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July 30, 2012

Mr. Mike Catalano-Clerk
Tennessee Supreme Court
Appellate Court Office
Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

Re: Carol Petschonek and Catholic Diocese of Memphis et al.,
Case No. W2011-002216-R9-CV

Dear Mr. Catalano:

On behalf of the Tennessee Employment Lawyers Association, please find for filing in connection with the above-referenced case, the original and six (6) copies of the Motion of Tennessee Employment Lawyers Association to File Amicus Brief in Support of Plaintiff/Appellant's Rule 11 Application for Permission to Appeal and six (6) copies of the Amicus Brief, should the motion be granted. Please do not hesitate to contact me should you have any questions. I remain,

Very truly yours,

DONATI LAW FIRM, LLP

William B. Ryan
For Tennessee Employment Lawyers Association

WBR
enclosures
c: TENNELA Amicus Committee
Messrs. Dan Norwood and Steve Barnat
Mr. John Dotson and Ms. Allison Wannamaker

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

CAROL PETSCHONEK,

Plaintiff/Appellant,

v.

Case No. W2011-002216-R9-CV
(Shelby County Circuit No. CT-002485-07)

CATHOLIC DIOCESE OF MEMPHIS ET AL.,

Defendants/Appellees.

MOTION OF TENNESSEE EMPLOYMENT LAWYERS ASSOCIATION TO FILE AMICUS BRIEF IN SUPPORT OF PLAINTIFF/APPELLANT'S RULE 11 APPLICATION FOR PERMISSION TO APPEAL

Comes now the Tennessee Employment Lawyers Association (TENNELA), pursuant to Rule 31 of the Tennessee Rules of Appellate Procedure, and moves this Honorable Court for leave to file an amicus curiae brief in support of the Plaintiff/Appellant's Rule 11 application for permission to appeal. As grounds TENNELA states as follows:

GROUNDS FOR THE MOTION

1. TENNELA[1] is an affiliate chapter of the National Employment Lawyers Association (NELA).[2] TENNELA holds meetings and conducts continuing education programs among employment law practitioners across the state. NELA is a professional membership organization comprised of lawyers who represent employees in labor, employment and civil rights disputes. NELA and TENNELA members are committed to working on behalf of those who have been treated illegally in the workplace. NELA and TENNELA members strive to

[1] www.tennela.org
[2] www.nela.org

protect the rights of employees and support precedent-setting litigation affecting those rights. TENNELA lawyers litigate regularly in courts across the State of Tennessee, as well as federal district courts, the Sixth Circuit Court of Appeals, and the United States Supreme Court (where seminal employment cases such as Crawford v. Metro. Govt. of Nashville and Davidson County, Tenn., 129 S.Ct. 846 (2009); Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. 53 (2006); and Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993), have been successfully litigated by TENNELA lawyers).

2. As part of fulfilling its mission to promote the interests of employees and assist the lawyers who represent them, TENNELA seeks to file an amicus curiae brief in this case urging the Court to grant Plaintiff/Appellant's Rule 11 application for permission to appeal. TENNELA has been permitted by the Court to file amicus briefs in the following recent cases decided by the Court: Perkins v. Metro. Gov't of Nashville and Davidson County, m2010-02021-SC-R11-CV (Oral Arg. June 14, 2012); Webb v. Nashville Area Habitat for Humanity, Inc., 346 S.W.3d 422 (Tenn. 2011); Sykes v. Chattanooga Housing Auth., 343 S.W.3d 18 (Tenn. 2011); and Kinsler v. Berkline, LLC, 320 S.W.3d 796 (Tenn. 2009).

3. In this instance, the Court is being asked to consider whether the Tennessee Court of Appeals erred in limiting claims of common law retaliatory discharge to at-will employment relationships instead of making it available to all non-governmental employees. Resolution of this issue is critically important as it limits a common law tort to only one particular class of people. Indeed, the resolution of the legal issues in this case will have a direct and significant effect on employment rights in Tennessee and the practices of TENNELA members who handle retaliatory discharge claims across the state.

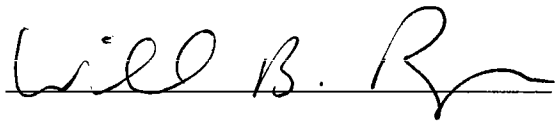
4. Here, the amicus curiae brief submitted by TENNELA will assist this Honorable Court in deciding important questions of law because it will provide additional research and perspective not presented in the briefs filed by the parties.

5. TENNELA's proposed amicus brief is being submitted contemporaneously.

CONCLUSION

For these reasons, amicus curiae TENNELA respectfully requests that this Honorable Court grant this motion and accept its amicus brief.

Respectfully submitted,

By: 

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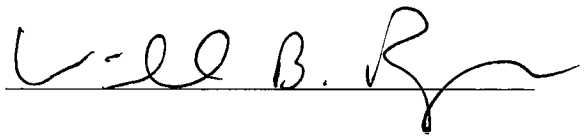
For The Tennessee Employment Lawyers Association

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been served via first class U.S. Mail, postage prepaid, on the attorneys for the Plaintiff/Appellant, Dan M. Norwood and Steve Barnat, 266 S. Front Street, Suite 206, Memphis, TN 38103 and the attorneys for Defendants/Appellees, John H. Dotson and Allison Wannamaker, One Commerce Square, 40 S. Main Street, Suite 2900, Memphis, TN 38103, on July 30, 2012.



IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

CAROL PETSCHONEK,

Plaintiff/Appellant,

v.

Case No. W2011-002216-R9-CV
(Shelby County Circuit No. CT-002485-07)

CATHOLIC DIOCESE OF MEMPHIS ET AL.,

Defendants/Appellees.

BRIEF OF AMICUS CURIAE TENNESSEE EMPLOYMENT LAWYERS ASSOCIATION IN SUPPORT OF PLAINTIFF/APPELLANT'S RULE 11 APPLICATION FOR PERMISSION TO APPEAL

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FOR THE TENNESSEE EMPLOYMENT LAWYERS ASSOCIATION

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TABLE OF AUTHORITIES

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INTEREST OF AMICUS CURIAE

The Tennessee Employment Lawyers Association (TENNELA)[1] is an affiliate chapter of the National Employment Lawyers Association (NELA).[2] NELA is the largest professional membership organization in the country comprised of over 3000 lawyers who represent employees in labor, employment, and civil rights disputes. NELA and TENNELA members are committed to working on behalf of those who have been treated illegally in the workplace. NELA and TENNELA members strive to protect the rights of the members' clients and support precedent-setting litigation affecting the rights of individuals in the workplace. TENNELA maintains an active listserv, holds regular meetings, and conducts continuing education programs among plaintiff-side employment law practitioners across the state. TENNELA lawyers litigate regularly in all courts across the State of Tennessee, as well as federal trial courts, the Sixth Circuit Court of Appeals, and the United States Supreme Court (where seminal employment cases such as Crawford v. Metro. Govt. of Nashville and Davidson County, Tenn., 129 S.Ct. 846 (2009); Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. 53 (2006); and Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993), have been successfully litigated by TENNELA lawyers).

As part of fulfilling its mission to promote the interests of individual employees and assisting the lawyers who represent them, TENNELA has requested leave to file this amicus curiae brief urging the Court to grant Plaintiff/Appellant's Rule 11 Application for Permission to Appeal. As noted in TENNELA's motion, TENNELA has been permitted by the Court to file amicus briefs in the following recent cases decided by the Court: Webb v. Nashville Area

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Habitat for Humanity, Inc., 346 S.W.3d 422 (Tenn. 2011); Sykes v. Chattanooga Housing Auth., 343 S.W.3d 18 (Tenn. 2011); and Kinsler v. Berkline, LLC, 320 S.W.3d 796 (Tenn. 2010).

In this case, the Court is being asked to consider whether the Tennessee Court of Appeals erred when it held that an employment at-will relationship was necessary for an employee to maintain an action for retaliatory discharge under the common law of the State of Tennessee. TENNELA lawyers have brought and argued on behalf of their clients many of the most significant cases involving claims for common law retaliatory discharge, including Reynolds v. Ozark Motor Lines, Inc., 887 S.W.2d 822, 825 (Tenn. 1994); Crews v. Buckman Labs. Int'l, Inc., 78 S.W.3d 852 (Tenn. 2002); and Guy v. Mutual of Omaha Ins. Co., 79 S.W.3d 528, 537 (Tenn. 2002). Moreover, TENNELA members frequently litigate retaliatory discharge claims under the Tennessee common law and the Tennessee Public Protection Act. Thus, TENNELA lawyers and their clients have an immediate and direct interest in the outcome of this case.

STATEMENT OF THE ISSUE

Under Tennessee law, may non at-will employees, like at-will employees, bring a common law tort claim for retaliatory discharge?

SUMMARY OF ARGUMENT

The Court of Appeals' holding that the Tennessee Supreme Court has limited the common law tort claim of retaliatory discharge to at-will employees is not supported by case law or public policy. While the common law tort of retaliatory discharge happened to originate with at-will cases, the Court's rationale has always applied equally to at-will and non at-will employees: To encourage all employees to speak out against and refrain from engaging in illegal activity, and to force employers to comply with the laws and policies that protect the health, safety, and well-being of the citizens of Tennessee. Clanton v. Cain-Sloan Co., 677 S.W.2d 441, 442-45 (Tenn. 1984). Non at-will employees, no different from at-will employees, should be encouraged to speak out and refrain from illegal activity in the interest of this State and its citizens. Consequently, this Court should grant the Plaintiff/Appellant's Rule 11 Application for Permission to Appeal and reverse the judgment of the Court of Appeals.

ARGUMENT

A. Tenn. R. App. P. 11(a) Standards Are Met

This case meets Rule 11's standard for acceptance. Tenn. R. App. P. 11(a) provides a non-exhaustive list of reasons considered by this Court in determining whether to grant a party permission to appeal. The reasons include "(1) the need to secure uniformity of decision, (2) the need to secure settlement of important questions of law, (3) the need to secure settlement of questions of public interest, and (4) the need for the exercise of the Supreme Court's supervisory authority." Id. Additionally, the Court often grants a Rule 11 application for permission to appeal to clarify and bring consistency to a holding expressed in a previous case. For example, in Alsip v. Johnson City Medical Center, 197 S.W.3d 722 (Tenn. 2006), the Court granted review to clarify the meaning of its holding in Givens v. Mullikin, 75 S.W.3d 383 (Tenn. 2002),

which involved *ex parte* conversations between defense counsel and non-party treating physicians. Here, the Court should grant Plaintiff/Appellant's Rule 11 application to secure uniformity of decision, secure settlement of important questions of law, secure the settlement of questions of public interest, and because there is a need for the Court to exercise its supervisory authority.

B. The Court of Appeals Erred in Limiting the Common Law Tort of Retaliatory Discharge to At-Will Employees

This Court should hold that the common law tort of retaliatory discharge is uniformly available to all Tennessee employees, even those whose employment relationship is not at-will. In reversing the trial court's denial of the Defendant's motion for summary judgment, the Court of Appeals began its analysis with the following statement: "Common law retaliatory discharge imposes a restriction to the employment-at-will doctrine historically adhered to in Tennessee." Petschonek v. Catholic Diocese of Memphis, No. W2011-02216-COA-R9-CV, at 8 (Tenn. Ct. App. May 23, 2012).

While there is no doubt that common law tort of retaliatory discharge is indeed an exception to the employment at-will doctrine, the rationale for the claim was to force employers to comply with important public policies of Tennessee, not simply to give a legal boost to employees without contractual protection from termination. When this Court first recognized a common law tort of retaliatory discharge, its main consideration was preventing employers from undermining important public policy in Tennessee, e.g., the state's comprehensive workers' compensation legislation. Clanton v. Cain-Sloan Co., 677 S.W.2d 441, 442-45 (Tenn. 1984).

Significantly, the Clanton court stated that it must "first consider the history and purpose of workers' compensation laws" in determining whether to recognize a cause of action. Id. at 442. Further, the court ultimately held that such a cause of action was "necessary to enforce the

duty of the employer, to secure the rights of the employee and to carry out the intention of the legislature". Id. at 445.

In other cases involving common law retaliatory discharge claims, this Court's focus has always been on ensuring compliance with the law and protecting public policy in Tennessee, as opposed to singling out at-will workers for protection. For example, in 1989, the Court held that a common law retaliatory discharge action would exist where an employee was terminated for refusing to participate in illegal activities. Watson v. Cleveland Chair Co., 789 S.W.2d 538, 544 (Tenn. 1989). The Watson court thus recognized a strong public policy in Tennessee, i.e., that of encouraging all employees to be law abiding citizens. Id. at 540. The Watson court also endorsed the well-reasoned view that employees should not be placed in the position of having to violate a law or lose their job. Id.

In 1990, on the heels of the Watson decision, the Tennessee General Assembly enacted the Tennessee Public Protection Act (TPPA), which provides that "[n]o employee shall be discharged or terminated solely for refusing to participate in, or for refusing to remain silent about, illegal activities. Tenn. Code Ann. § 50-1-304(b). This law is an expression and recognition of Tennessee's strong public policy that all employees have the absolute right to speak out about illegal activities in the workplace without fear that they may be discharged for doing so. Mason v. Seaton, 942 S.W.2d 470, 475-76 (Tenn. 1997).

In 1992, this Court found that common law claims were not limited to retaliation resulting from workers' compensation claims, but extended to all instances in which employees were terminated in violation of important public policy. Hodges v. S.C. Toof & Co., 833 S.W.2d 896, 899 (Tenn. 1992). And consistent with the TPPA, the Court has continued to hold that it is a violation of Tennessee common law for an employer to discharge an employee for refusing to

participate in, or for refusing to remain silent about, illegal activities. See Crews v. Buckman Labs. Int'l, Inc., 78 S.W.3d 852, 865 (Tenn. 2002) (common law claim for refusing to remain silent about illegal activity); Reynolds v. Ozark Motor Lines, Inc., 887 S.W.2d 822, 825 (Tenn. 1994) (common law claim of for refusing to participate in illegal activities).

Further, in 1994 and 2002, the Court found that availability of remedies was not the *sine qua non* of retaliation claims. Thus, it held that the TPPA, with its remedies, does not preempt the judicially-recognized common law tort of retaliatory discharge; instead, these rights are interpreted as cumulative. Reynolds, 887 S.W.2d at 825 (Tenn. 1994); Guy v. Mutual of Omaha Ins. Co., 79 S.W.3d 528, 537 (Tenn. 2002); see also Wooley v. Madison County, Tennessee, 209 F. Supp. 2d 836, 845 (W.D. Tenn. 2002) (Gibbons, J.).

In Petschonek, the case at bar, the Court of Appeals began its analysis with a faulty presumption: A common law tort claim of retaliatory discharge is limited to at-will employees. The Court of Appeals appears to have drawn this conclusion not because of any holding or analysis of the employee's status, but merely because the words "at will" have appeared in a cursory recitation of the elements of the claim. See Petschonek, No. W2011-02216-COA-R9-CV, at 8-9 (citing Webb v. Nashville Area Habitat for Humanity, Inc., 346 S.W.3d 422, 437 (Tenn. 2011)).

Significantly, as noted in Judge Kirby's concurring opinion in Petschonek, no Tennessee Supreme Court opinion has expressly held that Tennessee's common law tort of retaliatory discharge is restricted to just one subset of Tennessee employees, i.e., at-will employees. As mentioned, this Court has, without analysis, merely recited the words "at-will employment" when articulating elements of the claim. See Crews, 78 S.W.3d 852; Stein v. Davidson Hotel Co., 945 S.W.2d 714 (Tenn. 1997); Reynolds, 887 S.W.2d 822; and Chism v. Mid-South Milling

Co., 762 S.W.2d 552 (Tenn. 1988). But at other times, the words "employment relationship" have been used to describe the coverage requirement. See Anderson v. Standard Register Co., 857 S.W.2d 555, 558 (Tenn. 1993).

Historically, it is clear that this Court has never clipped non at-will employees from the tort's protective fold. And there is no real basis under common law tort principles for the Court to do so. Tort claims apply to all persons, not just some persons. Even in Crews, this Court spoke of the "typical common law retaliatory discharge claim." Crews, 78 S.W.3d at 862 (emphasis added). Thus, the language in Crews clearly reflects that the typical common law retaliatory discharge cases that have come before the Court have involved at-will employees, but that should not be a requirement to bring such a claim.

Also, the Tennessee Pattern Jury Instructions ("T.P.I."), which synthesize the law for practitioners and judges, correctly focus on an employment relationship, not exclusively an "at-will" relationship. The T.P.I. requires only that the employee prove "[t]hat the plaintiff was employed by the defendant" to establish the first prima facie element of the claim. T.P.I. 3-Civil 8.60A (9th Edition). It is unsurprising that the case law developed through employees who happened to be at-will, given the popularity of that relationship. But that does not mean the policy underpinnings are different for non at-will employees, such as those protected from at-will termination by collective bargaining agreements or "for cause" employment contracts. Indeed, no principled reason exists for denying basic protection from retaliation merely because a contract—no matter how one-sided, small, or inclusive or non-inclusive of discharge rights—may exist between the employee and employer.

Unfortunately, and perhaps unintentionally, in finding that the common law tort of retaliatory discharge is limited to at-will employees alone, the Court of Appeals disregarded the

fundamental purpose of the claim. The core purpose is not to provide employment protection to the at-will worker due to his unprotected status, but to guarantee the preservation of those rights and obligations considered essential under Tennessee public policy. Clanton, 677 S.W.2d at 443-44. In other words, the primary purpose of the claim is to force compliance with the laws and policies of the State of Tennessee. That purpose is met by protecting all employees engaged in protected activities, not just at-will employees.

An individual employee's retaliatory discharge action is merely a mechanism through which these important goals and policies may be achieved and sustained. Id. at 445 ("[A] cause of action for retaliatory discharge, although not explicitly created by the statute, is necessary to enforce the duty of the employer, to secure the rights of the employee, and to carry out the intention of the legislature."). When the employer's motivation for terminating the employment relationship is shown to be retaliation for the worker's protected activities, the terms of the employment relationship are irrelevant to proving the tort and promoting the rationale underlying its existence. The relevant issue is the employer's motivation for ending the employment relationship, regardless of whether it accomplished the termination by firing an at-will employee, refusing to renew a worker's contract, or by prematurely breaching a worker's contract for services.

The implications from the Court of Appeals' holding are troubling indeed. Is it now acceptable to fire tenured public teachers for taking jury service? Hodges, 833 S.W.2d 896 (retaliation for jury service against public policy). Is it acceptable to fire in-house counsel, who enjoys a limited contract from termination without cause, because she reports the unauthorized practice of law? Crews, 78 S.W.3d at 866 (retaliation for reporting unauthorized practice is against public policy). And is it acceptable to fire any worker who has job protection under a

collective bargaining agreement because he/she exercised rights to workers' compensation benefits? In every situation, the Court of Appeals' decision would eliminate protection for these workers.

As the case law from other jurisdictions shows, the preservation and protection of important public policies of this State are best served by providing for a common law cause of action that does not arbitrarily and illogically exclude certain types of protected employees, but that instead encourages *all* Tennessee employees to speak about illegal activities without fear of reprisal.

C. Case Law From Outside Tennessee Supports Making Common Law Retaliatory Discharge Claims Available to All Employees

Case law from other states supports this Court holding that the claim of common law retaliatory discharge in Tennessee be available to all employees whether their employment relationship is at-will or not. Other states overwhelmingly focus on their original reason for recognizing the tort. States like Tennessee, who recognize the tort primarily to ensure compliance with the law and protect public policy, do not treat non at-will employees differently than at-will employees.

For example, the Washington Supreme Court found the tort of wrongful discharge should be available to all employees because the right not to be terminated in violation of "a clear mandate of public policy" is a right independent of any contract. Smith v. Bates Tech. College, 991 P.2d 1135, 1141 (Wash. 2000) (citing Koehrer v. Superior Court, 226 Cal. Rptr. 820, 826 (1986)). Thus, because the cause of action vindicates the public interest and not the terms or promises arising out of a contract, "*any* employee . . . should be permitted to recover for the violation of his or her legal rights" when their termination defies the public policy of the jurisdiction. Id.

Similarly, the Illinois Supreme Court followed the same rationale when it held that

> [i]t would be unreasonable to immunize from punitive damages an employer who unjustly discharges a union employee while allowing the imposition of punitive damages against an employer who unfairly terminates a nonunion employee. The public policy against retaliatory discharges applies with equal force in both situations.

Midgett v. Sackett-Chicago, Inc., 473 N.E.2d 1280, 1284 (Ill. 1984).

In Retherford v. AT&T Communications of Mt. States, Inc., 844 P.2d 949 (Utah 1992), the Utah Supreme Court stated it best when rejecting the argument that non at-will employees were already protected by contractual remedies:

> When an employer's act violates both its own contractual just-cause standard and a clear and substantial public policy, we see no reason to dilute the force of the double sanction. In such an instance, the employer is liable for two breaches, one in contract and one in tort. It therefore must bear both consequences.

Id. at 960. See also Ewing v. Koppers Co., 537 A.2d 1173, 1175 (Md. 1988) ("[T]he public policy component of the tort is significant, and recognition of the availability of this cause of action to all employees, at will and contractual, will foster the State's interest in deterring particularly reprehensible conduct. Moreover, it would be illogical to deny the contract employee access to the courts equal to that afforded the at will employee. We hold that a cause of action for abusive discharge exists in favor of employees who serve under contract as well as those who serve at will."); LePore v. Nat'l Tool & Mfg. Co., 557 A.2d 1371, 1372 (N.J. 1989) ("[A]n employee covered by a collective-bargaining agreement, like an at-will employee, should be allowed to maintain an action for a wrongful discharge made in retaliation for reporting safety and health violations."); Coleman v. Safeway Stores, Inc., 752 P.2d 645, 650-51 (Kan. 1988) ("[T]he tort claim in question is based upon state public policy conferring upon all employees and employers certain nonnegotiable rights and imposing certain nonnegotiable duties and obligations, regardless of whether employees are covered by a collective bargaining agreement.

We believe these rights and duties cannot be a part of a collective bargaining contract, and, thus, that a retaliatory discharge claim is not preempted by [a] bargaining agreement . . . ."). Thus, where the focus in the creation of the tort is the preservation of public policy, courts hold that a retaliatory discharge claim may be brought irrespective of whether the employee is at-will or has a contract.

There are some states, like New Mexico, that deny common law protections to contractual employees. But these states did not originally focus entirely on the public good, but instead, more narrowly, "the need to encourage job security" for employees who lack any protection by contract. See Silva v. Albuquerque Assembly & Distrib. Freeport Warehouse Corp., 738 P.2d 513, 515 (N.M. 1987) (internal citations omitted); see also Phillips v. Babcock & Wilcox, 503 A.2d 36, 37 (Penn. 1986) (limiting the tort to at-will employment relationships because the underlying purpose of the tort is "to provide a remedy for employees with no other recourse against wrongful discharge"); Stiles v. Am. Gen. Life Ins. Co., 516 S.E.2d 449, 452-53 (S.C. 1999) (Total, A.J., concurring) (the basis for limiting the tort to at-will employees was grounded in the fact that an at-will employee has no other remedy for such a wrongful termination unlike contractual employees); Hermreck v. UPS, 938 P.2d 863, (Wyo. 1997) (holding that the lack of any other remedy justifies making the tort available to at-will employees); Azzi v. Western Electric Co., 474 N.E.2d 1166, 1169 (Mass. 1985) (holding that extending common law wrongful discharge claim to union workers not commendable because deprives opportunity of employer and union to develop own method for orderly settlement); Tomlinson v. Board of Educ., 629 A.2d 333, 347 (Conn. 1993) (holding tort limited to instances when other remedies not available, i.e. at-will employment).

Unlike these states, Tennessee has been concerned with compliance with the law and protecting the public policy of the State. Clanton, 677 S.W.2d at 442-45. Persons in public positions who may enjoy contractual protection from at-will termination—e.g. teachers, professors, government workers—are often in positions to ensure compliance with the law. Therefore, they, too, must be protected against refusal to participate in or remain silent about illegal activities that violate public policy. See Crews, 78 S.W.3d at 865; Reynolds, 887 S.W.2d at 825. Consistent with the reasoning expressed by courts in Washington, Illinois, Utah, Maryland, and Kansas, this Court should hold that the common law tort of retaliatory discharge is available to all employees.

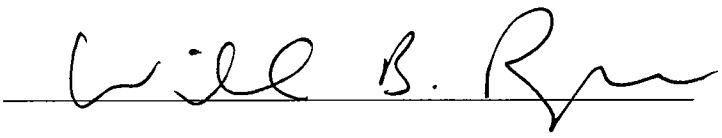
It should also be noted that "access to a remedy" has never been the defining feature for the availability of such a claim. For example, employees who are protected by the Tennessee Public Protection Act are not precluded from bringing a common law claim too, or vice versa. Rather, this Court has held that TPPA and common law claims should be interpreted cumulatively. See Reynolds, 887 S.W.2d at 825; Guy, 79 S.W.3d at 537.

Accordingly, because the purpose of the common law tort of retaliatory discharge is to encourage compliance with the law and to preserve and protect the public policy, this Court should hold that this tort is uniformly available to all Tennessee employees regardless of their employment relationship and that all Tennessee employees are entitled to vindicate Tennessee public policy by way of the common law.

CONCLUSION

For the foregoing reasons, the Court should grant the Plaintiff/Appellant's Rule 11 Application for Permission to Appeal and reverse the judgment of the Court of Appeals.

Respectfully submitted,

By: 

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For The Tennessee Employment Lawyers Association

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