

No. 91642-0

SUPREME COURT  
OF THE STATE OF WASHINGTON

---

CORTNEY BLOMSTROM, BROOKE M. BUTTON, and  
CHRISTOPHER V. COOPER,

*Petitioners,*

v.

THE HONORABLE GREGORY TRIPP, SPOKANE  
COUNTY DISTRICT COURT JUDGE,

*Respondent.*

---

ON APPEAL FROM A DECISION OF THE SPOKANE COUNTY  
SUPERIOR COURT  
Honorable Salvatore Cozza

---

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

---

James E. Lobsenz, WSBA #8787  
CARNEY BADLEY SPELLMAN,  
P.S.  
701 Fifth Avenue, Suite 3600  
Seattle, Washington 98104-7010  
(206) 622-8020  
Cooperating Attorney for ACLU-WA

Nancy Talner, WSBA #11196  
AMERICAN CIVIL LIBERTIES  
UNION OF WASHINGTON  
FOUNDATION  
901 Fifth Avenue, Suite 630  
Seattle, Washington 98164  
(206) 624-2184

Theresa H. Wang, WSBA #39784  
Lance A. Pelletier, WSBA #49030  
STOKES LAWRENCE, P.S.  
1420 Fifth Avenue, Suite 3000  
Seattle, Washington 98101-2393  
(206) 626-6000  
Cooperating Attorney for ACLU-  
WA

*Attorneys for Amicus Curiae*

The American Civil Liberties Union of Washington (“ACLU”) respectfully moves, pursuant to RAP 10.1(e) and 10.6 for leave to file an *amicus* brief in this matter. The Brief of *Amicus Curiae* (“Brief”) is filed with this Motion. In support of this Motion, the ACLU offers the following information.

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

The ACLU is a statewide, nonpartisan, nonprofit organization with over 75,000 members and supporters dedicated to the preservation and promotion of civil liberties. It is well-settled in Washington that individuals have a constitutionally protected interest in the privacy of their internal bodily functions and fluids, and that the State infringes on this interest when it takes an individual’s bodily fluids such as blood, DNA, urine, or breath. Defendants released pending trial are entitled to the presumption of innocence and do not have a diminished privacy interest. The ACLU has been a steady advocate for these privacy protections and has filed *amicus* briefs and engaged in legislative advocacy in support of these constitutional rights.

**II. FAMILIARITY WITH ISSUES AND SCOPE OF ARGUMENT ON REVIEW**

Counsel for *amicus* have read the briefs of Petitioner and Appellant. Counsel are familiar with the Parties’ arguments and have not unduly repeated them.

### **III. ISSUES ADDRESSED BY *AMICUS***

Whether this Court should find that the trial court's orders requiring Petitioners to submit to the bodily intrusion of random, warrantless, suspicionless UA testing as a condition of pretrial release violated WASH. CONST. Art. 1, sec. 7.

Whether the trial court orders imposing suspicionless UA testing as a condition of pretrial release raises significant concerns under the applicable court rule regarding pretrial release conditions.

Whether the provisions of the orders requiring indigent defendants to pay the costs of the tests result in disparate and unfair treatment of rich and poor defendants.

### **IV. WHY *AMICUS* BRIEFING WILL ASSIST THE COURT**

For the reasons explained in Petitioners' opening and reply briefs, in the Amicus Brief ACLU filed in *State v. Olsen*, Case No. 93315-4 pending in this Court (argued 2/16/17), and in the Amicus Brief filed in conjunction with this motion, the trial court's orders requiring Petitioners to submit to the bodily intrusion of random, warrantless, suspicionless UA testing as a condition of pretrial release violated WASH. CONST. Art. 1, sec. 7. The random, warrantless, and suspicionless UA testing at issue here would greatly compromise the state constitution's strong privacy protection, an interest the ACLU has sought to protect through submission of *amicus* briefs and other forms of advocacy. The *amicus* brief will also

address the applicable court rule on pretrial release conditions, and provisions of the orders requiring indigent defendants to pay the costs of the tests, more specifically, emphasizing that the payment conditions exacerbate disparate and unfair treatment of rich and poor defendants, and raise concerns similar to the “debtor’s prison” problems that this Court has confronted in other cases. The additional argument provided by the amicus brief will assist the Court in making a fully informed decision. RAP 10.6(a).

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

**V. CONCLUSION**

For the foregoing reasons, the ACLU respectfully requests that the Court grant leave to file the *amicus* brief filed concurrently with this Motion.

Respectfully submitted this 24th day of April, 2017.

**STOKES LAWRENCE, P.S.**

By /s/ Theresa H. Wang

Theresa Wang, WSBA # 39784

Lance Pelletier, WSBA # 49030

*Lance.Pelletier@stokeslaw.com*

*Theresa.Wang@stokeslaw.com*

Cooperating Attorneys for ACLU-WA

**CARNEY BADLEY SPELLMAN, P.S.**

James E. Lobsenz, WSBA #8787

*lobsenz@carneylaw.com*

Cooperating Attorney for ACLU-WA

**ACLU-WA FOUNDATION**

Nancy Talner, WSBA #11196

*talner@aclu-wa.org*

*Attorneys for Amicus Curiae*

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 24th day of April, 2017, I caused a true and correct copy of the foregoing document, “Motion for Leave to File Brief of *Amicus Curiae* American Civil Liberties Union of Washington,” to be delivered via email to the following counsel of record:

Counsel for Petitioners:

Michael Vander Giessen  
*MVANDERGIESSEN@spokanecounty.org*

Counsel for Respondent:

Brian O’Brien  
Gretchen E. Verhoef  
Samuel J. Comi  
*BOBRIEN@spokanecounty.org*  
*GVERHOEF@spokanecounty.org*  
*SJCOMI@spokanecounty.org*  
*scpaappeals@spokanecounty.org*

Dated this 24th day of April, 2017, at Seattle, Washington.

/s/ Theresa H. Wang  
Theresa Wang, WSBA # 39784  
Stokes Lawrence, P.S.  
1420 Fifth Avenue, Suite 3000  
Seattle, WA 98101  
(206) 626-6000  
Fax: (206) 464-1496  
*Theresa.Wang@stokeslaw.com*