

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA)	
)	
Appellant,)	
)	Case No. SC11-1166
v.)	
)	
RICHARD T. CATALANO, and)	
ALEXANDER SCHERMERHORN)	
)	
Appellee.)	
_____)	

AMERICAN CIVIL LIBERTIES UNION OF FLORIDA'S
UNOPPOSED MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

AMERICAN CIVIL LIBERTIES UNION (ACLU) OF FLORIDA moves the Court under Fla.R.App.P. 9.370(a) for leave to file an amicus curiae brief in support of Appellee in the State's appeal of the decision of the Second District Court of Appeal, finding Fla. Stat. sec. 316.3045 unconstitutional.

This is an action challenging the constitutionality of Fla. Stat. 316.3045(1), Unlawful Use of Soundmaking Devices in a Motor Vehicle. Appellee was stopped for playing his car radio too loudly. He challenged the police stop by motion to dismiss, asserting that the statute was unconstitutional on the grounds that it was overly broad and void for vagueness, and inviting arbitrary enforcement. The trial judge denied the motion to dismiss, and Catalano plead nolo contendere, reserving his right to appeal the denial of the motion. An appeal was taken in the Circuit Court for Pinellas County who reversed the trial judge, finding the statute to be unconstitutional, and remanded for discharge. The State appealed and the Second District Court of Appeal affirmed with an opinion. *State v. Catalano*, 60 So.3d 1139 (Fla. 2nd DCA 2011).

IDENTITY AND INTEREST OF AMICUS CURIAE

The American Civil Liberties Union (ACLU) of Florida is an affiliate of the American Civil Liberties Union, a nationwide, nonprofit, nonpartisan organization. The ACLU frequently participates in litigation involving constitutional interests and is frequently permitted to file amicus briefs in Florida's State and Federal Courts. As a local affiliate, ACLU of Florida has over 20,000 members dedicated to advancing and preserving the principles of the Bill of Rights, particularly the free speech embodied in the First Amendment to the U.S. Constitution. As part of that commitment, the ACLU seeks to protect the rights of citizens enjoying their First Amendment right to enjoy music in their vehicles, and the right of those citizens to do so absent arbitrary intrusion. Further, the ACLU seeks to protect citizens from legislation that has a chilling effect on free speech, and from legislation that is not content neutral. The ACLU would address these issues in the context of the constitutionality of Fla. Stat. 316.3045(1). Given the history of the ACLU's involvement in First Amendment cases, the ACLU believes that its involvement in this case will assist the Court in the disposition of this case.

The ACLU was granted leave to file an amicus brief in these proceedings before the Second District Court of Appeal.

The Attorney General and counsel for Appellee do not oppose the filing of the proposed amicus curiae brief by the ACLU. Appellee's brief is due on September 12, 2011. If this Court grants leave, the ACLU will serve its brief no later than five days after that date. *See* Rule 9.400(c), Florida Rules of Appellate Procedure.

Respectfully submitted,

s/ Andrea Flynn Mogensen
ANDREA FLYNN MOGENSEN, Esquire

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail and facsimile to Timothy Osterhaus, Esq., Deputy Solicitor General, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050; and Richard T. Catalano, 4370 112th Terrace North, Clearwater, FL 33762 this 18th day of August, 2011.

/s Andrea Flynn Mogensen
ANDREA FLYNN MOGENSEN, Esquire