NO. 102565-3

**SUPREME COURT OF THE STATE OF WASHINGTON**

C.R. and J.L., infants, by BRUCE A. WOLF,
their guardian ad litem,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

# STATE'S ANSWER TO AMICUS CURIAE MEMORANDUM

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## I. INTRODUCTION

The Department of Children, Youth, and Families and the Court of Appeals' underlying opinion recognize Washington's strong public policy of preventing and eliminating child sexual abuse. *See, e.g.*, Answer to Pet. at 15-17; *C.R. v. State of Washington*, No. 84682-5-I, at 6, 10 (Oct. 23, 2023) (slip op.). There is no dispute this policy existed in 2014 when D.L. disclosed her abuse, as reflected in former RCW 26.44.050 (2013). Nor does the Department dispute the data related to child sexual abuse within the materials cited by Amicus Connelly Law Offices. *See* Amicus Memo. at 2-8 (citing materials).

But amicus, like Plaintiffs, ignores that preventing and eliminating child abuse is a public policy that the legislature has necessarily balanced with a policy of preserving the integrity of the family. *See Wrigley v. State*, 195 Wn.2d 65, 76, 455 P.3d 1138 (2020). Consequently, the implied cause of action for negligent investigation under RCW 26.44.050 is a "narrow exception." *M.W. v. Dep't of Soc. & Health Servs.*, 149 Wn.2d

589, 601, 70 P.3d 954 (2003). The Court of Appeals' unanimous, unpublished decision correctly applied the law consistent with both policy objectives, as well as the plain language of former RCW 26.44.050, when it held that, "absent a report of abuse about C.R. and J.L., they have no cause of action under RCW 26.44.050 for negligent investigation." *C.R.*, slip op. at 14 (footnote omitted).

Rather than seeking amendment of RCW 26.44.050 through the legislative process, amicus invites this Court to expand the scope of former RCW 26.44.050 under the guise of statutory interpretation, basing its request on policy arguments more properly considered by the legislature. This Court should reject that invitation and deny review.

## II. ARGUMENT

### A. Amicus's Argument is Limited to the Negligent Investigation Cause of Action under RCW 26.44.050 and the RAP 13.4(b)(1) and (4) Criteria for Review

It is important to note what is *not* being argued by amicus. First, amicus offers no argument to support granting review of

the Court of Appeals' conclusion that the Department owed no common law duty to Plaintiffs. *See C.R.*, slip. op. at 2, 20. Rather, the entirety of amicus's argument centers on the scope of the duty owed under RCW 26.44.050. *See, e.g.*, Amicus Memo. at 1-2.

Second, amicus also offers no argument that the Court of Appeals' opinion conflicts with any other published decision of the Court of Appeals. Rather, amicus cites specifically to RAP 13.4(b)(4), related to review of issues of substantial public interest. *See* Amicus Memo. at 8. In addition, amicus also argues that the opinion conflicts with public policy as described by this Court in *Tyner v. Department of Social & Health Services*, 141 Wn.2d 68, 1 P.3d 1148 (2000), arguably invoking RAP 13.4(b)(1). Amicus Memo. at 9-10. As discussed below, neither criteria is met here.

### B. In Considering Amicus's Argument, this Court Should Disregard Unsupported Factual Assertions of Amicus

While the Department does not dispute the data related to child sexual abuse contained in the materials cited by amicus, the Department notes that not every purported factual statement of

amicus is supported by citation to those materials or other authority. Indeed, throughout its memorandum, amicus repeatedly makes general factual statements without citation to authority. An example of such unsupported assertions includes amicus's statement that, "Logically, once a predator abuses one sibling in the home, the risk of abuse of the other siblings increases, given this revictimization phenomenon." Amicus Memo. at 4. This Court should disregard such generalized factual statements that are unsupported by citation to any authority.

### C. The Court of Appeals' Opinion on the Scope of Former RCW 26.44.050 Comports with the Statute's Plain Language and Established Precedent of this Court

The Court of Appeals' opinion here correctly eschewed an interpretation of former RCW 26.44.050 untethered from the statute's plain language and, instead, reached a conclusion that recognized the dual policy objectives the legislature has sought to balance – that of protecting children and the integrity of the family. *Wrigley*, 195 Wn.2d at 76.

At its root, amicus's argument is a policy pitch in favor of expanding the scope of the duty under RCW 26.44.050 beyond its plain language and legislative intent, to instead require the investigation of children who are *not* the subject of a report of abuse or neglect. Such advocacy is best made to the legislature, which can hear from all stakeholders and thereafter determine if the language of RCW 26.44.050 needs clarification, as the legislature has done in the past. For example, in 2020, the legislature clarified the language of former RCW 26.44.050 to confirm that the duty to investigate was not triggered by reports suggesting a possibility of future abuse. *Compare* Laws of 2020, ch. 71, § 1 (amending former RCW 26.44.050 to provide for investigation only "upon the receipt of a report alleging that abuse or neglect *has occurred*" (emphasis added)), *with Wrigley v. State*, 5 Wn. App. 2d 909, 931, 428 P.3d 1279 (2018) (concluding that "the phrase 'report[s] concerning the possible occurrence of abuse or neglect' in former RCW 26.44.050 contemplates both reports of incidents that have already occurred

*and reports suggesting a reasonable possibility of future abuse or neglect*" (emphasis added)), *reversed by* 195 Wn.2d 65, 455 P.3d 1138 (2020).

Amicus also mischaracterizes the conclusion of the Court of Appeals. For example, amicus argues that "[t]he lack of a specific report of abuse by the siblings should not be dispositive of DCYF's/CPS's duty to those children" and that the fact Plaintiffs "did not themselves disclose their abuse . . . should not have been dispositive as to CPS's RCW 26.44.050 investigation[.]" Amicus Memo. at 4, 7. But nothing in the Court of Appeals' opinion suggests that a disclosure *by the siblings* is required. Rather, the court concluded that, without a report of possible abuse or neglect as to Plaintiffs from *anyone* – including potentially a Department social worker investigating the original report – there was no duty to investigate as to them. *See C.R.*, slip op. at 2 ("We hold that there is no implied cause of action under the statute for children about whom the State has received no report of suspected abuse."). As the Department noted in its

answer to the petition, Plaintiffs have never alleged a claim against the Department for failure to make a mandatory report under RCW 26.44.030 as to them. *See* Answer to Pet. at 17.

Nor does the Court of Appeals' opinion "condone[] inadequate abuse investigations by holding that DCYF/CPS have no duty to siblings in a home where CPS staff interviews those siblings[.]" *See* Amicus Memo. at 1. Not everyone interviewed during an investigation under RCW 26.44.050 has a cause of action for negligent investigation. Rather, as *Ducote v. Department of Social & Health Services*, instructs, "the class of persons who may sue for negligent investigation is limited." 167 Wn.2d 697, 704, 222 P.3d 785 (2009). D.L., who was the subject of the report, also sued the State; she accepted the State's offer of judgment and her claims were not before the Court of Appeals in this matter. *C.R.*, slip op. at 4. Thus, nothing about the Court of Appeals' opinion addresses the adequacy of the investigation as to the subject of the report, which is the only investigation that occurred.

In addition, amicus appears to be arguing for a blanket rule that allegations of child sexual abuse as to one child must always result in investigation as to all siblings, increasing the potential for removal of all children from the home, regardless of the outcome of any investigation into the allegations. *See* Amicus Memo. at 7 ("While studies suggest an offender is not guaranteed to re-offend, the risk is too great to tolerate . . . ."). This argument neglects the constitutional right of parents "to the care and custody of their children—a right that yields to the State's parens patriae right to intervene . . . [w]hen a child's health, safety, and welfare are seriously jeopardized by parental deficiencies[.]" *Mathieu v. Dep't of Child., Youth, & Fams.*, 23 Wn. App. 2d 1025, 1044-45, 520 P.3d 1033 (2022). Rather than adopting a blanket rule that runs afoul of constitutional guarantees, the Court of Appeals' interpretation of former RCW 26.44.050 adheres to the balance the legislature has struck and, consequently and appropriately, limits investigation and removal of children based on case-specific findings.

Further, amicus mistakenly relies on broad language in *Tyner* that "the State has a duty to act reasonably in relation to all members of the family." *See* Amicus Memo. at 9-10 (citing *Tyner*, 141 Wn.2d at 79). Amicus, like Plaintiffs, fails to appreciate that, in *Ducote*, this Court later clarified that statement and held that "the class of persons who may sue for negligent investigation is limited to those specifically mentioned in RCW 26.44.010[.]" 167 Wn.2d at 704.

Finally, in advocating for review, amicus, like Plaintiffs, ignores two procedural facets of this appeal that weigh against review: (1) the statute on which the Court of Appeals' opinion rests has been amended, and (2) the opinion is unpublished. A decision that has the potential to affect multiple lower court proceedings may warrant review as an issue of substantial public interest in order to avoid unnecessary litigation and confusion. *See State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005). The underlying opinion here does not have this potential.

Instead, the Court of Appeals correctly applied the plain language of former RCW 26.44.050 and settled law to the unique facts of this case. The extent to which the Court of Appeals' analysis directly applies to current RCW 26.44.050 should wait until the proper case where the current version of the statute is at issue. The decision here neither affects other proceedings, nor sows the seeds of general confusion and unnecessary litigation. As an unpublished opinion, it is not precedential or binding on any court under GR 14.1(a).

The Department is committed to protecting the children of Washington. It acted with urgency in this matter and, after receiving the report of abuse as to D.L., acted swiftly to contact law enforcement, to interview D.L. and her siblings, and to establish multiple safety plans for D.L.'s protection. *See* Answer to Pet. at 4-7. There is no claim that, during their investigation, the Department social workers discovered information that should have resulted in a new report of possible abuse as to Plaintiffs. Nor was any such report as to them made to the

Department by anyone else. The Court of Appeals' opinion correctly held that, in these circumstances, the Department did not owe Plaintiffs a duty under former RCW 26.44.050.

Review is not warranted under RAP 13.4(b)(1) or (4).

## III. CONCLUSION

For the foregoing reasons, and those in the Department's answer, the petition should be denied.

This document contains 1,793 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 8th day of February, 2024.

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## CERTIFICATE OF SERVICE

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

EXECUTED this 8th day of February, 2024, at Olympia, Washington.

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## February 08, 2024 - 3:55 PM

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