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SUPREME COURT
STATE OF WASHINGTON
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Supreme Court No. 100,992-5

Court of Appeals No. 55,915-3-II

SUPREME COURT OF THE STATE OF WASHINGTON

Gene Gonzales and Susan Gonzales, Horwath Family
Two, LLC, and the Washington Landlord Association,

Appellants

v.

Governor Jay Inslee and State of Washington,

Respondents.

Appellants' Statement of Additional Authorities

STEPHENS & KLINGE LLP
Richard M. Stephens, WSBA # 21776
10900 NE 4th Street, Suite 2300
Bellevue, WA 98004
(425) 453-6206
stephens@sklegal.pro
Attorneys for Appellants

In response to Justice Gordon-McCloud's question whether a takings plaintiff can seek declaratory relief (Oral Arg. at 5:41-6:20, 7:40-7:52 (Feb. 23, 2023)), Appellants file this Statement of Additional Authorities pursuant to RAP 10.8.

The United States Supreme Court has allowed declaratory relief claims as to whether a taking would or did occur. *See Duke Power Co. v. Carolina Env. Study Group*, 438 U.S. 59, 71 & n.15 (1978); *Ruckelshaus v. Monsanto*, 467 U.S. 986, 998-99, 1013 (1984); *E. Enterprises v. Apfel*, 524 U.S. 498, 521-22 (1998); *Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162, 2168 (2019).

The Court has also allowed declaratory relief claims where the complaint alleges a *per se* physical taking. *See Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2070, 2080 (2021) (declaring that the challenged regulation effected a *per se* taking); *Pakdel v. City & Cnty.*

of San Francisco, California, 141 S. Ct. 2226, 2228 (2021) (claim without seeking compensation was justiciable; remand for resolution on the merits); *see Pakdel v. City & Cnty. of San Francisco*, 2017 WL 6403074, at *3 (N.D. Cal. Nov. 20, 2017) (noting that the complaint sought only declaratory relief).

This Court also has recognized that parties can seek a determination as to whether a government action has caused a taking. *See Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 351 (2000), *abrogated on other grounds in Yim v. City of Seattle*, 451 P.3d 675, 659 (2019); *Ackerley Communications, Inc. v. City of Seattle*, 92 Wn.2d 905 (1979) (“where no administrative remedy is available, ..., a party may be allowed to raise constitutional issues in a declaratory judgment proceeding”).

Additionally, RCW 7.24.080 expressly allows parties bringing a declaratory relief to seek further relief “based on

a declaratory judgment.” *Id.* And, the declaratory judgment statute is to be liberally construed. *DiNino v. State*, 102 Wn.2d 327, 330 (1984).

The undersigned certifies that this answer contains 311 words in compliance with RAP 10.8(b).

Respectfully submitted this 28th day of February 2023, by

STEPHENS & KLINGE LLP

/s/ Richard M. Stephens
Richard M. Stephens, WSBA 21776

Attorneys for Petitioners and
Appellants Below

Declaration of Service

I, Richard M. Stephens, declare as follows pursuant to GR 13 and RCW 9A.72.085 that counsel for Respondents was served through the Court's electronic filing portal on February 28, 2023.

Executed this 28th day of February 2023, at Woodinville, Washington.

/s/ Richard M. Stephens
Richard M. Stephens

STEPHENS & KLINGE LLP

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Transmittal Information

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- rfried@democracyforward.org
- roger.wynne@seattle.gov
- sam.spiegelman1@gmail.com
- tainsworth@corrchronin.com
- yuant@kcba.org

Comments:

Sender Name: Richard Stephens - Email: stephens@sklegal.pro
Address:
10900 NE 4TH ST STE 2300
BELLEVUE, WA, 98004-5882
Phone: 425-453-6206

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