No. 1035195

SUPREME COURT OF THE STATE OF WASHINGTON

ASSURECARE ADULT HOME LLC, a Washington corporation; ASSURECARE ADULT FAMILY HOME CARE LLC, a Washington corporation; ASSURECARE FAMILY HOME CARE LLC, a Washington corporation; MARCELINA S. MACANDOG, an individual; and GERALD MACANDOG, an individual,

Petitioners,

v.

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

Respondents.

PETITIONERS' REPLY BRIEF

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I. INTRODUCTION

Plaintiffs answer Defendants' appeal by disputing and otherwise ignoring the evidence presented in opposition to their motion for summary judgment. However, Plaintiffs' interpretation of the evidentiary record cannot sustain their motion for summary judgment because all evidence must be considered in favor of Defendants, the nonmoving parties.[1] In this light alone, Plaintiffs' motion for summary judgment should be denied.

Even without these evidentiary obstacles to Plaintiff's motion, Plaintiffs still have the burden to prove "beyond a reasonable doubt" that the live-in exemption in RCW 49.46.010(3)(j) of the Minimum Wage Act violates the privileges and immunities clause in Article I, Section 12 of the Washington Constitution when applied to caregivers who reside

[1] *Keck v. Collins*, 184 Wn.2d 358, 368, 357 P.3d 1080, 1085 (2015) ("When we review a summary judgment order, we must consider all evidence in favor of the nonmoving party."); *also see* CR 56(c),

on the premises of the more than 2,600 adult family homes in Washington.[2] "As used in this context, 'beyond a reasonable doubt' is not an evidentiary standard but a reflection of 'respect for the legislature.' […] It signifies that [a Washington court] will not invalidate a statute unless the challenger, 'by argument and research, convince[s] the court that there is no reasonable doubt that the statute violates the constitution.'"[3] In this light, too, Plaintiffs' motion for summary judgment should be denied.

II. ARGUMENT

A. The Live-In Exemption does not Violate a Fundamental Right

In arguing that the live-in exemption violates the privileges and immunity provision of the Washington Constitution, Plaintiffs rely on this Court's decision in

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[2] *See Madison v. State*, 161 Wn.2d 85, 92, 163 P.3d 757 (2007) ("In general, '[a] statute is presumed to be constitutional, and the party challenging its constitutionality bears the burden of proving its unconstitutionality beyond a reasonable doubt.'") (citations omitted).

[3] *Quinn v. State*, 1 Wn.3d 453, 471, 526 P.3d 1, 12 (2023), *cert. denied*, 144 S. Ct. 680, 217 L. Ed. 2d 381 (2024).

Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc., 196 Wn.2d 506, 475 P.3d 164 (2020).

Article II, section 35 of the Washington Constitution requires the Legislature to enact "necessary" legislation that "protects employees working in certain especially dangerous industries."[4] In *Martinez-Cuevas*, the Court "conclude[d] that article II, section 35 [of the Washington Constitution provides […] dairy workers the fundamental right to health and safety protections of the Minimum Wage Act."[5] This conclusion rests on the Court's determination that "[t]he ***extremely dangerous*** nature of dairy work entitles dairy workers to the statutory protection set out in article II, section 35."[6] In reaching this determination, the Court cited long-established precedent which "not[ed] that farmworkers engage in 'an extremely dangerous

[4] *Martinez-Cuevas*, 196 Wn.2d at 519, *citing* Wash. Con. art. II, § 35.
[5] *Martinez-Cuevas*, 196 Wn.2d at 522.
[6] *Martinez-Cuevas*, 196 Wn.2d at 521.

occupation[.]'"[7] Moreover, the Court cited a deep record of undisputed evidence establishing that "dairy work is some of the most hazardous in the United States."[8] Thus, the evidentiary and precedential record in *Martinez-Cuevas* left no reasonable doubt about the extreme danger of dairy work which implicated the fundamental right to statutory health and safety legislation to protect such dairy workers as required by article II, section 35 of the Washington Constitution.[9] However, the record here falls far short of establishing beyond a reasonable doubt that live-in caregivers at adult family homes engage in such "extremely dangerous" work that they have a fundamental right to the health and safety protections provided by the Minimum Wage Act.

In *Martinez-Cuevas*, the defendants did "not dispute that

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[7] *Martinez-Cuevas*, 196 Wn.2d at 521 (emphasis added), *citing Macias v. Dep't of Labor & Indus.*, 100 Wn.2d 263, 274, 668 P.2d 1278 (1983).
[8] *Martinez-Cuevas*, 196 Wn.2d at 520.
[9] *Martinez-Cuevas*, 196 Wn.2d at 521; *cf. Madison,* 161 Wn.2d at 92, *supra* §I at n. 2.

the dairy industry is dangerous to the health of dairy workers."[10] In contrast, Defendants here provide unambiguous evidence that caregiving at adult family homes is not dangerous.[11] For example, "the injury rate for Washington's dairy industry [at issue in *Martinez-Cuevas*] was 121 percent higher than all other state industries combined and 19 percent higher than the *entire* agricultural sector[;]"[12] while here, the injury rate for caregivers at adult family homes is about 38 percent *lower* than the injury rate of childcare workers such as nannies.[13] Moreover, in the 16 years that Defendants have provided adult family homes to vulnerable Washingtonians, only one employee has had a work-place injury,[14] and this was a minor elbow injury requiring only one doctor's visit.[15] Thus, while workplace injuries are possible for adult family home

[10] *Martinez-Cuevas*, 196 Wn.2d at 520-521.
[11] Brief of Petitioner 10-11 at §III(C).
[12] *Martinez-Cuevas*, 196 Wn.2d at 520.
[13] Brief of Petitioner at App. 148:6-9.
[14] Brief of Petitioner at App. 106:21-22.
[15] Brief of Petitioner at App. 107:1-2.

caregivers, such work does not involve extreme danger to life and limb of the type that left no reasonable doubt for the Court in *Martinez-Cuevas* that dairy workers have a fundamental right to "necessary laws for the protection of persons working in mines, factories and other employments dangerous to life and deleterious to health[.]"[16] Before concluding otherwise, the Court would first have to determine that nannies, babysitters, and other childcare workers are engaged in "extremely dangerous" work, as the rate of childcare worker injuries is much higher than that of caregivers at adult family homes.[17]

Plaintiffs' answering brief disputes Defendants' evidence and its impact on Plaintiffs' motion summary judgment against the constitutionality of the live-in exemption. However, for purposes of Plaintiffs' motion for summary judgment, the parties' evidentiary disputes must be resolved in favor of

[16] Wash. Con. art. II, § 35; *cf. Martinez-Cuevas*, *supra*.
[17] *See* Brief of Petitioner at App. 148:6-9.

Defendants.[18] But even if the Court could weigh the credibility and inferences of the parties' evidence, Defendants' evidentiary record and related arguments are sufficient to establish reasonable doubt sufficient to reverse the King County Superior Court's ruling that the live-in exemption to the Minimum Wage Act implicates a fundamental right of live-in caregivers employed at the more than 2,600 adult family homes throughout Washington.

B. Reasonable Grounds Exist for the Live-In Exemption

Plaintiffs' answering brief would have the Court rule that, as a matter of law, the Legislature cannot have reasonable grounds for the live-in exemption because its original enactment in the 1960s did not include legislative history that justifies application of the exemption to adult family home caregivers. This argument ignores the fact that adult family homes did not exist in Washington until after the Legislature

[18] *Keck*, 184 Wn.2d at 368.

enabled their existence in 1989.[19] Moreover, clear precedent establishes that the live-in exemption as applied to adult family caregivers can be considered and understood in the context of the Legislative enactments that enabled adult family homes to exist.[20]

The Plaintiffs' answering brief then cites *Martinez-Cueva* to argue that the Legislature's enactments enabling the existence of adult family homes cannot be considered;[21] "The history of unrelated issues and statutes offers little in the way of legislative intent."[22] However, this argument ignores that Plaintiffs seek an order declaring that the live-in exemption is unconstitutional *as applied to adult family home caregivers*

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[19] *See* Brief of Petitioner 3 ("The State of Washington began licensing adult family homes in 1989 as part of an ongoing effort to find less expensive alternatives to nursing homes within the context of long-term supportive care that is primarily paid for by Medicaid."), *citing* App. 148:20-23.
[20] "[T]he legislature is presumed to enact laws with full knowledge of existing laws." *Jametsky v. Olsen*, 179 Wn.2d 756, 766, 317 P.3d 1003, 1008 (2014) (citation omitted).
[21] Answering Brief 44-45.
[22] *Martinez-Cuevas*, 196 Wn.2d at 524.

whose work only exists because of the Legislature's enabling enactments in 1989 and thereafter. Thus, the Court can and should consider that a stated purpose for the existence of adult family homes is to "[e]ncourage consumers, families, providers, and the public to become active in assuring their full participation in development of adult family homes that provide high quality and cost-effective care[.]"[23] To accomplish this purpose, the Legislature expressly requires a caregiver to reside at each adult family home.[24] The Legislature also requires each adult family home in Washington to be made a safe place to both work and live.[25] To this end, the Legislature requires each

[23] RCW 70.128.007(3).
[24] RCW 70.128.030(12).
[25] *See* RCW 70.128.030(3) ("Adult family homes shall be maintained internally and externally in good repair and condition. Such homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home."); RCW 70.128.030(6) ("Adult family homes shall be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.");

adult family home to be inspected by the State at least once every eighteen months.[26] Such legislative enactments can and do inform the Legislature's intent for allowing the live-in exemption of the Minimum Wage Act to be applied to caregivers who are required to reside at the adult family homes where they work.[27] Thus, the Legislature has made tough policy decisions to provide for both the health and safety of caregivers as well as the vulnerable Washingtonians who would not otherwise have a residential home to live in.[28] This is the

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RCW 70.128.030(9) ("Adult family homes shall have clean, functioning, and safe household items and furnishings.").

[26] RCW 70.128.070(2)(b)(i).

[27] *See Jametsky*, 179 Wn.2d at 766.

[28] *State v. Whitfield*, 132 Wn. App. 878, 893, 134 P.3d 1203, 1212 (2006) ("all citizens have a fundamental right to the State's protection of their physical safety"); *In re Dependency of R.H.*, 129 Wn. App. 83, 88–89, 117 P.3d 1179, 1181 (2005) ("Ryan forgets that R.H has fundamental rights at stake as well—the fundamental rights to health and safety, which the State, through the Department, has a compelling interest in protecting").

Legislature's prerogative.[29] Accordingly, there exist reasonable grounds for the live-in exemption to the Minimum Wage Act *as applied to caregivers who work at adult family homes*.[30]

C. Any Adverse Holding Should Apply Prospectively

Plaintiffs' answering brief makes clear that Plaintiffs are seeking to recover wages for each of the 24 hours of every day that they are required to reside at the adult family homes where they work.[31] Plaintiffs' answering brief offers no evidence to dispute Defendants' evidence that many of over 2,600 adult family homes providing residential living environments and

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[29] *State v. Gresham*, 173 Wn.2d 405, 428, 269 P.3d 207, 217 (2012) ("[T]he Legislature speaks for the people and we are hesitant to strike a duly enacted statute unless fully convinced, after a searching legal analysis, that the statute violates the constitution."), *quoting Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998).

[30] Brief of Petitioner 3-8, §III(A).

[31] Answering Brief 1 ("Plaintiffs worked around-the-clock as Adult Family Home caregivers"); *and* Answering Brief 43 n. 93 (citing a manual indicating that work is being "required to remain on the premises"). However, Defendants strongly dispute Plaintiffs' characterization of their work requirements. *See* Brief of Petitioner 8-10, §III(B).

supportive care to tens of thousands of vulnerable Washingtonians would close if adult family homes faced retroactive liability if the live-in exemption is held unconstitutional.[32] "When retroactive application causes [such] hardships and inequities, our Supreme Court allows courts to give only prospective effect to its decision to hold a statute unconstitutional."[33] A recognized reason to reject retroactive application is because of "justifiable reliance on a statute which is presumptively constitutional."[34] Plaintiffs' answering brief essentially argues that the 2,600 adult family homes in Washington have not justifiably relied on the presumed constitutionality of the live-in exemption because *Martinez-Cuevas* provided notice that the live-in exemption is unconstitutional. However, this argument is unavailing.

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[32] Brief of Petioner 7-8.
[33] *In re Marriage of Anderson*, 134 Wn. App. 506, 512, 141 P.3d 80, 83 (2006), *citing Bond v. Burrows,* 103 Wn.2d 153, 163–64, 690 P.2d 1168 (1984).
[34] *Bond*, 134 Wn. App. at 164.

Martinez-Cuevas had nothing to do with the constitutionality of the live-in exemption at RCW 49.46.010(3)(j) of the Minimum Wage Act. Rather, "[a]t issue [was] whether RCW 49.46.130(2)(g) violates the privileges or immunities clause or equal protection, article I, section 12 of the Washington State Constitution" as applied to dairy workers.[35] Thus, there is no reasonable interpretation of *Martinez-Cuevas* that provides sufficient notice to overcome the strong presumption that all enactments of the Legislature, including RCW 49.46.010(3)(j), are constitutional.

Accordingly, in situations like here where over 2,600 adult family homes have relied on the validity of the live-in exemption in their contracting with the State and others, the prospective application of decisions is particularly appropriate "so as not to 'jeopardize the massive contractual and governmental enterprises done under its protective shield[.]'"[36]

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[35] *Martinez-Cuevas*, 196 Wn.2d at 514.
[36] *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 273

III. CONCLUSION

The exemption of live-in employees from the definition of employee under the Minimum Wage Act does not violate the privileges and immunities prohibition of the Washington State Constitution Article I, Section 12. The live-in exemption to the Minimum Wage Act does not burden a fundamental right. The evidence makes clear that adult family home caregiving work is not made more dangerous because the live-in exemption allows live-in caregivers to be provided room and board for them and their families as non-monetary compensation. Moreover, there are ample and substantial public policies underlying the live-in exemption related to the Legislature encouraging the development and operation of more adult family homes to provide homes and care to some of the most vulnerable Washingtonians among us.

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n. 10, 208 P.3d 1092 (2009) (citation omitted).

For these reasons, and all the other reasons enumerated above, Defendants respectfully ask the Court to reverse the King County Superior Court's Order and hold that the live-in exemption to the Minimum Wage Act is constitutional.

Even if the live-in exemption is held to be invalid, that decision should be applied purely prospectively. To do otherwise would inequitably upend how adult family homes have contracted with the State and others with likely ruinous outcomes simply because thousands of adult family home operators have conducted business for decades in reliance on the presumptive constitutionality of the Minimum Wage Act's live-in exemption.

IV. CERTIFICATION

This document contains 2,365 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Dated this 23rd day of July 2025.

Respectfully submitted,

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V. CERTIFICATE OF SERVICE

I certify that on the date below I filed the Petitioners' Reply Brief with the Clerk of the Court using the electronic filing system which caused it to be served on the following electronic filing system participants as follows:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 23rd day of July 2025 in Seattle, Washington.

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July 23, 2025 - 4:49 PM

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