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Court of Appeals No. 50032-9-II
Supreme Court No.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KAREN CONWAY,

Appellant,

v.

STATE OF WASHINGTON,

Respondent

MOTION OF AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON, WASHINGTON DEFENDER ASSOCIATION, CIVIL
SURVIVAL PROJECT, PUBLIC DEFENDER ASSOCIATION,
WASHINGTON APPELLATE PROJECT, NORTHWEST CONSUMER
LAW CENTER, NATIONAL ALLIANCE ON MENTAL ILLNESS
WASHINGTON, COLUMBIA LEGAL SERVICES, WASHINGTON
ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, AND
BENEFITS LAW CENTER FOR LEAVE TO FILE *AMICI CURIAE*
BRIEF

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Attorneys for *amici* respectfully move pursuant to RAP 13.4(h) for permission to file a brief as *amici curiae* in this matter. The brief is filed with this motion.

I. IDENTITY AND INTEREST OF AMICI CURIAE

The American Civil Liberties Union of Washington Foundation (ACLU-WA) is a statewide, nonpartisan, nonprofit organization with over 135,000 members and supporters dedicated to the preservation of civil liberties and civil rights. Like the national ACLU and other affiliates across the country, ACLU-WA has long been dedicated to protecting the constitutional rights indigent persons with criminal convictions seeking to reenter into society, with a particular focus on issues involving the imposition and collection of legal financial obligations (LFOs). The ACLU-WA also strongly opposes “debtors’ prisons” and has advocated for reform of Washington’s LFO system. The ACLU-WA frequently participates as a party and *amicus curiae* in cases involving civil liberties and criminal justice issues, including LFOs and the impact of LFOs on indigent people.

The Washington Defender Association (WDA) is a statewide non-profit organization that represents over 30 public defender agencies and has over 1,500 members comprising criminal defense attorneys, investigators, social workers and paralegals throughout Washington. WDA is committed

to protecting the rights of people accused of crimes under the Washington and United States Constitutions. WDA representatives frequently testify before the Washington House and Senate on proposed legislation affecting indigent defense. WDA has been granted leave on many occasions to file amicus briefs in this Court and in the Washington Court of Appeals. The issues in this case are important to public defenders, who represent many of the indigent people accused of crimes in Washington.

The National Alliance on Mental Illness (NAMI) is the nation's largest grassroots organization dedicated to improving the lives of individuals and families affected by mental illness. The national NAMI organization has state and local affiliates in more than 1,100 communities across the country. NAMI Washington (NAMI WA) is a state level affiliate that represents 19 local NAMI affiliates located in Washington State. Individual NAMI members include mental health care consumers and their families and friends as well as mental health care providers and many others. Both the collective and individual knowledge base and experience held by NAMI WA, and the individual affiliates and members of the organizations will give the Court an important understanding and perspective and help to more fully inform the Court about the public policy and social concerns inherent in consideration of this case.

The Public Defender Association (PDA) is a non-profit corporation which advocates for justice system reform and develops alternatives that shift from a punishment paradigm to a system that supports individual and community health. We also provide technical assistance to community partners who are committed to these goals. We advance justice system reform and alternative practices and policy through several core programs and policy initiatives such as the Law Enforcement Assisted Diversion Project, Voices of Community Activists and Leaders- Washington, the Racial Disparity Project, the Civil Survival Project, and the Community Justice Project.

PDA's mission is to achieve social and racial equity and community health through reform of the criminal legal system. Grounding reform in a public health and safety framework, PDA develops new strategies and implements models that improve on conventional responses to crime and public order issues. In collaboration with community and government partners, we use policy advocacy, organizing, litigation, and public education to achieve our goals. As part of this work, PDA engages in direct representation of vulnerable clients who face criminal system impacts, including LFOs. PDA has represented several clients who owe LFOs and receive public benefits, and has witnessed the long term impacts on individuals' lives resulting from the LFO system. PDA is deeply invested

in the reform of this system and in alleviating the burdens of the criminal legal system on indigent and vulnerable Washingtonians.

The Washington Appellate Project (WAP) is a state-wide appellate public defense agency. Founded in 1994, WAP represents approximately 540 clients each year. Of the many thousands of clients WAP has represented over that 25 year period, all are indigent and most struggle to meet the burden of legal financial obligations. Because of the crippling impact of these financial penalties on our clients, attorneys from WAP have regularly challenged the imposition of such financial penalties, including in the recent cases of *State v. Catling*, 193 Wn.2d 252, 438 P.3d 1174 (2019) and *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2019). WAP has an interest in ensuring its clients can reenter society free from the onerous debt that results from their convictions.

The Northwest Consumer Law Center (“NWCLC”) is a statewide, non-profit law firm serving Washington State residents whose total household income falls under 500% of the Federal Poverty Level. NWCLC has advocated on behalf of thousands of low and moderate-income Washington consumers who seek relief from debt. While NWCLC is able to assist its clients in finding solutions through bankruptcy discharges, student loan repayment plans, and mortgage loan modifications, some of our clients continue to struggle financially due to their inability to pay

LFOs. LFOs are not dischargeable in bankruptcy, and debtors who are granted a fresh start by the Bankruptcy Court can still be unable to maintain even a minimal standard of living if subjected to payment of mandatory LFOs. And unlike federal student loans, a total and permanent disability does not relieve individuals from payment of mandatory LFOs. Simply put, while our clients are able to address many types of debt, there are little to no answers for individuals unable to pay mandatory LFOs. Courts' refusals to remit mandatory LFOs continues the cycle of poverty for NWCLC clients and others who lack the ability to pay. We and our clients have a substantial interest in this Court's review of the significant questions of state and federal constitutional law raised in this matter due to the devastating impacts that LFOs have on our clients' ability to obtain a fresh financial starts and meet their basic needs.

The Washington Association of Criminal Defense Lawyers (WACDL), a non-profit organization formed in 1987, is dedicated to improving the quality and administration of justice. WACDL has over 800 members consisting of private criminal defense lawyers, public defenders, and related professionals committed to preserving fairness and promoting a rational and humane criminal justice system. WACDL holds many seminars throughout the year to educate lawyers on pertinent issues related to the defense of citizens accused of all crimes, from capital cases to

misdemeanors and infractions, in Washington. WACDL has previously been granted amicus status in numerous Washington appellate cases and has been, on occasion, invited to file amicus briefing in the past.

Columbia Legal Services (CLS) is a nonprofit legal advocacy organization in Washington State that advocates for laws that advance social, economic, and racial equity for people living in poverty. Using a systemic approach, we support communities and movements through impact litigation and policy reform that is grounded in, and strongly guided by, an understanding of race equity. For decades, CLS has assisted and represented incarcerated and formerly incarcerated youth and adults on a variety of civil legal issues, including those related to poverty reduction and community reentry. In particular, recognizing that LFOs are a major barrier to successful community reentry, especially for those who lack the resources to pay, CLS has sought to reduce the harsh consequences of LFOs and improve reintegration efforts of poor persons with LFOs through legislative advocacy, individual representation, and a community legal clinic.

Civil Survival Project (CSP) organizes people in Washington who have been directly impacted by the criminal justice system to build connections, gain knowledge and increase political participation. We advocate for ourselves to change policies that marginalize us, in order to

break cycles of incarceration and deepen community liberation. We educate people who have been impacted directly by the criminal justice system, the general public, policy makers, and elected officials. We seek to build connections between ourselves and policy makers. CSP is led by and for people directly impacted by the criminal justice system, and we ensure that directly impacted people can meaningfully impact policies that perpetuate systems of mass incarceration and directly impact us and our communities.

CSP recognizes that LFOs can be a barrier to directly impacted people building lives as fully participating citizens. We recently helped organize a LFO Reconsideration Day in Kitsap County during which we assisted hundreds of people in reducing their LFOs. This was the first event of its kind in Washington, and we are planning several more in additional counties. Through the first LFO Reconsideration Day, we have seen the positive impact of diminishing LFOs.

Since 1997, Benefits Law Center (BLC) has provided legal advice and representation to low-income individuals with disabilities, in matters related to their entitlement to Social Security disability, and SSI benefits. BLC is a compassionate legal services organization, committed to delivering high-quality advocacy centered on a client's needs; honor for the humanity of every client; and a continually inclusive, collaborative environment for all. BLC's Social Security Advocacy Project (SSAP)

provides Social Security disability and SSI representation to vulnerable individuals. SSAP helps clients who have a legal problem with disability benefits that they are already receiving. SSAP focuses its resources on assisting clients who face multiple barriers (e.g. homelessness, mental illness, chemical dependency, limited language, and limited education), and have a legal problem that is unlikely to generate attorney's fees. BLC has a strong interest in helping people with disabilities living in poverty gain a measure of income stability.

II. APPLICANTS' FAMILIARITY WITH THE ISSUES

Counsel for *amici* are familiar with the opinion of the Court of Appeals and the briefing submitted in the lower courts and in this court. *Amici* are familiar with the scope of the arguments presented by the parties. *Amici* have not unduly repeated arguments raised by the parties.

III. ISSUE ADDRESSED BY AMICI

Whether this court should grant review under RAP 13.4(b) because courts' inability to remit mandatory legal financial obligations (LFOs) saddles a woman with disabilities who depends on Social Security and thousands like her with a lifetime of debt she cannot pay and a conviction record she cannot vacate, raising significant questions of state and federal constitutional law and substantial public interest?

IV. NECESSITY FOR ADDITIONAL ARGUMENT

The purpose of the *amici* brief is to expand on Ms. Conaway's explanation of the issues of constitutional law related to mandatory LFOs in Washington and to discuss issues of public policy that are important to *amici* and the people *amici* represent. Additional argument in this case is needed to convey the constitutional and policy concerns of *amici*.

V. CONCLUSION

For the above reasons, ACLU-WA, WDA, NAMI WA, PDA, WAP, NWCLC, WACDL, CLS, CSP, and BLC respectfully request that the Court grant permission to file the Brief of *Amici Curiae* submitted concurrently with this motion.

DATED this 30th day of August, 2019

Respectfully submitted,

/s/ Magda Baker

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