

NO. 91642-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CORTNEY L. BLOMSTROM,
BROOKE M. BUTTON,
CHRISTOPHER V. COOPER,

Petitioners,

v.

The Honorable GREGORY J. TRIPP, in his official capacity as a Spokane
County Disitric Court Judge,
and the SPOKANE COUNTY DISTRICT COURT,

Respondents.

BRIEF OF AMICUS CURIAE STATE OF WASHINGTON

ROBERT W. FERGUSON
Attorney General

APRIL S. BENSON, WSBA # 40766
LEAH E. HARRIS, WSBA # 40815
Assistant Attorneys General
Attorneys for State of Washington
OID #91020
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
Phone: (206) 464-7676
Fax: (206) 389-2800
E-mail: LALSeaEF@atg.wa.gov

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I. INTRODUCTION

The Court should decline to rule on the constitutionality of ignition interlock device requirements. An ignition interlock device requires drivers to take a breath alcohol test before starting their vehicles. The petitioners argue these tests are warrantless searches that violate their constitutional rights, yet none of the petitioners presented evidence that they were actually ordered to submit to an ignition interlock test as a result of pending charges. They also waived the argument by failing to raise it in the superior court.

Ignition interlock devices are an important tool in the fight against drunk driving in Washington, particularly in reducing the number of repeat offenses. The devices do not collect drivers' breath samples as evidence of a crime. Rather, they have the limited function of preventing a person from driving a car after consuming alcohol.

The State of Washington and its agencies have a strong interest in highway safety and ignition interlock use. The Washington State Patrol and Department of Licensing are two state agencies with a particular interest in this matter, as they administer and enforce Washington's traffic and driver licensing laws. The State submits this amicus curiae brief to inform the Court about the prevalence of ignition interlock devices on Washington vehicles and their various uses. The devices may be required

by a trial court, by the Department of Licensing, or by a driver's own decision to obtain a specialty driver's license—an ignition interlock driver's license—that allows the individual to drive with an ignition interlock device rather than serve certain types of license suspensions.

Given the widespread use of the devices and the differing reasons a driver may obtain one, if the Court reaches the question of the devices' constitutionality, it should limit the scope of its decision to pretrial ignition interlock requirements.

II. IDENTITY AND INTEREST OF AMICUS

The State has a vital interest in the issue of ignition interlock devices as a tool for eliminating drunk driving. Though Washington has made significant progress, impairment remains the main factor in fatal motor vehicle collisions in the state.¹ From 2012 to 2014, impaired drivers accounted for 673 fatalities and 1,289 serious injuries in Washington.² Nineteen percent of drivers involved in fatal collisions were impaired by alcohol, and eight percent were impaired by both drugs and alcohol.³ Ignition interlock devices reduce repeat offenses.⁴

¹ Washington Traffic Safety Commission, Washington State Strategic Highway Safety Plan 2016, 39 (August 2016) (accessed at http://wtsc.wa.gov/wp-content/uploads/dlm_uploads/2016/09/Target-Zero-2016-low-res.pdf).

² *Id.* at 38.

³ *Id.*

⁴ United States Government Accountability Office, Traffic Safety: Alcohol Ignition Interlocks are Effective While Installed; Less is Known About How to Increase Installation Rates, 11 (June 2014) (accessed at

The Department of Licensing is responsible for administering laws related to driver licensing and records, including records of when a person is subject to an ignition interlock requirement. RCW 46.01.030(1)–(3); RCW 46.20.740. The Department, in cooperation with the State Patrol and the Traffic Safety Commission, also recommends improvements to state motor vehicle laws to promote highway safety. RCW 46.01.030(10).

In addition to having a vital interest in ensuring highway safety, the State Patrol is responsible for certifying and regulating ignition interlock devices, technicians, and service centers. RCW 43.43.395(1); RCW 46.04.215; *see generally* chapter 204-50 WAC.

Both the Department and the State Patrol are members of Target Zero, Washington’s Strategic Highway Safety Plan, with a goal to reduce traffic fatalities and serious injuries on Washington’s roadways to zero by the year 2030.⁵

In 2016, over 50,000 Washington drivers had an ignition interlock requirement on record with the Department at some point during the year.

<http://www.gao.gov/assets/670/664281.pdf>); S.B. Rep. on Second Substitute H.B. 3254, 60th Leg., Reg. Sess. (Wash. 2008) (“Only 18 percent of the drivers that installed an [ignition interlock device] have a subsequent conviction for an alcohol related offense on their driving record, while over 80 percent of those drivers that did not get an interlock device installed have a second or subsequent offense on record.” (quoting Department data)).

⁵ Washington State Strategic Highway Safety Plan 2016, *supra* note 1, at 2.

Of those, 6,315 drivers were subject to pretrial ignition interlock requirements imposed in 2016.

The State has a strong interest in reducing impaired driving on Washington roads. Comprehensive ignition interlock laws are a significant piece of the State's system-wide approach to addressing the problem.

III. ISSUES ADDRESSED BY AMICUS

The State focuses on the importance of ignition interlock device requirements as a tool for reducing alcohol-impaired driving on state highways. Should this Court decline to address the constitutionality of a pretrial ignition interlock requirement when the petitioners lack standing to challenge the requirement because it was not actually imposed on them, and they failed to make an adequate record for the Court to address the issue?

IV. STATEMENT OF FACTS

An ignition interlock is a breath test device that is connected to a vehicle's ignition. WAC 204-50-030(11); RCW 46.04.215. If an ignition interlock device is connected to a vehicle, the driver must blow a breath sample into the device before the vehicle can be started. WAC 204-50-030(11); RCW 46.04.215. If the device detects a breath alcohol concentration below a preset level, it will allow the vehicle's ignition switch to start the engine. WAC 204-50-030(11). If the device detects a

breath alcohol concentration above the preset level, the vehicle will not start. *Id.* The device will also require the driver to submit to a random retest within 10 minutes of starting the vehicle, and at variable 10- to 45-minute intervals thereafter for the duration of the trip. WAC 204-50-030(11); WAC 204-50-110(1)(j). If the driver does not submit to a random retest or the device detects a breath alcohol concentration above the preset level, the vehicle's horn will honk repeatedly until the engine is switched off or the person passes another test. WAC 204-50-110(1)(k).

In Washington, ignition interlock devices are primarily used in four different circumstances: pretrial, post conviction, during a deferred prosecution, and as an alternative to license suspension.⁶ Regardless of the reason for the interlock requirement imposed on a driver, the Department is responsible for updating the driver's records to apprise law enforcement of the requirement. RCW 46.20.740(1); RCW 10.21.055(1)(b).

One circumstance in which interlock devices may be imposed, and ostensibly at issue in this case, is as a condition of release while criminal charges are pending. CrRLJ 3.2(d)(10); RCW 10.21.030(2)(j); RCW

⁶ Washington State first introduced ignition interlock devices as a tool for reducing alcohol-impaired driving in 1987. RCW 46.20.710; Laws of 1987, ch. 247, § 1. The legislature first authorized the use of ignition interlock devices as a discretionary post-conviction condition. Laws of 1987, ch. 247, § 2. Since 1987, the legislature has modified the laws several times to expand ignition interlock use and increase compliance. Washington Traffic Safety Commission, Evaluation of the Washington State Ignition Interlock Pilot Program 2009: 2012 Recidivism Report as Submitted to the Legislature Per RCW 46.20.745(5), 6 (April 2014) (accessed at http://wtsc.wa.gov/wp-content/uploads/2014/06/ignition-interlock-pilot-program-evaluation_2012.pdf).

10.21.055(1); RCW 46.20.720(1)(a), (e). When offenders face a repeat charge for certain alcohol-related driving offenses, the trial court has less discretion in imposing conditions of release. In those circumstances, under RCW 10.21.055(1)(a), the trial court must impose one of four possible pretrial release requirements—including an ignition interlock requirement. RCW 10.21.055(1).⁷

⁷ Specifically, RCW 10.21.055(1)(a) provides:

(1)(a) When any person charged with a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, in which the person has a prior offense as defined in RCW 46.61.5055 and the current offense involves alcohol, is released from custody at arraignment or trial on bail or personal recognizance, the court authorizing the release shall require, as a condition of release that person comply with one of the following four requirements:

(i) Have a functioning ignition interlock device installed on all motor vehicles operated by the person, with proof of installation filed with the court by the person or the certified interlock provider within five business days of the date of release from custody or as soon thereafter as determined by the court based on availability within the jurisdiction; or

(ii) Comply with 24/7 sobriety program monitoring, as defined in RCW 36.28A.330; or

(iii) Have an ignition interlock device on all motor vehicles operated by the person pursuant to (a)(i) of this subsection and submit to 24/7 sobriety program monitoring pursuant to (a)(ii) of this subsection, if available, or alcohol monitoring, at the expense of the person, as provided in RCW 46.61.5055(5) (b) and (c); or

(iv) Have an ignition interlock device on all motor vehicles operated by the person and that such person agrees not to operate any motor vehicle without an ignition interlock device as required by the court. Under this subsection (1)(a)(iv), the person must file a sworn statement with the court upon release at arraignment that states the person will not operate any motor vehicle without an ignition interlock device while the ignition interlock restriction is imposed by the court. Such person must also submit to 24/7 sobriety program monitoring pursuant to (a)(ii) of this subsection, if available, or alcohol monitoring, at the expense of the person, as provided in RCW 46.61.5055(5) (b) and (c).

Second, drivers must install an ignition interlock device on their vehicles after being convicted of certain driving offenses. Under RCW 46.20.720(1)(d)(i), a defendant convicted of driving or being in actual physical control of a motor vehicle while under the influence of alcohol or drugs (DUI) must install an ignition interlock device on all vehicles he or she operates after any other license suspension runs. Under RCW 46.20.720(1)(d)(ii), certain defendants convicted of negligent driving in the first degree or reckless driving are also required to install a device. The duration of the device requirement ranges from six months to 10 years, depending on the nature of the conviction and whether it is the person's first or subsequent offense. RCW 46.20.720(3)(c), (d).

Third, a driver participating in a deferred prosecution program for DUI, first degree negligent driving, or reckless driving may be required to use an ignition interlock device. RCW 46.20.720(c). The duration of the device requirement also ranges from six months to 10 years, depending on the type of conviction and the person's history. RCW 46.20.720(3)(c), (d).

Finally, as an alternative to having one's license suspended or revoked for a drug or alcohol-related offense, a person may choose to apply for a specialty driver's license called an "ignition interlock driver's license," which is issued by the Department. RCW 46.20.720(1)(b);

RCW 46.20.385(1).⁸ Having an ignition interlock driver's license allows a person to drive vehicles equipped with an ignition interlock device during a period in which the driver would otherwise be prohibited from driving due to a license suspension. *Nielsen v. Dep't of Licensing*, 177 Wn. App. 45, 50, 309 P.3d 1221 (2013) (citing RCW 46.04.217). The person may apply for an ignition interlock driver's license at any time. *Id.* (citing RCW 46.20.385(1)(b)). The license provides an incentive for offenders to install the device, while maintaining their legal driving privileges and, by extension, the ability to keep their jobs.⁹

It is a gross misdemeanor for a person subject to an ignition interlock requirement to operate a vehicle without a device. RCW 46.20.740(2). It is also a gross misdemeanor for a restricted driver to circumvent or tamper with the device. RCW 46.20.750(1)–(2); *see also* WAC 204-50-030(6) and (23) (defining “circumvention” and “tampering” with an ignition interlock device).

It is not a crime, however, for a driver to submit to an ignition interlock device test and receive a result above the preset alcohol level. In that case, the vehicle's ignition simply will not start, and the driver will not be able to engage the vehicle's ignition until they have passed the

⁸ The ignition interlock driver's license is available as relief from the civil administrative license suspensions imposed under the implied consent statute as well as those that follow specified criminal convictions. RCW 46.20.385(1)(a).

⁹ Washington State Strategic Highway Safety Plan 2016, *supra* note 1, at 18.

device's test. Or, if a person fails a random retest while the vehicle is in motion, the device will repeatedly honk the vehicle's horn until the engine is switched off or until the person submits a retest with a result below the preset level. WAC 204-50-110(j), (k). An ignition interlock device does not collect a breath sample to later be used as evidence of a crime. Thus, unlike the evidential breath test authorized by Washington's implied consent statute, RCW 46.20.308, the ignition interlock test results themselves are not evidence of any crime.

V. ARGUMENT

Ignition interlock devices are an important and widely used tool in the fight against drunk driving. The devices do not gather evidence of a crime. Instead, the devices have the limited function of preventing a person from putting the public at risk by driving after consuming alcohol.

None of the petitioners presented evidence that they were subject to a pretrial order to submit to an ignition interlock test when they sought relief in superior court. Therefore, none of the petitioners have standing to challenge the lawfulness of ignition interlock requirements. Further, the petitioners failed to make an adequate record for this Court to address the constitutionality of ignition interlock devices as conditions of pretrial release. Despite these significant flaws, the petitioners nevertheless ask this Court to conclude that pretrial ignition interlock requirements are

equivalent to urinalysis tests and should require a warrant. The Court should decline to do so.

Given the broad use of ignition interlock devices as a tool to reduce impaired driving for the protection of the public, the petitioners' lack of standing and their failure to make an adequate record, the Court should decline to reach the constitutionality of imposing an ignition interlock device as a pretrial release condition. If the Court does address the issue, it should not equate an ignition interlock device with a random urinalysis test because an ignition interlock device is far less intrusive and does not collect evidence for later prosecution of a crime. In any event, the Court should restrict its analysis to the precise use of ignition interlock devices in this case: as a condition of pretrial release.

A. Petitioners Lack Standing to Challenge the Lawfulness of Ignition Interlock Requirements

The petitioners lack standing to challenge the constitutionality of pretrial ignition interlock requirements because none of them presented any evidence that they used an ignition interlock device based on a pretrial order. While the petitioners have not been affected by the requirements they complain of, the decision they seek could have potentially negative and far-reaching public impact. Washington has a substantial interest in preserving the availability of ignition interlock requirements to protect the

innocent public against the often severe and deadly risks of impaired drivers. The Court should not contemplate limiting or eliminating the ability to use such restrictions to protect the public absent a fully developed argument from one alleging actual harm.

“A person may not urge the unconstitutionality of a statute unless he is harmfully affected by the particular feature of the statute” alleged to violate the constitution. *State v. Rowe*, 60 Wn.2d 797, 799, 376 P.2d 446 (1962). The person must claim infringement of an interest “particular and personal to himself” or herself, “as distinguished from a cause of dissatisfaction with the general framework of the statute.” *Id.* One must have an injury “that fairly can be traced to the challenged action” and is “likely to be redressed by a favorable decision.” *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 41, 96 S. Ct. 1917, 78 L. Ed. 2d 450 (1976). Moreover, traditionally a person may not challenge a statute “on the ground it may conceivably be applied unconstitutionally to others in situations not before the court.” *State v. Myers*, 133 Wn.2d 26, 31, 941 P.2d 1102 (1997) (citing *New York v. Ferber*, 458 U.S. 747, 767, 102 S. Ct. 3348, 73 L. Ed. 2d 1113 (1982)).

The petitioners here claim they are challenging the district court’s orders and not directly the constitutionality of any statute or court rule. Pet’r’s Reply Br. 5. But they also ask the Court to analyze the relevant

provisions in CrRLJ 3.2(d)(10), RCW 10.21.030, and RCW 10.21.055 as applied to them, rather than as a facial challenge. Pet'r's Reply Br. 6. These provisions give the trial court discretion to prohibit a defendant, as a condition of pretrial release, from operating a motor vehicle that is not equipped with an ignition interlock device.

None of the petitioners were harmfully affected by a pretrial ignition interlock requirement. It is undisputed that neither Blomstrom nor Cooper were ever subject to an ignition interlock requirement as a pretrial release condition. Blomstrom RP 3; Cooper RP 5–6; CP 33, 35, 37 (Blomstrom); CP 2, 23, 25 (Cooper). Button was the only petitioner on whom the district court imposed such a requirement, and it was in place less than three days. The district court ordered the ignition interlock device when it found probable cause and set conditions of release on Saturday, February 28, 2015. Mot. for Discretionary Review, Appendix 7–8. At Button's preliminary appearance on Monday, March 2, the district court removed the requirement because it was not clear that Button's current and previous offenses both involved alcohol. RP Button at 1–2, 6–7; CP 61, 88, 90. Thus, Button was not subject to any ignition interlock requirement when she filed her writ in superior court seeking relief from the district court's order on March 6. CP 60, 90. There is no indication in the record or briefing that Button ever installed an ignition interlock

device in any vehicle or submitted to an ignition interlock test before the district court struck the requirement. *See* Pet’r’s Reply Br. 6–7.

Thus, while the petitioners may be generally dissatisfied with the availability of ignition interlock requirements as a condition of pretrial release, they suffered no injury that can be traced to the challenged requirement. *See Simon*, 426 U.S. at 38, 41. No such condition was imposed upon them, and they submitted to no ignition interlock tests. The petitioners have shown no harm to or infringement of their particular and personal interests, as they must to establish standing. *Rowe*, 60 Wn.2d at 799. Their general dissatisfaction is insufficient to warrant this Court’s review. *Id.*; *see also Myers*, 133 Wn.2d at 31.

B. Petitioners Did Not Make an Adequate Record for the Court to Address the Constitutionality of Ignition Interlock Device Requirements

The Court should also decline to address the constitutionality of ignition interlock devices because the petitioners failed to raise the issue below and, thus, failed to make an adequate record for the Court to address the issue.

The Court may refuse to review any claim of error not raised below. RAP 2.5(a). “[T]o raise a claim for the first time on appeal, ‘the trial record must be sufficient to determine the merits of the claim.’” *State v. Koss*, 181 Wn.2d 493, 503, 334 P.3d 1042 (2014) (quoting *State v.*

O'Hara, 167 Wn.2d 91, 99, 217 P.3d 756 (2009)). “The party presenting an issue for review has the burden of providing an adequate record to establish error.” *State v. Barry*, 183 Wn.2d 297, 317, 352 P.3d 161 (2015).

In their applications for writs of review to the superior court, none of the petitioners raised the ignition interlock requirement as a basis for the superior court’s review. CP 33, 35, 37 (Blomstrom); CP 2, 23, 25 (Cooper); CP 61, 88, 90 (Button). As a result, the petitioners failed to make a record establishing the details of what an ignition interlock device is or how it functions.

To determine whether a violation of the right to privacy has occurred, the relevant inquiry under article I, section 7 of the Washington constitution is whether the government unreasonably intrudes into a person’s private affairs. *State v. Carter*, 127 Wn.2d 836, 848, 904 P.2d 290 (1995); *State v. White*, 135 Wn.2d 761, 768, 958 P.2d 982 (1998); *State v. Baird*, 187 Wn.2d 210, 231, 222, 386 P.2d 239 (2016) (González, J., concurring). The Court needs factual evidence to assess reasonableness and the level of intrusion of any search when evaluating potential violations of the Fourth Amendment and article I, section 7. *See State v. Garcia-Salgado*, 170 Wn.2d 176, 185-88, 240 P.3d 153 (2010) (assessing whether the state had shown a clear indication that the desired evidence will be found, a reasonable method of searching, and a reasonable manner

of performing the search). Here, petitioners hastily sought writs to challenge their pretrial orders, but offered none of the factual evidence a court needs to analyze the reasonableness of an alleged intrusion into private affairs. Indeed, the petitioners have not made clear precisely what privacy implications they believe the State would unreasonably intrude upon if it *did* impose a pretrial ignition interlock requirement.

Although this amicus brief has provided some background information on ignition interlock devices for context, this information is not in the record on review. Ignition interlock devices are a widely used tool in various civil and criminal settings, and a decision about the devices' constitutionality could potentially have a significant impact on traffic safety laws in Washington. Therefore, the Court should decline to reach the constitutionality of ignition interlock devices on the wholly inadequate record presented by the petitioners.

C. An Ignition Interlock Test is Meaningfully Different From a Urinalysis Test or Evidential Breath Test Obtained by Law Enforcement Under RCW 46.20.308

The Court should resist the petitioners' invitation to find that an ignition interlock test on the one hand, and a urinalysis and evidential breath test on the other, are functionally equivalent under the law.

An ignition interlock device breath test meaningfully differs from urinalysis and from evidential breath tests obtained by law enforcement

under the implied consent statute, RCW 46.20.308. In their briefing, petitioners assume, without analysis or citation to authority, that an ignition interlock test is the functional equivalent of an evidential breath test obtained under the implied consent statute after an arrest for DUI. Upon that assumption, petitioners leap to the conclusion that an ignition interlock device breath test is “[a] warrantless breath test . . . subject to the same constitutional analysis as a warrantless urine test.” Pet’r’s Reply Br. 7. But a breath test is far less intrusive and the results of an ignition interlock test are not collected as evidence to be used against the driver in a civil or criminal proceeding. For these reasons, in a case with an adequate factual record, the Court should consider the ignition interlock test independently of warrantless urinalyses or even evidential breath tests.

The petitioners concede that capturing exhaled air is less intrusive into an individual’s privacy than other types of biological testing. Pet’r’s Reply Br. 14. In *Birchfield v. North Dakota*, the United States Supreme Court reaffirmed that a breath test does not implicate significant privacy concerns. *Birchfield v. North Dakota*, ___ U.S. ___, 136 S. Ct. 2160, 2178, 195 L. Ed. 2d 560 (2016) (quoting *Skinner v. Ry. Labor Execs. Ass’n*, 489 U.S. 602, 626, 109 S. Ct. 1402, 103 L. Ed. 2d 639 (1989)). The procedures for collecting urine tests “raise concerns not implicated by blood or breath tests” in that they require individuals “to perform an excretory function

traditionally shielded by great privacy.” *Skinner*, 489 U.S. at 626. While individuals have a constitutionally protected interest in the privacy of their internal bodily functions and fluids, *State v. Mecham*, 186 Wn.2d 128, 145, 380 P.3d 414 (2016), “the impact of breath tests on privacy is slight, and the need for [breath alcohol concentration] testing is great[.]” *Baird*, 187 Wn.2d at 222 (quoting *Birchfield*, 136 S. Ct. at 2184); *see also id.* at 230 (González, J., concurring) (“A breath test is much less intrusive than other blood alcohol tests and produces only a limited amount of information.”). Breath tests are less invasive of privacy rights than urine collection tests.

While breath tests constitute searches under both the federal and state constitutions, it is less clear that an ignition interlock test amounts to a search subject to the warrant requirement. An evidential breath test occurs at a police station and at the direction of a law enforcement officer. In contrast, an ignition interlock test occurs in a person’s car, only when the person has made a decision to drive, and without the necessary presence of a law enforcement officer. *Compare* WAC 204-50-030(11) *and* RCW 46.20.308(2). Thus, a person retains autonomy to decide when and whether to submit to a test by deciding when and whether to drive.

Additionally, an ignition interlock device breath test has a more limited purpose and function than an evidential breath test conducted

subsequent to an arrest for DUI. The purpose of the implied consent law and an evidential breath test is to gather reliable evidence of intoxication for criminal DUI prosecutions and administrative license revocations. *Dep't of Licensing v. Cannon*, 147 Wn.2d 41, 47, 50 P.3d 627 (2002); *see generally* RCW 46.61.502; RCW 46.20.308. This Court recently held that a post-arrest evidential breath tests fall under the search incident to arrest exception to the warrant requirement. *Baird*, 187 Wn.2d at 222. The purpose of an ignition interlock test, in contrast, is to prevent the use of motor vehicles by individuals who have consumed alcohol, which can pose a severe and potentially deadly risk to the health and safety of other members of the public. RCW 46.20.710(1), (3). Unlike the evidential breath test, the primary purpose of an ignition interlock test is not to collect incriminating evidence, and a result indicating that a driver has some detectable level of alcohol on his or her breath is not available as evidence in a civil or criminal proceeding. Rather, by inhibiting a vehicle from starting after a positive test, the device prevents the crime of DUI.

The petitioners' lack of thorough analysis as to the differences between ignition interlock tests and other biological tests further demonstrates why this Court should not address the issue of the constitutionality of ignition interlock tests in this case.

D. If the Court Reaches the Merits of Pretrial Ignition Interlock Device Requirements, It Should Limit the Scope of Its Decision

The State agrees with and reaffirms the Respondents' arguments about the constitutionality of pretrial testing requirements and will not repeat briefing on that issue. *See* Respondents' Br. 8–26; RAP 10.6(b)(4). Should the Court reach the merits of pretrial ignition interlock device requirements, however, the State respectfully requests that the Court limit the scope of its decision in recognition of the inadequate record and lack of standing of those attempting to challenge them.

As outlined above, a driver may have an ignition interlock device installed on his or her vehicle for one or more of several different reasons, *see* RCW 46.20.720(1), each of which carries different implications for privacy rights and consent. For example, a driver may choose to obtain an ignition interlock driver's license under RCW 46.20.385, which is noncompulsory and allows a person to drive with an ignition interlock device while the person's regular driver's license is suspended, revoked, or denied. *Nielsen*, 177 Wn. App. at 50 (citing RCW 46.04.217). It is difficult to see how an individual with an ignition interlock driver's license could argue that an ignition interlock test is a search subject to the warrant requirement, as such a driver has *chosen* to obtain the device in

lieu of serving a license suspension. At minimum, such a system would require a different analysis by this Court.

Each of the four primary circumstances in which an ignition interlock device requirement is imposed is distinct and may require individual analysis. The petitioners have failed to present adequate analysis or a sufficient record for the Court to appropriately address the questions they raise. But if the Court decides to reach the issue of the constitutionality of pretrial ignition interlock requirements, the State respectfully requests that the Court limit its analysis to ignition interlock requirements imposed as a condition of pretrial release.

VI. CONCLUSION

Ignition interlock device requirements serve critical functions in the enforcement of Washington's traffic safety laws, including reducing alcohol-related accidents that result in injury and death to members of the public. The petitioners lack standing to challenge those requirements and have failed to develop an adequate record to demonstrate that this Court should address the constitutionality of ignition interlock requirements generally or pretrial ignition interlock requirements specifically. The State respectfully requests that the Court decline to reach that issue.

RESPECTFULLY SUBMITTED this 24th day of April, 2017.

ROBERT W. FERGUSON

Attorney General

A handwritten signature in cursive script, appearing to read "Leah Harris".

APRIL S. BENSON, WSBA # 40766

LEAH E. HARRIS, WSBA # 40815

Assistant Attorneys General

Attorneys for State of Washington

PROOF OF SERVICE

I, Jennifer Wagner, certify that I mailed and e-mailed a copy of this document, **Brief of Amicus Curiae State of Washington**, on all parties or counsel of record to:

Michael L. VanderGiessen
Spokane County Public Defender's Office
1033 West Gardner Ave
Spokane, WA 99260
mvandergiessen@spokanecounty.org

Brian O'Brien
County-City Public Safety Building
West 1100 Mallon
Spokane, WA 99260
bobrien@spokanecounty.org

Samuel J. Comi
County-City Public Safety Building
West 1100 Mallon
Spokane, WA 99260
sjcomi@spokanecounty.org

Gretchen E. Verhoef
County-City Public Safety Building
West 1100 Mallon
Spokane, WA 99260
gverhoef@spokanecounty.org

Electronically filed with Supreme Court of the State Of Washington

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JENNIFER A. WAGNER
Legal Assistant