

NO. 88086-7

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ALLEN EUGENE GREGORY,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

MOTION OF 56 FORMER AND RETIRED WASHINGTON STATE
JUDGES, A FORMER U.S. ATTORNEY, AMERICAN CIVIL
LIBERTIES UNION FOUNDATION, AMERICAN CIVIL
LIBERTIES UNION-WASHINGTON, CHURCH COUNCIL OF
GREATER SEATTLE, CATHOLIC MOBILIZING NETWORK,
FAITH ACTION NETWORK, FRIENDS COMMITTEE ON
WASHINGTON PUBLIC POLICY, LEAGUE OF WOMEN VOTERS
OF WASHINGTON, MURDER VICTIMS FAMILIES FOR
RECONCILIATION, TWO LAW SCHOOL PROFESSORS,
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE
LAWYERS, AND WASHINGTON DEFENDER ASSOCIATION FOR
LEAVE TO FILE AMICUS BRIEF AND
MOTION TO FILE OVERLENGTH BRIEF

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I. IDENTITY AND INTEREST OF AMICI

A. American Civil Liberties Union Foundation

The American Civil Liberties Union (“ACLU”) is a nationwide, nonprofit, nonpartisan organization with more than 500,000 members dedicated to the principles of liberty and equality embodied in the constitution. The ACLU Capital Punishment Project engages in public advocacy and litigation, including direct representation of capital defendants across the country. Its attorneys have considerable expertise in death penalty litigation.

B. American Civil Liberties Union of Washington

The American Civil Liberties Union of Washington (“ACLU-WA”) is a statewide, nonpartisan, nonprofit organization of over 50,000 members and supporters, dedicated to the preservation of civil liberties. ACLU-WA strongly opposes the death penalty. ACLU-WA has participated in numerous death penalty cases in Washington as amicus curiae and also has participated in legislative efforts to substitute safe and just alternative sentences for the death penalty.

C. Church Council of Greater Seattle

The Church Council of Greater Seattle (“CCGS”) is a membership organization of 320 congregations from 16 Christian denominations serving King and South Snohomish Counties. CCGS’s concern and

opposition to the death penalty is rooted in its religious traditions. CCGS concurs with the contents presented in the brief and is proud to join as a friend of the court to address and ultimately end this immoral practice in the State of Washington. CCGS continues its mission to build and to plant the seeds of the Beloved Community as espoused by the Rev. Dr. Martin Luther King Jr. with all people of faith and good will.

D. Catholic Mobilizing Network

The Catholic Mobilizing Network (“CMN”) proclaims the Church’s pro-life teaching and its application to capital punishment. Working to implement the United States Conference of Catholic Bishops’ Catholic Campaign to End the Use of the Death Penalty, CMN collaborates with grassroots organizations, state campaigns, and national organizations to end executions in our country.

E. Faith Action Network

Faith Action Network (“FAN”) is a statewide, interfaith, advocacy organization which through education and mobilization of its advocates (currently about 5,500) and partners seeks to address social injustices and help make the reforms and changes necessary for a more equitable and sustainable state and society. FAN sees one of our societal injustices as the death penalty. FAN advocates for this statute to be replaced with life without release because the current system is excessive in its financial

costs for local government—resources that could be better used to re-activate cold cases. FAN also believes the death penalty can be and is racially unjust in its application. Last, as a faith organization, FAN is morally opposed to the death penalty, believing that the state should not be involved in executing capital criminals but instead do effective incarceration that is smart on crime and not just hard on crime.

F. Friends Committee on Washington Public Policy

The Friends Committee on Washington Public Policy is a representative body of the members of the Religious Society of Friends (“Quakers”) in Washington State that serves as a lobby for peace and justice issues consistent with the faith, practice, and testimonies of the Quakers.

G. League of Women Voters of Washington

The League of Women Voters of Washington (“The League”) supports the abolition of the death penalty consistent with the League of Women Voters of the United States’ position to abolish the death penalty, which was adopted in 2006. As is the case with all of The League’s positions, it was reached only after a thorough study of and concurrence by The League’s membership. The League has concluded that the death penalty does not function as an appropriate punishment for the following reasons:

- In practice, the death penalty is unfair as it targets the poor and other vulnerable people—people who are mentally ill, mentally retarded, brain-damaged, and members of an ethnic or racial minority group.
- The death penalty is not an effective deterrent.
- The nations with which we most identify—the nations of the European Union and Canada, for example—have abolished the death penalty and consider it a violation of human rights.
- The death penalty does not serve the interests of family members of victims since the necessary and lengthy appeals process postpones the realization of justice and so, can delay the healing process.
- An error cannot be corrected if an innocent person is put to death.
- The death penalty is extremely expensive due to precautions and extra measures taken to insure that only appropriate defendants receive the death penalty.
- Reform has been tried and has not worked.

The League is a nonpartisan political organization that encourages informed and active participation of citizens in government and influences public policy through education and advocacy. The League of Women Voters of Washington has more than 1,800 members who are taxpayers in the State of Washington.

H. Murder Victims’ Families for Reconciliation

Murder Victims’ Families for Reconciliation (“MVFR”) is a national anti-death penalty organization led by family members of murder victims and the executed. Founded in 1976, MVFR’s anti-death penalty

stance is rooted in large measure in societal and judicial system suggestions that the death penalty is necessary for victim families to feel that justice has been served, and that their healing is somehow made possible through the execution of those convicted for killing their loved ones. Rejecting such counsel, MVFR provides space for families who oppose the death penalty to tell their stories in ways that can help dismantle the death penalty while strengthening support for victim families.

Based in Raleigh, North Carolina, MVFR is comprised of approximately 1,000 members throughout the United States. The MVFR membership includes people from a broad array of faith/belief systems or lack thereof, racial/ethnic identities, ages, and geographical settings.

MVFR members oppose the death penalty for a variety of reasons, including that it (1) complicates grieving and hinders healing; (2) wastes money that could be better spent on law enforcement to help solve the hundreds of murders that go unsolved every year; (3) is applied unfairly and disproportionately, especially against low income communities, and communities of color; (4) it represents cruel and unusual punishment; and (5) it violates ethical and moral teachings and norms.

I. Washington Association of Criminal Defense Lawyers

The Washington Association of Criminal Defense Lawyers (“WACDL”) was formed to improve the quality and administration of justice. A professional bar association founded in 1987, WACDL has over 900 members—private criminal defense lawyers, public defenders, and related professionals—committed to preserving fairness and promoting a rational and humane criminal justice system. WACDL joins this brief as a part of its mission to promote justice and protect individual constitutional rights.

J. Washington Defender Association

The Washington Defender Association (“WDA”) is a statewide non-profit organization whose membership consists of public defender agencies, defenders of the indigent, and others who are committed to improving public defense. The purpose of WDA, as set forth in its bylaws, is “to improve the administration of justice and to stimulate efforts to remedy inadequacies or injustice in substantive or procedural law.” WDA has a demonstrated interest in the death penalty and its administration in Washington State. Recently, WDA became the home of the Washington Death Penalty Assistance Center (“WDPAC”), which is staffed by counsel qualified to represent defendants in capital cases. The WDPAC provides continuing legal education and case-related assistance

to individual counsel in Washington State who currently or may in the future represent individuals charged with aggravated murder in cases where the death penalty may be imposed. (The interest of WDPAC is solely in providing resources and training for capital counsel; it does not participate directly in capital litigation.) WDA has previously been granted leave to file amicus briefs on numerous issues related to criminal defense and representation of the indigent defendants.

K. Individual Amici

The following persons signing this brief as individual amici are retired and former judges who previously served on courts in the State of Washington. Each remains interested in and seeks to promote integrity and impartiality in the administration of justice, and to enhance public understanding of the very serious issues raised by continued imposition of the death penalty.

Robert H. Alsdorf
Sharon S. Armstrong
Paul A. Bastine
Daniel J. Berschauer
Terrence A. Carroll
Paula Casey
Harriett M. Cody
Karen Conoley
John Darrah
James A. Doerty
David R. Draper
Tari S. Eitzen
Anne L. Ellington

George Finkle
Deborah D. Fleck
David Foscue
Michael J. Fox
M. Karlynn Haberly
Glenna S. Hall
Michael Hayden
Michael Heavey
Richard D. Hicks
Bruce W. Hilyer
Philip G. Hubbard, Jr.
Faith Ireland
Peter D. Jarvis
Charles V. Johnson
Paris K. Kallas
Kenneth H. Kato
Anna M. Laurie
J. Kathleen Learned
Terry Lukens
Nicole MacInnes
Craig Matheson
George Mattson
Harry J. McCarthy
Wm. Thomas McPhee
Charles W. Mertel
J. Dean Morgan
James M. Murphy
David A. Nichols
Dale B. Ramerman
E. Thompson Reynolds
Neal Rielly
Steven Scott
Carol Schapira
Richard Schroeder
David Soukup
Richard A. Strophy
Dennis Sweeney
Joseph A. Thibodeau
Arthur W. Verharen
Chris Washington
Jay V. White

Diane M. Woolard
Dennis D. Yule

Other individual amici:

Kate Pflaumer, former United States Attorney for the Western District of Washington, who is concerned about the fair and impartial administration of justice in Washington's death penalty system.

Mary Pat Treuthart, Professor of Law at Gonzaga University, who has been working on death penalty related issues in Washington State for the past 25 years.

George Critchlow, Professor of Law at Gonzaga University, who is concerned about the fair and impartial administration of justice in Washington's death penalty system.

Ann Murphy, Professor of Law at Gonzaga University, who is concerned about the fair and impartial administration of justice in Washington's death penalty system.

II. FAMILIARITY WITH ISSUES

Counsel for Amicus has reviewed the parties' briefs filed with this Court. Counsel is familiar with the scope of the argument presented by Mr. Gregory and other amici and has not unduly repeated arguments raised by them.

III. ISSUES TO BE ADDRESSED BY AMICI

Whether Washington's capital punishment scheme is cruel because

it is inherently arbitrary due to geographic and financial disparities among Washington's counties, and because proportionality review has failed to correct its arbitrariness?

Whether Washington's capital punishment scheme is cruel because it is inherently racially discriminatory?

Whether Washington's capital punishment scheme is cruel because it is wholly unreliable?

Whether Washington's capital punishment scheme is cruel because it cannot be reconciled with evolving standards of decency?

IV. WHY AMICUS BRIEFING WILL ASSIST THE COURT

The ACLU has extensive expertise in death penalty jurisprudence and extensive experience litigating and briefing cases involving racial justice issues. The ACLU amicus brief contains extensive authority relevant to the issues before the Court, which will assist the Court in evaluating the legal arguments presented by Mr. Gregory in his petition. Particularly because this is a death penalty case, a well informed decision is essential and the authority in the amicus brief will aid the Court in its consideration of the case.

V. MOTION FOR LEAVE TO FILE OVERLENGTH BRIEF

Amici seeks permission to file an overlength brief of thirty-four pages.

A. Facts Relevant to Motion

Amici present authority in their thirty-four-page brief that the death penalty in Washington is unconstitutionally arbitrary and discriminatory, unreliable, serves no valid penological purpose, and fails to comply with evolving standards of decency.

Amici's arguments support and do not duplicate those of the defendant or other amici, and Amici have made substantial efforts to edit the brief in an attempt to comply with the twenty-page limit. Given that Amici include ten different organizations and fifty-nine individuals, Amici believe that a combined brief is more efficient for the Court than if Amici had filed several separate briefs.

B. Grounds for Relief and Argument

RAP 10.4(b) provides that an amicus curiae brief shall not exceed twenty pages. The Court, however, has the discretion to grant a motion to file an overlength brief to serve the ends of justice. RAP 1.2(c); RAP18.8(a). Amici request permission to file a brief, which is thirty-four pages in length, due both to the serious and important nature of the issues raised in the briefing and to the fact that Amici include numerous organizations and individuals, each of whom might have filed their own amicus briefs, but elected instead to present a concise and precise brief on these important issues. Consideration of this information will

facilitate a decision of the case on the merits. RAP 1.2(a).

VI. CONCLUSION

For the foregoing reasons, the Amici respectfully request that the Court grant leave to file the overlength amicus brief.

DATED this 8th day of January 2016.

Respectfully submitted,

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Marc Shapiro (N.Y. Bar No. 4403606)

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