

Brian M. Barnard, USB No. 00215
 UTAH CIVIL RIGHTS & LIBERTIES
 FOUNDATION, INC.
 214 East Fifth South Street
 Salt Lake City, Utah 84111-3204
 Telephone: (801) 328-9531
 ulcr2d2c3po@utahlegalclinic.com

Alan E. Schoenfeld (*pro hac vice* pending)
 WILMER CUTLER PICKERING
 HALE AND DORR LLP
 399 Park Avenue
 New York, New York 10022
 Telephone: (212) 230-8800
 alan.schoenfeld@wilmerhale.com

Attorneys for Amicus Curiae
Immigration Equality

**IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF UTAH, CENTRAL DIVISION**

Utah Coalition of La Raza, *et al.*,

Plaintiffs,

v.

Gary R. Herbert, *et al.*,

Defendants.

**MOTION FOR LEAVE TO FILE
 MEMORANDUM OF *AMICUS CURIAE*
 IMMIGRATION EQUALITY IN
 SUPPORT OF PLAINTIFFS**

Case No.: 2:11-CV-401 CW

Judge Clark Waddoups

Immigration Equality respectfully submits this motion for leave to file an *amicus curiae* memorandum in support of the plaintiffs in the above-captioned case.

I. Interest of Amicus

Immigration Equality is a national organization that works to end discrimination in immigration law against those in the gay, lesbian, bisexual, and transgender (“LGBT”) community and immigrants who are living with HIV or AIDS. Incorporated in 1994, Immigration Equality helps those affected by discriminatory practices through education,

outreach, advocacy, and the maintenance of a nationwide resource network and a heavily-trafficked website. Immigration Equality also runs a *pro bono* asylum program and provides technical assistance and advice to hundreds of attorneys nationwide on sexual orientation, transgender, and HIV-based asylum matters.

Immigration Equality is particularly concerned by Utah’s Illegal Immigration Enforcement Act (“HB 497”), as lesbian and gay United States citizens may not sponsor a foreign-born same-sex spouse or partner to immigrate lawfully. By recent estimates, nearly 260 such families live in Utah, many with children. HB 497 makes it likely that many of these families will be torn apart.

II. Reason for Submitting Proposed *Amicus Curiae* Memorandum

Immigration Equality believes an *amicus curiae* memorandum will assist the Court in understanding the ways in which enforcement of Utah Ann. Code § 76-10-2901(2)(b)—the Utah alien harboring statute—raises troubling constitutional issues for binational couples¹ living in Utah. Section 76-10-2901(2)(b) purports to break apart a protected intimate relationship by criminalizing mere cohabitation with an alien spouse or partner who lacks legal status. Immigration Equality’s clients are particularly vulnerable to the destructive force of Section 76-10-2901(2)(b) because, as same-sex couples, sponsorship by the citizen partner for the adjustment of immigration status of the non-citizen partner to lawful permanent residence is unavailable.

Granting this motion will not materially prejudice the parties in this case. Counsel for plaintiffs have consented to this motion. The undersigned counsel for Immigration Equality have

¹ Binational couples are couples in which one partner is a U.S. citizen or permanent resident, and the other is a foreign national.

made repeated attempts to contact and obtain the consent of defendants, but have been unsuccessful in their attempts to reach defendants' counsel.

III. Conclusion

For the foregoing reasons, Immigration Equality respectfully requests the Court to grant leave to file the proposed *amicus curiae* memorandum attached as Exhibit A. A proposed Order granting this motion is attached.

Dated May 31, 2011

Respectfully submitted,
/s/ Brian M. Barnard
Brian M. Barnard, USB No. 00215
UTAH CIVIL RIGHTS & LIBERTIES
FOUNDATION, INC.
214 East Fifth South Street
Salt Lake City, Utah 84111-3204
Telephone: (801) 328-9531
ulcr2d2c3po@utahlegalclinic.com

Alan E. Schoenfeld (*pro hac vice* pending)
WILMER CUTLER PICKERING
HALE AND DORR LLP
399 Park Avenue
New York, New York 10022
Telephone: (212) 230-8800
alan.schoenfeld@wilmerhale.com

Attorneys for Amicus Curiae Immigration Equality

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing, and transmittal of a Notice of Electronic Filing to the following ECF registrants:

UTAH ATTORNEY GENERAL'S OFFICE

Jerrold S. Jensen
jerroldjensen@utah.gov
Thomas D. Roberts
ThomRoberts@utah.gov
OFFICE (160-140857)
160 E 300 S
P.O. BOX 140857
SALT LAKE CITY, UT 84114-0857
(801) 336-0353
Attorneys for State Defendants Gary R. Herbert and Mark Shurtleff

ACLU OF UTAH

Darcy M. Goddard
dgoddard@acluutah.org
355 N 300 W STE 1
SALT LAKE CITY, UT 84103
(801)521-9862
Attorneys for Plaintiffs Centro Civico Mexicano, Coalition of Utah Progressives, Latin American Chamber of Commerce, Salt Lake City Brown Berets, Service Employees International Union, Utah Coalition of La Raza, Workers United Rocky Mountain Joint Board, Alicia Cervantes, Eliana Larios, and Milton Ivan Salazar-Gomex

NATIONAL IMMIGRATION LAW CENTER

Linton Joaquin
joaquin@nilc.org
Karen C. Tumlin
tumlin@nilc.org
Shiu-Ming Cheer
cheer@nilc.org
Melissa S. Keaney
keaney@nilc.org
3435 WILSHIRE BLVD STE 2850
LOS ANGELES, CA 90010
(213)639-3900
Attorneys for Plaintiffs Centro Civico Mexicano, Coalition of Utah Progressives, Latin American Chamber of Commerce, Salt Lake City Brown Berets, Service Employees International Union, Utah Coalition of La Raza, Workers United Rocky Mountain Joint

Board, Alicia Cervantes, Eliana Larios, and Milton Ivan Salazar-Gomex

AMERICAN CIVIL LIBERTIES UNION FOUNDATION (NY)

Omar C. Jadwat

ojadwat@aclu.org

Andre Segura

asegura@aclu.org

Elora Mukherjee

emukherjee@aclu.org

125 BROAD ST 18TH FL

NEW YORK, NY 10004

(212)549-2664

Attorneys for Plaintiffs Centro Civico Mexicano, Coalition of Utah Progressives, Latin American Chamber of Commerce, Salt Lake City Brown Berets, Service Employees International Union, Utah Coalition of La Raza, Workers United Rocky Mountain Joint Board, Alicia Cervantes, Eliana Larios, and Milton Ivan Salazar-Gomex

AMERICAN CIVIL LIBERTIES UNION FOUNDATION (SF)

Cecillia D. Wang

cwang@aclu.org

Katherine Desormeau

kdesormeau@aclu.org

39 DRUMM ST

SAN FRANCISCO, CA 94111

(415)343-0778

Attorneys for Plaintiffs Centro Civico Mexicano, Coalition of Utah Progressives, Latin American Chamber of Commerce, Salt Lake City Brown Berets, Service Employees International Union, Utah Coalition of La Raza, Workers United Rocky Mountain Joint Board, Alicia Cervantes, Eliana Larios, and Milton Ivan Salazar-Gomex

Esperanza Granados

355 N 300 W

SALT LAKE CITY, UT 84103

801-521-9862 ext. 113

egrados@acluutah.org

Attorneys for Plaintiffs Centro Civico Mexicano, Coalition of Utah Progressives, Latin American Chamber of Commerce, Salt Lake City Brown Berets, Service Employees International Union, Utah Coalition of La Raza, Workers United Rocky Mountain Joint Board, Alicia Cervantes, Eliana Larios, and Milton Ivan Salazar-Gomex

MUNGER TOLLES & OLSON LLP

Bradley S. Phillips

brad.phillips@mto.com

355 S GRAND AVE STE 3500

LOS ANGELES, CA 90071-1560

(213)683-9262

Attorneys for Plaintiffs Centro Civico Mexicano, Coalition of Utah Progressives, Latin American Chamber of Commerce, Salt Lake City Brown Berets, Service Employees International Union, Utah Coalition of La Raza, Workers United Rocky Mountain Joint Board, Alicia Cervantes, Eliana Larios, and Milton Ivan Salazar-Gomex

Dated May 31, 2011

Signed: /s/ Brian M. Barnard