FILED
SUPREME COURT
STATE OF WASHINGTON
12/18/2020 1:08 PM
BY SUSAN L. CARLSON
CLERK

Supreme Court No. 98985-1
King County Superior Court No. 20-2-01420-6 SEA

SUPREME COURT OF THE STATE OF WASHINGTON

THE FAMILY OF DAMARIUS BUTTS, et al.

Respondents/Cross-Appellants,

v.

DOW CONSTANTINE, in his official capacity as King County Executive, et al.

Appellants/Cross-Respondents.

MOTION TO FILE BRIEF OF *AMICI CURIAE* COMMUNITY ORGANIZATIONS

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Amici curiae, a group of twenty-five organizations (the "Community Organizations"), respectfully move to file an *amicus curiae* brief pursuant to RAP 10.6(a). The subject brief is attached.

I. STATEMENT OF INTERESTS

Amici curiae seek an end to state-sanctioned police violence against Black individuals and others. *Amici curiae* include the organizations listed below.

American Civil Liberties Union of Washington works to ensure justice, freedom, and equality are realities for all people in Washington state, with particular attention to the rights of people and groups who have historically been disenfranchised. We have long supported improvements in inquests. The brief supports improvements in transparency and accountability, while at the same time recognizing that even better procedures may be possible as well.

API Chaya is an organization that supports survivors of gender-based violence. We support the right of families and communities to engage in public investigation to know what happened to their loved ones. Police should not be exempt from this.

Coalition Ending Gender-Based Violence seeks to end gender-based violence and promote equitable relationships through collective action for social change. The Coalition joins its colleagues and allied

organizations in demanding an end to police violence and the killing of our Black community members. Anyone impacted by gender-based violence deserves a lawful and just State response. Law-enforcement transparency, particularly in uses of deadly force, is key to accountability and a crucial component of creating communities where all can thrive.

Columbia Legal Services believes that every stage of the U.S. criminal justice system—from policing to prosecution to sentencing, imprisonment, and reentry—is deeply racialized and extreme in its harshness. Columbia Legal Services works for communities to dismantle our racialized criminal justice system, and the issues raised in this amicus brief related to policing and the inquest system align with that goal.

COVID-19 Mutual Aid, a grassroots group formed to provide aid to community members severely impacted by the pandemic, calls for the abolition of prisons, jails, and all incarceration and detention facilities, the existence of which has exacerbated the impacts of COVID-19. We stand against the systemic oppression of Black, Indigenous, and People of Color communities, including by police violence.

Creative Justice builds community with youth most impacted by the school-to-prison-(to-deportation) pipeline. Creative Justice stands with the community in its call for fair representation of the people's interests in matters of police violence.

The Data-Driven Institute is a Seattle-based nonprofit working on creating data-driven and technology-focused solutions for the greater social good of marginalized communities. The Institute believes in the sanctity of human life and the need to protect the underserved and marginalized community in King County.

Decriminalize Seattle is a grassroots group formed to demand the defunding of police and the abolition of prisons, jails, and all incarceration and detention facilities. We stand against police violence and the systemic oppression of Black, Indigenous, and People of Color communities.

Disability Rights Washington works on behalf of people with disabilities across the state, including those who are victims of police violence. People with disabilities, especially mental health issues, experience police violence at disproportionately high rates. DRW supports improvements to transparency and accountability in the ongoing effort to reduce police violence.

El Centro de la Raza, a nonprofit organization grounded in the Latino community of Washington State, is committed to combatting institutional racism and police brutality in all its forms. We stand in solidarity with our Black brothers and sisters in saying enough is enough; the time for change is overdue. We demand justice and accountability. *Tu lucha es nuestra lucha.* Your fight is our fight.

Faith Action Network is a statewide, social-change, faith-based organization that has worked on racial injustices for many years in the state legislature, Congress, local jurisdictions, law enforcement, and the judicial realm. We are glad to be a part of those many organizations that have signed on to this document.

Kadima Reconstructionist Community, a Seattle progressive Jewish community, has long stood against racism and all forms of oppression, including the defunding of police and ending youth incarceration. We join with all those working for justice in holding police accountable to the community, especially our Black & Indigenous Jews and all Jews of Color, as well as People of Color of all backgrounds and religions. All Jews know what unaccountable state violence can do, especially when the impact is felt by specific groups, and we say never again.

The Latina/o Bar Association of Washington works to advance the interests and concerns of Latina/o attorneys and community members in Washington. We stand in solidarity with Black communities throughout the United States, and demand justice for the systemic ills that buttress police brutality. We recognize that People of Color are disproportionately affected by over-policing, police violence, and bias in the criminal justice system.

The **Loren Miller Bar Association** is a civil rights organization that supports the community and believes improvements to the inquest process are vital. We stand against the systemic oppression of all people and especially the disparate treatment of African- Americans.

Martin Luther King County Democrats, through its King County Democratic Central Committee, unanimously passed a resolution in support of the inquest process. All the families of those killed by taxpayer-funded law enforcement officers and the communities to which the families and victims belong deserve an open and fair review of what happened. In order to heal, the families and our community deserve transparency, accountability, and justice.

Mothers for Police Accountability is a grassroots organization based in Seattle that has for 30 years vigorously advocated for constitutional and humane policing in the Puget Sound area. Mothers fully supports enhanced changes in King County's inquest process, including jury determinations of whether policies and training were violated. Mothers believes that doing so will promote greater healing for the families of those who have died in police custody.

Not This Time is a grassroots organization formed to engage with local community members, the families of those who have lost their loved ones to police shootings, and those who work inside the system to demand

more police accountability and safer communities. DeVitta Briscoe is the assistant director and André Taylor is the founder of Not This Time. Both André and DeVitta are family members of Che Taylor and found the inquest hearing to be an extremely dehumanizing experience for families that further insulates officers' wrongdoing and misconduct. Organizers of Not This Time pushed for significant changes to King County's inquest process with support from other families directly impacted by police violence. DeVitta Briscoe was appointed by Dow Constantine to serve on the Inquest Review Committee and wants to ensure that those reforms will not be reversed. We are signing on to this amicus brief in support of families.

OneAmerica is Washington's largest immigrant and refugee organizing, civic engagement and advocacy group, and the organization is grounded in immigrant and refugee communities of color. Our own members are often fearful of encounters with police because of their immigration status and their concern over police behavior in communities of color. Transparency in the inquest process is important to building trust for members of our organization and their communities in the criminal justice system.

QLaw Association of Washington is an association of LBGTQ+ legal professionals and their friends. QLaw Association serves as a voice of LGBTQ+ lawyers and other legal professionals in the State of Washington

on issues relating to diversity and equality in the legal profession, in the courts, and under the law. QLaw Association believes LGBTQ+ and BIPOC communities have disproportionately high rates of interaction with law enforcement. When those interactions lead to the death of a community member, there should be a thorough, transparent, and unimpeded investigation of the officer's actions.

QLaw Foundation of Washington promotes the dignity and respect of LGBTQ+ Washingtonians within the legal system through advocacy, education, and legal assistance. Our communities, and particularly Black transgender women, experience violence, over-policing, and abuse and sexual assault within the criminal justice system at disproportionately high rates. We believe that dismantling the racism of the criminal justice system must begin with transparency and accountability for police officers.

The **Seattle Chapter of the National Lawyers Guild** ("NLG") is one of many chapters around the country affiliated with the nation's oldest and largest progressive bar association with a mission to use law for the people by valuing human rights over property interests. 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. NLG uses law for the people, uniting lawyers, law students, legal workers, and jailhouse lawyers to

function as an effective force in the service of the people by valuing human rights over property interests. NLG advocates 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. NLG members protect the human and civil rights of individuals in their encounters with police and detention facility personnel and promote accountability and transparency in all procedures involving encounters between people and the police. NLG is committed to effecting change in the legal and police systems as a whole and to ending police brutality in all forms.

Seattle King County Coalition on Homelessness mobilizes our community to challenge systemic causes of homelessness and advocate for housing justice. We are a membership Coalition made up of King County organizations and residents. Our members experience and witness police conduct in the community; concerns about excessive use of force and biased policing led to our signing onto the 2010 request to the U.S. Department of Justice to request an investigation into patterns and practices of misconduct within the Seattle Police Department, and we shared information with DOJ investigators about the experiences of people who are homeless with SPD personnel. In partnership with our members and at the request of the

Community Police Commission, we gathered information about homeless people's interactions with law enforcement, including SPD. We are honored to stand with community-based organizations to insist on meaningful accountability measures and work for true public safety for all King County residents.

The **Washington Defender Association** ("WDA") 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 representatives frequently testify before the Washington House and Senate on proposed legislation affecting indigent clients and their families. Washington Courts of Appeal and that 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 individuals. Inquests provide a necessary public forum to review police violence against Black, Indigenous, and people of color (BIPOC). With statewide events of police-involved

shootings and killing of BIPOCs, the inquest must be an open, robust process to promote confidence in the system.

Washington Women Lawyers stands with and for communities of color and individuals impacted by police violence. We support an inquest process that provides a full and transparent examination of the deadly use of force, unencumbered by restrictions on a review of policies and training which are found to be relevant to a death.

11th Legislative District Democrats of Washington State is dedicated to fostering and perpetuating the ideals and principles of the Democratic Party, to increasing the interest of 11th Legislative District citizens in public affairs, and to creating a society where all people may achieve the highest degree of social justice and welfare. The organization unanimously passed a resolution in support of the King County inquest process. The families of those killed by taxpayer-funded law enforcement officers and the communities they were a part of deserve an open and fair review of what happened.

II. FAMILIARITY WITH THE ISSUES

Amici curiae engage in a range of work to serve community members whose civil rights and civil liberties are threatened by the police and to restructure policing. *Amici* have expertise and experience with advocating for police accountability and to end police violence against

Black, Indigenous, and other communities, as well as with building and supporting the health of marginalized communities. *Amici* stand together in recognizing the need for public accountability every time police kill a community member.

Amici have read the parties' briefs in this case and understand the scope of the argument presented or to be presented by the parties.

III. ISSUES ADDRESSED

The brief of *amici curiae* addresses the role inquests have historically played in examining potentially lethal dangers in our society, the importance of providing a forum to address the crisis of police violence against Black and other individuals, and the importance of—and the public's support for—a robust inquest process.

IV. REASONS FOR ADDITIONAL ARGUMENT

Amici seek to aid the Court by providing the community's perspective on the issues raised in this matter, including the community's perspective on the history, role, and importance of inquests. *Amici* respectfully submit that such information will be helpful to the Court in understanding the broader social context, the importance of a robust inquest process, and the community interests that *amici* represent and serve.

V. CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court grant their motion to file the attached brief as *amici curiae*.

Dated: December 18, 2020 Respectfully submitted,

By 

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I. INTRODUCTION

George Floyd . . . Breonna Taylor . . . Michael Brown . . . Around the nation, the deaths of Black individuals at the hands of law enforcement come with a regularity that could be mistaken for a drumbeat.[1] *Philando Castille . . . Eric Garner . . . Tamir Rice . . .* Our state is no exception: *Che Taylor . . . Manuel Ellis . . . Kevin Peterson . . .* Such deaths have Washingtonians, along with communities throughout the nation, demanding accountability and answers for why Black community members—as well as Indigenous communities and other people of color—are so frequently killed by police, and at rates far higher than others.

The public is entitled to a robust inquiry into the circumstances of each death to ascertain the truth. Internal investigations undertaken by law enforcement, as well as prosecutor charging decisions, unavoidably suffer from institutional pressures, opaque processes and decision-making, and unchecked individual biases. Inquests are the only statutory proceeding actually intended to ascertain the truth about a death, and a robust inquest process is necessary for the public to have confidence in its output.

While Black individuals are not the only casualties of police actions, they are so disproportionately impacted that it is impossible to fully grapple

[1] For background on many of these killings, see Alia Chughtai, *Know Their Names: Black People Killed by the Police in the US* (2020), *available at* https://interactive.aljazeera.com/aje/2020/know-their-names/index.html.

with the issue without acknowledging the deep racial injustices in our society. Black lives are too regularly devalued relative to white security and comfort. Many people cannot even accept the idea that Black lives ***matter***. Even a robust inquest process will not be immune from the institutionalized racism of our society. Nevertheless, the varied community interests that *amici* represent agree with the families of Black individuals killed by police in understanding that a robust inquest process is needed to uncover the truth. The trial court broadly invalidated King County's inquest policies and procedures directed to revealing that truth. *Amici* believe that racial justice demands a complete reversal of the trial court's decision that was not just contrary to law, but also oblivious to the needs of our society.

II. IDENTITY AND INTERESTS OF AMICI

Amici curiae are twenty-five organizations (identified in the accompanying Motion) who seek an end to state-sanctioned police violence against Black individuals and others. Our organizations engage in a range of work to serve community members whose civil rights and civil liberties are threatened by the police and to restructure policing. *Amici* stand together in recognizing the need for public accountability every time police kill a community member.

III. STATEMENT OF THE CASE

Amici curiae join in the statements of the case put forth by the

families of Charleena Lyles, Isaiah Obet, and Damarius Butts ("Families").

IV. ARGUMENT

A. Inquests provide a necessary public forum to address the crisis of police violence against people of color.

1. The history of unchecked use of excessive and lethal force by police against communities of color establishes the need for public accountability.

Police in the United States have been committing unjustified acts of violence against Black people and other people of color since before the country was founded. The use of state-sanctioned terror as a tool of oppression has been well-documented by historians and sociologists. In 1990, during the first Bush administration, the U.S. Department of Justice published a paper tracing the history of American policing as it impacted African Americans. From the pre-Revolution origin of the modern police force in "slave patrols," though law enforcement's tacit endorsement of lynching during the post-Reconstruction period, to the use of state and local police to attack peaceful civil rights demonstrations during the 1960s, the police have consistently been a force for racial oppression.[2] Throughout this history, police killings of Black citizens have all-too-frequently gone

[2] Hubert Williams & Patrick V. Murphy, *The Evolving Strategy of Police: A Minority View*, 13 Perspectives on Policing (Jan. 1990), https://www.ncjrs.gov/pdffiles1/nij/121019.pdf. Longer and more recent studies addressing this history include Kristian Williams, *Our Enemies in Blue: Police and Power in America* (2015), and Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (2019).

unexamined, leaving the police's use of lethal force effectively unchecked.

In Washington State, and particularly in King County, the dramatic disparity between police treatment of white people and people of color continues to this day. The ACLU, joined by many of the *amici* who have also joined this brief, filed a brief in the Superior Court demonstrating this racial disparity. CP 2483–512. One statistic stands out: A Black person living in King County has a risk of being killed by a police officer that is eight times higher than their white neighbors. CP 2492.

In this context, with this history, the public demand for police accountability through transparent investigations is an essential step in building community trust. Pleas from family members again and again emphasize the need for full and fair investigations. The mother of Enosa Strickland, killed by Auburn police in 2019, was blunt: "The police cannot and should not investigate themselves." CP 2494. The father of Tommy Le, a high school student shot to death by a King County Sherriff's Deputy in 2017, said simply, "I want to know what happened to my son." *Id.* It should go without saying that these are legitimate concerns about issues that impact public safety as well as the families directly involved. The inquest process implemented by King County, with the modifications requested by the Families in this case, provides a forum for responding to these concerns.

2. Public support for a robust inquest process in King County is overwhelming.

Public commitment to improving the process for conducting inquests into law enforcement-related killings has been the driving force behind King County's recent reforms. As the County notes, the decision to form a committee to review inquest procedures was in direct response to growing community concerns over the thoroughness and fairness of inquests into police killings, particularly killings of people of color. King County Br. 12 (citing CP 705). During the three months that the committee conducted its review, over two hundred individuals and fifty organizations sought to provide input on the issues. *Id.* at 12–13 (citing CP 797–785).

The legislative record for King County's improvements to the inquest process further demonstrates overwhelming public support for a robust inquest process. In January 2018, even before the commission appointed by the Executive had issued its report, the King County Council passed an ordinance providing legal representations for families involved in inquests by a unanimous 9-0 vote.[3] At the meeting where the vote was taken, several Council members noted the importance of the community interest

[3] King County Ord. 2018-0028; legislative history available at https://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=3298073&GUID=4239CE5C-F569-4E56-A550-DC96CC905416.

in and commitment to reforming the inquest process.[4] In November 2019, the twenty-member King County Charter Review Commission issued a unanimous recommendation for a public referendum to amend the County Charter to provide for an inquest any time a member of the public is killed by a law enforcement officer and to provide legal representation for families participating in an inquest.[5] That referendum, King County Charter Amendment One, was on the ballot for the election on November 3, 2020 and passed with an overwhelming 80% support.[6]

3. Issues raised by the Obet, Butts, and Lyles cases demonstrate the importance of inquests.

The three inquests in this case present important questions about the use of force by the police officers involved. Isaiah Obet was shot twice. CP 3–4. At least one witness stated that the second shot, which hit Obet in the head, was fired after Obet was already on the ground and motionless. *Id.* Even before the first shot was fired, the officer released a K-9 dog which had attacked Obet. *Id.* In these circumstances, were both shots appropriate uses of lethal force? Are the Auburn police department policies applicable

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[4] King County Council meeting Jan. 29, 2018, video available at http://king.granicus.com/MediaPlayer.php?view_id=4&clip_id=6877&meta_id=407392, at 1:08ff (comments by Councilmembers Gossettt, Kohl-Wells, Upthegrove).

[5] Report at https://www.kingcounty.gov/independent/charter-review-commission.aspx.

[6] https://ballotpedia.org/King_County,_Washington,_Charter_Amendment_1,_Mandatory_Inquests_for_Police-Related_Deaths_(November_2020).

to such situations reasonable? Were those policies followed by the officer involved? In the case of Charleena Lyles, police arrived at her apartment without crucial non-lethal weapons despite knowing that she had been diagnosed with significant mental health issues in the past. CP 1186–89. Why were they not properly equipped? Similarly, the shooting of Damarius Butts on a street in Downtown Seattle raises significant questions about appropriate use of lethal force and department policies requiring de-escalation and non-lethal alternatives to the use of firearms. CP 466–70.

Unless the inquest process is allowed to proceed, the official investigations of each of these shootings will occur behind a law-enforcement curtain, conducted by other police officers and by prosecutors who work closely with those officers on a daily basis. Community concerns about the obvious conflict of interest dampening the vigor and impairing the objectivity of such investigations are well-founded. Equally important, public access to the facts of each case will be limited and potentially distorted, leaving the families and the public unsure about what actually happened and how to minimize the chances that it might happen again.

B. Inquests have always provided a public forum for the examination of all types of potentially lethal dangers, including dangers posed by police and other officials.

Washington State has a long history of using inquests to examine all circumstances that may have contributed to an individual death. Unlike a

trial, which is limited to addressing the liability of a single individual, inquests have no pre-determined focus and can consider a wide range of factors. Importantly, inquests are public and provide a forum for an open examination of the causes of a particular death. In the current crisis brought on by police killings of people from communities of color, these factors must include relevant police department policy, and the inquest must address whether the officers involved followed that policy.

1. Government and business policies that contribute to a death have long been the subject of inquests.

Historically, inquests have frequently examined industry and department policies relevant to a death, and inquest verdicts have included recommendations for modifying policy and training requirements for law enforcement and others. In recent decades, pressure from police departments and their advocates has curtailed inquest juries' consideration of these issues. However, contrary to the claim made in the brief filed by the Sherriff's Office that "from time immemorial" inquests have been walled off from issues related to department policy and training, Cities and King County Sheriff Br. 11, any such limits are relatively recent and are not derived from the language of the Coroner's Statute.

Fire regulations are an example of public policy that received repeated attention from coroner's inquests early in the state's history. In

1898, a fire in Spokane led to several deaths. The inquest jury found that the efforts of firefighters to rescue people trapped on the upper floors of the building had been impeded by "the network of telephone and telegraph wires which were strung at considerable height alongside the doomed building." *A Fatal Ten Minutes*, Seattle Daily Times, Feb. 8, 1898, at 4.[7] The inquest jury not only found that the wires had contributed to the loss of life in the fire, it also explicitly recommended that the Spokane City Council declare wires strung in that manner a nuisance and require that they be moved so as not to interfere with firefighting activity. *Id.*

In addition to recommending modifications to relevant laws and regulations, inquest juries also made findings that officials' failure to enforce the existing regulations contributed to a death. In 1920, four guests died when they were trapped inside a Seattle hotel during a fire. The inquest jury noted "the laxity of the city departments whose duty it is to enforce state and city laws to make public hostelries safe to the public, by not requiring the management of the Hotel Lincoln to comply with the law." *Blame Civic Bureaus for Hotel Deaths*, Seattle Daily Times, Apr. 16, 1920, at 1. The jury also recommended changes to the governing regulations to eliminate confusing and potentially conflicting provisions. *Id.*

[7] For the convenience of the Court, *amici* are attaching older, harder-to-access newspaper articles as Appendix A. *See* RAP 10.4(c).

Inquest juries have made similar policy and training recommendations in a variety of industries. A number of Seattle inquests from the late 1800s and early 1900s involved findings and recommendations for safer operation of streetcars. In 1897, D.C. Govan was thrown from a streetcar as it rounded a corner. The inquest verdict stated: "We recommend that the company be required to change the construction of the outside seats of its cars for the better protection of its patrons, and that conductors and gripmen be instructed to give timely vocal notice in approaching the several curves." *Funeral of Mrs. Govan*, Seattle Daily Times, Oct. 10, 1897, at 5. In another accident that killed one person and injured at least seventy, the jury did not recommend criminal charges for the streetcar driver but did admonish the streetcar company for its training and staffing policies: "[I]t is to be regretted that the management has seen fit to detail practically inexperienced men in charge of cars, especially where the traffic is most heavy and the tracks dangerous." *Coroner's Jury Assails Use of Untrained Men*, Seattle Daily Times, Jan. 11, 1920, at 1.

Even in cases where the jury recommends criminal charges, it may also propose changes to public regulations or policies that contributed to the death. In 1966, a four-year old foster child was killed by her abusive custodial parents. The coroner's jury concluded that both parents should be charged with manslaughter but also found that Washington's Welfare

Department should change its policy for home visits to foster children and increase access to medical examinations for such children. *Jury Declares Child's Death Manslaughter,* Seattle Times, Oct. 20, 1966, at 24.

This history leaves no doubt that the Coroner's Statute has always been understood to encompass consideration of training and policy. Inquest juries empaneled under the Washington statute have been making recommendations for modifications to such policies for over one-hundred years. The trial court's finding that inquests must be limited to "'who' died, 'when,' and 'by what means'" and that King County's procedure for using inquests to investigate relevant training and policy issues "expands the scope of a reviewing jury," CP 2392, simply cannot be squared with the unambiguous historical record of coroner's inquests and their verdicts.

2. In determining the cause of a police-involved death and whether it was occasioned by criminal means, an inquest may appropriately consider the full picture of the cause of death, including police policy and police training.

Nothing in the language of the Coroner's Statute suggests that police-involved killings should be investigated any differently from any other death. In particular, nothing in the statute puts police policy or police training off-limits to an inquest. On the contrary, the public examination of policies with potentially deadly consequences are among the most important functions of an inquest.

In the past, police departments have changed their policies following inquest jury recommendations. One prominent example stems from the shooting death of Robert Reese in 1965. Mr. Reese and several of his friends, all of whom were Black, were drinking in a bar in the International District. Two off-duty Seattle police officers who were drinking in the same bar provoked a fight by directing racial slurs at Reese and his friends. After physically confronting the officers, Reese and his friends left the bar and got into a car, and the officers followed. One of the officers fired five shots at the car as it was driving away, hitting Reese in the head and killing him. The inquest jury returned a verdict of excusable homicide. *Reading of Inquest Verdict Draws Moans*, Seattle Times, July 1, 1965, at 11. One of the officers was subsequently charged with provoking an assault.

Although the inquest verdict may have been regrettable, the widespread press coverage of the inquest and its aftermath demonstrates that an inquest can provide a public forum for addressing concerns about police violence. Indeed, the prosecutor presenting the case to the inquest jury specifically asked the jury to find that Seattle police policy should be changed to prohibit officers from carrying firearms when participating in social activities involving alcohol. The jury did make such a finding and, less than two weeks later, Seattle's Chief of Police announced that he was changing the policy to follow the recommendation. *Ramon Changes Policy*,

Seattle Times, July 9, 1965, at 1. An editorial specifically noted that the coroner's inquest had "focused attention" on the policy issue. *When Police Need No Arms*, Seattle Times, June 30, 1965, at 10.

3. Prohibiting the inquest jury from addressing police policy eliminates an important path for reform.

When inquests exclude questions of police policy and training, juries have no meaningful opportunity to express an opinion about whether those policies should be reconsidered. And the public loses an opportunity to have those policies examined in an open forum.

There is reason to believe, for example, that the Seattle Police Department's so-called "knock and announce" policy for drug raids should have been reexamined after the death of several innocent citizens. In the late 1980s and early 1990s, this policy contributed to a series of killings when police burst into people's homes with little or no warning. In one case, Erdman Bascomb, a Black man, was shot dead within seconds of the police battering open his door when an officer mistook the remote control Bascomb was holding for a gun. No drugs or weapons were found in Bascomb's apartment. *Police Chief Says Raids Will Continue—But Family Wants Answers,* Seattle Times, Feb. 19, 1988, at A1. Just two weeks later, Seattle police killed another innocent Black man in a similar raid and claimed that the shooting had been an accident. *Officer Stumbles, Kills Man*

in Raid, Say Seattle Police, Seattle Times, Feb. 3, 1988, at A1.

An inquest jury was empaneled to investigate Bascomb's death. At the time, inquests avoided issues of police policy. Accordingly, the jury was not asked—whereas the jury in the Reese case 23 years before *had* been asked—whether the operative policy should be changed. Instead, the jury considering the shooting of Bascomb was asked to determine if the officer who fired the shot had reasonably feared for his life at that moment. *Opinion Split on Inquest Verdict,* Seattle Times, April 20, 1988, at F2. The inquest jury found that he did, effectively exonerating not only the officer but also the Seattle Police Department and its deadly "knock and announce" policy.

Limiting the Bascomb inquest to the officer's state of mind undoubtedly prevented a more deliberate and public examination of the "knock and announce" policy. The jurors themselves understood that there was more to the story. During deliberations, the jury sent a note to the judge asking if they were allowed to expand their verdict beyond the limited questions on the verdict form. The judge told them not to opine on any issues not included on the form. *Id.* After the trial, one juror said that he was "upset jurors were not asked whether police waited a 'reasonable' amount of time before crashing through Bascomb's door." *Hasty Police Action Criticized—Reasonable Wait Would Have Saved A Life Says Juror,* Seattle Times, Apr. 22, 1988, at B1.

The Bascomb killing and inquest received significant coverage in the press, but none of that coverage included a frank discussion of the "knock and announce" search policy. If that policy had been one of the issues presented to the inquest jury, as at least one juror indicated it should have been, public scrutiny of the policy would have undoubtedly increased and the possibility that a safer, less deadly policy would have ultimately have been implemented cannot be ignored.

C. Robust inquest procedures are in the public interest and do not impinge on any rights of those involved in the killing.

Rather than being an empty ritual addressing only the surface causes of an individual's death, inquests should serve the public interest by shining sunlight on lethal dangers in our society, including issues with police training and procedures or an individual officer's actions. To fully serve that purpose, the County properly enacted procedures to ensure the inquest jury has a more robust view of evidence of the real causes of an unnatural death.

If anything, the County's procedures are substantially more protective and accommodating towards law-enforcement officers than the U.S. Constitution or any statute requires. Neither the Constitution nor the Coroner's Statute requires that officers involved in a killing be allowed to play ***any*** role in an inquest different from that of other witnesses. While the County has elected to allow officers who agree to testify to participate,

through counsel, in inquest proceedings, such participation is a privilege of the County's own making that it did not have to provide at all.

In insisting that law-enforcement officers are entitled to participate in inquests and are exempt from summons or testifying, the trial court—and the officers—imagined special rules for law-enforcement officers giving them more rights in investigations than others who may have committed wrongdoing. Such police exceptionalism has no basis in the law, no justification in public policy, and no place in a decent society.

The Constitution does not grant officers any right to refuse to be summoned to testify.[8] While the Fifth Amendment allows a person not to answer particular questions that may be incriminating, a blanket right not to be questioned at all applies only during a criminal trial and not in any other proceeding. *United States v. Scully*, 225 F.2d 113, 115–16 (2d Cir. 1955) (recognizing the potential for a jury in a criminal trial "charged with the responsibility of determining the guilt or innocence of the accused" to infer guilt from assertion of the Fifth Amendment, thereby compromising "the right to remain silent without prejudice," whereas this was not an issue before a grand jury). Neither the trial court nor any party brief cites any

[8] *Amici* agree with the Families that the Coroner's Statute unambiguously requires that officers involved in a killing be summoned, except perhaps in the highly implausible event the inquest administrator believes they would have no relevant information.

authority supporting the proposition that officers are exempt from the same rules applicable to any other person. Cases such as *Garrity*, *Malloy*, *Seattle Police Officers' Guild*, *Post*, *Gault*, and *Lefkowitz* only confirm the existence of a Fifth Amendment right not to answer incriminating questions, not a right to altogether refuse to testify outside of a criminal trial.

Fifth Amendment rights are undeniably important. But case after case affirms that concerns about potential criminal liability cannot block the questioning of witnesses, whether in an inquest or other investigative contexts. For example, according to the U.S. Supreme Court, even the target of a grand jury proceeding cannot assert a blanket right not to testify. *United States v. Dionisio*, 410 U.S. 1, 10 n.8 (1973) ("The obligation to appear is no different for a person who may himself be the subject of the grand jury inquiry."). "Under settled principles, the Fifth Amendment does not confer an absolute right to decline to respond in a grand jury inquiry"; rather, a witness "can be required to answer before a grand jury, so long as there is no compulsion to answer questions that are self-incriminating." *United States v. Mandujano*, 425 U.S. 564, 573–74 (1976). Unlike an inquest jury, a grand jury is empowered to issue indictments, meaning a grand jury has a far greater nexus to potential criminal liability than an inquest. The trial court's recognition of ***more*** Fifth Amendment protections in an inquest than before a grand jury therefore defies logic.

The same requirement for a witness to take the stand and assert any Fifth Amendment privilege in response to each allegedly incriminating question as it is asked applies in other contexts that, unlike inquests, have actual legal repercussions. *E.g.*, *Burke v. Bd. of Governors of Fed. Reserve Sys.*, 940 F.2d 1360, 1367 (10th Cir. 1991), *cert. denied*, 504 U.S. 916 (1992) (Federal Reserve proceedings relating to bank mismanagement); *Roach v. Nat'l Transp. Safety Bd.*, 804 F.2d 1147, 1151 (10th Cir. 1986) (FAA investigation of pilot misconduct); *United States v. Ellsworth*, 460 F.2d 1246, 1248 (9th Cir. 1972) (IRS summons). While an inquest may reveal facts relevant to criminal liability, it does not determine any legal rights, whether of law-enforcement officers or anyone else. *A fortiori*, there is no justification for viewing the Fifth Amendment as constraining inquests more than in other contexts.

The trial court offered no coherent explanation for its view that the County's procedures impacted the Sixth Amendment right to counsel. The Sixth Amendment provides such a right "[i]n all criminal prosecutions." The trial court seemed to think the County's procedures caused officers' Fifth Amendment rights to be "leveraged against" their Sixth Amendment rights. CP 2388. This presumes police officers have some Sixth Amendment right to counsel during inquest proceedings at all—a right ***nobody*** enjoys in such proceedings. According to the U.S. Supreme Court, the Sixth

Amendment does not apply even in grand jury proceedings. *Mandujano*, 425 U.S. at 581 ("No criminal proceedings had been instituted against respondent, hence the Sixth Amendment right to counsel had not come into play."). "Under settled principles the witness may not insist upon the presence of his attorney in the grand jury room." *Id. A fortiori*, the trial court had no grounds for recognizing a Sixth Amendment right for law-enforcement officers in an inquest.

In conceiving such a right for officers, the trial court grossly misread *Miranda* as suggesting that a Washington court had "recognized the fundamentally different position officers occupy in an inquest due to their unique risk of prosecution." CP 2399. It is disappointing to see the Officers reiterate that misreading. Officers' Resp. Br. 31. In fact, *Miranda* rejected the idea that anyone had a right to counsel during inquests, noting that such a right only exists under the State Constitution "in cases in which a controversy is resolved or punishment is determined," whereas inquests are not "equivalent to a trial." *Miranda v. Sims*, 98 Wn. App. 898, 902–03 (2000) (citing *Seattle Times Co. v. Eberharter*, 105 Wn. 2d 144, 156 (1986)). The passage the trial court and the Officers quote, which recognized that County employees "may be civilly or criminally liable," relates to the court's rejection of the decedent's family's equal-protection argument that the County could not provide its employees with paid counsel without

funding for the same the decedent's family. 98 Wn. App. at 909. The Court of Appeals recognized that "[t]he inquest was directed toward the acts and potential liability of the employees, ***and thus of the County itself***," such that the County had a different interest in providing counsel for its employees because the County was liable for their actions. *Id.* (emphasis added). Nothing in *Miranda* can be read to suggest law-enforcement officers have a constitutional right to counsel in inquests, especially when the case rejects the idea of anyone having such a right.

Finally, on whether the Coroner's Statute (a) permits pre-inquest hearing subpoenas, (b) permits the testimony of experts other than those involved in law enforcement's own investigation, and (c) requires that the "criminal means" question be presented to the inquest jury, *amici* agree with the County, Administrator, and Families that the trial court's reasoning is clearly at odds with the statute.

V. CONCLUSION

For the foregoing reasons, *amici curiae* respectfully ask this Court to reverse the order of the Superior Court.

Dated: December 18, 2020 Respectfully submitted,

By 

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