101375-2

SUPREME COURT
OF THE STATE OF WASHINGTON

ROBERT SNAZA, *et al.*, RESPONDENTS

v.

STATE OF WASHINGTON, APPELLANT

ANSWER TO AMICUS CURIAE BRIEF

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I. STATEMENT OF THE CASE

In the trial court, the Sheriffs of seven non-charter counties asserted a provision of Engrossed Substitute HB 1054 interfered with the core functions of the office of the sheriff. CP 1-13; Laws of 2021, ch. 320, § 4; codified as RCW 10.116.030. The State sought direct review of the trial court's order holding portions of RCW 10.116.030 were unconstitutional. CP 70-74.

The provision at issue requires the sheriff to obtain authorization from the "highest elected official" of the jurisdiction prior to deploying tear gas to quell a riot. RCW 10.116.030(3). Therefore, in non-charter counties, an elected sheriff must obtain the consent of the chair of the county legislative authority, who is, by statute, "highest elected official" of the county. RCW 10.116.030(4)(b).[1]

[1] On cross motions for summary judgment, the trial court denied a separate claim that RCW 10.116.030 impermissibly vested

II. ARGUMENT

Contrary to longstanding precedent, Amicus advocate for this Court to reverse the trial court's decision and find that RCW 10.116.030 does not violate article XI, section 5 of the Washington Constitution. Amicus misinterpret article XI, section 5, do not properly apply the core functions doctrine, rely on public policy arguments outside the record and irrelevant to the inquiry to advance their view, and raise new, irrelevant constitutional claims for the first time in their brief.

The Sheriffs do not dispute the dangers of tear gas and acknowledge the legislature may regulate or ban the use of tear gas. However, these policy questions are not germane to analyzing whether the delegation of a sheriff's authority to the chair of the board of county commissioners under RCW

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power in the chair of the board of county commissioners to act alone. CP 73-74; 91.

10.116.030 violates article XI, section 5 of the Washington Constitution.

A. AMICUS' POLICY ARGUMENTS DO NOT NEED TO BE CONSIDERED.

This Court should decline to consider Amicus' arguments for several reasons. First, arguments made *only* by amici curiae do not need to be considered. *State v. Gonzalez*, 110 Wn.2d 738, 752 n.2, 757 P.2d 925 (1988) (citing *Coburn v. Seda*, 101 Wn.2d 270, 279, 677 P.2d 173 (1984); *Washington State Bar Ass'n v. Great W. Union Fed. Sav. & Loan Ass'n*, 91 Wn.2d 48, 59-60, 586 P.2d 870 (1978); *Long v. Odell*, 60 Wn.2d 151, 154, 372 P.2d 548 (1962)). This Court may disregard the arguments raised for the first time by Amicus.

Second, RAP 10.3(e) and 10.3(a)(6) direct amici to write in their briefing, "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." "Where no authorities are cited,

the court may assume that counsel, after diligent search, has found none." *Grant Cnty. v. Bohne,* 89 Wn.2d 953, 958, 577 P.2d 138 (1978). Furthermore, facts unsupported by the record cannot be considered on appeal. *Sherry v. Fin. Indem. Co.*, 160 Wn.2d 611, 615 n.1, 160 P.3d 31 (2007) (citing RAP 10(3)(a)(5), 13.4(c)); *State v. Dunaway*, 109 Wn.2d 207, 220-21, 743 P.2d 1237 (1987), *supplemented,* 109 Wn.2d 207, 749 P.2d 160 (1988).

Third, when raising constitutional issues, parties "must present considered arguments to this [C]ourt. We reiterate our previous position: "'naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.'" *State v. Johnson,* 119 Wn.2d 167, 171, 829 P.2d 1082 (1992) (citing *In re Rosier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986) (quoting *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970)). Amicus ask this Court to erroneously apply

First and Fourth Amendment principles to analyze article XI, section 5 of the constitution.

1. Amicus Inappropriately Rely on Facts Outside the Record.

Utilizing facts outside the record, Amicus argue police misuse and abuse of tear gas justifies stripping the sheriff of constitutionally protected powers and duties. Amicus Br. of ACLU at 8. Similarly, Amicus argue that granting a core function of the sheriff to the chair of the board of county commissioners is necessary because of the potential impacts of tear gas on the community. Amicus Br. of ACLU at 14.

Amicus cite to news articles, Wikipedia, public hearings, and websites in support of stripping the office of the sheriff of its core functions. Amicus Br. of ACLU at 3-5, 7, 9, 10-14, 17, 21. The assertions made by Amicus are outside the record and deprive the Sheriffs of an opportunity to contest or develop the record. Furthermore, none of these assertions have been

considered by a trier of fact, nor have the Sheriffs had an opportunity to cross-examine anyone on the accuracy of these facts.

Significantly, this appeal has come to this Court on a direct review under RAP 4.2(a)(2), (4) as an appeal from an order granting summary judgment. CP 68-69; 70-93. At the trial level there were no disputes of material fact. Accordingly, Amicus' reference to these untested secondary sources is inappropriate.

2. Amicus' Policy Arguments Are Irrelevant to Analyzing Whether RCW 10.116.030 Interferes With the Core Functions of the Sheriff.

Amicus' policy arguments that seek to justify the passage of RCW 10.116.030 cite no legal authority. Nor do Amicus endeavor to explain the relevance of their arguments to answering whether RCW 10.116.030 is constitutional. Amicus' erroneous interpretation of article XI, section 5, ultimately asks this Court to reevaluate policy decisions already made by the

legislature when ESHB 1054 was passed. Although this Court has the ultimate authority to decide whether a given enactment violates the constitution, Amicus' current policy arguments are better directed to the legislature, many of which were already presented in drafting and passing ESHB 1054. *See e.g. Senate Law & Justice Committee—Senator Jamie Pedersen's statement,* March 18, 2021, https://tvw.org/video/senate-law-justice-committee-2021031276/?eventID=2021031276 (beginning at 48:33); *Senate Floor Debate*, April 23, 2021, https://www.tvw.org/watch?clientID=9375922947&eventID=2021041278&startStreamAt=1413 (beginning at 23:33) (last visited April 18, 2023); *Island Cnty. v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998); *see State v. Jackson*, 137 Wn.2d 712, 725, 976 P.2d 1229 (1999).

Indeed, Amicus' argument relies on the fact that the legislature already considered these policy arguments in passing

ESHB 1054. Amicus Br. of ACLU at 5-9. These arguments demonstrate that the intent of the legislature was to divest the sheriff of their constitutional functions.

Even if the legislature believes it would be beneficial to remove a sheriff's authority, the legislature cannot unilaterally legislate that authority away absent a constitutional amendment. *State ex rel. Hamilton v. Troy*, 190 Wash. 483, 486-87, 68 P.2d 413 (1937) (invalidating a statute which attempted to change the name of the prosecuting attorney to district attorney); *see also State v. Rice*, 174 Wn.2d 884, 905-06, 279 P.3d 849 (2012) (recognizing the legislature is free to establish statutory duties that do not violate the core functions of county offices).

Similar reasoning was rejected by this Court as a justification for interfering with the charging discretion of prosecuting attorneys. *See Rice*, 174 Wn.2d at 903 (discussing the necessity and criticisms of prosecutorial discretion but

recognizing that the Washington State Constitution does not permit that authority to be usurped by the legislature). For reasons already thoroughly discussed in this brief and the Sheriffs' response, Amicus' policy arguments do not assist this court in determining whether RCW 10.116.030 unconstitutionally delegates the sheriff's authority to deploy tear gas to the chair of the board of county commissioners.

3. The Chilling Effect of Tear Gas Deployment Does Not Justify the Legislature Interfering With the Core Functions of County Officers.

For the first time in this case, Amicus argue the use of tear gas by law enforcement on civilians unconstitutionally infringes on those civilians' First and Fourth Amendment rights. Amicus Br. of ACLU at 15. Amicus provide no authority for how this argument applies to the core functions doctrine or article XI, section 5 of the constitution. These issues have not been raised

by the State, either to the trial court below or on direct review to this Court.

It is uncommon for courts to apply constitutional tests in inapplicable scenarios; for example, an equal protection analysis would present little use to a question of vagueness. Amicus provide no basis to explain how the chilling effect of tear gas deployment has any connection to the core functions of county offices.

Even if Amicus' assertion that HB 1054 was adopted, "because of the experiences of protesters . . ." were true, Amicus Br. of ACLU at 18, this Court should decline to apply a First and Fourth Amendment analysis to the issues presented in this case; this issue has never been raised by the State, and as explained above, the Court need not consider arguments made only by Amicus.

4. RCW 10.116.030's Delegation of the Sheriff's Authority to the Chair of the Board Does Nothing to Remedy the Harms Alleged by Amicus.

Notwithstanding these problems with Amicus' argument, Amicus' argument is circular. Amicus reason RCW 10.116.030 remedies police misconduct and alleviates its impact on the community because that is why ESHB 1054 was adopted. Amicus Br. of ACLU at 1, 8, 14, 18.

Amicus argue that granting the chair of the board of county commissioners the authority to approve the use of tear gas will prevent police misconduct and minimize the impact of tear gas on a community, without articulating any reasoned analysis in support of their argument.

For example, Amicus cite testimony from public hearings as evidence of the type of harmful effects that tear gas can have. Amicus Br. of ACLU at 5, 6-7. The problem with this evidence is that the challenged provision, RCW 10.116.030(3), (4)(b),

does nothing to directly address these concerns. For example, RCW 10.116.030(3) does not prevent law enforcement, in Portland, from deploying tear gas, which could ultimately impact both residents of Portland, Oregon and Vancouver, Washington. Nor does it prevent tear gas from being deployed at all.

Notwithstanding this argument, Oregon did pass a law regulating the use of tear gas.[2] Hours after the law was signed, tear gas was again deployed on protestors in Northeast Portland.[3]

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[2] Oregon HB 4208 did not require, unlike Washington's ESHB 1054, additional authorizations from other elected officials. The text of the bill can be found online: https://olis.oregonlegislature.gov/liz/2020S1/Measures/Overview/HB4208 (last visited 4/18/2023).

[3] Tess Riski, *Hours after Gov. Kate Brown Signs Tear Gas Ban Into Law, Portland Police Deploy More Gas Onto Protestors*, Willamette Week, (July 1, 2020, 2:23 pm PDT) (available at https://www.wweek.com/news/2020/07/01/hours-after-gov-kate-brown-signs-tear-gas-ban-into-law-portland-police-deploy-more-gas-onto-protesters (last visited 4/18/2023)).

RCW 10.116.030(3) requires only that "[i]n the case of a riot outside of a correctional jail, or detention facility, the officer . . . may use tear gas only after: (a) Receiving authorization from the [chair of the board of county commissioners] . . ." This means that all else being equal, the chair of the board of county commissioners could approve the use of tear gas, and the tear gas could still travel, "through the air into people's homes, restaurants, and cars, impacting everyone within a certain radius, even if they are not part of a protest or riot." Amicus Br. of ACLU at 5.

This remains true in cases of law enforcement abuses of force as well. RCW 10.116.030 does nothing to prevent the chair of the board of county commissioners from authorizing the use of tear gas in a manner that impacts peaceful protestors. Amicus argue that additional precautions must be put in place but fail to offer any evidence or argument demonstrating that RCW

10.116.030 actually accomplishes these goals. Amicus Br. of ACLU at 15.

Pointing out the flaws in Amicus' argument is not an endorsement of law enforcement abuse or misconduct. The Sheriffs have never challenged assertions about the dangerousness of tear gas. CP 42, 43, 45, 84. Nor is it intended to downplay the significance of the problems raised by Amicus.

However, the dangers of tear gas are immaterial to whether the legislature may require sheriffs, in non-charter counties, to receive the authorization of the chair of the board of county commissioners prior to deploying tear gas to quell a riot. Amicus' policy arguments on the wisdom of deploying tear gas are irrelevant to the constitutional question of whether the legislature may delegate the sheriff's power to decide if and when to deploy tear gas to the chair of the board of county commissioners.

Here, the legislature has inserted the discretion of the chair of the board of county commissioners between the sheriff and the sheriff's duty to keep the peace and quell riots. This action interferes with the core functions of the sheriff, violates the constitution, and violates the constitutional right of the people to choose their elected officials.

Amicus rely on instances of tear gas use in Seattle and King County to demonstrate the necessity of this restraint on sheriffs in non-charter counties. Amicus Br. of ACLU at 6-7, 9-11, 15, 18. Amicus suggest that patterns of policing by the Seattle Police Department, in a city and charter county (where the sheriff is unelected and appointed) can be attributable to a broader pattern of tear gas use across Washington. *Black Lives Matter Seattle-King Cnty. v. City of Seattle, Seattle Police Department*, 466 F.Supp.3d 1206, 1211 (2020); King County Code §

350.20.40 - Department of Public Safety.[4] The provision challenged by the Sheriffs only relates to the powers and duties of sheriffs in *non-charter* counties. Amicus provide no authority to suggest that the Seattle Police Department's practices are used by elected county sheriffs elsewhere in the state.

In addition, portions of the statute, which arguably *do* prevent these types of harm, are unchallenged by the Sheriffs. RCW 10.116.030(1) ("A law enforcement agency may not use or authorize its peace officers or other employees to use tear gas unless necessary to alleviate a present risk of serious harm posed by a: (a) Riot; (b) barricaded subject; or (c) hostage situation.") (emphasis added).

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[4] The Seattle Police Department's uses of force during the 1999 WTO Protests was scrutinized by the Wall Street Journal during the George Floyd Protests. The Wall Street Journal, *How 1999's WTO Protests Influenced the Policing of Protests Today* (June 16, 2020) (available at https://youtu.be/Msk0PbhwcuA (last accessed 4/18/2023)).

Similarly, the legislature's authority to outright ban the use of tear gas is already conceded by the Sheriffs. Here, the Sheriffs have challenged a provision which strips the sheriff of a core function and assigns it to the chair of the board of county commissioners, who has not been elected to keep the peace and quell riots.

5. The Sheriff is Best Equipped to Decide What Force is Necessary to Quell a Riot.

Amicus' policy arguments do not demonstrate that the chair of the board will make sound decisions about tear gas use that will prevent the alleged harms to the community. RCW 10.116.030 does not require the chair of the board of county commissioners to exercise better judgment than the sheriff. The qualifications to be a county commissioner do not require specialized knowledge or training in peacekeeping and riot control. Wash. Const. art. VI, sec. 1; RCW 42.04.020; RCW 36.32.050. In contrast, law enforcement officers, and sheriffs, are

required to receive basic law enforcement training. RCW 36.28.025; RCW 43.101.080; RCW 43.101.200. RCW 10.116.030 itself does not create any consequences for the improper use of tear gas.

The highest elected officials named in RCW 10.116.030 do not fall under chapter 43.102 RCW, Office of Independent Investigations. The purpose of that office is to "[c]onduct fair, thorough, transparent, and competent investigations of police use of force and other incidents involving law enforcement as authorized in this chapter and shall prioritize investigations conducted by the office based on resources and other criteria developed in consultation with the advisory board." RCW 43.102.030.

Accordingly, law enforcement officers may be held accountable for the misuse of tear gas. However, other elected officials, like the chair of the board of county commissioners,

mayor, or governor, are not subject to the review of the Office of Independent Investigations. While commissioners, mayors, and the governor are accountable to the people, for their decisions through the election process, so too are elected sheriffs.

Amicus refer to HB 1310, which, in part codified a new chapter, 10.120 RCW. Amicus Br. of ACLU at 4. RCW 10.120.030 directed the attorney general to promulgate model use of force policies and de-escalation tactics, which included requiring all law enforcement agencies to adopt policies consistent with RCW 10.120.020.

Where these policies are inconsistent with the model policies, law enforcement agencies must provide notice to the attorney general explaining the deviations and how the policies remain consistent with RCW 10.120.020.[5] RCW 10.120.030.

[5] These policies are available online at: https://www.atg.wa.gov/law-enforcement-use-force-and-de-escalation (last visited 4/18/2023).

There is no requirement for the chair of the board to be familiarized with these policies nor is the chair of the board bound by them when authorizing the use of tear gas. Accordingly, Amicus present no evidence why the chair of the board is better able to determine what level of force is necessary to quell a riot than the sheriff.

B. THIS COURT HAS A DUTY TO UPHOLD THE WASHINGTON CONSTITUTION BY PROTECTING THE PEOPLE'S RIGHTS TO CHOOSE THE OFFICERS TO EXECUTE COUNTY DUTIES.

Amicus' policy arguments ultimately fail because they do not respond to the constitutional question before this Court. This Court is tasked with determining whether RCW 10.116.030 violates article XI, section 5 of the constitution by interfering with the core functions of the office of the sheriff. Prior precedent establishes that it does.

"In a contest between a Washington statute and the plain language of the Washington Constitution, the judicial branch has the duty to uphold the constitution." *Quinn v. State*, No. 100769-8, 2023 WL 2620080, at *20 (Wash. Mar. 24, 2023) (Gordon McCloud, J., dissenting). The provisions of the Constitution are mandatory. Wash. Const. art. I, § 29; *State v. Blumberg*, 46 Wash. 270, 274, 89 P. 708 (1907). "The ultimate power to interpret, construe and enforce the constitution of this State belongs to the judiciary." *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 496, 585 P.2d 71 (1978) (citing cases); *see also Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.").

"[T]he judiciary must make the decision, as a matter of law, whether a given statute is within the legislature's power to enact or whether it violates a constitutional mandate." *Island*

Cnty., 135 Wn.2d at 147. This Court has a duty to protect the Constitution and protect the right of the People of Washington to choose who carries out the functions of the county offices. *Quinn,* 100769-8, 2023 WL 2620080, at *20.

C. ARTICLE XI, SECTION 5, PROTECTS COUNTY OFFICERS NAMED IN THE CONSTITUTION—INCLUDING THE SHERIFF—FROM INTERFERENCE WITH THEIR CORE FUNCTIONS.

Article XI, section 5 of the Washington Constitution provides: "The legislature, by general and uniform laws, shall provide for the election in the several counties of . . . sheriffs . . . and shall prescribe their duties . . ." Amicus understand this provision to mean that the legislature may freely take powers and duties from one county office and give them to another county

office. However, they cite no authority for this proposition.[6] This interpretation is incorrect.

This Court has previously recognized that article XI, section 5 "is plain and unambiguous" *Blumberg*, 46 Wash. at 274 (holding a legislative enactment creating the unelected office of county fruit inspector void because all county offices must be elective under article XI, section 5). The significance of this provision goes beyond requiring that all county officers be elected, however.

As this Court has acknowledged, "[t]he naming of these officers amounted to an implied restriction upon legislative authority to create other and appointive officers for the discharge of such functions." *State ex rel. Johnston v. Melton*, 192 Wash.

[6] This Court may assume that counsel has not found any authorities when none are cited. *Grant Cnty.*, 89 Wn.2d at 958.

379, 390, 73 P.2d 1334 (1937) (quoting *Ex parte Corliss*, 16 N.D. 470, 114 N.W. 962, 964 (1907)).

The purpose of this doctrine is to protect the constitution and the constitutional rights of voters. When electing someone to a given office, voters are necessarily choosing, "who will be responsible for the duties of that office." *State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 179-80, 385 P.3d 769 (2016). "If these constitutional offices can be *stripped of a portion of the inherent functions* thereof, they can be stripped of all such functions, and the same can be vested in newly created appointive officers, and the will of the framers of the Constitution thereby thwarted." *Melton*, 192 Wash. 379, 390, 73 P.2d 1334 (1937) (quoting *Ex parte Corliss*, 16 N.D. 470, 114 N.W. 962, 964 (emphasis added)). "[C]arried to its logical and inevitable result, [this] would lead to the monstrous doctrine that

the Constitution means nothing . . .” *Melton*, 192 Wash. at 391 (quoting *Ex parte Corliss*, 16 N.D. 470, 114 N.W. 962, 964).

Accordingly, an action is unconstitutional in three circumstances: (1) where it grants authority of a constitutional office to another office; (2) where it detaches and transfers away a core function of a constitutional office; or (3) where it usurps a core function of a constitutional office. *Burrowes v. Killian*, 195 Wn.2d 350, 363-64, 459 P.3d 1082 (2020); *Rice*, 174 Wn.2d at 903, 905-06; *Melton*, 192 Wash. at 389; *Drummond*, 187 Wn.2d at 182.

These principles have been consistently applied by this Court. In *Melton*, this Court held a statute that granted the prosecuting attorney authority to appoint investigators with, “the same authority as the sheriff of the county” unconstitutional. 192 Wash. at 380. In *Drummond*, this Court held that if the board of county commissioners “had statutory authority to hire outside

counsel over the objection of an able and willing prosecuting attorney—which it does not—the appointment would unconstitutionally deny the electorate's right to choose who provides the services of an elected office." 187 Wn.2d at 182.

In *Rice*, this Court held it would have been unconstitutional if a charging statute had taken away the charging discretion of prosecuting attorneys. 174 Wn.2d at 897-98, 906-07. In *Burrowes*, this Court held that a superior court could not usurp a county clerk's discretion to keep electronic files. 195 Wn.2d at 363.

Here, the legislature delegated to the chair of the board of county commissioners, an officer chosen by that same board, the duty of authorizing the use of tear gas in the event of a riot. This interference may be characterized in each of the three ways outlined above. However, the legislature *cannot* give the chair of the board of county commissioners the power to authorize a

constitutionally protected duty of the sheriff because it would interfere with the sheriff's core functions.

Although the legislature has not entirely transferred a duty from the sheriff to the board of county commissioners, the statute interferes with the sheriff's protected constitutional powers and duties nonetheless.

An interference occurs regardless of whether the sheriff has an alternative means of accomplishing their duty or exercising their power. Amicus' argument conflates legislative policy choices about *why* tear gas should be regulated with an analysis of whether the legislature *may* interfere with the sheriff's core functions.

If the sheriff elects to use tear gas, the chair of the board's discretion becomes a necessary element of the sheriff carrying out their powers and duties. RCW 10.116.030(3)(a). This analysis would be true if the statute regulated another means by

which the sheriff accomplished their powers and duties, instead of tear gas.

Ultimately, this demonstrates that tear gas (the mechanism of accomplishing a core function) has no bearing on evaluating the constitutionality of RCW 10.116.030. Focusing the Court's attention to evaluate the dangers of tear gas creates a more attractive argument for Amicus, but these considerations are better directed towards the legislature. *Associated Press v. Washington State Legislature*, 194 Wn.2d 915, 930, 454 P.3d 93 (2019).

The fact that the sheriff may continue to carry out their duties is not dispositive of whether an interference has occurred. In *Melton*, a statute permitting investigators, appointed by the prosecuting attorney, the same authority as the sheriff, did not prohibit the sheriff from continuing to accomplish their core functions. *Melton*, 192 Wash. at 380; *see also Ex parte Corliss*,

16 N.D. 470, 114 N.W. 962, 964. Yet, that statute was held unconstitutional because it interfered with the right of the people to elect the persons to perform the county governmental functions. *Melton*, 192 Wash. at 388-89.

If the legislature could create these types of additional checks and balances through inter-governmental authorizations of power, so long as an alternative means of accomplishing that power or duty existed, the legislature could effectively eliminate any meaningful ability for a county office to carry out its functions independent of another office. The problems created by this construction involve both the origins of the authorization, and the means of carrying out powers and duties.

For example, this precedent empowers other county offices, like the prosecuting attorney, to authorize the sheriff's actions. Going further, the legislature could grant this power to some other unelected official to authorize the sheriff's actions.

This precedent establishes the ability for other such checks to be placed on county offices, contravening the purpose of these officers being named in the constitution.

As foreseen by *Melton*, these precedents could be multiplied to the point where the people's right to elect their county officers is eroded and the functions of those offices are carried out by other offices through progressive legislative enactments. The core functions doctrine protects the Constitution, the separation of powers between county offices, and it protects the constitutional right of the people to choose the persons to carry out the functions of those offices. Amicus cite no authority supporting their interpretation of article XI, section 5, and fail to acknowledge prior precedent to the contrary.

III. CONCLUSION

The Sheriffs do not dispute the dangers of tear gas, nor do they endorse law enforcement abuses of force and tear gas. The

sheriffs admit that the legislature could ban the use of tear gas. Directed towards the legislature, many of Amicus' arguments might support this conclusion. However, the dangers of tear gas and the policy arguments supporting limitations on the use of tear gas are unnecessary for this Court to pass upon.

This Court has already held that article XI, section 5 of the constitution protects the core functions of the county offices from interference. As demonstrated, RCW 10.116.030's requirement that the chair of the county board of commissioners must authorize the use of tear gas in non-charter counties infringes on the core functions of the Sheriffs. Accordingly, the Sheriffs respectfully request that this Court affirm the decision of the trial court.

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Dated this 18 day of April, 2023.

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IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

ROBERT SNAZA, *et al.*, Respondents, v. STATE OF WASHINGTON, Appellant,	NO. 101375-2 CERTIFICATE OF MAILING

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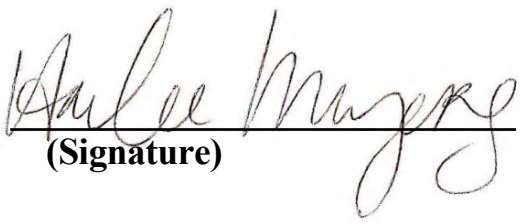
4/18/2023 **(Date)** Spokane, WA **(Place)**  **(Signature)**

SPOKANE COUNTY PROSECUTOR

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