

No. 19-20429

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

J.W.; LORI WASHINGTON, A/N/F/J.W.,
Plaintiffs-Appellees,

v.

ELVIN PALEY
Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of Texas

**Motion for Leave to File Brief of the American Civil Liberties Union, the
American Civil Liberties Union of Texas, the Juvenile and Children's
Advocacy Project, the Texas NAACP State Conference, the Mississippi
NAACP State Conference, the Louisiana NAACP State Conference, and
the Southern Poverty Law Center**

As Amici Curiae Supporting Appellees' Petition for Rehearing En Banc

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SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

J.W.; LORI WASHINGTON, A/N/F/J.W., v. ELVIN PALEY

Pursuant to Fifth Circuit Rule 29.2 and Rule 28.2.1, *amici curiae* make the following supplemental statement of interested parties to fully disclose all those with an interest in this brief.

Amici Curiae

American Civil Liberties Union
American Civil Liberties Union of Texas
Juvenile and Children's Advocacy Project
Texas NAACP State Conference
Mississippi NAACP State Conference
Louisiana NAACP State Conference
Southern Poverty Law Center

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MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Pursuant to Federal Rule of Appellate Procedure 27 and 29(a)(3), *amici curiae* the American Civil Liberties Union, the ACLU Foundation of Texas, the Juvenile and Children’s Advocacy Project, the Texas NAACP State Conference, the Mississippi NAACP State Conference, the Louisiana NAACP State Conference, and the Southern Poverty Law Center (collectively, “*amici*”) respectfully move for leave to file an *Amici Curiae* Brief in Support of Plaintiffs-Appellees request for rehearing *en banc*.

MOVANTS’ INTERESTS

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with nearly 2 million members dedicated to the principles of liberty and equality embodied in the Constitution and this nation’s civil rights laws. In support of these principles, the ACLU has appeared both as direct counsel and as *amicus curiae* in numerous cases concerning the rights of students. *E.g.*, *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969); *Goss v. Lopez*, 419 U.S. 565 (1975); *New Jersey v. T.L.O.*, 469 U.S. 325 (1985); *Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 141 S. Ct. 2038 (2021).

The ACLU Foundation of Texas is a nonpartisan organization with approximately 45,000 members across the State. Founded in 1938, the ACLU of Texas is headquartered in Houston and is one of the largest ACLU affiliates in the

nation. The ACLU of Texas is the State's foremost defender of the civil liberties and civil rights of all Texans as guaranteed by the U.S. Constitution and our nation's civil rights laws and has long advocated for the protection of students' rights in schools.

The Juvenile and Children's Advocacy Project (JCAP) is a non-profit legal organization and clinical program based at the University of Houston Law Center. JCAP's mission is to provide education, advocacy, and legal services on behalf of socially and economically disadvantaged youth in Texas.

The Louisiana, Mississippi, and Texas State Conferences of the National Association for the Advancement of Colored People (NAACP) are nonprofit civil rights organizations that advocate for political, social, economic, and educational equality. The Louisiana, Mississippi, and Texas State Conferences of the NAACP have been at the forefront of every major step toward desegregating each of their respective state's schools. They have fought for more than a century to ensure the rights of children and access to quality education in Louisiana, Mississippi, and Texas.

The Southern Poverty Law Center is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. It has long advocated for the safety of children in public schools across

the South. As part of that work, it has advocated for legislation, engaged in public education, and litigated cases against the use of excessive force by school police.

Amici have a vital interest in the outcome of this litigation and believe the proposed *amicus* brief will help the Court decide to grant rehearing *en banc* in this case.

CONSENT OF THE PARTIES

On August 18, 2021, *amici*, through undersigned counsel, sought consent from both parties to file the proposed *amici curie* brief. As of August 23, 2021, both Plaintiffs-Appellees and Defendants-Appellants have consented to the filing of the proposed *amici curie* brief.

REASONS FOR AND RELEVANCE OF *AMICI CURIAE*

This case raises important questions regarding the application of the Fourth Amendment to the use of force by police officers in schools. Robust Fourth Amendment protections for schoolchildren are especially important given the drastic increase of police presence in United States' public schools over the past fifty years and the accompanying increase in use of force against students.

The proposed *amici* brief would serve the critical function of providing information and context to the Court regarding: (i) the increased presence of police in schools; (ii) the extent to which police officers in schools are armed; (iii) the increase in the use of force against schoolchildren; (iv) the disproportionate use of force on schoolchildren of color; (v) the lack of mental health support staff in schools; and (vi) the need for clarity on the application of the Fourth Amendment to police in schools.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court grant leave to file an *amici curiae* brief in support of Plaintiffs-Appellees' Petition for Rehearing *En Banc*.

Dated: August 23, 2021

Respectfully Submitted,

/s/Andre Segura

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: August 23, 2021

/s/ Andre Segura

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 27(d), I certify that:

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because this motion contains 719 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in Times New Roman 14-point font using Microsoft Word 2019.

Date: August 23, 2021

/s/ Andre Segura

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