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SUPREME COURT OF THE STATE OF WASHINGTON

SHYANNE COLVIN, SHANELL DUNCAN, TERRY KILL, LEONDIS BERRY, and THEODORE ROOSEVELT RHONE,

Petitioners,

v.

JAY INSLEE, Governor of the State of Washington, and

STEVEN SINCLAIR, Secretary of the Washington State Department of Corrections,

Respondents

MEMORANDUM OF AMICUS CURIAE WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS

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IDENTITY AND INTEREST OF WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS ("WASPC")

Formed in 1963, WASPC is a non-profit association representing management personnel from Washington State law enforcement agencies, including county sheriffs, city and town police chiefs, executives of the Washington State Patrol and Department of Corrections ("DOC"), and representatives of federal and tribal law enforcement agencies. WASPC's mission is to foster collaboration among law enforcement executives to enhance public safety. WASPC accredits law enforcement agencies and develops industry best practices and standards.

Sheriffs and chiefs of police are the primary officials responsible for law enforcement and public safety. Chiefs of police are the primary law enforcement officers in cities and towns in Washington. A sheriff is the chief law enforcement officer for each of Washington's 39 counties. The sheriff is an elected position.[1] Under Washington law, the "sheriff is the chief executive officer and conservator of the peace of the county."[2]

WASPC and its members are charged with ensuring public safety. In response to the outbreak of COVID-19, WASPC and its members have collaborated with the State on reasonable efforts to protect inmate popula-

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[1] Wash. Const. Art. II, § 5; RCW 36.16.030.
[2] RCW 36.28.010

tions, while continuing to provide public safety and implement the best correctional practices.

The current Executive Director of WASPC, Steven D. Strachan, previously served as both a police chief and sheriff, and also served on Washington's Clemency & Pardons Board ("Board") for two (2) years. With such experience, Mr. Strachan is in a unique position of having knowledge of the Board's procedures for early release of an offender, and how those procedures can affect public safety generally, and law enforcement actions specifically, if done prematurely or without adequate review and planning. Mr. Strachan has submitted a declaration to provide further detail and support for WASPC's position herein.

I. ISSUES OF THE CASE

This brief addresses whether the current case-by-case release process to reduce Washington's inmate population in response to COVID-19 strikes the necessary balance between preserving public safety and protecting inmates such that it should not be overturned for a one-size-fits-all mass release as requested by Petitioners.

II. ARGUMENT

A. Longstanding And Vetted Inmate Release Processes Should Not Be Rushed Or Suspended.

Methods and procedures for releasing inmates have been developed to ensure public safety and successful re-entry into the community based on individualized assessments and planning. Scenarios for release include completion of sentences, furloughs, and the clemency process, each of which requires preparation in order to ensure public safety and reduce recidivism rates.

1. Structured Support Provided To Inmates Through Reintegration Should Not Be Rushed Or Suspended.

The current inmate re-entry process provides incarcerated individuals an opportunity to reenter the community with structured support to successfully transition safely and permanently. Successful reentry relies on positive support systems such as family, employment, education, and targeted treatment.[3] The reentry process may include serving the last portion of a sentence in work release (up to twelve months) and re-entering the community with electronic monitoring (up to six months).[4] Rushing or suspending the reintegration process would deprive inmates of the services and opportunities for successful outcomes,

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[3] Wash. St. Dep't of Corrections, *Graduated Reentry: Incarcerated Individuals*, https://www.doc.wa.gov/docs/publications/400-BR019.pdf (last visited April 10, 2020).

negatively impacting public safety and ultimately harming transitioning inmates, who may not otherwise receive the support needed for success. Washington's current recidivism rate is around 30%.[5] Assuming recidivism rates remain the same or rise due to reduced support, a sudden mass release would increase the number of new crimes committed, creating public safety concerns.

2. Victim Notification Is Crucial To The Inmate Release Process.

In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of certain crimes, the legislature has statutorily required that these individuals be provided safety planning and notification of significant events.[6] Significant events requiring notification include when an inmate is transferred from prison to partial confinement, released into the community, granted furlough, approved for extraordinary medical placement, and also when an inmate submits a release plan while serving a sentence for a sex offense.[7]

WASPC operates a victim information and notification system that alerts registered victims of significant events affecting an offender housed

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[4] *Id.*; RCW 9.94A.733.
[5] Wash. St. Dep't of Corrections, *Washington State DOC 3-Year Prison Recidivism Rates,* https://www.doc.wa.gov/docs/publications/200-CH001.pdf (last visited April 13, 2020).
[6] RCW 72.09.710-714; RCW 72.09.716; RCW 72.09.718; RCW 72.09.340.
[7] *Id.*

in any Washington state city or county jail or DOC facility.[8] Rushing, or suspending, the notification and safety planning process is likely to exacerbate the trauma victims endured originally and potentially lead to avoidable new victimization, creating public safety concerns. Prematurely opening the prison door for an inmate should not also reopen the deep distress of witnesses and victims.

3. The Clemency Process Requires Individualized Analysis And Should Not Be Reduced To A One-Size-Fits-All Mass Release.

The Governor is authorized to grant pardons, clemency, and extraordinary releases from incarceration.[9] The Board was established within the Office of the Governor and consists of five members appointed by the Governor and confirmed by the Senate.[10] The Board receives petitions from individuals and others for commutations of sentences and for pardons of convictions, and makes recommendations on those petitions to the Governor.[11] The Board's public hearings are held on a quarterly basis.[12] The Governor makes the final decision in all cases considered by the Board.[13]

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[8] RCW 36.28A.040
[9] Wash. Const. Art. III, § 9; RCW 10.01.120; RCW 9.94A.728(4), (6).
[10] RCW 9.94A.880.
[11] RCW 9.94A.885.
[12] *Steven D. Strachan Declaration* at ¶13.
[13] Wash. Const. Art. III, § 9; RCW 9.94A.728; RCW 9.94A.885.

Clemency petitions include information and supporting documentation related to any factors demonstrating extraordinary circumstances that warrant relief, including how those circumstances differ from those for similarly situated individuals.[14] Factors generally considered by the Board include the following: the seriousness of the offense; impact on the victims; acceptance of responsibility, remorse, and atonement; personal development and positive life changes since the offense occurred; and the risk or benefit to the community.[15]

If the Board grants a public hearing on the petition, interested parties are notified and given an opportunity to present their own analysis and documentation for the Board's review.[16] Notified interested parties include the Indeterminate Sentencing Review Board, DOC, and the pertinent prosecuting attorney, who in turn notifies the victims and survivors of victims so they have a chance to be heard.[17]

Typically, each hearing lasts a few hours and is broadcast to the public.[18] The Board spends significant efforts reviewing submitted records and has the opportunity to question those speaking at a hearing.[19] After the oral presentation, the Board deliberates and reaches a recommendation

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[14] *Steven D. Strachan Declaration* at ¶¶ 2, 3, and Ex. 1.
[15] *Id.* at ¶ 6.
[16] *Id.* at ¶¶ 2, 8, and Ex. 1.
[17] *Id.*; RCW 9.94A.885(3).
[18] *Id.* at ¶ 8.

that the Governor deny or grant the petition, with or without conditions.[20] The Board cannot make a recommendation until a public hearing has been held.[21] This long-standing and vetted clemency process simply cannot accommodate a sweeping, one-size-fits-all approach for a mass release.

B. Case-By-Case Solutions Have Already Been Implemented To Efficiently Reduce The Inmate Population While Preserving Individual And Public Safety.

As an alternative to the wholesale mass release, effective solutions to reduce the inmate population have already been implemented to protect inmates from COVID-19. Reducing inmate population can be achieved in two ways: reduce the number of incoming prisoners, and increase those being released. Commonsense solutions that account for public and individual safety require an individualized approach. The mass release requested by Petitioners is excessive, overreaching, and without a statutory basis.

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[19] *Id.* at ¶¶ 2, 8, and Ex. 1.
[20] *Id.*
[21] RCW 9.94.885(3).

1. Washington Supreme Court's Emergency Order and the Governor's Proclamation in Response to COVID-19 Empowered Localized Approaches To Reduce The Inmate Population.

This Court's March 20, 2020 Emergency Order,[22] which was revised and extended on April 13, 2020,[23] and the March 30, 2020 proclamation issued by the Governor, have already provided tools to address inmate populations while preserving public safety. As inmates continue to be released in the usual course, reducing the number of incoming inmates decreases the overall inmate population because the outgoing population is not being replaced.

The Emergency Order issued by this Court reduces the incoming population by providing a 45-day deferment for out of custody arraignments, naturally delaying bookings that may result.[24] Bench warrants are limited through May 4th, but warrants continue to be allowed

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[22] WA Supreme Court matter No. 25700-B-607, *In the Matter of Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency* (March 20, 2020), available at http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Supreme%20Court%20Emergency%20Order%20re%20CV19%20031820.pdf (last visited April 15, 2020).

[23] WA Supreme Court matter No. 25700-B-615, *In the Matter of Statewide Response by Washington State Courts to the COVID-19 Public Health Emergency* (April 13, 2020), available at http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/25700B615%20Revised%20and%20Extended%20Order%20Regarding%20Court%20Operations.pdf (last visited April 15, 2020).

[24] *Supra, n. 22 at* ¶ 5; *Supra, n. 23 at* ¶ 7.

as necessary for "immediate preservation of public or individual safety."[25] The Governor's Proclamation reduces the incoming inmate population by suspending strict compliance with RCW 9.94A.737(2)(b) through April 29, 2020, removing the requirement to arrest and imprison low level community custody offenses.[26]

In addition, this Court's Emergency Order provides a pathway for individualized releases that protect public safety. In-custody criminal matters have been postponed, except certain matters which includes those that will ultimately reduce the inmate population, such as pretrial release, plea hearings, and sentencing hearings.[27] Motions for pretrial release and bail modifications are expedited, along with plea and sentencing hearings that result in the anticipated release of the inmate within 30 days of the hearing.[28] Also, for "those identified as part of a vulnerable or at-risk population by the Center for Disease Control, COVID 19 is presumed to be a material change in circumstances," and the hearings for vulnerable or at-risk persons are fast-tracked to be scheduled within five days.[29]

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[25] *Supra, n. 22 at* ¶ 11; *Supra, n. 23 at* ¶ 13.
[26] Governor Jay Inslee, *Proclamation by the Governor 20-35: Department of Correction - Community Custody Violation,* (March 30, 2020), available at https://www.governor.wa.gov/sites/default/files/proclamations/20-35%20COVID-19%20DOC%20Community%20Custody%20Violations%20%28tmp%29.pdf (last visited April 15, 2020).
[27] *Supra, n. 22 at* ¶ 7; *Supra, n. 23 at* ¶ 9.
[28] *Supra, n. 22 at* ¶ 7; *Supra, n. 23 at* ¶ 9.
[29] *Supra, n. 22 at* ¶ 12; *Supra, n. 23 at* ¶ 14.

2. Collaborative Emergency Efforts Throughout The State Have Successfully Reduced The Inmate Population, While Preserving Public Safety.

Prior to, and in furtherance of, the Emergency Order issued by this Court, and with the support of WASPC, collaborative efforts among law enforcement, sheriffs, prosecutors, and defense attorneys have swiftly reduced the inmate population via an orderly and public-safety-focused process that preserves public safety.[30] Such efforts include self-imposed booking restrictions and individualized releases focused on persons most vulnerable to COVID-19 who pose lower risks to the safety of their community, resulting in statewide inmate population reductions.[31]

Some examples are illustrative. In Cowlitz County, the Office of Public Defense recommended the release of low-risk offenders, discussed the recommendations with prosecutors, and presented the list to judges for consideration.[32] Out of the fifty inmates presented, half were released.[33]

In Clark County, the jail population was reduced by nearly 200 in a matter of three days through collaborative efforts to identify nonviolent

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[30] *Steven D. Strachan Declaration* at ¶ 9.
[31] *Id.*
[32] Alex Bruell, *County officials aim to lower jail population amid COVID-19 concerns,* Longview Daily News (March 24, 2020), article available at https://tdn.com/news/local/%20county-officials-aim-to-lower-jail-populationamid-covid-/article_0d3cfbf8-d017-5739-88a3-9fc00fa6ee91.html (last visited April 15, 2020).
[33] *Id.*

and low-risk offenders.[34] Two groups were released: those awaiting trial, and those serving sentences.[35] Inmates serving sentences of less than a year were furloughed, with their return dates staggered.[36]

Island County prosecutors are reviewing jail rosters to identify inmates who pose the least risk to public safety, and some nonviolent inmates serving sentences are being furloughed.[37] Prosecutors are postponing charges for new felonies, delaying the incoming population.[38]

King County is performing individualized analysis to determine who can be released on a pretrial basis, and has reduced the daily population by 200 inmates.[39] The analysis includes ensuring safety for released inmates who suffer from behavioral-health challenges and are homeless.[40] King County has tapped into the newly available hotel and temporary intensive case management facilities to create safe residences

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[34] Jerzy Shedlock, *Clark County Jail releases nearly 200 inmates due to COVID-19,* The Columbian (March 25, 2020), article available at https://www.columbian.com/news/2020/mar/25/clark-county-jail-releases-nearly-200-inmates-due-to-covid-19/ (last visited April 15, 2020).
[35] *Id.*
[36] *Id.*
[37] Jessie Stensland, *Some county inmates to be released; cases delayed in response to coronavirus emergency,* Whidbey News-Times (March 17, 2020), article available at https://www.whidbeynewstimes.com/news/some-county-inmates-to-be-released-cases-delayed-in-response-to-coronavirus-emergency/ (last visited April 15, 2020).
[38] *Id.*
[39] Dan Satterberg, *Our King County justice system is taking innovative steps in response to coronavirus,* The Seattle Times (April 2, 2020), article available at https://www.seattletimes.com/opinion/our-king-county-justice-system-is-taking-innovative-steps-in-response-to-coronavirus/ (last visited April 15, 2020).
[40] *Id.*

for up to 500 vulnerable individuals over the next three months, while awaiting the resumption of the court process.[41]

Kitsap County reduced its bookings to those accused of more serious crimes, and prosecutors are asking for bail only for defendants believed to pose a danger to the community.[42] The Kitsap County jail population was only 272 in mid-March, out of a capacity of 420.[43]

Lewis County has not seen a decrease in crime, but the jail's inmate population has decreased from 215 in early March to 121 by the end of March due to booking restrictions and early release of low-risk offenders within days of their release date.[44]

Pacific County has reduced its jail population by reaching agreements allowing offenders to take responsibility for their offense and receive somewhat shorter sentences, allowing for immediate release with credit for time served.[45]

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[41] *Id.*

[42] Andrew Binion, *Kitsap County Jail officer diagnosed with COVID-19, second case connected to county campus*, Kitsap Sun (March 19, 2020), article available at https://www.kitsapsun.com/story/news/2020/03/19/kitsap-county-jail-officer-diagnosed-covid-19-second-case-connected-county-campus/2881899001/ (last visited April 15, 2020).

[43] *Id.*

[44] Jackson Gardner, *Lewis County drops jail population in response to coronavirus pandemic,* The Daily Chronicle (March 30, 2020), article available at http://www.chronline.com/community/lewis-county-drops-jail-population-in-response-to-coronavirus-pandemic/article_ad7c79d2-72d0-11ea-a9a7-7708fcacfdec.html (last visited April 15, 2020).

[45] Chinook Observer, *Superior court: Court officers work to reduce jail numbers,* Chinook Observer (March 31, 2020), article available at

Snohomish County is restricting bookings and making targeted, case-by-case decisions for low-risk inmates to be released.[46] Inmate population was reduced by 30% in a matter of two weeks; average daily intakes are now 36, down from 55.[47]

Spokane County has seen a sharp decrease in the inmate population as a result of restricting bookings, and releasing those held for low-level misdemeanors and on low bonds.[48] Some prisoners have been furloughed as individualized releases focus on identifying inmates who present little risk to the community.[49] Spokane County's inmate population is down more than 30% in a matter of weeks.[50]

Thurston County implemented booking restrictions, and prosecuting and defense attorneys are conducting individualized analyses to identify which individuals present a low risk to public safety.[51] Inmates

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https://www.chinookobserver.com/news/%20local/superior-court-court-officers-work-to-reduce-jail-numbers/article_%20c523d27a-72cf-11ea-8155-e37252243cf7.html (last visited April 15, 2020).

[46] Caleb Hutton, *Jail population drops as justice is postponed by COVID-19,* Everett Herald (March 22, 2020), article available at https://www.heraldnet.com/news/jail-population-drops-as-justice-is-postponed-by-covid-19/ (last visited April 15, 2020).

[47] *Id.*

[48] Chad Sokol, *Spokane County jail population plunges during pandemic*, Spokesman Review (March 27, 2020), article available at https://www.spokesman.com/stories/2020/mar/27/spokane-county-jail-population-plunges-during-pand/ (last visited April 15, 2020).

[49] *Id.*

[50] *Id.*

[51] Sara Gentzler, *Thurston inmates voice COVID-19 fears, efforts underway to thin crowded population,* The Olympian (March 29, 2020), article available at

are being released through agreed orders, and on case-by-case releases granted by judges.[52] In March 2020, Thurston's jail inmate population decreased by 20% and the reduction efforts continue.[53]

Yakima County is restricting bookings to those suspected of violent or serious crimes, while nonviolent offenders are being released on bail or through pretrial release programs.[54] Also, plea agreements are being reached to get inmates moved out of the jails.[55]

Throughout the state, counties and cities are taking steps to reduce jail populations safely and responsibly.

As for Washington's state prison inmate population, DOC created a COVID-19 response plan to reduce the population while preserving public safety.[56] DOC's release plan identifies five groups of people serving sentences for nonviolent crimes: those due for release within 75 days, vulnerable inmates due for release within 2 to 6 months through re-

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https://www.theolympian.com/news/coronavirus/article241530651.html (last visited April 15, 2020).

[52] *Id.*

[53] *Id.*

[54] Donald W. Meyers, *Prosecutors asking police to book fewer people into jail during COVID outbreak,* Yakima Herald, (March 31, 2020), article available at https://www.yakimaherald.com/special_projects/coronavirus/prosecutors-asking-police-to-book-fewer-people-into-jail-during-covid-outbreak/article_1feaaa6c-a31b-524e-8bf9-7f215be05782.html (last visited April 15, 2020).

[55] *Id.*

[56] James Drew, *State to release up to 950 nonviolent offenders early in response to COVID-19*, The News Tribune (April 13, 2020), article available at https://www.thenewstribune.com/news/coronavirus/article241974891.html (last visited April 15, 2020).

entry programs, vulnerable inmates scheduled for release in 6 to 8 months who have approved release plans, inmates incarcerated for lower level supervision violations, and inmates on work release who can be furloughed.[57] The DOC will conduct individualized assessments and develop tailored release plans, and estimates 600 to 950 inmates will be released in the coming days.[58]

Overall, proactive efforts have reduced Washington's jail inmate population to 6,000 as of April 3, 2020, half of the historical average, and reduction efforts remain in full force.[59] The inmate population for the DOC is also decreasing by at least 600-950 inmates.[60] Considering these efforts, and that Washington's inmate population is already one of the lowest per capita,[61] local and state officials should be allowed to continue crafting policies based on the circumstances in each county or judicial district to provide individualized responses to COVID-19 that maintain public safety while reducing the inmate population. An all-encompassing mass release is unwarranted.

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[57] *Id.*
[58] *Id.*
[59] *Steven D. Strachan Declaration* at ¶ 10.
[60] *Id.*
[61] *Id.*

C. Washington's Public Safety Depends on a Functioning Justice System.

Public safety relies on community confidence that the justice system provides consequences for criminal behavior and rehabilitation for offenders while preventing crime victims and civil litigants from resorting to self-help. A mass release that does not allow for individualized assessments and account for public safety could affect public confidence, creating avoidable public safety concerns.

Even with the targeted releases, recidivism will occur. In Kitsap County, an inmate accused of car theft was identified as a non-violent offender and released to reduce the inmate population, only to be arrested again a week later for stealing another car.[62] These instances should be contained.

Public concerns surrounding COVID-19 support the need for a reliable justice system. As COVID-19 swept across the United States, the demand for firearms reached a record high. In March 2020, the FBI conducted an estimated 2.4 million background checks related to firearms, an 80% increase from the same month last year, 1.2 million of which were conducted in a single week – starting March 16th, when states began

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[62] Andrew Binion, *Accused car thief released to make room in jail accused of stealing another car a week later*, Kitsap Sun (March 30, 2020), article available at https://www.kitsapsun.com/story/news/2020/03/30/accused-car-thief-released-make-

restrictions in response to COVID 19.[63] Actions to reduce the number of incarcerated people should not increase public anxiety over community safety.

While the Washington courts remain operational for criminal matters, general civil matters have been brought to a halt, for legitimate health concerns.[64] At its core, the civil litigation process also provides alternatives to self-help, keeping peace and public safety. Due to the COVID-19 pandemic, access to justice has been slowed or denied, and Washingtonians need to depend even more on the criminal justice system to maintain public safety.

WASPC provides informational resources for best practices regarding COVID-19 communication.[65] WASPC advises sheriffs and police chiefs on communications to law enforcement and to the general public regarding the safety measures being put in place to protect the community in response to COVID-19.[66] The general tone of each communication is reassurance and safety; and WASPC anticipates the

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room-jail-accused-stealing-another-car-week-later/5091406002/ (last visited April 15, 2020).

[63] Lois Beckett, *Americans purchasing record-breaking number of guns amid coronavirus,* The Guardian (April 1, 2020), article available at https://www.theguardian.com/world/2020/apr/01/us-gun-purchases-coronavirus-record (last visited April 15, 2020).

[64] *See generally supra, n. 22; See generally supra, n. 23.*

[65] *Steven D. Strachan Declaration* at ¶ 11.

[66] *Id.*

public will adhere to Gubernatorial orders and laws generally. Reliance on the justice system is critical for Washington to endure this global emergency. The citizens of Washington need to be reassured of law enforcement and public safety. A mass release of inmates would undermine these principles.

D. Washington As A Whole Is Faced With Unprecedented Challenges From COVID-19.

Government responses to COVID-19 for Washington's protection have upended daily lives. Under Washington's state of emergency, inmates are not being released into the same protective environment they would have been just a few months ago. As nonessential businesses close, unemployment rates soar.[67] Unemployment creates a ripple effect on the economy as savings are dwindled to pay for basic needs such as housing, food, and health care. Historically, high unemployment has been linked to increased crime rates.[68]

Beyond the lack of employment, for some staying at home is not safe. Under the current Stay Home, Stay Healthy Order, 911-calls related to domestic abuse have increased significantly - 22% in Seattle, 17% in

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[67] Paul Robert, *Washington state nears half a million unemployed from coronavirus, with 'tsunami' of more claims expected*, The Seattle Times (April 9, 2020), article available at https://www.seattletimes.com/business/economy/washington-state-sees-nearly-177000-new-jobless-claims-amid-coronavirus-pandemic/ (last visited April 15, 2020).

Bellevue – and the bookings related to domestic violence have seen sharp increases.[69] Preliminary data compiled the week of April 12 show an increase in domestic violence calls statewide. Emergency resources for housing, food, and medical are facing severe cuts.[70]

Recognizing the inevitable challenges Washington will endure through the COVID-19 pandemic, WASPC provides best practice models to its members to facilitate and coordinate readiness to protect the public.[71] Law enforcement availability is expected to be stretched with quarantine requirements, additional calls regarding violations of recent government proclamations, infections among law enforcement, and many being called to perform additional duties or subject to recall for National Guard or other similar duties.[72] Additionally, many in law enforcement are on the front lines and those first exposed to members of the public despite the COVID-19 risks.[73] With all of these added pressures on law enforcement,

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[68] Raphael, Steven and Winter-Ebmer, Rudolf, *Identifying the effect of unemployment on crime*, Journal of Law and Economics, (April 2001), at 44, available at https://escholarship.org/content/qt5hb4h56g/qt5hb4h56g.pdf (last visited April 15, 2020).
[69] Sara Jean Green, *Police, prosecutors and victim advocates worry coronavirus stay-at-home order will cause spike in domestic violence,* The Seattle Times (March 30, 2020), article available at https://www.seattletimes.com/seattle-news/crime/police-prosecutors-and-victim-advocates-worry-coronavirus-stay-at-home-order-will-cause-spike-in-domestic-violence/ (last visited April 15, 2020).
[70] *Id.*
[71] *Steven D. Strachan Declaration* at ¶ 11.
[72] *Id.*
[73] *Id.*

it is simply not in the best interests of public safety for the mass release of offenders requested by Petitioners.

III. CONCLUSION

We ask this Court to strike a balance between the health concerns of inmates, the capacity of law enforcement, and the public safety needs of all citizens. This Court should reject Petitioner's request for mass unfettered release, and allow the continuation of individualized assessments to reduce inmate populations so that our community can survive this pandemic together.

RESPECTFULLY SUBMITTED this 15th day of April, 2020.

SMITH ALLING, P.S.

By _____
Michael E. McAleenan, WSBA #29426
Andrea H. Brewer, WSBA #52724
Robert E. Mack, WSBA #6225
Attorneys for Amicus Curiae WASPC

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of April, 2020, served a true and correct copy of the foregoing document, via the methods noted below, properly addressed as follows:

Counsel for Petitioner:

Nicholas Allen Nicholas B. Straley Janet S. Chung Columbia Legal Services 101 Yesler Way, Suite 300 Seattle, WA 98104 nick.allen@columbialegal.org nick.straley@columbialegal.org janet.chung@columbialegal.org	____ ____ X X	Legal Messenger U.S. Mail (first-class, postage prepaid) E-Service Facsimile Email

Counsel for Respondent:

Jeffrey Todd Even Timothy Norman Lang Office of The Attorney General PO Box 40100 1125 Washington Street SE Olympia, WA 98504-0100 jeffe@atg.wa.gov tim.lang@atg.wa.gov	____ ____ X X	Legal Messenger U.S. Mail (first-class, postage prepaid) E-Service Facsimile Email

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

DATED this 15th day of April, 2020, at Tacoma, Washington.

/s/ Julie Perez
JULIE PEREZ

FILED
SUPREME COURT
STATE OF WASHINGTON
4/15/2020 4:03 PM
BY SUSAN L. CARLSON
CLERK

No. 98317-8

SUPREME COURT OF THE STATE OF WASHINGTON

SHYANNE COLVIN, SHANELL DUNCAN, TERRY KILL, LEONDIS BERRY, and THEODORE ROOSEVELT RHONE,

Petitioners,

v.

JAY INSLEE, Governor of the State of Washington, and

STEVEN SINCLAIR, Secretary of the Washington State Department of Corrections,

Respondents

DECLARATION OF STEVEN D. STRACHAN IN SUPPORT OF WASPC'S AMICUS BRIEF

SMITH ALLING, P.S.

Michael E. McAleenan, WSBA #29426
Andrea H. Brewer, WSBA #52724
Robert E. Mack, WSBA #6225

1501 Dock Street
Tacoma, Washington 98402
Tacoma: (253) 627-1091
Attorneys for Washington Association of Sheriffs and Police Chiefs

STEVEN D. STRACHAN declares as follows:

1. I am the Executive Director of the Washington Association of Sheriffs & Police Chiefs ("WASPC") and have held this position since January 2018. Prior to that, I was the Chief of Police for the Cities of Bremerton WA, Kent, WA, and Lakeville, MN, and was also King County Sheriff.

2. I was appointed by Governor Inslee to serve on the Washington State Clemency and Pardons board from mid-2015 to December 2017. The Governor's Clemency and Pardons Board ("Board") receives petitions for clemency, including for the commutation of sentences, from individuals with Washington convictions. The Board operates under the Washington State Clemency & Pardons Board Policy Manual ("Policy Manual"), a true and correct copy of which is attached hereto as **Exhibit 1**.

3. To submit a request for Clemency or Pardon, a petitioner must submit an eight (8) page application that requires a variety of information about the petitioner, his or her crime, and the reasons he or she believes the extraordinary act of clemency or of pardon is warranted. Thorough applications include documentation establishing that the petitioner has a well-considered plan as to how and why an early release will be successful, including identification of a solid and reliable support structure for income, housing, and employment.

4. The Board receives dozens of petitions each year. A two-person panel of Board members, appointed by the Chair, preliminarily screens the applications for compliance with applicable guidelines. For those applications that warrant further consideration, a public hearing is scheduled. Under RCW 9.94.885(3), the Board cannot make a recommendation to grant a particular petition until a public hearing has been held. The Board's public hearings are held on a quarterly basis.

5. In my experience on the Board, individuals applying for the commutation of a prison sentence typically submit voluminous supporting documents, including evidence of prison work and programming history; records of service or other actions they believed demonstrated "extraordinary" circumstances; letters from family, friends, and other community supports; and detailed plans for release that would cover housing, employment, community supports, community resources such as Alcoholics Anonymous meetings or counseling services; and other information as appropriate to the particular petition.

6. Factors generally considered by the Board include: the seriousness of the offense; impact on the victims; whether there is a significant and documented need for clemency; acceptance of responsibility, remorse, and atonement; personal development and positive life changes since the offense occurred; the offender's criminal history and

other relevant background; whether the individual has complied with all the obligations imposed by the court; the amount of time elapsed since the offense occurred; conduct while incarcerated and any violations; and the risk or benefit to the community of the proposed action.

7. For each petitioner granted a commutation hearing, the Department of Corrections provides the Board with a detailed analysis of that individual's convictions and institutional history, including: facility assignment history; classification and custody level history; intensive management unit or segregation history; prison disciplinary infraction history; a record of work, education, and programming while in prison; risk level and any security concerns, including any security threat group, i.e., gang or similar affiliations; whether and how much the petitioner had paid of his or her legal financial obligations; visitation history; an assessment of the petitioner's means of support if released; a proposed release address; and a transition plan recommendation that usually involves a period of 18-36 months over which the individual would transition through lower custody levels and usually work release, prior to release to the community and being subject to a period of community supervision.

8. The public hearings on commutation petitions usually involve testimony from the petitioner; their family and friends; community employment and service providers; prosecuting attorney's offices—who are

required by law to contact the petitioner's victim(s); and sometimes, when circumstances allowed and at their discretion, the victims themselves. The Board has the opportunity to ask questions of all these people and, of course, to question the petitioner at length. These hearings often run for 1-2 hours each, or longer. After the oral presentation, the Board deliberates and reaches a recommendation, which may be that the Governor deny or grant the petition, with or without conditions.

9. In response to COVID-19, WASPC has been supporting collaborative efforts among law enforcement, sheriffs, prosecutors, and defense attorneys to swiftly reduce the inmate population via an orderly and public safety focused process. Such efforts include self-imposed booking restrictions and individualized releases focused on persons most vulnerable to COVID-19 who pose lower risks to the safety of their community, resulting in statewide inmate population reductions.

10. Overall, proactive efforts have reduced Washington's jail inmate population to 6,000 as of April 3, 2020, half of the historical average of 12,000 inmates, and reduction efforts remain in full force. The inmate population for the Department of Corrections is also decreasing. On this front, it is also important to note that compared to other states, Washington already has one of the lower inmate populations per capita.

11. Recognizing the inevitable challenges Washington will endure through the COVID-19 pandemic, WASPC provides best practice models to its members to facilitate and coordinate readiness to protect the public. WASPC advises sheriffs and police chiefs on communications to law enforcement and to the general public regarding the safety measures being put in place to protect the community in response to COVID-19. Law enforcement availability is expected to be stretched as many are called to perform additional duties including but not limited to quarantine enforcement, National Guard, or similar commitments. Law enforcement are generally also those first exposed to the public despite the COVID-19 risks. Law enforcement is also tasked with enforcing each new proclamation issued by the government. With such added pressure on law enforcement, granting Petitioners' requested relief is not in the best interests of public safety.

12. In summary, Washington has a robust Clemency & Pardons program. The program has evolved over the years to provide all stakeholders reasonable and meaningful opportunity for review and comment on each petition. In considering and making recommendations on petitions, the Board exercises considerable discretion, and does not act in a ministerial manner. Also, individualized reviews are already being conducted to reduce the inmate population while preserving public safety. The petition in this

case, however, seeks to simply disregard or set aside the long standing Clemency & Pardons Board processes without regard to the reasons for said processes and without input from stakeholders resulting in a mass unchecked release of inmates. Such a mass release would undoubtedly further pressure a stretched law enforcement and erode public confidence in public safety. For these and many other reasons that are addressed elsewhere, WASPC and I oppose Petitioners' requested relief.

I certify, under penalty of perjury, under the laws of the State of Washington that the foregoing is true and correct. Executed at LACEY, Washington on the 15 day of April, 2020.

STEVEN D. STRACHAN

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of April, 2020, served a true and correct copy of the foregoing document, via the methods noted below, properly addressed as follows:

Counsel for Petitioner:

Nicholas Allen Nicholas B. Straley Janet S. Chung Columbia Legal Services 101 Yesler Way, Suite 300 Seattle, WA 98104 nick.allen@columbialegal.org nick.straley@columbialegal.org janet.chung@columbialegal.org	____ ____ X ____ X	Legal Messenger U.S. Mail (first-class, postage prepaid) E-Service Facsimile Email

Counsel for Respondent:

Jeffrey Todd Even Timothy Norman Lang Office of The Attorney General PO Box 40100 1125 Washington Street SE Olympia, WA 98504-0100 jeffe@atg.wa.gov tim.lang@atg.wa.gov	____ ____ X ____ X	Legal Messenger U.S. Mail (first-class, postage prepaid) E-Service Facsimile Email

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

DATED this 15th day of April, 2020, at Tacoma, Washington.

/s/ Julie Perez
JULIE PEREZ

EXHIBIT 1

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

Washington State Clemency & Pardons Board Policy Manual

Revised and Adopted 03/09/2018

I. OVERVIEW OF THE CLEMENCY & PARDONS PROCESS

The Washington State Constitution, Article III, Section 9, provides the Governor the authority to grant pardons, as does RCW 10.01.120 and RCW 9.94A.728(6). In addition, the Governor may grant an extraordinary release from incarceration under RCW 9.94A.728(4). The Clemency and Pardons Board (Board) has been established within the Office of the Governor pursuant to RCW 9.94A.880 and RCW 9.94A.885. The Board receives Petitions from individuals, the Department of Corrections, and organizations for commutation of sentences and pardons of offenders' convictions, and makes recommendations on those Petitions to the Governor. RCW 9.94A.885(1). The Governor makes the final decision in all cases heard by the Board.

The Board is also authorized to grant a petition to restore the right to engage in political office, if lost by operation of state law as a result of federal or out-of-state felony convictions. RCW 9.94A.885(2). However, since most people's right to vote would be restored by operation of law, and the right to engage in political office is ordinarily restored upon registration to vote, it would be unnecessary for the Board to take any action to restore the right to engage in political office. The Board is not aware of other circumstances in which the right to engage in political office is lost as a result of convictions for federal offenses or out-of-state felonies. However, a person who believes a petition for a certificate of restoration limited to engaging in political office is necessary due to unique circumstances, may explain the circumstances, request a copy of Petition for Restoration form, and the Board would consider the request.

The Board consists of five members appointed by the Governor, subject to confirmation by the Senate. RCW 9.94A.880(1). Members of the Board serve terms of four years or until their successors are appointed. RCW 9.94A.880(2). The Board elects a chairperson and a vice-chairperson from among its members. Members of the Board conduct hearings on a quarterly basis, or as needed, to review Petitions requiring Board consideration. Hearings are usually scheduled for the second Friday of the month in March, June, September and December.

This document describes the Board's policies and general procedures for receiving and considering Petitions from interested parties. Any procedure may be waived at the discretion of the Board if the particular circumstances warrant it. These policies are intended for guidance only and do not create, alter, or amend a right or benefit, substantive or procedural, for any individual or organization.

II. PETITION FOR PARDON OR COMMUTATION

The Board generally reviews and hears petitions for pardon or commutation only in cases in which judicial remedies for the conviction have been concluded to a final decision. This generally means that a Petition will not be heard until all direct appeals have been exhausted or until the time within which to appeal has expired. In most cases, absent unique or emergency circumstances, the Board will not consider a Petition until at least 10 years have passed from the date of conviction. Absent unique or emergency circumstances, the Governor will not consider a request for pardon or commutation unless a Petition has been submitted to the Board.

In addition, the Board ordinarily does not hear new Petitions from the same individual on the same matter until three years have elapsed from the date of the previous hearing. The Board may make exceptions where the circumstances are exceptional or where there is new information not previously considered by the Board.

A. Form of Petition

The Board has implemented the efficiency of a paperless process by transitioning to providing and receiving Board related materials in electronic format. If Petitioners have access to a computer and the internet, they may obtain a Petition form and review instructions by visiting the Board's website at http://www.governor.wa.gov/clemency/default.asp. Petitioners may also contact the Board's staff by email at CPBoard@atg.wa.gov. If Petitioners **do not** have access to a computer and the internet, they may continue to communicate via telephone at (360) 586-0047 or via the United States Mail by addressing correspondence to the:

Washington State Clemency and Pardons Board
c/o Jennifer E. Rhéaume
Office of the Attorney General
PO Box 40116
Olympia, Washington 98504-0116

It is important that the Petitioner provide as much detailed information as possible in response to the questions on the Petition form. If a petitioner is submitting a Petition for Commutation, the petitioner is required to obtain a certified copy of his/her infraction history from DOC and include a copy with the initial submission of the Petition. [In addition, a Petitioner who wishes to have his or her medical records reviewed must sign a medical records release that complies with the applicable health care records and confidentiality laws and rules allowing the Governor, the Board, the Attorney General's Office (AGO), and the AGO's staff permission to review the Petitioner's medical history. This is particularly necessary for a petition for extraordinary release from incarceration under RCW 9.94A.728(4). In other cases, other waivers or releases may be requested. The appropriate waiver form is included in the Petition packet.]

If represented by counsel, a copy of the Petition and all written materials submitted in support or opposed to a Petition, must be supplied to the prosecuting attorney's office at the same time it is supplied to the Board, consistent with deadlines set by the Board for receipt of submissions.

B. Consideration of Petitions

In determining what recommendation to make to the Governor, the Board focuses on the existence or non-existence of "extraordinary" circumstances, pursuant to RCW 9.94A.728(4) and RCW 9.94A.885(1). The Petitioner should demonstrate why his or her circumstances are extraordinary and warrant the exercise of the Governor's discretionary pardon power.

Washington law does not define "extraordinary" circumstances, and there is no limitation on the factors the Board may consider in making its recommendation to the Governor. Petitioners should submit to the Board information and supporting documentation related to any factors that

demonstrate that the circumstances are extraordinary and warrant relief. Petitioners should fully consider and explain how their circumstances differ from similarly situated individuals. Examples of factors that Petitioners have presented include the following:

- The seriousness of the offense;
- The impact on the victims;
- Whether there is a significant and documented need for clemency;
- Acceptance of responsibility, remorse, and atonement;
- Personal development and positive life changes since the offense occurred;
- The offender's criminal history and other relevant background;
- Whether the individual has complied with all obligations imposed by the court;
- The amount of time elapsed since the offense occurred; and
- The risk or benefit to the community.

The Board will also consider all written materials submitted in support or opposed to a Petition, consistent with deadlines set by the Board for receipt of submissions. The Board expects that everyone who submits a letter of recommendation in support of a Petitioner is aware of the specific criminal conviction and some of the related facts, and, of Petitioner's specific request for clemency. It is Petitioners' obligation to ensure that their references are so informed.

III. REVIEW & HEARING PROCESS FOR PETITIONS FOR PARDON OR COMMUTATION

A. Preliminary Review Committee

Each petition is reviewed by the Preliminary Review Committee consisting of two Board Members on a rotational basis. The Preliminary Review Committee considers whether the Petition may demonstrate the existence of extraordinary circumstances and warrant a hearing. On the vote of one member of the Preliminary Review Committee, the Petition will be scheduled for a hearing before the full Board. After review, the Petitioner receives notice of the decision of the Preliminary Review Committee.

B. Notice to Interested Parties

The following parties receive notice from the Board of Petitions for Pardon or Commutation:

- Indeterminate Sentencing Review Board (ISRB): If the ISRB determines that a Petitioner is within its jurisdiction, it provides a case analysis to the Board.

- Department of Corrections (DOC): Initially, the DOC provides the Board with the Petitioner's criminal history and a Legal Face Sheet if the Petitioner is currently an inmate. If the Petition is scheduled for a hearing, the DOC provides a case analysis for cases not under the jurisdiction of the ISRB.

- Prosecuting Attorney: The prosecuting attorney's office then complies with its responsibilities under RCW 9.94A.885(3), which include notifying victims and survivors of victims so that they may participate in the hearing. United States Attorney's Office: Receives notice in appropriate cases of Petitions set for hearing.

Also, the Petitioner receives notification prior to the hearing of the date, time, and location of the hearing.

The law requires the prosecuting attorney of the county where the conviction was obtained to be notified at least thirty days prior to the scheduled hearing that a petition has been filed and the date and place at which the hearing on the petition will be held. The Board may waive the thirty-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. ***In cases in which a death sentence is affirmed and a death warrant has been issued pursuant to RCW 10.95.160, a petition should be filed in time to allow a minimum twenty-day notice to the prosecuting attorney, who in turn provides notice to the survivors of victims.***

C. Hearing Process

The Board considers the Petitions at regularly scheduled quarterly hearings. The hearings are open to the public. A court reporter will attend and transcribe all hearings. In addition to the petitions selected by the Preliminary Review Committee for hearing, the Governor, Chairperson or a majority of the Board may call a Special Hearing on a petition, in accordance with the Bylaws. At the hearing, the Board hears oral statements, deliberates, and makes a final decision concerning whether to recommend to the Governor that petitions be granted.

1. General Introduction

At the opening of each hearing, the Chairperson introduces each member of the Board, the Board staff, legal counsel, and representatives from the DOC and ISRB. The Chairperson also provides a brief overview of the hearing process.

The order in which Petitions are heard is determined by the Board and Staff. The order of Petitions on the Board's Agenda is generally as follows:

(1) Petitions for Pardon or Commutation involving Petitioners who are incarcerated and who will appear by telephone or Skype; and,

(2) All other Petitions for Pardon or Commutation.

2. Oral Presentations and Consideration of Facts

The Petitioner, his or her representative, witnesses, the prosecutor or the U.S. Attorney and other interested persons may address the Board. If the Petitioner is incarcerated, he or she may arrange to make a statement by telephone or Skype. Pursuant to RCW 7.69 and 9.94A.885, victims and survivors of victims have the right to present statements in person, via audio or videotape, or other electronic means, or in writing, at any hearing on a Petition for Pardon or Commutation.

In an effort to gauge how much time is needed for each case, the Petitioner or his or her representative, are required to provide the Board with a list of speakers two weeks prior to the scheduled hearing. The Board may limit the length of time and the number of individuals who may address the Board, other than as required by law.

Among the areas of consideration, the Board may inquire into the underlying facts of the convictions, because doing so may assist in understanding the issues presented in the Petition. However, the hearing is not a forum to retry the conviction. A rare exception may be made if the law provides no judicial recourse for consideration by the courts of newly discovered and incontrovertible proof of actual innocence.

3. Board Deliberations and Recommendation

At the end of the oral presentations, the Board deliberates and reaches a determination. The Board may recommend that the Governor deny the petition or grant the petition with or without conditions. Deliberations on the recommendation occur in the public hearing. Each member will vote and may explain his or her reasons for the recommendation. Petitioners and interested parties should not interrupt the deliberations process, but may answer any additional questions that the Board raises during its deliberations.

After the Board has reached a decision, the Chairperson announces it and closes the Board's record on the Petition. The recommendation is submitted to the Governor, who is not bound to follow the Board's recommendation or take any action on the Petition.

4. Consideration of Late Submissions

Prior to the scheduled hearing on a Petition, the Board reviews all documents submitted in favor and opposing the Petition. Additional submissions concerning a Petition set for hearing will not be accepted or considered by the Board if received after 5:00 p.m. on the Monday preceding the scheduled hearing on a Petition.

5. Requests for Continuances

By Petitioner:

The Board's Quarterly Hearings are set in advance and posted on the Board's website, as well as filed with the Code Reviser. Submission deadlines are also posted on the Board's website for purposes of determining when a Petition will most likely be set for hearing before the full Board if selected. By submitting a Petition, the Board expects that the Petitioner will be ready and able to move forward with the hearing on any one of the dates set forth in the Notice of Quarterly Hearings. At the time of submitting a Petition, the Petitioner may make a specific written request that his/her hearing, if selected, not be set on a specific Quarterly Hearing date.

Hearings before the Board are scheduled on a space available basis. Continuances are not favored and will not be routinely granted. Absent significant extenuating circumstances, once a Petition is selected for hearing before the full Board, the Board will not agree to continue the hearing of a Petition to a different Quarterly Hearing date. If a continuance is sought, a written request must be submitted. If a request for continuance is denied by the Board, the Petitioner has the option of withdrawing his/her Petition from the Board's Agenda and reapplying at a future time or going forward with the hearing as scheduled.

By Prosecutor and/or Victims, survivors of victims, and witnesses of crime:

In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime, a thoughtful recommendation on a petition for clemency is dependent upon input from the victims and survivors of victims of crimes. It is the intent of the Board to ensure that all victims and survivors of victims of crimes are afforded a meaningful role in the clemency process.

It is also the intent of the Board to ensure that the prosecuting attorney who obtained the conviction and the law enforcement agency that conducted the investigation are afforded a meaningful role in the clemency process.

A request for a continuance by the prosecutor, the law enforcement agency that conducted the investigation, or the victims, survivors of victims and witnesses of the crime will be granted by the Board, if good cause is shown, to the next scheduled Quarterly Hearing date. Any subsequent request for a continuance will be considered on a case by case basis.

IV. ANNUAL CALENDAR FOR PROCESSING PETITIONS

Board hearings are scheduled quarterly in the months of March, June, September and December, generally on the second Friday of the month.

V. BOARD MEMBER'S IMPARTIALITY

In order to maintain a clemency and pardons system that openly and objectively evaluates petitions before recommendations are made to the Governor, a Board member will not discuss a petition pending before the Board, or a matter anticipated to be presented to the Board, with anyone outside of the quarterly hearings. Please do not contact a member of the Board about a petition.

Board members shall be impartial and make their recommendations solely on the record presented to them through the process established by the Board. Board members are required to disclose any real or perceived conflicts of interest or ex parte communication and shall disclose any such conflicts or communications on the record at the hearing. For purposes of this section, the term "ex parte" shall mean where, without notice, one or more interested parties is not present to participate in the communication.

After disclosing a real or perceived conflict or *ex parte* communication, a Board member may either choose to recuse him/herself or may choose to continue in the proceeding if the Board member believes he or she can exercise his or her statutory duty in a fair, impartial, and objective manner. Such recusal is an act taken by a Board member of his or her own volition.

VI. DISCRETIONARY POWERS OF THE BOARD

Nothing in these policies is intended or should be construed to limit the Board's statutory authority to consider, hear, or make a recommendation to the Governor to grant or deny a Petition for pardon, commutation or restoration of rights.

VII. AMENDMENTS TO THE POLICIES

By majority vote, with a quorum present, the Board may adopt, amend, or repeal these policies at anytime it deems appropriate. Minor clerical changes may be made at the direction of the Chairperson without a vote of the Board.

CERTIFICATION OF ADOPTION

The undersigned Chairperson of the Washington State Clemency and Pardons Board certifies that the above policies, were adopted by the Board members and that the same do now constitute the policies of the Clemency and Pardons Board, and that they supersede any prior policies or resolutions adopted by the Board or its predecessors.

Dated this 9th day of March 2018.

Jennifer Rancourt

Jennifer Rancourt, Chairperson

SMITH ALLING, P.S.

April 15, 2020 - 4:03 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98317-8
Appellate Court Case Title:	Shyanne Colvin et al. v. Jay Inslee et al.

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