

Nos. 19-35017 and 19-35019

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

ADREE EDMO,

Plaintiff-Appellee,

v.

IDAHO DEPARTMENT OF CORRECTION, *et al.*

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Idaho, No. 1:17-cv-00151-BLW

**MOTION FOR LEAVE OF AMICI CURIAE CIVIL RIGHTS &
NON-PROFIT ORGANIZATIONS TO FILE A BRIEF EXCEEDING THE
WORD LIMITATION IN FEDERAL RULE OF
APPELLATE PROCEDURE 29(a)(5)**

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April 12, 2019

Counsel for Amici Curiae

**MOTION FOR LEAVE TO FILE A BRIEF EXCEEDING THE WORD
LIMITATION IN FED. R. APP. P. 29(a)(5)**

Counsel for amici curiae civil rights and non-profit organizations respectfully moves for leave to file an amicus brief containing 7,623 words. A declaration of counsel stating in detail the reasons for the motion and a copy of the proposed brief have been filed with this motion pursuant to Circuit Rule 32-2.

Respectfully Submitted,

/s/ Alan E. Schoenfeld

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SUPPORTING DECLARATION OF COUNSEL

I, Alan E. Schoenfeld, declare:

1. I am pro bono counsel to amici curiae civil rights and non-profit organizations. I submit this declaration in support of the accompanying Motion for Leave to File a Brief Exceeding the Word Limitation in Fed. R. App. P. 29(a)(5).

2. Amici curiae's proposed brief contains 7,623 words, excluding exempted portions. The limit under Federal Rule of Appellate Procedure 29(a)(5) is 7,000 words. Amici curiae therefore seek an extension of 623 words. Ms. Edmo consents to this motion. Defendants-Appellants the Idaho Department of Correction and Corizon, Inc. were contacted but have not yet indicated whether they consent to the motion.

3. Under Circuit Rule 32-2, motions to exceed the type-volume limitation "will be granted only upon a showing of diligence and substantial need." These conditions are satisfied here, for the following reasons.

4. Counsel for amici curiae has worked diligently to present amici curiae's arguments as concisely as possible, and counsel intended that the brief would comply with this Court's word limit.

5. Counsel for amici curiae also timely filed the brief prior to receiving a notification of the need for a motion for leave to exceed the word limit.

6. This appeal presents a broad array of issues that implicate concerns

related to incarcerated transgender persons, their right to a standard of care consistent with the Eighth Amendment, and the legal ability of prison healthcare systems to decide the course of an incarcerated transgender person's treatment based on opinions that may or may not align with established medical consensus.

7. Amici curiae represent a variety of organizations that are deeply interested in the issues of this case and the consequences that a decision will have on incarcerated transgender persons across the country—not just Adree Edmo.

8. Counsel for amici curiae respectfully request the opportunity to exceed the applicable word limit by 623 words to permit the eleven organizations involved in this amici curiae effort to provide adequate statements of interest concerning the background of the amici organizations and the breadth of interests they represent.

9. Granting the extension requested will enable the amici to present viable and important considerations to this Court, including a full accounting of the interests and perspectives the Amici represent and the significant implications the Court's decision will hold for the broader transgender community.

10. Counsel for amici curiae originally interpreted Federal Rule of Appellate Procedure 29(a)(5), Circuit Rule 32-2, and Circuit Advisory Committee Note to Rule 32-2 to permit amici curiae to file a brief of 7,700 words when the parties were permitted automatically to file briefs of 15,400 words, in accordance

with Circuit Rule 32-2.

11. Federal Rule of Appellate Procedure 29(a)(5) states, “[e]xcept by the court’s permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party’s principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.”

12. However, Circuit Rule 32-2 states that a longer brief is automatically permitted “to separately represented parties that are filing a joint brief” and “a party or parties that file a single brief answering or replying to either (1) multiple briefs or (2) a longer joint brief filed pursuant to this subsection.

13. Circuit Advisory Committee Note to Rule 32-2 likewise states in part that “[a] litigant responding to the opposing party’s brief as well *as an amicus curiae brief filed under FRAP 29(a) is also eligible to file a longer brief automatically*” (emphasis supplied).

14. Pursuant to the Circuit Rules and accompanying guidance, counsel for amici curiae believed, in good faith, that because the parties to this appeal were automatically permitted a longer brief under Circuit Rule 32-2, amici curiae were similarly automatically entitled to a longer brief—*i.e.*, a brief of 7,700 words, or half the length of the parties’ joint brief.

15. Counsel for amici curiae has since been informed that this interpretation was incorrect, and that a motion to exceed the applicable page and type-volume limits is required to exceed 7,000 words for amici curiae.

16. In the event that this Court does not grant the requested relief, counsel for amici curiae respectfully request an extension of time to file a revised brief, as envisioned by Circuit Advisory Committee Note to Rule 32-2.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on April 12, 2019, in New York, New York.

Dated: April 12, 2019

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CERTIFICATE OF COMPLIANCE

This document complies with Fed. R. App. P. 27(d)(2)(A) and Circuit Rule 27-1 because, excluding the parts listed in Fed. R. App. P. 32(f), it contains 823 words as counted by Microsoft Word. This document also complies with the typeface and typestyle requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in proportionally spaced typeface in 14-point Times New Roman font.

Dated: April 12, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: April 12, 2019

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