

No. 95632-4

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

*Respondent,*

v.

JOHN DOUGLAS MAYFIELD,

*Petitioner.*

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**MOTION OF AMERICAN CIVIL LIBERTIES UNION OF  
WASHINGTON, FRED T. KOREMATSU CENTER FOR LAW  
AND EQUALITY, WASHINGTON ASSOCIATION OF CRIMINAL  
DEFENSE LAWYERS, AND WASHINGTON DEFENDER  
ASSOCIATION FOR LEAVE TO FILE AMICI CURIAE BRIEF**

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APPEAL FROM THE SUPERIOR COURT OF COWLITZ COUNTY

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The American Civil Liberties Union of Washington (“ACLU”), the Fred T. Korematsu Center for Law and Equality (“Korematsu Center”), the Washington Association of Criminal Defense Lawyers (“WACDL”), and the Washington Defender Association (“WDA”) respectfully move, pursuant to RAP 10.1(e) and 10.6, to file a brief as Amici Curiae in the instant matter.

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

The ACLU is a statewide, nonpartisan, nonprofit organization of over 80,000 members and supporters, dedicated to the preservation of civil liberties. It strongly supports adherence to article 1, section 7 of the Washington Constitution, which prohibits unlawful interference in private affairs. It has participated in numerous privacy-related cases as amicus curiae and as counsel.

The Korematsu Center is based at Seattle University School of Law and advances justice through research, advocacy, and education. The Korematsu Center is dedicated to advancing the legacy of Fred Korematsu, who defied the military orders during World War II that ultimately led to the incarceration of over 120,000 Japanese Americans. He took his challenge to the military orders to the United States Supreme Court, which upheld his conviction in 1944 on the ground that the removal of Japanese Americans was justified by “military necessity.” Mr.

Korematsu went on to successfully reopen his case and clear his conviction and to champion the cause of civil liberties and civil rights for all people. The Korematsu Center, inspired by his example, works to advance his legacy by promoting social justice. The Korematsu Center has a special interest in ensuring that Washington courts continue to develop our state constitutional jurisprudence. The Korematsu Center has participated in numerous cases, both as amicus curiae and as counsel, in which it has advocated for heightened protection in the juvenile sentencing, death penalty, right to counsel, and privacy contexts. The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

WACDL is a statewide, nonprofit organization formed to improve the quality and administration of justice. A professional bar association founded in 1987, WACDL has over 800 members—private criminal defense lawyers, public defenders, and related professionals—committed to promoting a fair, rational and humane criminal justice system.

WDA is a non-profit association of over a 1400 public defenders, criminal defense attorneys, investigators, social workers and children's civil rights attorneys throughout the state of Washington. WDA and its members are committed to supporting and improving indigent defense and the lives of indigent defendants and their families. A primary purpose of

WDA is to improve the administration of justice and stimulate efforts to remedy inadequacies in substantive and procedural law that contribute to injustice. WDA and its members are familiar with the law at issue in this case, based on their work in the criminal justice system, and they have previously been granted leave to file amicus briefs on many issues related to criminal law and criminal defense.

### **FAMILIARITY WITH ISSUES**

Amici Curiae have 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. Amici Curiae are familiar with the scope of the argument presented by the parties and will not unduly repeat arguments raised by other parties.

### **ISSUES TO BE ADDRESSED BY AMICI CURIAE**

1. Whether the inclusion of a formulaic “*Gunwall* analysis” should determine whether Washington courts undertake an independent analysis under the Washington Constitution.
2. Whether the Court should reject the attenuation exception to the exclusionary rule as incompatible with article I, section 7.
3. Whether the mere incantation of *Ferrier* warnings serves to cure a prior constitutional violation by police officers.

**WHY THE BRIEF OF AMICI CURIAE WILL  
ASSIST THE COURT**

The Court's decision on whether or not to modify requirements for *Gunwall* briefing, whether to recognize the attenuation doctrine under article 1, section 7 of the Washington Constitution, and whether to adopt a per se rule that attenuation exists whenever *Ferrier* warnings are given will significantly impact important areas of constitutional law in this state and affect a large segment of the population. A fully informed decision from Washington's highest court is essential, and the additional argument provided by Amici Curiae will be helpful to the Court. RAP 10.6(a).

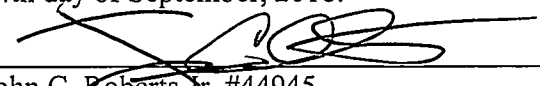
The parties are naturally most interested in establishment of a rule that addresses the particular facts of the case and provides a favorable result to their clients. Amici Curiae can provide a wider perspective, helping in the establishment of a rule that goes beyond the needs of the specific parties in this case.

**CONCLUSION**

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

Respectfully submitted this 24th day of September, 2018.

By

  
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**CERTIFICATE OF SERVICE**

I certify that on the 24th day of September, 2018, I caused a true and correct copy of the Motion for Leave to File Amici Curiae Brief to be sent by e-mail and U.S. mail to the following:

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

Executed in Seattle, Washington on September 24, 2018.

  
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**Transmittal Information**

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**Superior Court Case Number:** 15-1-00017-6

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