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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

No. 96781-4

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

Appellants,

v.

CITY OF SEATTLE,

Respondent,

and

UNITE HERE! LOCAL 8; SEATTLE PROTECTS WOMEN,

Respondent.

**APPELLANTS AMERICAN HOTEL & LODGING ASSOCIATION,
SEATTLE HOTEL ASSOCIATION, AND WASHINGTON
HOSPITALITY ASSOCIATION'S SUPPLEMENTAL BRIEF**

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I. INTRODUCTION

City of Seattle Initiative 124 (“I-124”) was one of the early legislative efforts in what is now known as the panic button movement. The movement, an offshoot of the #MeToo movement, has picked up steam in jurisdictions around the country, seeking stronger protection against sexual harassment and assault of hotel workers through distribution and use of panic devices. I-124 was undoubtedly part of the impetus for the Washington legislature’s recent enactment of SB 5258, a statewide panic button law that will apply broadly to “every hotel, motel, retail, [and] security guard entity” in the State.

The problem with I-124 is that unlike SB 5258 it contains much more than a panic button law. I-124 combines its panic button law with several other distinct and unconnected laws, in violation of the requirement that an initiative contain only a single subject. I-124’s other laws include (1) a gold level health insurance requirement for certain hotel workers employed by large hotels; (2) a novel and controversial blacklist provision that requires hotels to maintain registries of guests accused of harassment and requires hotels to punish accused guests without notice or opportunity to respond and clear their names; (3) a job security measure for hotel workers when there are changes in hotel ownership; and (4) a new private right of action for certain workplace injuries.

The Court of Appeals conducted a thorough analysis to reach the appropriate conclusion that I-124 violates the single subject rule. The Court of Appeals looked at I-124 through the lens of all the recent and relevant single subject cases from this Court. After determining that I-124's title is general, the Court of Appeals assessed whether "rational unity" exists among the several matters addressed in the initiative. *City of Burien v. Kiga*, 144 Wn. 2d 819, 826 (2001). As this Court has prescribed, rational unity requires all the different parts of a law be germane both to the law's general subject *and* to each other. I-124 fails the latter requirement. There is no rational way to find unity among a panic button law, a novel blacklist and punishment provision, a health insurance subsidy mandate, a job security law, and a new workplace injury cause of action that preserves the core promise of the single subject rule: the right of voters to say "yes" or "no" to a proposed new law, unencumbered by other proposed laws they may feel differently about.

Petitioners (and two *amici*) argue the Court of Appeals' decision upsets the legislative process. They claim that enforcing the single subject rule as the Court of Appeals did here would prevent lawmakers from enacting comprehensive legislation affecting a particular industry or constituency, and they seem to ask for an exception to the single subject rule for complex issues that call for multifaceted legislation. What they

ignore is that the legislative process already allows for multifaceted solutions, through multiple contemporaneous enactments. Bill packages are common. Just this session our legislature passed four separate bills to help protect orca whales. The difference between those four laws and I-124 is that we know the lawmakers approved each of the four orca laws on its merits; we have no way of knowing if Seattle voters would have approved of I-124's novel blacklist, or its insurance mandate, or its workplace safety provisions if they were allowed to vote on them separately from the panic button proposal. That is why we have the single subject rule: to ensure our laws are approved by our lawmakers and voters and not the product of logrolling or hitching unpopular legislation to something popular. This Court should affirm the Court of Appeals and ensure the single subject rule will continue to protect voters.

II. STATEMENT OF THE CASE

I-124 was a ballot measure approved by Seattle voters in November 2016. It included *four* distinct statements of “intent”: (1) to protect hotel employees from assault and sexual harassment (SMC 14.25.020), (2) to protect hotel employees from on-the-job injury caused by strenuous work and chemical exposure (SMC 14.25.070), (3) to improve access to affordable healthcare (SMC 14.25.110), and (4) to

reduce disruptions to Seattle’s economy resulting from changes in hotel ownership (SMC 14.25.130).

I-124 requires hotels to implement changes to their operations, including posting notices, tracking the square footage cleaned by housekeepers (and paying premiums if a threshold is exceeded), training management employees to maintain and use the required blacklist, and implementing changes to reservations systems and security protocols to prevent blacklisted guests from being on the premises for three years. I-124 also creates a new private right of action for enforcement of its laws.

Respondents—national, state, and local associations representing Seattle hotels—brought a facial challenge to I-124.¹ Respondents asserted, among other claims, (1) I-124’s blacklist provision forces hotels to violate the constitutional privacy and due process rights of guests; (2) the Washington Industrial Safety and Health Act of 1973, chapter 49.17 RCW (“WISHA”) preempts I-124’s workplace health and safety regulations; and (3) I-124 violates the single subject rule. On June 9, 2017, the trial court decided the case on cross motions for summary judgment and dismissed the associations’ claims. On December 24, 2018, the Court of Appeals reversed and held that I-124 violates the single

¹ I-124’s insurance mandate is the subject of separate litigation about whether it is preempted by the federal benefits law known as ERISA. *See ERISA Indus. Co. v. City of Seattle*, Case No. 18-cv-1188 (W.D. Wash Aug. 14, 2018).

subject rule. Because that ruling invalidated I-124, the Court of Appeals did not address Respondents' other challenges.

III. ARGUMENT

A. The Court of Appeals Decision Properly Applies This Court's Single Subject Jurisprudence

Over the years, this Court has developed and refined the test for determining whether laws satisfy the single subject rule. The Court of Appeals undertook a thorough analysis of I-124 based on the rich body of law from this Court. Petitioners, unhappy with the outcome of that analysis, argue that the decision conflicts with existing law. It does not. The Court of Appeals' decision applies this Court's jurisprudence to a particular situation. In doing so, the opinion adds to that jurisprudence in a way that aligns with the purpose of the single subject rule.

The single subject rule is intended to "prevent logrolling or pushing legislation through by attaching it to other legislation." *See Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 207 (2000) (citation omitted). The rule is supposed to prevent interest groups and legislators from getting one law passed by hitching it to another, more popular law. *See id.* When a law contains more than one subject "it is impossible for the court to assess whether either subject would have received majority support if voted on separately," and the entire measure is therefore invalid. *City of Burien v. Kiga*, 144 Wn.2d 819, 825 (2001)

(citing *Power, Inc. v. Huntley*, 39 Wn.2d 191, 200 (1951)). As the Court of Appeals stated here, “[o]nly 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.” Slip op. at 9 (citation & quotation omitted).

The start of a single subject analysis is determining whether a title is general or restrictive. *Lee v. State*, 185 Wn.2d 608, 621 (2016). On this point, the Court of Appeals gave the City and Intervenor the benefit of the more lenient test for laws with general titles, even though it found part of the title restrictive. Slip op. at 10-11. When a title is general, the single subject rule requires that the provisions of a law are germane to the title **and** that they are germane **to one another**. *Kiga*, 144 Wn.2d at 825-26.

I-124 fails that test. According to the four separate statements of “intent” in the measure, I-124 is supposed (1) to protect hotel employees from assault and sexual harassment (SMC 14.25.020), (2) to protect hotel employees from on-the-job injury caused by strenuous work and chemical exposure (SMC 14.25.070), (3) to improve access to affordable healthcare (14.25.110), and (4) to reduce disruptions to Seattle’s economy resulting from changes in hotel ownership (14.25.130). There is simply no rational

or plausible way to connect I-124’s unprecedented and controversial—and unconstitutional—blacklist provision to the traditional health, safety, and labor standards that make up much of the rest of the bill. Division I appropriately found the provisions are not germane to one another.

As this Court recently reiterated “[t]he key inquiry 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.’ If so, the initiative is void in its entirety.” *Lee*, 185 Wn.2d at 621 (quoting *Kiga*, 144 Wn.2d at 825). Here, there is no way to know whether Seattleites were voting for the blacklist, the panic button, or the general health, safety, and labor provisions in the other sections. Voters were entitled to consider and vote separately on the distinct laws contained in I-124. Because there is no way for this Court to know if I-124’s subjects “would have garnered popular support standing alone, [it] must declare the entire initiative void.” *Kiga*, 144 Wn.2d at 828. Therefore, Division I’s ruling is entirely consistent with this Court’s decisions regarding the purpose and proper application of the single subject rule.

Petitioners argue that *Amalgamated Transit*—a case in which the Supreme Court invalidated a law for violation of the single subject rule—is inconsistent with the Court of Appeals’ decision. Not so. In *Amalgamated Transit*, the Court determined that a ballot title was general

then found no rational unity between the two subjects: (1) reducing automobile license tab fees and eliminating the Motor Vehicle Excise Tax (“MVET”), and (2) providing a method of approving all future tax increases, designed to prevent an increase in taxes to offset the decrease accomplished by the elimination of the MVET. 142 Wn.2d at 217. The Court rejected the argument that the tax increase restriction was sufficiently related to the elimination of the MVET, finding “neither subject necessary to implement the other.” *Id.* Division I here correctly held that I-124 cannot pass muster under this approach to rational unity. The decision below explains at length why the different subparts of I-124 are not necessary to implement the others:

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.

Slip op. at 15; *see also* Slip op. at 16-17.

The Court of Appeals here also recognized that the interdependence of laws is not the only way this Court looks at rational unity. Slip. op. 12-17. It looked at I-124’s different laws through each of this Court’s relevant single subject cases and appropriately determined that none supports finding rational unity among I-124’s patchwork of

laws. Among other things, it noted that each of the main provisions had a different purpose, Slip. op. at 15; that the “private cause of action provision” was a “classic example of logrolling,” *id.* at 17; and that the blacklisting provision regulates hotels’ relationship with their guests while the rest regulates the employer-employee relationship, *id.* at 19.

Petitioners rely heavily on *Washington Ass’n for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 665 (2012), but that case also supports the decision below. In *Lee v. State*, this Court explained the decision in *Washington Ass’n for Substance Abuse*:

There, we held that an earmark of funds for public safety was germane to the general subject of liquor privatization because privatizing liquor implicated public safety and local governments would have to enforce the new liquor sales laws. Thus, the earmark was “necessary to implement” the statute. ***Also relevant was the fact that the legislature had previously treated the subjects of liquor regulation and public welfare together.***

185 Wn. 2d 608, 623 (2016) (citations omitted) (emphasis added). The last point bears further consideration. If two laws are of the type that are traditionally taken up together, it makes sense that courts would more readily treat them as germane to one another. Petitioners fail to identify any examples of blacklist laws akin to the one in I-124, so they obviously have no examples of blacklist laws that were passed in a single enactment along with a health insurance mandate or a job security law. Petitioners

did not identify a single example of a law that combines any two of I-124's separate laws, let alone all of them.

There is also nothing in the Court of Appeals' decision that is inconsistent with *Filo Foods, LLC v. City of SeaTac*, the case the City and Intervenors identify as most analogous to this one. In *Filo Foods*, the Court found all Proposition 1's substantive provisions "reasonably germane" to the subject of labor standards. 183 Wn.2d 785 (2015). That is simply not the case for I-124. Unlike the measure in *Filo Foods*, all provisions of which were intended to address "minimum employee benefits, including job security," *id.* at 785, the subparts of I-124 have widely different purposes. As the Court of Appeals stated, "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." Slip op. at 15. That analysis is entirely consistent with *Filo Foods*.

The Court of Appeals took a measured approach to assessing whether I-124 passes muster under the rubric of this Court's single subject jurisprudence. This Court should affirm.

B. I-124 Violates The Core Promise of the Single Subject Rule: Separate Consideration of Separate Laws

The single subject rule dates back to the early democracies of

Western civilization. In 98 B.C., the Romans prohibited passing laws that contained unrelated provisions to prevent crafty lawmakers from hitching unpopular provisions onto popular ones. ROBERT LUCE, *LEGISLATIVE PROCEDURE* 548 (1922). More than two millennia later, most U.S. states have enshrined some form of the single subject rule into their constitutions. See Martha J. Dragich, *State Constitutional Restrictions on Legislative Procedure: Rethinking the Analysis of Original Purpose, Single Subject, and Clear Title Challenges*, 38 HARV. J. ON LEGIS. 103, App. 1 (2001). The core promise of the single subject rule—in all its forms—is “to secure to every distinct measure of legislation a separate consideration and decision, dependent solely upon its individual merits.” *Minnesota v. Cassidy*, 22 Minn. 312, 322 (1875).

This Court has recognized this first principle of the single subject rule in many decisions. See, e.g., *Kiga*, 144 Wn.2d at 825. The single subject test “is founded on the question whether a measure is drafted in such a way that those voting on it may be required to vote for something of which the voter disapproves in order to obtain approval of an unrelated law.” 142 Wn.2d at 212. This principle is at the heart of the Court’s single subject rule jurisprudence, but it can get lost in a complex, multi-part test to assess a law’s compliance with the rule.

Looking at I-124 through the lens of that first principle, it is

exactly the kind of legislation the single subject rule was intended to prevent: I-124 combines a hodgepodge of disparate regulations, each with different implications for different constituencies. Unlike the initiative in *Filo Foods*, which contained provisions that related solely to the employer-employee relationship, I-124 contains provisions regulating the employer-employee relationship *and also* a blacklist that applies to hotel guests from Seattle and around the country. There is no way to know whether Seattle voters would have approved each of I-124's separate laws if allowed to vote on them separately.

C. I-124 Is Part of the Panic Button Movement, But It Is Far More Than a Panic Button Law

In the wake of recent revelations about sexual harassment in Hollywood, the media, political circles, and workplaces around the country, there has been a widespread push for more and stronger protections for those in vulnerable positions. In the hotel industry, there has been a nationwide “movement to provide panic buttons to housekeepers.” Ann C. McGinley, *Harassment in Hotel Casinos: Legal Liability, Prevention and Remediation*, NEV. LAWYER, May 2019, at 9. “In cities across the country, locals of [UNITE HERE] have been pushing ‘panic button’ ordinances.” Charles Du, *Securing Public Interest Law’s Commitment to Left Politics*, 128 YALE L.J. FORUM 244, 263-64 (2018).

While this challenge to I-124 has been pending, other panic button laws have passed, without blacklist provisions or wage premiums or insurance mandates. See Julia Jacobs, *Hotels See Panic Buttons as a #MeToo Solution for Workers. Guest Bans? Not So Fast*, N.Y. TIMES, Nov. 11, 2018, <https://www.nytimes.com/2018/11/11/us/panic-buttons-hotel-me-too.html>. In addition to “the passage of local ordinances, ‘panic button’ measures have made their way into several collective bargaining agreements across the country, including those in New York.” Shawn D. Fabian, “*Panic Button*” *Laws Make Their Way Across The U.S.*, NAT. L. REV., May 9, 2019. In response to the panic button movement, many major hotel chains, with the support of Respondent AHLA, have committed to providing panic button devices to their employees nationwide, irrespective of state and local laws. See Madeline Rundlett, *Major Hotels to Give Workers Panic Buttons to Prevent Sexual Harassment*, THE HILL, Sept. 6, 2018, <https://thehill.com/homenews/news/405489-major-hotels-to-give-workers-panic-buttons-to-prevent-sexual-harassment>.

Here in Washington, the panic button movement gained momentum when voters passed I-124. It eventually led the state legislature to enact SB 5258, a panic button law that applies to hotels throughout the state, not just in Seattle, along with employees in the retail

and security guard industries. The Legislature overwhelmingly passed SB 5258, which effectively supplants I-124. The senate unanimously approved the bill and the governor signed it into law on May 13, 2019. Based on the popularity of SB 5228, we can reasonably infer that the panic button portion of I-124 would have passed on its own.

The overwhelming popularity of panic button laws highlights the single subject rule problem with I-124. One of the goals of the rule is to prevent riding, “pushing through unpopular legislation by attaching it to popular or necessary legislation.” Slip op. ¶ 22. Regardless of whether I-124 is actually the product of riding, the hitching of disjointed laws to the panic button provision creates the appearance of an improper legislative process. Seattlites had to vote on a popular panic button proposal that was mashed together with a disparate and thorny set of other laws that did not have the same tailwind. There is no blacklist movement sweeping the country. There is no nationwide movement to mandate gold-level insurance subsidies exclusively to workers in the hotel industry. There is no consensus in Washington to create a private cause of action to enforce workplace safety rules. These proposals are controversial.

There is an ongoing debate about the level of due process appropriate for sexual harassment and assault hearings. *See, e.g., Blair Baker, When Campus Sexual Misconduct Policies Violate Due Process*

Rights, 26 Cornell J. L. & Pub. Pol’y 533, 540 & n. 3 (2017). Procedural due process has also been the focus of recent challenges to the Trump administration’s immigration policies. *See, e.g., ACLU Sues to Stop Trump Policy on Jailing Asylum Seekers*, THE GUARDIAN, May 2, 2019. I-124’s blacklist provision mandates punishment of accused hotel guests with *no process*—no notice, no hearing—and it may have a disparate impact on different ethnic and racial groups.² If the blacklist law had been proposed on its own, it would have been controversial.

Health insurance is a hot topic, with steadily rising health care costs and a multitude of opinions about how to bring better health outcomes to communities as efficiently as possible. A law that mandates premium health insurance for a subset of employees in a single industry would be controversial, among other reasons, because it would address the health care crisis on a piecemeal basis. *See* SB 6032 (directing Washington Institute for Public Policy to conduct a study of single-payer and universal health coverage systems).

² According to a study published by the National Registry of Exonerations, a black prisoner serving time for sexual assault is 3½ times more likely to be innocent than a white person convicted of sexual assault. Samuel R. Gross, et al., *Race and Wrongful Convictions in the United States* (Mar. 7, 2017), available at https://www.law.umich.edu/special/exoneration/Documents/Race_and_Wrongful_Convictions.pdf. Statistics like this could play out in a system, like the one created by I-124, where people can be accused and punished without any notice or opportunity to respond.

Likewise, undoing the “grand compromise” adopted in WISHA (“to remove workplace injuries from the court system and to provide injured workers with a swift, no-fault compensation system” Slip. Op. at 16), merited separate consideration by voters. Seattle voters were deprived of their right to vote on each of these novel laws independently.

D. Logrolling Is Not Permissible Simply Because the Different Laws Affect the Same Industry

Petitioners and two *amici* argue that the Court of Appeals construed the single subject rule in a way that interferes with the ability to address complex issues with comprehensive legislation. Their concerns are misplaced. What both *amici* and Petitioners fail to mention is that comprehensive legislation is often achieved through enactment of multiple separate laws. It happens all the time, and it avoids putting multiple laws into a single piece of legislation.

Consider our legislature’s most recent session. Lawmakers enacted a number of bills affecting the health care industry, including among others, a law creating a public option on the individual insurance exchange (SB 5526), a law protecting against surprise out-of-network bills (SSHB 1065), and a law requiring reporting of health care transactions to the AG (HB 1607). All these laws relate to the health care industry and the goals of providing higher quality health care to more citizens. The

different laws attack the multifaceted problem from different angles, affect different constituents, and were appropriately enacted separately.

The use of bill packages is not limited to large industries. Also in this session, the legislature enacted four different laws to protect orca whales. HB 1579 tackles the issue by protecting orca (and salmon) habitats from harmful development; HB 1578 adds requirements for vessels carrying crude oil to minimize the risk of oil spills that could harm orcas; SB 5577 addresses dangers posed by boats, imposing vessel speed limits, increasing the buffer zone around orcas, and imposing whalewatch licensing and fees; SB 5135 is intended to prevent pollution by certain chemicals especially harmful to orcas. Four different laws enacted separately in the same session to address the same goal: safety of orca whales. Four separate laws, each affecting different constituents, each serving the general purpose of protecting orca whales, but not germane to each other. The same goes for I-124. Four separate laws, each affecting different constituents, each trying to serve the general purpose of improving the health, safety, and welfare of hotel workers, but not germane to each other. The single subject rule requires that these laws be voted on separately.

In its brief, National Employment Law Project asserts that various national and international organizations have adopted model standards for

protecting hotel workers that encompass all of the provisions of I-124. NELP Amicus Br. at 3-5. The existence of comprehensive proposed standards for an industry is neither surprising nor compelling: organizations advocating standards in an industry undoubtedly look to a compendium of sources, including many separately enacted laws. NELP does not identify any jurisdiction that has enacted all the different laws in I-124 all at once. Neither do Petitioners or the AG.

At bottom, Petitioners and *amici* ask this Court to water down the protections of the single subject rule in the interest of easing the jobs of legislators, lobbyists, and interest groups. The Court should reject that invitation. Sometimes comprehensive legislation requires more than one law to address an industry or constituency. That is nothing new, and not an obstacle to effective legislation. The Court should affirm the Court of Appeals and affirm the enduring protection of the single subject rule.

E. I-124's Blacklist Violates Privacy and Due Process Rights, and Its Workplace Safety Provisions Are Preempted by WISHA

The Court of Appeals appropriately invalidated I-124 in its entirety because it violates the single subject rule. As a result, there was no need to reach the other two issues on appeal. Respondents challenged the initiative on two additional grounds: (1) the requirement that hotels do what the City could not do on its own (punish accused guests without

notice or a hearing) violates constitutional guarantees of privacy and due process and (2) the workplace safety provisions are preempted by WISHA. If this Court does not affirm the Court of Appeals' single subject ruling, it should reverse the trial court and invalidate these two unconstitutional provisions for the reasons briefed to the Court of Appeals.

Petitioners ask the Court to ignore these other problems with I-124. *See* Intervenors' Reply in Supp. of its Pet. for Discretionary Review. They argue these issues on appeal do not satisfy the requirements of RAP 13.4. Of course they do. Respondents' have argued WISHA preemption and challenged I-124's blacklist law as unconstitutional every step of the way: in the complaint, on summary judgment, and on appeal. The constitutional infirmity of these provisions of I-124 qualifies under RAP 13.4(b)(3) as "a significant question of law under the Constitution of the State of Washington or of the United States." It also qualifies under RAP 13.4(b)(4) as "an issue of substantial public interest that should be determined by the Supreme Court." Moreover, under RAP 13.7, "[i]f the Supreme Court reverses a decision of the Court of Appeals that did not consider all of the issues raised which might support that decision," the Supreme Court may "consider and decide those issues" *Id.* at 13.7(b)

If the Court of Appeals were reversed on the single subject rule without analysis or directions on the other issues, the case would have to

go through a time-consuming and costly remand to Division I and potentially another appeal to this Court. Principles of judicial economy counsel against such an unnecessarily elongated and disjointed process. *See Seattle v. McCready*, 123 Wn.2d 260, 269 (1994) (*en banc*).

IV. CONCLUSION

I-124 violates the single subject rule because it contains multiple different laws that are not germane to each other. It includes one of the first panic button laws. It also includes an insurance mandate, a job security law, a requirement for premium pay based on the amount of room cleaning required in a day, a new private right of action for workplace injuries, and the first blacklist law that requires hotels to punish accused guests without notice or an opportunity to be heard. If the single subject rule is going to have any enduring meaning, those distinct laws cannot all be presented to voters in a single ballot measure. That does not mean the laws cannot be enacted at the same time; they just need separate votes, like the different health care and orca protection laws recently passed by the Washington Legislature. The Court of Appeals reached the right result, and this Court should affirm.

RESPECTFULLY SUBMITTED this 31st day of May, 2019.

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CERTIFICATE OF SERVICE

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

On this date, I caused to be served in the manner noted below, a copy of the Appellants American Hotel & Lodging Association, Seattle Hotel Association, and Washington Hospitality Association's Supplemental Brief on the following:

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Executed this 31st day of May, 2019, in Seattle, Washington.

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