
No. 10-16645

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

**STATE OF ARIZONA AND JANICE K. BREWER, GOVERNOR OF THE STATE OF
ARIZONA, IN HER OFFICIAL CAPACITY,**

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Arizona, Case No. CV 10-1413-PHX-SRB
Hon. Susan Bolton, District Judge, Presiding

**ANTI-DEFAMATION LEAGUE'S MOTION FOR
LEAVE TO FILE AMICUS CURIAE BRIEF**

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Pursuant to Federal Rule of Appellate Procedure 29(a), the Anti-Defamation League (“ADL”) respectfully moves for leave to file the accompanying *amicus curiae* brief in support of Plaintiff-Appellee United States.¹

I. Interest of Movant

ADL is a non-profit organization that fights anti-Semitism and other forms of bigotry, defends democratic ideals and protects civil rights for all. It is the leading nongovernmental organization in the United States that trains law enforcement officers on issues of extremism and hate crimes. It provides training through a national network of regional offices to thousands of law enforcement officers to ensure that they know how to recognize and identify hate crimes and investigate them properly and sensitively.² Additionally, ADL has trained law enforcement leaders at its *Advanced Training School: Course on Extremist and Terrorist Threats* (ATS) in Washington, D.C.³ In partnership with the United States Holocaust Memorial Museum, ADL has also trained more than 45,000 law enforcement professionals in *Law Enforcement and Society: Lessons of the*

¹ Plaintiff-Appellee has consented to ADL’s participation as *amicus curiae*. Defendants-Appellants have informed ADL that, at this time, they do not consent.

² ADL, *Law Enforcement Training*, http://www.adl.org/learn/adl_law_enforcement/default.htm (last visited Sept. 27, 2010).

³ ADL, *Advanced Training School*, http://www.adl.org/learn/learn_main_training/Advanced_Training_School.asp (last visited Sept. 27, 2010).

Holocaust, a program that draws on the lessons of the Holocaust to provide police professionals with an increased understanding of the importance of their relationship to the people they serve and their role as protectors of the Constitution.⁴

ADL also has unmatched expertise concerning the development of hate crimes legislation at the federal and state levels. ADL played a leading role in advocating for passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (“HCPA”), signed into law by President Obama on October 28, 2009 (codified at 18 U.S.C. § 249). HCPA gives the United States Department of Justice the power to investigate and prosecute violent crimes where the perpetrator selects the victim because of the person’s actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity or disability. In 1981, ADL drafted a model state hate crime law that provides for increased penalties for criminals who target their victims because of personal characteristics, such as race, religion, national origin, gender or sexual orientation.⁵ The District of Columbia

⁴ ADL, *Law Enforcement and Society: Lessons of the Holocaust* (Mar. 19, 2009), http://www.adl.org/learn/adl_law_enforcement/LEAS+3-09.htm?LEARN_Cat=Training&LEARN_SubCat=Training_News; Federal Bureau of Investigation, *A Different Kind of Training: What New Agents Learn from the Holocaust* (May 30, 2010), http://www.fbi.gov/page2/mar10/leas_033010.html.

⁵ See ADL, *Hate Crimes Laws*, <http://www.adl.org/99hatecrime/intro.asp> (last visited Sept. 27, 2010); *ADL Model Legislation*, http://www.adl.org/99hatecrime/text_legis.asp (last visited Sept. 27, 2010).

and 45 states, including Arizona, have enacted statutes based on or similar to ADL's model.⁶ Furthermore, ADL has advocated for laws mandating the collection of statistics about hate crimes.

II. ADL's Participation Is Desirable and the Matters Raised in Its Brief Are Relevant.

Through its extensive work with law enforcement and specialized expertise in hate crimes, ADL is uniquely situated to assist the Court in evaluating the impact of S.B. 1070 on the reporting and prevention of hate crimes in Arizona. ADL's proposed brief provides important context about a particular and devastating consequence of the rupture in police-community trust that S.B. 1070 will inevitably cause – the creation of a law enforcement underclass uniquely vulnerable to increased hate crimes and violence. As shown in ADL's brief, unless the District Court's Preliminary Injunction is affirmed, S.B. 1070 will undermine the enforcement of hate crimes in Arizona by driving a wedge between law enforcement and communities whom such laws were designed to protect. That breach in trust will render Arizona's Latino population and immigrant communities, including U.S. Citizens, lawful permanent residents and

⁶ *See, e.g.*, A.R.S. § 13-701(D)(15) (aggravating factor in criminal sentencing includes “[e]vidence that the defendant committed the crime out of malice toward a victim because of the victim’s identity in a group listed in § 41-1750, subsection A, paragraph 3, or because of the defendant’s perception of the victim’s identity in a group listed in § 41-1750, subsection A, paragraph 3”); A.R.S. § 41-1750(A)(3) (discussing “evidence of prejudice based on race, color, religion, national origin, sexual orientation, gender or disability”).

undocumented immigrants, uniquely vulnerable to the commission of hate crimes. These considerations highlight how the enjoined provisions of S.B. 1070 conflict with the clearly manifested intent of Congress and the public policy of Arizona regarding the investigation and prosecution of hate crimes.

As the District Court recognized, courts must “pay[] particular attention to the *public consequences*” of granting or withholding a preliminary injunction. (ER 35, quoting *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 376 (2008) (emphasis added; internal citation omitted).) ADL’s *amicus* brief demonstrates that the public consequences of vacating the Preliminary Injunction – and the public interest – strongly support affirmance.

III. Conclusion

For the foregoing reasons, the Anti-Defamation League’s Motion for Leave to File *Amicus Curiae* Brief should be granted.

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2010, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system on the following:

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