

NO. 89590-2

SUPREME COURT
OF THE STATE OF WASHINGTON

IN RE THE PERSONAL RESTRAINT PETITION
OF
CECIL EMILE DAVIS

**MOTION FOR LEAVE TO FILE AMICI CURIAE
BRIEF OF
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON AND
DISABILITY RIGHTS WASHINGTON**

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1. Relief Requested

The American Civil Liberties Union of Washington (“ACLU”) and Disability Rights Washington (“DRW” and, together with ACLU, “Amici”) respectfully move for leave to file an amicus brief in this matter. The brief has been filed with this motion.

2. Applicants’ Interests and Familiarity with the Issues

Amici respectfully ask this Court to grant Mr. Davis’ Motion for Reconsideration and afford the relief requested therein.

ACLU is a statewide, nonpartisan, nonprofit organization with over 75,000 members and supporters, dedicated to the principles of liberty and equality embodied in the U.S. Constitution and Washington Constitution.

DRW is the organization designated by federal law and the Governor of Washington to provide protection and advocacy services to people in Washington with mental, developmental, physical and sensory disabilities. As the designated statewide protection and advocacy system for individuals with disabilities in Washington, DRW has the authority and the responsibility to pursue legal, administrative, and such other appropriate remedies as may be necessary to protect and advocate for the rights of persons in Washington with disabilities. *See* 42 U.S.C. § 15041 *et seq.*; 42 U.S.C. § 10801 *et seq.*; 29 U.S.C. § 794e; 29 U.S.C. § 2201; RCW 71A.10.080.

ACLU and DRW have each participated in death penalty litigation before this Court previously, including filing amicus curiae briefs in Mr. Davis' direct appeal. *See State v. Davis*, 175 Wn.2d 287, 290 P.3d 43 (2012).

3. Grounds for Granting Amicus Motion

Amici have reviewed Mr. Davis' Motion for Reconsideration and support the arguments set forth therein. Amici request leave to file their amicus brief pursuant to RAP 12.4(i) to address the soundness of certain legal principles announced in the Court's decision dismissing Mr. Davis' Personal Restraint Petition. The amicus brief addresses the unconstitutionality of Washington's death penalty scheme under *Hall v. Florida*, 134 S. Ct. 1986, 2001, 188 L.Ed.2d 1007 (2014), and *Moore v. Texas*, 137 S. Ct. 1039, 197 L.Ed.2d 416 (decided March 28, 2017, yet not cited in this Court's ruling in *In re Davis*, 188 Wn.2d 356, 395 P.3d 998 (May 18, 2017)), and the unconstitutionality of the death penalty in general as well as the unconstitutionality of imposing the death penalty against Mr. Davis, who is a person with an intellectual disability.

4. Conclusion

Applicants respectfully request that the Court grant this motion for leave to file an amicus brief in this case.

Respectfully submitted on September 8, 2017.

By: s/ Stacy Marchesano

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on September 8, 2017, I electronically filed the foregoing document using the Washington State Appellate Courts' E-Filing Portal, which will serve the document on Deputy Prosecuting Attorney Kathleen Proctor and all other registered parties of record. I further certify I have mailed the document to Cecil Emile Davis, DOC #920371, at the Washington State Penitentiary, IMU N-D-5, 1313 N. 13th Ave., Walla Walla, WA 99362.

s/ Vickie L. Owen
Vickie L. Owen
Legal Assistant
Garvey Schubert Barer

GARVEY SCHUBERT BARER

September 08, 2017 - 1:29 PM

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