STATE OF MICHIGAN
IN THE COURT OF APPEALS

THOMAS M. COOLEY LAW SCHOOL,

Appellee,

v.

JOHN DOE 1, unknown individual,

Appellant,

and

JOHN DOE 2, JOHN DOE 3, and
JOHN DOE 4, unknown individuals,

Defendants.
_____/

Docket No. 307426

Ingham County Circuit Court
Case No. 11-781-CZ

THE AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN'S
MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

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Dated: September 19, 2102

The American Civil Liberties Union Fund of Michigan, through counsel and pursuant to MCR 7.212(H), respectfully requests that this Court enter an Order granting it leave to file the attached *amicus curiae* brief for the reasons that follow:

1. The American Civil Liberties Union of Michigan is the Michigan affiliate of a nationwide nonpartisan organization of nearly 500,000 members dedicated to protecting the fundamental liberties and basic civil rights guaranteed by the United States Constitution. The American Civil Liberties Union Fund of Michigan is the legal and educational arm of the Michigan ACLU.

2. Among the rights that the ACLU vigorously seeks to protect are the First Amendment right to free speech.

3. The ACLU Fund of Michigan frequently provides direct representation or files *amicus curiae* briefs in state and federal courts on a wide range of civil liberties cases. *See*, *e.g.*, *Bertrand v City of Mackinac Island,* 256 Mich App 13 (2003), *People v Boomer*, 250 Mich App 534 (2002), *In re AMB*, 248 Mich App 144 (2002), *Doe v Department of Corrections*, 249 Mich App 49 (2002), *In Re Parole of Glover*, 241 Mich App 127 (2000), *City of Rochester Hills v Schultz*, 459 Mich 486 (1999), *Rembert v Ryan's Family Steak Houses, Inc*., 235 Mich App 118 (1999), *Marchwinski v Howard*, 113 F Supp 2d 1134 (ED Mich 2000), aff'd 60 Fed Appx 601, 2003 WL 1870916 (CA6 2003), *Detroit Free Press v Ashcroft*, 303 F 3d 681 (CA 6 2002), *Bazzetta v McGinnis,* 286 F 3d 311 (CA 6 2002), *Risbridger v Connelly,* 275 F 3d 565 (CA 6 2002), *Johnson v Martin,* 223 F Supp 2d 820 (WD Mich 2002), *Moore v Detroit School Reform Bd.,* 293 F 3d 352 (CA 6 2002); *White v Engler*, 188 F Supp 2d 730 (ED Mich 2001); *Cyberspace Communications, Inc. v Engler*, 142 F Supp 2d 827 (ED Mich 2001).

4. Given its experience and long-term interest in the First Amendment issues before the Court, the ACLU Fund of Michigan believes that its *amicus curiae* brief will bring additional necessary arguments and perspectives to the attention of the Court regarding this important issue of anonymous free speech.

5. This motion is timely because it is filed within 21 days after the filing of Appellee's brief. See MCR 7.212(H)(1).

WHEREFORE, the American Civil Liberties Union Fund of Michigan respectfully requests that this Court enter an Order granting it leave to file the *amicus curiae* brief that accompanies this motion.

Respectfully submitted,

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The American Civil Liberties Union of Michigan is the Michigan affiliate of a nationwide nonpartisan organization of nearly 500,000 members dedicated to protecting the fundamental liberties and basic civil rights guaranteed by the United States Constitution. The American Civil Liberties Union Fund of Michigan is the legal and educational arm of the Michigan ACLU. Among the rights that the ACLU vigorously seeks to protect are the First Amendment right to free speech.

The ACLU Fund of Michigan frequently provides direct representation or files *amicus curiae* briefs in state and federal courts on a wide range of civil liberties cases. See, e.g., *Bertrand v City of Mackinac Island,* 256 Mich App 13; 662 NW2d 77 (2003), *People v Boomer*, 250 Mich App 534; 655 NW2d 255 (2002), *In re AMB*, 248 Mich App 144; 640 NW2d 262 (2002), *Doe v Department of Corrections*, 249 Mich App 49; 641 NW2d 269 (2002), *In Re Parole of Glover*, 241 Mich App 127; 614 NW2d 714 (2000), *City of Rochester Hills v Schultz*, 459 Mich 486; 592 NW2d 69 (1999), *Rembert v Ryan's Family Steak Houses, Inc*., 235 Mich App 118; 596 NW2d 208 (1999), *Marchwinski v Howard*, 113 F Supp 2d 1134 (ED Mich, 2000), aff'd 60 Fed Appx 601, 2003 WL 1870916 (CA 6, 2003), *Detroit Free Press v Ashcroft*, 303 F3d 681 (CA 6, 2002), *Bazzetta v McGinnis,* 286 F3d 311 (CA 6, 2002), *Risbridger v Connelly,* 275 F3d 565 (CA 6, 2002), *Johnson v Martin,* 223 F Supp 2d 820 (WD Mich 2002), *Moore v Detroit School Reform Bd,* 293 F3d 352 (CA 6, 2002); *Cyberspace Communications, Inc v Engler*, 142 F Supp 2d 827 (ED Mich, 2001). Given its experience and long-term interest in the First Amendment issues before the Court, the ACLU Fund of Michigan believes that its *amicus curiae* brief will bring additional necessary arguments and perspectives to the attention of the Court regarding this important issue of anonymous freedom of speech.

I. INTRODUCTION

No one can deny that the Internet affords society a broad platform for the free exchange of valuable ideas. With those valuable ideas, however, comes a great deal of grammatically incorrect commentary, offensive statements, figurative speech, and nonsensical notions that an objectively reasonable person would not deem factually true. For that reason, many courts dismiss defamation actions regarding online commentary because their "context and tenor" expose the statements as the sort of "rhetorical hyperbole" that is protected by the First Amendment. The First Amendment privileges this sort of speech – speech that some may not deem to be worthwhile – because courts are reluctant to possibly chill valuable contributions to this marketplace of ideas.

While Michigan Courts have confirmed the long-standing notion that "rhetorical hyperbole" is protected by the First Amendment, they have yet to clarify that allegedly defamatory online statements must be examined in light of their "context and tenor." No Michigan appellate decision has considered whether an objectively reasonable person would consider as truthful an allegedly defamatory statement in an online forum, such as a blog or message board, when that statement contains grammatical errors, non-traditional stylistic choices, and absurd capitalization. Numerous other courts, however, have concluded that much of the speech on blogs and Internet message boards – containing erratic grammar and style like that of Doe 1's postings regarding Appellee – could never form the basis of a defamation action because no objectively reasonable person would consider those kinds of statements truthful factual allegations. Even though many statements in these online forums are offensive, harsh, or not literally true, "[a]s a Nation we have chosen . . . to protect even hurtful speech on public

issues to ensure that we do not stifle public debate." *Snyder v Phelps*, 131 S Ct 1207, 1220 (2011).

In this regard, the ACLU Fund of Michigan encourages this Court to adopt the *Dendrite* standard to ensure that lower courts considering whether to reveal the identity of an anonymous online speaker evaluate the "context and tenor" of the online statements to determine whether the speech is the sort of "rhetorical hyperbole" commonly found on the Internet and protected by the First Amendment. As Appellee's own brief thoroughly discusses in its introduction, Doe 1's speech is not in a format or forum that an objectively reasonable person would deem credible or truthful. In fact, Appellee believes that Doe 1's harsh language is not the kind of language that should be used by anyone aspiring to practice law. (Appellee Br. at 2.) Appellee's unilateral judgment of Doe 1 aside, Appellee's own arguments demonstrate that Doe 1's commentary cannot form the basis of a defamation action because no objectively reasonable person – especially someone considering applying to Appellee's law school – would believe Doe 1 to be alleging provably true statements of fact.

Although Doe 1's rhetoric may not rise to Appellee's standards of respectable discourse, the First Amendment nevertheless privileges such speech for fear that other speakers may fear reprisal for their meaningful statements, even if they are not made in accordance with Appellee's rigorous vocabulary and stylistic standards. For this reason, and all those set forth below, the ACLU Fund of Michigan respectfully requests that this Court reverse the decision of the Ingham County Circuit Court, adopt the *Dendrite* standard of review for analyzing alleged defamation claims against anonymous online speakers exercising their First Amendment rights, and conclude that no objectively reasonable person could consider Doe 1's online posting as anything other than "rhetorical hyperbole."

II. ARGUMENT

A. The Tradition Of Anonymity

The Supreme Court has recognized the important role that anonymous speech has played throughout history and that individuals sometimes choose to speak anonymously for the most constructive purposes. See *Talley v California*, 362 US 60, 64-65 (1960). "[I]dentification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance." *Id* at 65. For this reason, the Supreme Court has confirmed that "[a]nonymity is a shield from the tyranny of the majority." *McIntyre v Ohio Elections Comm'n*, 514 US 332, 357 (1995). Thus, an author is generally free to decide whether he wishes to disclose his true identity and his decision not to do so is an aspect of the freedom of speech provided in the First Amendment. See *id* at 341-42. Throughout any discussion of anonymous First Amendment rights, the Court has confirmed that our society gives greater weight to the value of free speech than the danger that anonymous speech will be misused. See *id* at 357. In short, the First Amendment protects the right to speak anonymously. See *Watchtower Bible & Tract Soc'y v Village of Stratton*, 536 US 150, 166-67 (2002)

The "tradition of anonymity" spans the history of this country, and arose out of real fears of reprisal for non-anonymous speech. See *McIntyre*, 514 US at 342 n 6. "Even the Federalist Papers, written in favor of our Constitution, were published under fictitious names." *Talley*, 362 US at 65. In fact, only two major Federalist or Anti-Federalist pieces appear to have been signed by their true authors. See *McIntyre*, 514 US at 368 n 3 (Thomas, J., concurring). Even before this Country had escaped the grip of English rule, Thomas Paine was publishing pamphlets signed pseudonymously. See *Talley*, 362 US at 62 n 3. One commentator described the tangible need from which this country's tradition of anonymity grew:

> For the Framers and their contemporaries, anonymity was the deciding factor between whether their writings would produce a social exchange or a personal beating. Obviously, before and during the war, anonymity was used to disguise the identity of a writer who might be subject to British punishment. The pamphleteer was a vital element of the American resistance movement, and the greatest of this diverse group, Thomas Paine, would significantly influence both the war and its underlying cause. Even after the war, anonymity was an accepted and widely used practice. Early American politics produced severe divisions between Federalist and anti-Federalists. Later, with the establishment of political parties, the division between Federalists and Jeffersonian Republicans emerged. These were not mere parlor debates. Jefferson would refer to the rule of the Federalists as the "reign of the witches." Each side accused the other of treasonous intentions and engaged in violent attacks against their opponents. Even the First Army was involved in widespread attacks on Republicans and Anti-Federalists under John Adams, who also used the Sedition Act to punish critics criminally. Anonymity in this period was not simply a charming diversion but a matter of personal survival.

Jonathan Turley, *Registering Publius: The Supreme Court and the Right to Anonymity*, 2002 CATO SUPREME COURT REVIEW 57, 58-59 (2002).

With the advent of the Internet, the Supreme Court has recognized and upheld the tradition of anonymity. The Court recognizes that good ideas may come from unpopular sources and "[a]nonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge the message simply because they do not like its proponent." *McIntyre*, 514 US at 342. The Supreme Court drew a direct correlation between the revolutionary speakers and modern online commentators when it noted that the Internet allows a user to "become a pamphleteer" in "the vast democratic forums of the Internet." *Reno v ACLU*, 521 US 844, 870, 868 (1997). Therefore, even when the speech is offensive, causing "sorrow" or "pain," "[a]s a Nation we have chosen a different course – to protect even hurtful speech on public issues to ensure that we do not stifle public debate." See *Snyder v Phelps*, 131 S Ct 1207, 1220 (2011).

Several lower courts have specifically upheld the right to communicate anonymously over the Internet. *Independent Newspapers v Brodie*, 966 A2d 432 (Md, 2009); *In re Does 1-10*,

242 SW3d 805 (Tex App, 2007); *Mobilisa v Doe*, 170 P3d 712 (Ariz App, 2007); *Doe v Cahill*, 884 A2d 451 (Del, 2005); *Dendrite v Doe*, 775 A2d 756 (NJ App, 2001). As one court noted, "[i]f Internet users could be stripped of that anonymity by a civil subpoena enforced under the liberal rules of civil discovery, this would have significant chilling effect on Internet communications and thus on basic First Amendment rights." *Doe v 2theMart.com*, 140 F Supp 2d 1088, 1093 (WD Wash, 2001). See also *Columbia Ins Co v Seescandy.com*, 185 FRD 573, 578 (ND Cal, 1999) ("People who have committed no wrong should be able to participate online without fear that someone who wishes to harass or embarrass them can file a frivolous lawsuit and thereby gain the power of the court's order to discover their identities.").

B. Procedural Safeguards Protect Online Anonymity Without Chilling Speech

Given the emphasis placed on this country's tradition of anonymity, courts have been reluctant to reveal online anonymous speakers without employing some process by which the claims of the prospective defamation plaintiff are legally and factually sufficient. In this regard, "The case law . . . has begun to coalesce around the basic framework of the test articulated in *Dendrite* . . . ." *SaleHoo Group v Doe*, 722 F Supp 2d 1210, 1214 (WD Wash, 2010). As discussed thoroughly in Appellant's Brief, numerous courts have adopted the standards set forth in *Dendrite*, which were established to protect free speech from "unreasonably restrictive and oppressive conduct by private entities." *Dendrite*, *supra*, 775 A2d at 766. Without repeating what Doe 1 has already presented before the Court, application of the *Dendrite* factors is designed to prevent a chilling effect on anonymous online speech by ensuring that defamation claims seeking to reveal anonymous speakers are constitutionally sufficient before any revelation can take place.

Presently, Michigan courts do not have any procedural protections for anonymous online speakers who are accused of defamation. Michigan does not employ either the *Dendrite* or

Cahill tests, and, contrary to Appellee's arguments, the Michigan Court Rules do not have built-in sufficiency requirements that exist in Illinois. Subsequent to *Maxon v Ottawa Publ Co*, 929 NE2d 666 (Ill App Ct, 2010), heavily relied upon by Appellee, the Illinois courts have clarified their position, noting that "constitutional protections are considered part of the *prima facie* case so that a plaintiff is required to plead facts to show that the allegedly defamatory statements are not constitutionally protected." *Stone v Paddock Publs, Inc*, 961 NE2d 380, 389 (Ill App, 2011). Furthermore, in Illinois "it remains the petitioner's burden to show that the discovery is necessary, *i.e.*, that petitioner can allege facts supporting a cause of action." *Id*. The prospective Illinois defamation Plaintiff is required to file an action pursuant to Rule 224 of the Illinois Supreme Court Rules. ISCR 224. The rule "requires a petitioner to demonstrate the reason why the proposed discovery seeking the individuals identity is 'necessary.'" *Stone* at 387. Pursuant to this rule, an Illinois Court "must ensure that the petition (1) is verified; (2) states with particularity facts that would demonstrate a cause of action for defamation; (3) seeks only the identity of a potential defendant, rather than information necessary to demonstrate a cause of action for defamation; and (4) is subjected to a hearing at which the Court determines that the petition sufficiently states a cause of action for defamation against the unnamed potential defendant, *i.e.*, the unidentified person is one who is responsible in damages to the petitioner." *Id* at 388-89. Where Appellee would put the burden of challenging the sufficiency of a defamation action upon an anonymous speaker, Illinois courts clearly require the petitioner to prove the constitutional sufficiency of their claims prior to taking any steps to identify an anonymous online speaker.

Whether employing the standards set forth in *Dendrite*, *Cahill*, or by the Illinois appellate courts, the conclusion remains the same: Courts must make an evaluation regarding the

constitutional sufficiency of any defamation action *prior* to taking steps that could identify the anonymous speaker. Michigan should adopt a similar standard.

C. The "Context and Tenor" Of Doe 1's Internet Post Reveals It Is "Rhetorical Hyperbole" Protected By The First Amendment

This case presents issues of first impression for Michigan. Not only is this Court being asked to adopt procedural safeguards that ensure the sufficiency of a defamation claim prior to identification of an anonymous speaker, this case also raises the question whether informal, grammatically incorrect online "rants" appearing on blogs and bulletin boards can generally be considered defamatory. Specifically, in light of the foregoing history of protecting anonymous speech and the trend among state and federal courts to evaluate the constitutional sufficiency of a defamation claim before revealing the identity of an anonymous online speaker, the Court should adopt a standard that requires trial courts to evaluate both "context and tenor" of anonymous online speech.

The First Amendment protects "statements that cannot reasonably [be] interpreted as stating *actual facts* about an individual." *Milkovich v Lorain Journal Co*, 497 US 1, 20 (1990) (emphasis added). Courts have extended First Amendment protection to such statements in recognition of "the reality that exaggeration and non-literal commentary have become an integral part of social discourse." *Levinsky's, Inc v Wal-Mart Stores, Inc*, 127 F3d 122, 128 (CA 1, 1997). Michigan courts agree that rhetorical expressions of opinion are non-defamatory as a matter of law. See *Ireland v Edwards*, 230 Mich App 607, 618-19; 584 NW2d 632 (1998). By protecting speakers whose statements cannot reasonably interpreted as allegations of fact, courts "provide[] assurance that public debate will not suffer for lack of imaginative expression or the rhetorical hyperbole which has traditionally added much to the discourse of our Nation." *Milkovich*, 497 US at 20. When determining whether a statement can reasonably be interpreted

as a factual assertion, a court must examine the "totality of the circumstances in which it was made." *Underwager v Channel 9 Australia*, 69 F3d 361, 366 (CA 9, 1995). "The context in which the statement appears is paramount in our analysis, and in some cases it can be dispositive." *Dworkin v Hustler Magazine, Inc*, 867 F2d 1188, 1193 (CA 9, 1989).

Given the multitude of online forums available to anyone in the world, this Court should evaluate whether speech such as Doe 1's incendiary rants could be reasonably interpreted as stating actual facts that a reader would think are true. Courts in the Fourth Circuit have adopted such an approach; they are "obliged to assess how an objective, reasonable reader would understand a challenged statement by focusing on the plain language of the statement and the context and general tenor of its message." *Snyder v Phelps*, 580 F3d 206, 219 (CA 4, 2009), aff'd, 131 S Ct 1207 (2011). In considering decidedly hateful speech asserting facts posted online regarding a deceased war veteran, the Fourth Circuit noted that "the 'context and tenor' of the speech at issue, as well as the speaker's use of 'irreverent and indefinite language,' can serve to negate any impression that he is asserting actual facts about an individual." *Id* at 224. The use of "distasteful and offensive words, atypical capitalization, and exaggerated punctuation . . . suggest the work of a hysterical protestor rather than an objective reporter of facts." *Id* at 225.

Because the reasonable interpretation of a word can change depending on the context in which it appears, not all statements that could be interpreted in the abstract as factual assertions are defamatory – especially in the online context. "[B]logs are a subspecies of online speech which inherently suggest that statements made there are not likely provable assertions of fact." *Obsidian Fin Group, LLC v Cox*, 812 F Supp 2d 1220, 1223 (D Or, 2011). See also *Too Much Media, LLC v Hale*, 206 NJ 209, 234-35; 20 A3d 364, 378-79 (2011) ("online message boards provide virtual, public forums for people to communicate with each other about topics of

interest" and "promote a looser, more relaxed communication style"); *Sandals Resorts Int'l, Ltd v Google, Inc*, 925 NYS2d 407, 415-16, 86 A3d 32, 43-44 (NY App Div, 2011) (noting that the "low barrier to speaking online allows anyone with an Internet connection to publish his thoughts, free from the editorial constraints that serve as gatekeepers for most traditional media of disseminating information [] [o]ften result[ing] in speech characterized by grammatical and spelling errors, the use of slang, and, in many instances, an overall lack of coherence" and observing that readers give less credence to allegedly defamatory remarks published on online message boards, chat rooms, and blogs, than to similar remarks made in other contexts); *Summit Bank v Rogers*, 206 Cal App 4th 669, 697 (2012) ("courts . . . have recognized that online blogs and message boards are places where readers expect to see strongly worded opinions rather than objective facts."); *Global Telemedia Int'l, Inc v John Doe 1*, 132 F Supp 2d 1261, 1267 (CD Cal, 2001) (finding Internet postings "are full of hyperbole, invective, short-hand phrases and language not generally found in fact-based documents, such as corporate press releases or SEC filings"). Where a party eschews "proper spelling or grammar" for "colloquial epithets" that constitute the speaker's "own unsophisticated, florid opinions," a reasonable person cannot conclude that the statements are defamatory. *Summit Bank* at 699. Indeed,

> a reasonable person reading a newspaper in print or online . . . can assume that the statements are factually based and researched. This is not the case when the statements are made on blogs or in chat rooms. When one views allegedly defamatory statements in context – both the immediate context and the broader social context – it becomes apparent that many of the allegedly defamatory statements cannot be interpreted as stating actual facts, but instead are either 'subjective speculation' or 'merely rhetorical hyperbole.'

Cahill, 884 A2d at 467. Said differently, Internet postings cannot constitute defamatory speech when they "lack the formality and polish typically found in documents in which a reader would

expect to find facts." *Global Telemedia*, 132 F Supp 2d at 1267.[1]

As Appellee itself notes throughout its Introduction, the context and tenor of Doe 1's comments are far from what any objectively reasonable reader would consider to be factual. In fact, as Appellee notes, Doe 1's Internet posting "heaped on the vile hyperbole" using wretched epithets, cursing, and even linking to "another blog about Cooley that carries on its front page a picture of a 'smoldering steaming pile of excrement' in a toilet bowl." (Appellee's Br. at 2.) Doe 1's blog is about as far from the credible online news source as it gets; it certainly would never be confused with the Detroit News or the New York Times. Certainly, if anyone found Doe 1's hyperbolic rant to be truthful or credible – upon which that person decided not to go to Cooley Law School – one would need to question whether that person was objectively reasonable, much less competent for admission to any law school or the bar of any state. For this reason, the Court should require a trial court to evaluate the entire "tenor and context" of an online post by an anonymous speaker before any identification of the speaker is made. Applied to this case, the tenor and context of Doe 1's entire blog reveals that it could never form the basis of a defamation action – it is simply a nonsensical, grammatically incorrect, and rather bizarre rant that, even where it claims truth, would not be considered factually truthful by an objectively reasonable reader.

[1] Commentators also agree. "[A]ny reader familiar with the culture of . . . most electronic bulletin boards . . . would know that board culture encourages discussion participants to play fast and loose with facts. . . . Indeed, the very fact that most of the posters remain anonymous, or pseudonymous, is a cue to discount their statements accordingly." Lidsky, *Silencing John Doe: Defamation & Discourse in Cyberspace*, 49 Duke LJ 855, 936-37 (2000). See also Comment, *Cybersmear or Cyber-SLAPP: Analyzing Defamation Suits Against Online John Does as Strategic Lawsuits Against Public Participation*, 25 Seattle U L Rev 213, 217 (2001) ("Posters on Yahoo! message boards often make outrageous claims . . ." and "[m]ost visitors are completely aware of the unreliable nature of these posts . . . .").

III. CONCLUSION

The First Amendment protects anonymous speech that may be objectionable, offensive, or vile, even when such statements appear in the "vast democratic forums of the Internet." Although Doe 1's speech may fall into one, or all of these categories, it cannot form the basis for a defamation action that would lift Doe 1's anonymity. Rather, our Constitution privileges speech such as Doe 1's so that other online speakers – speakers professing valuable, meaningful ideas – are not discouraged from expressing themselves online. In order to avoid this chilling effect, this Court should adopt a standard requiring a trial court to evaluate the constitutional sufficiency of a defamation claim ***before*** taking any steps to identify an anonymous online speaker. Any such evaluation should consider the entire tenor and context of the speech, evaluating whether an objectively reasonable person would consider the online blogs or message board posts as stating literally true facts.

WHEREFORE, the American Civil Liberties Union Fund of Michigan respectfully requests that this Court reverse the decision of the Ingham County Circuit Court, adopt the *Dendrite* standard of review for analyzing alleged defamation claims against anonymous online speakers exercising their First Amendment rights, and conclude that no objectively reasonable person would consider Doe 1's online posting as anything other than "rhetorical hyperbole."

Respectfully submitted,

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Proof of Service

I, H. William Burdett, Jr., hereby certify that on September 19, 2012, I filed the American Civil Liberties Union Fund of Michigan's Motion for Leave to File Brief as *Amicus Curiae* with the Clerk of the Court for the Michigan Court of Appeals through the Court's electronic filing system, which will serve copies of same on all counsel of record.

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