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No. 95263-9
Consolidated with Nos. 95510-7 and 96061-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ANTHONY ALLEN MORETTI,
HUNG VAN NGUYEN, and
FREDERICK ORR,

Petitioners,

v.

STATE OF WASHINGTON,

Respondent.

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

ACLU of Washington

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I. INTRODUCTION

The American Civil Liberties Union of Washington (“ACLU”) respectfully moves for permission to file the attached brief as amicus curiae in support of Petitioners Anthony Allen Moretti, Hung Van Nguyen, and Frederick Orr.

II. IDENTITY AND INTEREST OF AMICUS

The ACLU of Washington is a statewide, nonpartisan, nonprofit organization with over 135,000 members and supporters. It is dedicated to the preservation of civil liberties and has always vigorously supported efforts to enforce Washington’s constitutional ban on cruel punishment. The ACLU strongly supports adding consideration of mitigating factors, including youth, in all sentencing proceedings, but especially when a defendant is facing a life-without-parole sentence under the Persistent Offender Accountability Act (“POAA”). The ACLU has participated as amicus in numerous previous cases involving these issues.

III. FAMILIARITY WITH ISSUES

The ACLU has reviewed all of the briefing submitted by the parties to this Court, the Opinions of the Court of Appeals, and the proceedings below. The ACLU is familiar with the scope of the arguments presented by the parties and will not unduly repeat the arguments that have been raised.

IV. ISSUE TO BE ADDRESSED BY AMICUS

Should the Court expand the *State v. Fain* factors used to assess whether a sentence is disproportionate and “cruel” punishment under article 1, section 14 of the Washington Constitution and explicitly consider the specific characteristics of the strike offenses and the characteristics of the offender?

V. WHY AMICUS BRIEFING WILL ASSIST THE COURT

These consolidated cases present an important issue to the Court: whether the POAA’s mandatory life sentence amounts to “cruel” and “cruel and unusual punishment” in violation of the federal and state constitutions when applied to defendants that committed at least one of the strike offenses as a young adult.

This issue raises complex and compelling constitutional questions and will require the Court to grapple not only with established principles of law and assessing the adequacy of precedent, but also to look closely at our society’s standards of decency and understanding of justice. *Accord Hall v. Florida*, 572 U.S. 701, 134 S. Ct. 1986, 188 L. Ed. 2d 1007 (2014) (explaining that “[t]o enforce the Constitution’s protection of human dignity, this Court looks to the evolving standards of decency that mark the progress of a maturing society”).

The issue not only impacts the lives and liberty of the three Petitioners before this Court, but future offenders facing the application of the POAA. The Court has an opportunity to reshape our current jurisprudence on assessing the constitutionality of punishment, and there are few times when the stakes are higher. It is important the Court have all relevant information before it.

The parties' briefing focuses on the application of constitutional principles and, as is appropriate, on the specific facts related to the respective Petitioner. The ACLU's brief aims to assist the Court in understanding the larger context for the POAA's sentencing structure and the general insufficiency of our current proportionality analysis to determine whether a sentence is constitutional. The ACLU also has specific expertise in state and federal constitutional jurisprudence and criminal sentencing.

The ACLU's amicus brief places the specific, narrow legal issue before the Court in the larger legal and social context, which should help the Court's adjudication.

VI. CONCLUSION

The ACLU respectfully requests that the Court grant leave to file an *Amicus* Brief in Support of Petitioners which is submitted contemporaneously with this motion.

DATED: April 19, 2019

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CERTIFICATE OF SERVICE

Today I caused to be filed, electronically, the foregoing document via the Washington State Appellate Courts' Secure Portal, which will automatically cause such filing to be served on counsel for all other parties in this matter via the Court's e-filing platform.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED: April 19, 2019, at Seattle, Washington.


June Starr

PERKINS COIE LLP

April 19, 2019 - 3:41 PM

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