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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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No. 89723-9

(On appeal from King County Superior Court Case # 13-2-25352-6 KNT)

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

Respondents/Cross-Appellants,

v.

CITY OF SEATAC,

Appellant/Cross-Respondent,

and

PORT OF SEATTLE,

Respondent,

and

SEATAC COMMITTEE FOR GOOD JOBS,

Appellant/Cross-Respondent.

**PLAINTIFFS' ANSWER TO WASHINGTON ATTORNEY
GENERAL'S AMICUS CURIAE BRIEF**

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I. INTRODUCTION

The Attorney General of Washington in his amicus curiae brief seeks to interject two new and erroneous arguments into the parties' thoroughly-briefed appeal: (1) that an unrelated provision of the Washington Minimum Wage Act ("MWA") grants municipal jurisdiction over airport operations, and (2) that this Court should offer an advisory opinion on the scope of the Port's own authority to regulate employment terms at the Airport. Both as a matter of procedure and substance, the new arguments raised by the Attorney General do not support reversal of the superior court's correct conclusion that SeaTac voters lack the power to regulate employment terms and conditions at the Airport.

First, neither of the Attorney General's new arguments was raised previously by any party to this appeal. This Court does not consider arguments made solely by amici.

Second, RCW 49.46.120 of the MWA—which, like the Washington Law Against Discrimination, allows local governments to grant broader worker protections than offered by state or federal law—cannot limit the plain meaning of RCW 14.08.330 of the Revised Airports Act ("RAA"). Contrary to the Attorney General's unsupported assertions, the two statutes are not related for purposes of statutory interpretation. The undisputed legislative intent of the RAA is to create a uniform and

statewide system of regulations for airports. Nothing in RCW 49.46.120 limits the RAA's divestiture of municipal jurisdiction over airport operations.

Third, the question before the Court is whether the *City* has authority to regulate various aspects of the employment relationship for companies who do business at the Airport. In determining the validity of the Ordinance, this Court should not issue an advisory opinion deciding whether *both* the Port and the Legislature, or *only* the Legislature, may exercise the State's authority over wages and other employment terms offered by the Port's tenants and concessionaires.

II. ARGUMENT

A. The Attorney General as Amicus Curiae May Not Introduce New Arguments Not Made By Any Party.

Neither of the arguments made by the Attorney General was raised by any party to this appeal.¹ This Court does not consider arguments that are raised only by amici curiae. *Coburn v. Seda*, 101 Wn.2d 270, 279, 677 P.2d 173 (1984); *Long v. Odell*, 60 Wn.2d 151, 154, 372 P.2d 548 (1962) (“It is further well established that appellate courts will not enter into the discussion of points raised only by amici curiae.”); *Schuster v. Schuster*,

¹ Because the City took the position that this action was subject to RCW 7.24.100, Plaintiffs served the Attorney General with a copy of their Complaint and moving papers. CP 1833-34. Despite having the opportunity to intervene at the trial court level (and present these new arguments), the Attorney General expressly declined to do so.

90 Wn.2d 626, 629, 585 P.2d 130 (1978); *Washington State Bar Ass'n v. Great W. Union Fed. Sav. & Loan Ass'n*, 91 Wn.2d 48, 59-60, 586 P.2d 870 (1978).

B. The Two Statutes—RCW 14.08.330 and RCW 49.46.120—Are Unrelated And Should Not Be Read Together

Contrary to the Attorney General's contention, RCW 49.46.120 of the MWA does not limit the preemptive effect of RCW 14.08.330. To the contrary, the two statutes are completely unrelated. *Jametsky v. Olsen*, 179 Wn.2d 756, 765-66, 317 P.3d 1003 (2014) (whether statutes are related for purposes of statutory interpretation depends on legislative intent). The purpose of the RAA is to create a uniform body of law and regulation. RCW 14.08.340. In furtherance of this purpose, RCW 14.08.330 prevents municipalities, such as the City, from interfering with airport operations. *King Cnty. v. Port of Seattle*, 37 Wn.2d 338, 348, 223 P.2d 834 (1950). As the RAA directs, the statute

shall be so interpreted and construed as to make *uniform* so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of aeronautics.

RCW 14.08.340 (emphasis added).

The MWA, on the other hand, has nothing to do with aeronautics or airport operations. The purpose of the MWA is to establish a minimum

wage for employees in Washington State. RCW 49.46.005; 49.46.020. The MWA is in addition and supplementary to other standards (state, federal or local law, ordinance, rule or regulation) relating to wages, hours, and working conditions. If an alternative standard provides either more protection or is more favorable to an employee, the more protective standard will apply. The MWA, specifically RCW 49.46.120, does not create or divest jurisdiction over airport operations. Nor does it require, as the Attorney General erroneously contends, that local enactment of a favorable standard relating to wages, hours, and working conditions trumps the Legislature's allocation of regulatory jurisdiction in statutes other than the MWA, such as the RAA.

The Attorney General reads *Bostain v. Food Exp., Inc.* too broadly. 159 Wn.2d 700, 708, 153 P.3d 846 (2007). *Bostain* interprets the MWA by looking at other relevant provisions of the MWA. *Id.* at 711. The Court compared different provisions of the same statute. It did not look beyond the MWA to its relationship with other statutory schemes.

The Attorney General's reliance on *Washington State Coalition for the Homeless v. Dep't of Soc. & Health Servs.*, 133 Wn.2d 894, 949 P.2d 1291 (1997) and *Tootle v. Sec'y of Navy*, 446 F.3d 167, 176-77 (D.C. Cir. 2006) is also misplaced. Both decisions address the subject matter jurisdiction of components of the courts, a concept that is distinct from the

jurisdiction of municipal corporations, such as the City or Port. This Court may disregard the Attorney General's attempt to introduce new arguments on appeal regarding the construction of RCW 14.08.330.

C. This Court Need Not Reach the Scope of the Port's Own Authority to Regulate Employment in Order to Determine the Validity of the Ordinance.

Whether the Port has independent authority to impose standards relating to wages, hours, and working conditions on employers who do business at the Airport is *not* at issue in this appeal. RCW 14.08.330 of the RAA is a *divestiture* statute. It divests local municipalities, such as the City, of any authority to impose regulations that interfere with airport operations. RCW 14.08.330 is unconditional; the RAA does not provide an exception permitting local municipalities to impose regulations in order to fill a perceived "regulatory vacuum." Moreover, any concerns over a "regulatory vacuum" are unwarranted; state law standards relating to wages, hours, and working conditions, including the MWA, continue to apply to employers who do business at the Airport (except of course to the extent of any federal preemption).

Contrary to the arguments made by the Attorney General, the RAA's reference to "police jurisdiction" is not superfluous. The term "police jurisdiction" does not refer to police operations (i.e. officers with badges and cars with sirens), but rather is a legal term of art referring to

the jurisdiction of a municipality to regulate matters outside its borders. *See* Brief of Respondent Port of Seattle at 11. As used in RCW 14.08.330, the term “police jurisdiction” prohibits municipalities (such as the City or King County) that border or surround an airport from exercising any authority there, whether through direct or police jurisdiction. Committee’s Brief at 6. Rather than being superfluous, the use of the term “police jurisdiction” reinforces the RAA’s grant of exclusive jurisdiction over the Airport to the Port.

While the Attorney General may find it “hard to imagine that the Legislature intended to oust the authority of other local governments,” Attorney General Amicus Brief at 8, the express statutory purpose of the RAA confirms that is exactly what the Legislature intended. In any event, as discussed above, it is unnecessary and would be improper for this Court to reach the separate question of whether *both* the Port and the Legislature, or *only* the Legislature, may exercise the State’s authority over wages and other employment terms at the Airport. *See, e.g., Mukilteo Citizens for Simple Gov’t v. City of Mukilteo*, 174 Wn.2d 41, 55, 272 P.3d 227 (2012) (“Rendering a judgment on a hypothetical issue, therefore, would be tantamount to issuing an advisory opinion.”).

RESPECTFULLY SUBMITTED this 5th day of June, 2014.

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CERTIFICATE OF SERVICE

The undersigned declares under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

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Dated this 5th day of June, 2014.


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