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STATE OF WASHINGTON
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No. 86885-9

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

STEPHEN CHRISS JOHNSON,

Petitioner.

RESPONDENT'S CONSOLIDATED ANSWER TO ALL BRIEFS OF
AMICUS CURIAE

JONATHAN L. MEYER
Lewis County Prosecuting Attorney



By:

Shane O'Rourke, WSBA No. 39927
Deputy Prosecuting Attorney

Lewis County Prosecutor's Office
345 W. Main Street, 2nd Floor
Chehalis, WA 98532-1900
(360) 740-1240

 ORIGINAL

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I. INTRODUCTION

Respondent, State of Washington, is submitting this answer in response to Amici briefing in this case.

Northwest Justice Project, Got Green, The Defender Association's Racial Disparity Project, The American Civil Liberties Union of Washington, Washington Defender Association, Defender Initiative, Washington Association of Criminal Defense Lawyers, and Center for Justice have submitted a total of three amicus curiae briefs in support of the Petitioner in this case.

The aforementioned briefs are sufficiently similar such that a consolidated answer is appropriate.

II. STATEMENT OF FACTS

The State adopts the Statement of facts it set forth in its Response Brief to this Court for purposes of this brief.

III. ARGUMENT

This case continues to expand like a balloon. Amici have claimed due process violations, alleged racial disparity, and have relied heavily on the argument that license suspension is bad social policy and is premised on a system that is ruinous to the poor.

This Court does not consider any issues not raised or briefed in the Court of Appeals. *State v. Halstien*, 122 Wn.2d 109, 130, 857 P.2d 270 (1993) citing *State v. Laviollette*, 118 Wn.2d 670, 679, 826 P.2d 684 (1993). The scope of review in this Court is limited to those questions raised in the motion for discretionary review. RAP 13.7(b). This Court need not consider arguments that are raised solely by amici. *State v. Hirschfelder*, 170 Wn.2d 536, 552, 242 P.3d 875 (2010) citing *State v. Gonzalez*, 110 Wn.2d 738, 752, 757 P.2d 925 (1988). One who challenges a statute on equal protection grounds under rational review must do more than merely question the wisdom and expediency of the statute. *State v. Coria*, 120 Wn.2d 156, 839 P.2d 890 (1992).

No issues relating to due process were raised in the Court of Appeals and are now being argued for the first time by Petitioner and Amici in this Court. Petitioner's motion for discretionary review was granted on equal protection grounds and therefore, this should be the sole constitutional question before this Court. Issues relating to racial disparity in the driving while license suspended system were not raised by Petitioner and are now being raised for the first

time by Amici. Although socially important, such issues are irrelevant to the case before this Court, were not accepted for review, and should not be considered in this appeal. Finally, as the State has noted consistently, the wisdom of legislative policy is not an appropriate grounds upon which to base an equal protection violation claim.

The sole issues for which review was granted by this Court are whether the statutory scheme in question authorizes suspension of a license for failure to pay a ticket and subsequent prosecution for driving while in such a state of suspension, and whether the statutory scheme violates equal protection.

Amici have primarily argued constitutional violations and have not addressed the workings of the statutory scheme. The State and Petitioner have already briefed this issue extensively and therefore no further briefing is offered on that issue at this time.

In *City of Redmond v. Moore*, this Court held that the State has a legitimate state interest in its license suspension scheme relating to traffic infractions. "The State's interest in suspending an individual's driver's license for failing to appear, pay, or comply with

a notice of traffic infraction, is in the efficient administration of traffic regulations and in ensuring offending drivers appear in court, pay applicable fines, and comply with court orders." *City of Redmond v. Moore*, 151 Wn.2d 664, 677, 91 P.3d 875 (2004). The Court ruled against the State because the statutory scheme lacked necessary due process; however, *Moore* does not stand for the proposition that the criminal offense of driving during a suspension relating to traffic infractions is unconstitutional. *State v. Olinger*, 130 Wash.App. 22, 121 P.3d 724 (Div. 3, 2005).

Approximately five years after *Moore*, this Court found that the system of license suspension in RCW 46.20.245 and RCW 46.20.289 was constitutionally sound. *City of Bellevue v. Lee*, 166 Wn.2d 581, 210 P.3d 1011 (2009).

Petitioner claims that the statutory scheme in question violates equal protection. Amici do not discuss in detail the issue of Mr. Johnson's standing and this issue has been briefed previously, so it will not be discussed further here.

Assuming the Court finds that Mr. Johnson has standing, his claim is that Washington's license suspension system for non-

payment of traffic infractions has a disparate impact on indigent persons. However, not only does the statutory scheme not discriminate against indigent persons on its face, but even as applied, the relevant statutes target those who do not pay, not those who cannot. Most simply put, a license suspension is triggered by non-payment, for whatever reason, and not by being indigent. In fact, the system Mr. Johnson proposes would actually be a violation of equal protection in that it would create a wealth based classification. Specifically, Mr. Johnson essentially asks this Court to find that only the licenses of those that have not been found indigent be subject to a suspension and potentially subsequent prosecution. Under Mr. Johnson's system, once a person has been deemed indigent by the Court, not only would they have no incentive to follow the rules of the road, but they would not have their license suspended for nonpayment. Instead, only those who were non-indigent would be subject to suspension. This type of scheme is by definition a violation of equal protection.

Even if this Court does find that the statutory scheme has a disparate impact on indigent persons, because indigent persons

are not a suspect class, the statutory scheme is only subject to rational review. Constitutional questions relating to license suspension do not require intermediate or heightened scrutiny. *Merseal v. State Department of Licensing*, 99 Wash.App. 414, 420, 994 P.2d 262 (Div. 3, 2000). Amicus Northwest Justice Project suggests that this Court apply a heightened standard of intermediate scrutiny. However, Petitioner has not requested this standard of review, and more importantly, the case law offered is nowhere near on point to the issue of license suspension.

Under the appropriate standard, the question is whether the State has a legitimate interest in license suspension and in convictions based upon driving while suspended for non-payment of traffic infractions.

The State's legitimate interests are in having a meaningful system of enforcing the rules of the road, enforcing the orders of civil infraction courts, and to a limited extent promoting public safety. *Moore*, 151 Wn.2d at 677. Petitioner and Amici maintain that requiring indigent persons to be subject to license suspension is unreasonable because they cannot afford to pay an infraction when

they violate the rules of the road. However, in the same way that it is reasonable to expect that a driver will maintain liability insurance, pay for gas, and pay for maintenance on their motor vehicle, it is also reasonable to expect that a driver should be required to pay for violating the rules of the road.

Petitioner and Amici claim that the system is broken because many courts across the state are not utilizing time payment plans, are not mitigating tickets, and are not implementing relicensing programs. However, the fact that courts of limited jurisdiction may be applying the statutory scheme in an ineffective way, is not a basis for overturning the entire statutory scheme. Furthermore, what is more interesting is that amici argue that payment plans and relicensing programs are great ways of getting drivers back on the road. The State could not agree more. However, what amici fails to recognize is that in the counties they have mentioned that have such programs, such as King County, for those that fail to comply with such programs, there is still the prospect of conviction. Relicensing programs offer a person the incentive to get relicensed, back on the road and back to work without overly burdensome

costs and fines. The disincentive to simply falling off the wagon on such a program remains the prospect of criminal conviction and potential incarceration.

Finally, although due process claims were not raised below, the State did respond to such issues in its response briefing in the event that the Court addresses these claims. For purposes of responding to Amici, the State would simply note that this Court has already found that the statutory scheme in question affords necessary due process. *Lee, supra*. Furthermore, as Amici point out, not only are the normal procedural safeguards of RCW 46.20.245 in place, but RCW 46.63.110 and RCW 46.63.120 actually offer indigent persons additional options such as payment plans, mitigation, conversion to community service, and outright waiver of fines. Relicensing programs also exist in certain counties. Although this Court has never required such additional process, it is worth noting that it does exist in the statutory scheme.

IV. CONCLUSION

In the same vein as the Petitioner, the Amici in this case ask this Court to question the wisdom of the statutory scheme at issue and have tried to characterize the case as driving while poor. The socioeconomic issues that have been raised during the course of this appeal are issues that should be taken seriously. Certainly progress can and must always be made to improve the criminal justice system, especially with respect to those who are indigent and more vulnerable. However, such issues are simply not before this Court in this appeal and have been used as a means to sensationalize the case and distract from the reasons why this Court actually accepted review. The State respectfully requests that this Court limit its review to the issues of whether the statutory scheme authorizes Petitioner's conviction and whether the relevant statutes are constitutionally sound.

The statutory scheme explicitly authorizes suspension of a person's driver's license for failure to pay a traffic infraction as well as subsequent prosecution for driving during such a suspension. This conclusion is not only supported by the language of the

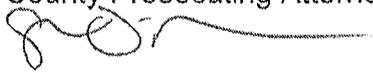
statutes themselves, but also the clear legislative history and intent as well as the fact that a conclusion to the contrary leads to an absurd result. The argument that the legislature intended for drivers to be prosecuted for driving after being suspended for ignoring a ticket upon receipt or for failing to make a court hearing, but not for overtly, and at times flagrantly, ignoring a civil infraction court's order to pay a monetary penalty, is by definition an absurd result.

Furthermore, this Court has previously recognized that Washington's system of license suspension for traffic infractions is constitutionally sound, and because Petitioner has failed to present any relevant authority to the contrary, the State asks this Court to rule the same way in this case.

For the reasons set forth above, the State is asking this Court to deny Petitioner's requested relief in this matter.

Respectfully Submitted this 7th day of March, 2013.

JONATHAN MEYER
Lewis County Prosecuting Attorney

By: 

Shane O'Rourke, WSBA 39927
Attorney for the Respondent

SUPREME COURT OF THE STATE OF WASHINGTON

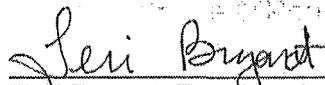
STATE OF WASHINGTON,)	NO. 86885-9
Respondent,)	
vs.)	DECLARATION OF
)	EMAILING
STEPHEN CHRISS JOHNSON,)	
Appellant.)	
_____)	

Ms. Teri Bryant, paralegal for Shane O'Rourke, Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On March 7, 2013, the appellant was served with a copy of the **Respondent's Consolidated Answer to all Briefs of Amicus Curiae** by emailing same to counsel for the appellant at:

kevinhochhalter@cushmanlaw.com; & kkuchno@cushmanlaw.com

And to Sarah A. Dunne and Nancy L. Talner of ACLU of Washington Foundation; Christine Hawkins of Davis Wright Tremaine and Aileen Tsao at: talner@aclu-wa.org.

DATED this 7th day of March, 2013, at Chehalis, Washington.



Teri Bryant, Paralegal
Lewis County Prosecuting Attorney Office

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent

vs.

STEPHEN CHRISS JOHNSON,

Petitioner.

NO. 86885-9

DECLARATION OF MAILING

Ms. Teri Bryant, paralegal for Shane O'Rourke, Deputy

Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and

correct: On March 7, 2013, a copy of the **Respondent's**

Consolidated Answer to all Briefs of Amicus Curiae was served

on all parties or their counsel of record as follows:

US Mail Postage Prepaid to:

Travis Stearns
Washington Defendant Assoc.
110 Prefontaine Pl. S., Ste. 610
Seattle, WA 98104

Robert C. Boruchowitz
Seattle University School of Law
901 12th Avenue
Seattle, WA 98122

Suzanne Elliott
705 2nd Avenue, Ste. 1300
Seattle, WA 98104

Julie Schaffer
Center for Justice
35 W Main Ave., Ste. 300
Spokane, WA 99201

Declaration of
Mailing

1

Lila Silverstein
Washington Appellate Project
1511 3rd Ave., Ste. 701
Seattle, WA 98101

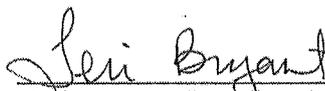
Andra Kranzler
Columbia Legal Services
101 Yesler Way, Ste. 300
Seattle, WA 98104

Isabel Bussarakum
The Defender Assoc.'s Racial Disparity Project
810 3rd Ave., Ste. 800
Seattle, WA 98104

Karen L. Campbell
Northwest Justice Project
500 W 8th St., Ste. 275
Vancouver, WA 98660

Mary Welch
Northwest Justice Project
1814 Cornwall Ave.
Bellingham, WA 98225

DATED this 7th day of March, 2013, at Chehalis, Washington.



Teri Bryant, Paralegal
Lewis County Prosecuting Attorney Office

Declaration of
Mailing

2

OFFICE RECEPTIONIST, CLERK

To: Teri Bryant
Cc: KevinHochhalter@cushmanlaw.com; 'kkuchno@cushmanlaw.com'; Talner@aclu-wa.org
Subject: RE: State of Washington vs. Stephen Chriss Johnson, Supreme Ct. No. 86885-9

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From: Teri Bryant [<mailto:Teri.Bryant@lewiscountywa.gov>]
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To: OFFICE RECEPTIONIST, CLERK
Cc: KevinHochhalter@cushmanlaw.com; 'kkuchno@cushmanlaw.com'; Talner@aclu-wa.org
Subject: State of Washington vs. Stephen Chriss Johnson, Supreme Ct. No. 86885-9

Attached for filing in the above case please find the Respondent's Consolidated Answer to all Briefs of Amicus Curiae.

Thanks,

Teri Bryant, Paralegal
Lewis County Prosecuting Attorney
345 W Main St. 2nd Floor
Chehalis, WA 98532
(360) 740-1258