FILED
Court of Appeals
Division I
State of Washington
1/23/2019 11:57 AM

NO. 96781-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

(On appeal from the Court of Appeals for the State of Washington,
Division I, No. 77918-4-I)

AMERICAN HOTEL & LODGING ASSOCIATION, SEATTLE HOTEL ASSOCIATION, and WASHINGTON HOSPITALITY ASSOCIATION,
Respondents/Plaintiffs,

v.

CITY OF SEATTLE,
Appellant/Defendant,

and

UNITE HERE! LOCAL 8 and SEATTLE PROTECTS WOMEN,
Appellants/Intervenor-Defendants.

LOCAL 8 AND SEATTLE PROTECTS WOMEN'S PETITION FOR DISCRETIONARY REVIEW

Laura Ewan, WSBA No. 45201
BARNARD IGLITZIN & LAVITT, LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119
(206) 257-6012
ewan@workerlaw.com

TABLE OF CONTENTS

I. IDENTITY OF PETITIONER 1

II. DECISION OF COURT OF APPEALS 1

III. ISSUES PRESENTED FOR REVIEW... 2

IV. STATEMENT OF THE CASE 2

V. ARGUMENT 5

A. SUMMARY OF ARGUMENT.. 5

B. REVIEW IS WARRANTED UNDER RAP 13.4(b)(1), AS THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH A DECISION OF THE SUPREME COURT. 6

C. DIRECT REVIEW IS WARRANTED UNDER RAP 13.4(b)(3) BECAUSE THE DECISION INVOLVES A SIGNIFICANT QUESTION OF LAW UNDER THE CONSTITUTION OF THE STATE OF WASHINGTON. 13

D. DIRECT REVIEW IS WARRANTED UNDER RAP 13.4(b)(4) BECAUSE THE DECISION CREATES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST REQUIRING ULTIMATE DETERMINATION BY THIS COURT. 13

VI. CONCLUSION 17

TABLE OF AUTHORITIES

Page(s)

Cases

Amalgamated Transit Union Local 587 v. State,
142 Wn.2d 183, 11 P.3d 762 (2000)..............................7, 10, 12, 14, 15

Barde v. State,
90 Wn.2d 470, 584 P.2d 390 (1978)..14

City of Burien v. Kiga,
144 Wn.2d 819, 31 P.3d 659 (2001)..9, 15

Filo Foods, LLC v. City of SeaTac,
183 Wn.2d 770, 357 P.3d 1040 (2015)....................5, 7, 8, 9, 10, 11, 12

Lee v. State,
185 Wn.2d 608, 374 P.3d 157 (2016)..15, 17

Pierce County v. State,
150 Wn.2d 422, 78 P.3d 640 (2003)...9

Price v. Evergreen Cemetery Co. of Seattle,
57 Wn.2d 352, 357 P.2d 702 (1960)..14

Responsible Wildlife Mgt. v. State,
149 Wn.2d 622, 71 P.3d 644 (2003)..9, 10

Washington Ass'n for Substance Abuse & Violence Prevention v. State,
174 Wn.2d 642, 278 P.3d 632 (2012).................................9, 10, 12, 15

Washington Ass'n of Neigh. Stores v. State,
149 Wn.2d 359, 70 P.3d 920 (2003)...7

Washington Toll Bridge Auth. v. State,
49 Wn.2d 520, 304 P.2d 676 (1956)..14

WFSE v. State,
127 Wn.2d 544, 901 P.2d 1028 (1995)..9

Statutes

RCW 35A.12.130..4

RCW 49.17.270 4

Seattle Municipal Code 14.25 *et seq*...3

I. IDENTITY OF PETITIONER

This motion is filed on behalf of UNITE HERE! Local 8 (“Local 8”) and Seattle Protects Women (“the Committee”) (together Appellants/Intervenor-Defendants), the sponsors of an initiative (“I-124”) addressing hotel worker well-being in the City of Seattle through improvements to health, safety, and labor standards. Appellants/Intervenor-Defendants intervened in the underlying King County Superior Court case, as they have a stake in the implementation of the initiative overwhelmingly passed by Seattle voters designed to protect some of the most vulnerable workers in our society.

II. DECISION OF COURT OF APPEALS

Appellants/Intervenor-Defendants seek review of the Court of Appeals’ published decision rendered in *American Hotel & Lodging Association et al. v. City of Seattle et al.*, No. 77918-4-I (December 24, 2018), which reversed the King County Superior Court’s June 9, 2017, order granting summary judgment in favor of the City of Seattle and Appellants/Intervenor-Defendants and denying summary judgment to plaintiffs. A copy of the decision is included in the Appendix at 1-21.

III. ISSUES PRESENTED FOR REVIEW

1. Is the Court of Appeals decision in conflict with decisions of the Supreme Court that clearly and expressly articulate whether an initiative satisfies the single-subject rule?

2. Does the Court of Appeals decision involve a significant question of law under the Constitution of the State of Washington where the decision incorrectly applies the Constitution?

3. Does the Court of Appeals decision involve an issue of substantial public interest where a law protecting worker well-being, in an industry where abuse is rampant, has been overturned in a manner inconsistent with prior case law?

IV. STATEMENT OF THE CASE

Local 8 is a labor organization representing over 5,000 workers in the hospitality industries of Oregon and Washington, primarily in hotels, restaurants, food service, and airport concessions. CP 106. They include room cleaners, cooks, bartenders, bellmen, servers, bussers, and dishwashers. Local 8 fights for living wages, job security, respect in the workplace, and affordable employer-provided family health insurance. *Id.*

Today, as many as 7,500 low-wage workers in Seattle are employed by the hotel industry—an industry which could grow by as much as 30 percent in the next five years as Seattle hotels have hit record

occupancy as a result of the city's ongoing economic boom. *Id.* But hotel workers do not directly reap these benefits—instead they experience unchecked harassment, unmanageable healthcare costs, inhumane workloads, and the constant threat of unemployment. Sexual harassment of hotel employees—especially those who work in guest rooms—is so rampant that studies have found it has essentially been normalized. CP 106.

Seeing that the well-being of hotel workers was going unaddressed, and to ensure that the hotel industry invests in protecting the workers who make it profitable, Local 8 staff drafted I-124—an initiative creating worker well-being standards that protect Seattle's hotel housekeepers from sexual harassment and inhumane workloads, and granting them access to affordable family medical care and basic job security. Seattle voters passed I-124 with 77 percent of the vote. Appendix at 2.

The American Hotel & Lodging Association, Seattle Hotel Association, and the Washington Hospitality Association (together, "the Associations") vehemently opposed I-124, which was codified at Seattle Municipal Code ("SMC") 14.25 *et seq.*, and want to prevent it from protecting some of Seattle's most vulnerable employees from sexual harassment, inhumane workloads, or basic human rights on the job.

On December 19, 2016, the Associations filed a complaint in King County Superior Court seeking to invalidate I-124—in whole or in part—on multiple grounds. Appellants/Intervenor-Defendants intervened, and the parties filed cross motions for summary judgment. Oral argument occurred on March 31, 2017. On June 9, 2017, the Honorable John Erlick issued a thorough and well-reasoned thirty-nine page decision outlining how I-124 was valid in its entirety, and ruling in favor of the City and the Appellants/Intervenor-Defendants. CP 375-413.

The Associations sought direct review from this Court on July 24, 2017, *again* asserting that I-124 should be overturned in whole or in part on numerous grounds. This Court transferred the case to Division I of the Court of Appeals on January 3, 2018. The parties argued before Division I on November 8, 2018.

The Court of Appeals then issued its decision on December 24, 2018, overturning I-124 based solely on the challenge to the "'single subject' rule of RCW 35A.12.130 and article IV, section 7 of the Seattle City Charter." Appendix at 1. The Court of Appeals declined to reach the Associations' other challenges (to an alleged violation of the privacy and due process rights of its members' guests, or to preemption under RCW 49.17.270 ("WISHA")). This timely petition follows.

V. ARGUMENT

A. SUMMARY OF ARGUMENT.

The Court should accept discretionary review of the Court of Appeals decision pursuant to RAP 13.4(b).

Review is warranted pursuant to RAP 13.4(b)(1), because the decision by the Court of Appeals is in direct conflict with multiple State Supreme Court cases, including *Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 357 P.3d 1040 (2015)—and because the Court of Appeals incorrectly distinguished the facts of that case with I-124. *Filo Foods* clearly explained that the pieces of the initiative in question there were "reasonably germane" to other provisions that provided "minimum employee benefits." The analogy to I-124 is both precise and indisputable: the pieces of I-124 are "reasonably germane" to each other, because they fall under the rubric of "health, safety and labor standards" for Seattle hotel employees—in other words, protections designed to promote hotel worker well-being, a point the Court of Appeals failed to appreciate.

Furthermore, review is warranted under RAP 13.4(b)(3) because the Court of Appeals decision incorrectly applied the Constitution of the State of Washington and related statutes, which clearly creates a significant question of law.

Review is also warranted because the decision involves an issue of substantial public interest pursuant to RAP 13.4(b)(4). The issue of whether an initiative such as I-124 is constitutional—an initiative that addresses worker well-being in its various interrelated facets—has wide-ranging applicability to workers across the state. On an even broader scale, the decision has the potential to impact the initiative process itself. The Court of Appeals' decision overturns the will of the citizens of Seattle and invalidates the necessary protections for hotel housekeepers outlined in I-124, and is therefore clearly an issue of substantial public interest.

For these reasons, this Court should reverse the Court of Appeals' rejection of the well-reasoned decision of the trial court in this matter.

B. REVIEW IS WARRANTED UNDER RAP 13.4(b)(1), AS THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH A DECISION OF THE SUPREME COURT.

Under RAP 13.4(b)(1), the Court will accept a petition for review if "the decision of the Court of Appeals is in conflict with a decision of the Supreme Court." *Id.* As articulated so clearly by the Superior Court's Order on Summary Judgment, *see* CP 375-413, the Court's single-subject jurisprudence was clear and there were no conflicting decisions to reconcile—until the Court of Appeals' erroneous decision here.

The Washington Supreme Court outlined the analysis for determining whether a bill, ordinance, or initiative relates to one general subject or multiple specific subjects, looking to the provision's title for guidance, in *Filo Foods*. When classifying an initiative to the people, the operative title is the ballot title because "it is the ballot title with which voters are faced in the voting booth." *Id.* at 782, citing *Washington Citizens Action of Wash. v. State*, 162 Wn.2d 142, 154, 171 P.3d 486 (2007) (internal citations omitted). The ballot title "consists of a statement of the subject of the measure, a concise description of the measure, and the question of whether or not the measure should be enacted into law." *Id.*, citing *Washington Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 655, 278 P.3d 632 (2012) (hereinafter "*WASAVP*").

Furthermore, as clearly stated in *Filo Foods* at 782-83, when a ballot title "suggests a general, overarching subject matter for the initiative," *Washington Ass'n of Neigh. Stores v. State*, 149 Wn.2d 359, 369, 70 P.3d 920 (2003), it is considered to be general and "**great liberality** will be indulged to hold that any subject reasonably germane to such title may be embraced," *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 207, 11 P.3d 762 (2000) (emphasis added) (hereinafter *Amalgamated Transit*) (quoting *DeCano v. State*, 7 Wn.2d 613, 627, 110 P.2d 627 (1941)).

In *Filo Foods*, a measure impacting multiple working conditions in one specific geographical area *and* for one specific type of employer was found to be a general subject matter, as it addressed labor standards for hospitality and transportation employees. This Court found that

> Proposition 1 satisfies the single-subject rule. Although the title **lists various provisions**, it also states that Proposition 1 **generally "concerns labor standards for certain employers."** … This language is sufficiently broad to place voters on notice of its contents, including the 90–day worker-retention policy imposed on successor employers. The retention policy concerns labor standards and is reasonably germane to the establishment of minimum employee benefits, including job security. Proposition 1 survives the single-subject challenge.

Id. at 784–85 (emphasis added).

The same holds true for I-124, applying to hotel employers in Seattle. Here, the ballot title to I-124 stated:

> Initiative 124 **concerns health, safety, and labor standards for Seattle hotel employees**.
>
> If passed, this initiative would require certain sized hotel-employers to further protect employees against assault, sexual harassment, and injury by retaining lists of accused guests among other measures; improve access to healthcare; limit workloads; and provide limited job security for employees upon hotel ownership transfer. Requirements except assault protections are waivable through collective bargaining. The City may investigate violations. Persons claiming injury are protected from retaliation and may sue hotel-employers. Penalties go to City enforcement, affected employees, and the complainant.

Should this measure be enacted into law?

CP 75 (emphasis added). The breadth of the topics covered in I-124 and the structure of its title is not appreciably different from the scope and structure of Proposition 1, upheld as valid in *Filo Foods*. *Id.* at 783.

The Court of Appeals agreed that the title of I-124 was general. Appendix at 11. According to this Court's jurisprudence, only rational unity among the matters need exist. *City of Burien v. Kiga*, 144 Wn.2d 819, 825-26, 31 P.3d 659 (2001). Rational unity exists when the matters within the body of the initiative are germane to the general title and to one another. *Id*. at 826; *see also Pierce County v. State*, 150 Wn.2d 422, 431, 78 P.3d 640 (2003). While rational unity must exist among all matters included within the measure and with the general topic expressed in the title, an initiative can embrace several "incidental" subjects or subdivisions "so long as they are related." *Kiga* at 826. There is no violation of the "single subject" rule if a ballot measure contains incidental subdivisions or subjects as long as they all reasonably relate to the law's general subject. *WFSE v. State*, 127 Wn.2d 544, 556, 901 P.2d 1028 (1995)); *WASAVP*, 174 Wn.2d at 656.

In *Citizens for Responsible Wildlife Mgt. v. State*, the initiative challengers asserted that "there is no rational unity between banning body-gripping traps and the use of the pesticides because it is completely

unnecessary to ban traps in order to implement the ban on the use of these chemical compounds as pesticides." 149 Wn.2d 622, 637, 71 P.3d 644 (2003) (internal quotations omitted). The Court held that such an argument "misconstrued" the *Amalgamated Transit* decision*.* *Id.* at 638. It reasoned: "An analysis of whether the incidental subjects are germane to one another **does not necessitate a conclusion that they are necessary to implement each other**, although that may be one way to do so. This court has not narrowed the test of rational unity to the degree claimed by Citizens." *Id.* The Court of Appeals in this case also "misconstrued" this analysis, squarely doing what the Court said was incorrect by stating "none of the first four parts of I-124 are necessary to implement any other part of the initiative." Appendix at 15. This Court's approach has *not* been to require that all of the provisions be necessary to implement one another.

The Court of Appeals also misstated the *Filo Foods* analysis necessary to understand how the provisions of I-124 are reasonably germane to one another. The Court of Appeals stated:

> In *Filo Foods*, the Supreme Court found rational unity between a similar 90-day employee retention provision and the minimum wage provisions of Proposition **1 because both provisions related to maintaining job security**. 183 Wn.2d at 785. But protecting some employees from a guest's sexual assault or harassment has a different purpose than ensuring that all hotel employees maintain their jobs when a hotel changes ownership.

Appendix at 15 (emphasis added). However, this misstates this Court's actual analysis in *Filo Foods*, where this Court noted that "[a]lthough the title lists various provisions, it also states that Proposition 1 generally "concerns labor standards for certain employers." ... The retention policy **concerns labor standards and is reasonably germane to the establishment of minimum employee benefits, including job security**." *Id.* at 784–85. In other words, the retention policy in *Filo Foods* was "reasonably germane" to other provisions of Proposition 1 that provided "minimum employee benefits," even though those other benefits—*e.g.*, the "minimum wage provisions" of Prop. 1—did not themselves relate to "job security" at all. The analogy to I-124 is both precise and indisputable: the retention policy in I-124 is "reasonably germane" to the sexual assault/harassment provisions of I-124, because they both fall under the general rubric of "health, safety and labor standards" for Seattle hotel employees—in other words, worker well-being.

The Court of Appeals' assertion that "none of the first four parts of I-124" have anything to do with one another is simply incorrect. Appendix at 15. Hotel housekeepers suffer from various working conditions that cause injury. CP 105-110. On-the-job injuries are rampant (due in large part to excessive workloads), and hotel housekeepers do not have access to viable options for health care to address those injuries; to

add *literal* insult to injury, they have next to no job security or safety on the job. CP 107-108. To say, as the Court of Appeals did here, that these topics "are completely unrelated" to the topic of worker well-being through health, safety, and labor standards is inconceivable. Appendix at 13-15. Promoting worker well-being by implementing labor standards that *protect* them from harm—including capping the number of square feet a hotel worker can be required to clean and thereby *protecting* them against injury, *protecting* employees from job loss, *protecting* them from exposure to chemicals, and *protecting* them against assault and sexual harassment clearly share rational unity as a concept. These provisions of I-124 are clearly "reasonable germane" to each other.

Contrary to the reasoning employed by the Court of Appeals, the instant case is quite analogous to this Court's decision related to initiatives regulating labor standards. *Filo Foods* built upon this Court's jurisprudence clearly addressing single-subject and ballot title issues outlined in *WASAVP, Citizens for Responsible Wildlife*, and *Amalgamated Transit*, to name a few. Those cases left no room for confusion with respect to the issues presented in this case, unless engaging in a type of selective quoting of case law divorced from the actual holdings of the decisions (as engaged in by the Associations and ultimately by the Court of Appeals). The Associations sought to sow confusion and chaos where

none existed, and were successful in confusing the Court of Appeals. Therefore, this Court should grant review under RAP 13.4(b)(1) to prevent the decision from standing in direct conflict with this Court's case law on the issue.

C. DIRECT REVIEW IS WARRANTED UNDER RAP 13.4(b)(3) BECAUSE THE DECISION INVOLVES A SIGNIFICANT QUESTION OF LAW UNDER THE CONSTITUTION OF THE STATE OF WASHINGTON.

Appellants/Intervenor-Defendants also believe the Court of Appeals' decision raises a significant question of law under the Constitution of the State of Washington, *see* RAP 13.4(b)(3), as the decision misstates the Constitutional provisions and related statutes that would apply to a city like Seattle. Appellants/Intervenor-Defendants agree with the City's position on this matter.

D. DIRECT REVIEW IS WARRANTED UNDER RAP 13.4(b)(4) BECAUSE THE DECISION CREATES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST REQUIRING ULTIMATE DETERMINATION BY THIS COURT.

RAP 13.4(b)(4) states that the Court will accept a petition for review if "the petition involves an issue of substantial public interest that should be determined by the Supreme Court." *Id.* Given the above-articulated concern and confusion that the Court of Appeals' decision has now sown into the jurisprudence surrounding ballot initiatives, there is a

clear issue of substantial public interest that *should* be determined by the Supreme Court.

Likewise, this Court has not narrowed the rational unity test to the degree done so by the Court of Appeals. As the following review demonstrates, I-124 bears no resemblance to the mere handful of laws with general titles that this Court has struck down on this basis during the more than 120 years of the constitutional provision's existence.

- *Washington Toll Bridge Auth. v. State*, 49 Wn.2d 520, 523-524, 304 P.2d 676 ("*Wash. Toll Bridge Auth. II"*) (1956), struck down an act that provided both a procedure for the establishing and financing of toll roads generally and the financing for a specific toll road from Tacoma to Everett. The Court concluded that the statute had two component parts with two different purposes, the first continuing and general in character, the second specific and temporary.
- *Price v. Evergreen Cemetery Co. of Seattle,* 57 Wn.2d 352, 353-54, 357 P.2d 702 (1960), struck down an act that provided for a cemetery fund and administrative board on the one hand, and banned racial discrimination in private cemeteries on the other.
- *Barde v. State*, 90 Wn.2d 470, 472, 584 P.2d 390 (1978) struck down an enactment that provided criminal sanctions for "dognapping" and the recovery of attorneys' fees in civil replevin actions, finding that the two subjects had no rational unity to one another.
- *Amalgamated Transit* found that I-695 embraced two subjects— (1) setting license tabs at $30 and (2) providing a method for approving future tax increases— that both fell under the general topic of taxes. 142 Wn.2d at 217. This Court invalidated the initiative in its entirety because the purposes of the two subjects were unrelated to each other.

- *Kiga* held that the initiative had two subjects: a tax refund and changes to the assessment process including a cap on property taxes. 144 Wn.2d at 827. The Court held that the refund provision was unrelated to the changes to property tax assessments in that the provision encompassed much more than property taxes in general.
- *Lee v. State*, 185 Wn.2d 608, 374 P.3d 157 (2016), following *Kiga*, addressed an initiative whose subjects were "either a reduction to the current sales tax rate and a constitutional amendment, or a reduction to the current sales tax rate and a change to the way all future tax increases are approved," *Id.* at 622, noting that "[u]nder any iteration, a reduction to the sales tax rate is unrelated to both a constitutional amendment, which would impact future legislatures, and to the way that future taxes and fees are approved." *Id.*

I-124 does not even arguably suffer from the same structural defect as the measures struck down in *Amalgamated Transit* and *Kiga.*[1] And the facts of *Lee v. State* are so distinguishable from those here that the Court of Appeals' reliance on that case to support its conclusion strains comprehension. Nor does I-124 comprise subtopics as disparate as those struck down by this Court in the past. All of I-124's subtopics rationally relate to improving worker well-being by establishing and enforcing health, safety, and labor standards with respect to certain employers. It easily satisfies the rational unity test.

Without clarification by this Court, the citizens of Washington face an even muddier description of what initiatives may or may not contain to

[1]In *WASAVP*, the Court explained that the fundamental flaw with the initiatives at issue in *Amalgamated Transit* and *Kiga,* was that they combined a very specific law with an immediate impact with a general measure having only a future impact. 174 Wn.2d at 659.

be compliant with the “single subject” rule. The Court of Appeals’ decision is a dramatic departure from this Court’s previous approach to how to analyze such issues.

Worse still, as a result, hotel housekeepers—largely low-wage, immigrant workers—are now without the protective legislation so overwhelmingly supported by the voters of Seattle. Housekeepers report rampant incidents of harassment and assault in spaces where they are alone with guests; in a survey of Seattle housekeepers, half of the respondents reported being touched, groped, blocked from leaving rooms, exposed to sexual content, and harassed in other ways by guests—and most incidents go unreported to management. CP 107. Another survey from Illinois found that 49 percent of hotel housekeepers had a guest open the door naked, expose themselves, or flash them. CP 122. And without legal requirements to track such incidents, police are hindered in their abilities to track down offenders. CP 122.

Meanwhile, they suffer from on-the-job injuries due in large part to excessive workloads—and their healthcare options are insufficient to care for them. CP 107-108. In the same survey, nearly all surveyed housekeepers reported that they suffer from work-related pain. CP 108. The same workers who help hotels earn record-breaking profits feel pain in their bodies—including their shoulders, backs, knees, and hands—and

have experienced increasing workloads and missed breaks. *Id.* And their pain doesn't end at the close of the workday—their pain interferes with eating, walking, sleeping, cooking, and other routine activities, even after taking days off to rest and even despite taking pain medication. CP 152.

This is clearly a matter of public importance sufficient to warrant review.

VI. CONCLUSION

For the foregoing reasons, Appellants/Intervenor-Defendants ask that this Court accept review of the Court of Appeals' decision.

Respectfully submitted this 23rd day of January, 2019.

Laura Ewan, WSBA No. 45201
BARNARD IGLITZIN & LAVITT, LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119
Ph. (206) 257-6012
Fax (206) 257-6048
ewan@workerlaw.com

Attorneys for Appellants / Intervenor-Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 2019, I caused the foregoing Appellants/Intervenor-Defendants Petition for Discretionary Review to be filed with the clerk of the court via the e-filing web portal, which will automatically provide notice of the filing to:

Rebecca Chraim
rjkuntze@gmail.com

Michele G. Radosevich
Harry J.F. Korrell III
Matthew Jedreski
micheleradosevich@dwt.com
harrykorrell@dwt.com
mjedreski@dwt.com

Michael Ryan
Erica Franklin
Jeff Slayton
michael.ryan@seattle.gov
erica.franklin@seattle.gov
jeff.slayton@seattle.gov

Laura Ewan, WSBA No. 45201

APPENDIX

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

AMERICAN HOTEL & LODGING ASSOCIATION, SEATTLE HOTEL ASSOCIATION, and WASHINGTON HOSPITALITY ASSOCIATION, Appellants, v. CITY OF SEATTLE, UNITE HERE! LOCAL 8, and SEATTLE PROTECTS WOMEN, Respondents.	No. 77918-4-I DIVISION ONE PUBLISHED OPINION FILED: December 24, 2018

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2018 DEC 24 AM 9:04

ANDRUS, J. — In November 2016, the citizens of Seattle voted to adopt Initiative 124 (I-124), now codified at Seattle Municipal Code ch.14.25. Three hotel associations challenge the initiative as a violation of the "single subject" rule of RCW 35A.12.130 and article IV, section 7 of the Seattle City Charter. We conclude the ordinance contains provisions not germane one to another and, therefore, violates the single subject rule. We reverse.

FACTS

On November 8, 2016, Seattle voters approved I-124. The ballot title for this initiative read as follows:

> Initiative 124 concerns health, safety and labor standards for Seattle hotel employees.

> If passed, this initiative would require certain sized hotel-employers to further protect employees against assault, sexual harassment, and injury by retaining lists of accused guests among other measures; improve access to healthcare; limit workloads; and provide limited job security for employees upon hotel ownership transfer. Requirements except assault protections are waivable through collective bargaining. The City may investigate violations. Persons claiming injury are protected from retaliation and may sue hotel-employers. Penalties go to City enforcement, affected employees, and the complainant.
>
> Should this measure be enacted into law?
>
> Yes
> No

The initiative passed with 76.59 percent of the vote. The City certified the results on November 29, 2016, and the initiative went into effect the following day.[1]

The initiative has seven parts. Part 1 is intended to protect hotel employees from violent assault and sexual harassment by guests. SMC 14.25.020. If a hotel employee is assigned to work in a guest room without other employees present, the employer must provide that employee with a panic button to use in an emergency. SMC 14.25.030. Hotel employers must maintain a list of names of any guest accused of assaulting, sexually assaulting, or sexually harassing hotel employees. SMC 14.25.040(A). Any guest accused of such misconduct must remain on the list for five years, and hotel employers must notify other employees assigned to an accused guest's room and warn them to exercise caution when entering that room. SMC 14.25.040(A), (C). If an accusation is supported by a

[1] The ordinance authorized and directed the Office of Labor Standards to promulgate rules consistent with the new chapter. SMC 14.25.150(D)(2). The rules became effective in July 2018. SHRR 150-010 to -300.

sworn statement "or other evidence,"[2] the hotel employer must bar the guest from the hotel for three years. SMC 14.25.040(B). Part 1 also requires hotel employers to post signs notifying guests of the protections afforded by I-124. SMC 14.25.050. Lastly, Part 1 provides that after an employee accuses a guest of sexual assault or harassment, a hotel employer must reassign the employee to a different work area upon request, provide paid time off to allow the employee to contact the police, a counselor, or an advisor, and, with the employee's consent, report any accusations of criminal conduct by guests to law enforcement. SMC 14.25.060.

Part 2 seeks to protect hotel workers from on-the-job injury. SMC 14.25.070. SMC 14.25.080 requires hotel employers to provide and use safety devices and safeguards, as well as "use work practices, methods, processes, and means" that are "reasonably adequate to make their workplaces safe." Under rules adopted by the Seattle Office of Labor Standards in July 2018, the workplace safety requirements of SMC 14.25.080 "must at least meet those outlined by the Washington Industrial Safety and Health Act" (WISHA), RCW ch. 49.17 and its administrative regulations. SHRR 150-070.

SMC 14.25.090 requires hotel employers to protect their employees from exposure to hazardous chemicals by controlling chemical agents, protecting employees from having contact with or being exposed to chemical agents, and providing employees with information on hazardous chemicals in their work areas.[3]

[2] "Other evidence" is not defined in the ordinance. SHRR 150-050(3) defines "other evidence" as "evidence other than statements of the victim, witnesses, or other persons, that tends to support an accusation of assault, sexual assault, or sexual harassment against a guest," including "physical evidence, audio and video recordings or photographs of events, occurrences, injuries, incident scenes, or other similar evidence."

[3] SHRR 150-080 provides that employers "must use methods of controlling chemical agents that at least meet the minimum requirements" of WISHA and its administrative regulations. SHRR 150-

SMC 14.25.100 prohibits "large hotels," defined as hotels with 100 or more guest rooms,[4] from requiring housekeepers to clean more than 5,000 square feet of floor space in an eight-hour workday unless the hotel pays the worker time and a half. Under administrative regulation, an employee has a right to refuse the employer's request to clean more than the maximum square footage allowed in the ordinance. SHRR 150-140.

Part 3 is intended to improve access to medical care for hotel employees. SMC 14.25.110. Under SMC 14.25.120, "large hotel" employers must provide healthcare subsidies to low-wage employees or provide health care coverage equal to at least a gold-level policy on the Washington Health Care Benefit Exchange.

Part 4 provides job security to hotel workers by requiring hotels undergoing a change in ownership or control to maintain a list of employees, based on seniority. SMC 14.25.130. The new hotel owner must hire its employees from this list for six months and retain employees hired from this list for at least 90 days, unless there is good cause for termination. SMC 14.25.140.

Part 5 is entitled "Enforcement." SMC 14.25.150(A) makes it a violation for any hotel employer to interfere with any right protected by the ordinance or to discharge any employee exercising rights under the ordinance. If an employer takes an adverse action within 90 days of that employee's exercise of rights under the ordinance, there is a rebuttable presumption of retaliation. SMC

---

090 similarly incorporates by reference the WISHA requirements for protecting employees from the hazard of contact with or exposure to chemical agents.

[4] SMC 14.25.160.

14.25.150(A)(5). Part 5 also prohibits hotel employers from threatening to report an employee's suspected citizenship or immigration status. SMC 14.25.150(A)(4). SMC 14.25.150(B) mandates that hotel employers give written notification to each employee of their rights under the ordinance in each language spoken by 10 or more employees.

SMC 14.25.150(C) creates a "private enforcement action." It provides that "any person claiming injury" from a violation of any part of the ordinance is entitled to bring a lawsuit in King County Superior Court or in any other court of competent jurisdiction to enforce its provisions. SMC 14.25.150(C)(1). The claimant "shall be entitled to all remedies available at law or in equity" and may seek "lost compensation and other damages, reinstatement, declaratory or injunctive relief, prejudgment interest, exemplary damages equal to the amount of wages wrongfully withheld or not paid" and to collect penalties described elsewhere in the ordinance. SMC 14.25.150(C)(1). A prevailing claimant is also entitled to an award of attorney fees and expenses. SMC 14.25.150(C)(2).

SMC 14.25.150(D) empowers the City's Office of Civil Rights to investigate alleged violations of the ordinance. It also authorizes the Division Director of the Office of Labor Standards within the Office of Civil Rights to promulgate rules "that protect the identity and privacy rights of employees who have made complaints" under the ordinance. SMC 14.25.150(D)(2).

SMC 14.25.150(E) sets out penalties a court may impose for ordinance violations. For each workday during which the employer is in violation, a court may impose a penalty of between $100 and $1,000 per day. SMC 14.25.150(E)(1). If

civil penalties are imposed, they must be distributed per the following formula: 50 percent to the Office of Labor Standards, 25 percent to "aggrieved employees," and 25 percent to the "person bringing the case." SMC 14.25.150(E)(2).

Part 6 defines key terms used in the ordinance. It does not define sexual assault or sexual harassment.

Part 7, entitled "Miscellaneous," includes a severability provision, SMC 14.25.180, and a provision prohibiting the waiver by agreement of the rights set out in the ordinance, unless contained in a collective bargaining agreement, SMC 14.25.170. SMC 14.25.170(B) provides that the provisions protecting employees from assault and sexual harassment and mandating hotels maintain lists of accused guests are not waivable.

The American Hotel & Lodging Association, the Seattle Hotel Association, and the Washington Hospitality Association (the Associations) brought suit to challenge I-124. The City of Seattle, and two intervening organizations, UNITE HERE! Local 8 and Seattle Protects Women (the Intervenors), defended the validity of the initiative. On cross-motions for summary judgment, the superior court upheld the validity of I-124. The Associations appeal.

ANALYSIS

The Associations argue the initiative violates the single subject rule of RCW 35A.12.130, article IV, section 7 of the Seattle City Charter, and article II,

section 19 of the Washington State Constitution.[5] The City and Intervenors argue the provisions of I-124 encompass only one subject—employee health, safety, and welfare—and the initiative is thus valid.

Article II, section 19 of the Washington State Constitution provides that "[n]o bill shall embrace more than one subject, and that shall be expressed in the title." This constitutional provision does not apply to I-124 because article II, section 19, by its express terms, applies only to state legislation. Carlson v. San Juan County, 183 Wn. App. 354, 376-77, 333 P.3d 511 (2014). But RCW 35A.12.130 also requires city ordinances to contain only a single subject, and the Seattle City Charter, article IV, section 7, similarly provides that every ordinance "shall contain but one subject."

Article XI, section 11 of the Washington Constitution provides that no city may enact any law that conflicts with state general law. An ordinance is inconsistent with article XI, section 11 if it (a) prohibits what state law permits; (b) thwarts the legislative purpose of a statutory scheme; or (c) exercises power that the statutory scheme does not confer on local governments. Emerald Enters., LLC v. Clark County, 2 Wn. App. 2d 794, 803-04, 413 P.3d 92, review denied, 190 Wn.2d 1030, 421 P.3d 445 (2018). If I-124 violates the single subject mandate of RCW 35A.12.130, it would violate article XI, section 11 because it would constitute an exercise of power that the statute does not permit. See Dep't of Ecology v.

[5] The Associations also challenge Part 1 as a violation of the privacy and due process rights of its members' guests, and Part 2 as preempted by WISHA. Because we resolve this appeal on the single subject rule challenge, we need not reach the other issues.

Wahkiakum County, 184 Wn. App. 372, 377, 337 P.3d 364 (2014) (ordinance that conflicts with state general law is unconstitutional under article XI, section 11).

Initiatives are presumed to be constitutional. Amalgamated Transit Union Local 587 v. State, 142 Wn.2d 183, 204-05, 11 P.3d 762 (2000) (Amalgamated Transit); see also Citizens for Responsible Wildlife Mgmt. v. State, 149 Wn.2d 622, 631, 71 P.3d 644 (2003) (Citizens) (confirming that initiatives receive the same level of scrutiny as legislatively enacted bills). The party challenging an ordinance has the burden of demonstrating its unconstitutionality. Emerald Enters., 2 Wn. App. 2d at 804.

Although article II, section 19 does not directly apply, case law interpreting the constitutional single subject rule is relevant because the Washington Supreme Court has relied on this case law when evaluating whether a city ordinance violates RCW 35A.12.130. Filo Foods, LLC v. City of SeaTac, 183 Wn.2d 770, 781-82, 357 P.3d 1040 (2015). We review de novo the trial court's grant of summary judgment under the statutory single subject rule. Id. at 781.

Washington case law recognizes the single subject rule has three general purposes. Robert D. Cooter & Michael D. Gilbert, A Theory of Direct Democracy and the Single Subject Rule, 110 Colum. L. Rev. 687, 705-06 (2010) (Cooter & Gilbert). The first purpose is to prevent "logrolling." Wash. Ass'n for Substance Abuse & Violence Prevention v. State, 174 Wn.2d 642, 655, 278 P.3d 632 (2012) (WASAVP); Amalgamated Transit, 142 Wn.2d at 207. Logrolling is combining multiple measures, none of which would pass on its own, into an omnibus proposition that receives majority support. Cooter & Gilbert, at 706.

A second goal is to prevent "riding," or pushing through unpopular legislation by attaching it to popular or necessary legislation. Wash. Ass'n of Neighborhood Stores v. State, 149 Wn.2d 359, 368, 70 P.3d 920 (2003), abrogated on other grounds by Filo Foods, 183 Wn.2d 770; see also Michael D. Gilbert, Does Law Matter? Theory and Evidence from Single-Subject Adjudication, 40 J. Legal Studies 333, 338 (2011). The single subject rule was written into the Washington Constitution to address the "riding" problem:

> [T]here had crept into our system of legislation a practice of engrafting upon measures of great public importance foreign matters for local or selfish purposes, and the members of the Legislature were often constrained to vote for such foreign provisions to avoid jeopardizing the main subject or to secure new strength for it, whereas if these provisions had been offered as independent measures they would not have received such support.

Lee v. State, 185 Wn.2d 608, 620, 374 P.3d 157 (2016) (quoting State ex rel. Wash. Toll Bridge Auth. v. Yelle, 54 Wn.2d 545, 550-51, 342 P.2d 588 (1959)).

The rule's third purpose is to simplify the process and improve political transparency. Lee at 620; State v. Broadaway, 133 Wn.2d 118, 124, 942 P.2d 363 (1997) (policy underlying single subject rule is to provide notice to public of what is contained in proposed legislation). "In theory, limiting initiatives and referenda to a single subject makes it easier for citizens to understand and scrutinize their contents." Cooter & Gilbert, at 709.

Only where there exists a rational relationship between the provisions of the initiative and with the initiative's subject "can we be certain voters were not required to vote for an unrelated subject of which the voters disapproved in order to pass a law pertaining to a subject of which the voters were committed." City of Burien v. Kiga, 144 Wn.2d 819, 826, 31 P.3d 659 (2001). When an initiative embodies two

unrelated subjects, "it is impossible for the court to assess whether either subject would have received majority support if voted on separately." Id. at 825. An initiative embodying two unrelated subjects is, thus, void in its entirety. Lee, 185 Wn.2d at 620.

To determine whether an initiative violates the single subject rule, we first look to the ballot title[6] to determine whether it is general or restrictive because the type of title determines the analysis we undertake. Amalgamated Transit, 142 Wn.2d at 207-10. If the ballot title is general in nature, we look to the body of the initiative to determine whether "rational unity" exists among the matters addressed in the initiative. Kiga, 144 Wn.2d at 826. The existence of rational unity is determined by whether the matters are "germane" to the general title and to one another. Id. While rational unity must exist among all matters included within the measure and with the general topic expressed in the title, an initiative can embrace several "incidental" subjects or subdivisions "so long as they are related." Id. If, however, the ballot title is restrictive, the provisions of the initiative must all fall "fairly within" the restrictive language. Yelle, 32 Wn.2d at 26.

The parties disagree whether I-124's ballot title is general or restrictive. If a ballot title suggests a general, overarching subject matter, it will be considered general. Filo Foods, 183 Wn.2d at 782. A ballot title is restrictive when "a particular part or branch of a subject is carved out and selected as the subject of the legislation." Id. at 783. The Supreme Court's analysis in Filo Foods is dispositive

[6] The ballot title includes the statement of the subject of the measure, the description of the measure, and the question of whether or not the measure should be enacted into law. WASAVP, 174 Wn.2d at 655.

on this question. In that case, the court considered the ballot title to SeaTac's Proposition 1 which read:

> Proposition No. 1 concerns labor standards for certain employers.
>
> This Ordinance requires certain hospitality and transportation employers to pay specified employees a $15.00 hourly minimum wage, adjusted annually for inflation, and pay sick and safe time of 1 hour per 40 hours worked. Tips shall be retained by workers who performed the services. Employers must offer additional hours to existing part-time employees before hiring from the outside. SeaTac must establish auditing procedures to monitor and ensure compliance. Other labor standards are established.
>
> Should this Ordinance be enacted into law?

Id. The court concluded this title was general because it "generally concerns labor standards for certain employers." Id. at 784.

The Associations argue that the ballot title in I-124 is distinguishable and more restrictive than Filo Foods because it carves out for regulation the narrow topic of protecting hotel employees from sexual assault and harassment by requiring hotels to keep a list of accused guests. We agree this part of I-124's ballot title is restrictive. The language about protecting employees "against assault, sexual harassment, and injury by retaining lists of accused guests" does carve out for regulation a specific risk hotel workers confront. But the balance of the title broadens its scope to cover more general working conditions—"improv[ing] access to healthcare; limit[ing] workloads; and provid[ing] limited job security." In Amalgamated Transit, the Supreme Court held that a ballot title containing some restrictive language may, nevertheless, be categorized as a general title when the overall tenor of the ballot title is general in nature. 142 Wn.2d at 216-17. We conclude, under Filo Foods, I-124's ballot title is general.

While Filo Foods governs our conclusion as to the nature of the ballot title, it does not lead us to conclude that I-124 passes the rational unity test. The City and Intervenors argue the provisions of I-124 all share the related purpose of ensuring employee health, safety, and welfare, and the initiative is analogous to Filo Foods. But Proposition 1, at issue in Filo Foods, is distinguishable from I-124 in several material ways. Filo Foods' Proposition 1 set out minimum employment standards for certain hospitality and transportation employers in the city of SeaTac. 183 Wn.2d at 778. The Supreme Court concluded that Proposition 1's hourly minimum wage, paid sick leave, tip retention, and 90-day worker retention provisions all had the related purpose of establishing "minimum employee benefits, including job security." Id. at 785.

Unlike Filo Foods, I-124, by its own language, identifies at least four distinct and separate purposes. Part 1 is intended to protect certain hotel employees from violent assault and sexual harassment. SMC 14.25.020. Part 2 is intended to protect hotel employees from on-the-job injuries arising out of heavy lifting, repetitive tasks, and chemical exposure. SMC 14.25.070. Part 3 is intended to improve hotel workers' access to affordable medical care. SMC 14.25.110. And Part 4 is intended to provide job security to low income hotel workers when there is a change in hotel ownership. SMC 14.25.130.

The City and Intervenors, relying on language from Amalgamated Transit, argue each of these parts "will, or may, facilitate" the stated purpose of improving the health, safety, and working conditions of employees at certain hotels. 142 Wn.2d at 209. Whether a provision may facilitate the initiative's purpose is but one

part of a two-part test. While the initiative's various parts may be germane to the general topic of employee health, safety, and working standards, rational unity requires that matters within the body of the initiative be germane not only to the general title, but also to one another. WASAVP, 174 Wn.2d at 656.

Each of I-124's provisions is arguably related to the ballot title because each "may facilitate" the "health, safety and labor conditions" of certain hotel workers. But the purposes of the operative provisions in Parts 1 through 4 are completely unrelated. Where Filo Foods had one single purpose, I-124 has four, each of which sets out very different and distinct public policies.

The initiative is, thus, more analogous to Amalgamated Transit, Kiga, and Lee, than to Filo Foods. In Amalgamated Transit, the ballot title for I-695 stated, "Shall voter approval be required for any tax increase, license tab fees be $30 per year for motor vehicles, and existing vehicle taxes be repealed?" 142 Wn.2d at 212. Although the Supreme Court held the ballot title was a general one, it found no rational unity between the subjects of I-695 because the provisions setting license tab fees at $30 and those providing a continuing method to approve all future tax increases had two unrelated purposes. Id.

In Kiga, the ballot title to I-722 stated, "Shall certain 1999 tax and fee increases be nullified, vehicles exempted from property taxes, and property tax increases (except new construction) limited to 2% annually?" 144 Wn.2d at 825. The Court held that while the tax nullification provision and the property tax assessment provisions were related to the general topic of tax relief, those subjects were not germane to each other. Id. at 827. It reasoned that "[t]he nullification

and onetime refund of various 1999 tax increases and monetary charges [was] unnecessary and entirely unrelated to permanent, systemic changes in property tax assessments." Id.

Finally, in Lee, the Supreme Court invalidated I-1366, an initiative that imposed a one-time reduction in sales taxes if the legislature failed to pass a constitutional amendment requiring a two-thirds vote of the legislature to enact any new taxes. 185 Wn.2d at 613. Specifically, it saw

> no substantive difference between the one-time tax reduction coupled with a permanent change to the way all taxes are levied or assessed in Amalgamated [Transit] and Kiga, which violated the single-subject rule, and the reduction of the current sales tax rate and a permanent change to the constitution or to the method for approving all future taxes and fees set forth by [the initiative].

Id. at 622-23. It held that even if the subjects were related to the general topic of fiscal restraint or taxes, they were not germane to each other. Id. at 623; see also Barde v. State, 90 Wn.2d 470, 472, 584 P.2d 390 (1978) (no rational unity between criminal sanctions for dognapping and attorney fees in a civil action, even if both were germane to the general topic of taking or withholding property); Wash. Toll Bridge Auth. v. State, 49 Wn.2d 520, 523-24, 304 P.2d 676 (1956) (finding no rational unity where general initiative title—toll roads—contained two unrelated purposes). Accordingly, the court held in Lee that the initiative violated the single subject rule and was void in its entirety. 185 Wn.2d at 629.

I-124 is analogous to Lee's I-1366 because requiring hotels to maintain a list of people who have been accused of sexually harassing hotel employees is unrelated to limiting the number of square feet a hotel worker can be required to

clean in an eight-hour period without being paid overtime, or requiring a hotel to create a seniority list from which a new owner must hire employees for a period of time after a change in ownership. Part 1 of the initiative does not have, as its purpose, the same purpose as Part 2, 3, or 4. The unrelated purposes of the provisions of I-124 undermines any claim of rational unity.

Even assuming Part 1's guest registry requirements and Part 2's hazardous chemicals restrictions are related to the same goal of reducing on-the-job injuries, it is difficult to see how the guest registry provision is germane to providing hotel workers with employment security for a set period of time after a hotel changes ownership. In Filo Foods, the Supreme Court found rational unity between a similar 90-day employee retention provision and the minimum wage provisions of Proposition 1 because both provisions related to maintaining job security. 183 Wn.2d at 785. But protecting some employees from a guest's sexual assault or harassment has a different purpose than ensuring that all hotel employees maintain their jobs when a hotel changes ownership.

Moreover, none of the first four parts of I-124 are necessary to implement any other part of the initiative. Although "[a]n analysis of whether the incidental subjects are germane to one another does not necessitate a conclusion that they are necessary to implement each other, . . . that may be one way to do so." Citizens, 149 Wn.2d at 638. In WASAVP, the Supreme Court affirmed an initiative privatizing liquor sales despite the inclusion of an earmark of funds for public safety because the earmark provision was "necessary to implement" the statute. 174 Wn.2d at 656; see also Lee, 185 Wn.2d at 623 (discussing WASAVP). No similar

connection, however, exists between the first four sections of I-124. Part 1's sexual harassment provisions are not necessary to implement Part 2's hazardous chemical restrictions, or vice versa. Similarly, Part 3's requirements for medical insurance subsidies are not necessary to implement Part 1's sexual harassment protections, or vice versa. And Parts 1, 2, and 3 are not necessary to implement Part 4's seniority list and job security provisions.

Part 5 is the only provision that could fit into a "necessary to implement" category. Part 5 sets up a unique enforcement system by creating a new cause of action for injured hotel employees to sue employers for damages and to recover attorney fees. SMC 14.25.150(C). Part 5 also authorizes the City's Office of Civil Rights to investigate alleged violations, SMC 14.25.150(D), and it purports to empower a superior court to impose civil penalties for violations, SMC 14.25.150(E). Part 5 also contains a provision prohibiting hotel employers from threatening to reveal the citizenship or immigration status of an employee or an employee's family member. SMC 14.25.150(A)(4)(b).

While Part 5 is arguably germane to the first four parts of the initiative, it does not make Parts 1 through 4 germane to each other. And Part 5 itself conflicts with key provisions of Washington's workers' compensation system by creating a private cause of action that does not now exist under Washington law. RCW 51.04.010 abolished all jurisdiction of the courts to hear worker injury cases. The Industrial Insurance Act represents a "grand compromise" between industry and labor to remove workplace injuries from the court system and to provide injured workers with a swift, no-fault compensation system for on-the-job injuries. Birklid

v. Boeing Co., 127 Wn.2d 853, 859, 904 P.2d 278 (1995). Even if the City can lawfully enact worker safety provisions that are stricter than those imposed by the Department of Labor & Industries, the City does not explain how an ordinance can confer subject matter jurisdiction on a state court to resolve work-related injury claims when, by statute, the legislature abolished that very jurisdiction over a century ago. See Laws of 1911, ch. 74, § 1 (enacting RCW 51.04.010). The private cause of action provision appears to be a classic example of logrolling prohibited by RCW 35A.12.130.

Intervenors argue that I-124 should be affirmed because there is a long history in Washington of legislatively addressing labor conditions in a single piece of legislation. In WASAVP, the Supreme Court relied on a well-established history of legislative appropriations of revenue under the Liquor Act[7] to demonstrate the relatedness of I-1183's liquor privatization provisions and the earmark for law enforcement funding. 174 Wn.2d at 657. Intervenors cite the Industrial Welfare Act (IWA) as proof of a similar history of legislating employee protections at the same time. This argument, however, does not pass scrutiny.

The IWA, originally passed in 1913, mandated the payment of minimum wages for women and made it unlawful to employ women or minors in any job that was "detrimental to their health or morals." Laws of 1913, ch. 174, §§ 1-2. The IWA is now codified in RCW ch. 49.12. But the IWA expressly excludes "conditions of labor otherwise governed by statutes and rules and regulations relating to industrial safety and health" administered by the Department of Labor & Industries.

---

[7] Title 66 RCW.

RCW 49.12.005(5). Industrial safety and health has historically been addressed in separate legislation—the Industrial Insurance Act, Title 51 RCW—not in the IWA. Indeed, employees assaulted on the job may not generally sue their employers for injuries and are limited to filing a claim under the Industrial Insurance Act. Brame v. W. State Hosp., 136 Wn. App. 740, 749, 150 P.3d 637 (2007). Contrary to the Intervenors argument, the legislature has not combined minimum wage and worker safety requirements in the same legislation for decades.

Additionally, the legislature has enacted laws to protect employees from sexual harassment on the job under the Washington Law Against Discrimination, RCW 49.60.180. But it has passed separate legislation to entitle an employee to overtime—the Washington Minimum Wage Act, RCW ch. 49.46. There is no history of legislatively combining sexual harassment protections with minimum wage requirements.

Unlike WASAVP, we find no history of the legislature treating sexual harassment protections, overtime provisions, protections from hazardous chemicals, and seniority list requirements together in the same legislation. In Lee, the Supreme Court distinguished WASAVP because it found "no history that the legislature ha[d] treated sales tax reductions and constitutional amendments or supermajority requirements together." Lee, 185 Wn.2d at 623. WASAVP is similarly distinguishable here. There is no legislatively recognized connection between protecting employees from sexual harassment and providing safeguards against unemployment or ensuring fair wages for fair work. Nor is there any such history of joining legislation to protect the confidentiality of an employee's and his

or her family members' immigration status with other health, safety, and labor standards.

Additionally, Part 1 regulates more than just the employee-employer relationship; it regulates the hotels' relationship with their guests by requiring hotels to ban certain guests for at least three years. There is no history of regulating an employer's relationships with its customers alongside labor standards for its employees. I-124's requirement in Part 1 to deny accommodation to guests accused of sexual harassment, and Part 2's wage requirements for housekeepers cleaning more than 5,000 square feet in a day, and Part 4's mandated seniority hiring list do not share the same rational relationship as the public safety earmark did to liquor regulation in WASAVP.

Nor does the Supreme Court's holding in Citizens save I-124. In that case, a consortium of wildlife management, outdoor recreation, and farming groups challenged the constitutionality of I-713, a law making it a gross misdemeanor to capture or kill an animal with steel leg traps or certain poisons. 149 Wn.2d at 627. The consortium argued that the provisions banning leg traps were not rationally related to the provisions banning the use of pesticides to kill wild animals. Id. at 637. The court held these two provisions were germane to each other because they both addressed particular methods of trapping and killing animals. Id. at 639.

The trial court in this case adopted a broad reading of Citizens in rejecting the Associations' single subject challenge to I-124. It concluded that the initiative expressed a single purpose and the provisions facilitated the accomplishment of this purpose and, for this reason, did not violate the single subject rule. I-124,

however, is distinguishable from the initiative in Citizens because Parts 1, 2, and 4 are not just different methods of protecting employees from on-the-job injuries. Nor are these three parts just different methods of ensuring job security. The initiative mixes, on the one hand, protections from sexual assault and exposure to hazardous chemicals with, on the other hand, limits on how much a worker can clean without being entitled to overtime pay and the creation of a seniority list for hiring purposes if a hotel is sold. Part 1's requirement that hotels maintain a list of guests accused of sexual harassment has no rational relation to Part 2's overtime pay requirements for hotel housekeepers or to Part 4's requirement that new hotel owners must hire from a current list of employees for six months and then retain them for 90 days. Although these subjects are all germane to the general title—health, safety, and labor standards—they are not germane to each other.

The key inquiry for the single subject rule is whether the subjects are so unrelated that "it is impossible for the court to assess whether either subject would have received majority support if voted on separately." Kiga, 144 Wn.2d at 825. In this case, it is impossible to determine whether any subject of I-124 standing alone would have received majority support if voted on separately. I-124 is similar to the initiative discussed in Kiga where our Supreme Court found logrolling of unrelated measures because

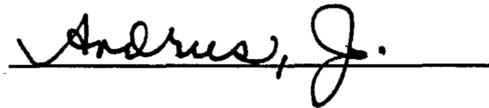
> a person who desired systemic changes to future property tax assessments but did not want to fiscally burden cities with the refunding of 1999 tax increases was required to vote for both measures or neither. Similarly, a person who did not own a home or who was otherwise unconcerned with changing methods for assessing property taxes but did desire a refund of other fees was required to vote for both measures or neither.

Id. at 828. Did I-124 receive overwhelming support because almost 80 percent of Seattle voters supported all the provisions? Or did a majority of the voters want to provide better healthcare to these workers and were willing to accept the guest registry provisions as a necessary evil to achieve the healthcare goal? The question could be asked for any combination of the subjects covered in I-124.

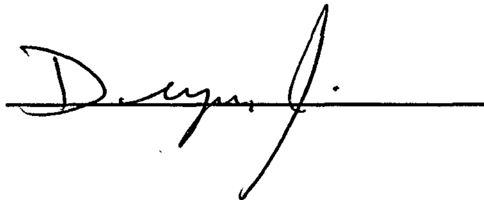
Because there is no rational unity between the provisions of I-124, it is impossible for the court to determine whether any provision would have received majority support if voted on separately. We conclude the Associations have carried their burden of proving that I-124 violates the single subject rule set out in RCW 35A.12.130 and article IV, section 7 of the Seattle City Charter. It is, thus, unconstitutional under Article XI, section 11 of the Washington Constitution and invalid in its entirety.

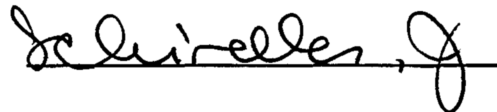
We reverse the trial court order granting summary judgment in favor of the City and Intervenors and remand to the superior court for entry of summary judgment in favor of the Associations.

Reversed.



WE CONCUR:





Chapter 14.25 - HOTEL EMPLOYEES HEALTH AND SAFETY

14.25.010 - Findings

The people hereby adopt basic safeguards to protect hotel employees from assault and injury on the job, to improve access to affordable healthcare, and to provide a minimum standard of job security for hotel employees. This measure also includes strong enforcement mechanisms to ensure that hotel owners and operators comply with the law. Providing these protections to hotel employees will make Seattle's economy fairer and more resilient.

Hotel employees are vital contributors to our community. The hospitality industry is a profitable and important component of our economy that receives substantial taxpayer support, including through the $1.5 billion expansion of the Washington State Convention Center.

However, the hospitality industry has not adequately provided for the safety and security of hotel employees. Due to the unique nature of hotel work, hotel employees are subjected to a higher risk of harassment and violence on the job. Unregulated workloads result in injury rates for hotel housekeepers that are higher than those of coalminers. At the same time, hospitality employees have the lowest rate of access to employer-offered health insurance of any industry in the State of Washington and face unaffordable monthly premiums for family healthcare. Frequent property sales, changes in ownership, mergers and acquisitions in the hospitality industry mean that hotel employees face employment disruptions that are wholly beyond their control. As a vast majority of Seattle hotel employees are women, immigrants, and people of color, these hazards and instabilities within the hospitality industry exacerbate existing structural inequities experienced by these groups. It is appropriate and necessary to protect employees in the hotel industry - those who clean the rooms, change the sheets, and dice the vegetables - from assault and injury, unmanageable medical costs, and unnecessary job loss.

(Initiative 124 , § 1, 2016.)

PART 1 - PROTECTING HOTEL EMPLOYEES FROM VIOLENT ASSAULT AND SEXUAL HARASSMENT

14.25.020 - Intent

It is the intent of Part 1 of this measure to protect hotel employees from violent assault, including sexual assault, and sexual harassment and to enable employees to speak out when they experience harassment or assault on the job. Hotel employees are often asked to work alone in hotel rooms, which sometimes may be occupied, placing them at risk of violent assault, including sexual assault, and sexual harassment.

(Initiative 124 , § 1, 2016.)

14.25.030 - Providing panic buttons to hotel employees providing in-room services

A hotel employer shall provide a panic button to each hotel employee assigned to work in a guest room without other employees present, at no cost to the employee. An employee may use the panic button if the employee reasonably believes there is an ongoing crime, harassment, or other emergency in the employee's presence. The hotel employee may cease work and leave the immediate area of perceived danger to await the arrival of assistance, and no adverse employment action may be taken against the employee for such action.

(Initiative 124 , § 1, 2016.)

14.25.040 - Protecting hotel employees from violent or harassing hotel guests

A. A hotel employer must record the accusations it receives that a guest has committed an act of violence, including assault, sexual assault, or sexual harassment towards an employee. The hotel employer must determine and record the name of the guest; if the name of the guest cannot be determined, the hotel employer must determine and record as much identifying information about the guest as is reasonably possible. The hotel employer shall compile and maintain a list of all guests so accused. The employer shall retain a guest on the list for at least five years from the date of the most recent accusation against the guest, during which time the employer shall retain all written documents relating to such accusations.

B. If an accusation against a guest under subsection 14.25.040.A involves assault, sexual assault, or sexual harassment, and is supported by a statement made under penalty of perjury or other evidence, the employer shall decline to allow the guest to return to the hotel for at least three years after the date of the incident. No employee may be required to provide such statement.

C. The hotel employer must notify any hotel employee assigned to work in guest rooms without other employees present, prior to starting their scheduled work, of any guest on the list established by subsection 14.25.040.A who is staying at the hotel, identify the room assigned to the guest, and warn the employees to exercise caution when entering that room during the time the guest is staying in the hotel.

(Initiative 124 , § 1, 2016.)

14.25.050 - Deterring assaults by notifying guests of employee protections

Each hotel shall place a sign on the back of each guest room door, written in a font size of no less than 18 points, that includes the heading "The Law Protects Hotel Housekeepers and Other Employees From Violent Assault and Sexual Harassment," a citation to this Chapter 14.25, and notice of the fact that the hotel is providing panic buttons to its housekeepers, room servers, and other employees assigned to work in guest rooms without other employees present, in compliance with this Chapter 14.25.

(Initiative 124 , § 1, 2016.)

14.25.060 - Protecting employees who report assault or sexual harassment

An employee who brings to the attention of a hotel employer the occurrence of an act of violence, including assault and sexual assault, or sexual harassment by a guest shall be afforded the following rights:

A. Upon request, the employee shall be reassigned to a different floor, or, if none is available for the employee's job classification, a different work area away from the guest for the entire duration of the guest's stay at the hotel;

B. The hotel employer shall immediately allow the employee sufficient paid time to contact the police and provide a police statement and to consult with a counselor or advisor of the employee's choosing; and

C. The hotel employer, with the consent of the employee, shall report an incident involving alleged criminal conduct by a guest to the law enforcement agency with jurisdiction and shall cooperate with any investigation into the incident undertaken by the agency and any attorney for the complaining employee.

(Initiative 124 , § 1, 2016.)

PART 2 - PROTECTING HOTEL EMPLOYEES FROM INJURY

14.25.070 - Intent

It is the intent of this Part 2 to protect hotel employees from on-the-job injury. Hotel employees suffer an unacceptably high rate of on-the-job injuries from heavy lifting, repetitive tasks, and chemical exposure, and are 40 percent more likely to be injured on the job than all other service sector workers. The provisions of this Part 2 will help to protect hotel employees from such injuries.

(Initiative 124 , § 1, 2016.)

14.25.080 - Hotel employers must adopt reasonable practices to protect the safety of hotel employees

Hotel employers must provide and use safety devices, and safeguards and use work practices, methods, processes, and means that are reasonably adequate to make their workplaces safe.

(Initiative 124 , § 1, 2016.)

14.25.090 - Hotel employers must protect their employees from chemical hazards

Hotel employers must:

A. Control chemical agents in a manner that they will not present a hazard to employees;

B. Protect employees from the hazard of contact with, or exposure to, chemical agents; and

C. Provide employees with effective information on hazardous chemicals in their work area at the time of their initial job assignment. Information must be provided whenever a new physical or health hazard related to chemical exposure is introduced into work areas.

(Initiative 124 , § 1, 2016.)

14.25.100 - Hotel employers must protect hotel housekeepers from injuries

A. Significant injuries to hotel housekeepers result from the repetitive and strenuous tasks that must be performed in each guest room, including lifting requirements that can substantially exceed federal occupational safety standards. Hotel housekeepers face the highest injury rate of all hotel occupations. Risk of injury is increased when hotel housekeepers must clean more than 5,000 square feet of guest rooms in an eight-hour workday, and further increases when housekeepers are required to perform more than ten strenuous guest room cleanings during the day or to clean guest rooms at an unsafe speed. Workplace interventions have been found to significantly reduce injury rates for hotel housekeepers.

B. An employee providing housekeeping services at a large hotel shall not be required to clean guest rooms totaling more than 5,000 square feet of floor space in an eight-hour workday. When an employee performs ten or more strenuous room cleanings in an eight-hour workday, the maximum floor space shall be reduced by 500 square feet for the tenth strenuous room cleaning and for each such strenuous room cleaning thereafter.

C. For an employee cleaning guest rooms for fewer than eight hours per day, the foregoing maximums and reductions shall be prorated according to the actual number of hours worked cleaning guest rooms.

D. If an employee performs cleaning in excess of the square footage allowed by this Section 14.25.100 in a day, the hotel employer shall pay such hotel employee at least time-and-a- half the employee's regular rate of pay for all time worked cleaning guest rooms during that day.

(Initiative 124 , § 1, 2016.)

PART 3 - IMPROVING ACCESS TO MEDICAL CARE FOR LOW INCOME HOTEL EMPLOYEES

14.25.110 - Intent

It is the intent of Part 3 to improve access to affordable family medical care for hotel employees. In Washington's economy, hospitality industry employers are the least likely to offer health insurance to employees and their contributions are second to lowest. The average monthly cost to a hotel employee for family medical coverage through an employer-offered plan exceeds $500 per month, forcing nearly half of eligible employees to decline such plans. Access to affordable medical care is critical for hotel employees to care for themselves and their families. Additional compensation reflecting hotel employees' anticipated family medical costs is necessary to improve access to medical care for low income hotel employees.

(Initiative 124 , § 1, 2016.)

14.25.120 - Large hotel employers must provide additional compensation reflective of the cost of medical coverage to low-income hotel employees

A. A large hotel employer shall pay, by no later than the 15th day of each calendar month, each of its low-wage employees who work full time at a large hotel additional wages or salary in an amount equal to the greater of $200, adjusted annually for inflation, or the difference between (1) the monthly premium for the lowest-cost, gold-level policy available on the Washington Health Benefit Exchange and (2) 7.5 percent of the amount by which the employee's compensation for the previous calendar month, not including the additional wage or salary required by this Section 14.25.120, exceeds 100 percent of the federal poverty line. The additional wages or salary required under this Section 14.25.120 are in addition to and will not be considered as wages paid for purposes of determining compliance with the hourly minimum wage and hourly minimum compensation requirements set forth in Sections 14.19.030 through 14.19.050.

B. A large hotel employer shall not be required to pay the additional wages or salary required by this Section 14.25.120 with respect to an employee for whom the hotel employer provides health and hospitalization coverage at least equal to a gold-level policy on the Washington Health Benefit Exchange at a premium or contribution cost to the employee of no more than five percent of the employee's gross taxable earnings paid to the employee by the hotel employer or its contractors or subcontractors.

C. If a household includes multiple employees covered by this Section 14.25.120, the total of all additional wage or salary payments made pursuant to this Section 14.25.120 to such employees by one or more hotel employers shall not exceed the total cost for coverage of the household under the least-expensive gold policy offered on the Washington Health Benefit Exchange. If one or more employees in the household are employed by more than one hotel employer, the hotel employers may coordinate their payments so that their combined payments do not exceed the foregoing maximum. In the absence of an agreement among hotel employers to so coordinate their payments, the amount of additional wages payable by each hotel employer shall be the amount due to each employee under subsection 14.25.120.A.

D. The inflation adjustment required under subsection 14.25.120.A shall be calculated using the year-over-year increase in cost of the lowest cost gold level policy available on the Washington Health Benefit Exchange.

(Initiative 124 , § 1, 2016.)

PART 4 - PREVENTING DISRUPTIONS IN THE HOTEL INDUSTRY

14.25.130 - Intent

This Part 4 is intended to reduce disruptions to the Seattle economy that could result from the increasing number of property sales and changes in ownership in the hotel industry and also to protect low-income workers. Even long-term and exemplary employees may find themselves terminated solely because a multinational corporation has decided to sell the hotel at which they work.

(Initiative 124 , § 1, 2016.)

14.25.140 - Worker retention

A. When a hotel undergoes a change in control, the outgoing hotel employer shall, within 15 days after the execution of a transfer document, provide to the incoming hotel employer the name, address, date of hire, and employment occupation classification of each retention hotel worker.

B. The incoming hotel employer shall maintain a preferential hiring list of retention hotel workers identified by the outgoing hotel employer, as set forth in subsection 14.25.140.A, and shall be required to hire from that list for a period beginning upon the execution of the transfer document and continuing for six months after the hotel is open to the public under the incoming hotel employer.

C. If the incoming hotel employer extends an offer of employment to a retention hotel worker, the offer shall be in writing and remain open for at least ten business days. The incoming hotel employer shall retain written verification of that offer for no fewer than three years from the date the offer was made. The verification shall include the name, address, date of hire, and employment occupation classification of each retention hotel worker.

D. An incoming hotel employer shall retain each retention hotel worker hired pursuant to this Section 14.25.140 for no fewer than 90 days following the retention hotel worker's employment commencement date. During this 90-day transition employment period, retention hotel workers shall be employed under the terms and conditions established by the incoming hotel employer, or as required by law.

E. If, within the 90-day transition employment period established in subsection 14.25.140.D, the incoming hotel employer determines that it requires fewer hotel employees than were required by the outgoing hotel employer, the incoming hotel employer shall retain retention hotel workers by seniority within each job classification to the extent that comparable job classifications exist.

F. During the 90-day transition employment period, the incoming hotel employer shall not discharge without just cause a retention hotel worker retained pursuant to this Section 14.25.140.

G. At the end of the 90-day transition employment period, the incoming hotel employer shall provide a written performance evaluation for each hotel worker retained pursuant to this Section 14.25.140. If the retention hotel worker's performance during the 90-day transition employment period is satisfactory, the incoming hotel employer shall consider offering the retention hotel worker continued employment under the terms and conditions established by the incoming hotel employer, or as required by law. The incoming hotel employer shall retain a record of the written performance evaluation for a period of no fewer than three years.

H. The outgoing hotel employer shall post written notice of the change in control at the location of the affected hotel within five business days following the execution of the transfer document. Notice shall be posted in a conspicuous place at the hotel so as to be readily viewed by retention hotel workers, other employees, and applicants for employment. Notice shall include, but not be limited to, the name of the outgoing hotel employer and its contact information, the name of the incoming hotel employer and its contact information, and the effective date of the change in control. Notice shall remain posted during any closure of the hotel and for six months after the hotel is open to the public under the incoming hotel employer.

(Initiative 124 , § 1, 2016.)

PART 5 - ENFORCING COMPLIANCE WITH THE LAW

14.25.150 - Enforcement

A. Exercise of rights protected; retaliation prohibited

1. It shall be a violation for a hotel employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter 14.25.

2. No person may discharge, reduce any part of the compensation of, or otherwise discriminate against an employee, in response to the enactment of this Chapter 14.25, or in response to the employee asserting rights under this Chapter 14.25. Such adverse actions are deemed to harm the public and the employees irreparably, and hence preliminary equitable relief and reinstatement shall be available to the affected employees in addition to all other relief.

3. It shall be a violation for a hotel employer to take any adverse action against any employee because the employee has exercised in good faith the rights protected under this Chapter 14.25. Such rights include but are not limited to the right to assert any rights guaranteed pursuant to this Chapter 14.25; the right to make inquiries about the rights protected under this Chapter 14.25; the right to inform others about an employer's alleged violation of this Chapter 14.25; the right to cooperate with the City in any investigations of alleged violations of this Chapter 14.25; the right to oppose any policy, practice, or act that is unlawful under this Chapter 14.25; the right to file an oral or written complaint with the City or to bring a civil action for an alleged violation of this Chapter 14.25; the right to testify in a proceeding under or related to this Chapter 14.25; the right to refuse to participate in any activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under this Chapter 14.25.

4. It shall be a violation for a hotel employer to (a) communicate to an employee exercising rights under this Chapter 14.25, directly or indirectly, explicitly or implicitly, its willingness or intent to inform a government employee that the employee is not lawfully in the United States; or (b) report or threaten to report suspected citizenship or immigration status of an employee or a family member of the employee to a federal, state, or local agency because the employee has exercised a right under this Chapter 14.25.

5. There shall be a rebuttable presumption of retaliation if a hotel employer takes an adverse action against an employee within 90 days of the employee's exercise of rights protected in this Chapter 14.25. The hotel employer may rebut the presumption with clear and convincing evidence that the action was taken for a permissible purpose and that the employee's exercise of rights protected in this Chapter 14.25 was not a motivating factor in the adverse action.

6. When the presumption in subsection 14.25.150.A.5 does not apply, proof of retaliation under this Chapter 14.25 shall be sufficient upon a showing that a hotel employer has taken an adverse action against an employee and the employee's exercise of rights protected in this Chapter 14.25 was a motivating factor in the adverse action, unless the hotel employer can prove that the action would have been taken in the absence of such protected activity.

7. The protections under subsections 14.25.150.A.2 and 14.25.150.A.3 apply to any employee who mistakenly but in good faith alleges violations of this Chapter 14.25.

B. Notice, posting, and records

1. Each hotel employer shall give written notification to each current employee and to each new employee at time of hire of the employee's rights under this Chapter 14.25. The notification shall be in each language spoken by ten or more employees.

2. Each hotel employer shall maintain for three years, for each employee and former employee, by name, a record showing the following information: (a) for each workweek of employment, the employee's regular hourly rate of pay; (b) for each month of full-time employment at a large hotel, the amount of additional wages or salary paid as additional compensation reflective of the cost of medical coverage for low income hotel employees, as required by section 14.25.120; and (c) for each day of employment as a housekeeping employee at a large hotel, the total

square feet of guest room floor space cleaned, the number of strenuous room cleanings performed, the number of hours worked, and the employee's gross pay for that day. The hotel employer must, upon request, make all such employee and former employee records available in full to any requesting employee and to the Office of Labor Standards for inspection and copying.

C. Private enforcement action

1. Any person claiming injury from a violation of this Chapter 14.25 shall be entitled to bring an action in King County Superior Court or in any other court of competent jurisdiction to enforce the provisions of this Chapter 14.25, and shall be entitled to all remedies available at law or in equity appropriate to remedy any violation of this Chapter 14.25, including but not limited to lost compensation and other damages, reinstatement, declaratory or injunctive relief, prejudgment interest, exemplary damages equal to the amount of wages wrongfully withheld or not paid on the established regular pay day when those wages were due, and to collect civil penalties as described in subsection 14.25.150.E.

2. A person who prevails in any action to enforce this Chapter 14.25 shall be awarded costs, reasonable attorneys' fees, and expenses.

3. An order issued by the court may include a requirement for a compliance report to be submitted to the court and to the City by the hotel employer.

D. Powers and duties of the Office of Civil Rights

1. The Office of Civil Rights may investigate charges alleging violations of this Chapter 14.25 and shall have such powers and duties in the performance of these functions as are necessary and proper in the performance of the same and provided for by law.

2. The Division Director of the Office of Labor Standards within the Office for Civil Rights, or the Division Director's designee, is authorized and directed to promulgate rules consistent with this Chapter 14.25, including rules that protect the identity and privacy rights of employees who have made complaints under this Chapter 14.25.

E. Penalties

1. Each workday during which the hotel employer is in violation of this Chapter 14.25 shall be deemed a separate violation for which the hotel employer shall be liable for a penalty, exclusive of any damages which may be recovered by or awarded to any employee, of at least $100 per day per employee, and not more than $1,000 per day per employee, in an amount to be determined by the court.

2. Civil penalties shall be distributed as follows: 50 percent to the Office of Labor Standards; 25 percent to the aggrieved employees, distributed according to each employee's share of injury by the violations; and 25 percent to the person bringing the case. Penalties paid to the Office of Labor Standards shall be used for the enforcement of labor laws and the education of employers and employees about their rights and responsibilities under the laws governing labor standards, to be continuously appropriated to supplement and not supplant existing funding for those purposes.

(Initiative 124 , § 1, 2016.)

PART 6 - DEFINITIONS

14.25.160 - Definitions

For the purposes of this Chapter 14.25:

"Change in control" means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a hotel or a discrete portion of the hotel that

continues in operation as a hotel, or a controlling interest (including by consolidation, merger, or reorganization) of the outgoing hotel employer or any person who controls the outgoing hotel employer.

"Checkout room" means a guest room assigned to be cleaned by an employee due to the departure of the guest assigned to that room.

"Compensation" means wages, salary, sick pay, vacation pay, holiday pay, bonuses, commissions, allowances, and in-kind compensation for work performed.

"Employee" and "hotel employee" means any non-managerial, non-supervisory individual employed by a hotel employer who:

1. In any particular workweek perform s at least two hours of work within the geographic boundaries of the City of Seattle for a hotel employer; and
2. Qualifies as an employee entitled to payment of a minimum wage from any employer under the City of Seattle and/or State of Washington minimum wage laws.

"Employee" and "hotel employee" include any individual (1) whose place of employment is at one or more hotels and (2) who is employed directly by the hotel employer or by a person who has contracted with the hotel employer to provide services at the hotel. Supervisory and confidential employees as defined under the National Labor Relations Act are not considered employees under this Chapter 14.25.

"Employment commencement date" means the date on which a hotel employee retained by the incoming hotel employer pursuant to this Chapter 14.25 commences work for the incoming hotel employer in exchange for benefits and compensation under the terms and conditions established by the incoming hotel employer or as required by law.

"Federal poverty line" means the poverty line for the size of the employee's household for the Seattle area as published in the Annual Update by the Department of Health and Human Services of the Poverty Guidelines for the 48 Contiguous States and the District of Columbia in the Federal Register.

"Full time" means at least 80 hours in a calendar month.

"Hotel" means a hotel or motel, as defined in Section 23.84A.024, containing 60 or more guest rooms or suites of rooms. "Hotel" also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building.

"Hotel employer" means any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of any employee and who owns, controls, and/or operates a hotel in Seattle; or a person who employs or exercises control over the wages, hours, or working conditions of any person employed in conjunction with a hotel employer in furtherance of the hotel's provision of lodging and other related services for the public.

"Incoming hotel employer" means the person that owns, controls, and/or operates a hotel subject to a change in control after the change in control.

"Large hotel" means a hotel containing 100 or more guest rooms or suites of rooms suitable for providing lodging to members of the public for a fee, regardless of how many of those rooms or suites are occupied or in commercial use at any given time.

"Low-wage employee" means an employee whose total compensation from the employer is 400 percent or less of the federal poverty line for the size of the employee's household.

"Outgoing hotel employer" means the person that owns, controls, and/or operates a hotel subject to a change in control prior to the change in control.

"Panic button" means an emergency contact device carried by an employee by which the employee may summon immediate on-scene assistance from another employee, security guard, or representative of the hotel employer.

"Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

"Policy" means an insurance policy available on the Washington Health Benefit Exchange that would provide coverage to the employee and, if the employee has any spouse and dependent children, to the employee's spouse and dependent children in addition to the employee.

"Stayover room" means a guest room assigned to be cleaned by an employee where the guest's stay has not yet ended.

"Strenuous room cleaning" means the cleaning of (1) a checkout room or (2) a stayover room that includes a cot, rollout bed, pet bed or crib.

"Transfer document" means the purchase agreement or other document(s) creating a binding agreement to effect the change in control.

"Retention hotel worker" means any employee (1) whose primary place of employment is at a hotel subject to a change in control, (2) who is employed directly by the outgoing hotel employer, or by a person who has contracted with the outgoing hotel employer to provide services at the hotel subject to a change in control, and (3) who has worked for the outgoing hotel employer for at least one month prior to the execution of the transfer document.

"Wages or salary" means the gross amount of taxable cash earnings paid to an employee by an employer or the employer's contractors or subcontractors.

(Initiative 124 , § 1, 2016.)

PART 7 - MISCELLANEOUS

14.25.170 - Waiver

A. The provisions of this Chapter 14.25 may not be waived by agreement between an individual employee and a hotel employer.

B. Any waiver by a party to a collective bargaining relationship involving a hotel employer of any provisions of Sections 14.25.020 through 14.25.060 and the applicable enforcement mechanisms under Section 14.25.150 shall be deemed contrary to public policy and shall be void and unenforceable.

C. Except as provided in Section 14.25.170.B, all of the provisions of this Chapter 14.25, or any part hereof, may be waived in a bona fide written collective bargaining agreement waiving provisions of this Chapter 14.25, if such a waiver is set forth in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this Chapter 14.25.

(Initiative 124 , § 1, 2016.)

14.25.180 - Severability and exceptions

A. The provisions of this Chapter 14.25 are declared to be separate and severable. If any provision of this Chapter 14.25, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Chapter 14.25 that can be given effect without the invalid provision or application; and to this end, the provisions or applications of this Chapter 14.25 are severable.

B. The requirements of this Chapter 14.25 shall not apply where and to the extent that state or federal law or regulations preclude their applicability.

(Initiative 124 , § 1, 2016.)

14.25.190 - Short title

This Chapter 14.25 is titled the Seattle Hotel Employees Health and Safety Initiative.

(Initiative 124 , § 1, 2016.)

SCHWERIN CAMPBELL BARNARD IGLITZIN & LAVITT

January 23, 2019 - 11:57 AM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	77918-4
Appellate Court Case Title:	American Hotel & Lodging Association, et al., Apps. v. City of Seattle, et al., Res.
Superior Court Case Number:	16-2-30233-5

The following documents have been uploaded:

- 779184_Petition_for_Review_20190123114826D1774790_5918.pdf
  This File Contains:
  Petition for Review
  The Original File Name was 2019 01 23_Petition for Review_Final.pdf

A copy of the uploaded files will be sent to:

- elainehuckabee@dwt.com
- erica.franklin@seattle.gov
- harrykorrell@dwt.com
- jeff.slayton@seattle.gov
- lise.kim@seattle.gov
- mendygraves@dwt.com
- micheleradosevich@dwt.com
- mjedreski@dwt.com
- mrobinson@kcnlaw.com
- peter.holmes@seattle.gov
- rjkuntze@gmail.com
- woodward@workerlaw.com

Comments:

Sender Name: Rebecca Huvard - Email: huvard@workerlaw.com
Filing on Behalf of: Laura Elizabeth Ewan - Email: ewan@workerlaw.com (Alternate Email:)

Address:
18 W. Mercer St., Ste. 400
Seattle, WA, 98119
Phone: (206) 257-6015

Note: The Filing Id is 20190123114826D1774790