

IN THE SUPREME COURT OF ARIZONA

STATE OF ARIZONA,)
) Supreme Court No. CR-13-0282-AP
)
) Maricopa County Superior Court
 Appellee,)
) No. CR-2003-038541-001
 vs.)
)
)
 AARON BRIAN GUNCHES,)
)
)
 Appellant.)
)

**REFILED MOTION OF AMERICAN CIVIL LIBERTIES UNION AND
AMERICAN CIVIL LIBERTIES UNION OF ARIZONA
FOR
LEAVE TO FILE BRIEF AS AMICI CURIAE**

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The American Civil Liberties Union (ACLU) and ACLU of Arizona respectfully refile their motion to this Court, originally filed on February 16, 2023,

for leave to submit the enclosed brief as amici curiae. In support of this motion, movants state as follows.

1. On January 31, 2023, this Court issued an order in the above-captioned case directing death-row prisoner Aaron Brian Gunches, the State of Arizona, and the Crime Victim to file simultaneous briefs addressing whether, in light of the State's motion to withdraw its prior request for an execution warrant and the other unique procedural elements of this case, this Court has authority to do anything other than issue the Warrant of Execution. The Court's order noted it anticipated it would conference this issue on February 28, 2023. With this motion, the ACLU and ACLU of Arizona seek leave to refile an amici brief addressing this important question.
2. The ACLU is a nationwide, nonprofit, nonpartisan organization with nearly two million members and supporters dedicated to the principles of free speech, liberty and equality embodied in the Constitution. The ACLU has long been committed to due process and fundamentally fair procedures for defendants in all criminal cases, and, as relevant here, protection of these rights in the context of capital sentencing, in which the utmost respect for constitutional protections must be observed. Moreover, as relevant here, the ACLU's commitment to protecting the Constitution includes the right to be free from cruel and unusual punishment and torturous methods of execution.

3. The ACLU's Capital Punishment Project defends persons facing the death penalty and their constitutional rights. The American Civil Liberties Union of Arizona is a state affiliate of the ACLU, dedicated to protecting all of the above constitutional rights in this State.
4. The ACLU has appeared as amici in trial and appellate courts across the U.S., including in the U.S. Supreme Court, and including in key cases involving lethal injection and freedom from cruel and unusual punishment. *See, e.g., Nance v. Ward*, 142 S. Ct. 2214 (2022). Amici have extensive familiarity with the procedures states have used and the obstacles they have encountered in their efforts at humane administration of lethal injection.
5. On February 16, 2023, amici submitted a motion for leave to file a brief as amici curiae, along with a brief of amici curiae.
6. On February 17, 2023, this Court issued an order denying amici's original motion for leave to file a brief, and ordered the brief submitted on February 16 stricken. The Court gave the amici leave to refile a motion to file a brief as amici curiae, and to file a brief that did not exceed fifteen pages. The enclosed brief complies with that order.
7. Movants respectfully request that this Court grant them leave to file the enclosed amici curiae brief, which highlights the good reasons for the Attorney General's motion to withdraw its request for an execution warrant in this case, and for

suspending executions for a thorough review of Arizona's protocols and their implementation.

8. Movants do not seek to participate in oral argument on this motion.

CONCLUSION

For the reasons above, movants' application for permission to file a fifteen-page brief as amici curiae should be granted.

Respectfully submitted this 21st day of February, 2023.

American Civil Liberties Union
Foundation of Arizona

By /s/ Jared G. Keenan

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