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STATE OF WASHINGTON
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NO. 99771-3

SUPREME COURT OF THE STATE OF WASHINGTON

THE WASHINGTON FOOD INDUSTRY ASSOCIATION,
et al.,
Respondents,

v.

THE CITY OF SEATTLE,
Petitioner.

**NATIONAL EMPLOYMENT LAW PROJECT, ET AL.'S
MOTION FOR LEAVE TO FILE BRIEF OF AMICI
CURIAE**

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Attorneys for Proposed Amici Curiae

I. Introduction

The National Employment Law Project (NELP), along with other non-profit organizations identified below, respectfully move under RAP 10.1(e) and 10.6 for leave to file a brief as *amici curiae* in this matter. Counsel for NELP has conferred with counsel for the parties to this appeal, who do not oppose this motion.

II. Applicant's interest and the persons applicant represents.

Amici curiae are national nonprofit organizations that work to advance workers' rights and economic justice through legal and policy advocacy. *Amici* are familiar with illegal business practices that exploit workers, such as corporations' independent contractor misclassification, and have extensive experience advocating on behalf of underpaid workers, including immigrants and workers of color. *Amici* have a strong interest in this case because interruption of the City's Ordinance No. 126094 (the Ordinance) will harm app-based delivery workers, who have worked throughout the pandemic while

being locked out of ordinary benefits and protections.

The **National Employment Law Project** (“NELP”) is a nonprofit legal organization with more than fifty years of experience advocating for the employment and labor rights of underpaid and unemployed workers. For decades, NELP has focused on the ways in which various work structures created by employers, such as mislabeling workers “independent contractors,” exacerbate income and wealth inequality, the segregation of workers by race and gender into poor quality jobs, and the ability of workers to come together to negotiate with business over wages and working conditions. NELP has litigated directly and participated as *amicus curiae* in numerous cases and has provided Congressional and state testimony addressing the issue of employment relationships and independent contractors, including in the app-based economy.

The **Economic Policy Institute** (“EPI”) is a nonprofit organization with over 35 years of experience analyzing the effects of economic policy on the lives of working people in the

United States. EPI has studied and produced extensive research on the economic implications of employers misclassifying workers as independent contractors, which is a longstanding, pervasive problem affecting millions of workers and costing government agencies billions of dollars each year. Further, EPI research shows that misclassification is rampant in low-wage, labor-intensive industries where women and people of color are overrepresented. EPI has participated as *amicus curiae* in numerous cases addressing the implications of employer misclassification of independent contractors under federal and state labor and employment laws. EPI strives to protect and improve the economic conditions of working people.

Jobs With Justice Education Fund is a 501(c)(3) nonprofit organization that believes that all workers should have collective bargaining rights, employment security, and a decent standard of living within an economy that works for everyone. We bring together labor, community, student, and faith voices at the national and local levels to win

improvements in people’s lives and shape the public discourse on workers’ rights and the economy. Jobs With Justice has done significant research on the compensation that gig workers for app-based companies—including food delivery network companies—receive, has worked on and supported organizing efforts for gig workers, and has advocated for policy changes to benefit gig workers.

The **National Council for Occupational Safety and Health** (“**COSH**”) is dedicated to promoting safe and healthy working conditions for all working people through organizing and advocacy. Our belief that almost all work-related deaths and serious injuries and illnesses are preventable motivates us to encourage workers to take action to protect their safety and health, promote protection from retaliation under job safety laws, and provide quality information and training about hazards on the job and workers’ rights. A decision against the City of Seattle in this case would put many workers performing dangerous jobs in peril, and by extension would harm the

broader community as well.

Public Rights Project (“PRP”) works at the intersection of community organizing and government enforcement, with a specific focus on catalyzing equitable and community-based enforcement. Spurred by a mission to bridge the gap between the promise of laws and the lived experiences of historically underserved groups, PRP has focused considerable attention advocating for enforcement of needed protections against businesses exploiting workers in the fissured economy as well as connecting government enforcement agencies with organizations that support affected workers. PRP has focused its advocacy efforts on protecting the rights of gig workers, an especially vulnerable group, given the low wages provided and the lack of safety precautions during the COVID-19 pandemic.

III. Applicant’s familiarity with the issues involved and the scope of the argument presented by the parties.

Amici have carefully reviewed the briefing before the trial court and to this Court and are familiar with the issues involved and the scope of the parties’ arguments.

IV. Specific issues to which the brief will be directed.

As national nonprofit organizations, *amici* seek to highlight the working conditions of people who work for a delivery platform employer. In Seattle and nationally, app-based delivery workers lack access to basic workplace protections due to their purported classification as independent contractors. At the same time, they lack the independence to freely set their own rates on their employer's platform, which could help to mitigate the financial hardships of the COVID-19 pandemic. To support this workforce, which disproportionately is made up of people of color and immigrants, the Ordinance has helped to ensure delivery workers' health and financial security during the pandemic. *Amici's* focus will be principally empirical.

V. Applicant's reason for believing additional argument is necessary.

Amici believe their nationwide perspective and longstanding advocacy for workers excluded from many workplace protections will provide the Court a concrete sense

of the lived reality that animates the public policy behind the Ordinance. This perspective, *amici* believe, will help the Court evaluate petitioner's exercise of its police powers.

VI. Conclusion

For these reasons, *amici* respectfully ask the Court to grant them leave to file an *amici curiae* brief supporting the petitioner.

I certify that the foregoing motion contains 962 words, in compliance with RAP 18.17.

Respectfully submitted this 21st of December, 2021.

/s/ Darin M. Dalmat

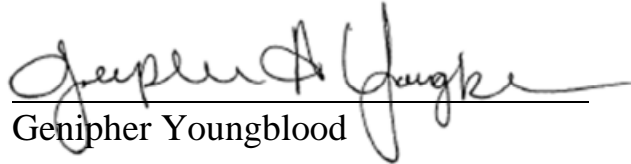
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DECLARATION OF SERVICE

I, Genipher Youngblood, hereby declare under penalty of perjury under the laws of the state of Washington that on the date noted below I caused the foregoing document to be filed with the Washington State Supreme Court via the appellate efilng system, which will automatically provide notice of such filing to all required parties.

Signed in Federal Way, WA, this 21st day of December, 2021.


Genipher Youngblood

BARNARD IGLITZIN & LAVITT

December 21, 2021 - 11:56 AM

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