FILED
2025 FEB 25 10:29 AM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 25-2-06332-1 KNT

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

CITY OF BURIEN,

Plaintiffs,

v.

TRANSIT RIDERS UNION, a non-profit corporation, and KATIE WILSON, an individual,

Defendants.

No.

COMPLAINT

"Light and liberty go together."

Thomas Jefferson to Tench Coxe, 1795.

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Plaintiff, the City of Burien ("Burien") alleges:

I. INTRODUCTION

As Thomas Jefferson and others observed, a properly functioning democracy depends on an informed electorate. And though the Burien electorate is as intelligent as any, they can only choose as wisely as the information they are presented with. In the recent election, Defendants, acting through "Raise the Minimum Wage Burien," went to exceptional lengths to suggest and imply that Burien had no minimum wage at all. Voters were not told what elements of local law they were voting to change, nor did the Defendants' initiative include any language superseding the prior law. When Burien attempted to convey this problem to the voters, Defendants filed a lawsuit to ensure that those voters remained in the dark. And ultimately, their initiative passed.

The problem is that now, by virtue of the wording of the initiative, Burien businesses are subject to two minimum wage laws. The existing minimum wage was enacted by the City of Burien, after consulting with workers and employers, as well as taking public input. This existing minimum wage ordinance is similar to those of surrounding cities, while accounting for their differences. Defendants' initiative, by contrast, borrows a minimum wage from Tukwila, which in turn borrows from SeaTac. And SeaTac's regulation only applies to "hospitality and transportation workers." The regulations, moreover, classify employers differently, call for different enforcement, and calculate wages differently. So employers are subject to two inconsistent laws, which expressly *do not* supersede one another, other than the initiative's minimum wage states that the "greater wages or compensation" will apply.

To bring order to this problematic situation, Burien now seeks judicial intervention to establish that Initiative 1 is unconstitutional and exceeds initiative power, or alternatively, does not apply because existing law provides for "greater wages and compensation."

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II. PARTIES

1. Plaintiff City of Burien ("Burien") is a municipal corporation organized as a non-charter code city under Title 35A RCW.

2. Defendants Transit Riders Union and Katie Wilson are sponsors of Burien Initiative 24-001 (referred to here as "Initiative 1").

III. JURISDICTION AND VENUE

3. This Court has jurisdiction. RCW 2.08.010; RCW 7.24.010; 020; RCW 7.40.010.

4. Venue is proper in this County. RCW 4.12.020; 025.

IV. FACTUAL BACKGROUND

A. Burien's Existing Minimum Wage Code

5. The State of Washington requires a minimum wage for all employers in our state, which is codified in Chapter 49.46 RCW. Municipalities may pass legislation setting their own minimum wage, provided it meets or exceeds the state's minimum wage requirements.

6. Consistent with this, in March 2024, Burien adopted a minimum wage, which, after amendment, became effective on January 1, 2025, and which is codified in Chapter 5.15 of the Burien Municipal Code ("BMC").

7. Chapter 5.15 BMC provides detailed protocols for its application and enforcement. This includes applicability (BMC 5.15.110-190); notification (BMC 5.15.200); rules for records retention (BMC 5.15.210); and enforcement mechanism, remedies, and prohibitions on retaliation (BMC 5.15.220-250).

8. As to application, Chapter 5.15 BMC creates three classifications of employers: (1) Level 1 employers are those with 500 or more full-time equivalent employees; (2) Level 2

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employers are those with between 21 and 499 full-time equivalent employees; and (2) Level 3 employers are those with 20 or fewer full-time equivalent employees. BMC 5.15.050.

9. Level 1 employers must pay employees at least $4.50 more per hour than the Washington State hourly minimum wage. BMC 5.15.170. Level 2 employers must pay employees at least $3.50 more per hour than the Washington State hourly minimum wage. BMC 5.15.180.

10. BMC 5.15.170 and 180 provide when the state increases the minimum wage for inflation, Burien's minimum wage also increases such that it remains $3.50 or $4.50 higher per hour than the state minimum wage (for as long as the state minimum wage does not constitute a livable wage).

11. As of January 1, 2025, the state minimum wage is $16.16 per hour. Thus, upon Chapter 5.15 BMC's January 1, 2025 effective date, the minimum wage in Burien for Level 1 employers is $21.16 per hour and is $20.16 per hour for Level 2 employers.

12. Level 3 employers are exempt. BMC 5.15.050.

13. This is generally consistent with other local jurisdictions, if not higher. For example, according to the Washington Department of Labor & Industries, the City of Seattle has a $20.75 per hour minimum wage for all employers; the City of Renton has a minimum wage of $20.90 per hour for employers with 501 or more employees, $18.90 per hour for employers with 15 to 500 employees, and small employers are exempt; the City of SeaTac has a minimum wage of $20.17 per hour for employers in hospitality and transportation industries (other employers are exempt); and the City of Tukwila's has a minimum of $21.10 per hour for employers with 500 or more employees and $20.10 per hour for employers with 15 to 499 employees or more than $2 million of annual gross revenue. All other employers are exempt.

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14. Under Burien's code, to determine full-time equivalent employees, employers count all employees' hours and divide those hours by the number of hours the State of Washington defines as a full-time employee. BMC 5.15.050. And the total number of employees for a given employer is generally determined by the number of full-time equivalent employees who worked for compensation, per calendar week, during the preceding calendar year. BMC 5.15.110.

15. Employers may not include tips or medical benefit plans for the state-required portion of the minimum wage but may include tips and medical benefit plans for the Burien-required additional minimum wage. BMC 5.15.190.

16. BMC 5.15.240 sets forth the enforcement procedures, including a required 45-day notice and cure period. If an employer fails to cure a violation, an employee may file a claim with Washington's Department of Labor and Industries. And upon exhaustion of administrative remedies, the employee may file a private action in King County district court.

17. An employer that violates Chapter 5.15 BMC must pay all unpaid wages due to the employee plus interest as well as liquidated damages up to twice the unpaid wages, plus interest, attorney fees and costs, and any other equitable or legal relief appropriate under the circumstances. If a court finds the employer retaliated against the employee, the employee may be awarded damages of up to three times the unpaid wages. BMC 5.15.240.

B. Initiative 1

18. Initiative 1 covers the same subject matter as Chapter 5.15 BMC, minimum wage, but imposes different standards, rates, and classifications.

19. In Section 1, Initiative 1 states that SeaTac, Seattle, Renton, and Tukwila enacted higher minimum wages and "until now Burien's wage has remained significantly lower." This

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is not accurate. As stated above, as of January 1, 2025, Burien's minimum wage is consistent with, or higher than these jurisdictions.

20. As to the hourly minimum wage, Initiative 1 provides in part:

> Starting 30 days after the effective date, and through the end of that calendar year, every large employer must pay to each employee an hourly wage of not less than the "large employer minimum wage rate" in effect in the City of Tukwila pursuant to Tukwila Municipal Code Section 5.63.

21. Other employers are subject to a "phase in" period. "Medium" employers (those with 16 to 500 employees) are required to pay $2 less per hour than City of Tukwila's large employer minimum wage rate, with the reduction decreasing by $1 every year. "Small" employers (fewer than 15 employees) are required to pay $3 less per hour, with the reduction decreasing by 50 cents every year.

22. Effectively outsourcing Burien's minimum wage to Tukwila is uniquely problematic. The Tukwila Municipal Code does not set a dollar amount for the large employer minimum wage rate. Instead, in Section 5.63.040(A) of its code, Tukwila designates a minimum wage for large employers at "an hourly wage of not less than the 2022 'living wage rate' *in the City of SeaTac*, established pursuant to SeaTac Municipal Code Section 7.45.060, adjusted for 2023 by the annual rate of inflation" (emphasis added).

23. The SeaTac Municipal Code, in turn, sets standards for *hospitality and transportation workers related to employee contracts and retention*. SMC 7.45.060. This section does not set a living wage rate (or any other minimum wage or rate). It also does not apply to employers outside the hospitality and transportation industries.

24. In short, Initiative 1 does not provide a per-hour dollar amount that employers must pay their employees. It, rather, outsources to one municipality, which outsources to another municipality, which utilizes a whole different approach.

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25. Regarding how small, medium, and large employers are calculated, Section 5 of Initiative 1 says:

> Employer classification for the current calendar year will be calculated based upon the average number of employees during all weeks in the previous calendar year in which the employer had at least one employee. For employers that did not have any employees during the previous calendar year, classification will be based upon the average number of employees during the most recent three months of the current year. In this determination, all employees will be counted, regardless of their location, and including employees who worked in full-time employment, part-time employment, joint employment, temporary employment, or through the services of a temporary services or staffing agency or similar entity. (Underline added).

26. Section 5 further provides that separate entities will be considered a single employer if they form a joint enterprise or are under joint control. It then lists four non-exclusive factors "to consider in making this assessment." Section 5 does not identify who is to make the assessment or make the determination. Nor does it state what other factors may be considered.

27. In Section 8, Initiative 1 provides that a person who suffers financial injury as a result of violation, may bring a civil action in a court of competent jurisdiction. If that person prevails, they are entitled to an award of attorney fees, the unpaid wages plus interest, compensatory damages, and liquidated damages of up to twice the amount of the unpaid wages. If the employer retaliated against the person, the person is entitled to up to $5,000 in additional damages.

28. Section 8(2) also provides that complaints may be submitted to the city attorney who may investigate and initiate legal or other action to remedy a violation.

29. Initiative 1 also imposes requirements for implementation, administration, and enforcement upon Burien and its City Manager. This includes:

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A. Section 3(3) requires the City Manager to establish and publish by October 15 of each year the hourly minimum wage rate for the following year using the annual rate of inflation.

B. Section 9 adds a new section to Chapter 5.05 BMC and grants discretion to the City Manager to deny, suspend, or revoke a license for violation. It requires the City Manager to deny, suspend, or revoke a license for repeated intentional violations. And it subjects enforcement actions to Burien's administrative procedures, which include opportunity for hearing before a hearing examiner and the availability for judicial review for any business aggrieved by the hearing examiner's decision. BMC 5.05.200.

C. Section 12 requires Burien to adopt rules and procedures to implement and ensure compliance including mandatory employer recordkeeping and annual certifications. This must be done within 150 days of the effective date.

D. Section 12 also requires Burien to "seek feedback from worker organizations and employers" before finalizing the rules and procedures.

30. Meanwhile, Initiative 1 makes no reference to Chapter 5.15 BMC at all. Rather than utilize a referendum that would expressly supersede or amend the existing law, Initiative 1 fails to mention, amend, or supersede the existing law.

31. On information and belief, this was no accident; rather, the entire Initiative 1 campaign—advanced by "Raise the Wage Burien"—rested on the misleading premise that Burien had no minimum wage.

32. When Burien attempted to give notice to the voters that they would be enacting competing and confusing local law, Defendants accused Burien of unlawfully using public

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funds for campaign purposes. Ultimately Burien relented, accepted Defendants' proposed language, and all damage claims against the City and those threatened with personal suit were dismissed with prejudice.

33. On February 11, 2025, based on the information given to the local electorate, Initiative 1 was approved. It is scheduled to go into effect within 30 days.

34. At that time, Burien will have two contradictory minimum wage laws that contain different standards, many of which cannot be harmonized. For example, under BMC 5.15.110, a small business with 16 full-time equivalent employees is not required to pay a wage above the state's minimum wage ($16.16 per hour). Under Initiative 1, that same employer would be a "medium employer," subject to fines, enforcement actions, civil action, and possible revocation of its business license – even though Initiative 1 does not clearly inform the business owner of the required wage it must pay.

35. Initiative 1 expressly does not "preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater wages or compensation…" Sect. 11. Burien's existing minimum wage law does in fact provide for "greater wages or compensation," and is therefore not preempted by Initiative 1. In fact, based on the drafting of the initiative, Initiative 1 does not offer a minimum wage.

36. Since its passage, Burien has received numerous calls from local business owners confused about the applicable minimum wage in Burien.

V. CAUSES OF ACTION

A. First Cause of Action for Declaratory Judgment

37. Burien repeats and realleges paragraphs 1 through 36.

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38. A genuine dispute and controversy exists between the parties as to the constitutionality and enforceability of Initiative 1.

39. Burien has broad authority to govern its own affairs, but it cannot enact legislation – by initiative or otherwise – conflicting with state or federal law.

40. Burien seeks a declaratory judgment pursuant to the Uniform Declaratory Judgments Act, RCW Chapter 7.24, that Initiative 1 is unenforceable and unconstitutional because:

a. Initiative 1 is Unconstitutionally Vague

41. The Fourteenth Amendment of the United States Constitution requires laws (1) be clear enough that ordinary people understand them; and (2) contain standards ascertainable enough to prevent arbitrary enforcement. The purpose of this vagueness doctrine is to provide fair warning to citizens of what conduct they must avoid and to protect them from arbitrary or discriminatory enforcement of the law.

42. Initiative 1 is void for vagueness because 30 days after its effective date, Burien will have two conflicting minimum wage laws, with two competing mechanisms for determining minimum wages, employer classification, and remedies, with the ambiguity only compounded by preemption language turning on which law provides greater wages or compensation (when they both do under different circumstances). Conduct that is entirely permissible under Chapter 5.15 BMC is prohibited under Initiative 1; and Burien's employers and their employees have no fair warning of what law they are to follow.

43. Moreover, Initiative 1 sets a minimum wage based on Section 5.63 of the Tukwila Municipal Code Section, which sets a minimum wage based on the City of SeaTac Municipal Code Section 7.45.060. But Section 7.45.060 does not set a minimum wage at all; it

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only applies to employers in the transportation and hospitality industries. An employer or employee in Burien, relying on the language of Initiative 1 has no accurate source reference or wage rate.

44. The differences between Initiative 1 and Chapter 5.15 BMC, combined with the errors in the Tukwila City Code, are confusing at best, and inaccurate at worst. Together with Initiative 1's "findings," the net result is a quagmire of inconsistencies that even the most thoughtful and reasonable employer would be left to guess at. An ordinary citizen subject to these competing laws will be unable to discern their rights and responsibilities.

45. As the government body charged with enforcement, Burien does not know what law applies, and there is thus nothing to prevent inconsistent and arbitrary enforcement.

b. Violation of Washington Constitution Article II, Section 37

46. Article II, section 37 of Washington's constitution provides that "no act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length." The purpose of this is to avoid confusion, ambiguity, and uncertainty in the law.

47. Initiative 1 does not reference Chapter 5.15 BMC.

48. Yet conduct that is permissive under Chapter 5.15 BMC violates Initiative 1, and vice-versa. There is no straightforward means of determining a person's rights or obligations under existing law, Chapter 5.15 BMC, when interpreting Initiative 1.

49. By failing to reference the existing code provision, Initiative 1 violates article II, section 37.

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c. Initiative 1 Exceeds the Initiative Power

50. It is unlawful for an initiative to interfere with the exercise of power delegated by state law to the governing body of a city.

51. Burien is a council-managed municipality under Chapter 35A.13 RCW.

52. RCW 35A.13.080 identifies the rights and responsibilities of Burien's City Manager and vests with the City Council the authority to assign duties to the City Manager "by ordinance or resolution." It further vests with the City Manager the power and duty to supervise Burien's administrative affairs and to "see that all laws and ordinances are faithfully executed…."

53. RCW 35A.090 grants the council the power to create departments and offices and to determine the duties of each department and office.

54. Initiative 1 assigns various administrative tasks to Burien's City Manager, which is the exclusive purview of the City Council.

55. More specifically, Initiative 1 usurps Burien City Council's power under 35A.11.020, which is exclusive to the council and not given to the city or voters to "organize and regulate its internal affairs … and to define the functions, powers, and duties of its officers and employees" when the Initiative in Sec. 12, requires Burien to adopt rules and procedures for compliance, and to seek feedback from worker organizations and employers before finalizing rules.

56. Initiative 1 further usurps the Burien City Manager's authority under 35A.13.080 to have "supervision over the administrative affairs" (managing staff and resources) as Initiative 1's mandatory business license revocation would also strip constitutional rights from businesses when it requires license penalties for violations in Section 9.

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57. Initiative 1 also usurps Burien voters' power and influence, disenfranchising Burien voters inasmuch as they cannot go to the Burien council to amend a law adopted by initiative; and because the Initiative requires compliance with minimum wage provisions of Tukwila and ultimately SeaTac.

58. Additionally, Initiative 1 is administrative in nature because (1) it directs Burien to direct or hinder a minimum wage plan it already adopted; and (2) conflicts with state and federal law.

59. Accordingly, Initiative 1 exceeds the scope of the initiative power.

d. Initiative 1 Failed to Comply with RCW 35.17.270, RCW 35.21.005(1)(a), and Related Provisions

60. RCW 35.17.270 and 35.21.005(1)(a) requires the text or prayer of the petition for signatures to be a concise statement of the action or relief sought and must contain a reference to the city ordinance applicable to the petition.

61. Initiative 1 contained the entire petition ordinance rather than a concise statement of action or relief as required by statute.

62. Initiative 1 failed to inform a potential petition signer or a voter that Burien had a minimum wage ordinance, that Burien's minimum wage was higher, or that the Burien City Council would be stripped of its authority to manage Burien's minimum wage if the petition was successful.

63. Initiative 1 was defective in that it was not a referendum (to repeal an existing law) and failed to provide notice of the intent to repeal an existing ordinance as required by RCW 35.17.240 and .250.

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64. In failing to identify that Burien had a minimum wage ordinance and that the minimum wage was higher, Initiative 1 did not meet the procedural requirements of RCW 35.17.270 and RCW 35.21.005(1)(a).

B. Second Cause of Action for Injunctive Relief

65. Burien realleges paragraphs 1 through 64.

66. Initiative 1 conflicts with state and federal law and is, therefore, unenforceable.

67. Burien has a clear and equitable right to prevent improper public expense incurred on an initiative that is not authorized by law.

68. Initiative 1 will require Burien to not only enforce an unconstitutional law, it will require Burien to consult with employee and employer groups and create detailed protocols and procedures within 150 days. It will also require Burien to expend resources on enforcement measures (including denying, revoking, or suspending local business licenses) that it cannot defend in front of a hearing examiner or reviewing court.

69. This places undue financial and administrative burden on Burien and the harm is immediate, concrete, and specific.

70. There is no adequate remedy at law because Burien is not authorized to amend or revoke an initiative absent a subsequent vote by its citizens.

71. Absent a temporary restraining order or injunction, irreparable harm will occur.

72. Accordingly, Burien is entitled to injunctive relief preventing the adoption of Initiative 1.

VI. REQUEST FOR RELIEF

Burien requests the following relief:

A. Declaratory judgment finding Initiative 1 unconstitutional and unenforceable;

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B. A temporary restraining order preventing the adoption and enforcement of Initiative 1;

C. A preliminary and permanent injunction preventing the adoption and enforcement of Initiative 1;

D. Attorney fees and costs as permitted by law and equity; and

E. All other relief the Court deems just and proper.

DATED this 25th day of February, 2025.

KELLER ROHRBACK L.L.P.

By *s/ Adam L. Rosenberg*

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