IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

No. 96781-4

AMERICAN HOTEL & LODGING ASSOCIATION, SEATTLE HOTEL ASSOCIATION, and WASHINGTON HOSPITALITY ASSOCIATION,

Appellants,

v.

CITY OF SEATTLE,

Respondent,

and

UNITE HERE! LOCAL 8; SEATTLE PROTECTS WOMEN,

Respondent.

APPELLANTS AMERICAN HOTEL & LODGING ASSOCIATION, SEATTLE HOTEL ASSOCIATION, AND WASHINGTON HOSPITALITY ASSOCIATION'S COMBINED RESPONSE TO CITY OF SEATTLE'S AND INTERVENORS' PETITIONS FOR REVIEW

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I. INTRODUCTION

The City of Seattle and Intervenors ask this Court to take review of a decision by Division I of the Court of Appeals that correctly applies established law to the facts of this case. Their petitions should be denied.

The City and Intervenors offer three rationales for their request, all of which are faulty. *First*, they argue Division I erred by citing to state law rather than Seattle's charter in applying the single subject rule. However, the standard is the same under both. The court merely noted that state law and the charter contain the single subject rule, as does the state constitution, art. I, sec. 19, and that the latter provides the majority of the case law the courts use for single subject analysis of state and municipal laws. *Second*, the City and Intervenors contend the case involves a matter of substantial public interest because it involves an initiative passed by the voters of Seattle. However, every initiative that makes it to the courts on a single subject challenge has been enacted by voters because Washington courts will not address the substance of an initiative until after it has passed. Finally, the City and Intervenors suggest that Division I's single subject analysis conflicts with prior decisions of this Court. However, Division I took careful note of this Court's jurisprudence and applied it to the text of the initiative. Application of the single subject rule necessarily relies on the details of

the particular measure before the Court. No two initiative texts are identical, and even similar texts may be judged differently by the addition of a single section that introduces a new subject.

None of the arguments made by the City and Intervenors satisfies the criteria in RAP 13.4. This Court should therefore deny review. However, if this Court accepts review, it should review the other issues raised in the Court of Appeals briefs but not reached by that court. By doing so, the Court would (1) resolve the entire case, obviating the need for a remand for more proceedings, and (2) address the only novel legal issues presented by this case—the constitutionality of the provision that requires the blacklisting of hotel guests and whether WISHA preempts the safety and health provisions of the ordinance.

II. ARGUMENT

A. Division I's Opinion Does Not Raise a Significant Question of Law.

The City and Intervenors argue that Division I created a significant question of law in relying on RCW 35A.12.130 for its single subject analysis. There are two problems with this argument: first, the court did not rely on RCW 35A.12.130 for its analysis; and second, even if it did, the analysis is identical to that under the City's charter and the state constitution, art. I, sec. 19.

Division I cited RCW 35A.12.130 but did not rely on it. The court stated: "But RCW 35A.12.130 also requires city ordinances to contain only a single subject, and the Seattle City Charter, article IV, section 7 similarly provides that every ordinance 'shall contain but one subject.'" Slip op. at 7. The court then goes on to use the single subject cases decided under the state constitution for its analysis. *See* Slip op. at 8.

Division I's citation to RCW 35A.12.130 along with City's charter is likely the result of its adherence to this Court's analysis in *Filo Foods v. City of SeaTac*, 183 Wn.2d 770 (2015). SeaTac is a code city, while Seattle is not, but that does not change the analysis or the outcome. As the City admits:

> Given the similarities between the single-subject requirements in RCW 35A.12.130, Article IV, section 7 of the Seattle City Charter, and Article II, section 19 of the Washington Constitution, the Court of Appeals' misapplication of RCW 35.A.12.130 may not have materially affected its reasoning.

City Pet. at 9.

The City argues that the citation to state law along with the City's charter "will sow confusion" if not corrected. *Id*. However, there can be no confusion of any consequence when courts analyze the single subject requirement of state law, the City's charter, and the constitution the same

way. The only problematic statement in the opinion is that by violating RCW 35A. 12.130, I-124 would also violate art. XI, sec. 11 of the state constitution, which provides that no city may enact any law that conflicts with general state law. However, this is clearly dicta, not necessary to the holding, and could have been corrected by Division I if the City had brought the issue to its attention in an agreed motion.

B. Division I's Opinion Does Not Involve an Issue of Substantial Public Interest.

As originally presented, this appeal contained three issues: the single subject question, the constitutionality of the blacklist requirement, and WISHA preemption. Only the second two presented questions never before decided by a court. However, Division I considered only the first issue—the single subject rule. Because violation of that rule invalidated the entire initiative, Division I did not reach the other issues.

The single subject rule is hardly novel. Washington appellate courts have decided over 80 cases on this basis, each using the same basic analysis but reaching varying outcomes based on the specific statutory text at issue. One more Division I case will not alter this Court's very substantial jurisprudence on this issue.

The City and Intervenors argue that the popularity of the measure imbues it with substantial public interest, but that could be said of all initiatives challenged in court, since passage is a prerequisite to a court hearing on the merits. *See State ex rel. O'Connell v. Kramer*, 73 Wn. 2d 85, 87 (1968).

C. Division I's Opinion Does Not Conflict with this Court's Single Subject Jurisprudence.

Division I reached the proper conclusion that I-124 violates the single subject rule after a thorough analysis of the initiative under this Court's rich body of law on the single subject rule. The decision is consistent with that jurisprudence and aligns with the bedrock principles underlying the single subject rule.

The single subject rule is intended to "prevent logrolling or pushing legislation through by attaching it to other legislation." *See Amalgamated Transit, Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 207 (2000). The rule is supposed to prevent interest groups and legislators from getting a law passed by "attaching it to other legislation." *See Amalgamated Transit*, 142 Wn.2d at 207. When a law contains more than one subject "it is impossible for the court to assess whether either subject would have received majority support if voted on separately," and the entire measure is invalid. *City of Burien v. Kiga*, 144

Wn.2d 819, 825 (2001) (citing *Power, Inc. v. Huntley*, 39 Wn.2d 191, 200 (1951)). As Division I stated, "[o]nly where there exists a rational relationship between the provisions of the initiative and with the initiative's subject can we be certain voters were not required to vote for an unrelated subject of which the voters disapproved in order to pass a law pertaining to a subject of which the voters were committed." Slip op. at 9 (citing *City of Burien v. Kiga*, 144 Wn.2d 819, 826 (2001)) (quotation omitted).

The start of a single subject analysis is determining whether a title is general or restrictive. *Lee v. State*, 185 Wn.2d 608, 621 (2016). On this point, Division I sided with the City and Intervenors, finding I-124's title general overall, even though it found part of the title restrictive. Slip op. at 10-11. When a title is general, the single subject rule requires that all the provisions within the law are germane both to the title, ***and to one another***. *Kiga*, 144 Wn.2d at 825-26.

Division I correctly determined I-124 fails the test. According to the four separate statements of "intent" in the measure, I-124 is supposed to (1) protect hotel employees from assault and sexual harassment (SMC 14.25.020), (2) protect hotel employees from on-the-job injury caused by strenuous work and chemical exposure (SMC 14.25.070), (3) improve access to affordable healthcare (14.25.110), and (4) reduce

disruptions to Seattle's economy resulting from changes in hotel ownership (14.25.130). There is simply no plausible, principled way to connect I-124's unprecedented and controversial blacklist provision (that affects the due process and privacy rights of third parties — strangers to the employment relationship) to the rest of the bill, which contains health, safety, and labor standards (that affect only employers and employees). Division I appropriately found the provisions are not all germane to one another.

As this Court recently reiterated, "[t]he key inquiry is whether the subjects are so unrelated that 'it is impossible for the court to assess whether either subject would have received majority support if voted on separately.' If so, the initiative is void in its entirety." *Lee*, 185 Wn.2d at 621 (quoting *Kiga*, 144 Wn.2d at 825). Here, there is no way to know whether Seattleites were voting on the blacklist requirement or the general health, safety, and labor provisions. Voters were entitled to consider and vote separately on the distinct laws contained in I-124. Because there is no way to know if I-124's subjects "would have garnered popular support standing alone, [it] must declare the entire initiative void." *Kiga,* 144 Wn.2d at 828. Therefore, Division I's ruling is entirely consistent with this Court's decisions regarding the purpose and proper application of the single subject rule.

Oddly, both the City and Intervenors argue that Division I's decision here conflicts with *Amalgamated Transit*—a case in which the Supreme Court invalidated a law for violation of the single subject rule. Not so. In *Amalgamated Transit*, the Supreme Court determined that a ballot title was general, then found no rational unity between the two subjects: (1) reducing automobile license tab fees and eliminating the Motor Vehicle Excise Tax ("MVET") and (2) providing a method of approving all future tax increases, designed to prevent an increase in taxes to undo the decrease accomplished by the elimination of the MVET. 142 Wn.2d at 217. The Court rejected the argument that the tax increase restriction (to prevent governments from increasing other fees and taxes to compensate for lost MVET revenues) was sufficiently related to the elimination of the MVET, finding "neither subject necessary to implement the other." *Id.* Here, Division I correctly held that I-124 cannot pass muster under this approach to rational unity. The decision outlines at length why the different subparts of I-124 are not necessary to implement the others:

> Part 1's sexual harassment provisions are not necessary to implement Part 2's hazardous chemical restrictions, or vice versa. Similarly, Part 3's requirements for medical insurance subsidies are not necessary to implement Part 1's sexual harassment protections, or vice versa.

> And Parts 1, 2, and 3 are not necessary to implement Part 4's seniority list and job security provisions.

Slip op. at 15; *see also* Slip op. at 16-17. Intervenors mischaracterize Division I's decision as solely focused on how the subparts of I-124 are unnecessary to implement the others. Intervenors Pet. at 10. Division I only undertook that analysis *after* already concluding that "[t]he unrelated purposes of the provisions of I-124 undermines any claim of rational unity." Slip op. at 15.

Moreover, there is nothing in Division I's decision that is inconsistent with *Filo Foods*, the case the City and Intervenors identify as most analogous to this one. In *Filo Foods*, the Court was able to look at the initiative's substantive provisions and find them all "reasonably germane" to the subject of labor standards. 183 Wn.2d 785. That is simply not reasonable for I-124. Unlike the initiative in *Filo Foods*, which contained provisions all of which addressed the employer-employee relationship (wages, job security, etc.), the subparts of I-124 have widely different purposes. As Division I stated, "protecting some employees from a guest's sexual assault or harassment has a different purpose than ensuring that all hotel employees maintain their jobs when a hotel changes ownership." Slip op. at 15. That analysis is consistent with *Filo Foods*.

Division I took a standard approach to assessing whether I-124 passes muster under the well-established rubric of this Court's single subject jurisprudence. It did so in a way that demonstrates how the intermediate appellate courts can and should have a role in developing the body of law in this area. This Court has accepted a huge number of cases that involve the single subject rule. There are more published decisions regarding the single subject rule from this Court than all of the intermediate appellate courts combined. Allowing Division I's decision to stand would help restore the usual balance, where the intermediate appellate courts help develop a body of law through application of this Court's decisions. This decision was especially appropriate for final determination by Division I where, as both the City and Intervenors acknowledge, I-124 has some notable similarities to the law at issue in this Court's recent *Filo Foods* decision. *See* City Pet. at 15-16; Intervenors Pet. at 5. The critical differences between I-124—with its radical blacklist provision, its workplace safety measures (including a new private right of action to enforce the new safety rules), its job security provision, and its health insurance mandate—and the employee wage and benefit law at issue in *Filo Foods*, appropriately led Division I to reach a different result here. "Where [the initiative in] *Filo Foods* had one single purpose, I-124

has four, each of which sets out very different and distinct public policies." Slip op. at 13.

Intermediate appellate courts are well equipped to apply this Court's single subject jurisprudence to new cases, assessing the importance of similarities and differences in the laws in question. That is exactly what happened here. There is no need for this Court to weigh in on every single subject challenge decided by lower courts. The Court should decline to review Division I's sound decision.

D. If the Court Takes Review, It Should Review the Entire Case.

Division I decided this case based on violation of the single subject rule, which invalidated the entire initiative. This issue was one of three raised by AHLA. AHLA also asked that the court invalidate (1) the requirement that hotels blacklist guests accused of harassment by a hotel employee and (2) the workplace health and safety provisions that are preempted by WISHA. If this Court were to take the case and reverse on the single subject rule without addressing the other two issues, it would require a time-consuming and costly remand to Division I and potentially another appeal to this Court. Principles of judicial economy counsel against such an unnecessarily prolonged and disjointed process. *See Seattle v. McCready*, 123 Wn.2d 260, 269 (1994) (en banc).

Moreover, the other issues raised by this case are novel and would benefit from review by this Court. The first is whether municipalities can require businesses do something the municipalities certainly could not do themselves: punish people accused of misconduct without any due process. I-124 requires hotels to collect, maintain, and share with City officials private, stigmatizing information about alleged (but unverified) conduct at a place of public accommodations (and deny future lodging) without notice or any ability to have one's name removed from such a list. In preparing for this case, all parties have attempted to find cases presenting analogous requirements, but no party has cited one. This blacklist provision is not only remarkable in its absence of basic due process protections, it is also a breathtaking delegation of municipal enforcement power to private entities and their employees. If the Court were to review I-124's violation of the single subject rule, it should consider in parallel the constitutional privacy and due process concerns raised by the blacklist provision.

The second novel issue is whether municipalities may regulate workplace health and safety or, is such regulation preempted by the Washington Industrial Safety and Health Act of 1973, chapter 49.17 RCW ("WISHA"). If I-124 were not preempted by WISHA, divergent municipal regulation of workplace health and safety could spring up in

cities and towns around the state, potentially affecting hundreds of thousands of businesses that will have to try to comply with conflicting standards and enforcement regimes.

If the Court were to reevaluate I-124's violation of the single subject rule, these novel issues warrant concurrent review. The resolution of them would have ramifications on public life in the state, as other municipalities will be guided by the Court's determination of the scope of local government power to enact such regulations.

III. CONCLUSION

For the foregoing reasons, AHLA asks that this Court deny the petitions for review of the Court of Appeals' decision.

RESPECTFULLY SUBMITTED this 22nd day of February, 2019.

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CERTIFICATE OF SERVICE

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