No. 98824-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CITY OF SEATTLE,

Respondent and Cross-Petitioner,

v.

STEVEN G. LONG,

Petitioner and Cross-Respondent.

CITY OF SEATTLE'S ANSWER TO AMICUS BRIEF OF NORTHWEST JUSTICE PROJECT AND NORTHWEST CONSUMER LAW CENTER

PETER S. HOLMES
Seattle City Attorney
Erica R. Franklin, WSBA #43477
Assistant City Attorney

erica.franklin@seattle.gov

Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7095
Phone: (206) 684-8200

K&L GATES LLP
Robert B. Mitchell, WSBA #10874
Aaron E. Millstein, WSBA #44315

rob.mitchell@klgates.com
aaron.millstein@klgates.com

K&L Gates LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
Phone: (206) 623-7580

Attorneys for the City of Seattle

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Amici curiae Northwest Justice Project and Northwest Consumer Law Center (together, "NJP") ask this Court to affirm the court of appeals' homestead ruling. The NJP brief relies on inapposite authority, ventures outside the confines of this case, and invites the Court to elevate policy concerns over plain meaning, stretching the Homestead Act well beyond its intended reach. The City of Seattle respectfully asks the Court to reject NJP's arguments and to reverse the court of appeals' homestead ruling.

II. ARGUMENT

A. The Homestead Act requires a declaration of homestead for personal property homesteads such as vehicles.

1. NJP's reading of the Homestead Act violates settled principles of statutory construction.

NJP argues that personal property such as a vehicle is automatically protected as a homestead if it is occupied by the owner. For this reason, NJP says, the reference in RCW 6.13.040(1) to "other personal property" refers solely to unoccupied personal property. NJP Br. at 6–8. This cannot be so.

NJP's reading of RCW 6.13.040 violates established precepts of statutory construction. NJP ignores altogether the requirements of RCW 6.15.060(3)(d), presumably because it has no answer to the City's argument that it would be impossible to comply with that statute if the term "any other personal property" in RCW 6.13.040(1) denoted only unoccupied personal

property. *Compare* RCW 6.15.060(3)(d) (requiring a "debtor who claims as a homestead, under RCW 6.13.040, ***any other personal property***" to deliver a declaration of homestead indicating that "the debtor ***resides thereon*** as a homestead")[1] *with* RCW 6.15.060(3)(c) (requiring "a debtor who claims as a homestead, under chapter 6.13 RCW, a mobile home that is ***not yet occupied as a homestead*** and that is located on land not owned by the debtor" to deliver a declaration of homestead indicating that the debtor "***intends to reside***" in the mobile home) (emphasis added throughout).

"Especially when statutes relate to the same subject matter, they are to be read together, whenever possible, to achieve a harmonious total statutory scheme . . . which maintains the integrity of the respective statutes." *Viewcrest Condo. Ass'n v. Robertson*, 197 Wn. App. 334, 338, 387 P.3d 1147 (2016) (internal quotation marks omitted). Because NJP's reading of RCW 6.13.040 creates an irreconcilable conflict with the requirements of RCW 6.15.060(3)(d), NJP's reading of the former statute must be rejected.

NJP's application of the canon of *expressio unius est exclusion alterius* is also misguided. Under that canon, the Court must assign significance to the legislature's decision to use the descriptor "not yet

[1] NJP's interpretation of the Homestead Act renders RCW 6.15.060(3)(d) meaningless.

occupied as a homestead" in only two of the three categories of property requiring a declaration. *See* RCW 6.13.040(1) (requiring a declaration of homestead for (1) "unimproved or improved land that is ***not yet occupied*** as a homestead," (2) "a mobile home ***not yet occupied as a homestead***. . ." and (3) "any other personal property") (emphasis supplied). If, as NJP contends, the Legislature intended the phrase "any other personal property" to denote not-yet-occupied personal property, it would have said so. *See In re Detention of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597 (2002) (applying *expressio unius* canon).

Interpreting RCW 6.13.040 as requiring a declaration for occupied personal property does not, as NJP contends, "render the first portion of RCW 6.13.040(1) meaningless and inconsistent with the remaining sections." NJP Br. at 9. As the City has explained, the term "[p]roperty described in RCW 6.13.010" refers to the traditional residences explicitly named in RCW 6.13.010: dwelling houses and mobile homes. That is the only type of property the Legislature was contemplating when it first enacted this provision. *See* City's Supp. Br. at 5–6.

2. Legislative history evinces the Legislature's intent to require a declaration for nontraditional homesteads.

Contrary to NJP's assertions, legislative history confirms that the Legislature intended to require a debtor claiming other personal property as

a homestead to deliver a declaration to that effect. NJP points to the 1981 legislation providing for automatic homesteads as evidence that the Legislature intended to bestow automatic protection on all properties occupied as principal residences. In 1981, however, the Legislature was not contemplating personal property homesteads (other than mobile homes) or the problems they would present from a notice standpoint. The Legislature first brought other personal property within the scope of the Homestead Act in 1993. Laws of 1993, ch. 200.[2]

Nothing in the legislative history surrounding the 1993 amendments evinces an intent to confer automatic protection on such personal property. *See* Final Bill Report, Laws of 1993, ch. 200.[3] To the contrary, when the Legislature amended the Homestead Act to include other personal property, it added new language to RCW 6.13.040(1) requiring a declaration of homestead for "any other personal property." Laws of 1993, ch. 200, sec. 3. It also added a new subsection to RCW 6.15.060(3) setting forth the procedures for preparing and delivering such a declaration. *Id*., sec 5.

Contrary to NJP's claim, it is insignificant that RCW 6.13.080 lacks an exemption for "vehicle liens, assessments or attachments to cover towing

[2] Chapter 200, Laws of 1993 is reproduced at Appendix B of the City's Supplemental Brief.

[3] The Final Bill Report for SSB 5068 is reproduced at Appendix C of the City's Supplemental Brief.

costs." *See* NJP Br. at 10. An explicit carve-out was not necessary to remove vehicle impoundment from the reach of the Homestead Act. Because the impoundment process does not involve an attachment, execution, or forced sale, it already lies outside the Act's purview. *See* RCW 6.13.070; City's Supp. Br. at 8–10; Brief of Washington State Association of Municipal Attorneys ("WSAMA Br.") at 12–19.

3. Liberal construction is not a license to rewrite a statute.

NJP urges the Court to apply "liberal construction" to dispense with the declaration requirement for occupied personal property. But liberal construction is not a means to override statutory language. This is true even where a statute serves a laudable remedial purpose. *See* City's Supp. Br. at 8–9; WSAMA Br. at 4–7. Although the cases NJP cites recognize that the Homestead Act is construed liberally, they do not sanction a departure from its plain text on that basis. *See State ex rel. Van Doren v. Superior Court for King County*, 179 Wash. 241, 243, 37 P.2d 215 (1934); *In re Plants*, 7 F.2d 507, 508 (W.D. Wash. 1925); *First Nat'l Bank of Everett v. Tiffany*, 40 Wn.2d 193, 242 P.2d 169 (1952); *In re Poli's Estate*, 27 Wn.2d 670, 674, 179 P.2d 704 (1947)).

4. NJP misreads the requirements for a valid declaration of homestead.

Under RCW 6.15.060(3)(d), a debtor who claims "any other personal property" as a homestead must "deliver" a declaration of

homestead to the "officer making the levy" and may do so "at any time before sale." NJP maintains that Mr. Long's vehicle was entitled to automatic protection because requiring a declaration in this context would "create[ ] unnecessary ambiguity and confusion." NJP Br. at 11. These alleged problems are entirely of NJP's making.[4]

If the Homestead Act applies to vehicle impoundments, the "officer making the levy" can only mean the tow truck operator. It is the operator, after all, that conducts a purported "forced sale" of the vehicle.[5] *See* RCW 6.15.060(3)(d); *cf.* RCW 6.36.010 ("'Levy' means to take control of or create a lien upon property under any judicial writ or process whereby satisfaction of a judgment may be enforced against such property."). For this reason, contrary to NJP's claim, Mr. Long could not have satisfied the requirements of RCW 6.15.060(3)(d) when he informed Magistrate Eng—rather than Lincoln Towing—that his vehicle was his residence. *See* NJP Br. at 12–13.

NJP cites *Viewcrest Condominium Associations* in maintaining that the declaration requirement is not sufficiently "specific, clear, and definite"

[4] To the extent that NJP's contentions about the difficulty of applying the requirements of a valid declaration in the context of a vehicle impoundment are valid, they reinforce the City's argument that homestead rules are not meant to apply to impoundments at all.

[5] The sale of a vehicle at auction pursuant to RCW 46.55.130(1) is not a "forced sale" within the meaning of RCW 6.13.070. *See* City's Supp. Br. at 9–10; WSAMA Br. at 14–15.

to be binding upon Mr. Long, but that part of the case is inapposite. In *Viewcrest*, the court of appeals held that the Legislature could not "negat[e] a right recognized under the Redemption Act . . . [a]bsent specific, clear and direct language." 197 Wn. App. at 344–45 (holding that Condominium Act did not limit or restrict the statutory right to possession during the redemption period under the Redemption Act). Here, the declaration requirement does not negate any right enshrined in the Homestead Act; rather, it is a prerequisite to the judicial recognition of such a right. In these circumstances, "specific, clear and direct language" is not necessary. *See id.*; RCW 6.13.040(1). In any event, the declaration requirement of RCW 6.15.060(3)(d) is specific, clear, and direct.

NJP also argues that the declaration requirement does "not serve any real notice purpose in the case of impounds" and therefore should be treated as inapplicable. NJP points out that a debtor can make a declaration up until the point of sale, but it fails to note that the notice must go to the officer making the levy—here, the tow truck operator. Although the declaration requirement may not provide notice to a parking enforcement officer who patrols the streets, it prevents a tow truck operator from unwittingly selling a vehicular homestead. That is a very important function.

B. Mr. Long's time payment plan does not implicate, much less offend, the Homestead Act.

NJP attacks the time payment plan approved by Magistrate Eng on several grounds. None have merit. First, NJP argues that the payment plan "undermines" both the "very purpose" of the homestead exemption and the "concept of homestead." NJP Br. at 13. By its terms, however, the Homestead Act prohibits only attachment, execution, and forced sale, none of which describe a payment plan such as that entered into by Mr. Long. *See* RCW 6.13.070; *Detention of Williams*, 147 Wn.2d at 491 ("to express one thing in a statute implies the exclusion of the other . . . . Omissions are deemed to be exclusions."); *Leischman v. Ogden Murphy Wallace*, PLLC, -- P.3d --, 2021 WL 280831 (January 28, 2021) at *5 ("We must refrain from adding words where the legislature has chosen not to include them."). The Homestead Act simply does not apply to an unsecured obligation that is not reduced to judgment. *See* City's Supp. Br. at 7–8.

The Court should reject NJP's invitation to elevate the purported spirit of the Homestead Act over its very specific language. *See* City's Supp. Br. at 8–9, WSAMA Br. at 4–6, 9–10. Such restraint is particularly apt here, given the competing objectives of the impoundment statutes. As WSAMA explains, the Court may not favor the purposes of the Homestead Act over those of the impoundment statutes because each of these statues is a valid

expression of legislative intent. WSAMA Br. at 7–8; s*ee generally* ch. 46.55 RCW.

The cases NJP cites to attack the payment plan have no bearing on its legality. In *City of Algona v. Sharp*, this Court held that the Homestead Act barred a "forced sale" of real property to satisfy a Local Improvement District lien. 30 Wn. App. 837, 838, 638 P.2d 627 (1982).[6] In *Pinebrook Homeowners Association v. Owen*, the court of appeals held that the Homestead Act prohibited a sale of property to satisfy a judgment because such a sale would constitute an "execution." 48 Wn. App. 424, 425, 739 P.2d 110 (1987). In contrast, the payment plan in this case involves neither a "forced sale" of nor an "execution" on any property, be it real or personal. *See* WSAMA Br. at 14–16.

Equally inapposite is *City of Richland v. Wakefield*, 186 Wn.2d 596, 608, 380 P.3d 459 (2016). In that case, this Court recognized that indigent defendants who enter into lengthy repayment plans for Legal Financial Obligations ("LFOs")[7] often pay more than they originally owe due to interest. *Id*. at 607. The Court further held that federal law bars courts from

[6] NJP misstates the holding in *Sharp*. In *Sharp*, this Court did not address the legality of a payment plan but rather rejected the city's argument that the availability of post-sale redemption rights meant that a forced sale did not violate the Homestead Act.

[7] *See WA State Superior Courts: 2018 Reference Guide on Legal Financial Obligations (LFOs)*, WASH. STATE S. CT. MINORITY & J. COMM'N (June 2018), https://www.courts.wa.gov/content/manuals/Superior%20Court%20LFOs.pdf.

requiring defendants to pay LFOs if the defendant's only source of income is social security disability. *Id*. at 609. In stark contrast, this case involves an interest-free payment plan designed to reimburse the City for a fraction of the amount that the City had to pay to tow Mr. Long's truck, CP 117–18, and it does not involve social security disability income.

C. NJP's discussion of the "expedited impound debt process" has no bearing on the issues before the Court.

NJP argues that automatic homestead protections are critical in the context of vehicle impoundment because the process is "fast and provides little due process protection." NJP Br. at 15. NJP's argument is misplaced. This case does not involve any procedural due process issues. It would not be appropriate for this Court to resolve this case on the basis of an issue that neither party has raised.

NJP's comparison of impoundment to "less harsh debt collection processes" is nonsensical. Impoundment is not a "debt collection process." Vehicles are not impounded as a means of collecting debt. Rather, debt arises from and after the impoundment. *See* WSAMA Br. at 18–19. Thus, the scenarios NJP describes are not comparable to impoundment. In any event, the "harshness" of a purported "debt collection process" is not the proper test for the applicability of homestead protections. By its terms, the

Homestead Act applies to attachment, execution, or forced sale. RCW 6.13.070. None of those actions are at issue here.

D. The Court should decline NJP's invitation to elevate policy considerations over plain meaning.

NJP's policy arguments should not drive the outcome of this case. The City does not dispute the seriousness of the homelessness crisis or the immense challenges facing vehicle-sheltered individuals such as Mr. Long. As detailed in the City's Answer to the ACLU's amicus brief, the City has embarked on an ambitious course of action to address these complex issues, and it devotes substantial and growing resources to combatting the crisis of homelessness. *See* City Answer to ACLU Br. at 1–5.

Even if the Homestead Act has a role to play in addressing issues associated with homelessness, vehicle impoundment lies far outside the reach of that statutory scheme. And extending the Homestead Act to vehicle impoundment thwarts the City's ability to control public rights of way to protect public health, safety, and welfare.

NJP argues that the court of appeals' interpretation of homestead law does not prevent cities from enforcing their parking laws, but NJP ignores the practical consequences that will follow from the court of appeals' decision unless it is corrected. If cities may not avail themselves of statutory procedures for impoundment and associated cost recovery, they

will bear the full expense of removing illegally parked vehicles from the public right of way. And while NJP suggests that there are alternatives to impoundment and auction, those alternatives have no bearing on the issues in this case or the legality of the City's policy choices.

III. CONCLUSION

The City respectfully asks this Court to reverse the court of appeals' Homestead Act ruling.

DATED this 26th day of February 2021.

Respectfully submitted,

PETER S. HOLMES
Seattle City Attorney

By: */s/ Erica R. Franklin*
Erica R. Franklin, WSBA #43477
Assistant City Attorney
E-mail: erica.franklin@seattle.gov
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
Phone: (206) 684-8200

K&L GATES LLP
By: */s/ Robert B. Mitchell*
Robert B. Mitchell, WSBA # 10874
Aaron E. Millstein, WSBA # 44135
E-mail: rob.mitchell@klgates.com
E-mail: aaron.millstein@klgates.com
925 Fourth Ave., Suite 2900
Seattle, WA 98104-1158
Phone: (206) 623-7580

Attorneys for the City of Seattle

K&L GATES LLP

February 26, 2021 - 3:37 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98824-2
Appellate Court Case Title:	City of Seattle v. Steven Gregory Long

The following documents have been uploaded:

- 988242_Briefs_20210226153633SC385317_3225.pdf
  This File Contains:
  Briefs - Answer to Amicus Curiae
  The Original File Name was City Answer to NJP Amicus Brief.pdf

A copy of the uploaded files will be sent to:

- Amanda@nwclc.org
- Lise.Kim@seattle.gov
- aaron.millstein@klgates.com
- ali@defensenet.org
- alison.bilow@columbialegal.org
- annlogerfo@gmail.com
- becky.fish@defender.org
- benee.gould@klgates.com
- bhardingham@publicjustice.net
- bschuster@aclu-wa.org
- carrie.graf@nwjustice.org
- catherine.bentley@defender.org
- cheryl.seelhoff@columbialegal.org
- dan.lloyd@cityofvancouver.us
- dawn.taylor@pacificalawgroup.com
- deborah.hartsoch@cityofvancouver.us
- dmg@vnf.com
- erica.franklin@seattle.gov
- hloya@ij.org
- ivy.rosa@columbialegal.org
- iwillis@vnf.com
- jfeierman@jlc.org
- jhe@publicjustice.net
- jmizutani@aclu-wa.org
- joanno@nwjustice.org
- kim@gordonsaunderslaw.com
- lbailey@publicjustice.net
- legal@rutherford.org
- lfoster@finesandfeesjusticecenter.org
- lobsenz@carneylaw.com
- lsmith@jlc.org
- matthew.segal@pacificalawgroup.com
- mbm7@georgetown.edu
- mjthomps@gmail.com

- mlevick@jlc.org
- morris@nclej.org
- prachi.dave@defender.org
- rankins@seattleu.edu
- robert@gordonsaunderslaw.com
- sarah@ahmlawyers.com
- scottc@nwjustice.org
- sw1098@georgetown.edu
- talner@aclu-wa.org
- tbauman@nlchp.org
- tmarshall@terrellmarshall.com
- todd@ahmlawyers.com
- tweaver@tomweaverlaw.com
- wilner@nclej.org
- wmaurer@ij.org

Comments:

Sender Name: Robert B. Mitchell - Email: rob.mitchell@klgates.com
Address:
925 4TH AVE STE 2900
SEATTLE, WA, 98104-1158
Phone: 206-623-7580 - Extension 7640

Note: The Filing Id is 20210226153633SC385317