

No. 82736-2

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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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**STATE OF WASHINGTON,**

**Respondent,**

**v.**

**KEVIN MONDAY,**

**Petitioner.**

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

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The American Civil Liberties Union of Washington (“ACLU-WA”) respectfully moves, pursuant to RAP 10.1(e) and 10.6, to file a brief as *amicus curiae* addressing the need for the courts to adopt a standard for reversal that provides a strong deterrent to prosecutor misconduct involving appeals to racial prejudice in a jury trial. This motion for leave to file is timely because it is being filed more than 30 days in advance of oral argument. In support of this motion, ACLU-WA offers the following information:

### **I. IDENTITY AND INTEREST OF AMICUS**

The American Civil Liberties Union of Washington (ACLU) is a statewide, nonprofit, non-partisan organization with over 20,000 members dedicated to the preservation of civil liberties and civil rights, including the right of equal protection of the laws and right to a justice system free of discrimination or bias. The ACLU has submitted amicus briefs in numerous cases where these rights have been at stake including *State v. Hicks*, 163 Wn.2d 477, 181 P.3d 831 (2008) (whether trial court erred in denying *Batson* challenge to excusal of only African-American juror on panel) and *Turner v. Stime*, 153 Wn.App. 581, 222 P.3d 1243 (2009) (ordering new trial because jurors’ racially-based comments about the plaintiffs’ lawyer deprived the plaintiffs of a fair trial).

## **II. FAMILIARITY WITH THE ISSUES AND THE PARTIES' ARGUMENTS**

As described in Part I above, ACLU-WA has substantial expertise on issues involving race discrimination in criminal and civil trials. ACLU-WA has obtained copies of, and is familiar with, the briefing submitted by the parties in this Court and in the Court of Appeals, and the Court of Appeals' decision. ACLU-WA is familiar with the scope of the arguments presented by the parties and has not unduly repeated arguments previously raised.

## **III. ISSUE TO BE ADDRESSED BY ACLU-WA**

ACLU-WA's amicus brief discusses the numerous cases from Washington and other jurisdictions which have condemned appeals to racial prejudice as occurred here, information from other authoritative sources illustrating the importance of eliminating racial prejudice in criminal trials, and authority supporting a strong and effective remedy to deter prosecutor appeals to racial prejudice in the future.

## **IV. WHY BRIEFING BY ACLU-WA WILL ASSIST THE COURT**

ACLU-WA believes that its extensive experience with a variety of issues involving race discrimination in criminal and civil trials provides an important and independent perspective on the prosecutor misconduct issue before the Court. Its brief provides relevant authority and information not

cited by the parties. A fully informed decision is essential, and the additional argument provided by ACLU-WA will be helpful to the Court. RAP 10.6(a).

**V. CONCLUSION**

For the foregoing reasons, ACLU-WA respectfully requests that the Court grant leave to appear as *amicus curiae* and file the attached brief.

Respectfully submitted this 9th day of April, 2010.

**AMERICAN CIVIL LIBERTIES UNION  
OF WASHINGTON FOUNDATION**

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