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SUPREME COURT  
OF THE STATE OF WASHINGTON

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

Respondents/Cross-Appellants,

v.

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

Appellant/Cross-Respondent,

and

PORT OF SEATTLE,

Respondent,

and

SEATAC COMMITTEE FOR GOOD JOBS,

Appellant/Cross-Respondent.

Filed *E*  
Washington State Supreme Court

MAY 22 2014

*RJC*  
Ronald R. Carpenter  
Clerk

**BRIEF OF *AMICUS CURIAE* WASHINGTON PUBLIC PORTS  
ASSOCIATION**

Christopher Howard, WSBA #34211  
Averil Rothrock, WSBA #24248  
Schwabe, Williamson & Wyatt, P.C.  
1420 5th Avenue, Suite 3400  
Seattle, WA 98101-4010  
Telephone: 206.622.1711  
Facsimile: 206.292.0460  
*Attorneys for Amicus Curiae*  
*Washington Public Ports Association*

Frank J. Chmelik, WSBA #13969  
Seth A. Woolson, WSBA #37973  
Chmelik Sitkin & Davis, P.S.  
1500 Railroad Avenue  
Bellingham, WA 98225  
Telephone: 360-671-1796  
Facsimile: 360-671-3781  
*Attorneys for Amicus Curiae Washington*  
*Public Ports Association*

 ORIGINAL

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## I. INTRODUCTION

The Washington Public Ports Association (“WPPA”) submits this brief as *amicus curiae* in support of affirmance of the King County Superior Court’s judgment finding SeaTac Municipal Code § 7.45 (the “Ordinance”) void as to the Seattle-Tacoma International Airport (“STIA”). The City of SeaTac (the “City”) has no jurisdiction to regulate at STIA given that RCW 14.08.330 provides exclusive jurisdiction and control of any airport to the municipality that owns, controls and operates it, in this case the Port of Seattle (the “Port”). This issue has significant ramifications for the operation and control of all of the airports in the State of Washington, many of which are operated by WPPA members.

The City and the SeaTac Committee for Good Jobs (the “Committee”) overlook the basic purpose of the *Municipal Airports – 1945 Act* (RCW Chpt 14.08): to promote the development and management of airports to serve their respective regions. The Legislature expressly stated that operation of airports in this state is a “matter of public necessity.” RCW 14.08.020. In RCW 14.08.330, the Legislature recognized the unique and important function of airports and insulated the municipalities that operate airports from local municipality interference when it granted “exclusive jurisdiction” to the operating municipality. RCW 14.08.330. Leaving no doubt, the Legislature further explicitly

prohibited local municipalities from exercising jurisdiction at airports, stating that “[n]o other municipality in which the airport . . . is located shall have any police jurisdiction of the same . . .” *Id.*

The Legislature clearly expressed in RCW 14.08.340, regarding “Interpretation and construction,” its desire that nearby municipalities not interfere with or impede airport operations by noting that the Act must be interpreted and construed “so as to make uniform so far as possible the laws and regulations of this state . . . having to do with the subject of aeronautics.” This court has clarified the statute was intended to prevent interference with airports by surrounding municipalities. *King County v. The Port of Seattle*, 37 Wn.2d 338, 223 P.2d 834 (1950).

The City’s and the Committee’s positions in their petitions and briefing attempt to change the meaning of “exclusive jurisdiction” and avoid the specific statutory prohibition against interference by local municipalities, like the City. They argue to add a burden on the Port to show actual substantial impact or harm in order to invoke the exclusive jurisdiction conferred in the statute. In asking for RCW 14.08.330 to be rewritten, the City and the Committee ask this court to hold either (1) that the Legislature did not intend what it set forth in the language of RCW 14.08, or (2) that circumstances have changed since the statute was passed so it should be interpreted differently, i.e. by eviscerating the words

“exclusive jurisdiction” to permit some level of interference that would permit the City to regulate at the airport. The Court should reject this approach.

This Court’s objective is to effectuate legislative intent based on the plain language of the statute. *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007). Here, the statutory language—both in the positive and the negative—is not equivocal. It provides no room for “some” level of interference argued to be acceptable. . And, while WPPA can agree that the circumstances have changed, the realities of the modern day global air transportation system have changed such that the provisions of this statute more important than ever. There is no doubt that a well-run STIA is important to the entire State; competition between the City and the Port for jurisdiction over the airport would be self-defeating and detrimental to STIA’s smooth and successful operations. This is true for any airport run by a port district and located in a city or county. RCW 14.08.330 leaves no power vacuum or doubt—the port district has exclusive jurisdiction.

The Legislature has amended RCW 14.08, but never has altered the critical provisions providing exclusive jurisdiction to the municipality that operates an airport. WPPA asks this court to uphold the portion of the Superior Court’s decision that found SMC § 7.45 is void as to STIA due to

RCW 14.08. The rationale, analysis and conclusion are correct.

The Superior Court's decision also is consistent with the strong public policy behind enactment of RCW 14.08.330. Operating an airport requires specific expertise by the municipality managing it. Airports are "a matter of public necessity" and are vital economic drivers for the regions they serve. Airport operations should not be curtailed or otherwise restricted by the locality in which they might operate; such interference might damage the regional economic contributions of airports. These policies underlie the Washington Legislature's enactment of RCW 14.08. These policies support the Superior Court's decision.

## **II. IDENTITY AND INTEREST OF AMICUS CURIAE**

WPPA's members include seventy-five member port districts throughout the State of Washington. This membership includes the Port and twenty six other port districts that operate thirty other airports in twenty Washington counties. WPPA was authorized by the Washington Legislature in 1961 by RCW 53.06.030.

WPPA and its members have a very strong interest in the proper interpretation and application of RCW 14.08.330. WPPA submits this brief to address issues raised by the City's and the Committee's challenge to RCW 14.08 that would affect many of its members and potentially all of the regions served by airports in Washington. WPPA moved for and

was granted leave to participate as *amicus curiae* at the Superior Court (CP 2005-07). The WPPA submitted a brief to the Superior Court, CP 2008-55, and the declaration of its executive director, Eric D. Johnson, providing background information on the WPPA and its member port districts. CP 1805-10. WPPA's interest is to preserve the efficient operation of airports throughout the State by preserving the protection from interference by local municipalities set forth in RCW 14.08.330.

### III. ISSUES

1. Was the Superior Court correct in holding portions of SeaTac Municipal Ordinance § 7.45 void at the airport because those portions conflict with RCW 14.08.330 and seek to regulate matters over which the City of SeaTac has no jurisdiction?

2. Does the Superior Court's decision properly reflect the public policy expressed by the Washington Legislature in Title 14.08 to protect the exclusive jurisdiction of municipalities that operate airports—a public necessity—for the successful management of airports uniformly throughout the state and to avoid jurisdiction contests like the present one?

### IV. ARGUMENT

#### **A. The Ordinance Intrudes on the Port's Exclusive Jurisdiction and Interferes with the Operation of STIA**

The Superior Court correctly ruled that the Ordinance is void as to

workers at STIA because the City lacks jurisdiction over STIA or its operations. The City's and the Committee's arguments seek to lead the Court down a path to rewrite the words "exclusive jurisdiction" and its accompanying prohibition against local municipality interference to be meaningless. The logical extension of their arguments would equate exclusive jurisdiction with the City being allowed to pass any regulations as long as the Port could not prove such regulation prevented aircraft from landing and taking off. These arguments overlook that a prohibition on interference means just that: no interference. It does not matter if the intrusion on exclusive jurisdiction is desirable or harmful. There is no basis in the statute or in case law that a prohibition on interference would allow the City to interfere as long as it is benign. The Legislature opted against the approach of placing an impossible burden on STIA, or whoever operates an airport in this State, to prove the interference reaches some unspecified level of harm.

The Superior Court correctly relied on the plain words of the statute and noted that exclusive jurisdiction rests in the Port, stating:

The municipality which controls and operates SeaTac Airport is the Port of Seattle. Pursuant to RCW 14.08.330, airport facilities and operations are "under the exclusive jurisdiction and control" of the Port of Seattle, subject to "federal and state laws, rules, and regulations" but **not** subject to the laws, rules and regulations of SeaTac or other municipalities. It is only the Port of Seattle that

has legislative authorization “[t]o adopt ... all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control ...” RCW 14.08.120(2). The grant of exclusive jurisdiction to the Port of Seattle covers all operations and activities occurring at the airport, its buildings, roads and facilities. See Chapters 53.08 and 14.08 RCW.

CP 1943-1944 (emphasis original). The Superior Court took the correct approach, focusing on the language employed by the Legislature as the expression of its intent. See *Tingey v. Haisch, supra*, 159 Wn.2d at 657 (“[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.”).

The Superior Court’s conclusions about the clear language in RCW 14.08.330 is supported by this Court’s decision *King County v. The Port of Seattle*, 37 Wn.2d 338, 223 P.2d 834 (1950). This Court in *King County* enforced the clause in the statute that prevents other municipalities from intruding on the exclusive jurisdiction at the airport or from exacting license fees or occupation taxes related to the operations of the airport. It did so after considering and rejecting the argument that the statute was unconstitutional because it arguably removed the STIA property from King County. It was in this latter context concerning the constitutional issue that the court clarified the statute did not redraw boundaries, but “merely” forbade interference, even though the airport remained in King County.

The City and the Committee stress the use of the word “merely” in *King County* without including the context. *See, e.g.*, Brief of Appellant SeaTac Committee for Good Jobs (“Committee Brief”) at page 6, Reply Brief and Cross-Response Brief of Appellant SeaTac Committee for Good Jobs, (the “Committee Reply Brief”) at page 4. In *King County* the Supreme Court did not limit the provisions of the statute when it used that word “merely.” It was stressing that the land was not removed from the boundaries of the County. This addressed the County’s argument that the statute was unconstitutional; the Court was not limiting or rewriting the grant of exclusive jurisdiction. The Court did not rewrite or limit the statute in any way. Arguments to the contrary are wrong.

In *King County*, this Court enforced RCW 14.08.330 and prohibited the county from licensing or collecting fees, in that case from the taxis that served the airport. The Court stressed the county could not interfere with those operations. The City and the Committee now seek to turn that case on its head and to use a statement that the City could not interfere as the basis to gut the exclusive jurisdiction provision of the statute.

The City and the Committee attempt this through a series of missteps, each of which moves their argument further from the plain meaning of the statute. First, they argue that *King County* implicitly limits

the plain language of the statute by using the word “merely.” See “Committee Brief”, at page 12, “Committee Reply Brief”, at page 2. That limitation would change the court’s explanation of exclusive jurisdiction to mean concurrent jurisdiction as long as the City does not interfere with airport operations. This first step is wrong, as the Court was expressing the rationale of the statute, not limiting its application.

The Committee argues the Superior Court incorrectly relied upon a judicial interpretation of exclusive jurisdiction that post-dated the enactment of the statute. See Committee Reply Brief, fn. 3, page 4. But the Superior Court’s reliance upon *Dept. of Labor and Industries v. Dirt & Aggregate, Inc.*, 120 Wn.2d 49, 52-53, 837 P.2d 1018 (1992), is well placed. That court relied on authority that pre-dated the enactment of RCW 14.08. *Dept. of Labor and Industries v. Dirt & Aggregate, Inc.*, at 53, fn 1, citing *Pacific Coast Dairy, Inc. v. Department of Agriculture*, 318 U.S. 285, 294, 87 L. Ed. 761, 63 S. Ct. 628 (1943); *State v. Rainier Nat’l Park Co.*, 192 Wash. at 594-95, 74 p.2d 464 (1937).

Further, the City and the Committee overlook the “and” in the court’s language that places additional restrictions on the county rather than limit the statute’s application.

We are of the opinion that Rem. Supp. 1945, § 2722-44, does not, nor does it attempt to, remove this territory from King county. The effect of this section,

when read in the light of the entire revised airports act, is **merely** to preclude appellant from interfering with respect to the operation of the Seattle-Tacoma airport **and** forbids appellant's exacting any license fees since the legislature has declared its policy to be that the responsibility of providing adequate and satisfactory transportation and other public services shall belong to the Port. No territory is stricken from King County. The legislature by general law has taken away from appellant its power to exact license fees within the airport. This was its prerogative.

*King County*, at 348, 223 P.2d at 840 (emphasis added).

The City and the Committee's next implicit step is to assume that interference must be read narrowly, only applying to some limited scope of airport operations. The City and the Committee never spell this out, but their arguments presuppose a narrower scope than that set forth in RCW 14.08.120(2) that grants the municipality operating an airport the enumerated powers ("[i]n addition to the general powers conferred in this chapter, and without limitation thereof") relied upon by the Superior Court in its ruling. On its face, even if "exclusive jurisdiction" in RCW 14.08.330 were limited to some standard of non-harmful interference—which it is not—the terms of RCW 14.08.120 would prohibit interference to all of these powers and responsibilities set forth in this part of Title 14.08. Many of the activities the Ordinance seeks to regulate are integral to the operation of an airport, such as baggage handling, passenger check in, aircraft refueling, aircraft cleaning and concessions. *See* SMC

7.56.010. The Superior Court received evidence that the Port has promulgated regulations and concession agreements in the same area that the Ordinance would regulate. *See* CP 1366-1445. The Ordinance clearly has an impact on those areas; indeed, the initiative was targeted at workers employed in many of these airport operations. The Ordinance on its face seeks to interfere in areas covered by RCW 14.08.120(2). The Superior Court's judgment correctly recognizes this and prevents it.

But the City and the Committee's arguments ignore this. Instead they imply the statute's protections apply to some lesser scope of airport operations which they never define. They cannot define operations in a way that would both be consistent with the powers granted in RCW 14.08.120(2) and the Ordinance. Instead they seek to redefine "interference." They do this by arguing that an airport should have the burden of proving some specific negative impact from the interference of the Ordinance. *See* Reply Brief of City of SeaTac, et al. ("City Reply") at 11-13. Neither RCW 14.08 nor existing Washington case law support such a requirement. The statute provides no basis for placing such a burden on the municipality operating an airport. The City and the Committee seek to create new law, rewriting RCW 14.08 and the *King County* case. This Court should reject their implicit invitation to revise the statute to place a burden on the municipality operating an airport to show

that another municipality's interference with its exclusive jurisdiction meets some threshold level of negative impact.

The approach urged by the City and the Committee in essence seeks to change "exclusive jurisdiction" into "concurrent jurisdiction" unless an airport meets some unspecified burden of establishing an impact or harm. But the Legislature's use of the term "concurrent jurisdiction" later in the same provision shows that it understood "exclusive" and "concurrent." *See* RCW 14.08.330 (permitting "concurrent jurisdiction" over "the adjacent territory"). The Court should not permit evisceration of this precise language.

The municipalities around the State that operate airports pursuant to RCW 14.08 do so for the benefit of the regions in which they are located. These airports should not be subject to a burden of proving harm from attempted interference in their operations. The statute provides for exclusive jurisdiction in these operations and includes a prohibition against local municipality interference. The *King County* case reiterated the obvious: the terms "exclusive jurisdiction" and no other municipality shall have "any police jurisdiction" meant no interference. "No interference" means that port districts are not burdened with proving harm in order to exercise the exclusive jurisdiction created by the Washington Legislature. To impose such a burden would make a mess of the lines

drawn by the Legislature. It would involve airports statewide in power struggles and litigation, ultimately exhausting precious state and local resources—a result that the Legislature avoided when it enacted the Ordinance.

The Committee cites various cases from other jurisdictions relating to parallel statutes in those states do not address the language of Washington’s statute. *See, e.g.*, Committee Brief at 21 and 31-8. The out-of-state case law does not justify overturning the clear protections set forth in RCW 14.08 and reinforced in *King County*.<sup>1</sup>

The Superior Court correctly interpreted the ordinance based on its plain language when it held that the Ordinance is not enforceable at STIA because the City has no jurisdiction at the airport—the Port does. . This portion of the Superior Court’s decision should be upheld.

**B. The Superior Court’s Ruling is Consistent with Established Washington Public Policy**

Washington’s Legislature set forth a clear public policy of encouraging development of regional airports to serve the citizens of this

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<sup>1</sup> To the extent the City and the Committee made arguments based on the other states’ laws in their opening briefs, they did not address the response to their out-of-state authority in their reply briefs at all. The City concedes the out-of-state authority does not address this issue. *See City Reply* at 15.

State and to function as economic drivers for their regions.

To accomplish this end, the Legislature set forth a degree of autonomy for the municipalities that operate airports. This allows those municipalities to develop the requisite expertise to comply with the State and Federal regulations necessary to operate airports and to maximize the airport's utility to the greater region in which they are located. This is good public policy.

This public policy is consistent with the explanation set forth in a treatise contemporary with enactment of the statute that the Committee provided the Superior Court. *See Airports and The Courts*, by Charles S. Rhyne, National Institute of Municipal Law Officers, (1944) at CP 1597. The authors explained that autonomous entities running airports can "serve several different political subdivisions," a strategy that "eliminates" "questions of conflicting jurisdiction," as follows:

The airport district is usually conceived as a legal plan whereby an airport may be established to serve several different political subdivisions, i.e. cities, towns or counties. Questions of conflicting jurisdiction, debt and tax limitations, and similar problems are eliminated by the use of this type of public corporation as it has an existence apart from the cities and counties in which it is located or which it serves.

*Id.*

The Legislature's delineation of exclusive jurisdiction to the municipalities operating airports helps to insulate the airport from local whims where the immediate neighbors might seek to have an impact on or curtail airport operations to the detriment of the greater region. This should not be allowed. The facts recited in the Brief of Amicus Curiae Masterpark LLC, at 3-4, demonstrate how a locality could target airport commerce for very local gain. This was what the Legislature was trying to prevent.

The City and the Committee argue that this leaves a vacuum in regulatory power. *See, e.g.* City Reply at page 19. This is not so. The municipalities that operate airports are specifically subject to State and Federal regulation. They are empowered to make all necessary rules and regulations for the operations at the airport. There is no vacuum that a local or neighboring city must fill in order to regulate anything related to the operation of the airport. The City and the Committee's argument is contrary to the public policy under Washington's statutory scheme for the operation of airports.

Implicit in the Committee's arguments is that this somehow leaves local citizens with no recourse. This is incorrect. All port districts in this State are governed by elected commissioners. Some of the airports are operated by the municipalities in which they are located. That is not the

case with regard to STIA and the City because STIA predates the City which grew up around it. But all port districts are subject to the election of their commissioners who govern the operations of the airports. The local electorate is not without recourse but the interests of the local electorate are necessarily and properly balanced with the needs of the all the citizens of the port district. Here, a very local electorate in the City incorporated approximately fifty years after the Port established STIA cannot and should not be allowed to impose its will on the Port and STIA which clearly serves King County and indeed the entire State. The case for a change in regulation at STIA should be made to the elected Port Commissioners and, failing success there, to the voters in the next Port Commissioner election.

The City and the Committee do not address this valid and important policy underpinning of Washington's Legislative scheme. It is important to protect the rights of workers, but that does not trump other policies set forth by the State to encourage mutual economic development through airports. Instead the City engages in sheer speculation about why later uniform statutes were worded differently. City Reply at pages 9 – 10. This has no bearing on the statute adopted by Washington's Legislature

Washington's Legislature has amended this statute, including in 1974 when amendment language relating to fire districts was added. In so

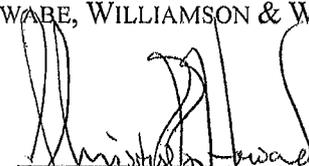
doing, the Legislature left the exclusive jurisdiction and local municipality prohibition provisions intact. A policy of protecting the operation of the airports remains. The Superior Court's decision with respect to the Ordinance being void as to STIA is consistent with this policy. That decision should be upheld.

## V. CONCLUSION

The Superior Court correctly followed established Washington statutory and case law in finding the Ordinance void as to STIA and the airport operations. That ruling was consistent with RCW 14.08.330. That ruling is consistent with *King County v. The Port of Seattle*. That ruling is consistent with sound public policy. This Court should uphold the Superior Court on that ruling.

Respectfully submitted on this 14<sup>th</sup> day of May, 2014.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: 

Christopher Howard, WSBA #11074

Averil Rothrock, WSBA # 24248

U.S. Bank Centre

1420 5th Avenue, Suite 3400

Seattle, WA 98101-4010

Telephone: 206.622.1711

Facsimile: 206.292.0460

*Attorneys for Amicus Curiae*

*Washington Public Ports Association*

CHMELIK SITKIN & DAVIS, P.S..

By:  *Reviewed for by telephone*  
*with [unclear] on 5/14/14*

Frank J. Chmelik, WSBA # 13969  
1500 Railroad Avenue  
Bellingham, WA 98225  
Telephone: 360.671-1796  
Facsimile: 360.671-3781  
*Attorneys for Amicus Curiae*  
*Washington Public Ports Association*

**CERTIFICATE OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct: That on the 14<sup>th</sup> day of May, 2014, I arranged for service of the foregoing Brief of *AMICUS curiae* Washington Public Ports Association to the parties to this action as follows:

**VIA EMAIL AND U.S. MAIL**

Office of Clerk  
Washington Supreme Court  
Temple of Justice  
POB 40929  
Olympia, WA 98504-0929  
Supreme@courts.wa.gov

**VIA EMAIL AND U.S. MAIL**

Harry J. F. Korrell  
[harrykorrell@dwt.com](mailto:harrykorrell@dwt.com)  
Roger A. Leishman  
[rogerleishman@dwt.com](mailto:rogerleishman@dwt.com)  
Davis Wright Tremaine LLP  
1201 Third Avenue  
Seattle, WA 98101-3045

**VIA EMAIL AND U.S. MAIL**

Cecilia A. Cordova  
[Cecilia@cordovalawfirm.com](mailto:Cecilia@cordovalawfirm.com)  
Pacific Alliance Law, PLLC  
601 Union Street, Suite 4200  
Seattle, WA 98101-4036

**VIA EMAIL AND U.S. MAIL**

Wayne D. Tanaka  
[wtanaka@omwlaw.com](mailto:wtanaka@omwlaw.com)  
Ogden Murphy Wallace P.L.L.C.  
901 Fifth Avenue, Suite 3500  
Seattle, WA 98164

**VIA EMAIL AND U.S. MAIL**

Mary Mirante Bartolo  
[mmbartolo@ci.seatac.wa.us](mailto:mmbartolo@ci.seatac.wa.us)  
Mark Johnsen  
[mjohnsen@ci.seatac.wa.us](mailto:mjohnsen@ci.seatac.wa.us)  
City of SeaTac Attorney's Office  
4800 South 188th Street  
SeaTac, WA 98188-8605

**VIA EMAIL AND U.S. MAIL**

Dmitri Iglitzin  
[iglitzin@workerlaw.com](mailto:iglitzin@workerlaw.com)  
Jennifer Lee Robbins  
[robbins@workerlaw.com](mailto:robbins@workerlaw.com)  
Laura Ewan  
[ewan@workerlaw.com](mailto:ewan@workerlaw.com)  
Schwerin Campbell Barnard Iglitzin & Lavitt  
18 W. Mercer Street, Suite 400  
Seattle, WA 98119

**VIA EMAIL AND U.S. MAIL**

Shane P. Cramer  
[shanec@calfoharrigan.com](mailto:shanec@calfoharrigan.com)  
Tim Leyh  
[timl@calfoharrigan.com](mailto:timl@calfoharrigan.com)  
Calfo Harrigan Leyh & Eakes LLP  
999 Third Avenue, Suite 4400  
Seattle, WA 98104

**VIA EMAIL AND U.S. MAIL**

Herman L. Wacker  
[Herman.wacker@alaskaair.com](mailto:Herman.wacker@alaskaair.com)  
Alaska Airlines  
POB 68900  
Seattle, WA 98168-0900

**VIA EMAIL AND U.S. MAIL**

Craig Watson  
[Watson.c@portseattle.org](mailto:Watson.c@portseattle.org)  
General Counsel for the Port of Seattle  
2711 Alaskan Way (Pier 69)  
Seattle, WA 98121

**VIA EMAIL AND U.S. MAIL**

M. Roy Goldberg  
[rgoldberg@sheppardmullin.com](mailto:rgoldberg@sheppardmullin.com)  
Sheppard Mullin Richter & Hampton LLP  
1300 I Street, NW, Suite 1100 East  
Washington, D.C. 20005

**VIA EMAIL AND U.S. MAIL**

Robert J. Guite  
[rguite@sheppardmullin.com](mailto:rguite@sheppardmullin.com)  
Sheppard Mullin Richter & Hampton LLP  
Four Embarcadero Center, 17<sup>th</sup> Floor  
San Francisco, CA 94111

**VIA EMAIL AND U.S. MAIL**

Douglas W. Hall  
[DHall@fordharrison.com](mailto:DHall@fordharrison.com)  
Ford Harrison  
1300 19<sup>th</sup> Street, NW, Suite 300  
Washington, D.C. 20036

**VIA EMAIL AND U.S. MAIL**

Patrick D. McVey  
[pmcvey@Riddellwilliams.com](mailto:pmcvey@Riddellwilliams.com)  
James E. Breitenbucher  
[jbreitenbucher@Riddellwilliams.com](mailto:jbreitenbucher@Riddellwilliams.com)  
Riddell Williams, P.S.  
1001 Fourth Avenue, Suite 4500  
Seattle, WA 98154

**VIA EMAIL AND U.S. MAIL**

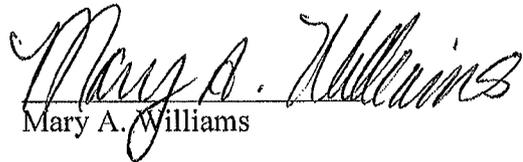
Timothy J. O'Connell  
[tjoconnell@stoel.com](mailto:tjoconnell@stoel.com)  
Stoel Rives, LLP  
600 University Street, Suite 3600  
Seattle, WA 98101

**VIA EMAIL AND U.S. MAIL**

Kristopher I. Tefft  
[Kris.Tefft@swiassn.org](mailto:Kris.Tefft@swiassn.org)  
1401 Fourth Avenue East, Suite 200  
Olympia, WA 98506-4484

**VIA EMAIL AND U.S. MAIL**

Diego R. Ichikawa  
[drondon@nelp.org](mailto:drondon@nelp.org)  
Rebecca Smith  
[rsmith@nelp.org](mailto:rsmith@nelp.org)  
National Employment Law Project  
317 17<sup>th</sup> Avenue South  
Seattle, WA 98144

  
Mary A. Williams

PDX\126905\194056\CHH\13867409.1

## OFFICE RECEPTIONIST, CLERK

---

**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Wednesday, May 14, 2014 2:54 PM  
**To:** 'Williams, Mary A.'  
**Cc:** Howard, Christopher H.; Rothrock, Averil  
**Subject:** RE: FILING BY ATTACHMENT TO EMAIL: Filo Foods, LLC, et al. v. The City of SeaTac, et al./No. 89723-9

Rec'd 5-14-14

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**From:** Williams, Mary A. [mailto:MAWilliams@SCHWABE.com]  
**Sent:** Wednesday, May 14, 2014 2:52 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** Howard, Christopher H.; Rothrock, Averil  
**Subject:** FILING BY ATTACHMENT TO EMAIL: Filo Foods, LLC, et al. v. The City of SeaTac, et al./No. 89723-9

Dear Clerk:

Attached please find the following documents to be filed with the Supreme Court:

- Washington Public Ports Association's Motion for Leave to Participate as an Amicus Curiae
- Brief of Amicus Curiae Washington Public Ports Association

Thank you,

Mary

**MARY A. WILLIAMS | Legal Assistant**  
**SCHWABE, WILLIAMSON & WYATT**  
**1420 5th Ave., Ste. 3400 Seattle, WA 98101**  
**Direct: 206-407-1568 | Fax: 206-292-0460 | Email: [mawilliams@schwabe.com](mailto:mawilliams@schwabe.com)**  
**Assistant to Colin Folawn, Averil Rothrock and Claire L. Been**  
*Legal advisors for the future of your business®*  
[www.schwabe.com](http://www.schwabe.com)

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