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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 *AMICUS*
CURIAE WASHINGTON EMPLOYMENT LAWYERS
ASSOCIATION**

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I. RESPONSE

A. The *Amicus* Brief's Attempts to Dispute Defendants' Evidence Are Unavailing

Five years ago, this Court stated, “The extremely dangerous nature of dairy work entitles dairy workers to the statutory protection set out in article II, section 35.”¹

Addressing this issue, WELA’s *amicus* brief argues against Defendants’ evidence that caregiving at adult family homes is not extremely dangerous. However, Defendants provide clear and succinct evidence that caregiving at adult family homes, including Defendants’ own adult family homes, is not extremely dangerous work subject to the statutory protection set out in article II, section 35, of the Washington State Constitution.² This evidence is sufficient to defeat Plaintiff’s motion for summary judgment at issue in this appeal.³

¹ *Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, 196 Wn.2d 506, 521, 475 P.3d 164, 172 (2020) (emphasis added).

² See Petitioners’ Reply Brief, §II(A).

³ See Petitioners’ Reply Brief, §II(A); cf. *Keck v. Collins*, 184 Wn.2d 358, 368, 357 P.3d 1080, 1085 (2015) (“When we

Moreover, this evidence establishes reasonable doubt sufficient to sustain the constitutionality of Legislature’s live-in exemption enacted in the Minimum Wage Act.⁴

B. The *Amicus* Brief Wrongly Ignores the Collectively Bargained Medicaid Contracts with the State

Most adult family homes are owned by women, people of color, and/or immigrants.⁵ 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.⁶ 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

review a summary judgment order, we must consider all evidence in favor of the nonmoving party.”); *also see* CR 56(c),⁴ “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); *cf.* Petitioners’ Reply Brief, §II(A).

⁵ *See supra*, §II(A).

⁶ App. 110:1-12, 113:11-17; *also see* RCW 70.128.043(1).

that allows them to stay in business, albeit with very thin margins.⁷ However, pursuant to this Court's precedents, such compensation rates presumed that the live-in exemption of the MWA was constitutional.⁸

Medicaid pays for residency and care of the overwhelming majority of Washingtonians who reside at adult family homes.⁹ Consistent with this fact, Medicaid pays for residency and care of nearly all the people who reside at Defendants' adult family homes.¹⁰ 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.¹¹

⁷ App. 113:15-19.

⁸ *Madison v. State*, 161 Wn.2d 85, 92, 163 P.3d 757 (2007).

⁹ App. 113:8-12, 114:16-17.

¹⁰ App. 106:2-3.

¹¹ App. 114:15-16.

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 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.”¹² 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.¹³

All these facts substantiate that Defendants and the many other adult family home owners in Washington had to conduct their business in reliance on the constitutionality of the live-in exemption to the MWA.¹⁴ Nevertheless, the WELA *amicus*

¹² App. 114:18-21.

¹³ See Brief of Petitioners, §III(A).

¹⁴ See Petitioners’ Reply Brief, §II(C).

brief argues that the MWA's live-in exemption should be stricken retroactively. However, the WELA *amicus* brief fails to acknowledge that the State would have no obligation to also retroactively increase the previously negotiated Medicaid compensation rates so that the super majority of adult family homes paid through Medicaid could afford retroactively to increase the financial compensation of their former employees without facing bankruptcy and the end of their adult family home business. These are clearly circumstances where justice and equity require prospectively holding the live-in exemption unconstitutional, if at all.¹⁵

¹⁵ See Petitioners' Reply Brief, §II(C).

II. CERTIFICATION

This document contains 722 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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III. 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 - 4:35 PM

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