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**SUPREME COURT OF THE STATE OF WASHINGTON**

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SKAGIT COUNTY AND SKAGIT COUNTY SHERIFF'S OFFICE; and  
SKAGIT EMERGENCY COMMUNICATIONS CENTER, d/b/a,  
SKAGIT 911,

Petitioners,

v.

GAYE DIANA MUNICH, as Personal Representative of the Estate of  
William R. Munich,

Respondent.

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**BRIEF OF *AMICUS CURIAE***  
**WASHINGTON STATE PATROL IN SUPPORT OF PETITION**  
**FOR REVIEW**

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ROBERT M. MCKENNA  
Attorney General

STEVE PUZ  
Assistant Attorney General  
WSBA #17407  
JENNIFER S. MEYER  
Assistant Attorney General  
WSBA #27057  
P.O. Box 40126  
Olympia, WA 98504-0126  
360-586-6304

ORIGINAL

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## I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Court of Appeals' decision announces a new test for the special relationship exception to the public duty doctrine. Under this test, plaintiffs are permitted to use true, accurate, fulfilled assurances made by 911 operators as a sword for attacking how police, firefighters and medical personnel respond to emergency events. *Munich v. Skagit Emergency Communications Center d/b/a Skagit 911, Skagit County, and Skagit County Sheriff's Office*, 161 Wn. App. 116, 118, 250 P.3d 491 (2011). Review should be granted because the Court of Appeals' test conflicts with the decisions of this Court. RAP 13.4(b)(1). Equally important, the test undercuts the effectiveness of the 911 emergency system by discouraging the exchange of information between 911 operators and callers, raising an issue of substantial public importance that warrants review by this Court. RAP 13.4(b)(4).

*Amicus Curiae* is the Washington State Patrol (WSP), a professional law enforcement agency that operates its own statewide 911 emergency call system. In 2010, WSP's 911 operators (Communications Officers or "COs") responded to 595,614 emergency 911 calls from the public, handled 1,065,377 calls for service, and made over 8.6 million outgoing radio transmissions to field units.

WSP respectfully submits this amicus brief to assist the Court in

understanding the functional dynamics of how 911 systems operate and the destructive impact of imposing liability upon emergency responders who make true, accurate, fulfilled assurances to members of the public.

## **II. ISSUES**

- (1) The Court of Appeals' new test, which eliminates the need for plaintiffs to show that a 911 operator's assurance was false, inaccurate or unfulfilled, allows plaintiffs to satisfy the special relationship exception to the public duty doctrine without proving detrimental reliance on the express assurance given by the 911 operator. Does this conflict with the decisions of this Court?
- (2) By transforming a 911 operator's true, reassuring statement into a gateway for imposing new liability against the government, the Court of Appeals' decision improperly discourages the exchange of information during emergency 911 calls. Does this present an issue of substantial public interest warranting review and reversal by this Court?

## **III. STATEMENT OF THE CASE**

On October 1, 2005, Marvin Ballsmider fired shots in the direction of Bill Munich. Munich called and reported this to his friend. CP 320-321. At his friend's urging, Munich then reported the incident to 911. CP 30-31. As the 911 operator gathered information from Munich, a second 911 operator dispatched a deputy to Munich's location. CP 122. Seeing this, the first 911 operator accurately told Munich "my partner's already got a deputy that's headed towards you...there's already a deputy that's en route to you." CP 31. The 911 operator entered the call as a priority 2 weapons offense based on Munich's statement that he removed himself from the

situation. CP 27. Unbeknownst to the 911 center, the situation on Munich's property deteriorated after the call. Ballsmider chased Munich from his garage, off his property, and down a public road. Munich again called his friend, who again advised Munich to call 911, which Munich did. CP 32, 706. While Munich spoke with a 911 operator a second time, Ballsmider drove up the road and murdered Munich. CP 34.

#### IV. ARGUMENT

**A. By Eliminating The Falsity Component, The Court Of Appeals' New Test Allows A Plaintiff To Satisfy The Special Relationship Exception Without Proving Detrimental Reliance**

The Court of Appeals' decision allows plaintiffs to satisfy the special relationship exception without showing the express assurance given by a 911 operator was untrue, inaccurate or unfulfilled. *Munich*, 161 Wn. App. at 121-22. By eliminating this falsity component, the Court of Appeals forces trial courts to either disregard the detrimental reliance element of the special relationship exception, or allow plaintiffs to premise their negligence claim on implied assurances attributed to a 911 operator. Both options are incompatible with the special relationship exception test established by this Court.

The public duty doctrine reflects the basic tort principle that a negligence claim must be premised on a duty owed to the plaintiff, not on one owed to the public in general. *Meaney v. Dodd*, 111 Wn.2d 174, 178,

759 P.2d 455 (1988); *Taylor v. Stevens County*, 111 Wn.2d 159, 163, 759 P.2d 447 (1988). The special relationship exception to the public duty doctrine is a focusing tool used to determine whether a government agency has undertaken a specific duty to the plaintiff. *Taylor*, 111 Wn.2d at 166. To satisfy the special relationship exception a plaintiff must show (1) direct contact or privity with a public official that sets the plaintiff apart from the general public, (2) that an express assurance was sought and unequivocally given by the public official, and (3) the plaintiff detrimentally relied on that express assurance. *Harvey v. County of Snohomish*, 157 Wn.2d 33, 38-41, 134 P.3d 216 (2006); *Cummins v. Lewis County*, 156 Wn.2d 844, 855-56, 133 P.3d 458 (2006); *Bratton v. Welp*, 145 Wn.2d 572, 577, 39 P.3d 959 (2002); *Babcock v. Mason County Fire Dist. No. 6*, 144 Wn.2d 774, 789, 30 P.3d 1261 (2001); *Taylor*, 111 Wn.2d at 166-67.

To show detrimental reliance, the plaintiff must prove the express assurance given by the public official was false, inaccurate or unfulfilled.

It is only where a direct inquiry is made by an individual *and incorrect information is clearly set forth by the government*, the government intends that it be relied upon and it is relied upon by the individual to their detriment, that the government may be bound.

*Meaney*, 111 Wn.2d at 180 (emphasis added); *see also Harvey*, 157 Wn.2d at 38-39 (no special relationship exists where plaintiff fails to prove the

911 operator's assurance was "false, unfulfilled, relied upon, or made to his detriment"); *Beal v. City of Seattle*, 134 Wn.2d 769, 787, 954 P.2d 237 (1998) (a special relationship is created by the 911 operator's express assurance "which the plaintiff relies upon and the government fails to fulfill").

There is no special relationship or actionable duty unless the plaintiff proves he detrimentally relied on the false, unfulfilled express assurance of the 911 operator. *Harvey*, 157 Wn.2d at 38-39; *Cummins*, 156 Wn.2d at 855; *Beal*, 134 Wn.2d at 787. By eliminating the falsity component, the Court of Appeals incorrectly suggests to trial courts that a caller can detrimentally rely on a 911 operator's true, accurate and fulfilled statement. By definition, when a 911 operator makes a truthful assurance and acts as promised, there can be no detrimental reliance by the caller – the caller received precisely what he was told. At that point, the caller stands in the same position as every other member of the public, and no further actionable duty exists. *Harvey*, 157 Wn.2d at 38-39; *Babcock*, 144 Wn.2d at 789.

However, by negating the falsity element, the Court of Appeals expands the special relationship exception to create actionable tort liability based upon any communication that takes place between a member of the public and the public official. This is the antithesis of the core precept of

the public duty doctrine that a duty to all is a duty to no one, compelling review and reversal by this Court. *Beal*, 134 Wn.2d at 784; *Taylor*, 111 Wn.2d at 163.

Unable to prove detrimental reliance on the true, fulfilled statement of the 911 operator, trial courts will be encouraged, as the Estate does here, to relax or eliminate the express assurance requirement and allow plaintiffs to assert detrimental reliance on *implied* or *inherent* assurances that were neither made nor intended by the 911 operator. *See Answer to Pet. For Rev.* at 17 (the 911 operator made an *implied promise* to code Munich's call differently and have police "respond on an emergency basis, not at the slower speed that they respond to routine calls").<sup>1</sup> This practice, too, conflicts with the decisions of this Court.

Implied assurances can never give rise to a special relationship or a legal duty. *Taylor*, 111 Wn.2d at 167 (*overruling J & B Dev. Co. v. King County*, 100 Wn.2d 299, 699 P.2d 468 (1983) to the extent it allowed plaintiffs to rely on implied or inherent assurances to impose liability on the government); *see also Cummins*, 156 Wn.2d at 855 (a "government duty cannot arise from implied assurances"); *Babcock*, 144 Wn.2d at 789;

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<sup>1</sup> Significantly, Munich never asked, and the 911 operator never stated, how far away the closest officer was from his location, nor was any estimate given for how long it would take for police to travel to Munich's property. CP 30-31. Further, there is no evidence Munich knew the 911 call center assigned priority codes to emergency calls, much less the specific code that was assigned to his call.

*Meaney*, 111 Wn.2d at 179-80.

The express assurance not only sets the caller apart from members of the general public, it also establishes the parameters of the specific duty owed. *Harvey*, 157 Wn.2d at 38-39; *Cummins*, 156 Wn.2d at 855; *Meaney*, 111 Wn.2d at 179. If a caller believes he needs additional information to decide what action to take, he can pose his questions to the 911 operator. However, the unstated expectations a caller secretly attributes to a 911 operator's statement are insufficient to create a special relationship or a legal duty. *Harvey*, 157 Wn.2d at 38-39; *Cummins*, 156 Wn.2d at 855; *Beal*, 134 Wn.2d at 784; *Babcock*, 144 Wn.2d at 789; *Meaney*, 111 Wn.2d at 180.

Allowing the Court of Appeals' new test to stand will suggest that it is consistent with the decisions of this Court, when it plainly is not. Confusion and inconsistent rulings will result as trial judges try to give effect to a Court of Appeals test that fails in both practice and theory. The Court should accept review, and reverse the Court of Appeals' decision.

**B. The Court Of Appeals Decision Penalizes 911 Operators For Providing True, Accurate Statements To Callers By Allowing Plaintiffs To Use Those Statements As A Basis For Attacking The Actions Of Emergency Responders**

Under the test announced by the Court of Appeals, a CO exposes WSP to new liability whenever a truthful, reassuring statement is made to

any one of the 595,614 people who place emergency calls to WSP each year. *Munich*, 161 Wn. App. at 121-22. This liability trap will discourage communication between 911 centers and callers, thereby undermining both the purpose and effectiveness of the 911 emergency system.

The 911 emergency system relieves callers from the burden of having to identify and locate the telephone number for the appropriate emergency agency or agencies, and helps ensure that duplicative emergency resources are not mistakenly dispatched to the same event. The effectiveness of this system is dependent on 911 operators being able to elicit complete, accurate information from callers. That information is then used by emergency responders in their preparation (e.g., informing police about the number of suspects, the presence of weapons, etc.). The people who make 911 calls are often frightened, rattled, and even disoriented by the event that lead to their call. 911 operators convey true, accurate reassuring statements to calm callers so that information can be gathered and relayed to the emergency responder. The Court of Appeals' decision detrimentally alters this dynamic by allowing plaintiffs to use a 911 operator's true, fulfilled assurance as a means for imposing new liability against those who provide emergency law enforcement, medical and firefighting services to the public.

After the Court of Appeals' decision, a CO's true statement that a

trooper is “en route” is sufficient to create a special relationship and impose legal duties on WSP that never existed before. Did the trooper take the most direct route to the scene or drive “fast enough?” Should the trooper have left an arguably “less important” emergency to respond to the plaintiff’s 911 call? Should the trooper have acted more cautiously or aggressively in their response? After the decision here, a negligence claim could, for the first time, be brought against WSP on one of these grounds.<sup>2</sup>

Further, there is an inherent disconnect and uncertainty created by allowing a public official’s *true* statement to trigger a significant expansion in tort liability for a government agency. Already combating the dramatic effects of budget reductions and layoffs, emergency agencies will be understandably concerned about the expanded tort liability the Court of Appeals creates. Many emergency agencies will adopt policies prohibiting 911 operators from giving reassurance to callers, fearful that such information could lead to agency liability. Regardless of whether formal policies are adopted, the risk of having their true statements used as a means for creating more claims and lawsuits against their employers will independently deter 911 operators from making assurances to callers.

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<sup>2</sup> The argument that meritless claims will be ferreted out by trial judges is somewhat illusory given the availability of paid experts willing to criticize the difficult, split-second judgment decisions responders must make when confronting an emergency. Moreover, the subsequent dismissal of a lawsuit provides little comfort for the 911 operator who was exposed to harassing litigation simply for making a true, reassuring statement to a caller.

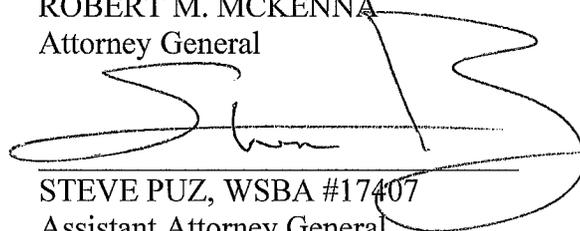
Callers will, in turn, disclose less, undermining the efforts of emergency personnel. Further, callers will lose the calming, empathetic, truthful assurances that 911 operators now provide. The Court of Appeals' test undermines and weakens the 911 emergency system, and is precisely the result the public duty doctrine is designed to protect against. *Taylor*, 111 Wn.2d at 170 ("legislative enactments for the public welfare should not be discouraged by subjecting a governmental entity to unlimited liability"); *McQuillan, Mun. Corp.*, § 53.04.25 (3<sup>rd</sup> Ed., updated May, 2011) (the public duty doctrine encourages the government to enact laws for the protection of the public "without exposing taxpayers to open-ended and potentially crushing liability from its attempt to enforce them"). This is an issue of substantial public importance warranting review by this Court.

## V. CONCLUSION

For each of the reasons stated, this Court should accept review and reverse the Court of Appeals' decision. RAP 13.4(b)(1) and (4).

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of July, 2011.

ROBERT M. MCKENNA  
Attorney General



STEVE PUZ, WSBA #17407  
Assistant Attorney General  
JENNIFER S. MEYER, WSBA #27057  
Assistant Attorney General