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NO. 96830-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JESSICA L. WRIGLEY, individually, and as Personal Representative for
the Estate of A.C.A., Deceased, and O.K.P., a minor child, and I.T.W., a
minor child, by and through their biological mother,
JESSICA WRIGLEY,

Respondents,

vs.

STATE OF WASHINGTON; DEPARTMENT OF SOCIAL & HEALTH
SERVICES; DONALD WATSON & "JANE DOE" WATSON, husband
and wife, individually and the marital community thereof;
ALESSANDRO LAROSA & "JANE DOE" LAROSA, husband and wife,
individually and the marital community thereof; RACHEL WHITNEY &
"JOHN DOE" WHITNEY, husband and wife, individually and the marital
community thereof; JENNIFER GORDER & "JOHN DOE" GORDER,
husband and wife, individually and the marital community thereof;
"JOHN DOE" Social Worker & "JANE DOE" Social Worker, husband
and wife individually and the marital community thereof, 1, through 5;

Petitioners.

BRIEF OF *AMICUS CURIAE*
WASHINGTON STATE ASSOCIATION OF MUNICIPAL
ATTORNEYS IN SUPPORT OF PETITIONERS

Daniel G. Lloyd, WSBA No. 34221
Assistant City Attorney
City of Vancouver
P.O. Box 1995
Vancouver, WA 98668-1995
(360) 487-8500/(360) 487-8501 (fax)
dan.lloyd@cityofvancouver.us

Counsel for Amicus Curiae
Washington State Association of Municipal Attorneys

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OTHER SOURCES

Minority Report (20th Century Fox et al., 2002)1, 3, 9

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I. INTRODUCTION, IDENTITY & INTEREST OF *AMICUS CURIAE*

Local law enforcement receives thousands of child abuse reports every year. Take for example the following harrowing statistics from 2018: 2,093 cases of simple assault, 522 cases of aggravated assault, 105 cases of child rape, 29 cases of sodomy or statutory rape, and 783 cases of violations of no-contact/protective order. See [WASH. ASS'N OF SHERIFFS & POLICE CHIEFS, 2018 CRIME IN WASH. REPORT](#) at 30 (2018) (report available via hyperlink embedded in text). The foregoing numbers confirm that child abuse is a horrific and terrible act that occurs all too often, and Washington's law enforcement personnel are called upon to shoulder the heavy burden of investigating these sickening crimes against the innocent.

But even those accused of the most heinous crimes have rights in our system of justice. As Justice Wiggins aptly wrote eight years ago, "We cannot lock up every person who presents a risk of future violent crime. Indeed, we recoil from the thought of confining innocent men and women simply because a knowledgeable objective observer is reasonably apprehensive that man or woman will commit a crime." *In re Det. of Danforth*, 173 Wn.2d 59, 91, 264 P.3d 783 (2011) (Wiggins, J., dissenting). In writing this passage, Justice Wiggins expressed optimism that the State of Washington "will never have PreCrime police" as shown in the movie *Minority Report* (20th Century Fox et al., 2002) because "our

courts require the State to confine state action to due process of law.” *Id.* at 90-91.¹

The Court of Appeals’ opinion below undermines Justice Wiggins’ optimism. If left intact, those agencies charged with the duty to investigate child abuse must—in order to avoid liability—take steps toward removing children from a parent’s care upon receiving “a report suggesting a reasonable possibility of abuse or neglect in the future,” *Wrigley v. State*, 5 Wn. App. 2d 926, 428 P.3d 1279 (2018), *review granted*, 193 Wn.2d 1008 (2019), functionally transmogrifying these officials into the same PreCrime police the thought of which causes anyone believing in the concept of innocent-until-proven-guilty to “recoil,” *Danforth*, 173 Wn.2d at 91 (Wiggins, J., dissenting). Inevitably, these future-based-removals will lead to even more litigation because the “remov[al] of a child from a nonabusive home” is a viable basis for a parent to sue, and the parent in these hypotheticals from whom custody is taken need not prove anything to demonstrate that, at the time the child is removed, the home is “nonabusive.” *M.W. v. Dep’t of Soc. & Health Servs.*, 149 Wn.2d 589, 597, 70 P.3d 954 (2003).

This dichotomy exemplifies the Catch-22 that the Court of Appeals foisted upon agencies entrusted to investigate allegations of child abuse and neglect, which include law enforcement agencies represented by the members of *amicus curiae* Washington State Association of Municipal Attorneys (WSAMA). If left intact, the Court of Appeals’ opinion holds

¹ *Danforth* was a fractured opinion that resulted in the civil commitment of Robert Danforth not because a majority of justices disagreed with the profound statement of Justice Wiggins quoted above, but rather because Danforth stipulated to being committed. 173 Wn.2d at 75, 78 (Chambers, J., concurring in part & dissenting in part).

that upon receipt of an allegation suggesting future abuse, an investigating agency either (a) faces liability for leaving a child in the care of a parent whom someone says will abuse that child in the future (if abuse occurs), or (b) faces liability to the parent who has never before abused his or her child if the agency takes steps to secure removal (because the abuse then does not occur). The only way to avoid liability is to successfully predict the future, which is utterly impossible short of finding “PreCogs” as depicted in *Minority Report*. What’s more is that municipalities and their employees face liability under federal civil rights law if they act according to the Court of Appeals’ mandate. *E.g.*, *Wallis v. Spencer*, 202 F.3d 1126, 1138 (9th Cir. 1999) (discussed *infra*)

WSAMA asks this Court to resolve the paradox created by the Court of Appeals’ interpretation of RCW 26.44.050 by reversing the decision below. WSAMA is a non-profit organization of municipal attorneys who represent Washington’s 281 cities and towns. WSAMA members represent municipalities throughout the state. Its members advise and defend their respective client-cities in cases involving allegations of police liability. The scope of that liability is one of great importance to Washington’s cities and towns, meaning WSAMA has a vested interest in the outcome of this case.

II. STATEMENT OF THE CASE

The parties seem to agree on the salient facts. Based on allegations of child abuse or neglect, A.A. was taken from his mother, Plaintiff-Respondent Jessica Wrigley, resulting in the Department of Social and Health Services (DSHS)² initiating dependency proceedings. During the proceedings, A.A.'s father, Anthony Viles, actively petitioned for custody, which led to the dismissal of the dependency action. It is undisputed that Wrigley's attorney "suggested they were in agreement with dismissing the dependency petition, which would leave A.A. in Viles' custody." *Wrigley*, 5 Wn. App. at 918. Viles had a history of violent behavior before, during, and after his relationship with Wrigley, but was never before suspected of abusing or neglecting any child.

Eight weeks after the dependency petition was dismissed, Viles struck A.A., causing the child's death. Wrigley then sued DSHS claiming negligent investigation leading to a "harmful placement decision" when Viles took A.A. home with him.

III. ARGUMENT

DSHS aptly explains from the State's perspective the flaws in the Court of Appeals' analysis. *See* Pet. for Review; Supp'l Br. of Pet'r. WSAMA does not repeat that analysis here, RAP 10.2(h), but rather demonstrates below how the Court of Appeals' construction of RCW 26.44.050 cannot be reconciled with how law enforcement discharges its

² Functions performed by the Children's Administration within the Department of Social and Health Services (DSHS) were transferred, along with all liabilities, to the Department of Children, Youth, and Families (DCYF) on July 1, 2018. LAWS OF 2018, ch. 58. Following the Court of Appeals' lead, WSAMA will refer to the Department in this brief as DSHS. *See Wrigley*, 5 Wn. App. at 911 n.1.

obligations under that statute, particularly in relation to protecting the constitutional rights of parents.

A. The Court of Appeals’ expansion of RCW 26.44.050 investigations into future abuse creates a Catch-22 that will always result in an arguable “harmful placement decision” regardless of whether a child is removed from or left with the accused parent.

Both this Court and the Court of Appeals have long held that “claim[s] for negligent investigation ... do not exist under the common law in Washington.” *Ducote v. Dep’t of Soc. & Health Servs.*, 167 Wn.2d 697, 702, 222 P.3d 785 (2009) (citing *Pettis v. State*, 98 Wn. App. 553, 558, 990 P.2d 453 (1999)); *see also Janaszak v. State*, 173 Wn. App. 703, 725, 297 P.3d 723 (2013) (“We have refused to recognize a cognizable claim for negligent investigation against law enforcement officials and other investigators.”); *Fondren v. Klickitat County*, 79 Wn. App. 850, 862, 905 P.2d 928 (1995) (same); *Dever v. Fowler*, 63 Wn. App. 35, 45, 816 P.2d 1237 (1991) (same). The rationale behind this established view is to aver “the chilling effect such claims would have on investigations.” *Pettis*, 98 Wn. App. at 558. The single limited exception to the general rule of no liability for negligent investigation is premised on RCW 26.44.050, which states in relevant part:

Upon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department of social and health services must investigate and provide the protective services section with a report in accordance with chapter 74.13 RCW, and where necessary to refer such report to the court.

RCW 26.44.050. This Court held “this statutory duty implies a cause of action for children and parents for negligent investigation in certain

circumstances.” *M.W.*, 149 Wn.2d at 595 (citing *Tyner v. Dep’t of Soc. & Health Servs.*, 141 Wn.2d 68, 79-81, 1 P.3d 1148 (2000)). Although this Court has not decided whether to extend RCW 26.44.050’s statutory duty in negligence to law enforcement, *Roberson v. Perez*, 156 Wn.2d 33, 45 n.10, 123 P.3d 844 (2005), the Court of Appeals has done so, *Rodriguez v. Perez*, 99 Wn. App. 439, 443-49, 994 P.2d 874 (2000).³ Consequently, until and unless this Court overrules Court of Appeals precedent extending this duty to law enforcement, those agencies represented by WSAMA members must proceed as though that actionable duty exists.

This Court has stressed that because “courts have not recognized a general tort claim for negligent investigation,” “[t]he negligent investigation cause of action against DSHS is a narrow exception that is based on, and limited to, the statutory duty” imposed by RCW 26.44.050 and the remedies the statute was designed to promote. *M.W.*, 149 Wn.2d at 601 (emphasis added). In this vein, a violation of RCW 26.44.050 must proximately cause a “harmful placement decision” before liability can attach. *Roberson*, 156 Wn.2d at 46 (quoting *M.W.*, 149 Wn.2d at 591). A “harmful placement decision” occurs when the child has been placed in an

³ As explained in footnote 10 of *Roberson*, *Rodriguez* was an earlier appeal of the same lawsuit, and this Court’s “denial [of the County’s petition for review in *Rodriguez*] import[ed] no expression of opinion upon the merits of the issues presented therein.” *Roberson*, 156 Wn.2d at 45 n.10. Two other Court of Appeals opinions declared that RCW 26.44.050’s duty extends to law enforcement. *Lewis v. Whatcom County*, 136 Wn. App. 450, 149 P.3d 686 (2006), did so addressing the County’s unsuccessful argument that there was no duty to investigate the allegations of a victim that her uncle had sexually abused her because he was not the victim’s parent. *Id.* at 454-55. The other did so by citing to *M.W.*, see *McCarthy v. Clark County*, 193 Wn. App. 314, 328, ¶ 41, 376 P.3d 1127 (2016) (citing *M.W.*, 149 Wn.2d at 595), despite the fact that the words “law enforcement” appeared in *M.W.* only in the dissenting opinion’s parenthetical reference to *Rodriguez*, see *M.W.*, 149 Wn.2d at 606 (Sanders, J., dissenting). This Court need not and should not decide here whether *Rodriguez* was correct, but WSAMA proceeds here as though it remains the law.

abusive home, left in an abusive home, or removed from a nonabusive home. *Id.* at 45 (citing and quoting *M.W.*, 149 Wn.2d at 591).

Tyner illustrates this approach in the context of a parent separated from his or her child despite mistaken allegations of child abuse. *E.g.*, *Tyner*, 141 Wn.2d at 89. There, David Tyner was believed by his eventual ex-wife to have molested their two minor children after some comments by their four-year old son. *Id.* at 71-72. A subsequent physical examination by the children's pediatrician and an interview by a CPS caseworker proved inconclusive; but a declaration from the caseworker proved enough for a judge to grant an *ex parte* order barring all contact between Mr. Tyner and his children. *Id.* at 72-73. The mother filed a dependency petition, which resulted in further separation between Mr. Tyner and his children. *Id.* at 74. Several months passed before Mr. Tyner was finally granted the ability to see his children without any restrictions. *Id.* at 75-76. A jury would later find in Mr. Tyner's favor and award him more than \$200,000 against DSHS, a verdict this Court reinstated after the Court of Appeals overturned it. *Id.* at 76, 89. Following the three-part test adopted by *Bennett v. Hardy*, 113 Wn.2d 912, 784 P.2d 1258 (1990), this Court held that parents accused of abuse were "'within the class for whose 'especial' benefit [RCW 26.44.050] was enacted,'" *Tyner*, 141 Wn.2d at 77 (quoting *Bennett*, 113 Wn.2d at 920), by pointing to "the Legislature[']s ... recogni[tion of] the importance of the family unit and the inextricable link between a parent and child," *Tyner*, 141 Wn.2d at 79. Thus, when Mr. Tyner's children were removed from his nonabusive home as a result of a negligent investigation, DSHS was liable to him. In

contrast, when a child is removed from a nonabusive home for reasons other than an alleged negligent child abuse investigation, there is no liability. *E.g.*, *Roberson*, 156 Wn.2d at 48.

If the duty to investigate under RCW 26.44.050 is triggered, the reasonableness of that investigation will quintessentially be one of fact almost incapable of resolution short of trial. *Cf. Owen v. Burlington N. Santa Fe R.R.*, 153 Wn.2d 780, 788, 108 P.3d 1220 (2005) (noting that “issues of negligence ... are generally not susceptible to summary judgment”) (citations and internal quotation marks omitted). This means that a law enforcement officer who investigates a child abuse claim must stand trial if he or she either leaves a child in an abusive home or removes a child from a nonabusive home. Stated in the converse, a law enforcement officer must, if RCW 26.44.050 is triggered, do one of the following to avoid liability: (a) take steps to ensure the *removal* of the child from an *abusive* home, or (b) *leave* the child in a *nonabusive* home.

But therein lies the officer’s dilemma upon receiving a report of child abuse that has *not* yet occurred. *Wrigley* illustrates the scenario of the officer disbelieving the predicted abuse, only to learn later that the forecast of the child’s abuse proved accurate. Under the Court of Appeals’ analysis, the officer would have been obligated to take steps *at the time of the prediction* to ensure the child’s removal. But if the officer took those steps *at that time* believing the home to be abusive (because abuse might happen in the future), the hypothetical becomes functionally indistinguishable from *Tyner*—a parent is accused of abuse that has not occurred and children are taken away as a result. And in that case, the

officer and his or her employer face liability. *Tyner*, 141 Wn.2d at 77-79. Only if the officer has the same abilities as the “PreCogs” in *Minority Report* can he or she know whether to remove or leave the child. Reality is not fantasy, and society does not function as a scriptwriter imagines it. In fantasy, the officer could successfully predict the future 10 out of 10 times, always preventing harm from occurring. But in reality, the officer is forced to defend his or her actions at trial *regardless* of what choice he or she would make. The law cannot permit such an impermissible Catch-22.

B. The Court of Appeals’ expansion of RCW 26.44.050’s duty to include investigating the future is inconsistent with the statutory scheme of what law enforcement officers can do upon receiving reports of child abuse.

The scope of tort liability imposed by statute must be tied to the statute’s language. *Ducote*, 167 Wn.2d at 703-04. *Ducote* illustrates this principle, as the Court there declined an invitation to expand the category of plaintiffs who could bring a negligent investigation claim under RCW 26.44.050 to stepparents, reasoning that group was not specifically called out in statute’s text. *See id.* at 706 (“Although we may imply a remedy, we *look to the language of the statute* to determine to whom the remedy is available.”) (emphasis added). Necessarily then, the statute’s language is determinative over not only *when* a law enforcement officer must act, but also *what* he or she must do when called upon to do so.

Upon receiving a report of child abuse or neglect, a law enforcement officer “must investigate and provide [child] protective services ... with a report in accordance with chapter 74.13 RCW.” RCW 26.44.050. Of course, if there is probable cause to believe a parent has abused his or her child, the officer arrests the parent. RCW

10.99.030(6)(a). But this case poses a different question: what does the officer do when abuse has *not* already occurred? After all, the officer cannot—and should not—arrest a parent if probable cause is lacking to believe abuse that has occurred in the past. *Cf.* U.S. CONST., amend. IV.

The officer has the discretion to take a child into protective custody without a court order only if two elements are met: (1) “there is probable cause to believe that the child *is abused or neglected* and [(2)] the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050.” RCW 26.44.050 (emphasis added). The use of the simple present passive voice “is abused or neglected”—as opposed to the future passive “will be abused or neglected”—necessarily implies only abuse or neglect that occurred previously. *Compare Nicholson v. World Bus. Network*, 105 F.3d 1361, 1365 (11th Cir. 1997) (construing regulation’s language “is compensated” as “a passive verb in the past tense that suggests an action completed, i.e., that the employee has actually been paid”) *with Alvarez v. Banach*, 153 Wn.2d 834, 840, 109 P.3d 402 (2005) (use of language “to be delivered” in certificate of service insufficient to convey proof that document had been delivered at time of filing). Thus, before an officer has the discretion to take a child into protective custody, there must be probable cause to believe the child *already* “is abused or neglected.” RCW 26.44.050. To be sure, the Ninth Circuit found government officials violated parents’ Fourteenth Amendment rights when they took children into protective custody without a court order based on a tip from a family member that the parents would, in the near future, murder their children. *Wallis*, 202

F.3d at 1137-41. Given *Wallis*, the Court of Appeals' interpretation of RCW 26.44.050 can be sustained only if the Court ignores its "duty to construe statutes to preserve their constitutionality." *In re Detention of M.W.*, 185 Wn.2d 633, 648, 374 P.3d 1123 (2016). Construing RCW 26.44.050 consistent with the Constitution, the statute has meaning only when applied to abuse that has already occurred, not abuse that might occur at some point in the future.

Because a law enforcement officer cannot take a child into protective custody after a report of future abuse, the officer's only other ability to remove a child from an allegedly dangerous situation would be pursuant to court order. *See* RCW 13.34.050. Such an order, though, can issue only upon the court finding that "at least one of the grounds set forth [in the petition] demonstrates a risk of imminent harm to the child." *Id.* Applied to this case, Jessica Wrigley's statement that A.A. would be "dead in six months," *Wrigley*, 5 Wn. App. 2d at 925, would be insufficient to justify an order of removal from Viles absent a showing of harm to A.A. was, at the time Wrigley made the statement, "imminent," RCW 13.34.050. Six months in the future falls short of this standard. *See In re Pers. Restraint of Faircloth*, 177 Wn. App. 161, 169-70, 311 P.3d 47 (2013) (rejecting claim that "one episode of abuse that occurred five months" previously was sufficient to "imply an imminent threat"). Consequently, a law enforcement officer would have been powerless to do anything in response to Wrigley's "dead in six months" prediction, yet the Court of Appeals' analysis implies that liability should still result.

Nor can the Court of Appeals' statutory analysis be reconciled with the very statutory construction principles it sought to employ. The Court of Appeals concluded that RCW 26.44.050 encompasses reports of future abuse by relying heavily on the dictionary definitions of "possible" and "occurrence." See *Wrigley*, 5 Wn. App. at 925-27. In the Court of Appeals' view, because the dictionary definition of "possible" included the definition as "that [which] may or may not occur : that may chance," the phrase "possible occurrence" included reports of what might transpire in the future. *Id.* at 925 (quoting WEBSTER'S NEW INTERNATIONAL DICTIONARY 1771 (2002)). But the dictionary also defines "possible" to mean "that may be true or may be the case, as something concerning which one has no knowledge to the contrary." RANDOM HOUSE UNABRIDGED DICTIONARY, available at <http://www.dictionary.com/browse/possible> (last visited Aug. 26, 2019). This definition eschews future predictions, instead suggesting (logically so) that an officer or caseworker must investigate a report of child abuse even if it is unknown whether the abused actually occurred. When a dictionary provides two reasonably alternative definitions, the statute loses its preciseness and is more accurately categorized as ambiguous. See *Columbia Riverkeeper v. Port of Vancouver*, 188 Wn.2d 421, 435, 395 P.3d 1031 (2017) (noting that a "statute [can] remain[] ambiguous" even after a court looks to a dictionary). As explained above, interpreting "possible" to include events in the future leads to the absurd consequence of shouldering officials with liability regardless of which action they take, necessarily negating the viability of that construction. *Glaubach v. Regence Blueshield*, 149 Wn.2d

827, 833, 74 P.3d 115 (2003) (“We avoid readings of statutes that result in unlikely, absurd, or strained consequences.”). But even if that interpretation were reasonable, it would then be appropriate to look to history as a guide for legislative intent because of the statute’s ambiguity. *State v. Evans*, 177 Wn.2d 186, 193, 298 P.3d 724 (2013). That legislative history reveals that the Court of Appeals’ view was wrong.

The word “possible” was first introduced in the earliest version of what is now RCW 26.44.050 in the following context:

Upon the receipt of a report concerning the *possible nonaccidental infliction of a physical injury upon a child* or physical neglect, or sexual abuse, it shall be the duty of the law enforcement agency to investigate and to refer such report to the court.

LAWS OF 1965, ch. 13, § 5 (emphasis added). This use of the term “possible” reflected legislative intent to address those situations in which a child was injured, and that the injury could have been caused by “nonaccidental” means. *Id.* In this sense, the legislature intended the word “possible” to address not some hypothetical event in the future, but rather those situations in which a child has already been injured but the cause of that injury could be either criminal or accidental. Stated another way, if there was a question as to whether the injury was accidental, the police should investigate. This makes sense.

That use of “possible” has remained unchanged since 1965. The legislature substituted the phrase “occurrence of child abuse or neglect” for “nonaccidental infliction of a physical injury upon a child” a decade later, otherwise left the word “possible” unaltered. LAWS OF 1975, 1st Ex. Sess., ch. 217, § 5. Thus, the most logical and sensible reading of

“possible” was to refer to an “occurrence of child abuse or injury” that either happened already or did not happen, but not something that *could* happen in the future.

It must be remembered that the goal of statutory interpretation is to give effect to the legislature’s intent. *Frias v. Asset Foreclosure Servs., Inc.*, 181 Wn.2d 412, 422, 334 P.3d 529 (2014). Proper use of statutory interpretive tools reveals that the Court of Appeals mistakenly distorted a dictionary meaning to ignore reasonable alternative definitions, and in so doing ignored legislative history that more appropriately shed light on what was actually intended.

Consequently, the Court of Appeals’ interpretation of RCW 26.44.050 was incorrect and should be reversed.

IV. CONCLUSION

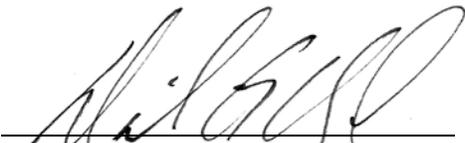
Despite its best intentions to fashion a remedy for Jessica Wrigley, the Court of Appeals’ opinion in this case serves as license to hold social workers and law enforcement officers to a strict liability standard, functionally elevating them to insurers for the wrongful and despicable acts of child abusers. Under the Court of Appeals’ analysis, social workers and, by extension, police officers must now become PreCrime police and accurately predict future child abuse to avoid liability.

If we “recoil from the thought of confining innocent men and women simply because a knowledgeable objective observer is reasonably apprehensive that man or woman will commit a crime,” then we must equally recoil at the thought of separating families “because a knowledgeable objective observer is reasonably apprehensive that a man

or woman will” abuse or neglect a child in the future. *Danforth*, 173 Wn.2d at 91 (Wiggins, J., dissenting). Due process demands more than relying on a prediction.

For all the foregoing reasons, WSAMA asks this Court to reverse the Court of Appeals and reinstate the trial court’s summary judgment order in favor of DSHS.

RESPECTFULLY SUBMITTED on August 26, 2019.



Daniel G. Lloyd, WSBA No. 34221
Assistant City Attorney
P.O. Box 1995
Vancouver, WA 98668-1995
(360) 487-8500/(360) 487-8501 (fax)
dan.lloyd@cityofvancouver.us

*Counsel for Amicus Curiae Washington
State Association of Municipal Attorneys*

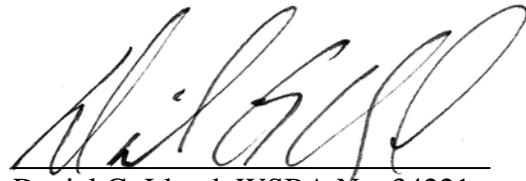
CERTIFICATE OF SERVICE

I certify that on the date referenced below, I served this document by electronic filing via the Washington State Courts Appellate Portal System, which will send notification to all counsel of record as listed below:

Allison Croft
Assistant Attorney General
PO Box 40126
Olympia, WA 98504
(360) 586-6300
AllisonC@ATG.WA.GOV

Gary Preble
Preble Law Firm P.S.
2120 State Ave NE, Ste. 101
Olympia, WA 98506
(360) 943-6960
gary@preblelaw.com
office@preblelaw.com

DATED on August 26, 2019.



Daniel G. Lloyd, WSBA No. 34221
Assistant City Attorney
P.O. Box 1995
Vancouver, WA 98668-1995
(360) 487-8500
(360) 487-8501 (fax)
dan.lloyd@cityofvancouver.us

*Counsel for Amicus Curiae
Washington State Association of
Municipal Attorneys*

VANCOUVER CITY ATTORNEY'S OFFICE

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- office@preblelaw.com

Comments:

Sender Name: Daniel Lloyd - Email: dan.lloyd@cityofvancouver.us
Address:
PO BOX 1995
415 W 6TH ST
VANCOUVER, WA, 98668-1995
Phone: 360-487-8500

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