

THE HONORABLE JAMES L. ROBERT

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

STATE OF WASHINGTON,)
)
Plaintiff,)
)
v.)
)
DONALD TRUMP, in his official capacity)
as President of the United States; U.S.)
DEPARTMENT OF HOMELAND)
SECURITY; JOHN F. KELLY, in his official)
capacity as Secretary of the Department of)
Homeland Security; TOM SHANNON, in his)
official capacity as Acting Secretary of State;)
and the UNITED STATES OF AMERICA,)
)
Defendants.)
_____)

Case No. 2:17-cv-00141-JLR

**LAW PROFESSORS' MOTION FOR
LEAVE TO FILE AMICUS CURIAE
BRIEF ON THE SUBJECT OF
STATE STANDING**

**NOTE FOR MOTION DATE:
FEBRUARY 2, 2017**

1 **I. INTRODUCTION**

2 Non-party law professors, Todd Aagaard, Robin Kundis Craig, Lincoln L. Davies, Noah
3 Hall, F. Andrew Hessick, Zygmunt J. B. Plater, Alexander T. Skibine, Lisa Grow Sun, Joseph
4 P. Tomain, and Amy J. Wildermuth, (“the Law Professors”) hereby move for leave to file an
5 *amicus curiae* brief, and for the Court to consider the Law Professors’ attached brief on the
6 issue of state standing. *See* Exhibit A. The Law Professors respectfully request that the Court
7 consider this brief because the Law Professors are scholars on the issue of state standing and
8 hope the Court may benefit from their analysis on this issue. The Law Professors maintain a
9 neutral position on the underlying merits of the case, and are not filing this brief in support of
10 either party. The Law Professors rather seek to offer guidance to the Court to help resolve the
11 issue of state standing consistent with current law.

12 **II. INTEREST OF THE LAW PROFESSORS**

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

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

- 21 • Todd Aagaard is the Vice Dean of the Villanova University Charles Widger
22 School of Law. His teaching and research focuses on administrative law,
23 property law, energy law, and environmental law.
- 24 • Robin Kundis Craig is the William H. Leary Professor of Law at the S.J.
25 Quinney College of Law at the University of Utah. She researches the law and
26 policy of “all things water,” including water rights, water pollution, and ocean
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1 and coastal issues, as well as climate change adaptation and the intersection of
2 constitutional and environmental law.

- 3 • Lincoln L. Davies is the Associate Dean for Academic Affairs, the Hugh B.
4 Brown Professor of Law, and a Presidential Scholar at the University of
5 Utah. His research focuses on administrative law, including standing issues, and
6 on energy and environmental regulation.
- 7 • Noah Hall is a law professor at Wayne State University and Scholarship
8 Director of the Great Lakes Environmental Law Center. His research focuses on
9 federalism, state sovereignty, and interstate environmental disputes.
- 10 • F. Andrew Hessick is a Professor of Law at the University of North Carolina
11 School of Law. Professor Hessick's research interests include federal courts,
12 administrative law, remedies, and criminal sentencing.
- 13 • Zygmunt J. B. Plater is a Professor of Law at Boston College Law School,
14 teaching and researching in the areas of environmental, property, land use, and
15 administrative agency law.
- 16 • Alexander T. Skibine is a Professor of Law at the S.J. Quinney College of Law
17 at the University of Utah. Professor Skibine has published many articles in the
18 area of federal Indian law and he is frequently invited to speak on federal Indian
19 law issues at venues around the country. He teaches administrative law,
20 constitutional law, torts, and federal Indian law.
- 21 • Lisa Grow Sun is an Associate Professor at the J. Reuben Clark Law School at
22 Brigham Young University. She teaches constitutional law, torts, and disaster
23 law, and her research focuses on disaster law.
- 24 • Joseph P. Tomain is Dean Emeritus and the Wilbert and Helen Ziegler Professor
25 of Law at University of Cincinnati College of Law. A highly respected professor
26 and scholar, his teaching and research interests focus in the areas of energy law,
27 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.

III. ARGUMENT IN SUPPORT OF LEAVE TO FILE

Although participation as *amici curiae* is typically associated with appeals, district courts have “broad discretion” to appoint *amici curiae*. *Skokomish Indian Tribe v. Goldmark*, No. C13-5071JLR, 2013 WL 5720053, at *1 (W.D. Wash. Oct. 21, 2013) (Robart, J.). As such, “[d]istrict courts may consider *amicus* briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. *Id.* (internal citations omitted). “Historically, *amicus curiae* is an impartial individual who suggests the interpretation and status of the law, gives information concerning it, and advises the Court in order that justice may be done, rather than to advocate a point of view so that a cause may be won by one party or another.” *Cnty. Ass’n for Restoration of Env’t (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999) (internal citations omitted). Thus, an *amicus* brief is “designed to supplement and assist in cases of general public interest, supplement the efforts of counsel, and draw the court’s attention to law that might otherwise escape consideration.” *Id.*

The Law Professors seek leave to file the accompanying memorandum to offer their unique perspective on the underlying standing issue. The Court has ordered further briefing on standing (Dkt. 10), and the Professors believe that their analysis on this issue will provide the Court 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 Protection Agency*¹ on the issue of state standing and has published law review

¹ *Massachusetts v. EPA* is one of the seminal cases on the question of state standing.

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

10 There are no rules governing the timeline for submission for *amici curiae* in district
 11 court. *Skokomish Indian Tribe*, 2013 WL 5720053, at *2. The Federal Rules of Appellate
 12 Procedure provide some guidance on timing, but those rules would not apply here in light of
 13 the expedited briefing schedule. As such, the Law Professors have endeavored to provide the
 14 Court their Memorandum as quickly as possible, and in advance of the February 3, 2017
 15 hearing on the State of Washington's TRO.

16 III. CONCLUSION

17 For the foregoing reasons, the Court should grant this motion and should consider the
 18 Law Professor's brief regarding state standing.

19 DATED: February 2, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February 2017, I electronically filed the foregoing document with the United States District Court ECF system, which will send notification of such filing to the following:

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11 Signed at Seattle, Washington, this 2nd day of February, 2017.
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