

STATE OF MINNESOTA  
IN SUPREME COURT

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Brooks D. Fisher,

Petitioner,

vs.

APPELLATE COURT CASE  
NUMBERS: A06-76, A06-77

State of Minnesota Department of Corrections,  
Joan Fabian, Erik Skon, Robert Feneis, Jim Zawacki,  
Chris Esty, Nanette Schroeder, Dr. David Paulson,  
Mark Uner, Jeff Dansky, Lt. Walter Sass,  
Lt. Brad McCulloch, Sgt. Peter Davis,  
Sgt. Scott Wierschem, Sgt. Steve McCarty,  
Ricky Nelson, Michael Clover, Craig Grabinksi,  
Larry Wyman, Josh Burdine, Lt. John Pentland,  
Robert E. Miller, Sgt. Robert Friedl, Greg Smith,  
Kathleen Mack, David Bye, Beth Walker, Alan Walz,  
Mariann Ruben, John Doe (whose true name is  
unknown), and Jane Smith (whose true name is  
unknown),



Respondents.

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**REQUEST OF AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA  
FOR LEAVE TO FILE BRIEF AMICUS CURIAE**

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TO: THE SUPREME COURT OF THE STATE OF MINNESOTA:

Pursuant to Minn. R. Civ. App. P. 129, the Minnesota Civil Liberties Union requests  
  
leave to file a brief *amicus curiae* in the event that the Petition for Review submitted by Brooks  
Fisher is granted. The ACLU-MN also respectfully urges the Court to grant Fisher's Petition for  
  
Review.

I. IDENTITIES AND INTERESTS OF APPLICANTS

The American Civil Liberties Union of Minnesota (ACLU-MN) is a private, non-profit,  
non-partisan, membership-supported organization supported by approximately 10,000 members

in the State of Minnesota. It is the state-wide affiliate of the American Civil Liberties Union. Its purpose is to protect the rights and liberties guaranteed to all Minnesotans by the Minnesota and United States Constitutions. Among those liberties is the fundamental right of prisoners to be free from cruel and unusual punishment under the Eighth Amendment. In addition to affecting the individual Petitioner, the outcome of this case will have a significant impact on the rights of plaintiffs who seek to bring §1983 claims against State of Minnesota defendants in Minnesota state courts. The ACLU-MN interest is, therefore, public.

## II. STATEMENT OF PARTY SUPPORTED AND POSITION TAKEN.

The Applicant supports the Petitioner's argument that the Court of Appeals erred when it dismissed Petitioner's §1983 claims. The dispositive issue is whether state officials enjoy sovereign immunity from civil rights claims under 42 U.S.C. §1983. Petitioner filed his action against the MN-DOC officials both in their official and individual capacities. While state officials enjoy sovereign immunity when they are sued in their official capacity, well established §1983 jurisprudence, and even the cases cited by the Court of Appeals recognize that sovereign immunity only shields claims against defendants sued in their official capacity while officials sued in their individual capacity do not enjoy the benefit of sovereign immunity. The ACLU-MN believes that the Court of Appeals erred when it dismissed the §1983 claims brought against the defendants in their individual capacities. The ACLU-MN believes that it is necessary for the Minnesota Supreme Court to clarify this issue to ensure that other §1983 plaintiffs will not have their claims erroneously dismissed in the future.

## III. STATEMENT OF WHY PARTICIPATION OF AMICUS CURIAE IS DESIRABLE.

An *amicus curiae* brief is desirable because the issues raised by this case affect interests extending far beyond those of the parties to this action. The ACLU-MN has an extensive

background of thorough and objective research in the field of constitutional rights. The ACLU-MN seeks to participate in this case as *amicus curiae* because it believes that it can offer valuable experience and perspective regarding the important issues involved because we have a long history of handling §1983 claims. In addition, we have a long history of participating as *amicus curiae* in litigation involving civil rights and civil liberties. Most importantly, the Court's resolution of the questions presented in this case will have considerable impact on the ability of Minnesota plaintiffs to sustain §1983 claims against State of Minnesota defendants.

IV. CONCLUSION.

For all the above reasons, Applicant American Civil Liberties Union of Minnesota respectfully supports the position of Petitioner and requests the opportunity to participate in this case as *amicus curiae* should the Court grant the requested review.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA

Dated: November 22, 2006

By: \_\_\_\_\_  
Teresa J. Nelson (#269736)  
American Civil Liberties Union of Minnesota  
450 North Syndicate, Suite 230  
St. Paul, MN 55104  
(651) 645-4097 Ext. 122