

HONORABLE JAMES L. ROBERT

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON and
STATE OF MINNESOTA,

Plaintiffs,

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.

NO. 2:17-cv-00141 JLR

**MOTION FOR LEAVE TO FILE BRIEF OF
AMICUS CURIAE AMERICANS UNITED
FOR SEPARATION OF CHURCH AND
STATE IN SUPPORT OF STATE OF
WASHINGTON'S AMENDED MOTION
FOR TEMPORARY RESTRAINING
ORDER**

**NOTE ON MOTION CALENDAR:
February 2, 2017**

1 Pending before the Court is the State of Washington's motion for a temporary restraining
2 order to enjoin enforcement of President Trump's Executive Order banning individuals from
3 predominantly Muslim countries from entering the United States. Exec. Order No. 13,769, 82 Fed.
4 Reg. 8977 (Jan. 27, 2017). Americans United for Separation of Church and State respectfully
5 requests leave to file the accompanying proposed *amicus* brief in support of the State.

6 Identity and Interest of *Amicus Curiae*

7 Americans United is a national, nonsectarian public-interest organization. Its mission is
8 twofold: (1) to advance the free-exercise rights of individuals and religious communities to
9 worship as they see fit, and (2) to preserve the separation of church and state as a vital component
10 of democratic government. Americans United represents more than 125,000 members and
11 supporters across the country. Since its founding in 1947, Americans United has regularly
12 participated as a party, as counsel, or as an *amicus curiae* in leading church-state cases decided by
13 the United States Supreme Court and by federal and state trial and appellate courts throughout the
14 country, including many cases involving Washington residents.

15 Americans United has long defended the fundamental rights of religious minorities in the
16 United States by, among other things, bringing legal challenges to governmental action that singles
17 out particular religions for favor or disfavor. *See, e.g., Ziglar v. Abbasi*, 2016 WL 7473962 (U.S.
18 2016) (supporting Muslim petitioners who were detained and tortured after the terror attacks of
19 September 11, 2001); *Hassan v. City of New York*, 2014 WL 3572027 (3d Cir. 2015) (supporting
20 challenge to New York City Police Department's surveillance of Muslim communities); *Awad v.*
21 *Ziriah*, 2011 WL 2118216 (10th Cir. 2012) (supporting challenge to Oklahoma law that singled out
22 Islam for official disfavor). Americans United also advocated for the passage of the Religious
23 Freedom Restoration Act, 42 U.S.C. §§ 2000bb, and its sister statute, the Religious Land Use and
24 Institutionalized Persons Act, 42 U.S.C. §§ 2000cc *et seq.*, and routinely participates as counsel or
25 as an *amicus curiae* in cases arising under these statutes. *See, e.g., Holt v. Hobbs*, 2014 WL

1 2361896 (2015). Notably, Americans United filed an *amicus* brief in *Cutter v. Wilkinson*, 544 U.S.
2 709 (2005), proposing the factors for the test of constitutionally permissible religious
3 accommodations under RFRA and RLUIPA that the Supreme Court then adopted.

4 **Reasons Why the Motion Should Be Granted**

5 This Court “has ‘broad discretion’ to appoint *amicus curiae*.” *Skokomish Indian Tribe v.*
6 *Goldmark*, No. C13-5071, 2013 WL 5720053, at *1 (W.D. Wash. Oct. 21, 2013). The district
7 courts regularly consider *amicus* briefs “concerning legal issues that have potential ramifications
8 beyond the parties directly involved or if the *amicus* has ‘unique information or perspective that
9 can help the court beyond the help that the lawyers for the parties are able to provide.’” *Id.*
10 (quoting *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D.
11 Cal. 2005)).

12 The issues in this case, including those that are the subject of the pending TRO motion,
13 have important ramifications for persons living not only in Washington but across the United
14 States and around the world. If the challenged Executive Order is not enjoined, families who
15 currently find themselves living in different countries will be estranged. People fleeing war-torn
16 regions will be turned away from borders and given no opportunity to seek or obtain refuge from
17 the horrors that they face in their countries of origin. And nothing more than birthplace and
18 religion will determine whether millions of people have access to the opportunities of life in the
19 United States. What is more, it is not only the targeted Muslims who will be affected the
20 implementation of the Executive Order. The seismic shift in this Nation’s treatment of a religious
21 minority will be felt by neighborhoods, houses of worship, and local businesses, which will suffer
22 the loss of valued members of their communities.

23 The hardships in this country and across the world that will be caused by official
24 discrimination against a single religious group highlight the importance of correctly analyzing and
25 deciding questions of religious–freedom rights—legal issues that Americans United is uniquely

1 positioned to assist this Court in parsing. The proposed *amicus* brief explains why the
2 Establishment Clause of the First Amendment to the U.S. Constitution and the Religious Freedom
3 Restoration Act both bar enforcement of the anti-Muslim Executive Order. As the brief explains,
4 the government is forbidden to discriminate against Muslims. It is forbidden to endorse any
5 religion over others. And it is forbidden to impose or apply religious tests in making official
6 determinations and taking official actions. The Executive Order does all of this and more.

7 Plaintiffs have consented to this motion and the filing of the accompanying *amicus* brief.
8 Defendants have informed counsel for the *amicus* that they take no position on the filing of the
9 brief.

10 If the Court grants the motion, Americans United requests that the brief be considered filed
11 as of the date of this motion.

12 For the Court's benefit, counsel for Americans United will be present in the courtroom for
13 the hearing on the motion for a temporary restraining order on February 3, 2017. Should the Court
14 wish, counsel is prepared to speak to the issues in the accompanying brief and to answer any
15 questions that the Court may have.

16 Date: February 2, 2017
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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2017, the foregoing document was electronically filed with the United States District Court's CM/ECF system, which will send notification of such filing to all attorneys of record.

Americans United for Separation of Church and State

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