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SUPREME COURT
STATE OF WASHINGTON
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NO. 90329-8

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

BENITO GOMEZ,

Respondent.

**AMICUS BRIEF OF WASHINGTON ASSOCIATION OF
PROSECUTING ATTORNEYS
IN SUPPORT OF PETITION FOR REVIEW**

DANIEL T. SATTERBERG
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ORIGINAL

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A. IDENTITY AND INTEREST OF AMICUS

The Washington Association of Prosecuting Attorneys ("WAPA") represents the elected prosecuting attorneys of Washington State who are responsible for the prosecution of all felony cases and of all gross misdemeanors and misdemeanors charged under state statutes. WAPA is interested in cases, such as this, that may establish the parameters of a trial court's authority to control the courtroom in a manner that respects the public's right to attend court proceedings.

B. ISSUES

Did the trial court "close" the court by ordering that spectators could enter only before session began or during recesses?

C. FACTS

The Court of Appeals and the parties have adequately set forth the salient facts.

D. REASONS TO GRANT REVIEW

1. WHEN AND HOW A TRIAL JUDGE CAN REGULATE ENTRY TO A COURTROOM DURING COURT SESSIONS IS A CRITICAL ISSUE FOR TRIAL JUDGES, AND CONSTITUTES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST.

This case asks this Court to determine whether a trial court may impose reasonable rules for the entry and exit of spectators without effectuating a "closure" of the courtroom. This trial judge was likely not

alone in believing that for security reasons and to minimize disruptions in front of the jury, he had the authority to restrict the moment at which spectators entered. It is imperative that judges understand the scope of such authority in light of developing public trial jurisprudence. If trial courts are not provided guidance, well-intended restrictions like those in this case will trigger costly and unnecessary retrials. Thus, review is appropriate because the issue presented in this case is one of substantial public interest. RAP 13.4(b)(4).

A number of cases touching on this issue are pending decision before this Court but most pertain to the full closure of some portion of *voir dire*; not even one member of the public was permitted to observe the closed proceedings in those cases. In this case, however, it appears that many people attended trial, they just had to wait for a while if they arrived while court was already in session. Thus, while there will be plenty of decisions from this Court clarifying the extent to which a court may totally close *voir dire* or similar proceedings, there are no cases pending that will assist trial judges in understanding whether *any* restriction on access violates the right to public trial, as the Court of Appeals effectively held in this case.

2. THE COURT OF APPEALS DECISION CONFLICTS WITH STATE V. LORMOR.

In State v. Lormor, 172 Wn.2d 85, 257 P.3d 624 (2011), this Court held that a trial court did not violate public trial principles when it ordered that a young child breathing with the assistance of a machine could not remain in the courtroom because the child's presence would disrupt the proceedings. The court said that a "closure of a courtroom occurs when the courtroom is completely and purposefully closed to spectators so that no one may enter and no one may leave." Lormor, 172 Wn.2d at 93. This clear holding would seem to resolve this case, as it suggests that a trial court has the authority to exercise some measure of control over attendees short of a total closure.

Gomez's answer to the State's petition for review and the Court of Appeals opinion below illustrate the confusion that has evidently developed on this point. Gomez argues that the trial court "closed entry into court after court sessions began." Answer at 3. The trial court did not "close entry," it simply restricted the timing of entry to a courtroom that was evidently well-populated. And, the court did not "close entry" indefinitely after court began. Rather, the trial court allowed unfettered access first thing in the morning, and the numbers of spectators could be replenished (had spectators departed) during the breaks. If this sort of

restriction—which, at present, seems a reasonable exercise of discretion—violates the public trial doctrine, then trial judges need to know it.

To the extent the Court of Appeals in this case held that the trial court's ruling was a closure, that decision seems to conflict with this Court's decision in Lormor. If the above-cited language from Lormor does not control, then this Court should grant review to clarify when a trial court may exclude spectators consistent with open court principles.

Review is appropriate to address this conflict. RAP 13.4(b)(1).

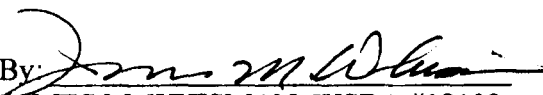
E. CONCLUSION

For these reasons, WAPA respectfully asks this Court to grant the petition for review.

DATED this 28th day of July, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the respondent,

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containing a copy of the Amicus Brief of Washington Association of Prosecuting Attorneys in Support of Petition for Review, in BENITO GOMEZ, Cause No. 90329-8-1, in the Supreme Court, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

U Brame
Name
Done in Seattle, Washington

7/28/14
Date 7/28/14

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From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, July 28, 2014 3:18 PM
To: 'Brame, Wynne'
Cc: Whisman, Jim; tchen@wapa-sep.wa.gov; jnagle@co.walla-walla.wa.us; jan@gemberlaw.com; jillreuterlaw@gmail.com
Subject: RE: State v. Benito Gomez, Supreme Court No. 90329-8

Rec'd 7-28-14

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Subject: State v. Benito Gomez, Supreme Court No. 90329-8

Please accept for filing the attached documents (Amicus Brief of Washington Association of Prosecuting Attorneys in Support of Petition for Review) in State of Washington v. Benito Gomez, No. 90329-8.

Thank you.

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This e-mail has been sent by Wynne Brame, paralegal (phone: 206-296-9650), at James Whisman's direction.

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