must "be motivated, at least in part, by a desire to inform the public about violations of laws and statutes, as a service to the public as a whole." *Wolcott*, 691 FSupp at 1059. To the extent that *Wolcott* offered any justification for its holding, it relied on *Fiorillo v US Dept of Justice, Bureau of Prisons*, 795 F2d 1544 (Fed Cir, 1986), a case interpreting the whistleblower protections in the Civil Service Reform Act, 5 USC § 2302.[7] In *Fiorillo*, the Court of Appeals held that a public employee's rights under the CSRA "and the First Amendment's right to free speech have been considered coextensive rights." *Fiorillo* applied the *Pickering v Board of Education*, 391 US 563, 88 SCt 1731, 20 LEd2d 811 (1968), test for a First Amendment claim which requires, *inter alia*, that a plaintiff be motivated by a desire to inform the public on matters of public concern. But *Fiorillo* was subsequently overruled by Congressional action in 1988, as discussed in *Horton v Dep't of Navy*, 66 F3d 279, 282-83 (Fed Cir, 1995), which explicated the basis for the overruling:

[7] *Wolcott* also relied on a misreading of *Melchi* which failed to take into account *Melchi*'s limited and textually based application of "good faith", *supra.*

The legislative history of that enactment explains:

> In *Fiorillo v Department of Justice,* 795 F2d 1544, 1550 (Fed Cir, 1986), an employee's disclosures were not considered protected because the employee's "primary motivation" was not for the public good, but rather for the personal motives of the employee. The court reached this conclusion despite the lack of any indication in CSRA that an employee's motives are supposed to be considered in determining whether a disclosure is protected.
>
> The Committee intends that disclosures be encouraged. The OSC, the Board and the courts should not erect barriers to disclosures which will limit the necessary flow of information from employees who have knowledge of government wrongdoing.

S Rep No 413, 100th Cong, 2d Sess 12-13 (1988) (emphasis added). *Wolcott*'s holding is a house of cards which collapses under the slightest scrutiny. *Fiorillo* was overruled by Congressional action in 1998, which makes clear that the CSRA simply did not contain a motive requirement, and the overruling was recognized by *Horton* in 1995. *Shallal* was decided in 1997 relying wholly on *Wolcott*'s discredited analysis, as was *Whitman* in 2011. Neither *Wolcott* nor *Melchi, supra*, provides any cognizable basis for adding a mandatory "good faith" element to a WPA plaintiff's *prima facie* case, as was done under *Shallal.* And, like the CSRA, the WPA lacks any indication that an employee's motives are supposed to be considered in determining whether a report of a violation or suspected violation is protected. Legislative explanation is wholly unnecessary.

The absence of statutory grounding is wholly evident in *Wolcott*, as it is in *Shallal.* But then *Shallal* even expanded *Wolcott*'s holding. While *Wolcott* required only that a WPA plaintiff "be motivated, at least in part, by a desire to inform the public", *Shallal* requires that "[t]he primary motivation of an employee pursuing a whistleblower claim 'must be a desire to inform the public on matters of public concern, and not personal vindictiveness.'" *Shallal*, 455 Mich at 621 *quoting Wolcott* 691 FSupp at 1065 (emphasis added). Then *Shallal* Court goes further yet,

seemingly requiring a jury to find that a WPA plaintiff acted "out of an altruistic motive of protecting the public." *Shallal*, 455 Mich at 622 (emphasis added). This extra-statutory requirement seems to have reached its zenith in *Whitman*, which held that if a plaintiff would benefit by correction of the illegal activity, he is not entitled to the protection of the WPA and further held that because the public interest served by Defendants' law breaking outweighed the legislatively recognized public interest in reporting their law breaking, the WPA did not protect Plaintiff's reporting. All of this is incompatible with, indeed contrary to, the plain terms of the WPA. Moreover, it undermines the ultimate purpose of the WPA, protecting the public from governmental and corporate law breaking through protecting whistleblowers, in favor of *Whitman*'s balancing of allegedly competing public interests.

II. *WHITMAN* WAS WRONGLY DECIDED: THE WHISTLEBLOWER'S PROTECTION ACT DOES NOT ALLOW COURTS TO "BALANCE" ALLEGEDLY COMPETING PUBLIC INTERESTS

The purpose of the WPA is to protect the integrity and enforcement of the law by protecting those who "blow the whistle" on governmental and corporate law breaking. As this Court held in *Dolan*, 454 Mich at 379:

> The underlying purpose of the act is protection of the public. The act meets this objective by protecting the whistleblowing employee and by removing barriers that may interdict employer efforts to report violations or suspected violations of the law.

In contrast, *Shallal* and *Whitman* erect barriers to enforcement of the WPA: a WPA plaintiff must prove not only that he or she reported from wholly altruistic motives, he or she must also prove that the public has a greater interest in enforcing the law than it does in the law breaker's justification for it malfeasance.

In a wholly unprecedented holding, the *Whitman* Court balanced the public's interest in reporting law breaking (legislatively recognized and protected by the WPA) against the public's

(alleged) interest in saving money through breaking the law. The public's interest in governmental law breaking won out:

> The mayor of Burton agreed with his administrators to forego cash payouts to save money and to demonstrate to the public that the administration was taking fiscally responsible action to save public funds while retaining needed city services. There is no dispute that the decision and subsequent agreement by the administrators to avoid thousands of dollars in cash payouts was a strategy to counter act a severe budgetary shortfall that, without some corrective measure, would like have resulted in the termination of other public service employees. Thus, it was in the public interest for plaintiff and the other administrators to forego this administrative perk, in order to preserve essential public services.
>
> In demanding payout under the ordinance for his sick and personal hours – a payment the cash-strapped city could ill-afford – plaintiff was decidedly *not* acting in the public interest.

Apx at 32a-33a. What the majority neglects to mention, and as is pointed out in the dissent, Defendants had the ability to save money by completely legal means – simply amend Ordinance 68C. Apx at 43a. They chose not to do so and also chose to continue with their law breaking by refusing to make payouts mandated by Ordinance 68C.

Stated in its essentials, *Whitman* holds that the public interest in saving money outweighs the public interest in knowing whether its government broke the law to do so and it is, therefore, inimical to the public interest to protect those who report governmental law breaking. This cannot be upheld. The very purpose of the WPA is to protect the integrity of the law by protecting whistleblowers, as Michigan Courts have repeatedly recognized. "The act 'encourage[s] employees to assist in law enforcement and ...protect[s] those employees who engage in whistleblowing activities.'" *See* e.g., *Dolan* 454 Mich at 378 (internal citation omitted); *Shaw v Ecorse*, 283 Mich App 1, 13 (2009), ("The Legislature intended the WPA to serve a vitally important and far reaching goal: protection of the public by protecting all employees who have knowledge that is relevant to the protection of the public from some abuse

or violation of law"). *Shallal*'s and *Whitman*'s "public interest" requirement undermines this purpose by allowing courts to choose which "public interest" they will value most, and thus protect, by choosing when to provide WPA protection for reporting violations and when not.

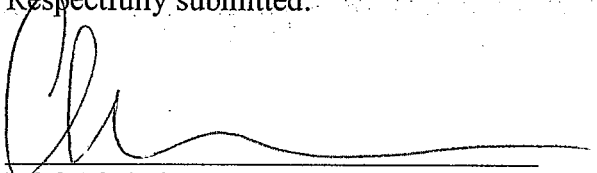
Contrary to *Whitman*, the WPA clearly states the public interest that it protects: enforcement of the laws that govern society. The legislature has already determined that the citizens of the City of Burton have a statutorily protected interest in ensuring that its officials abide by the laws that govern it. The public interest to be protected is not amorphous and undefined, nor is it subject to interpretation. The WPA protects those who report violations of the law because that enforcement of the law is the public interest it seeks to protect. The public may have had no interest in whether Whitman got paid his vacation pay. But in framing the issue as such, the Court of Appeals framed it incorrectly. City Attorney Dubay had the better analysis: the government cannot make agreements to violate the law. The WPA countenances no balancing of allegedly competing interests and *Whitman*'s holding wholly subverts the legislative enactment and purpose.

CONCLUSION

The plain language of the WPA does not require that an employee prove that he or she active from a pure, altruistic motive or that he or she was reporting on anything of public interest other than a violation or suspected violation. If an employee reports a violation or suspected violation of the law, that employee has engaged in protected conduct under the WPA. If an employer terminates an employee because the employee engaged in protected conduct, that employer has violated the WPA. Previous decisions of this Court have refused to import extra-statutory language into the WPA, whether to narrow or expand its protections. The holding in *Shallal*, and subsequently *Whitman*, impermissibly narrow the WPA's protections by importing a

motive requirement. *Whitman* further narrows the WPA's protections by expanding *Shallal*'s public concern requirement into a balancing test between allegedly competing public concerns. Therefore, for the reasons stated in this brief, the Michigan Association of Justice, as Amicus, respectfully requests that this Honorable Court overturn the holding in *Shallal v Catholic Social Services of Wayne County*, 455 Mich 604 (1997), that the primary motivation of an employee pursuing a whistleblower claim must be a desire to inform the public on matters of public concern, as opposed to personal vindictiveness and, therefore, reverse the Court of Appeals' decision in *Whitman v City of Burton.*

Respectfully submitted:



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