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**STATE OF MINNESOTA
IN SUPREME COURT**

**OFFICE OF
APPELLATE COURTS**

Christopher Thigpen,
Appellant,

vs.

Best Home Care LLC,
Respondent.

Department of Employment and Economic Development,
Respondent.

**BRIEF OF MID-MINNESOTA LEGAL AID AS AMICUS CURIAE IN SUPPORT
OF APPELLANT**

SOUTHERN MINNESOTA
REGIONAL LEGAL SERVICES
Russell Squire (0396335)
Brianna Boone (0397388)
55 East Fifth Street, Suite 400
St Paul, MN 55101
651-222-5863

Attorneys for Appellant

DEPARTMENT OF
EMPLOYMENT AND
ECONOMIC DEVELOPMENT
Keri Phillips (0389959)
180 East Fifth Street, Suite 1200
St. Paul, MN 55101
651-259-0971

*Attorney for Respondent Department
of Employment and Economic
Development*

MID-MINNESOTA LEGAL AID
Lars Markeson (0389094)
111 North 5th Street, Suite 100
Minneapolis, MN 55403
612-746-3618

*Attorney for Amicus Curiae Mid-
Minnesota Legal Aid*

BEST HOME CARE, LLC
2562 7th Avenue East, Suite 201
North St. Paul, MN 55109

Pro Se Respondent Employer

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LEGAL ISSUE

Does Minnesota's unemployment insurance misrepresentation overpayment punishment violate state and federal constitutional prohibitions against excessive fines?

Yes. The statutory regime creates a penalty wholly disproportionate to the alleged offense, an imbalance worsened by the fact that under the existing law, the state agency need not even prove intent.

The Court of Appeals held that the law met constitutional thresholds.

STATEMENT OF THE CASE

Minnesota's harsh penalties for unemployment insurance misrepresentation overpayments violate the Excessive Fines Clauses of the Minnesota Constitution. Mid-Minnesota Legal Aid submits this brief to outline for the Court how this unconstitutional penalty scheme especially harms low-income Minnesotans and Minnesotans from historically marginalized communities. The Court should reverse the decision by the Court of Appeals and remand the case to the Department of Employment and Economic Development to apply an appropriate—and constitutional—penalty for the small error committed by Appellant Christopher Thigpen.

ARGUMENT

Mid-Minnesota Legal Aid (MMLA) lawyers appear on behalf of thousands of families in Minnesota civil and administrative courts each year, including unemployment hearings. We advise many more. Our free legal services reach people in more than 20 counties, including Hennepin County. MMLA is part of the Minnesota Legal Services Coalition, a network of legal aid offices that serves Minnesotans in all 87 counties (collectively, “Legal Aid”). Legal Aid clients include individuals who, for one reason or another, find themselves unemployed. In individual cases, Legal Aid lawyers and advocates advise and represent unemployment recipients who were assessed overpayment penalties for alleged misrepresentations.

This brief makes four related arguments from the Legal Aid perspective. First, it supports Appellant’s argument that the penalty provisions in Minnesota’s unemployment statutes are unconstitutional. Second, it shows how the current system’s onerous burdens are borne disproportionately by Minnesotans with low incomes and Minnesotans who are Black, Indigenous, and People of Color. Third, it directs the Court to broad research showing that excessive fines regimes do not accomplish the objectives they purport to seek. Finally, this brief argues that at a minimum, the Court should strike down the part of the statute that bars applicants from offsetting penalties against awarded benefits.

1. Minnesota’s unemployment insurance statutes violate the excessive fines clause of the state and federal constitutions.

The Minnesota Court of Appeals (and, by extension, the Minnesota Supreme Court) may reverse or modify the decision of the unemployment law judge if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are in violation of constitutional provisions. Minn. Stat. § 268.105, subd. 7(d)(1) (2024). “[A]ny statutory provision that would preclude an applicant from receiving benefits must be narrowly construed.” Minn. Stat. § 268.031 (2024).

Minnesota’s unemployment insurance misrepresentation penalties disproportionately harm Legal Aid’s clients. People who are more affluent are better able to pay off an overpayment and penalty than are people with lesser means. The Appellate Court of Illinois applied this logic in *Meadows v. Grabiec*, 314 N.E.2d 283, 289 (Ill. App. Ct. 1974), and the Court should apply it here too. Those with the means to repay the misrepresentation overpayment would be able to repay, thus becoming eligible to receive unemployment benefits again. Without allowing for recoupment from future unemployment benefits, those without the means suffer a harsher penalty.

Minnesota Statutes, section 268.18, provides for 45 days to file an appeal after notification of an overpayment. Prior to this change in 2023, specifically in the period Appellant was noticed of the overpayment, applicants such as Appellant only had 20 days to file an appeal. Mid-Minnesota Legal Aid has had multiple clients who, having moved after they stopped receiving unemployment benefits, did not recall they still needed to

update the Department of Employment and Economic Development with their change of address. Because the mailed notice of overpayment had to be forwarded, they received the notice more than 20 days after mailing and, thus, were unable to present any defense to an alleged misrepresentation overpayment. When they lost their jobs again, through no fault of their own, they were left with no income to afford basic living. These people still have many years not being eligible for unemployment benefits before the debt is canceled and they become eligible to receive unemployment benefits again. Minn. Stat. § 268.18, subd. 4(b) (2024).

For those who are barred from receiving unemployment because of the misrepresentation overpayment, they also may have no access to any other public benefit. For instance, they are not eligible for cash through General Assistance, Minnesota's subsistence cash for single adults. Eligibility for General Assistance requires that an individual be unable to work. Minn. Stat. § 256D.05 (2024). This is in contrast to unemployment's requirement that the person be able, available, and actively seeking suitable employment. Minn. Stat. § 268.085, subd. 1(4-5), subd. 15-16 (2024). Additionally, as someone who can work, they are limited to receiving food benefits for three months out of every 36 months. 7 U.S.C.A. § 2015(o)(2) (2023).

For those already impoverished and unable to pay the overpayment, ten years of ineligibility can leave them with no income at a time when they are vulnerable because they are unemployed.

2. Minnesota’s unemployment insurance misrepresentation penalty scheme disproportionately harms Legal Aid’s clients.

All Minnesotans participating in the unemployment insurance program are definitionally at a vulnerable point in their lives: they are unemployed. Yet the client communities served by MMLA and other legal services programs are particularly vulnerable to the harm that comes from economic insecurity. Legal Aid serves low-income Minnesotans, and most of our clients come from historically marginalized communities. Data shows that Minnesotans who are Black, Indigenous, and People of Color (BIPOC) are more likely to be poor and more likely to be unemployed, making access to unemployment insurance critical.

Since September 2019, Mid-Minnesota Legal Aid (MMLA) provided advice or full representation to 510 people with an unemployment insurance case. Over half of these individuals (53%) identified as BIPOC, 34% as White, and 13% Refused/Unsure. Minnesota’s long-standing economic disparities among racial/ethnic groups are well-known and continue to persist. In 2022, the poverty rates in Minnesota were:

- White: 7.0 percent
- Asian: 10.6 percent
- Hispanic: 11.2 percent
- African American: 20.7 percent
- Native American: 28.5 percent
- Multiracial/other race: 10.5 percent

MINNESOTA COMMUNITY ACTION PARTNERSHIP AND HUMPHREY SCHOOL OF PUBLIC AFFAIRS AT THE UNIVERSITY OF MINNESOTA, MINNESOTA POVERTY REPORT 2022

(2022), www.hhh.umn.edu/news/minnesota-poverty-report-finds-income-disparities-persist-minnesota.

More BIPOC Minnesotans are unemployed when compared to their White counterparts. In Minnesota, American Indian, African American, and Somali adults have an unemployment rate four times greater than White adults. MINN. STATE DEMOGRAPHIC CENTER, *THE ECONOMIC STATUS OF MINNESOTANS 2023* (2023) mn.gov/admin/assets/Economic%20Status%20of%20Minnesotans%202023_tcm36-569572.pdf. Somali, Mexican, Ojibwe, and Hmong workers have the lowest full-time earnings, averaging under \$40,000 per year. *Id.* at 41. White workers, by contrast, earned an average of \$56,700 per year. *Id.*

BIPOC Minnesotans also have fewer savings to fall back on when a job loss happens. The racial wealth gap between Black and White Americans is stark: the current White-to-Black per capita wealth ratio is 6 to 1. LISA CAMNER MCKAY, FEDERAL RESERVE BANK OF MINNEAPOLIS, *HOW THE RACIAL WEALTH GAP HAS EVOLVED—AND WHY IT PERSISTS* (2022), www.minneapolisfed.org/article/2022/how-the-racial-wealth-gap-has-evolved-and-why-it-persists. In Minnesota, the median net worth of White households is \$211,000, \$18,000 for Hispanic households, and \$0 for Black households. BEN HOROWITZ ET AL., FEDERAL RESERVE BANK OF MINNEAPOLIS, *SYSTEMIC RACISM HAUNTS HOMEOWNERSHIP RATES IN MINNESOTA* (2021), www.minneapolisfed.org/article/2021/systemic-racism-haunts-homeownership-rates-in-minnesota. This staggering

wealth gap makes programs like unemployment insurance especially important for Minnesotans from historically marginalized communities.

On top of this, there are even further disparities among unemployment insurance program participants. According to the United States Department of Labor, “[d]ata indicates that the challenge of low reciprocity has been particularly difficult for historically marginalized groups that experience high rates of unemployment.”

UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 01-24, 2 (2023),

[www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2024/UIPL%2001-](http://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2024/UIPL%2001-24/UIPL%2001-24.pdf)

[24/UIPL%2001-24.pdf](http://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2024/UIPL%2001-24/UIPL%2001-24.pdf). A recent study found that:

First, reciprocity rates are substantially lower for younger workers (16-25), despite restricting to individuals with an eligible separation who are currently unemployed Second, we see a clear gradient in reciprocity rates by education, with more educated workers typically having the highest rates, and the least educated the lowest. Third, reciprocity rates are similar but slightly lower for women than men. Fourth, white workers typically have the highest reciprocity rates, while Black workers typically have the lowest. . . . [H]eterosexual workers and cis-gendered workers are substantially more likely to receive UI benefits than homosexual/bisexual/other workers and trans or non-binary workers, respectively.

ELIZA FORSYTHE ET AL., UNDERSTANDING DISPARITIES IN UNEMPLOYMENT INSURANCE

RECIPIENCY 22, 24 (2021), [www.dol.gov/sites/dolgov/files/OASP/](http://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/University%20of%20Illinois%20-%20Final%20SDC%20Paper.pdf)

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higher percentage of White, non-Hispanic/Latino applicants (80.2 percent) received

benefits from UI programs during the pandemic than Black applicants (73 percent). U.S.

GOV’T ACCOUNTABILITY OFFICE, MANAGEMENT REPORT: PRELIMINARY INFORMATION

ON POTENTIAL RACIAL AND ETHNIC DISPARITIES IN THE RECEIPT OF UNEMPLOYMENT
INSURANCE BENEFITS DURING THE COVID-19 PANDEMIC 3 (2021),

www.gao.gov/assets/gao-21-599r.pdf.

While unemployment insurance is not a needs-based program, its role in the social safety net is particularly critical for Minnesotans from historically marginalized communities living in poverty.

3. Excessive fees such as Minnesota’s unemployment insurance misrepresentation penalty scheme do not deter fraud and only serve to criminalize poverty.

In addition to being unconstitutional for all the reasons outlined in Appellant’s brief, the research shows that excessive fines such as those at issue here do not actually serve as a deterrence. They only serve to keep people in poverty. The National Center for Access to Justice, in its Fines and Fees Justice Index, sums it up well:

Fines and fees can keep people in a cycle of poverty, causing people to lose their jobs, their homes, and sometimes their children. The same monetary sanction that trivially inconveniences an affluent person can prevent a low-income family from paying the rent. In fact, fines and fees are often set without regard to a person’s actual financial situation. In short, they create a two-tiered system, placing justice out of reach for millions of people, including a disproportionate number of people of color.

NAT’L CTR. FOR ACCESS TO JUSTICE, FINES AND FEES JUSTICE INDEX, ncaj.org/state-rankings/justice-index/fines-and-fees (last visited Jan. 3, 2025). A recent study of misdemeanor fines showed that court debt charged to indigent defendants had no impact on causing or deterring new crime. Devah Pager et al., CRIMINALIZING POVERTY: THE

CONSEQUENCES OF COURT FEES IN A RANDOMIZED EXPERIMENT, Amer. Soc. Rev. 1-25 (2022), justicelab.columbia.edu/sites/default/files/content/Criminalizing%20Poverty.pdf.

This logic extends to Minnesota's excessive penalties for unemployment insurance misrepresentation. During the pandemic, most fraudulent unemployment insurance overpayments were due to identify theft. U.S. GOV'T ACCOUNTABILITY OFFICE, UNEMPLOYMENT INSURANCE: TRANSFORMATION NEEDED TO ADDRESS PROGRAM DESIGN, INFRASTRUCTURE, AND INTEGRITY RISKS, GAO-22-1051622 (2022), www.gao.gov/assets/gao-22-105162.pdf. Most applicants, like Appellant, are laypersons who find the unemployment insurance program confusing and inaccessible, and are unlikely to know the details of the program.

Here, Appellant had never applied for unemployment insurance benefits before and generally had difficulty understanding paperwork and bills. (Tr. 56, 97-8, 105.) The Department penalized Appellant by fining him \$15,842, plus interest, and banned him from the program for ten years. (App. Add. 5, 29, 41.) But does this harsh penalty scheme actually deter fraud? The research suggests it likely does not. All it does is make people like Appellant worse off and more likely to stay in poverty.

4. If Minnesota's unemployment statutes penalties and interest are found to be constitutional, then offset from future unemployment benefits should be permitted.

Until 2007, the Commissioner of the Department of Employment and Economic Development was required to offset from future unemployment benefits otherwise payable the total amount due from an overpayment due to fraud. Minn. Stat. § 268.18,

subd. 2(c) (2007). This is better policy than the current regime. Instead of unfairly punishing low-income Minnesotans, the unemployment insurance program should allow all Minnesotans the ability to repay their debt should they become unemployed again. This places them on a path to making things right, and would allow them to be able to access this critical safety net if they find themselves unemployed again. If the Court finds the penalty and interest constitutional, it should at a minimum permit an offset to allow individuals with misrepresentation overpayments and no other means to start paying it back.

CONCLUSION

For all the above-stated reasons, MMLA respectfully asks the Court to reverse the decision of the Court of Appeals.

MID-MINNESOTA LEGAL AID

Dated: January 3, 2025

By /s/ Lars Markeson
Lars Markeson, ID No. 0389094
111 N. 5th Street, Suite 100
Minneapolis, MN 55403
Telephone: (612) 746-3618
Email: lmarkeson@mylegalaid.org

*Attorney for Amicus Curiae Mid-Minnesota
Legal Aid*

**CERTIFICATE OF COMPLIANCE
WITH
MINN. R. APP. P. 132**

The undersigned certifies that this brief contains 2,034 words and complies with the type/volume limitations of Rule 132 of the Minnesota Rules of Appellate Procedure. This brief was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Word 365.

MID-MINNESOTA LEGAL AID

Dated: January 3, 2025

By /s/ Lars Markeson
Lars Markeson, ID No. 0389094
111 N. 5th Street, Suite 100
Minneapolis, MN 55403
Telephone: (612) 746-3618
Email: lmarkeson@mylegalaid.org

*Attorney for Amicus Curiae Mid-Minnesota
Legal Aid*