No. 103519-5

SUPREME COURT OF THE STATE OF WASHINGTON

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

Petitioners,

v.

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

Respondents.

AMICI CURIAE BRIEF OF AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION, CENTER FOR CIVIL RIGHTS AND CRITICAL JUSTICE, NATIONAL EMPLOYMENT LAW PROJECT, NATIONAL WOMEN'S LAW CENTER, NATIONAL DOMESTIC WORKERS ALLIANCE, AND PILIPINO WORKERS CENTER

David Montes, WSBA #45205
La Rond Baker, WSBA #43610
ACLU OF WASHINGTON FOUNDATION
P.O. Box 2728
Seattle, WA 98111

Jessica Levin, WSBA # 40837
Melissa R. Lee, WSBA # 38808
CENTER FOR CIVIL RIGHTS AND CRITICAL JUSTICE
Ronald A. Peterson Law Clinic

(206) 624-2184
dmontes@aclu-wa.org
baker@aclu-wa.org

1112 E. Columbia Street
Seattle, WA 98122
(t) 206.398.4167
(f) 206.398.4077
levinje@seattleu.edu
leeme@seattleu.edu

Cassandra Gomez
NATIONAL EMPLOYMENT LAW PROJECT
90 Broad St., Suite 1100
New York, NY 10004
212-285-3033
cgomez@nelp.org

Counsel for *Amici Curiae*

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I. IDENTITY AND INTEREST OF *AMICI*

Per RAP 10.3(e), the identity and interest of *Amici* are found in the accompanying Motion for Leave to File Amicus Curiae Brief.

II. INTRODUCTION

The exclusion of live-in workers in adult family homes[1] from the protections of the Minimum Wage Act (MWA) significantly burdens women and women of color. Eighty-three percent of the nearly 100,000 home care workers in Washington are women, nearly half are women of color, and one third are foreign born. Resp't Br. at 19 (CP at 459:11-15). Petitioners ask this Court to ignore the impact of such an exclusion on these Washingtonians and instead raise the hypothetical specter of widespread closures of adult family homes as a justification for

[1] RCW 49.46.010(3)(j) exempts any workers from the protections of the Minimum Wage Act if they reside where they work, exempting from the definition of employee "[a]ny individual whose duties require that he or she reside or sleep at the place of his or her employment or who otherwise spends a substantial portion of his or her work time subject to call, and not engaged in the performance of active duties."

excluding these workers from the MWA's protections. The Court should not accept Petitioners' post-hoc effort to justify the discriminatory outcomes produced by the original exclusion of domestic workers from the MWA.

Amici write to underscore the importance of hewing closely to the analysis in *Martinez-Cuevas v. DeRuyter Bros. Dairy*, 196 Wn.2d 506, 518, 475 P.3d 164 (2020), which rejected the conjectural, post-hoc justifications proffered for exempting agricultural workers from the overtime provision of the MWA. *Amici* urge this Court to affirm the trial court's grant of summary judgment on Respondents' privileges and immunities claim, as they have established that a straightforward application of the analysis from *Martinez-Cuevas* requires a finding that RCW 49.46.010(3)(j) is unconstitutional.

Amici also write to provide critical historical context for the exception enshrined in RCW 49.46.010(3)(j), which the Washington legislature adopted directly, without amendment or further justification, from an identical provision in the Fair Labor

Standards Act of 1938 (FLSA), exempting domestic workers from minimum wage laws. The historical record demonstrates that this exemption in the FLSA was created as a nominally race-neutral way to exclude Black people from labor protections, maintaining their economic subservience to white people. This history explains the original motivation behind this exemption and negates any argument that there are reasonable grounds for the identical provision at issue here. Moreover, the exemption continues to subject domestic workers—here, in-home caregivers, a job staffed overwhelmingly by women and primarily by people of color—to substandard wages.

Finally, *Amici* write to emphasize that even if the exemption at issue in this case did not violate the privileges and immunities provision of article I, section 12, the exemption would nonetheless violate the protection against discrimination and promise of equality embedded in article I, section 12. *Martinez-Cuevas*, 196 Wn.2d at 526-33 (article I, section 12 "prohibits both special interest favoritism and discrimination").

Because the exclusion of live-in workers from the protections of the MWA disparately impacts politically powerless and marginalized groups through its differential treatment of this class of workers, the law would also be subject to heightened scrutiny under article I, section 12's embedded protection against discrimination. *Martinez-Cuevas*, 196 Wn.2d at 533 (González, J., concurring) (article I, section 12 "does not tolerate laws that aim to advance the general welfare at the expense of a permanent underclass").

III. ARGUMENT

A. The Historical Record of the Exclusion of Agricultural and Domestic Workers from the FLSA, on Which Washington's MWA Is Based, Establishes a Story of Racial Oppression.

Congress enacted the FLSA, which became the basis of Washington's MWA, to protect workers across the United States. It established a minimum wage and overtime pay, as well as a private right of action against any covered employer that violates the statute. 29 U.S.C.S. §§ 206, 207, 216; *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 868, 281 P.3d

289 (2012). However, these protections did not extend to all workers. Instead, they were selectively withheld from two wide swaths of workers in industries that primarily employed Black people when the FLSA was enacted: agricultural workers and domestic workers. Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 OHIO ST. L.J. 95, 109 (2011), https://lawecommons.luc.edu/cgi/viewcontent.cgi?params=/context/facpubs/article/1150/&path_info=PEREA72OhioStLJ95.pdfEDITED.pdf. It is no coincidence that 65% of Black workers in America at the time were employed in these two industries; these exemptions were created to maintain economic subservience of Black people by white people. Kilolo Kijakazi et al., Urban Inst., *African American Economic Security and the Role of Social Security* 2 (July 2019), https://www.urban.org/sites/default/files/publication/100697/african_american_economic_security_and_

the_role_of_social_security.pdf; *Echoes of Slavery*, *supra* at 127.

To maintain the votes of Southern Democrats for passage of New Deal legislation, the Roosevelt administration excluded Black workers from the worker protections of the FLSA. *Echoes of Slavery*, *supra*, at 129. Southern Democrats felt that granting the FLSA's protections to Black workers would threaten white landowners' ability to maintain a quasi-plantation system in the Jim Crow South by making Black workers more independent and giving them more political power. *Id*. at 98, 102. These Democrats dominated Congress and Roosevelt needed their votes to pass the legislation. *Id.*

Southern Democrats made no attempt to hide their views on the subject. Members of Congress openly maintained that race-equal wage standards within the FLSA would be untenable for Southern society. *Id*. at 115. Representative E. Eugene Cox of Georgia expressed fear that if the FLSA were to mandate minimum wage and overtime standards equally among Black

and white workers, state-based racist hierarchies would be dissolved, with what he felt would be disastrous results. 82 Cong. Rec. Appendix at 442 (1937) ("The organized Negro groups of the country are supporting [the FLSA] because it will . . . render easier the elimination and disappearance of racial and social distinctions . . . .").

However, Roosevelt and Southern Democrats knew that explicit exclusion of Black workers would be unconstitutional and would be difficult to justify to Black voters who supported Northern liberals. *Echoes of Slavery*, *supra*, at 103-104. As a result, they needed a race-neutral way to exclude Black workers from labor protections, thereby maintaining the economic subservience of Black people to white people, securing the votes of white Southerners, and offering cover for Northern liberals. *Id.* Because most Black workers were employed as agricultural and domestic workers, the creation of an occupational exclusion for these jobs fulfilled Southern Democrats' goal of "gain[ing] federal benefits for their impoverished region and preserv[ing]

the racist status quo in the South" while also remaining "ostensibly race-neutral" to provide cover for Northern liberals in Congress and making the statute constitutional, at least on its face. *Id*. at 103.

Despite their attempts at race neutrality, the effect of these provisions was clear to both members of Congress and outsiders. Testifying before Congress on behalf of the NAACP, Charles Hamilton Houston stated:

> …where your Negro population is heaviest, you will find the majority of Negroes engaged either in farming or else in domestic service, so that, unless we have some provisions which will expressly extend the provisions of the bill to include domestic servants and agricultural workers, I submit that the bill is inadequate on the unemployment-compensation provision.[2]

Id. at 113.

[2] Although Houston was speaking about the unemployment compensation provision of the FLSA, this statement applies with equal force to the minimum wage exclusion since both provisions share a definition of employee, which excludes domestic labor. 29 U.S.C.S. §§ 206, 207, 216.

Some Members of Congress attempted to justify these provisions as helpful to Black people, as they had previously with slavery. For example, some Members argued that absent lower wages, Black people could not compete with white people and would not have jobs. *Id*. at 105. This echoed arguments that slavery itself was to the benefit of Black people. Pro-slavery author and lawyer Henry Hughes promoted a vision of antebellum slavery as "ethical warranteeism," in which enslaved people's labor is fairly exchanged for guaranteed food and housing. Brian Smith, *John Locke, Abolitionism, and the Reactionary Enlightenment*, 6 J. MOD. PHIL., 1, 13 (2025), https://jmphil.org/article/id/2503/; Henry Hughes, *Treatise on Sociology, Theoretical and Practical* 187 (1854), https://babel.hathitrust.org/cgi/pt?id=pst.000000449458&seq=. According to pro-slavery writer E.N. Elliott, such an arrangement affords enslaved people a "comfortable subsistence" that they would not otherwise be able to procure for

themselves. E.N. Elliot, *Cotton is King*, ¶ 7 (1860), https://www.gutenberg.org/files/28148/28148-h/28148-h.htm.

Proponents of similarly oppressive and discriminatory laws have also historically argued that paying a living wage would lead to the collapse of the economy or an inability to run businesses. Economic impossibility arguments have been applied against the extension of rights to domestic workers since the era of slavery. Pro-slavery economist Thomas Roderick Dew asserted that if slavery were abolished, "the whole southern country would be visited with an immediate general famine, from which the productive resources of all the other states of the Union could not deliver them." Joshua J. Mark, *T. R. Dew's A Review of the Debate in the Virginia Legislature of 1831 and 1832*, WORLD HIST. ENCYCLOPEDIA (Mar. 27, 2025), https://www.worldhistory.org/article/2678/t-r-dews-a-review-of-the-debate-in-the-virginia-le/#:~:text=Dew%20responded%20with%20A%20Review,slaves%20and%20would%20find%20freedom. This argument was

common amongst even those who claimed to oppose slavery, but who held people in bondage and published on the impossibility of its abolition. Joseph J. Ellis, *Slavery and Racism of Thomas Jefferson*, BRITTANICA (June 30, 2025), https://www.britannica.com/biography/Thomas-Jefferson/Slavery-and-racism. Notwithstanding the duplicitous economic concerns touted by proponents of the abhorrent practice of slavery, the U.S. economy grew in the post-emancipation era. Richard Hornbeck & Trevon Logan, *One Giant Leap: Emancipation and Aggregate Economic Gains* 2-3, 12-13 (Nat'l Bureau of Econ. Research, Working Paper No. 134, 2023), https://www.nber.org/system/files/working_papers/w31758/w31758.pdf (estimating that emancipation generated economic gains worth up to 35% of the U.S.' gross domestic product).

These racist attitudes combined with sexist attitudes and policies toward "women's work" to create a near-exclusive "caste" of Black women who served as domestic servants.

Evelyn Nakano Glenn, *Racial Ethnic Women's Labor: The Intersection of Race, Gender and Class Oppression*, 17 Rev. Radical Pol. Econ. 86, 96 (1985) https://caringlabor.wordpress.com/2011/02/13/evelyn-nakano-glenn-racial-ethnic-womens-labor-the-intersection-of-race-gender-and-class-oppression/. Exclusion from the benefits of the New Deal was meant to perpetuate this caste system. *Id.* That domestic work was primarily performed by women made its exclusion even easier for legislators because "women's work" was explicitly undervalued and deemed unworthy of legal protections. Ariela Migdal, *Home Health Care Workers Aren't Guaranteed Minimum Wage or Overtime, and the Legacies of Slavery and Jim Crow Are the Reason Why*, ACLU (June 29, 2016), https://www.aclu.org/news/womens-rights/home-health-care-workers-arent-guaranteed-minimum-wage-or. As a result, women were explicitly excluded from many protections, including social security coverage, which excluded "domestics" and women who worked two days per week until 1950. Phyllis

M. Palmer, *Domesticity and Dirt: Housewives and Domestic Servants in the United States 1920-1945*, at 155, Temple University Press (2010), https://www.jstor.org/stable/j.ctv941wpk.2?seq=4. Through this and other exclusions, "[domestic workers] were kept poor…, due to the mythology of the home as a private place,"—a mythology designed to make regulating domestic work seem unimaginable. Errin Haines, *The New Deal Devalued Home Care Workers. Advocates Hope New Legislation Can Undo That*., THE 19TH (Oct. 6, 2021), https://19thnews.org/2021/10/home-care-workers-new-deal-reconciliation/.

Indeed, the Appellants refers to residents of adult care homes as having a "surrogate family" in their caregivers, perpetuating many employers' inappropriate sentiments that domestic workers are part of their patients' families, a misguided view with historical roots in slaveholder attitudes toward the people they enslaved. Kristi L. Graunke, *"Just Like One of the Family": Domestic Violence Paradigms and Combating On-*

The-Job Violence Against Household Workers in the United States, 9 MICH. J. GENDER & L. 131, 165 (2002), https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1108&context=mjgl. In the contemporary context, the notion of the domestic worker as a family member particularly acts upon women workers, facilitating exploitation through "the guise that the employee is engaging in a labor of love as a family member, rather than engaging in paid labor as an employee." Mary Romero, *Immigration, the Servant Problem, and the Legacy of the Domestic Labor Debate: "Where Can You Find Good Help These Days!"*, 53 U. MIA. L. REV. 1045, 1047 (1999), https://repository.law.miami.edu/umlr/vol53/iss4/30.

The Washington legislature ultimately adopted the provisions of the FLSA in their entirety into its MWA, including those provisions excluding agricultural and domestic workers. *See Anfinson*, 174 Wn.2d at 868 (recognizing the MWA's definition of "employee" was based on the Fair Labor Standards Act). Members of this Court previously recognized the FLSA's

racist history, when the Court invalidated the exemption of agricultural workers from the MWA's overtime provision. *Martinez-Cuevas*, 196 Wn.2d at 528-29.

In *Martinez-Cuevas*, Justice González discussed the historical exclusion of agricultural workers from wage and hour protections. *Id*. at 528-29 (González, J., concurring). Echoing the history described above, and relying on the *Echoes of Slavery* article, Justice González noted that the "proponents of President Roosevelt's New Deal agenda made compromises to preserve a quasi-captive, nonwhite labor force and perpetuate the racial hierarchy in the South by excluding agricultural workers." *Id*. at 529; *see also id*. at 528-29. As the *Echoes of Slavery* article makes clear, the exclusion of agricultural workers was intimately and explicitly linked to the exclusion of domestic workers, all for the purpose of excluding Black people from wage and hour protections. Justice González went on to emphasize that agricultural workers remain a powerless group, primarily defined by race with 99% of agricultural workers being Latine. *Id*. at 531.

Now, employers of live-in caregivers—such as Petitioners—benefit from the exact provision meant to keep Black workers in economic subservience to deprive in-home caregivers—a workforce that is comprised primarily of women of color, many of whom are immigrants—of minimum wage protections meant to make workplaces safer. In Washington State, Asian American and Pacific Islander (AAPI) workers are especially impacted by this exclusion, as they are the largest non-white demographic in the state's home care workforce. *See* SEIU Healthcare 775NW, *Who Cares? A Portrait of Washington State Home Care Workers* 4 (Dec. 2010), https://www.myseiubenefits.org/wp-content/uploads/2015/01/Who_Cares_Portrait.pdf; *see also* Resp't Br. at 19.

B. No Reasonable Grounds Exist for Excluding In-Home Caregivers from Minimum Wage Protections.

To determine whether a statute grants an improper privilege or immunity in violation of article I, section 12, courts determine whether the law grants a privilege or immunity that

impacts a fundamental right of state citizenship and, if so, whether there are reasonable grounds for granting such a privilege or immunity. *Martinez-Cuevas*, 196 Wn.2d at 518.

The reasonable grounds test is "more exacting than rational basis review" because, unlike the latter, it does not allow courts to "hypothesize facts to justify a legislative distinction." *Bennett v. United States*, 2 Wn.3d 430, 449, 539 P.3d 361 (2023). Such a privilege or immunity has reasonable grounds if it has "a natural, reasonable, and just relation to the subject matter of the act." *Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 797, 317 P.3d 1009 (2014).

Respondents have established both prongs are met here, making a strong case that *Martinez-Cuevas* compels a holding that RCW 49.46.010(3)(j) is unconstitutional. *See generally* Resp't Br. *Amici* write separately to emphasize that the history of the exclusion of live-in workers from labor protections severely calls into question any purportedly reasonable grounds Petitioners propose.

Petitioners have argued that there are reasonable grounds—i.e., justification "in fact and theory," *Martinez-Cuevas*, 196 Wn.2d at 523—for the exemption of live-in workers from the MWA. They principally rely on the fact that the legislature *later* enacted the statutes to fund adult family homes knowing that the live-in exemption would apply. Pet'r Br. at 27-28. They assert, without any support in the legislative record, that the legislature must have considered the exception to the FLSA and chose to maintain it when setting up a scheme to regulate care facilities and family homes under the MWA. Pet'r Br. at 28. From the mere existence of these laws, the Appellants divine a "balancing of public policies" despite a total absence of supporting evidence in the legislative record. *Id.* This scheme, the Petitioners insist, amounts to a "book-keeping exemption" so that employers can consider room and board provided to employees as part of their wages. *Id*. at 21.[3] Petitioners go as far

[3] Petitioners do not attempt to explain why this would require an exemption from minimum wage laws, rather than an allowance to take room and board into account as part of compensation. The

as to suggest that this arrangement is of great benefit to Respondents and gives them a much better lifestyle than they could otherwise afford given, ironically, their meager wages. *Id*. at 4.

These arguments are virtually identical to those made to justify excluding Black people from the FLSA's protections using race-neutral categories of work. As there, Petitioners argue that not giving these workers the same protection is both necessary for society and beneficial for the workers.

Petitioners' attempts to justify the exemption of live-in workers fail, as the legislature's enactment of a subsequent law with awareness of the live-in exemption—even if salient for

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MWA defines "wage" as "compensation…payable in legal tender… subject to such deductions, charges, or allowances as may be permitted by rules of the director [of labor and industries]." RCW 49.46.010(1) and (7). Far from a balanced scheme that allows employers to take into account room and board, the MWA would require the Director of Labor and Industries to explicitly allow for such a deduction.

purposes of statutory interpretation[4]—does not foreclose a constitutional challenge.

First, Petitioners' argument fundamentally ignores this Court's express recognition of the stated purpose of the MWA, which is "to protect the health and safety of Washington workers," not to protect employers. *Martinez-Cuevas*, 196 Wn.2d at 525. Given the factual record here, Petitioners do not—and indeed could not—demonstrate a justification either in fact or in theory that excluding live-in workers from the protections of the MWA furthers the legislative goal of protecting worker safety and health.

Second, Petitioners do not address the racist origins of the live-in worker exclusion that was adopted from the FLSA into the MWA. Because the MWA adopted FLSA's exceptions with no additional explanation in the state-level legislative history, the

[4] When engaging in statutory interpretation, courts presume "that the legislature enacts laws with full knowledge of existing laws." *Thurston County v. Gorton*, 85 Wn.2d 133, 138, 530 P.2d 309 (1975).

FLSA's legislative history stands as the best evidence for why these provisions were adopted. As detailed above, the exceptions were nominally race-neutral means of excluding Black people from worker protections and maintaining their economic subservience. For this reason, the actual justifications for the statute are unjust and cannot satisfy the reasonable grounds test.

Third, Petitioners' attempt to justify the exclusions depends on an incorrect reading of *Martinez-Cuevas*, as this Court already recognized in that case when it rejected DeRuyter's very similar argument. According to Appellants, in *Martinez-Cuevas* this Court balanced the worker protections for dairy workers against "whether the price of milk might need to go up a few cents." Pet'r Br. at 29. Nowhere in the opinion does it balance these two competing priorities. The opinion considered only whether the alleged seasonality of dairy farming might justify an exception to the overtime requirements of the MWA. *Martinez-Cuevas*, 196 Wn.2d at 173-74. The Court rejected this argument because it was not supported by the record or

legislative history, finding the purpose underlying the MWA was employee health. *Id.* "In the face of this clear purpose and constitutionally mandated protection, the exemption in RCW 49.46.130(2)(g) is an impermissible grant of a privilege or immunity under article I, section 12 of Washington's constitution." *Id.*

In his concurrence, Justice González went further. In addressing DeRuyter's argument (markedly similar to Petitioners' here) that society benefits from dairy farmers' ability to operate their business with lower costs, he wrote:

> DeRuyter's appeal to the general welfare also does not save the law. DeRuyter contends the prosperity of the agricultural industry is vital to the welfare of Washingtonians… But the promise of equal protection does not tolerate laws that aim to advance the general welfare at the expense of a permanent underclass.

Id. at 532-533.

Given the history of this statute and the plainly unjust grounds for the privilege granted in this case, this statute should

be overturned based on the privileges and immunities clause of article I, section 12 of the Washington Constitution.

C. The Exclusion of Live-In Workers from the MWA Disparately Impacts Politically Powerless and Marginalized Groups and Would Also Justify Heightened Scrutiny Under Article I, Section 12.

In addition to protecting against special interest favoritism, article I, section 12 also protects Washingtonians against discrimination. *Schroeder v. Weighall*, 179 Wn.2d 566, 577, 316 P.3d 482 (2014); *Martinez-Cuevas*, 196 Wn.2d at 527 (González, J., concurring). The statutory exclusion at issue here contributes to a racially segmented workforce in which all but the most politically vulnerable workers turn away from an occupation.[5] This suggests a flawed political process and, as set forth in Respondents' brief and above, creates special-interest

[5] Because of the difficulty and low pay of in-home care jobs, the jobs have an incredibly high turnover, with many care givers leaving the jobs to take jobs in food service or warehouse work. Robert Holly, *Home Care Industry Turnover Reaches All-Time High of 82%*, HOME HEALTH CARE NEWS (May 8, 2019), https://homehealthcarenews.com/2019/05/home-care-industry-turnover-reaches-all-time-high-of-82/.

favoritism that requires this Court to strike down the exclusion. *Cf. Schroeder*, 179 Wn.2d at 577.

While not before the Court in this appeal, *Amici* note that the exclusion of live-in workers from the MWA would also justify heightened scrutiny under Respondents' article I, section 12's claim that those similarly situated receive equal treatment under the law, absent a sufficient reason justifying the differential treatment.

Members of this Court have called for heightened scrutiny in two circumstances. First, heightened scrutiny is appropriate where there is disparate impact on a racial minority. *Macias v. Dep't of Labor & Indus.*, 100 Wn.2d 263, 270-71, 668 P.2d 1278 (1983) ("[A] substantial disparate impact upon a racial minority…suggests an intermediate standard may be appropriate." (internal citations omitted)). Here, the exclusion's disproportionate impact on AAPI women, many of whom are also noncitizens, is reason enough to apply heightened scrutiny.

Second, heightened scrutiny may be appropriate where a law impacts a politically vulnerable class of individuals. *Schroeder*, 179 Wn.2d at 569, 577 (striking down a statute eliminating tolling of the statute of limitations for minors' medical malpractice claims). Although *Schroeder* rested mainly on a privileges and immunities analysis, this Court observed that the statute "[r]aise[d] [c]oncerns" under its equal protection cases. *Id.* The source of the concern expressed in *Schroeder* was that, in addition to burdening an "important right," the statute "has the potential to burden a particularly vulnerable population not accountable for its status" because the law "places a disproportionate burden on the child whose parent or guardian lacks the knowledge or incentive to pursue a claim on his or her behalf." 179 Wn.2d at 578-79 (observing that the law will burden "children in the foster care system, children whose parents are

themselves minors, and children whose parents are simply unconcerned").[6]

In *Martinez-Cuevas*, Justice González noted that farmworkers constituted a vulnerable class who have historically been excluded from the political process—which formed the empirical justification for the classification of farmworkers as "precisely the type of politically powerless minority whose interests are a central concern of [article I, section 12]." *Id*. at 531. Accordingly, while he agreed with the majority's privileges and immunities analysis, he wrote separately to underscore that "[t]he statutory exclusion of farmworkers from overtime pay deserves at least intermediate scrutiny" under the article I, section 12's protection against discrimination. *Id*. at 528.

Adult family home workers subject to the live-in exemption are a particularly vulnerable group. Across the United

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[6] The *Schroeder* court considered whether, as a practical matter, the statute under review affected this subgroup of children that is particularly vulnerable, even if the larger category of which they are a part (children) would not qualify for that label. 179 Wn.2d at 578-79.

States, home health aides, who assist patients with feeding, bathing, and other activities of daily living, are overwhelmingly women (87%) and encompass a much higher percentage of Black workers than workers overall (30% compared to 13%). *The Economics Daily: In 2023, the Majority of Home Health Aides and Personal Care Aides Were Women*, U.S. BUREAU OF LAB. STAT. (Nov. 13, 2024), https://www.bls.gov/opub/ted/2024/in-2023-the-majority-of-home-health-aides-and-personal-care-aides-were-women.html. Nearly 69% of home health aides are Black, Latine, or Asian. *Id.* Twenty-four percent of direct care workers are immigrants, and it is estimated that one in five immigrants working in direct care are undocumented, as the rapidly expanding industry "increasingly rel[ies] on migrant labor." Robert Espinoza, *Immigrants and the Direct Care Workforce* at 3 (June 2017) https://www.phinational.org/wp-content/uploads/2017/06/immigrants_and_the_direct_care_workforce_-_phi_-_june_2017.pdf; Cynthia Hess and Jane Henrici, *Increasing Pathways to Legal Status for Immigrant In-Home*

Care Workers at 13 (Feb. 2013), https://iwpr.org/wp-content/uploads/2013/02/I924_.pdf. In Washington State, a recent survey of professional caregivers showed that 81% were women and that only 53% of survey respondents were white, compared to 79% of all Washington residents. SEIU 775 and Ctr. For Am. Progress, *Higher Home Care Wages Reduce Economic Hardship and Improve Recruitment and Retention in One of the Country's Fastest-Growing Jobs* (2022), https://seiu775.org/wp-content/uploads/2021/06/SEIU-Hazard-Pay-Report.pdf. The largest non-white racial group consisted of AAPI workers. *Id.* Like the farmworkers discussed in *Martinez-Cuevas*, the vast majority of the live-in caregiver workforce consists of members of long marginalized, politically vulnerable groups.

This vulnerability is underscored by caregivers' continued exclusion from minimum wage protection. Even agricultural workers—a group Justice González described as "the type of politically powerless minority whose interests are a central concern" of the anti-discrimination provision of article I, section

12—gained minimum wage protections in Washington through a ballot initiative. *Martinez-Cuevas*, 196 Wn.2d at 530. In contrast, live-in domestic workers are still excluded from the critical protections of the MWA as they have been since the MWA's passage in 1959.

These low wages marginalize these communities even further because they are severely economically disadvantaged. In 2019, home care workers in Washington had a median hourly wage of $14.40 and a median annual income of $31,000, less than half of the state's average annual wage per employee of $69,593. Lina Stepick & Brooke Ada Tran, *Snapshot: Home Care in Washington*, at 1-2 (2022), https://www.frbsf.org/wp-content/uploads/sites/3/Homecare_Snapshot_WA_2022-1.pdf; *Quarterly Census of Employment and Wages: Employment and Wages Data Viewer*, U.S. BUREAU OF LAB. STAT. (Sept. 7, 2022), https://data.bls.gov/cew/apps/table_maker/v4/table_maker.htm#type=0&year=2019&qtr=A&own=0&ind=10&supp=1. Because of low wages, 15% of home healthcare workers live in poverty

and 28%—almost one third—receive food stamps. Stepick & Tran, *supra*, at 2.

Taken together, *Schroeder* and *Macias* suggest that article I, section 12's protection against discrimination calls for Washington courts to apply some form of heightened scrutiny if a statutory scheme will have a "substantial disparate impact" on a racial minority group or a "particularly vulnerable population." *Accord Martinez-Cuevas*, 196 Wn.2d at 526-33 (González, J., concurring) (applying heightened scrutiny to the exclusion of agricultural workers from overtime pay under RCW 49.46.130). The exclusion of in-home caregivers—a particularly vulnerable group unlikely to engage in the political process—from minimum wage protections would almost certainly run afoul of article I, section 12's protection against discrimination.

Finally, in addition to the contemporary discriminatory impact of the exclusion, the racist underpinnings of the exclusion of domestic workers from labor protection under the FLSA are reflected in Washington's MWA. While the target of

discrimination has changed,[7] the exclusion warrants careful scrutiny to ensure that the law affords politically vulnerable workers a remedy when special-interest legislation benefitting employers implicates their fundamental constitutional rights.

IV. CONCLUSION

For the reasons stated above, *Amici* ask this Court to strike down the exclusion of home healthcare workers from minimum wage protections.

This document contains 4,683 words per RAP 18.17(c)(9), excluding the parts of the document exempted from the word count by RAP 18.17(c).

[7] That domestic workers were not majority AAPI when the domestic worker exclusion was first adopted in the FLSA should not insulate the statute from meaningful scrutiny now. Review of statutes must account for changing facts. *United States v. Carolene Products Co., 304 U.S. 144, 153, 58 S. Ct. 778 (1938)* ("constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist").

RESPECTFULLY SUBMITTED August 1, 2025.

By: */s/* David Montes
David Montes, WSBA No. 45205
La Rond Baker, WSBA No. 43610
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION
P.O. Box 2728
Seattle, WA 98111
dmontes@aclu-wa.org
aleavitt@aclu-wa.org
baker@aclu-wa.org

Jessica Levin, WSBA No. 40837
Melissa R. Lee, WSBA No. 38808
CENTER FOR CIVIL RIGHTS AND CRITICAL JUSTICE
Ronald A. Peterson Law Clinic
1112 E. Columbia Street
Seattle, WA 98122
(t) 206.398.4167
(f) 206.398.4077
levinje@seattleu.edu
leeme@seattleu.edu

Cassandra Gomez
NATIONAL EMPLOYMENT LAW PROJECT
90 Broad St., Suite 1100
New York, NY 10004
212-285-3033
cgomez@nelp.org

Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

I certify that on the 1st day of August, 2025, I caused a true and correct copy of this document to be served on all parties by e-filing this document through the Washington State Appellate Courts Secure Portal.

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/s/ Tracie Wells
Tracie Wells, Paralegal
ACLU OF WASHINGTON FOUNDATION
P.O. Box 2728
Seattle, Washington 98111
(206) 624-2184

ACLU

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Comments:

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Address:
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