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No. 95575-1

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**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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RANDY REYNOLDS & ASSOCIATES, INC.

Respondents,

v.

KASEY HARMON, et al.,

Petitioners.

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**BRIEF OF AMICI CURIAE THURSTON COUNTY  
VOLUNTEER LEGAL SERVICES, KITSAP LEGAL  
SERVICES, AND CLARK COUNTY VOLUNTEER  
LAWYERS PROGRAM, IN SUPPORT OF PETITIONER  
HARMON**

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## **I. IDENTITY AND INTEREST OF AMICI CURIAE**

Amici Thurston County Volunteer Legal Services (TCVLS), Snohomish County Legal Services (SCLS), Kitsap Legal Services (KLS), and Clark County Volunteer Lawyers Program (CCVLP), have an interest in the outcome of this case because they provide free legal services by pro bono attorneys to low-income tenants facing eviction, like Petitioner Kasey Harmon (Harmon).

TCVLS, a non-profit organization based in Olympia, Washington, operates a weekly Housing Justice Project (HJP) clinic in conjunction with Thurston County Superior Court's unlawful detainer calendar.<sup>1</sup> TCVLS sends information to unrepresented parties listed on the weekly unlawful detainer calendar to notify them of the availability of representation by volunteer attorneys. Any tenants not listed on the unlawful detainer calendar (such as in the present case where the plaintiff proceeds directly to a default judgment and does not set a show cause hearing) do not receive information about the availability of legal advice and representation. TCVLS assists hundreds of otherwise unrepresented tenants facing eviction.

KLS is a Bremerton, Washington based non-profit organization that operates a weekly HJP with the purpose of advising tenants regarding their

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<sup>1</sup> See Thurston County Volunteer Legal Services, [www.tcvls.org](http://www.tcvls.org) (last visited Aug. 30, 2018).

rights and obligations and assisting with the prevention of unlawful evictions and judgments.<sup>2</sup>

Clark County Volunteer Lawyers Program (CCVLP) is a non-profit organization based in Vancouver, Washington, which provides free legal services to low-income clients with civil legal concerns in Clark County.<sup>3</sup> Volunteer attorneys with CCVLP are frequently in a position to advise clients seeking stays of writs of restitution or appealing a judgement.

As the above facts demonstrate, Amici anticipate that circumstances similar to those presented in this case are likely to recur. Therefore, they present this brief in support of Harmon.

## **II. STATEMENT OF THE CASE**

Amici adopt the facts of the present case as set forth in Harmon's Petition for Review. *See* Pet. at 2-5.

## **III. ARGUMENT**

### **A. Evictions Are Emergency Circumstances Justifying *Ex Parte* Grants of Stays of Writs of Restitution**

The availability of a temporary stay of a writ of restitution following a default judgment may provide a tenant who is unfamiliar with the unlawful detainer process their only opportunity to be heard by the judicial system before becoming homeless. Due to the nature of the unlawful detainer process, if a tenant lacks access to an emergency *ex parte* stay of a

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<sup>2</sup> *See* Kitsap Legal Services, [www.kitsaplegalservices.org](http://www.kitsaplegalservices.org) (last visited Aug. 30, 2018).

<sup>3</sup> *See* Clark County Volunteer Lawyers Program, [www.ccvlp.org](http://www.ccvlp.org) (last visited Aug. 30, 2018).

writ of restitution, the writ could be executed and the tenant removed from the home before a hearing could be scheduled on a motion to stay.

Washington State's unlawful detainer laws were designed to provide landlords with an expedited process for evicting tenants. *Christensen v. Ellsworth*, 162 Wn.2d 365, 370-371, 173 P.3d 228 (2007) ("An unlawful detainer action is a statutorily created proceeding that provides an expedited method of resolving the right to possession of property"). As this case illustrates, some tenants do not know how to respond to landlords' notices until it is too late to act. If, as in the present case, a landlord initiates an unlawful detainer action and the tenant fails to respond appropriately to the summons and complaint within the specified deadline, the unlawful detainer statute permits a landlord to obtain a default judgment *ex parte*. RCW 59.12.120. Tenants, therefore, may have only a narrow window of opportunity to respond or cure the action. *See* RCW 59.12.030(3), 070.<sup>4</sup>

Moreover, if, as in the present case, the landlord does not file the unlawful detainer action at the time the summons and complaint are served on the tenant, the tenant cannot file a response with the court because there is no case number until the action is filed and the court will not accept the document for filing. Therefore, the only option available to the tenant is to

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<sup>4</sup> RCW 59.12.030(3) requires a landlord to serve notice to a tenant of a past due payment of rent. The landlord may serve a summons and complaint to initiate an unlawful detainer action if the tenant does not cure the past due rent within three days. RCW 59.12.070 permits a landlord to require a response from the tenant in as few as seven days after service of a summons. If the tenant fails to respond by the specified date, the landlord may obtain a default judgment. Theoretically, a landlord could obtain a default judgment and writ within 10 days after a tenant becomes past due on rent.

respond directly to the landlord or the landlord’s attorney. If the tenant does not respond or responds too late, and the landlord obtains a default judgment, the tenant’s arguments will never be heard by the court.<sup>5</sup>

Eviction has sweeping impacts on individuals’ lives. In 2016, nearly a million evictions were ordered in the United States.<sup>6</sup> The instability caused by eviction “can disrupt employment and social networks and may interfere with children’s educational achievement and emotional well-being.”<sup>7</sup> Eviction has a particularly devastating effect on low-income individuals and families. They lose more than just their home. They are

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<sup>5</sup> Although we do not raise an argument here regarding the propriety of the default judgment process itself, Amici note that the practice used by Reynolds in the present case conflicts with established case law, including a recent opinion of this Court. See *Faciszewski v. Brown*, 187 Wn.2d 308, 314, 386 P.3d 711 (2016); *Housing Auth. of Grant County v. Newbigging*, 105 Wn. App. 178, 190-1, 19 P.3d 1081 (2001) (citing RCW 59.18.370, 17 WILLIAM B. STOEBOCK, WASHINGTON PRACTICE, REAL ESTATE: PROPERTY LAW, §6.80 (1995), and *Hartson P’ship v. Goodwin*, 99 Wn. App. 227, 230, 991 P.2d 1211 (2000)). In *Faciszewski*, this Court explicitly stated that “[f]or residential property, a landlord seeking a writ of restitution *must* request a show cause hearing,” citing RCW 59.18.370. *Faciszewski*, 187 Wn.2d at 314 (emphasis added). In Footnote 3, the Court added that although the statute states that “residential landlords ‘may’ request a show cause hearing,” it has been “interpreted as *requiring* residential landlords to afford tenants such a hearing”. *Id.* at 314, n. 3 (citing *Indigo Real Estate Servs., Inc. v. Wadsworth*, 169 Wn. App. 412, 421, 280 P.3d 506 (2012)). Pursuant to *Faciszewski*, Reynolds was required to set a show cause hearing when they filed their unlawful detainer action because this case involves residential property. Instead, Reynolds served the unfiled summons and complaint on Harmon, then filed the summons and complaint at the same moment that they obtained a default judgment and writ of restitution, thereby foreclosing the possibility of an opportunity for Harmon to be heard by the court. It is one thing if a tenant loses her home because she fails to appear at a show cause hearing or loses the argument at court. It is quite another if a show cause hearing is never afforded to her, as occurred here.

<sup>6</sup> Princeton University, *The Eviction Lab*, <https://evictionlab.org/map/#/2016?geography=states> (last visited August 28, 2018). The exact number of evictions in the United States tabulated by The Eviction Lab for 2016 was 893,942. Data was not available for North Dakota, South Dakota, Arkansas, and Alaska. The number of evictions filed in 2016 was 2,315,668, excluding North Dakota, South Dakota, and Alaska.

<sup>7</sup> Robin Phinney, *Exploring Residential Mobility Among Low-Income Families*, 87 SOC. SERV. REV. 780, 781 (2013).

“expelled from their community and their children have to change schools.”

See Princeton University, *The Eviction Lab*, <https://evictionlab.org/why-eviction-matters/#eviction-impact> (last visited August 20, 2018).<sup>8</sup>

Evictions can cause people to lose their jobs, either because they have to relocate to new areas or as a result of the stress of the eviction. *Id.*

Further, while many of Amici’s clients have pre-existing mental or physical disabilities that already make the eviction process difficult to navigate, data also suggests that the eviction process itself can have a profound effect on people’s mental health. See *Id.* Eviction can trigger a downward spiral for low-income tenants and have a domino effect on future housing opportunities, funding assistance, employment opportunities, and education opportunities for both individuals and families. Eviction does more than render low-income people homeless; it can relegate them to a permanent underclass. In short, “[e]viction functions as a cause, not just a condition of poverty.” See Princeton University, *The Eviction Lab*, <https://evictionlab.org/about/> (last visited August 20, 2018).

For these reasons, Amici believe eviction constitutes an emergency justifying an *ex parte* hearing for a stay of a writ of restitution, especially where the landlord has obtained a default judgment and the tenant presents a viable argument that she has not had an actual opportunity to be heard.

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<sup>8</sup> The cited website contains data compiled by the Eviction Lab of evictions across the country dating back to 2000. The Eviction Lab was founded in 2017 by Matthew Desmond, author of *Evicted: Poverty and Profit in the American City*, 2016.

Washington law recognizes other situations where imminent harm justifies *ex parte* action by the court. *See, e.g.* RCW 26.50.070(1) (allowing the court to issue temporary emergency *ex parte* orders for custody of children and protection of victims of domestic violence, stalking and harassment). Amici believe the imminent harm resulting from eviction is akin to the imminent harm justifying an *ex parte* custody or protection order. Amici also note that despite ruling against her, the Court of Appeals below considered that losing “possession of her residence” may have constituted an emergency for Harmon. *Randy Reynolds & Assoc., Inc. v. Harmon*, 1 Wn. App. 2d 239, 250, 404 P.3d 602 (2017).

**B. *Ex parte* Stays of Writs of Restitution Promote Judicial Efficiency**

An emergency stay for cases that were not fully litigated below, such as those ending in default judgments, best serves the purpose of judicial efficiency. The purpose of seeking an emergency *ex parte* stay of a writ of restitution is to allow a tenant who has a valid defense to be heard before being evicted and potentially becoming homeless. In addition, it allows the tenant to mount that defense in the most efficient way possible. Without an emergency stay, tenants who have valid defenses to their eviction may be compelled to appeal under the Rules of Appellate Procedure 2.2(a)(1) or 2.3(a), before a record is developed in the trial court. The trial courts are in the best position to weigh the evidence, evaluate witness testimony, and enter findings of fact. *E.g., State v. Agee*, 61 Wn.2d 416, 421, 573 P.2d 355 (1977) (explaining that cases remanded for entry of findings “emphasize the

inability of appellate courts to review a trial court decision when the basis for that decision is unknown.”). Until the record is properly developed, invoking appellate jurisdiction is a needless expense for low-income tenants and an inefficient use of the appellate courts’ resources.

#### IV. CONCLUSION

For the reasons stated above, Amici support Petitioner’s plea to vacate the Opinion of the Court of Appeals below.

Respectfully submitted this 10th day of September, 2018.

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# THURSTON COUNTY VOLUNTEER LEGAL SERVICES

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