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SUPREME COURT
OF THE STATE OF WASHINGTON

ALYNE FORTGANG,

Petitioner,

v.

WOODLAND PARK ZOOLOGICAL SOCIETY a/k/a WOODLAND
PARK ZOO,

Respondent.

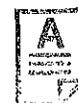
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BRIEF OF *AMICI CURIAE* WASHINGTON NONPROFITS AND
NATIONAL COUNCIL OF NONPROFITS

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I. INTRODUCTION

Although on the surface this appeal may look like a simple request to reinterpret an established four-part test, at its core Petitioner is really asking this Court to:

a) Violate separation of powers principles by assuming the power of the Washington Legislature and rewriting the Public Records Act, ch. 42.56 RCW (“PRA”), to exponentially expand it from what the people voted to enact and the Legislature has kept in place for 44 years—a regulatory scheme applicable only to governments—to cover private entities that have been hired by state or local government agencies;

b) Insert entirely new terms into existing written agreements that private entities have entered with governments across Washington to suddenly make them subject to the PRA, retroactively imposing on those private entities huge new obligations and operating costs and appropriating their resources in ways that none of the private entities contemplated when originally entering those written agreements; and

c) Ignore longstanding, bedrock American jurisprudence by falsely treating private entities as instrumentalities of the state.

The Court should affirm the decision below and reject Petitioner’s attempt to stretch the PRA beyond its long-recognized intended scope: **government agencies.**

II. IDENTITY AND INTERESTS OF AMICI CURIAE

Washington Nonprofits is a statewide association of private nonprofit organizations that supports and advocates on behalf of Washington's entire nonprofit sector. It provides an outlet for thousands of nonprofit organizations to manage and lead more effectively, increase their impact in their communities, and strengthen their collaborative voice on issues that affect both society and the nonprofit sector. Washington Nonprofits also partners through a written agreement with the Washington Secretary of State to deliver legal compliance training to newly-formed and other nonprofits.

The National Council of Nonprofits—the nation's largest network of nonprofits—is a trusted resource and advocate for America's charitable nonprofits. Through its network of state associations of nonprofits, including Washington Nonprofits, and 25,000-plus nonprofit members, the National Council of Nonprofits serves as a central coordinator and mobilizer to help nonprofits achieve greater collective impact in local communities across the country. The national network identifies emerging trends, shares proven practices, and promotes solutions that benefit charitable nonprofits and the communities they serve.

As associations representing the collective interests of the state and national nonprofit sector, Washington Nonprofits and the National

Council of Nonprofits (collectively “Nonprofit Amici”) are especially well-suited to assist this Court by providing a more complete picture of the interactive relationship between the nonprofit and government sectors. Nonprofit Amici can explain the multiple and diverse contracting relationships between governments and nonprofits and the independence that nonprofits rigorously maintain to pursue their missions. They step forward as amici curiae to underscore for the Court that Petitioner’s approach could seriously injure private nonprofit entities that were never intended, designed, or resourced to be subjected to the PRA.

III. STATEMENT OF THE CASE

A. Statement of the parties’ case.

Nonprofit Amici adopt the Statements of the Case set forth in the Respondent’s Supplemental Brief filed with this Court on July 29, 2016, its Answer to Petition for Review filed with this Court on April 1, 2016, and its Opening Brief filed with the Court of Appeals.

B. Private nonprofit organizations provide vital public benefits to our communities.

Nonprofit organizations are integral to the lives of Washington residents. Over 26,855 nonprofit organizations with IRS 501(c)(3) tax-exempt status provide programming and services that impact the lives of

millions of Washington residents daily.¹ There are nonprofits supporting communities in every county in Washington.² Nationally, there is one nonprofit organization for every 175 Americans.³ These organizations enrich every facet of community life, including education, healthcare, religion, housing, human services, civil rights and social action, criminal justice, public safety, the environment, recreation, youth development, science and technology, and arts, culture, and the humanities.⁴

To best serve our communities, many nonprofits supplement, complement, or facilitate the work of governments. In 2012, over 1,520 nonprofits in Washington performed compensated work on behalf of governments pursuant to written contracts or grants.⁵ These types of arrangements provide vital services to the public in such diverse areas as human services (accounting for 48% of those contracts), education,

¹G. Gorczynski, Washington Nonprofits, Tableau, Washington Nonprofits in Washington State (Jan. 21, 2016), *available at* <https://public.tableau.com/profile/george.gorczynski#!/vizhome/501c3/Footprint> (last visited Sept. 3, 2016).

² *Id.*

³ Urban Institute, The Nonprofit Almanac and Almanac Briefs (2016), *available at* <http://www.urban.org/features/nonprofit-almanac-and-almanac-briefs> (last visited Sept. 3, 2016).

⁴ *Id.*; P. Barber, Univ. of Wash. Evans Sch. Of Public Affairs, Nonprofits in Washington: Recent Statistics and Policy Developments, at *7 (Dec. 2013), *available at* <https://evans.uw.edu/sites/default/files/public/NPinWA2013.pdf> (last visited Sept. 3, 2016).

⁵ Urban Institute, National Study of Nonprofit-Government Contracting, Washington, at *110, *available at* <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/412949%20-%20National-Study-of-Nonprofit-Government-Contracts-and-Grants--State-Profiles.pdf> (last visited Sept. 3, 2016).

environment and animals, health, and arts, culture, and the humanities.⁶ A quarter of the nonprofits that earn government funding work with five or more different government agencies.⁷ Nationwide, the nonprofit sector as a whole earns 32.5 percent of its total revenue from government contracts and grants.⁸ Many of those organizations earn most or all of their revenues from work performed on behalf of governments. Far from being an indicia of government control, policymakers and procurement officials normally see contracting out to nonprofit (or for-profit) contractors as an effective and efficient use of taxpayer dollars.

The relationships between these governments and nonprofits are as diverse and complex as the social problems our communities face. Nonprofit entities may enter written agreements (grants or contracts) with government agencies, collaborate with government agencies to provide supplemental or complementary services, or provide services that government does not, or should not, provide. Such public-private partnerships are particularly impactful where a problem requires resources, expertise, or flexibility the government alone is unable to provide. For example, such partnerships are useful where the effective

⁶ *Id.*

⁷ *Id.*

⁸ The Nonprofit Sector in Brief, National Center for Charitable Statistics, 2015 (2013 data); Giving USA 2014 (2013 data).

provision of services requires existing relationships with a local population or cultural sensitivity.

Nonprofits provide essential services to enrich and support our local communities. Many nonprofits provide services that attract visitors, encourage growth, and help our local economies thrive. For example, arts and culture nonprofit organizations – a category that includes museums and zoos – employ local workers, “purchase goods and services from the community, and market and promote their regions.”⁹ Nationally, arts and culture nonprofits generate \$22.3 billion in revenue to local, state, and federal governments every year.¹⁰ The programming provided by these organizations “leverage[s] additional event-related spending by their audiences that pumps revenue into the local economy.”¹¹ In these and other ways, nonprofit organizations’ positive impact upon our communities often extends far beyond the particular services the nonprofits provide.

⁹ America for the Arts, Arts & Economic Prosperity, *The Economic Impact of Nonprofit Arts and Culture Organizations and Their Audiences, Summary Report*, at *2, available at http://www.americansforthearts.org/sites/default/files/pdf/information_services/research/services/economic_impact/aepiv/AEP4_NationalSummaryReport.pdf (last visited Sept. 3, 2016).

¹⁰ *Id.*

¹¹ *Id.* For example, the study found that audience members spent an average of \$24.60 per event in addition to the cost of admission. *Id.* at 3.

IV. ARGUMENT

Private nonprofit organizations provide numerous and significant public benefits to residents of Washington State and throughout the Nation. In doing so, many nonprofits collaborate with, and earn funding from, government agencies that wish to improve the quality of life in their communities. Together, nonprofits and government agencies implement innovative, responsive solutions to complex problems that would be inefficient and difficult for either to do alone.

Petitioner's desire to have this Court rewrite and expand the reach of the PRA would significantly harm the ability of nonprofits to provide these public benefits. The bases upon which Petitioner asks this Court to extend the PRA to the Woodland Park Zoological Society ("WPZS") could sweep in thousands of nonprofits in Washington because WPZS is not unique—it is common for nonprofits to have written agreements with government to perform services on behalf of the government for compensation, be subject to government audit and oversight, operate on public property, or provide public benefits that also are or have been provided by government. While extension of the PRA to a private entity may be appropriate in extremely limited circumstances, such as when a government agency delegates its police powers to a private group or creates a quasi-public entity for the express purpose of avoiding PRA

obligations, Petitioner's interpretation of the PRA is not tailored to capture such situations.

Rather, Petitioner asks this Court to rewrite the PRA by fashioning a new, broader test that would create a powerful disincentive for nonprofits to partner with government. Many nonprofits are underfunded and understaffed. The cost of complying with the PRA would divert already scarce funds away from essential programs. Ultimately, the result will be less collaboration between nonprofits and government and reduced public benefits in our communities.

A. Petitioner's interpretation of the PRA is not supported by the PRA's legislative history.

Petitioner's call for the PRA to be "interpreted and applied broadly in accordance with the intention of Washington voters" [Pet. at 7]—that is, applied to private nonprofits like WPZS—ignores the legislative history about the true scope of the PRA.

When the people of Washington voted in 1972 to enact the PRA as part of Initiative 276, they were told repeatedly that they were voting to make the records of **governments** open. At no point in the 14 pages regarding Initiative 276 did the Official Voters' Pamphlet¹² mention or

¹² "Official Voters' Pamphlet, Published by A. Ludlow Kramer, Secretary of State, General Election Tuesday, November 7, 1972," at pages 10-11, 55-66, 108; http://www.sos.wa.gov/_assets/elections/Voters%20Pamphlet%201972.pdf (last viewed Sept. 9, 2016).

even hint that it would apply to private organizations, whether for-profit or nonprofit. See these illustrative excerpts at pages 10-11 (emphasis added):

“Statement for:

...Trust and confidence **in governmental institutions** is at an all-time low. High on the list of causes of this citizen distrust are **secrecy in government**

How **Governmental** Decisions Are Really Made!! Initiative 276 makes all public records and documents **in state and local agencies** available for public inspection and copying. ...

Statement against

276 doesn't tell the taxpayer about **added cost of government**. Virtually every **office of State and Local Government** will incur added expenses-staff, office space, files, supplies and computer time at a conservatively estimated cost of more than \$2 million dollars annually. Every office holder and candidate will be subjected to countless hours of useless record keeping – the thousands of hours of wasted time merely to fill more filing cabinets in Olympia. It is impossible to estimate the potential cost to **State, County and City Government** of making all public records available for inspection and copying. ...”

Similarly, when the Attorney General's Office wrote the pertinent portion of the explanatory comment, it underscored the application to “state and local governmental agencies,” never indicating that it would extend beyond government to reach the records of for-profit or nonprofit entities:

“The initiative would require all such ‘public records’ of both **state and local agencies** to be made available for public inspection and copying by any person asking to see or copy a particular record This part of the initiative would also impose upon all **state and local governmental agencies** a great number of detailed requirements with respect to the maintenance and indexing of all their records.” (Emphasis added.)

Importantly, the original Act (at page 55) defined “Agency” as:

“all state agencies and all local agencies. ‘State agency’ includes every **state office, public official, department, division, bureau, board, commission or other state agency.** ‘Local agency’ includes every **county, city, city and county, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.**” (Emphasis added.)

During the last 44 years the Legislature has amended aspects of the definition above in what is now RCW 42.56.010(1)—but *never* to expand the PRA’s reach from government entities to private nonprofits.

Petitioner frequently asserts that the PRA is to be construed broadly. But notwithstanding the constant repetition of that assertion, Petitioner misses the central point: the PRA has always been designed to apply to **government** agencies, *not* private entities that the government hires to perform a service, be they for-profit roadbuilders or nonprofit human service providers. The PRA section that declares “this chapter shall be liberally construed” also contains limitations, including: “The people of this state ... insist on remaining informed **so that they may maintain control over the instruments that they have created.**” The people as a whole did not create Amazon, Microsoft, or Washington Nonprofits. So while the PRA is to be liberally construed with respect to state and local government agencies in Washington, it is not to be broadly construed in all instances as Petitioner demands, or it would lead to absurd results such

as applying to the records of the federal government, state and local governments in Oregon or Idaho, or private for-profit or nonprofit entities.

Washington's courts, however, have in a limited number of cases grafted a narrow functional equivalency test onto the PRA in what appear to be attempts to avoid manifest injustice, such as to prevent attempts to evade the PRA.¹³ They have done so very selectively, demonstrating they have recognized their extremely fragile authority to do so, given the clear intention of the people when enacting the PRA to have it apply solely to government agencies. Hence, they wisely have written their decisions narrowly on a case-by-case basis to avoid fueling overreach.

B. Petitioner's interpretation of the Telford factors would extend the PRA to – and injure – a significant number of Washington nonprofits.

Petitioner's interpretation of the four-factor functional equivalency test first articulated in *Telford* is an unwarranted and unsupportable invasion of the independence of charitable nonprofits. This strained interpretation would apply the PRA to WPZS based upon characteristics that are shared by a significant number of private nonprofit organizations.

¹³ See, e.g., *Cedar Grove Composting, Inc. v. City of Marysville*, 188 Wn. App. 695, 720, 354 P.3d 249 (2015) (finding that the City of Marysville “direct[ed] and delegate[ed] activities to [a private entity] with the express object of avoiding the reach of the PRA”); *Clarke v. Tri-Cities Animal Care & Control Shelter*, 144 Wn. App. 185, 194, 181 P.3d 881 (2008) (extending the PRA where a government agency contracted with a private entity for the performance of a “core government function”); *Telford v. Thurston Cty. Bd. of Comm'rs*, 95 Wn. App. 149, 165, 974 P.2d 886, 895 (1999) (extending the PRA to entities that were created by and are completely controlled by government officials).

1. Governments provide significant funding to private entities, including nonprofits, for services.

As to *Telford's* level of government funding factor, Petitioner argues that the PRA should apply to any private entity that receives a large amount of government funding, because the amount alone necessitates direct public oversight.¹⁴

Many nonprofit organizations regularly earn public funds to provide services in our communities. In Washington, governments pay \$1.8 billion to nonprofits for contracted services the organizations provide for the public benefit.¹⁵ In most instances, the payment from governments to nonprofits is similar to the payment to for-profit contractors and vendors, such as roadbuilders or school building architects. It is not unusual for nonprofit organizations to earn millions of dollars a year providing services to the community.

The dollar amount by itself provides no insight into whether the nonprofit is operating as a government agency or whether the oversight provided by public officials is inadequate. Indeed, a nonprofit hospital in an underserved and poor community may be reimbursed almost entirely from Medicaid and Medicare, but is no less independent from state and federal governments than a local food bank, arts organization, or zoo.

¹⁴ Pet.'s Supp. Br. 10-11.

¹⁵ See *supra* Note 5 at 108.

This level of funding factor illustrates the danger of what Petitioner wants the Court to do. Should the Court rewrite the statute so that the line is drawn based on a particular dollar threshold earned – \$1,000,000, or \$10,000, or \$10? Or use a set percentage that those dollars represent in the overall size of the contracting entity’s budget – 51 percent, 33.3 percent, or 3.14159 percent? What arbitrary number(s) would Petitioner have the Court use that would be applied in future cases? The answer, of course, is that the Court should not be substituting its judgment for the Legislature’s and rewriting provisions into the PRA, both for constitutional limitations reasons and for practical reasons recognized by the courts below: it should be considered in only the most egregious situations on a case-by-case basis. Such a situation does not exist in the case before the Court.

2. Governments regularly appropriate funds to hire nonprofits for specific purposes.

Petitioner also posits that the Court should give added weight to the fact WPZS receives funding from a taxpayer levy or legislative appropriation earmarked for that specific purpose, as distinguished from payment for particularized services rendered.¹⁶

But such an arrangement is unremarkable. Legislative bodies, whether the people acting on a ballot measure or elected officials acting on a bill or proposed ordinance, frequently choose to fund specific programs.

¹⁶ Pet. ’s Supp. Br. 8-10.

For example, the Washington State Legislature's 2015-17 operating budget includes multiple appropriations to nonprofits for specific purposes, including for the provision of televised coverage of state legislative determinations (an obvious reference to the private nonprofit TVW),¹⁷ criminal street gang prevention and intervention programs,¹⁸ operation of a toll-free hotline to educate families about the Apple Health for Kids program,¹⁹ administration of the preliminary scholastic aptitude test (PSAT) to students in the College Bound program,²⁰ music curriculum for kindergarten and first grade students,²¹ integration of the state learning standards in language arts, mathematics, and science with outdoor education,²² and promoting early childhood literacy through pediatric office visits,²³ among others. These designations of public funding simply direct government's policy priorities for investment of taxpayer money. That government chooses to fund specific programs and services is unrelated to whether a nonprofit is operating as a government "agency" subject to the PRA. And whether the people directly or through their

¹⁷ Laws of 2015, 3d Spec. Sess., ch. 4, § 120(2)(a), *available at* <http://leap.leg.wa.gov/leap/budget/lbns/1517Omni6052-S.SL.pdf>.

¹⁸ *Id.* at § 203(10).

¹⁹ *Id.* at § 213(s). Apple Health for Kids is a state program that provides full medical and dental coverage for children from low-income families.

²⁰ *Id.* at § 501(39).

²¹ *Id.* at § 501(41).

²² *Id.* at § 513(25).

²³ *Id.* at § 615(12).

elected body makes the policy choice is irrelevant—both situations are legislative preferences for where taxpayer money should be spent.

3. Many nonprofits operate on public property.

Petitioner also suggests that this Court should give added weight to whether a nonprofit organization operates on public property, especially if for only nominal consideration.²⁴

Many nonprofit organizations operate on public property due to programming needs or resource limitations, among other reasons. For example, each of the five Boys and Girls Clubs in Thurston County lease space on school district property for nominal consideration. Indeed, three of the five clubs are located on school grounds.²⁵ This arrangement permits students to easily access the Clubs' after-school enrichment programs, without the need to find safe and reliable transportation. This also allows the Clubs to work closely with school staff to ensure that the Clubs' services are tailored to meet students' particular academic needs. Such free or minimal rent is part of the consideration local government provides in its contracts work with private nonprofits to meet community

²⁴ Pet.'s Supp. Br. 8, 11-14.

²⁵ Boys & Girls Clubs of Thurston County, Find A Club, *available at* <http://www.bgctc.org/find-a-club.php> (last visited Sept. 3, 2016).

needs. It certainly is not indicative that a nonprofit has been transformed magically into a government “agency.”²⁶

4. All nonprofits performing services through government contracts and grants are subject to government audit and oversight.

As to the government control factor in *Telford*, Petitioner suggests that the audit and oversight mechanisms in WPZS’s contract with the City of Seattle should weigh in favor of applying the PRA to WPZS.²⁷ Under the contract, WPZS provides monthly, quarterly, and annual reports to the City and is subject to annual, independent audits.²⁸

But virtually all for-profits and nonprofits that earn public funding do so subject to government audit and oversight as a matter of course. For example, the state appropriates around \$2.7 million annually to a private, nonprofit organization to provide “gavel-to-gavel television coverage of state government deliberations and other events of statewide significance” (TVW).²⁹ A condition of that funding (and most government contracts and grants) is that the nonprofit is subject to annual independent audits, annual financial statements, and annual reports.³⁰ By way of further example, funding for affordable housing through local levies also frequently

²⁶ It is entirely likely that private roadbuilders in Washington State earn 100 percent of their revenues from state and local governments and perform all of their services on public land. It would be absurd to extend the PRA to such roadbuilders.

²⁷ Pet. ’s Supp. Br. 14; *see Telford*, 95 Wn. App. at 165.

²⁸ Supp. CP 230-32.

²⁹ *See, e.g.*, Laws of 2015, 3d Spec. Sess., ch. 4, §120(2).

³⁰ *Id.* Under Petitioner’s rationale, TVW would become subject to PRA requests.

requires annual reports, routine site inspections, and restrictions on use of property funded by public monies.³¹

These contractual oversight requirements do not indicate government control or involvement in the organization. Rather, they are accountability requirements that funders—government or private philanthropy—routinely include as a contract or grant requirement.³²

5. Many nonprofits provide a public benefit that is or has been provided by government.

As to the government function factor in *Telford*, Petitioner also asks this Court to weigh whether the nonprofit organization provides a public benefit that is or at any time has been performed by government.³³ Specifically, Petitioner suggests that the government function factor

³¹ See, e.g., City of Seattle, Housing, Annual Reporting, available at <http://www.seattle.gov/housing/property-managers/annual-reporting> (last visited on Sept. 3, 2016); City of Seattle, Housing, 2015 Matrix of Supplemental Annual Report Materials, available at <http://www.seattle.gov/Documents/Departments/Housing/PropertyManagers/AnnualReporting/2015WBARsAnnualReportMatrix.pdf> (last visited Sept. 3, 2016); City of Seattle, Housing, Transfer of Ownership, available at <http://www.seattle.gov/housing/property-managers/transfer-of-ownership> (last visited Sept. 3, 2016).

³² Cf. WAC 458-20-169(5)(g)(3) (Department of Revenue excise tax regulation on nonprofits, recognizing it is typical that donors condition gifts on accountability for use of funds). Federal grant law likewise imposes extensive reporting requirements on nonprofits when federal dollars are in the funding stream. The Uniform Guidance of the federal Office of Management and Budget (2 C.F.R. 200 *et seq.*) expressly dictates cost principles that governments and nonprofits must follow when accounting for use of federal funds (including when states and localities use federal funds to hire nonprofits), imposes extensive audit rules when aggregate funds exceed \$750,000, and mandates procurement processes and policies, among many other regulations. Note that a government “grant” is not a gift or donation of money; “grant” is a technical term that still involves a written agreement requiring the nonprofit to perform certain services in exchange for the funding.

³³ See Pet. 11-12; see *Telford*, 95 Wn. App. at 163-64.

should weigh in favor of applying the PRA to WPZS because the operation of a zoo provides a public benefit that has at times been provided by governments.

This suggestion ignores both the tradition and the complexity of evolving relationships between nonprofit organizations and governments, and in so doing implicates a significant amount of nonprofit activities. “[L]essening the burdens of Government” has long been one of the hallmarks of charitable institutions.³⁴ For example, the provision and management of low-income housing was once the province of government.³⁵ Now, an ever-growing number of nonprofits receive government funding to provide or subsidize low-income housing and accompanying services, while governments simultaneously provide such services.³⁶ Nonprofits also regularly overlap with government in other areas, such as education, medical care, and conservation.

³⁴ 26 C.F.R. § 1.501(c)(3)-1(d)(2) (IRS regulation defining “charitable”). See also *In re Estate of Foss*, 114 Wash. 681, 684, 196 P. 10 (1921) (“charitable trusts tend to lessen the burden of government”).

³⁵ Rachel G. Bratt, *Should We Foster the Nonprofit Housing Sector as Developers and Owners of Subsidized Rental Housing?*, Joint Center for Housing Studies, Harvard University (March 2007), available at http://jchs.harvard.edu/sites/jchs.harvard.edu/files/rr07-12_bratt.pdf (last visited Sept. 3, 2016).

³⁶ As a specific example, Mercy Housing, a national nonprofit organization, develops, preserves, manages, and finances affordable housing across the country, including 48 properties in the state of Washington. Mercy Housing, Washington and Idaho Properties, available at <https://www.mercyhousing.org/Northwest-Properties> (last visited Sept. 3, 2016); Mercy Housing, Mercy Housing Northwest, available at <https://www.mercyhousing.org/washington> (last visited Sept. 3, 2016).

Just because a nonprofit is doing something that a government used to do or could do, does not transform that nonprofit into a state or local agency subject to the PRA. Nonprofit independence is a sacred American heritage, dating back at least to the landmark decision of *Dartmouth College v. Woodward*,³⁷ in which the U.S. Supreme Court rejected the attempt by a state government to transform a private nonprofit entity into an instrumentality of the state. Ever since, the American legal system has protected private entities, both for-profit and nonprofit, from government control. Here, Petitioner seeks to have the Court essentially give extra weight to whether a government used to or could do something (run a zoo, operate a community hospital, run a youth center) and then transform a subsequent contractor providing the same service or using the same facility into a purported state or local government agency for purposes of the PRA. But, as this Court knows, there is no alchemy that transforms private entities into government agencies.

The consequence of treating private nonprofits as government agencies would be a dramatic increase in administrative costs of compliance for entities that already are not adequately funded. Nonprofits are not capable of incurring this added burden, creating a significant

³⁷ 4 Wheat. (17 U.S.) 518 (1819).

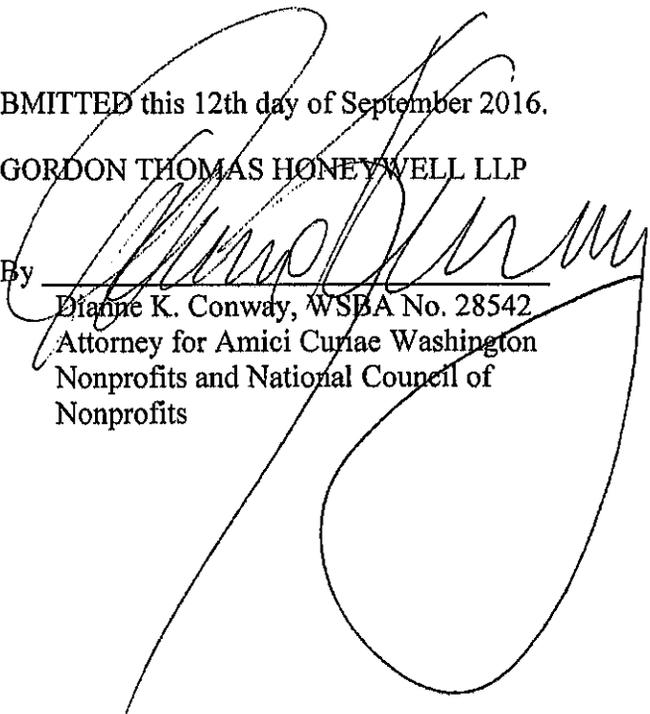
disincentive to partnering with government in the provision of public benefits.

V. CONCLUSION

Petitioner's proposed reinterpretation of the *Telford* test as applied to a private nonprofit ignores the legislative history of the PRA and its instruction that it be liberally construed in connection with governmental entities, not with private nonprofit organizations that are neither designated nor resourced to operate under the PRA. Extension of the PRA to WPZS here would establish a troubling precedent with broader implications affecting a tremendous number of nonprofits and imposing unanticipated and incalculably large costs. Ultimately, the communities we serve would suffer. These burdens would hinder collaboration and result in decreased services to those who need them most. Accordingly, Nonprofit Amici respectfully request that this Court affirm the decision of the Court of Appeals; clarify that the PRA applies liberally, but only to state and local **government** agencies; reinforce that the PRA does not apply to private nonprofit organizations, even when those private entities are working together through written agreements involving financial payments to the nonprofit; and narrowly circumscribe to the rarest exceptions the extension of the PRA to private nonprofit organizations.

RESPECTFULLY SUBMITTED this 12th day of September 2016.

GORDON THOMAS HONEYWELL LLP

By 

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CERTIFICATE OF SERVICE

I, Christine L. Scheall, declare under the penalty of perjury of the laws of the State of Washington that on September 12, 2014, I caused the Brief of *Amici Curiae* Washington Nonprofits and National Council of Nonprofits to be served via email, pursuant to the parties' mutual consent for service by email and first-class mail, as follows:

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Attached for filing in the case of *Alyne Fortgang v. Woodland Park Zoological Society a/k/a Woodland Park Zoo*, Case No. 92846-1, are the following:

Washington Nonprofits and National Council of Nonprofits' Motion for Leave to File Amicus Curiae Brief

Brief of Amici Curiae Washington Nonprofits and National Council of Nonprofits

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