

NO. 88694-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

E.J.J.,

Petitioner/Appellant.

**MOTION OF THE AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF**

Charles C. Sipos, WSBA No. 32825
David A. Perez, WSBA No. 43959
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AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION

Attorneys for Amicus Curiae
American Civil Liberties Union of Washington

I. Request for Permission to File Amicus Brief

A. Identity of Moving Party

The American Civil Liberties Union of Washington (“ACLU”) is a statewide, nonprofit, nonpartisan organization with over 20,000 members that is dedicated to the principles of liberty and equality embodied in the Constitution. As part of its mission, the ACLU works to preserve the First Amendment freedoms to observe and voice criticism of police officers acting in their official capacity.

B. Facts Relevant to Motion

The amicus brief was prepared by lawyers authorized to practice law in Washington, as required by RAP 10.6(a). The brief likewise satisfies the requirements of RAP 10.6(b).

1. Amicus Interest in this Case

Amicus has a special interest in promoting the principles of liberty and equality embodied in the Constitution. That interest includes ensuring that individuals may freely observe and criticize public officials without fear of arrest.

In this case, the State used Washington’s obstruction statute, RCW 9A.76.020, to punish an individual for exercising these rights. Amicus is a longstanding advocate and supporter of the First Amendment and of reform efforts aimed at ensuring that RCW 9A.76.020 is applied in a constitutional manner.

2. Familiarity with Issues and Argument

Amicus has reviewed the record, the decision below, and the arguments presented by the parties in their respective briefs.

3. Issues Amicus Curiae Brief Will Address

Amicus presents two arguments for the Court's consideration. First, Amicus argues that the Court should reverse E.J.J.'s ("Jordan") conviction because his conviction was based upon his verbal criticism of police. The First Amendment ensures that individuals may freely criticize police officers without risking arrest. *City of Houston, Tex. v. Hill*, 482 U.S. 451, 107 S. Ct. 2502, 96 L. Ed. 2d 398 (1987); *Gulliford v. Pierce Cnty.*, 136 F.3d 1345, 1350 (9th Cir. 1998) (finding that defendant's obscenity-laden criticism of police was protected speech).

Second, Amicus argues that the First Amendment also protects an individual's right to observe police while acting in their official capacity and that this observation is crucial to ensuring police accountability. *Fordyce v. City of Seattle*, 55 F.3d 436, 437-39 (9th Cir. 1995). As Jordan's conviction rested on these grounds, it must be reversed, and in order to ensure that no more individuals are subject to unconstitutional convictions for obstruction under RCW 9A.76.020, this Court should also reiterate that affirmative obstructive conduct is necessary to support a conviction under it.

II. Relief Requested

Amicus requests that the court allow the filing of their brief, on the

ground that the brief meets all of the requirements contained in RAP 10.6 and will be helpful to the Court.

III. Timeliness

Under RAP 10.2(f) this amicus brief is due on January 28, 2014.

IV. Conclusion

Amicus respectfully requests that the Court accept this proposed *amicus curiae* brief for filing.

DATED: January 27, 2014

**AMERICAN CIVIL LIBERTIES
UNION OF WASHINGTON**

By: /s/ Charles C. Sipos

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CERTIFICATE OF SERVICE

I, David A. Perez, attorney for Amicus Curiae American Civil Liberties Union of Washington, certify that on January 27, 2014, I personally served to each of the following persons a copy of the document on which this certification appears:

Lila Silverstein (via email)

Counsel for
Petitioner/Appellant

Dennis J. McCurdy and Daniel T.
Satterberg (via email)

Counsel for Respondent

Signed at Seattle, Washington, this 27th day of January, 2014.

/s/ David A. Perez