**No. 101600-0**

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**SUPREME COURT**
**OF THE STATE OF WASHINGTON**

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CIVIL SURVIVAL PROJECT, et al.,

Plaintiffs/Appellants,

v.

STATE OF WASHINGTON, KING COUNTY, and SNOHOMISH COUNTY,

Defendants/Respondents.

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# KING COUNTY'S AND SNOHOMISH COUNTY'S ANSWER TO INSTITUTE FOR JUSTICE'S *AMICUS CURIAE* MEMORANDUM IN SUPPORT OF PETITION FOR REVIEW

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## I. INTRODUCTION

The speculative concerns raised by the Institute for Justice in its memorandum of *amicus curiae* ("Memorandum") do not support this Court's review of the Court of Appeals' decision ("Decision") below.[1] The Decision was correct, is not in conflict with this Court's precedent, does not raise any state or federal constitutional issue requiring review, and does not involve a question of substantial public interest. The Court should deny the Petition.

The Institute for Justice first raises the possibility that future potential plaintiffs in future potential cases seeking future potential relief related to the collateral consequences of their simple possession convictions *may* be precluded from availing themselves of certain procedural mechanisms that *might* otherwise be available to them in litigation. Mem. at 3-6. These hypothetical procedural worries are not grounds for

[1] The "Decision" is attached as Exhibit A to the December 28, 2022 Petition for Discretionary Review.

review, particularly given that this case does not involve the factual circumstances the Institute for Justice describes. *Amicus*'s speculative concerns regarding the unavailability of future relief are, moreover, unfounded. As the Court of Appeals correctly held, CrR 7.8 provides a comprehensive remedy for Petitioners to seek vacation of their simple possession convictions and refunds of any LFOs paid.

The Memorandum next faults the Court of Appeals for its determination that a class action would not be more efficient or effective than the CrR 7.8 process. Mem. at 6-11. *Amicus* incorrectly reads the Decision as far-reaching, arguing that it has "consequences for *anyone* seeking to vindicate their constitutional rights in Washington." Mem. at 6 (emphasis added). *Amicus*'s hyperbole notwithstanding, the Decision is undeniably narrow in scope: it holds that CrR 7.8 is the exclusive remedy for seeking vacation of simple possession convictions and the refund of LFOs paid in connection with those convictions. The Decision does not preclude any

individual from vindicating her constitutional rights in any context. The Memorandum does not implicate any grounds under RAP 13.4(b) for reviewing the Decision's class action analysis.

Finally, the Institute of Justice quibbles with the Court of Appeals' analysis of the declaratory relief Petitioners sought under Washington's Uniform Declaratory Judgment Act, RCW chapter 7.24 ("UDJA"). *See* Mem. at 11-16; Decision at 20-23. But in affirming the dismissal of Petitioners' declaratory and equitable claims, the Court of Appeals merely applied (properly) this Court's precedent in *Williams v. City of Spokane*, 199 Wn.2d 236, 505 P.3d 91 (2022). *Williams* held that "for a new dispute to arise sufficient to enable standing for the purposes of the UDJA, the plaintiff had to first seek to . . . create a new dispute" by seeking to reverse the judgment rendered against him via "a motion to vacate in the municipal court." Decision at 21; *Williams*, 199 Wn.2d at 248. Petitioners did not seek to utilize CrR 7.8 prior to filing suit and

under *Williams*, lack standing to seek declaratory relief under the UDJA because they cannot show that there is any dispute as to the status of their convictions.

Nor does the Petition raise an "issue of major public importance" sufficient to warrant an exception to the standing principles the Decision correctly applied. Decision at 22-23. Petitioners' request for declaratory relief amounts to a request to declare their convictions void and to declare that they are entitled to LFO refunds. *See, e.g.*, Ctys.' Ans. to Pet., App. B035, at ¶ 8.2. The only plausible issue of "public importance" that Petitioners' request for declaratory relief could implicate is the issue of *Blake* compliance already being addressed by state government at every level. The Court of Appeals therefore properly affirmed the dismissal of Plaintiffs' equitable claims.

Because neither the Petition nor the Memorandum filed in support of the Petition raises a basis for review under RAP 13.4(b), this Court should deny the Petition.

## II. THE DECISION DOES NOT CONFLICT WITH ANY PRECEDENT

As set forth more fully in the Counties' Answer to the Petition for Review, this Court should grant review only when one of the considerations listed in RAP 13.4(b) applies. One such consideration is whether the Decision "is in conflict with a decision of the Supreme Court." RAP 13.4(b)(1). Notwithstanding *amicus*'s disagreement with (1) the Decision's discussion of the relative inefficiencies and procedural hurdles of a class action; and (2) the Decision's analysis of the UDJA, the Decision does not conflict with any precedent of this Court. Review is not warranted on this basis.

### A. The Decision Does Not Conflict with this Court's Class Action Precedent.

The Memorandum argues that the Petition "conflicts with the State's long-standing approach to class actions," Mem. at 6, but does not identify any particular precedent the Decision supposedly fails to follow. Instead, the Memorandum plucks out-of-context language regarding the utility of class actions

from a handful of cases mostly involving class certification—which is not at issue on this appeal.[2] *E.g.*, Mem. at 7 (citing *Chavez v. Our Lady of Lourdes Hosp. at Pasco*, 190 Wn.2d 507, 514, 415 P.3d 224 (2018) (reversing denial of class certification made without developed factual record because putative class satisfied predominance and superiority requirements); *Scott v. Cingular Wireless*, 160 Wn.2d 843, 856, 161 P.3d 1000 (2007) (blanket class action waivers in arbitration clauses were unconscionable); *Johnson v. Moore*, 80 Wn.2d 531, 469 P.2d 334 (1972) (reversing denial of class

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[2] *Amicus* claims, without citation, that the trial court "decided class certification at the pleadings stage" and that the Court of Appeals failed to address whether the trial court's "premature" class certification "deci[sion]" was appropriate. Mem. at 11 n.3. The trial court did not rule on class certification. *See generally* Supreme Court Case No. 100331-5 (Direct Review), CP 112-113 (Tr. Ct. Order) at ¶¶ 1-3. The Court of Appeals considered the relative merits of a class action versus utilization of the appropriate CrR 7.8 mechanism in the context of *Petitioners'* due process argument. *See* Decision at 18-19. The class certification decisions that *amicus* cites are therefore irrelevant to any issues in this case and cannot be used to manufacture a "conflict" sufficient to meet the review criteria of RAP 13.4(b).

certification on grounds that issue of law was common to proposed class); *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 189–90, 157 P.3d 847 (2007) (upholding class certification of declaratory claims where declaratory claim did not "relate[] exclusively or predominantly to monetary damages") (internal quotations and citations omitted); *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 323, 54 P.3d 665 (2002) (upholding class certification); *Zimmer v. City of Seattle*, 19 Wn. App. 864, 869, 578 P.2d 548 (1978) (finding commonality requirement satisfied because relief sought was injunction against enforcing allegedly vague statute that "equally prejudiced" all class members)).

The Decision is not in "conflict" with any of the cited cases or with any principles articulated therein—principles that are, in any event, primarily applicable in the class certification context. The Decision instead correctly opines that Petitioners' class action collateral attack on their convictions fails to address any of the due process concerns *Petitioners* raise to support

their argument that CrR 7.8 is a constitutionally deficient mechanism for obtaining *Blake* relief. In short, the Court of Appeals determined that the results of a class action in this case—including "less individualized advice [and] the return of less of the class members' LFO payments"—do not suggest "a process that is definitively more efficient and less likely to cause further constitutional harm than the individualized approach of CrR 7.8." Decision at 19. *Amicus*'s misapprehension of the context of this discussion—that CrR 7.8 satisfies due process not that class certification is unavailable—does not provide a basis for review. Decision at 20.

### B. The Decision Does Not Conflict with this Court's UDJA Precedent.

The Memorandum disagrees with the Decision's "approach" to the UDJA—but again fails to pinpoint any particular UDJA precedent with which the Decision conflicts. Instead, the Memorandum faults the Court of Appeals for *following* this Court's decision in *Williams* to find that

Petitioners did not have standing to seek equitable relief via a civil class action prior to seeking the vacation of their void traffic judgments in municipal court. Decision at 21; *Williams*, 199 Wn.2d at 248.

Until Petitioners unsuccessfully seek to vacate their convictions and obtain their LFO refunds "in accordance with the procedure outlined in the statutes and court rules,"—*i.e.*, pursuant to CrR 7.8—they cannot show the existence of "an actual, present and existing dispute." *Williams*, 199 Wn.2d at 248.[3] That is, Petitioners do not have standing to seek a declaration of their right to have their *Blake* convictions set aside as void without first availing themselves of the procedural remedy for obtaining that precise relief. *Amicus* does not explain how the Court of Appeals' application of this Court's

[3] As noted in the Counties' Answer to the Petition, some Petitioners already have obtained vacations and refunds, potentially implicating yet another justiciability barrier (mootness) to the revival of Petitioners' complaint. Ctys.' Ans, to Pet. at 8, 16.

*Williams* precedent presents a "conflict" necessitating review—or how the Decision otherwise "circumscribe[s]" the role of the UDJA.[4]

The Memorandum's appeal to the "public importance" doctrine is also flawed. *Amicus* argues that "*Blake* and its aftereffects" writ large "indisputably implicate matters of public importance" and thus the Court of Appeals was required to apply the public importance exception despite Petitioners' lack of standing to bring their UDJA claims. Mem. at 13-15.

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[4] *Amicus* also fails to explain how the declaratory relief Petitioners seek is relief "for constitutional violations under the UDJA." Mem. at 12. *Blake* already declared the simple possession statute unconstitutional. And Petitioners do not seek a declaration that CrR 7.8 is unconstitutional. Ctys.' Ans. to Pet., App. B035, at ¶ 8.2. Nonetheless, *amicus* cites two cases directly attacking the constitutionality of a particular ordinance. Mem. at 12 (citing *Wash. St. Council of Cnty. & City Emps. v. City of Spokane*, 200 Wn.2d 678, 681, 520 P.3d 991 (2022) (assessing constitutionality of collective bargaining ordinance); *Alim v. City of Seattle*, 14 Wn. App. 2d 838, 841, 474 P.3d 589 (2020) (evaluating constitutionality of municipal ordinance regulating firearm storage)). These cases are inapposite and do not support an argument that the Decision's UDJA analysis "conflicts" with this Court's precedent.

*Amicus* conflates "*Blake* issues" with the relief Petitioners actually sought by their declaratory judgment action: various declarations of rights related to issues already being addressed by the State, including by the Legislature and by state officials such as prosecutors, judges, and court clerks employed by the Counties. *See, e.g.*, Ctys.' Ans. to Pet., App. B035, at ¶ 8.2; Decision at 22-23 (relief Petitioners request addresses an area "that has already received significant attention from many aspects of our state government"). Petitioners' request has not "evade[d] review" by any measure. Mem. at 13 (quoting *Wash. St. Housing Fin. Comm'n v. Nat'l Homebuyers Fund, Inc.*, 193 Wn.2d 704, 712, 445 P.3d 533 (2019)). To the contrary, Petitioners' request for *Blake* relief is being actively addressed by every branch of government. *See* Ctys.' Ans. to Pet. at 13-19.

Moreover, the precise "issue" that Petitioners' complaint raises is whether an individual should be permitted to collaterally attack her judgment and sentence via a civil class

action. That issue is not one of "public importance" that would justify applying an exception to ordinary standing requirements—particularly given that this Court already has definitively addressed, in *Williams*, the merits of improper collateral attacks like the one Petitioners launched. And no fewer than three other (published and unpublished) decisions of the Court of Appeals have similarly precluded plaintiffs from evading rules of procedure in favor of class action litigation. Decision at 11, 13; *Doe v. Fife Municipal Court*, 74 Wn. App. 444, 874 P.2d 182 (1994); *Karl v. City of Bremerton*, No. 50228-3-II, 2019 WL 720834 (Wash. Ct. App. Feb. 20, 2019); *Boone v. City of Seattle*, No. 76611-2-I, 2018 WL 3344743 (Wash. Ct. App. July 9, 2018).

*Amicus* undoubtedly disagrees with the Decision's UDJA analysis. But that disagreement does not warrant review by this Court under RAP 13.4(b).

## III. THE DECISION DOES NOT RAISE AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST

Under RAP 13.4(b)(4), this Court may accept review if "the petition involves an issue of substantial public interest." The Memorandum argues that an issue of substantial public interest exists here because other collateral consequences of *Blake* convictions—not squarely raised by Petitioners in the context of this case—might remain unaddressed if the Decision stands.[5] Mem. at 3-6, 14.

*Amicus*'s fears are speculative, unfounded, and do not provide grounds for this Court's review. The complaint does not specifically seek to recover assets seized or forfeited in

[5] The Memorandum also suggests that the Decision's class action and UDJA holdings implicate issues of substantial public interest because future plaintiffs might be precluded from vindicating their constitutional rights based on the Decision's analysis. Mem. at 9-11; 15-16. Neither argument justifies review under RAP 13.4(b). To the extent *amicus* argues that *Blake* issues generally are sufficiently substantial to warrant this Court's intervention, *amicus* improperly urges the misapplication of the "public importance" exception to a context that is not before the Court.

connection with simple possession arrests and convictions. The complaint mentions civil forfeiture only in the context of Petitioners' general allegations that "drug enforcement has hit young men of color especially hard." Ctys,' Ans. to Pet., App. B008-B009, at ¶ 1.14. Whether a future action alleging other facts related to *Blake*'s aftereffects could be brought or maintained is not at issue in this appeal.

*Amicus*'s argument that the Petition raises an issue of substantial public importance because the Decision "undercuts" the ability of plaintiffs in other contexts to vindicate their constitutional rights is similarly unavailing. The Court of Appeals' narrow holding does not extend beyond the CrR 7.8 context. The Decision does not impact any future plaintiffs' ability to seek relief from a constitutional violation. The Decision merely affirms that CrR 7.8 provides adequate process for individuals seeking vacations and LFO refunds. *Amicus* does not explain how this holding could have a wider impact on constitutional litigants. The Petition raises no issue of

substantial public interest that would justify review under RAP 13.4(b).[6]

## IV. CONCLUSION

For the foregoing reasons, the Memorandum does not implicate any of the considerations set forth in RAP 13.4(b). The Court should deny review.

[6] The Memorandum is rife with references to the general ability of plaintiffs to vindicate their constitutional rights but does not point to a specific, significant issue of federal or state constitutional law requiring this Court's review under RAP 13.4(b)(3). To the extent *amicus* argues that this Court should accept review of the due process question addressed in the Decision, the Counties refer to their Answer to the Petition at 30-34.

I certify that this response contains 2,449 words in compliance with RAP 18.17(b).

SUBMITTED this 21st day of March, 2023.

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## CERTIFICATE OF SERVICE

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DATED this 21st day of March, 2023.

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