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No. 98317-8

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

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SHYANNE COLVIN, SHANELL DUNCAN, TERRY KILL, LEONDIS  
BERRY, and THEODORE ROOSEVELT RHONE,  
Petitioners,

v.

JAY INSLEE, Governor of the State of Washington, and STEPHEN  
SINCLAIR, Secretary of the Washington State Department of Corrections,  
Respondents.

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**MOTION FOR LEAVE TO FILE BRIEFS  
OF AMICI CURIAE FRED T. KOREMATSU CENTER FOR LAW  
AND EQUALITY, AMERICAN CIVIL LIBERTIES UNION OF  
WASHINGTON, DISABILITY RIGHTS WASHINGTON,  
SEATTLE CHAPTER OF THE NATIONAL LAWYERS GUILD,  
AND WASHINGTON DEFENDER ASSOCIATION IN SUPPORT  
OF PETITIONERS**

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**I. MOTION FOR LEAVE TO FILE BRIEFS OF AMICUS CURIAE**

The Fred T. Korematsu Center for Law and Equality, the American Civil Liberties Union of Washington, Disability Rights Washington, the Seattle Chapter of the National Lawyers Guild, and the Washington Defender Association (collectively “Amici”) respectfully request leave to file amicus briefs in support of Petitioners’ Petition for a Writ of Mandamus. Collectively, Amici intend to file no more than three amicus briefs. Robust participation by interested amici is warranted by the gravity of the matter before the Court.

Though no rule specifically governs amicus participation at this stage in the proceedings when a petition for a writ of mandamus has been filed before this Court pursuant to this Court’s original jurisdiction pursuant to Const. art IV, § 4 and RCW 7.16.160,<sup>1</sup> Amici assert that the general standards regarding amicus participation should apply. *Cf.* RAP 10.6(a) and (b) (rules regarding amicus curiae briefs); RAP 13.4(h) (“Rules 10.4 and 10.6 should govern generally disposition of a motion for leave to file an amicus curiae memorandum.”). Additional support to grant leave to file can be found in RAP 1.2(a), which calls for the rules to be

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<sup>1</sup> *See* RAP 16.2(c) (in an original action against a state office, petition is treated as a motion governed by Title 17); RAP 17 (silent with regard to participation by amicus).

liberally interpreted, and RAP 18.8(a), which permits this Court to waive or alter the provisions of any of these rules. Amici sought consent from the parties pursuant to RAP 10.6(a). Petitioners granted consent; respondents have not yet responded.<sup>2</sup>

### **A. Identity of Moving Parties**

The Fred T. Korematsu Center for Law and Equality (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 does not, in this brief or otherwise, represent the

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<sup>2</sup> Amici are not faulting respondents for not responding as of the filing of this motion. Counsel for the Korematsu Center emailed respondents’ counsel at 12:24pm on March 27, 2020, and Amici anticipate filing this motion for leave approximately 3 hours after the email was sent.

official views of Seattle University. The Korematsu Center has a special interest in ensuring that an avoidable public health tragedy not occur in Washington prisons because of governmental inaction in dereliction of clear duties owed under the Washington constitution and statutes. The Korematsu Center, on March 16, 2020, joined other organizations in a letter to respondent Governor Inslee requesting him to take action to address the special danger posed by COVID-19 in Washington’s prisons and jails.<sup>3</sup>

The American Civil Liberties Union of Washington (“ACLU-WA”) is a statewide, nonprofit, nonpartisan organization with over 135,000 members and supporters. It is an affiliate of the national ACLU. ACLU-WA is dedicated to defending and promoting civil liberties and civil rights, and has particular interest, long experience, and expertise in advocating for the rights of people in Washington who are incarcerated. It also has a direct connection to the issues in this case, related to the COVID-19 pandemic and its impact on the Washington State prison system, because incarcerated people and members of the public regularly contact ACLU-WA about these issues, and because the ACLU is addressing these issues nationwide.

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<sup>3</sup> Letter to The Honorable Jay Inslee, March 16, 2020, <https://columbialegal.org/wp-content/uploads/2020/03/Letter-to-Gov.-Inslee-re-COVID-19.pdf>.

Disability Rights Washington (DRW) is the nonprofit statewide protection and advocacy system designated by the governor of the state of Washington to protect and advocate for the rights of Washington residents with physical or mental disabilities. See RCW 71A.10.080. As the protection and advocacy system, DRW has the authority and responsibility to pursue legal, administrative, and such other appropriate remedies as may be necessary to protect and advocate for the rights of people with disabilities in Washington. See 42 U.S.C. §§ 15041-45; 42 U.S.C. § 10801-51; 29 U.S.C. § 794e; RCW 71A.10.080. DRW has federal authority to access people with disabilities in the places they live and receive services. See 42 C.F.R. § 51.42(b). We use this authority to monitor conditions in prison and jails, where DRW staff see conditions of these facilities firsthand and talk to people in all areas of prisons, including solitary confinement, suicide watch, and infirmaries.

Because of the high percentage of people with disabilities involved in the criminal justice system, DRW created a program dedicated to protecting the rights of people with disabilities experiencing incarceration and attempting to reenter society. This program is called AVID, which stands for Amplifying Voices of Inmates with Disabilities. AVID fields complaints and questions every day from people with disabilities. It receives hundreds of calls and letters per year from individuals with legal

problems related to their incarceration or reentry to society, including issues related to the substandard medical and mental health care and lack of supports for aging in prison. DRW takes direction from incarcerated people with disabilities and has been very active in supporting legislation that would create a post-conviction review process for people who have served more than 15 years in prison. DRW has been speaking to individuals with disabilities in prisons about their experiences related to the COVID-19 outbreak and has been advocating on their behalf.

The Seattle Chapter of the National Lawyers Guild is one of many chapters around the country of the National Lawyers Guild (“NLG”), a national non-profit voluntary bar association of lawyers, law students, legal workers and jailhouse lawyers. Since its inception in 1937, the NLG has been at the forefront of efforts to develop and ensure respect for the rule of law and basic rights. Its mandate is to advocate for fundamental principles of social and economic fairness and for human and civil rights, including the protection of rights guaranteed under international law, the United States Constitution and laws, and the constitutions and laws of the various states. Many of the members of the Seattle Chapter of the NLG are criminal defense lawyers and immigration lawyers who have particular concern for the rights of incarcerated people. Historically, members of the NLG have been involved in litigation arising from conditions in prisons

and immigration detention facilities, both in Washington State and nationally. Accordingly, the Seattle Chapter of the NLG has deep interest in the litigation over the impact of COVID-19 on the health and well-being of incarcerated individuals.

The Washington Defender Association is a statewide organization whose membership is comprised of public defender agencies, indigent defenders and those who are committed to seeing improvements in indigent defense. WDA is a not-for-profit corporation with 501(c)(3) tax-exempt status. The association's objectives and purposes are defined in its bylaws as follows:

- A. To protect and insure by rule of law those individual rights guaranteed by the Washington and Federal Constitutions, including the right to counsel, and to resist all efforts made to curtail such rights;
- B. To promote, assist, and encourage public defense systems to ensure that all accused persons receive effective assistance of counsel;
- C. To improve the administration of justice and to stimulate efforts to remedy inadequacies or injustice in substantive or procedural law;
- D. To promote, update, publicize, and further the professional standards for attorneys in the provision of services in public defense systems and to encourage their use and implementation by government, public defenders, and public defender associations;
- E. To improve the professional status of attorneys and to encourage cooperation between lawyers engaged in the furtherance of our objectives through publications, education, and mutual assistance; and

- F. To engage in all activities on a local, state and national level that will advance the purposes for which this association is formed in order to promote justice and the common good of the citizens of the United States.

WDA representatives frequently testify before the Washington House and Senate on proposed legislation affecting indigent clients and their families. Washington Courts of Appeal and Washington Supreme Court have granted WDA leave to file amicus briefs on many prior occasions. Representatives and members of the WDA frequently testify before both houses of the Washington State Legislature on proposed legislation affecting indigent defense issues. WDA represents 30 public defender agencies and has over 1,600 members comprising attorneys, investigators, social workers and paralegals throughout Washington State representing indigent representing indigent adults and children in criminal proceedings where their liberty interests are at stake, and through which they may become incarcerated at Washington State Department of Corrections (DOC). WDA attorneys have significant expertise on the issues presented in the instant case based on the technical assistance we provide criminal defense attorneys in superior court proceedings across the State.

#### **B. Facts Relevant to Motion**

Amici's motion was prepared by attorneys authorized to practice law in Washington. *See* RAP 10.6(a). The motion likewise satisfies the

requirements of RAP 10.6(b), which amici suggest provides the general standards by which to determine amicus participation in an original action against state officers. RAP 16.2.

***1. Amici's Interest in this Case***

Amici's respective interests in this case are detailed above.

***2. Familiarity with Issues and Argument***

Attorneys for Amici have reviewed the record and the arguments presented in the Petition for a Writ of Mandamus and Petitioners' Motion to Accelerate Review filed in this Court. Amici are familiar with the scope of the arguments presented by the petitioners and will not unduly repeat their arguments.

***3. Issues Amicus Curiae Briefs Will Address***

Amici will address additional factual circumstances that may guide the Court in deciding whether mandamus shall issue. Specifically, amici offer additional context that will aid this court's consideration of issues of urgent public interest; Amici will discuss the actions taken by other courts and government officials to reduce the incarcerated population in order to mitigate the spread of COVID-19 among those incarcerated, prison and jail staff, all the people the staff encounter outside of the prisons and jails, and healthcare professionals who will treat the afflicted. These actions collectively demonstrate the magnitude and urgency of the problem,

emphasizing the need for accelerated review as a predicate for full consideration and possible relief if petitioners prevail.

In addition, Amici will address the weighty issues based on Const. Art. I, §§ 12 and 14; the Washington Law Against Discrimination, RCW 49.60; and both the common law special responsibility that prisons have to protect incarcerated individuals as well as historical examples of instances when during emergencies prison authorities failed to protect those entrusted to their care. Amici will also address the Department of Corrections' past track record of inadequate health care and lack of preparation for its increasingly aging prison population. Amici will describe advocacy related to these issues and how the current COVID-19 crisis exacerbates them.

#### ***4. Belief that Additional Argument Is Necessary on These Issues***

Amici believe that additional argument on these issues is necessary as the Court considers whether to issue the writ of mandamus. Because COVID-19 in Washington prisons presents questions of grave public import, robust amicus participation is called for to ensure this Court is fully informed when making its decision.

#### **C. Grounds for Relief and Argument**

Amici request that the Court allow the filing of amicus briefs on

the ground that Amici meet all of the standards for amicus participation in RAP 10.6. To the extent that amicus participation is not expressly provided for, Amici request that the Court liberally interpret the rules, pursuant to RAP 1.2(a), and/or to waive or alter the rules, pursuant to RAP 18.8(a), to permit amicus participation.

## **II. TIMELINESS**

Petitioners' Writ of Mandamus was filed on March 24, 2020, with service completed on March 26, 2020. Petitioners' Motion to Accelerate Review was filed on March 25, 2020. The Court on March 27, 2020, retained jurisdiction, granted Petitioners' Motion to Accelerate Review, and set a briefing schedule.

Amici's motion for leave to file is filed on March 27, 2020.

In light of the urgency of the matter and the existing scheduling order and pursuant to RAP 10.2(f), Amici request that amicus briefs be filed no later than April 8, 2020, and that any responses to amici be filed no later than April 17, 2020. The current schedule would then be modified to include the proposed deadlines for amicus participation noted in **bold** as follows:

April 3, 2020	Parties file record
April 6, 2020	Petitioners' merits brief due
<b>April 8, 2020</b>	<b>Amicus briefs due</b>

April 13, 2020 Respondent's brief due  
April 16, 2020 Petitioners' reply brief due  
**April 17, 2020 Response to amici due**

### **III. CONCLUSION**

For the foregoing reasons, Amici respectfully request that the Court grant leave to file amicus briefs as described above.

DATED: March 27, 2020

*/s/ Robert S. Chang*

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## DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on March 27, 2020, the forgoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 27th day of March, 2020.

/s/ Melissa R. Lee

Melissa R. Lee

Counsel for Amicus Curiae

FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY

**FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY**

**March 27, 2020 - 3:58 PM**

**Transmittal Information**

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