

NO. 13-35921

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**WINDY PAYNE, individually and as guardian on behalf of D.P., a minor
child,**

Plaintiffs/Appellees,

v.

PENINSULA SCHOOL DISTRICT, *Defendant*, and

JODI COY,

Defendant-Appellant.

**MOTION FOR LEAVE TO FILE AMICUS CURIAE LETTER OF
AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON
SUPPORTING AFFIRMANCE AND IN SUPPORT OF
PLAINTIFFS/APPELLEES**

On Appeal from the United States District Court for the Western
District of Washington at Tacoma U.S.D.C. Case No. 3:05-cv-05780-
RBL, The Honorable Ronald B. Leighton

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A. IDENTITY AND INTEREST OF AMICUS

The ACLU-WA is a statewide, nonpartisan, nonprofit organization of over 20,000 members, dedicated to the preservation of civil liberties, including the right to be free of excessive force inflicted by the government. The ACLU-WA has participated in numerous qualified immunity and excessive force cases, as amicus curiae and as counsel to parties. See, e.g., *Brooks v. Seattle*, Ninth Circuit Case No. 08-35526.

B. REASONS WHY AMICUS LETTER IS DESIRABLE AND MATTERS ASSERTED ARE RELEVANT TO THE DISPOSITION OF THE CASE

ACLU-WA moves for leave to file an amicus curiae letter, in support of affirmance and in support of Plaintiffs/Appellees, in accordance with Rule 29 of the Federal Rules of Appellate Procedure and the Circuit Advisory Committee Note to Rule 29-1. The Circuit Note to Rule 29-1 authorizes the filing of a letter of amicus wishing to join in the arguments or factual statements of a party. The ACLU-WA amicus letter sought to be filed in this case fits the requirements of the Circuit Note.

Additionally, the ACLU-WA amicus letter is desirable and discusses matters relevant to the disposition of the case, since qualified immunity analysis is central to the issues before the Court and the amicus letter discusses binding and persuasive

authority on that issue. The authority cited in the amicus letter supplements the authority provided by the brief of Plaintiffs/Appellees.

Moreover, the legal principles discussed in the parties' briefs and the amicus letter involve fundamental and significant civil liberties issues. Applying the proper qualified immunity analysis is critical to preserving the ability to enforce constitutional rights and other civil liberties under 42 U.S.C. §1983. The importance of the issues at stake warrants amicus participation by an organization dedicated to civil liberties.

C. CONCLUSION

For the reasons set forth above, the ACLU respectfully requests that the Court accept its amicus letter in support of affirmance and in support of Plaintiffs/Appellees.

RESPECTFULLY SUBMITTED this 31st day of December, 2013.

/s/ Nancy L. Talner

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CERTIFICATION OF ELECTRONIC SERVICE

I, Nancy Talner, certify that on December 31, 2013, I electronically filed the foregoing Motion and Amicus Letter of American Civil Liberties Union of Washington In Support of Affirmance and Plaintiffs-Appellees with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: December 31, 2013

/s/Nancy Talner
Nancy Talner, WSBA #11196