

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
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No. 95013-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

OLYMPIC PENINSULA NARCOTICS ENFORCEMENT TEAM;
CLALLAM COUNTY SHERIFF BILL BENEDICT;
CLALLAM COUNTY SHERIFF'S DEPARTMENT; AND
CLALLAM COUNTY

Appellants,

v.

REAL PROPERTY KNOWN AS
(1) JUNCTION CITY LOTS 1-12 INCLUSIVE, BLOCK 35;
(2) LOT 2 OF THE NELSON SHORT PLAT LOCATED IN
JEFFERSON COUNTY; AND
ALL APPURTANCES AND IMPROVEMENTS THEREON, OR
PROCEEDS THERE FROM

Respondents *in rem*,

STEVEN L. FAGER;
DBVWC, INC.; AND
LUCILLE M BROWN LIVING TRUST
Interested Parties.

**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON**

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I. RELIEF REQUESTED

Pursuant to Rule of Appellate Procedure 10.6, the American Civil Liberties Union of Washington moves for leave to file the attached Brief of *Amicus Curiae* in support of interested parties Steven L. Fager, DBVWC, Inc., and Lucille M. Brown Living Trust. *Amicus* respectfully submits this brief on the grounds that it would assist the Court in its consideration of the important issues arising in this case concerning the interpretation of RCW 69.50.505(6) dealing with attorney fee awards in civil asset forfeiture cases.

II. IDENTITY AND INTEREST OF *AMICUS*

The American Civil Liberties Union of Washington (“ACLU”), is a statewide, nonprofit, nonpartisan organization with over 80,000 members and supporters. It is dedicated to the preservation and defense of civil liberties and civil rights, and has particular interest and expertise in the areas of drug policy, criminal justice, and civil asset forfeiture.

III. FAMILIARITY WITH ISSUES

Amicus has obtained copies of, and are familiar with, the briefing submitted by the parties to this Court, the opinion of the Court of Appeals, and the proceedings below. *Amicus* is familiar with the scope of the argument presented by the parties and will not unduly repeat arguments raised by any of the parties. *Amicus* has extensive legal and practical

experience in issues regarding drug policy, criminal justice, and civil asset forfeiture.

IV. SPECIFIC ISSUES TO BE ADDRESSED

Whether RCW 69.50.505(6) authorizes recovery of attorneys' fees reasonably incurred in pursuing a suppression motion in a related criminal case, which led to prevailing in the forfeiture proceeding as well?

V. NEED FOR ADDITIONAL ARGUMENT

Amicus ACLU's specific expertise and experience with issues related to the drug policy, criminal justice, and civil asset forfeiture under Washington law will assist the Court in analyzing this case. *Amicus* has filed *amicus* briefs in numerous drug policy cases, including *Roe v. Teletech Customer Care Management (Colorado) LLC*, No. 83768-6 (2011), *State v. Fry*, No. 81210-1 (2008), and *State v. Tracy*, No. 77534-6 (2006). *Amicus* is also able to aid the Court by providing a broader perspective to arguments and authority, which supplements the parties' briefs. This includes perspective on the legislative history surrounding RCW 69.50.505(6), adopted in 2001. Laws of 2001, ch. 168. The ACLU of Washington was an advocate during the legislative debate over the law and was listed as a stakeholder in a workgroup created in the legislation to "evaluate Washington civil forfeiture laws and practices."¹ *Id.*

¹ The workgroup never came into existence because the section authorizing its creation was vetoed.

VI. CONCLUSION

For the foregoing reasons, *Amicus* respectfully requests that the Court grant this motion and permit them to file the attached Brief of *Amicus Curiae*.

RESPECTFULLY SUBMITTED AND DATED this 26th day of
April, 2018.

By: /s/Mark Cooke
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DECLARATION OF SERVICE

I, Kaya McRuer, hereby certify that on the date below, I caused the foregoing MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON to be served on the following in the manner indicated:

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I certify under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 26th day of April, 2018 at Seattle, Washington.

/s/Kaya McRuer
Kaya McRuer, Legal Assistant

AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION

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Transmittal Information

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Appellate Court Case Number: 95013-0
Appellate Court Case Title: OPNET, et al. v. Real Property, Steven L. Fager, et al.
Superior Court Case Number: 09-2-00413-6

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