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SUPREME COURT  
STATE OF WASHINGTON

2001 APR 27 P 3:46

NO. 79971-7

BY WILLIAM R. GARDNER

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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MELANIE MORIN,

Appellant,

v.

CLARENCE HARRELL and HAZEL HARRELL, husband and wife and  
their marital community,

Respondent.

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**AMICUS CURIAE BRIEF OF STATE OF WASHINGTON**

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ORIGINAL

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## I. INTRODUCTION

This case concerns a 2005 challenge to a 1988 initiative that eliminated the domestic service exclusion from the Minimum Wage Act, RCW 49.46. The superior court held that the 1988 initiative did not comply with the subject in title requirements of article II, section 19 of the Washington Constitution. Because the 1988 initiative should be upheld, the case should be remanded for a determination of whether Clarence and Hazel Harrell owe Melanie Morin unpaid overtime wages under Washington's Minimum Wage Act, RCW 49.46.

## II. IDENTITY AND INTEREST OF AMICUS CURIAE

The State of Washington has an important interest in upholding initiatives passed by Washington citizens. *See* RCW 43.10.030; RCW 29A.72. The State also has an important interest regarding coverage under the Minimum Wage Act, which the Department of Labor and Industries (L&I) enforces. RCW 43.22.270(4); RCW 49.48.040. The Legislature has decided that covered workers should receive a minimum wage for their labor. The State has a vital interest in upholding the constitutionality of the long-codified – and subsequently amended – legislation providing for such wages. RCW 49.46.005. The State appears as amicus to address the state constitutional questions raised here.

### III. BACKGROUND

Washington enacted the Minimum Wage Act in 1959. The Act requires employers to pay minimum wages and overtime wages to “employees” covered under the Act. RCW 49.46.020, .130. The definition of “employee” excludes several categories of individuals from coverage under the Act, meaning they are not entitled to either minimum wages or overtime wages. RCW 49.46.010(5), .020, .130(2)(a).

The original Act excluded from the definition of employee, “any individual employed in *domestic service* in or about a private home.” RCW 49.46.010(5)(b) (originally enacted by Laws of 1959, ch. 294, § 1).

In 1988, Initiative 518 amended the Minimum Wage Act. The amendments narrowed the domestic service exclusion. The amended RCW 49.46.010(5)(b) excluded “any individual employed in *casual labor* in or about a private home, unless performed in the course of the employer’s trade, business, or profession.”<sup>1</sup> The initiative also increased the minimum wage and amended the previous agricultural exclusion to generally cover agricultural workers. Laws of 1989, ch. 1, §§ 1-5.

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<sup>1</sup> Under L&I’s policy interpretation “casual labor” means work that is “irregular, uncertain or incidental in nature and duration.” CP 29. The policy states that, “Employment that is intended to be permanent in nature is not casual, and is not exempt, regardless of the type of work performed. Employment of housekeepers, caregivers, or gardeners on a regular basis is not considered ‘employed in casual labor’ and such workers may be subject to the protections of the MWA.” CP 29. The parties used this interpretation below, and it is not at issue in this case. CP 11, 119.

Since passage of the 1988 initiative, several amendments to the Minimum Wage Act have occurred. The Legislature amended the definition of “employee” in RCW 49.46.010(5) in 1993, 1997, and 2002. Laws of 1993, ch. 281, § 56; Laws of 1997, ch. 203, § 3; Laws of 2002, ch. 354, § 231. In 1999, an initiative raised the minimum wage from the rates established by the 1988 initiative. Laws of 1999, ch. 1, § 1.

In this litigation, the Harrells claimed the “domestic service” language from the original 1959 Act applied, rather than the “casual labor” language from the 1988 amendments. CP 12-15. The superior court agreed. CP 123. The superior court ruled that the 1988 “casual labor” provision was constitutionally invalid; that the previous “domestic service” provision applied; and that the “domestic service” provision excluded Ms. Morin’s work as a caregiver from the minimum wage and overtime requirements of the Minimum Wage Act.<sup>2</sup> CP 123-24. The superior court also rejected Ms. Morin’s argument that laches barred the challenge. RP 2.

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<sup>2</sup> Ms. Morin has not assigned error to the superior court’s ruling that her work as a caregiver was excluded under the former “domestic service” provision. Appellant’s Brief at 1-2. Likewise, the Harrells accepted that the current “casual labor” exclusion in the RCW 49.46.010(5)(b) would not exclude Ms. Morin from the Minimum Wage Act. CP 11, 112. Given the procedural posture of this case, therefore, interpreting the meaning of the terms “domestic service” in former RCW 49.46.010(5)(b) and “casual labor” in the current statute are not before this Court as issues for consideration.

#### **IV. SPECIFIC ISSUES ADDRESSED BY AMICUS CURIAE**

(1) Whether the doctrine of laches applies to bar a procedural constitutional challenge under article II, section 19 of the Washington constitution.

(2) Whether the Court should reach the article II, section 19 claim when the Legislature subsequently amended and reenacted the challenged statute.

(3) Whether the 1988 amendments to RCW 49.46.010(5)(b) satisfied article II, section 19.

#### **V. ARGUMENT**

##### **A. Summary**

Almost 20 years after the 1988 initiative, and three legislative reenactments of the pertinent statute, the Harrells seek to invalidate RCW 49.46.010(5)(b) based on a claim that the initiative's title violated article II, section 19 of the state constitution. Article II, section 19 provides, "No bill shall embrace more than one subject, and that shall be expressed in the title." Article II, section 19 has two aspects: the "subject in title" and "single subject" rules. This case concerns only the "subject in title" rule because the trial court ruled on this basis, after the Harrells expressly declined to claim a "single subject" violation below. CP 123, 110 n.9.

The State agrees with Ms. Morin that the doctrine of laches applies to bar a challenge to a ballot title raised years after an initiative's passage. Applying the doctrine of laches is appropriate, especially given

the presumption of constitutionality in statutes enacted through the initiative process. See *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205, 11 P.3d 762, 27 P.3d 608 (2000).

In the intervening years since the 1988 initiative's passage, people have made important decisions based on the challenged statute, and it is inequitable to now allow a procedural challenge to its enactment. "Laches is not a mere matter of elapsed time, but rather, it is principally a question of the inequity of permitting a claim to be enforced." *Cole v. Montana*, 308 Mont. 265, 270, 42 P.3d 760 (2002) (laches barred constitutional challenge to initiative title nine years after passage); *LaVergne v. Boysen*, 82 Wn.2d 718, 720-22, 513 P.2d 547 (1973) (laches barred election challenge when the plaintiffs waited 79 days from the election to file suit and eight more months to prosecute it).

Significantly, the later amendments to the pertinent statute render the initial ballot title in the 1988 initiative irrelevant. When a statute is challenged on a claim that the enacting legislation or an initiative violated constitutional title requirements, a later amendment to the statute supersedes and therefore "cure[s] any defect" in the earlier legislation or initiative. *Pierce Cy. v. State*, 159 Wn.2d 16, 41, 148 P.3d 1002 (2006). Here, the Legislature has reenacted the challenged provision by amending the statute on multiple occasions. The later reenactments cured any defect

in its original enacting process.

Even assuming that laches did not apply, the 1988 amendment did not violate article II, section 19. Assuming even further that the amendment violated article II, section 19, the proper remedy would be to invalidate only the provision affected by the violation – the “casual labor” exclusion in RCW 49.46.010(5)(b).

**B. Laches Applies To Procedural Constitutional Challenges**

Laches bars the challenge under article II, section 19 to the 1988 amendments. The doctrine of laches applies to belated challenges based on procedural defects in the “mode of enactment” of ordinances. *Citizens for Responsible Gov't v. Kitsap Cy.*, 52 Wn. App. 236, 239, 758 P.2d 1009 (1988). The same standards for ordinances govern the enactment of statutes by initiative or legislation. *Cf. Pierce Cy.*, 159 Wn.2d at 39-41 (not necessary to reach article II, section 19 issue because any alleged defects in ballot title were cured by a later amendment to same statute).

In *Citizens*, a party claimed a denial of due process, asserting that the county failed to follow notice statutes when adopting a zoning ordinance. 52 Wn. App. at 238. The *Citizens* Court held laches barred the claim of deficient notice because prejudice occurred to developers, who relied on the ordinance during the three years before the parties raised a due process challenge. *Citizens*, 52 Wn. App. at 240-41.

The *Citizens* Court applied *Buell v. City of Bremerton*, 80 Wn.2d 518, 496 P.2d 1358 (1972), where this Court held that laches barred a challenge claiming multiple procedural defects in the passage of zoning ordinance. The Court barred a claim first raised in 1971 that a planning committee member had a potential financial benefit from a 1966 zoning ordinance. *Buell*, 80 Wn.2d at 522-23.

Courts in several other jurisdictions apply laches to reject belated claims that statutes were enacted in violation of constitutional procedural requirements. *See, e.g., Cole*, 308 Mont. at 269-72; *Stilp v. Hafer*, 553 Pa. 128, 134-36, 718 A.2d 290 (1998).<sup>3</sup> In *Cole*, legislators challenged a term limits initiative nine years after its enactment, arguing the ballot title violated Montana's version of the "double subject" provision. 308 Mont. at 269. The Montana Supreme Court dismissed the claim due to laches, holding that allowing the claim after a nine year delay would prejudice those who had relied upon the law's presumptive validity. *See Cole*, 308 Mont. at 269-72.

Like the *Citizens* Court, which distinguished "between defects

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<sup>3</sup> *See Schaeffer v. Anne Arundel Cy.*, 338 Md. 75, 656 A.2d 751 (1995) (laches barred a claim that an ordinance enacted four years earlier was invalid due to a procedural defect in its enactment); *Benequit v. Borough of Monmouth Beach*, 125 N.J.L. 65, 13 A.2d 847 (1940) (laches barred procedural challenge about notice of zoning ordinance raised eight years after its adoption); *see also Schulz v. New York*, 81 N.Y.2d 336, 615 N.E.2d 953, 599 N.Y.S.2d 469 (1993). *But see Sears v. Treasurer & Receiver Gen.*, 327 Mass. 310, 98 N.E.2d 621 (1951) (laches is not a defense to a constitutional claim to a law's execution).

which are substantive and those which are merely procedural,” the *Cole* Court found determinative the fact that the parties did not claim that the law violated any constitutional substantive right of the parties. *Citizens*, 52 Wn. App. at 239; *Cole*, 308 Mont. at 271-72. The *Cole* Court therefore allowed laches to apply to delayed procedural constitutional challenges, such as a challenge to an initiative title. *Cole*, 308 Mont. at 271-72. The claim must expire at some point:

[I]f we allowed Plaintiffs to challenge the procedure by which [this initiative] was enacted nine years after the fact, what would prevent a party from filing a similar procedural challenge to some other constitutional initiative fifteen, twenty or even thirty years after that initiative’s enactment? There must be a point at which a claim asserting that Montana voters failed to follow the proper procedures in enacting a constitutional initiative simply comes too late. We have reached that point.

*Cole*, 308 Mont. at 272.

Similarly in *Stilp*, the Pennsylvania Supreme Court declined to reach a procedural constitutional challenge to a statute where the claim was first raised 12 years after the statute’s enactment. The *Stilp* Court held that laches barred a belated constitutional claim of “procedural defects” in the method of enacting a bill where citizens had relied on the statute. *Stilp*, 553 Pa. at 136, 132-34.

The Harrells argue laches should not apply because their “constitutional challenge does not concern a procedural defect; rather, the

challenge is substantive and goes to the heart of whether the enactment itself violates article II, section 19 . . . .” Respondent’s Brief at 22. But the text of article II, section 19 mandates a certain *form* of the bill when the Legislature (or the voters) enacts it. Const. art. II, § 19 (providing that “[n]o bill shall embrace more than one subject, and that shall be expressed in the title”). The Harrells make no substantive claim that *content* in RCW 49.46.010(5)(b) is constitutionally infirm. Their concern is with the *form* of the initiative title used to enact the substantive content.

Washington courts have applied laches to cases implicating: due process notice concerns in the enactment of an ordinance (*Citizens*, 52 Wn. App. at 238-40); conflict of interest concerns implicated in the passage of an ordinance (*Buell*, 80 Wn.2d at 522-23); and fairness in elections concerns (*LaVergne*, 82 Wn.2d at 720-22). As noted, the *Citizens* Court recognized that procedural concerns about notice, with time, give way to the “public interest in the finality” of laws. 52 Wn. App. at 240. Similarly, the *LaVergne* Court held that laches barred a challenge to an election because the “substantial public interest in the finality of elections” necessitated prompt challenges. 82 Wn.2d at 721.

This Court should follow these cases and apply laches to this belated challenge under article II, section 19.

**C. The Harrells' Procedural Constitutional Claim Against the "Casual Labor" Exclusion Is Barred by Laches**

Laches properly applies to bar the Harrells' procedural constitutional claim regarding the 1988 initiative's amendment of RCW 49.46.010(5)(b). Laches bars the claims of those who neglect to assert a claim for an unreasonable time, leading others (including a party, innocent third parties, or the public) to alter their position or to suffer damage from the delay. *Buell*, 80 Wn.2d at 522; *LaVergne*, 82 Wn.2d at 721.

As their defense against laches, the Harrells argue they acted reasonably by relying on the advice of their accountants who advised them they did not need to pay overtime wages, and it was not until Ms. Morin's lawsuit that they learned otherwise. Respondent's Brief at 21; CP 45. This is not a defense to the delay here. The law determines the minimum compensation that an employee is entitled to, not the advice of the employer's accountant. RCW 49.46.020, .090, .130.

The Harrells claim an existing law does not apply to them based on article II, section 19. They had a reasonable opportunity to discover this claim. *See Davidson v. State*, 116 Wn.2d 13, 26, 802 P.2d 1374 (1991). This Court has held that a public law constitutes "a more than adequate basis to know their asserted rights had been invaded . . . ." *Davidson*, 116 Wn.2d at 26 (60-year delay barred challenge to harbor lines improperly

drawn in 1921 based on a 1913 law). *Accord Stilp*, 553 Pa. at 135 (rejecting claim of no knowledge because it is “not what a party knows, but what he might have known by the use of information within his reach” such as publicly available information about the procedures used to enact the challenged act).

In this case, the passage of the 1988 initiative and the existence of RCW 49.46.010(5)(b) put the Harrells on notice of any invasion of rights by the putatively unconstitutional procedure. If indeed the ballot title was incorrect, this meant that anyone could raise a question of its validity shortly after the time of its passage in November 1988. This information was available before the Harrells first hired Ms. Morin in 2001 and before they first hired employees in 1996. Therefore, the delay in raising the article II, section 19 claim is unreasonable. CP 43-44.

Laches protects against the inequities that would occur if a party were permitted to procedurally challenge a law years later, after people had made decisions based on the law. *Cole*, 308 Mont. at 270-72. The application of laches “depends upon the equities of the particular case which would render the maintenance of the action inequitable.” *LaVergne*, 82 Wn.2d at 721. Here legal positions have been established in reliance on the long-standing language, particularly in light of the Legislature’s later amendments to RCW 49.46.010(5). *Pierce Cy.*, 159

Wn.2d at 40-41; *see infra* Part V.C.

Employers and employees have relied on the long-standing revision in the Minimum Wage Act to make decisions about their daily lives and employment relationships. Private homeowners have relied on the exclusion from minimum wage requirements of casual labor provided in a private home to make employment decisions. Workers have relied on the 1988 amendments to RCW 49.46.010(5)(b). Housekeepers, nannies, and caregivers who work on a non-casual basis have made employment decisions under the existing language in RCW 49.46.010(5)(b).

To now alter long-settled expectancies creates a hardship for all individuals making such employment decisions and for the public in general. Such alteration is inconsistent with the important remedial principles of the Minimum Wage Act to protect workers. RCW 49.46.005; *see Drinkwitz v. Alliant Techsys., Inc.*, 140 Wn.2d 291, 300, 996 P.2d 582 (2000) (recognizing “Washington’s long and proud history of being a pioneer in the protection of employee rights”).

In summary, the trial court erred by granting summary judgment and by not barring the challenge to the title of the 1988 initiative.

**D. The Court Need Not Reach the Article II, Section 19 Claim Because Later Amendments to RCW 49.46.010(5) Have Cured Any Defect**

Even assuming any deficiency existed in the 1988 title, later

amendments have cured it, making this Court's review of the article II, section 19 claim unnecessary. When a statute is challenged on a claim that the enacting initiative violated constitutional title requirements, a later amendment to the statute supersedes and therefore cures any deficiencies in the earlier legislation. *See Pierce Cy.*, 159 Wn.2d at 41.<sup>4</sup> In *Pierce County*, the parties claimed that the Legislature's amendments in 1993 to a transportation statute violated article II, section 19. The Court did not reach the article II, section 19 question because the Court held that the later 1994 legislation amended the same statutory provision and "therefore, ratified and cured any defect in the 1993 enactment." *Pierce Cy.*, 159 Wn.2d at 41.

The Legislature has repeatedly amended and reenacted the definition of "employee" in RCW 49.46.010(5) since 1988. *See* Laws of 1993, ch. 281, § 56 (amending definition of executive, administrative, or professional employees); Laws of 1997, ch. 203, § 3 (defining retail establishment); Laws of 2002, ch. 354, § 231 (amending definition of executive, administrative, or professional employees). In each amendment, the Legislature reenacted the "casual labor" exclusion under RCW 49.46.010(5)(b). The later amendments cure any defects in the 1988 amendment process. *See Pierce Cy.*, 159 Wn.2d at 40-41.

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<sup>4</sup> This rule is consistent with the approach of many states. *See Pierce Cy.*, 159 Wn.2d at 40-41 (and cases cited therein).

Also, the 1988 initiative amended RCW 49.46.020 to increase the minimum wage to \$4.25 by 1990. Laws of 1989, ch. 1, § 2. Since then, voters approved another initiative for additional increases to the minimum wage that amended RCW 49.46.020. Laws of 1999, ch. 1, § 1. This 1999 amendment to the same wage statute cured any defects with the 1988 initiative about increased wages. *Pierce Cy.*, 159 Wn.2d at 41.

The Legislature by its later amendments has “ratified and cured any defect” in the 1988 enactment. *Pierce Cy.*, 159 Wn.2d at 41.

**E. The 1988 Amendments to RCW 49.46.010(5) Satisfied Article II, Section 19**

**1. The Title of the 1988 Initiative Did Not Violate the Subject in Title Rule**

To meet the subject in title rule, the title of the 1988 Initiative “need not be an index to its contents; nor is the title expected to give the details contained in the bill.” *Wash. Ass’n of Neighborhood Stores v. State*, 149 Wn.2d 359, 371, 70 P.3d 920 (2003) (citations omitted); *Wash. Fed’n of State Employees v. State*, 127 Wn.2d 544, 555, 901 P.2d 1028 (1995). It is enough if the title “gives notice that would lead to an inquiry into the body of the act, or indicate to an inquiring mind the scope and purpose of the law.” *Neighborhood Stores*, 149 Wn.2d at 371 (citations omitted). “Any objections to the title must be grave and the conflict between it and the constitution palpable before we will hold an act

unconstitutional.” *Id.* at 372.

The title of the 1988 initiative stated: “Shall the state minimum wage increase from \$2.30 to \$3.85 (January 1, 1989) and then to \$4.25 (January 1, 1990) and include agricultural workers?” CP 115. The title gives sufficient notice of the subject matter of the initiative – a two-step increase in the minimum wage and coverage for agricultural workers – which should lead to an inquiry into the body of the initiative for more details. A typical reader would understand that the initiative is about minimum wages and who receives them. As Ms. Morin states, one would understand from the title that the state’s wage laws “are involved because the minimum wage will be changed and so will the class of workers for whom the laws apply.” Appellant’s Brief at 7. The Harrells’ reading of the title is inconsistent with the well-established authority that “Const. art. 2, § 19 is to be liberally construed in favor of the legislation,” (*Wash. Fed’n of State Employees*, 127 Wn.2d at 555), with any reasonable doubts “resolved in favor of constitutionality.” *Wash. State Grange v. Locke*, 153 Wn.2d 475, 486, 105 P.3d 9 (2005).

The title of the 1988 initiative satisfies the subject in title rule.

**2. The Court Should Not Consider the Harrells’ Single Subject Claim Because They Expressly Declined To Pursue this Claim at Superior Court**

As an alternative argument, the Harrells argue that the 1988

initiative violated the single subject rule.<sup>5</sup> Appellant's Brief at 16-19. But they did not preserve this issue by properly raising it to the superior court.

The Harrells affirmatively declined to make a single subject claim at superior court (CP 110 n.9), and should be precluded from raising it now. Below the Harrells consciously decided not to raise a single subject claim due to the mistaken belief it would render the entire 1988 act unconstitutional, stating "a challenge on this basis [of the single subject rule] will be saved for another day." CP 110 n.9.<sup>6</sup> This waived the single subject claim, and their reliance on RAP 2.5(a) is misplaced.

"RAP 2.5(a)(3), which allows a party to raise a manifest error affecting a constitutional right for the first time on appeal, does not serve as a vehicle for relief from conscious decisions of trial counsel not to litigate constitutional issues at the trial court level." *State v. Walton*, 76 Wn. App. 364, 365, 370, 884 P.2d 1348 (1994); *see also State v. Valladares*, 99 Wn.2d 663, 671-672, 664 P.2d 508 (1983) (defendant "waived or abandoned his constitutional rights by affirmatively withdrawing his pretrial motion to suppress the evidence").

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<sup>5</sup> The Court need not reach the single subject issue if (assuming the Court rejects the laches, later amendment, and subject in title arguments) the Court finds a violation of the subject in title rule. Such a ruling alone would invalidate the "casual labor" provision in RCW 49.46.010(5)(b). *Patrice v. Murphy*, 136 Wn.2d 845, 855, 966 P.2d 1271 (1998).

<sup>6</sup> The Harrells did not argue the single subject issue in their summary judgment motion, and only alluded to this ground in a footnote at the end of their reply brief to Ms. Morin's brief opposing the Harrells' summary judgment motion. CP 110 n.9.

Given the Harrells' heavy burden to show unconstitutionality beyond a reasonable doubt, the Court should decline to consider the single subject issue because they waived the argument at the trial court. *Cf. Grange*, 153 Wn.2d at 499 n.14 (rejecting a single subject rule argument because, unlike the subject in title argument, the party did not expressly contend that the enactment violated the single subject rule).

### **3. The 1988 Initiative Did Not Violate the Single Subject Rule**

Assuming the Court reaches the Harrells' single subject challenge, the 1988 initiative satisfies the constitutional requirement that “[n]o bill shall embrace more than one subject.”

The Harrells failed to prove beyond a reasonable doubt that the 1988 minimum wage initiative violates the single subject requirement. *Pierce Cy. v. State*, 150 Wn.2d 422, 431, 78 P.3d 640 (2004). “An initiative embraces a single subject if its parts are rationally related to one another.” 150 Wn.2d at 431.<sup>7</sup> This Court has “consistently held that a bill may properly contain *one broad subject embracing many sub-subjects or subdivisions.*” *State v. Waggoner*, 80 Wn.2d 7, 9, 490 P.2d 1308 (1971) (emphasis added). This Court “has never favored a narrow construction of

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<sup>7</sup> The Harrells appropriately apply the rational unity test used for general titles. Respondent's Brief at 18. Viewing the title as either a general or restrictive one, the initiative satisfies article II, section 19.

the term ‘subject’ as used in Const. art. 2, § 19.” *Id.* at 9.

The Harrells rely on *Amalgamated*, 142 Wn.2d at 216-17, to argue that there is no rational unity between increasing the minimum wage and applying it to agricultural workers and casual laborers because “neither subject is necessary to implement the other.” Respondent’s Brief at 18. But this Court has rejected this argument, which “wrongly equate[s] ‘rational unity’ with ‘necessity.’” *Neighborhood Stores*, 149 Wn.2d at 370. Although necessity may demonstrate rational unity, the “absence of such a relationship” does not defeat rational unity. *Neighborhood Stores*, 149 Wn.2d at 370. Rational unity exists as long as the provisions are “reasonably connected to one another and the . . . title.” *Neighborhood Stores*, 149 Wn.2d at 370.

Increasing the minimum wage and the types of workers *who will benefit from the increase* are *reasonably connected* to one another and to the title of the 1988 initiative. The rational unity test is met. The 1988 initiative satisfies the single subject rule.

**F. If the Court Finds a Constitutional Violation, the Remedy Is To Invalidate Only the “Casual Labor” Provision, not the Entire 1988 Initiative**

Assuming the Court finds that the 1988 initiative violated article II, section 19, the remedy would be to invalidate the “casual labor” portion of the 1988 initiative, leaving the remaining portions of the Act intact. *See*

*Mun. of Metro. Seattle v. O'Brien*, 86 Wn.2d 339, 349, 544 P.2d 729

(1976). As the Court has observed:

“[T]he Constitution does provide that if only one subject is embraced in the title, then any subject not expressed in the title that is not embraced in the body of the act, may be rejected, and the part that is expressed in the title be allowed to stand[.]”

*Patrice*, 136 Wn.2d at 855 (citations omitted).

Severability applies to both violations of the subject in title rule and the single subject rule when two conditions are met. *State v. Broadaway*, 133 Wn.2d 118, 128, 942 P.2d 363 (1997); *Patrice*, 136 Wn.2d at 855; *State v. Thomas*, 103 Wn. App. 800, 813, 14 P.3d 854 (2000). The court severs an invalid portion if: (1) the court can presume the enacting body would have enacted the valid portion without the invalid portion; and (2) this would not render the remainder of the act incapable of accomplishing the legislative purpose. *Broadaway*, 133 Wn.2d at 128.

The two elements are met here. It can be assumed that the Legislature (or voters) would have enacted the 1988 act without the challenged casual labor language. The minimum wage increases in the 1988 initiative are rendered irrelevant because of the later 1999 amendments to RCW 49.46.020 to further increase the minimum wage. Laws of 1999, ch. 1, § 1 (amending RCW 49.46.020); see *Pierce Cy.*, 159 Wn.2d at 41.

Maintaining the coverage of agricultural workers accomplishes a legislative purpose expressed in the ballot title. If this Court declines to apply laches or the rule regarding later amendment, and in turn finds the challenged “casual labor” provision violated article II, section 19, the proper remedy is to find only RCW 49.46.010(5)(b) invalid, leaving the remainder of the 1988 act intact, *i.e.*, the agricultural worker provision. Such a result is consistent with established Supreme Court precedent.

## VI. CONCLUSION

The State requests that the superior court decision be reversed and the case be remanded to decide whether Ms. Morin is an employee under the Minimum Wages Act entitled to unpaid overtime wages.

RESPECTFULLY submitted this 27th day of April, 2007.

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