

NO. 101375-2

SUPREME COURT OF THE STATE OF WASHINGTON

ROBERT SNAZA, in his official capacity as Sheriff of Lewis County; SEAN SWOPE, in his official capacity as District 1 Commissioner of Lewis County; LINDSEY POLLOCK, in her official capacity as District 2 Commissioner of Lewis County; GARY STAMPER, in his official capacity as District 3 Commissioner Chair of the Board of County Commissioners of Lewis County; JOSEPH HELM, in official capacity as Sheriff of Columbia County; RYAN RUNDELL, in his official capacity as District 1 Commissioner and Chair of the Board of County Commissioners for Columbia County; MARTY HALL, in his official capacity as District 2 Commissioner of Columbia County; CHARLES AMAAREIN, in his official capacity as District 3 Commissioner of Columbia County; RAYMOND MAYCUMBER, EREK GIANUKAKIS, in his official capacity as District 1 Commissioner of Ferry County; NATHAN DAVIS, in his official capacity as District 2 Commissioner and Chair of the Board of County Commissioners for Ferry County; MICHAEL HEATH, in his official capacity as District 3 Commissioner of Ferry County; DREW HYER, in his official capacity as Sheriff of Garfield County; JIM NELSON, in his official capacity as District 1 Commissioner of Garfield County; LARRY LEDGEWOOD, in his official capacity as District 2 Commissioner of Garfield County; JUSTIN DIXON, in his official capacity as District 3 Commissioner and Chair of the Board of County Commissioners for Garfield County; TOM JONES, in his official capacity as District 1 Commissioner of

Grant County; DANNY STONE, in his official capacity as District 1 Commissioner of Grant County; ROB JONES, in his official capacity as District 2 Commissioner of Grant County; CINDY CARTER, in her capacity as District 3 Commissioner and Chair of the Board of County Commissioners for Grant County; DAVID S. BROWN, in his official capacity as Sheriff of Skamania County; RICHARD MAHAR, in his official capacity as District 1 Commissioner of Skamania County; TOM LANNEN, in his official capacity as District 2 Commissioner and Chair of the Board of County Commissioners for Skamania County; BOB HAMLIN, in his official capacity as District 3 Commissioner of Skamania County; OZZIE KNEZOVICH, in his official capacity as Sheriff of Spokane County; JOSH KERNS, in his official capacity as District 1 Commissioner of Spokane County; MARY KUNEY, in her official capacity as District 2 Commissioner of Spokane County; AL RENCH, in his official capacity as District 3 Commissioner of Spokane County;

Respondents,

v.

STATE OF WASHINGTON,

Petitioner.

AMICUS BRIEF

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I. IDENTITY AND INTEREST OF AMICI

The identity and interest of Amici are set forth in the Motion for Leave to File, submitted contemporaneously with this brief.

II. INTRODUCTION

As the Washington Constitution recognizes, the legislature is tasked with “prescribing” the duties of sheriffs in the state. Wash. Const. Art. XI, § 5. Because of a public outcry across Washington in 2020, where tens of thousands of community members protested against police violence, and because of the resulting harm caused by law enforcement’s unfettered use of tear gas during those protests, the 2021 legislature did just that: they passed a bipartisan bill, codified at RCW 10.116.030, which prescribed the duties of law enforcement and other government officials in using tear gas. Because of the devastating nature of tear gas, RCW 10.116.030 strikes the necessary balance between a law enforcement agent’s response to a developing situation with the rights of community

members. Because of the potential for harm with tear gas to those involved and uninvolved with the incident at hand, this crowd control weapon and the decisions to use it must be regulated and balanced by an outside authority that can approach the situation with a cool head and from a broader perspective. RCW 10.116.030 strikes that exact balance.

III. FACTUAL BACKGROUND

During the summer of 2020, tens of thousands of people across Washington – from Spokane¹ to Forks², and Walla Walla³

¹ See *Thousands March in Spokane*, The Spokesman-Review, <https://www.spokesman.com/stories/2020/may/31/protesters-gather-in-downtown-spokane-to-demonstra/> (last visited March 27, 2023).

² Jesse Major, *Widespread protests continue*, Peninsula Daily News, <https://www.peninsuladailynews.com/news/widespread-protests-continue/> (last visited March 27, 2023).

³ Dian Ver Valen, *Peaceful downtown rally Sunday*, Union-Bulletin, https://www.union-bulletin.com/news/peaceful-downtown-rally-sunday/collection_04c6cc1f-5e7c-5037-a0ed-c09ddb8535f2.html (last visited March 27, 2023).

to Omak⁴, and many places in between⁵ – gathered to protest police violence in the wake of George Floyd’s horrific and unnecessary murder. In response to those protests, officers employed tear gas as crowd control, which had devastating effects on community members, including those who were completely uninvolved in the protests.⁶ The 2021 legislature responded to these cries for police regulation by passing a slate

⁴ *Community pulls together for Floyd March*, The Omak Chronicle, https://www.omakchronicle.com/free/community-pulls-together-for-floyd-march/article_289ba0ae-a77c-11ea-a35d-eb152d431011.html (last visited March 27, 2023).

⁵ *See, e.g., George Floyd Protests in Washington (state)*, Wikipedia: The Free Dictionary, [https://en.wikipedia.org/wiki/George_Floyd_protests_in_Washington_\(state\)#cite_note-26](https://en.wikipedia.org/wiki/George_Floyd_protests_in_Washington_(state)#cite_note-26) (last visited March 27, 2023).

⁶ Natalie Graham, *Seattle Residents Got Tear Gassed in Their Own Apartments*, The Stranger, <https://www.thestranger.com/slog/2020/06/04/43840246/seattle-residents-got-tear-gassed-in-their-own-apartments>.

of bills aimed at regulating how and when officers can use force against community members.⁷

HB 1054 was one of fourteen⁸ police reform bills that the legislature passed in 2021, calling for certain limitations on policing and police tactics. In addition to severely restricting the use of tear gas, HB 1054 also banned chokeholds and neck restraints, “no knock” warrants, and restricted the use of military equipment by law enforcement. In public testimony, one

⁷ See Nicholas Bogel-Burroughs, *Washington State Enacts Police Reform a Year After George Floyd’s Death*, The New York Times, <https://www.nytimes.com/2021/05/19/us/washington-inslee-police-reform.html>. See also *How Policing in Washington is Changing After the 2021 Legislative Session*, Enoka Herat, NW Sidebar: The Voices of Washington’s Legal Community, *How Policing in Washington is Changing After the 2021 Legislative Session* – NWSidebar (wsba.org) <https://nwsidebar.wsba.org/2021/07/29/how-policing-in-washington-is-changing-after-the-2021-legislative-session>.

⁸ The fourteen police reform bills are as follows: HB 1001, HB 1054, HB 1088, HB 1089, HB 1140, HB 1223, HB 1267, HB 1310, SB 5051, SB 5055, SB 5066, SB 5135, SB 5259, and SB 5263.

community member spoke of her experience with tear gas during protests in Portland, which led to the passing of HB 1054:

I will start by saying that I did not actively attend any of the protests...because at the time I was pregnant, and I knew about the negative and harmful effects of CS gas on pregnant people...I made the decision to avoid downtown, the protests, and the drinking water from the municipal water sources. I live three miles from downtown where the tear gas was used....[However] I was admitted to the ER for a suspected 2nd trimester miscarriage. During my short stay, they confirmed that I was having a rare miscarriage (1 in 500,000 chance) and my baby had already passed. They asked me a series of questions trying to ascertain what my proximity and involvement was to the use of biochemical weapons being released on civilians. They took a blood sample and were able to determine that I was suffering from a CS toxicity and they suspected that this was the cause for my 2nd trimester miscarriage.”⁹

Specifically, RCW 10.116.030 outlines that “[a] law enforcement agency may not use or authorize its peace officers

9 Executive Session: Hearing on HB 1089, HB 1072, and HB 1054 before the Senate Law and Justice Committee, March 11, 2021,
<https://tvw.org/video/senate-law-justice-committee-2021031161/?eventID=2021031161> (beginning at 1:11:47) (testimony of Camilla Muldrow on HB 1054).

or other employees to use tear gas unless necessary to alleviate a present risk of serious harm,” which the statute defines as limited to a riot, barricaded subject, or hostage situation only. Additionally, prior to using tear gas, the officer or employee, in relevant part, “shall [] exhaust alternatives to the use of tear gas... [and] obtain authorization to use tear gas from a supervising officer.” However, the legislature did not find this supervising authority sufficient for all scenarios and added additional language for certain events. For “a riot *outside of a correctional jail or detention facility*,” the officer may use tear gas only after “[r]eceiving authorization from the highest elected official of the jurisdiction in which the tear gas is to be used.” Highest elected official is defined as the “county executive in those charter counties with an elective office of county executive.” In response to a proposed amendment that sought to shorten the chain of command for decision making on the use of tear gas, Sen. Jamie Pedersen urged his colleagues to vote no on the proposed amendment with the following statement:

This summer, my neighborhood, not just my district, my neighborhood, was filled with tear gas, indiscriminately used by police who had too easy a chain of command to decide that...that a chemical weapon that we have agreed by treaty not to use against hostile combatants, is going to be used on our own citizens, peaceful protestors. It needs to stop.¹⁰

The law maker who proposed to shorten the chain of command, Republican Sen. Wagoner, ultimately voted to pass the bill, which included the requirement to obtain authorization from the highest elected official, making the bill bipartisan.¹¹

Soon after RCW 10.116.030 went into effect, sheriffs and county commissioners from seven counties filed a lawsuit, arguing that certain portions of RCW 10.116.030 transfer a “core function” of the sheriff’s Washington State Constitutional powers to another elected official, in violation of Article XI,

¹⁰ *Senate Law & Justice Committee—Senator Jamie Pedersen’s statement*, March 18, 2021, <https://tvw.org/video/senate-law-justice-committee-2021031276/?eventID=2021031276> (beginning at 48:33).

¹¹ *See Senate final passage roll call* (April 23, 2021), <https://app.leg.wa.gov/bills/summary?BillNumber=1054&Initiative=false&Year=2021>.

Section 5 of the state Constitution. The sheriffs and county commissioners take umbrage with RCW 10.116.030(3) and 10.116.030(4)(b), specifically, arguing that these portions of the statute violate the duties prescribed to them by the state constitution, as defined in Article XI, Section 5, which follows:

The legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners, sheriffs, county clerks, treasurers, prosecuting attorneys and other county, township or precinct and district officers, as public convenience may require, and shall prescribe their duties, and fix their terms of office.

The Washington State Attorney General's Office defends the statute, arguing that these two portions of RCW 10.116.030 do not unconstitutionally infringe on the sheriff's core functions as defined by Article XI, Section 5. Amici submit this brief in support of the Washington State Attorney General's position.

IV. ARGUMENT

A. Tear Gas Was Regulated by the Washington Legislature Because of Police Misuse and Abuse.

At the heart of this case is a statute that limits the use of

tear gas by law enforcement agencies enacted in the context of police abuse and misuse of the chemical agent and the disastrous effects,¹² less than a year prior to passage. As Sen. Pedersen, the representative of Capitol Hill noted during the final Senate floor vote adopting the “highest elected official” requirement, “that way we’ll ensure that there is some accountability for how public safety is being balanced in its various aspects.”¹³

While the officer employing tear gas may attempt to use it as a target to disperse a crowd, tear gas is still a vapor. While it can be deployed in a certain area it travels through the air into people’s homes, restaurants, and cars, impacting everyone within a certain radius, even if they are not part of a protest or riot.

¹² Jemima McEnvoy, *Seattle Police Use Tear Gas Against Protestors Despite City Ban*, Forbes, <https://www.forbes.com/sites/jemimamcevoy/2020/06/08/seattle-police-use-tear-gas-against-protestors-despite-city-ban/?sh=4294c0ef5b4b> (last visited March 27, 2023).

¹³ *Senate Floor Debate*, April 23, 2021, <https://www.tvw.org/watch/?clientID=9375922947&eventID=2021041278&startStreamAt=1413> (beginning at 23:33) (last visited March 27, 2023).

In Washington, “largely peaceful” protesters¹⁴ in Seattle were tear gassed, pepper-sprayed, and subjected to flash-bang grenades and rubber bullets by police officers in the protests that occurred after George Floyd’s killing. *Black Lives Matter Seattle-King County v. Cty. Of Seattle, Seattle Police Dep’t*, 466 F. Supp. 3d 1206 (W.D. Wash. 2020). Horrifyingly, Seattle citizens were not alone in being targeted by local law enforcement’s use of tear gas. In fact, in the aftermath of George Floyd’s killing, *at least* 100 law enforcement agencies used some form of tear gas against civilians who were protesting police brutality and racism.¹⁵ In fact, the New York Times outlined that

¹⁴ As described in the decision, the Western District highlighted that while “on some occasions” protestors and Seattle Police Department exchanged “bottles, rocks, and fireworks for tear gas, pepper spray, and blast balls,” the protests were by and large peaceful. *Black Lives Matter*, 466 F. Supp. 3d at 1211.

¹⁵ *See Here are the 100 U.S. Cities Where Protesters were Tear-Gassed*, The New York Times, <https://www.nytimes.com/interactive/2020/06/16/us/george-floyd-protests-police-tear-gas.html#:~:text=The%20widespread%20use%20of%20tear%20gas%20has%20prompted,all%20temporarily%20banned%20police%20from%20using%20tear%20gas.>

this period of time, covering about one month in 2020, was the “most widespread domestic use of tear gas against demonstrators since the long years of unrest in the late 1960s and early 70’s.”

Id. One student in Indiana lost an eye after he was hit by a tear gas canister and in North Carolina after police officers used tear gas on both ends of a street to trap protesters in the middle of the tear gas fog. *Id.* In preparing to protest, one religious leader in New York City explained, “I’m just a pastor, but it feels like I’m suiting up for war...[p]eople I’ve been supporting have seen the tear gas and violence.” *Tear gas: prepare for what to do if you’re exposed*, CNN Health, available at <https://www.cnn.com/2020/06/02/health/tear-gas-effects-treatment-wellness-trnd/index.html>.

In Seattle, during the protests after George Floyd’s killing, residents in the Capitol Hill neighborhood not involved in the protests were tear gassed in their homes. *Seattle Residents Got Tear Gassed in Their Own Apartments*, The Stranger, <https://www.thestranger.com/slog/2020/06/04/43840246/seattle>

-residents-got-tear-gassed-in-their-own-apartments. The tear gas released on protesters did not discriminate—small pets, a six-month-old baby, and immuno-compromised 70-year-olds in their homes were also impacted. *Id.* One person’s decision to utilize tear gas to disperse a crowd impacts the entire community unlike other crowd control tools. The long, violent history of tear gas and its grim and unique neighborhood and community-wide impact requires it to be regulated differently and for there to be more protections for state residents against its use.

While discussion about and images of tear gas being used against people have gained traction in recent years in the United States, tear gas has a long, complex, and violent history. The use of tear gas against people originated in World War I, when soldiers used it to attack and incapacitate enemy troops, prompting the Geneva Convention to ban its use in international war, declaring it a “chemical warfare agent” due to its devastating nature. *Tear Gas is a Chemical Weapon*, The Cut, <https://www.thecut.com/2020/06/tear-gas-is-a-chemical->

[weapon-why-can-cops-use-it.html](#). The 1993 Chemical Weapons Convention, a United Nations agreement, banned tear gas as a form of chemical warfare. *Tear Gas Bans: A Policing Change Not Gaining Traction*, The Pew Charitable Trusts, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/08/04/tear-gas-bans-a-policing-change-not-gaining-traction>.

Even so, domestic bans on tear gas didn't follow these international examples at the time, despite evidence of how damaging tear gas is for anyone in its path. In fact, the use of tear gas by law enforcement against American citizens immediately evoke memories of some of the worst moments in our nation's history. State and local police officers released tear gas, and worse, on peaceful voting rights protesters, many of whom were college-age young adults, as they walked across the Edmund Pettus Bridge in Selma, Alabama on March 7, 1965. *Alabama: The Edmund Pettus Bridge*, National Park Service, <https://www.nps.gov/places/alabama-the-edmund-pettus->

bridge.htm. More than fifty years later, in 2020, history repeated itself when police officers in various cities nationwide released tear gas on protesters after George Floyd was killed while in the custody of police officers in Minneapolis, Minnesota.

B. Additional Oversight from Another Elected Official Was Necessary Because of the Abuse of Tear Gas, as Well as Its Broad Impact on Community Members.

Passed in the context of concerns with law enforcement use of tear gas, RCW 10.116.030 requires the “highest elected official” to authorize its use, recognizing the unique nature of the chemical agent. Tear gas is a devastating chemical that has serious consequences when used against people. The Centers for Disease Control (CDC) defines tear gas as “chemical compounds that temporarily make people unable to function by causing irritation to the eyes, mouth, throat, lungs, and skin.” *Emergency Preparedness and Response—Facts about Riot Control Agents Interim document*, Centers for Disease Control and Prevention, <https://emergency.cdc.gov/agent/riotcontrol/factsheet.asp>. The impact of tear gas ranges from making a person unable to

function to potentially causing significant breathing issues and sometimes death. This significant impact indicates that some precautions must be put in place for law enforcement agencies if they are to continue to use tear gas as a crowd control tool.

C. Tear Gas Has a Chilling Effect on Constitutional Rights.

Tear gas has devastating mental and physical impacts on a community, as a whole, and lasting impacts we still do not fully understand. Additionally, the use of tear gas by law enforcement on civilians unconstitutionally infringes on their First and Fourth Amendment rights. As a result of tear gas being used during the George Floyd protests, a group of Seattle protesters brought First Amendment and Fourth Amendment claims against the City of Seattle and the Seattle Police Department, arguing that their use of tear gas and other “less-lethal” weapons including, but not limited to, weapons designed to stun people with light and sound, chilled their constitutional right to assemble and protest peacefully. *Black Lives Matter*, 466 F. Supp. 3d 1206. The

Western District of Washington held that the Seattle Police Department had “used less-lethal weapons disproportionately and without provocation,” supporting the plaintiffs’ motion for a temporary restraining order. *Id.* at 1211.

Black Lives Matter was not an anomaly. In fact, similar cases swept the country as the result of overuse of tear gas on civilians during the protests resulting from George Floyd’s killing. Case after case brought by protestors contained the same arguments—police departments and other law enforcement agencies were overusing tear gas on largely peaceful protests in order to chill First and Fourth Amendment rights. *See, e.g., Don’t Shoot Portland v. City of Portland*, 465 F. Supp. 3d 1150, 1156-57 (D. Or. 2020) (granting Plaintiff’s motion for a temporary restraining order prohibiting the City of Portland from using tear gas as a crowd control measure except as provided for in its own rules, limiting the use of tear gas to “situations in which the lives or safety of the public or the police are at risk” after tear gas was used, in some instances, to disperse protesters).

Unfortunately, these protests, and the subsequent cases, are not unique to May 2020 and after; rather, they are a continuation of cases relating to police overuse of tear gas during protests resulting from the deaths of other Black citizens at the hands of police. *See, e.g., Quraishi v. St. Charles Co., Mo.*, 986 F.3d 831 (8th Cir. 2021) (holding that a St. Charles County police officer violated the First Amendment rights—and was not entitled to qualified immunity on this count—of three reporters covering the protests after Michael Brown’s killing in Ferguson, Missouri when the police officer deployed tear gas on the reporters).¹⁶

Over the course of recent history, we see more examples of when tear gas is used not to quell riots, but rather to chill certain freedoms guaranteed by United States Constitution.

¹⁶ *See also Buck v. City of Albuquerque*, No. 04-1000 JP/DJS, 2007 WL 9734037 (D.N.M. 2007) (denying Defendants’ motion for summary judgment as to the First Amendment claims because there was sufficient evidence suggesting that Defendants interfered with Plaintiffs’ First Amendment rights to protest the Iraq War when Defendants deployed tear gas into a protest).

Police Use Less Lethal Weapons to Crush Social Movements Across the World, Truthout, <https://truthout.org/articles/police-use-less-lethal-weapons-to-crush-social-movements-across-the-world/> (last visited March 27, 2023). Courts have repeatedly held that “the proper response to potential and actual violence is for the government to ensure an adequate police presence, and to arrest those *who actually engage in such conduct*, rather than to suppress legitimate First Amendment conduct as a prophylactic measure.” *Black Lives Matter*, 466 F. Supp. 3d at 1213 (citing *Collins v. Jordan*, 110 F.3d 1363 (9th Cir. 1996)). It is because of the experiences of protesters in Seattle, throughout Washington, and throughout the country that HB 1054 was originally introduced and entered into law.

D. RCW 10.116.030 Does Not Violate the “Core Functions” of the Sheriffs’ Offices.

The main thrust of the sheriffs and county commissioners’ argument is that RCW 10.116.030(3) and 10.116.030(4)(b) violate the core function of the sheriff’s office as defined by the Washington Constitution and shift the sheriff’s powers to

another entity by requiring the sheriff to get approval from the highest elected official prior to using tear gas when there is riot outside a jail or correctional facility. Respondents urge the Court to examine the powers of the sheriff's office as defined in the "years leading up to the adoption of the Constitution in 1889." Respondents' brief at 1.

In support, the sheriffs and county commissioners argue that the powers of a sheriff are exceptionally expansive. Repeatedly, they argue that the sheriff's powers are "open-ended," and that sheriffs have the "discretionary authority to decide the manner in which a riot should be quelled," equating the ability to determine the manner in which a riot is stopped with a constitutional directive to control the means by which a riot is stopped. Respondents' brief at 27, 37. Ultimately, Respondents argue that "the sheriff's discretion to decide the most effective manner to keep the peace," is, essentially, a constitutionally-vested power to control all of the means by which a riot is stopped. But this reading of the sheriff's powers is too expansive

and not supported by the Washington Constitution or precedence.

As an initial matter, the plain language of the Article XI, Section 5 does not support this expansive reading of a sheriff's power. When interpreting a constitutional provision, this Court previously held that "we look first to the plain language of the text 'and will accord it is reasonable interpretation'." *State v. Barton*, 181 Wn.2d 148, 155, 331, P.3d 50 (2014) (internal citations omitted). Ultimately, "[t]he words of the text will be given their common and ordinary meaning, as determined at the time they were drafted." *Id.* See also *Spokane Cnty. v. State*, 196 Wn.2d 79, 84-85, 469 P.3d 1173, 1176 (2020). The relevant part of Article XI, Section 5 is that the "legislature...shall provide for the election...of...sheriffs...*and shall prescribe their duties.*" Based on the plain language of Article XI, Section 5, the legislature prescribes the duties of the sheriff, which is exactly what RCW 10.116.030 does.

A state legislature's ability to prescribe the duties and

limits on law enforcement is a fundamental part of our federalist system. The state has a broad array of regulatory concerns: maintaining the safety of officers and community members; establishing a framework for the relationship between law enforcement officers and the communities they serve; and identifying the purposes for which and extent to which officers can use force or tactics as an application of state authority. The Washington legislature has regulated the duties of law enforcement under statutes addressing how force can be used,¹⁷ how law enforcement can interact with federal authorities,¹⁸ and how lethal uses of force by officers are investigated.¹⁹ In each of

¹⁷ See RCW 10.120.020 Permissible uses of force, <https://app.leg.wa.gov/RCW/default.aspx?cite=10.120.020> (last visited March 27, 2023).

¹⁸ See RCW 10.93.160 Immigration and citizenship status—Law enforcement agency restrictions, <https://app.leg.wa.gov/RCW/default.aspx?cite=10.93.160> (last visited March 27, 2023).

¹⁹ See RCW 43.102.080 Investigations—Duties and powers, <https://app.leg.wa.gov/RCW/default.aspx?cite=43.102.080> (last visited March 27, 2023). See also RCW 10.114.011 Independent investigation—adoption of rules,

these examples, the state has placed limits on law enforcement and thus a sheriff's authority.

That said, RCW 10.116.030 allows sheriffs to retain discretion, while placing only a directive on the decision to use tear gas, recognizing that this tactic has broad impact necessitating additional government oversight. In fact, despite Respondents' arguments to the contrary, sheriffs *shared* the responsibility of quelling riots with other local government leaders around the time of the creation of Washington's Constitution. In *Chapin v. Ferry*,²⁰ this Court held that a variety of public officials, including "any justice of the peace, sheriff, deputy-sheriff, constable, or marshal of a city, or mayor or alderman," are responsible for suppressing riots and are able to "go among the persons so assembled...and...command them, in the name of the state of Washington, immediately to disperse."

<https://app.leg.wa.gov/rcw/default.aspx?cite=10.114.011> (last visited March 27, 2023).

²⁰ This case is also relied on by Respondents.

Chapin v. Ferry, 3 Wash. 386, 392, 28 P. 754 (1891). Ultimately, “[i]t has always been the duty of magistrates and peace officers to preserve the public peace.” *Id.*

V. CONCLUSION

For the foregoing reasons, the Court should reverse and remand.

RAP 18.17 Certification

Undersigned counsel certifies that, pursuant to RAP 18.17(b), this brief contains 3,656 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).

DATED this 27th day of March, 2023.

Respectfully submitted,

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** The ACLU would like to acknowledge Sussanah Lake, whose Washington State Bar application is pending and intern Sagiv Galai for their work and contribution to this motion and amicus brief.*

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CERTIFICATE OF SERVICE

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Signed this 27th day of March, 2022 at Seattle, WA.

/s/ *Tori Harris*
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