No. 93428-2

SUPREME COURT
OF THE STATE OF WASHINGTON

MICHAEL AMES,

Petitioner,

v.

PIERCE COUNTY, By and Through, PIERCE COUNTY PROSECUTING ATTORNEY MARK LINDQUIST,

Respondent.

PIERCE COUNTY'S ANSWER TO AMICI

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A. INTRODUCTION

Certain police labor organizations filed an amicus curiae memorandum in support of petitioner Ames's effort to secure review of the Court of Appeals decision by this Court. Nothing in that memorandum should persuade this Court that review is appropriate. RAP 13.4(b).

Petitioner Ames filed a baseless lawsuit against Pierce County ("County") seeking either a writ of prohibition or declaratory relief under the Uniform Declaratory Judgment Act, RCW 7.24 ("UDJA"). The Pierce County Prosecutor's Office ("Office") acted well within its discretion to disclose potential impeachment evidence ("PIE") pertaining to Ames in a criminal case. The Office's decision was entirely consistent with model *Brady*[1] standards promulgated by the Washington Association of Prosecuting Attorneys ("WAPA"). That decision was constitutionally-mandated.

Amici fail to demonstrate that the trial court or the Court of Appeals erred in concluding that well-established law foreclosed Ames from securing a writ of prohibition or declaratory relief here. Theirs is essentially a request for a new remedy for "name clearing" by officers whose testimony falls within *Brady*. Theirs is a request better made to the Legislature.

B. STATEMENT OF THE CASE

[1] *Brady v. Maryland,* 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

The amici merely echo Ames's assertions regarding the facts. Memo. at 1. They fail to address the fact that Ames had an opportunity in *State v. George* to address his PIE concerns. CP 219, 221-29. Moreover, they fail to address the report of Jeffrey Coopersmith, an attorney retained by Pierce County's Human Relations Department to independently assess Ames's contentions that the Sheriff's Department and Office had retaliated against him. Coopersmith found in May, 2013 that the County did not retaliate against Ames and that the County properly conducted its investigation, describing his allegations of "corruption" as a "very slender reed" and "in fact…not a reed at all." CP 1002. *See generally*, answer to PFR at 3-4.

The amici muddle the theories Ames asserted below when they fail to precisely describe the actual theories Ames argued. Memo. at 1. Ames sought a writ of prohibition and a declaratory ruling for all future cases in which he was a witness that he was "truthful," CP 10, and that the materials at issue were not potentially impeachment evidence ("PIE"). CP 8-9. Both theories are subject to well-established legal principles largely ignored by amici.

C. ARGUMENT WHY REVIEW SHOULD BE DENIED

The trial court dismissed Ames's petition under CR 12(b)(6) because Ames failed to establish a basis for a writ of prohibition or standing to claim declaratory relief. The trial court was entirely correct in its ruling, as the Court of Appeals determined.

Like Ames, the amici fail to seriously address the law on the *specific forms of relief* Ames pleaded. Those specific theories for relief are not a basis for a "name clearing hearing" for law enforcement officers affected by *Brady*. Ames, like amici, fails to articulate a basis upon which Ames can obtain either a writ of prohibition or declaratory relief, the specific claims he pleaded.

(1) A Prosecutor's Duty to Provide PIE to Defense Counsel

Like Ames, the amici have no real answer to the fact that the Office had a clear constitutional duty to disclose PIE to a criminal defendant. Answer to PFR at 8-10. They touch upon *Brady* only in passing. Memo. at 3. Contrary to their unsupported assertion there, an officer's interest in his/her personnel file is not on a par with a prosecutor's *Brady* duty. Prosecutors have a constitutional duty to disclose PIE to defense counsel. They must gauge what must be disclosed, resolving any doubts in favor of disclosure. *Kyles v. Whitley,* 514 U.S. 419, 437-40, 15 S. Ct. 1555, 131 L. Ed. 2d 490 (1995). Because a prosecutor has discretion as to what must be

turned over as PIE, a prosecutor is entitled to immunity as to that decision. *Broam v. Bogan*, 320 F.3d 1023, 1030 (9th Cir. 2003). The prosecutor's duty is non-delegable and the courts are not entitled to "second guess" such a decision. *In re Brown*, 17 Cal.4th 873, 881, 952 P.2d 715, *cert. denied*, 525 U.S. 978 (1998); *United States v. Bland*, 517 F.3d 930, 935 (7th Cir. 2008) (a court is under no general independent duty to review government files to determine PIE material).

The Court of Appeals agreed the Office was under a constitutional imperative to disclose PIE. Op. at 13-14. To have failed to provide such materials in *George* would have violated George's due process rights, or those of any other criminal defendants in whose cases Ames might testify.

(2) Ames Was Not Entitled to a Writ of Prohibition

The Court of Appeals unanimously agreed with the trial court, CP 771-73, that Ames was not entitled to a writ of prohibition because he could not establish that the Office acted outside its jurisdiction with regard to disclosing either the *Dalsing* declarations or the Coopersmith Report. CP 771-73; op. at 14-18. The amici offer a bare argument to the contrary. Memo. at 9-10. They fail to address *any* of the Court's controlling writ decisions.

The Court of Appeals' writ decision was amply supported. A writ of prohibition is characterized as a "drastic measure," which is to be issued

only when two conditions are met: (1) the absence or excess of jurisdiction, and (2) absence of a plain, speedy, and adequate remedy in the course of legal procedure. *Skagit County Public Hospital Dist. No. 304 v. Skagit County Public Hospital Dist. No. 1,* 177 Wn.2d 718, 722, 305 P.3d 1079 (2013); *Hood Canal Sand & Gravel LLC v. Goldmark,* 195 Wn. App. 284, 381 P.3d 95 (2016) (denying writ). "The absence of either one precludes the issuance of the writ." *Kreidler v. Eikenberry*, 111 Wn.2d 828, 838, 766 P.2d 438 (1989).

The Court of Appeals correctly concluded, op. at 8-15, that Ames could not prove the Office acted in excess of its jurisdiction in disclosing the PIE materials in *George*, given the Office's broad constitutional obligation to disclose PIE to criminal defendants.

(3) Ames Had No Right to Declaratory Relief

Agreeing with the trial court, the Court of Appeals unanimously applied this Court's principles to determine that Ames lacked standing to seek declaratory relief. CP 773-75; op. at 18-21. The amici do not show how Ames met the test for standing under RCW 7.24 discussed in *numerous* decisions of this Court, *e.g.*, *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001); *League of Education Voters v. State*, 176 Wn.2d 808, 816, 295 P.3d 743 (2013), and in decisions of the Court of Appeals. *Lewis County v. State*, 178 Wn. App. 431, 437, 315 P.3d 550 (2013), *review*

denied, 180 Wn.2d 1010 (2014). Indeed, as with writs of prohibition, they offer the barest of arguments, *ignoring* this Court's controlling decisions on standing. Memo. at 9.

The Court of Appeals correctly observed, op. at 19-21, Ames could not show that a *present* controversy exists and any decision would not be final or conclusive. In *George,* the only *present* case at issue, Ames's counsel did not object to disclosure and effectively *conceded* the PIE disclosure by the State there was proper. Ames's concerns essentially pertain only to *future* cases and do not involve a *present* controversy. *Walker v. Munro*, 124 Wn.2d 402, 412, 879 P.2d 920 (1994) (controversy over effect of initiative that was not yet in effect not justiciable). Ames has retired; he will not likely be a future witness for the State. The issue here is not one upon which a judgment could effectively operate because Ames seeks to dictate to other courts and juries – present and future – that some unidentified "statements" by him are truthful; he apparently seeks to bar prosecutors from *ever* treating the materials at issue here as PIE and barring their use by criminal defendants for impeachment, and stating that he must be deemed truthful whenever he testifies in criminal matters for the State. The UDJA does not allow such extraordinary and unconstitutional relief.

See also, RCW 7.24.060 (refusal of declaration where judgment would not terminate controversy).[2]

Review on the issue of Ames's UDJA standing is not merited. RAP 13.4(b).

(4) The Present Case Is Not One of Public Importance

The central thrust of the amici's argument, like Ames's argument, is that this Court should grant review to create a cause of action for officers whose testimony falls within *Brady* to "clear their name." In their motion for leave, the amici claim such officers "have a constitutional 'liberty interest' in their good name and should be allowed due process and fair access to civil recourse to clear their names." Motion at 2.[3] If that is so, such officers *have* recourse – a claim under 42 U.S.C. § 1983, a claim Ames decided not to seek. State courts have concurrent jurisdiction to hear such federal claims. *Haywood v. Drown,* 556 U.S. 729, 740, 129 S. Ct. 2108, 173 L. Ed. 2d 920 (2009). Ames and his counsel made a *tactical decision* to seek a writ of prohibition and for declaratory relief under RCW 7.24. Ames understood he had a potential avenue under 42 U.S.C. § 1983 for a

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[2] As the trial court noted, any one-time determination in a particular case by a particular court that Ames was or was not truthful does not bind another court in a criminal case in which Ames is called as a witness for the State. CP 774. The courts lacked the ability to provide Ames the relief he sought. Op. at 20-21.

[3] When amici assert in their memo at 2 that Washington law on "due process" in this context is "underdeveloped and needs clarification," they ignore § 1983 law.

"name clearing proceeding." CP 1310-42, 1344. Although not of record, Ames later filed an action to "clear his name," as he noted in his petition at 3 nn.4, 6. The United States District Court for the Western District of Washington at Tacoma initially dismissed his various claims as *baseless*. (Dkt. 21 – No. C16-5090-BNS). A second dismissal motion was granted in part (Dkt. 35). *See* Appendix. A further motion is pending.

This Court should not grant review to create a cause of action for Ames that he did not specifically plead when he had the opportunity to do so.

Moreover, the Court of Appeals majority correctly rejected Ames's argument that he was entitled to declaratory relief because this case is one of "public importance." Op. at 21-25. This exception on UDJA standing is to be *rarely* applied and only if the public's interest is "overwhelming." *To-Ro Trade Shows*, 144 Wn.2d at 413. It applies only "where a controversy is of serious public importance and immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally...." *Vovos v. Grant*, 87 Wn.2d 697, 701, 555 P.2d 1343 (1976).[4] Ames did not meet

[4] *See also*, *Walker*, 124 Wn.2d at 414-26, (rejecting application of exception to allow challenge to initiative's constitutionality); *League of Education Voters*, 176 Wn.2d at 820 (same, noting that exception was also inapplicable where dispute was not ripe); *Bercier v. Kiga*, 127 Wn. App. 809, 822, 103 P.3d 232 (2004), *review denied*, 155 Wn.2d 1015 (2005) (dispute over tobacco taxation by tribe as to member of another tribe not an

this test; the amici did not *even address* it precisely because Ames cannot meet it.

The amici's argument, not even advanced by Ames, about the rights of law enforcement officers in their personnel files does not support the granting of review here. Memo. at 3-4, 6-7. Amici assert, without a shred of documentation, that prosecutors will keep "*Brady* lists," and then discuss New Hampshire's experience where that state's Attorney General, unlike our own, *required* local prosecutors to keep such lists. The New Hampshire Supreme Court did not find a general constitutional right to a "name clearing" process. Under New Hampshire's Constitution, its Supreme Court recognized a broader duty on the part of prosecutors to disclose PIE than that articulated in *Brady*. *State v. Laurie*, 653 A.2d 549 (N.H. 1995). Local prosecutors came to maintain actual lists of police officers who had questionable behaviors in their personnel files – "*Laurie* lists." *Duchesne v. Hillsborough County Attorney*, 119 A.3d 188, 193-94 (N.H. 2015). The New Hampshire Legislature enacted legislation to address officers' personnel files. *Id.* at 194-95.[5] In *Duchesne*, officers accused of using

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issue of major public importance). *Lewis County*, 178 Wn. App. at 439-41 (County's dispute with State over funding of civil liability for acts of judicial branch officers was not one of major public importance; the financial dispute between the County and State did not implicate the public's interest). Amici neglect to address *any* of these cases in their memorandum.

[5] This fact again supports the view that this is an issue for the Legislature.

unnecessary force successfully challenged discipline imposed upon them for such conduct and then sued to have their names removed from the *Laurie* lists, and the New Hampshire court agreed. But in *Gantert v. City of Rochester*, 135 A.3d 112 (N.H. 2016), the New Hampshire court held that the procedures for addressing placement on a *Laurie* list, a list required by the State's Attorney General, satisfied due process standards.

Washington does not have anything resembling "*Laurie* lists" in place, and, as the New Hampshire court noted in its opinions, the critical point of *Laurie* was the strong federal and state constitutional obligation of prosecutors to disclose PIE to accuseds and their counsel.

The amici's request for a process to address law enforcement personnel records is misdirected. That request should not be to this Court, to create a process out of a theory Ames never pleaded, but it should be to the Legislature.

Ultimately, the amici fail to demonstrate that Ames's activities meet the public importance test articulated by this Court. Review is not merited. RAP 13.4(b).

D. CONCLUSION

The trial court correctly determined that Ames failed to state a claim against the County on the theories he actually pleaded, and the Court of Appeals correctly affirmed the trial court's decision dismissing Ames's

claims for a writ of prohibition and UDJA relief. Review is not merited. RAP 13.4(b).

DATED this 14th day of November, 2016.

Respectfully submitted,

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APPENDIX

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL AMES,

Plaintiff,

v.

MARK LINDQUIST, et al.,

Defendants.

CASE NO. C16-5090BHS

ORDER GRANTING DEFENDANTS' MOTION IN PART, DENYING THE MOTION IN PART, RESERVING RULING IN PART, REQUESTING ADDITIONAL BRIEFING, AND RENOTING MOTION

This matter comes before the Court on Defendants Mark Lindquist, Chelsea Lindquist, and Pierce County's ("Defendants") motion to dismiss (Dkt. 26), the Court's request for additional briefing on Plaintiff Michael Ames's ("Ames") First Amendment claims (Dkt. 32), and the parties supplemental briefs (Dkts. 33, 34). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby rules, in part, as follows:

I. PROCEDURAL HISTORY

On February 2, 2016, Plaintiff Michael Ames ("Ames") filed a complaint against Defendants in Pierce County Superior Court for the State of Washington. Dkt. 1, Exh. 1.

Ames asserted causes of action for violations of his constitutional rights, conspiracy to violate his civil rights, abuse of process, invasion of privacy, constructive discharge, outrage, and indemnification. *Id.* On February 22, 2016, Defendants filed a motion to dismiss. Dkt. 13. On April 21, 2016, the Court granted the motion concluding that Ames failed to connect factual allegations to the elements of his causes of action and granted Ames leave to amend. Dkt. 21.

On May 5, 2016, Ames filed a First Amended Complaint ("FAC") asserting six causes of action: (1) violations of his civil rights, including his First Amendment right to freedom of speech, right to redress or petition, and right to access the courts and his Fourteenth Amendment rights to procedural and substantive due process, (2) abuse of process, (3) invasion of privacy, (4) constructive discharge/breach of contract, (5) outrage, and (6) indemnification. Dkt. 24. The FAC is 72 pages long, and Ames attached 320 pages of appendices. *Id.*

On May 19, 2016, Defendants filed a motion to dismiss. Dkt. 26. On June 5, 2016, Ames responded. Dkt. 29. On June 10, 2016, Defendants replied and moved to strike portions of Ames's response. Dkt. 30. On July 20, 2016, the Court requested additional briefing on Ames's First Amendment claims. Dkt. 32. On July 25, 2016, Ames filed a supplemental brief. Dkt. 33 On July 29, 2016, Defendants filed a supplemental brief. Dkt. 34.

II. FACTUAL HISTORY

In March of 1988, Pierce County hired Ames as a law enforcement officer. FAC, ¶ 2.1. In 2001, the Pierce County Sheriff's Department promoted Ames to detective, and,

in 2007, Ames began his assignment as Pierce County's Computer Crimes Detective. *Id.* at ¶ 5.2. With regard to Ames's First Amendment claims, Ames contends that he spoke out on multiple matters of public concern and sought redress on matters of public concern. *Id.* at ¶¶ 6.42–6.49. Ames alleges that Defendants retaliated against him in various ways and that the retaliation culminated in his constructive discharge. *Id.* at ¶¶ 6.56–6.65.

III. DISCUSSION

A. Failure to Respond

Defendants argue that the Court should dismiss Ames's claims because Ames failed to respond to the Court's request for additional briefing on Ames's First Amendment claims. Dkt. 34 at 2–3. The Court agrees that Ames failed to submit briefing as requested, but disagrees that the failure rises to the level of dismissal. At most, it shows that the Court is providing Ames numerous opportunities to state his positions and Ames either cannot or will not clarify his claims. Regardless, the Court will address the merits of the claims based on the current record.

B. Statute of Limitations

"A discrete retaliatory or discriminatory act 'occurred' on the day that it 'happened.'" *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 110 (2002).

In this case, Ames asserts, and Defendants do not dispute, that the applicable statute of limitations date is October 9, 2012. Dkt. 33 at 2. Ames lists multiple allegations of retaliatory acts that occurred after this date. *Id.* at 7–13. While Defendants identify alleged retaliatory acts that occured before the operative date, they fail to address

the allegations that occurred after the date. Dkt. 34 at 3–6. Therefore, Ames has met his burden by alleging retaliatory acts within the applicable statute of limitations.

C. First Amendment

"[P]ublic employees do not surrender all their First Amendment rights by reason of their employment. Rather, the First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern." *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006). If the employee's speech raises a First Amendment claim, then "[t]he question becomes whether the relevant *government entity* had an adequate justification for treating the employee differently from any other member of the general public." *Id.* at 418 (emphasis added).

> Acknowledging the limits on the state's ability to silence its employees, the Supreme Court has explained that "[t]he problem in any case is to arrive at a balance between the interests of the [public employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees."

Eng v. Cooley, 552 F.3d 1062, 1070 (9th Cir. 2009) (citing *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968)).

This area of the law is less than settled, and Ames's allegations raise a number of concerns. The Ninth Circuit has stated as follows.

> In the forty years since *Pickering*, First Amendment retaliation law has evolved dramatically, if sometimes inconsistently. Unraveling Pickering's tangled history reveals a sequential five-step series of questions: (1) whether the plaintiff spoke on a matter of public concern; (2) whether the plaintiff spoke as a private citizen or public employee; (3) whether the plaintiff's protected speech was a substantial or motivating factor in the adverse employment action; (4) whether the state had an adequate justification for treating the employee differently from other

> members of the general public; and (5) whether the state would have taken the adverse employment action even absent the protected speech.

Eng, 552 F.3d at 1070. In order to state a claim against a government employer for violation of the First Amendment, an employee must show (1) that he or she engaged in protected speech; (2) that the employer took "adverse employment action"; and (3) that his or her speech was a "substantial or motivating" factor for the adverse employment action. *Coszalter v. City of Salem*, 320 F.3d 968, 973 (9th Cir. 2003).

In light of these principles, it is at least unclear whether Ames has a cause of action against fellow employees in addition to his employer. Ames alleges that Lindquist, as a fellow employee of Pierce County and not a supervisor, retaliated against him. While the employer may sometimes be liable for the actions of its employees, Ames has failed to present an adequate legal theory that he has a cause of action against another employee for First Amendment retaliation. Allegations regarding a prosecutor abusing his powers may be troubling, but this case does not involve a supervisor with a "heightened interest[] in controlling speech made by an employee in his or her professional capacity." *Garcetti*, 547 U.S. at 422 (2006). Ames's allegations state that a government official, who was not a supervisor, retaliated against Ames for Ames's protected activities. In such a case, there is no need to balance the employer's interests in promoting the efficiency of the services it provides. *Eng*, 552 F.3d at 1070.

For example, Ames alleges he was retaliated against for filing a declaratory judgment action to clear his name. FAC, ¶ 6.48. Ames alleges that, because the sheriff's department refused to allow him an opportunity to clear his name, he was forced to file a

declaratory injunction action in state court. *Id.* at ¶ 5.25. Ames alleges that Lindquist retaliated by generating and/or authoring conclusory declarations "proclaiming Ames dishonest." *Id.* at 6.53. The declarations were filed in opposition to Ames's complaint in his declaratory judgment action. *Id.* Assuming these facts state a valid claim for relief, they have nothing to do with the employee-employer relationship.

In sum, the case law and underlying theory protecting public employee speech does not protect all potential public employees from all public employee retaliation. Therefore, the Court grants Defendants' motion on Ames's First Amendment employee speech retaliation claims against Mark Lindquist in his official and individual capacity and his marital community and dismisses these claims with prejudice.[1]

With regard to Pierce County, as employer, it also argues that Ames has failed to state a claim. First, Pierce County argues that Ames's alleged protected speech was only on matters of purely personal interest. Dkt. 34 at 6–7. The Court disagrees because, viewing the complaint liberally, Ames has sufficiently alleged that he spoke about fraudulent overtime schemes in the police department and other governmental wastes of resources. These allegations, if true, could conceivably be considered matters of public concern.

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[1] This ruling does not reach any potential claim regarding Lindquist as a government official retaliating against Ames for protected actions as a citizen exercising his First Amendment rights. *See*, *e.g.*, *Sloman v. Tadlock*, 21 F.3d 1462, 1469 (9th Cir.1994) (In order to demonstrate a First Amendment violation, a plaintiff must provide evidence showing that "by his actions [the defendant] deterred or chilled [the plaintiff's] political speech and such deterrence was a substantial or motivating factor in [the defendant's] conduct."). Such speech is also not restricted to the public concern requirement. *Garcetti*, 547 U.S. at 421–22.

Second, Defendants argue that Ames has failed to allege a specific adverse employment action directly related to a discrete retaliatory act. Dkt. 34 at 7–9. The Court agrees to the extent that there appears to be some problems with causation in this matter. These issues, however, may not be determined on a motion to dismiss because the Court must accept Ames's allegations relating to causation as true.

Third, Defendants argue that constructive discharge is not an adverse employment action. Based on the record and the Court's review of the relevant law, the Court agrees. Ames, however, has alleged transfer of job duties such as the removal of certain criminal investigations and Pierce County's failure to provide indemnification in certain civil suits. The Court concludes that such allegations fall within the gambit of adverse employment actions in the Ninth Circuit. *Ray v. Henderson*, 217 F.3d 1234, 1240–41 (9th Cir. 2000) ("We have found that a wide array of disadvantageous changes in the workplace constitute adverse employment actions.").

Finally, Defendants argue that Ames has failed to properly plead a municipal liability claim against Pierce County. Dkt. 34 at 9–10. Ames, however, has sufficiently alleged that Pierce County has failed to supervise and train employees, including employees in the sheriff's department, leading to the alleged deprivations of Ames's constitutional rights. FAC, ¶¶ 6.34–6.40. These are sufficient allegations to overcome a motion to dismiss because, at this stage of the proceeding, Ames does not have to "prove" the allegations. *See* Dkt. 34 at 10 (stating that "Plaintiff must prove [his claim] . . . .").

D. Due Process Claims

The Court will next address Ames's due process claims and requests additional briefing on only those claims.

IV. ORDER

Therefore, it is hereby **ORDERED** that Defendants' motion to dismiss (Dkt. 26) is **GRANTED in part** and Ames's First Amendment public employee speech claims are dismissed against Mark and Chelsea Lindquist, **DENIED in part** as to Ames's First Amendment claims against Pierce County.

Ames may file a supplemental response on his due process claims no longer than 24 pages, no later than October 19, 2016; Defendants may file a supplemental reply no longer than 12 pages, no later than October 28, 2016; and the Clerk shall renote Defendants' motion for consideration on the Court's October 28, 2016 calendar. Footnotes may be used for citation purposes only. Any substantive material contained in a footnote will be ignored.

Dated this 6th day of October, 2016.

BENJAMIN H. SETTLE
United States District Judge

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of Pierce County's Answer to Amici in Supreme Court Cause No. 93428-2 to the following parties:

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Original E-filed with:
Washington Supreme Court
Clerk's Office

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

DATED: November 14, 2016, at Seattle, Washington.

Matt J. Albers

Matt J. Albers, Paralegal
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TALMADGE/FITZPATRICK/TRIBE

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