

SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA

v.

PHILLIP BRANDON DAW

From Wake County

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA LEGAL FOUNDATION, NORTH CAROLINA ADVOCATES FOR JUSTICE, DISABILITY RIGHTS NORTH CAROLINA, AND THE CATO INSTITUTE FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE IN SUPPORT OF PHILLIP BRANDON DAW

Pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, the American Civil Liberties Union of North Carolina Legal Foundation, North Carolina Advocates for Justice, Disability Rights North Carolina, and The Cato Institute move for leave to file a brief as amici curiae in support of Phillip Brandon Daw.

INTERESTS OF AMICI CURIAE

The American Civil Liberties Union of North Carolina Legal Foundation (ACLU-NC) is a statewide, nonprofit, nonpartisan affiliate of the ACLU with approximately 21,000 members and thousands of other supporters dedicated to defending the constitutional rights of all North Carolinians through educational programs, public statements, and litigation. ACLU-NC has filed numerous amicus briefs in state and federal court addressing civil rights issues. ACLU-NC has an interest in this case as it involves an effort by the State to limit access to habeas corpus, which has for centuries been a fundamental protection of individual liberty.

North Carolina Advocates for Justice (NCAJ) is a professional organization of more than 3,500 North Carolina lawyers. NCAJ works to ensure the proper administration of justice in both civil and criminal cases. NCAJ's interest in this case is preserving state constitutional protections for individual liberty.

Disability Rights North Carolina (DRNC) is North Carolina's designated Protection and Advocacy System ("P&A"). DRNC is authorized by federal law to protect and advocate for the rights of

individuals with disabilities. *See* Protection and Advocacy for Individuals with Mental Illness (“PAIMI Act”), 42 U.S.C. § 10801 *et seq.*; Protection and Advocacy of Individual Rights provisions of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (“PAIDD”), 42 U.S.C. §§ 15041-15045; Protection and Advocacy for Individual Rights (“PAIR”), 29 U.S.C. § 794e. The federal regulations governing the P&A Acts mandate that, as the P&A, DRNC is empowered to “pursue administrative, legal or other appropriate remedies to protect and advocate on behalf of individuals” with disabilities to address abuse, neglect or other violations of rights. *See* PAIMI, 42 C.F.R. § 51.31(a); PAIDD, 42 U.S.C. § 15043(2)(A); PAIR 29 U.S.C. § 794e(f)(3). DRNC’s interest in this case is to highlight the importance of habeas relief to people with disabilities who are incarcerated in North Carolina prisons, and to demonstrate how eliminating habeas review for anyone confined by a final judgement would disproportionately harm people with disabilities.

The Cato Institute was established in 1977 as a non-partisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Toward

those ends, Cato often files amicus briefs with state and federal courts. Because the instant case raises vital questions about the power of government to deprive citizens of their liberty, the case is of significant concern to Cato.

REASONS WHY THE BRIEF IS DESIRABLE

Amici have extensive experience with civil rights litigation—including issues specific to North Carolina law, prison litigation, and the rights of people with disabilities—that would benefit the Court in its consideration of this appeal.

ISSUES TO BE ADDRESSED

Amici wish to address four issues. First, Amici will discuss why the text and purpose of North Carolina's constitutional and statutory provisions governing habeas corpus allow parties to seek relief from unlawful restraint even when their original imprisonment pursuant to a final judgment was lawful. Second, Amici will discuss why the principle of legislative acquiescence weighs against the State's request to overrule decisions of the Court of Appeals dating back almost fifty years. Third, Amici will discuss why persuasive authority from the United States Supreme Court, other federal courts, and state courts supports affirming

the Court of Appeals. Fourth, Amici will explain why eliminating habeas access as the State suggests would have a disproportionate and adverse effect on people with disabilities.

CONCLUSION

The Court should grant Amici leave to file a brief in support of Phillip Brandon Daw.

Respectfully submitted, this 2nd day of June, 2023.

/s/Daniel K. Siegel
Daniel K. Siegel
N.C. State Bar. No. 46397
ACLU OF NORTH CAROLINA
LEGAL FOUNDATION
P.O. Box 28004
Raleigh, NC 27611
(919) 592-4630
dsiegel@acluofnc.org

I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

Ivy Johnson
N.C. State Bar. No. 52228
ACLU OF NORTH CAROLINA
LEGAL FOUNDATION
P.O. Box 28004
Raleigh, NC 27611
919-532-3681
ijohnson@acluofnc.org

CERTIFICATE OF SERVICE

I certify that on June 2, 2023 I served the foregoing document on counsel of record for the parties via email addressed to:

Heidi M. Williams
hwilliams@ncdoj.gov
Counsel for the State

Rob Heroy
rheroy@goodmancarr.net
Counsel for Phillip Brandon Daw

/s/Daniel K. Siegel
Daniel K. Siegel
N.C. State Bar. No. 46397
ACLU OF NORTH CAROLINA
LEGAL FOUNDATION
P.O. Box 28004
Raleigh, NC 27611
(919) 592-4630
dsiegel@acluofnc.org