

90113-9

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Court No. 89266-1
(Court of Appeals No. 70758-2-1)

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STATE OF WASHINGTON
Apr 18, 2014, 10:29 am
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FILO FOODS, LLC, BF FOODS, LLC, ALASKA
AIRLINES, INC., and WASHINGTON RESTAURANT
ASSOCIATION,

Petitioners/Plaintiffs,

v.

CITY OF SEATAC, and KRISTINA GREGG, CITY
CLERK

Respondents/Defendants,

v.

SEATAC COMMITTEE FOR GOOD JOBS,

Respondent/Intervenor.

**CITY OF SEATAC'S ANSWER
TO PETITION FOR REVIEW**

For City of SeaTac and Kristina Gregg
Wayne D. Tanaka, WSBA #6303
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I. IDENTITY OF RESPONDENT

The Respondent is the City of SeaTac, Washington and Kristina Gregg, City Clerk, in her official capacity. (collectively “City”).

II. INTRODUCTION

The City opposes the Petition for Review filed by Plaintiffs Filo Foods, LLC, BF Foods, LLC, Alaska Airlines, Inc., and the Washington Restaurant Association (“Plaintiffs” or “Filo Foods”). However, if this Court were to accept review, the City would urge the Court to affirm the Court of Appeals’ decision but on a different basis, namely, on the basis of well-established state law.

III. COUNTER STATEMENT OF THE CASE

The City accepts generally the statements of the case as set forth in the Petition for Review with the following exceptions. First, it should be noted that the City’s Petition Review Board (Board) and the associated administrative procedures are scheduled to be repealed at the May 13, 2014 City Council meeting. Instead the City intends to amend its code to simply reference the RCWs.¹

¹ See Declaration of Mark Johnsen. Appendix A
{WDT1161497.DOCX;1/13098.000002/ }

Second, Plaintiffs' statement of the case suggests that the City refused to commit to convene the Board upon the Plaintiffs' request.² The City never refused to commit to convene the Board. Rather due to the extreme press of time, including the 4th of July holiday, the first available date to hold the Board hearing was July 19, 2013.³ As stated in Ms. Gregg's declaration, the City received a request to convene the Board after 5 pm on July 2, 2013. Ms. Gregg, who was responsible for convening the Board, was in and out of the office due to the holiday and it was not until July 5th that she was able to determine the personal schedules of the Board members and determine that July 19th was the first available time for the Board to convene. She immediately (on July 5th) notified Plaintiffs' counsel of this date.⁴ Plaintiffs' implied criticism of the City's response to their request to convene the Board is entirely misplaced.

Finally, Plaintiffs have consistently mischaracterized their Motion for Declaratory Judgment as a Motion for Summary Judgment.⁵ The record is clear that at no time did Plaintiffs move for summary judgment under Rule CR 56. Rather they moved for a declaratory judgment which

² Petition for Review, p. 5.

³ See Declaration of Kristina Gregg, dated July 15, 2013, Appendix B

⁴ See Declaration of Kristina Gregg, page 3, paragraph 8.

⁵ See Petition for Review, page 8. There is an obvious typo in terms of the date. {WDT1161497.DOCX;1/13098.000002/ }

is essentially a trial.⁶ In every pleading filed with the trial court, the Plaintiffs consistently referred to their motion for declaratory judgment. At no time, in any pleading or in oral argument before the trial court did the Plaintiffs suggest that this was a summary judgment motion under CR 56.⁷ While of course a declaratory judgment action can be decided by summary judgment a declaratory judgment is not always decided by summary judgment. RCW 7.24.090 provides that determination of facts is made in the same manner as other civil actions. If all declaratory judgments were decided by summary judgment, this section would be entirely unnecessary.

IV. ARGUMENT

A. This Court should deny review because Plaintiffs can meet none of the considerations set forth under the Rules of Appellate Procedure.

1. This case does not present an issue of substantial public interest. As Plaintiffs note, the legislature has amended the specific statute

⁶ See Plaintiffs Motion for Declaratory Judgment on State Law Claims and Plaintiffs Motion for Declaratory Judgment on Federal Law Claims. Appendix C and D. (Only the first several pages of each are attached to show the basis of the motion and the absence of any reference to summary judgment.)

⁷ Intervenors propounded certain discovery to Plaintiffs prior to the hearing. Plaintiffs moved for a protective order. At the hearing, on the basis of representations that the issues were legal, the trial court indicated that she would be making no factual findings and verbally granted the protective order. See verbatim transcript, Appendix E {WDT1161497.DOCX;1/13098.000002/ }

at issue⁸ to provide that if a person signs a petition more than once, all but the first valid signature must be rejected. The Governor has signed this Bill and it will go into effect 90 days after the end of the legislative session. The SeaTac City Council will shortly pass an ordinance which repeals the city version of former RCW 35A.01.040(7). While the laws may or may not be retroactive, the new laws mean that this particular issue should not arise in the future and therefore, this issue is not of substantial public interest under RAP 13.4(b)(4).

2. The Court of Appeals' decision is correct, based on an alternate state law grounds and therefore no alleged conflict with the Court of Appeals or Supreme Court need be resolved.

The Court of Appeals' decision was based on the US Constitution's First Amendment. None of the parties at the trial court or at the Court of Appeals argued that the statute violated the Federal Constitution. The Court of Appeals' reliance on the First Amendment was therefore of its own making and not subject to review and comment by the parties.

The City agrees that the Court of Appeals' conclusion is correct, namely that former RCW 35A.01.040(7) is invalid. However, there exists

⁸ RCW 35A.01.040(7)
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an adequate state law basis for so holding, one that was briefed and argued to the trial court. The state law basis is set forth in *Sudduth v. Chapman*, 88 Wn.2d 247, 558 P.2d 806 (1977). The *Sudduth* court did not arrive at its decision based on federal constitutional principles. Rather, the court cited to the State constitutional provisions regarding state-wide initiative and referendum. However, the basis for the court's decision was that there was no valid public purpose or reason for the law and therefore, it should be struck down. Plaintiffs argue that because local initiative and referendum powers are not constitutionally based, the *Sudduth* court's reasoning has no application to this case. This is incorrect. The court's reasoning in *Sudduth* directly applies because even a statutorily granted right cannot be infringed by a law that has no valid public purpose.

Because the Court of Appeals decision can and should be based on an adequate state law ground, it is not necessary to reach the unbriefed and unargued federal constitutional issue. Therefore, this Court should not grant review under RAP 13.4(b)(1), (2) or (3) because the question of any alleged conflicts with other First Amendment cases need not arise.

3. Plaintiffs have raised and argued the validity of RCW 35A.01.040(7) in another case now before this Court.

This Court has accepted review of the trial court's decision relating to the validity of the Ordinance⁹ under cause No. 89723-9 which involves the same parties and same lawsuit as this case. In that case, Plaintiffs have argued that the trial court's decision, in part, can be upheld because the Ordinance should never have been placed on the ballot. Plaintiffs allege that without counting the original of duplicate signatures the initiative petition lacked the required number of signatures. Thus, the parties to this case and in the other case will have a full opportunity to brief and argue whether or not former RCW 35A.01.040(7) is invalid, and if so, the proper basis for such invalidity. There is no reason to have to consider the matter in a separate appeal.

⁹ The ordinance is denominated "Ordinance Setting Minimum Employment Standards for Hospitality and Transportation Industry Employers".
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V. CONCLUSION

This Court should deny Plaintiffs' Petition for Review. However, if review is granted, the Court should affirm the Court of Appeals on the basis of state law and not on the basis of federal constitutional law.

RESPECTFULLY SUBMITTED this 18th day of April, 2014.

Respectfully submitted,

OGDEN MURPHY WALLACE, P.L.L.C.

By 
Wayne D. Tanaka, WSBA #6303
Attorneys for City of SeaTac and Kristina
Gregg, City Clerk

APPENDIX A

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Court No. 90113-9

(Court of Appeals No. 70758-2-I,
Petition for Review filed 3/31/14)

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

Petitioners/Plaintiffs,

v.

CITY OF SEATAC,

Respondents/Defendants,

v.

SEATAC COMMITTEE FOR GOOD JOBS,

Respondent/Intervenor.

**DECLARATION OF MARK JOHNSEN IN OPPOSITION
TO PLAINTIFFS' PETITION FOR REVIEW**

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1. I am over the age of 18 and competent to testify to the matters stated herein.

2. I am the Senior Assistant City Attorney for the City of SeaTac ("City") and have held this position since November 2005.

3. Following the Court of Appeals decision, I was asked to draft an ordinance that would repeal the City's Petition Review Board, the City's provision that corresponded to RCW 35A.01.040, and to simply reference the RCW. I prepared such an ordinance and presented it to the SeaTac City Council at their study session on March 25, 2014. At that time the Council asked me to include a provision relating to preparation of a fiscal impact statement for future initiatives and referenda. The Council had no issues with the remainder of the proposed ordinance. I made that addition and presented a second draft of the ordinance to the City Council at the Council study session on April 8, 2014. At the April 8 study session, the Council directed that I make one additional edit related to the fiscal impact statement, and that the revised ordinance be brought back on the May 13, 2014 consent agenda.

4. I prepared the revisions to the ordinance as directed. Attached to this declaration is a copy, in legislative format, of the proposed ordinance that will be presented to the Council on the consent agenda for

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May 13. The consent agenda is reserved for items that the Council anticipates will pass on a single motion and is reserved for items that typically are approved without dissent. I see no reason why this ordinance will not be adopted at the May 13, 2014 council meeting.

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

EXECUTED at SeaTac, Washington this _____ day of April, 2014.



Mark Johnsen

ORDINANCE NO. _____

AN ORDINANCE of the City Council of the City of SeaTac, Washington amending Chapter 1.10 of the SeaTac Municipal Code, related to Initiative and Referendum Powers.

WHEREAS, the City of SeaTac has the power of initiative and referendum; and

WHEREAS, it is appropriate to amend Chapter 1.10 of the SeaTac Municipal Code so that such powers are set forth only in accordance State Law, rather than as currently set forth in the Municipal Code;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON, DO ORDAIN as follows:

Section 1. Chapter 1.10 of the SeaTac Municipal Code is hereby amended to read as follows:

~~1.10.010 Application of referendum.~~

~~Every ordinance which:~~

- ~~A. First imposes upon any business activity a municipal business and occupation tax; or~~
- ~~B. First imposes an additional sales and use tax under authority of RCW 82.14.030(2), or which alters the rate of any such tax; or~~
- ~~C. First imposes the additional local real estate excise tax under authority of RCW 82.46.010(2); shall be subject to the referendum procedures set forth in Sections 1.10.020 and 1.10.030.~~

~~1.10.020 Procedure.~~

- ~~A. A referendum petition seeking to repeal any City ordinance made subject to these referendum procedures by Section 1.10.010 shall be filed with the City Clerk within seven (7) days of the passage or publication, whichever is later, of the ordinance sought to be repealed.~~
- ~~B. Within ten days, the City Clerk shall confer with the petitioner concerning the form and style of the petition, issue an identification number for the petition, and cause to be written a ballot title for the measure.~~
- ~~C. The ballot title shall be posed as a question, so that an affirmation answer to the question and an affirmation vote on the measure results in the tax or tax rate increase being imposed, and a negative answer to the question and a negative vote on the measure results in the tax or tax rate increase not being imposed. The petitioner shall be notified of the identification number and ballot title within this ten-day period.~~

~~D. After notification of the identification number and ballot title, the petitioner shall have thirty (30) days in which to secure on petition forms the signatures of not less than fifteen percent of the registered voters of the City and to file the signed petitions with the City Clerk.~~

~~E. Each petition form shall contain the ballot title and the full text of the measure to be referred. The City Clerk shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the City Clerk shall cause the referendum measure to be submitted to the City voters at a general or special election held on one of the dates provided in RCW 29.13.010, as determined by the City Council, which election shall not take place later than one hundred twenty (120) days after the signed petition has been filed with the City Clerk.~~

1.10.030 Exclusive procedure.

~~The referendum procedures herein adopted shall be exclusive in all instances for any City ordinance first imposing, or increasing the specific taxes designated as subject to referendum as provided in Section 1.10.010 and no other taxes or rates imposed by the City shall be subject to the said referendum procedures. The referendum procedure provided in Chapter 35A.11, RCW is hereby superseded.~~

H. Initiative and Referendum

1.10.040 Grant of powers.

~~The voters of the City are hereby granted the powers of initiative and referendum, subject to the limitations of State law, the general law, and this chapter pursuant to Revised Code of Washington (RCW) 35A.11.080 through 35A.11.100. Such powers are to be exercised as provided in these sections as they now exist or may be amended and said sections are hereby incorporated in full by this reference.~~

1.10.045 Fiscal Impact Statement

~~A. A fiscal impact statement shall be prepared for any Initiative or Referendum in which there are sufficient signatures to qualify the measure for placement on the ballot. The City Manager shall request that the City Council approve an agreement with a third-party consultant to prepare the fiscal impact statement in regards to City operations. If the City Council does not approve such an agreement with a third-party consultant, the provisions of the Section shall not apply.~~

~~B. A fiscal impact statement prepared under this Section must be impartial, factually accurate, non-argumentative, and unbiased. Additionally, a fiscal impact statement should include any assumptions being made in its preparation, and may describe projected increases or decreases in revenues, costs, expenditures, or indebtedness should the measure be adopted.~~

~~C. A fiscal impact statement prepared under this Section should be completed at least 45 days prior to the date in which the measure will appear on the ballot. If the City Manager determines that the fiscal impact of an Initiative or Referendum cannot be accurately determined, the provisions of the Section shall not apply. The fiscal impact statement shall be made available to members of the public, including but not limited to the City's website.~~

1.10.050 Effective date of ordinances.

~~Ordinances subject to referendum shall not go into effect before thirty (30) days from the time of final passage and shall be subject to referendum during the said interim, except ordinances by general or common law not subject to referendum and except:~~

~~A. Ordinances initiated by petition;~~

~~B. Ordinances necessary for immediate preservation of public peace, health, and safety or for the support of City government and its existing public institutions which contain a statement of urgency and are passed by unanimous vote of the Council;~~

~~C. Ordinances providing for local improvement districts;~~

~~D. Ordinance appropriating money;~~

~~E. Ordinances providing for or approving collective bargaining;~~

~~F. Ordinances providing for the compensation of or working conditions of City employees;~~

~~G. Ordinances authorizing or repealing the levy of taxes; which excepted tax ordinances shall go into effect as provided by the general law or by applicable selections of Title 35A RCW as now or hereafter amended.~~

1.10.060 Initiative and referendum petitions — Content and form.

Every initiative and referendum petition shall contain the following essential elements:

A. A warning which shall read:

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.

B. A clear and concise statement of the action sought by the petitioners;

C. The title of the ordinance being initiated, or the ordinance sought to be referred;

D. A true and correct copy of the ordinance being initiated, or the ordinance sought to be referred, which ordinance may be printed upon the face of the petition or may be firmly affixed to the petition;

E. Numbered lines, not to exceed twenty (20) per sheet, with sufficient space for a signature, printed name, date of signing, and residence address of the signer, on each such line; and

F. A statement that each signer is a registered voter resident in the City.

1.10.070 Form of petition — Requirements.

~~Every initiative and referendum petition shall consist of a single page or group of single pages containing identical text and identical attachments, if any, in compliance with the requirements of content set forth in subsection A of this section, and shall further comply with the following requirements of form:~~

~~A. Petitions shall be printed or typed on single sheets of white paper of good quality measuring not less than eight and one-half inches in width and eleven inches in length;~~

~~B. Each sheet shall have a margin of not less than one and three-quarters inches at the top for binding;~~

~~C. Printing or typewriting shall be clear, legible and reproducible and shall be of at least 8-point type or, if typewritten, be of pica, or equivalent size with not more than 10 characters per inch, and shall be black in color;~~

~~D. Petitions shall be devoid of any statements for or against the proposition, and any quotations, pictures, logos, symbols or other language intended to, or which might tend to, constitute an endorsement or argument, or which might tend to deceive or to misrepresent any fact; and~~

~~E. The reverse side of each petition sheet shall be blank.~~

~~1.10.080 Form of petition — Proposed ordinance.~~

~~Every initiative petition initiating a proposed ordinance for submission to the City Council and, in lieu of enactment by the Council, to the voters of the City, shall be substantially in the following form:~~

~~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 is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.~~

~~INITIATIVE PETITION FOR SUBMISSION TO THE SEATAC CITY COUNCIL~~

~~TO: The City Council of the City of SeaTac:~~

~~We, the undersigned registered voters of the City of SeaTac, State of Washington, residing at the addresses set forth opposite our respective names, being equal to 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, respectfully request that the following ordinance be enacted by the City Council or, if not so enacted, be submitted to a vote of the residents of the City. The title of the said ordinance is as follows:~~

~~[Here insert the title, ensuring that the proposed ordinance does not contain more than one subject and that the subject is clearly expressed in the title, and then insert one of the two sentences shown below].~~

~~[The full text of the ordinance is as follows:] or [A full, true and correct copy of the ordinance is attached to this Petition.]~~

~~Each of us for himself or herself says: I have personally signed this petition; I am a registered voter of the City of SeaTac, State of Washington; and my residence address is correctly stated.~~

~~Signature Printed Name Street and Number City Date~~

~~1. _____~~

~~20. _____~~

~~1.10.090 Form of petition — Repeal of ordinance.~~

~~Every referendum petition seeking to refer an enacted ordinance to the City Council for repeal and, in lieu of repeal by the Council, to the voters of the City for approval or rejection, shall be substantially in the following form:~~

~~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 is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.~~

~~PETITION FOR REFERENDUM~~

~~TO: The City Council of the City of SeaTac:~~

~~We, the undersigned registered voters of the City of SeaTac, State of Washington, residing at the addresses set forth opposite our respective names, being equal to 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, respectfully request that Ordinance No. _____ enacted by the City Council on the ____ day of _____, 19____, be repealed by the Council or, if not so repealed, be referred to a vote of the residents of the City for their approval or rejection. The title of the said ordinance is as follows:~~

~~[Here insert the title of the Ordinance as enacted, and then insert one of the two sentences shown below]~~

~~[The full text of the ordinance, as enacted by the City Council, is as follows:] or [A full, true and correct copy of the ordinance as enacted by the City Council is attached to this Petition.]~~

~~Each of us for himself or herself says:~~

~~I have personally signed this petition; I am a registered voter of the City of SeaTac, State of Washington; and my residence address is correctly stated.~~

~~Signature Printed Name Street and Number City Date~~

1. _____

20. _____

~~1.10.100 Initiative and referendum petitions — Filing of sample with City Clerk.~~

~~A. No initiative or referendum petition shall be distributed to the public for solicitation of signatures until a sample petition has been submitted to the City Clerk, for the purpose of ensuring that permanent or temporary alterations do not occur during the solicitation process. The sample petition shall be either one of the printed petitions or a galley proof or other accurate specimen of the petition. The City Clerk shall retain the sample petition for comparison with the signed petitions later filed for determination of sufficiency.~~

~~B. The individual or individuals, or entity, sponsoring the petition shall also provide to the City Clerk the name and mailing address of the sponsor.~~

~~C. If requested by the sponsor, the City Clerk may, with advice of the City Attorney, review, require changes, and/or approve the content and format of the petition and, if an initiative petition, the title and text of the proposed ordinance.~~

~~D. If such approval is granted, signed petitions shall, upon filing, be subject only to review for sufficiency of signatures and to ensure that alterations have not been made.~~

~~1.10.110 Required signatures.~~

~~Petitions for initiative or referendum must be signed, in ink or indelible pencil, 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.~~

~~1.10.120 Filing of signed petitions.~~

~~All signed initiative and referendum petitions must be filed with the City Clerk. A signed initiative petition may be filed at any time. A signed referendum petition must be filed prior to the effective date of the ordinance. Upon timely filing of a referendum petition with the City Clerk, the ordinance sought to be referred to the voters shall be suspended from taking effect until there is a final determination of insufficiency or untimeliness of the referendum petition, or the ordinance so referred is approved by the voters at a referendum election.~~

~~1.10.130 Addition and withdrawal of signatures until terminal date.~~

~~Within three (3) working days after the filing of a signed petition, the City Clerk shall commence the proceeding to determine sufficiency of the petition, and shall file a certificate stating the date upon which such determination was commenced, which date shall be referred to as the terminal date. A copy of the said certificate shall be personally served upon, or mailed to, the sponsor of the petition. Additional pages of signatures may be added to the petition by filing the same with the City Clerk prior to the terminal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the City Clerk prior to the terminal date. Such written request shall so sufficiently described 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.~~

~~1.10.140 Determination of sufficiency.~~

~~Commencing on the terminal date, and proceeding with reasonable promptness, the City Clerk shall ensure that the petition complies with the requirements of form and content specified in this part, unless approval of the City Clerk shall have been previously granted, and that the filed petition is identical to the sample petition filed with the City Clerk pursuant to Section 1.10.100. If the petition initiates an ordinance, and if approval of the City Clerk was not previously granted, the City Clerk, with advice of the City Attorney, shall determine the legality and sufficiency of the title and text of the proposed ordinance. The City Clerk shall then refer the petition to the Superintendent of Elections of the King County Records and Elections Division, as ex officio supervisor of City elections, pursuant to RCW 35A.29.040, whereupon the sufficiency of signatures shall be determined by the Superintendent and City Clerk in accordance with general law and with the following criteria:~~

~~A. Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved;~~

~~B. 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;~~

~~C. Signatures, including the original, of any person who has signed a petition two or more times shall be stricken;~~

~~D. 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;~~

~~E. All signatures on any petition which has been temporarily or permanently altered shall be invalid and shall not be counted;~~

~~F. If signatures are found to be insufficient, the City Clerk shall so notify the sponsor by certificate of insufficiency and the sponsor shall have ten (10) days from the date of the certificate in which to amend the petition by filing additional signed petitions;~~

~~G. The Superintendent of Elections and the City Clerk shall determine the sufficiency of such additional signatures and, if found insufficient, the City Clerk shall issue a second certificate of insufficiency and the petition shall be returned to the sponsor without further action; and~~

~~H. If the signatures be found sufficient, the City Clerk shall file a certificate of sufficiency and shall provide a copy thereof to the sponsor.~~

~~1.10.150 Alteration of petitions declared unlawful.~~

~~Vigorous political debate concerning the merits of initiatives and referendums is appropriate and to be encouraged. However, initiative and referendum petitions themselves should be documents which inform voters of the issues before them and which record the signatures of voters who wish to support the initiative or referendum. It is necessary to ensure that the language and form of initiative and referendum petitions not be subjected to unapproved alteration by persons desiring to use the petitions as instruments of political debate or to induce voters to sign petitions based upon inaccurate or misleading characterizations of the petitions. Therefore, the following sanctions are declared necessary to discourage alteration of petitions and to uphold the integrity of the initiative and referendum process:~~

~~A. The permanent or temporary alteration of any initiative or referendum petition is hereby declared unlawful; and~~

~~B. Any person who shall intentionally and maliciously alter an initiative or referendum petition, or distribute an altered initiative or referendum petition, shall be guilty of violation of a City ordinance equivalent to a misdemeanor and, upon conviction, shall be subject to a term of imprisonment in jail not to exceed one (1) year or a fine in an amount not to exceed the sum of one thousand dollars (\$1,000.00), or both. The act of intentionally altering a petition shall be a separate crime for each page, sheet or copy of any petition so altered.~~

~~**1.10.160 Definitions pertaining to alteration of petitions.**~~

~~For purposes of this chapter, the following definitions are adopted in regard to the alteration of initiative and referendum petitions:~~

~~A. "Alter" means to cause alteration.~~

~~B. "Alteration" is any change to an initiative or referendum petition which occurs between the time the sample form is filed with the City Clerk and the time when the signed petitions are returned to the City Clerk including, but not limited to, the addition of any unapproved language, either printed or handwritten, the crossing out, covering or obscuring of approved language, the underlining or highlighting of any words or part of the petition, or the physical attachment to the petition by any means (e. g., stapling, taping, gluing or clipping) of any unapproved document, with the exception of:~~

- ~~1. The signatures and other information required of the petition signers;~~
- ~~2. Normal wear and tear, so long as such wear and tear does not make illegible any significant portion of the approved language of the petition.~~

~~C. "Permanent alteration" is such alteration as is observable at the time the signed petitions are filed with the City Clerk.~~

~~D. "Temporary alteration" is such alteration which occurs at any time during the solicitation of signatures for the petition but which is no longer observable when the signed petitions are filed with the City Clerk.~~

~~**1.10.170 Petition Review Board created.**~~

~~There is hereby created a Petition Review Board which shall consist of the Mayor, City Manager, and Police Chief. The Board is authorized to include the King County Superintendent of Elections as a member of the Board, with or without voting rights. The Board shall consider and act upon any evidence or reports of temporary or permanent alteration of petitions, or any other matters relating to initiative and referendum petitions which the Board may determine to warrant investigation, report to the City Council, or legal action.~~

~~1.10.180 Action upon indication of permanent alteration.~~

~~When signed petitions are filed, the City Clerk shall examine the same to determine whether any permanent alteration shall have occurred. Any apparently altered petitions shall be retained by the City Clerk and shall not be transmitted to the King County Superintendent of Elections, although the Superintendent shall be notified of the withholding of apparently altered petitions. The City Clerk shall immediately report the apparent permanent alteration to the Petition Review Board for consideration and action. The City Clerk shall notify the petition sponsor or sponsors of the apparent permanent alteration and shall make the altered petitions available for inspection. If the Petition Review Board finds that permanent alteration did occur, notice of that finding shall be forwarded to the King County Superintendent of Elections and to the petition sponsor or sponsors.~~

~~1.10.190 Action upon indication of temporary alteration.~~

~~At any time before the City Clerk issues a certificate of sufficiency, an initiative petition is acted upon by the City Council by enactment of the proposed ordinance, a referendum petition is acted upon by the City Council by repeal of the challenged ordinance, or an initiative or referendum petition is referred to the voters, whichever is later, any City official or employee, and any registered voter of the City, may allege that a petition or petitions were temporarily altered during the period of solicitation of signatures. Any such allegation shall be made by filing with the City Clerk an affidavit stating the factual basis for the allegation. The City Clerk shall transmit the affidavit to the Petition Review Board, and, if the petition has been transmitted to the King County Superintendent of Elections for determination of sufficiency of signatures, a copy of the affidavit shall be forwarded to the said Superintendent. If the number of signatures determined to be valid, without regard to whether the petition was or was not altered, is insufficient to satisfy the fifteen percent (15%) requirement of initiative or referendum petitions, then the City Clerk shall file a certificate of insufficiency and shall provide a copy thereof to the petition's sponsor or sponsors. The Petition Review Board shall, in that case, consider whether a fact finding hearing should be held for the purpose of preferring criminal charges. If the number of signatures on the questioned petition is determined to be sufficient, if obtained on unaltered petitions, then the Petition Review Board shall convene a fact finding hearing and make final determination.~~

~~1.10.200 Fact finding hearing.~~

~~The members of the Petition Review Board shall convene a fact finding hearing in event of any temporary alteration where petition signatures would otherwise be sufficient, and in event of any permanent alteration which the Board may deem appropriate for investigation. The fact finding hearing shall be conducted in accordance with the following:~~

~~A. Parties to the hearing shall be the petition challenger or challengers and the petition sponsor or sponsors. The challenger shall have the burden of proving the fact, nature and extent of any alteration by a preponderance of the evidence;~~

~~B. The City Attorney shall conduct the hearing on behalf of the Petition Review Board;~~

~~C. The Board shall determine whether alteration took place as alleged and, if so, shall determine whether the number of signatures invalidated by alteration reduces the number of signatures below the requisite fifteen percent (15%) minimum;~~

~~D. The members of the Petition Review Board must agree unanimously in order to invalidate signatures on temporarily or permanently altered petitions;~~

~~E. The hearing shall be electronically recorded;~~

~~F. The Petition Review Board shall make its findings and decision and shall transmit the same to the City Clerk, who shall then file a final certificate of sufficiency or insufficiency, and shall provide a copy thereof to the petition challenger or challengers, if any, and to the petition sponsor or sponsors.~~

1.10.210 Appeal to the Superior Court.

~~A certificate of insufficiency may be appealed by the sponsor or sponsors of any petition, or by any signer, and any final certificate of sufficiency or insufficiency, following review by the Petition Review Board, may be appealed by any aggrieved party to the King County Superior Court. Such appeal shall be by writ filed with the Superior Court within ten (10) calendar days following the filing of the certificate of insufficiency, or of the final certificate of sufficiency or insufficiency, and a copy thereof shall be served upon the City Clerk within three (3) days following such filing in the Superior Court.~~

1.10.220 Certificate of sufficiency—Action by City Council.

~~Within twenty (20) days following the filing by the City Clerk of a certificate of sufficiency as to any initiative or referendum petition, the request by the petitioners shall be placed upon the agenda of the City Council for consideration. The City Council may refer the matter to committee or may otherwise defer the matter for further investigation and study, providing that any such continuance or deferral shall not result in inability to place the initiative or referendum upon the ballot at the next City municipal election. The City Council may enact any ordinance, without alteration, proposed by initiative petition and may repeal any previously enacted ordinance pursuant to request of a referendum petition. If the City Council determines not to take such action in response to a petition, an appropriate ballot title shall be drawn, notice and publication shall be given, and the initiative or referendum measure shall be placed upon the ballot to be voted at the next following general or special City election, pursuant to law.~~

Section 2. This Ordinance shall be in full force and effect thirty (30) days after passage and publication as required by law.

ADOPTED this _____ day of _____, 2014, and signed in authentication thereof on this _____ day of _____, 2014.

CITY OF SEATAC

Mia Gregerson, Mayor

ATTEST:

Kristina Gregg, City Clerk

Approved as to Form:

Mary E. Mirante Bartolo, City Attorney

[Effective Date: _____]

[Amend SMC 1.10]

APPENDIX B

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

FILO FOODS, LLC; BF FOODS, LLC; ALASKA)
AIRLINES, INC.; and THE WASHINGTON)
RESTAURANT ASSOCIATION,)

Plaintiffs,)

v.)

THE CITY OF SEATAC and KRISTINA)
GREGG, CITY OF SEATAC CITY CLERK, in)
her official capacity,)

Defendants.)

NO. 13-2-25352-6 KNT

DECLARATION OF KRISTINA GREGG IN
OPPOSITION TO PLAINTIFFS' MOTION
FOR WRITS OF REVIEW, PROHIBITION
AND MANDATE

1. I am over the age of 18 and competent to testify to the matters set forth herein.

2. I am currently the City Clerk for the City of SeaTac ("City") and have held this position since July 2007. Prior to that time, I was the Deputy City Clerk for the City of SeaTac since 1996.

3. With regard to the initiative and referendum process, I am generally familiar with Chapter 1.10 of the SeaTac Municipal Code ("SMC"). Section 1.10.100 SMC requires that a sample petition be submitted to me for review. The purpose of this review is to ensure that

1 permanent or temporary alterations do not occur during the signature-gathering process. This is
2 the sole reason for requiring the sample petition to be submitted.

3 4. In addition to having a sample petition on file in my office, Section 1.10.100(C)
4 states that if the sponsor requests, I may review, require changes, and/or approve the content and
5 format of the petition and if an initiative petition, the title and text of the proposed ordinance.
6 My understanding of the purpose of this section is to review the format and form of the petition
7 to verify whether it complies with the requirements of Sections 1.10.060, 1.10.070, and 1.10.080
8 of the SMC. It is not my understanding that the review under this section is whether the
9 ordinance is legal under statutory or constitutional grounds. I am not an attorney and the job
10 description for City Clerk does not require me to have extensive legal knowledge.

11 5. In this particular case, the initiative sponsors did request, pursuant to Section
12 1.10.100(C) SMC that I review the content and format of the petition and the title and text of the
13 proposed ordinance. This I proceeded to do with help from the City Attorney's Office. I then
14 sent the initiative sponsors a letter dated May 1, 2013, a copy of which is attached to this
15 declaration and labeled as Exhibit A. My letter accurately sets forth the review which I
16 performed, pursuant to SMC 1.10.100(C). I reviewed the petition as to format and found that it
17 complied with SMC 1.10.060, 1.10.070, and 1.10.080. I also was assured that the format of the
18 proposed ordinance was such that it could, if passed, be codified in the SMC. Those are the
19 extent of my duties as I understand the Code.
20
21
22

23 6. Subsequent to my May 1, 2013, letter, the petitions were circulated and eventually
24 returned to my office for determination of sufficiency. I am aware of Section 1.10.140 SMC.
25 That section provides that upon receipt of the signed petitions, I am to ensure that the petition
26 complies with the requirements of form and content as specified in the Code "unless approval of

1 the City Clerk shall have been previously granted.” Since I had previously approved the petition
2 form, this section of the Code was inapplicable.

3 7. Section 1.10.140 SMC goes on to state that in the case of an initiative petition, if
4 approval of the City Clerk was not previously granted, I would “determine the legality and
5 sufficiency of the title and text of the proposed ordinance.” As indicated previously, I did on
6 May 1, 2013, approve the title and text of the ordinance as to format so that it could be easily
7 codified in the SMC. Thus, this particular part of the SMC was not applicable to the initiative
8 petition at issue here.

9
10 8. To my knowledge, the City has never had occasion to invoke the Petition Review
11 Board. On July 2, 2013, at the end of the day (after 5:00 p.m.), the City received communication
12 from plaintiffs’ counsels requesting that the Petition Review Board (“Board”) be convened. I
13 was only in the office for part of July 3 and out of the office July 4 for the holiday. On July 5, I
14 was finally able to determine schedules for members of the Board, and I determined that July 19
15 was the first date that was available where all members of the Board could attend. I immediately
16 scheduled this meeting. Plaintiffs’ counsels were notified of this meeting date and time promptly
17 by the City Attorney’s Office. It would be inaccurate to claim or allege that I failed or refused to
18 respond to any request to convene the Board. As noted, the Board is scheduled to meet at 1:00
19 p.m. on Friday, July 19, 2013.

20
21
22 I declare under penalty of perjury under the laws of the State of Washington that the
23 foregoing is true and correct.

24 EXECUTED at SeaTac, Washington this 15th day of July, 2013.

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Kristina Gregg

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EXHIBIT A



4800 South 188th Street
SeaTac, WA 98188-8605

City Hall: 206.973.4800
Fax: 206.973.4809
TDD: 206.973.4808

May 1, 2013

Laura Ewan
Schwerin Campbell Barnard Iglitzin & Lavitt, LLP
18 West Mercer St, Suite 400
Seattle, WA 98119

RE: Initiative Petition—Minimum Employment Standards

Dear Ms. Ewan:

This letter is in response to your filing of an Initiative Petition with the City Clerk on Friday April 26. You requested that the City Clerk review the copy of the petition with input from the City Attorney. The City received an updated submission from you on May 1 which is similar to the original submission but with some minor corrections.

SMC 1.10.100 provides in relevant part:

“...the City Clerk may, with advice of the City Attorney, review, require changes, and/or approve the content and format of the petition, and if an initiative petition, the title and text of the proposed ordinance.”

After review of the petition with advice from the City Attorney’s Office, I am not requiring any changes. I am also aware that you have consulted with the City Attorney’s Office regarding ensuring that the format of the proposed Ordinance is properly formatted so that it could, if passed, easily be codified in the Municipal Code. Based on review of the proposed petition (the version submitted on May 1, 2013), the format is hereby approved as your submission appears to have met the requirements outlined in SMC 1.10.060, 070, and 080. Therefore, I consider your May 1, 2013 petition as the “sample petition” as described in SMC 1.10.100.

I also want to take this opportunity to remind you of the requirements outlined in SMC 1.10. Please review this Code section carefully to ensure your compliance with the signature requirements. Furthermore, based on review of King County records it appears that the number of registered voters at the last City general election was 10,268. Therefore, it appears that your initiative requires 1,541 valid signatures as required by SMC 1.10.110.

Should you have any other questions regarding this petition, please feel free to contact me at 206.973.4660 or Senior Assistant City Mark Johnsen at 206.973.4635.

Sincerely,

Kristina Gregg
City Clerk

Cc: Mark Johnsen, Senior Assistant City Attorney

Mayor
Tony Anderson

Deputy Mayor
Mia Gregerson

Councilmembers
Berry Ladenburg
Rick Forschler
Terry Anderson
Dave Bush
Pam Fernald

City Manager
Todd Cutts

Assistant City Manager
Gwen Voelpel

City Attorney
Mary Mirante Bartolo

City Clerk
Kristina Gregg

APPENDIX C

FILED

13 NOV 22 PM 12:35

The Honorable ^{KING COUNTY} Andrea Darvas
SUPERIOR COURT CLERK
Hearing Date: December 15, 2015
Hearing Time: 2:30 p.m.
CASE NUMBER: 13-2-25352-6 KNT

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SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

FILO FOODS, LLC; BF FOODS, LLC;)
ALASKA AIRLINES, INC.; and THE)
WASHINGTON RESTAURANT)
ASSOCIATION,)

Plaintiffs,

v.

THE CITY OF SEATAC; KRISTINA GREGG,)
CITY OF SEATAC CITY CLERK, in her)
official capacity; and the PORT OF SEATTLE)

Defendants.

SEATAC COMMITTEE FOR GOOD JOBS,)

Intervenors.

No. 13-2-23352-6 KNT

PLAINTIFFS' MOTION FOR
DECLARATORY JUDGMENT
ON STATE LAW CLAIMS

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Cases

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Amalgamated Transit Union Local 587 v. State,
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City of Burien v. Kiga,
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1 I. INTRODUCTION AND RELIEF REQUESTED

2 Plaintiffs seek a judgment that the Ordinance Setting Minimum Employment Standards
3 for Hospitality and Transportation Industry Employers, new Chapter 7.45 of the SeaTac
4 Municipal Code (the “Ordinance”), is invalid. The Ordinance is invalid for each of the
5 following reasons:

6 1. It exceeds the proper scope of the legislative power of the City of SeaTac under
7 State law. The Ordinance purports to legislate and regulate various aspects of employment and
8 business operations (including wages, leave policies, hiring policies, tip pooling, successor
9 employer obligations, etc.) for companies and employees at the Seattle-Tacoma International
10 Airport (“Sea-Tac Airport”). The Ordinance also creates both a municipal and private
11 enforcement mechanism for these new rules, also to apply at the airport. However, under RCW
12 14.08.330, the City of SeaTac does not have the authority to regulate businesses operating at
13 the airport. The Port of Seattle, itself a municipal corporation, has jurisdiction over the airport,
14 and no other municipality, such as the City of SeaTac, has authority to impose or enforce such
15 regulations. Because the legislative intent behind the Ordinance—regulating certain
16 employment and business activity at the airport—cannot be accomplished without violating
17 state law, the Ordinance is completely invalid.

18 2. It violates the “single-subject” rule applicable to municipal legislation. Here,
19 the Ordinance addresses multiple subjects. The title itself identifies five separate subjects of
20 the legislation. These and the other subjects addressed by the Ordinance are not sufficiently
21 related to one another to constitute a single subject and, in fact, are commonly addressed by
22 separate legislation. An ordinance that violates the single-subject rule is invalid in its entirety.

23 3. It violates the “subject-in-title” rule applicable to municipal legislation. The
24 subject-in-title rule requires that the title of legislation fairly describe its contents. Here, the
25 Ordinance violates the subject-in-title rule because it contains numerous provisions that are not
26 identified in the title. Many of these omitted provisions are key to Ordinance; their omission
27

1 from the title renders them unenforceable and makes it impossible to effectuate the primary
2 purpose of the Ordinance as drafted. As a result, the entire Ordinance is invalid.

3 4. It exceeds the scope of local initiative power by purporting to expand the state
4 common law standing requirements. The Ordinance permits a person (broadly defined under
5 the Ordinance to include third-party individuals or organizations) to bring an action in court to
6 enforce the statute regardless of whether that person has suffered an injury. This is contrary to
7 long-established state common law, and this provision of the Ordinance is thus invalid.

8 II. STATEMENT OF FACTS

9 A. The Plaintiffs

10 Plaintiffs Filo Foods, LLC, BF Foods, LLC, Alaska Airlines, Inc. and the Washington
11 Restaurant Association are all affected by the Ordinance:

12 1. Filo Foods LLC (“Filo”) and BF Foods LLC (“BF Foods”) are Washington
13 limited liability companies located in the City of SeaTac. Filo and BF Foods are small food
14 and beverage concessionaires operating out of Sea-Tac Airport, employing ten or more
15 nonmanagerial, nonsupervisory employees. Filo and BF Foods would be directly affected by
16 the Ordinance because the Ordinance will increase their labor costs dramatically and impose
17 other restrictions on the operation of their businesses at the airport, as detailed in the
18 Declaration of LeeAnn Subelbia.

19 2. Alaska Airlines, Inc. (“Alaska”) is an Alaska corporation with its headquarters
20 in the City of SeaTac. Alaska provides passenger air transportation and related services, by
21 itself and through contractors, at Sea-Tac Airport. Alaska would be directly affected by the
22 Ordinance in several ways, as detailed in the Declaration of Jeff Butler. Among the
23 consequences of the Ordinance, Alaska will face significantly increased costs for various
24 services provided to passengers through its contractors. In addition, the Ordinance will
25 increase airlines’ direct labor costs and impose restrictions on their operations when they
26 perform services such as passenger check-in, baggage check, wheelchair escort, baggage
27

1 handling, and other support services for other airlines. Any air carriers, including Alaska, who
2 participate in this customary practice would be directly affected by the Ordinance, because the
3 Ordinance purports to regulate wages, leave accrual, and other aspects of employment when
4 their employees are so engaged.

5 3. The Washington Restaurant Association is a trade association representing and
6 advocating the interests of the restaurant industry in Washington. A number of its members
7 will be adversely affected by the Ordinance, including the way it would affect Filo and BF
8 Foods, as detailed in the Declaration of Bruce Beckett.

9 **B. The Ordinance**

10 On June 5, 2013, Petitioner SeaTac Committee for Good Jobs (the “Committee”) filed
11 an initiative petition and proposed ordinance entitled “Ordinance Setting Minimum Standards
12 for Hospitality and Transportation Industry Employer” with the City of SeaTac City Clerk’s
13 office. After extensive litigation in this Court regarding the invalidity of many of the signatures
14 submitted in support of the measure, the Ordinance was placed on the ballot for the November
15 5, 2013 election.

16 The Ordinance amends the SeaTac Municipal Code (“SMC”) to impose requirements
17 and restrictions on certain private employers in the hospitality and transportation industries.
18 The primary purpose of the Ordinance is to regulate various aspects of the employer-employee
19 relationship for companies doing business at Sea-Tac Airport, as indicated by the language of
20 the Ordinance (in particular the definition of “transportation employer”), the statements in
21 support of the measure in the Voters’ Pamphlet (which constitutes the legislative history of the
22 initiative), and the statements of the advocates for the measure. *See* Declaration of Rebecca
23 Meissner, Exs. A-B.

24 **III. STATEMENT OF ISSUES**

25 Is the Ordinance invalid because it exceeds the City’s legislative authority? Yes.

26 **IV. EVIDENCE RELIED UPON**

1 This motion relies on the pleadings and other papers on file in this matter and the
2 declarations filed herewith.

3 **V. AUTHORITY AND ARGUMENT**

4 **A. Declaratory Judgment Is the Proper Mechanism for Ruling on the Validity
5 of an Ordinance Adopted by Initiative.**

6 The Uniform Declaratory Judgments Act, RCW 7.24.010 et seq., is designed “to settle
7 and to afford relief from uncertainty and insecurity with respect to rights, status and other legal
8 relations; and is to be liberally construed and administered.” RCW 7.24.120. “A declaratory
9 judgment is used to determine questions of construction or validity of a statute or ordinance.”
10 *City of Fed. Way v. King Cnty.*, 62 Wn. App. 530, 534-35, 815 P.2d 790 (1991); *City of*
11 *Longview v. Wallin*, 174 Wn. App. 763, 301 P.3d 45, *review denied*, __ P.3d __ (Wash. Nov. 6,
12 2013); *Seattle-King Cnty. Council of Camp Fire v. State Dep’t of Revenue*, 105 Wn.2d 55, 711
13 P.2d 300 (1985); *Ayers v. City of Tacoma*, 6 Wn.2d 545, 108 P.2d 359 (1940).

14 Courts routinely rule on the validity of legislation proposed or adopted by initiative in
15 declaratory judgment proceedings. *See, e.g., Am. Traffic Solutions, Inc. v. City of Bellingham*,
16 163 Wn. App. 427, 433-34, 260 P.3d 245 (2011) (reversing denial of declaratory judgment for
17 company challenging local initiative as exceeding initiative power), *review denied*, 173 Wn.2d
18 1029 (2012); *King Cnty. v. Taxpayers of King Cnty.*, 133 Wn.2d 584, 608, 612, 949 P.2d 1260
19 (1997) (affirming declaratory judgment invalidating local initiative because, among other
20 things, initiative would have conflicted with state law); *Seattle Bldg. & Constr. Trades Council*
21 *v. City of Seattle*, 94 Wn.2d 740, 747-49, 620 P.2d 82 (1980) (“*Seattle Bldg.*”) (affirming
22 declaratory judgment for private trade association challenging local initiative as exceeding
23 initiative power); *Ford v. Logan*, 79 Wn.2d 147, 155-57, 483 P.2d 1247 (1971) (affirming
24 declaration invalidating local initiative because it conflicted with the state constitution).

25 The jurisdiction of a court may be invoked under the Uniform Declaratory Judgments
26 Act when there is a justiciable controversy. *Wallin*, 174 Wn. App. at 777. A justiciable
27 controversy requires:

1 “(1) ... an actual, present and existing dispute, or the mature seeds of one, as
2 distinguished from a possible, dormant, hypothetical, speculative, or moot
3 disagreement, (2) between parties having genuine and opposing interests, (3)
4 which involves interests that must be direct and substantial, rather than potential,
5 theoretical, abstract or academic, and (4) a judicial determination of which will
6 be final and conclusive.”

7 *Id.* at 777-78 (alteration in original) (quoting *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 27
8 P.3d 1149 (2001)).

9 Here, Plaintiffs’ claims satisfy the requirements for a justiciable controversy. As
10 indicated above and in the declarations cited, all Plaintiffs would be directly affected by the
11 Ordinance and they, therefore, have an interest in having the Ordinance declared invalid.
12 Plaintiffs’ interest is substantial and genuine. If enforced, the Ordinance will force companies
13 such as Filo and BF Foods to lay off employees, reduce the quality and quantity of products
14 they offer customers, and potentially shut down as a result of increased labor costs (costs they
15 cannot pass on to their customers because of the “street pricing” requirements imposed by the
16 Port of Seattle, which owns and operates the airport). Airlines, such as Alaska Airlines, will
17 face significantly increased costs for providing essential passenger services.

18 Employers who do not comply with the newly enacted Ordinance are subject to
19 enforcement actions brought by employees, the City, competitors, and even third-party
20 individuals or organizations such as the Intervenor and the labor unions who support it.
21 7.45.100(A). This risk of enforcement is sufficient to support a motion for declaratory
22 judgment; an actual enforcement action is not necessary. *See Allied Daily Newspapers of*
23 *Wash. v. Eikenberry*, 121 Wn.2d 205, 208, 848 P.2d 1258 (1993) (allowing declaratory
24 judgment action concerning future enforcement of newly enacted statute); *Peterson v. Hagan*,
25 56 Wn.2d 48, 66, 351 P.2d 127 (1960) (“[A] declaratory judgment action will lie to determine
26 the validity of rights under a statute, even though no steps have been taken to enforce it”)
27 (internal quotation marks omitted).

28 In addition, the question of whether the City of SeaTac has the authority to legislate and
29 impose regulations on employers at the airport is one of significant public importance, and this

1 too justifies the court's resolving the dispute now, before the Ordinance takes effect. *Am.*
2 *Traffic*, 163 Wn. App. at 433. Where a controversy is of significant public importance, the
3 requirements for justiciability are applied more liberally. *Wallin*, 174 Wn. App. at 777; *see*
4 *also Am. Traffic*, 163 Wn. App. at 433; *State v. Watson*, 155 Wn.2d 574, 578-79, 122 P.3d 903
5 (2005).

6 **B. Municipal Legislation by Initiative Is Subject to Constitutional and**
7 **Statutory Limitations.**

8 The Washington constitution protects the right of the people to propose *statewide*
9 legislation by initiative, and in result courts presume such statewide laws to be valid, just like
10 laws adopted by the legislature. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d
11 183, 204, 11 P.3d 762 (2000) ("*Amal. Transit*") ("In approving an initiative measure, the
12 people exercise the same power of sovereignty as the Legislature does when enacting a
13 statute.") (citing *Wash. Fed'n of State Emps. v. State*, 127 Wn.2d 544, 556, 901 P.2d 1028
14 (1995)). But the constitutional right to legislate by initiative does not include the power to
15 propose local, municipal legislation. That right, where it exists, is solely a creature of statute.
16 *City of Port Angeles v. Our Water-Our Choice!*, 170 Wn.2d 1, 8, 239 P.3d 589 (2010); *Save*
17 *Our State Park v. Bd. of Clallam Cnty. Comm'rs*, 74 Wn. App. 637, 643-44, 875 P.2d 673
18 (1994). The State legislature has authorized, but not required, noncharter code cities like the
19 City of SeaTac to enact legislation allowing initiatives. RCW 35A.11.090. The power of the
20 people to legislate by initiative, at the local level, is substantially limited. *Our Water-Our*
21 *Choice!*, 170 Wn.2d at 7-8; *see also Coppernol v. Reed*, 155 Wn.2d 290, 299, 119 P.3d 318
22 (2005) (noting that judicial review of initiatives, even pre-election, is appropriate because of
23 the "more limited powers of initiatives under city or county charters, or enabling legislation").
24 Courts routinely invalidate local initiatives if "the proposed law is beyond the scope of the
25 initiative power." *Our Water-Our Choice!*, 170 Wn.2d at 8 (quoting *Seattle Bldg.*, 94 Wn.2d
26 at 746); *see also Am. Traffic*, 163 Wn. App. at 433-34; *Taxpayers for King Cnty.*, 133 Wn.2d at
27 608, 612 (1997).

APPENDIX D

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The Honorable KING COUNTY
SUPERIOR COURT CLERK
Hearing Date: December 15, 2015
Hearing Time: 2:30 p.m.
CASE NUMBER: 13-2-25352-6 KNT

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SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

FILO FOODS, LLC; BF FOODS, LLC;)
ALASKA AIRLINES, INC.; and THE)
WASHINGTON RESTAURANT)
ASSOCIATION,)

Plaintiffs,

v.

THE CITY OF SEATAC; KRISTINA GREGG,)
CITY OF SEATAC CITY CLERK, in her)
official capacity; and the PORT OF SEATTLE)

Defendants.

SEATAC COMMITTEE FOR GOOD JOBS,)

Intervenors.

No. 13-2-23352-6 KNT

PLAINTIFFS' MOTION FOR
DECLARATORY JUDGMENT
ON FEDERAL LAW CLAIMS

PLAINTIFFS' MOTION FOR DECLARATORY JUDGMENT ON
FEDERAL LAW CLAIMS

DWT 22938809v9 0017572-000176

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I. INTRODUCTION AND RELIEF REQUESTED

Plaintiffs seek a judgment that Chapter 7.45 of the SeaTac Municipal Code (the “Ordinance”) is unconstitutional. The Ordinance violates the supremacy clause of the United States Constitution because it purports to regulate areas of law that are preempted by federal law.

Federal law is supreme, notwithstanding any contrary state law. U.S. Const. art. VI, cl. 2. “Congress’ power to preempt state law is derived from the Supremacy Clause of article 6 of the federal constitution.” *Beaman v. Yakima Valley Disposal*, 116 Wn.2d 697, 702, 807 P.2d 849 (1991). A state or local law is preempted if it attempts to regulate conduct regulated by federal law. Federal law may preempt state law in any of three ways: (1) Congress may explicitly define extent to which it intends to preempt state law; (2) Congress may indicate an intent to occupy an entire field of regulation, in which case the states must leave all regulatory activity in that area to federal government; and (3) Congress may preempt state law to the extent that it actually conflicts with federal law. *See Mich. Cannery and Freezers Ass’n, Inc. v. Agric. Mktg. and Bargaining Bd.*, 467 U.S. 461, 469 (1984).

The Ordinance intrudes on subjects that are heavily regulated by federal law: labor relations and domestic air transport. With regard to labor relations, Congress occupied the entire field of regulation when it enacted both the National Labor Relations Act (“NLRA”) and, for railroads and airlines the Railway Labor Act (“RLA”). *Beaman*, 116 Wn.2d at 702 (“Congressional power to legislate in the area of labor relations is long established.”) (citing *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937)). Similarly, the Airline Deregulation Act of 1978, governing domestic air transport, includes an express preemption clause. The Ordinance also violates the dormant Commerce Clause of the U.S. Constitution.

II. STATEMENT OF FACTS

On June 5, 2013, the SeaTac Committee for Good Jobs (the “Committee”) filed an initiative petition and proposed ordinance entitled “Ordinance Setting Minimum Standards For

1 Hospitality and Transportation Industry Employer” (the “Ordinance”) with the City of SeaTac
2 City Clerk’s office. The primary purpose of the Ordinance is to regulate various aspects of the
3 employer-employee relationship for companies doing business at the Sea-Tac Airport. *See*,
4 Ordinance 7.45.010(M)(1); Voters’ Pamphlet (Ex. A, Meissner Decl). Plaintiffs Filo Foods,
5 LLC, BF Foods, LLC, Alaska Airlines, Inc. and members of the Washington Restaurant
6 Association will be affected by the Ordinance if it is implemented.¹

7 **III. STATEMENT OF ISSUES**

- 8 1. Is the Ordinance pre-empted by the National Labor Relations Act, the Railway
9 Labor Act, and/or the Airline Deregulation Act?
- 10 2. Does the Ordinance violate the dormant commerce clause?

11 **IV. EVIDENCE RELIED UPON**

12 This motion relies on the papers on file in this matter and the declarations filed
13 herewith.

14 **V. AUTHORITY AND ARGUMENT**

15 **A. Standard For Declaratory Relief**

16 Court routinely rule on the validity of legislation proposed or adopted by initiative in
17 declaratory judgment proceedings. *See, e.g., Am. Traffic Solutions, Inc. v. City of Bellingham*,
18 163 Wn. App. 427, 433-34, 260 P.3d 245, 248 (2011); and cases cited in Plaintiffs’ Motion on
19 State Law Claims.

20 **B. The Ordinance Is Preempted By Federal Labor Law**

21 The NLRA “is a comprehensive code passed by Congress to regulate labor relations in
22 activities affecting interstate and foreign commerce.” *Commonwealth Edison Co. v. Int’l Bhd.*
23 *of Elec. Workers*, 961 F. Supp. 1169, 1178 (N.D. Ill. 1997). The NLRA declares the policy of
24 the United States to eliminate or mitigate obstructions to the free flow of commerce caused by
25 industrial strife, unrest, and unequal bargaining power, “by encouraging the practice and
26

27 ¹ See Declarations of Jeff Butler, Dean DuVall, LeeAnne Subelbia, and Bruce Beckett.

1 procedure of collective bargaining and by protecting the exercise by workers of full freedom of
2 association, self-organization, and designation of representatives of their own choosing, for the
3 purpose of negotiating the terms and conditions of their employment or other mutual aid or
4 protection.” 29 U.S.C. § 151. The NLRA authorizes the National Labor Relations Board
5 (“NLRB”) to adjudicate disputes concerning unfair labor practices and to prevent any person
6 from engaging in an unfair labor practice affecting commerce. 29 U.S.C. § 153

7 The US Supreme Court has articulated two types of preemption that are implicitly
8 mandated by the NLRA. *Chamber of Commerce of United States v. Brown*, 554 U.S. 60, 65
9 (2008). “Garmon preemption” (*San Diego Bldg. Traders Council v. Garmon*, 359 U.S. 236
10 (1959)) prevents states or municipalities from interfering with the NLRB’s jurisdiction by
11 prohibiting state or municipal regulation of activities that the NLRA even arguably protects and
12 prohibits. *Brown*, 554 U.S. at 65. “Machinists preemption” (*Machinists v. Wis. Emp’t Relations*
13 *Comm’n*, 427 U.S. 132 (1976)) prevents states, municipalities, and even the NLRB itself, from
14 regulating “conduct that Congress intended [to] be unregulated because left to be controlled by
15 the free play of economic forces.” *Brown*, 554 U.S. at 65 (quotations omitted).²

16 The RLA was enacted “to promote peaceful and efficient resolution” of labor disputes
17 in the railroad and airline industries. *Union Pac. R.R. Co. v. Bhd. of Locomotive Eng’rs &*
18 *Trainmen*, 558 U.S. 67, 72 (2009). To achieve this goal, the RLA “provid[es] a comprehensive
19 framework for resolving labor disputes” arising thereunder. *Hawaiian Airlines v. Norris*, 512
20 U.S. 246, 252 (1994). The nationwide scope of railroad and airline operations and collective

21
22 ² “Whether the NLRA preempts [a law] is a pure legal question. . . .” *520 S. Mich. Ave. Assocs.,*
23 *Ltd. v. Shannon*, 549 F.3d 1119, 1124 (7th Cir. 2008). Most, if not all, of the business covered
24 by the Ordinance would be covered by the NLRA. Despite the Ordinance’s attempt to exclude
25 certificated air carriers from its coverage (§ 7.45.010(M)(1)), the RLA also applies because
26 vendors under contract to provide services to Alaska are covered by the RLA. See, Declaration
27 of Dean DuVall, ¶ 3; *John Menzies, PLC, d/b/a Ogden Ground Services, Inc.*, 339 NLRB 869
(2003); *John Menzies, PLC, d/b/a Ogden Ground Services, Inc.*, 340 NLRB 1167 (2003); *Delta*
Air Lines Global Services, 28 NMB No. 75 (2001); *Bags, Inc.*, 40 NMB 165 (2013).

Contractors provide Alaska with baggage handling, wheelchair escorts, curbside check-in,
fueling, and aircraft cleaning; these contractors are covered by the ordinance and do not
currently pay the wage required by the Ordinance. DuVall, ¶ 3; Butler Decl., ¶¶ 6, 9.A.

APPENDIX E

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

FILO FOODS, LLC; BF FOODS,
LLC; ALASKA AIRLINES, INC.;
and THE WASHINGTON
RESTAURANT ASSOCIATION,

Plaintiffs,

v.

THE CITY OF SEATAC and
KRISTINA GREGG, CITY OF
SEATAC CLERK, in her
official capacity,

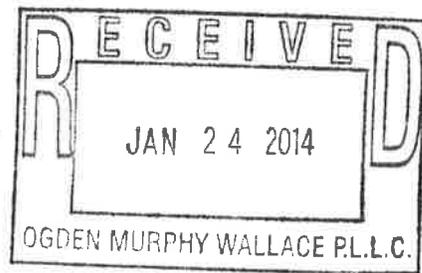
Defendants,

SEATAC COMMITTEE FOR GOOD
JOBS,

Intervenors.

COPY

King County Cause No.
13-2-25352-6 KNT



VERBATIM REPORT OF PROCEEDINGS

Had in the above entitled cause before the HONORABLE ANDREA
DARVAS, Superior Court Judge for the State of Washington,
County of King, on December 13, 2013.

Marci E.C. Chatelain, CCR, RPR, CRR
Official Court Reporter
Maleng Regional Justice Center
401 4th Avenue North, Rm. 2D
Kent, WA 98032
(206) 477-2756

1 relevant for further proceedings in this court should there
2 be such proceedings.

3 THE COURT: I did have a question. And I read
4 your brief in opposition of the motion to stay discovery. I
5 guess that leads me to another general question for counsel,
6 which is, it's my understanding that the motions that are
7 before me today are purely based on issues of law and that no
8 factual findings are appropriate or necessary; is that
9 accurate?

10 MR. IGLITZIN: So, your Honor, speaking from the
11 point of view of the Committee with regard to the federal
12 claims, which are really where the -- what the discovery
13 relates to, the State law claims, I'll defer to other parties
14 their opinion, but those seem to be purely legal issues.

15 In their motions, the plaintiffs make factual allegations
16 on the order of, the consequences of this law will be --

17 THE COURT: Right.

18 MR. IGLITZIN: -- massive increases of cost,
19 changes of rates, routes. So to me, those are factual
20 assertions. Clearly, there's zero evidence before you from
21 which you could make factual findings. And in that light, I
22 think what you would need to do today is make purely legal
23 decisions.

24 THE COURT: Okay. And do the other parties
25 concur?

1 MR. KORRELL: Your Honor, perhaps a slightly
2 different take on that. Our view is that the issues are, in
3 fact, legal issues. We've briefed these up as legal issues.
4 It is appropriate for your Honor to consider undisputed or
5 undisputable facts.

6 Defendants have not identified in their briefing any facts
7 they need to conduct discovery on, and thus the continuance
8 under 56(f), nothing like that has been briefed.

9 So while I don't think you're asked to make factual
10 findings, it doesn't mean that the record is devoid of sort
11 of background facts that your Honor can consider.

12 THE COURT: Well, the problem is that to the
13 extent they're disputed, I can't really base a decision on
14 them, can I?

15 MR. KORRELL: Well, your Honor, I suppose, yes, if
16 they're disputed, but the defendants would have to come
17 forward with some reasonable basis for saying they dispute
18 that if -- you know, if someone's labor costs goes up 63
19 percent that they would have to increase prices. I mean,
20 that doesn't -- there are factual assertions like that in the
21 record, but I don't think that's something that there's been
22 any dispute created about, and thus I think your Honor could
23 take that as an undisputed fact, because it has not been
24 contested by any admissible evidence.

25 MR. IGLITZIN: It will not surprise you to know

1 that we strongly dispute.

2 And I happened to see in the Wall Street Journal yesterday
3 a covered employer representative saying that because of
4 economic issues, competitive issues, they're just going to
5 have lower profits because they won't be able to raise their
6 prices.

7 So that's not in the record as a fact, but it's certainly
8 a fact in dispute.

9 THE COURT: Yeah. I think all I can do in terms
10 of the numerous declarations in this case about the alleged
11 consequences of SMC 7.45 going into effect would be just what
12 the viewpoints of various parties and declarants are on that,
13 rather than making a factual finding. Because I don't know
14 that the Court can make factual findings about disputed
15 matters without actually conducting an evidentiary hearing,
16 which is not what we're here for.

17 Anyone else want to weigh in on that issue?

18 Okay. I think what I'll do is I will grant the motion to
19 stay discovery until I have issued a decision in this matter,
20 which is going to be a relatively brief stay because of the
21 time frame that we're all operating in.

22 Are there any other preliminary matters?

23 MR. TANAKA: Yes, your Honor. Wayne Tanaka.

24 The City of SeaTac did file a request or motion to file a
25 reply brief to the brief that the Port submitted.

DECLARATION OF SERVICE

I, Gloria J. Zak, make the following declaration:

On the ____ day of April, 2014, I provided this document to:

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

EXECUTED at Seattle, Washington this 18 day of April
2014.



Gloria J. Zak