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January 31, 2017

Honorable Susan L. Carlson
Supreme Court Clerk
P.O. Box 40929
Olympia, WA 98504-0929

RE: Proposed Rule GR 36

Dear Clerk Carlson;

I write in opposition to the American Civil Liberties Union of Washington's (ACLU) proposed rule. I urge the Court to consider the alternative rule proposed by the Washington Association of Prosecuting Attorneys (WAPA) as a more comprehensive approach.

The ACLU proposed rule urges a standard contrary to existing law. The vague standard of denying a preemptory challenge when race or ethnicity "could" be a factor limits the trial court's ability to fully examine the circumstances surrounding the challenge. Appellate courts have historically given deference to trial court findings in *Batson* cases because the trial court is in a better position to examine the circumstances surrounding the challenge.

Also, the ACLU proposed rule fails to consider gender as a protected class. The defense regularly strikes women jurors in sexual offense cases. Nothing in the ACLU proposed rule would protect this class and their rights to serve as jurors.

Additionally, the ACLU proposed rule does not require a timely objection. Issues of juror qualification should be raised and resolved at the trial court level. The judicial officer observing the conduct is in the best position to address the concern when raised.

While I agree that protecting the rights of prospective jurors can be addressed by court rules, the ACLU proposed rule falls short of the objective and should be rejected. Alternatively, I urge the Court to consider the WAPA proposed rule which codifies existing law and includes reasonable procedural safeguards.

Respectfully submitted,

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Tracy, Mary

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Sent: Tuesday, January 31, 2017 4:41 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
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