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NO. 91644-6

SUPREME COURT OF THE STATE OF WASHINGTON

FRED BINSCHUS, individually and as Personal Representative of the Estate of JULIE ANN BINSCHUS; TONYA FENTON; TRISHA WOODS; TAMMY MORRIS; JOANN GILLUM, as Personal Representative of the Estate of GREGORY N. GILLUM; CARLA J. LANGE, individually and as Personal Representative of the Estate of LEROY B. LANG; NICHOLAS LEE LANGE, Individually and as Personal Representative of the Estate of CHESTER M. ROSE; STACY ROSE, Individually; RICHARD TRESTON and CAROL TRESTON, and the marital community thereof; BEN MERCADO; and PAMELA RADCLIFFE, individually and as Personal Representative of the Estate of DAVID RADCLIFFE, and TROY GIDDINGS, individually,

Respondents,

v.

SKAGIT COUNTY,
a political subdivision of the State of Washington,
Petitioner,

STATE OF WASHINGTON, DEPARTMENT OF CORRECTIONS;
OKANOGAN COUNTY, a political subdivision of the State of Washington; and
SKAGIT EMERGENCY COMMUNICATIONS CENTER d/b/a "Skagit 911," an
interlocal government agency,

Defendants.

AMICUS CURIAE BRIEF OF STATE OF WASHINGTON

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I. INTRODUCTION AND IDENTITY AND INTEREST OF AMICUS CURIAE

The State of Washington operates numerous mental health treatment facilities and correctional institutions throughout the State.¹ Accordingly, the State has a profound interest in the new liability that the Court of Appeals has created for failing to rehabilitate offenders and mental patients to prevent harm to the public. This new governmental liability vastly expands existing special relationship duties. *Binschus v. Dep't of Corr.*, 186 Wn. App. 77, 93-94, 345 P.3d 818, *review granted*, *Binschus v. Skagit Cty.*, 184 Wn.2d 1001, 357 P.3d 665 (2015) (no duty enforceable in tort to rehabilitate offenders).

In addition, imposing liability on government for failing to cure the dangerous propensities of violent criminals to prevent their future re-offense is unworkable. The recognition of such a tort duty presupposes (1) the availability of behavior altering treatment, (2) an amenability to such treatment, and (3) the offender's acquiescence to participate.² Since each of these critical components to the Court of Appeals "duty to

¹ As of March 31, 2015, the Department of Corrections has a total of 18,426 offenders in confinement. *See* Washington State Department of Corrections, Statistics and Reports, Fact Card: *Facts About Offenders in Confinement* (2015), available at <http://www.doc.wa.gov/aboutdoc/statistics.asp>. The materials referenced in this footnote and footnote 7 has been filed with the Washington State Law Library per this Court's direction.

² As succinctly stated in a timeless epigram: "You can lead a horse to water, but you can't make him drink."

rehabilitate” is beyond the control of government, the imposition of liability is contrary to sound public policy and defies common sense.

The State of Washington respectfully submits this amicus brief to assist the Court in understanding the breadth of the problems that the Court of Appeals’ opinion creates.

II. ISSUES ADDRESSED BY AMICUS

1. Did the Court of Appeals properly extend liability under *Restatement (Second) of Torts* §§ 315 and 319 (1977) to include claims of negligent failure to treat and rehabilitate offenders while they are incarcerated, when government does not have control over the minds of mental patients and criminal offenders?

1. Is the imposition of tort liability on state and local governments for failure to treat and/or rehabilitate offenders while they are incarcerated consistent with sound public policy, common sense and logic when such offenders have a constitutional right to oppose medical treatment and the practical ability to refuse to participate in rehabilitative treatment?

III. STATEMENT OF THE CASE³

The claims in this case arise from a tragic crime spree by Isaac Zamora following his release from incarceration. His victims sued both Skagit County and Okanogan County for failing to provide mental health treatment that they allege would have prevented his criminal conduct.

Facts relevant to the liability claims include that Mr. Zamora was arrested on outstanding warrants on April 4, 2008, and held in the Skagit County Jail until Okanogan County took custody of Mr. Zamora on May 29, 2008, pursuant to a contract with the Skagit County jail for housing Skagit County inmates. Mr. Zamora was released from Okanogan County Jail on August 2, 2008, after he completed his sentence. On September 2, 2008, Mr. Zamora committed the crimes at issue in this case.

The Court of Appeals concluded that both Skagit and Okanogan counties had a “take charge relationship” with Mr. Zamora giving rise to a duty to exercise reasonable care while Mr. Zamora was incarcerated in their custody to prevent him from harming third persons following his release. *Binschus*, 186 Wn. App. at 93-94. Based upon this determination, the Court of Appeals reversed summary judgment that had been granted in favor of Skagit County, finding there was a question of fact as to whether Skagit County’s failure to evaluate and treat

³ The facts contained in this statement of the case are taken from the opinion of the Court of Appeals.

Mr. Zamora's mental illness was the cause in fact for Mr. Zamora's crime spree on September 2, 2008.

On the issue of proximate cause—whether Mr. Zamora would have agreed to the injection of antipsychotic medication—the Court of Appeals focused on a statement by an expert that “skilled persuasion is all that is required” to get someone to voluntarily participate in such treatment. *Binschus*, 186 Wn. App. at 101.

The Court of Appeals affirmed summary judgment in favor of Okanogan County based upon the absence of evidence Okanogan County knew or should have known of Mr. Zamora's unstable, mental health condition. *Id.* Skagit County's petition for review to this Court was granted.

IV. ARGUMENT

A. In *Melville*, This Court Correctly Rejected Tort Liability Based on Allegations of Negligent Failure to Treat and Rehabilitate Convicted Criminals While They Were Incarcerated

In *Melville v. State*, 115 Wn.2d 34, 793 P.2d 952 (1990), this Court rejected a claim substantially the same as the present case, holding that the Department of Corrections was not liable for failing to provide mental health treatment to an inmate, which allegedly would have prevented the inmate's crimes upon release. *Id.* at 39. The *Melville* decision is

controlling and was cited in the briefs below, yet the Court of Appeals failed to address or even mention it.

The *Melville* case involved a wrongful death action against the Department of Corrections based on a former inmate's actions three months after release from an eight-month prison sentence. *Id.* at 35. Just as in the present case, the plaintiffs there alleged that the Department had negligently failed to provide mental health services. *Id.* at 36. Despite the plaintiffs' reliance on a statute directing the Department to establish a comprehensive system of corrections that ensured public safety and make wise investment in effective rehabilitation, the court rejected plaintiffs' claims that the Department had tort liability for failing to provide mental health treatment. *Id.* at 37-38.

In arguing that *Melville* does not control here, plaintiffs assert that it has never been their position—nor did the Court of Appeals' decision reflect—an analysis that would impose a duty to treat and rehabilitate violent offenders. *See* Resp't Supp. Br. at 14 n.15. Indeed, plaintiffs claim they are asking for nothing more than this Court to reaffirm the principles established in existing case law. *See* Resp't Supp. Br. at 10. Yet, these assertions ignore the limited scope of the duty that exists under current case law and the broad expansion of that duty by the Court of Appeals in this case.

The nature of the take charge relationship in the tort duty recognized in *Taggart v. State*, 118 Wn.2d 195, 822 P.2d 243 (1992), is based upon the control the Department has over offenders through the enforcement of conditions of supervision by arresting and incarcerating the offender when those conditions are violated. *Id.* at 227. The duty at issue in this case is fundamentally different. It is not based upon the failure to incarcerate or incapacitate someone who poses a danger. *Cf. Petersen v. State*, 100 Wn.2d 421, 424-25, 671 P.2d 230 (1983) (liability was premised upon the failure to seek further commitment of a mental health patient who was known to pose a serious risk of harm). Here, the Court of Appeals found jails have a duty to utilize psychiatric treatment to prevent criminal behavior after an offender's release from custody.⁴

Under existing case law, community corrections officers have a duty to adequately monitor and report violations of an offender's conditions of supervision. *Bishop v. Miche*, 137 Wn.2d 518, 526, 973 P.2d 465 (1999). Causation is established if the offender should have been incarcerated at the time of the tortious re-offense. *See Estate of Borden v.*

⁴ The claims that DOC settled in this case were based upon an already existing, clearly established tort duty to enforce conditions of community supervision through reincarceration. The tort duty recognized by the Court of Appeals in this case, and addressed in this amicus brief, is completely different; imposing liability on government for failing to prevent post-release criminal conduct by treating persons with dangerous propensities while they are incarcerated.

State, 122 Wn. App. 227, 95 P.3d 764 (2004) (in order to prove causation estate was required to put forth evidence that if his violation of sentence conditions had been reported to the court, the offender would have been in jail on the date of injury). *Hungerford v. Dep't of Corr.*, 135 Wn. App. 240, 253, 139 P.3d 1131 (2006) (dismissal is appropriate when plaintiff fails to present evidence that offender would still have been in jail on the date of the murder if his community custody violations had been properly reported).

Under plaintiffs' theory of liability the government's duty to control the violent propensities of an offender goes far beyond incarcerating the offender, but also includes preventing the offender from committing new crimes while in the community. Thus, plaintiff's theory greatly expands the duty previously delineated in these opinions. Here, the Court of Appeals held that Skagit County had a take charge relationship over Mr. Zamora and Mr. Zamora had dangerous propensities which triggered a duty on the part of Skagit County to persuade Mr. Zamora to take antipsychotic medication, which would purportedly have prevented the events giving rise to the plaintiff's injuries.

In direct conflict with this Court's decision in *Melville*, the Court of Appeals concluded that because Skagit County had failed to evaluate and skillfully persuade Mr. Zamora into taking Haloperidol Deconate

(Haldol), an antipsychotic medication, Skagit County was potentially liable for Mr. Zamora's murderous rampage.

Plaintiffs also assert that *Melville* is now questionable authority in light of this Court's decision in *Gregoire v. City of Oak Harbor*, 170 Wn.2d 628, 244 P.3d 924 (2010). Resp't Supp. Br. at 27. Plaintiffs offer no explanation as to how this Court's holding in *Gregoire* undermines, much less implicates, the *Melville* decision. These two cases involve the analysis of two completely dissimilar tort duties owed to different protected classes. In *Melville* this Court rejected liability based upon an alleged duty to treat Mr. David's mental health problems in order to prevent him from murdering his ex-wife after his release. *Gregoire* did not address a duty to protect the public, but instead held that jails have a duty to protect jailed inmates from known suicidal ideations. In other words, *Melville* rejected a duty owed to the general public to provide mental health treatment to an inmate to prevent his re-offense. *Gregoire* recognized a tort duty owed to the inmate to prevent his suicide while he was in jail.

The Court of Appeals' rationale essentially assumes government has power over the minds of mentally ill patients and violent criminal offenders that trigger responsibility on the part of public officials to modify and improve their behavior. This duty is all-encompassing and

continues even after custody has terminated. It is a duty to change behavior to prevent physical harm by offenders after their release into the community. Despite the plaintiffs' claims, there is nothing in the Court of Appeals' opinion limiting this duty to the treatment of mental illness.

Given the broad wording of the scope of tort liability by the Court of Appeals, the range of future liability claims will undoubtedly yield lawsuits based upon negligent failure to provide mental health treatment, alcohol treatment, drug treatment, domestic violence treatment, anger management treatment, sex offender counseling, etc. This Court should reaffirm its holding in *Melville* that the government does not have tort liability for failing to provide treatment to an inmate to prevent his re-offense. Liability premised on a take charge relationship should be based on the ability of government to control offenders on community custody parole, probation, etc., through reincarceration based upon violations of the conditions of supervision.⁵

⁵ Many years ago, under the old parole system, this Court acknowledged the inherent risks of releasing criminals:

The courts have long recognized too, that, although releasing a convicted felon on parole may be beneficent and rehabilitative and in the long run produce a genuine social benefit it is also a risky business. The parole may turn loose upon society individuals of the most depraved, sadistic, cruel and ruthless character who may accept parole with no genuine resolve for rehabilitation nor to observe the laws and customs promulgated by the democratic society, which in the process of self-government granted the parole.

January v. Porter, 75 Wn.2d 768, 774, 453 P.2d 876 (1969).

The Court of Appeals opinion is also inconsistent with other Court of Appeals opinions, which properly apply the take charge duty as enunciated by this Court. As Skagit County notes in its supplemental brief, in two recent decisions, the Court of Appeals has noted that the ability to control an offender through the enforcement of the conditions of supervision ends when an offender absconds. And when an offender absconds from supervision, and a warrant is issued for his or her arrest, the tort duty terminates until the take-charge relationship resumes following apprehension. *Smith v. Dep't of Corr.*, No. 45479-3, 359 P.3d 867, WL 5042152 (Aug. 26, 2015); *Husted v. State*, 187 Wn. App. 579, 590, 348 P.3d 776 (2015), *review denied*, No. 71662-0, WL 2260762 (Nov. 4, 2015). *See also Couch v. Dep't of Corr.*, 113 Wn. App. 556, 571, 54 P.3d 197 (2002), *review denied*, 149 Wn.2d 1012 (2003).

While government has a take charge relationship that gives it the ability to control offenders and prevent re-offense through reincarceration, this take charge relationship does not afford government the ability to control or change the thought processes and behavior of criminals and the mentally ill. Even though government may be successful in rehabilitating some offenders, it should not have liability for failing to rehabilitate all offenders. *See Estate of Davis v. Dep't of Corr.*, 127 Wn. App. 833, 843-44, 113 P.3d 487 (2005) (DOC's tort duty is limited by the conditions it

has the legal authority to enforce). This Court should reaffirm its holding in *Melville* and reject and expansive tort duty to treat and rehabilitate the known dangerous propensities of violent offenders.

B. The Imposition of Tort Liability on State And Local Governments For Failing to Treat And Rehabilitate Violent Criminals is Contrary to Sound Public Policy, Common Sense And Logic

In recognition of the serious and inherent risks in releasing violent criminals back into society, no court in the country has gone as far as the Court of Appeals did in this case, imposing a general tort duty on government to protect the public at large from the recidivistic conduct of violent offenders based upon a negligent failure to treat and rehabilitate.

The determination of how far legal liability should extend is dependent upon “mixed considerations of logic, common sense, justice, policy and precedent.” *Hartley v. State*, 103 Wn.2d 768, 779, 698 P.2d 77 (1985). Consistent with this Court’s decision in *Melville*, 115 Wn.2d at 37-39, other jurisdictions have similarly refused to impose liability for harm caused by third persons released from a state rehabilitative program. *E.g.*, *State v. Sandsness*, 72 P.3d 299, 302 (Alaska 2003). In *Sandsness*, the Alaska Supreme Court relied heavily upon a decision from the Vermont Supreme Court, *Sorge v. State*, 171 Vt. 171, 762 A.2d 816, 823 (2000):

The court surveyed relevant case law and noted that similar attempts to impose liability had been rejected by courts “that have recognized that most juvenile and adult programs dealing with persons committed to the custody of the State are intended to rehabilitate conduct rather than control it.”

Sandsness, 72 P.3d at 302 (citing *Sorge*, 762 A.2d at 820-21).

Similarly, in *Ferree v. Utah*, 784 P.2d 149 (Utah 1989), the Utah Supreme Court concluded that imposing liability for releasing offenders before they were rehabilitated would impose too broad a duty of care on the part of correction officials, exposing the state to potentially every wrong that flows from the necessary programs of rehabilitation and paroling of prisoners. “Given the increase in prison populations, the effect could well be to burden correctional officials and chill legitimate rehabilitative programs.” *Id.* at 151. *See also VanLuchene v. State*, 244 Mont. 397, 797 P.2d 932 (1990) (the state has no duty to rehabilitate prisoners nor is it a guarantor of its rehabilitation facility).

The current prison population has been sentenced for a wide range of crimes and has a myriad of criminal histories. The scope of the duty the Court of Appeals has created is amorphous at best. It will depend upon the characteristics of the offender involved and many other factors, which include: (1) the degree to which the offender is willing, if at all, to

participate in treatment;⁶ (2) the offender’s amenability to treatment; (3) the complexity of the offender’s treatment needs; e.g., whether the offender has a history of drug abuse, alcohol abuse, child abuse, domestic violence, and mental illness; (4) how much time is available to treat the offender—the length of the sentence; (5) the availability of treatment in rehabilitative programs in the facility where the offender is incarcerated; and, (6) the impact that events occurring in prison or after release that undo or undermine the rehabilitative effects of treatment.⁷

Because the effectiveness of rehabilitative treatment is dependent upon so many factors—that are often beyond the control of government—imposing liability on government for failing to achieve specific rehabilitative outcomes is poor public policy. A good example of the speculative nature of rehabilitative outcomes is set forth in the *Melville* decision where this Court noted that even assuming a duty existed to

⁶ In *Roberson v. Perez*, 156 Wn.2d 33, 46-47, 123 P.3d 844 (2005), this Court refused to extend a cause of action for negligent investigation to include voluntary placement decisions. As in *Melville*, this Court noted that premising liability on voluntary conduct would be “problematic” because the harm resulting from the government’s actions would be purely speculative and could frustrate the efforts of government to protect children.

⁷ Recidivism statistics demonstrate the multiplicity of factors that affect whether a criminal will reoffend, including age of the offender, gender of the offender, nature of the offense, etc. Studies have shown that the effective incarceration on offender recidivism is complex and likely to be offender specific. For some offenders, incarceration and longer confinements seem to increase the risk of recidivism. For other offenders, the likelihood of re-offense will be either unaffected or reduced by longer terms of incarceration. Lin Song with Roxanne Lieb, *Recidivism: The Effect of Incarceration and Length of Time Served*, Washington State Institute for Public Policy at 1 (1993); Michael Evans, *Washington State Department of Corrections Recidivism Rate Outcomes for 2007* (2011).

provide an inmate with mental treatment, there would still be a threshold problem that the treatment was provided on a voluntary participation basis only. The court specifically rejected as speculative the opinions of experts who had never met the offender that he probably would have accepted an offer of treatment and was a good candidate for the anger management program. *Melville*, 115 Wn.2d at 40-41. In the case at bar the Court of Appeals points to the testimony of an expert witness, Dr. Hegvarvy, that “[m]ore often than not skilled persuasion is all that is required” to get a patient suffering from schizophrenia to agree to an injection of antipsychotic medication. *Binschus*, 186 Wn. App. at 101. The Court of Appeals does not mention that Mr. Zamora would have had to have given informed consent to such an injection which would have required disclosure of the serious potential side effects of Haldol. In this case as in *Melville* the issue of whether Mr. Zamora would have actually consented to an injection of Haldol is highly speculative.⁸

Even if Mr. Zamora would have consented to an injection of Haldol, there is good reason to believe that many other offenders would not. In *Washington v. Harper*, 49 U.S. 210, 110 S. Ct. 1028, 108

⁸ In his declaration, Dr. Hegyvaray did not say that Mr. Zamora would have agreed to take Haldol. Rather, he stated: “It is unreasonable to assume, based on Mr. Zamora’s behavior during incarceration, that he would not have been receptive to mental health treatment.” CP at 2605. In his deposition, Dr. Hegyvary was unable to state whether, based on probability, Mr. Zamora would have ever agreed to see a mental health professional. CP at 3632-33.

L. Ed. 2d 178 (1990), the Supreme Court recognized and discussed the significant risks associated with antipsychotic medication.⁹ More specifically, in *In re R.K.*, 338 Ill. App. 3d 514, 519, 786 N.E.2d 212 (2003), the court specifically declined to order the involuntary administration of Haldol as the initial antipsychotic medication due to the significant side effects of Haldol, even when those could be reduced through the administration of the separate drug. *Id.*¹⁰

Of course, if Mr. Zamora did not voluntarily consent to the administration of an antipsychotic medication, with full disclosure of potential side effects, then he would have been entitled to a due process hearing. *See Harper*, 494 U.S. at 227. Similarly, an inmate would have a right to a due process hearing before being transferred to a mental health treatment program. *See Vitek v. Jones*, 445 U.S. 480, 487, 100 S. Ct. 1254, 63 L. Ed. 2d 552 (1980) (requiring an offender to participate in a sex offender treatment also implicates a due process liberty interest). *See Wills v. U.S. Parole Comm'n*, 882 F. Supp. 2d 60, 77 (D.C. Cir. 2012)

⁹ The Court noted that antipsychotic medication can have serious—even fatal—side effects. These include acute dystonia (a severe involuntary spasm of the upper body, tongue, throat, or eyes); akathisia (motor restlessness often characterized by an inability to sit still); neuroleptic malignant syndrome (a relatively rare condition that can lead to death from cardiac dysfunction); and tardive dyskinesia (a neurological disorder irreversible in some cases, that is characterized by involuntary, uncontrollable movements of various muscles, especially around the face). *Harper*, 497 U.S. at 229-30.

¹⁰ The Physician's Desk Reference Warnings/Precautions for the treatment with Haldol Deconoate are listed at <http://www.pdr.net/drug-summary/Haldol-Decanoate-haloperidol-decanoate-948.1589>.

(offender's right to due process was violated when he was given no opportunity to be heard before being placed into a sex-offender, after-care program); *Chandler v. U.S. Parole Comm'n*, 60 F. Supp. 3d 205 (D.C. Cir. 2014) (a prisoner was entitled to due process procedural protection in advance of the imposition of the sex-offender, treatment condition upon his parole). Whether a due process hearing will result in an order directing an involuntary injection of antipsychotic medication, or an order transferring an inmate into involuntary treatment is not certain. The outcome will, of course, depend on the circumstances of each situation.

In the context of the administration of antipsychotic medication on a psychotic individual, there is a probability that the offender's psychosis will temporarily improve. However, when dealing with other forms of treatment, such as mental health counseling, drug and alcohol treatment, domestic violence treatment, sex offender treatment, etc., a correctional institution's ability to compel participation in treatment is limited. Even willing participants are not amenable to such treatment. Treatment outcomes are, at best, uncertain. Indeed, some inmates disingenuously feign an interest in rehabilitative treatment to obtain an earlier release through good time credits. Or, as in the *Melville* case, an offender's sentence may not be of sufficient duration to allow for the completion of anger management treatment: “[B]ecause of overcrowding and other

administrative concerns, the waiting time for entry into the available anger management program was longer than the period for which this inmate was in custody.” *Melville*, 115 Wn.2d at 41. An offender’s institutional programming may be focused on education and the acquisition of job skills or an offender’s custody classification may be so high that an offender is not allowed to be at the prison location where the treatment/counseling class is held.¹¹ In short, there are a myriad of reasons why an offender may not receive rehabilitative treatment and why such rehabilitative treatment may not be effective. Tort liability should not hang from such a tenuous thread.

Quite simply, government does not have control over the minds and thoughts of criminal offenders and mental patients in its care. The decision of the Court of Appeals is a dramatic and imprudent expansion of the duty of jails, prisons, and mental health institutions. This new liability is premised on a duty to rehabilitate offenders. Yet mental patients and convicted criminals often reject or are unavailable for treatment or not amenable to such treatment. The ability to effectuate such a profound

¹¹ Of course, the first order of business in a jail or prison is security, the protection of staff and inmates. Courts should afford prison administrators wide ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security. *Bell v. Wolfish*, 441 U.S. 520, 547, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979); *Whitley v. Albers*, 475 U.S. 312, 321-22, 106 S. Ct. 1078, 89 L. Ed. 2d 251 (1986) (courts should defer to prison officials’ judgment in implementing security measures that respond to actual confrontations and prophylactic measures intended to prevent breaches of prison discipline).

rehabilitative change in the dangerous propensities of violent offenders is not within the control of government, but is instead dependent upon a myriad of complex factors, many of which are outside the control of correctional and mental health professionals.

V. CONCLUSION

Government officials do not have control over an inmate's mind or the ability to force the mentally ill to willingly participate in treatment. They often lack the authority or resources to rehabilitate willing offenders. The law should not require the impossible. The Court of Appeals recognition of a duty to rehabilitate violent criminals is in conflict with this Court's decision in *Melville*, and contrary to sound public policy and common sense. For these reasons, this Court should reverse the decision of the Court of Appeals and affirm the order granting summary judgment.

RESPECTFULLY SUBMITTED this 4th day of December, 2015.

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DECLARATION OF SERVICE

I, Debora A. Gross, declare that on the date indicated below, I emailed a true and correct copy of the foregoing document to the following parties or their counsel of record:

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<p>Mark R. Bucklin Keating, Bucklin & ,McCormack, Inc. P.S. 800 Fifth Ave., Suite 4141 Seattle, WA 98104-3175 Email: mbucklin@kbmlawyers.com</p>	<p>Christopher Kerley Evans, Craven & Lackie, P.S. 818 W. Riverside, Suite 250 Spokane, WA 99201-0910 Email: ckerley@ecl-law.com</p>
<p>Howard Goodfriend Smith Goodfriend, P.S. 1619 – 8th Ave. North Seattle, WA 98109 Email: howard@washingtonappeals.com</p>	<p>Arne O. Denny Skagit County Prosecutor’s Office 605 Third Street Mt. Vernon, WA 98273 Email: arned@co.skagit.wa.us</p>
<p>Daniel B. Heid Counsel for Amicus Curiae, Wash. State Assoc. of Municipal Attorneys Email: dheid@auburnwa.gov</p>	<p>George Ahrend Counsel for Amicus Curiae Washington State Assoc. of Municipal Attorneys Email: gahrend@ahrendlaw.com</p>
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<p>Bryan Harnetiaux WA State Ass’n for Justice Found. Email: amicuswsajf@wsajf.org</p>	<p>Valerie Davis Mcomie Email: valeriemcomie@gmail.com</p>

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 4th day of December, 2015, at Tumwater, WA.

/s/ Debora A. Gross
DEBORA A. GROSS
Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Gross, Debora (ATG)
Cc: Lynch, Mike (ATG); Savoia, Lisa (ATG); Washington, Cathy (ATG); ATG MI TOR Oly EF
Subject: RE: Supreme Court No. 91644-6 - Binschus, et al. v. Skagit County, et al.

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Supreme Court Clerk's Office

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From: Gross, Debora (ATG) [mailto:DeboraG1@ATG.WA.GOV]
Sent: Friday, December 04, 2015 1:02 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
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Subject: Supreme Court No. 91644-6 - Binschus, et al. v. Skagit County, et al.

Good afternoon,

Attached for filing is the State's Amicus Curiae Brief with attached Declaration of Service. If you should have any questions, please contact me at the number below. Thank you.

Sincerely,

Deb Gross

Debora A. Gross
Legal Assistant to Division Chief Pam Anderson
and Michael P. Lynch, Senior Counsel
Office of the Attorney General
Torts Division / PO Box 40126
Olympia, WA 98504/ 360.586.6427