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NO. 96781-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

AMERICAN HOTEL & LODGING ASSOCIATION, SEATTLE HOTEL
ASSOCIATION, and WASHINGTON HOSPITALITY ASSOCIATION,
Respondents/Plaintiffs,

v.

CITY OF SEATTLE,
Appellant/Defendant,

and

UNITE HERE! LOCAL 8 and SEATTLE PROTECTS WOMEN,
Appellants/Intervenor-Defendants.

SUPPLEMENTAL BRIEF OF APPELLANTS
UNITE HERE! LOCAL 8 AND SEATTLE PROTECTS WOMEN

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I. INTRODUCTION

Three corporate lobbying groups—the American Hotel & Lodging Association, Seattle Hotel Association, and the Washington Hospitality Association (together, the Associations)—represent an industry that makes billions of dollars in profit in Seattle, largely based on their hardworking employees’ service. CP 116. The Associations vehemently opposed Seattle Municipal Code (SMC) 14.25 *et seq.*—a law enacted via the initiative process through Initiative 124 (I-124) that was passed overwhelmingly by the voters of Seattle to protect hotel employee well-being. CP 31, 109.

Despite the overwhelming support for this law demonstrated by the voters of Seattle, these Associations have spared no expense to achieve their single-minded goal: to invalidate the law and cause their employees to lose these crucial protections, lowering employment standards and worker well-being in the process.

In their efforts to do so, they appealed the trial court’s thorough and well-reasoned determination that I-124 was valid and constitutional in all its parts. CP 375-413. On Christmas Eve, the Court of Appeals wrongly overturned I-124 by applying incorrect statutes and by misunderstanding this Court’s jurisprudence on the “single-subject” rule. *Am. Hotel & Lodging Ass’n v. City of Seattle*, 6 Wn. App. 2d 928, 432 P.3d 434 (2018).

UNITE HERE! Local 8 (“Local 8”) and Seattle Protects Women (“the Committee”) (together Appellants/Intervenor-Defendants) ask this Court to overturn the Court of Appeals’ erroneous opinion, and restore SMC 14.25 so the will of the voters of Seattle can be preserved and so it can continue to offer one of our most vulnerable populations the protections they deserve.

II. ASSIGNMENTS OF ERROR

1. Does I-124 violate the Seattle City Charter’s “single-subject” requirement?
2. Did the Court of Appeals err in holding that RCW 35A.12.130 applied to the City of Seattle?

III. STATEMENT OF THE CASE

Local 8 is a labor organization representing over 5,000 workers in the hospitality industries of Oregon and Washington, primarily in hotels, restaurants, food service, and airport concessions. CP 106. They include room cleaners, cooks, bartenders, bellmen, servers, bussers, and dishwashers. Local 8 fights for living wages, job security, respect in the workplace, and affordable employer-provided family health insurance. *Id.*

Today, as many as 7,500 low-wage workers in Seattle are employed by the hotel industry—an industry which could grow by as much as 30 percent in the next five years as Seattle hotels have hit record

occupancy as a result of the city’s ongoing economic boom. CP 106, 116-118. But hotel workers do not directly reap these benefits—instead they experience unchecked harassment, unmanageable healthcare costs, inhumane workloads, and the constant threat of unemployment. CP 106. Sexual harassment of hotel employees—especially those who work in guest rooms—is so rampant that studies have found it has essentially been normalized. CP 106-08, 120-190.

Seeing that the well-being of hotel workers was going unaddressed, and to ensure that the hotel industry invests in protecting the workers who make it profitable, Local 8 staff drafted I-124—an initiative creating worker well-being standards that protect Seattle’s hotel housekeepers from sexual harassment and inhumane workloads, and granting them access to affordable family medical care and basic job security. CP 108.

The initiative’s provisions all provide for hotel employee well-being: protecting them from violent assault and sexual harassment; protecting them from injury; improving their access to medical care through their employers; preventing disruptions to employment; and enforcing compliance with the law. Seattle Municipal Code (“SMC”) 14.25 *et seq.*; CP 280-291, 389. Seattle voters passed I-124 with 77 percent of the vote. CP 31, 109.

The Associations vehemently opposed I-124. They have made clear their mistrust of the City of Seattle or the right to the initiative process that voters in Washington State enjoy. CP 194 (“Initiative 124...demonstrates the dangers of legislating by initiative.”). The Associations instead want to prevent I-124 from protecting some of Seattle’s most vulnerable employees from sexual harassment, inhumane workloads, or basic human rights on the job based purely on speculative and far-fetched harms that might occur to hypothetical falsely-accused guests of their member hotels. *See, e.g.*, CP 1-2, 207-208.

On December 19, 2016, the Associations filed a complaint in King County Superior Court seeking to invalidate I-124—in whole or in part—on multiple grounds. Appellants/Intervenor-Defendants intervened, and the parties filed cross motions for summary judgment, with oral argument on March 31, 2017. On June 9, 2017, the Honorable John Erlick issued a thorough and well-reasoned thirty-nine page decision outlining how I-124 was valid in its entirety. CP 375-413.

The trial court explained its decision to uphold I-124 in its entirety by noting that I-124 does not violate the “single-subject” rule,¹ as its

¹ The Court also addressed other challenges to I-124 that the Court of Appeals did not address, noting that there was no violation of due process created by I-124—particularly here, where the Associations had only a facial challenge and cannot succeed on an as-applied challenge because they lack the standing to assert the rights of guests instead of their own member associations and businesses. CP 392-97, 405-11. There was also no

provisions “express[] a general subject or purpose which is single, all matters which are naturally and reasonably connected with it, and all measures which will, or may, facilitate the accomplishment of the purposes so stated, are properly included in the act and are germane to its title.” CP 389.

The Associations sought direct review from this Court on July 24, 2017, *again* asserting that I-124 should be overturned in whole or in part on numerous grounds. This Court transferred the case to Division I of the Court of Appeals on January 3, 2018. The parties argued before Division I on November 8, 2018.

On December 24, 2018—almost two years after the Associations filed their complaint in King County Superior Court—the Court of Appeals issued its decision, overturning I-124 based solely on the challenge to the “‘single subject’ rule of RCW 35A.12.130 and article IV, section 7 of the Seattle City Charter.” *Am. Hotel & Lodging Ass’n v. City of Seattle*, 6 Wn. App. 2d 928, 432 P.3d 434 (2018), *review granted*, 439 P.3d 1069 (2019). The Court of Appeals declined to reach the Associations’ other challenges (to an alleged violation of the privacy and

conflict with WISHA created by the language in I-124; there is no preemptive language in WISHA that would preclude municipalities or other governmental bodies from adopting laws or regulations related to the health and safety of employees more protective of those set forth in WISHA, and there is nothing in I-124 that would conflict or be inconsistent with WISHA. CP 398-404

due process rights of its members' guests, or to preemption under RCW 49.17.270 ("WISHA")). Decision, 6 Wn. App. 2d at 937 n. 5.

IV. ARGUMENT

A. I-124 DOES NOT VIOLATE THE SEATTLE CITY CHARTER'S "SINGLE-SUBJECT" REQUIREMENT.

Article IV, Sec. 7 of the Seattle City Charter requires that every legislative act "shall contain but one subject, which shall be clearly expressed in its title."² This "single subject" rule must be construed liberally to ensure the ability of the legislative process to succeed. *Kueckelhan v. Fed. Old Line Ins. Co.*, 69 Wn.2d 392, 403, 418 P.2d 443 (1966) (single-subject requirement "is to be liberally construed so as not to impose awkward and hampering restrictions upon the legislature"); *City of Seattle v. Barto*, 31 Wash. 141, 71 P. 735 (1903) (a narrow reading of the term "object" in Article IV, Section 7 of the Seattle City Charter would "tie the hands of the Legislature as to make legislation extremely difficult, if not impossible").

Statutes, including those enacted through the initiative process, are presumed to be constitutional. *Brower v. State*, 137 Wn.2d 44, 52, 969 P.2d 42 (1998), *cert. denied*, 526 U.S. 1088, 119 S.Ct. 1498 (1999); *see also Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205,

² This language is almost identical to that in RCW 35A.12.130 ("[n]o ordinance shall contain more than one subject and that must be clearly expressed in its title"), which may be where the Court of Appeals got confused. See discussion *infra* at 15.

11 P.3d 762, 27 P.3d 608 (2000) (*ATU*); *Gerberding v. Munro*, 134 Wn.2d 188, 196, 949 P.2d 1366 (1998); *State ex rel. O'Connell v. Meyers*, 51 Wn.2d 454, 458, 319 P.2d 828 (1957). In order to be overturned, statutes enacted through the initiative process must be shown to be unconstitutional beyond a reasonable doubt in order to be overturned. *ATU*, 142 Wn.2d at 205, 11 P.3d 762 (2000); *State ex rel. Heavey*, 138 Wn.2d 800, 808, 982 P.2d 611 (1999); *Gerberding*, 134 Wn.2d at 196, 949 P.2d 1366. If there are any reasonable doubts about the constitutionality of an ordinance, they must be resolved in favor of constitutionality. *Washington Fed'n of State Emp. v. State*, 127 Wn.2d 544, 566, 901 P.2d 1028 (1995).

In order to violate single subject rule, a bill or initiative must embrace more than one subject. *Washington Ass'n for Substance Abuse and Violence Prevention v. State*, 174 Wn.2d 642, 655, 278 P.3d 632 (2012). This concept has been most clearly—and most analogously—applied to initiatives regarding labor standards in *Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 783, 357 P.3d 1040, 1047 (2015). There, Proposition 1, an initiative impacting working conditions in one specific geographical area—the City of SeaTac—and for one type of employer—transportation-related employers—was found to be of a general subject and therefore did not violate the single-subject rule. *Id.* at 783-84. That

means that the ballot title “contained a general statement of the subject” of the initiative, with a “few well-chosen words, suggestive of the general subject stated,” being “all that is necessary.” *ATU*, 142 Wn.2d at 207. And when a ballot title suggests a general, overarching subject matter for the initiative, “great liberality will be indulged to hold that any subject reasonably germane to such title may be embraced.” *Id.* at 208, quoting *DeCano v. State*, 7 Wn.2d 613, 627, 110 P.2d 627 (1941).

A review the two ballot titles—Proposition 1 (CP 343-344; *Filo Foods* at 783) and I-124 (CP 77, 82)—side-by-side shows their similarity:

Proposition 1	I-124
<p>Proposition No. 1 concerns labor standards for certain employers.</p> <p>This Ordinance requires certain hospitality and transportation employers to pay specified employees a \$15.00 hourly minimum wage, adjusted annually for inflation, and pay sick and safe time of 1 hour per 40 hours worked. Tips shall be retained by workers who performed the services. Employers must offer additional hours to existing part-time employees before hiring from the outside. SeaTac must establish auditing procedures to monitor and ensure compliance. Other labor standards are established.</p>	<p>Initiative 124 concerns health, safety, and labor standards for Seattle hotel employees.</p> <p>If passed, this initiative would require certain sized hotel-employers to further protect employees against assault, sexual harassment, and injury by retaining lists of accused guests among other measures; improve access to healthcare; limit workloads; and provide limited job security for employees upon hotel ownership transfer. Requirements except assault protections are waivable through collective bargaining. The City may investigate violations. Persons claiming injury are protected from retaliation and may sue hotel-employers. Penalties go to City enforcement, affected employees, and the complainant.</p>

Relying on *Filo Foods*, both the trial court and the Court of Appeals found I-124's subject matter to be general in nature. CP 389 (“[T]his Court finds that the enacted popular legislation ‘expresses a general subject or purpose which is single, all matters which are naturally and reasonably connected with it, and all measures which will, or may, facilitate the accomplishment of the purpose so stated, are properly included in the act and are germane to its title.’”); Decision, 6 Wn. App. 2d at 941 (“We conclude, under *Filo Foods*, I-124’s ballot title is general.”).

This is consistent with the long-standing tradition in Washington State to combine several conditions of employment within one piece of legislation. Over a hundred years ago, the Industrial Welfare Act, 1913 Laws of Washington, c. 174 § 2, made it unlawful to employ women or minors “under *conditions of labor* detrimental to their health and morals,” and also made it unlawful to employ “women in any industry within the State of Washington at wages which are not adequate for their maintenance,” thus combining in the same law requirements relating to multiple conditions of labor.³ I-124 thus follows in the well-established

³ See also RCW 49.12 generally (requiring adequate wages, forbidding wage discrimination based on sex, enabling use of paid time off for sick leave, addressing *other conditions of labor*, and authorizing rules and regulations “fixing minimum wages and standards, conditions and hours of labor” to be promulgated by the Department of Labor and Industries, RCW 49.12.091, all in one chapter of one title of the Revised Code of Washington).

tradition of legislation in Washington that simultaneously addresses various conditions of labor.

Missing that point, the Court of Appeals went on to misapply existing Washington Supreme Court case law regarding “single-subject” requirements, particularly by misunderstanding *Filo Foods*. The Court of Appeals noted:

In *Filo Foods*, the Supreme Court found rational unity between a similar 90-day employee retention provision and the minimum wage provisions of Proposition 1 because both provisions **related to maintaining job security**. 183 Wash.2d at 785, 357 P.3d 1040. But 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.

Decision, 6 Wn. App. 2d at 944 (emphasis added). However, that is not what this Court actually held in *Filo Foods*:

We similarly find that Proposition 1 satisfies the single-subject rule. Although the title lists various provisions, it also states that Proposition 1 generally “concerns labor standards for certain employers.” King County Official Local Voters’ Pamphlet, General and Special Election 94 (Nov. 5, 2013). This language is sufficiently broad to place voters on notice of its contents, including the 90-day worker-retention policy imposed on successor employers. The retention policy **concerns labor standards and is reasonably germane to the establishment of minimum employee benefits, including job security**.

183 Wn.2d at 784–85, 357 P.3d at 1047 (emphasis added).

In other words, the retention policy in *Filo Foods* was “reasonably germane” to other provisions of Proposition 1 that provided “minimum employee benefits,” even though those benefits—such as the wage provisions of Proposition 1—did not *themselves* impact “job security.”

The analogy to I-124 is both precise and indisputable: the retention policy in I-124 is “reasonably germane” to the sexual assault and anti-harassment provisions of I-124, because they both fall under the general rubric of “health, safety and labor standards” related to the well-being of Seattle hotel employees. As the trial court noted, “the ways [I-124] sets out to protect hotel employees has rational unity by seeking to protect employees from sexual assault, reduce workplace injuries, improve access to health insurance, and reduce disruptions in employment”—in other words, the provisions are reasonably germane to worker well-being.

Likewise, when the Court of Appeals stated that “none of the first four parts of I-124 are necessary to implement any other part of the initiative,” the Court shows additional misunderstanding of the proper standard to be applied. Decision, 6 Wn. App. 2d at 944. This Court has rejected this interpretation with respect to rational unity. In *Citizens for Responsible Wildlife Mgt. v. State*, the initiative challengers asserted that “there is no rational unity between banning body-gripping traps and the use of the pesticides because it is completely unnecessary to ban traps in

order to implement the ban on the use of these chemical compounds as pesticides.” 149 Wn.2d 622, 637, 71 P.3d 644 (2003) (internal quotations omitted). The Court held that such an argument “misconstrued” the *ATU* decision. *Id.* at 638. It reasoned: “An analysis of whether the incidental subjects are germane to one another does not necessitate a conclusion that they are necessary to implement each other, although that may be one way to do so. This court has not narrowed the test of rational unity to the degree claimed by Citizens.” *Id.*

Put another way:

...[T]here must be some rational unity between the matters embraced in the act, the unity being found in the general purpose of the act and the practical problems of efficient administration. It is hardly necessary to suggest that matters which ordinarily would not be thought to have any common features or characteristics might, for purposes of legislative treatment, be grouped together and treated as one subject. For purposes of legislation, “subjects” are not absolute existences to be discovered by some sort of *a priori* reasoning, but are the result of classification for convenience of treatment and for greater effectiveness in attaining the general purpose of the particular legislative act....

Washington Toll Bridge Authority v. Yelle, 61 Wn.2d 28, 33, 377 P.2d 466 (1948); *see also Kueckelhan*, 69 Wn.2d at 403 (“Where the title of a legislative act expresses a general subject or purpose which is single, all matters which are naturally and reasonably connected with it, and all

measures which will, or may, facilitate the accomplishment of the purpose so stated, are properly included in the act and are germane to its title.”).

This Court has not narrowed the rational unity test to the degree in the Court of Appeals’ decision. I-124 bears no resemblance to the handful of laws with general titles that this Court has struck down on this basis during the more than 120 years of the constitutional provision’s existence.

- *Washington Toll Bridge Auth. v. State*, 49 Wn.2d 520, 523-524, 304 P.2d 676 (“*Wash. Toll Bridge Auth. II*”) (1956), struck down an act that provided both a procedure for the establishing and financing of toll roads generally and the financing for a specific toll road from Tacoma to Everett. The Court concluded that the statute had two component parts with two different purposes, the first continuing and general in character, the second specific and temporary.
- *Price v. Evergreen Cemetery Co. of Seattle*, 57 Wn.2d 352, 353-54, 357 P.2d 702 (1960), struck down an act that provided for a cemetery fund and administrative board on the one hand, and banned racial discrimination in private cemeteries on the other.
- *Barde v. State*, 90 Wn.2d 470, 472, 584 P.2d 390 (1978) struck down an enactment that provided criminal sanctions for “dognapping” and the recovery of attorneys’ fees in civil replevin actions, finding that the two subjects had no rational unity to one another.
- *ATU 587* found that I-695 embraced two subjects— (1) setting license tabs at \$30 and (2) providing a method for approving future tax increases—that both fell under the general topic of taxes. 142 Wn.2d at 217. This Court invalidated the initiative in its entirety because the purposes of the two subjects were unrelated to each other. *Id.*
- *City of Burien* held that the initiative had two subjects: a tax refund and changes to the assessment process including a cap on property taxes. 144 Wn.2d at 827.

The Court held that the refund provision was unrelated to the changes to property tax assessments in that the provision encompassed much more than property taxes in general. *Id.*

I-124 does not even arguably suffer from the same structural defect as the measures struck down in *ATU* and *City of Burien*, and the bill at issue in *Wash. Toll Bridge Auth. II*.⁴ Nor does I-124 comprise subtopics as disparate as those in *Barde* or *Price*. All of I-124's subtopics rationally relate to establishing and enforcing health, safety, and labor standards with respect to certain employers. It easily satisfies the rational unity test.

The trial court's reasoning with respect to I-124—that all of the provisions “are rationally related to the single subject of health, safety, and labor conditions for hotel employees,” CP 389—is completely consistent with established case law, including this Court's on-point analysis in *Filo Foods*, where the five separate provisions of SeaTac Proposition 1 were upheld as having rational unity despite not being “necessary” to implement the other—because that is not the requirement to satisfy the constitutional standard.

The same analysis must apply here, as all of the provisions of I-124 are rationally related to the single subject of health, safety, and labor

⁴In *Washington Ass'n for Substance Abuse and Violence Prevention v. State*, the Court explained that the fundamental flaw with the initiatives at issue in *ATU* and *City of Burien*, and the bill at issue in *Wash. Toll Bridge Auth. II*, was that they combined a very specific law with an immediate impact with a general measure having only a future impact. 174 Wn.2d at 659.

conditions for hotel employees—the single subject of worker well-being. Hotel housekeepers suffer from various working conditions that cause injury. CP 105-110. On-the-job injuries are rampant (due in large part to excessive workloads), and hotel housekeepers do not have access to viable options for health care to address those injuries; to add insult to (literal) injury, they have next to no job security or safety on the job. CP 107-108. To say, as the Court of Appeals did here, that these topics “are completely unrelated” to the topic of worker well-being through health, safety, and labor standards is inconceivable. Decision, 6 Wn. App. 2d at 942. Promoting worker well-being by implementing labor standards that *protect* them from harm—including capping the number of square feet a hotel worker can be required to clean and thereby *protecting* them against injury, *protecting* employees from job loss, *protecting* them from exposure to chemicals, and *protecting* them against assault and sexual harassment clearly share rational unity as a concept. These provisions of I-124 are clearly “reasonable germane” to each other.

The Court of Appeals’ decision requiring that any one part be “necessary to implement any other part of the initiative” must be overturned. Decision, 6 Wn. App. 2d at 944.

B. THE COURT OF APPEALS ERRED IN HOLDING THAT RCW 35A.12.130 APPLIED TO THE CITY OF SEATTLE.

The Court of Appeals also erred in holding that RCW 35A.12.130 applied to the City of Seattle. Decision, 6 Wn. App. 2d at 936-38.

As the City has pointed out in its briefing to this Court, RCW 35A is the Optional Municipal Code, which confers “grants of municipal power to municipalities *electing* to be governed under the provisions of this title,” meaning a city must choose to be governed by the terms of RCW 35A. RCW 35A.01.010 (emphasis added).

Seattle has never chosen to be governed by RCW 35A. Seattle is therefore a first-class charter city governed by RCW 35. *See, e.g., State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 804, 432 P.3d 805, 816 (2019) (noting that Seattle is a Charter City governed by RCW 35).

As it currently stands, the Court of Appeals has created a question whereby cities that have not adopted the Optional Municipal Code may find themselves subject to the requirements outlined in 35A. Thus, this Court should correct the Court of Appeals’ error in applying RCW 35A.12.130 to a Seattle initiative.

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V. CONCLUSION

For the foregoing reasons, Appellants/Intervenor-Defendants ask that this Court to overturn the Court of Appeals' erroneous opinion, and restore SMC 14.25..

Respectfully submitted this 31st day of May, 2019.



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DECLARATION OF SERVICE

I hereby declare under penalty of perjury under the laws of the state of Washington that on this 31st day of May, 2019, I caused the foregoing Local 8 and Seattle Protects Women's Supplemental Brief to be filed with the clerk of the court via the e-filing web portal, which will automatically provide of such filing to all required parties.

Signed in Seattle, Washington, this 31st day of May, 2019.


Jennifer Woodward, Paralegal

BARNARD IGLITZIN & LAVITT

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