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NO. 96781-4

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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

v.

CITY OF SEATTLE,
Appellant/Defendant,

and

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

**NATIONAL EMPLOYMENT LAW PROJECT, DR. DAVID
MICHAELS, DR. CELESTE MONFORTON, AND DR. MICHAEL
SILVERSTEIN'S BRIEF OF *AMICI CURIAE* IN SUPPORT OF
APPELLANTS**

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I. IDENTITY AND INTEREST OF *AMICI*

Amici curiae are the National Employment Law Project (“NELP”), Dr. David Michaels, Dr. Michael Silverstein, and Dr. Celeste Monforton. Drs. Michaels, Silverstein, and Monforton have substantial expertise in occupational safety and health and in identifying and preventing occupational health and safety risks among hotel housekeepers. NELP has for almost 50 years advocated for improved labor standards for low wage workers, including improved occupational safety and health standards. The expertise of these individuals and NELP and their interest in this matter is set forth in more detail in the Motion for Leave to File Brief of Amicus Curiae, filed simultaneously herewith.

II. STATEMENT OF THE CASE

City of Seattle Initiative 124 (“I-124”), approved overwhelmingly by Seattle voters in November of 2016, addresses the topic of worker well-being in Seattle’s hotel industry. The Initiative sets standards to protect Seattle’s hotel housekeepers from sexual harassment and inhumane workloads and granting them access to affordable family medical care and basic job security. The realities of employment for hotel housekeepers establish not only that each of these provisions is necessary, but also that none by itself is sufficient to create an effective effort to protect hotel workers’ health and safety. As shown below, all parts together function to

secure a working environment for hotel workers that is safe and healthful. The Court of Appeals' decision to strike down I-124 as violative of the "single-subject" requirement of RCW 35A.12.130 and the Seattle City Charter, article IV, section 7, was therefore error and should be reversed.

III. ARGUMENT

All the provisions contained in I-124, including preventing workplace violence; preventing on the job injuries and illnesses such as musculoskeletal disorders and chemical related illnesses; reducing job stress by providing job security; and providing access to medical care; are germane both to the title of the measure ("concern[ing] health, safety and labor standards for Seattle hotel employees") and to each other.

As noted in the supplemental briefing of Appellants/Intervenor-Defendants UNITE HERE! Local 8 and Seattle Protects Women, some 7,500 low-wage workers in Seattle are employed by the hotel industry, and that number is expected to grow as Seattle continues to grow. CP 106, 116-118. These workers experience "unchecked harassment, unmanageable healthcare costs, inhumane workloads, and the constant threat of unemployment." CP 106.

Hotel housekeepers face disproportionately high work-related hazards that can lead to adverse health consequences. These include workplace violence; slips, trips and falls; exposures to dangerous

chemical/biological substances; high rates of musculoskeletal disorders; job stress due to excessive work load; and job stress from the precariousness of their work. A failure to address all of these underlying hazards renders piecemeal efforts ineffective and the consequent injuries and illnesses more frequent and/or more severe.

It is for this reason that the Federal Government’s workplace safety experts at the National Institute for Occupational Safety and Health (NIOSH) use the same comprehensive approach as I-124 in addressing the health and safety of hotel housekeepers. According to NIOSH’s 2012 fact sheet on “Safety and Health Among Hotel Cleaners:”

Tasks performed by hotel room cleaners include dusting, vacuuming, changing linens and making beds, scrubbing bathrooms, cleaning mirrors, and disposing of trash. Most cleaners are women, and many are immigrants and minorities. According to a recent academic study, housekeepers had the highest rates of injury of all jobs studied in sampled hotels.¹

NIOSH went on to note that workplace hazards from hotel cleaning may result in the following: musculoskeletal disorders from bending, pushing carts, and making beds; traumatic injuries from slips, trips, and falls; respiratory illnesses from cleaning products that contain substances such as irritant aerosols and bleaching agents; skin reactions from detergents and

¹ U. S. Department of Labor, Occupational Safety and Health Administration, “Safety and Health among Hotel Cleaners,” <https://www.cdc.gov/niosh/docs/2012-151/pdfs/2012-151.pdf> (last visited July 25, 2019).

latex; infectious diseases from agents such as biological waste (e.g., feces and vomit) and bloodborne pathogens found on broken glass and uncapped needles; occupational stress due to workloads, job insecurity, low pay, and discrimination.²

NIOSH clearly indicates that to improve the safety and health of hotel housekeepers a multi-pronged approach is necessary, identifying all hazards—including those that increase job stress, such as job insecurity. Further, this integrative approach is also consistent with NIOSH’s overall approach to effective programs that protect workers from work-related safety and health risks: “Total Worker Health” (TWH). TWH “advocates for integration of all organizational policies, programs, and practices that contribute to worker safety, health and well-being, including those relevant to the control of hazards and exposures, the organization of work, compensation and benefits, work-life management, and a health-supporting built environment.”³

² Charles, L.E., D. Loomis, and Z. Demissie, *Occupational hazards experienced by cleaning workers and janitors: a review of the epidemiologic literature*, *Work* 34(1):105–116 (2009), <https://www.ncbi.nlm.nih.gov/pubmed/19923681>; Kraus, N., T. Scherzer, and R. Rugulies, *Physical workload, work intensification, and prevalence of pain in low wage workers: results from a participatory research project with hotel room cleaners in Las Vegas*, *Am J Ind Med* 48(5):326–337 (2005); N. Krause, R. Rugulies, and C. Maslach, *Effort-reward imbalance at work and self rated health of Las Vegas hotel room cleaners*, *Am J Ind Med* 53:372–386 (2005).

³ National Institute for Occupational Safety and Health, Center for Disease Control and Prevention, “Total Worker Health,” <https://www.cdc.gov/niosh/twh/totalhealth.html#workers> (last visited July 29, 2019).

The International Union of Food Workers (IUF) employs the same comprehensive approach in their draft framework for an international standard to protect the health and safety of hotel housekeepers. According to the IUF:

Employees are required to dust, vacuum, scrub bathrooms, clean mirrors, distribute amenities, take out the trash and more. These may sound like undemanding, everyday activities, but when employees must perform each of them dozens of times a day, subject to room-cleaning quotas and under various physical and psychological stressors, they can add up to a serious risk to health and safety. The result is that hotel workers in the United States alone are 40% more likely to be injured at work than are service – sector workers in general.”⁴

The goal of the IUF draft health and safety standard is the same as I-124’s: for “housekeepers to secure a working environment that is healthy and meaningful and affords full safety from harmful physical and mental impact.” *Id.* In order to meet that goal, its draft standard includes all four of the provisions of I-124 that are at issue here. Importantly, in addition to traditional health and safety risks (slips trips, falls), musculoskeletal disorders, sexual harassment, quotas, exposure to toxic chemicals and biological agents, the IUF draft standard includes the hazard of job

⁴ “Occupational Health and Safety for Hotel Housekeepers: Towards a Framework for International Standards,” Paper Prepared for the International Union of Foodworkers by the Labor Law Clinic at Cornell Law School, http://www.iuf.org/w/sites/default/files/Occupational_Health_and_Safety_Standards_for_Housekeepers.pdf. last viewed July 25.

insecurity: “employees have a high rate of precarious employment;⁵ employees are predominantly female, earn low wages, are frequently migrants and/or ethnic and racial minorities, and do not typically enjoy much job security due to short term, seasonal and otherwise part time contracts.”⁶

These experts agree that protecting the health and safety of hotel housekeepers requires a comprehensive approach. A close look at the four sections of I-124 at issue here supports the referendum’s inclusion of all four together — as they are included in the IUF draft standard and NIOSH’s prevention efforts.

Regarding Part 1, the research is clear that hotel workers face workplace-related health and safety threats of sexual harassment and violence.⁷ Workers in “accommodation and food services”—which include hotel housekeepers”—account for 14 percent of harassment charges to the EEOC, which is substantially higher than the sector’s share of total employment. Workers, such as hotel workers, who often work in isolated

⁵ See, Thomas Baum, *International Perspectives on Women and Work in Hotels, Catering and Tourism*, ILO Working Paper (2013), http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_209867.pdf.

⁶ Occupational Health and Safety for Hotel Housekeepers.

⁷ Elyse Shaw, Ariane Hegewisch, and Cynthia Hess, *Sexual Harassment and Assault at Work: Understanding the Costs*, Institute for Women’s Policy Research, Oct. 15, 2018, <https://iwpr.org/publications/sexual-harassment-work-cost/>.

spaces, report higher than average rates of sexual harassment and assault.⁸ Isolation leaves women vulnerable to abusers who may feel emboldened by a lack of witnesses.⁹ A study released in 2015 revealed the pervasiveness of sexual harassment experienced by women hotel room housekeepers.¹⁰

Research has also made clear that work-related stress increases the risk of workplace violence.¹¹ In fact, research in health care has demonstrated that work stress due to job demands (such as those job demands addressed in Part 2) increases the risk of workplace violence (in that context, from patients).¹² And guidelines published by the Occupational Safety and Health Administration on Workplace Violence Prevention in Health Care (where the bulk of research has been done on workplace violence) clearly indicate that the availability and accessibility of medical and psychological counseling (the need for which is addressed in Part 3 of

⁸ Campbell, Alexia Fernandez “Housekeepers and Nannies Have No Protection from Sexual Harassment under Federal Law,” Vox, Apr 26, 2018, <https://www.vox.com/2018/4/26/17275708/housekeepers-nannies-sexual-harassment-laws>.

⁹ Yeung, Bernice, “Rape on the Night Shift: Under the Cover of Darkness, Female Janitors Face Rape and Assault.” Frontline, Jun 23, 2015, <https://www.pbs.org/wgbh/frontline/article/rape-on-the-night-shift/>.

¹⁰ Kensbock, Sandra, et.al., *Sexual Harassment of Women Working as Room Attendants within 5-Star Hotels*, Wiley Online Library, (2015), <https://onlinelibrary.wiley.com/doi/full/10.1111/gwao.12064>.

¹¹ Magnavita, N., *Workplace Violence and Occupational Stress in Healthcare Workers: A Chicken-and-egg Situation – Results of a 6-year Follow-up Study*, J. Nurs. Scholarsh, 2014 Sep; 46(5): 366-76, <https://www.ncbi.nlm.nih.gov/pubmed/24754800>.

¹² Arnetz, Judith et.,al., *Organizational Determinants of Workplace Violence Against Hospital Workers*, J. Occup. Environ. Med. 2018 Aug, 60(8): 693-699, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6086761/>.

I-124) for employees experiencing or witnessing assault and other violent incidents is a core component of a workplace violence prevention program.¹³

Not surprisingly, housekeepers suffer musculoskeletal disorders at rates fully three times higher than all other workers¹⁴ and have the highest rate of musculoskeletal disorders among all hotel employees.¹⁵ Access to affordable medical care (Part 3) is critical to the treatment of musculoskeletal injuries, to detect these injuries early when treatment is effective. The studies are clear that without early medical intervention and treatment, these disorders can become more severe and even crippling.¹⁶ OSHA's webpage on Ergonomics states clearly: "Early reporting, diagnosis, and intervention can limit injury severity, improve the effectiveness of treatment, and minimize the likelihood of disability or permanent damage" from musculoskeletal disorders.¹⁷

¹³ U.S. Department of Labor, Occupational Safety and Health Administration OSHA 3148-06R, *Guidelines for Preventing Workplace Violence for Healthcare and Social Service Workers*, (2016), <https://www.osha.gov/Publications/osha3148.pdf>.

¹⁴ U.S. Department of Labor, Bureau of Labor Statistics, *Chart 1: Nonfatal occupational Injury and Illness Incidence Rates by Case Type, Private Industry, 2003-2017*, <https://www.bls.gov/iif/soii-chart-data-2017.htm>. (last visited July 25, 2019).

¹⁵ Buchanan S., et.al., *Occupational injury disparities in the US hotel industry*. *Am J Ind Med*. 53(2):116–25, (2010).

¹⁶ Ranney, Don, *Work-related chronic injuries of the forearm and hand: their specific diagnosis and management*, *Ergonomics*, 36:8, 871-880, (1993).

¹⁷ U.S. Department of Labor, Occupational Safety and Health Administration, Ergonomics, <https://www.osha.gov/SLTC/ergonomics/identifyprobs.html#ReportInjuries> (last visited July 25, 2019).

In addition, studies have also demonstrated that cleaning floors can increase cardiovascular loads to a level that exceeds the guidelines established by NIOSH.¹⁸ In terms of psychological wellness, the time pressure of cleaning rooms quickly, which Part 2 is intended to address, are also major work-related stressors.¹⁹ According to NIOSH, stress plays an important role in several types of chronic health problems-especially cardiovascular disease, musculoskeletal disorders, and psychological disorders.”²⁰

Similarly, it has been known for decades that hotel housekeepers are also regularly exposed to hazardous chemicals found in the cleaning products they use, including ammonia and harsh solvents that irritate the skin, eyes, nose, and throat. Prolonged exposure can cause problems

¹⁸ Hagner, I.M., *Evaluation of two floor-mopping work methods by measurement of load*. *Ergonomics*, 32(4):401–8 (1989); Søgaard K., N. Fallentin, and J. Nielsen, *Work load during floor cleaning. The effect of cleaning methods and work technique*, *Eur J Appl Physiol*, 73:73–81 (1996); Davis, K.G., W.S. Marras, and T.R. Waters, *Reduction of spinal loading through the use of handles*, *Ergonomics*, 41:1155–68 (1998); Krause, N., et.al., *Health and working conditions of hotel guest room attendants in Las Vegas*, Report to the Culinary Workers Union, Local 226, Las Vegas. 2002; <http://www.lohp.org/docs/pubs/vegasrpt.pdf>.

¹⁸ *Health and working conditions of hotel guest room attendants in Las Vegas*.

¹⁹ Yuchin Hsieh et.al., *Work Conditions and Health and Well-Being of Latina Hotel Housekeepers*, *Journal of immigrant and minority health / Center for Minority Public Health*. 18, 10.1007/s10903-015-0224-y (2015).

²⁰ U.S. Centers for Disease Control, National Institute for Occupational Health and Safety Pub. No. 99-101, *Stress...At Work*,” (1999), <https://www.cdc.gov/niosh/docs/99-101/#Job%20Stress%20and%20Health>; “Musculoskeletal Disorders and the Workplace: Low Back and Upper Extremities,” National Research Council and Institute of Medicine, Panel on Musculoskeletal Disorders and the Workplace, National Academies Press, Washington, D.C. (2001), <https://www.ncbi.nlm.nih.gov/books/NBK222423/>.

ranging from dermatitis and respiratory diseases, to heart and kidney failure, and even cancer.²¹ Biological hazards are infectious agents that may be transmitted via contact with infected people or contaminated objects, human tissue, or body secretions, presenting an increased risk of illness, injury, and even death to employees.²² While cleaning guest rooms, hotel housekeepers can potentially come into contact with broken glassware, used hypodermic needles and other medical waste, as well as contaminated waste, human excreta, mold and microbial contaminants. Contact with such biological hazards can put hotel cleaners at risk of contracting bloodborne infections and other infectious diseases. Having access to medical care, addressed in Part 3 of the Initiative, is critical to the management of all of the above illnesses.²³

Finally, concern over job security, such as the concerns that Part 4 is designed to alleviate, compounds the mental and physical impact of job stress from work related violence and job demands. This leads to emotional and physical health consequences. Job insecurity is linked to uncertainties about the future of a company. This may be linked to fears that the company

²¹ J.M. Stellman, *Chemical, industries and occupations. In encyclopedia of occupational health and safety*. International Labor Office, 4th ed., (1998).

²²U.S. Department of Labor, Occupational Safety and Health Administration, Biological agents, <http://www.osha.gov/SLTC/biologicalagents/index.html>. (last visited July 25, 2019).

²³ Randall R. Bovbjerg and Jack Hadley, “Why Health Insurance is Important,” Urban Institute, Nov 9, 2007, <https://www.urban.org/research/publication/why-health-insurance-important>.

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