

CIVIL DIVISION
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18 ARIZONA SUPERIOR COURT
19 MARICOPA COUNTY

20 STATE OF ARIZONA,
21
22 Appellee,
23
24 v.
25 MONICA RENEE JONES,
26
27 Appellant.

28 No.
(Municipal Court No. 20139021636)
**MOTION FOR LEAVE TO FILE BRIEF
OF *AMICI CURIAE***

29 Pursuant to Rule 31.25 of Arizona’s Rules of Criminal Procedure, the American Civil
30 Liberties Union (“ACLU”), American Civil Liberties Foundation of Arizona (“ACLF-AZ”),
31 Lambda Legal Defense and Education Fund (“Lambda Legal”), the Legal Aid Society of New
32 York (“LAS”), Transgender Law Center (“TLC”), and the Urban Justice Center (“UJC”), through
33 undersigned counsel, hereby move to appear as *amici curiae* in the above-captioned action on
34 behalf of Defendant-Appellant Monica Renee Jones (“Defendant-Appellant”). The ACLF-AZ
35 moved to appear as *amicus curiae* in the above-captioned matter before the Municipal Court and
36 that motion was granted. [Trial Transcript at 8: 2-3]. Proposed *amici* have read all the relevant
37 pleadings and documents in this case. Proposed *amici* have the consent of Defendant-Appellant

1 to appear as *amici* and file the accompanying brief.

2 MEMORANDUM

3 While Arizona has no rule governing *amicus curiae* briefs in the trial courts, Arizona
4 courts have permitted the appearance of *amici curiae* before trial courts. *See, e.g., Home Builders*
5 *Ass'n of Cent. Ariz. v. City of Apache Junction*, 148 Ariz. 493, 497 n.4, 11 P.3d 1032, 1035 n.4
6 (Ct. App. 2000).¹

7 A. Interests of Proposed *Amici*.

8 *Amici Curiae* are advocacy and civil rights organizations committed to protecting the
9 freedoms guaranteed by the First Amendment and defending the constitutional and civil rights of
10 women, including transgender women, LGBT people, people of color and people impacted by the
11 criminal justice system. *Amici* have an interest in the constitutional issues raised by the defense
12 in this case and have particular expertise on the impact of criminal laws on transgender
13 individuals.

14 The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan
15 organization with more than 500,000 members dedicated to the principles of liberty and equality
16 embodied in the Constitution and our nation's civil rights laws. The ACLU is committed to
17 protecting the freedoms guaranteed by the First Amendment and advocating for the rights of
18 LGBT persons and criminal defendants. The ACLU of Arizona (ACLU-AZ) is the Arizona state
19 affiliate of the national ACLU. The ACLU-AZ has acted to protect the rights and well-being of
20 arrested, incarcerated and otherwise confined transwomen including in the state's largest shelter
21 and in various jails and prisons. Because the ordinance under which the defendant was convicted
22 is unconstitutional and the continued prosecution of individuals under that law raises serious
23 concerns for the transgender community, the proper resolution of this case is a matter of
24 significant concern to the ACLU and its membership throughout the country.

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26
27 ¹ Federal courts have explicitly recognized that trial courts have inherent authority to
28 permit appearance of *amici curiae* in trial courts in the absence of a rule. *See Hoptowit v. Ray*,
692 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515
U.S. 472 (1995); *see also Wilderness Soc'y v. U.S. Bureau of Land Mgmt.*, No. 09-CV-08010,
2010 WL 2594853 at *1 (D. Ariz., June 21, 2010).

1 Lambda Legal Defense and Education Fund, Inc. (Lambda Legal) is a national
2 organization dedicated to achieving full recognition of the civil rights of lesbian, gay, bisexual,
3 and transgender (LGBT) people and those living with HIV through impact litigation, education
4 and public policy work. Lambda Legal has appeared as counsel or amicus curiae in numerous
5 cases in federal and state court involving the rights of transgender people, including incarcerated
6 transgender people. *See, e.g., Fields v. Smith*, 653 F.3d 550 (7th Cir. 2011), (holding that
7 Wisconsin law preventing transgender prisoners from accessing transition-related care violated
8 prohibition against cruel and unusual punishment) cert. denied, 132 S. Ct. 1810 (2012); *Shaw v.*
9 *District of Columbia*, 944 F. Supp. 2d 43 (D.D.C. 2013), appeal docketed, No. 13-5212 (D.C. Cir.
10 Mar. 19, 2014) (arguing as *amici* that D.C. Circuit should affirm district court decision denying
11 defendants' motions to dismiss deliberate indifference claim of transgender female detainee who
12 was sexually harassed while housed with male detainees). Because protecting and advancing the
13 rights of transgender people is integral to Lambda Legal's mission, Lambda Legal has a strong
14 interest in the proper resolution of this case.

15 Founded in 1876, The Legal Aid Society is the nation's oldest and largest provider of legal
16 services to indigent clients. Annually, in all five boroughs of New York City, The Legal Aid
17 Society ("LAS") provides legal assistance in more than 300,000 individual matters for low-
18 income families and individuals with civil, criminal, and juvenile rights legal problems. Since
19 1965, we have served as the primary defender in New York City. In addition to representing
20 many thousands of people each year in trial and appellate courts, LAS also pursues impact
21 litigation and other law reform initiatives. Two specific projects at The Legal Aid Society
22 contribute to our interest in the issues raised in the instant case. First, the Trafficking Victims
23 Advocacy Project is a specialized unit in our criminal practice -- dedicated to identifying and
24 advocating for victims of human trafficking and people arrested and prosecuted for prostitution
25 offenses in the criminal justice system. This unit is the first effort by a public defender office to
26 look critically at the issue of criminalization of victims of trafficking and to respond to anti-
27 prostitution policing practices that violate the rights of those engaging in prostitution or those
28 merely profiled as such and falsely arrested. Similarly, the LGBT Law & Policy Initiative at The

1 Legal Aid Society engages in litigation, public policy and legislative efforts on behalf of low-
2 income LGBT New Yorkers, and has specifically fought policies that unjustly discriminate
3 against transgender individuals in the areas of medical coverage and foster care.

4 Transgender Law Center (TLC) is the nation’s largest organization dedicated to advancing
5 the rights of transgender and gender nonconforming people. TLC works to change law, policy,
6 and attitudes so that all people can live safely, authentically, and free from discrimination
7 regardless of their gender identity or expression. TLC works to fight the systems that
8 disproportionately funnel transgender people—and especially low-income transgender people of
9 color—into prison. Transgender Law Center has a serious interest in the proper resolution of this
10 case because unconstitutional ordinances similar to the one defendant was convicted under
11 disproportionately harm transgender women of color around the country.

12 For 30 years, the Urban Justice Center (UJC) has served New York City's most vulnerable
13 residents through a combination of direct legal service, systemic advocacy, community education
14 and political organizing. The UJC assists clients on numerous levels, from one-on-one legal
15 advice, to helping individuals access housing and government assistance, to filing class action
16 lawsuits to bring about systemic change. The UJC often defends the rights of people who are
17 overlooked or turned away by other organizations. The UJC is composed of eleven distinct
18 projects that offer services to severely marginalized individuals, including lesbian, gay, bisexual,
19 and transgender community; survivors of domestic violence; sex workers and those profiled as
20 sex workers; the homeless, veterans and people with mental illness. The UJC seeks a proper
21 resolution of this case because the law under which Monica Jones was convicted is
22 unconstitutional and results in the profiling and targeting of transgender women as well as other
23 marginalized individuals.

24 **B. Accepting the Motion of *Amici Curiae* is Desirable and Will aid the Court.**

25 *Amici* are leading experts in free speech and due process law and doctrine and have
26 substantial background in the impact of criminal laws on certain communities, particularly
27 transgender individuals, LGBT individuals, people of color, immigrants and people living in
28 poverty. As such, *amici* are well positioned to provide important legal information and resources

1 about these subject areas to the Court. Given the speech and liberty interests at stake in this case,
2 and the implications of the case for the rights of other similarly situated defendants both in
3 Phoenix and nationally, it is imperative that the Court hear all relevant information surrounding
4 the invalidity of Phoenix Municipal Code Section 23-52(A)(3) under the First Amendment of the
5 U.S. Constitution and the free speech protections of the Arizona Constitution, art. 2, § 6 and the
6 Due Process Clause of the Fourteenth Amendment of the U.S. Constitution and under the Arizona
7 Constitution, art. 2, §4.

8 *Amici* do not wish to reiterate the arguments set forth in Appellant's Memorandum but
9 seek to offer important information in support of that Memorandum. For the foregoing reasons,
10 *amici* respectfully suggest that the attached brief may assist the Court in resolving the important
11 issues presented in this case.

12 CONCLUSION

13 Wherefore, *amici* respectfully request that this Court grant their motion for leave to file
14 the *amici curiae* brief submitted herewith.

15 Dated: August 5, 2014

16 ACLU FOUNDATION OF ARIZONA

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1 Copy of the foregoing mailed
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