

Supreme Court No. 93609-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ERIC GRAY,

Petitioner.

**MOTION OF THE AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON, JUVENILE LAW CENTER, COLUMBIA LEGAL
SERVICES, AND TEAMCHILD FOR LEAVE TO FILE *AMICUS
CURIAE* BRIEF**

Steven W. Fogg, WSBA No. 23528
Kelly H. Sheridan, WSBA No. 44746
Corr Cronin Michelson Baumgardner
Fogg & Moore LLP
1001 Fourth Avenue, Suite 3900
Seattle, WA 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

Nancy L. Talner, WSBA No. 11196
Vanessa Hernandez, WSBA No. 42770
ACLU-WA Foundation
901 Fifth Ave. #630
Seattle, WA 98164
Tel (206) 624-2184

*Attorneys for Amicus American
Civil Liberties Union of Washington*

Marsha L. Levick
Juvenile Law Center
1315 Walnut Street
4th Floor
Philadelphia, PA 19107
Tel (215) 625-0551

*Attorney for Amicus Juvenile Law
Center*

Nicholas B. Allen, WSBA No.
42990
Columbia Legal Services
101 Yesler Way Ste 300
Seattle, WA 98104
Tel (206) 464-0838

*Attorney for Amicus Columbia
Legal Services*

Sara Zier, WSBA No. 43075
TeamChild
715 Tacoma Ave S
Tacoma, WA 98402
Tel (253) 507-8435

Bonnie Linville, WSBA No.
49361
TeamChild
32 N 3rd St Ste 410
Yakima, WA 98901
Tel (509) 573-4993

Attorneys for Amicus TeamChild

Amici respectfully move, pursuant to RAP 10.6, to file an *Amicus Curiae* Brief regarding the issues described below.

I. IDENTITY AND INTEREST OF *AMICI*

The moving parties herein are the American Civil Liberties Union of Washington (“ACLU”), the Juvenile Law Center, Columbia Legal Services (“CLS”), and TeamChild.

The ACLU is a statewide, nonpartisan, nonprofit organization with over 75,000 members and supporters dedicated to the preservation of civil liberties. The ACLU has consistently advocated against the over-criminalization of juvenile behavior. The ACLU favors laws that take account of the characteristics of the juvenile justice system, including its goal of rehabilitation for juvenile offenders. The ACLU has participated as *amicus curiae* in numerous cases in Washington involving juvenile justice.

Founded in 1975, Juvenile Law Center is the oldest multi-issue public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Among other things, Juvenile Law Center works to ensure that children’s rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights. Juvenile Law Center has

worked extensively to promote public policies and practices that avoid criminalizing normative adolescent behaviors, including sexual experimentation that may include consensual sexual relationships and the consensual exchange of suggestive photos over cell phones and social media. This work includes *amicus* briefs in the United States Court of Appeals for the Third Circuit; the Pennsylvania, Ohio, and Kentucky Supreme Courts; and numerous appellate courts. Juvenile Law Center has also participated as *amicus* in other Washington appellate cases.

CLS is a non-profit civil legal aid law firm that represents low income Washingtonians on a variety of legal issues. Juvenile justice is an important priority that CLS pursues on behalf of its clients. CLS has sought and received leave to file *amicus* briefs on similar issues in the past.

TeamChild is a nationally recognized, non-profit civil legal advocacy program for low-income children at risk of involvement or already involved with juvenile and adult courts in Washington. With offices in King, Yakima, Pierce, and Spokane counties, TeamChild lawyers advocate for low-income youth across the state to help them access their basic civil rights to education, health care, safe and stable housing, and other social services. TeamChild has participated as *amicus* in many cases involving the legal rights and civil liberties of youth and children in Washington State and nationally.

II. FAMILIARITY WITH ISSUES

Amici have obtained copies of, and are familiar with, the briefing submitted by the parties to this Court, the Opinion of the Court of Appeals, and the proceedings below. *Amici* are familiar with the scope of the argument presented by the parties and will not unduly repeat arguments raised by any of the parties.

III. ISSUES TO BE ADDRESSED BY *AMICI*

1. Whether the Court should overturn an interpretation of the “dealing in depictions of a minor” statute that, if permitted to stand, would criminalize a minor taking nude photographs of themselves, thereby rendering the growing teenage practice of “sexting” a felony sex crime?
2. Whether the lower courts’ interpretation of the statute raises significant constitutional concerns because it contravenes decades of jurisprudence holding that child pornography laws are constitutional only when they protect child victims, while the constitutional concerns can be avoided by applying a reasonable interpretation of the statute?

IV. WHY *AMICUS* BRIEFING WILL ASSIST THE COURT

This Court’s decision in this case will significantly impact an important area of law in this state. This case asks the Court to interpret Washington’s child pornography statute in a way that does not result in absurd results that are contrary to the purposes of the statute and constitutional law. *Amici* provide additional authority and analysis in support of Petitioner’s arguments which will assist the Court in addressing this issue. Therefore, the requirements of RAP 10.6 are met and this Motion should be granted.

V. CONCLUSION

For the foregoing reasons, *Amici* respectfully request that the Court grant them leave to file the attached *Amicus* Brief.

RESPECTFULLY SUBMITTED this 31st day of March, 2017.

CORR CRONIN MICHELSON
BAUMGARDNER FOGG & MOORE LLP

s/ Kelly H. Sheridan

Steven W. Fogg, WSBA No. 23528
Kelly H. Sheridan, WSBA No. 44746
1001 Fourth Avenue, Suite 3900
Seattle, WA 98154-1051
Tel (206) 625-8600
sfogg@corrchronin.com
ksheridan@corrchronin.com

Nancy L. Talner, WSBA No. 11196
Vanessa Hernandez, WSBA No. 42770
ACLU-WA Foundation
901 Fifth Ave. #630
Seattle, WA 98164
Tel (206) 624-2184
talner@aclu-wa.org
vhernandez@aclu-wa.org

*Attorneys for Amicus American Civil
Liberties Union of Washington*

Marsha L. Levick
Juvenile Law Center
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107
Tel (215) 625-0551
mlevick@jlc.org

Attorney for Amicus Juvenile Law Center

Nicholas B. Allen, WSBA No. 42990
Columbia Legal Services
101 Yesler Way Ste 300
Seattle, WA 98104
Tel (206) 464-0838
Nick.Allen@columbialegal.org

*Attorney for Amicus Columbia Legal
Services*

Sara Zier, WSBA No. 43075
TeamChild
715 Tacoma Ave S
Tacoma, WA 98402
Tel (253) 507-8435
sara.zier@teamchild.org

Bonnie Linville, WSBA No. 49361
TeamChild
32 N 3rd St Ste 410
Yakima, WA 98901
Tel (509) 573-4993
bonnie.linville@teamchild.org

Attorneys for Amicus TeamChild

DECLARATION OF SERVICE

The undersigned declares as follows:

1. I am employed at Corr Cronin Michelson Baumgardner Fogg & Moore LLP, attorneys for *Amicus Curiae* American Civil Liberties Union of Washington.

2. On March 31, 2017, I caused the foregoing to be filed with the Supreme Court of the State of Washington and served on the parties to this action as follows:

Kathleen A. Shea Washington Appellate Project 1511 Third Avenue, Suite 701 Seattle, WA 98101 kate@washapp.org wapofficemail@washapp.org <i>Attorney for Petitioner</i>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Gretchen E. Verhoef Deputy Prosecuting Attorney County-City Public Safety Building West 1100 Mallon Spokane, WA 99260 gverhoef@spokanecounty.org kcornelius@spokanecounty.org scpaappeals@spokanecounty.org <i>Attorneys for Respondent</i>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

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

DATED this 31st day of March, 2017 at Seattle, Washington.



Lauren Beers