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**IN THE SUPREME COURT FOR THE STATE OF  
WASHINGTON**

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**STATE OF WASHINGTON,**

**Respondent**

**v.**

**ZACHERY K. MEREDITH,**

**Petitioner**

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**MEMORANDUM OF AMICUS CURIAE IN SUPPORT  
OF REVIEW**

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**I. IDENTITY AND INTEREST OF *AMICI CURIAE***

The identity and interest of Amici are set forth in the Motion for Leave to File Memorandum of Amici Curiae in Support of Review.

**II. COURT OF APPEALS DECISION**

This brief is filed in support of Petitioner Meredith’s Petition for Review of the published Court of Appeals decision *State v. Meredith*, 492 P.3d 198 issued on July 26, 2021.

**III. ISSUES WARRANTING GRANT OF REVIEW**

In concluding that the Snohomish County Sherriff’s Office seizure of Mr. Meredith during a fare enforcement sweep did not violate article I, section 7 of the Washington State Constitution because passengers consent to such a seizure by “cho[osing] to ride the bus”, the Court of Appeals improperly created an unprecedented exception to the general warrant requirement. *State v. Meredith*, 492 P.3d 198, 204 (Wn. Ct. App. 2021). There are at least two issues warranting grant of review: (1) Whether article I, section 7 distinguishes between

those with less social or economic capital or who otherwise choose to use public services; (2) Whether the disproportionate impact punitive fare enforcement has on Black, Indigenous, People of Color (BIPOC) and people with low-incomes involves an issue of substantial public interest that should be determined by this Court.

#### **IV. STATEMENT OF THE CASE**

Amicus adopts Petitioner's Statement of the Case.

#### **V. REASONS WHY REVIEW SHOULD BE GRANTED**

##### **A. Social and Economic Capital Do Not Correspond to the Level of Protection One Receives Under Our Constitutions**

Article I, section 7 provides that “[n]o person shall be disturbed in his private affairs . . . without authority of law.” Const. art. I, § 7. “Authority of law” generally means a valid warrant, absent which a search or seizure is presumed to violate the federal and state constitutions. *State v. Villela*, 194 Wn.2d 451, 458, 450 P.3d 170 (2019). This presumption can only be rebutted if the State demonstrates the seizure fell within one of

the “jealously guarded and carefully drawn exceptions to the warrant requirement.” *Id.* at 458 (internal citations and quotation marks omitted).

There is no “public transit” exception to article I, section 7. Yet this is the implication of the decision below, which creates a distinction between the privacy rights of those who use mass public transit and those who use any form of transit – including walking – on the exact same public street. *State v. Meredith*, 492 P.3d 198, 206 (Wn. Ct. App. 2021) (“for purposes of a seizure analysis, a passenger of a common carrier, such as a public bus or train, is legally distinct from a pedestrian or a person in a private automobile”) (internal citations omitted).

**1. BIPOC and People with Low-Incomes Often Don’t Have A “Choice” In Using Public Goods**

Supposedly equal laws become unequal when the presumption of rights is dependent on how much a person is forced to interact with the state or the public. *Cf. State v. Thorp*, 71 Wn. App. 175, 178-179, 856 P.2d 1123 (1993) (holding that

even persons who voluntarily choose to subject themselves to government regulation and implicitly consent to intrusion still do not consent to suspicionless seizures).

For many, public transit and the use of public property is not a choice, but a necessity to accessing the economic mainstays of life, such as employment. BIPOC and those with low incomes are less likely to own a car, and to rely primarily or exclusively on public transit more than other groups.<sup>1</sup> For example, people of color use King County Metro more often than white people; and people with annual incomes less than \$35,000 use King County Metro more than people in other income groups.<sup>2</sup> Metro Transit Department, *King County Metro*

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<sup>1</sup> See e.g. Sara Amri, *Fighting for Fair Fares in New York City Through Civil Society Enforcement of Title VI*, 26 J.L. & Pol’y 165, 180 (2018) (N.Y.); Nicole Stelle Garnett, *The Road from Welfare to Work: Informal Transportation and the Urban Poor*, 38 Harv. J. on Legis. 173, 182 (2001); Jerett Yan, *Rousing the Sleeping Giant: Administrative Enforcement of Title VI and New Routes to Equity in Transit Planning*, 101 Calif. L. Rev. 1131, 1133 n.11 (2013) (nation as a whole).

<sup>2</sup> This publicly available report and others cited in this brief contain “legislative facts” this Court may consider when weighing the policy implications of its decision in this case.

*Transit 2019 Rider and Non-Rider Survey*, at 54, (March. 2020), <https://kingcounty.gov/~media/depts/metro/accountability/reports/2019/2019-rider-non-rider-survey-final.pdf>. Of those who use King County Metro for most or all of their transportation needs, more than half make less than twice the federal poverty level and over forty percent are people of color. *Id.* at 56. Over half of all King County transit riders use public transit primarily to travel to and from their jobs. *Id.* at 55.<sup>3</sup>

Like accessing the public education system, utilizing public sewer, water, and utilities, or the welfare system – public transit is a necessity to which waiving constitutional rights cannot be condition of accessing. To call use of public services “voluntary, and thus unworthy of basic privacy protections, is to walk blindly among the realities around us. Worse, such an

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*Wyman v. Wallace*, 94 Wn.2d 99, 102–03, 615 P.2d 452 (1980) (citing ER 201(a)).

<sup>3</sup> The undersigned was unable to find ridership demographic data for neighboring Snohomish County, though similar trends are likely there.

argument would strip those on the street of the protections given the rest of us directly because of their poverty. Our constitution means something better.” *State v. Pippin*, 200 Wn. App. 826, 845, 403 P.3d 907 (2017).

**2. Use of Public Services Does Not Waive Protections Under Article I, Section 7.**

While the use of public services is not inherently optional, whether or not Mr. Meredith “chose” to ride the bus does not change his right to be free from the disturbance of his private affairs without a warrant. There is no Washington case that suggests article I, section 7 affords bus passengers less rights than drivers or vehicle passengers simply because public transit passengers “chose to ride the bus” over their private vehicle nor that they contract all constitutional rights away in so doing. To the contrary, article I, section 7 protects even an individual using public property in a way that might violate the law (*see Pippin*, 200 Wn. App at 845) (finding that article I, section 7 applied equally to a houseless resident’s home while living on public property, even though the individual was doing

so in violation of a City ordinance), as well as those who may have a reduced expectation of privacy. *State v. Hendrickson*, 129 Wn.2d 61, 71, 917 P.2d 563 (1996) (expressly holding that even when an individual may have a subjective reduced expectation of privacy, it still “does not constitute an exception to the requirement of a warrant under art. I, § 7.”).

The Court of Appeals decision would effectively mean those who can afford more private space, like a brick-and-mortar house or a private car, will inevitably have more rights under the Washington constitution, whereas people forced to live their private lives in public spaces, somehow contract their rights away by virtue of using such services. There must be a presumption that individuals have the right to use public transit and police must independently articulate why a specific passenger may have failed to pay – the does not constitution allow police to treat all passengers as suspects. *State v. Rankin*, 151 Wn.2d 689, 697, 92 P.3d 202 (2004) (Under article I, section 7, absent a reasonable basis for the inquiry, a request for

identification from a passenger of a vehicle for investigatory purposes was unconstitutional).

“Under article I, section 7, we have specifically recognized that ‘[r]egardless of the setting ... constitutional protections [are] possessed *individually*.’” *State v. Parker*, 139 Wn.2d 486, 497-498, 987 P.2d 73 (1999) (quoting *State v. Broadnax*, 98 Wn.2d 289, 296, 654 P.2d 96 (1982) (quoting *Ybarra v. Illinois*, 444 U.S. 85, 92, 100 S. Ct. 338, 62 L.Ed.2d 238 (1979))). In the same way that the “heightened protections of article I, section 7” do not “fade away or disappear within the confines of an automobile”, such protections should not fade away because one is a passenger on public transit. *State v. Parker*, 139 Wn.2d at 505.

The Court of Appeal’s erroneous creation of a new exception to article I, section 7 warrants review.



**B. The Disproportionate Impact of Punitive Fare Enforcement on BIPOC and People with Low-Incomes Is an Issue of Substantial Public Interest**

Racism has long shaped public transit. From displacing Indigenous people from hundreds of millions of acres of land to expand railroads; to enshrining racial segregation in transit, breathing life into decades of Jim Crow laws; to highway construction and “urban renewal” programs that resulted “in the demolition, division, and displacement of Black neighborhoods” and “destruction of local economies”; to discrimination in infrastructure investments and housing – the public spaces that shape our cities were often intentionally built at the expense of BIPOC who now struggle to afford using it. Regan F. Patterson, *New Routes to Equity, The Future of Transportation in the Black Community*, Congressional Black Caucus Foundation (Sept. 2020) at 6,

<https://www.cbefinc.org/wp-content/uploads/2020/10/NewRoutestoEquity-Final5.pdf>.<sup>4</sup>

Punitive fare enforcement exacerbates this legacy of discrimination. While “[w]e don’t have data that shows that fare enforcement increases public safety or has any revenue recovery [,] we do have data that shows huge racial disparities on who is impacted.” *Safety For All*, TransitCenter (July 2021) at 21, <https://transitcenter.org/publication/safety-for-all/>. For example, on Sound Transit, Black riders made up only nine percent of the ridership in 2018 and 2019 but accounted for 21 percent of warnings and citations. Sound Transit Rider Experience and Operations Committee, *Fare Enforcement Policy Update* at 15 (Oct. 3, 2019)

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<sup>4</sup> See also Marc Brenman, *Transportation Inequity in the United States: A Historical Overview*, 34-SUM Hum. Rts. 7, 9 (2007); Sara Amri, *Fighting for Fair Fares in New York City Through Civil Society Enforcement of Title VI*, 26 J.L. & Pol’y 165, 172 (2018) (N.Y.); Ashish Valentine, ‘*The Wrong Complexion for Protection.*’ *How Race Shaped America’s Roadways and Cities*, NPR (July 5, 2020), <https://www.npr.org/2020/07/05/887386869/how-transportation-racism-shaped-america>

[https://www.soundtransit.org/st\\_sharepoint/download/sites/PRDA/FinalRecords/2019/Presentation%20-%20Fare%20Enforcement%20Procedure%20Updates%20191003.pdf](https://www.soundtransit.org/st_sharepoint/download/sites/PRDA/FinalRecords/2019/Presentation%20-%20Fare%20Enforcement%20Procedure%20Updates%20191003.pdf). Likewise, between May 2015 and July 2019, 19 percent of warnings and 43 percent of citations were issued to Black riders. *Memo from Matthew Brenton, Sound Transit Security Operations Program Manager, to Kenneth Cummins, Sound Transit Director of Public Safety*, at 3–4 (Aug. 6, 2019) <https://www.documentcloud.org/documents/6434966-Sound-Transit-Fare-Enforcement-Demographics.html>.

Similar trends are apparent throughout the country. In Washington, D.C., between 2016 and 2018, 91 percent of riders cited were Black, and Metro Police focused on “stops heavily used by youth of color.” Wash. Lawyers’ Committee for Civil Rights and Urban Affairs, *Unfair: Disparities in Fare Evasion Enforcement by Metro Police* at 1 (Sept. 14, 2018) [https://www.washlaw.org/pdf/2018\\_09\\_13\\_unfair\\_disparity\\_fair\\_evasion\\_enforcement\\_report.PDF](https://www.washlaw.org/pdf/2018_09_13_unfair_disparity_fair_evasion_enforcement_report.PDF). In Minneapolis, Black

riders were 16 percent more likely to receive a citation and 38 percent more likely to be arrested than white riders, and Indigenous riders were 55 percent more likely to be cited and 93 percent more likely to be arrested. Metro Transit Research and Analytics, *Analysis of Police Incidents by Race* at 2–3 (Dec. 17, 2015)

[https://www.metrotransit.org/Data/Sites/1/media/blog/police\\_report-12-17-15.pdf](https://www.metrotransit.org/Data/Sites/1/media/blog/police_report-12-17-15.pdf). In Brooklyn, young Black men accounted for 13 percent of low-income adults but half of fare evasion arrests. Harold Stolper & Jeff Jones, *The Crime of Being Short \$2.75: Policing Communities of Color at the Turnstile* at 2 (Oct. 2017) [https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Fare\\_Evasion\\_FINAL\\_10\\_6\\_17\\_smaller.pdf](https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Fare_Evasion_FINAL_10_6_17_smaller.pdf).

Low-income riders are also disproportionately impacted by fare enforcement. For example, 24 percent of citations and 31 percent of misdemeanors for riding without proof of payment between 2015 and 2017 on King County Metro were

issued to riders who were experiencing homelessness or housing instability. King County Auditor’s Office, *RapidRide Fare Enforcement: Efforts Needed to Ensure Efficiency and Address Equity Issues* at 7 (Apr. 4, 2018) <https://www.kingcounty.gov/~media/depts/auditor/new-web-docs/2018/rapidride-2018/rapidride-2018.ashx?la=en>. In this time period, nearly 1600 penalties were disproportionately given to the same 99 people. *Id.* at 8. Most of the riders in this group were “people of color, people who experienced housing instability during this time, or both.” *Id.* The significant impact of creating a new exception to article I, section 7 further warrants this Court’s review.

### **C. Unconstitutional Searches and Seizures Have Dire Consequences**

For white individuals with social and economic capital, surveillance and privacy intrusions are rarely seen as a matter of life and death, but the abstract fear of being watched or monitored by technology. However, for Black, Indigenous, Latinx, and Pacific Islanders, invasions of privacy regularly

lead to lethal encounters, including on transit systems. For example, a Bay Area Rapid Transit police officer killed Oscar Grant, a 22-year-old Black man in 2009. *On Our Watch*'

*Litigation Reveals New Details in Police Shooting of Oscar Grant* (July 8, 2021)

<https://www.npr.org/2021/06/23/1009486885/on-our-watch-litigation-reveals-new-details-in-police-shooting-of-oscar-grant>.

There are countless examples in New York City of NYPD drawing guns, tackling, and frisking teenagers and adults for fare hopping, or selling candy at subway stations. Katie Shepherd, *'Putting dozens of lives at risk over \$2.75': NYPD slammed for pulling guns on fare-hopping teen*, Washington Post (Oct. 28, 2019)

<https://www.washingtonpost.com/nation/2019/10/28/nypd-video-guns-pointed-subway-train-unarmed-fare-hopper/>;

Streetsblog, *Brooklyn Pol to Cuomo: Get Your Anti-Immigrant Cops Out of the Subway* (Nov. 13, 2019)

<https://nyc.streetsblog.org/2019/11/13/brooklyn-pol-to-cuomo-get-your-anti-immigrant-cops-out-of-the-subway/>.

In Washington, people of color are disproportionately stopped and searched even though they are less likely to possess narcotics or weapons than white people who are searched. *See Race and Washington's Criminal Justice System: 2021 Report to the Washington Supreme Court*, at 2, Fred T. Korematsu Center for Law and Equality, (2021)

[https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1116&context=korematsu\\_center](https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1116&context=korematsu_center). Black, Indigenous, Pacific Islander and Latinx people are also more likely to be the victim of police use of force. *Id.* at 12. In Vancouver, for example, a Black person is 10.6 times more likely to be subjected to police force than a White person. *Id.* In the last decade, of the 253 people were killed by police in Washington State, Black people were killed in police civilian killings at a rate that was 3.6 times that of non-Hispanic white people; Indigenous people were killed at a rate of 3.3 times, Pacific

Islanders at 3.3 times, and Latinx people were killed at a rate of 1.3 times that of non-Hispanic white people. *Id.* 11-12.

Expanding article I, section 7's narrowly drawn exceptions to allow those who use public goods or transit to be summarily seized would only increase, or at best maintain, the likelihood of lethal encounters. Washington's protections against intrusive government and policing must guard against operating "on a downward ratcheting mechanism of diminishing expectations of privacy" and instead "hold[] the line by pegging the constitutional standard to 'those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant.'" *State v. Ladson*, 138 Wn.2d 343, 349, 979 P.2d 833, (1999) (quoting *State v. Myrick*, 102 Wn.2d 506, 511, 688 P.2d 151 (1984)).

## **VI. CONCLUSION**

For the reasons stated above, Amicus respectfully request this Court to take review.



The undersigned hereby certifies that this brief contains  
2,462 words.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of  
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## CERTIFICATE OF SERVICE

I certify that on the 22<sup>nd</sup> day of October, 2021, 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 22<sup>nd</sup> day of October, 2021 at Seattle, WA.

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