

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

ROBERT UPDEGROVE, *et al.*,

Plaintiffs,

v.

MARK R. HERRING, *et al.*,

Defendants.

Case No. 1:20-cv-01141-CMH-JFA

**UNOPPOSED MOTION FOR LEAVE
TO FILE BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION AND
AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA**

The American Civil Liberties Union (“ACLU”) and the American Civil Liberties Union of Virginia (“ACLU of Virginia”) (together, “*Amici*”) seek leave to file the accompanying *amicus curiae* brief in support of Defendants in this action. In support of this motion, they state as follows:

1. In support of its request, the *Amici* state that the ACLU is a nationwide, nonpartisan organization with nearly two million members dedicated to defending the principles of liberty and equality embodied in the Constitution. The ACLU of Virginia—the ACLU’s state affiliate in the Commonwealth—has a long history of advocating for the civil rights and civil liberties of Virginians in both state and federal courts across the Commonwealth. As organizations that advocate for First Amendment liberties as well as equal rights for lesbian, gay,

bisexual, and transgender (“LGBT”) people, *Amici* and their members have a strong interest in the application of proper standards when evaluating constitutional challenges to civil rights laws.

2. Furthermore, the ACLU has served as counsel in cases raising similar issues regarding nondiscrimination laws applied to businesses of public accommodation that protect customers on the basis of their sexual orientation. *See Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm’n*, 138 S. Ct. 1719 (2018); *Washington v. Arlene’s Flowers, Inc.*, 441 P.3d 1203 (Wash. 2019) (*petition for cert. filed*).

3. The ACLU of Virginia advocated for the passage of the Virginia Values Act, the source of the challenged provisions in this case, both as an independent organization and as a member of the Virginia Values Coalition. For example, the ACLU of Virginia provided testimony on behalf of the bill during committee hearings.

4. As summarized in the proposed brief, *Amici*’s experience indicates that Virginia is permitted to prohibit discrimination in public accommodations through neutral laws that regulate conduct and have only an incidental effect on expression. Virginia has a compelling interest in ending invidious discrimination and such laws are narrowly tailored to protect individuals from being unjustly turned away and barred from participation in the marketplace.

5. This Court has “broad discretion in deciding whether to allow a non-party to participate as an amicus curiae.” *Tafas v. Dudas*, 511 F. Supp. 2d 652, 659 (E.D. Va. 2007). The Court should exercise its discretion to grant this motion because, as described above, *Amici* have a “special interest in the subject matter of the suit” and the contents of the proposed brief are “timely [and] useful.” *Id.* (internal citations omitted).

6. Undersigned counsel has communicated with the parties regarding this motion, and counsel for Plaintiffs and counsel for Defendants have both expressed their consent to the ACLU's and ACLU of Virginia's filing this motion.

WHEREFORE, *Amici* respectfully request that this Court grant this motion. A proposed order is also attached.

Dated: November 23, 2020

Respectfully submitted,

/s/ Nicole Tortoriello

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*Motion to proceed *Pro Hac Vice* forthcoming

CERTIFICATE OF SERVICE

I certify that on November 23, 2020, I electronically filed the foregoing with the Clerk of Court through the Court's CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished through the CM/ECF system.

/s/ Nicole Tortoriello

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