

No. 91642-0

SUPREME COURT
OF THE STATE OF WASHINGTON

CORTNEY BLOMSTROM, BROOKE M. BUTTON, and
CHRISTOPHER V. COOPER,

Petitioners,

v.

THE HONORABLE GREGORY TRIPP, SPOKANE
COUNTY DISTRICT COURT JUDGE,

Respondent.

ON APPEAL FROM A DECISION OF THE SPOKANE COUNTY
SUPERIOR COURT
Honorable Salvatore Cozza

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON**

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The American Civil Liberties Union of Washington (“ACLU”) respectfully moves, pursuant to RAP 10.1(e) and 10.6 for leave to file an *amicus* brief in this matter. The Brief of *Amicus Curiae* (“Brief”) is filed with this Motion. In support of this Motion, the ACLU offers the following information.

I. IDENTITY AND INTEREST OF *AMICUS CURIAE*

The ACLU is a statewide, nonpartisan, nonprofit organization with over 75,000 members and supporters dedicated to the preservation and promotion of civil liberties. It is well-settled in Washington that individuals have a constitutionally protected interest in the privacy of their internal bodily functions and fluids, and that the State infringes on this interest when it takes an individual’s bodily fluids such as blood, DNA, urine, or breath. Defendants released pending trial are entitled to the presumption of innocence and do not have a diminished privacy interest. The ACLU has been a steady advocate for these privacy protections and has filed *amicus* briefs and engaged in legislative advocacy in support of these constitutional rights.

II. FAMILIARITY WITH ISSUES AND SCOPE OF ARGUMENT ON REVIEW

Counsel for *amicus* have read the briefs of Petitioner and Appellant. Counsel are familiar with the Parties’ arguments and have not unduly repeated them.

III. ISSUES ADDRESSED BY *AMICUS*

Whether this Court should find that the trial court's orders requiring Petitioners to submit to the bodily intrusion of random, warrantless, suspicionless UA testing as a condition of pretrial release violated WASH. CONST. Art. 1, sec. 7.

Whether the trial court orders imposing suspicionless UA testing as a condition of pretrial release raises significant concerns under the applicable court rule regarding pretrial release conditions.

Whether the provisions of the orders requiring indigent defendants to pay the costs of the tests result in disparate and unfair treatment of rich and poor defendants.

IV. WHY *AMICUS* BRIEFING WILL ASSIST THE COURT

For the reasons explained in Petitioners' opening and reply briefs, in the Amicus Brief ACLU filed in *State v. Olsen*, Case No. 93315-4 pending in this Court (argued 2/16/17), and in the Amicus Brief filed in conjunction with this motion, the trial court's orders requiring Petitioners to submit to the bodily intrusion of random, warrantless, suspicionless UA testing as a condition of pretrial release violated WASH. CONST. Art. 1, sec. 7. The random, warrantless, and suspicionless UA testing at issue here would greatly compromise the state constitution's strong privacy protection, an interest the ACLU has sought to protect through submission of *amicus* briefs and other forms of advocacy. The *amicus* brief will also

address the applicable court rule on pretrial release conditions, and provisions of the orders requiring indigent defendants to pay the costs of the tests, more specifically, emphasizing that the payment conditions exacerbate disparate and unfair treatment of rich and poor defendants, and raise concerns similar to the “debtor’s prison” problems that this Court has confronted in other cases. The additional argument provided by the amicus brief will assist the Court in making a fully informed decision. RAP 10.6(a).

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V. CONCLUSION

For the foregoing reasons, the ACLU respectfully requests that the Court grant leave to file the *amicus* brief filed concurrently with this Motion.

Respectfully submitted this 24th day of April, 2017.

STOKES LAWRENCE, P.S.

By /s/ Theresa H. Wang

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 24th day of April, 2017, I caused a true and correct copy of the foregoing document, “Motion for Leave to File Brief of *Amicus Curiae* American Civil Liberties Union of Washington,” to be delivered via email to the following counsel of record:

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Dated this 24th day of April, 2017, at Seattle, Washington.

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