No. 100123-1

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

KEENA BEAN, et al.,
Appellants,

v.

CITY OF SEATTLE, et al.,
Respondents.

RESPONDENT CITY OF SEATTLE'S ANSWER TO APPELLANTS' PETITION FOR REVIEW

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I. INTRODUCTION

Respondent City of Seattle answers appellants' petition for discretionary review by the Supreme Court and asks that the petition be denied. While the petition gives surface mention to their claims that (i) there is a contradiction in Art. I, section 7 jurisprudence requiring resolution or (ii) that the (allegedly expanding) scope of private inspections warrants additional judicial guidance, appellants' petition is actually nothing more than a disagreement with the Supreme Court's decision in *City of Pasco v. Shaw*, 161 Wn.2d 450, 166 P.3d 1157 (2007). Dislike of a prior decision of this Court is not a basis for discretionary review.

The petition fails to meet this Court's standards for discretionary review established by RAP 13.4(b): There are no conflicts between appellate divisions requiring resolution; the Court of Appeals faithfully applied this Court's controlling decision in *City of Pasco*; and the holdings in that case fully settled the same constitutional and public policy questions

raised here. Despite making alarmist statements about potential governmental intrusion which have no basis in the challenged ordinance itself, appellants have not provided a reason to revisit this Court's prior determinations with respect to constitutional and public policy issues.

II. COUNTERSTATEMENT OF ISSUES FOR REVIEW

1. Does the Court of Appeals' faithful application of the precedent in *City of Pasco v. Shaw* to a factually similar ordinance require further judicial review?
2. Since *City of Pasco,* are there any new policy considerations or case law that provide grounds under RAP 13.4(b) for this Court to revisit its 2007 decision?

III. STATEMENT OF THE CASE

The Seattle City Council passed RRIO in 2012, finding it "necessary to protect the health, safety, and welfare of the public; and prevent deterioration and blight conditions that adversely impact the quality of life in the city." SMC

22.214.010. RRIO accomplishes this goal "by requiring rental housing be registered and properly maintained, and that substandard housing conditions be identified and corrected." *Id*. All registered rental properties must be inspected at least once every ten years. SMC 22.214.050(B).

The property owner must use a "qualified rental housing inspector" to conduct the inspection and provide the required advance notice to any existing tenant. SMC 22.214.050(A), (H). A "qualified rental housing inspector" is either: a) a City Housing and Zoning Inspector; or b) a private inspector who is registered with the City and who maintains certain credentials. SMC 22.214.020(9). The inspector physically inspects the interior and exterior of the property, and if the property meets RRIO's habitability standards, the inspector issues a certificate of compliance so stating, which is submitted to the City. SMC 22.214.050(E), (F),

22.214.020(2).[1]

The challenge to the state statute granting the City authority to enact RRIO was dismissed March 29, 2019, while the City's dismissal motion was denied at that time. CP 187-188 Because of that decision, the City subsequently amended its ordinance so that it conformed with the ordinance reviewed by this Court in *City of Pasco*, by eliminating the need for all inspection reports to be provided to the City. CP 224 In light of this statutory amendment, the City's subsequent dismissal motion was granted on February 28, 2020. The Court of Appeals then affirmed that dismissal because the "**ordinance and challenge here are not distinguishable** from those in [City of] Pasco." Op. at 7 (emphasis added). Division I found the attempts to distinguish the Seattle ordinance from the Pasco ordinance to be "unpersuasive" and expressly noted that they were arguments

[1] Once a certificate of compliance has been submitted for a rental property, that property shall not be selected for inspection for at least five years, unless the City determines that the certificate is no longer valid. SMC 22.214.050(I).

made to, and rejected by, this Court in *City of Pasco*. *Id*.[2] The opinion by the appellate court, applying the binding precedent of *City of Pasco* (since codified in RCW 59.18.125) to directly analogous facts, was not published.

IV. ARGUMENT

RAP 13.4(b) states that a petition for review will be accepted by the Supreme Court only if there is conflict between the Court of Appeals' decision and either another appellate division or a prior Supreme Court decision; a significant question of constitutional law exists or a substantial interest of public policy is raised. None of those elements are present here. Despite limited attempts to raise issues that fall within RAP 13.4(b), Appellants' legal claims are actually rooted in their refusal to accept this Court's holdings in *City of Pasco*,

[2] Additionally, on her facial challenge to the (state) authorizing statute, the court found that Bean had failed to demonstrate that a privacy right was implicated, another argument which was made to, and rejected by, this Court in *City of Pasco*. CP 205

especially that: (i) private inspectors hired by the landlords are not state actors, and (ii) landlords may access the property they own with proper notice and a proper purpose, including arranging a safety inspection required for business licensing purposes.

A. Judicial review is unwarranted because the Pasco Ordinance and Seattle's RRIO have no material or relevant differences.

The appellants' petition for discretionary review unsuccessfully tries to establish differences between the Seattle ordinance and the Pasco ordinance which warrant review. The City of Seattle modeled its RRIO ordinance on the *City of Pasco* ordinance in all legally significant elements, as held by both lower courts. Applying *Pasco*, the Court of Appeals expressly held that "[p]rivate inspectors are not state actors under at least one path to certification authorized by the RRIO," and therefore compliance with the statute does not require any constitutional violation. Op. at 10.

Appellants' attempts to argue that Seattle's ordinance somehow goes beyond the Pasco ordinance are not actually rooted in the Seattle RRIO ordinance, as is evidenced by appellants' failure to call this Court's attention to any specific language or requirement in the ordinance. The statute mandates a health and safety inspection, nothing more, even if the City has politely referred to private inspectors as "partners" or warned them tenants may be confused and ask private inspectors about city services.

B. Appellants Fail to Identify Either an Existing Constitutional Issue or a Discrepancy in Constitutional Case Law.

Appellants simply disagree with the *Pasco* decision. Appellants bluntly acknowledged this truth in earlier pleadings: "To be clear, Plaintiffs believe that *City of Pasco* was wrongly decided and should be overturned." Plaintiffs' Response in Opposition to Seattle's Motion to Dismiss the Am. Comp. at 24, FN 7. Appellants essentially complain that the *Pasco* decision results in similar ordinances elsewhere, which they

view as leading to increasing Art. 1, Sect. 7 violations.[3] However, after careful analysis of Pasco's rental inspection ordinance, this Court held that no state action was implicated, so there cannot be an Article I, Section 7 violation. *City of Pasco* at 462.

Moreover, this Court's Article I, Section 7 jurisprudence has been consistent, appellants' claims to the contrary notwithstanding. Simply put, citing cases about the appropriate role of actual state actors, as petitioners do, is not evidence of inconsistent jurisprudence. Post-*Pasco* cases about the ability of police officers and probation officers to conduct warrantless searches, *see* petition at 16-17, are irrelevant to the principles of *Pasco*, a case allowing health and safety inspections by non-state (private) inspectors. Similarly, neither *McCready* nor *Bosteder* have any bearing on this matter. *See City of Pasco*,

[3] "[T]his Court's jurisprudence [in its Pasco decision] leads to public policy that directly undermines a fundamental constitutional protection." Petition at 3.

161 Wn.2d at 459 ("the *McCready* cases and *Bosteder* involved searches conducted by city inspectors, these cases do not answer the question presented here, whether the Fourth Amendment or Article I, Section 7 is violated where a landlord and a privately engaged inspector inspect a rental property for code violations that impact health and safety."(citing to *City of Seattle v. McCready* (*McCready II*), 124 Wn.2d 300 (1994) and to *Bosteder v. City of Renton*, 155 Wn.2d 18 (2005))).

V. CONCLUSION

This petition is in effect a Motion for Reconsideration of this Court's decision in *City of Pasco*. However, appellants have not demonstrated that this Court fundamentally misunderstood or misapplied the law, or that the ordinance itself merits review in the circumstances of this case. Accordingly, the City asks that the petition be denied.

This document contains 1,370 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 24th day of September 2021.

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