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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STATE OF WASHINGTON,

C17-5806RJB

Plaintiff,

v.

THE GEO GROUP, INC., a Florida
corporation,

Defendant.

C17-5769 RJB

UGOCHUKWU GOODLUCK
NWAUZOR, on behalf of all those
similarly situated, and FERNANDO
AGUIRRE-URBINA, individually,

ORDER ON MOTIONS FOR JUDGMENT
AS A MATTER OF LAW

Plaintiffs,

v.

THE GEO GROUP, INC., a Florida
corporation,

Defendant

THIS MATTER comes before the Court on the Plaintiff State of Washington's Renewed Motion for Judgment as a Matter of Law (filed in *Washington v. The GEO Group, Inc.*, U.S. District Court for the Western District of Washington case number 17-5806, Dkt. 498) and

1 Pursuant to Fed. R. Civ. P. 50(a)(1),

2 If a party has been fully heard on an issue during a jury trial and the court finds
3 that a reasonable jury would not have a legally sufficient evidentiary basis to find
4 for the party on that issue, the court may:

4 (A) resolve the issue against the party; and

5 (B) grant a motion for judgment as a matter of law against the party on a claim or
6 defense that, under the controlling law, can be maintained or defeated only with a
7 favorable finding on that issue.

7 Under Rule 50(b), “[i]f the court does not grant a motion for judgment as a matter of law made
8 under Rule 50(a), the court is considered to have submitted the action to the jury subject to the
9 court’s later deciding the legal questions raised by the motion.” According to Rule 50(b)(3), the
10 court may “direct the entry of judgment as a matter of law in ruling on the renewed motion.”

11 The State argues in its Rule 50(b) motion that the Court should dismiss GEO’s
12 intergovernmental immunity defense because GEO failed to carry its burden that the Washington
13 Minimum Wage Act, RCW 49.46, *et. seq.*, (“MWA”) is discriminatory as applied and even if
14 GEO could be compared to state-owned and state-operated facilities, it failed to show that state-
15 owned and state-operated facilities are similarly situated to GEO. *State*, case number 17-5806,
16 Dkts. 498 and 512. GEO opposes the motion. *State*, case number 17-5806, Dkt. 509.

17 In its Rule 50(b) motions, GEO argues that the MWA impermissibly discriminates
18 against the federal government and GEO because the plain language of the MWA exempts
19 detainees of “state, county or municipal” facilities, benefitting “state, county or municipal”
20 governmental entities, but not the federal government or those with whom it deals (GEO). *State*,
21 case number 17-5806, Dkts. 503 and 513; *Nwauzor*, case number 17-5769, Dkts. 394 and 402
22 (*citing* RCW 49.46.010(3)(k)). GEO further maintains that the MWA also discriminates against
23 it because it categorically exempts “individuals engaged in the activities of an educational,
24 charitable, religious, state, or local governmental body or agency, or nonprofit organization . . .

1 [who] receives reimbursement in lieu of compensation for normally incurred out-of-pocket
2 expenses or receives a nominal amount of compensation per unit of voluntary service rendered.”
3 *Id.* (citing RCW 49.46.010(3)(d)). The State and class oppose the motion. *State*, case number
4 17-5806, Dkt. 507; *Nwauzor*, case number 17-5769, Dkt. 398.

5 DISCUSSION

6 First, the issue of immunity being a defense, the Court must assume that the Plaintiffs
7 will be successful in demonstrating at trial that GEO’s detainee workers are employees under the
8 MWA.

9 “The doctrine of intergovernmental immunity is derived from the Supremacy Clause,
10 U.S. Const., art. VI, which mandates that ‘the activities of the Federal Government are free from
11 regulation by any state.’” *United States v. California*, 921 F.3d 865, 878 (9th Cir.
12 2019)(quoting *Boeing Co. v. Movassaghi*, 768 F.3d 832, 839 (9th Cir. 2014)). “The doctrine
13 traces its origins to the Supreme Court’s decision in *McCulloch v. Maryland*, which established
14 that ‘the states have no power, by taxation or otherwise, to retard, impede, burden, or in any
15 manner control, the operations of the constitutional laws enacted by congress to carry into
16 execution the powers vested in the general government.’” *United States v. Washington*, 994 F.3d
17 994, 1014–15 (9th Cir. 2020)(quoting *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436, 4
18 L.Ed. 579 (1819)). Accordingly, “state laws are invalid if they regulate the United States
19 directly or discriminate against the Federal Government or those with whom it
20 deals.” *California*, at 878. “Over [70] years ago, however, the Supreme Court decisively
21 rejected the argument that any state regulation which indirectly regulates the Federal
22 Government’s activity is unconstitutional, and that view has now been thoroughly repudiated.”
23 *North Dakota v. U.S.*, 495 U.S. 423, 434 (1990)(*internal quotation marks and citations*
24

1 *omitted*)(*emphasis added*). “Intergovernmental immunity attaches only to state laws that
2 discriminate against the federal government and burden it in some way.” *California*, at 880.

3 The doctrine of intergovernmental immunity has been invoked, to give a few
4 examples, to prevent a state from imposing more onerous clean-up standards on a
5 federal hazardous waste site than a non-federal project, to preclude cities from
6 banning only the U.S. military and its agents from recruiting minors, and to
foreclose a state from taxing the lessees of federal property while exempting from
the tax lessees of state property. Those cases dealt with laws that directly or
indirectly affected the operation of a federal program or contract.

7 *California*, at 880 (*internal citations omitted*). “Since the advent of the doctrine,
8 intergovernmental immunity has attached where a state’s discrimination negatively affected
9 federal activities in some way. It is not implicated when a state merely references or even singles
10 out federal activities in an otherwise innocuous enactment.” *California*, at 881.

11 GEO points to *Goodyear Atomic Corporation v. Miller*, 486 U.S. 174 (1988) and to
12 *Boeing v. Movassghi*, 768 F.3d 832 (2014), as well as other cases. *Goodyear* merely stands for
13 the proposition that the intergovernmental immunity defense applies to direct regulation from the
14 state if the entity being regulated is a federal contractor on federally-owned property. *Boeing*
15 extended the defense even where the property was owned, in part, by the contractor, finding that
16 the regulations at issue there were discriminatory because they “single[d] out Boeing, [the
17 federal government], and the site for a substantially more stringent cleanup scheme than that
18 which applie[d] elsewhere in the state.” *Id.*, at 942. Neither those cases nor the other cases cited
19 definitively decide the issue here: they did not deal with laws of general applicability that the
20 private contractor agreed to follow by contract on a private contractor-owned and private
21 contractor-operated site. Nor did they deal with anything like the GEO-ICE contract here, where
22 GEO is free to set pay rates at any amount, but not at less than a dollar a day.

23 What appears clear is that the basic rule of *Boeing* – a state law discriminates against the
24 federal government if it treats someone else better than it treats the government – must be

1 considered with the Supreme Court’s *North Dakota* requirements that the question of
2 discrimination cannot be “viewed in isolation,” but must be considered “with regard to the
3 economic burdens that result” to the federal government.

4 The MWA is a neutral law of general application and is being imposed on GEO on a
5 “basis unrelated to [GEO’s] status as a Government contractor.” *North Dakota, v. U.S.*, 495 U.S.
6 423, 438 (1990). The MWA is imposed generally on employers in Washington, unrelated to a
7 status as a contractor with federal governmental entities. Indeed, the federal government and
8 GEO contemplated (or should have contemplated) application of the MWA in their contracts.
9 The 2009 Contract and 2015 Contract between GEO and the federal government require that
10 GEO comply with all “applicable federal, state and local labor laws.” *State*, case number 17-
11 5806, Dkts. 246-2, at 19 and 58; 246-3, at 46 and 52. Those contracts further provide that
12 “[s]hould a conflict exist between any of these standards, the most stringent shall apply.” *State*,
13 case number 17-5806, Dkt. 246-2, at 58 and 246-3, at 52. GEO failed to address these provisions
14 in its briefing.

15 “A state does not discriminate against the Federal Government and those with whom it
16 deals unless it treats someone else better than it treats them.” *California*, at 881. GEO asserts
17 that the exceptions in both RCW 49.46.010(3)(k), for “any resident, inmate or patient of a state,
18 county or municipal correctional, detention, treatment or rehabilitation facility” and in RCW
19 49.46.010(3)(d) for “individuals engaged in the activities of an educational, charitable, religious,
20 state, or local governmental body or agency, or nonprofit organization where the employer-
21 employee relationship does not in fact exist or where the services are rendered to such
22 organizations gratuitously . . . ” result in others being treated better than they are being treated.
23 GEO has failed to show that it is similarly situated to the State or to any of these other entities
24 such that the State “is treating someone else better than it treats them.” *Id.* It is a private

1 company and not a governmental entity and is not sufficiently similar to the State or the State's
2 detention activities to trigger further comparison. GEO is not a "educational, charitable,
3 religious . . . or nonprofit organization." Immunity defenses should not be a way to avoid a
4 neutral law, but to avoid unfair treatment. There is no showing that the MWA is not being
5 "imposed equally on other similarly situated constituents of the State." *North Dakota*, at 438.
6 The MWA is imposed on all private and public non-exempt entities.

7 While GEO maintains that application of the MWA to participants in the VWP will end
8 up costing the federal government money, they fail to point to evidence to support this
9 contention. Their supposition is speculative, at best. Here, there is no showing of any economic
10 burden on the federal government by applying the MWA to GEO. The evidence at trial clearly
11 demonstrated that the only economic impact on GEO, by application of the MWA, would be on
12 GEO's profits, and that there would be no economic impact on the federal government; that
13 GEO's profits would be burdened is not sufficient to justify immunity.

14 In other words, GEO is not entitled to the special treatment of discrimination immunity
15 only because it contracts with the federal government. Immunity only attaches if there is a
16 relationship, or nexus, between the state law at issue, and an economic, or other, burden on the
17 federal government. Here, the evidence at trial was clear: any possible economic burden on the
18 federal government is speculative and was not proven. GEO is not entitled to the special
19 treatment it requests.

20 Another thought – presumably, GEO's non-detainee employees are covered by the
21 MWA. Should not detainee employees be treated equally?

22 To permit GEO to wield the intergovernmental immunity defense here would be to
23 provide GEO with an unwarranted windfall – an excuse to ignore a generally applied law. GEO
24 is not entitled to the exemption it seeks.

1 The State’s Rule 50 motion (Dkt. 498) should be granted and the remaining issue in
2 GEO’s Rule 50 motions – the discrimination portion of GEO’s intergovernmental immunity
3 defense – (*State*, case number 17-5806, Dkt. 503; *Nwauzor*, case number 17-5769, Dkt. 394)
4 should be denied. The parties should prepare to go to trial on October 12, 2021 on the remaining
5 issues.

6 It appears clear to the Court that it erred in submitting to the jury Instruction #17 and the
7 Verdict Form, which covered the discrimination prong of the intergovernmental immunity
8 defense. This Order corrects that error.

9 **ORDER**

10 **IT IS ORDERED THAT:**

- 11 • The State of Washington’s Renewed Motion for Judgment as a Matter of Law
12 (filed in *Washington v. The GEO Group, Inc.*, U.S. District Court for the Western
13 District of Washington case number 17-5806, Dkt. 498) **IS GRANTED**; and
- 14 • The GEO Group, Inc.’s Rule 50(b) Motion for Judgment as a Matter of Law (filed
15 in *Washington v. The GEO Group, Inc.*, U.S. District Court for the Western
16 District of Washington case number 17-5806, Dkt. 503 and in *Nwauzor v. The*
17 *GEO Group*, U.S. District Court for the Western District of Washington case
18 number 17-5769, Dkt. 394) as to the remaining claim of the discrimination
19 portion of GEO’s intergovernmental immunity defense **IS DENIED**.

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1 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
2 to any party appearing *pro se* at said party's last known address.

3 Dated this 19th day of August, 2021.

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5 ROBERT J. BRYAN
6 United States District Judge

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