

FILED  
07-09-2021  
CLERK OF WISCONSIN  
COURT OF APPEALS

Appeal No. 2021AP000218

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STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II

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TOWN OF BROOKFIELD,

Plaintiff-Respondent,

-vs.-

MARTIN M. GONZALEZ,

Defendant-Appellant.

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**MOTION FOR LEAVE TO FILE NON-PARTY BRIEF**

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Pursuant to Wis. Stat. § 809.19(7)(a), the First Amendment Clinic at Duke Law hereby moves for an order granting it leave to file a non-party brief in this action as *Amicus Curiae*. In support, amicus submit their proposed brief and state as follows:

1. Amicus Duke Law First Amendment Clinic is dedicated to protecting and advancing the First Amendment freedoms of speech,

press, assembly, and petition, in legal representation and through public commentary. Students enrolled in the Clinic are certified by the State Bar of North Carolina to perform supervised legal work. Amicus has submitted numerous non-party briefs in federal and state courts on issues involving the rights of speech, press, assembly, and petition.

2. Amicus has a particular interest state statutes that punish disorderly conduct, as such statutes can be used to punish protected speech and related expressive activity.

3. This case questions whether the Town of Brookfield can lawfully apply a civil interpretation of the Wisconsin Disorderly Conduct statute, Wis. Stat. § 947.01, to the social media postings of the Defendant-Appellant, Martin M. Gonzalez. The Town has argued that Gonzalez's postings were "true threats," which are exempt from First Amendment protections. Amicus urges this court to vacate the conviction of Gonzalez because his social media postings are not true threats but rather speech protected by the First Amendment.

4. Amicus is well-positioned to aid this Court in the instant case by providing insights into the application of Wisconsin's "true threats" test and the significant ramifications of finding that social media postings of the sort posted by Gonzalez are true threats. The brief of Amicus demonstrates that Gonzalez's postings were not true threats under Wisconsin law and that affirming his conviction has would transform every Wisconsinite's social media account into an endless source of punishable true threats.

5. The Town's response brief was filed on June 25, 2021. Hence, this motion is timely filed pursuant to Wis. Stat. § 809.19(7)(b).

### CONCLUSION

For the reasons stated above, the First Amendment Clinic at Duke Law respectfully requests that the Court grant its motion for permission to file a non-party brief in this case, and that the Court accept the proposed non-party brief that accompanies this motion.

Dated this 9<sup>th</sup> day of July, 2021.

Respectfully submitted by,

Electronically signed by Matthew S. Pinix

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## CERTIFICATION

I certify that a copy of this motion has been filed with the Court  
and served on all parties on this 9<sup>th</sup> day of July 2021 as follows:

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Dated this 9<sup>th</sup> day of July, 2021.

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