No. 99771-3

SUPREME COURT
OF THE STATE OF WASHINGTON

THE WASHINGTON FOOD INDUSTRY ASSOCIATION; et al.

Respondents,

v.

THE CITY OF SEATTLE,

Appellant.

CITY OF SEATTLE'S OPENING BRIEF

PETER S. HOLMES
Seattle City Attorney

Jeremiah Miller, WSBA #40949
Derrick De Vera, WSBA #49954
Erica R. Franklin, WSBA #43477
Assistant City Attorneys
For Appellant, City of Seattle

Seattle City Attorney's Office
701 Fifth Ave., Suite 2050
Seattle, WA 98104-7097
(206) 684-8200

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Ordinances

Constitutional Provisions

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case concerns attempts by businesses to thwart governmental police powers safeguarding public health, safety, and welfare.

Early in the COVID-19 pandemic, the City of Seattle passed a law (the "Ordinance") requiring hazard pay for food delivery network drivers, recognizing both the risks inherent to providing at-home food delivery during a deadly pandemic and the critical role of this service in checking the spread of the virus.

Displeased with the business impact of this enactment, Respondents took their grievances not to the polls but to the courts. Invoking *Lochner*-era conceptions of economic liberty, Respondents invited the trial court to substitute its judgment for that of the City's legislative branch and subordinate the public health, safety, and welfare to Respondents' private business and contractual interests.

The trial court accepted Respondents' invitation. In declining to dismiss Respondents' groundless police power and

equal protection claims, the trial court failed to accord the Ordinance the deference to which it was entitled under rational basis review, holding instead that Respondents could prevail by proving that the Ordinance was unnecessary or that its stated justifications were pretextual. In so doing, the court embraced an outdated approach to judicial scrutiny that unduly interferes with the City's authority to enact remedial economic legislation. And in declining to dismiss Respondents' Takings and Contract Clause claims, the trial court repackaged discredited *Lochner*-era principles privileging Respondents' business and contractual interests over the public welfare. Finally, by allowing each of these insufficient claims to proceed, the trial court misapplied Civil Rule ("CR") 12(b)(6)—a critical bulwark against meritless challenges to valid legislation.

The trial court's decision heralds a dangerous retreat to the last Gilded Age, in which courts routinely struck down remedial economic legislation at the behest of businesses. The City respectfully requests that this Court reverse the trial court ruling,

except with respect to Respondents' claims under Chapter 82.84 RCW,[1] and reaffirm the government's authority to legislate for the public good.

II. ASSIGNMENTS OF ERROR AND ISSUES

A. Assignments of Error

1. The trial court erred in declining to dismiss Respondents' police power claim.

2. The trial court erred in declining to dismiss Respondents' federal equal protection claim.

3. The trial court erred in declining to dismiss Respondents' state law Privileges and Immunities claim.

4. The trial court erred in declining to dismiss Respondents' Contract Clause claims.

5. The trial court erred in declining to dismiss Respondent's Takings claims.

6. The trial court erred in declining to dismiss Respondents' 42 U.S.C. § 1983 claim.

[1] The trial court correctly dismissed Respondents' spurious claim under Chapter 82.84 RCW, and the City respectfully requests that the Court affirm the trial court's ruling on this issue.

B. Issues Pertaining to Assignments of Error

1. An exercise of the police power is valid if any reasonably conceivable bases for the enactment exist. Conceivable bases for the Ordinance abound. Do Respondents' police power claims fail? (Assignment of Error 1.)

2. Social and economic legislation will survive scrutiny under the Equal Protection Clause if any reasonably conceivable state of facts could provide a rational basis for the classification. There are many conceivable reasons for distinguishing between food delivery network company drivers and other essential workers. Does Respondents' federal equal protection claim fail? (Assignment of Error 2.)

3. Washington's Privileges and Immunities Clause requires an independent analysis only where the challenged law implicates a "fundamental right" of state citizenship; other laws are subject only to the deferential rational basis standard. The Ordinance implicates no "fundamental right" and readily satisfies rational basis review. Does Respondents' Privileges and Immunities claim fail? (Assignment of Error 3).

4. Valid exercises of the police power cannot amount to a "substantial impairment" under the State and federal Contract Clauses, and unless the government is a contracting party, an enactment survives scrutiny under the Contract Clauses if there is a rational connection between the purpose of the statute and the method the statute uses to accomplish that end. The Ordinance is a valid

exercise of the police power, involves only private parties, and survives rational basis review. Do Respondents' Contract Clause claims fail? (Assignment of Error 4).

5. The Takings Clauses of the State and federal constitutions do not extend to deprivations of profits and revenues, and they only apply to contractual rights when the action at issue appropriates, rather than merely frustrates, a party's contracts. Respondents allege only the loss of profits and revenues and the impairment of their contracts. Do Respondents' Takings claims fail? (Assignment of Error 5).

6. 42 U.S.C. § 1983 provides for damages based on an underlying federal constitutional violation. The Ordinance does not violate Respondents' federal constitutional rights. Does Respondents' 42 U.S.C. § 1983 claim fail? (Assignment of Error 6).

III. STATEMENT OF THE CASE

A. Factual background.

A few months into the COVID-19 pandemic, the City enacted the emergency, temporary Ordinance No. 126094, recognizing both the critical role food delivery drivers play in ensuring safe access to food and the dangers inherent in this work

during a pandemic.[2] The Ordinance requires covered food delivery network companies ("FDNCs") to pay delivery drivers hazard pay for each Seattle delivery. Hazard pay compensates drivers for the risks they face, promotes retention, and provides resources for drivers to protect themselves and their community.[3] The Ordinance also contains secondary provisions designed to ensure that the per-delivery premium increases driver compensation and does not reduce access to FDNC services.[4] As a temporary, emergency measure, the law will terminate when the emergency ends.[5]

The Ordinance rests on extensive factual findings. The

---

[2] The ongoing pandemic has sickened more than 144,000 King County residents, resulting in more than 1,800 deaths. https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard (last accessed on September 16, 2021).

[3] CP 94, 95, 98 & 105 (Ordinance, Section 1.B, .P, .T, .U; Section 2, 100.025.D).

[4] *See* CP 106 (Ordinance, Section 2, 100.027.B).

[5] CP 105 (Ordinance, Section 2, 100.025); Ordinance No. 126122.

City Council found that the Ordinance "protects and promotes public health, safety, and welfare during the new coronavirus 19 (COVID-19) emergency by requiring food delivery network companies to provide premium pay for gig workers performing work in Seattle, thereby increasing retention of gig workers who provide essential services on the frontlines of a global pandemic and who should be paid additional compensation for the hazards of working with significant exposure to an infectious disease."[6]

The Council found that FDNC drivers lack access to "employee protections established by local, state, and federal law" and are "highly vulnerable to economic insecurity and health or safety risks."[7] It recognized that "[g]ig workers working for food delivery network companies are essential workers who perform services that are fundamental to the economy and health of the community during the COVID-19

[6] CP 94-95 (Ordinance, Section 1.B).

[7] CP 96 (Ordinance, Section I.L).

crisis" and that they "continually expose themselves and the public to the spread of disease."[8] It noted that "many gig workers are immigrants and people of color who have taken on debt or invested their savings to purchase and/or lease vehicles or other equipment to work for food delivery network companies."[9] And it recognized that "[p]remium pay, paid in addition to regular wages, is an established type of compensation for employees performing hazardous duty or work involving physical hardship that can cause extreme physical discomfort and distress."[10]

The Ordinance was enacted pursuant to ordinary procedures, including multiple opportunities for public participation.[11] Plaintiffs allege no procedural irregularities in

---

[8] CP 97 (Ordinance, Section 1.M).

[9] *Id*. (Ordinance, Section 1.N).

[10] *Id*. (Ordinance, Section 1.Q).

[11] *See* Journal of the Proceedings of the Seattle City Council, June 15, 2020, available at http://seattle.legistar.com/View.ashx?M=M&ID=793824&GUID=3ABEBF9F-0F2D-469F-87CB-6427EAC74C75; Journal of the Proceedings of the Seattle City Council, June 8, 2020,

the passage of the Ordinance.[12] The Ordinance was passed by unanimous vote of the Council and under the Mayor's signature.[13]

B. Procedural history.

Respondents filed a complaint seeking damages, declaratory relief, and injunctive relief. Following multiple judicial reassignments, the trial court granted in part and denied in part the City's Motion to Dismiss Respondents' Amended Complaint.[14]

In its bench ruling, the court recognized that the Ordinance was subject only to rational basis review. However, it reasoned that, because CR 12(b)(6) required it to construe all

---

available at http://seattle.legistar.com/View.ashx?M=M&ID=793824&GUID=3ABEBF9F-0F2D-469F-87CB-6427EAC74C75.

[12] *See* CP 70-139 (Amended Complaint).

[13] *See supra* note 11; CP 139 (Ordinance, Section 6).

[14] *Id*. (Amended Complaint); CP 151-299 (Motion to Dismiss Amended Complaint); CP 448-98 (Transcript of hearing on Motion to Dismiss).

pleaded facts in the light most favorable to Respondents, Respondents could overcome this deferential standard by merely alleging that the stated bases for the Ordinance were pretextual and that the Ordinance was an unnecessary response to the COVID-19 pandemic. Because it believed that additional factfinding was necessary before it could rule on the merits of Respondents' equal protection and police power claims, the trial court declined to dismiss these claims.[15]

The court further ruled that Respondents had stated a claim for a Takings violation by pleading that their "business model" had been "appropriated," and had stated a claim for a Contract Clause violation because Respondents had alleged "substantial impairment."[16]

After unsuccessfully moving for reconsideration, the City

[15] CP 492-93 (RP 45-46). The trial court did not distinguish between Respondents' federal equal protection claim and State Privileges and Immunities claim.

[16] CP 494-95 (RP 47-48).

successfully sought direct, discretionary review in this Court.[17] This appeal followed.

IV. ARGUMENT

A superior court's decision on a CR 12(b)(6) motion is reviewed *de novo*.[18] "While a court must consider any hypothetical facts when entertaining a motion to dismiss for failure to state a claim, the gravamen of a court's inquiry is whether the plaintiff's claim is legally sufficient…. If a plaintiff's claim remains legally insufficient even under his or her proffered hypothetical facts, dismissal pursuant to CR 12(b)(6) is appropriate."[19]

Each of Respondents' claims is legally insufficient and thus should have been dismissed under CR 12(b)(6). Because

---

[17] The Commissioner's Order granted direct review of all the issues below, including Respondents' claim under Ch. 82.84 RCW.

[18] *Kinney v. Cook,* 159 Wn.2d 837, 842, 154 P.3d 206 (2007).

[19] *Gorman v. Garlock, Inc.*, 155 Wn.2d 198, 215, 118 P.3d 311 (2005).

the Ordinance readily survives rational basis review, the trial court should have dismissed Respondents' police power and equal protection claims. Respondent's Takings Claim fails as a matter of law because profits and revenues are not legally cognizable property for this purpose and because the Ordinance does not appropriate Respondents' contracts. Respondents' Contract Clause claim also fails at the threshold because the Ordinance was a valid exercise of the City's police power to address a public emergency. Absent any viable federal constitutional claim, Respondents' 42 U.S.C. § 1983 claim must fail as well.

In allowing each of these claims to proceed beyond the motion to dismiss stage, the trial court misapplied the applicable substantive law—reviving outdated conceptions of the role of the judiciary in evaluating economic legislation. What is more, the trial court disregarded the critical gatekeeping function of CR 12(b)(6), instead embracing a standard that invites those displeased with political outcomes to resort to groundless legal

challenges and deters many government entities from considering novel solutions to pressing problems.

The trial court correctly dismissed Respondents' state law preemption claim under Chapter 82.84 RCW because the Ordinance falls outside the purview of that chapter.

A. This Court should reject the trial court's *Lochner*-era approach to economic legislation, in which courts, at the behest of private interests, strike down legislation safeguarding public health, safety, and welfare.

In a ruling reminiscent of nineteenth-century jurisprudence, the trial court concluded that Respondents' private business and contractual interests could override the City's democratic exercise of the police power to enact remedial economic legislation.

First, while the trial court recognized that the Ordinance was subject to rational basis review, it misapplied that standard in assuming a fact-finding role with respect to the policy determinations underlying the Ordinance and in interrogating the Council's motives. In so doing, the trial court announced its

intent to sit as a superlegislature, subjecting the Ordinance to a degree of scrutiny that courts no longer apply to economic legislation and unduly interfering with the City's exercise of the police power to promote the public welfare.

Second, and in the same tradition, the trial court's ruling rested on the discredited notion that private business and contractual interests can take on constitutional dimensions and thereby supersede laws addressing public safety, health, and welfare. This Court should reverse the trial court ruling and correct these serious errors.

1. The trial court failed to accord the Ordinance the deference to which it was entitled in considering Respondents' police power and equal protection claims, effectively subjecting economic legislation to heightened scrutiny.

In considering Respondents' police power and equal protection claims, the trial court failed to accord the Ordinance the deference to which it is entitled under modern jurisprudence.

Nineteenth-century judicial decisions second-guessing the wisdom underlying legislative enactments provided a "sobering

lesson in the necessity for judicial deference to the legislature in the exercise of its police power to accomplish economic regulation."[20] During the *Lochner*-era, courts readily substituted their judgment for that of legislative bodies, routinely invalidating social and economic legislation.[21] However, with the decline of the *Lochner*-era, this judicial interventionism gave way to a more deferential standard of review, under which courts

[20] *Aetna Life Ins. Co. v. Washington Life & Disability Ins. Guar. Ass'n*, 83 Wn.2d 523, 534, 520 P.2d 162 (1974) (collecting cases).

[21] *See, e.g.*, *Lochner v. New York*, 198 U.S. 45, 58, 25 S.Ct. 539, 49 L. Ed. 937 (1905) *overruled by West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703 (1937) (invalidating law prescribing maximum hours for bakery workers after finding "no reasonable foundation for holding this to be necessary or appropriate as a health law to safeguard the public health, or the health of the individuals who are following the trade of a baker"); *see generally* Brandon R. Magner, *Burying Lochner: Why courts should reject coming attempts to revive economic due process*, 106 Ky.L. J. 463 (2017-18) (describing rise and fall of *Lochner*- era and concomitant emergence of rational basis review).

declined to pass on the wisdom of social and economic legislation.[22]

Today, social and economic legislation is only subject to rational basis review.[23] "This standard of review is a paradigm of judicial restraint[,]"[24] consistent with longstanding principles of representative democracy and separation of powers. "The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention

---

[22] *See, e.g.*, *Nebbia v. People of New York*, 291 U.S. 502, 537, 54 S. Ct. 505, 78 L. Ed. 940 (1934) ("With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal."); *Parrish*, 300 U.S. at 399 ("Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the Legislature is entitled to its judgment.").

[23] *See, e.g.*, *U.S. R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 175, 101 S. Ct. 453, 66 L. Ed.2d 368 (1980) (noting that "the Court in cases involving social and economic benefits has consistently refused to invalidate on equal protection grounds legislation which it simply deemed unwise or unartfully drawn").

[24] *F.C.C. v. Beach Commc'ns*, 508 U.S. 307, 314, 113 S. Ct. 2096, 124 L. Ed. 2d 211 (1993).

is generally unwarranted, no matter how unwisely we may think a political branch has acted."[25] In declining to dismiss Respondents' police power and equal protection claims, the trial court departed from these bedrock principles in favor of Respondents' private interests, intruding on the Council's authority to legislate for the public good.

[25] *Vance v. Bradley*, 440 U.S. 93, 97, 99 S. Ct. 939, 59 L.Ed.2d 171 (1979); *see also* Philip A. Talmadge, *The Myth of Property Absolutism and Modern Government: The Interaction of Police Power and Property Rights*, 75 Wash. L. Rev. 857, 858, 907 (2000) ("[A]part from the doctrinal limits on the police power, there is a major limit to the police power in the American system of government: the democratic electoral process. If government goes too far in enacting stupid or ineffective laws, or if otherwise salutary laws are administered carelessly, U.S. history shows a political opposition will arise. The self-corrective feature of democratic government is a significant check on governmental abuse, and is often overlooked by advocates of greater constitutional limits on the police power.").

a) The trial court erred in declining to dismiss Respondents' police power claim.

The trial court failed to accord the Ordinance the deference to which it was entitled in evaluating Respondents' police power claim.

Washington is a "home rule" state, with a constitution that confers the majority of state power on county and city governments.[26] This democratic arrangement ensures that political power is generally exercised by those entities that are most responsive to the people, reflecting the principle that "[a]ll political power is inherent in the people, and governments derive their just powers from the consent of the governed…."[27]

Accordingly, local governments are granted broad police powers: "[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other

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

[27] Wash. Const. Art. I, § 1.

regulations as are not in conflict with general laws."[28] These police powers are as extensive as those of the State,[29] and they include "enactments designed to protect and promote public peace, health, morals, and safety" as well as "those intended to promote the general public welfare and prosperity."[30]

More than 100 years ago, Washington courts recognized that these powers encompass laws that "promot[e] … health; provide for the marketing of food products; prevent fraud in the

---

[28] Wash. Const. Art. XI, § 11.

[29] *Hass v. City of Kirkland*, 78 Wn.2d 929, 932, 481 P.2d 9 (1971) *abrogated on other grounds by Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019) (Article XI, Section 11 of the Washington Constitution is "a direct delegation of the police power as ample within its limits as that possessed by the legislature itself") (cleaned up). Throughout this brief, the City uses the shorthand phrase "cleaned up" to denote the omission of brackets, parentheticals, internal quotation marks, and quoting citations. *See, e.g.*, https://abaforlawstudents.com/2017/10/03/use-cleaned-up-make-legal-writing-easier-to-read/.

[30] *City of Tacoma v. Fox*, 158 Wn. 325, 330–31, 290 P. 1010 (1930); *see Kitsap Cty. v. Kitsap Rifle & Revolver Club*, 1 Wn.App.2d 393, 404, 405 P.3d 1026 (2017) ("Local governments have considerable latitude in exercising police powers…") (cleaned up).

disposition and sale of goods; prevent the doing of certain work and the pursuit of certain occupations upon the Sabbath day; regulate certain trades, businesses, and professions; limit the hours of labor upon public works, and fix hours of labor for women; enact drainage laws, and fill lowlands where drainage is impractical."[31] More recently, this Court endorsed using the police power of the State to "improve[] the economy… and enhance[] the fabric of life of its citizens…."[32] Thus, "[t]he scope of the police power is to be measured by the legislative will of the people upon questions of public concern…."[33]

As the trial court recognized, a city's broad police power "clearly extends to regulation of working conditions, including setting minimum wages, maximum hours, and other types of

---

[31] *State v. Mountain Timber Co.*, 75 Wn. 581, 588, 135 P. 645 (1913).

[32] *CLEAN v. State*, 130 Wn.2d 782, 806, 928 P.2d 1054 (1996), as amended (Jan. 13, 1997).

[33] *Mountain Timber Co.*, 75 Wn. at 588; *see Kidd v. Pearson*, 128 U.S. 1, 26, 9 S. Ct. 6, 32 L. Ed. 346 (1888) ("The police power of a state is as broad and plenary as its taxing power").

employment regulations."[34] Indeed, the United States Supreme Court, upholding a Washington wage and hour law, held that "[i]n dealing with the relation of employer and employed, the [state] has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression."[35] Local governments in Washington may exercise their police powers to establish minimum wages,[36] set maximum hours,[37] outlaw employment discrimination,[38] and set

---

[34] CP 491 (RP 44).

[35] *Parrish*, 300 U.S. at 393; *see RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1150 (9th Cir. 2004) ("[t]he power to regulate wages and employment conditions lies clearly within a state's or a municipality's police power. …. Child labor laws, minimum and other wage laws, laws affecting occupational health and safety... are only a few examples") (cleaned up).

[36] *Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 779, 357 P.3d 1040 (2015).

[37] *State v. Buchanan*, 29 Wn. 602, 70 P. 52 (1902).

[38] *Seattle Newspaper-Web Pressmen's Union Local No. 26 v. City of Seattle*, 24 Wn. App. 462, 604 P.2d 170 (1979).

maximum fees charged by employment agencies.[39] This authority extends to the working conditions of those labeled independent contractors.[40]

Robust though it may be, the police power is not without its limits; it is axiomatic that this Court has the authority to review and establish constitutional limitations on the actions of governments.[41] In reviewing exercises of the government's police powers, Washington courts have used a variety of standards over the preceding century. In its earliest formulations, this Court explained that legislative enactments of police power

---

[39] *Petstel, Inc. v. King Cty.*, 77 Wn.2d 144, 459 P.2d 937 (1969).

[40] *See, e.g.*, *Marquis v. City of Spokane*, 130 Wn.2d 97, 112–13, 922 P.2d 43 (1996) (holding that portions of the Washington Law Against Discrimination extend to independent contractors); *see also Stute v. P.B.M.C., Inc.*, 114 Wn.2d 454, 457, 788 P.2d 545 (1990) (Washington Industrial Safety and Health Act requires businesses to provide for the safety of independent contractors under some circumstances).

[41] *See, e.g.*, *Okeson v. City of Seattle*, 150 Wn.2d 540, 548–49, 78 P.3d 1279 (2003) (Washington Supreme Court determines "constitutional limitations and statutory authority" issues by *de novo* review).

laws were invalid only if the law was passed "either in a mistake, or in a spirit of fraud or wantonness" by the legislating body.[42] Other Washington decisions equated the review of police power laws with substantive due process inquiries,[43] espousing a *Lochner*-era view of the role of courts with respect to economic legislation that Washington courts have since rejected.[44]

In *City of Seattle v. Webster*,[45] this Court adopted the current standard for judicial review of governmental exercises of

---

[42] *City of Walla Walla v. Ferdon*, 21 Wn. 308, 311, 57 P. 796 (1899) (cleaned up).

[43] *See, e.g.*, *State v. Smith*, 42 Wn. 237, 238, 247, 84 P. 851 (1906), *overruled by Fox*, 158 Wn. at 334 (citing *Lochner* and holding that county ordinance requiring plumbers to be licensed unconstitutional under the Fourteenth Amendment because it "trench[es] upon liberty and property rights").

[44] *See, e.g.*, *Shea v. Olson*, 185 Wn. 143, 154, 53 P.2d 615 (1936) (rejecting a substantive due process analysis of police power economic regulations and noting that "[a] large discretion is… vested in the Legislature to determine what the public interest demands and what measures are necessary to secure and protect the same"); *see also Petstel*, 77 Wn.2d at 146-151 (discussing courts' retreat from heightened scrutiny of police power economic regulation).

[45] 115 Wn.2d 635, 802 P.2d 1333 (1990).

the police power, reaffirming the end of *Lochner*-era review of economic regulation. There, this Court held that "[t]he burden of establishing the invalidity of an ordinance rests heavily upon the party challenging its constitutionality."[46] Under this highly deferential standard, "[i]f a state of facts justifying the ordinance can *reasonably be conceived to exist*, such facts *must be presumed to exist* and the ordinance passed in conformity therewith."[47] This standard "severely limits judicial review"[48] by design, as it "mark[s] the line of demarcation between legislative and judicial functions."[49]

---

[46] *Id*. at 645 (cleaned up).

[47] *Id*. (emphasis supplied); *see also Optimer Intern., Inc. v. RP Bellevue, LLC*, 151 Wn. App. 954, 970, 214 P.3d 961 (2009) ("[I]n determining whether this particular legislation tends to promote the [public welfare], we must presume that if a conceivable set of facts exists to justify the legislation, then those facts do exist and the legislation was passed with reference to those facts.") (cleaned up).

[48] *Petstel*, 77 Wn.2d at 154.

[49] *Webster*, 115 Wn.2d at 645 (cleaned up).

The trial court misapplied this standard in declining to dismiss Respondents' police power claim, because conceivable bases for the Ordinance abound. Hazard pay furthers public health, safety, and welfare by compensating drivers for the risk they incur in frequenting crowded public establishments, assisting efforts to slow the spread of a highly infectious disease.[50] It further promotes public health by ensuring an adequate supply of FDNC drivers; as Respondents concede,[51] FDNCs play a critical role in the pandemic by allowing consumers to procure food from the safety of their homes. And it helps ensure that these drivers have the means to protect themselves and their communities from the hazards of their jobs.

---

[50] *See Filo Foods*, 183 Wn.2d at 790 (characterizing imposition of a minimum wage as "regulating for the general welfare"); *cf. Martinez-Cuevas v. DeRuyter Bros. Dairy, Inc.*, 196 Wn.2d 506, 520, 475 P.3d 164 (2020) (recognizing that "article II, section 35 [of the Washington Constitution] *requires* the legislature to pass appropriate laws for the protection of workers") (emphasis in original).

[51] CP 81 (Amended Complaint ¶¶ 41, 43).

Any of those justifications would be sufficient to uphold the Ordinance against a rational basis challenge.

In declining to dismiss Respondents' police power claims, the trial court cited the "unique nature of this ordinance, which not only regulates compensation to drivers but also precludes the plaintiffs from adjusting their business model to offset the imposition of those regulatory expenses."[52] But the supposed novelty of these restrictions—which seek to ensure that drivers actually receive an increase in pay and that the services remain available and affordable for consumers—does not negate the numerous rational bases for the Ordinance. The trial court's inquiry should have ended there, notwithstanding its displeasure with the alleged burden on Instacart's business.

The trial court further erred in entertaining Respondents' allegations that the Ordinance was unnecessary and pretextual. Respondents' "argument on the lack of need for this

[52] CP 493 (RP 46).

legislation…must be addressed to the legislative branches of government," as "[c]ourts do not review the wisdom of legislative acts or the policy contained therein."[53]

Thus, Respondents' allegations that market forces had already driven up driver pay were not a license for the trial court to second-guess the wisdom or propriety of the Ordinance. The City could have rationally concluded that then-current pay increases were insufficient, given the potentially fatal risks facing drivers and their loved ones; that existing wages might not ensure an adequate supply of delivery drivers; or that drivers should be guaranteed hazard pay, rather than relying on market forces. In inserting itself into this analysis, the trial court departed from *Webster*'s rational basis review, subjecting the

[53] *Petstel*, 77 Wn.2d at 151; *see also id*. at 151-52 ("If a state of facts which would justify the legislation can reasonably be conceived to exist, courts must presume it did exist and the legislation was passed for that purpose. There is no requirement that the court find facts justifying the legislation.").

Ordinance to a level of scrutiny that modern-day courts have abandoned.[54]

Nor was the trial court entitled to "examine the motives of the legislative body" in reviewing an exercise of the police power.[55] Where, as here, "the ordinance is valid on its face, the reasons or arguments that may have moved the city council to act are not pertinent[.]"[56] Indeed, because police power legislation is valid whenever "a state of facts justifying the ordinance can *reasonably be conceived to exist*,"[57] a reviewing court need not concern itself with the *actual* basis for the legislation. Moreover,

---

[54] *See State v. Smith*, 93 Wn.2d 329, 338-39, 610 P.2d 869 (1980) ("It is not our proper function to substitute our judgment for that of the legislature with respect to the necessity of" exercises of the police power.); *see also CLEAN*, 130 Wn.2d at 813 ("Of the three branches of government, the Legislature is best able to consider what measures promote the general welfare.").

[55] *Cougar Bus. Owners Ass'n v. State*, 97 Wn.2d 466, 478, 647 P.2d 481 (1982), *abrogated on other grounds by Yim*, 194 Wn.2d 682 (cleaned up).

[56] *Shepard v. City of Seattle*, 59 Wn. 363, 375, 109 P. 1067 (1910).

[57] *Webster*, 115 Wn.2d at 645 (cleaned up).

it is difficult to imagine how a trial court would go about determining actual intent, since the Council is made up of nine separate individuals, each with presumably different motivations.[58]

b) The trial court erred in declining to dismiss Respondents' equal protection claims.

While the trial court recognized that the Ordinance is subject to rational basis review—the "most relaxed and tolerant form of judicial scrutiny under the Equal Protection Clause[]"[59]—it failed once again to apply that standard. Rational basis review does not permit a court to "sit as a superlegislature to judge the wisdom or desirability of legislative policy

---

[58] In any event, because the facts relevant to determining whether legislators enacted a law for "pretextual" reasons or whether a law is a "necessary" response to a particular problem would almost certainly be disputed, the trial court's approach likely would preclude summary judgment and require a full trial.

[59] *Dallas v. Stanglin*, 490 U.S. 19, 26, 109 S. Ct. 1591, 104 L. Ed. 2d 18 (1989); CP 495 (RP 48); *see* U.S. Const., Amendment XIV, § 1.

determinations."[60] In allowing Respondents' equal protection claims to proceed, the trial court demonstrated a willingness to do precisely that.[61]

Under rational basis review, a law will survive scrutiny "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification."[62] Accordingly, "those attacking the rationality of the legislative classification

---

[60] *New Orleans v. Dukes*, 427 U.S. 297, 303, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976) (*per curiam*); *see also Aetna Life Ins. Co*, 83 Wn.2d at 529 ("The Fourteenth Amendment was not designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State") (cleaned up).

[61] To be sure, rational basis review is not a rubber stamp. While highly deferential, it would not preclude a meaningful challenge to purely arbitrary legislation lacking an articulable rational basis. *See, e.g.*, *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 587-92 (9th Cir. 2008) (challenged classification had no articulable rational basis and was completely unrelated to government's proffered purpose).

[62] *Beach Commc'ns*, 508 U.S. at 313; *see also Aetna Life Ins. Co*, 83 Wn.2d at 528 ("Every state of facts sufficient to sustain a classification which reasonably can be conceived of as having existed when the law was adopted will be assumed").

have the burden "to negative *every* conceivable basis which might support it[.]"[63]

Respondents' equal protection claims are premised on the Ordinance's distinction between covered FDNCs and non-covered "taxis, [Transportation Network Companies ("TNCs")], or any other businesses or service providers in the grocery and food industry that face equal or greater risks of exposure."[64] The City had ample bases for making such distinctions. As Respondents admit, FDNC drivers serve a critical function during the pandemic by enabling people to obtain food from the safety of their homes and thereby reducing crowds in public spaces.[65] And the Council rationally could have concluded that FDNC drivers are more vulnerable than workers in other sectors, such as the grocery industry, who are classified as employees

[63] *Beach Commc'ns*, 508 U.S. at 315 (cleaned up) (emphasis supplied).

[64] CP 88 (Am. Compl. ¶ 80).

[65] CP 81 (Am. Compl. ¶¶ 41, 43).

rather than independent contractors. Furthermore, legislative efforts to provide separate statutory protections to TNC drivers were already underway at the time of the Ordinance's passage. Indeed, the City recently finalized a minimum compensation ordinance that sets minimum pay rates for TNC drivers.[66] Because there was a "plausible basis" for distinguishing between FDNC drivers and other essential workers, "judicial review" should have been "at an end."[67] In allowing Respondents' equal protection claims to proceed in the face of these plausible bases, the trial court again subjected the Ordinance to undue scrutiny.[68]

---

[66] Seattle Mun. Code 14.33 (Ordinance No. 126189, signed into law on October 8, 2020).

[67] *Fitzgerald v. Racing Ass'n of Cent. Iowa*, 539 U.S. 103, 108-09, 123 S. Ct. 2156, 156 L. Ed. 2d 97 (2003) (cleaned up).

[68] Respondents' burden under the Equal Protection Clause is even greater in the context of a public health emergency. *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 27, 25 S.Ct. 358, 49 L.Ed. 643 (1905) (when there is a public health emergency, the right "to determine for all what ought to be done" is properly lodged with political decision makers rather than courts). Accordingly, in reviewing the exercise of emergency police powers, "[i]t is no part of the function of a court" to second guess a determination as to what method is "likely to be the most

"[R]estraints on judicial review have added force where the legislature must necessarily engage in a process of line-drawing."[69] As the Supreme Court has explained, "[d]efining the class of persons subject to a regulatory requirement … inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and the fact that the line may have been drawn differently at some points is a matter for legislative, rather than judicial consideration." [70] The legislature's placement of such a line is "virtually unreviewable, since the legislature must be allowed to approach a perceived problem incrementally." [71] For example,

> Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature

---

effective for the protection of the public against disease." *Id*. at 30.

[69] *Beach Commc'ns,* 508 U.S. at 315.

[70] *Id.* at 315-16 (cleaned up).

[71] *Id*. at 316.

> may select one phase of one field and apply a remedy there, neglecting the others.[72]

Here, Council "had to draw the line somewhere[,]"[73] in determining the scope of the Ordinance, and in so doing, it reasonably opted to limit the Ordinance to FDNC drivers. If Respondents are dissatisfied with this determination, they should "resort to the polls not to the courts."[74]

Respondents gain nothing by alleging that the stated bases for the Ordinance were pretextual. As with exercises of the police power, "[i]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction *actually* motivated the legislature"[75] because rational

---

[72] *Id*. (quoting *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489, 75 S. Ct. 461, 99 L. Ed. 563 (1955)); *accord Aetna Life Ins. Co.*, 83 Wn.2d at 531 ("The legislature is free to recognize degrees of harm, and a law which corrects one deficiency will not be overthrown merely because there may be other instances to which it might have been applied.").

[73] *Beach Commc'ns,* 508 U.S. at 316.

[74] *Lee Optical.*, 348 U.S. at 488.

[75] *Beach Commc'ns*, 508 U.S. at 315 (emphasis supplied).

basis requires only a "*reasonably conceivable* state of facts that *could* provide a rational basis for the classification."[76] Moreover, if challengers could overcome a motion to dismiss by simply pointing to the involvement of successful stakeholders in the passage of the legislation, it is difficult to imagine a challenge to an Ordinance that would not be allowed to proceed.

The trial court further overstepped its authority in entertaining Respondents' allegations that the Ordinance was not strictly necessary. "It is not the function of this [C]ourt in the exercise of judicial review to second-guess the wisdom of legislative determinations."[77] And "a legislative choice is not

---

[76] *Id*. at 313 (emphasis supplied). In contrast, where there is no conceivable basis for a challenged law other than benefiting a political constituency, the law will fail even rational basis review. *See, e.g*., *Fowler Packing Co., Inc. v. Lanier*, 844 F.3d 809, 815 (9th Cir. 2016) (holding that district court erroneously dismissed plaintiffs' equal protection claim because "we can conceive of no other reason why the California legislature would choose to carve out these three employers other than to respond to the demands of a political constituent").

[77] *Aetna Life Ins. Co*., 83 Wn.2d at 529.

subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data."[78] By the same token, "[w]hether *in fact*" a law will achieve its stated purposes "is not the question: the Equal Protection Clause is satisfied" where the legislature "*could rationally have decided*" that its chosen means would satisfy the desired ends.[79] Because there were many possible bases for requiring hazard pay to FDNC drivers, Respondents' allegation that driver pay was already sufficient is not germane to this inquiry.[80]

Respondents' state law Privileges and Immunities claim fares no better than their federal equal protection claim. Article I, section 12 of the Washington Constitution generally provides the same protections, and requires the same analysis, as the

[78] *Beach Commc'ns*, 508 U.S. at 313.

[79] *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 466, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981) (emphasis in original).

[80] *See supra*, section IV.A.1(a).

federal Equal Protection Clause.[81] An independent analysis is required only when "a law implicates a 'privilege or immunity' as defined in our early cases distinguishing the fundamental rights of state citizenship."[82] The Ordinance does not come within this exception.

For purposes of Article I, section 12, a law implicates the fundamental right to carry on a business—the purported fundamental right on which Respondents rely[83]—only when it prevents an entity from engaging in business altogether.[84]

---

[81] *Martinez-Cuevas*, 196 Wn.2d at 518-19.

[82] *Id*. As this Court has explained, if the definition of a privilege or immunity were construed more broadly, courts "could be called on to second-guess the distinctions drawn by the legislature for policy reasons nearly every time it enacts a statute." *Ockletree v. Franciscan Health Syst*., 179 Wn.2d 769, 779, 317 P.3d 1009 (2014). A wide array of statutory exemptions could come under attack, from property tax exemptions based on age, disability, or veteran status, to exemptions from emission control inspections for farm vehicles and hybrid vehicles. *Id*.

[83] CP 89 (Amended Compl. ¶ 84).

[84] *Am. Legion Post #149 v. Dep't of Health*, 164 Wn.2d 570, 608, 192 P.3d 306 (2008).

Courts have declined, time and again, to characterize ordinary business regulations like the Ordinance as intrusions on the right to "carry on business" for purposes of article I, section 12. In particular, "Washington courts have been hesitant to broadly apply the right to carry on a business in any legislative act that happens to harm a single aspect of a business."[85] Similarly, "mere harm to a business's profits caused by a change in the laws does not implicate the right to carry on a business."[86]

For example, Seattle's minimum wage ordinance, which subjected large businesses to higher labor costs over a three-year period than small businesses, did not "substantially burden or prohibit [those classified as large businesses] from carrying on

---

[85] *Blocktree Properties, LLC v. Public Utility Dist. No. 2 of Grant Cty, Washington*, 380 F.Supp.3d 1002, 1124 (E.D. Wash. 2019) (citing *Am. Legion Post #149*, 164 Wn.2d 570, *Ass'n of Washington Spirits & Wine Distribs v. Liquor Control Bd.*, 182 Wn.2d 342, 340 p.3d 849 (2015)).

[86] *Id*.

business in Seattle."[87] By the same token, courts have held that an administrative rule that imposed certain fees on spirits distributor licensees but not other entities in the supply chain,[88] a statute that prohibited smoking in certain facilities but not in others,[89] an ordinance that "simply impose[d] certain business regulations" on distributors of yellow pages phonebooks,[90] and a rate schedule that subjected certain industries to higher rates than others[91] did not implicate the fundamental right to carry on a business. In stark contrast, a law that "*effectively prohibited*

[87] *Int'l Franchise Ass'n, Inc. v. City of Seattle*, 97 F. Supp.3d 1256, 1285 (W.D. Wash. 2015), *aff'd*, 803 F.3d 389 (9th Cir. 2015).

[88] *Ass'n of Washington Spirits and Wine Distribs.,* 182 Wn.2d 342.

[89] *Am. Legion Post #149*, 164 Wn.2d 570.

[90] *Dex Media West, Inc. v. City of Seattle*, C10-1857-JLR, 2011 WL 4352121 (W.D. Wash. Sept. 16, 2011) (unreported).

[91] *Blocktree Properties, LLC*, 380 F. Supp.3d 1102.

nonresidents from engaging in the photography business" did implicate the right to carry on a business.[92]

Here, Respondents have never alleged, nor could they, that the Ordinance precludes them *in toto* from engaging in business in Seattle. To the contrary, they allege that there has been a "surge in the number of customers ordering groceries online" and that the size of the average order has increased.[93] Thus, an independent analysis under article I, section 12 is unwarranted, and the trial court should have dismissed Respondents' privileges and immunities claim as well as their federal equal protection claim.[94]

---

[92] *Am. Legion Post #149*, 164 Wn.2d at 608 (emphasis supplied) (citing *Ralph v. City of Wenatchee*, 34 Wn.2d 638, 644, 209 P.2d 270 (1949)).

[93] CP 81-82 (Amended Complaint ¶¶ 44-45).

[94] Rational basis review also requires dismissal of Respondents' Contract Clause claims. However, as explained below, see *infra* section IV.A.2.(c), the trial court should have dismissed Respondents' Contract Clause claims at the threshold, without reaching the question of whether the Ordinance survived rational basis review.

2. Plaintiffs' Takings and Contract Clause claims repackage discredited *Lochner*-era economic liberty claims privileging private business interests over public welfare.

Respondents' claims that the Ordinance violates the State and federal constitutional Contract and Takings clauses are an attempt to resuscitate economic liberty arguments that this Court has rejected for nearly 100 years. Consistent with the modern-day understanding of the legal thresholds for these claims, the trial court should have dismissed Respondents' allegations on the pleadings. This Court should reverse the trial court's ruling, re-affirming that private business arrangements do not supersede the government's authority to protect public health, safety, and welfare.

a) Respondents' Contract Clause and Takings Claims are predicated on the discredited notion that Respondents' freedom to contract supersedes governmental police powers.

Respondents' Contract Clause and Takings Clause claims are indistinguishable from claims made by businesses at the end

of the nineteenth century, seeking to preference their "economic liberty" over laws protecting public health, safety, and welfare.

Respondents' opposition to the City's Motion to Dismiss describes Respondent Instacart's business as "multiple sets of contractual relationships… contracts with independent contractors who shop for and deliver goods…, contracts with customers who purchase grocery delivery services, and contracts with food and grocery retailers who sell goods."[95] Respondents complain that the Ordinance "imposes new restrictions and duties on Instacart's contractual rights" and so constitutes an unconstitutional taking of their property and unconstitutional impairment of their contracts.[96] Respondents are clear: "[i]t is the rights defined by pre-existing contracts, not revenues or

[95] CP 326.

[96] *Id*. at p. 19:12-17; *see* CP 86-87 (Amended Complaint ¶ 73) ("The Ordinance substantially impairs Instacart's preexisting contractual relationships by altering the contractual obligations owed to Instacart and by depriving it of the benefit of its contractual rights and protections").

profits, that the City has taken and impaired through regulation."[97]

Respondents' contentions echo the economic liberty theories animating late nineteenth-century decisions striking down protective economic regulation.[98] This Court has long recognized the "unfortunate history" of attempts by businesses

[97] CP 328 (Opposition to Motion to Dismiss).

[98] *See, e.g.*, *City of Seattle v. Smyth*, 22 Wn. 327, 329, 60 P. 1120, 1120 (1900), *overruled by Peterson v. Hagan*, 56 Wn.2d 48, 351 P.2d 127 (1960) (eight hour workday Ordinance declared unconstitutional because it "interfere[d] with the constitutional right of persons to contract with reference to compensation for their services" characterized by the court as "one of the first and highest of civil rights") (cleaned up); *see also Coppage v. Kansas*, 236 U.S. 1, 35 S.Ct. 240, 59 L.Ed. 441 (1915) *overruled by Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 61 S.Ct. 845, 85 L.Ed. 1271 (1941) (striking down a law that prohibited employment contracts that required employees to agree to not join a union); *Godcharles v. Wigeman*, 113 Pa. 431, 437, 6 A. 354 (1886) (a law forbidding paying workers in company scrip "utterly unconstitutional" on the ground that it "prevent[s] persons who are *sui juris* from making their own contracts"); *In re Eight-Hour Law*, 21 Colo. 29, 32, 39 P. 328 (1895) (law setting maximum hours for miners and those working in manufacturing unconstitutional because it "violates the right of parties to make their own contracts").

to invoke purported constitutional rights to displace economic regulation.[99] Since then, such efforts to displace exercises of the police power have "been soundly rejected by the United States Supreme Court and this [C]ourt,"[100] particularly in the context of laws that protect workers and otherwise promote social welfare.[101]

This Court should reject Respondents' attempts to repackage long discredited economic liberty arguments as

---

[99] *Aetna Life Ins. Co.*, 83 Wn.2d at 534 (collecting cases).

[100] *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 227-28, 143 P.3d 571 (2006), *abrogated on other grounds by Yim*, 194 Wn.2d 682 (collecting cases).

[101] *Id*. (explaining this Court's rejection of the core principle of *Lochner*, and holding that the "'liberty' interest of the employees and employers to contract for" labor are *not* "outside of the police power of the state legislature to protect workers…"); *see also* Talmadge, *supra* note 25, at 858 ("The ideologically driven views of modern-day property rights advocates…would effectively undercut the police power by elevating policy dispute to constitutional dimensions, thereby transferring the decision-making process from the people through their elected representatives to the courts. They would turn back the clock to the days of *Lochner v. New York*, when an activist Supreme Court routinely overturned state and federal economic regulations.").

Takings or Contract Clause claims. "The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases[;]" for example, "statutes prescribing the terms upon which those conducting certain businesses may contract, or imposing terms if they do enter into agreements, are within the state's competency."[102] As Justice Holmes remarked, objecting to the invalidation of a wage and hour law on the basis that it violated the "liberty of contract," almost "all law consists in forbidding men to do some things that they want to do, and contract is no more exempt from law than other acts."[103]

For example, in upholding a Washington minimum wage law, the United States Supreme Court held that the "power under the Constitution to restrict freedom of contract has had many illustrations. That it may be exercised in the public interest with

---

[102] *Nebbia*, 291 U.S. at 527–28 (collecting cases).

[103] *Adkins v. Children's Hosp. of the D.C.*, 261 U.S. 525, 568, 43 S. Ct. 394, 67 L. Ed. 785 (1923), (Holmes, J. Dissenting), *overruled by Parrish*, 300 U.S. 379.

respect to contracts between employer and employee is undeniable."[104] The Court concluded that workplace regulations, protecting "health and safety… peace and good order" properly supersede private contracts because they "insure wholesome conditions of work and freedom from oppression."[105]

Accordingly, "rights" created by private agreements between individuals or businesses do not provide a basis to override police power laws, enacted to protect public health, safety, and welfare. Here, the Ordinance was enacted to protect vulnerable workers during a public health crisis. On this basis alone, the trial court should have dismissed the Takings and Contract Clause claims in the Amended Complaint. Indeed, as described below, the primacy of the public good over private arrangements is reflected in court decisions interpreting and

---

[104] *Parrish*, 300 U.S. at 392 (footnote omitted) (citing to cases approving laws that set maximum hours, limit methods or means of payment, and establish workers' compensation systems).

[105] *Id.*

applying the Contract Clause and Takings Clause of the Washington and federal constitutions.[106]

b) Black letter law requires dismissal of Respondents' Takings Clause claims.

"For government action to require compensation under the Takings Clause, it must involve 'property' and that property must be 'taken.'"[107] Here, Respondents failed to make legally sufficient claims that any of Respondents' property was taken.

In their Amended Complaint, Respondents appear to allege that the Ordinance "takes" property because it causes a reduction in business revenues, profits, or profitability.[108] But a

---

[106] Washington courts apply the federal analysis to Washington's parallel Contract Clause and Takings Clause. *See Hambleton*, 181 Wn.2d at 830 (Contracts, per U.S. Const. Art. I, § 10 and Wash. Const. Art. I, § 23); *see also Yim v. City of Seattle*, 194 Wn.2d 651, 672, 451 P.3d 675 (2019) (Takings, per U.S. Const. Amendment 14, § 1 and Wash. Const. Art. I, § 16).

[107] *Classic Cab, Inc. v. D.C.*, 288 F.Supp.3d 218, 227 (D.D.C. 2018).

[108] *See* CP 85 (Amended Complaint ¶ 68) (complaining of the costs imposed by the Ordinance and the impact on the commercial viability of Instacart's business).

business's expectations regarding its future revenues and profits do not constitute legally cognizable "property" within the meaning of the Takings Clause[109] and cannot, therefore, give rise to a taking.[110] The Takings Clause protects an owner's interest only in the property at issue, not interests merely "incident to ... ownership."[111] A taking "does not include losses to [an owner's] business,"[112] profits, or profitability.[113] "Given the propriety of

---

[109] *Classic Cab*, 288 F. Supp. 3d at 227.

[110] In any event, Instacart's allegations that its business is booming, and that it has tripled the number of new drivers in Seattle belie its claims as to the devastating impact of the Ordinance on its business. See CP 78-79 (Amended Compl. ¶¶ 31-32).

[111] *United States v. Gen. Motors Corp*., 323 U.S. 373, 378, 65 S.Ct. 357, 89 L.Ed. 311 (1945).

[112] *Id*. at 380.

[113] *Andrus v. Allard*, 444 U.S. 51, 66, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979) (fact that challenged regulations "prevent the most profitable use of [plaintiffs'] property...is not dispositive" because "a reduction in the value of property is not necessarily equated with a taking"); *Fed. Home Loan Mortgage Corp. v. N.Y. Div. Housing & Cmty. Renewal*, 83 F.3d 45, 48 (2nd. Cir. 1996) (upholding rent stabilization law over takings challenge because "[a]lthough [plaintiff] will not profit as much as it could under a

the governmental power to regulate," a taking does not occur whenever a law "requires one person to use his or her assets for the benefit of another"—particularly in the context of "a public program that adjusts the benefits and burdens of economic life to promote the common good."[114] Similarly, "where an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking, because the aggregate must

---

market-based system, it may still rent apartments and collect regulated rents") (citing *Bowles v. Willingham*, 321 U.S. 503, 517-518, 64 S.Ct. 641, 88 L.Ed. 892 (1944) (recognizing that while "price control, the same as other forms of regulation, may reduce the value of the property regulated…that does not mean that the regulation is unconstitutional" and that a "member of the class which is regulated may suffer economic losses not shared by others" and "[h]is property may lose utility and depreciate in value as a consequence of regulation")).

[114] *Connolly v. Pension Benefit Guaranty Corp*, 475 U.S. 211, 223, 225, 106 S.Ct. 1018, 89 L.Ed.2d 166 (1986); *accord. Penn. Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124, 98 S.Ct. 264, 657 L.Ed.2d 631 (1978) ("Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law, and this Court has accordingly recognized, in a wide variety of contexts, that government may execute laws or programs that adversely affect recognized economic values. Exercises of the taxing power are one obvious example.") (internal quotations and citation omitted).

be viewed in its entirety."[115]

Perhaps recognizing that the economic impact on Instacart's business could not support a Takings claim, Respondents pivoted in responding to the City's Motion to Dismiss, alleging that the "property" taken by the Ordinance is their nebulous "rights defined by… contracts."[116] But their assertion that this inchoate property is *taken* fares no better than the theory that the alleged impact on Respondents' profits constitutes a taking. The mere *impairment* of a party's contractual rights or expectations is not a taking. The government must instead *acquire* those rights and dedicate them

[115] *Andrus*, 444 U.S at 65–67 (no taking under the Fifth Amendment where "a significant restriction has been imposed on one means of disposing of" plaintiff's property but challenged regulations "do not compel the surrender" of the property and "there is no physical invasion or restraint upon them").

[116] CP 328.

to a public purpose.[117] This standard remains current.[118] Respondents do not (and could not) allege that the City has *acquired* Instacart's contractual rights vis-á-vis drivers, retailers, or delivery recipients; they allege only that their business has been burdened (and thus their contractual expectations frustrated) by economic regulation.

In fact, Respondents expressly allege that Instacart

---

[117] *Omnia Commercial Co. Inc. v. United States*, 261 U.S. 502, 513, 43 S.Ct. 437, 67 L.Ed. 773 (1923) (finding no Takings claim where "the effect of the [challenged government action] was to bring the contract to an end, not to keep it alive for the use of the government"). In the trial court, Respondents' primary argument against dismissal of their claims was that regulatory takings claims like theirs are subject to a "fact-intensive balancing test" under *Penn Central Transportation Company v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978). *See* CP 326 (Opposition to Motion to Dismiss). But a *Penn Central* analysis is appropriate only when a plaintiff *has been deprived of property in the first instance*, and *Omnia* establishes the circumstances under which one may be deprived of contract rights for Takings Clause purposes.

[118] *See, e.g., Acceptance Ins. Companies, Inc. v. United States*, 84 Fed. Cl. 111, 117-118 (Fed. Cl. 2008), *aff'd*, 583 F.3d 849 (Fed. Cir. 2009) (collecting cases).

does *not* have the right to require any driver to make a delivery, so the Ordinance cannot be said to dedicate to the public any contractual right of Instacart to procure grocery deliveries from its drivers.[119] Further, Instacart—not the City or the public—remains the beneficiary of its contracts with drivers, retailers, and customers, such as those governing the apportionment of customer payments. Just as a minimum wage imposes limits on the terms under which an employer can contract with its employees, the Ordinance here imposes certain conditions on Instacart's contractual relationships with drivers. But neither form of regulation involves the *taking* of contractual rights, because in both instances private parties remain the sole beneficiaries of the rights established in their contracts.

Additionally, allowing Respondents' impairment of contracts claim to proceed as a Takings claims would short-

[119] CP 81 (Amended Complaint ¶ 42) ("Because they are independent contractors and not employees, they are never required to accept a particular order or work in a specific place or at a specific time").

circuit Contract Clause jurisprudence. Respondents allege that the "rights defined by pre-existing contracts" have been both "*taken* and *impaired* through regulation."[120] Converting a contractual impairment argument into a Takings claim would supplant the careful limitations courts have placed upon Contract Clause claims in favor of a less restrictive Takings analysis, rendering the Contract Clause a nullity.[121] Despite hundreds of years of case law interpreting the Contract Clause and the Takings Clause, the City is aware of no case holding that impairment of a contract constitutes a taking.

---

[120] CP 328 (Opposition to Motion to Dismiss) (emphasis supplied).

[121] *See Classic Cab*, 288 F. Supp. 3d at 225 (where a law "has not deprived the plaintiffs of any legal rights or remedies arising from the contract… [but] [a]t most… has had the *effect* of reducing or eliminating the contract's value" any "cognizable constitutional claim" is "under the Contract Clause, not" the Takings Clause or Due Process Clause) (emphasis in the original); *see also Application of Eng*, 113 Wn.2d 178, 184, 776 P.2d 1336 (1989) ("This court has long held that in construing a constitutional provision, one must view the instrument as a whole and give effect to all of its provisions harmoniously").

c) Current Contract Clause jurisprudence requires dismissal.

Respondents' Contract Clause claims fare no better. To determine whether a contract has been unconstitutionally impaired, a court engages in a three-part inquiry. The test begins with a threshold question: whether the challenged law "has in fact, operated as a substantial impairment of a contractual relationship."[122] Only if there is a substantial impairment does a court move forward, determining whether the legislation has "a significant and legitimate public purpose," and "whether the adjustment of the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying the legislation's adoption."[123]

---

[122] *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 411, 103 S. Ct. 697, 74 L. Ed. 569 (1983) (cleaned up).

[123] *Id*. at 411-412 (cleaned up).

The Court should have dismissed Respondents' Contract Clause claim at the threshold, as the Ordinance did not result in substantial impairment. It has long been recognized that "the [constitutional] prohibition against any impairment of contracts is 'not an absolute one and is not to be read with literal exactness.'"[124] The "governing constitutional principle" for Contract Clause challenges is that private contracts exist not in a vacuum but against the backdrop of the government's police power, such that lawful exercises of the police power are an implicit part of all private contracts rather than a source of impairment.[125]

---

[124] *Tyrpak v. Daniels,* 124 Wn.2d 146, 151, 874 P.2d 1374 (1994) (quoting *Home Bldg. & Loan Ass'n v. Blaisdell,* 290 U.S. 398, 428, 54 S.Ct. 23178 L.Ed. 413 (1934)).

[125] *E. N.Y. Sav. Bank v. Hahn*, 326 U.S. 230, 232, 234, 66 S.Ct. 69, 90 L.Ed. 34 (1945) ("[W]hen a widely diffused public interest has become enmeshed in a network of multitudinous private arrangements, the authority of the State 'to safeguard the vital interests of its people,'… is not to be gainsaid by abstracting one such arrangement from its public context and treating it as though it were an isolated private contract constitutionally immune from impairment") (quoting *Blaisdell*, 209 U.S. at 434).

Thus, the Contract Clause "prohibition must be accommodated to the inherent police power of the State"[126] safeguarding the vital interests of the people, because such police powers are "paramount to any rights under contracts between individuals."[127] Here, because the challenged Ordinance was a valid exercise of the police powers,[128] Respondents' cannot satisfy the threshold test for a Contract Clause violation.

Moreover, where laws are temporary enactments, designed to combat emergencies, "[t]he reservation of state power appropriate to such extraordinary conditions may be deemed to be… a part of all contracts…."[129] Because the Ordinance is a temporary measure to address a public health emergency, it cannot be said to impair Respondents' contracts.

---

[126] *Energy Reserves,* 459 U.S. at 410; *Hambleton,* 181 Wn.2d at 830 (quoting *Energy Reserves*); *Optimer*, 151 Wn. App. at 965.

[127] *Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234, 241, 98 S.Ct. 2716, 57 L.Ed.2d 727 (1978) (cleaned up).

[128] *See* Section IV.A.1(a), *supra*.

[129] *Blaisdell,* 290 U.S. at 439.

Even if Respondents could satisfy the threshold test for a Contract Clause violation, their Contract Clause claims would fail as a matter of law. Unless the government is a contracting party, the second and third prongs of this inquiry amount to rational basis review.[130] Such a law must be upheld if "there is a rational connection between the purpose of the statute and the method the statute uses to accomplish that purpose."[131] And "[a]s is customary in reviewing economic and social regulation…courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure."[132]

---

[130] *See Optimer*, 151 Wn. App. at 969-70; *Ass'n of Surrogates & Supreme Court Reporters Within City of New York v. State of New York*, 940 F.2d 766, 771 (2d Cir. 1991) ("[L]egislation which impairs the obligation of *private* contracts is tested under the contracts clause by reference to a rational-basis test") (emphasis in original).

[131] *Optimer*, 151 Wn. App. at 970.

[132] *Energy Reserves*, 459 U.S. at 412-13 (cleaned up).

As discussed above,[133] the Ordinance readily survives rational basis review, notwithstanding Respondents' pretext and lack of necessity allegations. Thus, regardless of whether the Ordinance "substantially impairs" any contracts, the trial court erred in declining to dismiss Respondents' Contract Clause claim.[134]

B. The trial court misconstrued the role of CR 12(b)(6) in weeding out meritless challenges to valid legislation.

A faithful application of CR 12(b)(6)'s gatekeeping function is critical to curtailing unfounded attacks on valid exercises of the police power. In its gatekeeping capacity, CR 12(b)(6) aids not only in the efficient operation of the courts but also in the effective operation of government.

---

[133] *See supra*, section IV.A.1.

[134] Because each of Respondents' constitutional claims fail, the trial court further erred in declining to dismiss Respondents' 42 U.S.C. § 1983 claim for damages.

"The purpose of CR 12(b)(6) is to weed out complaints where, even if that which plaintiff alleges is true, the law does not provide a remedy."[135] Thus, while the Court had to credit each of Respondents' allegations, it should have measured them against the substantive standards governing each of their claims to determine whether further fact-finding would be fruitful. Had it correctly done so, it would have dismissed Respondents' police power, equal protection, and Contract Clause claims given the unassailable rational bases for the Ordinance and the challenged classifications.

Dismissal of baseless challenges to laws subject to only rational basis review on a CR 12(b)(6) motion is entirely proper. As the Eighth Circuit has explained, in applying the similar Federal Rule of Civil Procedure 12(b)(6), "because all that must be shown is any reasonably conceivable state of facts that could

---

[135] *Markoff v. Puget Sound Energy, Inc.*, 9 Wn.App.2d 833, 839, 447 P.3d 577 (2019), *rev. denied*, 195 Wn.2d 1013, 460 P.3d 183 (2020) (explaining that CR 12(b)(6) motion inquires "whether there is an insuperable bar to relief").

provide a rational basis for the classification, it is not necessary to wait for further factual development in order to conduct a rational basis review on a motion to dismiss."[136]

Furthermore, had the trial court tested Respondents' allegations against the substantive standards for Takings and

---

[136] *Gilmore v. Cty. of Douglas, State of Neb.*, 406 F.3d 935, 937 (8th Cir. 2005) (cleaned up); *see also Teigen v. Renfrow,* 511 F.3d 1072, 1084 (10th Cir. 2007) (in analyzing a motion to dismiss a challenge to a statute subject to rational basis review, courts must consider any possible justification for the classification, and such considerations are "a legal question which need not be based on any evidence or empirical data"); *Flying J Inc. v. City of New Haven*, 549 F.3d 538, 547 (7th Cir. 2008) ("only when courts can hypothesize no rational basis for the action" are "allegations of animus" sufficient to overcome a motion to dismiss on rational basis grounds); *Hettinga v. United States*, 677 F.3d 471, 479 (D.C. Cir. 2012) ("Even at the motion to dismiss stage, a plaintiff alleging an equal protection violation must plead facts that establish that there is not any reasonable conceivable state of facts that could provide a rational basis for the classification") (cleaned up); *A.J. California Mini Bus, Inc. v. Airport Comm'n of the City & Cty. of San Francisco*, 148 F. Supp. 3d 904, 919 (N.D. Cal. 2015) (dismissal of an attack on a law subject only to rational basis review proper where plaintiffs did not "negate the conceivable bases" for the law in their complaint); *see also Taylor v. Rancho Santa Barbara*, 206 F.3d 932, 938 (9th Cir. 2000) (affirming district court dismissal because the challenged statute satisfied the rational basis standard).

Contract Clause claims, it would have dismissed Respondents' Takings claims for lack of legally cognizable property that is taken and Respondents' Contract Clause claims for lack of substantial impairment.

In contrast, allowing legally deficient claims to proceed beyond the motion to dismiss stage not only wastes public resources, but also encourages the use of baseless litigation to resist undesired regulation. Specifically, it invites any economically powerful business dissatisfied with the results of the legislative process to turn to the courts rather than the ballot box, impermissibly burdening valid exercises of the police power.[137]

---

[137] A court's recent dismissal of a challenge to the City's grocery worker hazard pay ordinance is illustrative. *See Northwest Grocery Ass'n v. City of Seattle*, No. C21-0142-JCC, ___ F.Supp.3d ___, 2021 WL 1055994 (W.D. Wash. Mar. 18, 2021), *appeal voluntarily dismissed*; Becca Savransky, "Federal judge dismisses grocery associations' lawsuit against Seattle's hazard pay ordinance lawsuit," *Seattle PI* (March 18, 2021) (reporting on impact of dismissal on municipalities considering similar hazard pay ordinances) available at https://www.seattlepi.com/coronavirus/article/Federal-judge-

When courts decline to dispose of meritless lawsuits at the outset pursuant to CR 12(b)(6), the cost and burdens of litigation skyrocket. The threat of costly legislation may deter smaller governmental entities from adopting novel legislative approaches to emerging economic and societal problems, and will, in every case, distort legislative decision making by forcing fiscally responsible lawmakers to weigh the public benefits of a new law against the substantial costs that will result from groundless legal challenges.[138]

---

dismisses-grocery-associations-16036263.php (last visited on September 16, 2021).

[138] *Cf.* Rob Ollikainen, "Port Angeles considers ordering hazard pay for grocery workers: Eyes are on Seattle challenge of similar law; first reading April 6," *Peninsula Daily News* (March 4, 2021) (reporting that Port Angeles City Council would "consider approving [in April 2021] a mandate of hazard pay for grocery store workers in Port Angeles, pending a legal challenge to Seattle's mandatory hazard pay ordinance") available at https://www.peninsuladailynews.com/politics/port-angeles-considers-ordering-hazard-pay-for-grocery-workers/ (last visited on September 16, 2021).

Discouraging legislators from promoting and protecting the public interest is particularly harmful where, as here, a jurisdiction enacts emergency legislation in response to an admitted public health crisis.[139] This Court should reverse to reaffirm the role of CR 12(b)(6) in weeding out spurious challenges to valid legislation.

C. The trial court correctly dismissed Respondents' meritless state law preemption claim under RCW 82.84.

The Ordinance requires that FDNCs pay premiums to their workers for food delivery in the City of Seattle. The Ordinance raises *no revenue* for City operations. Thus, Respondents' contention that State law prohibiting local taxes on groceries preempts the Ordinance was properly dismissed.

Chapter 82.84 RCW (a codification of Initiative 1634 approved by Washington voters in 2018) is titled "Local Grocery Tax Restrictions" and is located in Title 82, which is comprised

[139] *See Jacobson,* 197 U.S. at 30.

of excise tax statutes. Chapter 82.84 RCW prohibits local governments from "impos[ing] or collect[ing] any tax, fee, or other assessment on groceries."[140] The law defines "tax, fee, or other assessment on groceries" as

> a sales *tax*, gross receipts *tax*, business and occupation *tax*, business license *tax*, excise *tax*, privilege *tax*, *or any other similar levy, charge, or exaction of any kind* on groceries or the manufacture, distribution, sale, possession, ownership, transfer, transportation, container, use, or consumption thereof.[141]

Washington courts interpret initiatives according to the normal canons of statutory interpretation.[142] "Statutory language must be given its usual and ordinary meaning, regardless of the policy behind the enactment."[143] The "legislative intent" behind the

---

[140] RCW 82.84.040.

[141] RCW 82.84.030(5) (emphasis supplied).

[142] *City of Spokane v. Taxpayers of City of Spokane*, 111 Wn.2d 91, 97, 758 P.2d 480 (1988); *Dep't of Rev. v. Hoppe*, 82 Wn.2d 549, 552, 512 P.2d 1094 (1973)).

[143] *Id*.

initiative is only relevant if there is some ambiguity in the meaning of the law; in that case, a court "should focus on the voters' intent and the language of the initiative as the average informed lay voter would read it."[144] Statements in the voter pamphlet are evidence of voter intent.[145]

Respondents' Amended Complaint is not sufficient to allege either that the Ordinance directly conflicts with Chapter 82.84 RCW or that it operates in a field that the legislature wholly occupied by that law.[146] By its own terms, the law prevents the imposition of taxes. The examples given in defining the key phrase "tax, fee, or other assessment on groceries" are all

---

[144] *Id*. (cleaned up).

[145] *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 206, 11 P.3d 762 (2000).

[146] *See State v. Kirwin*, 165 Wn.2d 818, 825, 203 P.3d 1044 (2009) (conflict preemption applies "where [the ordinance] permits what state law forbids or forbids what state law permits"); *see also Heinsma v. City of Vancouver*, 144 Wn.2d 556, 561, 29 P.3d 709 (2001) (field preemption results where the state legislature has expressly or impliedly occupied an entire area of regulation).

taxes, and the more general categories (levy, charge, or exaction) are limited to those that are "similar" to the list of taxes prohibited. Taxes are "burdens or charges imposed by legislative authority on persons or property, to *raise money for public purposes*, or, more briefly, *an imposition for the supply of the public treasury*."[147] Setting wage requirements, where hiring entities are required to pay money to their workers, not to the City, does not raise money for the City treasury and cannot reasonably be considered "similar" to a sales tax, business and occupation tax or the like.

The language of Chapter 82.84 RCW is plain: local governments are prohibited from taxing groceries; the law does not prohibit regulating working conditions. But even if there were some ambiguity in the text of Chapter 82.84 RCW, nothing in the history of the underlying initiative supports Respondents'

[147] *King Cty. Fire Prot. Dists. No. 16, No. 36 & No. 40 v. Hous. Auth. of King Cty.*, 123 Wn.2d 819, 833, 872 P.2d 516 (1994) (cleaned up, emphases supplied).

contorted reading. The voter pamphlet is clear: the initiative is about the taxation power of local governments. The pamphlet frames the measure as "concern[ing] taxation of certain items intended for human consumption."[148] The section entitled "the law as it presently exists" begins "[a]ll local taxation must be authorized by state law" and exclusively focuses on the taxation powers of local governments.[149] Further, the statements in favor of and against the initiative are exclusively focused on taxation issues. For example, in rebutting the statement against, proponents of the initiative stated "I-1634 prohibits new, local taxes on groceries, period."[150]

V. CONCLUSION

The trial court's ruling is at odds with decades of precedent rejecting attempts to interfere with the state's lawful exercise of the police power. The City respectfully requests that

[148] CP 213.

[149] CP 214.

[150] CP 215.

this Court reverse the trial court's ruling, except as to Chapter 82.84 RCW. In so doing, this Court should reaffirm the deference courts must accord to social and economic legislation, reject attempts to repackage discredited *Lochner*-era economic liberty claims privileging private business interests over public welfare, and preserve the role of CR 12(b)(6) in weeding out meritless challenges to valid legislation.

///

///

///

This document contains 11,847 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted September 16, 2021.

PETER S. HOLMES
Seattle City Attorney

By: */s/ Jeremiah Miller*
Jeremiah Miller, WSBA #40949
Derrick De Vera, WSBA #49954
Erica R. Franklin, WSBA #43477
Assistant City Attorneys

Stacey Leyton, WSBA #53757
P. Casey Pitts (*pro hac vice*)
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108

Attorneys for Appellant,
City of Seattle

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that today I filed this document via the Clerk's electronic portal filing system, which should cause it to be served by the Clerk on all parties, and emailed a courtesy copy of this document to:

Robert M. McKenna, WSBA #18327
Daniel J. Dunne, WSBA #16999
Daniel A. Rubens, NYBA #468834
Benjamin F. Aiken, #DC-1046730
Orrick, Herrington & Sutcliffe LLP
701 Fifth Avenue, Suite 5600
Seattle, WA 98104
Email: rmckenna@orrick.com
ddunne@orrick.com
drubens@orrick.com
baiken@orrick.com

Attorneys for Respondents, Washington Food Industry Association, et al.

Jeremiah Miller, WSBA #40949
Erica Franklin, WSBA #43477
Derrick De Vera, WSBA #49954
Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
Email: jeremiah.miller@seattle.gov
erica.franklin@seattle.gov
derrick.devera@seattle.gov

Stacey Leyton, WSBA #53757
P. Casey Pitts (*pro hac vice*)
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Email: sleyton@altber.com
cpitts@altber.com

Attorneys for Appellant, The City of Seattle

DATED this 16th day of September, 2021, at Seattle, Washington.

/s/ Sheala Anderson
Sheala Anderson, Legal Assistant

SEATTLE CITY ATTORNEYS' OFFICE - REEJ

September 16, 2021 - 4:06 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	99771-3
Appellate Court Case Title:	Washington Food Industry Assoc. et al. v. City of Seattle

The following documents have been uploaded:

- 997713_Briefs_20210916160013SC653291_5856.pdf
  This File Contains:
  Briefs - Attorneys Opening Brief
  The Original File Name was City s Opening Brief final.pdf

A copy of the uploaded files will be sent to:

- Derrick.DeVera@seattle.gov
- baiken@orrick.com
- cpitts@altber.com
- ddunne@orrick.com
- drubens@orrick.com
- mherbert@altshulerberzon.com
- rmckenna@orrick.com
- sea_wa_appellatefilings@orrick.com
- sheala.anderson@seattle.gov
- sleyton@altber.com

Comments:

Sender Name: Ianne Santos - Email: Ianne.Santos@seattle.gov
Filing on Behalf of: Jeremiah Miller - Email: jeremiah.miller@seattle.gov (Alternate Email: Jennifer.Litfin@seattle.gov)

Address:
701 5th Avenue, Suite 2050
Seattle, WA, 98104
Phone: (206) 684-8201

Note: The Filing Id is 20210916160013SC653291