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NO. 95015-6

**SUPREME COURT OF THE
STATE OF WASHINGTON**

BNSF RAILWAY COMPANY, Respondent

v.

THOMAS B. CLARK, M.D., Pierce County Medical Examiner,
and PIERCE COUNTY MEDICAL EXAMINER, Petitioners

**BRIEF OF AMICUS CURIAE WASHINGTON ASSOCIATION OF
CORONERS AND MEDICAL EXAMINERS (WACME)**

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**I. IDENTITY AND INTEREST OF AMICUS CURIAE
WASHINGTON ASSOCIATION OF CORONERS AND
MEDICAL EXAMINERS (WACME)**

The Washington Association of Coroners and Medical Examiners (WACME) is an association that facilitates communication and coordination among Washington's elected Coroners and appointed Medical Examiners, and facilitates their pursuit of matters of common interest. Among other things, these can include legal issues of concern, including legislation and case law, which affect the authority, duties, and responsibilities of Coroners and Medical Examiners. The Washington Association of County Officials (WACO) often represents WACME in legislative matters.

This case is of significant concern to WACME and its members because the central issue before the Court is an interpretation of the Washington statutes that govern the authority of Coroners and Medical Examiners to perform their duties. WACME is concerned that a ruling by the Court adverse to the Petitioner could deprive Coroners and Medical Examiners of the legal authority necessary to perform their duties. Which would have a detrimental impact on the public that they serve.

For this reason, pursuant to RAP 10.1(e) and 10.3(e), WACME asks the Court for leave to participate in this case as an amicus curiae, and in so doing, submits this brief to the Court.

II. STATEMENT OF THE CASE

Amicus Curiae WACME incorporates by reference the Statement of

the Case presented in the brief of Petitioner, Dr. Clark. Br. Pet. 4-10.

III. ARGUMENT

A. The Offices of Coroner and Medical Examiner

The public office of Coroner is statutory in origin and has long performed an important public function. The office is historically significant, being one of the original and oldest public offices in Washington. Not only does it pre-date statehood, it goes back to the First Territorial Legislative Assembly. *See, e.g.*, 1854 LAWS OF WASHINGTON (Terr.) Ch. 1, sec. 79. *See, also*, 1854 LAWS OF WASHINGTON p. 435, "An Act Relative to Coroners." Presumably the office existed in the counties while they were part of the Oregon Territory and thus predates even the creation of the Washington Territory.

While the office of Coroner goes back to the origins of Washington, the Legislature created the office of Medical Examiner in 1996 as an additional option for counties with a population of 250,000 or more. 1996 LAWS OF WASHINGTON, Ch. 108 § 2. Medical Examiners must be qualified in forensic pathology. *See* RCW 36.24.190. Unlike Coroners, who are elected officials, Medical Examiners are officials appointed by the county legislative authority. *Compare* RCW 36.16.030 *with* RCW 36.24.190.

Medical Examiners assume all the statutory duties performed by a county Coroner. RCW 36.24.190. Thus, Coroners and Medical Examiners have the same exact legal authority, duties and responsibilities. Coroners are

trained as forensic death investigators. When necessary a Coroner may obtain autopsies and medical expertise from surgeons and physicians, to include a professional opinion as to the cause of death. RCW 36.24.060. Medical Examiners are forensic pathologists. RCW 36.24.190. They employ death investigators within their offices. Indeed, both Coroners and Medical Examiners may employ deputies and other necessary employees to perform their responsibilities. *See* RCW 36.16.070.

The use of Medical Examiners makes sense in counties with large populations that can afford to maintain an office of a Medical Examiner. Due to a national shortage of Medical Examiners, and budget limitations it would be a current impossibility to employ a Medical Examiner in every county. Coroners satisfy the statutory requirements for death investigations and determinations in a manner that better meets the needs of smaller counties.

For the sake of brevity, and because the relevant statutes primarily refer to Coroners, hereinafter all references to Coroners includes by extension Medical Examiners.

B. Coroners May Conduct Death Investigations and Are Not Limited to Performing Their Work Through Inquests

Coroners have jurisdiction over human bodies under a number of circumstances, including sudden death when in apparent good health; death caused by unnatural or unlawful means; death under suspicious circumstances; from unknown or obscure causes; *or where a Coroner's*

autopsy or post mortem or Coroner's inquest is to be held. RCW 68.50.010.

The emphasized language establishes that a Coroner has authority to conduct a death investigation regardless of whether the Coroner convenes an inquest because it distinguishes between an autopsy or post mortem and a Coroner's inquest. Similarly, the authority to conduct an autopsy distinguishes between cases "*where the coroner is authorized to hold an inquest upon the body,*" and "*... in any case in which the coroner has jurisdiction of the body.*" RCW 68.50.100.

That a Coroner may conduct a death investigation without an inquest is further established by the fact that whether to conduct a Coroner's inquest is discretionary on the part of the Coroner. RCW 36.24.020; *State ex rel. Lopez Pacheco v. Jones*, 66 Wn.2d 199, 201 (1965) (where the coroner as an administrative officer is granted discretionary authority, a party challenging the discretionary decision bears the burden to establish arbitrary and capricious conduct in the exercise of authority).

Finally, a Coroner or Medical Examiner is immune from civil liability for determining the cause and manner of death. RCW 68.50.015. This reflects the Coroner's authority to conduct death investigations and determinations independent of the inquest process because, in an inquest, the inquest jurors, not the Coroner, make the death determination. The need for the Coroner's immunity from liability only arises because the coroner has the authority to make the death determinations independent of an inquest jury.

In point of fact, the inquest process that uses jurors to make a death determination is one employed by Coroners only infrequently, ordinarily to provide an open and public determination in cases of an unusually sensitive or political nature.

C. Coroners Have General Subpoena Authority

The legislature has granted Coroners the authority to subpoena and summon witnesses. *See* RCW 36.24.050.

The coroner may issue subpoenas for witnesses returnable forthwith or at such time and place as the coroner may appoint, which may be served by any competent person. The coroner must summon and examine as witnesses, on oath administered by the coroner, every person, who, in his or her opinion or that of any of the jury, has any knowledge of the facts. A witness served with a subpoena may be compelled to attend and testify, or be punished by the coroner for disobedience, in like manner as upon a subpoena issued by a district judge.

Nothing in the statutory language conditions or limits the grant of subpoena and summons authority only to where a Coroner conducts an inquest. The only reference to the inquest process is the inclusion of the language "... or that of any of the jury ..." which merely indicates that the Coroner may also subpoena or summons witnesses to appear in an inquest.

A Coroner's subpoena authority is the same as a judge at district court. For the reasons argued by the Petitioner, that includes the authority to issue a subpoena duces tecum. Br. Pet. 21-25; Reply Br. Pet. 4-7.

D. Coroners Should Be Accorded Great Deference in Their Exercise of Discretion on How to Conduct an Inquest

It is the position of WACME that under the plain language of RCW 36.24.050 Dr. Clark did not need to initiate an inquest in order to have subpoena authority. Nonetheless, he did so.

Coroners have broad discretion as to how to conduct an inquest. The only requirement imposed on them to initiate an inquest is that they notify the superior court. *See* RCW 36.24.020. This Court should interpret broadly the Coroner's authority on how to conduct inquests.

This Court should not limit the authority of Coroners by imposing requirements that are not contained in the statute. The Court should hold that Dr. Clark's notice to the superior court administrator was sufficient to initiate the inquest. This Court should not, however, hold that such a process is necessary, as the superior courts in the various counties of the state are structured and operated differently from each other. Other methods of initiating an inquest may suffice in the various counties.

Further, Dr. Clark, apparently in an abundance of caution, has also assumed that once a Coroner's inquest is convened, it must be completed to its conclusion. While the good doctor's exercise of an abundance of caution in this regard is understandable, this Court should not hold that he is bound to conduct the inquest to a conclusion. Consistent with the broad discretion vested in Coroners as to the conduct of an inquest, this Court should hold that Coroners retain the authority to terminate an inquest at their discretion. To

hold otherwise would require Coroners to engage in a pointless, time consuming, and expensive exercise in those circumstances where it has become apparent in the course of an inquest that it is unnecessary to conclude the inquest. This Court should hold that it rests within the sound discretion of Coroners whether to pursue an inquest to a verdict. This is particularly so where a panel of jurors has not yet been seated and sworn.

E. The Court Should Recognize the Broad Grant of Discretion Granted to Coroners Because to Do Otherwise Would Eliminate the Ability of Coroners to Perform Their Statutory Responsibilities

The legislature, through the statutes, has vested considerable discretionary authority in Coroners. This is because such discretion is necessary for Coroners to perform their responsibilities in the broad range of death circumstances which they are required to investigate. That the statutes are not more specific is consistent with and reflective of the broad grant of discretion given to Coroners. Parties challenging the discretionary authority of Coroners should be required to establish arbitrary and capricious conduct in the exercise of the Coroner's authority. *See State ex rel. Lopez-Pacheco v. Jones*, 66 Wn.2d 199. That was not done here.

Coroners are responsible for making death determinations under a number of significant circumstances. *See* RCW 36.24.020; RCW 368.50.010; 68.50.100. While evidence from the body of the deceased is certainly important to death determinations, other evidence is often necessary to make

a proper and true determination. Such external evidence may be necessary, as is the case here, to determine if the death was accidental or intentionally self-inflicted. External evidence can be equally necessary to determine whether a death was caused by accident or unlawful means. To deny Coroners of their statutory subpoena and summons authority would make it impossible for Coroners to make determinations in many cases.

Coroners cannot perform their duty to make a death determination if parties can withhold relevant evidence. It is for this reason that Coroners have subpoena authority, to include the authority to issue subpoenas duces tecum.

To follow the Respondent's position to its logical conclusion would result in an unreasonable and unworkable result for the public. Often insurance and other death benefits are conditioned on the cause of death (homicide, suicide, accidental death, or death by natural causes). As those death benefits are waiting for a finding by the coroner's inquest jury the decedent's survivors can be deprived of the means to make final arrangements, or benefits to maintain their household. If as Respondents asserts a coroner's inquest must be scheduled and empaneled in order to gain access to necessary evidence to support a cause of death determination, this would extend by months the period it would otherwise take to arrive at such a conclusion. Such a result is contrary to the coroners' and medical examiners' statutory duties and to interests of public policy.

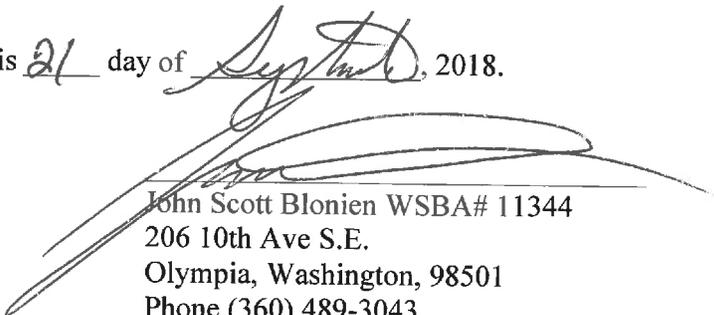
If this Court were to adopt the reasoning of the Respondent, it would in many instances make it impossible for Coroners to perform their statutory responsibilities. In creating the office of Coroner, the legislature did not intend it to be either a nullity or ineffective. For this reason, the arguments of the Respondent should be rejected.

IV. CONCLUSION

The legislature has granted Coroners broad discretionary authority on how to conduct death investigations. This authority includes subpoena and summons authority, as well as discretion on how to conduct an inquest. This Court should recognize the legislature's broad grant of authority to Coroners in conducting their duties. It should affirm Coroners' subpoena authority and also affirm their discretionary authority on how to initiate inquests and when to cease or terminate inquests. The Court should rule in favor of Petitioner

Dr. Clark. To do anything less would be contrary to the intent of the legislature, would undermine the office of Coroner, and in some circumstances make it impossible for Coroners to perform their statutory duties.

DATED this 21 day of September, 2018.



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BNSF Railway Company

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Respondent,

PROOF OF SERVICE

v.

Thomas B. Clark, M.D., Pierce
County Medical Examiner, and
Pierce County Medical Examiner

Petitioner.

On the 21 day of September, 2018, pursuant to the agreement of the parties and *amici curiae*, I e-mailed a copy of the Brief of Amicus Curiae Washington Association of Coroners and Medical Examiners (WACME) and copy of the Motion for Leave to File *Amicus Curiae* Brief, and copy of this Proof of Service to:

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Steve Trinen: steve.trinen@piercecountywa.gov

Signed under penalty of perjury under the laws of the State of Washington this 21st day of September 2018, at Olympia, Washington.



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