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No. 101093-1

SUPREME COURT FOR THE STATE OF WASHINGTON

**FREEDOM FOUNDATION,
Petitioner,**

v.

**WASHINGTON FEDERATION OF STATE
EMPLOYEES, *et al.*,
Respondents.**

**BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL
LIBERTIES UNION OF WASHINGTON FOUNDATION**

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The statement of identity and interest of amicus are set forth in the Motion for Leave to File that accompanies this brief.

II. INTRODUCTION

The Court of Appeals in this case ruled that the substantive due process rights of Washingtonians preclude release of certain information in public records requested by petitioner Freedom Foundation. Petitioner asks this Court to rule that no such substantive due process rights exist. Opening Br. of Pet'r at 15.

In the wake of the United States Supreme Court's destruction of self-determination and the right to autonomy over our bodies, amicus asks this Court to reject petitioner's argument. Washington law requires more than the federal constitution. Washington has long recognized the fundamental rights to bodily autonomy and protections, and any infringement of those rights must be narrowly tailored to effectuate compelling state interests. It is incumbent upon this Court to protect rights arising from the State's Constitution and laws.

There is ample support for affirming the Court of Appeals' ruling based on the substantive due process protections provided by the State's Constitution. Washington's Constitution was drafted to provide greater individual rights than those established under the United States Constitution. And its Supreme Court has recognized an obligation to determine rights independently concerning the "evolution of our society" or when rights have been overruled by the United States Supreme Court. *Alderwood Associates v. Washington Environmental Council*, 96 Wn.2d 230, 238-9, 635 P.2d 108 (1981).

This Court has also committed to recognizing the harms that can occur when we "feel bound by tradition and the way things have 'always' been." Rights deemed integral to "liberty" cannot be defined exclusively by the omission of such a right at one point in time. The error of tethering fundamental rights to "history and tradition" necessarily precludes the recognition of rights that have been discriminatorily withheld perpetuating the existing power structure.

In this case, the substantive due process protections of Washington’s Constitution support an exemption from the public records statute. The Public Records Act (“PRA”) is key to transparency and accountability. Open examination of public records affords the public and policymakers the ability to fully understand government practices and hold accountable government actors for the public interest – establishing a compelling interest. But mandating disclosure of information that is likely to lead to substantial physical harm is not narrowly tailored to effectuate that purpose.

III. STATEMENT OF THE CASE

The parties have described the factual and procedural background, which is incorporated here by reference. The Court of Appeals properly held “public employees who are survivors, or whose immediate family members are survivors, of domestic violence, sexual assault, stalking, or harassment have a substantive due process right to personal security and bodily integrity.” *Washington Fed’n of State Emps., Council*, 28

(WFSE) v. State, 22 Wn. App. 2d 392, 398–99; 404-05, 511 P.3d 119 (2022), review grant’d *Washington Fed’n of State Emps. v. Freedom Found.*, 200 Wn.2d 1012 (2022). The appellate court also appropriately held that strict scrutiny applies where state law mandates the disclosure of information that risks an infringement of the fundamental rights to personal security and bodily integrity, requiring a compelling state interest as well as being narrowly drawn to further that state interest. *Id.*

IV. ARGUMENT

A. **Washingtonians Have Long Been Entitled to the Fundamental Rights of Bodily Autonomy and Protections, Independent of Federal Analysis.**

1. **Washington Courts Are Not Limited by Federal Analysis.**

Washington courts have never been limited by federal interpretation: “[I]n interpreting the due process clause of the state constitution, we have repeatedly noted that the Supreme Court’s interpretation of the Fourteenth Amendment does not control our interpretation of the state constitution’s due process clause.” *State v. Bartholomew*, 101 Wn.2d 631, 639, 683 P.2d

1079 (1984). *See, also, Yim v. City of Seattle*, 194 Wn.2d 682, 690, 451 P.3d 694, 698-9 (2019), *as amended* (Jan. 9, 2020). (“[T]his court has a duty to recognize heightened constitutional protections as a matter of independent state law[.]”). *Id.*

Reliance on federal analysis is problematic because “it deprives the people of their ‘double security.’” *Alderwood Assocs.*, 96 Wn.2d at 238. Such reliance rests on two weak assumptions – the Supreme Court has arrived at the definitive meaning; and, that the Supreme Court never errs. Kristiana L. Farris, *Seeley v. State: The Need for Definitional Balancing in Washington Substantive Due Process Law*, 73 Wash. L. Rev. 669, 685 (1998).

“If the Supreme Court insists on limiting the content of due process to the rights created by state law, state courts can breathe new life into the federal due process clause by interpreting their common law, statutes and constitutions to guarantee a ‘property’ and ‘liberty’ that even the federal courts must protect. Federalism need not be a mean-spirited doctrine

that serves only to limit the scope of human liberty. Rather, it must necessarily be furthered significantly when state courts thrust themselves into a position of prominence in the struggle to protect the people of our nation from governmental intrusions on their freedoms ” William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 503 (1977).

2. *Gunwall* Warrants Independence and Greater Protection.

A *Gunwall* analysis and the preservation of fundamental rights guaranteed under Washington’s Constitution warrant departure from federal analysis, because the “legal underpinnings of precedent have changed or disappeared altogether” because the Supreme Court has limited fundamental rights to those that existed more than century and a half ago. *See, e.g., Yim*, 194 Wn.2d at 690. Inadequate federal protection in particular contexts is an additional factor triggering an independent review under the Washington Constitution. *See*

State v. Boland, 115 Wn.2d 571, 577-580, 800 P.2d 1112 (1990) (holding that police violate Const. art. I, § 7 privacy rights when they search a person’s curbside garbage, even though the United States Supreme Court held to the contrary when applying the Fourth Amendment).

Analysis of the six *Gunwall* factors warranting independence and greater protection for the substantive due process rights of bodily autonomy and protections under art. I, § 3, are: “(1) the textual language; (2) differences in the texts; (3) constitutional history; (4) preexisting state law; (5) structural differences; and (6) matters of particular state or local concern.”

State v. Gunwall, 106 Wn.2d 54, 58, 720 P.2d 808 (1986).

a. The First Three *Gunwall* Factors Combine to Weigh in Favor of Independence.

While the first factor weighs against independence because Const. art. I § 3 and the Fourteenth Amendment have the same text, remaining factors support an independent and more protective analysis.

With regard to the second factor, other provisions in Washington's Constitution warrant a broader reading of substantive due process rights. "Even where parallel provisions of the two constitutions do not have meaningful differences, other relevant provisions of the state constitution may require that the state constitution be interpreted differently." Hugh D. Spitzer, *Which Constitution? Eleven Years of Gunwall in Washington State*, 21 Seattle U. L. Rev. 1187, 1214 (1998). As set forth in Section B.2, below, Washington's Constitution has additional unique and extensive protections for fundamental rights, including Const. art. I § 1, and the express right to privacy in Const. art. I § 7. These provisions enhance protection of individual rights relating to personal decisions and require independent review and broader protection.

The third factor, on its own, is not probative. In drafting Const. art. I, § 3, the convention simply mimicked the language in the United States and Oregon Constitutions without serious debate or discussion. Farris, *supra*, at 697 (citing Journal

of Washington State Constitutional Convention 1889, 495-96 (B. Rosenow ed. 1962).

b. All Three Remaining *Gunwall* Factors Support Independence and Greater Protection.

The fifth *Gunwall* factor consistently supports independent analysis of the State Constitution – no matter the right asserted. Washington has “consistently concluded that [this] factor supports an independent analysis.” *King v. King*, 162 Wn.2d 2d 378, 393, 174 P.3d 659 (2007). “[T]he United States Constitution is a grant of limited power to the Federal government, while the state constitution imposes limitations on the otherwise plenary power of the state.” *Bellevue Sch. Dist. v. E.S.*, 171 Wn.2d 695, 713, 257 P.3d 570 (2011) (*internal citations omitted*).

The fourth and sixth factors support independence because State law and policy have long recognized the rights to bodily autonomy and protections as fundamental. These rights have long-served as the basis for requiring informed consent in

medical procedures; as the right to make one's own decisions about their bodies including the right to terminate a pregnancy; the right to decline life-saving measures; and the fundamental concept that one has a constitutional right to remain free from bodily attacks. In 1975, Washington's Supreme Court recognized the right to abortion, involving control of one's own reproduction, a fundamental right arising from the right of privacy, and subject to the protections in Const. art. I § 3. *State v. Koome*, 84 Wn.2d 901, 903, 530 P.2d 260 (1975). The right to refuse treatment is similarly explained as: "a constitutional right of privacy that encompasses the right to refuse treatment that serves only to prolong the dying process[,]" which is "found in our state constitution." See e.g., *Matter of Welfare of Colyer*, 99 Wn.2d 114, 120, 660 P.2d 738 (1983), *modified*, *Matter of Guardianship of Hamlin*, 102 Wn.2d 810, 689 P.2d 1372 (1984). This right has long been recognized in Washington, stemming first from the "common law right to be free from bodily invasion[.]" *Id.*, (citing *Physician's & Dentists' Business Bur. V.*

Dray, 8 Wn.2d 38, 111 P.2d 568 (1941), providing that an operation without authorized consent constituted assault and battery and malpractice). Washington also recognizes the substantive due process rights of foster children to be “free of unreasonable risk of danger, harm, or pain[.]” *Braam v. State*, 150 Wn.2d 689, 700, 81 P.3d 851 (2003) (recognizing and adhering to the weight of authority recognizing substantive due process rights of foster children in sister courts).

The rights to bodily autonomy and protections are also enshrined in the State’s laws as evidenced by several statutes. Washington’s Reproductive Privacy Act (RCW 9.02), for example, provides “every individual possesses a fundamental right of privacy with respect to personal reproductive decisions....Every pregnant individual has the fundamental right to choose or refuse to have an abortion[.]” *See also*, the Washington Death with Dignity Act (RCW 70.245). Statutes also protect long-term care residents’ rights to “reasonable control over life decisions” ensuring basic civil and legal rights

to those in long-term care. RCW 70.129.005. In addition, there are several statutes that exemplify the import the State places on one's right to be free from harm: There is "significant history of strong protections in the areas of gender-based violence and safety in the workplace[,]" as set forth in the Resp't Unions Response to Pet'n for Rev. at 21-22 (highlighting caselaw and statutes).

These established bodies of State law, "bear on the granting of distinctive state constitutional rights." *See, e.g., Spitzer, supra*, at 1214–15. The long existing law in Washington establishes an individual's rights to autonomy and protections of their own body are matters of particular State and local concern sufficient to justify a more protective analysis based upon a *Gunwall* analysis.

B. There Is Ample Support for Affirming the Court of Appeals' Substantive Due Process Analysis.

1. More Rights Are Guaranteed Under Washington's Constitution.

There is ample support for the Court of Appeals' substantive due process analysis in addition to the *Gunwall* analysis. Washington's Constitution is more expressly protective of individual rights, than its federal counterpart. ROBERT F. UTTER & HUGH D. SPITZER, *THE WASHINGTON STATE CONSTITUTION* 4 (2d ed. 2013). Washington's Constitution was drafted at the height of concern regarding natural fundamental rights. *Id.*, at 8. The United States Constitution, on the other hand, is a grant of limited power, authorizing the federal government to exercise only those express powers delegated it. *Alderwood Assocs.*, 96 Wn.2d at 233.

“State constitutions were originally intended to be the primary devices to protect individual rights, with the federal constitution a secondary layer of protection. Accordingly [Washington's Constitution was] intended to provide broader protection.” *State v. Smith*, 117 Wn.2d 263, 283, 814 P.2d 652 (1991). “State constitutions...are a font of individual liberties, their protections often extending beyond those required by the

Supreme Court’s interpretation of federal law.” Brennan, *supra*, at 491.

This Court has “a duty, to develop additional constitutional rights and privileges under” our State Constitution, where we find “such fundamental rights and privileges to be within the intention and spirit of our local constitutional language[.]” *Alderwood Assocs.*, 96 Wn.2d at 237.

This Court also has an obligation to ensure rights arising from Washington’s Constitution when federal rights have been diminished, “or where they have been recently overruled by the United States Supreme Court[.] Old principles are continually reexamined and where our earlier cases have relied in part on overturned precedent, we will determine whether the considerations underlying that precedent have vitality and hence require its perpetuation as a matter of state law.” *Id.*, at 238.

This Court has employed its independence and the greater protections afforded by Washington’s Constitution previously, during a period when the United States Supreme Court,

“condoned both isolated and systematic violations of civil liberties.” Brennan, *supra*, at 502 (highlighting federal cases that accord lesser protection to “members of our society due to their susceptibility to the medical condition of pregnancy” and the claims of those barred from judicial forums for inability to pay fees and fines). And once again, “the very premise of the cases that foreclose federal remedies constitutes a clear call to state courts to step into the breach.” *Id.*, at 503.

2. Washington’s Constitution Was Drafted to Establish, Protect, and Maintain Individual Rights.

Washington’s Constitution reflects conscious decisions to seek independence “far from the East’s growing commercial economy,” with “an increasing commitment to a “natural-rights liberalism.” UTTER & SPITZER, *supra*, at 4. It “imposed numerous restrictions on the legislature, and provided strong protections for individual liberties.” *Id.* “It is impossible to properly understand or interpret the document without recognizing the founders’ aspirations for an independent lifestyle, their dislike of special

privilege, and their profound distrust of large business interests.”

Id., at 11.

The assurance of fundamental rights enshrined by Washington’s Constitution have long been recognized by our courts: “[T]he protection of the fundamental rights of Washington citizens was intended to be and remains a separate and important function of our state constitution and courts that is closely associated with our sovereignty.” *State v. Coe*. 101 Wn.2d 364, 374, 679 P.2d 353 (1984). Several of its provisions reveal the clear intent to protect individual rights.

Article I, § 1, states: “All political power is inherent in the people, and governments...are established to protect and maintain individual rights.”

Substantive due process in Const. art. I § 3, provides that no person shall be deprived of life, liberty, or property, without due process of law. And even though its language mirrors the Fourteenth Amendment, “[i]t is safe to say” what ‘due process’ meant to a Northwestern pioneer in 1889,” “did not mean exactly

the same thing [it] meant to an aristocratic Virginia plantation owner and slaveholder of 1789.” UTTER & SPITZER, *supra*, at 6.

Washington’s constitutional delegates relied on strong rights provisions from other state constitutions rather than the less protective generalities of the Federal Bill of Rights, as exemplified by art. I, § 7’s express right to privacy. *Id.*, at 5. The provision explicitly protects individual privacy rights ensuring “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law[.]” Read together, Const. arts. I § 3, and I § 7, combine to ensure an individual’s liberty interest to build their life in the most intimate and defining ways without interference by the State. That commitment to individual rights is supplemented by Const. art. I, § 30, which incorporates those rights not otherwise expressly stated: “enumeration...of certain rights shall not be construed to deny others retained by the people.”

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3. The Court Has an Obligation to Independently Analyze Substantive Due Process Rights.

a. Substantive Due Process Ensures Protection of Those Rights Deemed Most Fundamental.

Fundamental rights have been described as “matters involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.” *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 851, 112 S. Ct. 2791, 2807, 120 L. Ed. 2d 674 (1992), *overruled by Dobbs v. Jackson Women's Health Org.*, __U.S.__, 142 S. Ct. 2228, 213 L. Ed. 2d 545 (2022).

Because these rights are not express, broad constitutional language referencing individual rights and substantive due process principles are designed to secure basic freedoms including control over one’s body and related inherent privacy

interests. James G. Hodge, Jr., J.D., LL.M. et. al., *Curbing Reversals of Non-Textual Constitutional Rights*, 22 U. Md. L.J. Race, Religion, Gender & Class 167, 190 (2022) (summarizing federal caselaw beginning with reproductive decision-making, recognized as a “basic civil right” protecting against forced sterilizations; incorporating privacy rights to recognize inherent rights to marital privacy, consensual sex, marriage equality, and abortions). These “fundamental rights” are so integral to our independence that they are deemed to arise from framers’ conceptions, public perceptions, political views, and “through concerted efforts among jurists to ascertain specific interests that warrant protection from unjustified governmental intrusions.” *Id.*

Although they are unenumerated, these rights are clearly contemplated by Const. art. I, § 30. In Washington, if an action infringes a fundamental right, it will be subject to heightened scrutiny and permitted only in those rare instances where the infringement is narrowly tailored to achieve compelling state

interests. *State v. Harner*, 153 Wn.2d 228, 235, 103 P.3d 738 (2004).

b. The Federal Court’s Revocation of a Fundamental Right for its Lack of Pedigree in Our Racist History and Tradition Compels Departure.

At times and until recently, the Supreme Court of the United States has articulated a broad analysis to determine if a right was fundamental, examining more than just the historical context of a right, but the very personal nature of the right. *See, e.g., Lawrence v. Texas*, 539 U.S. 558, 573-4, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003). Those cases focused on the broader framing of the right and considered whether it had been historically withheld discriminatorily. *See, e.g., Loving v. Virginia*, 388 U.S. 1, 12, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967); *Obergefell v. Hodges*, 576 U.S. 644, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015). They recognized “[i]f rights were defined by who exercised them in the past, then received practices could serve as their own continued justification and new groups could not invoke rights once denied.” *Obergefell*, 576 U.S. at 671.

In *Dobbs*, the United States Supreme Court reverted to an extremely narrow test for fundamental rights to hold the right to choose whether to have a child is no longer a fundamental right because it was not recognized as such in 1868 – the year the Fourteenth Amendment was ratified. *Dobbs* froze “for all time the original view of what [constitutional] rights guarantee, [and] how they apply.” *Dobbs*, 142. S. Ct. at 2236 (Breyer, Sotomayor, & Kagan, JJ., dissenting). “Because women could not participate in the democratic process, one could reasonably assume that their interests were not reflected in *any* of the nation's laws, including the criminal laws that the *Dobbs* majority read as foreclosing a constitutional right to terminate a pregnancy. Thus, the majority’s choice to privilege the year 1868 and to attempt to divine the meaning of the Constitution by looking at the nation’s practices during that time is a choice to privilege an era characterized by the formal exclusion of women and people capable of pregnancy.” Khiara M. Bridges, *Foreword: Race in the Roberts Court*, 136 Harv. L. Rev. 23, 35–36 (2022).

“The method of constitutional interpretation that the *Dobbs* majority chose to employ – interpreting the Constitution to protect only those behaviors and practices that were protected in 1868 – does not bode well for the persistence of other fundamental rights that earlier iterations of the Court have found in the Due Process Clause.” *Id.*, at 38–39 (2022) (arguing the same rationale could apply to contraception, same-sex sex and marriage, and forced sterilization). As Dr. Bridges explains, “the *Dobbs* majority’s decision to elevate as right and true the historical account that it provides...is an exercise that is fraught with values, convictions, preferences, *and, perhaps most of all, power.*” *Id.*, at 39 (*emphasis added*).

The *Dobbs analysis* is not only antithetical to rights guaranteed to Washingtonians, but its reliance on our history and tradition, tethers the fundamental rights analysis to “the way things have ‘always been’.” And in so doing, it ensures the perpetuation of white supremacy that Washington’s Supreme Court has cautioned us against. Open Letter from the Wash. State

Supreme Court to Members of the Judiciary & Legal Cmty. (June 4, 2020). <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf>

Washington’s Supreme Court recognizes that devaluation and degradation of Black lives “is a persistent and systemic injustice that predates this nation’s founding” and that “our institutions remain affected by the vestiges of slavery[.]” *Id.* To resist the urge to revert to tradition and the way things have always been – the Washington Supreme Court has called on each of us to “develop a greater awareness of our own conscious and unconscious biases and to “administer justice...in a way that brings greater racial justice to our system as a whole.” *Id.* It reminds us “that even the most venerable precedent must be struck down when it is incorrect and harmful.” *Id.*

Washington’s Supreme Court has acknowledged that “recent history and tradition” are relevant. *Andersen v. King Cnty.*, 158 Wn.2d 1, 128, 138 P.3d 963, 1043 (2006), *abrogated*

by *Obergefell*, 576 U.S. 644 (2015). “Historical ignorance and discrimination cannot be used...as an excuse for continued denial of the fundamental right [.]” *Id.*, at 349 (Fairhurst, Owens, & Chambers, JJ. dissenting).

Washington’s Supreme Court challenges us to address the shameful legacy we inherit – and we cannot do that by limiting fundamental rights to only those deeply rooted in our history and tradition. History and tradition are steeped in slavery, oppression, and white supremacy. “We have a duty to interpret and apply those rights and values in a way that will protect all Washingtonians, not just the few whom the framers might have had in mind when drafting them.” *Quinn v. State*, __P.3d__, 2023 WL 2620080, at *27 (March 24, 2023) (Gordon McCloud, J, dissenting). <https://www.courts.wa.gov/opinions/pdf/1007698.pdf>. “For the genius of our Constitution resides not in any static meaning that it had in a world that is dead and gone, but in the adaptability of its great principles[.] A principle to be vital must be of wider application than the mischief that gave it birth.”

Brennan, *supra*, at 495. This Court has similarly “clearly held that the constitution was ‘not intended to be a static document incapable of coping with changing times. It was meant to be, and is, a living document with current effectiveness.’ *Quinn*, 2023 WL 2620080 at *27 (Gordon McCloud, J, dissenting) (*citing*, *Seattle Sch. Dist. No. 1 of King Cnty. v. State*, 90 Wn.2d 476, 517, 585 P.2d 71 (1978)).

C. The PRA Is Necessary for Governmental Transparency and Accountability, But Disclosure Is Not Compelled Where There is Risk of Substantial Injury.

The primary purpose of the Public Records Act is to foster governmental transparency and accountability by providing Washington’s citizens with full access to public records. *Doe ex rel. Doe v. Wash. State Patrol*, 185 Wn.2d 363, 371, 374 P.3d 63 (2016). “The stated purpose of the [PRA] is nothing less than the preservation of the most central tenets of representative government, namely, the sovereignty of the people and the accountability to the people of public officials and institutions.”

Progressive Animal Welfare Soc. v. Univ. of Wash., 125 Wn.2d 243, 251, 844 P.2d 592 (1995) (*en banc*).

Under the PRA, government agencies must “make available for public inspection and copying all public records, unless the record falls within the specific exemptions[.]” RCW 45.56.070.

The intended purpose of the PRA – transparency and accountability – is a compelling state interest. But Washingtonians’ long-recognized fundamental rights to control and protect their own bodies, cannot be infringed by any statute unless narrowly tailored. Infringement here, is not narrowly tailored, and it has dangerous far-reaching consequences. Disability Rights of Washington, as *amicus curiae*, sets forth examples of the credible threats to the safety of entire classes of vulnerable individuals that can occur as a result of the involuntary disclosure of sensitive information. *See* Br. of *Amicus Curiae* Disability Rights Washington at 6-9.

The Court of Appeals correctly reasoned that mandating disclosure “when the disclosure of personally identifying information about a public employee is capable of being used to locate domestic violence or sexual assault survivors and to cause them harm,” fails strict scrutiny; application of the statute “is not narrowly tailored enough to serve a compelling interest in transparency.” *WFSE*, 22 Wn. App. 2d at 406.

V. CONCLUSION

Washington’s Constitution and its protections and provisions are more protective of individuals’ substantive due process rights, particularly with regard to an individual’s rights to control and protect their own bodies. Washington Courts should ensure any analysis of fundamental rights incorporates a detailed analysis of the *Gunwall* factors, encompassing considerations of importance established by preexisting state law and matters of particular local and state concern. The Court has an obligation to ensure that substantive due process analysis is not tethered solely to history and tradition perpetuating white

supremacy. “When we deal with broad, general constitutional rights and values (such as ‘due process’ or ‘equal protection’), we have a duty to interpret and apply those rights and values in a way that will protect all Washingtonians.” *Quinn*, 2023 WL 2620080, at *27 (Gordon McCloud, J., dissenting).

RAP 18.17 Certification

Undersigned counsel certifies that, pursuant to RAP 18.17(b), this brief contains 4,340 words, exclusive of words contained in the appendices, title sheet, table of contents, table of authorities, certificates of compliance and signature blocks, and pictorial images, and therefore meets the word count limitation of 5,000 words for amicus briefs as required by RAP 18.17(c)(6).

Respectfully submitted this 31st day of March, 2023.

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CERTIFICATE OF SERVICE

I certify that on the 31st day of March, 2023, I caused a true and correct copy of this document to be served on all parties by e-filing this document through the Washington State Appellate Courts Secure Portal.

Signed this 31st day of March, 2023 at Seattle, WA.

/s/ Tori Harris
Tori Harris, Paralegal

ACLU OF WASHINGTON FOUNDATION

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