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**SUPREME COURT OF THE STATE OF WASHINGTON**

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CITY OF SEATTLE,

Respondent,

v.

MATTHEW ERICKSON,

Petitioner.

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**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF ON  
BEHALF OF AMERICAN CIVIL LIBERTIES UNION OF  
WASHINGTON, WASHINGTON ASSOCIATION OF  
CRIMINAL DEFENSE LAWYERS, WASHINGTON  
DEFENDER ASSOCIATION, AND LOREN MILLER BAR  
ASSOCIATION**

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Pursuant to RAP 10.6(b), amici respectfully move for leave to file a brief in *City of Seattle v. Erickson*, no. 93408-8.

### **IDENTITY AND INTEREST OF *AMICI CURIAE***

The American Civil Liberties Union of Washington (“ACLU”) is a statewide, nonpartisan, nonprofit organization with over 50,000 members and supporters dedicated to the constitutional principles of liberty and equality. The ACLU has long been dedicated to protecting the constitutional right to a trial by a jury selected free of racial bias. It has submitted amicus briefs in numerous cases where that right is at stake.

The Washington Association of Criminal Defense Lawyers (“WACDL”) is an association made up of attorneys practicing criminal defense law in Washington State. It was formed in 1987 to improve the quality and administration of justice. The objectives and purposes of this organization are: (a) To protect and insure by rule of law those individual rights guaranteed by the Washington and Federal Constitutions, and to resist all efforts made to curtail such rights; (b) To improve the professional status of all lawyers and to encourage cooperation between lawyers engaged in the furtherance of our objectives through publications, education, and mutual assistance; and (c) To engage in all activities on a local, state and national level that will advance the purposes for which this

organization is formed in order to promote justice and the common good of the citizens of the United States.

The Washington Defender Association (“WDA”) is a non-profit association of nearly 1400 public defenders, criminal defense attorneys, investigators and others throughout the state of Washington. WDA and its members are committed to supporting and improving indigent defense. The primary purposes of WDA include protecting individual rights that are guaranteed by the Washington and U.S. Constitutions, improving the administration of justice, and stimulating efforts to remedy inadequacies in substantive and procedural law that contribute to injustice. WDA and its members are involved in numerous initiatives to remedy racial inequity in the criminal justice system. WDA has an interest in how this Court’s decision in *State v. Saintcalle*, 178 Wn.2d 34, 309 P.3d 326 (2013) will be interpreted and implemented, as well as in how *Batson* is applied in Washington State.

Originally formed in 1968, the Loren Miller Bar Association (“LMBA”) is a statewide organization of African-American attorneys and judges. LMBA is a civil rights organization focused on addressing the issues of race and social and economic disparities that affect the African-American community. The rights of African Americans and other racial minorities to participate in a jury and to receive a fair jury trial are critical

civil rights issues that are of paramount importance to LMBA and its members.

### **FAMILIARITY WITH ISSUES AND RECORD**

Undersigned counsel has read the parties' briefs and the verbatim reports of proceedings for voir dire and jury selection. Counsel is familiar with the parties' arguments and has not unduly repeated them.

### **ISSUES ADDRESSED BY AMICI**

1. In addressing the first step of a *Batson* challenge, did the trial court err in requiring proof of a pattern of discrimination, in treating all non-white jurors as one class, and in failing to consider the prosecutor's inherently race-based reason for excluding the juror?
2. In light of the persistent problem of excluding minorities from jury service, should this Court adopt the rule favored by five justices in *State v. Rhone*, 168 Wn.2d 645, 229 P.3d 752 (2010), that a defendant establishes a prima facie case of discrimination when the prosecutor exercises a peremptory challenge against the sole remaining venire member of the defendant's racial group or the last remaining minority member of the venire?
3. Given that racial bias is often unconscious but *Batson* addresses only intentional discrimination, should this Court adopt an "objective observer" standard akin to the appearance of fairness doctrine used for judicial recusals?

### **WHY AMICI BRIEFING WILL ASSIST THE COURT**

In *State v. Saintcalle*, 178 Wn.2d 34, 309 P.3d 326 (2013) this Court recognized the pervasive problem of race discrimination in jury

selection and lamented that current procedures were inadequate to address it. The amici brief suggests potential solutions to this problem in addition to clarifying existing equal protection case law. Amici provide a wider perspective than the parties on the significant constitutional rights involved, thereby aiding the Court in reaching a fully informed decision.

### **CONCLUSION**

Amici respectfully request that the Court grant leave to file the attached brief.

DATED this 13th day of February, 2017.

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