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No. 99771-3

SUPREME COURT
OF THE STATE OF WASHINGTON

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

v.

THE CITY OF SEATTLE, Appellant.

BRIEF OF AMICUS CURIAE ASSOCIATION OF WASHINGTON CITIES IN SUPPORT OF APPELLANT

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TABLE OF CONTENTS

Page

I. IDENTITY AND INTEREST OF AMICUS CURIAE .. 1

II. STATEMENT OF THE CASE 1

III. ARGUMENT 2

A. **Washington Follows the Home Rule Doctrine.**. 3

B. **Judicial Deference to Local Authority Is a Critical Aspect of Home Rule.** 5

IV. CONCLUSION 8

TABLE OF AUTHORITIES

Page

Cases

City of Seattle v. Williams, 128 Wn. 2d 341, 908 P.2d 359 (1995) 7
City of Spokane v. Carlson, 73 Wn.2d 76, 436 P.2d 454 (1968) 6
Detamore v. Hindley, 83 Wash. 322, 145 P. 462 (1915) 4
Haas v. City of Kirkland, 78 Wn.2d 929, 481 P.2d 9 (1971) 4
Lakehaven Water & Sewer Dist. v. City of Fed. Way, 195 Wn. 2d 742, 466 P.3d 213 (2020) 5
Leonard v. City of Spokane, 127 Wn.2d 194, 897 P.2d 358 (1995) 5
Mosebar v. Moore, 41 Wn.2d 216, 248 P.2d 385 (1952) 7
Rabon v. City of Seattle, 135 Wn.2d 278, 957 P.2d 621 (1998) 5
Silver Shores Mobile Home Park v. City of Everett, 87 Wn.2d 618, 555 P.2d 993 (1976) 6
State ex rel. Billington v. Sinclair, 28 Wn.2d 575, 183 P.2d 813 (1947) 7
State ex rel. Griffiths v. Superior Court, 177 Wash. 619, 33 P.2d 94 (1934) 7
Walker v. City of Spokane, 62 Wash. 312, 113 P. 775 (1911) ... 7
Watson v. City of Seattle, 189 Wn.2d 149, 410 P.3d 1 (2017) .. 5
Weden v. San Juan County, 135 Wn.2d 678, 958 P.2d 273 (1998) 6
Yim v. City of Seattle, 194 Wn. 2d 682, 451 P.3d 694 (2019) ... 4

Statutes

RCW 35.22.195 3
RCW 35A.01.010 3

Other Authorities

Hugh D. Spitzer, *"Municipal Police Power In Washington State"*, 75 Wash. Law Rev. 495 (2000) 7

Hugh Spitzer, *"Home Rule" vs. "Dillon's Rule" for Washington Cities*, 38 Seattle U. L. Rev. 809 (2015)............................ 3, 4

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Association of Washington Cities ("AWC") is a private non-profit corporation that represents Washington's cities and towns before the State Legislature, the State Executive branch, and regulatory agencies. Although membership in the AWC is voluntary, the association includes 100 percent participation from Washington's 281 cities and towns. A 25-member board of directors oversees AWC's activities. AWC's mission is to serve its members through advocacy, education, and services. Support for local authority is a core value of the association.

II. STATEMENT OF THE CASE

AWC adopts the Statement of the Case set forth in the Opening Brief of Appellant City of Seattle (App. Br. 5-11).

III. ARGUMENT

AWC expresses no position regarding Ordinance No. 126094, the City of Seattle enactment challenged in the above-captioned case. The association instead submits this brief to underscore a more basic, fundamental concern: Ensuring that judicial review of challenges to local ordinances remains appropriately deferential. For over 100 years, this longstanding principle, enshrined in Washington's "home rule" doctrine, has recognized the broad discretion of city councils to adopt local legislation on a wide range of regulatory topics. As a necessary adjunct to this authority, this Court has consistently deferred to local policymaking autonomy and has refused to substitute the Court's judgment for that of local elected officials.

AWC, and the cities and towns it represents, has a critical interest in preserving this bedrock principle of Washington municipal law. The continued stability of the legal *status quo* that

has endured for decades depends largely upon this result. This concern transcends the substantive outcome of the instant appeal.

A. Washington Follows the Home Rule Doctrine.

"Home rule is an approach to structuring government meant to push as much power down to the local level as is practicable, reducing interference by the legislature or other agencies of state government."[1] The doctrine is enshrined at its most fundamental level at Article XI, Section 11 of the Washington Constitution:

> *Police and Sanitary Regulations.* Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.[2]

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[1] Hugh Spitzer, *"Home Rule" vs. "Dillon's Rule" for Washington Cities*, 38 Seattle U. L. Rev. 809, 810 (2015).

[2] Const. art. XI, §11. Various Washington statutes reflect and effectuate Article XI, section 11's broad grant of autonomous power to municipalities. *See, e.g.,* RCW 35A.01.010 (code cities; RCW 35.22.195 (first class charter cities).

As Professor Spitzer has noted, "[t]his is a strong home rule provision, with a direct, self-executing constitutional delegation of all regulatory powers to counties, cities, and towns, except to the extent those regulations conflict with preempting state law."[3] This Court has likewise characterized Article XI, Section 11 as "[a] direct delegation of the police power as ample within its limits as that possessed by the legislature itself." *Haas v. City of Kirkland*, 78 Wn.2d 929, 932, 481 P.2d 9 (1971) (citing *Detamore v. Hindley*, 83 Wash. 322, 326, 145 P. 462 (1915)), *abrogated on unrelated grounds by Yim v. City of Seattle*, 194 Wn. 2d 682, 451 P.3d 694 (2019).

The contrary theory, known commonly as "Dillon's Rule", disavows local autonomy by limiting municipal powers to those expressly granted in the state constitution or by statute. *See Lakehaven Water & Sewer Dist. v. City of Fed. Way,* 195 Wn. 2d

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[3] Hugh Spitzer, *"Home Rule" vs. "Dillon's Rule" for Washington Cities* Spitzer, 38 Seattle U. L. Rev. 809, 825 (2015) .

742, 755, 466 P.3d 213 (2020). Dillon's Rule has been widely discredited as an "antiquated. . . vestige of 19th century jurisprudence," *Id.* at 755, 762; that has been variously superseded by statute and caselaw, *Id.* at 756; and which should be viewed as "permanently dead." Spitzer, 38 Seattle U. L. Rev., *supra* note 1, at 860.

B. Judicial Deference to Local Authority Is a Critical Aspect of Home Rule.

The doctrinal centerpiece of home rule is the "[p]resumption of autonomy in local governance." *Lakehaven,* 195 Wn.2d at 755 (quoting *Watson v. City of Seattle,* 189 Wn.2d 149, 166-67, 410 P.3d 1 (2017)). This in turn reflects and complements the general principle that "[a]n ordinance is presumed constitutional", and that the party challenging a local enactment bears the heavy burden of establishing its invalidity beyond a reasonable doubt. *Rabon v. City of Seattle*, 135 Wn.2d 278, 287, 957 P.2d 621 (1998); *Leonard v. City of Spokane*, 127 Wn.2d 194, 197-98, 897 P.2d 358 (1995). By design, this

standard of review is highly deferential to the policymaking authority of local legislative bodies. When entertaining legal challenges in this context, courts do not conduct an in-depth evaluation of the enactment's effectiveness, its policy underpinnings, or any underlying political motivations. Instead, "[i]f a state of facts justifying an ordinance can reasonably be conceived to exist, such facts must be presumed to exist." *City of Spokane v. Carlson*, 73 Wn.2d 76, 436 P.2d 454 (1968) (citation omitted). Indeed, "[e]very presumption will be in favor of the constitutionality of an ordinance." *Silver Shores Mobile Home Park v. City of Everett,* 87 Wn.2d 618, 624, 555 P.2d 993 (1976).[4] Under this deliberately lenient standard, Washington courts have upheld a wide range of local enactments aimed at

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[4] Washington courts have recognized limited exceptions to this general rule where the challenged ordinance implicates a fundamental right or a suspect class. *See, e.g., Weden v. San Juan County*, 135 Wn.2d 678, 690, 958 P.2d 273 (1998) (citation omitted).

protecting the public health, safety, and welfare of communities throughout the state.[5]

It is this longstanding presumption, and the corollary deference to local policymaking discretion, that should be acknowledged and reaffirmed in the instant case. The Court should resist the invitation to effectively reverse the applicable standard of review and burden of persuasion by performing or otherwise endorsing an exacting evaluation of the political motivations, policy wisdom, and/or comparative effectiveness of

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[5] *See generally*: Spitzer, 38 Seattle U. L. Rev., *supra* note 1, at 844-48; Hugh D. Spitzer, *"Municipal Police Power In Washington State"*, 75 Wash. Law Rev. 495, 497-506 (2000); *City of Seattle v. Williams*, 128 Wn. 2d 341, 358, 908 P.2d 359 (1995) (*Citing Mosebar v. Moore,* 41 Wn.2d 216, 222, 248 P.2d 385 (1952); *State ex rel. Billington v. Sinclair,* 28 Wn.2d 575, 183 P.2d 813 (1947); *State ex rel. Griffiths v. Superior Court,* 177 Wash. 619, 33 P.2d 94 (1934); *Walker v. City of Spokane,* 62 Wash. 312, 113 P. 775 (1911)).

Ordinance No. 126094. Under home rule, these considerations are irrelevant as a matter of law. In sum, the Court should not dilute the presumption of local autonomy in a manner that implicitly resurrects the outdated strictures of Dillon's Rule. That obsolete approach should instead remain "permanently dead."

IV. CONCLUSION

The instant case implicates not merely the validity of Ordinance No. 126094, but also the legal framework for reviewing challenges to local ordinances generally. The judicial deference inherent in the home rule approach has long enabled Washington cities to enact and enforce local regulations that are appropriately tailored to the unique circumstances of their own communities—without the fear that such efforts would ultimately be second-guessed by a reviewing court. The Court is respectfully requested to preserve this critically important *status quo*, which has historically served the public health, safety, and welfare so effectively.

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RESPECTFULLY SUBMITTED this 30th day of December, 2021.

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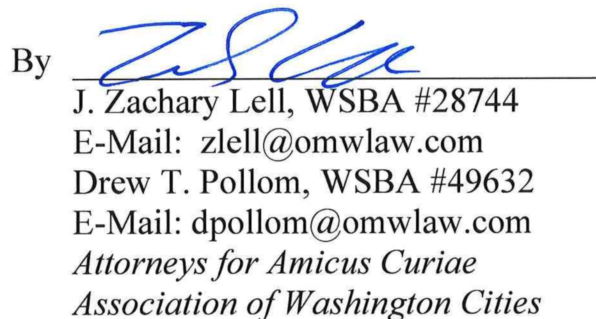

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