NO. 101375-2

SUPREME COURT OF THE STATE OF WASHINGTON

ROBERT SNAZA, et al.,

Respondents,

v.

STATE OF WASHINGTON,

Appellant.

STATE OF WASHINGTON'S OPENING BRIEF

ROBERT W. FERGUSON
Attorney General

Jeffrey T. Even, WSBA 20367
Deputy Solicitor General
Kate S. Worthington, WSBA 47556
Assistant Attorney General
Alexia Diorio, WSBA 57280
Assistant Attorney General
OID No. 91087
PO Box 40100
Olympia, WA 98504
jeffrey.even@atg.wa.gov
kate.worthington@atg.wa.gov
alexia.diorio@atg.wa.gov

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I. INTRODUCTION

In 2021 the Legislature enacted several statutes to prevent unnecessary or dangerous use of force by law enforcement, including RCW 10.116.030, which restricts use of tear gas. The statute specifies that tear gas may only be used in limited situations and that other alternatives must be exhausted first, among other limits. Most relevant here, RCW 10.116.030(3) requires law enforcement to obtain approval of the highest elected officer of the jurisdiction before using tear gas to suppress a riot. The statute applies to all law enforcement agencies, including county sheriffs, municipal police, and the Washington State Patrol.

A group of county sheriffs and county commissioners unhappy with this statute filed suit. They conceded that virtually all of the restrictions were lawful and that the Legislature could even ban tear gas outright. But they argued that the Legislature could not take the smaller step of requiring sheriffs to obtain approval from the chair of the county commission before using

tear gas. The trial court unfortunately agreed, holding that this singular requirement unconstitutionally infringes on the "core functions" of sheriffs. This ruling was incorrect.

Sheriffs have no constitutional right to deploy tear gas whenever they want. The constitution grants the Legislature the primary role of enacting laws to protect public safety, and that power includes the power to protect residents from excessive use of force by law enforcement. Moreover, article XI, section 5 specifies that the Legislature "shall prescribe [the] duties" of county officials, like sheriffs, and that legislative power includes the power to restrict activities that endanger the public.

While this Court has held that the Legislature cannot usurp "core functions" of county officers like sheriffs, that phrase must be defined narrowly. A broad reading like the one adopted by the trial court ignores the language of article XI, section 5, leads to an indecipherable standard because county official functions have varied and changed extensively over time, conflicts with this Court's decisions holding that state officials have no powers

other than those expressly stated in the Constitution or granted by the Legislature, and would unduly restrict legislative efforts to reform the roles of law enforcement and prosecutors to meet modern needs.

In any event, the use of tear gas without safeguards for public safety fails to qualify as a "core function." The use of tear gas is at most a tactic, not a "core function," of county sheriffs.

This Court should therefore reverse the trial court's decision invalidating this important public safety statute.

II. ASSIGNMENT OF ERROR

The trial court erred in granting partial summary judgment in favor of the Sheriffs, as reflected in its September 16, 2022, order. CP 68-69.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Does article XI, section 5 of the Washington Constitution prohibit the Legislature from restricting the use of tear gas by county sheriffs, specifically by requiring the approval of the chair

of the board of county commissioners before tactically deploying tear gas?

IV. STATEMENT OF THE CASE

A. The Historical Development of the Office of the Sheriff

The duties of sheriffs have changed and evolved over the centuries and have varied considerably from place to place. Over time the office has shed many of its original duties, leaving a narrow range of what could reasonably be described as "core functions" today.

1. The powers of sheriffs have consistently shrunk throughout English and American history

The office of sheriff dates back to England before the Norman Conquest. James Tomberlin, *"Don't Elect Me": Sheriffs and the Need for Reform in County Law Enforcement*, 104 Va. L. Rev. 113, 116-17 (2018) (citing William L. Murfree, Sr., *A Treatise on the Law of Sheriffs and Other Ministerial Officers* § 1a n.2 (2d ed. 1890)). Originally termed the "shire-reeve," the sheriff was essentially the King's agent for a local shire, today's equivalent of an American county. *Id.* At their height, the

sheriff's duties "included law enforcement . . . tax collection, execution of writs, the 'apprehension and custody of prisoners,' and holding shire court, which had criminal and civil jurisdiction over pleas of the crown." Tomberlin, 104 VA. L. Rev. at 117 (footnotes omitted) (internal quote C.R. Wigan & Hon. Dougall Meston, *Mather on Sheriff and Execution Law* 14-15 (3d ed., reprinted 1990) (1935)).

The history of the sheriff since that time has been one of gradual loss of power. The Magna Carta stripped the sheriff of most judicial authority, and by the 14th century, the sheriff was essentially the King's bailiff. *Id.* at 117-18. "By the seventeenth century, the sheriff served 'as the executive official of the courts, as a principal medium of communication between the central government and the county, and as a conservator of the peace.'" *Id.* at 118 (quoting Cyrus Harreld Karraker, *The Seventeenth-Century Sheriff: A Comparative Study of the Sheriff in England and the Chesapeake Colonies 1607-1689*, at 15 (1930)). The sheriff acted to safeguard "the King's rights, collecting and

accounting for his personal revenues, and keeping the county court." Tomberlin, 104 VA. L. Rev. at 118.

On this side of the Atlantic, sheriffs were assigned more or fewer duties depending on the role of counties as governmental entities in particular states. *Id.* at 119. In the northern colonies, counties were mostly judicial units, while in the Mid-Atlantic local government powers were shared between counties and towns. *Id.* at 119 (citing J. Edwin Benton, *Counties as Service Delivery Agents: Changing Expectations and Roles* 7 (2002)). The southern colonies assigned counties more prominent functions, and sheriffs' functions followed suit. But New England relied more on town constables. *Id.* at 119-20.

The role of the sheriff in the American West was shaped by the circumstances with which the office is now most strongly associated in the popular mind: the Wild West. Law enforcement was informal at first, but over time new states adopted state constitutions calling for popularly-elected sheriffs. *Id.* at 121 (citing Lawrence L. Martin, *American County Government: An*

Historical Perspective, in *County Governments in an Era of Change* 6-7 (1993)). New states "adopted the southern-state model in which counties were important service providers, making the sheriff one of the most important western officers." Tomberlin, 104 VA. L. Rev. at 121. Sheriffs maintained a variety of duties, including "serving process, making arrests, keeping the peace, to acting as tax collector, assembling a jury, and administering punishment." *Id.* This development, in which sheriffs became elected constitutional officers, contributed to the perception of sheriffs as independent local officers rather than as the agents of the central government they had been in earlier eras. *Id*. at 121-22 (citing Frank Richard Prassel, *The Western Peace Officer*: *A Legacy of Law and Order* 72 (1972)).

But the role of the sheriff has continued to shrink. "Many sheriffs are now without law enforcement power, either because a county police force has taken over that task or because there are no unincorporated areas in a county for the sheriff to police." *Id.* at 122 (citing S. Anthony McCann, *County-Wide Law*

Enforcement: A Report on a Survey of Central Police Services in 97 Urban Counties (1975)). Indeed, "[t]he vast majority of police departments in the United States are political subdivisions of city governments." Anthony O'Rourke, Rich Su, & Guyora Binder, *Disbanding Police Agencies*, 121 Colum. L. Rev. 1327, 1360 (2021). Only about a quarter of all sworn nonfederal law enforcement officers are deputy sheriffs. *Id.* at 1371.

2. Washington sheriffs never exercised all of the historical functions of sheriffs from elsewhere

The office of sheriff in Washington began with a statute enacted by the first territorial legislature in 1854. Laws of 1854, page no. 434, § 4 (enacting original form of what is now RCW 36.28.010). That statute assigned the sheriff duties "to keep and preserve the peace . . . and to quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county, as they may deem necessary." Laws of 1854, page

no. 434, § 4. A later act of 1863 and the territorial Code of 1881 carried that text forward without change. Laws of 1862, page no. 557, § 4, Code of 1881, § 2769.

Almost immediately after statehood, the first state legislature amended the statutes governing sheriffs. Laws of 1891, ch. XLV, § 1. The statute they passed, now codified at RCW 36.28.010, remains largely unchanged today, except that paragraph 6 of the current statute derives from a 1963 act. Laws of 1963, ch. 4, § 36.28.010. The current statute reads:

> The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his or her office, he or she and his or her deputies:
>
> (1) Shall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;
>
> (2) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;
>
> (3) Shall execute the process and orders of the courts of justice or judicial officers, when delivered for that purpose, according to law;

> (4) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes;
>
> (5) Shall attend the sessions of the courts of record held within the county, and obey their lawful orders or directions;
>
> (6) Shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary.

RCW 36.28.010.

Since territorial days, the sheriff's role has been limited to law enforcement, defending against breaches of the peace, serving process, executing warrants, attending courts, and implementing court orders. RCW 36.28.010. Unlike their English predecessors, there is no history of Washington sheriffs performing judicial functions, collecting taxes, assembling

juries, or administering punishment (other than running the county jail). *See* Tomberlin, 104 Va. L. Rev. at 121.

3. The role of municipal police and other agencies have increased at the expense of the sheriff's role

The profile of municipal police and other law enforcement agencies began to rise during the territorial period as well. This rise came at the expense of the sheriff's role. The same session of the territorial legislature that assigned countywide law enforcement duties to the sheriff, Laws of 1854, page no. 434, § 4, also established the office of constable and vested it with functions that overlapped with those of sheriffs. Laws of 1854, page no. 225, § 18. Constables were elected for the purpose of serving "any writ, process, or order, lawfully directed to him by any justice of the peace, judge of probate, or coroner, and generally do and perform all acts by law required of constables." Laws of 1854, page no. 225, § 18.

Washington lacked any general law authorizing the incorporation of cities and town until near the end of the territorial period. The territorial legislature, instead, chartered

individual cities and towns by special act.[1] All of those acts mandated that cities and towns maintain municipal police departments, to perform within their boundaries law enforcement duties otherwise performed by sheriffs.[2] Notably, all of these laws also made the suppression of riots or disturbances a municipal function.[3]

The last session of the territorial legislature, occurring just before the drafting of the Washington Constitution, saw the enactment of the first general law providing a process for municipal incorporation. Laws of 1887, pp. 221-32 (providing

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[1] *See*, *e.g.*, Laws of 1856, page nos. 69-73 (City of Vancouver); Laws of 1858, page nos. 31-34 (Town of Olympia); Laws of 1861, page nos. 16-24 (City of Walla Walla); and Laws of 1864, page nos. 75-79 (Town of Seattle).

[2] Laws of 1856, page no. 70-72 (mandating a marshal for the City of Vancouver and describing its duties); Laws of 1858, page nos. 32 & 34 (same for the Town of Olympia); Laws of 1861, page nos. 17-18 (same for the City of Walla Walla); and Laws of 1864, page no. 78 (same for the Town of Seattle).

[3] Laws of 1856, page no. 71 (City of Vancouver); Laws of 1858 page no. 33 (Town of Olympia); Laws of 1861, page no. 22 (City of Walla Walla); Laws of 1864, page no. 77 (Town of Seattle).

for the incorporation of towns and villages)[4]. That act provided for municipal law enforcement in the form of a marshal. Laws of 1887, p. 226, § 8. Like the territorial charters of earlier years, the 1887 act made the suppression of riots and disturbances a municipal function, in derogation of the role the sheriff would otherwise play. Laws of 1887, p. 225, § 7(29).

After statehood, the first state legislature enacted a new general law providing for municipal incorporation. Laws of 1889, page nos. 131-224. That act provided for the classification of cities and towns based on population. First class cities were governed by city charters. Laws of 1889, page no. 143, § 23. Second class cities were mandated to include a chief of police among their local officers. Laws of 1889, page no. 144, § 25. The act called for a police force composed "of the chief of police and

[4] The cited act was adopted during a session that convened on December 5, 1887, and adjourned on February 2, 1888. Laws of 1887, page 1. The session laws from that session appear in a volume available online as Laws of 1887, although the cited act was adopted in 1888. *See* https://leg.wa.gov/CodeReviser/Pages/session_laws.aspx.

such number of policemen as shall . . . be fixed and determined by the city council." Laws of 1889, page no. 172, § 89. Third class cities similarly provided local police departments, in this case headed by a marshal, exercising "the powers that are now or may hereafter be conferred upon sheriffs by the laws of the state". Laws of 1889, page no. 195, § 136. Cites of the fourth class, which were called "towns," also maintained a marshal. Laws of 1889, page no. 198, § 143. The marshal headed the police department, in which were vested "the powers that are now and may hereafter be conferred upon sheriffs by the laws of the state." Laws of 1889, page no. 213, § 172.

By the conclusion of the first state legislative session, the powers of local law enforcement in incorporated areas were already exercised by municipal police rather than by county sheriffs. This trend of providing law enforcement through agencies other than the sheriff continued as the Legislature established other agencies during the twentieth century. This included the creation of what is now the Washington State Patrol

(WSP) in 1921. Laws of 1921, ch. 108, § 17 (authorizing the first "highway police"). Today, general authority Washington law enforcement agencies include not only local sheriffs and police, but the WSP and the department of fish and wildlife. RCW 10.93.020(3). Additional limited authority Washington law enforcement agencies perform certain law enforcement functions governing specific topics. These include the departments of natural resources and social and health services, as well the state gambling commission, state lottery commission, state parks and recreation commission, utilities and transportation commission, liquor and cannabis board, the office of the insurance commissioner, the department of corrections, and the office of independent investigations. RCW 10.93.020(5).

B. Proceedings in This Case

Following waves of protests across the State and country calling for racial justice and reform of police practices, the 2021 Washington Legislature enacted RCW 10.116.030 as part of a larger Act establishing requirements for or restrictions of tactics

and equipment used by peace officers. Laws of 2021, ch. 320, § 4. The part of the law challenged here regulates the use of tear gas by law enforcement agencies, specifying that tear gas may only be used when "necessary to alleviate a present risk of serious harm posed by a: (a) riot; (b) barricaded subject; or (c) hostage situation." RCW 10.116.030(1).[5] The statute further specifies steps that law enforcement must take before using tear gas. These include exhausting alternatives to tear gas, obtaining authority from a supervising officer, announcing the intent to use tear gas, and allowing sufficient time for people to comply with the directions of law enforcement. RCW 10.116.030(2).

[5] Other sections of the same Act prohibited law enforcement officers from using chokeholds or neck restraints, Laws of 2021, ch. 320, § 2, required model policies on the use of canine teams, *id.* at § 3, prohibited law enforcement agencies from acquiring military equipment, *id.* at § 5, required policies to make law enforcement officers reasonably identifiable while on duty, *id.* at § 6, restricted vehicular pursuits, *id.* at § 7, and regulated law enforcement requests for search warrants, *id.* at § 8.

The Plaintiffs (the Sheriffs[6]) do not challenge these substantive limits on the use of tear gas, but instead solely challenge RCW 10.116.030(3)(a) as applied to sheriffs of general law counties. The challenged provision reads:

> (3) In the case of a riot outside of a correctional, jail, or detention facility, the officer or employee may use tear gas only after: (a) Receiving authorization from the highest elected official of the jurisdiction in which the tear gas is to be used, and (b) meeting the requirements of subsection (2) of this section.

RCW 10.116.030(3). The statute defines "highest elected official" to mean, in the case of counties without a county executive, "the chair of the county legislative authority." RCW 10.116.030(4)(b). Therefore, this case does not relate to the use of tear gas by city police departments, by sheriffs of charter counties having county executives, or by other law enforcement agencies such as the WSP.

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[6] The Plaintiffs below included county commissioners as well, CP 4, but no issues relating to county commissioners are presented on appeal. No disrespect is intended in the manner of identifying the Plaintiffs-Respondents.

The Sheriffs brought this action in Lewis County Superior Court to challenge RCW 10.116.030(3)(a). CP 5-13. The Sheriffs contended that this check on the use of tear gas violated article XI, section 5, of the Washington Constitution by transferring a core function of the sheriff to the chair of the board. CP 9-11. They also challenged the application of RCW 10.116.030(3) to county commissioners. CP 10. The Sheriffs argued that RCW 10.116.030(3) violated article XI, section 5 by assigning a role to the chair of the board of county commissioners that was not shared by the other commissioners as a group. CP 10.

The parties filed cross motions for summary judgment. CP 14-67. The trial court granted summary judgment in favor of the Sheriffs, concluding that a county sheriff "has the right and the duty to suppress riots," which "cannot be taken away." VRP 18:25-19:4; CP 92-93. To the trial court, this included the authority to utilize tear gas as a tactic to that end, without seeking the approval of the chair of the board of county commissioners.

CP 92-93. At the same time, the trial court rejected the Sheriffs' argument that RCW 10.116.030(3) intruded on the powers of county commissioners, ruling in favor of the State on that claim. CP 69.[7] The State appealed the portion of the ruling regarding the application of RCW 10.116.030(3) to sheriffs. CP 70-93. No party cross appealed the ruling in favor of the State regarding county commissioners.

V. STANDARD OF REVIEW

This Court reviews de novo a trial court's order on summary judgment, including issues of constitutional interpretation. *Wash. State Legislature v. Inslee*, 198 Wn.2d 561, 569, 498 P.3d 496 (2021). "A legislative act is presumed constitutional, and the statute's challenger has the heavy burden to overcome that presumption." *Wash. Bankers Ass'n v. State*,

[7] Although the trial court's order is phrased as a denial of Sheriffs' motion for summary judgment as to the county commissioners, the trial court heard the matter on cross motions for summary judgment. CP 14-67. The order should therefore properly be construed as granting summary judgment to the State as to this claim.

198 Wn.2d 418, 427, 495 P.3d 808 (2021). When determining constitutionality, "'if a court can reasonably conceive of a state of facts to exist which would justify the legislation, those facts will be presumed to exist and the statute will be presumed to have been passed with reference to those facts.'" *State v. Fraser*, 199 Wn.2d 465, 476, 509 P.3d 282 (2022) (quoting *State v. Brayman*, 110 Wn.2d 183, 193, 751 P.2d 294 (1988)).

VI. ARGUMENT

A. The Legislature Has Broad Authority to Define and Change the Duties of Sheriffs

The Washington Constitution lists a series of county elective officers and directs the Legislature to prescribe their duties. The section reads:

> The legislature, by general and uniform laws, shall provide for the election in the several counties of boards of county commissioners, *sheriffs*, county clerks, treasurers, prosecuting attorneys and other county, township or precinct and district officers, as public convenience may require, and *shall prescribe their duties*, and fix their terms of office.

Const. art. XI, § 5 (emphasis added). As with the other listed offices, the office of the sheriff is thus constitutionally

established, but the responsibility for defining the duties of that office belongs to the Legislature. *See Fleetwood v. Rhay*, 7 Wn. App. 225, 227, 498 P.2d 891 (1972); *State v. Heaton*, 21 Wash. 59, 61, 56 P. 843 (1899); *Osborn v. Grant County by & through Grant County. Comm'rs*, 130 Wn.2d 615, 626, 926 P.2d 911 (1996). The general duties of the sheriff are prescribed in RCW 36.28.010.

To prevail, the Sheriffs bear the burden of establishing a constitutional restriction on legislative authority that RCW 10.116.030(3) transgresses. This must be understood within the constitutional context that the Legislature's authority to enact a law is plenary and unrestrained unless limited by the state or federal constitution. *Wash. State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 300-01, 174 P.3d 1142 (2007). "'Plenary power in the legislature, for all purposes of civil government, is the rule. A prohibition to exercise a particular power is an exception.'" *Id.* at 301. (quoting *State v. Fair*, 35 Wash. 127, 132-33, 76 P. 731 (1904)).

The Legislature has inherent constitutional flexibility in providing public services. *See Davison v. State*, 196 Wn.2d 285, 295, 466 P.3d 231 (2020) (discussing legislative discretion over the manner of providing public defense, and citing *Farm Bureau*, 162 Wn.2d at 300-01). The Constitution vests broad discretion in the Legislature "'to determine what the public interest demands under particular circumstances, and what measures are necessary to secure and protect the same.'" *Fraser*, 199 Wn.2d at 476 (quoting *Brayman*, 110 Wn.2d at 193).

This general legislative authority to provide for—and reform as needed for changing times—the duties of the county officers extends to the system of county government as well. The Washington Constitution charges the Legislature with a duty to "establish a system of county government, which shall be uniform throughout the state." Const. art. XI, § 4. This Court has construed the term "uniform system" to mean "an organized plan or scheme that applied equally to everyone once put under a specific category within that scheme." *Spokane County v. State*,

196 Wn.2d 79, 86, 469 P.3d 1173 (2020). The development of such a system may well entail departing from the specific compartmentalization of county officer powers and duties that were present in territorial days, even as officers' core functions remain respected.

Within this system, sheriffs require the approval of other officers for their basic functions. Sheriffs must operate within the constraints of budgetary authorization from the county legislative authority. *See generally*, RCW 36.40. The approval of the county legislative authority is required for the sheriff to create new positions in the office. RCW 36.16.070. State law requires an independent investigation of the use of deadly force by a law enforcement officer, divesting the sheriff of authority to conduct such investigations of his or her own deputies. RCW 10.114.011.

B. While the Legislature Cannot Usurp "Core Functions" of County Officers, That Phrase Must be Narrowly Understood

The text of Washington's Constitution merely lists various county officers, while instructing the Legislature to provide their

duties. Const. art. IX, § 5. This Court has held that the naming of these officers implies that the Legislature may not usurp their core functions. *State ex rel. Johnston v. Melton*, 192 Wash. 379, 389, 73 P.2d 1334 (1937); *State v. Rice*, 174 Wn.2d 884, 905, 279 P.3d 849 (2012). Any implied restriction on legislative authority must be construed narrowly, however, given that it comes in the same sentence as a grant of legislative authority. *See Farm Bureau*, 162 Wn.2d at 301. Any other approach would unduly constrain the plenary authority of the Legislature to comprehensively provide for and reform law enforcement in this state. It would conflict with the general rule that the Legislature's authority is unrestrained unless expressly limited by the Constitution. *Id.* It would further lead to the absurd conclusion that the Legislature may not define the duties of county sheriffs when the Constitution expressly charges it with the role of doing so, and when it clearly may define the duties of other law enforcement agencies.

1. A broad reading of "core functions" is unworkable because the roles of county officers have varied greatly over time and across jurisdictions

The basic concept upon which the Sheriffs rely is that "the legislature cannot transfer to other officers . . . important powers and functions which from time immemorial have belonged to the office of sheriff." *Johnston*, 192 Wash. at 389 (quoting *State ex rel. Kennedy v. Brunst*, 26 Wis. 412, 7 Am. Rep. 84). This begs the question of just what powers the sheriff has had "from time immemorial." Duties change. Much of the history of the office has been one of diminishment, from once having broad executive and judicial powers to one that, by Washington's statehood, consisted of basic local law enforcement. Even historically, the sheriff developed as the King's local representative, *see* pages 4-6 *supra*, demonstrating that the sheriff was historically under the control of a central government. In that light, it hardly seems unreasonable that a state constitution that instructs the Legislature to define the duties of county officers would not preclude the Legislature from adding a check to potentially

dangerous tactics in order to protect the public. Const. art. XI, § 5. This Court has accordingly limited its concept of implied powers that cannot be taken from county officers to only to those "most fundamental role[s]" played by those officers. *Rice*, 174 Wn.at 901.

The Sheriffs assert that the "core function" of the office of sheriff at issue here is riot suppression. CP 23, 32, 53; Answer to Appellant's Statement of Grounds for Direct Review at 7. But restricting the use of tear gas simply limits one tool available for riot suppression in non-custodial contexts; it does not eliminate sheriffs' abilities to perform that function. To equate statutory limitations on the exercise of discretion with interference with a county officer's core functions would dramatically expand the understanding of "core function", and would seem to suggest that any limitation on the use of force by sheriffs in controlling riots is unconstitutional. This cannot be correct. Moreover, the duty of riot suppression has been long shared. As discussed above, municipal police departments were established following the

chartering of individual cities and towns by special acts, and these laws also made the suppression of riots a municipal function. *See supra* page 12. And *all* of the county sheriffs' powers were vested in the marshals of third and fourth class cities in 1889. *See supra* page 14.

The very existence of these other local agencies demonstrates that the Sheriffs read too broadly this Court's precedent concerning article XI, section 5. It cannot mean that no duty of a sheriff can be shared with anybody else. If assigning other officers powers that overlap with those of the sheriff were all it took to establish a violation of article XI, section 5, then neither municipal police departments nor the WSP could even exist. While their officers might not exercise *all* of the functions of deputy sheriffs, they certainly exercise important ones for law enforcement. Further, when the chair of the board of county commissioners is assigned the responsibility of approving the use of tear gas by RCW 10.116.030(3), that chairperson merely

exercises a check based upon a legislative determination of how to best protect the public peace, health, and safety.

It therefore makes no sense to read into article XI, section 5, such a tight restriction on the Legislature that it cannot require a sheriff to obtain approval to deploy tear gas against the public, when such a requirement is clearly within the Legislature's prerogative as to all other law enforcement agencies.

2. Cases finding infringements on "core functions" dealt with extreme intrusions into the most fundamental of county officer powers

Although the Legislature has broad power to define the duties of county offices pursuant to article XI, section 5, case law instructs that it must respect the "core functions" of those offices when acting on that power. *See Rice*, 174 Wn.2d at 905. The "core functions" of sheriffs have not been expressly defined, but this Court, borrowing language from a Wisconsin case, has referred to "important powers and functions which from time immemorial have belonged to the office of sheriff." *Johnston*,

192 Wash. at 389 (quoting *State ex rel. Kennedy v. Brunst*, 26 Wis. 412, 7 Am. Rep. 84).

The Sheriffs' challenge to instituting a check on the potentially dangerous use of tear gas on the public stems from the concept that "[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." *Johnston*, 192 Wash. at 389 (quoting *Ex Parte Corliss*, 16 N.D. 470, 114 N.W. 962, 964 (1907)). This Court has considered the issue of infringement on "core functions" in a few prior cases; those cases have all involved extreme intrusions into fundamental aspects of county officer powers, including where those powers were delegated to non-elected officers.

In *Johnston*, the Court considered the constitutionality of a legislative act authorizing prosecuting attorneys to appoint investigators, who would operate under the authority and direction of the prosecutors, and who would hold "the same authority as the sheriff of the county to make arrests anywhere in

the county and to serve anywhere in the county, warrants, writs, subpoenas in criminal cases, and all other processes in criminal cases." *Johnston*, 192 Wash. at 380. The Court noted that the language in the act granted powers to the *appointed* investigators that were reserved by the Constitution for *elected* sheriffs. *Id*. at 385-386. The Court further explained that the act in question could not stand because the Legislature did not have the power to authorize unelected persons to exercise the "important powers and functions, which belonged to the sheriff at the time our Constitution was adopted, and 'from time immemorial.'" *Johnston*, 192 Wash. at 389.

In *Rice*, the Court considered the constitutionality of certain charging statutes and, clarified that "a prosecutor's broad charging discretion is part of the inherent authority granted [to them] as executive officers under the Washington State Constitution." *Rice*, 174 Wn.2d at 904. Although *Rice* concerned the duties of prosecutors, rather than sheriffs, the Court's treatment of the core functions of county officers concerns the

same constitutional section. The Court explained that "[a]lthough the legislature can fashion the duties of prosecuting attorneys, the legislature cannot interfere with the core functions that make them 'prosecuting attorneys' in the first place." *Id*. at 905 (internal citations omitted). Had the Court determined that the Legislature eliminated prosecutorial discretion and imposed enforceable charging requirements on prosecutors through the statues in question in *Rice*, the Court would have found that the Legislature had violated the separation of powers doctrine and article XI, section 5, even if the county prosecutor consented to the requirements. *Rice*, 174 Wn.2d at 906-07.

A few years later, Island County's board of commissioners hired outside counsel to provide legal services to the commissioners, over the objection of the Island County prosecuting attorney, whose office was able and willing to provide necessary legal advice. *State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 161, 385 P.3d 769 (2016). Although the *Banks* case did not involve legislative action and is therefore generally

inapposite, it does provide another example of the Court finding an infringement on a core function of the county prosecuting attorney, in the context of an overt assignment of that function to outside counsel. The *Banks* Court explained that "[e]ven if a board of commissioners had statutory authority" to hire its own legal counsel despite having an available prosecuting attorney, such action would "unconstitutionally deny the electorate's right to choose who provides the services of an elected office." *Banks*, 187 Wn.2d. at 182.

The Legislature holds plenary authority to define the duties of constitutionally established county offices, so long as it does not infringe upon the "core functions" of those offices. *Johnston* and *Rice* discuss legislative action that this Court found did and did not, respectively, infringe upon the core functions of county officers. *Banks* offers a comparative example of extreme infringement on core functions outside of the legislative arena. Findings of infringement on core functions of county officers have, thus far, been centered on extreme overreach by the

Legislature or other government entities and the delegation of powers to officers not democratically accountable to the people. But here, the Legislature chose to "disperse[] authority" with respect to the use of tear gas between two elective offices: the sheriff and the county commissioner serving as the board chair. *City of Seattle v. McKenna*, 172 Wn.2d 551, 564, 259 P.3d 1087 (2011).

3. This Court has said that state officers have no common law powers, so it would be incongruous to find that county officers have broad common law powers

Contradictions abound in this area of law. Article XI, section 5, merely lists county offices that must be elected, while expressly authorizing legislation to define their duties. Yet the *Johnston* line of cases find an implied limitation on legislative authority to do that which the Constitution expressly says the Legislature may do. By way of contrast, while the state Constitution also provides for various statewide officers (Const. art. III, § 1), this Court has rejected the idea that those officers have *any* powers other than those specified in the Constitution

itself or provided by statute. *Goldmark v. McKenna*, 172 Wn.2d 568, 576, 259 P.3d 1095 (2011) ("every office under our system of government, from the governor down, is one of delegated powers"); *see also Osborn*, 130 Wn.2d at 626 ("powers are limited to those expressly granted by statute"). The Court has also recognized that the framers of the Washington Constitution "dispersed authority among several officers" within the executive branch—but that this authority is not static. *City of Seattle*, 172 Wn.2d at 564. "In addition to assigning certain duties to each officer, the framers left additional duties to be determined by future generations in the exercise of self-government." *Id.*

Yet this Court in *Johnston* concluded that the naming of certain county officers in the Constitution "amounted to an implied restriction upon legislative authority to create other and appointive officers for the discharge of such functions." *Johnston*, 192 Wn.2d at 390 (quoting *Ex Parte Corliss*, 16 N.D. 470, 114 N.W.2d 962, 964 (1907)). This is precisely the opposite

conclusion the Court has reaching regarding state officers also named in the Constitution. *Goldmark*, 172 Wn.2d at 576.

California's Constitution has historically mirrored our article XI, section 5, but California courts do not apply different rules to state and county officers. California courts simply reject the idea that any inherent authority is vested in county offices solely by virtue of their being listed in the constitution. *Beck v. County. of Santa Clara*, 204 Cal. App. 3d 789, 796-97, 251 Cal. Rptr. 444 (1988). "The [California] Constitution specifies only one attribute of the sheriff's office—that it is elective." *Id.*at 798. The constitution simply "leaves the sheriff's duties to future definition." *Id.*; *see also Beasly v. Ridout*, 94 Md. 641, 52 A. 61, 63 (1902). The California court found the rule of cases like *Johnston* to have no application because the California Constitution, like Washington's, leaves the definition of the sheriff's duties to statute. *Beck*, 204 Cal. App. 3d at 798.

It is not necessary to untangle any and all contradictions in the case law in order to uphold the constitutionality of

RCW 10.116.030(3). Rather, it is sufficient to conclude that article XI, section 5, at the very most relates only to the utter core of the sheriff's functions—to those things that, if changed, would mean the sheriff ceases to be a sheriff in anything but name, or ceases to exist at all. *See Rice*, 174 Wn.2d at 905 ("Without broad charging discretion, a prosecuting attorney would cease to be a 'prosecuting attorney' as intended by the state constitution."); *cf. State ex rel. Hamilton v. Troy*, 190 Wash. 483, 485-87, 68 P.2d 413 (1937) (Legislature cannot change official title of prosecuting attorneys). As the next sections demonstrate, RCW 10.116.030(3) does not transgress that standard.

4. A broad reading of "core functions" would needlessly restrict the Legislature's options for modernizing and reforming law enforcement practices

A broad reading of any constitutional restriction on the transfer of "core functions" of the sheriff would intrude on the Legislature's authority to provide for and comprehensively reform law enforcement functions performed by all jurisdictions. To put the matter bluntly, the duties and obligations of law

enforcement, and their interactions with the public, should not depend on whether a particular officer wears the uniform of a county sheriff, a municipal police officer, or the WSP.

State law vests much discretion in law enforcement. The sheer variety of situations officers may encounter necessitates some discretion. "The nature of policing requires officers to make judgment calls." *In re Recall of Snaza*, 197 Wn.2d 104, 112, 480 P.3d 404 (2021). But the same need for discretion makes vital the Legislature's broad authority to define the duties of officers and to direct their actions in the public interest. This Court has noted, for example, that "this discretion explains, at least in significant part, patterns of disproportionate policing in communities of color." *Id.* at 113 n. 2. Some of the most challenging public policy issues of our day revolve around law enforcement and the manner in which officers interact with a diverse public. Rigid adherence to a notion that the duties of sheriffs were cast in stone in the nineteenth century would

hamstring legislative authority to adapt and promote public policy in the twenty-first century and beyond.

Both municipal police departments and the WSP are purely creatures of statute. RCW 35.23.161 (providing for city police department under a chief of police and subject to the direction of the mayor); RCW 35A.12.020 (authorizing the appointment of a chief law enforcement officer of a code city[8] using the mayor-council plan of government); RCW 35A.13.090 (providing for a chief of police or other law enforcement officer in a code city using the council-manager plan of government); RCW 35.27.240 (providing for a town police department under the direction of a town marshal and subject to the direction of the mayor); RCW 43.43.010 (creating the WSP under the authority of a chief). Municipal police are not subject to any implied limitation that article XI, section 5, might place on legislative action regarding county officers.

[8] A "code city" is one that has opted to operate under the Optional Municipal Code, RCW 35A.

Such officers generally exercise the same functions. Municipal police obviously exercise authority within their applicable city limits, and the sheriffs' functions extend throughout their counties. RCW 36.28.010. "Nowhere has the Legislature indicated that the sheriff's powers and duties are limited to the unincorporated areas of the county." Op. Att'y Gen. 4, at 3 (1990). But riot suppression is not exclusively the function of county sheriffs, RCW 36.28.010; it is also a municipal function. RCW 35.23.161 (second class cities); RCW 35.27.240 (towns); RCW 35A.21.030 (code cities). WSP officers, similarly, enjoy "throughout the state, such police powers and duties as are vested in sheriffs and peace officers generally." RCW 43.43.030.

There is accordingly a strong public interest in the Legislature's ability to consistently treat all law enforcement agencies. Indeed, state law already regulates law enforcement activities in numerous ways that are essential to statewide policy. Law enforcement officers are prohibited from using choke holds and neck restraints in the course of duty. RCW 10.116.020. Law

enforcement agencies are prohibited from acquiring "military equipment," as defined. RCW 10.116.040. Law enforcement officers must be reasonably identifiable while on duty. RCW 10.116.050. State law regulates vehicular pursuits, including requiring that officers obtain the approval of a supervising officer in certain situations. RCW 10.116.060(1)(d). There is no reason why such rules should be unconstitutional as to sheriffs but applicable to all other law enforcement agencies.

The statute at issue similarly reflects a need for consistent public policy. RCW 10.116.030 limits the use of tear gas by all law enforcement agencies, whether state, city, or county. It embodies a legislative determination that the public interest requires an external check on any decision by law enforcement to deploy tear gas as a tactic while suppressing a riot. RCW 10.116.030(3). Sheriffs should be no different in this regard than municipal police or the WSP.

Article XI, section 5, thus cannot mandate a different set of rules for county sheriffs than for other law enforcement agencies

performing the same functions. It defies logic to conclude that sheriffs may deploy tear gas without the same public safety limitations imposed on other law enforcement agencies.

C. A Sheriff's "Core Functions" Do Not Include Deploying Tear Gas without Checks to Promote Public Safety

"Tear gas" is at most a tactic, not a core function, sometimes used by law enforcement, including sheriffs, when suppressing riots. "Tear gas" means chloroacetophenone (CN), O-chlorobenzylidene malononitrile (CS), and any similar chemical irritant dispersed in the air for the purpose of producing temporary physical discomfort or permanent injury. RCW 10.116.030(4)(d). Tear gas, however, did not originate as a riot control agent, nor was it used by law enforcement as a riot suppression tactic in the 1850s.

Tear gas and other tear, cough, and sneeze producers make up a class of less-lethal weapons referred to collectively as "riot control agents." James D. Fry, *Gas Smells Awful: U.N. Forces, Riot-Control Agents, and the Chemical Weapons Convention*, 31 Mich. J. Int'l L. 475, 480 (2010). Experimentation with this type

of chemical weaponry was underway by 1899, and the French used ethyl bromoacetate during the First World War. *Id*. at 481. Germany retaliated with its own version of tear gas, but later used more lethal gasses, phosgene and chlorine. *Id*. at 481-82.

Following the war and public backlash against the use of chemical weapons, tear gas was repurposed for law enforcement uses. Casey Morin, *Next Steps in Chemical Weapons Control and Protecting the Right to Protest: Improvements to the Legal Regime Controlling Tear Gas*, 44 Fordham Int'l L. J. 1267, 1273-74 (2021). The term "riot control agent" came into being shortly thereafter, following use of tear gas against rioters. Fry, Mich. J. Int'l L. 475, at 480.

In concessions that reflect that tear gas has not historically been materially interwoven with riot suppression in Washington, the Sheriffs concede that the Legislature may entirely prohibit the use of tear gas by law enforcement, and that such a prohibition would not affect the core functions of the sheriff. CP 32; Answer to Appellant's Statement of Grounds for Direct

Review at 1. As the Legislature may entirely prohibit the use of tear gas by law enforcement, and such prohibition would not unconstitutionally invade the core functions of the sheriff, the ability to use tear gas, then, is not in and of itself a core function of the sheriff.

Given that tear gas is a tactic, and the ability to use tear gas is not in and of itself a core function of the sheriff, it stands to reason that neither would limitations placed on the use of tear gas infringe upon the core functions of the sheriff. The Sheriffs apparently agree, to some extent, as they did not challenge the statute's substantive limitations on the use of tear gas, and have conceded that "the legislature may place blanket limitations on the use of tear gas." Answer to Appellant's Statement of Grounds for Direct Review at 1. RCW 10.116.030's unchallenged limitations on the use of tear gas include that it may only be used "to alleviate a present risk of serious harm posed by a: (a) Riot; (b) barricaded subject; or (c) hostage situation." RCW 10.116.030(1). The Sheriffs also issue no challenge to the

statute's further limits on use of tear gas as set forth in RCW 10.116.030(2); this section requires that prior to deploying tear gas in such scenarios, law enforcement (a) exhaust available and appropriate alternatives, (b) obtain authorization to use tear gas from a supervising officer (who has determined whether the circumstances warrant use of tear gas and whether alternatives have been exhausted), (c) announce to the subject(s) the intent to use tear gas, and (d) allow enough time and space for compliance with law enforcement directives. RCW 10.116.030(2).

The Sheriffs' sole challenge is to the limitation found in RCW 10.116.030(3)(a), which requires that, before deploying tear gas in a riot situation outside of a jail setting, law enforcement obtain "authorization from the highest elected official of the jurisdiction in which the tear gas is to be used[.]" RCW 10.116.030(a). The "highest elected official" in non-charter counties is the chair of the county legislative authority. RCW 10.116.030(4)(b). The Sheriffs argue that this limitation, but not any of the others in the same statute, unconstitutionally

infringes upon a core function of the office of the sheriff, to wit, riot suppression. CP 23-24, 32, 54-55; Answer to Appellant's Statement of Grounds for Direct Review at 6.

The Sheriffs, however, dramatically overstate what RCW 10.116.030 does. They assert that RCW 10.116.030 requires a sheriff to receive authorization from the chair of the board of county commissioners "before acting to disperse a riot" and "improperly vests peacekeeping authority in the board of county commissioners." Answer to Appellant's Statement of Grounds for Direct Review at 6; RCW 10.116.030. The statute, however, does neither, nor does it assign or transfer any core function of the sheriff to another official. Both before and after the enactment of RCW 10.116.030, the decision to use available tactics, such as tear gas, is vested in the first instance in law enforcement, and actual deployment of tear gas is accomplished by law enforcement. The statute's addition is merely one of approval by the jurisdiction's highest elected official, a safeguard designed to promote public safety.

The statute contains no language preventing a sheriff from taking action using other available tools, tactics, methods, or training to disperse a riot. The sheriff does not have to receive authorization from the chair of the board of county commissioners to suppress a riot; such authorization is only required if the sheriff wants to deploy tear gas against the public in the course of suppressing a riot other than in a jail.

In conceding that the Legislature has the power and authority to entirely prohibit the use of tear gas, and that such a prohibition would not impact the core functions of sheriffs, the Sheriffs have made no argument that, without tear gas, they are unable to defend their counties against or suppress riots. In fact, were the Legislature to take the additional measure of banning the use of tear gas entirely, sheriffs would have fewer options available than they do just by coordinating with the chair of the board of county commissioners regarding the potential use of tear gas pursuant to RCW 10.116.030(3)(a). That is to say, sheriffs would still have the same list of general duties in

RCW 36.28.010, including riot suppression, with or without the ability to use the tactic of tear gas during a riot. Sheriffs are, with or without the ability to use the tactic of tear gas, able to take action using other available tools, tactics, methods, and training at their disposal to disperse a riot.

Additionally, the present case is distinguishable from *Johnston*. As discussed above, in *Johnston*, the Legislature enacted a law that expressly granted investigators "the same authority as the sheriff of the county to make arrests anywhere in the county and to serve anywhere in the county, warrants, writs, subpoenas in criminal cases, and all other processes in criminal cases." *Johnston*, 192 Wash. at 380. These investigators were neither elected officials nor under the supervision or direction of the sheriff, but were to be appointed by and operate under prosecuting attorneys. In this case, however, no new officer has been created under the direction of the commissioners, no peacekeeping authority has been transferred to the chair of the board of county commissioners, nor has that chairperson been

vested with the responsibility to suppress riots. Unlike in *Johnston*, the sheriff's functions remain with the sheriff, with one tactic subject to legislative limitations due to its potential impact on the public.

Just as in *Rice,* the Legislature in the instant case has not infringed upon a core function that makes a sheriff a sheriff in the first place. In *Rice*, wherein the Court examined the issue of infringement on core functions in the context of charging discretion of prosecuting attorneys, the Court resolved that the Legislature had not violated either the separation of powers doctrine or article XI, section 5. Similarly here, no part of RCW 10.116.030 transfers, reassigns, or removes, any function of the sheriff to another elected or appointed official.

Of note, the charging discretion for prosecutors at issue in *Rice* is not the same as the discretionary decision to deploy tear gas against the public. This Court in *Rice* held that "broad charging discretion" is part of the "inherent authority," or core function, of prosecuting attorneys. *Rice*, 174 Wn.2d at 904. The

Sheriffs in the instant case have asserted that riot suppression is the core function at issue. But a sheriff's discretionary decision regarding tactics or tools to use in suppressing a riot is dissimilar from a prosecutor's charging discretion. A sheriff remains free to suppress a riot in a different manner absent consent to use tear gas, while a prosecutor divested of charging discretion is deprived of the very function of making charging decisions.

RCW 10.116.030(3) is most readily understood as a public-policy-driven check on the deployment of a specific tactic used by law enforcement against civilians during a riot, rather than an interference with a sheriff's ability to respond to a riot. The provision for approval of the chair of the board of county commissioners does not transfer a core peacekeeping function away from the sheriff. RCW 10.116.030 does not deprive the sheriff of any function of that office, let alone a core function, in violation of article XI, section 5, and this Court should reverse the decision of the trial court.

D. The Sheriffs' Argument Leads to an Absurd Result, that the Legislature can Restrict Tactics Used by Local Police and the Washington State Patrol, but not by the Sheriffs

RCW 10.116.030 applies to all law enforcement agencies, not merely those who are parties to this case. It defines "law enforcement agency" broadly to include "any 'general authority Washington law enforcement agency' and any 'limited authority Washington law enforcement agency' as those terms are defined in RCW 10.93.020." RCW 10.116.010(1). This means that the statute applies as well to municipal police departments and the WSP, among others. RCW 10.93.020(3). The difference is merely which official must approve law enforcement's use of tear gas to suppress a riot. RCW 10.116.030(4).

The Sheriffs' argument would result in a rule under which the Legislature cannot require that the sheriff of a general law county obtain approval for using tear gas, with no similar restriction on legislative authority for the sheriffs of charter counties, municipal police, or the WSP. This result would defy

common sense, given the overall prerogative of the Legislature to determine what measures best promote the public peace, health, and safety. *CLEAN v. State*, 130 Wn.2d 782, 804-05, 928 P.2d 1054 (1997) (courts defer to the Legislature regarding reasonable exercises of the police power). If, as the Legislature found by enacting RCW 10.116.030, the public interest is served by providing a safeguard for the use of tear gas against the public, that interest would be equally significant no matter which law enforcement agency is involved. The trial court's ruling cannot be correct because, if it were, the Legislature could only protect the public by providing for a check on law enforcement in some jurisdictions but not in others; such a jurisdictionally-driven result would create a disparity wholly unrelated to the actual needs of the people the Legislature intended to protect.

The argument that article XI, section 5 implicitly limits the Legislature in defining the duties of county officers cannot apply to charter counties. Just as the state Constitution makes sheriffs constitutional officers, it also authorizes counties to adopt local

home rule charters in order to permit local variance in governmental structure. Const. art. XI, § 4. County charters may provide for different county officers than those specified in the Constitution. *See State ex rel. Carroll v. King County*, 78 Wn.2d 452, 456, 474 P.2d 877 (1970) (county charters may provide for "those officers which [the county] deems necessary to handle its purely local concerns"); *see also Spokane County*, 196 Wn.2d at 90 n.2 (noting that county may circumvent state statutes governing the authority of county officers by adopting a charter structuring local government differently).[9] A charter may also divide functions differently among county officers. For example,

[9] This Court in *Spokane County* upheld a statute that transferred the function of drawing electoral districts for county commissioners to a new redistricting commission. *Spokane County,* 196 Wn.2d at 90 n.2. This Court rejected an argument "that allowing commissioner districts to be drawn by legislative appointees 'intrudes on the local control over the election of county officials that the Constitution otherwise delegates to counties.'" *Id.* (quoting a brief of a party to that case). But the State must acknowledge that neither that decision nor the briefing in it discussed the *Johnston* line of cases. *See* briefing to this Court in *Spokane County v. State*, No. 97739-9.

"[i]n King County, the election-related duties of the county auditor have been assigned by charter to the Director of the Elections Department." *Filo Foods LLC v. City of SeaTac*, 179 Wn. App. 401, 411 n. 1, 319 P.3d 817 (2014) (Dwyer, J., concurring).

This means that the authority of a county officer in a charter county does not derive from article XI, section 5 of the Constitution, but rather from the charter. The Legislature, however, may enact provisions that override a county charter. "The Washington Constitution expressly relegates Home Rule charters to an inferior position vis-à-vis 'the Constitution and laws of this state.'" *Snohomish County v. Anderson*, 123 Wn.2d 151, 158, 868 P.2d 116 (1994) (quoting Const. art. XI, § 4). That is, a local charter must give way to "'considerations of public policy of broad concern, expressed in general laws.'" *Id.* (quoting *Henry v. Thorne*, 92 Wn.2d 878, 881, 602 P.2d 354 (1979)); *see also Washam v. Sonntag*, 74 Wn. App. 504, 509, 874 P.2d 188 (1994) ("Home rule charter provisions are subordinate

to state law."). Thus, the authority of the Legislature to enact statutes of general application that bind charter counties cannot be limited by article XI, section 5, because county officers in charter counties derive their authority from the charter rather than from article XI, section 5.

Similarly, the powers and duties of municipal police departments and the WSP cannot be limited by article XI, section 5. Both are purely creatures of statute. RCW 35.23.161 (providing for city police department under a chief of police and subject to the direction of the mayor); RCW 35A.12.020 (authorizing the appointment of a chief law enforcement officer of a code city using the mayor-council plan of government); RCW 35A.13.090 (providing for a chief of police or other law enforcement officer in a code city using the council-manager plan of government); RCW 35.27.240 (providing for a town police department under the direction of a town marshal and subject to the direction of the mayor); RCW 43.43.010 (creating the WSP under the authority of a chief). Since the heads of all of

these law enforcement agencies are not county officers, the authority of the Legislature to provide for their powers and duties is not limited by article XI, section 5. And as we have seen, municipal police already shared with county sheriffs the function of riot suppression from the dawn of statehood. *See* page 13 *supra*.

Such an incongruous result across jurisdictions and law enforcement agencies, which would inevitably produce inconsistent consequences for public safety, cannot be the intended outcome of a system of "general and uniform laws."

VII. CONCLUSION

For these reasons, this Court should reverse the decision of the trial court to the extent that it granted summary judgment in favor of the Sheriffs and rule in favor of the State as a matter of law.

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RESPECTFULLY SUBMITTED this 22nd day of December, 2022.

ROBERT W. FERGUSON
Attorney General

s/ Jeffrey T. Even
JEFFREY T. EVEN, WSBA 20367
Deputy Solicitor General
Kate S. Worthington, WSBA 47556
Alexia Diorio, WSBA 57280
Assistant Attorneys General
OID No. 91087
PO Box 40100
Olympia, WA 98504
jeffrey.even@atg.wa.gov
kate.worthington@atg.wa.gov
alexia.diorio@atg.wa.gov

CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing was electronically filed in the Washington State Supreme Court and electronically served on all parties of record, according to the Court's protocols for electronic filing and service.

DATED this 22nd day of December 2022, at Olympia, Washington.

s/ Stephanie N. Lindey
STEPHANIE N. LINDEY
Legal Assistant

From:	OFFICE RECEPTIONIST, CLERK
To:	"Lindey, Stephanie N. (ATG)"; Even, Jeffrey T (ATG); Worthington, Kate S. (ATG); Sepe, Cristina (ATG)
Cc:	"KStenseng@spokanecounty.org"; "jonathan.meyer@lewiscountywa.gov"; "sara.beigh@lewiscountywa.gov"; "Natalie.Dunlap@lewiscountywa.gov"; "Brittani.bonahoom@lewiscountywa.gov"; "McClain, Mark"; "amusick@spokanecounty.org"; "dmonroe@spokanecounty.org"; "Dale_Slack@co.columbia.wa.us"; "michelle_mccleary@co.columbia.wa.us"; "kiburke@co.ferry.wa.us"; "kijager@co.ferry.wa.us"; "mnewberg@co.garfield.wa.us"; "kjmccrae@grantcountywa.gov"; "kick@co.skamania.wa.us"; "derek@co.skamania.wa.us"
Subject:	RE: Case No. 101375-2; Robert Snaza, et al v. State of Washington; State of Washington"s Opening Brief
Date:	Thursday, December 22, 2022 4:16:46 PM

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From: Lindey, Stephanie N. (ATG) <stephanie.lindey@atg.wa.gov>
Sent: Thursday, December 22, 2022 4:15 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; Even, Jeffrey T (ATG) <jeffrey.even@atg.wa.gov>; Worthington, Kate S. (ATG) <kate.worthington@atg.wa.gov>; Sepe, Cristina (ATG) <cristina.sepe@atg.wa.gov>
Cc: 'KStenseng@spokanecounty.org' <KStenseng@spokanecounty.org>; 'jonathan.meyer@lewiscountywa.gov' <jonathan.meyer@lewiscountywa.gov>; 'sara.beigh@lewiscountywa.gov' <sara.beigh@lewiscountywa.gov>; 'Natalie.Dunlap@lewiscountywa.gov' <Natalie.Dunlap@lewiscountywa.gov>; 'Brittani.bonahoom@lewiscountywa.gov' <Brittani.bonahoom@lewiscountywa.gov>; 'McClain, Mark' <MMCCLAIN@SpokaneCounty.org>; 'amusick@spokanecounty.org' <amusick@spokanecounty.org>; 'dmonroe@spokanecounty.org' <dmonroe@spokanecounty.org>; 'Dale_Slack@co.columbia.wa.us' <Dale_Slack@co.columbia.wa.us>; 'michelle_mccleary@co.columbia.wa.us' <michelle_mccleary@co.columbia.wa.us>; 'kiburke@co.ferry.wa.us' <kiburke@co.ferry.wa.us>; 'kijager@co.ferry.wa.us' <kijager@co.ferry.wa.us>; 'mnewberg@co.garfield.wa.us' <mnewberg@co.garfield.wa.us>; 'kjmccrae@grantcountywa.gov' <kjmccrae@grantcountywa.gov>; 'kick@co.skamania.wa.us' <kick@co.skamania.wa.us>; 'derek@co.skamania.wa.us' <derek@co.skamania.wa.us>
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Attached please find the State of Washington's Opening Brief in case no. 101375-2. Thank

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Stephanie N. Lindey

Solicitor General Division

PO Box 40100

Olympia, WA 98504-0100

(360) 586-3114

Stephanie.Lindey@atg.wa.gov