

No. 18-2457

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

REGINALD CORNELIUS LATSON,

*Plaintiff-Appellant,*

v.

HAROLD W. CLARKE, et al.,

*Defendants-Appellees.*

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Appeal from the U.S. District Court for the Western District of Virginia  
Case No. 1:16-cv-0039; The Honorable James P. Jones

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**MOTION OF THE AMERICAN CIVIL LIBERTIES UNION OF  
MARYLAND, THE AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF VIRGINIA, INC., CENTER FOR PUBLIC  
REPRESENTATION, DISABILITY LAW CENTER OF VIRGINIA,  
DISABILITY RIGHTS CALIFORNIA, DISABILITY RIGHTS  
MARYLAND, DISABILITY RIGHTS NORTH CAROLINA,  
THE RODERICK AND SOLANGE MACARTHUR JUSTICE CENTER,  
THE UPTOWN PEOPLE'S LAW CENTER  
IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL**

---

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

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No. 18-2457 Caption: Reginald Cornelius Latson v. Harold W. Clarke, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

The American Civil Liberties Union of Maryland  
(name of party/amicus)

who is amicus, makes the following disclosure:  
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?  YES  NO
  
2. Does party/amicus have any parent corporations?  YES  NO  
If yes, identify all parent corporations, including all generations of parent corporations:
  
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4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))?  YES  NO  
If yes, identify entity and nature of interest:

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If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO  
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Daniel Greenfield

Date: February 11, 2019

Counsel for: American Civil Liberties Union of Maryland

**CERTIFICATE OF SERVICE**

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I certify that on February 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Daniel M. Greenfield  
(signature)

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(date)

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No. 18-2457                      Caption: Reginald Cornelius Latson v. Harold W. Clarke, et al.

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American Civil Liberties Union Foundation of Virginia

(name of party/amicus)

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Signature: /s/ Vishal Agraharkar

Date: February 11, 2019

Counsel for: ACLU Foundation of Virginia, Inc.

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No. 18-2457 Caption: Reginald Cornelius Latson v. Harold W. Clarke, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Center for Public Representation  
(name of party/amicus)

who is amicus, makes the following disclosure:  
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Signature: /s/ Daniel M. Greenfield

Date: February 11, 2019

Counsel for: Center for Public Representation

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No. 18-2457 Caption: Reginald Cornelius Latson v. Harold W. Clarke, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

disAbility Law Center of Virginia  
(name of party/amicus)

who is amicus, makes the following disclosure:  
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Signature: /s/ Daniel M. Greenfield

Date: February 11, 2019

Counsel for: disAbility Law Center of Virginia

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Signature: /s/ Daniel Greenfield

Date: February 11, 2019

Counsel for: Disability Rights California

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Signature: /s/ Daniel M. Greenfield

Date: February 11, 2019

Counsel for: Disability Rights Maryland

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Signature: /s/ Daniel M. Greenfield

Date: February 11, 2019

Counsel for: Disability Rights North Carolina

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No. 18-2457 Caption: Reginald Cornelius Latson v. Harold W. Clarke, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Roderick & Solange MacArthur Justice Center

(name of party/amicus)

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Date: February 11, 2019

Counsel for: MacArthur Justice Center

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Pursuant to FRAP 26.1 and Local Rule 26.1,

Uptown People's Law Center

(name of party/amicus)

who is amicus, makes the following disclosure:  
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Signature: /s/ Liz Mazur

Date: February 11, 2019

Counsel for: Uptown People's Law Center

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/s/ Liz Mazur  
(signature)

February 11, 2019  
(date)

**MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT  
OF APPELLANT**

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), the American Civil Liberties Union Foundation of Virginia, Inc., American Civil Liberties Union of Maryland, the Center for Public Representation, disAbility Law Center of Virginia, Disability Rights California, Disability Rights Maryland, Disability Rights North Carolina, the Roderick and Solange MacArthur Justice Center, and the Uptown People's Law Center move for leave to file the accompanying *Amicus Curiae* Brief in Support of Plaintiff-Appellant Reginald Latson.

*Amici curiae* are non-profit organizations that advocate for the humane treatment of prisoners with disabilities. *Amici* offer their particular background, experience, and expertise regarding two issues central to this case: (1) the scientific consensus and overwhelming evidence establishing that solitary confinement inflicts grave damage on vulnerable prisoners' mental and physical health; and (2) the doctrinal landscape relevant to the question of qualified immunity in cases involving the rights of prisoners with disabilities held in solitary confinement. These topics are central to *amici*'s mission of ensuring that prison officials administer their duties humanely and in compliance with constitutional mandates.

*Amici curiae* are:

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with over 500,000 members dedicated to

defending the principles embodied in the Constitution and our nation's civil rights laws. The American Civil Liberties Union of Maryland (ACLU-MD) is a statewide affiliate of the national ACLU. Since its founding in 1931, the ACLU-MD has worked to ensure that people who are incarcerated receive the due process and protection from cruel and unusual punishment to which they are entitled under the Constitution.

The American Civil Liberties Union Foundation of Virginia, Inc. ("ACLU of Virginia") is the Virginia affiliate of the American Civil Liberties Union, with approximately 30,000 members across the Commonwealth. The ACLU of Virginia is a private, non-profit organization that promotes civil liberties and civil rights for everyone in the Commonwealth through public education, litigation, and advocacy with the goal of securing freedom and equality for all. It regularly appears before this Court and other federal and state courts in Virginia, both as amicus and as direct counsel. The ACLU of Virginia has a significant interest in the outcome of this case and in other cases across the country concerning the fundamental rights of those who are incarcerated.

The Center for Public Representation ("Center") is a public interest law firm with offices in Massachusetts and Washington D.C. For more than four decades the Center has represented institutionalized people with disabilities in numerous states. The Center's clients have included adults and youth who are confined in solitary

confinement in prisons, jails, and juvenile facilities. Like Reginald Latson, the Center's clients have experienced the negative psychological and physical effects of isolation. The Center and its clients have a significant interest in the outcome of this appeal.

disAbility Law Center of Virginia ("dLCV") is the designated protection and advocacy (P&A) agency for the Commonwealth of Virginia. Va. Code § 51.5-39.13. As the designated protection and advocacy agency, dLCV is mandated to protect individuals with disabilities from abuse, neglect, and discrimination, and has the authority to "pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals." 29 U.S.C. § 794e(f)(3). The United States Supreme Court affirmed this authority in *Virginia Office for Protection and Advocacy v. Stewart*, 563 U.S. 247 (2011). As the P&A agency for Virginia, dLCV has a strong interest in enforcement of the Americans with Disabilities Act ("ADA") and other state and federal laws in assuring that incarcerated Virginians with disabilities are not abused or neglected, including being placed in solitary confinement unreasonably.

Disability Rights California ("DRC"), a non-profit legal advocacy organization established in 1978, is California's Protection & Advocacy system mandated under federal law to advance and defend the civil rights of people with all types of disabilities. DRC investigates the conditions for, and treatment of,

individuals who are incarcerated in jails and other detention facilities, and has litigated cases regarding the use of solitary confinement for people with mental illness and other disabilities.

Disability Rights Maryland (“DRM”) is a non-profit legal services organization mandated to advance the civil rights of people with disabilities. Since 1975, DRM has served as the federally mandated Protection and Advocacy for the state of Maryland. As such, DRM has access to facilities where individuals with disabilities may be housed in order to monitor and conduct investigations to keep people with disabilities free from abuse and neglect. One of DRM’s service priorities is to advocate for reduced use of segregation and for the provision of appropriate care in prison facilities. DRM has issued public reports identifying inhumane conditions and rights violations based upon prolonged use of segregation of persons with serious disabilities. DRM has an interest in this case and in having the facts and claims move to trial for a full and complete discussion.

Disability Rights North Carolina (“DRNC”), a 501(c)(3) nonprofit legal advocacy organization, is the designated Protection & Advocacy (P&A) system in North Carolina, dedicated to advancing the legal and human rights of people with disabilities statewide. DRNC recognizes that longstanding, systematic marginalization and discrimination against people with disabilities has resulted in their disproportionate entanglement in the criminal justice system, where they are

ill-served and frequently singled out for adverse discipline such as solitary confinement, which is typically contraindicated and severely exacerbates their disabilities. As North Carolina's P&A charged with protecting disabled persons against abuse, neglect and discrimination, DRNC regularly monitors conditions in jails and prisons. Through these efforts, we have become well-informed regarding problematic conditions, treatment and practices affecting incarcerated persons with disabilities, including extreme isolation of individuals with mental health care needs that results in heightened risk and incidence of suicide. DRNC is interested in the outcome of this case due to our serious concerns that over-use and misuse of solitary confinement is illegal, inhumane and causes permanent damage to prisoners with disabilities.

The Roderick and Solange MacArthur Justice Center ("RSMJC") is a public interest law firm founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. RSMJC has offices at Northwestern Pritzker School of Law, at the University of Mississippi School of Law, in New Orleans, in St. Louis, and in Washington, D.C. RSMJC attorneys have led civil rights battles in areas that include police misconduct, the rights of the indigent in the criminal justice system, compensation for the wrongfully convicted, and the treatment of incarcerated men and women. RSMJC litigates appeals related to the civil rights of incarcerated men and women throughout the federal circuits.



The Uptown People’s Law Center (“UPLC”) provides legal representation, advocacy, and education for poor and working people, and legal assistance to people housed in prisons in cases related to their confinement. UPLC has provided direct representation to over 100 persons confined in prisons pertaining to their civil rights, including in seven class-action or putative class-action cases that are currently pending. UPLC has litigated several cases involving disabled prisoners, including a class action case challenging Illinois’ failure to accommodate the communication needs of deaf and hard of hearing prisoners, and a class action challenging the treatment provided prisoners with mental illness. In addition to UPLC’s civil rights work with prisoners, it has also represented scores of formerly incarcerated people who are so profoundly disabled that they are unable to perform any gainful work and must depend on social security’s disability payments.

Appellees were contacted by undersigned counsel and stated that they oppose this motion. Appellants consented to the motion.

The proposed amicus brief provides important information and argument that inform the proper resolution of the issue. In short, the *amici*’s brief easily meets FRAP R. 29(a)(3)’s requirements of (1) an adequate interest, (2) desirability, and (3) relevance. *See Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 130-31 (3d Cir. 2002) (granting motion for leave to file amicus brief and noting that “I think that our court would be well advised to grant motions for leave to file amicus briefs unless it

is obvious that the proposed briefs do not meet Rule 29's criteria as broadly interpreted . . . consistent with the predominant practice in the courts of appeals") (citing Micael E. Tigar and Jane B. Tigar, *Federal Appeals—Jurisdiction and Practice* 181 (3d ed. 1999) ("Even when the other side refuses to consent to an amicus filing, most courts of appeals freely grant leave to file, provided the brief is timely and well-reasoned.")).

First, *amici curiae*, many of whom are charged with monitoring prisons and jails within the Fourth Circuit, have broad experience with the harmful effects of solitary confinement on human health and welfare, particularly among prisoners with disabilities. Moreover, undersigned counsel has previously filed similar amicus briefs setting forth the scientific consensus concerning solitary confinement's deleterious effects, including in this Court. Recent examples include: *Porter v. Clarke*, No. 18-6257 (4th Cir.); *Rodriguez v. Ratledge*, No. 17-8768 (S. Ct.); *United States v. Giles*, No. 18-3126 (7th Cir.); *J.H. v. Williamson Cty.*, No. 18-5874 (6th Cir.). In light of this experience, *amici* are well-positioned to provide the Court with a unique perspective that the parties have not. See *Altizer v. Deeds*, 191 F.3d 540, 543 n.7 (4th Cir. 1999) (discussing that "federal courts have frequently appointed *amici* to participate in an appeal where a party will not brief an important position"); see also *Stuart v. Huff*, 706 F.3d 345, 355 (4th Cir. 2013) (explaining that "amicus often make useful contributions to litigation").

The proposed brief's summary of the scientific consensus that solitary confinement imposes an excessive risk of serious harm is also relevant to qualified immunity. The first prong of the qualified immunity analysis requires a showing of a constitutional violation, which in turn requires a showing of excessive risk to prisoner health and safety—the very focus of the amicus brief. This Court has found such context relevant and important in other qualified immunity cases concerning solitary confinement. *E.g.*, *Williamson v. Stirling*, 912 F.3d 154, 164 n.7 (4th Cir. 2018) (allowing filing of amicus brief that reviewed scientific consensus regarding harms of solitary confinement and quoting the scientific evidence in that brief in the opinion).

Second, *amici curiae* have an interest in ensuring that legal precedents do not subject prisoners with disabilities to the severe psychological and physical harm associated with solitary confinement. *Amici curiae* expect that this Court's decision in this case will have a substantial impact on prisoners similarly situated to Mr. Latson. *See N. Sec. Co. v. United States*, 191 U.S. 555, 556 (1903) (stating that courts often allow *amicus curiae* to file briefs in cases involving similar questions as those in pending cases in which the *amicus curiae* are interested); *Bryant v. Better Bus. Bureau*, 923 F. Supp. 720, 728 (D. Md. 1996) (finding courts generally permit amicus briefs where the proposed amicus has “a special interest in the subject matter of the suit”).

WHEREFORE, amici curiae respectfully request that this Court grant this motion for leave to file the attached brief in support of Mr. Latson.

Dated: February 11, 2019

Respectfully Submitted,

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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 1,848 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 2016.

Date: February 11, 2019

*/s/ Daniel M. Greenfield*

Daniel M. Greenfield

### CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth 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: February 11, 2019

*/s/ Daniel M. Greenfield*

Daniel M. Greenfield