NO. 90113-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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BF FOODS, LLC, FILO FOODS, LLC, ALASKA AIRLINES, INC., and WASHINGTON RESTAURANT ASSOCIATION,
Petitioners/Plaintiffs,

v.

CITY OF SEATAC,
Respondent/Defendant,

v.

SEATAC COMMITTEE FOR GOOD JOBS,
Respondent/Intervenor.

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# APPENDIX TO ANSWER OF SEATAC COMMITTEE FOR GOOD JOBS TO PETITION FOR REVIEW/CROSS-PETITION FOR REVIEW

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## INDEX TO APPENDIX



DATED this 17th day of April, 2014.


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## CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April, 2014, I caused the foregoing Appendix to SeaTac Committee for Good Jobs' to Petition for Review/Cross-Petition for Review to be sent for filing via overnight mail to the Clerk of the Supreme Court, and a true and correct copy of the same to be delivered via overnight mail to:

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# Appendix

SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

| | |
|---|---|
| FILO FOODS, LLC; BF FOODS, LLC; ALASKA AIRLINES, INC; and THE WASHINGTON RESTAURANT ASSOCIATION<br><br>Plaintiffs,<br><br>v.<br><br>THE CITY OF SEATAC and KRISTINA GREGG, CITY OF SEATAC CITY CLERK, in her official capacity<br><br>Defendants. | No.<br><br>APPLICATION FOR WRITS OF REVIEW, MANDATE, AND PROHIBITION<br><br>and<br><br>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF |

Plaintiffs, by and through their undersigned counsel, allege the following:

## I. INTRODUCTION

On or about June 5, 2013, the SeaTac Committee for Good Jobs filed an initiative petition and proposed ordinance entitled "Ordinance Setting Minimum Standards For Hospitality and Transportation Industry Employers" (the "Ordinance") with the City of SeaTac City Clerk's office.[1] The Ordinance, if adopted, would amend the SeaTac Municipal Code ("SMC") to impose a series of unprecedented requirements and restrictions on certain private employers in

[1] A true and correct copy of the proposed Ordinance filed with the City of SeaTac City Clerk's office is attached hereto as Exhibit A.



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the hospitality and transportation industries. Among other things, the Ordinance would impose the highest minimum wage in the country (increasing the minimum wage in the city, but only for certain industries, by 68%; regulate how tips are shared among employees; restrict employers' ability to hire additional part-time workers; impose retention and successorship obligations that restrict employers' right to select their own employees; impose costly sick and safe time obligations on employers; and subject employees' confidential medical information to public review. Moreover, the Ordinance can be enforced by any person or entity, without regard for whether they have been harmed by a violation or are even employed or doing business in the City of SeaTac.

In its processing of the proposed Ordinance, the City of SeaTac has failed to follow the procedures required for the processing of initiatives set out in the SeaTac municipal code, and the Ordinance exceeds the power of the City of SeaTac to adopt legislation, by initiative or otherwise.

Specifically,

(a) the number of valid signatures on the initiative petition is not sufficient to advance the measure to the City Council for action or for placement on the November ballot;

(b) the City of SeaTac did not perform a review of the legality and sufficiency of the title and text of the Ordinance, as required by SMC 1.10.140, prior to issuing a Certificate of Sufficiency regarding the initiative petition (thus potentially misleading the City Council and voters regarding the measure's legality);

(c) the Ordinance exceeds the scope of the City of SeaTac's initiative power and legislative authority. The Ordinance addresses multiple subjects, and those



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subjects are not reflected in the title; the measure conflicts with state and federal law; and many provisions purport to regulate aspects of the employment relationship that are preempted by federal law; and

(d) the City of SeaTac failed to create a Petition Review Board to consider and act upon any evidence or reports of matters relating to initiative petitions which the Board may determine warrant investigation or legal action.

**In Part One on this suit**, Plaintiffs seek writs, pursuant to SMC 1.10.210, reversing the City Clerk's decision to issue a Certificate of Sufficiency; prohibiting further action until the City Clerk reviews the legality and sufficiency of the title and text of the Ordinance as required; and mandating that the City conduct the review required by SMC 1.10.140.

**In Part Two of this suit**, Plaintiffs seek a judgment declaring that the proposed Ordinance exceeds the scope of City of SeaTac's initiative power and legislative authority and a Writ of Prohibition or an injunction prohibiting the City of SeaTac or the City Clerk from forwarding the proposed Ordinance to the City Council for action and from taking any other action to forward the Ordinance to King County for placement on a ballot for an election.

## II. PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs Filo Foods LLC and BF Foods LLC. Plaintiffs Filo Foods LLC ("Filo") and BF Foods LLC ("BF Foods") are Washington limited liability corporations located in the City of SeaTac. Filo and BF Foods are small food and beverage concessionaires operating out of SeaTac Airport, employing ten or more nonmanagerial, nonsupervisory employees. If the proposed Ordinance is adopted, Filo and BF Foods would be directly affected by the proposed Ordinance in several ways, including the following: (A) If Filo or BF Foods seek to operate in a new location, they would be forced to hire the employees of the business which had previously operated out of that location. If that happened, then their current employees could



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lose their jobs. (B) The employees of Filo Foods and BF Foods have not chosen to be represented by a union, but the proposed ordinance improperly encourages unionization and collective bargaining. (C) Filo's and BF Foods' labor costs would increase dramatically. (D) Filo and BF Foods, like other concessionaires operating out of SeaTac Airport, have a contractual obligation to offer "street pricing." Street pricing prohibits Filo and BF Foods from passing increased labor costs to its customers, and Filo and BF Foods could be forced to take steps, damaging to its business, in order to keep expenses from exceeding revenues (such as laying off employees or cutting back on the quality and quantity they offer customers). (E) It is industry practice for employees to engage in tip pooling, allowing cooks, dishwashers, runners, expeditors, hostesses, bartenders, and others to participate in tips as part of the tip system. If the proposed Ordinance is passed, then some of Filo's and BF Foods' employees would lose tips as part of their compensation.

2. Plaintiff Alaska Airlines, Inc. Plaintiff Alaska Airlines, Inc. ("Alaska") is an Alaska corporation with its headquarters in the City of SeaTac. Alaska provides passenger air transportation and related services, by itself and through contractors, at the Seattle-Tacoma International Airport (hereinafter, "SeaTac Airport"). Alaska would be directly affected by the proposed Ordinance in several ways, including the following: (A) In providing services to Alaska and its passengers, Alaska's four major contractors employ in excess of 500 full-time employees in those efforts. If the proposed Ordinance were adopted and applied to Alaska's contractors, their labor costs would increase dramatically. If that happened, because of how pricing is determined in the agreements with these contractors, the prices charged by the contractors to Alaska would increase dramatically as well. Alaska would have to pass some or all of that price increase on to its customers, and the market for air transportation services is



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price sensitive. (B) It is a customary practice in the industry for airlines to provide some services to each other. The measure purports to exempt certified air carriers performing services such as passenger check-in, baggage check, wheelchair escort, baggage handling, and other support services "for itself," but it does not exempt air carriers performing such services for other airlines. Any air carriers, including Alaska, who participate in this customary practice would be directly affected by the proposed Ordinance. (C) By drastically increasing the labor costs to the hospitality and transportation industries in SeaTac, the proposed Ordinance would make hotel rooms, rental cars, and parking more expensive, and this will make Seattle a more expensive destination and transportation hub. A large portion of Alaska's business comes from travelers flying to Seattle, and if Seattle becomes a more expensive destination, Alaska's business would suffer.

3. Plaintiff Restaurant Association of Washington. Plaintiff Restaurant Association of Washington is a trade association representing and advocating the interests of the restaurant industry in Washington. Many of its members will be adversely affected by the proposed Ordinance, including the ways it would affect Plaintiffs Filo Foods, LLC and BF Foods, LLC.

4. Serious Public Importance. In addition to causing the harms suffered or likely to be suffered by the Plaintiffs herein, the proposed Ordinance and its legality are matters of serious public importance and immediately affect substantial segments of the population. The disposition of this matter will have a direct bearing on commerce, finance, labor, and industry.

5. Defendant City of SeaTac. Defendant City of SeaTac (the "City") is a non-charter code city and a municipal corporation organized and existing under the laws of the State of Washington and does business in King County, Washington.



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6. Defendant City of Sea Tac City Clerk. Defendant Kristina Gregg is the City of SeaTac City Clerk ("City Clerk"). Plaintiffs name the defendant in her official capacity only. This Court has personal jurisdiction over the City Clerk because the City Clerk maintains offices and transacts business in the State of Washington.

7. Venue. Venue is proper in King County pursuant to RCW 4.12.020. Venue is also proper because defendants do business in King County.

8. Jurisdiction to Issue Writs. This Court has jurisdiction to issue writs of review, mandate, and/or prohibition pursuant to SMC 1.10.210 and RCW 7.16 *et* seq..

9. Jurisdiction to Provide Declaratory and Injunctive Relief. This Court has jurisdiction over this controversy pursuant to RCW 7.24 because Plaintiffs seek a determination of the legality of the Ordinance, including whether enacting the Ordinance is within the City's initiative power. This Court also has jurisdiction over this controversy pursuant to RCW 7.16 and 7.40 because Plaintiffs seek a Writ of Prohibition or an injunction preventing placement of the Ordinance on the November 2013 ballot.

## III. THE PROPOSED ORDINANCE

10. On or about June 5, 2013, SeaTac Committee for Good Jobs filed an initiative petition and proposed ordinance entitled "Ordinance Setting Minimum Employment Standards For Hospitality and Transportation Industry Employers" with the City Clerk's office.

11. The Ordinance seeks to amend the SeaTac Municipal Code to regulate some private employers in the hospitality and transportation industries. The measure contains numerous provisions, addressing a variety of topics, among them the following:

**Minimum Wage.**

a. Mandates a minimum wage of $15 per hour, but only for some employers in the Hospitality and Transportation Industries.



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b. Increases the minimum wage each year.

c. Excludes tips, gratuities, service charges, and commissions from the minimum wage.

**Sick Leave.**

a. Mandates the employers in the Hospitality and Transportation Industry provide employees with immediate entitlement to accrue and to use one hour of paid sick and safe time for every 40 hours worked.

b. Requires that employers pay employees a lump sum payment at the end of the calendar year equivalent to the compensation due for any accrued but unused sick and safe time.

c. Regulates the reasons why an employee is entitled to sick and safe time.

d. Does not allow employers to documentation to support a request for or safe sick time.

e. Requires that employers retain records documenting sick and safe time, including medical certifications, re-certifications, and medical histories of employees and their family members and make such records available for inspection by the SeaTac City Manager.

**Restricting Employment.**

a. Interferes with the ability of employers to hire additional workers and subcontractors by requiring that employers offer extra hours of work to qualified part time employees before hiring additional part-time employees and subcontractors.

**Tip Pooling.**

a. Requires that any service charge or tips be retained by or paid to the employee who performs the services for which the tip or service charge is collected.

b. Requires that tips and service charges be pooled and distributed among the workers who perform services.

c. Prohibits the distribution of tips to employees who do not directly provide the services at issue, regardless of an employer's alternative legal tip pooling system.

**Retention Of Employees.**

a. Requires that an employer give notice to all employees 60-days prior to the termination of a contract. The proposed ordinance does not define what kind of contract must be terminated to trigger this requirement.

b. Interferes with the ability of parties to contract for the provision of services and employers' ability to arrange its workforce by requiring that a successor employer



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retain the employees of the predecessor employer, before hiring additional employees or transferring workers from elsewhere, regardless of the successor employer's needs or desire to retain its own employees.

c. Requires that employees of a predecessor employer be employed for no less than 90-days once hired, regardless of the successor employer's needs.

d. Requires that employees of a predecessor employer be offered positions according to seniority, regardless of the successor employer's policies, practices, or needs.

**Recordkeeping Requirements.**

a. Invades the privacy of employees by requiring that employers maintain and make available for inspection numerous personnel records.

b. Imposes liability on employers for substantive violations of the ordinance based solely on a lack of records.

**Enforcement.**

a. Abrogates State law standing requirements by allowing any person (defined to include associations, corporations, and other "entities") to bring a complaint against an employer in King County Superior Court regardless of whether or not the suing "person" is injured.

b. Requires the City of SeaTac to adopt auditing procedures sufficient to monitor and ensure compliance, investigate complaints, and initiate legal action to remedy violations.

**Protected Activity.**

a. Prohibits retaliation against employees who engage in certain protected activity.

b. Defines protected activity to include communicating with a union about alleged employer violations of the Ordinance.

**Waiver.**

a. The provisions of the Ordinance apply to all covered employers, and individual employees cannot agree to waive any of its provision, but

b. The burdens of the Ordinance may be avoided if the covered employer enters a "bona fide" collective bargaining agreement with a union that includes a waiver of the provisions.



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**Application.**

The Ordinance applies to employers that operate or provide the following services within the City of SeaTac:

a. Transportation services including, but not limited to, curbside check-in and baggage handling, cargo handling, aircraft cleaning and washing, and aircraft fueling.

b. Any janitorial and custodial service, facility maintenance service, security service, or customer service performed in a facility where transportation services are also performed, regardless of whether these secondary services are related to the transportation services.

c. Rental car, shuttle transportation, and parking lot management services.

d. Hotels with one hundred or more guest rooms.

e. Foodservice or retail provided in public facilities, corporate cafeterias, conference centers and meeting areas, and hotels.

## IV. PART ONE: APPLICATION FOR WRITS PURSUANT TO SEATAC MUNICIPAL CODE 1.100.210 AND RCW 7.16

### A. Limits on the Initiative Power in Municipalities.

12. RCW 35A.11.080 – RCW 35A.11.100 allows non-charter code cities such as the City of SeaTac to provide for direct legislation by the people through initiatives. RCW 35A.11.100 allows such cities to exercise its initiative powers generally "in the manner set forth for the commission form of government in RCW 35.17.240 through 35.17.360". This municipal initiative power, however, is limited. The "subject in title" and "single subject" rules that apply to state-wide initiatives also apply to SeaTac initiatives. RCW 35A.12.130; SMC 1.10.080. These rules ensure that legislators and voters both know what they are voting for or against and that they are not forced to adopt legislation on one topic that they do not approve in order to pass legislation on another topic that they do support. In addition, a municipality such as the City of SeaTac does not have the power to adopt legislation by initiative that conflicts with the United States or Washington State constitutions, or with other state or federal laws. SMC 1.10.140; Wash. Const. art. XI, § 10. Likewise, a municipality does



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not have the power to adopt legislation by initiative that purports to regulate issues preempted by federal law. *City of Seattle v. Burlington N. R.R.*, 145 Wn.2d 661 (2002).

13. Legislation proposed by initiative often has not had the benefit of research, negotiation, compromise, and other checks and balances of the legislative process and, as a result, can reflect a myopic or one-sided view of an issue or problem. Because an initiative may not have been vetted by legislative staff and counsel, legislation proposed by initiative often turns out to be in conflict with or preempted by state or federal legislation. *Wash. Citizens Action of Wash. v. State*, 162 Wn.2d 142 (2007); *City of Sequim v. Malkasian,* 157 Wn.2d 251 (2006); *Amalgamated Transit v. State*, 142 Wn.2d 183 (2000).

14. The SeaTac municipal code imposes safeguards to reduce some of the risks of legislating by initiative. SMC 1.10.140 requires that before an ordinance proposed by initiative may be passed to the City Council for either adoption or placement on the ballot at the next election, the City Clerk, in consultation with the City Attorney, must review and approve the "legality" of the "title and text" of the proposed measure either before initiative sponsors begin collecting signatures or, if such prior approval was not provided, then prior to forwarding the proposed Ordinance to the City Council for action (either adopting it or putting it on the ballot at the next election). SMC 1.10.110 requires that a proposed Ordinance be supported by petitions containing valid signatures from the number of registered voters of the City equal to at least fifteen percent (15%) of the total number of names of persons listed as registered voters within the City on the day of the last preceding City general election. SMC 1.10.140 sets out the criteria for determining whether signatures are valid.

15. With respect to the proposed Ordinance, the City Clerk has issued a Certificate of Sufficiency and has announced her intention to present the measure to the City Council on



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July 8, 2013. The City Clerk issued this certificate based on an insufficient number of valid signatures and without reviewing the legality of the measure as required by SMC 1.10.140. Absent immediate action by the Court, the City of SeaTac will be allowed to act in excess of its initiative power and legislative authority by placing an unlawful measure on the November 5, 2013 ballot.

**B. Allegations**

**1. The City Issued a Certificate of Sufficiency Without Reviewing the Legality and Sufficiency of the Title and Text of the Ordinance**

16. RCW 35A.11.080 – RCW 35A.11.100 and SMC 1.10.040 grant the voters of the City the powers of initiative and referendum subject to the limitations of state law, the general law, and the City's initiative and referendum procedure.

17. SMC 1.10.100 requires that a sample petition be submitted to the City Clerk before an initiative can be distributed to the public for the solicitation of signatures.

18. Pursuant to SMC 1.10.100(C), the sponsor of an initiative petition may request that the City Clerk, with advice of the City Attorney, review, require changes, and/or approve the content and format of the petition and the title and text of the proposed ordinance prior to obtaining signatures. If the sponsor does not request review, the City Clerk, with advice of the City Attorney, shall determine the legality and sufficiency of the title and text of the proposed ordinance before the petition is referred to City Council for adoption or referral to the King County Department of Elections. SMC 1.10.140. Thus, at some point prior to referring any ordinance proposed by petition to the City Council, the City Clerk must review the legality of the title, content, and text of the measure.

19. On or about April 26, 2013, SeaTac Committee for Good Jobs and SeaTac residents Mahad Aden, Joseph Diallo, Patricia L. Reid, and Chris Smith (collectively, the



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"Petition Sponsors") submitted a sample petition to the SeaTac City Clerk. The Petition Sponsors requested, pursuant to SMC 1.10.100(c), that the City Clerk, with the advice of the City Attorney, review the content and format of the petition, including the title and text of the proposed ordinance.

20. Following their submission of the Ordinance, the Petition Sponsors consulted with the City Attorney regarding the format of the Ordinance so that, if passed, it could easily be codified in the Municipal Code.

21. On or about May 1, 2013, the Petition Sponsors resubmitted a revised version of the sample petition to the SeaTac City Clerk. The revised version of the sample petition was similar to the original submission but with some minor corrections.

22. On or about May 1, 2013, the City Clerk approved the format of the petition. Neither the City Clerk nor the City Attorney made any determination with regard to the legality and sufficiency of the title, content, or text of the proposed ordinance prior to the petition being distributed to the public for the solicitation of signatures.

23. On or about May 9, 2013, the City's Legal Department issued an opinion that the subject matter of the Ordinance was an area that could be regulated by the City. The opinion was issued in response to a request by City Councilmember Pam Fernald. Although the opinion found that the City could regulate "wages, hours, and other working conditions," the opinion specifically addressed only the Ordinance's minimum wage and safe and sick time provisions. The Legal Department did not consider, and the opinion did not address, any other aspects of the Ordinance's legality.

24. On or about June 19, 2013, the City Clerk issued a memorandum stating that she had determined the legality and the sufficiency of the title and text of the proposed Ordinance.



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The City Clerk determined only that "The proposed Ordinance is a subject that can be submitted to the City via the Initiative process." The City Clerk did not make any other determinations regarding the legality and sufficiency of the title and text of the Ordinance.

25. SMC 1.10.170 creates a Petition Review Board (consisting of the Mayor, City Manager, and Police Chief) to review any matters relating to initiative petitions which warrant investigation, report to the City Council, or legal action. The Petition Review Board has never met to consider the proposed Ordinance.

26. On or about June 21, 2013, Plaintiff Alaska, along with the Southwest King County Chamber of Commerce and the Association of Washington Business, sent a letter to the City Clerk asking, among other things, whether she had considered various issues with regard to the legality and sufficiency of the title and text of the Ordinance and if not, when she intended to do so. Alaska further requested that the City Clerk convene a Petition Review Board to consider the Ordinance before further processing the proposed ordinance. The City Clerk did not respond to Alaska's letter or request.

27. On July 2, 2013, Plaintiffs Alaska, Filo, and BF Foods sent a letter to the City Clerk petitioning the City of SeaTac to convene a Petition Review Board to consider the legality and sufficiency of the title, text, and content of the proposed Ordinance. Other than acknowledging receipt of this letter, the City Clerk has not responded to this request by Plaintiff Alaska.

**2. The City Issued a Certificate of Sufficiency Even Though the Signatures on the Initiative Petition Are Not Sufficient**

28. On or about June 5, 2013, SeaTac Committee for Good Jobs filed with the City Clerk copies of the petition in support of the Ordinance signed by 2,506 individuals. The City Clerk forwarded the copies of the petition to the Superintendent of Elections of the King



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County Department of Elections to check compliance with the signature requirements of SMC 1.10.140.

29. The Superintendent of Elections of the King County Department of Elections, as ex officio supervisor of city elections, examined signatures on the petition.

30. On or about June 20, 2013, the Superintendent of Elections of the King County Department of Elections completed verification of the signatures on the petition. The Superintendent of Elections of the King County Department of Elections "verified" 2,283 signatures of the 2,506 signatures submitted with the petition, meaning the County examined those signatures to determine if they should be counted. Of the 2,283 verified signatures, the Superintendent of Elections of the King County Department of Elections "challenged" 668 signatures, meaning it rejected them either because they were not signatures from registered voters living in the City of SeaTac or they failed to satisfy the requirements of SMC 1.10.140. The Superintendent of Elections of the King County Department of Elections determined that the remaining 1,615 signatures were valid signatures from registered voters living in SeaTac. SMC 1.10.110 requires that to qualify for mandatory consideration by the City Council and placement on the ballot at the next election, the petition be signed by 1,536 registered voters.

31. The Superintendent of Elections of the King County Department of Elections determined that 44 individuals signed the petition multiple times. SMC 1.10.140 requires that when a person signs a petition two or more times, all signatures, including the original, must be stricken. King County did not strike (and instead counted) the original signature when a person signed the petition two or more times. Those 44 original signatures should have been rejected.



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32. One hundred thirty six of the signatures that were found sufficient and counted by the Superintendent of Elections of the King County Department of Elections did not include a date as required by law. SMC 1.10.140 requires that signatures be followed by a date that is not more than six months prior to the date of filing of the petition. Signatures not followed by a date should have been rejected. King County did not reject, and instead counted, 136 signatures that did not have dates.

33. Thirty six of the signatures that were found sufficient and counted by the Superintendent of Elections of the King County Department of Elections plainly were dated by an unknown third party, on an unknown date. SMC section 1.10.140 requires that signatures that have been altered shall be invalid and shall not be counted. The Superintendent of Elections of the King County Department of Elections improperly counted these signatures.

34. Thirty eight of the signatures that were found sufficient and counted by the Superintendent of Elections of the King County Department of Elections appeared on petition pages that did not have a copy of the proposed Ordinance attached to them as required by law. SMC 1.10.080 requires that a copy of the petition be attached to every single petition signature page. These 38 signatures should have been rejected.

35. Twelve signatures did not include an address. The format of the petition mandated by SMC 1.10.080 requires that each registered voter provide their address when they sign. The Superintendent of Elections of the King County Department of Elections improperly counted these signatures, and they should have been excluded.

36. Thus, 266 were found sufficient and counted that should have been rejected by the Superintendent of Elections of the King County Department of Elections. Because those



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signatures were not valid and should have been rejected under SMC1.10.140, the petition is supported only by, at most, 1349 signatures, fewer than the 1,536 required by SMC 1.10.110.

37. On June 20, 2013, the Superintendent of Elections of the King County Department of Elections certified to the City Clerk that the petition was supported by a sufficient number of valid signatures.

38. On June 28, 2013, the City Clerk issued a Certificate of Sufficiency with regard to the petition. This Certificate of Sufficiency was improperly issued because the petition was not, in fact, supported by a significant number of valid signatures; because the City Clerk failed to conduct the required review of the legality of the measure; and because the Petition Review Board has not yet considered any aspect of the petition, despite requests to do so.

39. The SeaTac City Attorney is scheduled to present the Ordinance to the City Council and answer questions on July 9, 2013, and on July 23, 2013, the City Council is scheduled to vote on whether to adopt the Ordinance. Pursuant to SMC 1.10.220, if the City Council does not adopt the proposed (and unlawful) ordinance, the City Clerk will forward it to King County for placement on the ballot for the November 5, 2013, election.

**C. Claims For Relief In Part One**

40. In Part One of this Application and Complaint, Plaintiffs seek the issuance of writs pursuant to SMC 1.10.210 and RCW 7.16.

41. Writ of Review. The determination by the City Clerk that the petition is supported by a sufficient number of valid signatures should be reviewed and reversed. Before a Certificate of Sufficiency may be issued, the City Clerk was required to determine that the Petition was signed by the number or registered voters of the City equal to at least fifteen percent (15%) of the total number of names of persons listed as registered voters within the City on the day of the last preceding City general election. SMC 1.10.100. The City Clerk



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relied on a certification by the Superintendent of Elections of the King County Department of Elections, but as explained above, the Superintendent improperly counted at least 266 signatures that failed to meet the requirements of SMC 1.10.140 and thus should have been rejected.

42. This court should issue a Writ of Review, pursuant to SMC 1.10.210 and RCW 7.16.040 and reverse the determination that the Petition is supported by the necessary signatures, which determination necessarily underlies the City Clerk's June 28, 2013, Certificate of Sufficiency.

43. Writ of Prohibition. The City Clerk has failed to make the required review of the legality and sufficiency of the title, content, and text of the proposed Ordinance. Any review conducted by the City Clerk so far was limited to the format of the petition and the narrow question of whether the City had the authority, generally, to regulate wages and hours of employees in the City. The City has thus far ignored a request that the City conduct a proper review of the Ordinance and convene the Petition Review Board created for this purpose by SMC 1.10.170.

44. This court should issue a Writ of Prohibition, pursuant to SMC 1.10.210 and RCW 7.16.300, forbidding the City and the City Clerk from taking any further action with regard to the Ordinance, including, but not limited to, taking any action necessary to place the proposed Ordinance before the City Council for adoption or taking any action to place the Ordinance on the November 5, 2013 ballot until after the City Clerk undertakes the required review of the legality of the title, text, and content of the proposed Ordinance and then determines: (a) that the title, text, and content of the proposed Ordinance are legal and sufficient and (b) that the petition was validly signed by the required number of registered



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voters (valid signatures not to include signatures that appear without a date or an address, signatures that appear without a date written by the person actually signing, signatures that appear on petitions that did not have a copy of the Ordinance attached, or signatures of persons signing multiple times).

45. Writ of Mandate. The Court should issue a Writ of Mandate compelling the City and City Clerk to do the following, as required by SMC 1.10.140

a. conduct a review of the sufficiency of the signatures in support of the petition and determine whether the petition is supported by sufficient valid signatures (not including signatures that appear without a date or an address, signatures that appear without a date written by the person actually signing, signatures that appear on petitions that did not have a copy of the Ordinance attached, or signatures of persons signing multiple times);

b. Conduct a review of the legality of the title, text, and content of the proposed Ordinance and then determine whether the title, text, and content of the proposed Ordinance are legal and sufficient;

c. Issue a Certificate of Sufficiency or Certificate of Insufficiency based on this review; and

d. Convene the Petition Review Board to conduct a hearing to determine the legality and sufficiency of the signatures supporting the petition and the title, text, and content of the proposed Ordinance and to issue a Final Certificate of Sufficiency or Final Certificate of Insufficiency.

46. Absence of an Otherwise Plain, Speedy, and Adequate Legal Remedy. Plaintiffs have no plain, speedy, and adequate remedy by appeal or other legal action.



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47. Plaintiff Alaska Airlines and others requested that the City Clerk conduct the required review and make a determination as to the legality and sufficiency of the title and text of the proposed Ordinance. The Plaintiffs and others requested the City of SeaTac to convene a Petition Review Board before taking any further action with regard to the Ordinance. Alaska Airlines and others also requested that the City Clerk review the sufficiency of the submitted signatures. The City has thus far not honored these requests.

48. SMC 1.10.210 requires Plaintiffs to apply to this court for the aforementioned writs, and RCW 7.16 gives this court the authority to issue the requested writs. If the requested writs are not granted, the proposed Ordinance will be placed on the ballot without a determination by the City Clerk that the title and text of the proposed Ordinance is legal and without the petition initiating it having been validly signed by the required number of registered voters of the City. No remedy at law would provide any relief, and equitable relief in the form of a permanent injunction may not be available or available quickly enough to provide relief before the proposed ordinance is forwarded to King County for inclusion on the November 5, 2013, ballot.

49. Costs and Fees. The Court should award Plaintiffs' costs of suit, attorneys' fees, and such other additional relief as the court may deem appropriate pursuant to RCW 7.16.260.

## V. PART TWO: COMPLAINT FOR DECLARATORY JUDGMENT AND A WRIT OF PROHIBITION OR INJUNCTION

50. In this Part Two, Plaintiffs seek a Declaratory Judgment that the proposed Ordinance exceeds SeaTac's initiative power and a Writ of Prohibition or Injunction to prevent the City and City Clerk from taking any action to place the invalid initiative on a ballot for an election.



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**A. Allegations**

51. State Law Authorizes Local Initiatives. Non-charter code cities such as SeaTac "have all powers possible for a city or town to have under the Constitution of the state, and not specifically denied to code cities by law." RCW 35.11.020. A state statute authorizes cities to provide for "direct legislation by the people through the initiative and referendum upon any matter within the scope of the powers, functions, or duties of the city." RCW 35.22.200. RCW 35A.11.080 – RCW 35A.11.100 expressly authorizes non-charter code cities power to adopt initiative powers.

52. SeaTac's Municipal Code Authorizes Local Initiatives, Subject To State Law. In June 1990, the City of SeaTac City Council adopted Ordinance 90-1042 establishing initiative and referendum power for the City. Ordinance 90-1042 became codified as SeaTac Municipal Code Chapter 1.10. Section 1.10.040 of the SeaTac Municipal Code ("SMC") grants the voters of the City of SeaTac the powers of initiative and referendum subject to the limitations of State law, the general law, and the City's initiative and referendum procedure.

53. Local Initiatives Are Limited In Permissible Scope. Cities have no authority to adopt by initiative any Ordinance that exceeds the City's authority to legislate. For example, cities may not adopt initiatives that purport to create local laws conflicting with the United States or Washington constitutions or that conflict with other state or federal laws. Similarly, cities may not adopt initiatives involving powers delegated by the Washington legislature to a city council or other local board, rather than the city itself. In addition, cities may not adopt initiatives that are administrative, rather than legislative, in nature.

54. Invalid Initiatives Should Not Appear On The Ballot. Initiatives that exceed the scope of the initiative power of a city in any manner are invalid and should not be placed on the ballot.



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55. The Ordinance Exceeds The Initiative Power of the City of SeaTac. The proposed SeaTac Ordinance exceeds the initiative power of the City of SeaTac because the City does not have the authority to enact laws via initiative that violate the "subject in title" and "single subject" rules; that are administrative in nature rather than legislative; or that conflict with or are preempted by federal or state law.

56. The Ordinance Violates The "Subject in Title" Rule. The Ordinance exceeds the initiative power of the City of SeaTac because the City does not have the legislative authority to enact a law that violates the "subject in the title" rule. The "subject in the title" rule requires that the subject of the measure must be expressed in its title. RCW 35A.12.130; SMC 1.10.080; *see also* Wash. Const. Art. II, Sec.19. "The purpose of this provision is to ensure legislators and the public are on notice as to what the contents of the bill are. ... This requirement has particular importance in the context of initiatives since voters will often make their decision based on the title of the act alone, without ever reading the body of it. .... A title complies with this requirement if it gives notice to voters which would lead to an inquiry into the body of the act or indicates the scope and purpose of the law to an inquiring mind." *Citizens For Wildlife Mgmt. v. State*, 149 Wn.2d 622, 639 (2003). The title of the proposed Ordinance is "Ordinance Setting Minimum Employment Standards For Hospitality And Transportation Industry Employers." This title does not give sufficient notice to voters as to the true contents of the proposed Ordinance.

57. The Ordinance Violates the Single Subject Rule. The Ordinance exceeds the initiative power of the City of SeaTac because the City does not have the legislative authority to enact a law that violates the requirement that an ordinance contain only one subject which must be clearly expressed in the title. RCW 35A.12.130; SMC 1.10.080; *see also* Wash.



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Const. Art. II, Sec. 19. The Ordinance exceeds the initiative power because the Ordinance addresses at least seven, if not more, distinct and discreet subjects. The several subjects contained in the Ordinance do not have "rational unity" as required by state law. In fact, the many subjects of the Ordinance are typically addressed in separate legislation and enforced by separate regulatory agencies, including some in state government and some in the federal government.

58. The Ordinance Involves Administrative Matters. To be valid, a measure proposed by initiative must be legislative (and not administrative) and within the municipality's power to act. An act is considered administrative if it is temporary and special, rather than permanent and general. The wage rate revisions and reporting requirements in § 7.45.050 (B)-(D) and the requirement of the City Manager to formally request consent in Section 7.45.110 are administrative and not legislative in nature.

59. The Ordinance Conflicts with State Law Because it Purports to Eliminate The Standing Requirement For Proceedings in State Court. The Ordinance exceeds SeaTac's initiative power because it unconstitutionally does away with Washington's requirements for standing to sue and purports to change state law regarding standing by allowing "any person" (broadly defined to include individuals, partnerships, trusts, associations "or any other legal or commercial entity, whether domestic or foreign") "claiming a violation of this chapter" to "bring an action" to enforce it, regardless of whether the person or entity was actually harmed or threatened with harm.

60. Provisions of the Ordinance Conflict With Or Are Preempted By Federal Labor Law. Plaintiff Alaska Airlines is a carrier by air covered by the Railway Labor Act, 45 U.S.C §§ 151-188 ("RLA"), and employs approximately 8000 employees covered by collective bargaining



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agreements with multiple labor unions negotiated under the RLA. Numerous vendors and contractors covered by the proposed Ordinance perform services at SeaTac Airport for Alaska and other air carriers. Most of these vendors and contractors are also covered by the RLA. Some of them are covered by the National Labor Relations Act, 29 U.S.C. §§ 151-169 ("NLRA"). Whether an employer is covered by the NLRA or the RLA is determined by the National Mediation Board ("NMB") and/or the National Labor Relations Board ("NLRB"). These federal agencies have complete and exclusive jurisdiction to address and resolve representation disputes. "That is to say, at least where representation disputes are concerned, the National Mediation Board has been given complete jurisdiction under the Railway Labor Act, which is coextensive with that of the National Labor Relations Board under the National Labor Relations Act. The jurisdiction of both administrative bodies is exclusive, with no power in the federal district courts to intrude." *AMFA v. United Airlines*, 406 F. Supp. 494 at 506 (1976). Air carriers who perform services for other air carriers or other third parties and who would, as a result, be covered by the proposed Ordinance are covered by the RLA.

61. SeaTac does not have the authority to adopt by initiative any legislation that conflicts with federal law or that purports to regulate aspects of labor-management relations governed by federal labor law. Legislation that interferes with the economic weapons available to labor and management in reaching agreements is pre-empted by the NLRA or the RLA, as applicable, because of its interference with the bargaining process.

62. By way of example and without limitation, Section 7.45.090 of the proposed Ordinance ("Prohibiting Retaliation Against Covered Workers For Exercising Their Lawful Rights") purports to make illegal any adverse action by an employer against an employee who communicates with a union about alleged violations of the Ordinance. Section 7.45.100A



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creates remedies for violations of the proposed Ordinance. The NLRA, regulates the rights of employees to engage in protected concerted activity, such as communicating with each other or with a union about wages, hours, and working conditions (all subjects of the Ordinance), and an employer's ability to respond to such conduct by its employees. The National Labor Relations Board has exclusive jurisdiction to determine if there has been any unlawful retaliation against employees for exercising such rights. Section 7.45.090 and .100A of the Ordinance thus purport to provide a cause of action and remedies for conduct that arguably constitutes an unfair labor practice under the NLRA. Employees covered by the RLA have similar protections although the enforcement mechanisms differ. Such legislation (and any action under the Ordinance to enforce it) is preempted by federal labor law.

63. The Ordinance also would impose obligations on "Predecessor Employers" and "Successor Employers," including with respect to notice to and retention of employees. By regulating successorship and specifically imposing an obligation on a "successor" to hire "retention employees," the Ordinance requires that employers hire a particular worker or a specific group of workers based on a group characteristic. Both the NLRA andRLA define, and governs the obligations of, predecessor and successor employers and preempts regulations, such as the Ordinance, that attempt to regulate market forces with regard to labor supply and collective bargaining and in doing so, interfere with the free play of economic forces.

64. The Ordinance interferes with employee and employer rights by coercing employers to recognize unions and enter into collective bargaining agreements and by coercing employees into union membership Among other things, the proposed Ordinance allows employers to avoid the impermissible requirements imposed by the measure but only by entering a "bona fide" collective bargaining agreement that waives the provisions of the



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Ordinance in clear and unambiguous terms. Individual employees are not allowed to reach agreements to waive the provisions. The Ordinance thus conflicts with or is preempted by federal labor law because it interferes with employees' and employers' rights under Sections 7 and 8 of the NLRA and Section 2, Third, Fourth, and Seventh of the RLA. *See Metropolitan Life Ins. Co. v. Massachusetts,* 471 U.S. 724, 755, 105 S.Ct. 2380, 2397 (1985); *American Train Dispatchers v. Denver & Rio Grande Western Railroad Co.,* 614 F. Supp. 543 (D. Colorado 1985).

65. Section 7.45.060 of the proposed Ordinance would require the purchasers of covered employers and successors to the agreements of covered employers to hire the employees of the predecessor employer. This provision is inconsistent with and/or preempted by both the NLRA and the RLA because it has the effect of forcing the new provider or employer to become a successor employer for purposes of federal labor law, with the attendant obligation to recognize and bargain with the union representing the predecessor employer's employees.

66. In addition, Section 7.45.100 of the proposed Ordinance gives to King County Superior Court the responsibility of determining whether there exists a bona fide collective bargaining agreement and whether such an agreement contains a "clear and unambiguous" waiver of the Ordinance's provisions. Thus, it conflicts with Section 301 of the NLRA, which provides that only the NLRB or courts applying federal law have this authority, and under the RLA, Congress has vested System Boards of Adjustment with the sole and exclusive jurisdiction to construe and interpret collective bargaining agreements. The RLA creates "a comprehensive framework for the resolution of labor disputes" arising out of the interpretation



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of CBAs in these industries. *Atchison, Topeka & Santa Fe Ry. Co. v. Buell*, 480 U.S. 557, 562 (1987).

67. The Ordinance Conflicts With The Airline Deregulation Act. The Ordinance exceeds the initiative power of the City of SeaTac because Section 7.45.040(A) of the Ordinance, requires payment of service charges directly to "Transportation Workers." That term is defined in the Ordinance to mean any nonmanagerial, nonsupervisory individual employed by a "Transportation Employer," which is defined to include to include a company operating "curbside passenger check-in services; baggage check services, wheelchair escort services, [and] baggage handling. . . ." And while Section 7.45.010(M) of the Ordinance excludes from its definition of a covered Transportation Employer "a certified air carrier performing services for itself," it does not exempt certified air carriers when they perform the covered transportation support services for other airlines, as is customary in the industry. Thus certified air carriers would be covered by the proposed Ordinance, at least with respect to some of their operations. Such regulation of air carriers and the services provided by air carriers is preempted by the Airline Deregulation Act ("ADA"). *See* 49 U.S.C. § 41713(b)(1) (2006). The ADA contains an express preemption clause: no state may "enact or enforce a law, regulation, or other provision having the force and effect of law related to a *price*, route, or *service* of an air carrier. . . ." 49 U.S.C. §41713(b)(1) (2006) (emphasis added).

68. The Ordinance Violates The U.S. and Washington State Constitutions. The Ordinance does not set general terms of employment or set minimum employment standards. It exceeds SeaTac's initiative power in part because it substantially impairs contract rights or contractual relationships in violation of the Contract Clause of the U.S. and Constitution and art. 1, sec. 23 of the State Constition. The Ordinance requires that employers retain "qualified



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Retention employees" for up to three months following the assumption of a contract. The Ordinance also increases labor costs by up to 68% and, in doing so, substantially impairs employers' contractual obligation with a separate municipal corporation, the Port of Seattle, to offer "street pricing" to customers in the airport. Rather than set general terms and conditions of employment or minimum employment standards, the successorship provision of the Ordinance, in Section 7.45.060, require that an employer hire and retain specific employees solely because that employer assumed a service contract, regardless of the needs of the business. These provisions impose wholly unanticipated burdens and obligations on the parties to those agreements.

69. Offending Provisions Are Not Severable. The Ordinance contains a severability clause, but the provisions of the Ordinance that exceed the initiative power of the City of SeaTac are vital to the Ordinance's intended purposes. The Court cannot sever the offending provisions of the Ordinance from the non-offending provisions without rendering the Ordinance incapable of accomplishing the legislative purposes.

**B. Claims for Relief In Part Two**

70. In Part Two of this Application and Complaint, Plaintiffs seek a Declaratory Judgment that the proposed Ordinance exceeds the initiative power of the City of SeaTac and a Writ of Prohibition or an injunction prohibiting the City and the City Clerk from taking any further action to forward the proposed ordinance to the City Council or to King County or taking any other action to place the measure on the ballot for the November 2013 election.

**1. Declaratory Judgment**

71. Pursuant to the Washington Declaratory Judgment Act, RCW 7.24 et seq., this Court may declare the validity of a proposed initiative.



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72. The matter is ripe for declaratory relief because a dispute exists as to the validity of the Ordinance.

73. A declaratory judgment action is proper to determine whether the Ordinance exceeds the initiative power of the City of SeaTac and thus whether it may be submitted to the qualified electors in the November 2013 election.

74. The Court should enter a judgment that the Ordinance exceeds the initiative power of the City of SeaTac for the reasons set out above, as well as such other and further relief as may follow from the entry of such a declaratory judgment.

**2. Writ of Prohibition**

75. Under RCW 7.16.290, this Court has the authority to issue a Writ of Prohibition to arrest the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

76. As explained above, the City of SeaTac has no authority or jurisdiction to present for possible adoption by voters a proposed Ordinance that exceeds the City's initiative power.

77. Because the proposed Ordinance exceeds the City's power of initiative and because there is not a plain, speedy, and adequate remedy in the ordinary course of law, the Court should issue a Writ of Prohibition prohibiting the City of SeaTac and the City Clerk from taking any further steps to place the proposed Ordinance before the City Council for action or any other steps to place the proposed Ordinance on the November 5, 2013 ballot.

**3. Injunction**

78. Pursuant to RCW 7.40 *et seq.* the Court has the power to grant injunctive relief. The Court may grant an injunction at the time the action is commenced or at any time afterwards.



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79. The Ordinance has been deemed sufficient by the City Clerk to be presented to the City Council and/or placed on the November 2013 ballot.

80. Only a valid initiative may be placed on a ballot for a local election. An initiative that exceeds the power of the municipality is not a valid initiative as a matter of Washington law and may not be placed on an election ballot.

81. For the reasons described in the preceding paragraphs of this complaint, Plaintiffs have a well-grounded fear of the immediate invasion of their rights should the Ordinance be presented to the City Council and/or placed on the November 2013 ballot. Additionally, the Ordinance seeks to alter protections afforded by the United States and Washington constitutions, as well as state and federal law. If enacted by the City of SeaTac, Plaintiffs would be subject to the time and cost of pursuing post-election litigation. Plaintiffs will suffer actual and substantial injuries if an injunction is not entered preventing the measures from appearing on the ballot.

82. A preliminary and permanent injunction precluding presentation of the Ordinance to the City Council and/or placement of the Ordinance on the November 5, 2013, ballot is also proper (1) because the presence of invalid initiatives steals attention, time, and money from other valid propositions on the same ballot; (2) to avoid the cost of placing before the voters measures that would be unenforceable if enacted; (3) to avoid the public confusion that would otherwise arise if the Initiatives are enacted and then later found to be invalid; (4) to eliminate potential negative impacts the Ordinance may have on the City of SeaTac's economic development efforts between now and the November 5, 2013 election; and (5) protect the taxpayers of the City of SeaTac and King County from having to pay for multiple lawsuits likely to arise post-election as the result of the enactment of an unlawful ordinance.



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83. If the Court does not enter the requested Writ of Prohibition, an injunction is the only other possible remedy to prevent the placement of an invalid initiative on the November 5, 2013, ballot. The court should enter an injunction prohibiting the City and City Clerk from taking any further steps to place the proposed Ordinance before the City Council for action or any other steps to place the proposed Ordinance on the November 5, 2013 ballot.

## VI. PRAYER FOR RELIEF

Based on the allegations set out above, Plaintiffs respectfully request the following relief:

**Part One:**

1. For issuance of a Writ of Review reversing the determination by the City Clerk that the Petition is supported by a sufficient number of valid signatures;

2. For issuance of a Writ of Prohibition forbidding the City and the City Clerk from taking any further action with regard to the Ordinance, including, but not limited to, taking any action to place the proposed Ordinance before the City Council or for action or any other steps to forward the proposed Ordinance to King County for placement on a ballot, until after the City Clerk (a) undertakes the required substantive review of the legality of the title, text, and content of the proposed Ordinance and (b) determines whether the petition has been was validly signed by the number of registered voters of the City equal to at least fifteen percent (15%) of the total number of names of persons listed as registered voters within the City on the day of the last preceding City general election (valid signatures not to include signatures that appear without a date or an address, signatures that appear without a date written by the person actually signing, signatures that appear on petitions that did not have a copy of the Ordinance attached, or signatures of persons signing multiple times).



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3. For issuance of a Writ of Mandate compelling the City and City Clerk to do the following, as required by SMC 1.10.140, prior to taking any further action on the petition and proposed Ordinance:

a. Conduct a review of the sufficiency of the signatures in support of the petition and determine whether the petition is supported by sufficient valid signatures (not including signatures that appear without a date or an address, signatures that appear without a date written by the person actually signing, signatures that appear on petitions that did not have a copy of the Ordinance attached, or signatures of persons signing multiple times);

b. Conduct a substantive review of the legality of the title, text, and content of the proposed Ordinance and then determine whether the title, text, and content of the proposed Ordinance are legal and sufficient;

c. Issue a Certificate of Sufficiency or a Certificate of Insufficiency based on these reviews; and

d. Convene the Petition Review Board to (a) conduct a hearing to determine the legality and sufficiency of the signatures supporting the Petition and the legality and sufficiency of the title, text, and content of the proposed Ordinance and (b) issue a Final Certificate of Sufficiency or a Final Certificate of Insufficiency.

**Part Two:**

4. For a judgment declaring that the Ordinance is beyond the scope of the initiative power of the City of SeaTac, as well as such other and further relief as may follow from the entry of such a declaratory judgment;

5. For a Writ of Prohibition prohibiting the City of SeaTac and the City Clerk from taking any further steps to place the proposed Ordinance before the City Council for action or



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any other steps to forward the proposed Ordinance to King County for placement on a ballot for any election.

6. For a permanent injunction prohibiting the City of SeaTac and the City Clerk from taking any further steps to place the proposed Ordinance before the City Council for action or any other steps to forward the proposed Ordinance to King County for placement on a ballot for any election;

7. For judgment against the City for Plaintiffs' costs and attorneys' fees pursuant to RCW 7.16.260; and

8. For such other relief that the Court deems appropriate.

DATED this 8th day of July, 2013.

Davis Wright Tremaine LLP
Attorneys for Alaska Airlines, Inc. and Washington Restaurant Association

By s/Harry J. F. Korrell
Harry J. F. Korrell, WSBA #23173

Pacific Alliance Law, PLLC
Attorneys for Filo Foods, LLC and BF Foods, LLC

By s/Cecilia Cordova via approval
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NO. _____

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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BF FOODS, LLC, FILO FOODS, LLC, ALASKA AIRLINES, INC., and WASHINGTON RESTAURANT ASSOCIATION,
Respondents/Plaintiffs,

v.

CITY OF SEATAC,
Respondents/Defendants,

and

SEATAC COMMITTEE FOR GOOD JOBS,
Petitioner/Intervenor.

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**PETITIONER SEATAC COMMITTEE FOR GOOD JOBS' EMERGENCY MOTION FOR DISCRETIONARY REVIEW**

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## A. IDENTITY OF PETITIONER

Petitioner SeaTac Committee for Good Jobs ("the Committee") is a coalition of individuals, businesses, neighborhood associations, immigrant groups, civil rights organizations, people of faith, and labor organizations in and around SeaTac, united for good jobs and a fair economy, who are working together to support a proposed ballot initiative to the People of SeaTac, entitled "Ordinance Setting Minimum Employment Standards for Hospitality and Transportation Industry Employers," City of SeaTac Proposition One ("the Good Jobs Initiative").

## B. DECISION BEING APPEALED

The Committee is appealing King County Superior Court's August 26, 2013, Order Granting Plaintiffs' Motion and Application for Writs of Review, Mandate and Prohibition and Issuing Writs of Review, Mandate, and Prohibition ("the Order"), a copy of which is attached hereto. A-6-16.[1]

## C. ISSUES PRESENTED FOR REVIEW

1. Did the superior court commit probable error by issuing its Order where King County had already determined that the Initiative had sufficient signatures and therefore issued a Notice of Sufficiency?

2. Did the superior court commit probable error by issuing its Order where, even if the Court acted correctly in striking all signatures of

[1] All "A-__" references refer to documents in the Appendix submitted with Petitioner's Emergency Motion for Discretionary Review.

voters who signed the Petition more than once, sufficient other valid signatures (wrongly stricken by the Petition Review Board) existed to warrant upholding a determination of sufficiency?

3. Did the superior court commit probable error by issuing its Order where the procedures and decisions of the Petition Review Board and Judge Darvas depriving SeaTac voters of federal Constitutional rights?

4. If yes, should this Court accept discretionary review on an expedited basis, issue an order vacating the Order Granting Plaintiffs' Motion and Application for Writs of Review, Mandate and Prohibition and Issuing Writs of Review, Mandate, and Prohibition and thereby permit the Good Jobs Initiative to be submitted to the voters of SeaTac at the next general election?

## D. STATEMENT OF THE CASE

This underlying action is an effort by BF Foods, LLC, Filo Foods, LLC, Alaska Airlines, INC., and the Washington Restaurant Association ("the Plaintiffs") to prevent City of SeaTac Proposition One ("the Good Jobs Initiative"), a City of SeaTac initiative entitled "Ordinance Setting Minimum Employment Standards for Hospitality and Transportation Industry Employers," from being submitted to the voters.

The SeaTac Municipal Code ("SMC") provides an initiative process for SeaTac voters. A-44-54. SMC 1.10.110 requires that a petition in support of a ballot initiative be supported by at least fifteen (15) percent of registered voters within the City as of the day of the last preceding general election. A-49. It is not disputed that with respect to the Good Jobs Initiative, this means that the proposed initiative needed to have been supported by 1,536 valid signatures in order to justify a certificate of sufficiency being issued. A-392-98.

The SeaTac Committee for Good Jobs collected 2,506 signatures in support of the Good Jobs Initiative. A-129-229. The City sent these signatures to King County Division of Elections ("King County Elections") for review, as required under SMC 1.10.140. A-249-50. King County Elections reviewed the signatures for validity, and on June 20, 2013, issued a finding of sufficiency for the signatures reviewed. A-320. The City Clerk's office issued its own certificate of sufficiency in response, on June 28. A-319.

The City Council, following the provisions of SMC 1.10.220, set the issue of sending the Initiative to the November ballot on the City Council agenda for July 23, 2013. A-362-66. Plaintiffs requested a hearing before the City's Petition Review Board, on the basis, inter alia, that the City had counted invalid signatures in support of the initiative. A-336-52.

After a review of the arguments and discussion with the City Attorney, the Board found that signatures in three of the five categories should not count towards the total signatures for a finding of sufficiency.[2] Even with these three categories of signatures stricken, the Board determined that the petition was supported by 1,579 valid signatures, and issued a final certificate of sufficiency. A-522.

The Initiative was placed on the City Council agenda for consideration on July 23, 2013, at which time the Council voted to place the Initiative on the November ballot. A-364-66. Plaintiffs then filed a motion and application for writs of review, mandate, and prohibition, forbidding the Good Jobs Initiative from being placed on the ballot on the grounds, inter alia, that the Petition Review Board had improperly counted as 61 valid signatures the signatures of SeaTac voters who mistakenly signed the petition more than once, in alleged contravention of RCW 35A.01.040(7) and SMC 1.10.140(C). A-17-32. This motion and application was subsequently granted. A-6-16.

This emergency discretionary appeal followed. Because the Order deprives the Committee of its ability to place before the voters of SeaTac an initiative that could have a significant impact on the lives of those

[2] The Board decided to strike 1) signers that did not include a date of signing on the petition; 2) signers that did not include an address on the petition; and 3) signers on petition pages that did not have a full text ordinance attached. A-392-98; A-414-15.

voters, Petitioners seek an expedited emergency determination of their right to discretionary review. *See* RAP 17.4.

## E. ARGUMENT

### 1. Standard for Discretionary Review.

Petitioner seeks discretionary review of the trial court's order granting a motion and application for writs of review, mandate, and prohibition, forbidding the Good Jobs Initiative from being placed on the ballot. Discretionary review should be granted on the grounds that:

> The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act[.]

RAP 2.3(b)(2).

The trial court's ruling dramatically, negatively, and without any reasonable justification denied the Committee its right to have the Good Jobs Initiative placed before the voters of the City of SeaTac. In so ruling, the trial court committed probable error.

### 2. The Superior Court Committed Probable Error When It Granted Plaintiffs' Motion And Application For Writs Of Review, Mandate And Prohibition, Because the Initiative Qualified For The Ballot When The King County Auditor Found That It Had Sufficient Signatures And Issued Its Notice Of Sufficiency.

The Good Jobs Initiative qualified for the ballot when the King County Auditor found that it had sufficient signatures and granted its notice of sufficiency on June 20, 2013. Under state law, it is the King

County Auditor—and only the King County Auditor—that is given the "duty to determine the sufficiency of the petition." Not surprisingly, only a court of law can reject voter signatures, which are presumed valid under state law, RCW 35A.01.040 (5), once validated by the County Auditor. Because the determination by the King County Auditor has never been challenged, the Good Jobs Initiative should not be barred from the November 2013 City of SeaTac ballot.

The underlying facts of this case are not in dispute. On June 10, 2013, the proponents of the Good Jobs Initiative submitted the petition, which was thereafter sent to King County to determine its sufficiency. King County issued the Good Jobs Initiative a Certificate of Sufficiency on June 20, 2013. King County's certificate states that the Good Jobs Initiative "has been examined and the signatures thereon carefully compared with the registration records of the King County Elections Department," and as a result of such examination, found the signatures to be sufficient under the provisions of RCW 35A.01.040.

To qualify for the ballot, only 1,536 signatures were necessary. A-395, ¶3. King County found there to be 1,780 valid signatures. A-395, ¶6. This included 61 original signatures from voters who signed twice. A-395, ¶ 12. **In other words, King County found that the initiative had more than enough signatures to qualify for the ballot even if it had rejected**

**both the original and duplicate signatures of voters.** Even with both instances stricken, there would have been 1,719 valid signatures, well more than the necessary number.

King County found the Good Jobs Initiative valid using the same methodology that it has used throughout the county for ten years. Consistent with its practice, when the County came upon a duplicate signature, it followed the Supreme Court's decision in *Sudduth v. Chapman*, 88 Wn.2d 247 (1977), and counted the first signature but not the duplicate. When an address was missing, the King County Auditor's office looked it up.

The Washington state legislature has enacted tight regulations for determining the sufficiency of petition signatures, identifying a clear decision-maker and specific time-lines. RCW 35A.01.040[3] provides that

> (4) To be sufficient a petition must contain valid signatures of qualified registered voters or property owners, as the case may be, in the number required by the applicable statute or ordinance. **Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters, or to the county assessor for petitions signed by property owners for determination of sufficiency. The officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness** and shall file with the officer receiving the petition for filing a certificate stating the date

[3]*See also*, RCW 35.21.005(4).

> upon which such determination was begun, which date shall be referred to as the terminal date.
> ...
> (5) **Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.**
> ...
> (10) **The officer or officers responsible for determining the sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed.** (emphasis added).

The Court of Appeals in *Eyman v. McGee,* 173 Wn.App. 684, 686 (2013) interpreted RCW 35A.01.040(4) to mean that "A city clerk has a mandatory duty under the statutes governing the filing of initiative petitions to transmit such petitions to the county auditor for determination of sufficiency."). In *King County Water Dist. No. 90 v. City of Renton*, 88 Wn. App. 214, 225 (1997), the Court noted that the "sufficiency" statute, RCW 35A.01.040, has been amended.... As amended, it appears that the county auditor and assessor are the officers whose duty it is to determine the sufficiency of a petition." The Court of Appeals noted that prior to 1997 the local government may have shared this right. *Id.*

The Revised Code of Washington (RCW) clearly delegates the authority to determine sufficiency exclusively to the County Auditor, and leaves no room for municipal officials to adopt subsequent proceedings to allow their elected officials to review and/or overturn King County's decision. Any such municipal efforts are preempted by conflicting state

law under Article XI, section 11 of the Washington Constitution. *See Lawson v. City of Pasco*, 168 Wn.2d 675, 682 (2010); *Clallam County Deputy Sheriff's Guild v. Bd. Of Clallam County Comm'n.*, 92 Wn.2d 844 (1979).

To date—about one week before the deadline for referring the Good Jobs Initiative to the ballot—no party has brought an action against King County to challenge its certificate of sufficiency or, specifically, its finding that the Good Jobs Initiative is sufficient under RCW 35A.01.040. Based on these facts, this Court should reverse the superior court and require King County and the City of SeaTac to place the Good Jobs Initiative on the ballot.

**3. The Superior Court Committed Probable Error When It Granted Plaintiffs' Motion And Application For Writs Of Review, Mandate And Prohibition Because Even If The Superior Court Was Correct in Striking the Signatures of People Who Signed the Petition More than Once, Sufficient Other Valid Signatures (Wrongly Stricken By the Petition Review Board) Existed To Warrant the Good Jobs Initiative Being Placed on the Ballot.**

a. The superior court failed to address Petitioner's contention that a large number of signatures were improperly excluded by the Petition Review Board, and Petitioner requests that the superior court reverse that exclusion, an act that would have resulted in a determination that a sufficient number of valid signatures existed.

In the pleadings before the superior court, the Committee contended that even if the court concluded that signatures of persons who signed more than once were properly excluded, a sufficient number of other valid signatures existed, signatures that were improperly stricken from consideration by the Petition Review Board. A-404-8.

The superior court failed to even **address** this argument in its Order. A-6-16. In fact, the superior court should have addressed the Committee's argument that two categories of signatures were *improperly* stricken by the Board, in contravention of both RCW and SMC provisions concerning local ballot initiatives. Had the superior court done so, it would have concluded, as we urge the Court of Appeals now to conclude based on the argument below, that enough valid signatures were improperly stricken by the Petition Review Board that *even if* the superior court's ruling on the duplicate signer question was correct, a sufficient number of signatures to justify the Good Jobs Initiative being placed on the ballot still existed.

b. <u>One hundred and forty-five signatures were improperly excluded by the Petition Review Board based on Plaintiffs' assertions regarding the date of the signatures</u>.

RCW 35A.01.040(8) states that "[s]ignatures followed by a date of signing which is *more than six months* prior to the date of filing of the petition shall be stricken." (Emphasis added). This language is the same as

in SMC 1.10.140(D). Yet the Petition Review Board struck as an entire category all signatures from "signers that did not include a date of signing on the petition." A-396-97, ¶¶15-17.

The Plaintiffs have not alleged that the signatures were *gathered* six months prior to the date of filing the petition, but rather broadly assert that the lack of a date means such signatures should be excluded entirely.[4] Yet the Plaintiffs have no valid justification for such an argument. The language of the Code and of the SMC clearly indicates when signatures should be stricken, and makes no provision whatsoever for striking signatures that simply omit a date. As it was not possible for any of these signatures to exist "more than six months prior to the date of filing of the petition," these signatures should not have been stricken (especially in light of the presumption of validity of signatures unless proven otherwise).

This category's signatures are included at A-429-505. As demonstrated, seven signatures *did* contain at leat partial dates, despite the characterization made by the Plaintiffs to the Board.[5] The remaining 138

[4]No one has disputed the timeframe in which the petition sheet was created, based on the email communications between the City Attorney's office and the Committee's attorney that occurred in April of 2013. A-413-14, ¶2; A-419-28. The Petition was filed with the Clerk, including the final version of the signature page, on April 26 and May 1, 2013. A-413-14, ¶2.

[5] Contrary to Plaintiffs' assertions, the Committee never stipulated to or before the Petition Review Board that any of the individual signatures contained in the categories of signatures challenged by Plaintiffs properly belonged in those categories. A-415-16, ¶9. Thus, the Committee is in no way estopped or barred from arguing to this Court that

signatures in this category, while lacking a date, occurred on pages where it could clearly be inferred from the dates surrounding the signature that the date was within the six-month window. Because 145 signatures is vastly greater than the 18-signature deficiency that would exist were all 61 "duplicate signer" signatures deemed invalid by this Court, this category alone is enough to maintain a determination of sufficiency.

c. An additional 14 signatures were improperly excluded by the Board based on the Plaintiffs' challenge regarding flaws in the address.

RCW 35A.01.040(d) requires "[n]umbered lines for signatures with space provided beside each signature for the name and address of the signer and the date of signing." There is no language in the RCW or the Code that calls for striking signatures based on flaws in address completion. The RCW language for sufficiency of signatures notes what "shall be stricken" in clear terms. *See, e.g.*, RCW 35A.01.040(7) and (8). SMC provides the same. *See, e.g.*, SMC 1.10.140(C), (D), and (E). If the intent of the statutory language was to strike the signature of any voter who did not *fully* fill out the address line, then that would be indicated in the language of the Statute and the Code.

Furthermore, as the King County Department of Elections can clearly look up names to confirm that the signer is in fact a resident of

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these seven signatures were improperly disregarded by the Board even if the Board's legal analysis regarding this "category" of signatures was correct.

SeaTac, there is no prejudicial error possible in counting a signer that does not contain a completed address next to the voter's signature.[6]

The signatures that fall into this category are included at A-506-515. Six of these signatures had partial information in the address line. Eight more did not but should not have been stricken, because they were verified as valid voters and residents of the City of SeaTac. These are 14 additional signatures that should have also counted towards the determination of sufficiency. Combined only with the seven signatures that were erroneously stricken by the Board for allegedly lacking a date on the signature line, when in fact they had such a date (discussed above), and putting aside entirely the issue of the 135 signatures that concededly lacked any written date, this still generates a total of 21 signatures that were invalidly stricken by the Board. Were this Court to deem those 21 signatures valid, then the Good Jobs Initiative is still supported by 1,539 valid signatures (the 1,518 that are left after the 61 signatures from "duplicate signers" are stricken, plus these 21)—three more signatures than are necessary for the certificate of sufficiency that was issued by the Petition Review Board to be properly upheld.

d. The fact that the Committee did not attempt to appeal these rulings of the Petition Review Board does not

[6]In fact, Plaintiffs concede that King County *did* exclude signers who were not residents of SeaTac, regardless of the information included on the petition signature sheet. A-19.

> mean that the superior court did not commit plain error in not reversing those rulings and counting the improperly stricken signatures as valid.

Where a party prevails in a preliminary action, it is not obliged to cross-appeal to argue for affirmance on any grounds supported by the record. *See State v. Bobic*, 140 Wn.2d 250, 257, 996 P.2d 610, 615 (2000). In *Bobic*, the Court rejected the notion that the State failed to properly preserve an issue below "because it did not cross-appeal from the trial court's finding" because "[t]he State prevailed on the suppression motion" and "[a]s a respondent, the State was not obliged to cross-appeal because it sought no further affirmative relief from the Court of Appeals." *Id.*, citing *In re Arbitration of Doyle,* 93 Wn. App. 120, 123, 966 P.2d 1279 (1998) (notice of cross appeal is essential if the respondent seeks affirmative relief as distinguished from urging additional grounds for affirmance); 3 Lewis H. Orland & Karl B. Tegland, *Washington Practice: Rules Practice* 48 (5th ed.1998).

To the contrary, the respondent in the *Bobic* litigation, the State, was "entitled to argue any grounds supported by the record to sustain the trial court's order." *Bobic*, 140 Wn.2d at 258, citing *Davis v. Niagara Mach. Co.,* 90 Wn.2d 342, 348, 581 P.2d 1344 (1978); *Ertman v. City of Olympia,* 95 Wn.2d 105, 621 P.2d 724 (1980); *Tropiano v. City of Tacoma,* 105 Wn.2d 873, 876, 718 P.2d 801 (1986).

"[N]otice of cross-review is essential if the respondent 'seeks affirmative relief as distinguished from *the urging of additional grounds for affirmance.*'" *State v. Sims*, 171 Wn.2d 436, 442-43, 256 P.3d 285, 289 (2011) (emphasis added), citing *Robinson v. Khan,* 89 Wn. App. 418, 420, 948 P.2d 1347 (1998). Affirmative relief "normally mean[s] a change in the final result at trial." 2A Karl B. Tegland, *Washington Practice: Rules Practice* RAP 2.4 author's cmt. 3, at 174 (6th ed. 2004). While RAP 2.4(a) does not limit the scope of argument a respondent may make, it qualifies any relief sought by the respondent beyond affirmation of the lower court. *Sims*, 171 Wn.2d at 442-43, citing *Doyle,* 93 Wn. App. at 127 (holding that, when a respondent "requests a partial reversal of the trial court's decision, he seeks affirmative relief").

In contrast, where (as here) no affirmative relief, as defined above, is sought, then no cross-appeal is necessary in order for arguments regarding a lower tribunal's error to legitimately be presented. *See, e.g., State v. McInally,* 125 Wn. App. 854, 863, 106 P.3d 794 (2005) (State was "entitled to argue any grounds to affirm the court's decision that are supported by the record, and is not required to cross-appeal.").

Here, because the Committee was not aggrieved by the Petition Review Board's issuance of a final certificate of sufficiency, it did not affirmatively seek a writ of review of that act in this (or any other) legal

action. As in *Bobic*, the Committee did not cross-appeal from the Petition Review Board's finding because the Committee prevailed on the determination of sufficiency and "was not obliged to cross-appeal because it sought no further affirmative relief" from the Court. The Committee was entitled to argue any grounds supported by the Record to affirm the Petition Review Board's decision, and was not required to cross-appeal.

**4. The Superior Court Committed Probable Error When It Granted Plaintiffs' Motion And Application For Writs Of Review, Mandate And Prohibition Because The Procedures and Decisions of the Petition Review Board and Judge Darvas Deprived SeaTac voters of Federal Constitutional Rights.**

Washington State's grant of the initiative process to its citizens elevated it to a fundamental right under the Federal Constitution, protected under the Equal Protection and Due Process clauses. "[W]hen a state chooses to give its citizens the right to enact laws by initiative, 'it subjects itself to the requirements of the Equal Protection Clause.'" *Angle v. Miller*, 673 F.3d 1122, 1128 (9th Cir. 2012) (quoting *Idaho Coal. United for Bears v. Cenarrusa*, 343 F.3d 1073, 1077 n.7 (9th Cir. 2003)).

This federal protection arises from the fundamental right to vote, where "[a]ll procedures used by a State as an integral part of the election process must pass muster against the charges of discrimination or of abridgment of the right to vote." *Moore v. Ogilvie*, 394 U.S. 814, 815

(1969). "The ballot initiative, like the election of public officials, is a 'basic instrument of democratic government,' and is therefore subject to equal protection guarantees. Those guarantees furthermore apply to ballot access restrictions just as they do to elections themselves." *Idaho Coalition*, 342 F.3d at 1076 (9th Cir. 2003) (quoting *Cuyahoga Falls v. Buckeye Comm. Hope Found.*, 123 S. Ct. 1389, 1395 (2003) (internal citation omitted); citing *Illinois State Bd. Of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979)). "Nominating petitions . . . for initiatives both implicate the fundamental right to vote, for the same reasons and in the same manner, and the burdens on both are subject to the same analysis under the Equal Protection Clause." *Id.* at 1077.

The "rigorousness" of the "inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. . . . When those rights are subjected to severe restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'" *Burdick v. Takushi,* 504 U.S. 428, 434 (1992) (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). Where the restriction is so severe that it eliminates a person's vote entirely, it must pass strict scrutiny. *Southwest Voter Registration Educ. Project v. Shelley*, 344 F.3d 882, 899-900 (9th Cir. Cal. 2003). Thus, the government must demonstrate that the infringement on this

fundamental right is narrowly tailored to serve a compelling state interest. *Amunrud v. Board of Appeals*, 158 Wn.2d 208, 219, 143 P.3d 571 (2006). The government bears the burden of proof under strict scrutiny. *See e.g., Minority Television Project, Inc. v. FCC*, 676 F.3d 869 (9th Cir. 2012).

Striking the names of those individuals who signed the petition more than once not only directly disenfranchises 61 voters, it indirectly disenfranchises all the voters who signed to qualify the Good Jobs Initiative for the ballot. Thus, the actions and decisions of the City and Judge Darvas violate these Federal Constitutional guarantees.

a. Rejecting original signatures of SeaTac voters simply because they mistakenly signed the initiative more than once violates the Equal Protection clause of the U.S. Constitution.

Rejection of all signatures of an individual who signed an initiative twice is not in the least narrowly tailored and thus violates the equal protection rights of SeaTac voters. The government's interest in preserving the integrity of the initiative process is undisputedly important. *See John Doe No. 1 v. Reed*, __ U.S. __, 130 S. Ct. 2811, 2819 (2010). But, this action is not narrowly tailored to meet the professed goal. As the *Sudduth* court recognized, when a voter accidentally signs an initiative twice, eliminating the voter's *original* signature along with the duplicates does nothing to enhance the integrity of the initiative process. *See Sudduth*, 88 Wn.2d at 251.

Indeed, even if the Court were to examine SeaTac's rejection of every duplicate signature under a less onerous standard, it would fail Constitutional standards. No matter how small the burden on the access to the ballot, it "must be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'" *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 191 (2008) (quoting *Norman v. Reed*, 502 U.S. 279, 288-89 (1992)).

b. Changing the requirements for signatures without notice violates the SeaTac voters' rights to due process provided by the federal Constitution.

"[A]n election is a denial of substantive due process if it is conducted in a manner that is fundamentally unfair." *Bennett v. Yoshina*, 140 F.3d 1218, 1226 (9th Cir. 1998). After-the-fact and surprise disenfranchisement are particularly indicative of a due process violation. *Id.* at 1227. In this case, King County has long counted one signature of a voter who has signed a petition multiple times. A-387-8. Consequently, voters had no notice that inadvertently signing twice would lead to their disenfranchisement. The Washington Supreme Court's 1977 pronouncement that rejecting every duplicate signature is unconstitutional makes it even more likely that voters expect their signatures to count even if they inadvertently signed more than once. *See Sudduth*, 88 Wn.2d at 251. SeaTac's unanticipated deviation from these initiative procedures

resulted in total disenfranchisement of enough petitioners to prevent certification of the initiative for the ballot. This easily satisfies the "significant disenfranchisement" element the Ninth Circuit expressed in *Bennett.* Rejecting the original signatures now without any notice thus violates the SeaTac voters' substantive due process guarantees afforded by the federal Constitution.

## F. CONCLUSION

For the foregoing reasons, this court should accept review under RAP 2.3(b)(2) on an emergency basis under RAP 17.4, reverse the trial court's decision granting Plaintiffs' Motion and Application for Writs of Review, Mandate and Prohibition, and permit the Good Jobs Initiative to be placed on the November, 2013, ballot.

Respectfully submitted this 29th day of August, 2013.

By: _____

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## CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August, 2013, I caused Petitioner's Emergency Motion for Discretionary Review and Appendix thereto to be delivered via legal messenger to State of Washington Court of Appeals District I, and true and correct copies of the same to be delivered via email, and placed in the US First Class mail, per agreement of counsel, to:

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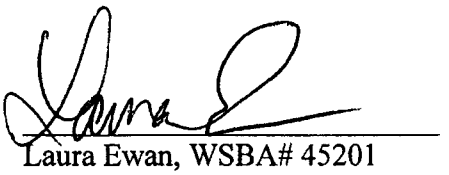

Laura Ewan, WSBA# 45201

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 2296**

Chapter 121, Laws of 2014

63rd Legislature
2014 Regular Session

MUNICIPAL PETITIONS--DUPLICATE SIGNATURES

EFFECTIVE DATE: 06/12/14

Passed by the House March 10, 2014
Yeas 95 Nays 0

FRANK CHOPP

**Speaker of the House of Representatives**

Passed by the Senate March 4, 2014
Yeas 49 Nays 0

BRAD OWEN

**President of the Senate**

Approved March 28, 2014, 2:33 p.m.

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2296** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

**Chief Clerk**

FILED

March 31, 2014

**Secretary of State**
**State of Washington**

# HOUSE BILL 2296

AS AMENDED BY THE SENATE

Passed Legislature - 2014 Regular Session

**State of Washington 63rd Legislature 2014 Regular Session**

**By** Representatives Pike, Harris, Blake, Vick, Taylor, Overstreet, Farrell, Hunt, and Pollet

Read first time 01/15/14. Referred to Committee on Local Government.

AN ACT Relating to duplicate signatures on petitions in cities, towns, and code cities; amending RCW 35.21.005 and 35A.01.040; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (1) The legislature finds that in *Filo Foods, LLC v. City of SeaTac*, No. 70758-2-I (Wash. Ct. Apps. Div. I, Feb. 10, 2014), the Washington court of appeals ruled that RCW 35A.01.040(7), requiring local certifying officers to strike all signatures of any person signing an optional municipal code city initiative petition two or more times, was unconstitutional. The court held that the statute unduly burdened the first amendment rights of voters who expressed a view on a political matter by signing an initiative petition.

(2) The legislature intends to require local officers certifying city and town petitions to count one valid signature of a duplicate signer. This will ensure that a person inadvertently signing a city or town petition more than once will not be penalized for doing so.

**Sec. 2.** RCW 35.21.005 and 2008 c 196 s 1 are each amended to read as follows:

Wherever in this title petitions are required to be signed and filed, the following rules shall govern the sufficiency thereof:

(1) A petition may include any page or group of pages containing an identical text or prayer intended by the circulators, signers or sponsors to be presented and considered as one petition and containing the following essential elements when applicable, except that the elements referred to in (d) and (e) of this subsection are essential for petitions referring or initiating legislative matters to the voters, but are directory as to other petitions:

(a) The text or prayer of the petition which shall be a concise statement of the action or relief sought by petitioners and shall include a reference to the applicable state statute or city ordinance, if any;

(b) If the petition initiates or refers an ordinance, a true copy thereof;

(c) If the petition seeks the annexation, incorporation, withdrawal, or reduction of an area for any purpose, an accurate legal description of the area proposed for such action and if practical, a map of the area;

(d) Numbered lines for signatures with space provided beside each signature for the name and address of the signer and the date of signing;

(e) The warning statement prescribed in subsection (2) of this section.

(2) Petitions shall be printed or typed on single sheets of white paper of good quality and each sheet of petition paper having a space thereon for signatures shall contain the text or prayer of the petition and the following warning:

WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the name and address of the signer and the date of signing.

(3) The term "signer" means any person who signs his or her own name to the petition.

(4) To be sufficient a petition must contain valid signatures of qualified registered voters or property owners, as the case may be, in the number required by the applicable statute or ordinance. Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters, or to the county assessor for petitions signed by property owners for determination of sufficiency. The officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness and shall file with the officer receiving the petition for filing a certificate stating the date upon which such determination was begun, which date shall be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the appropriate filing officer prior to such terminal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the receiving officer prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and the petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn.

(5) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(6) A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(7) ((~~Signatures, including the original, of any person who has~~

~~signed a petition two or more times shall be stricken.~~)) If a person signs a petition more than once, all but the first valid signature must be rejected.

(8) Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken.

(9) When petitions are required to be signed by the owners of property, the determination shall be made by the county assessor. Where validation of signatures to the petition is required, the following shall apply:

(a) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse;

(b) In the case of mortgaged property, the signature of the mortgagor shall be sufficient, without the signature of his or her spouse;

(c) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient, without the signature of his or her spouse;

(d) Any officer of a corporation owning land within the area involved who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign on behalf of such corporation, and shall attach to the petition a certified excerpt from the bylaws of such corporation showing such authority;

(e) When the petition seeks annexation, any officer of a corporation owning land within the area involved, who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign under oath on behalf of such corporation. If an officer signs the petition, he or she must attach an affidavit stating that he or she is duly authorized to sign the petition on behalf of such corporation;

(f) When property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property; and

(g) When a parcel of property is owned by multiple owners, the signature of an owner designated by the multiple owners is sufficient.

(10) The officer or officers responsible for determining the

sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed.

**Sec. 3.** RCW 35A.01.040 and 2008 c 196 s 2 are each amended to read as follows:

Wherever in this title petitions are required to be signed and filed, the following rules shall govern the sufficiency thereof:

(1) A petition may include any page or group of pages containing an identical text or prayer intended by the circulators, signers or sponsors to be presented and considered as one petition and containing the following essential elements when applicable, except that the elements referred to in (d) and (e) of this subsection are essential for petitions referring or initiating legislative matters to the voters, but are directory as to other petitions:

(a) The text or prayer of the petition which shall be a concise statement of the action or relief sought by petitioners and shall include a reference to the applicable state statute or city ordinance, if any;

(b) If the petition initiates or refers an ordinance, a true copy thereof;

(c) If the petition seeks the annexation, incorporation, withdrawal, or reduction of an area for any purpose, an accurate legal description of the area proposed for such action and if practical, a map of the area;

(d) Numbered lines for signatures with space provided beside each signature for the name and address of the signer and the date of signing;

(e) The warning statement prescribed in subsection (2) of this section.

(2) Petitions shall be printed or typed on single sheets of white paper of good quality and each sheet of petition paper having a space thereon for signatures shall contain the text or prayer of the petition and the following warning:

WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or

she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the name and address of the signer and the date of signing.

(3) The term "signer" means any person who signs his or her own name to the petition.

(4) To be sufficient a petition must contain valid signatures of qualified registered voters or property owners, as the case may be, in the number required by the applicable statute or ordinance. Within three working days after the filing of a petition, the officer with whom the petition is filed shall transmit the petition to the county auditor for petitions signed by registered voters, or to the county assessor for petitions signed by property owners for determination of sufficiency. The officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness and shall file with the officer receiving the petition for filing a certificate stating the date upon which such determination was begun, which date shall be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the appropriate filing officer prior to such terminal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the receiving officer prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and the petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn.

(5) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(6) A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(7) ((~~Signatures, including the original, of any person who has signed a petition two or more times shall be stricken.~~)) If a person signs a petition more than once, all but the first valid signature must be rejected.

(8) Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken.

(9) When petitions are required to be signed by the owners of property, the determination shall be made by the county assessor. Where validation of signatures to the petition is required, the following shall apply:

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(d) Any officer of a corporation owning land within the area involved who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign on behalf of such corporation, and shall attach to the petition a certified excerpt from the bylaws of such corporation showing such authority;

(e) When the petition seeks annexation, any officer of a corporation owning land within the area involved, who is duly authorized to execute deeds or encumbrances on behalf of the corporation, may sign under oath on behalf of such corporation. If an officer signs the petition, he or she must attach an affidavit stating that he or she is duly authorized to sign the petition on behalf of such corporation;

(f) When property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property; and

(g) When a parcel of property is owned by multiple owners, the signature of an owner designated by the multiple owners is sufficient.

(10) The officer or officers responsible for determining the sufficiency of the petition shall do so in writing and transmit the written certificate to the officer with whom the petition was originally filed.

Passed by the House March 10, 2014.
Passed by the Senate March 4, 2014.
Approved by the Governor March 28, 2014.
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