

No. 17-1351

IN THE
**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.,
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, ET AL.,
Defendants-Appellants.

**On Appeal from the United States District Court
for the District of Maryland**

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE IN SUPPORT OF APPELLANTS**

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March 29, 2017

UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF

The American Civil Rights Union (ACRU) moves for leave of court to file a brief as amicus curiae in this case.

1. The ACRU is a 501(c)(3) nonprofit public-policy organization headquartered in Alexandria, Virginia, dedicated to advancing a jurisprudence predicated upon sound principles of constitutional and statutory interpretation. The Policy Board of the ACRU includes leading authorities on constitutional government, such as former U.S. Attorney General Edwin Meese III, Assistant Attorney General Charles J. Cooper, Assistant Attorney General William Bradford Reynolds, and Ambassador J. Kenneth Blackwell.

2. The ACRU concurs with the State of Texas that it is not entirely clear whether leave to file is required in the current procedural posture of this case, given that all parties have consented. The ACRU seeks to file an amicus brief pursuant to Federal Rule of Appellate Procedure 29(a) for this court's initial consideration of the merits of the case, insofar as this case will be reviewing the district court's granting of a preliminary injunction against Executive Order 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017), signed by President Donald J. Trump on March 6, 2017. Nonetheless, in an abundance of caution, the ACRU seeks leave of court to resolve any ambiguity regarding what the governing rules require at this stage of the litigation.

3. An amicus brief is proper at this point in this litigation, and would assist the court in examining the weighty matters implicated by this case. It is of no moment that this court may be determining whether also to grant a stay at this point in the legal process, as an amicus brief will assist the court in determining which parties have a substantial likelihood of success on the merits, regardless of whether this court is making that determination for purposes of granting a stay or of reversing the district court's grant of a preliminary injunction. Neither is it of any moment that this court is considering whether to grant an initial hearing en banc in this appeal, as such a hearing would still be the initial consideration of the case's merits, as opposed to a typical en banc proceeding, which usually is a reconsideration of the case subsequent to a decision rendered by a three-judge appellate panel. The fact that this court must decide this appeal on an accelerated schedule further accentuates the assistance that robust briefing offered by the ACRU and other amici can provide.

4. The ACRU intends to offer an argument to this court demonstrating that the district court predicated its Establishment Clause analysis on a line of cases that is no longer good law. The district court's analysis focused on the purpose prong of the test from *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and the "endorsement test" variation of *Lemon* first adopted by the Supreme Court in *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573 (1989).

This court would benefit from a brief explanation as to why that line of cases does not control here. The authorities the ACRU wishes to present are not duplicative of those the Department of Justice set forth in its opening brief on behalf of the Federal Defendants.

5. All parties consent to the filing of the proposed amicus brief.

CONCLUSION

The ACRU does not believe that leave of court is required to file a brief as amicus curiae in this appeal's current procedural posture before this court, but in an abundance of caution respectfully requests leave of court to file the brief.

Respectfully submitted,

s/ Kenneth A. Klukowski

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March 29, 2017

CERTIFICATE OF CONFERENCE

The undersigned counsel conferred with counsel for the parties in this case, all of whom consent to the filing of the proposed amicus brief.

Executed March 29, 2017.

s/ Kenneth A. Klukowski

Kenneth A. Klukowski

*Attorney for Amicus Curiae
American Civil Rights Union*

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2017, I electronically filed this motion with the Clerk of the Court of the United States Court of Appeals for the Fourth Circuit via this court's CM/ECF system. Counsel for the parties in this appeal are CM/ECF users, and service will be accomplished through the CM/ECF system.

s/ Kenneth A. Klukowski

Kenneth A. Klukowski

*Attorney for Amicus Curiae
American Civil Rights Union*

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
APPEARANCE OF COUNSEL FORM

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[X]Retained []Court-appointed(CJA) []Court-assigned(non-CJA) []Federal Defender []Pro Bono []Government

COUNSEL FOR: American Civil Rights Union

as the (party name)

appellant(s) appellee(s) petitioner(s) respondent(s) [X] amicus curiae intervenor(s) movant(s)

s/ Kenneth A. Klukowski (signature)

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CERTIFICATE OF SERVICE

I certify that on March 29, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

s/ Kenneth A. Klukowski Signature

March 29, 2017 Date