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The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STATE OF WASHINGTON, <i>et al.</i> ,	)	
	)	Case No. 2:17-cv-141-JLR
Plaintiffs,	)	
	)	AMERICAN CENTER FOR LAW &
v.	)	JUSTICE'S MOTION FOR LEAVE TO
	)	FILE <i>AMICUS CURIAE</i> BRIEF
DONALD J. TRUMP, <i>et al.</i> ,	)	OPPOSING EMERGENCY MOTION TO
	)	ENFORCE PRELIMINARY INJUNCTION
Defendants.	)	(DKT. #119)
	)	
	)	NOTE ON MOTION CALENDAR:
	)	March 14, 2017

1 Movant, the American Center for Law and Justice (“ACLJ”), respectfully files this  
2 Motion for Leave to File its attached, proposed *Amicus Curiae* Brief in support of  
3 Defendants’ opposition to Plaintiffs’ emergency motion to enforce the preliminary  
4 injunction. *See* Dkt. #'s 84, 119.

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6 **I. DISTRICT COURTS HAVE AUTHORITY TO ACCEPT *AMICUS* BRIEFS.**

7 District courts have the authority to “consider amicus briefs from non-parties  
8 ‘concerning legal issues that have potential ramifications beyond the parties directly involved  
9 . . . .’” *Skokomish Indian Tribe v. Goldmark*, 2013 U.S. Dist. LEXIS 151310, at \*5 (W.D.  
10 Wash. 2013). *Amicus* briefs are “frequently welcome” in district courts, especially when “the  
11 amicus has ‘unique information or perspective that can help the court beyond the help that  
12 the lawyers for the parties are able to provide.’” *NGV Gaming, Ltd. v. Upstream Point*  
13 *Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (quoting *Cobell v. Norton*, 246 F.  
14 Supp. 2d 59, 62 (D.D.C. 2003)). This assistance to the court is helpful “in case[s] of general  
15 public interest,” and “supplements the efforts of counsel, and draws the court’s attention to  
16 law that escaped consideration.” *Miller-Wohl Co. v. Comm’r of Labor & Indus. State of*  
17 *Mont.*, 694 F.2d 203, 204 (9th Cir. 1982). The case before this Court implicates issues of  
18 general public interest. The proper resolution of this case is a matter of utmost concern to the  
19 ACLJ because of its impact on the integrity of the Constitutional process and the safety of  
20 American citizens, many of whom are ACLJ members. In the past, this Court has granted  
21 non-profit organizations leave to participate as *amici* where those organizations had “a  
22 particular perspective that may not otherwise be before the court.” *Microsoft Corp. v. United*  
23 *States DOJ*, 2016 U.S. Dist. LEXIS 115867, at \*27 (W.D. Wash. Aug. 29, 2016).  
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1 **II. INTEREST OF THE MOVANT**

2 The ACLJ is an organization dedicated to the defense of constitutional liberties  
3 secured by law. Counsel for the ACLJ have presented oral argument, represented parties, and  
4 submitted *amicus* briefs before the United States Supreme Court and numerous state and  
5 federal courts around the country in cases concerning the First Amendment and immigration  
6 law, including *FEC v. Wisconsin Right to Life*, 551 U.S. 449 (2007), *McConnell v. FEC*, 540  
7 U.S. 93 (2003), *United States v. Texas*, 136 S. Ct. 2271 (2016), and *Washington v. Trump*,  
8 2017 U.S. App. LEXIS 2369 (9th Cir. 2017). The ACLJ has been active in advocacy and  
9 litigation concerning the need for protecting the Constitution, the separation of powers, and  
10 the immigration laws in place that protect American citizens from harm. The ACLJ believes  
11 it can offer this Court information or perspective that will assist it in deciding the pending  
12 issues. The ACLJ respectfully submits that its participation as *amicus curiae* will aid the  
13 Court in resolving this case.  
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16 **III. MOVANT'S BRIEF IS TIMELY AND USEFUL TO THE DISPOSITION OF  
THE ISSUES BEFORE THE COURT.**

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18 “There are no particular local rules governing when an *amicus curiae* must file its  
19 brief in response to a motion of one of the parties.” *Skokomish Indian Tribe*, 2013 U.S. Dist.  
20 LEXIS 151310, at \*7. The ACLJ has submitted its *amicus curiae* brief along with this  
21 motion the same day that Defendants’ opposition to Plaintiffs’ emergency motion to enforce  
22 the preliminary injunction is due. Dkt. # 120. Thus, the ACLJ asks this Court to accept this  
23 motion and its *amicus curiae* brief as timely filed.  
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25 The issues presented before this Court are complex matters of constitutional and  
26 national security law. The ACLJ’s team of constitutional lawyers is uniquely situated to  
27 provide insight into the matters now before this Court. In the following respects the attached,  
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1 proposed *amicus curiae* brief will provide this Court with unique or helpful information  
2 beyond what the parties can provide. *See* Dkt. # 84.

3         1. The brief explains that this case is not a standard Establishment Clause case  
4 wherein the Court examines the primary purpose and effect of the government’s actions.  
5 Rather, this case involves the special context of a presidential executive order (“EO”),  
6 enacted pursuant to the President’s constitutional and statutory authority, concerning the  
7 admission of aliens into the United States from six unstable and terrorism-infested countries  
8 of particular concern. When the Supreme Court has considered constitutional challenges to  
9 immigration-related actions of this sort, it has declined to subject those actions to the same  
10 level of scrutiny applied to non-immigration-related actions. As the Supreme Court has held,  
11 “when the Executive exercises [the power to exclude an alien] on the basis of a facially  
12 legitimate and bona fide reason, the courts will neither look behind the exercise of that  
13 discretion, nor test it by balancing its justification against” opposing interests. *Kleindienst v.*  
14 *Mandel*, 408 U.S. 753, 770 (1972). The EO, which pauses the entry of immigrants from these  
15 countries of concern, for the legitimate purpose of allowing time for needed improvements to  
16 the immigration and refugee screening process, is valid under the governing standards.  
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19         2. Even if the EO were subjected to traditional Establishment Clause analysis,  
20 however, it still passes constitutional muster. The EO satisfies the “purpose prong” of *Lemon*  
21 *v. Kurtzman*, 403 U.S. 602, 612-13 (1971), by furthering the secular purpose of protecting  
22 national security. Moreover, Plaintiffs’ attempt to sidestep the EO’s obvious secular purpose  
23 by focusing on miscellaneous comments made by then-candidate Trump, or by his advisors,  
24 is flawed for at least three reasons.  
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26         • The Supreme Court has emphasized, in the context of legislative enactments, that  
27 “what is relevant is the legislative purpose of the statute, not the possibly religious motives of  
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1 the legislators who enacted the law.” *Bd. of Educ. v. Mergens*, 496 U.S. 226, 249 (1990)  
2 (plurality opinion). The EO, on its face, serves the secular purpose of protecting national  
3 security.

4       • Miscellaneous comments by a candidate for public office, or his or her proxies,  
5 *while on the campaign trail and as a private citizen(s)* do not constitute “*contemporaneous*  
6 *legislative history*” or official acts. *See McCreary Cnty. v. ACLU*, 545 U.S. 844, 862 (2005).  
7 Indeed, “one would be naive not to recognize that campaign promises are—by long  
8 democratic tradition—the least binding form of human commitment.” *Republican Party of*  
9 *Minn. v. White*, 536 U.S. 765, 780 (2002).

10       • The mere suggestion of a possible religious or anti-religious motive, mined from  
11 past comments of a political candidate or his supporters is not enough to doom government  
12 action. The Supreme Court has explained that “all that *Lemon* requires” is that government  
13 action have “*a* secular purpose,” not that its purpose be “*exclusively* secular,” and a policy is  
14 invalid under this test only if it “was motivated *wholly* by religious considerations.”<sup>1</sup> The EO  
15 clearly serves a secular purpose and satisfies *Lemon*’s purpose test. The secular purpose of  
16 the EO—protecting our national security—is genuine.

#### 19 IV. CONCLUSION

20       The ACLJ respectfully requests that this Court grant its motion, allow it to participate  
21 as *amicus curiae*, and accept for filing its attached *amicus curiae* brief.  
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25 <sup>1</sup> *Lynch v. Donnelly*, 465 U.S. 668, 680-81 & n.6 (1984) (emphasis added); *see also Van Orden v. Perry*, 545  
26 U.S. 677, 703 (2005) (Breyer, J.) (upholding government action that “serv[ed] a mixed but primarily  
27 nonreligious purpose”); *Bowen v. Kendrick*, 487 U.S. 589, 602 (1988) (“[A] court may invalidate a statute only  
28 if it is motivated wholly by an impermissible purpose.”).

1 Dated: March 14, 2017.

Respectfully submitted,

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 14, 2017, the foregoing motion, attached proposed  
3 order, and attached proposed *amicus curiae* brief were electronically filed with the Court's  
4 CM/ECF system, which will send notification of such filing to all attorneys of record.

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