

No. 17-35105

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

STATE OF WASHINGTON, et al.,
Plaintiffs-Appellees,

v.

DONALD TRUMP, President of the United States, et al.,
Defendant-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*
LAW PROFESSORS
IN SUPPORT OF NEITHER PARTY**

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Non-party law professors, Todd Aagaard, David E. Adelman, Robin Kundis Craig, Lincoln L. Davies, Noah Hall, F., Dave Owen, Zygmunt J. B. Plater, Alexander T. Skibine, Lisa Grow Sun, Joseph P. Tomain, and Amy J. Wildermuth, (“the Law Professors”) hereby move for leave to file an *amicus curiae* brief, and for the Court to consider the Law Professors’ attached brief on the issue of state standing in adjudicating Defendants-Appellants’ Emergency Motion for Stay (“Emergency Motion”). The Law Professors respectfully request that the Court consider this brief because the Law Professors are scholars on the issue of state standing and hope the Court may benefit from their analysis of this issue. The Law Professors maintain a neutral position on the underlying merits of the case, and are not filing this brief in support of either party. The Law Professors rather seek to offer guidance to the Court to help resolve the issue of state standing consistent with current law.

I. INTEREST OF THE LAW PROFESSORS

The Law Professors are scholars who have spent considerable time studying the question of state standing. As such, the Law Professors have a strong interest in ensuring that the Court’s decision on standing is consistent with this body of law.

The Law Professors are professors at law schools across the country who research, teach, and write on constitutional law, federal courts and administrative law. The Law Professors are all particularly interested in questions of state standing, and continue to research and study this area of the law.

- Todd Aagaard is the Vice Dean of the Villanova University Charles Widger School of Law. His teaching and research focuses on administrative law, property law, energy law, and environmental law.
- David E. Adelman is the Harry Reasoner Regents Chair in Law at the University of Texas School of Law. He teaches and writes in the areas of environmental law, intellectual property law, administrative law, and climate change policy.
- Robin Kundis Craig is the William H. Leary Professor of Law at the S.J. Quinney College of Law at the University of Utah. She researches the law and policy of “all things water,” including water rights, water pollution, and ocean and coastal issues, as well as climate change adaptation and the intersection of constitutional and environmental law.
- Lincoln L. Davies is the Associate Dean for Academic Affairs, the Hugh B. Brown Professor of Law, and a Presidential Scholar at the University of Utah. His research focuses on administrative law, including standing issues, and on energy and environmental regulation.
- Noah Hall is a law professor at Wayne State University and Scholarship Director of the Great Lakes Environmental Law Center. His research focuses on federalism, state sovereignty, and interstate environmental disputes.

- Dave Owen is a Professor of Law at University of California Hastings College of Law. He teaches courses in environmental, natural resources, water, and administrative law.
- Zygmunt J. B. Plater is a Professor of Law at Boston College Law School, teaching and researching in the areas of environmental, property, land use, and administrative agency law.
- Alexander T. Skibine is a Professor of Law at the S.J. Quinney College of Law at the University of Utah. Professor Skibine has published many articles in the area of federal Indian law and he is frequently invited to speak on federal Indian law issues at venues around the country. He teaches administrative law, constitutional law, torts, and federal Indian law.
- Lisa Grow Sun is an Associate Professor at the J. Reuben Clark Law School at Brigham Young University. She teaches constitutional law, torts, and disaster law, and her research focuses on disaster law.
- Joseph P. Tomain is Dean Emeritus and the Wilbert and Helen Ziegler Professor of Law at University of Cincinnati College of Law. A highly respected professor and scholar, his teaching and research interests focus in the areas of energy law, land use, regulatory policy, and contracts.

- Amy J. Wildermuth is the Associate Vice President for Faculty, Chief Sustainability Officer, and a Professor of Law at the University of Utah. She teaches and writes on civil procedure, administrative law, and U.S. Supreme Court practice.

II. ARGUMENT IN SUPPORT OF LEAVE TO FILE

Pursuant to Fed. R. App. P. 29(a), this Court may grant leave for a non-party to file an *amicus curiae* brief. The District Court granted the Law Professors leave to file an amicus brief on standing during the February 3, 2017 hearing. *State of Washington v. Trump*, W.D. Wash. No. 2:17-cv-00141, Dkt. 51.

The Law Professors seek leave to file the accompanying memorandum to offer their unique perspective on the underlying standing issue. Issues of standing are central to the disposition of this matter,¹ and the Law Professors believe that their analysis on this issue will provide the Court with valuable insight on this question. For example, Professor Wildermuth was counsel of record for several states appearing as *amici curiae* in *Massachusetts v. United States Environmental*

¹ The District Court ordered further briefing on standing in advance of the oral argument on the Temporary Restraining Order, *see State of Washington v. Trump*, 2:17-cv-00141 Dkt. 10; both Appellees and Appellants spent considerable time discussing standing in their oral argument, *see Motion, Ex. E* (“Transcript of Hearing before Judge Robart”), pp. 17-21, 23-26, 34-36, 42, 47; the Temporary Restraining Order held that Appellees had standing to bring its suit, *see Motion, Ex. C* (“Temporary Restraining Order”) pp. 4-5; and the Appellants challenge standing in their Emergency Motion Under Circuit Rule 27-3 for Administrative Stay and Motion for Stay Pending Appeal, *see Motion* pp. 9-12.

*Protection Agency*² on the issue of state standing and has published law review articles on this question. See Amy J. Wildermuth, *Why State Standing in Massachusetts v. EPA Matters*, 27 J. LAND, RESOURCES, & ENVTL. L. 273 (2007), available at <http://epubs.utah.edu/index.php/jlrel/article/view/53/46>; Kathryn A. Watts & Amy J. Wildermuth, *Massachusetts v. EPA: Breaking New Ground on Issues Other Than Global Warming*, 102 NW. U. L. REV. 1029 (2008), 102 NW. U. L. REV. COLLOQUY 1 (2007), available at <http://www.law.northwestern.edu/lawreview/Colloquy/2007/17/LRColl2007n17Watts.pdf>; *Brief of the States of Arizona, Iowa, Maryland, Minnesota, and Wisconsin, as Amici Curiae in Support of Petitioners, Massachusetts v. United States Environmental Protection Agency*, 549 U.S. 497 (2007) (No. 05-1120), 2006 WL 2563380.

The Federal Rules of Appellate Procedure provide that “[a]n amicus curiae that does not support either party must file its brief no later than 7 days after the appellant’s or petitioner’s principal brief is filed.” Fed. R. App. P. 29(a)(6). Because the Emergency Motion has been sent for consideration on an expedited basis, the Law Professors submit their *amicus curiae* brief on February 6, 2017, in time for consideration of the Emergency Motion and well before the standard seven-day deadline set by the Federal Rules.

² *Massachusetts v. EPA* is one of the seminal cases on the question of state standing.

III. CONCLUSION

For the foregoing reasons, the Court should grant this motion and should consider the Law Professors' brief regarding state standing.

RESPECTFULLY SUBMITTED this 6th day of February, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED: February 6, 2017

Respectfully submitted,

s/Claire Loeb Davis
Claire Loeb Davis