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Division I
State of Washington
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No. _____

Court of Appeals No. 77918-4-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SEATTLE,

Petitioner,

v.

AMERICAN HOTEL & LODGING ASSOCIATION, SEATTLE HOTEL ASSOCIATION, and WASHINGTON HOSPITALITY ASSOCIATION,

and

UNITE HERE! LOCAL 8; SEATTLE PROTECTS WOMAN,

Respondents.

CITY OF SEATTLE'S PETITION FOR REVIEW

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I INTRODUCTION

In 2016, recognizing the vital role of the hospitality industry in Seattle's booming economy and the difficulties facing those who service that industry, Seattle voters overwhelmingly approved I-124 (the "Initiative"), an initiative designed to improve the well-being of hotel workers. Comprehensive in nature but singular in its focus, the Initiative addressed multiple facets of worker well-being within the hotel industry, including harassment and assault in the workplace, on-the-job injuries, access to health insurance, and job security.

In a published decision striking down the Initiative on single-subject grounds, the Court of Appeals not only applied a wholly inapplicable statute but also strayed from this Court's single-subject jurisprudence. In concluding that the Initiative contained at least four distinct subjects, the lower court announced a rigid and unworkable standard that favors an unnecessarily piecemeal approach to policymaking. Because the decision below contains a serious statutory and constitutional error, involves issues of substantial public importance, and conflicts with decisions of this Court, the Court should accept review pursuant to RAP 13.4(b)(1), (b)(3), and (b)(4).

II IDENTITY OF PETITIONER

The City of Seattle ("City"), Respondent in the Court of Appeals and Defendant in the Superior Court, petitions for review of the decision terminating review identified below.

III CITATION TO COURT OF APPEALS DECISION

The City seeks review of the published decision ("Decision") in *American Hotel and Lodging Association v City of Seattle*, filed on December 24, 2018 by Division I of the Court of Appeals. A copy of the decision, published at -- Wn.2d --, 432 P.3d 434 (2018), is attached hereto as Appendix A.

IV ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals err in holding that RCW 35A.12.130 applies to the City of Seattle?
2. Does the Initiative violate the Seattle City Charter's single-subject requirement?

V STATEMENT OF THE CASE

A. Seattle voters overwhelmingly approve the Initiative.

On April 6, 2017, UNITE HERE! Local 8 filed a copy of the Initiative petition, which was designated I-124. CP 70. After the City Attorney's Office prepared the ballot title, UNITE HERE! and the

Washington Lodging Association sued to challenge the title. CP 71. The ballot title the Superior Court ultimately approved states in relevant part:

> Initiative 124 concerns health, safety, and labor standards for Seattle hotel employees.
>
> If passed, this initiative would require certain sized hotel-employers to further protect employees against assault, sexual harassment, and injury by retaining lists of accused guests among other measures; improve access to healthcare; limit workloads; and provide limited job security for employees upon hotel ownership transfer. Requirements except assault protections are waivable through collective bargaining. The City may investigate violations. Persons claiming injury are protected from retaliation and may sue hotel-employers. Penalties go to City enforcement, affected employees, and the complainant.

CP 75. On November 8, 2016, Seattle voters overwhelmingly adopted the Initiative, with 76.59% voting in favor of its passage. CP 337.

B. Overview of the Initiative.

The Initiative adds a new chapter to the Seattle Municipal Code, Chapter 14.25 SMC, titled Hotel Employees Health and Safety (Appendix B). All of the Initiative's subparts directly advance the well-being of hotel workers.

Part 1 improves worker well-being by protecting hotel workers from assault and harassment on the job. It requires employers to provide panic buttons, maintain lists of guests accused of harassment, notify workers of

the presence of such guests, exclude such guests under certain circumstances, and post signage. SMC 14.25.020-.060.

Part 2 improves worker well-being by protecting hotel workers from on-the-job injuries. *See* SMC 14.25.070. To that end, it requires hotel employers to provide a safe workplace, protects employees from exposure to hazardous chemicals, and sets limits on the amount of floor space a hotel housekeeper may be required to clean in a workday. *See* SMC 14.25.080-.100.

Part 3 promotes worker well-being by "improv[ing] access to affordable family medical care." SMC 14.25.110. It requires hotel employers of a certain size to provide healthcare subsidies to employees who earn 400% or less of the federal poverty line or to provide a certain level of health care coverage. *See generally* SMC 14.25.120.

Part 4 improves the well-being of hotel workers by reducing economic disruption caused by property sales or ownership changes in the hotel industry. *See* SMC 14.25.130. When a hotel changes control, the incoming employer must maintain a list of employees, based on seniority, employed by the prior owner. *See* SMC 14.25.140. The new hotel must hire from this list for six months and retain employees hired from this list for at least 90 days, barring cause for termination. *Id.*

Part 5, which pertains to enforcement of the Initiative's substantive requirements, contains a number of provisions relating to retaliation, requires employers to notify employees of their rights under the Initiative and to keep records documenting compliance with the Initiative, and creates a private right of action for violations of the Initiative. It also authorizes the City to investigate alleged violations of the Initiative and promulgate regulations, and it sets forth a scheme for penalties. *See* SMC 14.25.150.

Part 6 provides definitions. Part 7 allows any provisions of Chapter 14.25, except for the provisions on assault and harassment, to be waived via a collective bargaining agreement. SMC 14.25.170. Part 7 also contains a severability clause and a short title. *See* SMC 14.25.180 & .190.

C. Procedural history.

Shortly after the Initiative went into effect, several hotel associations (the "Association") filed suit, bringing seven different claims. CP 1-9. The Initiative proponents intervened shortly thereafter. All parties moved for summary judgment. On June 9, 2017, Judge John P. Erlick issued a comprehensive 38-page opinion rejecting each of the Association's claims. CP 333-70.

The Association sought direct review of the Superior Court's decision, which this Court denied. On December 24, 2018, the Court of

Appeals reversed the Superior Court's ruling, holding that the Initiative violated the single-subject requirements of RCW 35A.12.130.

VI ARGUMENT

A. Review is warranted to correct statutory and constitutional errors.

The Court of Appeals' holding that the Initiative violated RCW 35A.12.130—and therefore violated Article XI, section 11 of the Washington State Constitution—suffers from a fundamental flaw: RCW 35A.12.130 does not apply to the City of Seattle and its legislative enactments.[1] Review is warranted under RAP 13.4(b)(3) to correct this constitutional error and prevent any attendant confusion.

The Washington State Constitution provides that "Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." Const. art. XI, § 11. The Court of Appeals held that the Initiative was in conflict with state law because it did not adhere to the single-subject requirement of RCW 35A.12.130. But Title 35A RCW is inapplicable in this context. Title 35A RCW, the Optional Municipal Code, was enacted in 1967 to "to confer upon two *optional* classes of cities created hereby the

[1] The City did not address this issue in its briefing before the Court of Appeals because the only mention of this statute in the Association's briefing was a fleeting reference in a footnote. App't's Opening Br. at 4 n. 1.

broadest powers of local self-government consistent with the Constitution of this state.... All grants of municipal power to *municipalities electing to be governed under the provisions of this title*, whether the grant is in specific terms or in general terms, shall be liberally construed in favor of the municipality." RCW 35A.01.010 (emphasis added). Put simply, a city must opt-in to the Code to be governed by its provisions.

As the Municipal Research Services Center (MRSC) explains:

> The Optional Municipal Code creates two new classes of cities: "charter code cities" and "noncharter code cities." These are the only classifications which are applicable to municipalities *choosing to operate under the Optional Municipal Code.* A municipality which adopts either of those classifications abandons its former numerical classification and ceases to be governed by the laws of that numbered class (Title 35 RCW). Instead, a code city will be governed primarily by the Optional Municipal Code (Title 35A RCW).
>
> The term "code city," as used in the Title 35A RCW, generally refers to any "noncharter" or "charter" code city. RCW 35A.01.035.[2]

According to MRSC's website,

> Most Washington cities are classified as code cities under the Optional Municipal Code (Title 35A RCW). Created in 1967, the Optional Municipal Code provides an alternative to the basic statutory classification system of municipal government. It was

[2] MRSC Code City Handbook, Page 10 (emphasis added), available at http://mrsc.org/getmedia/f96b74ab-a955-44be-8db28fbce16075ea/Code-City-Handbook.pdf.aspx?ext=.pdf (last visited January 22, 2019).

> designed to provide broad statutory home rule authority in matters of local concern.
>
> Any unincorporated area having a population of at least 1,500 may incorporate as a code city, and any city or town may reorganize as a code city. Code cities with populations over 10,000 may also adopt a charter, but only one city (Kelso) has done so.
>
> There are 197 code cities in Washington, with 147 operating under mayor-council and 50 under council-manager.[3]

The City of Seattle has never opted-in to being governed by the Optional Municipal Code and is not among the 197 cities that have opted to function as a code city.[4] As an early opinion of the Attorney General explains: "Action to bring a city under the code [Title 35A RCW] may be initiated either by resolution of the city's legislative body (RCW 35A.02.030 or 35A.02.070, noncharter code city; RCW 35A.08.030, charter code city) or by direct initiative petition of a certain percentage of the electorate of the city (RCW 35A.02.020 or 35A.02.060, noncharter code city; RCW 35A.08.030, charter code city)." Wash. Att'y Gen. Op. 1970 No. 5 (1970). Neither the City Council nor Seattle citizens have taken the necessary actions to transform the City of Seattle into a code city.

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[3] MRSC City and Town Classifications, available at http://mrsc.org/getdoc/9ffdd05f-965a-4737-b421-ac4f8749b721/City-and-Town-Classification-Overview.aspx (last visited January 22, 2019).

[4] See http://mrsc.org/Home/Research-Tools/Washington-City-and-Town-Profiles.aspx (last visited January 22, 2019) (classifying Washington municipalities by type).

Thus, the City of Seattle remains a First-Class Charter City. *See* RCW 35.01.010; *State v. Evergreen Freedom Found.*, No. 95281-7, 2019 WL 151350, at *10 (Wash. Jan. 10, 2019) (Gordon McCloud, J., dissenting) (recognizing the City of Seattle as a charter city governed by Title 35 RCW). As such, the City is governed by its charter and Title 35 RCW.

Accordingly, the Court of Appeals erred in applying RCW 35A.12.130 to a Seattle initiative. Because the court's conclusion that the Initiative violated Article XI, section 11 of the Washington State Constitution rests on the erroneous notion that it violated RCW 35A.12.130, the Decision is also incorrect from a constitutional standpoint, warranting this Court's review. RAP 13.4(b)(3).

Given the similarities between the single-subject requirements in RCW 35A.12.130, Article IV, section 7 of the Seattle City Charter, and Article II, section 19 of the Washington Constitution, the Court of Appeals' misapplication of RCW 35A.12.130 may not have materially affected its reasoning. Nevertheless, this error is not without consequence. If left standing, the Decision will sow confusion as to whether cities that have not adopted the Optional Municipal Code, such as the City of Seattle, are nonetheless subject to the myriad requirements of Title 35A RCW. Accordingly, this Court should accept review to correct a significant error in the published decision below.

B. This case involves an issue of substantial public interest.

In striking down the Initiative, the Court of Appeals also misconstrued the single-subject rule, using it not "as a shield to prevent the union of diverse, incongruous, and disconnected matters" as this Court intended, but rather "as a sword to strike down useful legislation not within the mischief sought to be avoided." *City of Seattle v. Sylvester-Cowen Inv. Co.*, 55 Wash. 659, 664, 104 P. 1121 (1909). If allowed to stand, this overzealous application of the single-subject rule will have far-reaching consequences.

First, the Decision struck a blow to the democratic process by overturning an initiative that received overwhelming support at the ballot box. As noted, 76.59% of Seattle voters voted in favor of the Initiative. CP 337. "In approving initiative measures, the people exercise the same power of sovereignty as the Legislature when it enacts a statute." *Washington Fed'n of State Employees v. State*, 127 Wn.2d 544, 556, 901 P.2d 1028 (1995). As detailed below, enacting comprehensive legislation to improve the well-being of hotel workers was a perfectly appropriate exercise of the initiative power. *See* SMC 14.25.010 (Findings). "It is not the prerogative nor the function of the judiciary to substitute what they may deem to be their better judgment for that of the electorate in enacting initiatives...unless the errors in judgment clearly contravene state or federal constitutional

provisions." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 206, 11 P.3d 762 (2000). Accordingly, this Court should accept review to reinstate the will of Seattle's voters.

Furthermore, and perhaps more importantly, the Court of Appeals' rigid construction of the single-subject requirement will hinder the ability of both the Legislature and the people to pass effective legislation. "The general versus restrictive approach was designed to allow the legislature to include in one general enactment all of the statutory law relating to a cognate subject." *Lee v. State*, 185 Wn.2d 608, 621, 374 P.3d 157 (2016) (internal quotations and citation omitted); *see also Amalgamated Transit*, 142 Wn.2d at 209 ("Where the title of a legislative act expresses a general subject or purpose which is single...all measures which will, or may, facilitate the accomplishment of the purpose so stated, are properly included in the act and are germane to its title"); *Weed v. Goodwin*, 36 Wash. 31, 33, 78 P. 36 (1904) (under Seattle City Charter, "a subject embraced in the title of an act includes all subsidiary details which are means for carrying into effect the object and purpose of the act disclosed in the subject").

By treating each of the Initiative's subdivisions as distinct subjects requiring separate legislation, the Decision departs from this practical standard, compelling legislators (the people and the Legislature alike) to take a siloed approach to policymaking. In passing the Initiative, Seattle

voters recognized that hotel workers face a range of challenges related to their employment, from sexual assault on the job to unregulated workloads to poor job security. *See* SMC 14.25.010. But rather than allow Seattle's voters to take a comprehensive approach to this industry-wide issue, the Court of Appeals would ask the people to chip away at the problem in piecemeal fashion, leaving hotel workers safe from dangerous chemicals but not from dangerous guests, or providing hotel workers with affordable health insurance tied to unstable employment.

This Court has cautioned against a restrictive reading of single-subject requirements for this very reason. *See, e.g.*, *Kueckelhan v. Fed. Old Line Ins. Co. (Mut.)*, 69 Wn.2d 392, 403, 418 P.2d 443 (1966) (single-subject requirement "is to be liberally construed so as not to impose awkward and hampering restrictions upon the legislature"); *City of Seattle v. Barto*, 31 Wash. 141, 71 P. 735 (1903) (holding that a narrow reading of the term "object" in Article IV, section 7 in Seattle City Charter would "tie the hands of the Legislature as to make legislation extremely difficult, if not impossible"). The Court should accept review to restore the ability of the people and their elected representatives to enact meaningful legislation that comprehensively addresses a problem.

C. The decision below conflicts with this Court's jurisprudence on the single-subject rule.

Article VI, section 7 of the Seattle City Charter provides, "Every ordinance shall be clearly entitled and shall contain but one subject, which shall be clearly expressed in its title."[5] The decision below conflicts with decisions of this Court interpreting that Charter provision, as well as decisions interpreting analogous provisions in RCW 35A.12.130 and Article II, section 19 of the Washington Constitution, by taking a hyper-technical approach to single-subject requirements. This Court should accept review under RAP 13.4(b)(1) to reinstate the workable standard set forth in its prior decisions.

In a single-subject challenge, the level of scrutiny depends on whether the title of the challenged measure is general or restrictive. *Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 782, 357 P.3d 1040 (2015). The Court of Appeals correctly determined that the operative title for

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[5] In 1890, the City adopted a charter provision that stated:

> Every legislative act of said City shall be by ordinance. Every ordinance shall be clearly entitled and shall contain but one object, which shall be clearly expressed in its title. The enacting clause of every ordinance shall be: "Be it ordained by The City of Seattle as follows:"

1890 Seattle City Charter art. IV, § 13. The most recent recodification of this provision took place in 1946, when it was re-codified as Seattle City Charter art. IV, § 7. In addition, the 1946 charter replaced the word "object" with the word "subject." The 1946 version of this section is the current version.

purposes of this inquiry is the ballot title, which consists of the statement of the subject, the concise description, and the question. Decision at 10 n. 6; *see Filo Foods, LLC*, 183 Wn.2d at 782. It was also correct in concluding that the ballot title was general in nature because it covered "general working conditions" of hotel workers. Decision at 11; *see Filo Foods*, LLC, 183 Wn.2d at 782 (ballot title is general if it "suggests a general, overarching subject matter for the initiative"). From there, however, the lower court's analysis departed from this Court's jurisprudence.

While the Court of Appeals recognized that "[i]nitiatives are presumed to be constitutional" and that initiatives receive no more "scrutiny" than other forms of legislation, Decision at 8, it nevertheless failed to afford the Initiative the deference to which it was entitled. Where the title of a measure is general, "great liberality will be indulged to hold that any subject reasonably germane to such title may be embraced within the body of the bill." *Amalgamated Transit*, 142 Wn.2d at 207; *see also Filo Foods, LLC*, 183 Wn.2d at 784 (noting that even an "arguably tenuous" relationship between provisions is sufficient for rational unity). If there were any doubt as to rational unity here, this "great liberality"—to say nothing of the presumption of constitutionality—should have tipped the scales in the Initiative's favor. In any event, this deferential standard calls

the Court of Appeals' stringent reading of the single-subject rule into serious question.

Eschewing "great liberality"—and parting company with this Court's recent pronouncements on rational unity—the Court of Appeals adopted a stringent and hyper-technical reading of the Initiative, concluding that it "identifies at least four distinct and separate purposes." Decision at 12. To the contrary, just as the provisions at issue in *Filo Foods* served to establish "minimum employee benefits," the Initiative's provisions serve the unitary purpose of improving worker well-being within the hotel industry. 183 Wn.2d at 785; *see* SMC 14.25.010 (noting that hotel workers face a high risk of on-the-job harassment and violence, unregulated workloads, high rates of injury, low rates of access to health insurance, and poor job security). Indeed, the lower court's strained reading of the Initiative is at odds with this Court's guidance on single-subject requirements, which favors a pragmatic approach. *See, e.g., Washington Ass'n for Substance Abuse and Violence Prevention*, 174 Wn.2d 642, 656, 278 P.3d 632 (2012) ("*WASAVP*") ("For purposes of legislation, 'subjects' are not absolute existences to be discovered by some sort of *a priori* reasoning, but are the result of classification for convenience of treatment and for greater effectiveness in attaining the general purpose of the particular legislative act.") (quotations and alterations omitted).

Furthermore, the Court of Appeals relied heavily on a line of cases that this Court has distinguished under analogous facts. *See* Decision at 13 ("The initiative is, thus, more analogous to *Amalgamated Transit*, *Kiga*, and *Lee*, than to *Filo Foods.*") (citing *Amalgamated Transit*, 142 Wn.2d at 212; *City of Burien v. Kiga*, 144 Wn.2d 819, 31 P.3d 659 (2001); *Lee*, 185 Wn.2d at 613). In *WASAVP*, this Court distinguished two of those cases on grounds that "unlike the subjects at issue in *Amalgamated Transit* and *Kiga*," the challenged initiative did not "combine a specific impact of a law with a general measure for the future." 174 Wn.2d at 659. The same is true of the Initiative, as all of its provisions are forward-looking. *See generally* Ch. 14.25 SMC. Accordingly, *Amalgamated Transit* and *Kiga* are inapposite. So, too, is *Lee,* which is akin to *Amalgamated Transit* and *Kiga* from a single-subject standpoint. 185 Wn.2d at 622-23 ("We see no substantive difference between the one-time tax reduction coupled with a permanent change to the way all taxes are levied or assessed in *Amalgamated* and *Kiga*, which violated the single-subject rule, and the reduction of the current sales tax rate and a permanent change to the constitution or to the method for approving all future taxes and fees set forth by I-1366.").

Setting aside *Amalgamated Transit*, *Kiga*, and *Lee*, which have no bearing on the Initiative, this Court has upheld challenged legislation in the majority of recent single-subject challenges. *See, e.g.*, *Filo Foods, LLC*, 183

Wn.2d 770; *WASAVP*, 174 Wn.2d 642; *Citizens for Responsible Wildlife Mgt v. State*, 149 Wn.2d 622, 71 P.3d 644 (2003); *State v. Broadaway*, 133 Wn.2d 118, 942 P.2d 363 (1997); *Washington Fed'n of State Employees*, 127 Wn.2d 544. Thus, the decision below is an outlier in this respect, and as such, it merits careful scrutiny.

The Court of Appeals further erred by placing undue emphasis on its conclusion that the Initiative's provisions were not "necessary to implement" one another. Decision at 15 ("Moreover, none of the first four parts of I-124 are necessary to implement any other part of the initiative."). As the court acknowledged, "[a]n analysis of whether the incidental subjects are germane to one another does not necessitate a conclusion that they are necessary to implement one another." Decision at 15 (citing *Citizens for Responsible Wildlife Mgt.*, 149 Wn.2d at 638). Thus, its conclusion that the Initiative's provisions were not necessary to implement one another should not have been fatal to the Initiative. Insofar as it suggests otherwise, the Decision breathes new life into a requirement that this Court expressly abandoned fifteen years ago. *Citizens*, 149 Wn.2d at 638.

The Court of Appeals' lengthy discussion of the legislative history of labor protections also misses the mark. It does not take a "legislatively recognized connection" to conclude that all of the Initiative's provisions support the well-being of hotel workers and are thus germane to one

another. *See* Decision at 18; *see generally* Ch. 14.25 SMC. Moreover, regardless of how the legislature has treated working conditions across industries, Seattle voters had good reason to opt for comprehensive legislation over piecemeal protections to address worker well-being within a single industry.

Finally, the Court of Appeals' conclusion that Part 5 of the Initiative "conflicts with key provisions of Washington's worker compensation system" is troubling in that the legality of the Initiative's individual provisions has no bearing on the single-subject inquiry. *See* Decision at 16.[6] Moreover, the court's reasoning directly conflicts with *Filo Foods*, 183 Wn.2d at 802. Just as Proposition 1, the initiative at issue in *Filo Foods*, "provide[d] an employee a remedy for illegal retaliation for exercising rights protected under Proposition 1" rather than "a remedy for exercising rights protected under the [National Labor Relations Act]," the Initiative at issue here provides a remedy for violations of the Initiative, not a remedy for general work-related claims. *See id.*; SMC 14.25.150. Thus, the Court

[6] While the Court of Appeals cites this provision "as a classic example of logrolling," Decision at 17, logrolling only "occurs when a measure is drafted such that a legislator or voter may be required to vote for something of which he or she disapproves in order to secure approval of an *unrelated* law." *WASAVP*, 174 Wn.2d at 655 (quotations omitted, and emphasis added).

of Appeals' concerns in this regard reflect a misunderstanding of the rights the Initiative creates and protects.

VII CONCLUSION

The decision below contains a significant constitutional error, involves an issue of substantial public importance, and conflicts with settled precedent. Accordingly, the City respectfully requests that this Court grant discretionary review pursuant to RAP 13.4(b)(1), (b)(3), and (b)(4).

RESPECTFULLY SUBMITTED this 23rd day of January, 2019.

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PROOF OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, competent to be a witness in the above action, and not a party thereto; that on the 23rd day of January, 2019, I caused to be served, a true copy of the foregoing Petition for Review upon the parties listed below:

Michele Radosevich Harry J.F. Korrell DAVIS WRIGHT TREMAINE LLP 1201 Third Avenue, Suite 2200 Seattle, WA 98101-3045	☑ E-file notification MicheleRadosevich@dwt.com HarryKorrell@dwt.com
Laura Ewan Schwerin Campbell Barnard IGLITZIN & LAVITT, LLP 18 West Mercer Street, Suite 400 Seattle, WA 98119-3971	☑ E-file notification ewan@workerlaw.com

Dated this 23rd day of January, 2019.

/s/ Marisa Johnson
Marisa Johnson, Legal Assistant

APPENDIX A

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

AMERICAN HOTEL & LODGING ASSOCIATION, SEATTLE HOTEL ASSOCIATION, and WASHINGTON HOSPITALITY ASSOCIATION, Appellants, v. CITY OF SEATTLE, UNITE HERE! LOCAL 8, and SEATTLE PROTECTS WOMEN, Respondents.	No. 77918-4-I DIVISION ONE PUBLISHED OPINION FILED: December 24, 2018

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2018 DEC 24 AM 9:04

ANDRUS, J. — In November 2016, the citizens of Seattle voted to adopt Initiative 124 (I-124), now codified at Seattle Municipal Code ch.14.25. Three hotel associations challenge the initiative as a violation of the "single subject" rule of RCW 35A.12.130 and article IV, section 7 of the Seattle City Charter. We conclude the ordinance contains provisions not germane one to another and, therefore, violates the single subject rule. We reverse.

FACTS

On November 8, 2016, Seattle voters approved I-124. The ballot title for this initiative read as follows:

> Initiative 124 concerns health, safety and labor standards for Seattle hotel employees.

> If passed, this initiative would require certain sized hotel-employers to further protect employees against assault, sexual harassment, and injury by retaining lists of accused guests among other measures; improve access to healthcare; limit workloads; and provide limited job security for employees upon hotel ownership transfer. Requirements except assault protections are waivable through collective bargaining. The City may investigate violations. Persons claiming injury are protected from retaliation and may sue hotel-employers. Penalties go to City enforcement, affected employees, and the complainant.
>
> Should this measure be enacted into law?
>
> Yes
> No

The initiative passed with 76.59 percent of the vote. The City certified the results on November 29, 2016, and the initiative went into effect the following day.[1]

The initiative has seven parts. Part 1 is intended to protect hotel employees from violent assault and sexual harassment by guests. SMC 14.25.020. If a hotel employee is assigned to work in a guest room without other employees present, the employer must provide that employee with a panic button to use in an emergency. SMC 14.25.030. Hotel employers must maintain a list of names of any guest accused of assaulting, sexually assaulting, or sexually harassing hotel employees. SMC 14.25.040(A). Any guest accused of such misconduct must remain on the list for five years, and hotel employers must notify other employees assigned to an accused guest's room and warn them to exercise caution when entering that room. SMC 14.25.040(A), (C). If an accusation is supported by a

[1] The ordinance authorized and directed the Office of Labor Standards to promulgate rules consistent with the new chapter. SMC 14.25.150(D)(2). The rules became effective in July 2018. SHRR 150-010 to -300.

sworn statement "or other evidence,"[2] the hotel employer must bar the guest from the hotel for three years. SMC 14.25.040(B). Part 1 also requires hotel employers to post signs notifying guests of the protections afforded by I-124. SMC 14.25.050. Lastly, Part 1 provides that after an employee accuses a guest of sexual assault or harassment, a hotel employer must reassign the employee to a different work area upon request, provide paid time off to allow the employee to contact the police, a counselor, or an advisor, and, with the employee's consent, report any accusations of criminal conduct by guests to law enforcement. SMC 14.25.060.

Part 2 seeks to protect hotel workers from on-the-job injury. SMC 14.25.070. SMC 14.25.080 requires hotel employers to provide and use safety devices and safeguards, as well as "use work practices, methods, processes, and means" that are "reasonably adequate to make their workplaces safe." Under rules adopted by the Seattle Office of Labor Standards in July 2018, the workplace safety requirements of SMC 14.25.080 "must at least meet those outlined by the Washington Industrial Safety and Health Act" (WISHA), RCW ch. 49.17 and its administrative regulations. SHRR 150-070.

SMC 14.25.090 requires hotel employers to protect their employees from exposure to hazardous chemicals by controlling chemical agents, protecting employees from having contact with or being exposed to chemical agents, and providing employees with information on hazardous chemicals in their work areas.[3]

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[2] "Other evidence" is not defined in the ordinance. SHRR 150-050(3) defines "other evidence" as "evidence other than statements of the victim, witnesses, or other persons, that tends to support an accusation of assault, sexual assault, or sexual harassment against a guest," including "physical evidence, audio and video recordings or photographs of events, occurrences, injuries, incident scenes, or other similar evidence."

[3] SHRR 150-080 provides that employers "must use methods of controlling chemical agents that at least meet the minimum requirements" of WISHA and its administrative regulations. SHRR 150-

SMC 14.25.100 prohibits "large hotels," defined as hotels with 100 or more guest rooms,[4] from requiring housekeepers to clean more than 5,000 square feet of floor space in an eight-hour workday unless the hotel pays the worker time and a half. Under administrative regulation, an employee has a right to refuse the employer's request to clean more than the maximum square footage allowed in the ordinance. SHRR 150-140.

Part 3 is intended to improve access to medical care for hotel employees. SMC 14.25.110. Under SMC 14.25.120, "large hotel" employers must provide healthcare subsidies to low-wage employees or provide health care coverage equal to at least a gold-level policy on the Washington Health Care Benefit Exchange.

Part 4 provides job security to hotel workers by requiring hotels undergoing a change in ownership or control to maintain a list of employees, based on seniority. SMC 14.25.130. The new hotel owner must hire its employees from this list for six months and retain employees hired from this list for at least 90 days, unless there is good cause for termination. SMC 14.25.140.

Part 5 is entitled "Enforcement." SMC 14.25.150(A) makes it a violation for any hotel employer to interfere with any right protected by the ordinance or to discharge any employee exercising rights under the ordinance. If an employer takes an adverse action within 90 days of that employee's exercise of rights under the ordinance, there is a rebuttable presumption of retaliation. SMC

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090 similarly incorporates by reference the WISHA requirements for protecting employees from the hazard of contact with or exposure to chemical agents.

[4] SMC 14.25.160.

14.25.150(A)(5). Part 5 also prohibits hotel employers from threatening to report an employee's suspected citizenship or immigration status. SMC 14.25.150(A)(4). SMC 14.25.150(B) mandates that hotel employers give written notification to each employee of their rights under the ordinance in each language spoken by 10 or more employees.

SMC 14.25.150(C) creates a "private enforcement action." It provides that "any person claiming injury" from a violation of any part of the ordinance is entitled to bring a lawsuit in King County Superior Court or in any other court of competent jurisdiction to enforce its provisions. SMC 14.25.150(C)(1). The claimant "shall be entitled to all remedies available at law or in equity" and may seek "lost compensation and other damages, reinstatement, declaratory or injunctive relief, prejudgment interest, exemplary damages equal to the amount of wages wrongfully withheld or not paid" and to collect penalties described elsewhere in the ordinance. SMC 14.25.150(C)(1). A prevailing claimant is also entitled to an award of attorney fees and expenses. SMC 14.25.150(C)(2).

SMC 14.25.150(D) empowers the City's Office of Civil Rights to investigate alleged violations of the ordinance. It also authorizes the Division Director of the Office of Labor Standards within the Office of Civil Rights to promulgate rules "that protect the identity and privacy rights of employees who have made complaints" under the ordinance. SMC 14.25.150(D)(2).

SMC 14.25.150(E) sets out penalties a court may impose for ordinance violations. For each workday during which the employer is in violation, a court may impose a penalty of between $100 and $1,000 per day. SMC 14.25.150(E)(1). If

civil penalties are imposed, they must be distributed per the following formula: 50 percent to the Office of Labor Standards, 25 percent to "aggrieved employees," and 25 percent to the "person bringing the case." SMC 14.25.150(E)(2).

Part 6 defines key terms used in the ordinance. It does not define sexual assault or sexual harassment.

Part 7, entitled "Miscellaneous," includes a severability provision, SMC 14.25.180, and a provision prohibiting the waiver by agreement of the rights set out in the ordinance, unless contained in a collective bargaining agreement, SMC 14.25.170. SMC 14.25.170(B) provides that the provisions protecting employees from assault and sexual harassment and mandating hotels maintain lists of accused guests are not waivable.

The American Hotel & Lodging Association, the Seattle Hotel Association, and the Washington Hospitality Association (the Associations) brought suit to challenge I-124. The City of Seattle, and two intervening organizations, UNITE HERE! Local 8 and Seattle Protects Women (the Intervenors), defended the validity of the initiative. On cross-motions for summary judgment, the superior court upheld the validity of I-124. The Associations appeal.

ANALYSIS

The Associations argue the initiative violates the single subject rule of RCW 35A.12.130, article IV, section 7 of the Seattle City Charter, and article II,

section 19 of the Washington State Constitution.[5] The City and Intervenors argue the provisions of I-124 encompass only one subject—employee health, safety, and welfare—and the initiative is thus valid.

Article II, section 19 of the Washington State Constitution provides that "[n]o bill shall embrace more than one subject, and that shall be expressed in the title." This constitutional provision does not apply to I-124 because article II, section 19, by its express terms, applies only to state legislation. Carlson v. San Juan County, 183 Wn. App. 354, 376-77, 333 P.3d 511 (2014). But RCW 35A.12.130 also requires city ordinances to contain only a single subject, and the Seattle City Charter, article IV, section 7, similarly provides that every ordinance "shall contain but one subject."

Article XI, section 11 of the Washington Constitution provides that no city may enact any law that conflicts with state general law. An ordinance is inconsistent with article XI, section 11 if it (a) prohibits what state law permits; (b) thwarts the legislative purpose of a statutory scheme; or (c) exercises power that the statutory scheme does not confer on local governments. Emerald Enters., LLC v. Clark County, 2 Wn. App. 2d 794, 803-04, 413 P.3d 92, review denied, 190 Wn.2d 1030, 421 P.3d 445 (2018). If I-124 violates the single subject mandate of RCW 35A.12.130, it would violate article XI, section 11 because it would constitute an exercise of power that the statute does not permit. See Dep't of Ecology v.

[5] The Associations also challenge Part 1 as a violation of the privacy and due process rights of its members' guests, and Part 2 as preempted by WISHA. Because we resolve this appeal on the single subject rule challenge, we need not reach the other issues.

Wahkiakum County, 184 Wn. App. 372, 377, 337 P.3d 364 (2014) (ordinance that conflicts with state general law is unconstitutional under article XI, section 11).

Initiatives are presumed to be constitutional. Amalgamated Transit Union Local 587 v. State, 142 Wn.2d 183, 204-05, 11 P.3d 762 (2000) (Amalgamated Transit); see also Citizens for Responsible Wildlife Mgmt. v. State, 149 Wn.2d 622, 631, 71 P.3d 644 (2003) (Citizens) (confirming that initiatives receive the same level of scrutiny as legislatively enacted bills). The party challenging an ordinance has the burden of demonstrating its unconstitutionality. Emerald Enters., 2 Wn. App. 2d at 804.

Although article II, section 19 does not directly apply, case law interpreting the constitutional single subject rule is relevant because the Washington Supreme Court has relied on this case law when evaluating whether a city ordinance violates RCW 35A.12.130. Filo Foods, LLC v. City of SeaTac, 183 Wn.2d 770, 781-82, 357 P.3d 1040 (2015). We review de novo the trial court's grant of summary judgment under the statutory single subject rule. Id. at 781.

Washington case law recognizes the single subject rule has three general purposes. Robert D. Cooter & Michael D. Gilbert, A Theory of Direct Democracy and the Single Subject Rule, 110 Colum. L. Rev. 687, 705-06 (2010) (Cooter & Gilbert). The first purpose is to prevent "logrolling." Wash. Ass'n for Substance Abuse & Violence Prevention v. State, 174 Wn.2d 642, 655, 278 P.3d 632 (2012) (WASAVP); Amalgamated Transit, 142 Wn.2d at 207. Logrolling is combining multiple measures, none of which would pass on its own, into an omnibus proposition that receives majority support. Cooter & Gilbert, at 706.

A second goal is to prevent "riding," or pushing through unpopular legislation by attaching it to popular or necessary legislation. Wash. Ass'n of Neighborhood Stores v. State, 149 Wn.2d 359, 368, 70 P.3d 920 (2003), abrogated on other grounds by Filo Foods, 183 Wn.2d 770; see also Michael D. Gilbert, Does Law Matter? Theory and Evidence from Single-Subject Adjudication, 40 J. Legal Studies 333, 338 (2011). The single subject rule was written into the Washington Constitution to address the "riding" problem:

> [T]here had crept into our system of legislation a practice of engrafting upon measures of great public importance foreign matters for local or selfish purposes, and the members of the Legislature were often constrained to vote for such foreign provisions to avoid jeopardizing the main subject or to secure new strength for it, whereas if these provisions had been offered as independent measures they would not have received such support.

Lee v. State, 185 Wn.2d 608, 620, 374 P.3d 157 (2016) (quoting State ex rel. Wash. Toll Bridge Auth. v. Yelle, 54 Wn.2d 545, 550-51, 342 P.2d 588 (1959)).

The rule's third purpose is to simplify the process and improve political transparency. Lee at 620; State v. Broadaway, 133 Wn.2d 118, 124, 942 P.2d 363 (1997) (policy underlying single subject rule is to provide notice to public of what is contained in proposed legislation). "In theory, limiting initiatives and referenda to a single subject makes it easier for citizens to understand and scrutinize their contents." Cooter & Gilbert, at 709.

Only where there exists a rational relationship between the provisions of the initiative and with the initiative's subject "can we be certain voters were not required to vote for an unrelated subject of which the voters disapproved in order to pass a law pertaining to a subject of which the voters were committed." City of Burien v. Kiga, 144 Wn.2d 819, 826, 31 P.3d 659 (2001). When an initiative embodies two

unrelated subjects, "it is impossible for the court to assess whether either subject would have received majority support if voted on separately." Id. at 825. An initiative embodying two unrelated subjects is, thus, void in its entirety. Lee, 185 Wn.2d at 620.

To determine whether an initiative violates the single subject rule, we first look to the ballot title[6] to determine whether it is general or restrictive because the type of title determines the analysis we undertake. Amalgamated Transit, 142 Wn.2d at 207-10. If the ballot title is general in nature, we look to the body of the initiative to determine whether "rational unity" exists among the matters addressed in the initiative. Kiga, 144 Wn.2d at 826. The existence of rational unity is determined by whether the matters are "germane" to the general title and to one another. Id. While rational unity must exist among all matters included within the measure and with the general topic expressed in the title, an initiative can embrace several "incidental" subjects or subdivisions "so long as they are related." Id. If, however, the ballot title is restrictive, the provisions of the initiative must all fall "fairly within" the restrictive language. Yelle, 32 Wn.2d at 26.

The parties disagree whether I-124's ballot title is general or restrictive. If a ballot title suggests a general, overarching subject matter, it will be considered general. Filo Foods, 183 Wn.2d at 782. A ballot title is restrictive when "a particular part or branch of a subject is carved out and selected as the subject of the legislation." Id. at 783. The Supreme Court's analysis in Filo Foods is dispositive

[6] The ballot title includes the statement of the subject of the measure, the description of the measure, and the question of whether or not the measure should be enacted into law. WASAVP, 174 Wn.2d at 655.

on this question. In that case, the court considered the ballot title to SeaTac's Proposition 1 which read:

> Proposition No. 1 concerns labor standards for certain employers.
>
> This Ordinance requires certain hospitality and transportation employers to pay specified employees a $15.00 hourly minimum wage, adjusted annually for inflation, and pay sick and safe time of 1 hour per 40 hours worked. Tips shall be retained by workers who performed the services. Employers must offer additional hours to existing part-time employees before hiring from the outside. SeaTac must establish auditing procedures to monitor and ensure compliance. Other labor standards are established.
>
> Should this Ordinance be enacted into law?

Id. The court concluded this title was general because it "generally concerns labor standards for certain employers." Id. at 784.

The Associations argue that the ballot title in I-124 is distinguishable and more restrictive than Filo Foods because it carves out for regulation the narrow topic of protecting hotel employees from sexual assault and harassment by requiring hotels to keep a list of accused guests. We agree this part of I-124's ballot title is restrictive. The language about protecting employees "against assault, sexual harassment, and injury by retaining lists of accused guests" does carve out for regulation a specific risk hotel workers confront. But the balance of the title broadens its scope to cover more general working conditions—"improv[ing] access to healthcare; limit[ing] workloads; and provid[ing] limited job security." In Amalgamated Transit, the Supreme Court held that a ballot title containing some restrictive language may, nevertheless, be categorized as a general title when the overall tenor of the ballot title is general in nature. 142 Wn.2d at 216-17. We conclude, under Filo Foods, I-124's ballot title is general.

While Filo Foods governs our conclusion as to the nature of the ballot title, it does not lead us to conclude that I-124 passes the rational unity test. The City and Intervenors argue the provisions of I-124 all share the related purpose of ensuring employee health, safety, and welfare, and the initiative is analogous to Filo Foods. But Proposition 1, at issue in Filo Foods, is distinguishable from I-124 in several material ways. Filo Foods' Proposition 1 set out minimum employment standards for certain hospitality and transportation employers in the city of SeaTac. 183 Wn.2d at 778. The Supreme Court concluded that Proposition 1's hourly minimum wage, paid sick leave, tip retention, and 90-day worker retention provisions all had the related purpose of establishing "minimum employee benefits, including job security." Id. at 785.

Unlike Filo Foods, I-124, by its own language, identifies at least four distinct and separate purposes. Part 1 is intended to protect certain hotel employees from violent assault and sexual harassment. SMC 14.25.020. Part 2 is intended to protect hotel employees from on-the-job injuries arising out of heavy lifting, repetitive tasks, and chemical exposure. SMC 14.25.070. Part 3 is intended to improve hotel workers' access to affordable medical care. SMC 14.25.110. And Part 4 is intended to provide job security to low income hotel workers when there is a change in hotel ownership. SMC 14.25.130.

The City and Intervenors, relying on language from Amalgamated Transit, argue each of these parts "will, or may, facilitate" the stated purpose of improving the health, safety, and working conditions of employees at certain hotels. 142 Wn.2d at 209. Whether a provision may facilitate the initiative's purpose is but one

part of a two-part test. While the initiative's various parts may be germane to the general topic of employee health, safety, and working standards, rational unity requires that matters within the body of the initiative be germane not only to the general title, but also to one another. WASAVP, 174 Wn.2d at 656.

Each of I-124's provisions is arguably related to the ballot title because each "may facilitate" the "health, safety and labor conditions" of certain hotel workers. But the purposes of the operative provisions in Parts 1 through 4 are completely unrelated. Where Filo Foods had one single purpose, I-124 has four, each of which sets out very different and distinct public policies.

The initiative is, thus, more analogous to Amalgamated Transit, Kiga, and Lee, than to Filo Foods. In Amalgamated Transit, the ballot title for I-695 stated, "Shall voter approval be required for any tax increase, license tab fees be $30 per year for motor vehicles, and existing vehicle taxes be repealed?" 142 Wn.2d at 212. Although the Supreme Court held the ballot title was a general one, it found no rational unity between the subjects of I-695 because the provisions setting license tab fees at $30 and those providing a continuing method to approve all future tax increases had two unrelated purposes. Id.

In Kiga, the ballot title to I-722 stated, "Shall certain 1999 tax and fee increases be nullified, vehicles exempted from property taxes, and property tax increases (except new construction) limited to 2% annually?" 144 Wn.2d at 825. The Court held that while the tax nullification provision and the property tax assessment provisions were related to the general topic of tax relief, those subjects were not germane to each other. Id. at 827. It reasoned that "[t]he nullification

and onetime refund of various 1999 tax increases and monetary charges [was] unnecessary and entirely unrelated to permanent, systemic changes in property tax assessments." Id.

Finally, in Lee, the Supreme Court invalidated I-1366, an initiative that imposed a one-time reduction in sales taxes if the legislature failed to pass a constitutional amendment requiring a two-thirds vote of the legislature to enact any new taxes. 185 Wn.2d at 613. Specifically, it saw

> no substantive difference between the one-time tax reduction coupled with a permanent change to the way all taxes are levied or assessed in Amalgamated [Transit] and Kiga, which violated the single-subject rule, and the reduction of the current sales tax rate and a permanent change to the constitution or to the method for approving all future taxes and fees set forth by [the initiative].

Id. at 622-23. It held that even if the subjects were related to the general topic of fiscal restraint or taxes, they were not germane to each other. Id. at 623; see also Barde v. State, 90 Wn.2d 470, 472, 584 P.2d 390 (1978) (no rational unity between criminal sanctions for dognapping and attorney fees in a civil action, even if both were germane to the general topic of taking or withholding property); Wash. Toll Bridge Auth. v. State, 49 Wn.2d 520, 523-24, 304 P.2d 676 (1956) (finding no rational unity where general initiative title—toll roads—contained two unrelated purposes). Accordingly, the court held in Lee that the initiative violated the single subject rule and was void in its entirety. 185 Wn.2d at 629.

I-124 is analogous to Lee's I-1366 because requiring hotels to maintain a list of people who have been accused of sexually harassing hotel employees is unrelated to limiting the number of square feet a hotel worker can be required to

clean in an eight-hour period without being paid overtime, or requiring a hotel to create a seniority list from which a new owner must hire employees for a period of time after a change in ownership. Part 1 of the initiative does not have, as its purpose, the same purpose as Part 2, 3, or 4. The unrelated purposes of the provisions of I-124 undermines any claim of rational unity.

Even assuming Part 1's guest registry requirements and Part 2's hazardous chemicals restrictions are related to the same goal of reducing on-the-job injuries, it is difficult to see how the guest registry provision is germane to providing hotel workers with employment security for a set period of time after a hotel changes ownership. In Filo Foods, the Supreme Court found rational unity between a similar 90-day employee retention provision and the minimum wage provisions of Proposition 1 because both provisions related to maintaining job security. 183 Wn.2d at 785. But protecting some employees from a guest's sexual assault or harassment has a different purpose than ensuring that all hotel employees maintain their jobs when a hotel changes ownership.

Moreover, none of the first four parts of I-124 are necessary to implement any other part of the initiative. Although "[a]n analysis of whether the incidental subjects are germane to one another does not necessitate a conclusion that they are necessary to implement each other, . . . that may be one way to do so." Citizens, 149 Wn.2d at 638. In WASAVP, the Supreme Court affirmed an initiative privatizing liquor sales despite the inclusion of an earmark of funds for public safety because the earmark provision was "necessary to implement" the statute. 174 Wn.2d at 656; see also Lee, 185 Wn.2d at 623 (discussing WASAVP). No similar

connection, however, exists between the first four sections of I-124. Part 1's sexual harassment provisions are not necessary to implement Part 2's hazardous chemical restrictions, or vice versa. Similarly, Part 3's requirements for medical insurance subsidies are not necessary to implement Part 1's sexual harassment protections, or vice versa. And Parts 1, 2, and 3 are not necessary to implement Part 4's seniority list and job security provisions.

Part 5 is the only provision that could fit into a "necessary to implement" category. Part 5 sets up a unique enforcement system by creating a new cause of action for injured hotel employees to sue employers for damages and to recover attorney fees. SMC 14.25.150(C). Part 5 also authorizes the City's Office of Civil Rights to investigate alleged violations, SMC 14.25.150(D), and it purports to empower a superior court to impose civil penalties for violations, SMC 14.25.150(E). Part 5 also contains a provision prohibiting hotel employers from threatening to reveal the citizenship or immigration status of an employee or an employee's family member. SMC 14.25.150(A)(4)(b).

While Part 5 is arguably germane to the first four parts of the initiative, it does not make Parts 1 through 4 germane to each other. And Part 5 itself conflicts with key provisions of Washington's workers' compensation system by creating a private cause of action that does not now exist under Washington law. RCW 51.04.010 abolished all jurisdiction of the courts to hear worker injury cases. The Industrial Insurance Act represents a "grand compromise" between industry and labor to remove workplace injuries from the court system and to provide injured workers with a swift, no-fault compensation system for on-the-job injuries. Birklid

v. Boeing Co., 127 Wn.2d 853, 859, 904 P.2d 278 (1995). Even if the City can lawfully enact worker safety provisions that are stricter than those imposed by the Department of Labor & Industries, the City does not explain how an ordinance can confer subject matter jurisdiction on a state court to resolve work-related injury claims when, by statute, the legislature abolished that very jurisdiction over a century ago. See Laws of 1911, ch. 74, § 1 (enacting RCW 51.04.010). The private cause of action provision appears to be a classic example of logrolling prohibited by RCW 35A.12.130.

Intervenors argue that I-124 should be affirmed because there is a long history in Washington of legislatively addressing labor conditions in a single piece of legislation. In WASAVP, the Supreme Court relied on a well-established history of legislative appropriations of revenue under the Liquor Act[7] to demonstrate the relatedness of I-1183's liquor privatization provisions and the earmark for law enforcement funding. 174 Wn.2d at 657. Intervenors cite the Industrial Welfare Act (IWA) as proof of a similar history of legislating employee protections at the same time. This argument, however, does not pass scrutiny.

The IWA, originally passed in 1913, mandated the payment of minimum wages for women and made it unlawful to employ women or minors in any job that was "detrimental to their health or morals." Laws of 1913, ch. 174, §§ 1-2. The IWA is now codified in RCW ch. 49.12. But the IWA expressly excludes "conditions of labor otherwise governed by statutes and rules and regulations relating to industrial safety and health" administered by the Department of Labor & Industries.

[7] Title 66 RCW.

RCW 49.12.005(5). Industrial safety and health has historically been addressed in separate legislation—the Industrial Insurance Act, Title 51 RCW—not in the IWA. Indeed, employees assaulted on the job may not generally sue their employers for injuries and are limited to filing a claim under the Industrial Insurance Act. Brame v. W. State Hosp., 136 Wn. App. 740, 749, 150 P.3d 637 (2007). Contrary to the Intervenors argument, the legislature has not combined minimum wage and worker safety requirements in the same legislation for decades.

Additionally, the legislature has enacted laws to protect employees from sexual harassment on the job under the Washington Law Against Discrimination, RCW 49.60.180. But it has passed separate legislation to entitle an employee to overtime—the Washington Minimum Wage Act, RCW ch. 49.46. There is no history of legislatively combining sexual harassment protections with minimum wage requirements.

Unlike WASAVP, we find no history of the legislature treating sexual harassment protections, overtime provisions, protections from hazardous chemicals, and seniority list requirements together in the same legislation. In Lee, the Supreme Court distinguished WASAVP because it found "no history that the legislature ha[d] treated sales tax reductions and constitutional amendments or supermajority requirements together." Lee, 185 Wn.2d at 623. WASAVP is similarly distinguishable here. There is no legislatively recognized connection between protecting employees from sexual harassment and providing safeguards against unemployment or ensuring fair wages for fair work. Nor is there any such history of joining legislation to protect the confidentiality of an employee's and his

or her family members' immigration status with other health, safety, and labor standards.

Additionally, Part 1 regulates more than just the employee-employer relationship; it regulates the hotels' relationship with their guests by requiring hotels to ban certain guests for at least three years. There is no history of regulating an employer's relationships with its customers alongside labor standards for its employees. I-124's requirement in Part 1 to deny accommodation to guests accused of sexual harassment, and Part 2's wage requirements for housekeepers cleaning more than 5,000 square feet in a day, and Part 4's mandated seniority hiring list do not share the same rational relationship as the public safety earmark did to liquor regulation in WASAVP.

Nor does the Supreme Court's holding in Citizens save I-124. In that case, a consortium of wildlife management, outdoor recreation, and farming groups challenged the constitutionality of I-713, a law making it a gross misdemeanor to capture or kill an animal with steel leg traps or certain poisons. 149 Wn.2d at 627. The consortium argued that the provisions banning leg traps were not rationally related to the provisions banning the use of pesticides to kill wild animals. Id. at 637. The court held these two provisions were germane to each other because they both addressed particular methods of trapping and killing animals. Id. at 639.

The trial court in this case adopted a broad reading of Citizens in rejecting the Associations' single subject challenge to I-124. It concluded that the initiative expressed a single purpose and the provisions facilitated the accomplishment of this purpose and, for this reason, did not violate the single subject rule. I-124,

however, is distinguishable from the initiative in Citizens because Parts 1, 2, and 4 are not just different methods of protecting employees from on-the-job injuries. Nor are these three parts just different methods of ensuring job security. The initiative mixes, on the one hand, protections from sexual assault and exposure to hazardous chemicals with, on the other hand, limits on how much a worker can clean without being entitled to overtime pay and the creation of a seniority list for hiring purposes if a hotel is sold. Part 1's requirement that hotels maintain a list of guests accused of sexual harassment has no rational relation to Part 2's overtime pay requirements for hotel housekeepers or to Part 4's requirement that new hotel owners must hire from a current list of employees for six months and then retain them for 90 days. Although these subjects are all germane to the general title—health, safety, and labor standards—they are not germane to each other.

The key inquiry for the single subject rule is whether the subjects are so unrelated that "it is impossible for the court to assess whether either subject would have received majority support if voted on separately." Kiga, 144 Wn.2d at 825. In this case, it is impossible to determine whether any subject of I-124 standing alone would have received majority support if voted on separately. I-124 is similar to the initiative discussed in Kiga where our Supreme Court found logrolling of unrelated measures because

> a person who desired systemic changes to future property tax assessments but did not want to fiscally burden cities with the refunding of 1999 tax increases was required to vote for both measures or neither. Similarly, a person who did not own a home or who was otherwise unconcerned with changing methods for assessing property taxes but did desire a refund of other fees was required to vote for both measures or neither.

Id. at 828. Did I-124 receive overwhelming support because almost 80 percent of Seattle voters supported all the provisions? Or did a majority of the voters want to provide better healthcare to these workers and were willing to accept the guest registry provisions as a necessary evil to achieve the healthcare goal? The question could be asked for any combination of the subjects covered in I-124.

Because there is no rational unity between the provisions of I-124, it is impossible for the court to determine whether any provision would have received majority support if voted on separately. We conclude the Associations have carried their burden of proving that I-124 violates the single subject rule set out in RCW 35A.12.130 and article IV, section 7 of the Seattle City Charter. It is, thus, unconstitutional under Article XI, section 11 of the Washington Constitution and invalid in its entirety.

We reverse the trial court order granting summary judgment in favor of the City and Intervenors and remand to the superior court for entry of summary judgment in favor of the Associations.

Reversed.

Andrus, J.

WE CONCUR:

Dwyer, J.

Schindler, J.

APPENDIX B

Chapter 14.25 - HOTEL EMPLOYEES HEALTH AND SAFETY

14.25.010 - Findings

The people hereby adopt basic safeguards to protect hotel employees from assault and injury on the job, to improve access to affordable healthcare, and to provide a minimum standard of job security for hotel employees. This measure also includes strong enforcement mechanisms to ensure that hotel owners and operators comply with the law. Providing these protections to hotel employees will make Seattle's economy fairer and more resilient.

Hotel employees are vital contributors to our community. The hospitality industry is a profitable and important component of our economy that receives substantial taxpayer support, including through the $1.5 billion expansion of the Washington State Convention Center.

However, the hospitality industry has not adequately provided for the safety and security of hotel employees. Due to the unique nature of hotel work, hotel employees are subjected to a higher risk of harassment and violence on the job. Unregulated workloads result in injury rates for hotel housekeepers that are higher than those of coalminers. At the same time, hospitality employees have the lowest rate of access to employer-offered health insurance of any industry in the State of Washington and face unaffordable monthly premiums for family healthcare. Frequent property sales, changes in ownership, mergers and acquisitions in the hospitality industry mean that hotel employees face employment disruptions that are wholly beyond their control. As a vast majority of Seattle hotel employees are women, immigrants, and people of color, these hazards and instabilities within the hospitality industry exacerbate existing structural inequities experienced by these groups. It is appropriate and necessary to protect employees in the hotel industry - those who clean the rooms, change the sheets, and dice the vegetables - from assault and injury, unmanageable medical costs, and unnecessary job loss.

(Initiative 124, § 1, 2016.)

PART 1 - PROTECTING HOTEL EMPLOYEES FROM VIOLENT ASSAULT AND SEXUAL HARASSMENT

14.25.020 - Intent

It is the intent of Part 1 of this measure to protect hotel employees from violent assault, including sexual assault, and sexual harassment and to enable employees to speak out when they experience harassment or assault on the job. Hotel employees are often asked to work alone in hotel rooms, which sometimes may be occupied, placing them at risk of violent assault, including sexual assault, and sexual harassment.

(Initiative 124, § 1, 2016.)

14.25.030 - Providing panic buttons to hotel employees providing in-room services

A hotel employer shall provide a panic button to each hotel employee assigned to work in a guest room without other employees present, at no cost to the employee. An employee may use the panic button if the employee reasonably believes there is an ongoing crime, harassment, or other emergency in the employee's presence. The hotel employee may cease work and leave the immediate area of perceived danger to await the arrival of assistance, and no adverse employment action may be taken against the employee for such action.

(Initiative 124, § 1, 2016.)

14.25.040 - Protecting hotel employees from violent or harassing hotel guests

A. A hotel employer must record the accusations it receives that a guest has committed an act of violence, including assault, sexual assault, or sexual harassment towards an employee. The hotel employer must determine and record the name of the guest; if the name of the guest cannot be determined, the hotel employer must determine and record as much identifying information about the guest as is reasonably possible. The hotel employer shall compile and maintain a list of all guests so accused. The employer shall retain a guest on the list for at least five years from the date of the most recent accusation against the guest, during which time the employer shall retain all written documents relating to such accusations.

B. If an accusation against a guest under subsection 14.25.040.A involves assault, sexual assault, or sexual harassment, and is supported by a statement made under penalty of perjury or other evidence, the employer shall decline to allow the guest to return to the hotel for at least three years after the date of the incident. No employee may be required to provide such statement.

C. The hotel employer must notify any hotel employee assigned to work in guest rooms without other employees present, prior to starting their scheduled work, of any guest on the list established by subsection 14.25.040.A who is staying at the hotel, identify the room assigned to the guest, and warn the employees to exercise caution when entering that room during the time the guest is staying in the hotel.

(Initiative 124, § 1, 2016.)

14.25.050 - Deterring assaults by notifying guests of employee protections

Each hotel shall place a sign on the back of each guest room door, written in a font size of no less than 18 points, that includes the heading "The Law Protects Hotel Housekeepers and Other Employees From Violent Assault and Sexual Harassment," a citation to this Chapter 14.25, and notice of the fact that the hotel is providing panic buttons to its housekeepers, room servers, and other employees assigned to work in guest rooms without other employees present, in compliance with this Chapter 14.25.

(Initiative 124, § 1, 2016.)

14.25.060 - Protecting employees who report assault or sexual harassment

An employee who brings to the attention of a hotel employer the occurrence of an act of violence, including assault and sexual assault, or sexual harassment by a guest shall be afforded the following rights:

A. Upon request, the employee shall be reassigned to a different floor, or, if none is available for the employee's job classification, a different work area away from the guest for the entire duration of the guest's stay at the hotel;

B. The hotel employer shall immediately allow the employee sufficient paid time to contact the police and provide a police statement and to consult with a counselor or advisor of the employee's choosing; and

C. The hotel employer, with the consent of the employee, shall report an incident involving alleged criminal conduct by a guest to the law enforcement agency with jurisdiction and shall cooperate with any investigation into the incident undertaken by the agency and any attorney for the complaining employee.

(Initiative 124, § 1, 2016.)

PART 2 - PROTECTING HOTEL EMPLOYEES FROM INJURY

14.25.070 - Intent

It is the intent of this Part 2 to protect hotel employees from on-the-job injury. Hotel employees suffer an unacceptably high rate of on-the-job injuries from heavy lifting, repetitive tasks, and chemical exposure, and are 40 percent more likely to be injured on the job than all other service sector workers. The provisions of this Part 2 will help to protect hotel employees from such injuries.

(Initiative 124, § 1, 2016.)

14.25.080 - Hotel employers must adopt reasonable practices to protect the safety of hotel employees

Hotel employers must provide and use safety devices, and safeguards and use work practices, methods, processes, and means that are reasonably adequate to make their workplaces safe.

(Initiative 124, § 1, 2016.)

14.25.090 - Hotel employers must protect their employees from chemical hazards

Hotel employers must:

A. Control chemical agents in a manner that they will not present a hazard to employees;

B. Protect employees from the hazard of contact with, or exposure to, chemical agents; and

C. Provide employees with effective information on hazardous chemicals in their work area at the time of their initial job assignment. Information must be provided whenever a new physical or health hazard related to chemical exposure is introduced into work areas.

(Initiative 124, § 1, 2016.)

14.25.100 - Hotel employers must protect hotel housekeepers from injuries

A. Significant injuries to hotel housekeepers result from the repetitive and strenuous tasks that must be performed in each guest room, including lifting requirements that can substantially exceed federal occupational safety standards. Hotel housekeepers face the highest injury rate of all hotel occupations. Risk of injury is increased when hotel housekeepers must clean more than 5,000 square feet of guest rooms in an eight-hour workday, and further increases when housekeepers are required to perform more than ten strenuous guest room cleanings during the day or to clean guest rooms at an unsafe speed. Workplace interventions have been found to significantly reduce injury rates for hotel housekeepers.

B. An employee providing housekeeping services at a large hotel shall not be required to clean guest rooms totaling more than 5,000 square feet of floor space in an eight-hour workday. When an employee performs ten or more strenuous room cleanings in an eight-hour workday, the maximum floor space shall be reduced by 500 square feet for the tenth strenuous room cleaning and for each such strenuous room cleaning thereafter.

C. For an employee cleaning guest rooms for fewer than eight hours per day, the foregoing maximums and reductions shall be prorated according to the actual number of hours worked cleaning guest rooms.

D. If an employee performs cleaning in excess of the square footage allowed by this Section 14.25.100 in a day, the hotel employer shall pay such hotel employee at least time-and-a- half the employee's regular rate of pay for all time worked cleaning guest rooms during that day.

(Initiative 124, § 1, 2016.)

PART 3 - IMPROVING ACCESS TO MEDICAL CARE FOR LOW INCOME HOTEL EMPLOYEES

14.25.110 - Intent

It is the intent of Part 3 to improve access to affordable family medical care for hotel employees. In Washington's economy, hospitality industry employers are the least likely to offer health insurance to employees and their contributions are second to lowest. The average monthly cost to a hotel employee for family medical coverage through an employer-offered plan exceeds $500 per month, forcing nearly half of eligible employees to decline such plans. Access to affordable medical care is critical for hotel employees to care for themselves and their families. Additional compensation reflecting hotel employees' anticipated family medical costs is necessary to improve access to medical care for low income hotel employees.

(Initiative 124, § 1, 2016.)

14.25.120 - Large hotel employers must provide additional compensation reflective of the cost of medical coverage to low-income hotel employees

A. A large hotel employer shall pay, by no later than the 15th day of each calendar month, each of its low-wage employees who work full time at a large hotel additional wages or salary in an amount equal to the greater of $200, adjusted annually for inflation, or the difference between (1) the monthly premium for the lowest-cost, gold-level policy available on the Washington Health Benefit Exchange and (2) 7.5 percent of the amount by which the employee's compensation for the previous calendar month, not including the additional wage or salary required by this Section 14.25.120, exceeds 100 percent of the federal poverty line. The additional wages or salary required under this Section 14.25.120 are in addition to and will not be considered as wages paid for purposes of determining compliance with the hourly minimum wage and hourly minimum compensation requirements set forth in Sections 14.19.030 through 14.19.050.

B. A large hotel employer shall not be required to pay the additional wages or salary required by this Section 14.25.120 with respect to an employee for whom the hotel employer provides health and hospitalization coverage at least equal to a gold-level policy on the Washington Health Benefit Exchange at a premium or contribution cost to the employee of no more than five percent of the employee's gross taxable earnings paid to the employee by the hotel employer or its contractors or subcontractors.

C. If a household includes multiple employees covered by this Section 14.25.120, the total of all additional wage or salary payments made pursuant to this Section 14.25.120 to such employees by one or more hotel employers shall not exceed the total cost for coverage of the household under the least-expensive gold policy offered on the Washington Health Benefit Exchange. If one or more employees in the household are employed by more than one hotel employer, the hotel employers may coordinate their payments so that their combined payments do not exceed the foregoing maximum. In the absence of an agreement among hotel employers to so coordinate their payments, the amount of additional wages payable by each hotel employer shall be the amount due to each employee under subsection 14.25.120.A.

D. The inflation adjustment required under subsection 14.25.120.A shall be calculated using the year-over-year increase in cost of the lowest cost gold level policy available on the Washington Health Benefit Exchange.

(Initiative 124, § 1, 2016.)

PART 4 - PREVENTING DISRUPTIONS IN THE HOTEL INDUSTRY

14.25.130 - Intent

This Part 4 is intended to reduce disruptions to the Seattle economy that could result from the increasing number of property sales and changes in ownership in the hotel industry and also to protect low-income workers. Even long-term and exemplary employees may find themselves terminated solely because a multinational corporation has decided to sell the hotel at which they work.

(Initiative 124, § 1, 2016.)

14.25.140 - Worker retention

A. When a hotel undergoes a change in control, the outgoing hotel employer shall, within 15 days after the execution of a transfer document, provide to the incoming hotel employer the name, address, date of hire, and employment occupation classification of each retention hotel worker.

B. The incoming hotel employer shall maintain a preferential hiring list of retention hotel workers identified by the outgoing hotel employer, as set forth in subsection 14.25.140.A, and shall be required to hire from that list for a period beginning upon the execution of the transfer document and continuing for six months after the hotel is open to the public under the incoming hotel employer.

C. If the incoming hotel employer extends an offer of employment to a retention hotel worker, the offer shall be in writing and remain open for at least ten business days. The incoming hotel employer shall retain written verification of that offer for no fewer than three years from the date the offer was made. The verification shall include the name, address, date of hire, and employment occupation classification of each retention hotel worker.

D. An incoming hotel employer shall retain each retention hotel worker hired pursuant to this Section 14.25.140 for no fewer than 90 days following the retention hotel worker's employment commencement date. During this 90-day transition employment period, retention hotel workers shall be employed under the terms and conditions established by the incoming hotel employer, or as required by law.

E. If, within the 90-day transition employment period established in subsection 14.25.140.D, the incoming hotel employer determines that it requires fewer hotel employees than were required by the outgoing hotel employer, the incoming hotel employer shall retain retention hotel workers by seniority within each job classification to the extent that comparable job classifications exist.

F. During the 90-day transition employment period, the incoming hotel employer shall not discharge without just cause a retention hotel worker retained pursuant to this Section 14.25.140.

G. At the end of the 90-day transition employment period, the incoming hotel employer shall provide a written performance evaluation for each hotel worker retained pursuant to this Section 14.25.140. If the retention hotel worker's performance during the 90-day transition employment period is satisfactory, the incoming hotel employer shall consider offering the retention hotel worker continued employment under the terms and conditions established by the incoming hotel employer, or as required by law. The incoming hotel employer shall retain a record of the written performance evaluation for a period of no fewer than three years.

H. The outgoing hotel employer shall post written notice of the change in control at the location of the affected hotel within five business days following the execution of the transfer document. Notice shall be posted in a conspicuous place at the hotel so as to be readily viewed by retention hotel workers, other employees, and applicants for employment. Notice shall include, but not be limited to, the name of the outgoing hotel employer and its contact information, the name of the incoming hotel employer and its contact information, and the effective date of the change in control. Notice shall remain posted during any closure of the hotel and for six months after the hotel is open to the public under the incoming hotel employer.

(Initiative 124, § 1, 2016.)

PART 5 - ENFORCING COMPLIANCE WITH THE LAW

14.25.150 - Enforcement

A. Exercise of rights protected; retaliation prohibited

1. It shall be a violation for a hotel employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter 14.25.

2. No person may discharge, reduce any part of the compensation of, or otherwise discriminate against an employee, in response to the enactment of this Chapter 14.25, or in response to the employee asserting rights under this Chapter 14.25. Such adverse actions are deemed to harm the public and the employees irreparably, and hence preliminary equitable relief and reinstatement shall be available to the affected employees in addition to all other relief.

3. It shall be a violation for a hotel employer to take any adverse action against any employee because the employee has exercised in good faith the rights protected under this Chapter 14.25. Such rights include but are not limited to the right to assert any rights guaranteed pursuant to this Chapter 14.25; the right to make inquiries about the rights protected under this Chapter 14.25; the right to inform others about an employer's alleged violation of this Chapter 14.25; the right to cooperate with the City in any investigations of alleged violations of this Chapter 14.25; the right to oppose any policy, practice, or act that is unlawful under this Chapter 14.25; the right to file an oral or written complaint with the City or to bring a civil action for an alleged violation of this Chapter 14.25; the right to testify in a proceeding under or related to this Chapter 14.25; the right to refuse to participate in any activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under this Chapter 14.25.

4. It shall be a violation for a hotel employer to (a) communicate to an employee exercising rights under this Chapter 14.25, directly or indirectly, explicitly or implicitly, its willingness or intent to inform a government employee that the employee is not lawfully in the United States; or (b) report or threaten to report suspected citizenship or immigration status of an employee or a family member of the employee to a federal, state, or local agency because the employee has exercised a right under this Chapter 14.25.

5. There shall be a rebuttable presumption of retaliation if a hotel employer takes an adverse action against an employee within 90 days of the employee's exercise of rights protected in this Chapter 14.25. The hotel employer may rebut the presumption with clear and convincing evidence that the action was taken for a permissible purpose and that the employee's exercise of rights protected in this Chapter 14.25 was not a motivating factor in the adverse action.

6. When the presumption in subsection 14.25.150.A.5 does not apply, proof of retaliation under this Chapter 14.25 shall be sufficient upon a showing that a hotel employer has taken an adverse action against an employee and the employee's exercise of rights protected in this Chapter 14.25 was a motivating factor in the adverse action, unless the hotel employer can prove that the action would have been taken in the absence of such protected activity.

7. The protections under subsections 14.25.150.A.2 and 14.25.150.A.3 apply to any employee who mistakenly but in good faith alleges violations of this Chapter 14.25.

B. Notice, posting, and records

1. Each hotel employer shall give written notification to each current employee and to each new employee at time of hire of the employee's rights under this Chapter 14.25. The notification shall be in each language spoken by ten or more employees.

2. Each hotel employer shall maintain for three years, for each employee and former employee, by name, a record showing the following information: (a) for each workweek of employment, the employee's regular hourly rate of pay; (b) for each month of full-time employment at a large hotel, the amount of additional wages or salary paid as additional compensation reflective of the cost of medical coverage for low income hotel employees, as required by section 14.25.120; and (c) for each day of employment as a housekeeping employee at a large hotel, the total

square feet of guest room floor space cleaned, the number of strenuous room cleanings performed, the number of hours worked, and the employee's gross pay for that day. The hotel employer must, upon request, make all such employee and former employee records available in full to any requesting employee and to the Office of Labor Standards for inspection and copying.

C. Private enforcement action

1. Any person claiming injury from a violation of this Chapter 14.25 shall be entitled to bring an action in King County Superior Court or in any other court of competent jurisdiction to enforce the provisions of this Chapter 14.25, and shall be entitled to all remedies available at law or in equity appropriate to remedy any violation of this Chapter 14.25, including but not limited to lost compensation and other damages, reinstatement, declaratory or injunctive relief, prejudgment interest, exemplary damages equal to the amount of wages wrongfully withheld or not paid on the established regular pay day when those wages were due, and to collect civil penalties as described in subsection 14.25.150.E.

2. A person who prevails in any action to enforce this Chapter 14.25 shall be awarded costs, reasonable attorneys' fees, and expenses.

3. An order issued by the court may include a requirement for a compliance report to be submitted to the court and to the City by the hotel employer.

D. Powers and duties of the Office of Civil Rights

1. The Office of Civil Rights may investigate charges alleging violations of this Chapter 14.25 and shall have such powers and duties in the performance of these functions as are necessary and proper in the performance of the same and provided for by law.

2. The Division Director of the Office of Labor Standards within the Office for Civil Rights, or the Division Director's designee, is authorized and directed to promulgate rules consistent with this Chapter 14.25, including rules that protect the identity and privacy rights of employees who have made complaints under this Chapter 14.25.

E. Penalties

1. Each workday during which the hotel employer is in violation of this Chapter 14.25 shall be deemed a separate violation for which the hotel employer shall be liable for a penalty, exclusive of any damages which may be recovered by or awarded to any employee, of at least $100 per day per employee, and not more than $1,000 per day per employee, in an amount to be determined by the court.

2. Civil penalties shall be distributed as follows: 50 percent to the Office of Labor Standards; 25 percent to the aggrieved employees, distributed according to each employee's share of injury by the violations; and 25 percent to the person bringing the case. Penalties paid to the Office of Labor Standards shall be used for the enforcement of labor laws and the education of employers and employees about their rights and responsibilities under the laws governing labor standards, to be continuously appropriated to supplement and not supplant existing funding for those purposes.

(Initiative 124, § 1, 2016.)

PART 6 - DEFINITIONS

14.25.160 - Definitions

For the purposes of this Chapter 14.25:

"Change in control" means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a hotel or a discrete portion of the hotel that

continues in operation as a hotel, or a controlling interest (including by consolidation, merger, or reorganization) of the outgoing hotel employer or any person who controls the outgoing hotel employer.

"Checkout room" means a guest room assigned to be cleaned by an employee due to the departure of the guest assigned to that room.

"Compensation" means wages, salary, sick pay, vacation pay, holiday pay, bonuses, commissions, allowances, and in-kind compensation for work performed.

"Employee" and "hotel employee" means any non-managerial, non-supervisory individual employed by a hotel employer who:

1. In any particular workweek perform s at least two hours of work within the geographic boundaries of the City of Seattle for a hotel employer; and
2. Qualifies as an employee entitled to payment of a minimum wage from any employer under the City of Seattle and/or State of Washington minimum wage laws.

"Employee" and "hotel employee" include any individual (1) whose place of employment is at one or more hotels and (2) who is employed directly by the hotel employer or by a person who has contracted with the hotel employer to provide services at the hotel. Supervisory and confidential employees as defined under the National Labor Relations Act are not considered employees under this Chapter 14.25.

"Employment commencement date" means the date on which a hotel employee retained by the incoming hotel employer pursuant to this Chapter 14.25 commences work for the incoming hotel employer in exchange for benefits and compensation under the terms and conditions established by the incoming hotel employer or as required by law.

"Federal poverty line" means the poverty line for the size of the employee's household for the Seattle area as published in the Annual Update by the Department of Health and Human Services of the Poverty Guidelines for the 48 Contiguous States and the District of Columbia in the Federal Register.

"Full time" means at least 80 hours in a calendar month.

"Hotel" means a hotel or motel, as defined in Section 23.84A.024, containing 60 or more guest rooms or suites of rooms. "Hotel" also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building.

"Hotel employer" means any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of any employee and who owns, controls, and/or operates a hotel in Seattle; or a person who employs or exercises control over the wages, hours, or working conditions of any person employed in conjunction with a hotel employer in furtherance of the hotel's provision of lodging and other related services for the public.

"Incoming hotel employer" means the person that owns, controls, and/or operates a hotel subject to a change in control after the change in control.

"Large hotel" means a hotel containing 100 or more guest rooms or suites of rooms suitable for providing lodging to members of the public for a fee, regardless of how many of those rooms or suites are occupied or in commercial use at any given time.

"Low-wage employee" means an employee whose total compensation from the employer is 400 percent or less of the federal poverty line for the size of the employee's household.

"Outgoing hotel employer" means the person that owns, controls, and/or operates a hotel subject to a change in control prior to the change in control.

"Panic button" means an emergency contact device carried by an employee by which the employee may summon immediate on-scene assistance from another employee, security guard, or representative of the hotel employer.

"Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

"Policy" means an insurance policy available on the Washington Health Benefit Exchange that would provide coverage to the employee and, if the employee has any spouse and dependent children, to the employee's spouse and dependent children in addition to the employee.

"Stayover room" means a guest room assigned to be cleaned by an employee where the guest's stay has not yet ended.

"Strenuous room cleaning" means the cleaning of (1) a checkout room or (2) a stayover room that includes a cot, rollout bed, pet bed or crib.

"Transfer document" means the purchase agreement or other document(s) creating a binding agreement to effect the change in control.

"Retention hotel worker" means any employee (1) whose primary place of employment is at a hotel subject to a change in control, (2) who is employed directly by the outgoing hotel employer, or by a person who has contracted with the outgoing hotel employer to provide services at the hotel subject to a change in control, and (3) who has worked for the outgoing hotel employer for at least one month prior to the execution of the transfer document.

"Wages or salary" means the gross amount of taxable cash earnings paid to an employee by an employer or the employer's contractors or subcontractors.

(Initiative 124, § 1, 2016.)

PART 7 - MISCELLANEOUS

14.25.170 - Waiver

A. The provisions of this Chapter 14.25 may not be waived by agreement between an individual employee and a hotel employer.

B. Any waiver by a party to a collective bargaining relationship involving a hotel employer of any provisions of Sections 14.25.020 through 14.25.060 and the applicable enforcement mechanisms under Section 14.25.150 shall be deemed contrary to public policy and shall be void and unenforceable.

C. Except as provided in Section 14.25.170.B, all of the provisions of this Chapter 14.25, or any part hereof, may be waived in a bona fide written collective bargaining agreement waiving provisions of this Chapter 14.25, if such a waiver is set forth in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this Chapter 14.25.

(Initiative 124, § 1, 2016.)

14.25.180 - Severability and exceptions

A. The provisions of this Chapter 14.25 are declared to be separate and severable. If any provision of this Chapter 14.25, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this Chapter 14.25 that can be given effect without the invalid provision or application; and to this end, the provisions or applications of this Chapter 14.25 are severable.

B. The requirements of this Chapter 14.25 shall not apply where and to the extent that state or federal law or regulations preclude their applicability.

(Initiative 124, § 1, 2016.)

14.25.190 - Short title

This Chapter 14.25 is titled the Seattle Hotel Employees Health and Safety Initiative.

(Initiative 124, § 1, 2016.)

APPENDIX C

Charter of The City of Seattle (Current version)

Adopted at the General Election March 12, 1946
Last amended November 5, 2013

ARTICLE IV - Legislative Department

Sec. 7. LEGISLATIVE ACTS BY ORDINANCE; SUBJECT MATTER; TITLE; ENACTING CLAUSE: Every legislative act of said City shall be by ordinance. Every ordinance shall be clearly entitled and shall contain but one subject, which shall be clearly expressed in its title. The enacting clause of every ordinance shall be: "Be it ordained by The City of Seattle as follows:"

Charter of The City of Seattle (1890 version)

ARTICLE IV - Legislative Department

Sec. 13. LEGISLATIVE ACTS BY ORDINANCE; SUBJECT MATTER; TITLE; ENACTING CLAUSE: Every legislative act of said City shall be by ordinance. Every ordinance shall be clearly entitled and shall contain but one object, which shall be clearly expressed in its title. The enacting clause of every ordinance shall be: "Be it ordained by The City of Seattle as follows:"

APPENDIX D

Washington State Constitution

ARTICLE II
LEGISLATIVE DEPARTMENT

SECTION 19: BILL TO CONTAIN ONE SUBJECT. No bill shall embrace more than one subject, and that shall be expressed in the title.

ARTICLE XI
COUNTY, CITY, AND TOWNSHIP ORGANIZATION

SECTION 11: POLICE AND SANITARY REGULATIONS. Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.

APPENDIX E

Relevant Statutes

RCW 35.01.010

First-class city.

A first-class city is a city with a population of ten thousand or more at the time of its organization or reorganization that has a charter adopted under Article XI, section 10, of the state Constitution.

RCW 35A.01.010

Purpose and policy of this title—Interpretation.

The purpose and policy of this title is to confer upon two optional classes of cities created hereby the broadest powers of local self-government consistent with the Constitution of this state. Any specific enumeration of municipal powers contained in this title or in any other general law shall not be construed in any way to limit the general description of power contained in this title, and any such specifically enumerated powers shall be construed as in addition and supplementary to the powers conferred in general terms by this title. All grants of municipal power to municipalities electing to be governed under the provisions of this title, whether the grant is in specific terms or in general terms, shall be liberally construed in favor of the municipality.

RCW 35A.12.130

Ordinances—Style—Requisites—Veto.

The enacting clause of all ordinances shall be as follows: "The city council of the city of . . . . . do ordain as follows:" No ordinance shall contain more than one subject and that must be clearly expressed in its title.

No ordinance or any section or subsection thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or the amended section or subsection at full length.

No ordinance shall take effect until five days after the date of its publication unless otherwise provided by statute or charter, except that an ordinance passed by a majority plus one of the whole membership of the council, designated therein as a public emergency ordinance necessary for the protection of public health, public safety, public property or the public peace, may be made effective upon adoption, but such ordinance may not levy taxes, grant, renew, or extend a franchise, or authorize the borrowing of money.

Every ordinance which passes the council in order to become valid must be presented to the mayor; if he or she approves it, he or she shall sign it, but if not, he or she shall return it with his or her written objections to the council and the council shall cause his or her objections to be entered at large upon the journal and proceed to a reconsideration thereof. If upon reconsideration a majority plus one of the whole membership, voting upon a call of ayes and nays, favor its passage, the ordinance shall become valid notwithstanding the mayor's veto. If the mayor fails for ten days to either approve or veto an ordinance, it shall become valid without his or her approval. Ordinances shall be signed by the mayor and attested by the clerk.

SEATTLE CITY ATTORNEY'S OFFICE - GOVERNMENT AFFAIRS

January 23, 2019 - 3:31 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	77918-4
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Superior Court Case Number:	16-2-30233-5

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