NO. 101600-0

SUPREME COURT OF THE STATE OF WASHINGTON

THE CIVIL SURVIVAL PROJECT, et al.,

Appellants,

v.

STATE OF WASHINGTON, et al.,

Respondents.

RESPONDENT STATE OF WASHINGTON'S ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

The Court of Appeals correctly applied this Court's recent controlling precedent. The Court of Appeals upheld dismissal of Plaintiffs' putative class action to refund all legal financial obligations owed to individuals based on this Court's decision in *State v. Blake*,[1] holding that the exclusive means to obtain refunds is through the relevant criminal rule and that a class action is not available. Slip op. at 15 (citing *Williams v. City of Spokane*, 199 Wn.2d 236 (2022)). A class action "would not enhance the public interest but instead further complicate an already complicated problem." Slip op. at 23. Following this Court's lead and recognizing the logistical and constitutional problems that would result by allowing a class action to proceed, the Court of Appeals correctly held that CrR 7.8 is the exclusive mechanism to refund *Blake* LFOs.

[1] 197 Wn.2d 170 (2021).

The Court of Appeals' decision reflects the practical reality of implementing *Blake*. No one here—not the Legislature, the prosecutors, the defense attorneys, the lower courts, or the State—disputes that individuals convicted of *Blake*-related crimes are entitled to vacatur and a refund of their paid LFOs for those convictions. Since *Blake*, all of these parties have operated on the assumption that CrR 7.8, the commonly used procedure to vacate invalid convictions and sentences, is the process. The Legislature appropriated over $140 million to agencies, prosecutors, defense attorneys, and courts to not just use that process but provide notice and education about using that process. This Court even amended CrR 7.8 to simplify that process. All of those entities are continuing that work.

Yet Plaintiffs now ask the Court to revert course and use a class action or retain ongoing jurisdiction to legislate how refunds are to be done. Plaintiffs' request not only runs afoul of this Court's decision in *Williams*, but causes multiple logistical and constitutional issues. For example, the class action would not

vacate the convictions and would set aside the individualized decisions made by the criminal courts.

The Court of Appeals issued a thorough, reasoned decision addressing the realities of implementing *Blake*. There is no reason to review that decision and add yet further complication to a complicated matter. The Court should deny review.

II. FACTS

In 2021, this Court decided *State v. Blake*, which invalidated Washington's simple drug possession statute as unconstitutional for lacking an intent element.[2] All parties agree that individuals convicted by simple drug possession under the statute invalidated by *Blake* are entitled to vacation of those convictions; that individuals with multiple convictions are entitled to be resentenced with the *Blake* convictions vacated; and that paid LFOs attributable to *Blake* convictions should be refunded. *See Nelson v. Colorado*, 581 U.S. 128 (2017) (due

[2]The statute has since been amended to add a *mens rea* element. RCW 69.50.4013(1), as amended July 25, 2021.

process requires return of costs, fees, and restitution paid pursuant to invalidated convictions without further proving innocence). This lawsuit addresses whether a class action is an appropriate mechanism to vindicate such rights.

A. The Courts, Counties, State Agencies, and Legislature Are Responsible for Implementing *Blake*

1. Criminal Rule 7.8

When an individual seeks to vacate a conviction and obtain a refund of paid LFOs, CrR 7.8 governs the process. That rule requires the filing of a motion stating the grounds for relief, supported by an affidavit describing the facts or errors warranting vacation. CrR 7.8(c)(1). Where vacation is sought because the conviction was for simple drug possession under the invalidated statute, all parties agree that *Blake* requires vacation. Counties have been utilizing the CrR 7.8 process when addressing *Blake* convictions, including in vacating convictions, conducting resentencings, and reimbursing LFO payments. Counties have proactively worked to vacate thousands of *Blake* convictions by bringing their own motions pursuant to CrR 7.8.

In May 2021, members of the criminal defense bar proposed amendments to CrR 7.8 and CrR 3.1 "to remove unjust barriers to the appointment of counsel in cases eligible for resentencing under the Supreme Court's recent decision in *State v. Blake*."[3] In December 2021, this Court adopted the proposed changes, amending CrR 7.8 to provide that an individual is entitled to relief when that person is serving a sentence for a conviction under a statute determined to be void, invalid, or unconstitutional by the Supreme Court of the United States or this Court. CrR 7.8(c)(2). It amended CrR 3.1 to add a provision that individuals have a right to a lawyer if they are serving a sentence for a conviction based on a statute determined to be void, valid, or unconstitutional by the United States Supreme

[3] *See* Letter from Larry Jefferson, et al., Wash. State Off. of Pub. Def., to Justice Johnson and Justice Yu, Co-Chairs, Sup. Ct. Comm. (May 24, 2021), *Suggested amendments to CrR 3.1, Right To And Assignment of Lawyer and CrR 7.8, Relief From Judgment Or Order* (May 24, 2021), https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplayArchive&ruleId=5842.

Court or this Court. CrR 3.1(b)(2)(B). The rule changes were substantively identical to those proposed by the criminal defense bar and only apply to the incarcerated.

2. Legislative appropriations

In April 2021, two months after *Blake* came down, the Legislature passed ESSB 5092, which appropriated $80 million to assist counties in vacating convictions under the voided simple drug possession statute and refunding paid LFOs. The Governor signed the bill in May 2021. Laws of 2021, ch. 334.

During the following legislative session, which ended in March 2022, the Legislature further responded to *Blake* by passing a wide array of appropriations through ESSB 5693. The Governor signed the bill, with an unrelated partial veto, on March 31, 2022. Laws of 2022, ch. 297. In total, the 2022 budget bill appropriated over $140 million specifically to address *Blake*, including:

- $46.75 million to establish an LFO aid pool for counties to refund LFOs. § 114(6);

- $44.5 million to assist counties with the costs of complying with *Blake* that arise from the county's role in operating the state's criminal justice system, including resentencings, vacating prior convictions for simple drug possession, and certifying refunds of LFOs. § 114(5);

- $11.5 million to assist cities to comply with *Blake*. § 114(31);

- $11 million to the Office of Public Defense (OPD) over the next two years to assist counties with public defense costs related to *Blake* LFOs. § 115(5);

- $6.2 million over the next two years to the Department of Corrections (DOC) for temporary court facilities and release assistance to individuals resulting from confinement. §§ 223(6)(c)-(d);

- $2.85 million over the next two years to the Office of Civil Legal Aid to continue and expand online forms, outreach, education, and legal assistance relating to LFOs and vacating *Blake* sentences. § 116(8);

- $2 million for the Administrative Office of the Courts (AOC) relating to resentencings and refunds. § 114(29); and

- $7.09 million in assorted other *Blake*-related appropriations. §§ 114(16), (3); 115(6); 223(6)(d), (f)-(g).

The AOC is to use the roughly $2 million to "[c]ollaborate with superior court clerks, district court administrators, and municipal court administrators to prepare comprehensive

reports, based on available court records, of all cause numbers impacted by *State v. Blake* going back to 1971" and to "[e]stablish a process to locate and notify individuals of available refunds and notify those individuals of the application process necessary to claim the refund and issue payment from the legal financial obligation aid pool." *Id.* § 114(29)(a)-(b). The Office of Civil Legal Aid is to use the $2.25 million to "continue and expand online automated plain language forms, outreach, education, technical assistance, and legal assistance to help resolve civil matters relating to legal financial obligations and vacating the sentences of defendants whose convictions or sentences are affected by the *State v. Blake* decision." *Id.* § 116(8) (cleaned up).

With respect to aid pools for counties and cities, the bill provides that "[o]nce a direct refund process is established, superior court clerks or district court administrators must certify, and send to the [AOC], the amount of any refund ordered by the court." *Id.* §§ 114(6), (32). This facilitates tracking and

disbursement of monies from the aid pool to cover reimbursements paid by counties and cities. *See id.* The OPD is to use the $11 million "to assist counties with public defense costs related to vacating the sentences of defendants whose convictions or sentences are affected by the *State v. Blake* decision," *id.* § 115(5), including grants for public defense assistance and funds for OPD "to provide statewide attorney training, technical assistance, data analysis and reporting, and quality oversight and for administering financial assistance for public defense costs related to *State v. Blake* impacts." *Id.* § 115(5)(a).

The current 2023 legislative session is considering further proposals, including establishing a process to vacate convictions and refund LFOs. *See* Bill Info., HB 1492, Wash. State Leg., https://app.leg.wa.gov/billsummary?BillNumber=1492&initiative=false&year=2023 (last visited Feb. 27, 2023). The Legislature likely will decide the proposals after this brief's filing.

B. The Dismissal Below

Two weeks after this Court issued the *Blake* decision, the Civil Survival Project, and several individual plaintiffs filed a putative bilateral class action complaint against King and Snohomish Counties, as well as the State. CP 14. In August 2021, Plaintiffs filed a Second Amended Class Action Complaint to add all Washington counties as defendants, but did not serve these new defendants. CP 40.

On behalf of a putative plaintiff class of individuals with LFOs arising from *Blake* convictions, Plaintiffs sought declaratory and injunctive relief, as well as damages related to LFOs paid in connection with *Blake* convictions. CP 40. Plaintiffs brought claims for (1) reimbursement of LFOs under unjust enrichment and restitution theories; (2) rescission of plea agreements that were based on the invalidated simple-possession statute; and (3) declaratory relief stating that Plaintiffs are entitled to recover LFOs or, in the alternative, a declaratory judgment requiring the State to "order the Defendant Counties

and Defendant Class Members" to return LFOs to Plaintiffs and putative Plaintiff Class. CP 40, 59-61.

King and Snohomish Counties moved to dismiss, arguing that CrR 7.8 is the exclusive mechanism to vacate *Blake* convictions and obtain LFO refunds, whereas a civil class action is not available. CP 46. The State took no position on the counties' motion to dismiss, but pointed out that a controlling Court of Appeals opinion held that a collateral civil lawsuit could not be used to obtain class-wide relief from criminal judgments. *See* State's Answer to Statement of Grounds for Direct Rev. at 2 (citing *Doe v. Fife Mun. Ct.*, 74 Wn. App. 444 (1994)). *Doe* held that in the context of limited jurisdiction courts, CrRLJ 7.8—which is identical to CrR 7.8—was the exclusive mechanism for a party to attack a void judgment in a criminal case. 74 Wn. App. at 451.

While acknowledging *Doe*, the State identified logistical and access-to-justice concerns with requiring thousands of individuals to affirmatively file motions to vacate their

unconstitutional convictions pursuant to CrR 7.8 to obtain relief to which they are entitled. The superior court dismissed the suit. CP 66.

C. This Court Declined Direct Review and the Court of Appeals Affirmed

Plaintiffs appealed, seeking direct review from this Court. This Court transferred the case to the Court of Appeals.

The Court of Appeals affirmed. It held that this Court's recent decision in *Williams*, controls the resolution because it held that CrR 7.8 and analogous rules provide the exclusive remedy to revisit judgment and sentences. Slip op. at 8-15. The court rejected the Plaintiffs' argument that application of CrR 7.8 violated due process because the rule does not place a significant burden on defendants—in fact, it "could not easily be more minimal." Slip op. at 17. The court rejected the argument that using CrR 7.8 offends due process because it is so inefficient that a number of *Blake*-affected individuals would ultimately receive

refunds too late or not at all, explaining that there are potential constitutional deprivations if a class action were to be used.

Plaintiffs seek review.

III. REASONS WHY REVIEW SHOULD BE DENIED

Because the Court of Appeals' decision correctly dealt with the issues and there is no issue that presently needs to be decided by this Court, Plaintiffs fail to meet any RAP 13.4(b) standard. The Court should deny review.

A. The Decision Below Does Not Conflict with a Decision by This Court

The Court of Appeals correctly held that CrR 7.8 is the exclusive mechanism to obtain relief, following this Court's recent *Williams* decision. As that Court explained, CrR 7.8 is the mechanism by which superior courts provide relief from a criminal judgment or order, allowing vacation of judgments on "[a]pplication . . . made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is

based." CrR 7.8(c)(1). While this rule does not speak directly to whether it is the exclusive remedy, case law provides that it is. As noted by the Court of Appeals, there is a line of cases from the Court of Appeals repeatedly affirming that provisions similar to CrR 7.8 applicable to courts of limited jurisdiction, are the exclusive means to remedy problems in criminal judgments in those courts. *See Doe*, 74 Wn. App. at 451 (addressing CrRLJ 7.8, dismissing putative class action); *Boone v. City of Seattle*, No. 76611-2-I, 2018 WL 3344743, at *3 (Wash. Ct. App. July 9, 2018) (unpublished) (addressing CRLJ 60, dismissing putative class action); *Karl v. City of Bremerton*, No. 50228-3-II, 2019 WL 720834, at *3-4 (Wash. Ct. App. Feb. 20, 2019) (unpublished) (addressing CRLJ 60, dismissing putative class action).

This Court in *Williams* endorsed this line of precedent. 199 Wn.2d at 244 ("Williams would have us reject the analysis of all three divisions of the Court of Appeals and hold that *Boone*, *Karl*, and *Williams* were wrongly decided. We decline."). This

Court held that CRLJ 60(b) is the "only avenue" to obtain relief from a municipal court. In *Williams*, Spokane Municipal Court fined plaintiff for speeding in a school zone. While the *Civil Survival Project* case was on appeal, this Court decided *Williams*, endorsing a line of appellate decisions holding that the exclusive means for vacating convictions and obtaining refunds of paid fines and fees is through filing a motion in the superior court where the conviction occurred.

The Court of Appeals properly recognized that there was no material difference from the limited jurisdiction court rules in *Boone*, *Karl*, and *Doe* and the criminal rule at issue here. Recognizing this Court's endorsement of *Doe*, the Court of Appeals properly held that it would make no sense to read nearly identically worded rules differently simply because one applied to criminal rules for limited jurisdiction courts and the one here applied to criminal rules for superior courts.

In an effort to create a conflict with this Court's decisions, Plaintiffs overread *State v. Jennings*[4] and *State v. Ammons*.[5] The Plaintiffs correctly state that the *Jennings* Court held that *Blake* convictions are constitutionally invalid and not to be used when calculating a sentencing score. Pet. at 7. And *Ammons* explains that a defendant need not resort to a separate avenue of challenge when a conviction is constitutionally invalid on its face. *Id.* at 8. But the implication of these holdings is not what Plaintiffs presuppose. These holdings mean that if it were another situation where a prior conviction could affect a decision (like when calculating an offender score), the courts in those matters cannot consider the *Blake* conviction. Under *Jennings* and *Ammons*, the defendant need not go through any additional proceeding to avoid having the *Blake* conviction be considered, as it is invalid. But just because a defendant does not need to go through extra steps to prevent a *Blake* conviction from affecting a court

[4]199 Wn.2d 53 (2022).
[5]105 Wn.2d 175 (1986).

outcome, that does not create a new cause of action through a class action for the limited purpose of refunding LFOs while leaving the rest of the effects of a conviction untouched. In rejecting Plaintiffs' arguments and explaining how *Jennings* and *Ammons* apply in subsequent matters, the Court of Appeals correctly understood that *Jennings* and *Ammons* simply applied blackletter criminal law. That court didn't read *Jennings* narrowly, but rather read *Jennings* and *Williams* in harmony, giving full effect to each decision.

Another fundamental flaw in Plaintiffs' misunderstanding of blackletter criminal law is their failure to appreciate the difference between invalid convictions and vacated convictions. *See State v. French*, 21 Wn. App. 2d 891 (2022) (explaining effect on conviction based on invalid statute); *State v. Schwab*, 163 Wn.2d 664 (2008) (explaining effect of vacating a conviction). It is undisputed that the *Blake* Court held that simple drug convictions are void. As a result, they cannot be used in

subsequent proceedings.[6] Vacatur is the administrative process of removing the conviction, leading to refunding LFOs and issuing such other orders as necessary given the individual's circumstances. Plaintiffs conflate these two concepts, which would lead to confusing, illogical situations where individuals would receive refunds, yet their convictions would not be vacated.

B. The Decision Below Does Not Involve a Significant Question of Constitutional Law

This case does not raise a significant constitutional question that needs to be resolved by this Court because the Court of Appeals correctly determined that applying CrR 7.8 does not offend due process. In *Nelson*, the Supreme Court held that "a State may not impose anything more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated." 581 U.S. at 139. The State and Court of Appeals agree with this principle but recognize that

[6]The Court was clear that the convictions were void, not voidable. *Blake*, 197 Wn.2d at 195.

there has to be some process to ensure the correct individuals receive the correct refund, which is much less burdensome than the process analyzed in *Nelson*. That Court invalidated Colorado's Exoneration Act, which required a petitioner to prove "actual innocence" in order to receive compensation for being wrongfully convicted. *Id.* at 134. The Court held that this standard of proof was inconsistent with the presumption of innocence and thus "does not comport with due process." *Id.* at 128-135; *see also id.* at 136 ("Colorado may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions."). In fact, the two *Nelson* petitioners already had their convictions vacated—the only question presented was whether Colorado was "obliged to refund fees, court costs, and restitution" paid as a result of those convictions, which the Court held it was. *Id.* at 130.

Criminal Rule 7.8 is materially different from Colorado's Exoneration Act, which provides a civil claim for relief "after a conviction has been reversed or vacated," "to compensate an

innocent person who was wrongly convicted" only if they prove their "actual innocence." *Nelson*, 581 U.S. at 133-35. By contrast, CrR 7.8 simply establishes the process to vacate a criminal conviction in the first place, requiring only that a movant (whom can be either prosecutor or defendant) state "the grounds upon which relief is asked" and provide "the facts or errors upon which the motion is based." CrR 7.8(c)(1). With *Blake* convictions, the fact that a conviction was for simple drug possession under the now-invalidated statute is all that needs to be shown. All parties agree that upon vacation of the conviction, the individual is entitled to refund of paid LFOs, as *Nelson* requires.

Plaintiffs are wrong in arguing that CrR 7.8 places the burden of proof on a defendant, in violation of *Nelson*. First, *Nelson* nowhere holds that it would be unconstitutional to place any burden on a defendant—it held that a defendant should not have to go the extra step of proving actual innocence. Second, CrR 7.8 does not place the burden solely on the defendant. To

the extent there is any burden, it is on the moving party to present grounds for the relief and facts supporting the motion. Prosecutors thus have even brought motions to vacate and refund.

The Court of Appeals correctly applied the *Matthews v. Eldridge*[7] factors to hold that using common criminal procedure did not offend due process. There can be no real debate that applying CrR 7.8 to vacate convictions and refund LFOs does not per se violate due process, nor do Plaintiffs argue that here. The Court of Appeals engaged in an analysis to determine whether looking at both the proposal brought by Plaintiffs and the CrR 7.8 process actually being utilized, the Plaintiffs' proposal is so far superior to result in a due process violation. Looking at the practicalities of both ideas, the Court determined that a class action suit presented just as many, if not more, potential constitutional issues. With respect to each factor,

[7]424 U.S. 319 (1976).

applying CrR 7.8 addresses private interests more completely, because in addition to refunding LFOs, it addresses the individuals' convictions. Second, there is little risk of erroneous deprivation using CrR 7.8 as the process looks to the facts relating to the individual, usually through court records and the individual's identification. Finally, there is already a stated governmental interest in utilizing CrR 7.8, where the legislature, executive branch (and prosecutors), and the courts have been implementing this process. It would be counter to the governmental interest to have a separate, parallel track via a class action. The Court of Appeals properly applied these factors to reject Plaintiffs' argument. Plaintiffs' constitutional arguments are without merit, so there is no reason for this Court to grant review.

C. The Plaintiffs Fail to Show That This Case Involves an Issue of Substantial Public Importance That Should Be Decided by This Court

Much of Plaintiffs' petition argues that this case presents issues of substantial public importance. To be sure, the issues

raised by *Blake* and the criminal justice system, including the refund of LFOs, are important to the public. Plaintiffs have steadfastly maintained that CrR 7.8 provides no notice to individuals who may be entitled to vacation of their convictions and refunds of related LFO payments they have made, and they argue that even if individuals succeed on CrR 7.8 motions, there are insufficient funds available to provide *Blake*-related LFO refunds.

As the Court of Appeals held, *Williams* appears to control the outcome here regardless of these concerns. But even if *Williams* was not controlling, the Court of Appeals aptly recognized that a dual track of using both the CrR 7.8 process and a class action would add further complications to an already complicated situation. All three branches have been working towards addressing the problems Plaintiffs identified while using the common CrR 7.8 procedure. The Legislature's 2022 budget appropriations speak directly to the issues of notice to affected individuals and funding for implementation. It directed the AOC

to collaborate with superior court clerks to "prepare comprehensive reports, based on available court records, of all cause numbers impacted by [*Blake* since] 1971," and to establish a process to "locate and notify individuals of available refunds and notify those individuals of the application process" needed to claim the refunds. ESSB 5693 §§ 114(29)(a)-(b). Although notice to each and every individual with a *Blake* conviction going back to 1971 is likely infeasible due to recordkeeping limitations and the passage of time, it is unclear how a class action could improve the notice process.

The Legislature appropriated significant additional funding to assist cities and counties with the costs of complying with *Blake*, including providing more than $55 million in "aid pools" for refunding *Blake* LFOs. And $44.5 million was provided to assist counties with "vacating prior convictions for simple drug possession" and other measures, ESSB 5693 § 114(5)—which enables counties to expand their efforts to vacate *Blake* convictions on their own initiative. As mentioned

already, CrR 7.8 does not specify who must make the motion, and the counties have implemented processes to vacate *Blake* convictions by proactive filings from prosecutors. Such efforts have occurred and can and should continue.

The Legislature provided grants for public defense and other legal assistance for individuals impacted by *Blake*, as well as the expansion of online automated plain language forms, outreach, education, and technical assistance, which focus on assisting individuals' case-by-case. This contemplates that CrR 7.8 will continue as the exclusive mechanism to vacate *Blake* convictions.

While CrR 7.8 might be imperfect, there are also problems with utilizing a parallel class action, as recognized by the Court of Appeals. As a practical matter, the efficiencies that class actions are designed to produce in civil matters would not be available to those seeking to vacate criminal convictions and have their LFOs returned. Criminal cases raise individualized issues that have to be resolved on an individual basis. For

instance, in some circumstances, individuals may have the right *not* to have their convictions vacated to avoid double jeopardy. *See State v. Hall*, 162 Wn.2d 901 (2008). An individualized process is needed to address this circumstance. For individuals who were convicted of simple possession plus another charge, an individualized determination must be made to determine what effect, if any, the *Blake* conviction vacation has on resentencing and the LFOs that the person paid. To comport with due process, courts must consider the particular circumstances for each case, possible alternative charges, and collateral consequences from the convictions. *See, e.g.*, *State v. Hunley*, 175 Wn.2d 901 (2012); *State v. Abd-Rahmaan*, 154 Wn.2d 280 (2005).

Even the amount of LFOs vary considerably (just looking at today's numbers), ranging from a minimum of $1,000 up to $10,000. RCW 69.50.430(1)-(2); RCW 9.94A.550; RCW 9A.20.021(1)(c). Other potential LFO costs that an individual may (or may not) have been charged include (i) a $500 penalty assessment, RCW 7.68.035(1); (ii) a $100 DNA

identification analysis fee, RCW 43.43.7541; (iii) a $100 crime lab analysis fee, RCW 43.43.690(1)-(2); (iv) the costs of prosecution, RCW 10.01.160(2); RCW 10.46.190; RCW 10.64.015; (v) a $125 or $250 jury fee, RCW 36.18.016(3)(b); (vi) the costs of incarceration (including medical expenses incurred during confinement), RCW 10.01.160(2); RCW 70.48.130(5); (vii) restitution, RCW 9.94A.750(5), (8); RCW 72.09.480(2); and/or (viii) collection costs for unpaid LFOs, RCW 36.18.190. An individual's LFOs often are impacted by other, still-valid convictions, further complicating the issue of what LFOs need to be refunded for a vacated *Blake* conviction. A class action is not the ideal vehicle to conduct the complex and individualized assessment necessary to compute the amount of LFOs to be refunded to each putative class member.

Class actions do have the benefit of providing notice, but here, the Legislature has foreseen the notice issue and directed AOC to work with court clerks to establish a process to locate

and notify individuals of the available refunds and the appropriate process necessary to receive those refunds. There is no indication that a class action would serve this role more effectively or efficiently, particularly when the information the class would need would come from the AOC and the clerks, who are already working at the Legislature's directive.

A significant disadvantage of a class action mechanism is its provision for attorneys' fees and costs. The Legislature has appropriated more than $140 million thus far to implement the *Blake* decision. If the putative class action were to proceed, substantial costs and fees would be retained by counsel rather than going into the pockets of impacted individuals or being used to identify those individuals, vacate their convictions, and compute the amounts owed to them. The Court of Appeals rightly understood that public resources will be used most efficiently if they go directly where they are needed. While there are certainly important issues raised because of *Blake*, the Court of Appeals correctly recognized the pitfalls with using a

class action, and there is no reason why this Court needs to weigh in further.

Relying on a Massachusetts decision, Plaintiffs alternatively ask this Court to take the extraordinary step of retaining ongoing jurisdiction. This would put the cart before the horse and result in advisory opinions issued in a vacuum. Without the benefit of any record, this Court would be called upon to decide, among other things, the amount of each LFO refund, the process to determine whether a refund is appropriate when records have been destroyed, the effect of convictions of other crimes on the LFO refund, how to verify the identity of the defendant entitled to a refund (particularly if the defendant moved out of state or is deceased), which agency pays for the LFO refund, and what attorney costs and fees should be awarded and how those should be paid, just to name a few. Prosecutors, defense attorneys, the courts, and AOC are already working through these issues.

If, despite the collaborative work of the three branches of

government and stakeholders, these issues that cannot be resolved, parties can appeal the results of the CrR 7.8 process. If appropriate, this Court could then review a developed record and provide guidance through the usual appellate process. At this stage, Plaintiffs' request for ongoing jurisdiction should be denied, as should its petition.

Plaintiffs last include a few throwaway arguments challenging specific aspects of the Court of Appeals decision. First, the Court of Appeals did not create a conflict with Washington's pleading standard, where it held that Plaintiffs' claims were foreclosed by CrR 7.8 and this Court's decision in *Williams*. Second, the Court of Appeals did not narrowly consider CSP's standing but recognized the reality that CSP was trying to use a class action to affect criminal cases *en masse*, which is improper when individualized determinations need to be made. Likewise, the Court of Appeals correctly held that a class action mechanism doesn't work in a situation like that presented here, where the class certification raises many

constitutional concerns with its potential effect on criminal matters. Finally, Plaintiffs' equitable claims expressly derive from their damages claims. Combined with the concerns in utilizing a class action, the public importance exception is inapt to this situation.

IV. CONCLUSION

The Court should deny review.

This document contains 4,974 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 27th day of February 2023.

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