NO. 101600-0

SUPREME COURT OF THE STATE OF WASHINGTON

THE CIVIL SURVIVAL PROJECT, et al.,

Petitioners,

v.

STATE OF WASHINGTON, et al.,

Respondents.

RESPONDENT STATE OF WASHINGTON'S ANSWER TO MEMORANDUM OF AMICUS CURIAE INSTITUTE FOR JUSTICE IN SUPPORT OF PETITION FOR REVIEW

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I. INTRODUCTION

The Institute for Justice's (Institute) amicus memorandum raises several legitimate concerns about Washington's criminal justice system, which the State has noted throughout the course of this litigation. But at issue here is whether a putative class action is the appropriate mechanism to manage refunding Legal Financial Obligations (LFOs) as a result of *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

The Court of Appeals appropriately recognized the concerns the Institute raises here but also recognized problems in utilizing a class action. To start, CrR 7.8 is the exclusive mechanism to refund LFOs, under this Court's decision in *Williams v. City of Spokane*, 199 Wn.2d 236, 505 P.3d 91 (2022). All three branches of government have been continuing to work on improving the CrR 7.8 process to vacate *Blake*-related convictions and refund LFOs. It would cause more confusion to simultaneously implement a class action.

Many of the Institute's arguments show why the Court of Appeals' analysis was correct. The Institute highlights collateral consequences resulting from *Blake* convictions, but the putative class action would not address those issues. The Institute expresses concerns about delays, but there is no evidence that a class action will shorten delays, particularly when the Legislature has allocated funding for the CrR 7.8 process. And while the issues are no doubt important, the public interests would not be enhanced by this Court addressing in a vacuum all of the issues necessary to implement a class action. The Court should deny review.

II. ARGUMENT

A. This Court's Decision in *Williams* Forecloses the Institute's Arguments

The Institute provides no explanation as to how CrR 7.8 does not apply, nor why *Williams* and its preceding line of cases do not control. CrR 7.8 provides the mechanism by which superior courts provide relief from a criminal judgment or order.

A line of appellate cases analyzing nearly identical rules held that such rules are the exclusive means to remedy problems in criminal judgments. *See Doe v. Fife Mun. Ct.*, 74 Wn. App. 444, 874 P.2d 182 (1994); *Boone v. City of Seattle*, 4 Wn. App. 2d 1038, 2018 WL 3344743, at *3 (July 9, 2018) (unpublished); *Karl v. City of Bremerton*, 7 Wn. App. 2d 1047, 2019 WL 720834, at *3-4 (Feb. 20, 2019) (unpublished). In *Williams*, this Court endorsed that line of precedent, holding that the exclusive means for vacating convictions and obtaining refunds resulting from paid fines and fees is through filing a motion in the superior court where the conviction occurred. 199 Wn.2d at 244.

The Court of Appeals correctly spent much of its analysis on why this Court's opinion in *Williams* can lead only to the conclusion that CrR 7.8 is the exclusive mechanism to vacate *Blake*-related convictions and refund LFOs. The Court of Appeals followed *Williams* analysis to reject both the class action and the Uniform Declaratory Judgment Act (UDJA) claims. Op. at 12-15, 21-23 (entered Nov. 28, 2022). Rather than

meaningfully address CrR 7.8 or *Williams*, which foreclose the potential for this putative class action, the Institute mentions these critical points in passing.

Contrary to the Institute's insinuations otherwise, the Court of Appeals recognized and considered potential drawbacks in using CrR 7.8 as the exclusive mechanism, including how different counties deal with the process. The court also noted the steps taken by all three branches of government to better improve the process. As pointed out in the State's answer to the petition for review, the Legislature allocated millions of dollars not just to assist in providing LFO refunds but also to create and improve the structure by which those refunds occurred. These include expanding online automated plain language forms, outreach, education, and technical assistance, as well as additional resources for appointing counsel and judicial staff. While the Institute repeats the initial complaint's claim that it would take 4,000 years to refund all *Blake*-related LFOs, this allegation does not account for the funding and systems created and

implemented by the three branches of government following the initiation of this lawsuit.

B. The Institute's New Concerns Are Not Related to This Case and Show Why Review Should Be Denied

The Institute's amicus curiae memorandum (Memo) raises a new argument about recovering assets taken by civil forfeiture. Memo at 3-5. The Court need not consider new arguments or issues on review presented for the first time by an amicus. *Ctr. for Env't L. & Pol'y v. Dep't of Ecology*, 196 Wn.2d 17, 36 n.14, 468 P.3d 1064 (2020) (en banc) ("This court generally does not consider issues that are raised only by an amicus.") (cleaned up, collecting cases). Here, Plaintiffs did not present a legal claim for civil forfeiture and the issue was never briefed to the Court of Appeals or identified in the petition for review. The Court should not consider the new issue raised by amicus.

If anything, the discussion of civil forfeiture and other collateral consequences shows why the requested putative class action is not appropriate. Plaintiffs did not request that civil

forfeiture be included with their class definition, so it is another collateral consequence that would have to go through a separate judicial proceeding to order appropriate relief. Contrary to the Institute's arguments, the requested class action will not address all collateral consequences, as it cannot.

Nor is civil forfeiture well-suited for a class action. A claim resulting from a civil forfeiture derives from the seizure or forfeiture of property by a law enforcement agency or authorized state agency. *See, e.g.*, RCW 69.50.505. Although a separate action, the forfeiture action inherently derives from the underlying criminal case giving rise to the seizure or forfeiture. *Olympic Peninsula Narcotics Enf't Team v. Real Prop. Known as (1) Junction City Lots 1 Through 12 Inclusive*, 191 Wn.2d 654, 666-667, 424 P.3d 1226 (2018). A variety of property can be subject to seizure or forfeiture, including money, raw materials, conveyances, personal property, or even real property. RCW 69.50.505. Returning such property or even calculating appropriate damages for an improper seizure would require

individualized determinations not just about what property was seized, but which entity received the property, whether such property has been sold or a value determined (if possible).

Additionally, the Legislature established a separate process to challenge a seizure or forfeiture. *See* RCW 69.50.505(5)-(17). It is likely for this reason that the Institute cannot cite to a case where a class action was utilized to return all property seized as a result of a particular crime. A class action is not well-suited, either legally or practically, to deal with such individualized determinations that would have to be made.[1]

[1]This is not to say that concerns about improper use of civil forfeiture are misplaced. This Court and the Court of Appeals have noted situations in which a forfeiture amounted to an excessive penalty and the necessity of making whole a person whose assets were improperly seized. *Olympic Peninsula*, 191 Wn.2d at 668-669 (claimants who successfully challenged forfeiture entitled to civil and criminal attorney fees to make them whole); *Jacobo Hernandez v. City of Kent*, 19 Wn. App. 2d 709, 497 P.3d 871 (2021) (forfeiture of vehicle violated Excessive Fines Clause). Again, these cases involve individualized legal determinations based on the presented facts, which is not suited for a class action.

C. The Court of Appeals Correctly Applied the Standards for Class Actions

The Institute repeats Plaintiffs' incorrect argument that the Court of Appeals misapplied the standards for class actions. Memo at 6-10. First, as discussed above and explained throughout the State's answer to petition for review, *Williams* forecloses this argument. Rather than discussing *Williams*, the Institute cites inapposite cases. None of those cases deal with mass vacatur or refund based on an invalidated criminal statute.

The problem with utilizing a class action is not that there would be an individual showing of damages, as the Institute and Plaintiffs argue. Memo at 8. The problem is that there will be no set formula to apply—there will need to be a different formula based on each individual, dependent on factors related to the underlying criminal convictions, including all the collateral consequences.

The Court of Appeals thus did not restrict class action case law, as it simply followed this Court's precedent. If anything,

Plaintiffs and the Institute seek to expand class actions to apply to criminal matters, which no Washington court has ever applied.

The Institute is wrong in arguing that the Court of Appeals failed to grapple with class action principles. *Contra* Memo at 8-11. That court could have simply relied on *Williams* and affirmed. Instead, the court analyzed the textual structure and addressed Plaintiffs' concerns that "the sheer scope of *Blake*'s demands on the judicial system create different concerns of judicial efficiency than those present in *Doe* and *Williams*." Op. at 15. It considered whether a class action separate from or in tandem with the CrR 7.8 process, pointing out the separate processes would not remedy Plaintiffs' concerns. Neither Plaintiffs nor the Institute have shown how the class action provides a manner in which individuals will be able to receive personalized advice on how to navigate the process more readily than by filing CrR 7.8 motions, and pro se individuals will be subject to the same burdens. *See* Op. at 18-19.

Although the Institute raises the understandable concern that the principle justice delayed is justice denied is particularly true concerning money (Memo at 9), the Institute fails to account for the reality that the legislature has allocated hundreds of millions of dollars to help refund LFOs through the CrR 7.8 process. There has been no similar allocation for a putative class action, nor is there any evidence that local governments have similarly allocated funds for a class action. It would take duplicative resources, assuredly involving the same staffs in clerks' offices, prosecuting attorneys' offices, public defenders offices, and the Administrative Office of the Court, to manage both the CrR 7.8 process endorsed by the Legislature and this class action.

The Institute neglects to address the likely drawbacks by utilizing a class action, including that funds would be diverted to paying class counsel, and that the class action would complicate efforts down the road for affected individuals to vacate convictions. Op. at 19. The Court of Appeals explained that a

class action is just as likely to lead to the same drawbacks that would occur through the CrR 7.8 process.

D. The Court of Appeals Correctly Rejected the UDJA Claims and Held That the Public Importance Doctrine Does Not Apply

The Institute's argument that the UDJA claims should remain ignores both the Court of Appeals' actual analysis and the *Williams* holding. As the Court of Appeals explained, the *Williams* Court expressly held that no dispute exists so as to confer standing under the UDJA. Op. at 20-22. The *Williams* Court explained that a viable UDJA claim must involve "an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement." 199 Wn.2d at 248-249 (citations omitted). A final judgment closes the underlying cases, removing UDJA standing, which means that a new dispute, like a motion to vacate, is necessary. Op. at 21 (citing *Williams*, 199 Wn.2d at 248). And *Williams* rejected that a class representative could have standing to bring this UDJA suit. *Id.*

Because individuals still have the CrR 7.8 process, the UDJA is not "the only means by which individuals' rights can be safeguarded" as the Institute incorrectly argues. Memo at 12.

This holding does not, as the Institute argues, restrict standing for UDJA claims, but appropriately applies *Williams*. While the UDJA has and can continue to be used to address constitutional questions, that does not mean that all claims for equitable and injunctive relief based on constitutional arguments are subject to UDJA standing. Rather, there still needs to be an analysis whether there is an existing dispute, including whether the claim challenges a final judgment. *Williams*, 199 Wn.2d at 248; *see also League of Educ. Voters v. State*, 176 Wn.2d 808, 816, 295 P.3d 743 (2013). That is what occurs through these claims, so they were appropriately dismissed.[2]

In arguing that the Court should invoke the public importance doctrine, the Institute provides an incomplete picture

[2]The Institute never disputes that the UDJA claims are derivative of the other claims.

of when the courts exercise their discretion to relax standing requirements to review a case because it is one of major public importance. The State has never disputed that *Blake* and concerns about refunding LFOs is important to the public. The Court of Appeals agrees. The problem, as the Court of Appeals recognized, is that public interest would not be enhanced by reviewing this case.

Unlike the cases invoking the public importance doctrine cited by the Institute, this case is not about a simple constitutional ruling, but "presents complex, fact-dependent questions of public administration in an area that has already received significant attention from many aspects of our state government." Op. at 23.

Granting review and permitting the requested relief would require this Court to answer such questions as identifying all crimes subject to *Blake*, who pays for the refund, how the refund is paid, how the individuals are identified, and whether the paid LFO should be attributed to the *Blake*-related conviction or another valid conviction, to name a few. All of this would occur

alongside a parallel system following the CrR 7.8 process. The Court of Appeals correctly recognized that invoking the doctrine "would not enhance the public interest but instead further complicate an already complicated problem." Op. at 23.

III. CONCLUSION

The Court should deny review.

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RESPECTFULLY SUBMITTED this 21st day of March 2023.

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