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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Mikkel Jordahl; Mikkel (Mik)
Jordahl, P.C.,

Plaintiffs,

vs.

Mark Brnovich, Arizona Attorney
General; Jim Driscoll, Coconino
County Sheriff; Matt Ryan,
Coconino County Jail District
Board of Directors Member; Lena
Fowler, Coconino County Jail
District Board of Directors
Member; Elizabeth Archuleta,
Coconino County Jail District
Board of Directors Member; Art
Babbott, Coconino County Jail
District Board of Directors
Member; Jim Parks, Coconino
County Jail District Board of
Directors Member, all in their
official capacities,
Defendants.

**CASE NO: 3:17-CV-08263-PCT-
DJH**

**MOTION FOR LEAVE TO
FILE BRIEF OF *AMICUS
CURIAE* ZACHOR LEGAL
INSTITUTE.**

1 Movant, Zachor Legal Institute, respectfully moves this court for leave to
2 participate as *amicus curiae* and file a brief in support of Defendants’ combined
3 response to Plaintiffs’ motion for preliminary injunction and motion to dismiss. A
4 true and correct copy of the proposed brief has been submitted with this motion.

5 **I. PARTIES’ POSITION ON THIS MOTION.**

6 Consent for Movant’s proposed brief was sought from Plaintiffs and
7 Defendants. Plaintiffs’ counsel took no position on Movant filing as *amicus*
8 *curiae*. Defendants’ counsel consented to Movant filing as *amicus curiae*.

9 **II. DISTRICT COURTS HAVE AUTHORITY TO ACCEPT AMICUS**
10 **BRIEFS.**

11 Federal district courts possess the inherent authority to accept amicus
12 briefs. *In re Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1249 n.34 (11th Cir.
13 2006) (“[D]istrict courts possess the inherent authority to appoint ‘friends of the
14 court’ to assist in their proceedings.”); *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (2d
15 Cir. 1982); *United States ex rel. Gudur v. Deloitte Consulting Llp*, 512 F. Supp. 2d
16 920, 927 (S.D. Tex. 2007) (“The extent to which the court permits or denies
17 amicus briefing lies solely within the court’s discretion.”). “No statute, rule, or
18 controlling case defines a federal district court’s power to grant or deny leave to
19 file an amicus brief, . . . and in the absence of controlling authority, district courts
20 commonly refer to [Federal Rule of Appellate Procedure] 29 for guidance.”
21 *Gudur*, 512 F. Supp. 2d at 927. “Factors relevant to the determination of whether
22 amicus briefing should be allowed include whether the proffered information is
23 ‘timely and useful’ or otherwise necessary to the administration of justice.” *Id.*
24 *Amici’s* role is to assist the court “in cases of general public interest by making
25 suggestions to the court, by providing supplementary assistance to existing
26 counsel, and by insuring a complete and plenary presentation of difficult issues so
27 that the court may reach a proper decision.” *N.A.A.C.P. v. Town of Harrison*, 940
28 F.2d 792, 808 (3d Cir. 1991).

1 *Amici* do not have to be impartial to the outcome of a case. *Hoptowit*, 682
2 F.2d at 1260. Courts generally welcome the participation of *amici* where *amici*
3 help in “...assisting in a case of general public interest, supplementing the efforts
4 of counsel and drawing the court’s attention to law that might otherwise escape
5 consideration.” *Funbus Systems, Inc. v. State of California Pub. Utilities Comm’n*,
6 801 F.2d 1120, 1125 (9th Cir. 1986). Supreme Court Justice Samuel Alito, then a
7 judge on the Second Circuit, explained

8 [e]ven when a party is very well represented, an amicus may provide
9 important assistance to the court. ‘Some amicus briefs collect background
10 or factual references that merit judicial notice. Some friends of the court are
11 entities with particular expertise not possessed by any party to the case.
12 Others argue points deemed too far-reaching for emphasis by a party intent
13 on winning a particular case. Still others explain the impact a potential
14 holding might have on an industry or other group.’ Luther T. Munford,
15 When Does the Curiae Need An Amicus?, 1 J.App. Prac. & Process 279
16 (1999). Accordingly, denying motions for leave to file an amicus brief
17 whenever the party supported is adequately represented would in some
18 instances deprive the court of valuable assistance.

19 *Neonatology Associates, P.A. v Comm’r IRS*, 293 F.3d 128, 132 (3rd Cir. 2002).

20 This authority supports the Court’s exercise of its discretion to accept this
21 *amicus* brief.

22 **III. INTEREST OF THE MOVANT.**

23 Movant is a non-profit legal foundation that focuses on constitutional and
24 rights advocacy and scholarship. In particular, Movant has published legal
25 analyses of boycotts and the First Amendment with an emphasis on the status of
26 federal and state laws that limit boycott activity. Movant has also investigated and
27 published works on the origin and operations of the so-called Boycott Divestment
28 and Sanction movement (“BDS” or the “BDS Movement”). A number of states,

1 Federal agencies and other scholars have relied either directly or indirectly on the
2 scholarly works of Movant in considering the legal status of laws limiting BDS
3 activity.

4 **IV. MOVANT’S BRIEF IS TIMELY AND USEFUL TO THE**
5 **DISPOSITION OF THE ISSUES BEFORE THE COURT.**

6 Movant has submitted its amicus curiae brief along with this motion as
7 **Exhibit 1.**

8 The issues presented before this Court are complex matters of constitutional
9 law, especially with regard to the specific question of boycotts under the First
10 Amendment. Movant’s published scholarship on the First Amendment and the
11 BDS Movement will allow this Court to be better informed of the issues at stake.
12 In particular, the Movant explains in its brief the history of the caselaw relied upon
13 by both parties and sets forth a number of facts that will be useful by the Court in
14 determining the scope of First Amendment protection applicable to the boycotts
15 subject to the state law being reviewed. These facts and cases are not discussed in
16 depth in existing briefs for the parties.

17 Furthermore, the state law in question in this case was enacted in response
18 to the BDS Movement, a fact that Plaintiffs acknowledge in their pleadings.
19 Movant’s scholarship on the history of the BDS Movement, which has been cited
20 and relied upon by the Congressional Research Service, state legislatures, other
21 scholars and rights activists, as well as the Supreme Court of Israel, gives Movant
22 a unique ability to synthesize the pertinent facts relating to the BDS Movement.
23 In order to properly understand the rationale for the state law, the Movant is
24 particularly qualified to inform the Court on the background and operations of the
25 BDS Movement.

26 Plaintiffs allege that Arizona House Bill 2617, A.R.S. § 35-393.01 infringes
27 their First Amendment rights to engage in political speech. In support of this
28 allegation, Plaintiffs rely in large part upon *NAACP. V. Claiborne Hardware Co.*,

1 458 U.S. 886 (1982) and further claim that the boycott activity that they engage in
2 is protected political speech. In addition, Plaintiffs allege generally that BDS is
3 non-discriminatory civil rights advocacy and is thus protected by the First
4 Amendment.

5 Plaintiffs' arguments distort and mangle *Claiborne*, which does not provide
6 the all-encompassing First Amendment protections Plaintiffs allege, while
7 ignoring relevant adverse caselaw that has fact patterns nearly identical to BDS
8 activity. Furthermore, Plaintiffs whitewash the origin and objectives of BDS,
9 wrongfully portraying it as a movement analogous to domestic rights movements
10 from the Civil Rights-era and failing to advise the court that BDS is, in reality, a
11 toxic mutation of the Arab League boycott, backed and managed in large part by
12 foreign terror organizations.

13 Movant's brief provides this Court with a detailed analysis of *Claiborne* as
14 well as a full history and discussion of BDS.

15 Movant respectfully submits that its participation as *amicus curiae* will aid
16 this Court in resolving this case.

17 **V. CONCLUSION.**

18 Movant respectfully request that this Court grant this motion, allow it to
19 participate as *amicus curiae*, and accept for filing the *amicus curiae* brief
20 submitted with this motion.

21 Respectfully submitted on February 8, 2018.

22
23 By: s/ Marc A. Greendorfer
24 MARC A. GREENDORFER*
25 *Counsel of Record for Amicus Curiae*
26 ZACHOR LEGAL INSTITUTE
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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2018, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and distribution to all registered participants of the CM/ECF System.

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