

No. 942323

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

The University of Washington,

Respondent,

v.

City of Seattle, Docomomo US - WEWA, Historic Seattle, and the
Washington Trust for Historic Preservation,

Petitioners.

BRIEF OF AMICUS CURIAE FUTUREWISE

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I. INTRODUCTION

Respondent the University of Washington (UW) claims that “the City attacks a straw man that it erects at the top of an imaginary slippery slope.” Brief of Respondent at 43-44.

According to UW, this Court’s decision can be limited to state institutions of higher education and to landmarks preservation ordinances. UW’s position is unrealistic. Few Supreme Court decisions are truly limited to their facts, and the potential implications of exempting a class of state agencies from the GMA are significant.

UW’s claim that it is an “institution of higher education” rather than a state agency fails. But even if this were true, there are still six four-year and numerous more two-year educational institutions. Allowing those institutions to exempt themselves from local development regulations will have a broad impact across the state.

Further, UW claims that application of Seattle’s Landmark Preservation Ordinance to UW would unfairly fetter

its operations by limiting what UW can do with a particular historic building. But the doctrine of adaptive reuse—novel ways to modify historic buildings that leave historic character intact while still adapting to changing needs—means UW could still effectively use historic buildings, even if it could not demolish them.

II. IDENTITY AND INTERESTS OF *AMICUS CURIAE*

Futurewise, a non-profit corporation, is a statewide public interest group working to promote healthy communities and cities while protecting farmland, forests, and shorelines today and for future generations. Futurewise focuses on the efficient management of growth in Washington and responsible implementation of Washington's Growth Management Act (GMA) and related laws.

Futurewise works in all of the cities and counties that may be affected by a ruling from this Court exempting certain state agencies from the GMA. Futurewise's interest is in ensuring the GMA's mandate for coordinated land use

planning—including landmarks preservation ordinances—is evenly applied across the state and that some entities are not allowed to evade the local regulations adopted as part of the GMA’s coordinated, goal-driven planning process

III. STATEMENT OF THE CASE

Futurewise relies on the statement of the case in the briefs of the City of Seattle.

IV. ARGUMENT

A. UW is a state agency and this Court’s ruling is likely to impact a broad range of other state agencies.

UW claims that the GMA does not apply to it because it is not a “state agency” subject to GMA regulation, but a “higher education institution” that is exempt because the GMA does not specifically define “state agency.” Brief of Respondent at 40–42. UW relies primarily on the Legislature’s decision to use the phrase “state agencies, including higher education institutions” in other statutes unrelated to the GMA.

But the Legislature calls out other state agencies, too. In the GMA itself, the Legislature notes that “State agencies including the department [of commerce]” can provide comments to enacting jurisdictions. RCW 36.70A.106(1). According to UW’s logic, the Department of Commerce would thereafter be exempt from every section of the RCW that didn’t specifically name it. UW’s argument would leave few state agencies regulated by the RCW. This ill-advised proposal requires the Court to believe that the Legislature intended most of the state’s executive branch to operate free from Legislative oversight and the rule of law.

Further, UW itself acknowledges that it is a state agency in its court filings. In this case in the pleadings below, UW carefully avoided using the term “state agency” in the pleading captions. But UW calls itself a state agency in other cases, including four recently filed.¹

¹ E.g., *University of Washington et al. v. Central Intelligence Agency*, 2:15-cv-01577-JLR (WDWA 2015); *University of Washington v. GE, et al.*, 2:10-cv-1933 (WDWA 2010);

Futurewise is especially concerned about the effects of UW’s theory on the GMA. State agencies control vast swathes of land. And although the phrasing UW relies on—the words “state agency” juxtaposed next to a specific state agency like “higher education institution” does not apply to every state agency, it applies to many. *E.g.* RCW 79.145.030 (parks and recreation commission and the departments of ecology and fish and wildlife); RCW 48.130.070 (law enforcement agencies); RCW 43.105.020 (agencies headed by an elected official); RCW 1.16.080 (Department of Labor and Industries); RCW 18.64.005(licensure disciplinary boards). If some or all state agencies are exempt because of a tortured reading of “state agency,” our environment will suffer unless those agencies voluntarily choose to comply.

And even if the ruling is limited to landmarks preservation ordinances, the specter of a municipality very

University of Washington v. Lightbourn, 09-2-02559-2 SEA (2009); *University of Washington v. Lloyd Helicopter*, 2:10-cv-01647-RSL (WDWA 2010).

carefully preserving a historic district only to have the Department of Labor and Industries or some other “exempt” state agency open a branch office in it and decide it need not comply with local regulations is a very real one. State agencies rarely have historic preservation as a mandate and are required to get the taxpayers the most possible value for the least expense. Historic preservation can be expensive. Allowing some state agencies to dodge local requirements contravenes the GMA’s stated intent of a statewide, carefully coordinated growth-planning process—a process driven in part by an express goal to “[i]dentify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance.” RCW 36.70A.020(13).

The City has ably argued that the Court’s decision will affect not just landmarks preservation ordinances, but any development regulation enacted pursuant to the GMA. That means a host of protections are at risk. Development regulations protect critical areas like wetlands and steep slopes,

require setbacks and other safety provisions, and, in some cases, ensure community design standards are met. UW's argument that it is a responsible agency that will do those things anyway misses a key tenet of the GMA: Land use decisions must be coordinated and uniform, and no property owner is free to decide for itself what will and will not be protected. As this Court has noted, "the Legislature adopted the Growth Management Act (GMA) to control urban sprawl and to ensure that 'citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning.'" *King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 166–67, 979 P.2d 374, 377 (1999), as amended on denial of reconsideration (Sept. 22, 1999).

B. UW is not the only higher education institution.

Holding that institutions of higher education are exempt from the GMA would have a broad impact. Washington features six four-year state institutions of higher education and

a robust community and technical college system—all of which are currently subject to the GMA and local implementing ordinances, yet all of which are also state institutions of higher education that UW’s argument would exempt. *See* RCW 28B.10.016(4) (defining “institutions of higher education” as UW, WSU, WWU, CWU, EWU, Evergreen State College, and the community and technical colleges).

For some communities, the institution of higher education is a cornerstone of the economic, cultural, and social life of the city or town. Central Washington University, for example, has over ten thousand students and thousands of faculty and staff and a 380-acre campus. Ellensburg has a little over 18,000 residents and a total land area of 7.76 square miles—meaning CWU is a massive part of Ellensburg’s population and land area.²

² State of Washington Office of Financial Management, April 1 official population estimates webpage accessed on April 20, 2017 at: <http://www.ofm.wa.gov/pop/april1/default.asp>; State of Washington Office of Financial Management, Population density webpage accessed on April 20, 2017 at: <http://www.ofm.wa.gov/pop/popden/default.asp>; Central Washington University Quick Facts webpage accessed on April 20, 2017 at: <https://www.cwu.edu/about/quick-facts>;

Telling the municipalities that host a state-agency or higher education institution that they cannot have any say over how the state agency occupying a significant part of the real estate in a given area protects its historic structures, critical areas, or any of the other land use regulations mandated by the GMA undermines the purpose of the GMA and undermines the authority of municipal corporations.

C. Adaptive reuse means UW can effectively use landmarks Seattle regulates.

UW argues that Seattle's Landmark Preservation Ordinance unfairly limits UW's options for managing its physical plant. But UW ignores a body of thinking about wise adaptation and reuse of historic structures.³ The doctrine of adaptive reuse notes that the number of buildings constructed

and Central Washington University About CWU webpage accessed on April 20, 2017 at: <http://www.cwu.edu/about/welcome-cwu>.

³ See Peter A. Bullen, (2007), "Adaptive reuse and sustainability of commercial buildings", *Facilities*, Vol. 25 Iss 1/2 pp. 20–31; Robert Shipley, Steve Utz & Michael Parsons (2006), "Does Adaptive Reuse Pay? A Study of the Business of Building Renovation in Ontario, Canada." *International Journal of Heritage Studies* Vol. 12, No. 6, pp. 505–520; Peter A. Bullen, Peter E.D. Love, (2010), "The rhetoric of adaptive reuse or reality of demolition: Views from the field." *Cities* 27, 215–224.

annually in developed countries corresponds to only 1.5–2 percent of the existing building stock. *Id.* At that rate of construction output, it would take anything from 50 to 100 years to replace the current stock of existing buildings. Adapting old buildings to new uses—whether the building is designated as historic or not—is both economically advantageous and can offer many of the same benefits as building a new structure. Schools of thought on how to best accommodate changing needs with existing structures have developed. Adaptive reuse is consistent with the City of Seattle’s practice of collaborating with qualified design professionals to explore design alternatives that advance the property’s owner’s goals and the City’s historic preservation goals. *See* CP 505-06 (declaration of City Historic Preservation Officer).

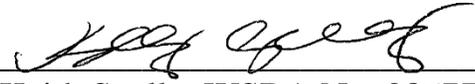
Applied through the City’s process, adaptive reuse should enable UW to attain its goals while preserving landmarked structures. UW spurned that process when it came

to the historic structure UW highlighted in this litigation. *See* CP 506-07. UW brought this suit to avoid even having to try, and then demolished that structure in the wake of the Superior Court’s ruling. The GMA’s balanced rule means UW at least must try—pursue adaptive reuse through the City’s process—even if at the end of the process UW invokes the GMA’s protection for the siting of state education facilities. *See* RCW 36.70A.200(1) and (5).

V. CONCLUSION

UW claims that there is nothing to fear and that the Court’s decision will be limited to UW and these facts. But this Court’s decision carries the potential to exempt a wide swath of state agencies from the GMA’s requirements. The Legislature did not intend for the State itself to be free from local development regulations: The fruit of the careful planning and balancing of interests the GMA requires. The Court should decline UW’s request to adopt a tortured reading of “state agency” and should reverse the Superior Court.

Respectfully submitted this 21st day of April 2017.

A handwritten signature in black ink, appearing to read "Keith Scully", written over a horizontal line.

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