

1 Lawrence J. Zweifach  
2 Akiva Shapiro  
3 Matthew Greenfield  
4 Vince Eisinger  
5 GIBSON, DUNN & CRUTCHER LLP  
6 200 Park Avenue  
7 New York, NY 10166-0193  
8 (212) 351-3830

9 *Attorneys for Amicus Curiae The Louis D. Brandeis Center, Inc.*

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

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

v.

Mark Brnovich, Arizona Attorney General; Jim Driscoll, Coconino County Sheriff; Matt Ryan, Coconino County Board of Supervisors Chair; Lena Fowler, Coconino County Board of Supervisors Vice Chair; Elizabeth Archuleta Coconino County Board of Supervisors Member; Art Babbott, Coconino County Board of Supervisors Member; Jim Parks, Coconino County Board of Supervisors Member; Sarah Benatar, Coconino County Treasurer, all in their official capacities,  
Defendants.

Case No: 3:17-cv-08263-PCT-DJH  
**Motion for Leave to File Brief of  
*Amicus Curiae* The Louis D.  
Brandeis Center, Inc.**

Proposed *amicus curiae*, The Louis D. Brandeis Center, Inc. (the “Brandeis Center” or the “Center”), by its undersigned counsel, hereby respectfully moves the Court for leave to file the accompanying Brief of *Amicus Curiae* The Louis D. Brandeis Center, Inc. (the “*Amicus* Brief”), a true and authentic copy of which is attached hereto as **Exhibit 1**. A proposed order granting the Center’s motion is attached hereto as **Exhibit 2**. In support of its motion, the Center submits the following incorporated Memorandum of Points and Authorities:

## INTERESTS OF *AMICUS CURIAE*

The Center is an independent, non-partisan institution for public interest advocacy, research, and education. The Center’s mission is to advance the civil and human rights of the Jewish people and to promote justice for all. The Center’s education, research, and advocacy focus especially, but not exclusively, on the problem of anti-Semitism on college and university campuses. In fulfilling its mission, the Brandeis Center emphasizes the importance of clear, comprehensive, and specific anti-discrimination policies for government entities.

This case challenges the State of Arizona’s legal authority to combat invidious discrimination through conditions on contracting with the State and other regulations. The Center strongly supports the important constitutional rights protected by the First Amendment, but also believes that our Nation’s federal, state, and local governments have the responsibility and authority to zealously protect the right of all citizens to be free of discrimination on the basis of race, national origin, ethnicity, or religion. A fuller description of the Center’s interests is found in its proposed *Amicus* Brief (attached as Exhibit 1).

## ARGUMENT

### A. This Court Has the Authority to Permit *Amicus* Participation

“District courts have broad discretion to appoint or reject *amici curiae*.” *Friendly House v. Whiting*, No. 10-cv-1061-PHX-SRB, 2010 WL 11452277, at \*19 n.15 (D. Ariz. Oct. 8, 2010); *see also* Motion for Leave to File Brief of *Amicus Curiae* American Jewish Committee at 4-5 (Dkt. 30) (elaborating on the caselaw authorizing this Court to grant the motion of a proposed *amicus curiae* for leave to file).

### B. The Center Should Be Granted Leave to File Its Proposed *Amicus* Brief

The Center’s proposed *amicus* brief leverages its expertise in combatting discrimination—in particular discrimination in the form of anti-Semitism and the Boycott, Divestment, and Sanctions movement—to explain that Arizona House Bill 2617 (the “Act”) fits comfortably within the commonplace statutes and executive orders that condition government contracts on a commitment not to engage in discrimination. The Center’s brief brings to the Court’s attention numerous federal, state, and local laws and executive orders not

1 cited by the parties that—like the Act—condition government contracts on a contractor’s  
2 willingness to refrain from discriminating on the basis of national origin, race, religion, and  
3 other invidious classifications. These measures have regularly survived constitutional  
4 challenges. Similarly, a growing number of states have enacted legislation that, like the Act,  
5 requires that government contractors refrain from boycotting Israel for the duration of any  
6 contract with those states. Such conditions on contracting are a pillar of our nation’s anti-  
7 discrimination laws. Any argument impugning the government’s ability to promote equality  
8 under the law through such regulation of discriminatory conduct should be viewed with great  
9 skepticism.

10 Furthermore, the Center’s research and advocacy emphasize the history of  
11 discrimination against Jews and Israel, and its relationship to anti-Jewish and anti-Israel  
12 boycotts. Against this backdrop, the proposed *amicus* brief explains that by conditioning state  
13 contracts on a commitment not to boycott Israel and people who do business with Israel, the  
14 Act properly disincentivizes discriminatory conduct on the basis of national origin, religion,  
15 and race. In the Center’s view, such a limited restriction on conduct alone has been historically  
16 effective in discouraging discrimination without encroaching on the First Amendment rights of  
17 government contractors or others.

18 WHEREFORE, the Center respectfully requests that the Court (1) grant the Center leave  
19 to file its *Amicus* Brief; and (2) grant such other and further relief as the Court deems necessary  
20 or appropriate.

1 DATED this 9th day of February, 2018.

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3 /s/ Akiva Shapiro  
4 Lawrence J. Zweifach  
5 Akiva Shapiro  
6 Matthew Greenfield  
7 Vince Eisinger  
8 GIBSON, DUNN & CRUTCHER LLP  
9 200 Park Avenue  
10 New York, NY 10166-0193  
11 (212) 351-3830

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*Attorneys for Amicus Curiae The Louis D. Brandeis  
Center, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of February, 2018, I caused the foregoing document to be electronically transmitted to the Clerk’s Office using the CM/ECF System for Filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Kathleen E. Brody  
Darrell L. Hill  
ACLU Foundation of Arizona  
3707 North 7th Street, Suite 235  
Phoenix, AZ 85014  
Telephone: (602) 650-1854  
kbrody@acluaz.org  
dhill@acluaz.org

Brian Hauss  
Vera Eidelman  
Ben Wizner  
ACLU Foundation  
Speech, Privacy & Technology Project  
125 Broad Street, 18th Floor  
New York, NY 10004  
Telephone: (212) 549-2500  
bhauss@aclu.org  
veidelman@aclu.org  
bwizner@aclu.org

Drew C. Ensign  
Oramel H. (O.H.) Skinner  
Brunn (Beau) W. Roysden III  
Evan G. Daniels  
Keith J. Miller  
Aaron M. Duell  
2005 N. Central Avenue  
Phoenix, Arizona 85004  
Telephone: (602) 542-5200  
Drew.Ensign@azag.gov

/s/ Akiva Shapiro  
*Attorney for Amicus Curiae The Louis D. Brandeis Center, Inc.*