IN THE SUPREME COURT OF MISSOURI

No. SC93132

JOHN TEMPLEMIRE

Appellant,

vs.

W&M WELDING, INC.,

Respondent.

Appeal from the Circuit Court of Pettis County, Missouri
Honorable Robert L. Koffman, Circuit Judge
Case No. 07PT-CC00019

Transferred from the Missouri Court of Appeals, Eastern District
Appeal No. WD74681

BRIEF OF THE ST. LOUIS AND KANSAS CITY CHAPTERS OF THE NATIONAL EMPLOYMENT LAWYERS ASSOCIATION AS AMICI CURIAE IN SUPPORT OF APPELLANT

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STATEMENT OF CONSENT

Appellant John Templemire and Respondent W&M Welding, Inc., have consented to the filing of this brief.

STATEMENT OF INTEREST

Amici Curiae, the St. Louis and Kansas City Chapters of the National Employment Lawyers Association, are voluntary membership organizations of more than 150 lawyers who represent employees in labor, employment, and civil rights disputes in the state of Missouri. The Chapters are affiliates of the National Employment Lawyers Association (NELA), which consists of more than 3,000 attorneys who specialize in representing individuals in controversies arising out of the workplace. As part of its advocacy efforts, NELA has filed numerous amicus curiae briefs in state and federal courts across the country regarding the proper interpretation and application of employment law to ensure that such law is fully enforced and that the rights of workers are fully protected. Members of the St. Louis and Kansas City Chapters of NELA regularly represent victims of unlawful retaliatory discharge.

STATEMENT OF FACTS

Appellant John Templemire brought this lawsuit against Respondent W&M Welding, Inc., alleging that Respondent violated section 287.780 of the Missouri Revised Statutes by terminating his employment in retaliation for filing a workers' compensation claim against Respondent.

The case proceeded to trial on September 27, 2011. Before submission of the case to the jury, Appellant argued that MAI 23.13 (now 38.04) misstated the law to the extent

that it required the jury to find an exclusive causal connection between the filing of Appellant's workers' compensation claim and his discharge. Appellant offered an alternate instruction that would have allowed the jury to return a verdict in his favor if it found, *inter alia*, that the filing of his workers' compensation claim was a "contributing factor" in his discharge. The trial court rejected Appellant's alternate instruction and submitted MAI 23.13 to the jury. The jury returned a verdict in favor of Respondent and the trial court entered judgment in accordance with the verdict.

On appeal, the Court of Appeals affirmed the trial court's judgment, based upon precedent from this Court holding that "exclusive causation" is the proper standard of causation for claims arising under section 287.780. Appellant then filed an application for transfer to this Court, which the Court granted.

POINTS RELIED ON

I.

The Court Should Abandon the "Exclusive Causation" Standard for Claims under Section 287.780 Because Such a Standard Is Inconsistent with the Plain Language of the Statute and Fails to Fulfill the Purpose of the Statute.

Fleshner v. Pepose Vision Inst., P.C., 304 S.W.3d 81 (Mo. 2010)

Hager v. Syberg's Westport, 304 S.W.3d 771 (Mo. App. E.D. 2010)

Southwestern Bell Yellow Pages v. Director of Revenue, 94 S.W.3d 388 (Mo. 2002)

Wolff Shoe Co. v. Director of Revenue, 762 S.W.2d 29 (Mo. 1988)

Mo. Rev. Stat. § 287.780

Mo. Rev. Stat. § 287.800

II.

The Court Should Adopt a "Contributing Factor" Standard for Claims under Section 287.780 Because Such a Standard Would Fulfill the Purpose of the Statute and Would Be Consistent with the Standard Used for Other Types of Employment Discharge Claims under Missouri Law.

Daugherty v. City of Maryland Heights, 231 S.W.3d 814 (Mo. 2007)

Fleshner v. Pepose Vision Inst., P.C., 304 S.W.3d 81 (Mo. 2010)

Mo. Rev. Stat. § 287.780

Mo. Rev. Stat. § 287.800

ARGUMENT

The Missouri General Assembly, by enacting section 287.780, has determined that employees who choose to exercise their rights under Missouri's Workers' Compensation Law should be protected from discharge or discrimination by their employers as a result of the exercise of those rights. For nearly thirty years, Missouri courts, including the Court of Appeals in the instant case, have held that an employee must establish an exclusive causal relationship between the exercise of his rights under the Workers' Compensation Law and the discharge of or discrimination against him to make a submissible case under section 287.780. Because the "exclusive causation" standard is inconsistent with the plain language of section 287.780 and fails to give effect to the intent of the statute, this Court should abandon that standard and adopt a "contributing factor" standard in its place.

I. The Court Should Abandon the "Exclusive Causation" Standard for Claims under Section 287.780 Because Such a Standard Is Inconsistent with the Plain Language of the Statute and Fails to Fulfill the Purpose of the Statute.

Section 287.780 provides that "[n]o employer or agent shall discharge or in any way discriminate against any employee for exercising any of his rights under [Chapter 287]" and creates a civil action for damages for an aggrieved employee. Mo. Rev. Stat. § 287.780. In *Hansome v. Northwestern Cooperage Co.*, 679 S.W.2d 273 (Mo. 1984), this Court stated that an action under section 287.780 consists of four elements:

> "(1) plaintiff's status as an employee of defendant before injury, (2) plaintiff's exercise of a right granted by Chapter 287, (3) employer's

> discharge of or discrimination against plaintiff, and (4) an exclusive causal relationship between plaintiff's actions and defendant's actions."

679 S.W.2d at 275. Fourteen years later, in *Crabtree v. Bugby*, 967 S.W.2d 66 (Mo. 1998), this Court reiterated the "exclusive causation" standard set forth in *Hansome*. 967 S.W.2d at 70. As set forth below, to the extent that *Hansome* and *Crabtree* require an employee to establish an exclusive causal relationship between the exercise of his rights under Chapter 287 and his employer's actions, those cases were based upon misinterpretations of section 287.780 and this Court should no longer follow those precedents.

In *Crabtree*, this Court declined to modify the elements of a claim under section 287.780, based upon the doctrine of *stare decisis*. 967 S.W.2d at 71-72. The Court stated that "[t]hose who disagree with . . . this Court's precedent analyzing the statute are free to seek redress in the legislative arena." *Id.* at 72. Yet, with all due deference to the legislature, this Court has full authority and responsibility to reexamine and repudiate decisions in prior cases, without violating the doctrine of *stare decisis*, when those decisions were "clearly erroneous and manifestly wrong." *Southwestern Bell Yellow Pages v. Director of Revenue*, 94 S.W.3d 388, 391 (Mo. 2002) (internal quotation omitted). As this Court noted in *Medicine Shoppe Int'l, Inc. v. Director of Revenue*, 156 S.W.3d 333 (Mo. 2005), "the adherence to precedent is not absolute, and the passage of time and the experience of enforcing a purportedly incorrect precedent may demonstrate a compelling case for changing course." *Id.* at 335. The Court further recognized that "American history is replete with examples of instances where experience and the

changing needs of society trump adherence to precedent and demonstrate the fallacy of an earlier interpretation." *Id.* This case presents one such example.

Foremost among the reasons that this Court should repudiate the "exclusive causation" standard articulated in *Hansome* and *Crabtree* is that the application of such a standard to claims under section 287.780 violates basic rules of statutory construction. The starting point to determine the meaning of a statute is the plain language of the statute itself. *Jones v. Director of Revenue*, 981 S.W.2d 571, 574 (Mo. 1998). "The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning." *Wolff Shoe Co. v. Director of Revenue*, 762 S.W.2d 29, 31 (Mo. 1988). The Court should also consider "the problem the legislature sought to address with the statute's enactment" and "must construe the statute in light of the purposes the legislature intended to accomplish and the evils it intended to cure." *Wilson v. Director of Revenue*, 873 S.W.2d 328, 329 (Mo. App. E.D. 1994).

The plain language of section 287.780 prohibits an employer from discharging or in any way discriminating against an employee "for exercising any of his rights under [Chapter 287]." Mo. Rev. Stat. § 287.780. As this Court recently noted, "Nowhere in the workers' compensation laws does 'exclusive causal' or 'exclusive causation' language appear." *Fleshner v. Pepose Vision Inst., P.C.*, 304 S.W.3d 81, 92 (Mo. 2010). If the legislature had intended for claims under section 287.780 to require an "exclusive causation" standard, it could have easily used words to indicate such an intent, as other state legislatures have done in similar statutes. *See, e.g.*, ALA. CODE § 25-5-11.1 ("No

employee shall be terminated by an employer *solely* because the employee has instituted or maintained any action against the employer to recover workers' compensation benefits under this chapter); MD. LAB. & EMP. CODE § 9-1105 ("An employer may not discharge a covered employee from employment *solely* because the covered employee files a claim for compensation under this title."); N.M. STAT. § 52-1-28.2 ("An employer shall not discharge, threaten to discharge or otherwise retaliate in the terms or conditions of employment against a worker who seeks workers' compensation benefits *for the sole reason* that that employee seeks workers' compensation benefits."); VA. CODE § 65.2-308 ("No employer or person shall discharge an employee *solely* because the employee intends to file or has filed a claim under this title or has testified or is about to testify in any proceeding under this title."). The Missouri General Assembly's failure to include such language in section 287.780 cannot be deemed a mere oversight. *See Overcast v. Billings Mut. Ins. Co.*, 11 S.W.3d 62, 69-70 (Mo. 2000) ("To read words and concepts into our statutes that the general assembly did not write shows disrespect both for the general assembly and for the common law, which the legislature has the power expressly to displace.").

The rejection of an "exclusive causation" standard for claims under section 287.780 is bolstered by the 2005 amendments to the Workers' Compensation Law. As part of those amendments, the Missouri General Assembly amended section 287.800 to provide as follows: "Administrative law judges, associate administrative law judges, legal advisors, the labor and industrial relations commission, the division of workers' compensation, and any reviewing courts shall construe the provisions of this chapter

strictly." Mo. Rev. Stat. § 287.800. "When a court is directed to strictly construe a statute, it must consider the plain and ordinary meaning of the words used." *Hager v. Syberg's Westport*, 304 S.W.3d 771, 776 (Mo. App. E.D. 2010). "[A] strict construction of a statute presumes nothing that is not expressed." *Allcorn v. Tap Enter., Inc.*, 277 S.W.3d 823, 828 (Mo. App. S.D. 2009). Based upon a proper analysis of section 287.780, it would be inappropriate for this Court to presume that section 287.780 requires an "exclusive causation" standard when no such requirement is expressed in the statute.

Indeed, states with workers' compensation statutes containing language similar to section 287.780 have uniformly rejected an "exclusive causation" standard. For example, a Kentucky statute provides that "[n]o employee shall be harassed, coerced, discharged, or discriminated against in any manner *for* filing and pursuing a lawful claim under this chapter." KY. REV. STAT. § 342.197 (emphasis added). Under that statute, Kentucky courts require only that there be "a causal connection" between the protected activity and the adverse employment action. *See Colorama, Inc. v. Johnson*, 295 S.W.3d 148, 152 (Ky. Ct. App. 2009). Similarly, a Minnesota statute makes it unlawful for any person to discharge or threaten to discharge an employee "*for* seeking workers' compensation benefits." MINN. STAT. § 176.82 (emphasis added). The applicable standard of causation for claims under that statute is "a causal connection." *Schmidgall v. Filmtec Corp.*, 2002 Minn. App. LEXIS 432, at *4-5 (Minn. Ct. App. Apr. 23, 2002). In Maine, "[a]n employee may not be discriminated against by any employer in any way *for* testifying or asserting any claim" under the workers' compensation law. ME. REV. STAT. tit. 39-A, § 353 (emphasis added). An employee pursuing a claim under that statute need only present

evidence that the adverse employment action "was rooted substantially or significantly in the employee's exercise of his rights under the Workers' Compensation Act." *Maietta v. Town of Scarborough*, 854 A.2d 223, 227 (Me. 2004). Clearly, a reasonable interpretation of the word "for" in section 287.780 does not lead to a conclusion that the statute requires "exclusive causation."

This Court has had one other opportunity to consider the plain language of section 287.780 in a different context. In *Hayes v. Show Me Believers, Inc.*, 192 S.W.3d 706 (Mo. 2006), clarifying the dicta in *Hansome*, the Court found that the statute prohibits an employer from discharging an employee because he had filed a workers' compensation claim against a previous employer. 192 S.W.3d at 707. The Court held that the "plain language of section 287.780 provides, without limitation, that 'no employer' can discharge any employee for exercising any of his or her rights under the workers' compensation law," and that the "plain language of the statute does not include any limitation as to which employers are barred from discharging an employee for exercising his or her rights under the workers' compensation law." *Id.*

The Court's reasoning in *Hayes* applies with equal force to an analysis of the causation standard for claims under section 287.780. There is simply nothing in the plain language of the statute that requires an employee to prove that an exclusive causal relationship exists between the exercise of his rights under Chapter 287 and his employer's discharge of or discrimination against him. The Court in *Hansome* and *Crabtree* effectively rewrote section 287.780 to include such a requirement.

In *Hansome*, when describing the elements of a claim under section 287.780, this Court made no effort to ascertain the legislature's intent in enacting that statute. Rather, as Judge White noted in his dissenting opinion in *Crabtree*, "[t]he 'exclusive' language in *Hansome* appears to have been plucked out of thin air." *Crabtree*, 967 S.W.2d at 74. Notably, neither of the two cases cited in *Hansome* to support the elements of a claim under section 287.780 contain any mention of an "exclusive causation" standard.

One of the cases cited in *Hansome* is *Mitchell v. St. Louis County*, 575 S.W.2d 813 (Mo. App. E.D. 1978), which, consistent with Judge White's dissent in *Crabtree*, is silent about any requirement of "exclusive causation." In *Mitchell*, the plaintiff alleged that she was discharged in violation of section 287.780, relying upon proof that she suffered an injury that was covered by the Workers' Compensation Law, yet admitting to numerous absences that were unrelated to her injury. 575 S.W.2d at 815. In affirming a directed verdict in favor of the defendant, the Court of Appeals held that the plaintiff failed to present substantial evidence that her discharge was based upon her filing of a workers' compensation claim. *Id.* As the Court noted, "the record amply supports the basis for her discharge for excessive absenteeism – a valid and not pretextual motive." *Id. Mitchell* merely stands for the proposition that there must be *some* evidence of causation between an employee's exercise of rights under Chapter 287 and the employer's actions, not that there must be "exclusive causation."

The only other case cited in *Hansome* to support the "exclusive causation" standard is *Davis v. Richmond Special Road Dist.*, 649 S.W.2d 252 (Mo. App. W.D. 1983). In *Davis*, the plaintiff argued that he could establish a claim under section 287.780

simply by presenting evidence that he exercised his rights under Chapter 287 and that he was subsequently discharged, regardless of whether the discharge had anything to do with the exercise of his rights. 649 S.W.2d at 254. The Court of Appeals correctly rejected that argument and explained that claims under section 287.780 contain an element of causation:

> "By its wording, the statute does not convey an intent that mere discharge of an employee gives rise to a claim against the employer. On the other hand, the statute reveals a legislative intent that there must be a causal relationship between the exercise of the right by the employee and his discharge by his employer arising precisely from the employee's exercise of his rights, and upon proof, that the discharge was related to the employee's exercise of his or her rights."

Id. at 255. While the Court of Appeals in *Davis* certainly recognized that causation is an important part of a claim under section 287.780, there is nothing in its decision that even remotely refers to an "exclusive causation" standard.

Relying upon the holding in *Hansome*, this Court in *Crabtree* noted that section 287.780 was "enacted into law against the backdrop of the 'at will' doctrine, which allows an employer to fire an employee without a durational contract for any reason or for no reason." 967 S.W.2d at 70. The Court also pointed out that the purpose of the Workers' Compensation Law was not to provide heightened job security, but rather to compensate employees for work-related injuries. *Id.* at 72. The rationales expressed in

Crabtree as a basis for the "exclusive causation" standard survive neither close examination nor the test of time.

That section 287.780 was enacted by the Missouri General Assembly against the backdrop of the employment-at-will doctrine does not logically equate with the adoption, by mere silence or omission, of an "exclusive causation" standard for the cause of action provided by that statute. Under the common law, the employment-at-will doctrine remains fundamentally the genesis of the employment relationship for all Missouri employees without a contract of employment for a specified term. Certainly, it would be accurate to describe the enactment of the Missouri Human Rights Act (MHRA), Mo. Rev. Stat. § 213.010 *et seq.*, as well as recognition by this Court of common law causes of action for wrongful discharge in violation of public policy in *Fleshner v. Pepose Vision Institute, P.C., supra,* as modifications of the employment-at-will doctrine. Yet, as discussed in Section II, *infra*, this Court has never required an "exclusive causation" standard for claims under the MHRA or claims based upon the public policy exception to the employment-at-will doctrine. There is nothing fundamentally distinct, for purposes of determining the appropriate standard of causation for a cause of action, between at-will employees who suffer retaliation at the hands of employers on the basis of factors prohibited by the MHRA, at-will employees who suffer retaliation for reasons that contravene public policy, and at-will employees who suffer retaliation for exercising rights provided by Chapter 287.

The second rationale referred to in *Crabtree* as a basis for the "exclusive causation" standard for claims under section 287.780 fares no better than the first. The

Court stated in *Crabtree* that the purpose of the Workers' Compensation Law is to compensate persons who suffer work-related injuries, not to provide job security to marginal employees. 967 S.W.2d at 72. Yet, in relying upon the purpose of the Workers' Compensation Law as a whole, the Court in *Crabtree* inexplicably overlooked the fundamental reason for the enactment of section 287.780, which is specifically aimed at the protection of employment. Section 287.780, by its very terms, is distinguished from the remaining provisions of Chapter 287 through the enactment of a civil cause of action that protects employees who exercise rights under the Workers' Compensation Law from discriminatory or retaliatory treatment by their employers. Although section 287.780 is not intended as a guarantee of continued employment simply because one has been injured, at the same time, by its terms, the statute is intended to prevent workers who exercise rights under the Workers' Compensation Law from paying a price for doing so in the form of discrimination or discharge from employment.

While it is certainly true that employers have the right to terminate marginal employees, there is no possible justification for an employer's decision to discharge a marginal employee who has filed a workers' compensation claim while retaining a marginal employee who has not. Furthermore, as the Court of Appeals noted in the cases that this Court relied upon in *Hansome*, the mere fact that an employee has exercised rights under Chapter 287 and is subsequently discharged is not enough, in and of itself, to establish a violation of section 287.780. The employee must still present evidence of a causal relationship between the two events. Therefore, even without an "exclusive causation" standard, employers will still be able to discharge employees who perform

poorly as long as they do not base their decisions on the employees' exercise of rights under Chapter 287.

For the foregoing reasons, this Court should abandon the "exclusive causation" standard for claims under section 287.780, as this standard is "clearly erroneous and manifestly wrong." *Southwestern Bell Yellow Pages v. Director of Revenue, supra*.

II. The Court Should Adopt a "Contributing Factor" Standard for Claims under Section 287.780 Because Such a Standard Would Fulfill the Purpose of the Statute and Would Be Consistent with the Standard Used for Other Types of Employment Discharge Claims under Missouri Law .

For claims under section 287.780, this Court should adopt a standard of causation that requires an aggrieved employee to demonstrate that the exercise of his rights under Chapter 287 was a "contributing factor" in his employer's decision to discharge or discriminate against him. Not only would such a standard fulfill the purpose of the statute, but it would also be consistent with other types of employment discharge claims under Missouri law.

As noted in the previous section, provisions of the Workers' Compensation Law are to be strictly construed, which means that courts must consider the plain and ordinary meaning of the words used in the statute. Mo. Rev. Stat. § 287.800; *Hager*, 304 S.W.3d at 776. "'When a statutory term is not defined, courts apply the ordinary meaning of the term as found in the dictionary.'" *Hager*, 304 S.W.3d at 776 (quoting *Harness v. Southern Copyroll, Inc.*, 291 S.W.3d 299, 304 (Mo. App. S.D. 2009)). The word "for" is defined by Black's Law Dictionary to mean "by reason of" or "because of." BLACK'S

LAW DICTIONARY 444 (6th ed. 1991). There is nothing in the definition of the word "for" that requires an exclusive causal relationship.

Over the past several years, this Court has had opportunities to determine the appropriate standards of causation for other types of employment discharge claims, including claims under the MHRA and claims alleging wrongful discharge in violation of public policy, both of which are similar in nature to claims under section 287.780. In *Daugherty v. City of Maryland Heights*, 231 S.W.3d 814 (Mo. 2007), the Court determined that a "contributing factor" standard for claims under the MHRA is consistent with the plain meaning of the statute, which prohibits employers from discriminating against employees "because of" certain protected characteristics, such as race, gender, or age. 231 S.W.3d at 819-820; Mo. Rev. Stat. § 213.055. According to the Court, "if consideration of age, disability, or other protected characteristics contributed to the unfair treatment, that is sufficient." 231 S.W.3d at 819.

In *Hill v. Ford Motor Company*, 277 S.W.3d 659 (Mo. 2009), this Court held that the conclusions reached in *Daugherty* with respect to the appropriate standard of causation for discrimination claims under section 213.055 applied with equal force to the appropriate standard of causation for retaliation claims under section 213.070. *See Hill*, 277 S.W.3d at 665 ("[D]efendant does not explain why a claim for retaliation brought under section 213.070 should be treated differently from a claim for discrimination brought under section 213.055."). By finding that the "contributing factor" standard also applied to retaliation claims under the MHRA, the Court in *Hill* was able to harmonize the meaning of the word "because" between different sections of the statute.

This Court has also held that a "contributing factor" standard is appropriate for claims alleging wrongful discharge in violation of public policy. *See Fleshner*, 304 S.W.3d at 93-95. As adopted by the Court in *Fleshner*, the public-policy exception to the employment-at-will doctrine applies when an employee is terminated "*for* refusing to violate the law or any well-established and clear mandate of public policy" or "*for* reporting wrongdoing or violations of law to superiors or public authorities." *Id.* at 92 (emphasis added).

The rationale for applying a "contributing factor" standard of causation to claims under the MHRA and claims alleging wrongful discharge in violation of public policy is that a factor such as an employee's race or his refusal to perform an illegal act should play no role whatsoever in an employer's decision to take an action against the employee. The employment-at-will doctrine gives employers in Missouri a significant amount of freedom to make employment decisions on a day-to-day basis, but the Missouri General Assembly and Missouri courts have determined that the latitude granted employers under the employment-at-will doctrine does not extend to employers who make employment decisions that are based upon discriminatory or retaliatory motives or that violate the public policies of Missouri.

In cases involving the MHRA and the public policy exception, the critical determination is "whether an illegal factor *played a role* in the decision to discharge the employee." *Fleshner*, 304 S.W.3d at 94 (emphasis added). As the Court recognized in *Fleshner*, whether there may have been other factors that contributed to the employer's decision is simply not relevant:

> "Under the MHRA, if race, color, religion, national origin, sex, ancestry, age, or disability of the employee was a 'contributing factor' to the discharge, then the employer has violated the MHRA. The employer's action is no less reprehensible because that factor was not the only reason. Similarly, if an employee reports violations of law or refuses to violate the law or public policy as described herein, it is a 'contributing factor' to the discharge, and the discharge is still reprehensible regardless of any other reasons of the employer."

Id. at 94-95.

There is no valid reason why a different standard of causation should apply to claims under section 287.780. By enacting that statute, the Missouri General Assembly made it clear that it is inappropriate for employers, when making an employment decision, to give any consideration to the fact that an employee has filed a workers' compensation claim or otherwise exercised his rights under Chapter 287. Section 287.780 makes it unlawful for an employer to "discharge or *in any way* discriminate against *any* employee for exercising *any* of his rights under [Chapter 287]." Mo. Rev. Stat. § 287.780. The use of such broad language reflects a clear intent by the legislature to protect employees to the greatest extent possible.

With the exception of the "exclusive causation" standard, Missouri courts have consistently applied the plain and ordinary meaning of the language used in section 287.780 to give effect to the legislature's intent. For example, courts have held that the protections provided by section 287.780 are not limited to employees who actually file a

workers' compensation claim, but rather, as the statute expressly states, extend to employees who exercise *any* right under Chapter 287. *See, e.g., Self v. Lenertz Terminal, Inc.*, 854 S.W.2d 571 (Mo. App. 1993) (holding that section 287.780 protects the exercise of an employee's right to receive medical treatment for a work-related injury); *Wiedower v. ACF Industries, Inc.*, 715 S.W.2d 303, 306 (Mo. App. E.D. 1986) (holding that an employer's awareness that an injured employee had contacted an attorney and was considering filing a formal claim for compensation fell within the scope of section 287.780). Further, under its express terms, section 287.780 not only protects employees from discharge, but it also protects employees from *any* discriminatory treatment. *See Kummer v. Royal Gate Dodge, Inc.*, 983 S.W.2d 568, 572 (Mo. App. E.D. 1998) (holding that "an employee may plead, prove and recover under section 287.780 for wrongful discrimination, either independently or in combination with a claim for wrongful discharge"); *Arie v. Intertherm, Inc.*, 648 S.W.2d 142, 149 n.3 (Mo. App. E.D. 1983) ("Discrimination may take various forms including denying the employee advancement, salary or hourly pay increases, assignment to less desirous jobs or locations, etc.").

It is incongruous to recognize that the Missouri General Assembly utilized language with the intention of broadly prohibiting employers or their agents from discharging or in any way discriminating against any employee for the exercise of any of the rights afforded under Chapter 287, yet at the same time, and by virtue of the identical prohibitory language in the same four-line statute, conclude that those protections were intended to be severely limited by the use of an "exclusive causation" standard that appears nowhere in the statute. The *Hansome* and *Crabtree* decisions represent the

genesis of this severe incongruity and should no longer be followed. A "contributing factor" standard of causation will accurately reflect the legislature's intent in enacting section 287.780.

CONCLUSION

For the reasons set forth above, the St. Louis and Kansas City Chapters of the National Employment Lawyers Association, as amici curiae, respectfully request that this Court abandon the "exclusive causation" standard for claims under section 287.780 and adopt a "contributing factor" standard in its place.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing brief complies with the limitations set forth in Rule 84.06(b). According to the word count function of Microsoft Word, the foregoing brief, from the Table of Contents through the Conclusion, contains 5,261 words.

/s/ Gregory A. Rich

CERTIFICATE OF SERVICE

The undersigned certifies that on April 8, 2013, the foregoing document was served through the electronic filing system upon:

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