No. 102182-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOHN DOES 1, 2, 4 and 5,

Respondents,

V.

SAM SUEOKA et al.,

Petitioner.

MEMORANDUM OF AMICI CURIAE ACLU OF WASHINGTON, FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY, UNIDOS, THE WASHINGTON COALITION FOR POLICE ACCOUNTABILITY, AND THE CLARK COUNTY JUSTICE GROUP

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I. IDENTITIES AND INTERESTS OF *AMICI*

Per RAP 10.3(e), the identities and interests of Amici are found in the accompanying motion for leave.

II. INTRODUCTION

The government has an important interest in facilitating robust police oversight. To meet this important governmental interest, the identities of Seattle Police Department (SPD) officers who attended the January 6th rally, as well as their potential affiliation with white supremacist organizations that were a part of that event, must be disclosed. Without such disclosure, community members in Seattle are left to wonder whether the officer pulling them over for speeding was present at the January 6 rally and whether the officer harbors white supremacist ideologies.

These questions add to the well-earned distrust of police by Black and brown communities based on a long history of racialized policing, which has resulted in extensive harm to already marginalized communities. The government has the

strongest possible interest in addressing this distrust so that community members can feel safe when interacting with police and officers can effectively do their jobs. Only then can these historically marginalized communities of color begin to heal from decades of harm at the hands of police. To build trust and mitigate the harms inflicted upon communities of color, the government must facilitate community oversight of police.

Community oversight in the present case means community members must be able to understand the officers' roles in this rally, understand whether they are affiliated with white supremacist organizations, and judge whether the investigation into these officers was thorough and fair. That can only be achieved through disclosure of the officers' names, their affiliation with white supremacist groups discovered through this investigation, and the officers' observations of these organizations' presence and role at the January 6 rally.

The Court of Appeals recognized these concerns but ignored them when evaluating the governmental interest at stake

here. The Court of Appeals noted that many of the groups attending the rally espoused "white supremacist views." *Doe 1 v. Seattle Police Dep't*, 27 Wn. App. 2d 295, 375, 531 P.3d 821 (2023). For that reason, the Court of Appeals noted that "it is easy to understand the concerns motivating the City and the requesters." *Id.*

The Court of Appeals failed to make this significant concern a part of its analysis of the governmental interest in this case. As a result, the Court of Appeals also failed to correctly balance the competing interests at stake in this disclosure. The Court of Appeals found that the possibility of public opprobrium for the officers outweighed the governmental interest in facilitating community oversight, ignoring the distrust these events would breed in community members and the effect this would have on the SPD's ability to effectively police. Failing to fully consider these issues as part of the governmental interest in this case was error.

III. ARGUMENT

Where government disclosure could chill First Amendment rights, the disclosure is subject to exacting scrutiny. *John Doe No. 1 v. Reed,* 561 U.S. 186, 196, 130 S. Ct. 2811, 2818, 177 L. Ed. 2d 493 (2010). Exacting scrutiny "requires a substantial relation between the disclosure requirement and a sufficiently important governmental interest." *Id.* Such action must be narrowly tailored to the government's interest. *Americans for Prosperity Found. v. Bonta,* 141 S. Ct. 2373, 2384, 210 L. Ed. 2d 716 (2021).

Through the Public Records Act ("PRA"), the government maintains an important interest in ensuring public oversight of important governmental functions. *Reed*, 561 U.S. at 198. The purpose of the PRA "is to provide a mechanism by which the public can be assured its public officials are honest and impartial in the conduct of their public offices." *Cowles Pub. Co. v. State Patrol*, 109 Wn.2d 712, 719, 748 P.2d 597, 605 (1988).

The governmental interest in facilitating community oversight of a governmental function is proportional to the importance of that governmental function. When the governmental function is important enough, the governmental interest in facilitating oversight will overcome even strong First Amendment interests in preventing disclosure. For example, in *John Doe No. 1 v. Reed*, the United States Supreme Court considered a challenge to Washington's PRA as it applied to a disclosure request for petition signatures for an unpopular ballot initiative. 561 U.S. at 193. The Court held that there is a First Amendment interest in the expressive act of signing an initiative petition, *Id.* at 195, but that this interest was outweighed by the government's interest:

> The State's interest in preserving the integrity of the electoral process is undoubtedly important…The State's interest is particularly strong with respect to efforts to root out fraud, which not only may produce fraudulent outcomes, but has a systemic effect as well: It drives honest citizens out of the democratic process and breeds distrust of our government.

Id. at 197. Because public trust in elections was implicated, there was an important governmental interest in disclosure, which outweighed the plaintiffs' First Amendment interests. *Id.* at 201.

Similar balancing is required here but the Court of Appeals failed to conduct that balancing correctly. This Court must reverse the Court of Appeals decision because: A) the government has an overwhelming interest in accommodating community oversight of police in this situation; B) without disclosure of officers' names, as well as their potential affiliation with white supremacist organizations that were a part of the January 6 rally, the compelling governmental interest in facilitating community oversight of police cannot be served; C) disclosure of this information is narrowly tailored to meet the governmental interest in facilitating community oversight and outweighs the officers' First Amendment interests; and D) this balancing applies equally to privacy interests under the PRA.

A. THE GOVERNMENT HAS AN IMPORTANT INTEREST IN FACILITATING PUBLIC OVERSIGHT OF POLICE.

The governmental interest is stronger here than in *Reed*. Police are different from other public employees and community members. Officers can do things that would be illegal for any other person – detaining people, forcibly holding them in a cell, and, in certain circumstances, assaulting or killing them. With these powers comes an expanded governmental interest in facilitating oversight of police.

This unique governmental interest, combined with SPD's well-documented history of racially disproportionate policing, compounds the important governmental interest in facilitating community oversight of police. Community members must be able to understand the officers' roles in this rally, their affiliations with white supremacist organizations, and judge whether the investigation here was thorough and fair.

1. A Long History of Racially Biased Policing Creates an Important Governmental Interest in Facilitating Community Oversight of Police.

This Court has instructed lower courts to consider historical racism against Black and brown communities as important context when interpreting statutes and constitutional provisions. *Matter of Dependency of Z.J.G.*, 196 Wn.2d 152, 156, 471 P.3d 853 (2020); *State v. Sum*, 199 Wn.2d 627, 641, 511 P.3d 92 (2022).[1]

In *State v. Sum*, this Court required Washington courts to confront the role racially biased policing plays in interactions between police and Black and brown communities. 199 Wn.2d at 644. The Court recognized that "it is no secret that people of color are disproportionate victims of [illegal stops]." *Id.*[2] The Court noted that these stops frequently escalate to violence and

[1] *See also State v. Monday*, 171 Wn.2d 667, 680, 257 P.3d 551 (2011) (imposing heightened scrutiny on racially biased prosecutorial misconduct); *State v. Gregory*, 192 Wn.2d 1, 18-19, 427 P.3d 621 (2018) (striking down the death penalty because it was administered in an arbitrary and racially biased manner); *State v. Berhe*, 193 Wn.2d 647, 665, 657, 444 P.3d 1172 (2019) (using GR 37 framework to determine whether the Court should find that racial bias played an impermissible role in jury deliberations).

[2] A study of 11 million traffic stops by Washington State Patrol shows that officers searched the vehicles of Black drivers at twice the rate we would expect based on the proportion of Black people in the population.

that Black and brown communities have had to adapt to this reality: "[f]or generations, [B]lack and brown parents have given their children 'the talk.'" *Id.* "The talk" reflects Black and brown communities' "fear of harm and resulting protective conditioning to submit to avoid harm at the hands of police." *Id.* at 651. The Court recognized that this dynamic causes great "pain, suffering, and distrust." *Id.* at 645.

This dynamic is a longstanding problem in Seattle. Seattle struggled with police violence against Black and brown communities dating back to at least the 1950s, when the population of Black people in Seattle increased significantly. Anne Frantilla, *Police Accountability in Seattle, 1955-2020*, https://www.seattle.gov/documents/Departments/CityArchive/Exhibits/PoliceAccountabilityInSeattle.pdf at 1. The City established its first police oversight committee in 1955 but struggled with police violence against Black and brown people through the next six decades. *Id.*

In 2012, in response to SPD's continued excessive use of force, the Department of Justice entered a consent decree with the City of Seattle. Seattle Police Monitor, *About the Seattle Consent Decree,* https://seattlepolicemonitor.org/overview. Despite over a decade under the consent decree, SPD continues to disproportionately kill and harm Black and brown people. Mike Carter, *Seattle police use of force nears all-time lows, but racial disparities still plague the numbers,* The Seattle Times (March 7, 2024), https://www.seattletimes.com/seattle-new/law--justice/seattle-police-use-of-force-nears-all-time-lows-but-racial-disparities-still-plague-the-numbers/#:~:text=In%202023%2C%20Black%20residents%20were,Latinos%2C%20and%20lower%20among%20Asians.

This history causes distrust of police in the community. Government efforts, including creating accountability boards and entering consent decrees, indicate the critical governmental interest in trying to eliminate police violence against Black and brown communities and build community trust in the police. An

important aspect of building community trust is facilitating robust community oversight of police.

The Court of Appeals failed to take this history of racial bias in policing into account when weighing the governmental interest in facilitating robust oversight of police.

2. Officers' Participation in the January 6 Rally Raises Serious Concerns about Bias and Increases the Governmental Interest in Facilitating Community Oversight of Police Here.

The distrust that flows from a history of racially biased policing was amplified when community members in Seattle discovered that officers from the Seattle Police Department were present at the January 6 rally.

The January 6 rally was closely linked to white supremacist organizations. Many white supremacist organizations announced that they would attend the rally ahead of time. A.C. Thompson and Ford Fischer, *Members of Several Well-Known Hate Groups Identified at Capitol Riot,* Frontline (January 9, 2021), https://www.pbs.org/wgbh/frontline/article/several-well-known-hate-groups-identified-at-capitol-riot/. Many

protesters wore clothes openly advertising their affiliations with these white supremacist groups. Christine Fernando and Noreen Nasir, *Years of white supremacy threats culminated in Capitol riots,* Associated Press (January 14, 2021), https://apnews.com/article/white-supremacy-threats-capitol-riots-2d4ba4d1a3d55197489d773b3e0b0f32. Other protesters carried banners proclaiming white supremacist ideology and prominently displayed white supremacist symbols, including confederate flags and nazi memorabilia. *Id.*; see also Deena Zaru, *The symbols of hate and far-right extremism on display in pro-Trump Capitol siege,* ABC News (January 14, 2021), https://abcnews.go.com/US/symbols-hate-extremism-display-pro-trump-capitol-siege/story?id=75177671. Other protesters used racial slurs and chanted racist slogans. Nicole Austin-Hillery and Victoria Strang, *Racism's Prominent Role in January 6 US Capitol Attack,* Human Rights Watch (January 5, 2022), https://hrw.org/news/2022/01/05/racisms-prominent-role-january-6-us-capitol-

attack. In short, anyone at these protests would have been aware of the white supremacist ideologies that pervaded the event. Officers, nonetheless, remained at the rally, raising serious concerns.

These concerns were apparent to SPD's Office of Police Accountability ("OPA") from the time the officers' presence at the rally came to light. Andrew Myerberg, the OPA Director at the time, stated that he would try to determine whether officers "had ties to any militias or white supremacist groups." Paul Kiefer, *SPD Confirms that At Least Five Officers Were in D.C. During Capitol Attack*, South Seattle Emerald (Jan. 21, 2021), https://southseattleemerald.com/2021/01/21/spd-confirms-that-at-least-five-officers-were-in-d-c-during-capitol-attack/.

The Court of Appeals also recognized this issue but did not take it into consideration when weighing the governmental interest in this case. The Court of Appeals noted that many people at the rally belonged to groups that espoused white supremacist views. *Doe 1,* 27 Wn. App. at 375. Given that fact,

the Court wrote, "it is easy to understand the concerns motivating the City and the requesters." *Id.*

This easily understood concern did not appear to play a role in assessing the governmental interest in this case; this is error. The government must fight the distrust engendered by a long history of racially biased policing by assuring community members that when allegations like these arise, they can trust that the investigation is thorough and fair. The presence of officers at a rally with such deep ties to white supremacist ideologies clearly implicates this interest and requires the government to facilitate robust community oversight.

The Court of Appeals relied on the fact that no violation of SPD policy was found to discount the public interest in oversight. However, it is not clear that ties to white supremacist organizations would violate SPD policy, so this finding is irrelevant to the communities' "obvious" concerns. As the head of the OPA stated at the start of his investigation: "In my mind, membership in an [extremist] group would be a disqualifying

factor for employment with the Seattle Police Department but that's going to be the chief's call." Paul Kiefer, *SPD Confirms that At Least Five Officers Were in D.C. During Capitol Attack*, South Seattle Emerald, *supra*. In fact, there is no provision of the Seattle Police Department manual that forbids membership in such a group. *See Seattle Police Department Policy Manual*, Title 5: Employee Conduct (January 1, 2024), https://public.powerdms.com/Sea4550/tree/documents/204286.

An officer could have ties to white supremacist organizations but not violate SPD policy. This highlights the unique situation here and the governmental need for robust community oversight, which can only be accommodated through disclosure of the officers' names and potential affiliations with these groups.

More broadly, the Court of Appeals ruling interferes with steps taken by Washington State to eradicate white supremacy in our police forces. In 2021, with racialized policing still a serious concern, the Washington State Legislature enacted RCW

43.101.095, which requires background checks of applicants to police departments to include an inquiry into whether an officer is a present or past member of an extremist organization. RCW 43.101.095(b)(iii).

Under this statute, a police department can inquire into connections with white supremacist organizations and must refuse to hire an applicant with ties to an extremist organization. However, under the Court of Appeals decision, the associational privilege that prevents disclosure in this case could potentially allow an officer to assert a First Amendment privilege against disclosure of such affiliations. This would be an absurd result and is not required by the First Amendment.

3. Racial Bias and Community Distrust Impede SPD's Operations, Thereby Elevating the Already Important Governmental Interest in Facilitating Robust Community Oversight of Police.

The State has an interest in "in promoting the efficiency of the public services it performs through its employees," which must be balanced against its employee's First Amendment interests. *Pickering v. Board of Education of Township High*

School District 205, Will County, Ill., 391 U.S. 563, 568, 88 S. Ct. 1731 (1968). The Court of Appeals, without explanation, stated that failure to disclose this information would not interfere with SPD operations. *Doe 1*, 27 Wn. App. 2d at 346. This is incorrect.

As Seattle Police Chief Diaz stated in terminating two of the officers who were at the rally, "[i]n granting the police the power and responsibility to do their work, the community takes as collateral an expectation that law enforcement will, at all times, earn and abide by that trust." Adrian Diaz, *Chief Diaz's Statement on Termination of Two Officers Present During Attack on DC Capitol*, SPD Blotter (August 6, 2021), https://spdblotter.seattle.gov/2021/08/06/chief-diazs-statement-on-termination-of-two-officers-present-during-attack-on-dc-capitol/. In other words, public distrust makes an officer's job impossible.

The fact that public distrust stems from off-duty activities does not change this analysis: "If the off duty acts of a police officer bear upon his or her fitness to perform public duty…then

the interest of the individual in 'personal privacy' is to be given slight weight in the balancing test and the appropriate concern of the public as to the proper performance of public duty is to be given great weight." *Cowles Pub. Co.*, 109 Wn.2d at 726.[3]

Given the nature of this rally, there is an overwhelming governmental interest in community oversight of this investigation. Unless the identities of the officers who were at the rally are released, the public cannot know if any officer they interact with could be one of the officers who attended the rally and whether that officer might harbor white supremacist ideologies. This extends the distrust of a few officers to the entire force and clearly interferes with SPD's appropriate functions.

A lack of transparency also interferes with officers' ability to work with their peers, as one Black officer noted when this information surfaced: "I would ask that the OPA keep in mind the African American officers…We have to guard ourselves

[3] *Cowles* is a PRA case, where the interest balanced is between the public interest and the privacy interest of the officer. However, as argued in section D, this interest is almost identical in this case.

from people who mean to harm us, meaning white supremacists. It's unsettling to think that there's a possibility that there might be some behind you — someone who is supposed to be backing you up — that's involved in white supremacist groups." Paul Kiefer, *SPD Confirms that At Least Five Officers Were in D.C. During Capitol Attack*, *supra*.

The lack of transparency around this issue creates distrust in the community and within the department, interfering with SPD's operations.

B. WITHOUT DISCLOSURE OF OFFICERS' NAMES, AS WELL AS THEIR POTENTIAL AFFILIATION WITH WHITE SUPREMACIST ORGANIZATIONS THAT WERE A PART OF THE JANUARY 6 RALLY, THE COMPELLING GOVERNMENTAL INTEREST IN FACILITATING COMMUNITY OVERSIGHT OF POLICE CANNOT BE SERVED.

The important governmental interests at stake in this case cannot be served without disclosure of the officers' names and answers to questions regarding the officers' affiliation with white supremacist organizations and observations of these organizations' presence and role at the January 6 rally. The

public must have sufficient information to evaluate whether the investigation was fair and thorough and whether the unsustained finding was appropriate given the available evidence.

Police departments have been historically bad at policing themselves. Ann Hodges and Justin Pugh, *Crossing the Thin Blue Line: Protecting Law Enforcement Officers Who Blow the Whistle,* UC David Law Review (June 2018), https://lawreview.law.ucdavis.edu/sites/g/files/dgvnsk15026/files/media/documents/52-online-Hodges-Pugh.pdf at 7-8. A history of silence by police departments in the face of police violence is so prevalent that it has a name: "the thin blue line." *Id.* at 8. As a result, many community members are skeptical of police investigations of themselves. *Id.* at 9. Because of this distrust, public oversight of the investigation in this case is critical. That type of oversight cannot happen without full disclosure of officers' names.

First, because this investigation was essentially an internal investigation, the public must have sufficient information to know whether conflicts of interest existed. This is not a

hypothetical concern. The Court of Appeals was made aware of an allegation that Andrew Myerburg, who oversaw this investigation, may have previously represented one of the officers in a civil rights action against the officer. *Doe 1 2*7 Wn. App. 2d at 351, fn. 36. This type of conflict is possible. Myerberg previously worked for the Seattle City Attorney's Police Action Team, which represented the City in the Department of Justice consent decree case. Daniel Beekman, *Andrew Myerberg nominated to lead Seattle police's civilian watchdog*, The Seattle Times (October 30, 2017), https://www.seattletimes.com/seattle-news/politics/andrew-myerberg-nominated-to-permanently-lead-seattle-polices-civilian-watchdog/. The Police Action Team also defended the City, and the interests of officers accused of using unlawful force, in lawsuits alleging unlawful force by police. Seattle City Attorney, *Verdict Shows Value of Police Action Team* https://www.seattle.gov/cityattorney/verdict-shows-value-of-police-action-team. It is possible that Myerberg previously represented the interests of these officers in a suit

alleging police violence and that this conflict was not disclosed. There is simply no way to investigate an allegation of a conflict of interest in this case without disclosure of the officers' names.

Second, there is an important interest in analyzing the investigative process. Myerberg promised to investigate links the officers had to white supremacist organizations. The public must be able to evaluate this investigation. Without the officers' names, we cannot know whether the investigation considered the officers' prior record of complaints of racial bias when evaluating their answers to these questions or their links to white supremacy.

The government has an overwhelming interest in ensuring the public can evaluate whether the investigation was fair and thorough. The Court of Appeals decision failed to consider these interests.

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C. DISCLOSURE OF THIS INFORMATION IS NARROWLY TAILORED TO MEET THE GOVERNMENTAL INTEREST IN FACILITATING COMMUNITY OVERSIGHT AND FAR OUTWEIGHS THE OFFICERS' FIRST AMENDMENT INTERESTS.

Given the history of racialized policing, the issues raised by the officers' presence at this rally, and the effect of these allegations on SPD's operations, the governmental interest in facilitating community oversight is high. Nonetheless, the Court of Appeals found that the chilling effect on the officers' First Amendment rights outweighed the governmental interest because they would face public opprobrium. In coming to this conclusion, the Court of Appeals relied on several cases involving the National Association for the Advancement of Colored People ("NAACP") during the civil rights movement.

Lost in this analysis is the context of these two very different situations. In *NAACP v. Alabama*, Alabama sought to banish the NAACP from the state and reveal their membership rolls because the NAACP was "causing irreparable injury to the property and civil rights of the residents and citizens of the State

of Alabama for which criminal prosecution and civil actions at law afford no adequate relief." 357 U.S. 449, 452, 78 S. Ct. 1163 (1958). The primary reason that criminal prosecution or civil action was inadequate was because the NAACP was engaged in valid, First Amendment protected advocacy.

The "consequences of exposure" on the other hand would be dire for people exposed as members of the NAACP. *Brief for Petitioner, NAACP v. Alabama*, 1957 WL 55387, at 16 n.12. In their brief, the NAACP cited articles detailing "a year-long series of bombings and shootings of Negro leaders," "19 major acts of violence – 9 bombings and ten shootings- were directed against buses, or the homes of negro leaders," and "the bombing of four churches, and other acts of terror targeting people involved in the Civil Rights Movement in Alabama." *Id.* The Court held that the NAACP "made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other

manifestations of public hostility." *NAACP*, 357 U.S. at 462. The Court found that disclosure would thereby burden their exercise of First Amendment association. *Id.* This burden far outweighed any of Alabama's stated interests in obtaining the lists. *Id.* at 466.

This is in sharp contrast to this case. The governmental interest in ensuring robust community oversight of police so that racial bias in policing can be eradicated is extremely important. As in *NAACP*, there is evidence that a group of people are subject to violence but unlike in *NAACP*, it is not the group seeking First Amendment protections, it is the community they police. Community members who are disproportionately subject to state-sanctioned violence should have access to available information as to whether officers authorized to use that violence may harbor racist ideologies and how that has affected their prior conduct as officers.

This far outweighs the interests of the officers in avoiding public opprobrium. As the Court of Appeals stated, "the Does would likely face opprobrium," because "the Seattle community

is likely to presume that the Does' attendance at the January 6 rally indicates that they are white supremacists who sought to undermine our nation's democracy." *Doe 1*, 27 Wn. App. 2d at 328. The court went on to state that individuals are allowed to "espouse beliefs... unpopular with their neighbors" and that the First Amendment forbids disclosures that would have a chilling effect on those beliefs. *Id.* at 327.

This is true, and a principal Amici supports. Amici have long held the First Amendment as one of the most important constitutional protections. No one should be chilled in their association or speech absent an extremely compelling governmental interest, even if that association or speech is extremely unpopular. This applies equally to government employees. However, this situation is unique, and release of the investigative materials described above is narrowly tailored to meet the unique governmental at stake here.

The governmental interest in investigating bias of police is different than governmental investigations of other public

employees because police officers have the authority to use lethal force. This may be a matter of life or death for community members. The same is not true of other public employees and upholding this governmental interest would have a narrow impact on associational rights of public employees and people in the community.

Additionally, the government is not exposing broad swaths of information, such as entire membership lists of organizations. The government did a targeted investigation of four officers, whose actions give the public a reason to question their impartiality. Releasing the relevant portions of this investigation is the minimum necessary step to accommodate the communities' interest in oversight. If officers believe specific information is beyond the scope of this interest or covered by a different exemption, such as information about who they voted for in the election, they should request specific redactions that address those concerns.

Release of the officers' names and information regarding the officers' affiliation with white supremacist organizations is narrowly tailored to meet the governmental interest of facilitating community oversight and clearly outweighs the officers' interest in avoiding public opprobrium.

D. IDENTICAL CONSIDERATIONS REQUIRE DISCLOSURE UNDER THE PRA.

Bellevue John Does 1-11 v. Bellevue Sch. Dist. #405, 164 Wn.2d 199, 189 P.3d 139 (2008) and *Bainbridge Island Police Guild v. City of Puyallup*, 172 Wn.2d 398, 259 P.3d 190 (2011) stand for the proposition that where allegations of sexual misconduct against government employees are unfounded, redacting the name of the accused balances the public interest in oversight of the investigation with the privacy interest of the accused. The Court of Appeals incorrectly read these cases much more broadly.

Neither case stands for the proposition that there could never be public interest in allegations that did not violate police department policy. In fact, in *Bainbridge Island*, the Court found

that there was a public interest in the investigation, but the officer's name was not necessary to meet that public interest: "Although lacking a legitimate interest in the name of a police officer who is the subject of an unsubstantiated allegation of sexual misconduct, the public does have a legitimate interest in how a police department responds to and investigates such an allegation against an officer." *Bainbridge Island Police Guild*, 172 Wn.2d at 416. The Court went on to consider whether the public interest in disclosure still prevailed even though it could lead to identification of the officer: "We recognize that appellants' request under these circumstances may result in others figuring out Officer Cain's identity" but still "the remainder of the [investigation] is nonexempt." *Id.* at 418.

As articulated above, information regarding participation in a rally which was heavily attended by white supremacist groups, implicates significant public interests, regardless of whether it violated policy. Unlike the situation in *Bainbridge*, the officers' names play an integral role in meeting that public

interest, as articulated above. As in the context of the First Amendment, this public interest overcomes any interest the officers have in maintaining their privacy under the PRA.

IV. CONCLUSION

For the reasons stated above, Amici ask this Court to order the disclosure of the complete OPA investigations.

This document contains 4,639 words per RAP 18.17(c)(6), excluding the parts of the document exempted from the word count by RAP 18.17(c).

RESPECTFULLY SUBMITTED this 10th day of May, 2024.

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CERTIFICATE OF SERVICE

I certify that on this 10th day of May, 2024, I caused a true and correct copy of this document to be served on all parties by electronically filing this document through the Washington State Appellate Courts Secure Portal.

Signed this 10th day of May, 2024 at Seattle, Washington.

/s/ Tori Harris
Tori Harris, Paralegal