No. 14-1191

IN THE

Supreme Court of the United States

QUICKEN LOANS INC.,

Petitioner,

v.

LOURIE BROWN & MONIQUE BROWN,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of West Virginia

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

Amicus curiae addresses only the first of the two Questions Presented by the Petition:

Whether a state court may evade its obligation to apply the United States Constitution and this Court's cases by asserting that expressly and pervasively raised federal constitutional claims were purportedly waived.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES:

Page(s)

CONSTITUTIONAL PROVISIONS:

Page(s)

OTHER AUTHORITIES:

INTEREST OF *AMICUS CURIAE*[1]

Washington Legal Foundation (WLF) is a nonprofit, public-interest law firm and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending and promoting free enterprise, individual rights, a limited and accountable government, and the rule of law. To that end, WLF regularly appears as *amicus curiae* before this and other federal courts to address the propriety and permissible size of punitive damages awards. *See, e.g., Philip Morris USA v. Williams*, 549 U.S. 346 (2006), *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *BMW of N. Am. v. Gore*, 517 U.S. 559 (1996). WLF also regularly supports efforts to vindicate the due process rights of litigants to seek appellate review of excessive or improper punitive damages awards. *See, e.g., Cooper Indus., Inc. v. Leatherman Tool Group, Inc.,* 532 U.S. 424 (2001); *Honda Motor Co. v. Oberg*, 512 U.S. 415 (1994).

In addition, WLF's Legal Studies Division, the publishing arm of WLF, frequently produces articles and sponsors media briefings on a variety of legal issues related to punitive damages awards. *See, e.g.,* Victor E. Schwartz, *Punitive Damages Awards: The*

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[1] Pursuant to Supreme Court Rule 37.6, *amicus* WLF states that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than WLF and their counsel, made a monetary contribution intended to fund the preparation and submission of this brief. More than ten days before the due date, counsel for WLF provided counsel for Respondent with notice of intent to file. All parties have consented to the filing of this brief; letters of consent have been lodged with the Clerk.

Rest of the Story, WLF LEGAL BACKGROUNDER (Nov. 4, 2011); Curt Cutting, *An Emerging Trend?: Federal Appeals Court Limits Punitive Damages to 1:1 Ratio*, WLF LEGAL OPINION LETTER (Feb. 27, 2009); Theodore B. Olson, *Supreme Court Revisits Constitutional Limits on Punitive Damages*, WLF LEGAL OPINION LETTER (Oct. 20, 2006).

WLF believes that this Court must grant review in this case to ensure that lower courts are not allowed to pick and choose which of this Court's precedents they will follow. Simply put, the blatant refusal of the West Virginia Supreme Court of Appeals to even consider this Court's important due-process limits on punitive damages awards should not be tolerated. To allow lower courts to act in such a cavalier manner would risk undermining the important protections this Court has recognized that the constitution guarantees all defendants in civil litigation. It is thus vitally important for the Court to intervene and remind the West Virginia courts that adherence to the rule of law requires that at least minimal due process review be afforded to all punitive damages awards—particularly awards as large as the grossly excessive punitive damages awarded in this case.

WLF has no direct interest, financial or otherwise, in the outcome of this case. It submits this brief solely due to its interest in ensuring the Court's further judicial review of the important due process issues raised by the Petition. Because of its lack of a direct interest, WLF believes that it can assist the Court by providing a perspective that is distinct from that of any party.

STATEMENT OF THE CASE

Petitioner is a leading national retail mortgage lender. This case arises from Respondent's default, after only two timely payments, on a $144,800 secured loan agreement with Petitioner. Pet. App. 4a. When Petitioner foreclosed on the loan, Respondent filed suit in West Virginia circuit court complaining that Petitioner lent her more money than her house was worth, alleging fraud and various violations of the West Virginia Consumer and Credit Prevention Act. *Id.* at 4a-5a.

Following a bench trial, the circuit court found Petitioner liable on nearly every claim, evidently crediting Respondent's uncorroborated testimony that Petitioner verbally promised to allow her to refinance her loan within "three to four months." Pet. App 156a-58a. Finding the loan agreement substantively unconscionable, the court also concluded that Petitioner failed to disclose a balloon payment due at the end of the 30-year loan term (even though that payment had been disclosed to Respondent in three separate documents, and Respondent admitted to being aware of the payment before executing the loan agreement). *Id.* at 152a-56a. The trial court did not order Respondent to repay the loan principal and awarded her $17,467.72 in restitution. *Id.* at 7a-8a. In a separate proceeding, the circuit court awarded Respondent $596,199.89 in attorney's fees and costs, and $2,168,868.75 in punitive damages. *Id.* at 7a. The court acknowledged that it arrived at its punitive damages calculation by using a multiplier of 3.53 times the amount awarded in compensatory damages *and* attorney's fees. *Id.* at 196a.

On appeal, Petitioner challenged not only the findings of liability below but also contended that the "award of punitive damages was grossly excessive and deprived [it] of due process" under the U.S. Constitution. Pet. App. 288a, 293a. The West Virginia Supreme Court of Appeals affirmed each of the circuit court's findings on liability, but determined that the circuit court lacked authority to cancel Respondent's loan obligation and erred further by refusing to offset the judgment with the $700,000 Respondent received from a pre-trial settlement with other defendants. While agreeing with the circuit court that attorney's fees and costs "are properly considered compensatory damages for the purposes of calculating punitive damages," the court vacated the punitive damages award for failing to adequately support and justify the award as required by *Garnes v. Fleming Landfill, Inc.*, 413 S.E.2d 897 (W. Va. 1991), and remanded the case for further proceedings consistent with its opinion.

On remand, the circuit court again refused to enforce the loan agreement, relieving Respondent of any obligation to repay the loan. Pet. App. 11a. Because Petitioner would retain a valid lien on the property, Petitioner could "receive the net proceeds from the eventual sale of the property, should the property ever be sold, up to the principal amount of the loan, $144,900." *Id.* Then, without citing any legal justification, the circuit court increased the original compensatory damages award by $98,800, the amount by which the loan had exceeded the appraised value of the property. *Id.* The court also increased the award of attorney's fees to $596,199.89, which included an additional $279,033.55 for the cost of the appeal and post-

appellate proceedings. *Id.* Finally, after conducting the requisite *Garnes* analysis, the court awarded $3,500,000 in punitive damages, an increase of $1,331,131.25 from the original punitive damages award. *Id.* at 11a-12a. The court arrived at its revised punitive damages award by applying the original 3.53:1 ratio to the increased awards for compensatory damages and attorney's fees. *Id.* at 12a.

On appeal, Petitioner again contended that the circuit court's punitive damages award was grossly excessive and violated Petitioner's substantive due process rights. Pet. App. 86a. Petitioner further argued that, by increasing Respondent's relief on remand, the circuit court had exceeded the appeals court's mandate. *Id.* The Supreme Court of Appeals agreed that the trial court had exceeded its mandate by effectively canceling Respondent's loan obligation and by increasing, *sua sponte*, the damages and attorney's fee awards. *Id.* at 22a. Accordingly, the appeals court reinstated Respondent's loan obligation, restored the original compensatory damages award of $17,476.72, and reversed all attorney's fees and costs beyond the $596,199.89 originally awarded, resulting in a "total compensatory damages award" of $613,676.61. *Id.* at 25a, 43a-44a, 68a. Applying the same 3.53:1 multiplier ratio, the appeals court then restored the initial punitive damages award of $2,168,868.75, which the court viewed as consistent with the law of the case. *Id.* at 44a-45a. The court reaffirmed its earlier view that attorney's fees and costs "shall be included in the compensatory to punitive damages ratio." *Id.* at 68a.

As for whether the punitive damages award was unconstitutionally excessive, the Supreme Court of Appeals addressed only "whether it exceeds state law limits on excessiveness," which it concluded the award did not. Pet. App. 53a-68a. The court flatly refused to address Petitioner's due process challenge, stating that Petitioner had "waived" any "federal substantive due process challenge" by purportedly failing "to raise any issue pertaining to *BMW* and *State Farm*" in its brief and reply brief in the first appeal. *Id.* at 53a. In fact, however, Petitioner's notice of appeal and opening and reply briefs had repeatedly raised deprivation of substantive due process under the U.S. Constitution, replete with citations to both *BMW* and *State Farm*, in *both* appeals. *Id.* at 230a-305a, 372a-405a.

Justices Benjamin and Loughry dissented from the court's finding of waiver, relying "upon independent review of the appendix record and the briefs submitted by the parties" to conclude that Petitioner had fully preserved its substantive due process challenge. Pet. App. 53a. Criticizing the court's "misguided" and "stubborn refusal to review the punitive damages award" contrary to *BMW* and *State Farm*, Justice Loughry insisted that "there is no question that the petitioner[] plainly asserted a due process challenge to the punitive damages award" in both appeals. *Id.* at 86a-87a. Rather than include attorney's fees and costs in the compensatory damages calculation, Justice Loughry would have used "the actual compensatory damage award of $17,476.72" in computing the punitive damages award. *Id.* at 92a. In sum, Justice Loughry derided the court's "contumacious refusal to heed the United States Supreme Court's holdings and insistence on a

result-oriented analysis to uphold plainly-excessive punitive damages awards." *Id.* at 93a.

Petitioner sought rehearing, exhaustively documenting the many instances it had raised federal due process concerns in its initial appeal from the trial court's punitive damages award. Without explanation, by a 3-2 vote, the West Virginia Supreme Court of Appeals denied rehearing. Pet. App. 229a.

SUMMARY OF ARGUMENT

The petition raises issues of exceptional importance. The West Virginia court's $2,168,868.75 punitive damages award—which eclipses by a 124 to 1 ratio the less than $17,500 in restitution damages awarded at trial—cries out for summary reversal. WLF recognizes that this Court is not in a position to correct every constitutionally excessive state court judgment, which occur with some frequency within even the best managed court systems. But it is the "contumacious refusal" of the West Virginia Supreme Court of Appeals to provide any meaningful review of the punitive damages award in this case that makes the case particularly worthy of the Court's attention.

Any objective review of the record in this case can lead to only one conclusion: the decision below does not have a leg to stand on. Indeed, the West Virginia Supreme Court's post-hoc invocation of "waiver" to bar consideration of Petitioner's due process claim is nothing more than "an obvious subterfuge to evade consideration of a federal issue." *Radio Station Wow, Inc. v. Johnson*, 326 U.S. 120,

129 (1945). Review by this Court is thus warranted to determine whether the judicial abdication of any constitutionally meaningful review of punitive damages awards violates a defendant's rights under the Due Process Clause.

Review is also warranted because of mounting evidence that the judicial system in West Virginia is seriously askew. West Virginia has a long history of alliances and close personal connections between trial lawyers and local judges, such that out-of-state defendants sued in West Virginia often have great difficulty in receiving equal justice. Nor is the West Virginia high court's insouciance in this case an outlier; indeed, multi-million dollar punitive damages awards have routinely gone unreviewed by the West Virginia Supreme Court of Appeals. WLF respectfully submits that West Virginia's widespread reputation for denying equal justice to large, out-of-state defendants provides an additional reason for granting the Petition.

To protect Petitioner's constitutional rights (and those of other defendants who find themselves subject to the jurisdiction of West Virginia courts), the Court should grant certiorari and summarily reverse the Supreme Court of Appeals of West Virginia's decision, which directly conflicts with this Court's settled precedents. Alternatively, the Court should grant plenary review to correct the manifest errors in the decision below. Either way, the Court can make an important statement regarding the responsibility of state courts to take seriously the due process rights of defendants by reviewing punitive damages awards to ensure that they are not constitutionally excessive.

The interests of due process, fairness, and stare decisis were all injured in this case. WLF joins with Petitioner in urging this Court to grant the Petition for writ of certiorari.

REASONS FOR GRANTING THE PETITION

I. REVIEW IS WARRANTED TO CORRECT THE WEST VIRGINIA COURT'S DELIBERATE REFUSAL TO CONSIDER PETITIONER'S DUE PROCESS RIGHTS

A. Petitioner Has a Substantive Due Process Right to Challenge "Grossly Disproportional" Punitive Damages Awards

Despite the broad discretion that state courts enjoy with respect to the imposition of civil liability, the Due Process Clause of the Fourteenth Amendment imposes substantive limits on that discretion. *See* U.S. Const. amend. XIV, § 1. In particular, the Due Process Clause prohibits state courts from depriving individuals of life, liberty, or property where the deprivation is "grossly disproportional" to the gravity of a defendant's offense. *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 453-54 (1993) ("[T]he Due Process Clause of the Fourteenth Amendment imposes substantive limits beyond which penalties may not go.") (internal citations omitted).

That substantive limitation on governmental deprivations of private property has regularly been interpreted by this Court to impose limitations on

the size of punitive damages awards imposed by state courts. *See, e.g., State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003) (Utah court's $145 million punitive damages award on $1 million compensatory judgment violated due process); *BMW of N. America, Inc. v. Gore*, 517 U.S. 559, 562 (1996) (Alabama court's $2 million punitive damages award for failing to advise customers of minor pre-delivery repairs to new automobiles was "grossly excessive" and therefore unconstitutional).

Applying the Court's "grossly disproportional" standard to this case, the constitutional impropriety of the West Virginia court's $2,168,868.75 punitive damages award is readily apparent. Indeed, that egregious award—which eclipses by a 124 to 1 ratio the less than $17,500 in restitution damages awarded at trial—unquestionably violates Petitioner's due process rights. Further, as the Petition exhaustively demonstrates, there is *absolutely no basis* in the record from which the West Virginia Supreme Court of Appeals could have rationally concluded that Petitioner somehow "waived" its due process challenge to the court's punitive damages award. To the contrary, Petitioner repeatedly objected to the amount of the punitive damages award on the basis that it was "grossly disproportional" and thus a violation of federal due process.

B. Petitioner Has a Procedural Due Process Right to Have Its Punitive Damages Award Meaningfully Reviewed on Appeal

This Court has also recognized that due process rights extend well beyond a simple boilerplate right not to be subject to excessive or arbitrary punitive damages awards. Indeed, this Court's punitive-damages jurisprudence has implicitly recognized that defendants have a constitutional right to procedural due process that is separate and independent from any substantive due process right they may possess. Due process thus also requires that court systems provide meaningful review of such awards, to ensure that constitutional protections against such "grossly disproportional" punitive damages are actually being enforced. *Honda Motor Co. v. Oberg*, 512 U.S. 415 (1994) (holding that the Due Process Clause requires judicial review of the amount of a punitive damages award to ensure that it is not constitutionally excessive).

In *Oberg*, the Court sustained a due process challenge to an amendment to the Oregon Constitution that prohibited judicial review of the amount of a punitive damages award unless there was "no evidence" to support such an award in any amount. 512 U.S. at 418. The Court framed the question presented as "whether the Due Process Clause *requires* judicial review of the amount of punitive damages awards." *Id.* at 420 (emphasis added). Although "[j]udicial review of the size of punitive damages awards has been a safeguard against excessive verdicts for as long as punitive

damages have been awarded," *id.*, the Court concluded that "Oregon, unlike the common law, provides no assurance that those whose conduct is sanctionable by punitive damages are not subjected to punitive damages of arbitrary amounts." *Id.* at 429. Emphasizing that "[p]unitive damages pose an acute danger of arbitrary deprivation of property," the Court held that "Oregon's denial of judicial review of the size of punitive damages awards violates the Due Process Clause of the Fourteenth Amendment." *Id.* at 432.

"When this Court has fulfilled its duty to interpret federal law, a state court may not contradict or fail to implement the rule so established." *Marmet Health Care Ctr., Inc. v. Brown*, 1232 S. Ct. 1201, 1202 (2012) (per curiam). The court has long recognized that unlimited judicial discretion "may invite extreme results that jar one's constitutional sensibilities." *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 18 (1990). Given the importance of the rights protected by the Constitution, the Court has regularly required exacting review of a party's claim that those rights are being violated. Indeed, in many instances, the Court has required appellate courts to undertake *de novo* review of lower court decisions rejecting (or ignoring) an assertion of constitutional rights. As the Court has explained:

> The requirement of independent appellate review . . . is a rule of federal constitutional law [that] reflects a deeply held conviction that judges—and particularly Members of this Court—*must* exercise such review in order to

> preserve the precious liberties established and ordained by the Constitution. . . . Judges, as expositors of the Constitution, must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold.

Bose Corp. v. Consumers Union of the U.S., Inc., 466 U.S. 485, 510-11 (1984).

The Court's growing concern over unlimited judicial discretion in awarding punitive damages culminated in *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 435 (2001), in which the Court emphasized the need for "an independent examination of the relevant criteria" when evaluating punitive damages awards. Because an "award of punitive damages does not constitute a finding of fact," the Court held that appellate courts should apply a *de novo* standard of review when passing on trial courts' determinations of the constitutionality of punitive damages awards. *Id*. at 436-37. *De novo* review requires that the appellate court actually review the record afresh and, where an affirmance is in order, articulate the reasons *why* the award is consistent with due process. Only such a heightened standard of review, the Court determined, "makes certain that the punitive damages are reasonable in their amount and rational in light of their purpose to punish what has occurred and to deter its repetition." *Id.* at 436 n.9 (quoting *Pacific Mut. Life Ins. Co.*, 499 U.S. at 20-21).

This Court's precedents thus recognize that the constitutional constraints on punitive damages awards can be ensured only by meaningful appellate review. Here, the fact that the West Virginia Supreme Court granted discretionary review is of no import because it ultimately refused to conduct an "independent examination of the relevant criteria"—namely, whether the punitive damages award was "grossly disproportional" to any harm actually caused to the Browns by Petitioner's conduct. Certainly, such non-existent constitutional review does nothing to safeguard the Petitioner's due process rights. Because West Virginia has blatantly refused to secure those rights, it now falls upon this Court to do so.

By refusing to consider Petitioner's constitutional objections to the punitive damages award in this case, the West Virginia Supreme Court of Appeals also undercuts the other benefits of *de novo* review that this Court identified in *Cooper*: maintaining control of, and clarifying, legal principles through the case-by-case review at the appellate level and unifying and stabilizing precedent by "assur[ing] the uniform treatment of similarly situated persons that is the essence of law itself." *Id.* at 436.

In sum, review is warranted to determine whether the Supreme Court of Appeals of West Virginia met its constitutional obligations, and to provide much needed guidance to other state courts regarding the extent of such obligations.

II. REVIEW IS WARRANTED BECAUSE THE WEST VIRGINIA COURTS HAVE SHOWN AN ALARMING PATTERN OF DENYING DUE PROCESS RIGHTS

Unfortunately, Petitioner's difficulty in obtaining meaningful judicial review of its due process rights does not appear to be an aberration in West Virginia. Indeed, West Virginia's courts have earned a reputation in recent years for denying equal justice to out-of-state defendants and for being overly solicitous to the concerns of the plaintiffs' bar. Review is thus warranted to provide the Court with an opportunity to clarify the responsibility of the West Virginia Supreme Court of Appeals to take seriously the need to review punitive damages awards to ensure that they are not unconstitutionally excessive.

The West Virginia court system has a checkered history of alliances and close personal connections between the trial lawyers' bar and local judges. As a result, the litigation climate in West Virginia remains one where defendants—especially out-of-state defendants—are often denied equal justice under the law.[2] As then-Justice Richard

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[2] The American Tort Reform Foundation (ATRF), a nonprofit organization based in Washington, D.C., annually undertakes a study of judicial systems across the country to determine how well they do in preserving the rule of law and in protecting the rights of both plaintiffs and defendants in civil litigation. Every year for more than a decade, ATRF has featured West Virginia as a leading "Judicial Hellhole" in the United States. *See* ATRF, *Judicial Hellholes 2014/2015,*

Neely once famously boasted: "As long as I am allowed to redistribute wealth from out-of-state companies to in-state plaintiffs, I shall continue to do so. Not only is my sleep enhanced when I give someone else's money away, but so is my job security, because the in-state plaintiffs, their families and their friends will re-elect me." Richard Neely, *The Product Liability Mess: How Business Can Be Rescued from the Politics of State Courts* 4 (Free Press, 1988).

Although the West Virginia legislature on occasion has adopted reform measures designed to improve the legal climate in the State, the West Virginia Supreme Court of Appeals has issued decisions that have effectively thwarted those measures. For example, after the state legislature sought to reduce forum shopping by adopting a law (similar to laws in effect in a number of other States) that denies jurisdiction to nonresident plaintiffs whose cause of action arises outside the State, the West Virginia Supreme Court of Appeals struck down the law on the highly questionable ground that it discriminated against out-of-state residents under the Privileges and Immunities Clause of the U.S. Constitution. *See Morris v. Crown Equip. Corp.*, 219 W. Va. 347, *cert denied*, 549 U.S. 1096 (2006).

West Virginia's remarkably lax venue standards continue to make it especially easy for out-of-state plaintiffs to sue out-of-state corporations. As Judge Arthur Recht—the trial judge

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available at www.judicialhellholes.org/wp-content/ uploads/ 2014/12/JudicialHellholes-2014.pdf.

below in this case—has openly conceded: "West Virginia was a 'field of dreams' for plaintiffs' lawyers. We built it and they came." AEI-Brookings Joint Center for Regulatory Studies, *Judicial Education Program: Critical Issues in Toxic Tort Litigation*, Washington, D.C., April 28-29, 2004.

The West Virginia Supreme Court of Appeals is comprised of only five justices. And because West Virginia is one of only a handful of States not to have created an intermediate appellate court, the potential that unconstitutionally excessive punitive damages awards will escape meaningful appellate review is significantly higher in West Virginia than elsewhere. Indeed, the West Virginia Supreme Court routinely denies meaningful review in appeals from unusually excessive punitive damages judgments. For example, the court has declined to review a $100 million punitive damages award for a coal shipment dispute. *Cent. W. Va. Energy Co. v. Wheeling Pittsburgh Steel Corp.*, No. 05-C-85-MJG, 2007 WL 4949806 (W. Va. Cir. Ct. Aug. 2, 2007), *cert denied*, 555 U.S. 1045 (2008). Most notably, the court refused to review a $405 million judgment—including $270 million in punitive damages—for the alleged breach of a natural gas royalty contract. *Estate of Tawney v. Columbia Natural Res., LLC*, No. 03-C-10E, 2007 WL 5539871 (W. Va. Cir. Ct. Sep. 25, 2007), *cert denied*, 555 U.S. 1041 (2008). The court also denied review of a $10.5 million judgment in undefined consequential damages, in a breach of confidentiality agreement and trade secrets claim, where the trial court judge conceded that he was "most troubled" by and "struggling with" the proper measure of damages in the case. *Eagle Research Corp. v. Daniel Measurement Servs., Inc.*, No.

070375, *rev. denied* (W. Va. May 27, 2007), *cert. denied*, 552 U.S. 1056 (2007).

Of course, the Court is no stranger to the West Virginia Supreme Court's refusal to adhere to this Court's precedents. When a justice on that court refused to recuse himself after a litigant indirectly contributed more than $3 million to that justice's election campaign, this Court reversed and required recusal on due process grounds. *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 872 (2009). Similarly, when the West Virginia Supreme Court held that the Federal Arbitration Act did not govern contracts between nursing homes and injured patient's family members, this Court summarily (and unanimously) reversed on federal preemption grounds. *Marmet Health Care Ctr., Inc.*, 1232 S. Ct. at 1202. And, in a case highly relevant to this one, when the West Virginia high court refused to consider a defendant's "clearly presented" constitutional claims, this Court summarily vacated that ruling and remanded the case to the lower court for thorough consideration of those claims. *Youngblood v. West Virginia*, 547 U.S. 867, 869-70 (2006).

WLF respectfully submits that West Virginia's widespread reputation for denying equal justice to large, out-of-state defendants provides an additional reason for granting the Petition. Review is further warranted to provide the Court with an opportunity to ensure that state courts take seriously the need to review punitive damages awards in order to safeguard defendants' due process rights.

CONCLUSION

For the foregoing reasons, *amicus curiae* Washington Legal Foundation respectfully requests that the Court grant certiorari and summarily reverse the Supreme Court of Appeals of West Virginia's decision below. Alternatively, WLF asks the Court to grant plenary review to correct the manifest errors in the decision below.

Respectfully submitted,

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