No. 1039000

Court of Appeals Division I No. 85583-2-I

SUPREME COURT OF THE STATE OF WASHINGTON

BOBBY KITCHEON, ET AL.,

Plaintiffs-Respondents,

vs.

CITY OF SEATTLE,

Defendant-Petitioner.

PLAINTIFFS-RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES

RULES

I. INTRODUCTION

The Petition for Review (the "Petition") filed by Defendant-Appellant the City of Seattle (the "City") does not establish any of the four criteria under RAP 13.4(b) for review by this Court of the challenged portion of the unpublished Court of Appeals opinion ("Op." or "Opinion"). The Court of Appeals correctly held one provision of the City's administrative rules to be facially unconstitutional, the Opinion does not conflict with decisions of this Court or published decisions of the Court of Appeals, and the City's complaints regarding facial constitutional analysis and severance present no significant constitutional or important public issue that would call for review. No other constitutional issue is presented because the City does not challenge the Opinion's conclusion that houseless people have rights under the Washington Constitution's protections against invasion of homes and privacy. In short, the City has not established that the Opinion merits this Court's review. The City's Petition should be denied.

II. COUNTERSTATEMENT OF THE CASE

Washington courts have long recognized the continuing homelessness crisis in the City of Seattle. *See City of Seattle v. Long*, 198 Wn.2d 136, 137, 493 P.3d 94 (2021) (discussing homelessness "crisis" in King County, Washington); *see also* RCW 43.185C.005 (finding causes of homelessness to include a lack of accessible and affordable housing and inadequate healthcare support for physical health, mental illness, and chemical dependency). With nowhere else to go, unhoused individuals may set up encampments on public property. The City of Seattle is responsible for addressing the homelessness crisis and the challenges posed by houseless people being on public property. However, as the Court of Appeals recognized, the City's actions must be constrained by the demands of the Washington Constitution.

In 2017, the City revised its Encampment Abatement Program by expanding its rules governing the identification and assessment of encampments for removal, including the Multi-

Departmental Administrative Rule 17-01 ("MDAR 17-01") and Finance and Administrative Services Rule 17-01 ("FAS 17-01") (collectively, the "Rules"). CP 2130-2153. The Rules allow City agencies "to prohibit camping on property under their jurisdiction," including encampments of unhoused individuals. MDAR 17-01, § 1.1; FAS 17-01, § 2.1.

Under the Rules, unless an encampment is an obstruction or immediate hazard, the City must: (1) provide at least 72 hours' notice before removing the encampment; and (2) offer shelter. FAS 17-01 §§ 6.1-.3, 7.1. However, as centrally relevant here, an encampment that constitutes an "obstruction" or "immediate hazard" may be removed immediately *without* written notice or an offer of alternative available shelter. FAS 17-01 §§ 4.1-.2. FAS 17-01, section 3.4 (CP 2131) defines obstructions as follows:

> "Obstruction" means people, tents, personal property, garbage, debris or other objects related to an encampment that**: <u>are in a City park or on a public sidewalk</u>;** interfere with the pedestrian or transportation purposes of public rights-of-way; or

> interfere with areas that are necessary for or essential to the intended use of a public property or facility.

(Emphasis added). As is clear from the bolded portion, referred to by the Court of Appeals as the "in-a-park category," simply being in a City park or on a public sidewalk, without more, constitutes an "obstruction." In other words, the City may summarily remove a houseless person's tent or other makeshift home and all of their worldly belongings solely because they are in a park or on a public sidewalk.[1]

In this case, a taxpayer Plaintiff, Squirrel Chops, LLC, and two formerly unhoused people, Bobby Kitcheon and Candance Ream, challenged aspects of the City's rules as unconstitutional and Mr. Kitcheon and Ms. Ream sued for damages for conversion of their property and violations of their constitutional rights due to the City's treatment of them. Op. at 3. The "in-a-

[1] The City suggests that notice is provided for these summary obstruction removals, but the Rules do not require it. Op. at 6-7 (citing FAS 17-01, § 4.2).

park category" is the only provision of the City's Rules at issue here, as the trial court and the Court of Appeals held this provision facially unconstitutional. The City's Rules that require 72 hours' notice and an alternative offer of shelter are not at issue here.[2]

Ruling on summary judgment, the trial court issued a declaratory judgment that the "in-a-park category" rendered that part of the Rules facially unconstitutional under the article I, section 7 and article I, section 14 of the Washington Constitution to the extent the City subjects people and property who are

[2] The City suggests that the Court of Appeals said that the trial court's ruling was "not coherent." Pet. at 11. A Commissioner did say that on a truncated record on a motion for discretionary review (Comm'rs Ruling Granting Discretionary Rev. 5, Oct. 6, 2023), but on full review, a panel found the "in-a-park category" facially unconstitutional as had the trial court. Similarly, the City misleadingly hints that issues in this case were previously resolved in federal court. Pet. at 7-8. But the federal case did not adjudicate any constitutional issues as it was dismissed without prejudice, and the court did not address any state constitutional issues. *See Hooper v. City of Seattle*, No. 2:17-cv-00077-RSM, 2020 U.S. Dist. LEXIS 102620, *8 (W.D. Wash. June 11, 2020) ("[D]ecisions of state law [...] are better adjudicated in the state court action.").

merely "in a park or on a public sidewalk" to immediate removal. At the summary judgment hearing and elsewhere, the City conceded that the Rules provide for immediate removal for merely being in a park:

> THE COURT: But would you agree that if it was just a tent in the middle of the woods in a large city park like Discovery Park or Lincoln Park, that if that's all we know, that's not an obstruction?
>
> MR. FARMER: Under the definition, that could be an obstruction.
>
> THE COURT: And you agree it could be an obstruction and then it could be removed immediately […]
>
> MR. FARMER: Yes.

RP 34:9-18; *see also* RP 31-34. Testimony of one field coordinator for homeless encampments also made this clear:

> Q: … Is the entire park an obstruction zone, or does the personal property have to be…blocking a trail or something like that?
>
> A: The entire park is obstruction.

CP 1043.

On the eve of trial, the City obtained discretionary review in the Court of Appeals and challenged Plaintiffs' ability to mount a facial challenge to the "in-a-park category." Relying on standard statutory interpretation, the Court of Appeals held that § 3.4 lays out three distinct and independent categories under which encampments may qualify as an "obstruction" subject to immediate removal. Op. at 15. As such, the Court of Appeals independently reviewed the "in-a-park category" and affirmed the trial court's finding that this provision is facially unconstitutional under article I, section 7. While that court recognized the City has an "undisputed" legitimate interest in promoting the health and safety of the public, it also held that on its face, the "in-a-park category" does not implicate any health or safety concerns and so cannot be upheld under even a "rational basis" review. *Id*. at 25-26. Instead, the "in-a-park category" authorizes the City to immediately remove people or property solely because the encampment exists in a park, without implicating any immediate public health or safety threats or even

interference with pedestrian or transportation rights-of-way or public facilities. Put simply, the Court of Appeals held that removals subject to the "in-a-park category" are facially unconstitutional under article I, section 7 because the only requirement for immediate removal is that the encampment is "in a park or on a public sidewalk." *Id*. at 31. The court also held that because that provision is independent and its invalidation does not affect the rest of the "obstruction" definition, it is to be severed and stricken from the "obstruction" definition, leaving the rest of the definition, and the rest of the City's Rules, intact. *Id*. at 26-27. The City's Petition for Review challenges these decisions in this Court.[3]

[3] The Court of Appeals also reversed the trial court's determinations that the "in-a-park category" facially violated the article I, section 14's "cruel punishment" clause, and that the individual Plaintiffs could pursue as-applied article I, section 14 claims. Plaintiffs will not pursue these claims further. Notably, the City did not challenge the trial court's ruling that the individual Plaintiffs may pursue their claims related to loss of their property, that is, for conversion and as-applied article I, section 7 claims. Thus, there will be a trial no matter the outcome of the City's interlocutory appeal.

III. ARGUMENT

A. The Court of Appeals Correctly Ruled that the "In-A-Park Category" Is Facially Unconstitutional.

Under the proper constitutional analysis, the "in-a-park category" at issue here is without doubt facially unconstitutional. The Court of Appeals was correct to so hold.

1. Proper Constitutional Analysis Requires That Individual Provisions of a Statute or Rule Are Evaluated Individually.

The City's extreme interpretation of the "no set of circumstances" analysis posits that if *any* part of a statute (or administrative rule) can be applied constitutionally, all other provisions are immune from scrutiny for facial invalidity. This is incorrect. As the Court of Appeals correctly held, provisions that are distinct (here, as set off by semicolons and the disjunctive "or") can be judged independently for facial invalidity. This must be true: otherwise, a governmental agency could place a provision that is undoubtedly facially unconstitutional among provisions that are not facially unconstitutional and a court

would be unable to strike the clearly offending provision. For example, a statute could say:

> A search warrant is not required where there are exigent circumstances; *whenever an officer of the law decides to search a home*; or when the officer reasonably believes a felony is in progress in the home.

Under the City's interpretation, the flagrantly unconstitutional italicized portion allowing any and all warrantless searches could never be subject to facial challenge simply because other provisions are constitutional. This cannot be and is not the law.[4]

The City has done here what the hypothetical above would do: nestled the "in-a-park category" among two provisions defining "obstruction" that can be constitutionally applied in some circumstances (actual blocking of right of ways, and interference with intended use of City property), and then claim

[4] The City also seems to suggest that severability doctrine is somehow part of the constitutional analysis itself. As discussed in section B below, severability is a remedy question that becomes relevant only when part of an enactment has been found facially unconstitutional.

this renders the "in-a-park category" immune from facial scrutiny. This is profoundly incorrect, and no case the City cites regarding "no set of circumstances" supports this interpretation. Instead, in *State v. Fraser*, this Court scrutinized "one prong" of a statute relating to driving while intoxicated by cannabis for facial invalidity. 199 Wn.2d 465, 509 P.3d 282 (2022). In *State v. Abrams*, the Court held one provision of a perjury statute requiring judges to determine the element of "materiality" facially unconstitutional because that single provision could never be applied constitutionally. 163 Wn.2d 277, 178 P.3d 1021 (2008). The same is true here: the "in-a-park category" must be evaluated independently and is facially unconstitutional.[5]

[5] Other cases the City cites referencing "no set of circumstances" demonstrate the incorrectness of the City's argument. *Rental Hous. Ass'n v. City of Seattle*, 22 Wn. App. 2d 426, 512 P.3d 545 (2022) (evaluating parts of landlord-tenant ordinances independently and invalidating some but not others); *State v. Clinkenbeard*, 130 Wn. App. 552, 123 P.3d 872 (2005) (looking independently at a sub-part of a criminal statute). None of the cited cases hold that clearly distinct parts may not be evaluated separately. *Portugal v. Franklin Cnty.*, 1 Wn.3d 629, 647, 530 P.3d 994 (2023) (citing "no set" but finding the statute created

2. The Proper Application of the "No Set of Circumstances" Test Requires Courts to Evaluate a Provision Based on the Persons it Affects.

Earlier this month, this Court explained the role of "no set of circumstances" in this kind of case. In rejecting the State of Washington's claim that "no set" must be applied to the whole of an enactment and not separate parts, the Court explained that each provision must be evaluated based on the persons it affects, not the situations in which it has no effect:

> The State contends that since this is a facial constitutional challenge, Vet Voice must show that there is no set of circumstances under which the

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no privilege or immunity that could be subject to article I, section 12 constitutional analysis); *Woods v. Seattle's Union Gospel Mission*, 197 Wn.2d 231, 240-241, 481 P.3d 1060 (2021) (only stating that facial challenges are subject to "no set of circumstances" review but not applying it because the challenge at bar was as-applied); *Chong Yim v. City of Seattle*, 194 Wn.2d 651, 451 P.3d 675 (2019) (there was no regulatory taking and so the constitutional claim failed on that basis); *Bldg. Indus. Ass'n of Wash. v. State*, 30 Wn. App. 2d 148, 543 P.3d 908 (2024) (similarly holding that a tax is not a property tax, fatally undercutting the constitutional claim); *Tunstall v. Bergeson*, 141 Wn.2d 201, 5 P.3d 691 (2000) (reviewing an entire statute because of the context in which it arose, *i.e.*, the broad discretion the Legislature retains to determine educational policy).

> [entire] statute can be applied. This standard has been frequently articulated by this and other courts. *See Portugal v. Franklin County*, 1 Wn.3d 629, 647, 530 P.3d 994 (2023)… We stress that "'[t]he proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.'" *City of Los Angeles v. Patel*, 576 U.S. 409, 418, 135 S. Ct. 2443, 192 L. Ed. 2d 435 (2015) (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 894, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)). A statute does not survive facial constitutional scrutiny merely because it has no effect on some group of people or under some circumstances.

Vet Voice Found. v. Hobbs, No. 102569-6, 2025 Wash. LEXIS 143, at *20-21 n.4 (March 6, 2025).

The approach *Vet Voice* endorses from *Patel* and *Casey*, specifically referenced in Plaintiffs' briefs below, is directly applicable here. In *Patel*, much like here, a city claimed that an ordinance requiring hotels to turn over guest information without a warrant could not be held facially unconstitutional because there are circumstances when the information would have to be disclosed, such as when a warrant exception applies. 576 U.S. at 418. However, the Court rejected the city's argument as

"misunder[standing] how courts analyze facial challenges." *Id*. The Court held the ordinance unconstitutional because the warrant exceptions would allow the government intrusion even without the ordinance, and so the ordinance had no actual effect except to allow warrantless searches with no constitutional basis. *Id.* at 418-19.

Similarly, in *Casey*, the Court reasoned that a facial challenge is analyzed for its "consistency with the Constitution by [the] impact on those whose conduct it affects." 505 U.S. at 894. There, the Court found that a provision requiring a married woman to inform her husband prior to receiving an abortion affected only women who feared informing their spouse, and held it facially unconstitutional because this sole operative effect was always unconstitutional.

Lastly, similar to *Patel*, in *State v. Villela*, this Court held that a statute that includes only patently unconstitutional means on its face—in that case, mandatory seizure of a vehicle, even if there is no established constitutional basis to do so—is

unconstitutional as written. 194 Wn.2d 451, 459, 450 P.3d 170 (2019).[6] In other words, "no set of circumstances" is applied in a reasoned way to the actual impact of the provision being challenged, as an aid and not a barrier to proper constitutional analysis.[7]

Thus, the "in-a-park category" must be judged by the actual impact it creates on unhoused individuals' homes and belongings that are merely "in a City park" or "on a public sidewalk," not for situations that are covered by other parts of the "obstruction" definition or other exceptions allowing for

[6] This Court in *Villela* did not explicitly state that it was holding the statute facially unconstitutional, and tellingly did not mention the "no set of circumstances" analysis, but the case is in fact a facial invalidity case that applied reasoning analogous to *Patel*.

[7] As is clear from the passage from *Vet Voice*, this Court has not applied the "no set of circumstances" analysis in a rigid way; rather it is applied in a way to aid, rather than prevent, reasoned constitutional analysis (and sometimes is not even mentioned or directly applied when it is unnecessary). *See, e.g.*, *El Centro de la Raza v. State*, 192 Wn.2d 103, 428 P.3d 1143 (2018) (finding a portion of a statute to be facially unconstitutional without applying the "no set of circumstances" test); *League of Educ. Voters v. State*, 176 Wn.2d 808, 295 P.3d 743 (2013) (same).

immediate removal of property.[8] Every one of the examples the City tries to claim involve the "in-a-park category" instead is covered by one of these other permissible bases for immediate removal. In its Petition at 26, the City posits the following: prevention of elderly people's egress, but this is clearly either an actual obstruction of egress or interference with intended use of city property, both covered by other parts of the "obstruction" definition; a tent in a road roundabout, which the City says "creates a risk of harm" and if it does we concede it is immediately removable; and two instances of hazardous items or liquids going into waterways, which again, create clear dangers subject to immediate removal. Because these instances are covered by other bases for immediate removal, they are not part of the effect of the "in-a-park category" and so are irrelevant to the constitutional analysis.

[8] Plaintiffs concede that the other parts of the "obstruction" definition, FAS 17-01, § 3.4, *can* be constitutionally applied and so are not subject to facial challenge, but do not concede that they always *are* constitutionally applied.

The "in-a-park category," which purports to authorize the City to summarily remove unhoused individuals merely for being in a park or on a public sidewalk invokes no potentially constitutional basis for immediate removal. Per *Vet Voice, et al.*, the "in-a park category" is fully subject to facial constitutional review for the impact it has on those actually affected, that is, people whose homes and belongings are merely "in a park or on a public sidewalk."

3. Under These Principles, the "In-A-Park Category" is Facially Unconstitutional Under Any Applicable Test.

The City does not contest the Court of Appeals' holding that under article I, section 7's explicit privacy protections, unhoused people, who must shelter on public property, are included among those who have privacy rights in their homes and belongings. Op. at 4-5, 19-20. Thus, the only constitutional question here is whether the "in-a-park category" facially allows invasion of those rights without lawful authority and is therefore a violation of article I, section 7. The answer is that the "in-a-

park-category" is facially unconstitutional under any applicable analysis, as it can never be applied constitutionally.

The City claims that the "no set of circumstances" test immunizes their actions, even if the Court deems encampment removals to be seizures subject to warrant requirement, unless an exception applies. Petition at 28-29. But the City does not even attempt to obtain warrants prior to removal and the "in-a-park category" invokes no recognized exception. As discussed above, Plaintiffs do not dispute that "obstructions," such as property that interferes with public rights-of-way or interferes with the use of public property, or "immediate hazards," can be immediately removed. In contrast, the "in-a-park category" allows the City to summarily remove unhoused individuals' property where there is *no* immediate hazard or other constitutional basis for governmental action. In doing so, the City invades unhoused individuals' homes and unilaterally seizes their only belongings without proper use of the City's Rules or any constitutionally sufficient authority of law. This cannot be justified under article

I, section 7, and, thus, there is no set of circumstances in which the "in-a-park category" can be constitutionally applied.

Further, as the Court of Appeals correctly found, the "in-a-park category" does not even pass muster under the most forgiving "rational basis" test for invasions of privacy. Op. at 19-23. It is ludicrous for the City to claim that its summary seizures might not have an impact on houseless peoples' privacy—the Rule is clearly designed to do just that with no justification. During encampment sweeps, City workers will see unhoused individuals' private property as they enter tents and remove belongings. City workers are tasked with sorting through private property to decide what to discard, discarding everything that is "wet," including books and file folders, and all food (even canned food). CP 1052-55. This is obvious governmental exposure of copious amounts of private property and intimate information. Though it is more likely the City's actions should be seen as a seizure subject to the much more stringent standards that apply to such actions, the "in-a-park category" cannot be

constitutionally justified even under the Court of Appeals' application of this most forgiving "rational basis" standard.[9]

Moreover, the Court of Appeals did not err in relying on *Robinson v. City of Seattle*, 102 Wn. App. 795, 10 P.3d 452 (2000). Applying *Robinson* is simply another way of correctly rejecting the City's attempt to say that separate portions of a statute cannot be evaluated independently. In *Robinson*, as here, the City claimed that the "no set of circumstances" analysis had to be applied to all parts of the City ordinance requiring drug tests

[9] The Court of Appeals took its "rational basis" analysis from *Wash. Pub. Emps. Ass'n v. Wash. State Ctr. For Childhood Deafness & Hr'g Loss*, 194 Wn. 2d 484, 450 P.3d 601 (2019), suggesting that the privacy interest here is no greater than in that case's challenge to the disclosure of names of public employees. However, the Court of Appeals overlooked this Court's statement in that case that "the context here does not involve a direct government intrusion into a person's home, effects, or other private affairs, i.e., a 'search or seizure,'" 194 Wn.2d at 507, i.e., the context that would invoke the higher standard. The City's actions in the present case are in fact a dramatic invasion of home and belongings and seizure of all belongings of houseless people, and so the stricter standard most likely applies. But this makes no difference here: The result even under the much more forgiving "rational basis" analysis is the same–the "in-a-park category" is facially unconstitutional.

for all job applicants, and if any part could be applied constitutionally, none could be found facially unconstitutional. The *Robinson* court, among other reasons, rejected that overly broad argument, just as this Court did in *Vet Voice*:

> …[T]he City does not explain how the ["no set"] test would apply here, except to assert that because the Taxpayers do not challenge the testing program for law enforcement and fire safety applicants, the Taxpayers cannot establish that there is no set of circumstances in which the ordinance is valid. But the ordinance itself creates five categories, only one of which is "public safety responsibilities." The City does not explain why a facial challenge is not available to other aspects of the ordinance, even under ["no set"].

Robinson, 102 Wn. App. at 807. The *Robinson* court then held some of the provisions of the ordinance facially unconstitutional under article I, section 7 because the job categories did not implicate public safety, and so there was no constitutionally valid justification for requiring drug tests. This is fundamentally the same analysis set forth in *Vet Voice*, *Villela*, *Patel*, and *Casey*: facial analysis is to be employed regarding the people that comprise the only group targeted by a provision. That analysis is

not trumped by the existence of other provisions within a statute or rule that do not touch the directly affected group and that may be constitutionally applied. The *Robinson* court employed a reasoned and logical application of facial analysis consistent with other cases analyzing facial claims, and in this case the Court of Appeals did the same.[10] The Court of Appeals' holding that the "in-a-park category" is facially unconstitutional was correct.

B. The Court of Appeals Correctly Ruled that the "In-A-Park Category" is Severable from the Remainder of the "Obstruction" Definition.

The City misunderstands the correct application of a severability analysis. Severability is a remedy issue that comes into play *after* a provision of law has been found

[10] At the end of its Petition, the City tries to suggest that the Court of Appeals' unpublished opinion will "encroach" on "legislative authority." Petition at 29-30. But the Court of Appeals decision on the "in-a-park category" is not only a correct decision to curb the effect of this unconstitutional provision, it does not even involve a statute. Instead, the Court of Appeals reviewed an administrative rule not enacted by any legislative body. The City can show no major impact from the Court of Appeals decision, except to require administrators to take care to follow the Washington Constitution.

unconstitutional. After a court has found that a provision cannot pass constitutional muster, the court then determines whether the offending provision may be stricken, leaving the remainder intact, or whether the entire statute must be invalidated. *See League of Women Voters of Wash. v. State*, 184 Wn.2d 393, 411-12, 355 P.3d 1131 (2015) (finding that only after a portion of an act was found to be unconstitutional would the court address "the next question [which] is whether the [] unconstitutional provisions render the Act unconstitutional in its entirety").

The Court of Appeals looked to the plain meaning of section 3.4, and how the "in-a-park category" is separated from the other categories of "obstruction," and correctly concluded that the "in-a-park category" is severable from the remainder of the "obstruction" definition because it is "distinct and separable" from the unchallenged portions. Op. at 16-17. As the Court of Appeals explained, the use of a colon to "introduce[] an enumeration of three definitions for what may constitute an obstruction" and semicolons to "demonstrate the three

categorical definitions" of "obstruction" indicate that the "in-a-park category" "stands on its own" and can thus be severed from the remaining portions of the definition. *Id*. This plain-meaning interpretation is supported by ample authority. *See, e.g.*, *Dep't. of Lab. & Indus. v. Slaugh*, 177 Wn. App. 439, 447-48, 312 P.3d 676 (2013) (looking to the statute's use of semicolons to discern its meaning); *Tateuchi v. City of Bellevue*, 15 Wn. App. 2d 888, 902 n.15, 478 P.3d 142 (2020) (same); *Campbell v. Bd. for Volunteer Firefighters*, 111 Wn. App. 413, 421 n.3, 415 P.3d 216 (2002) (relying on the statute's use of the word "or" in relation to a semicolon in interpreting a statute). Revisiting the text of the rule shows this is obviously correct:

> Obstruction means people, tents, personal property, garbage, debris or other objects related to an encampment that: **are in a City park or on a public sidewalk**; interfere with the pedestrian or transportation purposes of public rights-of-way; or interfere with areas that are necessary for or essential to the intended use of a public property or facility.

FAS 17-01, § 3.4 (emphasis added); CP 2131.

The City argues that the Court of Appeals applied the incorrect standard in its severability analysis, contending that because the Court of Appeals focused its analysis on whether the "in-a-park category" is "distinct and separable" from the remainder of the definition—as opposed to whether this language is "connected and interdependent"—this Court's review is warranted. Petition at 19-23. This is incorrect for two reasons.

First, the Court of Appeals *did* consider the City's argument that the "in-a-park category" is "connected and interdependent" with the other portions of the "obstruction" definition. However, the Court rightly dismissed this argument, as the City did not adequately brief the issue. Op. at 17; s*ee also Norcon Builders, LLC v. GMP Homes VG, LLC*, 161 Wn. App. 474, 486, 254 P.3d 835 (2011) ("We will not consider an inadequately briefed argument."); *Orwick v. Seattle*, 103 Wn.2d 249, 256, 692 P.2d 793 (1984) ("It is not the function of trial or appellate courts to do counsel's thinking and briefing.").

Second, the City's claim that the Court of Appeals erred by focusing its analysis on the distinctions between the "in-a-park category" and other parts of the "obstruction" definition is purely semantic. This Court has previously employed "distinct and separable" language in evaluating whether unconstitutional provisions are "connected and interdependent." *State ex rel. King Cnty. v. State Tax Comm'n*, 174 Wash. 336, 339-340, 24 P.2d 1094 (1933) (asserting, in applying the "connected and interdependent test," "[t]he property within the city or county and intercounty property being so distinct and separable, the fact that the act was held invalid as to the former does not render it unconstitutional as to the latter[.]"). It makes no difference that the Court of Appeals here did not explicitly adopt the City's "connected or interdependent" standard. Under any of the applicable cases, the analysis is the same and leads to the conclusion that the "in-a-park-category" is severable. The City makes no showing that would lead to a different result.

And as the cases clearly state, even if this Court were to find the "in-a-park category" could not be properly stricken from the rest of the rule, the proper remedy would then be to strike the entire rule. The Court of Appeals appropriately—and in pointed deference to the City's need to deal with encampments on public property—left intact every bit of the City's rules, except the clearly unconstitutional "in-a-park category."

The Court of Appeals correctly concluded that the "in-a-park category" is severable from the remainder of the "obstruction" definition found in FAS 17-01, section 3.4. The City provides no reason for this Court to review this issue.

IV. CONCLUSION

For these reasons, the City's Petition should be denied.

Respectfully submitted March 28, 2025.

I certify that this document contains 4,997 words, excluding the parts of the document exempted from the word count by RAP 18.17.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 28th day of March 2025, I caused a true and correct copy of this Answer to Petition for Review to be served on the following through the Court's e-filing system:

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/s/ John C. Roberts Jr.
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