No. 1039000
(Court of Appeals Case No. 85583-2-I)

SUPREME COURT
OF THE STATE OF WASHINGTON

BOBBY KITCHEON, et al.,

Plaintiffs/Respondents,

v.

CITY OF SEATTLE,

Defendant/Appellant.

CITY OF SEATTLE'S REPLY IN SUPPORT OF PETITION FOR REVIEW

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TABLE OF AUTHORITIES

Contrary to Respondents' argument, the City does not advance an "extreme interpretation" of the no set of circumstances test (Ans. 9) but simply seeks application of the test, which Respondents' authority, *Voice Vet*¸ reaffirms.

The City does not argue that if one part of an ordinance is constitutional then all are. It asserts that the Court must determine if the challenged portion is severable by applying the precedential test for severability (Pet. 19-23) and applying the precedential test for a facial challenge (Pet. 13-19). The court below did neither.

Voice Vet demonstrates the vitality of the no set of circumstances test and refutes the Court of Appeals' approach. *Voice Vet* applies the "no set" test to "the group for whom the law is a restriction." Applied here, the challenged language passes this test. It restricts any person's tent or belongings located on a sidewalk or in a park and *related to an encampment* (CP 2131). Respondents concede there are constitutional applications of this restriction. Ans. 16. There

also are circumstances in which the City has a valid interest in removing tents and belongings from sidewalks and parks *and* which do not fall into the other categories defining obstruction (interfering with rights-of-way or areas essential to facility use). Encampments located on sidewalks adjacent to businesses or public buildings or those causing environmental harm in parks are two examples. While physical access and use of essential areas (*e.g.*, playground) may be possible, the City has a valid interest in removing such encampments immediately for health or safety reasons (Pet. 25-28). Its obligation to protect the public is paramount. Immediate removal with notice where possible, property sorting to determine storability, 70 days' storage, and on-demand delivery, protect individual rights and is narrowly tailored for the circumstances.

Patel and *Casey* do not change this analysis. The City does not argue that the challenged language is constitutional because the City may obtain a warrant before removing an encampment (*Patel*), or because individuals may consent to

storage (*Casey*). Instead, the constitutional applications of the challenged category withstand Respondents' facial challenge.

I certify that this Reply contains 344 words, in compliance with RAP 18.17(b).

RESPECTFULLY SUBMITTED this 10th day of April, 2025.

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By *s/Tyler L. Farmer*

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CERTIFICATE OF SERVICE

I, Erin Fujita, declare that I am employed by the law firm of Martinez & Farmer LLP, a citizen of the United States of America, a resident of the state of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On April 10, 2025, I caused a true and correct copy of the foregoing document to be served on the person(s) listed below in the manner indicated:

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DATED this 10th day of April, 2025.

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Transmittal Information

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