No. 1035195

SUPREME COURT OF THE STATE OF WASHINGTON

ASSURECARE ADULT HOME LLC; ASSURECARE ADULT FAMILY HOME CARE LLC; ASSURECARE FAMILY HOME CARE LLC; MARCELINA S. MACANDOG; and GERALD MACANDOG,

Petitioners,

v.

JOCYLIN BOLINA; ADOLFO PAYAG; MADONNA OCAMPO; HONORINA ROBLES; HOLLEE CASTILLO; and REGINALD VILLALOBOS,

Respondents.

PETITIONERS' RESPONSE TO BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION, ET AL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

I. INTRODUCTION

The ACLU's *amici* brief introduces a trove of citations to history texts concerning racial discrimination that was endemic to much of the country for too many years. However, the ACLU's *amicus* brief wholly ignores the undisputed facts that establish how the Legislature's introduction of adult family homes in 1989 dramatically transformed the home health industry in ways that have helped to remedy this history of discrimination. Moreover, by fixating on distant histories, the ACLU's *amicus* brief wrongly disregards how the Court striking the live-in exemption to the Minimum Wage Act ("MWA") would harm the many women, people of color, immigrants who are the predominate owners of adult family homes as well as the many disabled and inform Washingtonians who rely on adult family homes to live in their communities while receiving the supportive care they need.

II. RESPONSE

A. In Washington, Adult Family Homes Help Remedy Historical Discrimination

Washington has more than 2,800 adult family homes.[1] "Most [of these] adult family homes can be categorized as women or minority owned business[es]."[2] "A significant portion of [adult family home] workers *and owners* are recent immigrants or first generation Americans."[3] Consistent with these facts, Defendants' adult family homes are owned and operated by a woman of color who, like Plaintiffs, immigrated to the United States from the Philippines.[4]

In other settings, "[c]aregiving is often seen as an entry level, low wage position with no career ladder."[5] However, "[adult family home] ownership provides a unique opportunity for caregivers to grow as entrepreneurs."[6] Thus, "running a

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[1] Brief of Petitioner, Appendix ("App.") 144:10-11.
[2] App. 113:4-5.
[3] App. 113:5-6 (emphasis added).
[4] App. 105:18-22, 106:16-17.
[5] App. 112:22-23.
[6] App. 112:23.

successful [adult family home] is a great opportunity for many women, people of color and immigrants to achieve economic independence as small business owners."[7]

B. Striking the Live-In Exemption to the Minimum Wage Act Would Unfairly Harm Women, People of Color, Immigrants, Disabled People, and Elders

Most adult family homes are owned by women, people of color, and/or immigrants.[8] The Legislature empowered all of these diverse, small-business owners to negotiate collectively with the State of Washington on all economic matters including Medicaid compensation rates.[9] In this manner, adult family home owners acting collectively have been able to negotiate with the State to secure Medicaid reimbursement rates to a level that allows them to stay in business, albeit with very thin margins.[10] However, pursuant to this Court's precedents, such

[7] App. 112:19-22.
[8] *See supra*, §II(A).
[9] App. 110:1-12, 113:11-17; *also see* RCW 70.128.043(1).
[10] App. 113:15-19.

compensation rates presumed that the live-in exemption of the MWA was constitutional.[11]

Medicaid pays for residency and care of the overwhelming majority of Washingtonians who reside at adult family homes.[12] Consistent with this fact, Medicaid pays for residency and care of nearly all the people who reside at Defendants' adult family homes.[13] Because these Medicaid payment rates have presumed that the live-in exemption of the MWA was constitutional, it has been and remains cost-prohibitive for adult family home owners to compensate live-in caregivers as if the live-in exemption did not exist while also providing them and their families with free room and board.[14]

Accordingly, "[i]f the live-in exemption is ruled unconstitutional, and [adult family home] owners are required to comply with the MWA, it would upend the entire [adult

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[11] *Madison v. State*, 161 Wn.2d 85, 92, 163 P.3d 757 (2007).
[12] App. 113:8-12, 114:16-17.
[13] App. 106:2-3.
[14] App. 114:15-16.

family home] industry and likely result in the closure of [adult family homes]. This would mean fewer available beds for the growing population of aging Washingtonians."[15] Moreover, this would punish the predominately female, minority, and/or immigrant caregivers who followed the laws as written by the Legislature to become small business owners who provide homes and supportive care to disabled and elderly Washingtonians who desperately need such.[16]

C. The *Amici*'s New Equal Protection Clause Arguments are Unavailing

The ACLU's *amici* brief raises new arguments arising from the equal protections clause of the Washington Constitution.[17] These equal protections clause arguments were neither raised nor argued in the trial court below. Whether raised on appeal by parties or amici, such "arguments not raised

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[15] App. 114:18-21.
[16] *See* Brief of Petitioners, §III(A).
[17] *See* ACLU's *Amici* Brief, §III(C); *e.g.*, *see* ACLU's *Amici* Brief 23, *citing Schroeder v. Weighall*, 179 Wn.2d 566, 577, 316 P.3d 482 (2014).

in the trial court generally will not be considered on appeal."[18] Therefore, these equal protection clause arguments should be disregarded.

Nevertheless, if any equal protection clause arguments are considered, then this Court's precedents establish that "the Legislature may constitutionally approach the problem of employment discrimination one step at a time."[19] In this regard, there is no genuine dispute that the impact of the Legislature's enablement of adult family homes in 1989 has served to remedy, not perpetuate, discrimination among home health workers in Washington by giving adult family home caregivers a path to business ownership and agency that many have taken to their benefit.[20] It is immaterial that the Legislature did not rectify all adverse impacts of historical discrimination. As

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[18] *Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 853, 50 P.3d 256, 262 (2002), *quoting State v. Riley,* 121 Wash.2d 22, 31, 846 P.2d 1365 (1993);
[19] *Griffin v. Eller*, 130 Wn.2d 58, 66, 922 P.2d 788, 791 (1996).
[20] *See supra*, II(A).

repeatedly stated by the Court, "It is no requirement of equal protection that all evils of the same genus be eradicated or none at all."[21]

III. CONCLUSION

There is no genuine evidentiary dispute that Washington's adult family homes as legislated and enabled by the Legislature have done much to create a home healthcare system that provides viable, entrepreneurial opportunities for caregivers who are women, people of color, and/or immigrants. Moreover, there is no genuine evidentiary dispute that in providing such opportunities to historically marginalized minorities, adult family homes provide critically-needed homes with supportive care to vulnerable minorities such as the disabled and elderly. Finally, there is no genuine evidentiary dispute that affirming the outcome sought by the ACLU's *amici*

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[21] *Griffin*, 130 Wn.2d at 66, *quoting O'Hartigan v. Department of Personnel,* 118 Wash.2d 111, 124, 821 P.2d 44 (1991), *quoting Railway Express Agency, Inc. v. People of New York,* 336 U.S. 106, 110, 69 S.Ct. 463, 466, 93 L.Ed. 533 (1949).

brief would undermine if not undo much of the good that adult family homes have provided for all these historically marginalized minorities. Lost to the calculus of the plaintiffs and *amici*'s arguments is that the people principally harmed by eliminating the live-in exemption are themselves historically marginalized minorities such as women, people of color, immigrants, disabled people, and elders. Defendants respectfully ask the Court not to ignore such impacts. Thus, neither Plaintiffs nor *amici*'s evidence and arguments are sufficient to meet the high burden of proof required for the Court to hold that the MWA's live-in exemption is unconstitutional as applied to adult family home caregivers.[22]

[22] "The burden to prove a legislative act is unconstitutional rests on the statute's challenger—here, Plaintiffs—and is sometimes expressed as requiring proof beyond a reasonable doubt." *Quinn v. State*, 1 Wn.3d 453, 470–71, 526 P.3d 1, 12 (2023), *cert. denied*, 144 S. Ct. 680, 217 L. Ed. 2d 381 (2024). "As used in this context, 'beyond a reasonable doubt' is not an evidentiary standard but a reflection of 'respect for the legislature.'" *Id.*, at 471 n. 9, *citing Sch. Dists.' All. for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599, 606, 244 P.3d 1 (2010).

IV. CERTIFICATION

This document contains 1,239 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Dated this 26th day of August 2025.

Respectfully submitted,

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V. CERTIFICATE OF SERVICE

I certify that on the date below I caused a true and correct copy of this document to be served on all parties by e-filing this document through the Washington State Appellate Courts Secure Portal.

Signed this 26th day of August 2025 in Seattle, WA.

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SEATTLE LITIGATION GROUP PLLC

August 26, 2025 - 4:33 PM

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