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No. 103652-3

SUPREME COURT
OF THE STATE OF WASHINGTON

MATTHEW AND KAYLYNE NEWELL,

Petitioners,

v.

PIERCE COUNTY, WASHINGTON,

Respondent.

MEMORANDUM OF *AMICUS CURIAE*
WASHINGTON TRUCKING ASSOCIATIONS

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I. INTRODUCTION

There can be little question that Washington's trucking industry is vital to the economy of Washington State. Every day, on Washington's roadways, trucks, big and small, deliver goods that Washington's people and businesses need.¹ But that industry cannot function if roads, bridges, fueling facilities, rest areas for drivers, and truck yards do not exist to support truck operations.

The present case is a microcosm of the frustrations trucking carriers experience in Washington at the hands of government administrative and elected officials.

II. IDENTITY AND INTEREST OF *AMICUS CURIAE*

The identity and interest of *amicus* Washington Trucking Associations ("WTA") are described in the motion for leave to file this memorandum. WTA is the pre-eminent voice for the

¹ The Joint Transportation Committee's December 2021 Truck Parking Action Plan reported that Washington is among the most freight intensive states in America with over 596 million tons of freight valued at more than \$677 billion moved in 2017. <https://leg.wa.gov/media/53ahrful/finaltruckparkingactionplan2021.pdf>

trucking industry in Washington.

III. STATEMENT OF THE CASE

WTA relies on the recitation of the facts and procedure in Division II's decision, *op.* at 3-12, as well as the statement of the case in the Newells' petition for review. *Pet.* at 3-10.

It is essentially undisputed that before Newell purchased the property at issue it was being used by the Malyons as a trucking contractor yard, a non-conforming use under Pierce County ("County") code. It is also undisputed that before purchasing the property, the Newells specifically asked County planners if their proposed use of the property fell within the parameters of the existing contractor yard non-conforming use. County planners confirmed that it did, and only then did the Newells buy the property in reliance on that representation.

It is also noteworthy that the County initiated, and later dropped, a 2013 enforcement action that claimed the Malyons had expanded the non-conforming contractor yard use. *Pet.* at 4. Similarly, a subsequent 2019 enforcement action against the

Newells claiming that the non-conforming contractor yard use had expanded was initiated and also dropped by the County. *Id.* at 5. The present action is the *third* County effort to claim the non-conforming use had expanded. The Newells were subjected to intense administrative and political pressure by the County, even though the non-conforming use remained one for trucking operations. Pet. at 5-8.

IV. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

In this case, the Newells bought property in Pierce County with the expectation derived from their interactions with County planners that they could operate their small dump truck business from that property. Instead of being allowed to operate that business, they faced years of continued hurdles and harassment from County administrative and elected officials.

WTA does not repeat the arguments the Newells have offered in their petition supporting this Court's review of the Court of Appeals, Division II, decision under RAP 13.4(b).

Rather, WTA seeks to put this case into appropriate context.

(1) Inaction on Necessary Trucking Infrastructure

Despite the critical importance of trucking to freight mobility specifically and Washington's economy generally, state and local governments have been slow to take necessary steps to facilitate trucking operations. The lack of sufficient and safe roads, bridges, and other infrastructure is an obvious statewide concern for the industry. But certain other trucking-specific infrastructure is lacking.

For example, the lack of places on Washington roadways where trucks and their drivers can pull off the road and park so that drivers can have necessary respite from driving has become a major problem for the industry. Fatigued drivers² with nowhere

² Federal law, administered by the Federal Motor Carrier Safety Administrations limits the number of hours drivers may operate trucks. 49 C.F.R. Part 395. In most instances, long-haul drivers may drive a maximum of eleven hours after ten consecutive hours off duty, although they can be on duty for up to 14 hours. Drivers are limited to 60 hours in any 7 consecutive day period.

to park their trucks who must then keep driving are not conducive to safety on Washington roadways.³ This problem prompted the introduction of HB 1787 in 2023. *See* Appendix. The preamble to that bill states in pertinent part:

The trucking industry is vital to Washington state's economy. In order to make the flow of goods by the trucking industry possible, there must be appropriate infrastructure to accommodate the needs of the men and women who drive and work on the trucks, and to service the trucks themselves. Some local governments in Washington have not planned sufficiently for those needs or have erected barriers to developing such infrastructure. The joint transportation committee has received recommendations in a truck parking action plan. The action plan includes immediate actions to have governments build parking, provide incentives to build truck parking in high-demand areas, and have governments plan for truck parking and other necessary facilities. The legislature intends for this act to promote action to increase these much needed facilities.

HB 1787, § 1 (2023).

A similar type of problem is the lack of sanitary facilities

³ Truck driver fatigue is a leading factor in large truck crashes in the United States. <https://www.fmsca.dot.gov>. *See* Appendix.

for drivers. It was only after years of controversy that the Legislature enacted SHB 1706 in 2022 to provide sufficient restrooms for truck drivers at port districts. Laws of 2022, ch. 22. *See* Appendix. The problem of restroom access continues to be significant for truck drivers outside of ports on Washington roadways.

In sum, governments, state and local, frustrate the operations of Washington's vital trucking industry by failing to provide needed facilities for that industry, and its men and women.

(2) Local Government Land Use Actions Frustrate Needed Trucking Facilities

The problem of governmental frustration of industry operations is not confined to infrastructure. Local governments have attempted to zone trucking operations out of their communities. WTA hears constantly from its members regarding local and state governmental land use decisions that interfere with trucking operations. Although these stories from other

trucking firms are anecdotal, they are consistent – local governments all too often do everything they can to frustrate trucking industry operations by their land use decision making.

Governments often capitulate to NIMBY concerns when trucking facilities are being sited. Perhaps the most significant example of such conduct was in North Bend in 2018, where the town enacted an ordinance banning future truck stops and prohibiting the expansion of the Truck Town truck stop on Interstate 90 that is the only remaining truck stop in King County. The town also opposed the location of a truck weigh station near Exit 34, fearing more trucks in their community. The fact that North Bend's is the only truck stop in King County speaks volumes.

In theory, the Growth Management Act required counties to make provision in their comprehensive plans for needed transportation facilities, RCW 36.70A.070(6), but, in practice, that theoretical provision is not implemented. WTA has seen far too many instances where local governments make it difficult by

their specific land use decisions for the industry to operate efficiently.

Even in indirect ways, governments can make life difficult for trucking operations. WTA's experience is that local governments aggressively enforce traffic laws against trucking firms. Private firms do so as well. The Summit at Snoqualmie dramatically increased parking fees to discourage truck parking.

<https://www.seattletimes.com/life/outdoors/summit-at-snoqualmie-enacts-new-daily-parking-fee-among-ski-industry's-highest/>.

All of these decisions adversely impact Washington's vital trucking industry in significant ways.

V. CONCLUSION

The Newells' case is but a typical example of how government can frustrate trucking operations. It is important for this Court to understand the state-wide impact of the County's actions in the Newells' case.

WTA respectfully asks that this Court grant review and reverse Division II's decision.

This document contains 1,272 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 24th day of January, 2025.

Respectfully submitted,

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APPENDIX

**U.S. Department of Transportation's
Federal Motor Carrier Safety Administration**

Fact Sheet on Truck Driver Hours-of-Service

Fatal Crash Rates

While the rate of fatal crashes involving large trucks per 100 million vehicle miles traveled decreased each year from 2005 through 2009, it rose, along with increased demands for freight shipping, from 2009 through 2012.

Data from the U.S. Department of Transportation shows that in 2012 there were:

- **10,659,380 large trucks** registered in the United States;
- **317,000 traffic crashes** involving large trucks – an average of 6,100 each week, or 868 per day;
- **3,921 fatalities** involving large truck crashes – an average of 75 per week, or 11 per day;
- **73,000 large truck injury crashes** – an average of 1,400 per week, or 200 per day.

Driver fatigue is a leading factor in large truck crashes. The 2006 Large Truck Crash Causation Study reported that 13 percent of Commercial Motor Vehicle (CMV) drivers were considered to have been fatigued at the time of a serious crash.

The Revised Hours-of-Service rules from the FMCSA went into effect in July 2013 to reduce fatigue-related crashes and ensure that drivers get the rest they need to be alert, safe and awake when operating up to 80,000-pound vehicles on roads they share with the traveling public. The regulations reduce the maximum average work week for truckers to 70 hours from 82 hours and require them to take a 30-minute break during the first eight hours of their shift.

Analysis shows the revised rules:

- Prevent approximately 1,400 crashes each year -- saving 19 lives and avoiding 560 injuries;
- Impact less than 15 percent of the truck driving population;
- Provide \$280 million in annual savings from fewer crashes and \$470 million in annual savings from improved driver health (i.e., reduced mortality).

Scientific study of the 34-hour provision:

One of the largest naturalistic field studies to measure fatigue among commercial motor vehicle drivers provided further scientific evidence that the 34-hour restart provision in the current hours-of-service rule for truck drivers is more effective at combatting fatigue than the prior version.

Scientists who measured sleep, reaction time, sleepiness and driving performance found that drivers who began their work week with just one nighttime period of rest, as compared to the two nights in the updated 34-hour restart break:

- Exhibited more lapses of attention, especially at night;
- Reported greater sleepiness, especially toward the end of their duty periods; and
- Showed increased lane deviation in the morning, afternoon and at night.

Working long daily and weekly hours on a continuing basis is associated with chronic fatigue, a high risk of crashes, and a number of serious chronic health conditions in drivers.

A National Institute for Occupational Safety and Health survey found that 69 percent of truck drivers were obese and 54 percent smoked. Additionally, 88 percent of long-haul truck drivers reported having at least one risk factor (hypertension, smoking, and obesity) for chronic disease, compared to only 54 percent of the general U.S. adult working population: <http://www.cdc.gov/niosh/updates/upd-01-16-14.html>.

Local Government Committee

HB 1787

Brief Description: Concerning the planning and implementation of infrastructure to facilitate the transport and delivery of goods.

Sponsors: Representatives Sandlin, Chapman, Barkis, Robertson, Graham, Corry, Dent, Steele, Goehner, Couture and Volz.

Brief Summary of Bill

- Requires the Department of Transportation (Department) to establish a plan to facilitate the establishment and operation of commercial truck parking located near specified areas.
- Requires the Department to report annually to the Governor and the Legislature on known increases to commercial parking near ports and specified interstate highways.
- Requires the Department to develop and implement a program to provide assistance to counties and cities for comprehensive plan amendments, development regulations, and other programs to assist the development of commercial parking facilities.
- Requires cities and counties to allow commercial parking near specified areas.
- Encourages cities and counties to develop areas where commercial truck drivers can rest.
- Updates the land use and transportation elements of the Growth Management Act to include various planning requirements related to commercial trucking.

Hearing Date: 2/15/23

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Elizabeth Allison (786-7129).

Background:

Commercial Trucking.

Commercial truck drivers are licensed to operate vehicles classified as commercial vehicles. Commercial truck drivers may drive across state lines and are required by state and federal law to stop and rest during long hauls. The Department of Transportation (Department) provides various truck parking at rest areas where drivers may stay for up to 11 hours. .

Transportation System Policy Goals.

In 2002 the Legislature established policy goals for the operation and performance of, and investment in, the state's transportation system. Goals include:

- preservation: to maintain, preserve, and extend the life and utility of prior investments in transportation systems and services, including the state ferry system;
- safety: to provide for and improve the safety and security of transportation customers and the transportation system;
- stewardship: to continuously improve the quality, effectiveness, resilience, and efficiency of the transportation system;
- mobility: to improve the predictable movement of goods and people throughout Washington, including congestion relief and improved freight mobility;
- economic vitality: to promote and develop transportation systems that stimulate, support, and enhance the movement of people and goods to ensure a prosperous economy; and
- environment: to enhance Washington's quality of life through transportation investments that promote energy conservation, enhance healthy communities, and protect the environment.

Growth Management Act.

The Growth Management Act (GMA) is the comprehensive land use planning framework for counties and cities in Washington. Originally enacted in 1990 and 1991, the GMA establishes land use designation and environmental protection requirements for all Washington counties and cities. The GMA also establishes a significantly wider array of planning duties for 28 counties, and the cities within those counties, that are obligated to satisfy all planning requirements of the GMA. These jurisdictions are sometimes referred to as "fully planning" under the GMA.

The GMA directs fully planning jurisdictions to adopt internally consistent, comprehensive land use plans. Comprehensive plans are implemented through locally adopted development regulations, and both the plans and the local regulations are subject to review and revision requirements prescribed in the GMA. Comprehensive plans must contain certain required elements, including a transportation element, land use element, utilities element, and capital facilities plan element, among others.

Summary of Bill:

Commercial Truck Parking Facilities.

In accordance with the transportation system policy goals, the Department must establish a plan for the Department and other state agencies to facilitate the establishment and operation of commercial truck parking located near interstate highways, ports, and other areas that generate significant amounts of commercial truck trips. The plan should include proposals for public investment in truck parking and recommendations or incentives for nonpublic investment in such parking.

Between 2023 and 2030 the Department must report annually to the Governor and the transportation committees of the Legislature on the known increases to commercial parking near Interstates 2, 5, and 90 and any of the ports. The Department must conduct outreach to local governments, ports, and a state association representing commercial companies when preparing the report.

Using funding provided in the transportation budget, the Department, in consultation with port authorities, trucking industries, counties, and cities, must develop and implement a program to provide direct assistance to counties and cities to prepare comprehensive plan amendments, development regulations, and other programs and incentives to assist with the development of parking facilities.

Cities and counties must allow commercial parking near ports, warehouses, and the national highway system in areas frequently used by commercial trucks. Cities and counties may not prohibit the establishment of commercial truck parking in areas where there are commercial or industrial developments. Cities and counties are encouraged to facilitate the development of areas where commercial truck drivers can rest. Such facilities should include security measures, restrooms, showers, and equipment for heating, ventilation, air conditioning, and electric services that can be powered on-site. Some locations should be near restaurants and grocery stores that can accommodate commercial trucks with trailers.

Growth Management Act.

The land use element of the GMA must include proposed general distribution and locations for truck parking. The transportation element must include accommodation of the delivery of goods into communities by requiring truck loading and unloading areas in urban areas; the creation of commercial truck parking sufficient for the amount of deliveries into the community; and planned highway corridors for heavy commercial trucks to traverse.

Additionally, fully planning jurisdictions must, as part of the transportation element requirement, plan to:

- provide sufficient parking locations to accommodate the delivery of goods;
- provide and maintain streets designed, sized, and constructed to be used by heavy commercial trucks in appropriate locations; and
- for counties and cities with a population over 75,000, permit locations where large commercial vehicles can receive maintenance, repairs, and services.

When planning to provide sufficient parking locations to accommodate the delivery of goods:

- each jurisdiction may require properties receiving deliveries from commercial trucks to accommodate commercial trucks, preferably onsite;
- each jurisdiction must require communities to have commercial truck parking near ports, warehouses, and the national highway system in areas frequently used by commercial trucks; and
- multifamily residential buildings within urban growth areas must have locations where light duty, package delivery, or moving trucks can temporarily park without obstructing the flow of vehicular, bicycle, and pedestrian traffic.

Appropriation: None.

Fiscal Note: Requested on February 14, 2023.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

HOUSE BILL 1787

State of Washington

68th Legislature

2023 Regular Session

By Representatives Sandlin, Chapman, Barkis, Robertson, Graham, Corry, Dent, Steele, Goehner, Couture, and Volz

Read first time 02/07/23. Referred to Committee on Local Government.

1 AN ACT Relating to the planning and implementation of
2 infrastructure to facilitate the transport and delivery of goods;
3 reenacting and amending RCW 36.70A.070; adding a new section to
4 chapter 47.04 RCW; adding a new section to chapter 35.21 RCW; adding
5 a new section to chapter 35.63 RCW; adding a new section to chapter
6 36.70 RCW; adding a new section to chapter 36.70A RCW; and creating
7 new sections.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** The trucking industry is vital to
10 Washington state's economy. In order to make the flow of goods by the
11 trucking industry possible, there must be appropriate infrastructure
12 to accommodate the needs of the men and women who drive and work on
13 the trucks, and to service the trucks themselves. Some local
14 governments in Washington have not planned sufficiently for those
15 needs or have erected barriers to developing such infrastructure. The
16 joint transportation committee has received recommendations in a
17 truck parking action plan. The action plan includes immediate actions
18 to have governments build parking, provide incentives to build truck
19 parking in high-demand areas, and have governments plan for truck
20 parking and other necessary facilities. The legislature intends for
21 this act to promote action to increase these much needed facilities.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.04
2 RCW to read as follows:

3 (1) As part of the safety policy goal established in RCW
4 47.04.280(1), the department must establish a plan for the department
5 and other state agencies to facilitate the establishment and
6 operation of commercial truck parking located near interstate
7 highways, ports, and other areas that generate significant amounts of
8 commercial truck trips. This plan should include proposals for public
9 investment in truck parking as well as recommending or providing
10 incentives for nonpublic investment in such parking.

11 (2) During the years 2023 to 2030, the department must annually
12 report to the governor and the transportation committees of the
13 legislature on the known increases to commercial truck parking near
14 Interstates 2, 5, and 90, and any of the ports. The department must
15 reach out to local governments, ports, and a state association
16 representing commercial trucking companies when preparing the report.

17 NEW SECTION. **Sec. 3.** With funding provided in the omnibus
18 transportation appropriations act, the department of transportation,
19 in consultation with members of port authorities, trucking
20 industries, counties, and cities, shall develop and implement a
21 program to provide direct assistance to counties and cities for the
22 preparation of comprehensive plan amendments, development
23 regulations, and expedited permitting programs, land purchases,
24 building incentives, and construction funding to assist in
25 development of truck parking facilities, including collocations with
26 restaurants and showering facilities available for commercial truck
27 drivers.

28 NEW SECTION. **Sec. 4.** A new section is added to chapter 35.21
29 RCW to read as follows:

30 Cities must allow commercial truck parking near ports,
31 warehouses, and the national highway system in areas frequently used
32 by commercial trucks. Cities may not prohibit the establishment of
33 commercial truck parking in areas where there are commercial or
34 industrial developments, and are encouraged to facilitate the
35 development of areas where commercial truck drivers may abide for
36 periods of rest. Commercial truck parking facilities should include
37 restrooms, showers, equipment to facilitate idle reduction allowing
38 for heating, ventilation, air conditioning, and electric services to

1 be powered from on-site, and security measures. Some locations should
2 be collocated, abutting, or very near restaurants and grocery stores
3 that can accommodate commercial trucks with trailers.

4 NEW SECTION. **Sec. 5.** A new section is added to chapter 35.63
5 RCW to read as follows:

6 Cities must plan for and allow commercial truck parking near
7 ports, warehouses, and the national highway system in areas
8 frequently used by commercial trucks. Cities may not prohibit the
9 establishment of commercial truck parking in areas where there are
10 commercial or industrial developments, and are encouraged to
11 facilitate the development of areas where commercial truck drivers
12 may abide for periods of rest. Commercial truck parking facilities
13 should include restrooms, showers, equipment to facilitate idle
14 reduction allowing for heating, ventilation, air conditioning, and
15 electric services to be powered from on-site, and security measures.
16 Some locations should be collocated, abutting, or very near
17 restaurants and grocery stores that can accommodate commercial trucks
18 with trailers.

19 NEW SECTION. **Sec. 6.** A new section is added to chapter 36.70
20 RCW to read as follows:

21 Counties must allow commercial truck parking near ports,
22 warehouses, and the national highway system in areas frequently used
23 by commercial trucks. Counties may not prohibit the establishment of
24 commercial truck parking in areas where there are commercial or
25 industrial developments, and are encouraged to facilitate the
26 development of areas where commercial truck drivers may abide for
27 periods of rest. Commercial truck parking facilities should include
28 restrooms, showers, equipment to facilitate idle reduction allowing
29 for heating, ventilation, air conditioning, and electric services to
30 be powered from on-site, and security measures. Some locations should
31 be collocated, abutting, or very near restaurants and grocery stores
32 that can accommodate commercial trucks with trailers.

33 **Sec. 7.** RCW 36.70A.070 and 2022 c 246 s 2 and 2022 c 220 s 1 are
34 each reenacted and amended to read as follows:

35 The comprehensive plan of a county or city that is required or
36 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
37 and descriptive text covering objectives, principles, and standards

1 used to develop the comprehensive plan. The plan shall be an
2 internally consistent document and all elements shall be consistent
3 with the future land use map. A comprehensive plan shall be adopted
4 and amended with public participation as provided in RCW 36.70A.140.
5 Each comprehensive plan shall include a plan, scheme, or design for
6 each of the following:

7 (1) A land use element designating the proposed general
8 distribution and general location and extent of the uses of land,
9 where appropriate, for agriculture, timber production, housing,
10 commerce, industry, truck parking, recreation, open spaces, general
11 aviation airports, public utilities, public facilities, and other
12 land uses. The land use element shall include population densities,
13 building intensities, and estimates of future population growth. The
14 land use element shall provide for protection of the quality and
15 quantity of groundwater used for public water supplies. Wherever
16 possible, the land use element should consider utilizing urban
17 planning approaches that promote physical activity. Where applicable,
18 the land use element shall review drainage, flooding, and stormwater
19 runoff in the area and nearby jurisdictions and provide guidance for
20 corrective actions to mitigate or cleanse those discharges that
21 pollute waters of the state, including Puget Sound or waters entering
22 Puget Sound.

23 (2) A housing element ensuring the vitality and character of
24 established residential neighborhoods that:

25 (a) Includes an inventory and analysis of existing and projected
26 housing needs that identifies the number of housing units necessary
27 to manage projected growth, as provided by the department of
28 commerce, including:

29 (i) Units for moderate, low, very low, and extremely low-income
30 households; and

31 (ii) Emergency housing, emergency shelters, and permanent
32 supportive housing;

33 (b) Includes a statement of goals, policies, objectives, and
34 mandatory provisions for the preservation, improvement, and
35 development of housing, including single-family residences, and
36 within an urban growth area boundary, moderate density housing
37 options including, but not limited to, duplexes, triplexes, and
38 townhomes;

39 (c) Identifies sufficient capacity of land for housing including,
40 but not limited to, government-assisted housing, housing for

1 moderate, low, very low, and extremely low-income households,
2 manufactured housing, multifamily housing, group homes, foster care
3 facilities, emergency housing, emergency shelters, permanent
4 supportive housing, and within an urban growth area boundary,
5 consideration of duplexes, triplexes, and townhomes;

6 (d) Makes adequate provisions for existing and projected needs of
7 all economic segments of the community, including:

8 (i) Incorporating consideration for low, very low, extremely low,
9 and moderate-income households;

10 (ii) Documenting programs and actions needed to achieve housing
11 availability including gaps in local funding, barriers such as
12 development regulations, and other limitations;

13 (iii) Consideration of housing locations in relation to
14 employment location; and

15 (iv) Consideration of the role of accessory dwelling units in
16 meeting housing needs;

17 (e) Identifies local policies and regulations that result in
18 racially disparate impacts, displacement, and exclusion in housing,
19 including:

20 (i) Zoning that may have a discriminatory effect;

21 (ii) Disinvestment; and

22 (iii) Infrastructure availability;

23 (f) Identifies and implements policies and regulations to address
24 and begin to undo racially disparate impacts, displacement, and
25 exclusion in housing caused by local policies, plans, and actions;

26 (g) Identifies areas that may be at higher risk of displacement
27 from market forces that occur with changes to zoning development
28 regulations and capital investments; and

29 (h) Establishes antidisplacement policies, with consideration
30 given to the preservation of historical and cultural communities as
31 well as investments in low, very low, extremely low, and moderate-
32 income housing; equitable development initiatives; inclusionary
33 zoning; community planning requirements; tenant protections; land
34 disposition policies; and consideration of land that may be used for
35 affordable housing.

36 In counties and cities subject to the review and evaluation
37 requirements of RCW 36.70A.215, any revision to the housing element
38 shall include consideration of prior review and evaluation reports
39 and any reasonable measures identified. The housing element should

1 link jurisdictional goals with overall county goals to ensure that
2 the housing element goals are met.

3 The adoption of ordinances, development regulations and
4 amendments to such regulations, and other nonproject actions taken by
5 a city that is required or chooses to plan under RCW 36.70A.040 that
6 increase housing capacity, increase housing affordability, and
7 mitigate displacement as required under this subsection (2) and that
8 apply outside of critical areas are not subject to administrative or
9 judicial appeal under chapter 43.21C RCW unless the adoption of such
10 ordinances, development regulations and amendments to such
11 regulations, or other nonproject actions has a probable significant
12 adverse impact on fish habitat.

13 (3) A capital facilities plan element consisting of: (a) An
14 inventory of existing capital facilities owned by public entities,
15 showing the locations and capacities of the capital facilities; (b) a
16 forecast of the future needs for such capital facilities; (c) the
17 proposed locations and capacities of expanded or new capital
18 facilities; (d) at least a six-year plan that will finance such
19 capital facilities within projected funding capacities and clearly
20 identifies sources of public money for such purposes; and (e) a
21 requirement to reassess the land use element if probable funding
22 falls short of meeting existing needs and to ensure that the land use
23 element, capital facilities plan element, and financing plan within
24 the capital facilities plan element are coordinated and consistent.
25 Park and recreation facilities shall be included in the capital
26 facilities plan element.

27 (4) A utilities element consisting of the general location,
28 proposed location, and capacity of all existing and proposed
29 utilities, including, but not limited to, electrical lines,
30 telecommunication lines, and natural gas lines.

31 (5) Rural element. Counties shall include a rural element
32 including lands that are not designated for urban growth,
33 agriculture, forest, or mineral resources. The following provisions
34 shall apply to the rural element:

35 (a) Growth management act goals and local circumstances. Because
36 circumstances vary from county to county, in establishing patterns of
37 rural densities and uses, a county may consider local circumstances,
38 but shall develop a written record explaining how the rural element
39 harmonizes the planning goals in RCW 36.70A.020 and meets the
40 requirements of this chapter.

1 (b) Rural development. The rural element shall permit rural
2 development, forestry, and agriculture in rural areas. The rural
3 element shall provide for a variety of rural densities, uses,
4 essential public facilities, and rural governmental services needed
5 to serve the permitted densities and uses. To achieve a variety of
6 rural densities and uses, counties may provide for clustering,
7 density transfer, design guidelines, conservation easements, and
8 other innovative techniques that will accommodate appropriate rural
9 economic advancement, densities, and uses that are not characterized
10 by urban growth and that are consistent with rural character.

11 (c) Measures governing rural development. The rural element shall
12 include measures that apply to rural development and protect the
13 rural character of the area, as established by the county, by:

14 (i) Containing or otherwise controlling rural development;

15 (ii) Assuring visual compatibility of rural development with the
16 surrounding rural area;

17 (iii) Reducing the inappropriate conversion of undeveloped land
18 into sprawling, low-density development in the rural area;

19 (iv) Protecting critical areas, as provided in RCW 36.70A.060,
20 and surface water and groundwater resources; and

21 (v) Protecting against conflicts with the use of agricultural,
22 forest, and mineral resource lands designated under RCW 36.70A.170.

23 (d) Limited areas of more intensive rural development. Subject to
24 the requirements of this subsection and except as otherwise
25 specifically provided in this subsection (5)(d), the rural element
26 may allow for limited areas of more intensive rural development,
27 including necessary public facilities and public services to serve
28 the limited area as follows:

29 (i) Rural development consisting of the infill, development, or
30 redevelopment of existing commercial, industrial, residential, or
31 mixed-use areas, whether characterized as shoreline development,
32 villages, hamlets, rural activity centers, or crossroads
33 developments.

34 (A) A commercial, industrial, residential, shoreline, or mixed-
35 use area are subject to the requirements of (d)(iv) of this
36 subsection, but are not subject to the requirements of (c)(ii) and
37 (iii) of this subsection.

38 (B) Any development or redevelopment other than an industrial
39 area or an industrial use within a mixed-use area or an industrial

1 area under this subsection (5)(d)(i) must be principally designed to
2 serve the existing and projected rural population.

3 (C) Any development or redevelopment in terms of building size,
4 scale, use, or intensity may be permitted subject to confirmation
5 from all existing providers of public facilities and public services
6 of sufficient capacity of existing public facilities and public
7 services to serve any new or additional demand from the new
8 development or redevelopment. Development and redevelopment may
9 include changes in use from vacant land or a previously existing use
10 so long as the new use conforms to the requirements of this
11 subsection (5) and is consistent with the local character. Any
12 commercial development or redevelopment within a mixed-use area must
13 be principally designed to serve the existing and projected rural
14 population and must meet the following requirements:

15 (I) Any included retail or food service space must not exceed the
16 footprint of previously occupied space or 5,000 square feet,
17 whichever is greater, for the same or similar use; and

18 (II) Any included retail or food service space must not exceed
19 2,500 square feet for a new use;

20 (ii) The intensification of development on lots containing, or
21 new development of, small-scale recreational or tourist uses,
22 including commercial facilities to serve those recreational or
23 tourist uses, that rely on a rural location and setting, but that do
24 not include new residential development. A small-scale recreation or
25 tourist use is not required to be principally designed to serve the
26 existing and projected rural population. Public services and public
27 facilities shall be limited to those necessary to serve the
28 recreation or tourist use and shall be provided in a manner that does
29 not permit low-density sprawl;

30 (iii) The intensification of development on lots containing
31 isolated nonresidential uses or new development of isolated cottage
32 industries and isolated small-scale businesses that are not
33 principally designed to serve the existing and projected rural
34 population and nonresidential uses, but do provide job opportunities
35 for rural residents. Rural counties may allow the expansion of small-
36 scale businesses as long as those small-scale businesses conform with
37 the rural character of the area as defined by the local government
38 according to RCW 36.70A.030(23). Rural counties may also allow new
39 small-scale businesses to utilize a site previously occupied by an
40 existing business as long as the new small-scale business conforms to

1 the rural character of the area as defined by the local government
2 according to RCW 36.70A.030(23). Public services and public
3 facilities shall be limited to those necessary to serve the isolated
4 nonresidential use and shall be provided in a manner that does not
5 permit low-density sprawl;

6 (iv) A county shall adopt measures to minimize and contain the
7 existing areas of more intensive rural development, as appropriate,
8 authorized under this subsection. Lands included in such existing
9 areas shall not extend beyond the logical outer boundary of the
10 existing area, thereby allowing a new pattern of low-density sprawl.
11 Existing areas are those that are clearly identifiable and contained
12 and where there is a logical boundary delineated predominately by the
13 built environment, but that may also include undeveloped lands if
14 limited as provided in this subsection. The county shall establish
15 the logical outer boundary of an area of more intensive rural
16 development. In establishing the logical outer boundary, the county
17 shall address (A) the need to preserve the character of existing
18 natural neighborhoods and communities, (B) physical boundaries, such
19 as bodies of water, streets and highways, and land forms and
20 contours, (C) the prevention of abnormally irregular boundaries, and
21 (D) the ability to provide public facilities and public services in a
22 manner that does not permit low-density sprawl;

23 (v) For purposes of this subsection (5)(d), an existing area or
24 existing use is one that was in existence:

25 (A) On July 1, 1990, in a county that was initially required to
26 plan under all of the provisions of this chapter;

27 (B) On the date the county adopted a resolution under RCW
28 36.70A.040(2), in a county that is planning under all of the
29 provisions of this chapter under RCW 36.70A.040(2); or

30 (C) On the date the office of financial management certifies the
31 county's population as provided in RCW 36.70A.040(5), in a county
32 that is planning under all of the provisions of this chapter pursuant
33 to RCW 36.70A.040(5).

34 (e) Exception. This subsection shall not be interpreted to permit
35 in the rural area a major industrial development or a master planned
36 resort unless otherwise specifically permitted under RCW 36.70A.360
37 and 36.70A.365.

38 (6) A transportation element that implements, and is consistent
39 with, the land use element.

1 (a) The transportation element shall include the following
2 subelements:

3 (i) Land use assumptions used in estimating travel;

4 (ii) Estimated traffic impacts to state-owned transportation
5 facilities resulting from land use assumptions to assist the
6 department of transportation in monitoring the performance of state
7 facilities, to plan improvements for the facilities, and to assess
8 the impact of land-use decisions on state-owned transportation
9 facilities;

10 (iii) Facilities and services needs, including:

11 (A) An inventory of air, water, and ground transportation
12 facilities and services, including transit alignments and general
13 aviation airport facilities, to define existing capital facilities
14 and travel levels as a basis for future planning. This inventory must
15 include state-owned transportation facilities within the city or
16 county's jurisdictional boundaries;

17 (B) Level of service standards for all locally owned arterials
18 and transit routes to serve as a gauge to judge performance of the
19 system. These standards should be regionally coordinated;

20 (C) For state-owned transportation facilities, level of service
21 standards for highways, as prescribed in chapters 47.06 and 47.80
22 RCW, to gauge the performance of the system. The purposes of
23 reflecting level of service standards for state highways in the local
24 comprehensive plan are to monitor the performance of the system, to
25 evaluate improvement strategies, and to facilitate coordination
26 between the county's or city's six-year street, road, or transit
27 program and the office of financial management's ~~((ten))~~ 10-year
28 investment program. The concurrency requirements of (b) of this
29 subsection do not apply to transportation facilities and services of
30 statewide significance except for counties consisting of islands
31 whose only connection to the mainland are state highways or ferry
32 routes. In these island counties, state highways and ferry route
33 capacity must be a factor in meeting the concurrency requirements in
34 (b) of this subsection;

35 (D) Specific actions and requirements for bringing into
36 compliance locally owned transportation facilities or services that
37 are below an established level of service standard;

38 (E) Forecasts of traffic for at least ten years based on the
39 adopted land use plan to provide information on the location, timing,
40 and capacity needs of future growth;

1 (F) Identification of state and local system needs to meet
2 current and future demands. Identified needs on state-owned
3 transportation facilities must be consistent with the statewide
4 multimodal transportation plan required under chapter 47.06 RCW;

5 (iv) Finance, including:

6 (A) An analysis of funding capability to judge needs against
7 probable funding resources;

8 (B) A multiyear financing plan based on the needs identified in
9 the comprehensive plan, the appropriate parts of which shall serve as
10 the basis for the six-year street, road, or transit program required
11 by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
12 35.58.2795 for public transportation systems. The multiyear financing
13 plan should be coordinated with the ~~((ten))~~ 10-year investment
14 program developed by the office of financial management as required
15 by RCW 47.05.030;

16 (C) If probable funding falls short of meeting identified needs,
17 a discussion of how additional funding will be raised, or how land
18 use assumptions will be reassessed to ensure that level of service
19 standards will be met;

20 (v) Intergovernmental coordination efforts, including an
21 assessment of the impacts of the transportation plan and land use
22 assumptions on the transportation systems of adjacent jurisdictions;

23 (vi) Demand-management strategies;

24 (vii) Pedestrian and bicycle component to include collaborative
25 efforts to identify and designate planned improvements for pedestrian
26 and bicycle facilities and corridors that address and encourage
27 enhanced community access and promote healthy lifestyles;

28 (viii) Accommodation of the delivery of goods into communities by
29 requiring truck loading and unloading areas in urban areas, the
30 creation of commercial truck parking sufficient for the amount of
31 deliveries into the community, and planned highway corridors for
32 heavy commercial trucks to traverse.

33 (b) After adoption of the comprehensive plan by jurisdictions
34 required to plan or who choose to plan under RCW 36.70A.040, local
35 jurisdictions must adopt and enforce ordinances which prohibit
36 development approval if the development causes the level of service
37 on a locally owned transportation facility to decline below the
38 standards adopted in the transportation element of the comprehensive
39 plan, unless transportation improvements or strategies to accommodate
40 the impacts of development are made concurrent with the development.

1 These strategies may include increased public transportation service,
2 ride-sharing programs, demand management, and other transportation
3 systems management strategies. For the purposes of this subsection
4 (6), "concurrent with the development" means that improvements or
5 strategies are in place at the time of development, or that a
6 financial commitment is in place to complete the improvements or
7 strategies within six years. If the collection of impact fees is
8 delayed under RCW 82.02.050(3), the six-year period required by this
9 subsection (6)(b) must begin after full payment of all impact fees is
10 due to the county or city.

11 (c) The transportation element described in this subsection (6),
12 the six-year plans required by RCW 35.77.010 for cities, RCW
13 36.81.121 for counties, and RCW 35.58.2795 for public transportation
14 systems, and the ~~((ten))~~ 10-year investment program required by RCW
15 47.05.030 for the state, must be consistent.

16 (7) An economic development element establishing local goals,
17 policies, objectives, and provisions for economic growth and vitality
18 and a high quality of life. A city that has chosen to be a
19 residential community is exempt from the economic development element
20 requirement of this subsection.

21 (8) A park and recreation element that implements, and is
22 consistent with, the capital facilities plan element as it relates to
23 park and recreation facilities. The element shall include: (a)
24 Estimates of park and recreation demand for at least a ~~((ten))~~ 10-
25 year period; (b) an evaluation of facilities and service needs; and
26 (c) an evaluation of intergovernmental coordination opportunities to
27 provide regional approaches for meeting park and recreational demand.

28 (9) It is the intent that new or amended elements required after
29 January 1, 2002, be adopted concurrent with the scheduled update
30 provided in RCW 36.70A.130. Requirements to incorporate any such new
31 or amended elements shall be null and void until funds sufficient to
32 cover applicable local government costs are appropriated and
33 distributed by the state at least two years before local government
34 must update comprehensive plans as required in RCW 36.70A.130.

35 NEW SECTION. **Sec. 8.** A new section is added to chapter 36.70A
36 RCW to read as follows:

37 Planning cities and counties as part of the transportation
38 requirements in RCW 36.70A.070(6) must address the following issues:

1 (1) Each must plan to provide sufficient parking locations to
2 accommodate delivery of goods.

3 (a) Each may require properties that are to receive delivery from
4 commercial trucks to have a way to accommodate those vehicles,
5 preferably on-site.

6 (b) Each must require communities to have commercial truck
7 parking near ports, warehouses, and the national highway system in
8 areas frequently used by commercial trucks. Counties and cities may
9 not prohibit the establishment of commercial truck parking in areas
10 where there are commercial or industrial developments. They are
11 encouraged to facilitate the development of areas where commercial
12 truck drivers may abide for periods of rest. Commercial truck parking
13 facilities should include restrooms, showers, equipment to facilitate
14 idle reduction allowing for heating, ventilation, air conditioning,
15 and electric services to be powered from on-site, and security
16 measures. Some locations should be collocated, abutting, or very near
17 restaurants and grocery stores that can accommodate the commercial
18 trucks.

19 (c) Multifamily residential buildings within the urban growth
20 area are to have locations where light duty, package delivery, or
21 moving trucks can temporarily park without obstructing the flow of
22 vehicular, bicycle, and pedestrian traffic on the streets, bicycle
23 lanes, and sidewalks.

24 (2) Each must plan to provide and maintain streets designed,
25 sized, and constructed to be used by heavy commercial trucks in
26 appropriate locations.

27 (3) For counties or cities with a population greater than 75,000,
28 each must plan for and permit locations where large commercial
29 vehicles can receive maintenance, repairs, and services.

--- END ---

FINAL BILL REPORT

SHB 1706

C 204 L 22
Synopsis as Enacted

Brief Description: Concerning truck drivers ability to access restroom facilities.

Sponsors: House Committee on Transportation (originally sponsored by Representatives Sells, Ryu, Wicks, Berry, Valdez, Graham, Berg, Macri, Peterson, Senn, Shewmake, Orwall, Gregerson, Dolan, Fitzgibbon, Paul, Stonier, Davis, Riccelli, Santos, Taylor and Kloba).

House Committee on Transportation

Senate Committee on Transportation

Senate Committee on Labor, Commerce & Tribal Affairs

Background:

Restroom Requirements.

Under the Washington Industrial Safety and Health Act (WISHA), an employer must provide a workplace free from recognized hazards. The Department of Labor and Industries (L&I) administers WISHA. The L&I has adopted general health and safety standards, pursuant to WISHA, that apply to most industries, and has safety standards that apply only to specific industries, many of which include requirements regarding the provision of restroom facilities.

Port Districts.

Port districts are a type of special purpose district, and there are 75 port districts in Washington. Port districts can include harbors and marine transport, but can also include airports, railroads, and other facilities. Port districts are generally funded by property taxes, services fees, lease fees, and bonds, but they may also receive funding from the federal government and the state.

Marine cargo generally comes in three forms: containerized (cargo transported by container), bulk (cargo transported unpackaged, like grain or oil), and break bulk (cargo, such as a car or barrels, that is loaded individually, rather than in containers or in bulk). Most non-bulk cargo is transported by intermodal container. Such containers can be

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

transferred between different modes of transportation—for example, from ship to rail—without removing the cargo from the container. Drayage trucks are generally diesel-fueled, heavy-duty trucks that transport containers and bulk freight between a port and intermodal rail facilities, distribution centers, and other locations near the port.

Summary:

Port Districts.

A terminal operator, which may or may not be the port district, must provide a sufficient number of restrooms for use by drayage truck operators in areas of the terminal that drayage truck operators typically access. These restrooms may include fixed bathrooms with flush toilets or portable chemical toilets. At least one restroom must be a private space that is both suitable for and dedicated to expressing breast milk.

A terminal operator complies with this restroom requirement if the terminal operator:

- allows drayage truck operators access to existing restrooms while the drayage truck operators are on port property, when access does not pose an obvious safety risk to the drayage truck operators and other workers in the area, is in areas where drayage truck operators typically have access, and does not violate federal terminal security requirements;
- provides additional restrooms at locations where there is the most need; and
- has a policy that allows drayage truck operators to leave their vehicles at reasonable times and locations for purposes of accessing restrooms.

Enforcement.

The Department of Health (DOH) and the L&I are granted jurisdiction to enforce the restroom requirements. The DOH is allowed to issue a warning for a first violation of the section and a class 2 civil infraction for subsequent violations. Failure to comply with the restroom requirement is a violation of the WISHA.

The DOH and L&I may not take duplicate enforcement actions on violations arising from the same conduct.

Votes on Final Passage:

House	98	0	
Senate	48	0	(Senate amended)
House	97	1	(House concurred)

Effective: June 9, 2022

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1706

Chapter 204, Laws of 2022

67th Legislature
2022 Regular Session

DRAYAGE TRUCK OPERATORS—ACCESS TO RESTROOM FACILITIES

EFFECTIVE DATE: June 9, 2022

Passed by the House March 7, 2022
Yeas 97 Nays 1

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate March 2, 2022
Yeas 48 Nays 0

DENNY HECK

President of the Senate

Approved March 30, 2022 2:22 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1706** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

March 31, 2022

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1706

AS AMENDED BY THE SENATE

Passed Legislature - 2022 Regular Session

State of Washington

67th Legislature

2022 Regular Session

By House Transportation (originally sponsored by Representatives Sells, Ryu, Wicks, Berry, Valdez, Graham, Berg, Macri, Peterson, Senn, Shewmake, Orwall, Gregerson, Dolan, Fitzgibbon, Paul, Stonier, Davis, Riccelli, Santos, Taylor, and Kloba)

READ FIRST TIME 02/07/22.

1 AN ACT Relating to truck drivers ability to access restroom
2 facilities; adding a new section to chapter 70.54 RCW; and
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.54
6 RCW to read as follows:

7 (1) The definitions in this subsection apply throughout this
8 section unless the context clearly requires otherwise.

9 (a) "Drayage truck operator" means the driver of any in-use on-
10 road vehicle with a gross vehicle weight rating greater than 33,000
11 pounds operating on or transgressing through port or intermodal rail
12 yard property for the purpose of loading, unloading, or transporting
13 cargo, including containerized, bulk, or break-bulk goods.

14 (b)(i) "Terminal operator" means the business entity operating a
15 marine terminal for loading and unloading cargo to and from marine
16 vessels.

17 (ii) "Terminal operator" includes the port if the port is
18 directly operating the marine terminal in loading and unloading cargo
19 to and from marine vessels.

20 (2) A terminal operator must provide a sufficient number of
21 restrooms for use by drayage truck operators in areas of the terminal

1 that drayage truck operators typically have access to, such as inside
2 the gate and truck queuing lots. Restrooms may include fixed
3 bathrooms with flush toilets or portable chemical toilets. At least
4 one restroom provided by the terminal operator must be a private
5 space suitable for and dedicated to expressing breast milk.

6 (3) A terminal operator is deemed in compliance with this section
7 if the terminal operator:

8 (a) Allows drayage truck operators access to existing restrooms
9 while the drayage truck operators are on port property in areas of
10 the terminal that drayage truck operators typically have access to
11 and when access does not pose an obvious safety risk to the drayage
12 truck operators and other workers in the area and does not violate
13 federal terminal security requirements;

14 (b) When necessary, provides additional restrooms at locations
15 where there is the most need. To determine need, the terminal
16 operator must assess the use and accessibility of existing restrooms
17 and conduct a survey of drayage truck operators; and

18 (c) Has a policy that allows drayage truck operators to leave
19 their vehicles at reasonable times and locations for purposes of
20 accessing restrooms.

21 (4) Restrooms for drayage truck operators must be located in
22 areas where access would not pose an obvious health or safety risk to
23 the drayage truck operators or other workers in the area.

24 (5)(a) The departments of health and labor and industries have
25 jurisdiction to enforce this section.

26 (b) The department of health may issue a warning letter to the
27 port terminal operator for a first violation of this section,
28 informing the port terminal operator of the requirements of this
29 section. A port terminal operator that violates this section after
30 receiving a warning letter is guilty of a class 2 civil infraction
31 under chapter 7.80 RCW.

32 (c) Failure of a terminal operator to comply with this section is
33 a violation of chapter 49.17 RCW.

34 (d) The departments may not take duplicate enforcement actions
35 against an individual or business for violations arising from the
36 same conduct.

Passed by the House March 7, 2022.
Passed by the Senate March 2, 2022.
Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

--- **END** ---

DECLARATION OF SERVICE

On said day below, I had electronically delivered a true and accurate copy of the *Memorandum of Amicus Curiae Washington Trucking Associations* in Supreme Court Cause No. 103652-3 to the following parties:

Carolyn A. Lake
Goodstein Law Group PLLC
501 S. G St
Tacoma, WA 98405-4715

Peter J. Helmberger
David C. Owen
Pierce County Prosecutor's Office
930 Tacoma Ave S. Rm 946
Tacoma, WA 98402-2102

Original electronically delivered via appellate portal:
Supreme Court Clerk's Office

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

DATED: January 24, 2025 at Seattle, Washington.

/s/ Brad Roberts
Brad Roberts, Legal Assistant
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

January 24, 2025 - 10:27 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 103,652-3
Appellate Court Case Title: Matthew and Kaylyne Newell v. Pierce County
Superior Court Case Number: 21-2-07529-2

The following documents have been uploaded:

- 1036523_Motion_20250124102052SC958639_3362.pdf
This File Contains:
Motion 1 - Amicus Curiae Brief
The Original File Name was WTA Memorandum of Amicus Curiae.pdf
- 1036523_Other_20250124102052SC958639_7709.pdf
This File Contains:
Other - Motion for Leave to File Amicus Memorandum
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Comments:

WTA Motion for Leave to File Amicus Memorandum WTA Memorandum of Amicus Curiae

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