No. 99909-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ABDIKADIR HASSAN, et al.,

Petitioners/Appellants,

v.

GCA PRODUCTION SERVICES, INC.,

Respondent/Appellee.

AMICI CURIAE MEMORANDUM OF WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION AND TEAMSTERS LOCAL UNION NO. 117

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I. INTEREST OF AMICI CURIAE

The Washington Employment Lawyers Association (WELA) is a chapter of the National Employment Lawyers Association and comprises more than 220 lawyers licensed in Washington. WELA advocates in favor of employee rights, recognizing employment with dignity and fairness is fundamental to the quality of life. WELA members frequently represent employees in cases involving minimum wage rights.

Teamsters Local Union No. 117 is a labor union that represents 17,000 workers in Washington. At the time the SeaTac ordinance passed, Local 117 represented rental car workers at SeaTac International Airport, including employees of a labor contractor (Fleetlogix) who shuttled vehicles owned by rental car companies.

II. ARGUMENT AND AUTHORITY

A. This case involves issues of substantial public interest.

The Court of Appeals' decision raises two issues of substantial public interest. The first concerns the interpretation of a SeaTac ordinance enacted through the initiative process. *See Hassan v. GCA Prod. Servs., Inc.*, 17 Wn. App. 2d 625, 630, 637-38, 487 P.3d 203 (2021). That ordinance provides "a living wage for hospitality workers and transportation workers" employed within the city. SeaTac Municipal Code (SMC) 7.45.050. At the time the law passed, it was estimated that 6,300

workers would see their wages increase by an average of 36 percent.[1] Most of these workers were (and continue to be) located at SeaTac International Airport.[2] Rental car firms routinely employed (and continue to employ) as many as 800 workers at a time, depending on the season.[3]

Washington is a pioneer in the protection of employee rights. *Hill v. Xerox Bus. Servs., LLC*, 191 Wn.2d 751, 760, 426 P.3d 703 (2018). Minimum wage laws are designed "to protect the health, safety, and general welfare of [the] citizenry by ensuring that minimal employment standards [are] met." *Id.* at 760-61. Likewise, "[t]he content of a ballot and issues of statutory interpretation are generally matters of substantial public interest . . . ." *Eyman v. Ferguson*, 7 Wn. App. 2d 312, 322, 433 P.3d 863 (2019); *see also, e.g.*, *Glob. Neighborhood v. Respect Wash.*, 7 Wn. App. 2d 354, 379, 434 P.3d 1024 (2019) (courts "repeatedly" find suits arising out of initiatives "entail substantial public interest").

SeaTac voters passed a ballot measure requiring a higher minimum wage for employees of a "transportation employer." *Hassan*, 17 Wn. App. 2d at 630, 637-42.[4] The construction of this term is an issue that concerns

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[1] Nicole Vallestero Keenan & Howard Greenwich, *The Economic Impacts of a Transportation and Hospitality Living Wage in the City of SeaTac* at ii (Puget Sound Sage Sept. 2013), available at https://pugetsoundsage.org/wp-content/uploads/2016/09/Economic-Analysis-of-SeaTac-Living-Wage-9-25-13.pdf.
[2] *Id*. at iii.
[3] *Id*. at 6, 23.
[4] With the approval of the living wage ordinance, SeaTac voters ushered in one of the highest minimum wages in the country. Martha C. White, *Voters weigh $15 hourly*

the compensation of seasonal, low-wage workers who should qualify for minimum wage. If left to stand, the Court of Appeals' decision will result in lower earnings for thousands of employees over the coming years. Whether the decision is correct is thus one of substantial public interest.

The second issue of substantial public interest concerns the ability of an employee to pursue a lawsuit for wages owed after complaining to the Department of Labor & Industries (DLI) and being told the alleged violation was unsubstantiated. *See id.* at 632-37. DLI is a "state agency dedicated to the safety, health, and security of Washington's 3.3 million workers."[5] It has 19 offices throughout Washington, and one of its many objectives is to "ensure workers are paid what they are owed."[6] This is no small task. In 2019, the most recent year for which data is publicly available, DLI received more than 6,400 wage complaints—an average of 123 per week.[7] Employees are told they can withdraw their complaints at

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minimum wage for airport, hotel workers, NBCNEWS.COM (Oct. 18, 2013), available at https://www.nbcnews.com/businessmain/voters-weigh-15-hourly-minimum-wage-airport-hotel-workers-8c11399394. The ordinance has already been the basis of several lawsuits, many of which were brought as class actions. *See, e.g.*, *Alemu v. Imperial Parking (U.S.), LLC*, 17 Wn. App. 2d 1001, 2021 WL 1250942, at *1 (Apr. 5, 2021); *Jama v. GCA Servs. Grp., Inc.*, No. C16-0331RSL, 2017 WL 7053970, at *1 (W.D. Wash. Oct. 27, 2017); *Jama v. Golden Gate Am. LLC*, No. C16-0611RSL, 2017 WL 7053971, at *1 (W.D. Wash. Apr. 26, 2017); *Toering v. Ean Holdings LLC*, No. C15-2016JCC, 2016 WL 4765850, at *1 n.2 (W.D. Wash. Sept. 13, 2016).

[5] *About Labor & Industries*, WASH. DEPT. OF LABOR & INDUS., available at https://lni.wa.gov/agency/.

[6] *Id*.

[7] *L&I Facts and Figures*, WASH. DEPT. OF LABOR & INDUS., available at https://lni.wa.gov/agency/_docs/LNIFactsAndFigures2019.pdf. The formula for the stated average is 6400 / 52 = 123.08.

any time, but there is no indication the failure to do so will prohibit the employees from pursuing wage claims in court.[8]

Protecting the minimum wage rights of our state's most vulnerable workers is of utmost importance. A quick resolution to wage claims is a vital option for workers because they often cannot wait for the more time-consuming judicial process, which can also be impractical for relatively small claims.[9] To protect employees, the courthouse doors must remain open even if DLI is initially unable to substantiate a wage violation.

B. In its motion to publish the decision of the Court of Appeals, GCA effectively conceded that RAP 13.4(b) is satisfied.

In its answering brief, GCA writes: "any argument that the Court of Appeals' claim preclusion analysis involves substantial issues of public interest . . . fails." Resp.'s Answer at 17. This assertion is disingenuous.

The Court of Appeals originally chose not to publish the portion of its decision that addressed claim preclusion. GCA moved for publication of the entire decision, which the Court of Appeals ultimately granted. In its motion, GCA argued the decision "meets the requirements of RAP

[8] Instead, the agency states: "If the evidence gathered does not substantiate your claim, we will close the Worker Rights Complaint and send a letter to both you and your employer. This letter will state we could not find a violation and will not take further action." *Worker Rights Complaints*, WASH. DEPT. OF LABOR & INDUS., available at https://lni.wa.gov/workers-rights/workplace-complaints/worker-rights-complaints.
[9] In 2019, DLI returned "nearly $4 million" to workers. Note 8, *supra*. This averages out to less than $625 for every wage complaint filed, but $625 can prevent someone from being evicted or provide food for her children.

12.3(e)(3)-(5).” RAP 12.3(E) Mot. for Publ’n of Dec. at 3. Subsection (5) of the rule requires an appellate court to look at “whether the decision is of general public interest or importance.” This tracks closely with a criterion governing discretionary review: whether the decision “involves an issue of substantial public interest . . . .” RAP 13.4(b)(4).

In support of its argument to publish, GCA maintained publication would provide “guidance” to litigants and “assist superior courts in determining whether [those] litigants are similarly barred . . . .” *Id*. at 5-6. Accordingly, GCA concluded, the decision of the Court of Appeals is one of “public interest and importance.” *Id*. at 5. Amici agree! The issues addressed in this case are “of substantial public interest [and] should be determined by the Supreme Court.” RAP 13.4(b)(4).

C. The Court of Appeals erred in holding that GCA falls outside the meaning of “transportation employer.”

The SeaTac ordinance requires transportation employers to pay a defined minimum wage to their employees. SMC 7.45.050(A). This is a remedial ordinance that “should be liberally construed to effectuate its purpose.” *Int’l Ass’n of Fire Fighters, Local 46, v. City of Everett,* 146 Wn.2d 29, 34, 42 P.3d 1265 (2002). “Transportation employer” is defined in relevant part as “any person” who “[o]perates or provides rental car services . . . .” SMC 7.45.010(M)(2). The Court of Appeals held that

"GCA did not provide or operate rental car services under the ordinary meaning of the terms" and thus had no obligation to pay its workers the minimum wage required under the ordinance. *Hassan*, 17 Wn. App. 2d at 637. Amici respectfully submit this holding is erroneous.

The SeaTac International Airport rental car facility is a massive, five-story building with more than 2.1 million square feet of space.[10] It can accommodate 5,400 vehicles on the building's four parking floors and on peak days, the facility processes as many as 14,000 rental cars.[11] There are 22 car washes, 48 vacuums, and 48 gasoline pumps to clean and fuel returned cars so they are ready for use by the next customers.[12]

GCA "contracted with Avis Budget Car Rental LLC" to handle "on-airport shuttling and off-airport shuttling duties." *Hassan*, 17 Wn. App. 2d at 629-30. On-airport shuttling involves "driv[ing] cars at the airport garage from the return line to the car wash/refueling area and then from the clean area to the company parking spots where they are ready to be taken by new customers." CP 1152. Off-airport shuttling involves moving cars between a large overflow lot in SeaTac, where cars are stored

[10] *Port holds pre-opening ceremony for massive rental car facility*, WESTSIDESEATTLE.COM (May 9, 2012), available at https://www.westsideseattle.com/highline-times/2012/05/09/port-holds-pre-opening-ceremony-massive-rental-car-facility.
[11] *Id*.
[12] *Id*.

and repaired, and the airport rental car facility, where cars are taken by customers. CP 5. There appears to be no dispute that Avis's rental car business requires that some group of people—whether it be Avis employees or the employees of a subcontractor like GCA—provide these shuttling services. The workers in this case carried out those duties.

In determining whether GCA's employees fell under the definition of "transportation employer," the Court of Appeals held that "provides rental car services" means "supplies individuals with the possession and enjoyment of cars in exchange for payments." *Hassan*, 17 Wn. App. 2d at 639. Because "GCA [did] not receive a rental fee for its services" and "[did] not own the vehicles," the court concluded that GCA did not provide rental car services. *Id*. This reasoning fails to withstand scrutiny.

Nothing in the ordinance indicates that the obligation to pay a living wage applies only to employers owning the rental cars or receiving fees directly from customers. Indeed, an employer does not have to even operate the rental car business to be covered; it need only *provide the services* that are integral to that business. Otherwise, there is no distinction between "[o]perates or provides." SMC 7.45.010(M)(2). Each word of an ordinance is to be accorded meaning and when different terms are used within an ordinance, they are presumed to have different meanings. *State*

v. Roggenkamp, 153 Wn.2d 614, 624-26, 106 P.3d 196 (2005). The Court of Appeals did not correctly adhere to these principles.

The Court of Appeals also justified its holding by pointing out that unlike the definition of "hospitality employer," the definition of "transportation employer" lacks a reference to subcontractors. *Hassan*, 17 Wn. App. 2d at 639. But both definitions apply to entities that "operate" or "provide" certain services, and the reference to "subcontractors" in the definition of "hospitality employer" is merely an illustration of the type of entities that "provide" hospitality services. *Compare* SMC 7.45.010(D), *with* SMC 7.45.010(M)(2). The operative meaning of "provide" must be the same throughout the ordinance. *State v. Gonzalez*, 168 Wn.2d 256, 264, 226 P.3d 131 (2010) ("When similar words are used in different parts of a statute, the meaning is presumed to be the same throughout." (Internal marks and citations omitted.)). The conclusion that subcontractors who provide hospitality services are covered but those who provide rental car services are not is wrong and contrary to the required liberal interpretation.

Finally, the decision of the Court of Appeals runs contrary to the purpose of the SeaTac ordinance because it creates a loophole that allows rental car and other transportation businesses to avoid minimum wage obligations simply by subcontracting certain services necessary to their operations. If Avis employed the workers in this case, they would have

been covered by the ordinance. The fact that those workers performed the same duties for a different employer is no basis for excluding them.

D. The Court of Appeals erred in holding that claim preclusion applies to workers who receive determinations of compliance from the Department of Labor & Industries.

On the issue of claim preclusion, the Court of Appeals held: "when DLI determined that GCA did not violate the ordinance, it resolved disputed issues of fact properly before it, and claim preclusion applies to DLI's determination as final judgment on the merits." *Hassan*, 17 Wn. App. 2d at 634. Amici respectfully submit this holding is erroneous.

Claim preclusion, or res judicata, is "an equitable, common law doctrine." *Weaver v. City of Everett*, 194 Wn.2d 464, 482, 450 P.3d 177 (2019). It "is not to be applied so rigidly as to defeat the ends of justice, or to work an injustice." *Id*. Injustice occurs where the affected party "did not have a full and fair opportunity to litigate" the claim in the "earlier proceeding." *Weaver v. City of Everett*, 4 Wn. App. 2d 303, 316, 421 P.3d 1013 (2018), *aff'd*, 194 Wn.2d 464, 450 P.3d 177 (2019). Injustice also occurs when application of the doctrine "contravene[s] clear public policy." *Weaver*, 194 Wn.2d at 482. Both circumstances apply here.

The workers in this case were not provided an opportunity to "litigate" their claims before the agency. Indeed, the system is not set up that way. There is no process by which employees can obtain discovery

from employers, for example. The workers here are also immigrants, and many do not speak English well. CP 220. They proceeded pro se and lacked the erudition necessary to offer legal arguments as to the meaning of "transportation employer." CP 802-17, 820-22, 1644-45.

Washington also has a "a strong policy in favor of payment of wages due employees . . . ." *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 157, 961 P.2d 371 (1998). Minimum wage laws provide "substantive rights" to workers and are "liberally construed" to "assure payment." *Id*., 136 Wn.2d at 157, 159. As discussed above, the workers in this case were entitled to receive the minimum wage rate SeaTac voters approved. It would be unjust to bar the workers from recovery simply because DLI erroneously concluded they fell outside the scope of the ordinance.

Finally, claim preclusion is contrary to the express language of the Wage Payment Act, which prohibits an employee from pursuing wages in court only when DLI cites the employer for violating a wage requirement and the employee accepts payment of all wages and interest assessed. RCW 49.48.083(4). Outside this one scenario, the statute allows the employee "to pursue *any* judicial, administrative, or other action available with respect to [the] employer." RCW 49.48.085(3) (emphasis added).

III. CONCLUSION

Amici respectfully ask the Court to grant the petition for review.

RESPECTFULLY SUBMITTED AND DATED this 23rd day of August, 2021.

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CERTIFICATE OF SERVICE

I certify that on August 23, 2021, I caused a true and correct copy of the foregoing to be served on the following via the means indicated:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 23rd day of August, 2021.

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