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Federal Court Denies Attempt to Halt Franchise Provision of Seattle's Minimum Wage Ordinance

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In a 43-page ruling issued late Tuesday, Federal Judge Richard Jones denied the International Franchise Association's ("IFA") bid to prevent Seattle's Minimum Wage Ordinance's franchise provision from going into effect as written. As a result, starting April 1, most franchisees in Seattle will be treated as "large" employers under the Ordinance, meaning they must pay the higher initial rate of $11 per hour. They also will scale up to the $15 minimum wage in just three years, much more rapidly than small businesses. While this is not the end of IFA's case attacking the franchise provision, it is a big setback and a strong indication that IFA is unlikely to ultimately be successful.

IFA had sought a preliminary injunction, challenging the Ordinance's definition of "large" employers as including all franchisees that are part of a chain with more than 500 employees anywhere in the nation. It argued that franchisees are more like small businesses, because individual locations are separately owned and have far fewer than 500 employees. It argued that, by lumping small franchise owners together with large businesses, Seattle was putting franchisees at a competitive disadvantage. It further alleged the City had intentionally discriminated against franchisees because of its preference for local businesses. This discrimination, if proved, would be a problem because states and cities are not allowed to enact legislation that is intended to or has the effect of favoring local businesses over out-of-state businesses. IFA's motion, if granted, would have put a temporary hold on the franchise portion of the Ordinance and required that franchisees with fewer than 500 employees be treated as small businesses until the case was fully resolved, which could take until the end of this year. The Court heard three hours of oral argument on the motion last week.

The Court's Order rejected each of IFA's legal theories. In sum, the Court found:

- The Ordinance is not discriminatory as written because it applies equally to franchisees whose corporate headquarters are in Seattle.

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- The Ordinance does not have a discriminatory purpose. The stated purpose of the minimum wage hike is to reduce income inequality and promote the general welfare, health, and prosperity of Seattle workers, and the rationale for differentiating between small and large businesses is the recognition that large businesses will have less "difficulty accommodating the increased costs." Although IFA argued that comments by a member of the Advisory Committee to the Mayor regarding "extractive national chains" revealed an ulterior motive to harm multi-state businesses, the Court gave these comments little weight. It reasoned that this was a "politically charged" issue with impassioned debate, "fervent remarks," and lobbying on both sides, making it improper to focus so heavily on a comment by one member of the public. It also rejected IFA's argument regarding statements by members of the City Council, reasoning that the statements, even if they were discriminatory, were "insufficient to override the entire City Council's formal statements of purpose in the Ordinance itself."
- The Ordinance does not have a discriminatory effect on franchisees. To invalidate the franchise provision under this argument, IFA had to prove the Ordinance would harm franchisees so much that the ultimate effect would be that local goods would have a larger share of the market than goods that come from out of the state. The Court found IFA had only argued potential, rather than actual, harm to franchisees and refused to "speculate or to infer discriminatory effect without substantial proof." Although IFA had argued that franchisees would be forced to close up shop or that new franchisees would not open in Seattle, there was insufficient proof of this. Moreover, the Court noted, there was some evidence that franchisees would not be harmed because they could draw upon the "greater financial resources" of their franchisors to support them during times of business stress. Even if the court did assume there would be some negative effect on franchisees from the law, this burden would not override the local benefit from assisting low wage workers, and, in any event, the court stated, "it is not the court's place to second guess the reasoned judgments of the lawmakers who studied and analyzed this issue as part of an involved legislative process."
- There was no equal protection violation because it was rational for the City to believe franchisees would be able to tolerate the increased wage better than small independent businesses. The court pointed to economic benefits from the franchise relationship, such as national advertising, valuable and well-known trademarks, reduced cost for supplies and raw materials, training, and a network of other franchisees who provide valuable business advice. The Court also pointed out various benefits that individual plaintiff franchisees had acknowledged, such as one Holiday Inn franchisee's use of a large on-line reservation system and access to a loyalty reward system with 74 million members worldwide.
- The Court also rejected IFA's other arguments, including its First Amendment claim, its argument that the Ordinance was preempted by federal law on copyrights (the Lanham Act) or health plans (ERISA), and its claim under the Washington State Constitution's Privileges and Immunities clause. For each, the reasoning was essentially that these theories, while in some cases "novel and creative," were not well-supported under the law and were otherwise unpersuasive, given the court's reasoning on some of the previous claims.

Overall, the Court found IFA did not prove it was likely to win on any of its arguments. Although it was "sympathetic to the concerns of franchisees," it also found that any harm from the Ordinance taking effect

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was speculative and not supported by the evidence. It also balanced the harm to franchisees against the "concrete harm" to low-wage employees if they lost the expected wage increase and found the equities did not support the requested injunction. Finally, in a serious blow to IFA's chances at ultimate success in this case, assuming it goes forward, the Court found IFA had failed to raise "serious questions" showing it had a "fair chance of success on the merits."

Although this ruling is not the end of the case, Judge Jones' thoughtful and comprehensive analysis of IFA's claims is a strong indication that IFA will not ultimately be successful while the lawsuit is before Judge Jones. If you have any questions on this ruling, the IFA litigation, or Seattle's Minimum Wage Ordinance in general, please contact Greg Duff or Diana Shukis.

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