INTERESTS OF AMICI

The participation of *amici curiae* will assist this Court in the resolution of the issues of public importance raised by this case by providing the legal context in which to analyze the facts of this case. The participation of *amici curiae* is particularly appropriate in cases with "broad implication," Taxpayers Assoc. of Weymouth Twp. v. Weymouth Twp., 80 N.J. 6 (1976), *cert. denied,* 430 U.S. 977 (1977), or in cases of "general public interest." Casey v. Male, 63 N.J. Super. 255 (Co. Ct. 1960). This is just such a case.

1. American Civil Liberties Union of New Jersey ("ACLU-NJ")

The ACLU-NJ is a private non-profit, non-partisan membership organization dedicated to the principle of individual liberty embodied in the Constitution. Founded in 1960, the ACLU-NJ has over 9,700 members in the State of New Jersey. The ACLU-NJ is the state affiliate of the American Civil Liberties Union, which was founded in 1920 for identical purposes, and is composed of over 350,000 members nationwide.

ACLU-NJ strongly supports ensuring equal protection for all persons and protection against undue government interference upon privacy rights. ACLU-NJ has participated in numerous cases raising privacy or equal protection claims. See, e.g., Joye, et al. v. Hunterdon Central Regional High School Brd. Of Ed., 353 N.J. Super. 600 (App. Div. 2002), appeal pending

in N.J.S.Ct., Dkt. No. 53,546; Sojourner, et al. v. New Jersey Dep't of Human Services, 350 N.J.Super 152, cert. granted 174 N.J. 194 (2002) (oral argument held on January 22, 2003); Planned Parenthood, et al. v. Farmer, et al., 165 N.J. 609 (2000); V.C. v. M.J.B., 163 N.J. 200 (2000); Boy Scouts of America v. Dale, 160 N.J. 562 (1999), rev'd, 530 U.S. 640 (2000); Rutgers Council of AAUP Chapters v. Rutgers, 298 N.J. Super. 442 (App. Div. 1997), certif. denied, 153 N.J. 48 (1998). It has also participated as direct counsel or *amicus curiae* in numerous other state court cases involving constitutional rights. See e.g. State v. Carty, 170 N.J. 632 (2002) (State Constitution requires reasonable suspicion of criminal activity prior to police seeking consent to search lawfully stopped motor vehicle); State v. Allah, 170 N.J. 269 (2002) (Sixth Amendment rights violated based on ineffective assistance of counsel where trial counsel failed to assert a meritorious double jeopardy claim); State v. Ravotto, 169 N.J. 227 (2001) (police used unreasonable force in obtaining a blood sample from a DWI suspect where suspect had consented to breathalyzer test); State in Interest of J.G., 151 N.J. 565 (1997); Doe v. Poritz, 142 N.J. 1 (1995) (challenging disclosure of information pertaining to sex offenders based in part on right to privacy); State v. Novembrino, 105 N.J. 95 (1987) (holding that there is no good faith exception to the exclusionary rule under the State Constitution); Mourning v.

Correctional Medical Services, 300 N.J. Super. 213 (App. Div.), certif. denied, 151 N.J. 468 (1997).

2. American-Arab Anti-Discrimination Committee ("ADC")

ADC is the national association of Arab Americans that works in every sphere of public life to promote and defend the interests of the Arab-American and Arab immigrant community. Arab Americans are an ethnic group who trace their roots to the Arabic-speaking countries of the Middle East and North Africa. Currently, there are Arab Americans living in all 50 of the United States, with nearly three million in the country as a whole. ADC is a grassroots civil rights organization that welcomes people of all backgrounds, faiths, and ethnicity as members. Since its founding in 1980 by former United States Senator James Abourezk, ADC has grown into the largest non-sectarian, non-partisan civil rights organization in America dedicated to protecting the civil rights of Americans of Arab descent. As an active member of the Leadership Conference on Civil Rights and the Detention Watch Network national coalitions, ADC works with many other civil rights organizations and coalitions on a multitude of issues that affect constitutional freedoms. Headquartered in Washington D.C., ADC also has offices in New York, Michigan, California and Ohio, and 42 membership chapters nationwide. As the representative of a culturally diverse group of

Americans and a staunch defender of human rights and civil liberties, ADC is resolutely committed to freedom of thought, conscience and religion. ADC has been and currently is involved in numerous cases involving discrimination and civil rights, and ADC is dedicated to ensuring that courts not forego their obligation to address constitutional issues involving fundamental rights.

3. Asian American Legal Defense and Education Fund ("AALDEF")

AALDEF, founded in 1974, is a non-profit organization based in New York City. AALDEF defends the civil rights of Asian Americans nationwide through litigation, legal advocacy and dissemination of public information. AALDEF has throughout its long history fought for the right to equal treatment for all persons, including lesbian and gay couples. AALDEF takes the position that discrimination on the basis of sexual orientation should be prohibited on the same basis as discrimination based on race and that it is incumbent upon the courts to ensure that discrimination laws and fundamental constitutional rights are upheld.

4. National Organization of Women Legal Defense and Education Fund ("NOW Legal Defense")

NOW Legal Defense is a leading national not-for-profit civil rights organization with a 31-year history of advocating for women's rights and promoting gender equality. Among NOW Legal Defense's major goals is

securing economic justice for all. Throughout our history, we have used the power of the law to advocate for the rights of all women. We have appeared before the Supreme Court of the United States in a wide variety of gender discrimination and welfare cases, and have advocated for protection of reproductive and employment rights, increased access to childcare, and reduction of domestic violence and sexual assault. We oppose gender or sexual stereotyping in the law and in countless cases and public forums have advocated for the right of privacy and individual autonomy in making personal decisions with respect to reproductive and marital choices, including the right of gay and lesbian couples to marry.

5. National Organization for Women of New Jersey (NOW-NJ)

NOW-NJ is a civil rights organization with over 10,000 members and is dedicated to the full and equal participation of women in society. As such, NOW-NJ has consistently opposed gender stereotyping and discrimination. Further, NOW-NJ advocates for the right of privacy and individual autonomy in making personal decisions with respect to reproductive and marital choices. NOW-NJ accomplishes its goals by educating lawmakers and the public, testifying at the State House in Trenton, and working in coalition with other civil rights organizations.

ARGUMENT

Gay and lesbian couples comprise a significant minority in New Jersey. According to the 2000 Census, there are at least 16,000 same-sex couples living in the State. See "For gays and lesbians, a question of equity," Star Ledger, May 4, 2003. These couples, on average, are financially less secure than other couples in New Jersey but, at the same time, have larger families to support. See Human Rights Campaign Report entitled "New Jersey Census Data Shows Average New Jersey Same-Sex Couple Is Less Financially Secure than Other State Couples," at http://www.hrc.org/newsreleases/2003/census/030512nj.asp (attached hereto as A-1).[1] Nevertheless, same-sex couples, due to their inability to obtain civil marriages, are denied numerous financial and non-financial benefits that would assist and strengthen their families.

Plaintiffs in this action are seven same-sex couples who have been in committed loving relationships for many years and who desire to be married and to obtain the legal rights, recognition, and responsibilities attendant thereto. All have been denied this most basic and personal right, the right to

[1] While the median income of same-sex couples ($64,000) is nine thousand dollars *less* than that of other couples ($73,800), same-sex couples on average have *more* children than other couples (2.08 for same-sex couples; 1.89 for other couples). Id.

marry, by the government based solely on the fact that the sex of each plaintiff's choice of marital partner is the same as his or her own. Plaintiffs therefore filed this action seeking vindication of their rights to privacy and equal protection under the New Jersey Constitution.

In seeking dismissal of plaintiffs' action, defendants argue, in part, that the court should forego its obligation to resolve the constitutional claims presented. Defendants request that the court instead permit the legislature to decide what rights plaintiffs should be afforded. Amici write to emphasize the manner in which defendants' position is directly at odds with numerous prior New Jersey court decisions and, indeed, with the very principles upon which individual constitutional rights are founded.

Amici also address an overarching mischaracterization proffered by defendants, namely that plaintiffs are requesting recognition of a "new" constitutional right – that of same-sex marriage. Db at 19, 30. As discussed further below, the right not to have one's choice of marital partner limited by the government (unless the burden is otherwise justified under the Court's balancing test) is neither a "new" right nor a "homosexual" right. It is a fundamental privacy right arising from Article 1, section 1 of the New Jersey Constitution. Indeed, the right to independent decision-making in the marital context is clearly established under the New Jersey Constitution.

Greenberg v. Kimmelman, 99 N.J. 552 (1985). That the decision-making right is being applied herein in the context of plaintiffs' choices of same-sex partners neither voids the constitutional right nor shields the government's limitation thereof from being subjected to constitutional review.

It is therefore not plaintiffs who ask for a "new" right; rather it is the State that asks for this Court to adopt a new procedure whereby it abstains from deciding claims that have properly been placed before it and that pertain to denial of fundamental rights. Neither jurisdictional nor providential concerns support the State's radical request.

I. THIS COURT HAS A DUTY TO ADDRESS AND RESOLVE PLAINTIFFS' CONSTITUTIONAL CLAIMS AND MUST NOT PERMIT PLAINTIFFS' RIGHTS TO BE SUBJECT TO MAJORITY VOTE OF THE LEGISLATURE.

"'The judicial obligation to protect the rights of individuals is as old as this county.'" Robinson v. Cahill, 69 N.J. 133, 147 (1975), quoting Cooper v. Nutley Sun Printing Company, 36 N.J. 189, 196 (1961). Contrary to that well-established precedent, defendants propose that this court forego its "obligation of interpreting the Constitution and of safeguarding the basic rights granted thereby to the people," (Asbury Park v. Wooley, 33 N.J. 1, 12 (1960)), and, instead, permit the State legislature to determine the extent of plaintiffs' constitutional rights and the extent to which plaintiffs should be permitted to exercise those rights. Defendants'

request controverts fundamental principles of constitutional law that are so firmly established "'as not to be debatable,'" (id., citing State v. Rogers, 56 N.J.L. 480 (Sup.Ct. 1894)), and must therefore be rejected.

A. The New Jersey Courts Have an Unflagging Obligation to Address Claims Involving Fundamental Rights Under the State Constitution.

In very clear terms, the New Jersey Supreme Court has consistently recognized that it is the obligation of the courts to protect individual rights and to adjudicate cases properly before them. As explained by the Court in Asbury Park Press, Inc., 33 N.J. at 10, adjudication of the constitutionality of government actions or enactments "is not only within the constitutional authority of the courts, but represents one of their duties as well." The Court explained:

> The judicial branch of the government has imposed upon it the obligation of interpreting the Constitution and of safeguarding the basic rights granted thereby to the people. In this sphere of activity the courts recognize that they have no power to overturn a law adopted by the legislature within its constitutional limitation, even though the law may be unwise, impolitic or unjust. But when legislative action exceeds the boundaries of the authority delegated by the constitution, and transgresses a sacred right guaranteed to a citizen, final decision as to the invalidity of such action must rest exclusively with the courts. [Id.]

The Court further added: "It cannot be forgotten that ours is a government of law and not of men, and that the judicial department has imposed upon it

the solemn duty to interpret the laws in the last resort. However delicate that duty may be, we are not at liberty to surrender, or to ignore, or to waive it." Id.

The underpinning for the judiciary's role as final arbiter of constitutional questions and protector of individual rights was expressed in State v. Loftin, 157 N.J. 253 (1999). The Court, quoting Governor Driscoll's address at the 1947 Constitutional Convention, wrote:

> It is, as you know, the courts that have traditionally been the guardians of our constitutions, to whom the meanest citizen may appeal for protection against a wayward executive or capricious legislature. Without independent courts, the whole republican system must surely fail. Our primary, our basic purpose in the drafting of a new Constitution is to secure beyond any question a strong, competent, easily functioning, but always independent, judiciary, and, therefore, be in a position to curb any tendency on the part of the other two branches of government to exceed their constitutional authority. [Id.]

See also Mulhearn v. Federal Shipbuilding Dry Dock Co., 2 N.J. 356, 364 (1949) (characterizing the separation of powers doctrine as "the great contribution of Anglo-American lawyers to the prevention of absolutism and the preservation of the rights of the individual against the state").

Not surprisingly, defendants cite no cases to support their request for the court to stay its hand and to refer the claims raised herein to the legislature. See Db at 28. In fact, the only cases regarding deference cited

by defendants arise in a separate section of defendants' brief (see Db at 8) and relate only to the presumption of validity of legislative enactments. Even in that context, however, defendants' arguments for deference to be granted in the present case are unavailing. Defendants rely upon Paul Kimball Hosp. V. Brick Township Hosp., 86 N.J. 429 (1981) and Newark Superior Officer's Assn. V. City of Newark, 98 N.J. 212 (1985), for support of their position. That reliance is clearly misplaced. When passages from those cases are read in their entirety, they, in fact, support scrupulous judicial review for the government action involved herein. While those cases do recognize that courts should not lightly overturn enactments by the legislature, they further hold that the reluctance to declare a government action or enactment void gives way when the governmental action is "repugnant to the Constitution." Paul Kimball Hosp., 86 N.J. at 447; Newark Superior Officer's Assn., 98 N.J. at 222. As explained in Bell v. Township of Stafford, 110 N.J. 384, 394-95 (1988): "[O]rdinarily legislative enactments are presumed to be valid and the burden to prove invalidity is a heavy one….Nevertheless, if an enactment directly impinges on a constitutionality protected right, the presumption of validity disappears." Id. The Court added: "Courts are far more demanding of clarity, specificity and restrictiveness with respect to legislative enactments that have a

demonstrable impact on fundamental rights." Id., citing State v. Cameron, 100 N.J. 586, 592 (1985). See also Planned Parenthood v. Farmer, 165 N.J. at 619 ("when legislation impinges on a constitutionally protected right, we have looked more closely at the State's purported justification"); Taylor v. Bd. of Ed. Of Hoboken, 187 N.J.Super. 546, 554 (App. Div. 1983) (although "holding an act of the Legislature even partially unconstitutional …is a sensitive ruling…[, n]evertheless, there comes a time when the disagreeable judicial venture arises").

Recognizing the specific hardship of minority individuals in the political realm, the New Jersey Supreme Court has in fact acknowledged a heightened need for the judiciary to act when the equal rights of minority citizens are at stake, as is the case herein. As stated in Dale v. Boy Scouts, 160 N.J. at 619:

> The sad truth is that excluded groups and individuals have been prevented from full participation in the social, economic, and political life of our country. The human price of this bigotry has been enormous. At a most fundamental level, adherence to the principle of equality demands that our legal system protect the victims of invidious discrimination. [Id.]

This Court cannot now ignore its constitutional duty and deny the minority individuals before it their right to seek redress in the legal system against discrimination and violations of their fundamental rights. Plaintiffs brought suit because the State's actions "directly impinge[] on a

constitutionality protected right" – namely, the right to privacy and the right to equal protection. It is therefore the obligation and function of this court to determine whether plaintiffs' claims are valid. Cf. Marbury v. Madison, 1 Cranch 137 (1803) ("It is emphatically the province of the judicial department to say what the law is.").

B. Constitutional Rights Cannot Be Subjected to Majority Vote.

The legislature is not only an improper venue for assessing plaintiffs' claims based upon the hardships alluded to in Dale but, more fundamentally, based upon the inalienable nature of fundamental rights. As held by the United States Supreme Court: "One's right to life, liberty, and property, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote…." West Virginia State Bd. of Elections v. Barnette, 319 U.S. 624, 638 (1943). Indeed, the very purpose of the provision of individual constitutional rights is "to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." Id. See also Thornburgh v. American College of Obstetricians & Gynecologists, 476 U.S. 747, 772, 106 S.Ct. 2169, 2184, 90 L.Ed.2d 779 (1986) ("Our cases long have recognized that the Constitution

embodies a promise that a certain private sphere of individual liberty will be kept largely beyond the reach of government").

As such, forcing plaintiffs to make their case for the existence of, and right to exercise, their constitutional rights before the state legislature is wholly repugnant to constitutional principles. No individual or minority group should be required to plead to the majority for permission to exercise rights to which they are already constitutionally guaranteed. As expressed by the New Jersey Supreme Court, "the State Constitution, as a wellspring of individual rights and liberties, may be directly enforceable, its protections not dependent even upon implementing legislation." State v. Schmid, 84 N.J. 535, 558 (1980), citing Peper v. Princeton Univ. Bd. of Trustees, 77 N.J. at 76-77.

Defendants' argument in support of referring plaintiffs' claims to the legislature underscores the inappropriateness of such action. Defendants argue that "[t]he Legislature is the body most responsive to the will of the people and best suited to forge the practical *compromises* necessary to preserve unity….The Judiciary should permit the vital debate and delicate political *negotiation* to continue without interruption from the courts." Db at 28 (emphasis added). As stated above, however, constitutional rights "may not be submitted to vote", Barnette, 319 U.S. at 638, and no individual or

minority group should have their constitutionally-guaranteed rights become the subject of “compromise” or “negotiations.”

This Court should also reject the argument apparently suggested by defendants (and potentially by other *amici*) that the court should stay its hand for fear of creating disunity or a backlash by particular members of the legislature or the public. See Db at 28 (discussing the Legislature’s need and ability “to preserve unity” as a reason for the court to defer the current questions before it to that branch of government). “A judiciary, conscious of the sacrosanct quality of its oath of office to uphold the Constitution, cannot accept an In terrorem argument….” Asbury Park Press, Inc, 33 N.J. at 15.

Finally, defendants try to support their argument for deference to the Legislature by noting that the State has already granted plaintiffs certain limited rights to this point (Db at 25-26) and that plaintiffs can attempt to obtain additional rights currently denied to them by seeking additional legislative action. Defendant’s ultimate conclusion is that a judicial review of plaintiffs’ claims for equality is not justified by their “impatience with the scope or pace of change….” Db at 30. However, that a legislature might ultimately “come around” to plaintiffs’ position and thus eventually come into constitutional compliance is not an acceptable reason to permit a current

violation of constitutional rights to continue.[2] As stated by Chief Justice Weintraub in Village of Ridgefield Park v. Bergen Co. Br. Of Taxation, 31 N.J. 420, 426 (1960), when the jurisdiction of the court is rightfully invoked the court cannot "properly look the other way….It is the singular situation of the judiciary that issues before it must be met and decided when presented." Id.

In sum, the courts have an unflagging obligation to adjudicate plaintiffs' alleged constitutional violations and to not permit fundamental rights to be subject to a majority vote. "To find otherwise would be to say that our Constitution embodies rights in a vacuum, existing only on papers.'" Robinson v. Cahill, 69 N.J. at 147, quoting Cooper v. Nutley Sun Printing Co., Inc., 36 N.J. at 197. This Court, as the "guarantor of the Constitution's command, possesses and must use power equal to its responsibility." Robinson v. Cahill, 69 N.J. at 154.

[2] Whether defendants will independently grant plaintiffs their requested relief at any time in the near future is highly speculative and, in fact, doubtful. Defendants themselves point out that the recent trend in legislative enactments "has been overwhelmingly against plaintiffs' position."

II. THE CONSTITUTIONAL RIGHT TO PRIVACY CANNOT BE PARSED SO AS TO EXCLUDE A PARTICULAR MINORITY FROM ITS PROTECTION.

The right to privacy confers, as against the government, "the right to be let alone – the most comprehensive of rights and the right most valued by civilized men." State v. Hempele, 120 N.J. 182, 225 (1990), quoting Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting); see also Doe v. Poritz, 142 N.J. at 100 (same); State v. Saunders, 75 N.J. 200, 213 (1977) (same). Most notably, this right protects individual "independence in making certain kinds of decisions." Doe v. Poritz, 142 N.J. at 77, citing Whalen v. Roe, 429 U.S. 589, 599 (1977). Under the New Jersey Constitution, this right emanates from Article I, paragraph 1. Right to Choose v. Byrne, 91 N.J. 287, 303 (1982) ("By declaring the right to life, liberty and the pursuit of safety and happiness, Art. I, par. 1 protects the right of privacy"); see also Planned Parenthood v. Farmer, 165 N.J. at 629; State v. Saunders, 75 N.J. at 216. Indeed, the language of Article I, section 1 is "more expansive ... than that of the United States Constitution...." Planned Parenthood, 165 N.J. at 629, quoting Right to Choose v. Byrne, 91 N.J. at 303. Specifically, "New Jersey's Constitution has been read more expansively than the federal Constitution in the area of right to privacy…[in the contexts of] *marriage and familial association*, refusal of medical

treatment, consensual adult sexual relations, and procreative rights." Doe v. Poritz, 142 N.J. at 147 (Stein, J., dissenting) (emphasis added).

In determining whether a privacy right is implicated by a government action, the focus is on the area of decision-making affected, not upon the individual claiming the interest. In other words, it is the "zone" of privacy that is protected from government intrusion. Greenberg v. Kimmelman, 99 N.J. at 563. As recognized by the defendant: "[T]he New Jersey Constitution provides citizens with a 'zone of privacy' to conduct their affairs without government interference, unless such interference [is constitutionally permissible]." Db at 17, citing Doe v. Poritz, 142 N.J. at 77-78.

Once it has been established that an individual's right to privacy under the New Jersey Constitution is implicated, courts then employ a balancing test to analyze whether the governmental infringement of that right is permissible. Planned Parenthood v. Farmer, 165 N.J. at 630; Right to Choose v. Byrne, 91 N.J. at 308-9; Greenberg v. Kimmelman, 99 N.J. at 567. In striking the balance, the Court considers "the nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction." Planned Parenthood v. Farmer, 165 N.J. at 630, citing Greenberg, 99 N.J. at 567. Significantly, the balancing test

(like the analysis as to whether a right to privacy in a certain decision-making area exists) focuses on the affected right itself without reference to the individual claiming the right. The status of a plaintiff as a member of a particular subsection of society is therefore not germane to this balancing of interests analysis.

"As one of life's most intimate choices,…" the decision regarding whom one should marry undoubtedly "invokes a privacy interest safeguarded by the New Jersey Constitution." Greenberg, 99 N.J. at 572. See also State v. Saunders, 75 N.J. at 219 ("we can only reiterate that decisions such as whether to marry are of a highly personal nature; they neither lend themselves to official coercion or sanction, nor fall within the regulatory power of those who are elected to govern"). The State of New Jersey does not deny the existence of this privacy right. Instead, it inappropriately attempts to parse the privacy right in such a way as to effectively negate the general right to independent decision-making that the constitution meant to protect. Essentially, defendants seek to limit the general application of the privacy right to make independent decisions about one's marital status such that it only applies to the heterosexual segment of the population. Defendants do so by asserting that plaintiffs seek to invoke

not a right to marriage but, rather, the right to *same-sex* marriage. Db at 19, 30.

While it is true that defendants limited plaintiffs' marital choices based upon their chosen partners' same-sex status, the right which is being burdened is the basic privacy right to make marital decisions without undue government interference. Indeed, whatever the particular relationship of an individual to his or her marital partner -- whether it be a Jew choosing to marry a Christian, a Caucasian choosing to marry an African-American, a gay man or lesbian woman choosing to marry another gay man or lesbian woman, or any other of the infinite permutations of what makes one couple distinct from others -- each situation involves simply a specific context within which the right to independent choice of marital partner is exercised. As such, the "right to *same-sex* marriage" can no more be parsed out of the overarching right to privacy in the area of marriage than could the "right to *interracial* marriage" or the "right to *inter-religious* marriage." Simply put, none of the situations described above invoke "new" rights but, rather, all fall within the existent right to privacy in the marital realm. Indeed, "[s]ince Art. I, para. 1 specifically protects the rights of *all persons*…, the necessity of permitting [plaintiffs] to vindicate this basic right is self-evident." Peper

v. Princeton University Bd. of Trustees, 77 N.J. 55, 79 (1978) (emphasis added).

Further, the fact that a privacy right is implicated should not be obfuscated by the question which must thereafter be asked as to whether or not the State has an overriding interest in limiting the plaintiffs' right to choose a same-sex partner for marriage.[3] Indeed, even in the numerous contexts wherein the State has permissibly limited marital decision-making based upon an overriding state interest (e.g., limitations on marrying a minor or closely-related relatives), the constitutional privacy right to independent decision-making is nevertheless infringed upon (albeit, in those situations, justifiably so based upon overriding valid state interests, such as in public health and the protection of minors). As such, regardless of proffered justifications in the present case, the existence of the privacy right, the governmental limitation thereof, and the need for constitutional review cannot be denied.

[3] Amici believe defendants do not have any legitimate overriding interest for such a limitation and concurs with the arguments presented in plaintiffs' brief.

CONCLUSION

For the reasons stated above, defendants' motion to dismiss should be denied.

Dated: ________________

____
Ed Barocas
Legal Director, ACLU-NJ
On behalf of *amici curiae*