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NO. 102773-7

SUPREME COURT OF THE STATE OF WASHINGTON

HEADWORKS HAND CRAFTED ALES, INC.
dba HEADWORKS BREWING,

Appellant,

v.

WASHINGTON STATE LIQUOR AND CANNABIS
BOARD,

Respondent.

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. COUNTERSTATEMENT OF ISSUES ON REVIEW 2

III. COUNTERSTATEMENT OF THE CASE..... 2

 A. Minimal COVID-19 Safety Requirements 2

 B. Headworks’ Refusal to Comply with the Mask Mandate Jeopardized Public Safety..... 4

 C. Administrative Adjudication and Judicial Review 8

IV. REASONS FOR DENYING REVIEW 10

 A. Headworks Fails to Demonstrate that the Court of Appeals’ Decision Conflicts with Precedent..... 11

 B. LCB Properly Interpreted and Applied the Term “Public Safety” in WAC 314-11-015(3) 15

 C. Headworks Fails to Raise an Issue of Substantial Public Interest 18

V. CONCLUSION 19

TABLE OF AUTHORITIES

Cases

<i>Barry & Barry, Inc. v. Dep't of Motor Vehicles</i> 81 Wn. 2d 155, 500 P.2d 540 (1972).....	14
<i>Budget Rent A Car Corp. v. Dep't of Licensing</i> 144 Wn.2d 889, 31 P.3d 1174 (2001).....	16
<i>Headworks Hand Crafted Ales, Inc. v. Liquor & Cannabis Bd.</i> 540 P.3d 863 (Wash. Ct. App. 2024).....	passim
<i>Jow Sin Quan v. Liquor Control Bd.</i> 69 Wn.2d 373, 418 P.2d 424 (1966).....	12
<i>McGee Guest Home, Inc. v. Dep't of Soc. & Health Servs.</i> 96 Wn. App. 804, 981 P.2d 459 (1999).....	17
<i>Providence Physician Servs. Co. v. Dep't of Health</i> 196 Wn. App. 709, 384 P.3d 658 (2016).....	16, 17
<i>Racoon Hill, LLC, v. Liquor & Cannabis Bd., No. 84622-1-I</i> 2023 WL 5528046 (Wash. Ct. App. Aug. 28, 2023) (unpublished).....	9
<i>Regan v. Dep't of Licensing</i> 130 Wn. App. 39, 121 P.3d 731 (2005).....	16
<i>Sehmel v. Shah</i> 23 Wn. App. 2d 182, 514 P.3d 1238 (2022).....	14
<i>State ex rel. Puget Sound Navigation Co. v. Dep't of Transp.</i> 33 Wn.2d 448, 206 P.2d 456 (1949).....	12

<i>State ex rel. R.R. Comm'n v. Great N. Ry. Co.</i> 68 Wash. 257, 123 P. 8 (1912)	12
<i>Tuerk v. Dep't of Licensing</i> 123 Wn.2d 120, 864 P.2d 1382 (1994).....	12

Statutes

RCW 34.05.001	16
RCW 34.05.518	9
RCW 43.06.220	3
RCW 66.08.010	12
RCW 66.08.030(12)	12
RCW 66.08.030(6)	11
RCW 66.98.070	12

Other Authorities

Order of the Secretary of Health 20-03	3, 17
Order of the Secretary of Health 20-03.2.....	3
Order of the Secretary of Health 20-03.4.....	3
Order of the Secretary of Health 20-03.6.....	6
Proclamation by the Governor 20-05	2
Proclamation by the Governor 20-25	3
Proclamation by the Governor 20-25.16.....	3

Proclamation by the Governor 20-25.17	3
Proclamation by the Governor 20-25.20	3
Wash. Dept. of Health	
<i>COVID-19 Morbidity and Mortality by Race, Ethnicity</i>	
<i>and Language in Washington State</i> (Feb. 21, 2024).....	4

Regulations

WAC 314-11-015	6, 10
WAC 314-11-015(3)	15, 17, 18, 20
WAC 314-11-015(3)(a)	13
WAC 314-11-015(3)(c)	passim
WAC 314-11-015(3)(g)	13
WAC 314-11-015(4)	13

I. INTRODUCTION

Despite repeated warnings from the Washington State Liquor and Cannabis Board (LCB), Headworks Hand Crafted Ales, Inc. dba Headworks Brewing (Headworks) refused to adopt even the most minimal safety precautions to prevent avoidable COVID-19 infections.

Headworks' responsibilities as a liquor licensee in 2021 were fundamentally the same as they were in 2019—do not endanger public safety. What changed between 2019 and 2021 was the type of safety precautions necessary to protect public safety. Headworks' indifference towards COVID-19 risks does not exempt it from the responsibility to operate its licensed business without endangering the health and safety of its employees, patrons, and surrounding community. *See* WAC 314-11-015(3)(c).

The Court of Appeals appropriately addressed all of Headworks' arguments and, consistent with precedent, dismissed them. Headworks' claim that the Court of Appeals has

“render[ed] the LCB’s police power limitless” is unfounded. Petition at 6, 8, 29. This case does not raise a matter of substantial public interest and this Court should deny discretionary review.

II. COUNTERSTATEMENT OF ISSUES ON REVIEW

1. Whether the LCB has statutory authority to penalize Headworks for allowing conduct that presented a threat to public safety on its licensed premises, when Headworks refused to adopt minimal COVID-19 safety precautions required by statewide public health orders?

2. Whether the LCB can interpret “threat to public safety” in WAC 314-11-015(3)(c) to include noncompliance with required COVID-19 safety precautions?

III. COUNTERSTATEMENT OF THE CASE

A. Minimal COVID-19 Safety Requirements

On February 29, 2020, Governor Jay Inslee issued Proclamation 20-05¹ declaring a statewide State of Emergency

¹ Proclamation of Governor Jay Inslee, No. 20-05 (Wash. Feb. 29, 2020).

due to an outbreak of a novel coronavirus disease (COVID-19). Clerk's Papers (CP) 346-47. The Governor exercised his emergency powers under RCW 43.06.220 to issue Proclamations 20-25 through 20-25.20, prohibiting certain activities and public gatherings, unless specific health and safety conditions were met. On June 24, 2020, the Secretary of Health issued Order 20-03,² directing every person in Washington to wear a face covering when in "any indoor or outdoor public setting." CP 330-34.

Over time, Secretary of Health orders were modified in accordance with scientific judgment as the outbreak expanded into a global pandemic.³ On September 13, 2021, the Governor amended Proclamations 20-25 through 20-25.16 to incorporate the Secretary of Health's face covering order and all subsequent amendments thereto. CP 348-53.⁴ These statewide public health

² Wash. Sec'y of Health, Ord. No. 20-03 (Wash. June 24, 2020).

³ Wash. Sec'y of Health, Ord. No. 20-03.2 (Wash. May 15, 2021); Wash. Sec'y of Health, Ord. No. 20-03.4 (Wash. Aug. 19, 2021).

⁴ Proclamation of Governor Jay Inslee, No. 20-25.17 (Wash. Sept. 13, 2021).

orders, commonly referred to as the “mask mandate,” generally required individuals to wear face masks and take other safety precautions that would reduce viral transmission and prevent avoidable COVID-19 infections. The State of Washington would eventually see more than two million recorded infections and seventeen thousand deaths from COVID-19.⁵ Without measures, like the mask mandate, that ensured mass adoption of common-sense safety precautions, those totals would have been much higher.

B. Headworks’ Refusal to Comply with the Mask Mandate Jeopardized Public Safety

Headworks Hand Crafted Ales, Inc. operates a microbrewery in Enumclaw, Washington, licensed to sell liquor by the LCB under the trade name of “Headworks Brewing.” CP 321, 475-476.

⁵ Wash. Dept. of Health, *COVID-19 Morbidity and Mortality by Race, Ethnicity and Language in Washington State* (Feb. 21, 2024), <https://doh.wa.gov/sites/default/files/2022-02/COVID-19MorbidityMortalityRaceEthnicityLanguageWAState.pdf>

After receiving a public complaint about a lack of COVID-19 safety precautions at Headworks Brewing, LCB officers conducted a premises check and observed the bartender not wearing a mask. CP 329, 337. Headworks' on-site manager, Gino Santamaria, stated that Headworks "would not refuse service to anyone based on mask wearing" and that "only 1 of 8 bartenders employed at the location wears a mask." CP 337. LCB Officer Richard Steinbach informed Santamaria that, at a minimum, Headworks' employees needed to wear masks as required by the statewide mask mandate. *Id.*

Officer Steinbach conducted a follow-up visit to Headworks Brewing on October 8, 2021 because the LCB had received additional public complaints. CP 328-329, 338-39. Officer Steinbach observed approximately 15 to 25 patrons on the licensed premises along with three employees who were working without wearing masks. *Id.* Officer Steinbach approached two of the employees, advised them of the

requirement to wear a mask, and stated that Headworks would receive a written warning for the continued noncompliance. *Id.*

The LCB issued a written warning directing Headworks to comply with the statewide mask mandate and noted that failure to come into compliance would be a violation of WAC 314-11-015. *Id.*; CP 319-320. Enclosed with the written warning provided to Headworks was a copy of the Secretary of Health's Order 20-03.6 and a guidance document produced by the Governor's Office entitled *Updated COVID-19 Facial Covering Guidance for Employers, Businesses, and Organizations*. CP 319-320, 328-336, 472, 497.

Over the following month, LCB received three new public complaints citing Headworks' failure to comply with statewide masking requirements. CP 340-343. In response to this newest set of complaints, Officer Steinbach again contacted Santamaria. Officer Steinbach provided a courtesy notice that, sometime in the following week, he would conduct a premises check to ensure Headworks had come into compliance with the indoor masking

requirement. CP 326. Based on that brief conversation, it became apparent to Officer Steinbach that “Headworks Brewing did not believe in the legality of the mask mandate and thus was not enforcing mask wearing by their employees [and has chosen] not to have any meaningful engagement with their employees” regarding COVID-19 safety compliance. *Id.*

Four days after the courtesy call, Officer Steinbach conducted a premises check at Headworks Brewing. CP 324, 326-327. Through the front windows, Officer Steinbach observed a female employee working behind the bar and engaging with customers, without wearing a mask. *Id.* Upon entering the establishment, Officer Steinbach observed approximately three other employees working on the premises, all without any face covering or mask. *Id.* Officer Steinbach met with Santamaria who continued to question the legality of the mask mandate and told Steinbach that Headworks employees were not required to wear masks because the mandate was not a law. CP 324-326, 472.

Based on his observations, Officer Steinbach concluded that Headworks' noncompliance with the statewide mask mandate and refusal to adopt minimal COVID-19 safety precautions violated WAC 314-11-015(3)(c). CP 319-329, 472. Officer Steinbach issued Administrative Violation Notice (AVN) 1N1327A assessing a five-day license suspension penalty or a \$500 fine in lieu of suspension. CP 321.

C. Administrative Adjudication and Judicial Review

Headworks timely requested an administrative hearing to appeal the AVN, and the LCB Enforcement Division issued Administrative Complaint No. L-27,636. CP 282, 278-280, 501-505. Both Headworks and Enforcement filed cross-motions for summary judgment. CP 310-317, 444-468. After receiving both parties' responses and replies, the Administrative Law Judge issued an Initial Order granting summary judgment for Enforcement, affirming Complaint L-27,636 and the AVN. CP 593-637, 639-647.

Headworks timely petitioned for the Liquor and Cannabis Board to review the Initial Order. CP 652-656, 659-667. The Board unanimously affirmed the Initial Order and fully adopted its factual findings and conclusions as the Final Order of the Board. CP 670-673. The LCB denied Headworks’ subsequent petition for reconsideration of the Final Order. CP 689-692.

Headworks then petitioned for direct review by Division I of the Court of Appeals pursuant to RCW 34.05.518. CP 1-16, 706-707. In a published opinion, the Courts of Appeals affirmed the Final Order of the Board, finding that Headworks’ contention that the LCB did not have authority to issue the AVN was “unavailing” and “without merit.” *Headworks Hand Crafted Ales, Inc. v. Liquor & Cannabis Bd.*, 540 P.3d 863, 871 (Wash. Ct. App. 2024). The Court of Appeals adopted its reasoning from a recent unpublished case⁶ that rejected similar arguments

⁶ *Racoon Hill, LLC, v. Liquor & Cannabis Bd.*, No. 84622-1-I, 2023 WL 5528046 (Wash. Ct. App. Aug. 28, 2023) (unpublished), <https://www.courts.wa.gov/opinions/pdf/846221.pdf>.

challenging an AVN for refusal to adopt COVID-19 safety precautions as a threat to public safety, under WAC 314-11-015(3)(c). *Headworks*, 540 P.3d at 871, n.10. *Headworks* now petitions this Court for review.

IV. REASONS FOR DENYING REVIEW

Under longstanding LCB regulations, a liquor licensee cannot “engage in or allow . . . conduct which presents a threat to public safety” on its licensed premises. WAC 314-11-015(3)(c). The Secretary of Health “expressly defined COVID-19 as a threat to public safety and required masking to address that threat.” *Headworks*, 540 P.3d at 872; *see* CP 330. In light of that definition, the LCB properly recognized “that refusing to wear face masks during the pandemic at a public establishment on licensed premises constituted a threat to public safety” and a violation of WAC 314-11-015. *Headworks*, 540 P.3d at 872; *see* CP 670.

This Court should deny review because the Court of Appeals decision affirming the Board’s determination is

consistent with precedent on the scope of the LCB’s authority, and Headworks’ arguments fail to raise an issue of substantial public interest.⁷

A. Headworks Fails to Demonstrate that the Court of Appeals’ Decision Conflicts with Precedent

Headworks asserts the decision below conflicts with precedent solely because Headworks mistakenly believes the LCB has exceeded its authority, based on a misguided belief that the danger posed by COVID-19 is categorically different from all other threats to public safety.

The LCB is well within its authority to regulate “the sale of liquor kept by the holders of licenses,” RCW 66.08.030(6), and prescribe “the conditions, accommodations, and qualifications requisite for the obtaining of licenses to sell beer,

⁷ Notably, Headworks appears to have largely abandoned its challenge to the underlying validity of the mask mandate. *See Headworks*, 540 P.3d at 870 (citing numerous cases that “directly contradict Headworks’ assertion that the [G]overnor’s emergency powers do not extend to issues stemming from a pandemic”).

wines, and spirits, and [regulate] the sale of beer, wines, and spirits thereunder[.]” RCW 66.08.030(12).

The Liquor Control Act is “an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose.” RCW 66.08.010. “There can be no question but that the [LCB], in the interests of public health, safety, and morals, [possesses] the constitutional and statutory power to control and regulate the dispensation of alcoholic beverages.” *Jow Sin Quan v. Liquor Control Bd.*, 69 Wn.2d 373, 379, 418 P.2d 424 (1966)

Administrative agencies have implied authority to carry out their legislatively mandated purposes. *Tuerk v. Dep’t of Licensing*, 123 Wn.2d 120, 125, 864 P.2d 1382 (1994) (quoting *State ex rel. Puget Sound Navigation Co. v. Dep’t of Transp.*, 33 Wn.2d 448, 481, 206 P.2d 456 (1949), and *State ex rel. R.R. Comm’n v. Great N. Ry. Co.*, 68 Wash. 257, 123 P. 8 (1912)); *See also* RCW 66.98.070. While the LCB’s officers could not

issue a citation to a non-licensed business or individual whose conduct presented a risk to the public safety, it has clear authority to hold a business the LCB has licensed accountable for employee conduct and any behavior that business allows on its licensed premises.

There are other LCB rules that, while not directly related to the sale of alcoholic beverages, still regulate conduct on licensed premises in the interest of public safety. For example, WAC 314-11-015(3)(a) prohibits disorderly people from remaining on licensed premises, regardless of whether the disorderly conduct is the result of alcohol consumption. WAC 314-11-015(3)(g) prohibits the consumption of cannabis on licensed premises. WAC 314-11-015(4) prohibits a licensee or employee from dancing or spending time with a patron for compensation. Each of these rules prohibits certain types of conduct on licensed premises, regardless of whether any of the individuals involved have purchased or consumed an alcoholic

beverage on the premises. Under each rule, the licensee may be held responsible for allowing the prohibited conduct to occur.

Headworks appears to argue that state agencies cannot respond to the outbreak of a pandemic viral pathogen or similar emergent public health risk, without express statutory delegation of authority that specifically relates to infectious disease. Petition at 14-21. However, in reality, a delegation of legislative power to the executive “is not improper simply because it is broad.” *Sehmel v. Shah*, 23 Wn. App. 2d 182, 194, 514 P.3d 1238, 1245 (2022) (citing *Barry & Barry, Inc. v. Dep’t of Motor Vehicles*, 81 Wn. 2d 155, 159, 500 P.2d 540 (1972)). As the Court of Appeals correctly concluded below:

[It] is indisputable that threats to public safety come in all shapes and sizes; the phrasing of the delegation of authority from our state legislature to the LCB is inherently broad and flexible so as to encapsulate and address unforeseeable events, such as those which unfolded as a result of the COVID-19 pandemic.

Headworks, 540 P.3d at 872. Headworks’ Petition fails to demonstrate *how* the Court of Appeals’ holding “directly

conflicts” with this Court’s precedent on scope of agency authority, beyond repeated conclusory exaggerations. Petition at 7-8.

By ignoring the mask mandate, Headworks was selling and serving alcohol in a manner that jeopardized the public’s health and safety, in violation of WAC 314-11-015(3). The LCB has broad authority to control and regulate the dispensation of alcoholic beverages, and that authority is not arbitrarily limited in application when alcohol sales continue to occur during a viral pandemic.

B. LCB Properly Interpreted and Applied the Term “Public Safety” in WAC 314-11-015(3)

The Court of Appeals correctly held that the LCB’s determination of what “constituted a threat to public safety under WAC 314-11-015(3)(c) was not an overly broad interpretation of the regulation.” *Headworks*, 540 P.3d at 872. This holding neither conflicts with other precedent nor raises an issue of substantial public interest.

Headworks’ broad claim that the Court of Appeals’ decision “renders the LCB’s police power limitless” is unfounded. Petition at 8. “While it is true that the APA is designed to provide ‘greater public and legislative access to administrative decision making,’ . . . it is equally true that the APA’s provisions were not designed to serve as the straitjacket of administrative action.” *Budget Rent A Car Corp. v. Dep’t of Licensing*, 144 Wn.2d 889, 898, 31 P.3d 1174 (2001) (quoting RCW 34.05.001). “Washington courts have repeatedly held that agencies are empowered to interpret a statute or regulation without going through formal rule making procedures.” *Providence Physician Servs. Co. v. Dep’t of Health*, 196 Wn. App. 709, 726, 384 P.3d 658 (2016). Examples include agency interpretations of phrases like: “the total of all passenger cars in the fleet,”⁸ “sale or issuance,”⁹ “group practice [of] private

⁸ *Budget*, 144 Wn.2d at 893, 897–98.

⁹ *Regan v. Dep’t of Licensing*, 130 Wn. App. 39, 55, 121 P.3d 731 (2005).

physicians,”¹⁰ and even a refined definition of the word “reasonable.”¹¹ The LCB was not required to promulgate a new regulation in order to enforce a preexisting regulation regarding threats to public safety on the premises of an LCB-licensed business.

The LCB’s Final Order interprets and applies the term “public safety” in WAC 314-11-015(3) to include compliance with the minimal level of COVID-19 safety precautions required by the Secretary of Health’s Order 20-03. CP 670. The COVID-19 pandemic was a “public disaster” that endangered the life, health, and livelihood of every individual in this state. CP 347, 350; *see generally* CP 354-442. The danger was real, and ignoring it risked the safety of Headworks’ employees and threatened the public’s safety at large. Headworks’ flouting of clear and unambiguous safety precautions required by a disaster

¹⁰ *Providence Physician Servs. Co. v. Dep’t of Health*, 196 Wn. App. 709, 719, 384 P.3d 658 (2016)

¹¹ *McGee Guest Home, Inc. v. Dep’t of Soc. & Health Servs.*, 96 Wn. App. 804, 812, 981 P.2d 459 (1999)

proclamation and statewide public health order was a threat to public safety. The LCB properly interpreted and applied WAC 314-11-015(3).

C. Headworks Fails to Raise an Issue of Substantial Public Interest

Contrary to the Petitioner’s unsubstantiated allegations, the LCB did not “operate as an arm of the Health Department” nor was it “directed to do so by the executive (governor) of the executive branch.” Petition at 8, 25. To be clear, this case involves the LCB, based on first hand observations of LCB enforcement officers, issuing a citation to an LCB-licensed business for violation of an LCB-adopted rule. The LCB’s enforcement of WAC 314-11-015(3)(c) was consistent with rule’s plain language prohibiting licensees from allowing conduct that presents a threat to public safety.

As the Court of Appeals accurately summarized:

The record before us establishes that the LCB received a total of seven public complaints regarding the customers and employees of Headworks failing to comply with the mask mandate in the midst of a global pandemic. Before

issuing the AVN, LCB enforcement visited Headworks, spoke with employees and the manager, and issued a written warning that included guidance on the mask mandate for employers. Headworks still failed to comply.

Headworks, 540 P.3d at 872. Headworks was not confused about the mask mandate, or unaware of its responsibilities as an LCB-licensed business. As further noted by the Court of Appeals, “[t]he record shows . . . that staff directly told the LCB enforcement officer prior to the issuance of the AVN that the mask mandate was not lawful and they would not comply.” *Id.* at 872 n.11. Headworks simply did not want to comply with the rules and disregarded the resultant risk posed to the public. The \$500 monetary penalty was more than appropriate. Headworks has not demonstrated that this is a matter of substantial public interest.

V. CONCLUSION

Headworks refused to require its employees to wear a face covering while working, despite repeated warnings from the LCB’s enforcement officers. Headworks’ cavalier approach to a

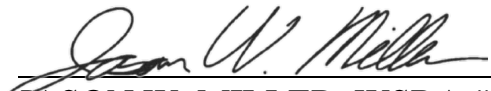
public health emergency endangered its employees, patrons, and the surrounding community. Through indifference, Headworks allowed conduct on its licensed premises that was “a threat to public safety,” within the plain meaning of WAC 314-11-015(3).

Headworks’ arguments fail to raise an issue of substantial public interest. The Court of Appeals appropriately addressed Headworks’ arguments and, consistent with precedent, dismissed them. This Court should deny discretionary review.

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RESPECTFULLY SUBMITTED this 1st day of April, 2024.

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 1st day of April, 2024, at Olympia, Washington.


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