

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF)	No. S148029
CALIFORNIA,)	
)	Court of Appeal
Plaintiff and Respondent,)	No. F048115
)	
v.)	
)	
ARTHUR LOURDES LENIX,)	
)	
Defendant and Petitioner.)	
_____)	

**MOTION OF THE CALIFORNIA STATE CONFERENCE OF THE NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL.,
FOR PERMISSION TO APPEAR AS AMICI CURIAE ON BEHALF OF
DEFENDANT/PETITIONER**

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TO: THE HONORABLE RONALD GEORGE, CHIEF JUSTICE OF THE SUPREME
COURT OF CALIFORNIA, AND TO THE HONORABLE ASSOCIATE JUSTICES OF
THE COURT:

The California State Conference of the National Association for the Advancement
of Colored People (“NAACP of California”), Rabbi Allen B. Bennett, Dr. James A.
Donahue, Mr. Suleiman Ghali, Rev. Cannon Charles Gibbs, and Rev. Dr. Cecil L. Murray
move this Court for permission to appear as an amici curiae on behalf of defendant within

the meaning of California Rules of Court, Rule 8.520(f). In bringing this application, the NAACP of California, Rabbi Allen B. Bennett, Dr. James A. Donahue, Mr. Suleiman Ghali, Rev. Cannon Charles Gibbs, and Rev. Dr. Cecil L. Murray note that they are restricting their briefing to address grounds not covered by the parties in the briefing currently on file with the Court.

I. MOTION TO APPEAR AS AMICI CURIAE IN SUPPORT OF DEFENDANT.

A. Identification Of Parties.¹

The California State Conference of the National Association for the Advancement of Colored People (NAACP) is the state affiliate of the NAACP, which was founded in 1909, and is the nation's largest civil rights organization. The principal objective of the NAACP is to ensure the political, educational, social and economic equality of minority citizens of the United States, and it engages in the democratic processes, including litigation, to secure the elimination of racial and ethnic bias. One of the strongest and most enduring symbols of injustice in this country is the trial of an African-American

¹ No party involved in this litigation has tendered any form of compensation, monetary or otherwise, for legal services related to the writing or production of this brief, nor has any party to this litigation contributed any monies, services, or other form of donation to assist in the production of this brief.

defendant by an all-white jury. Historically, the NAACP has been at the forefront of litigation to ensure that persons of color are not excluded from participating in an institution -- the jury -- that is central to the fair administration of our justice system.

Rabbi Allen B. Bennett is the President of the Board of Rabbis of Northern California. He has served as the rabbi at congregations in California and Minnesota, and was the Executive Director of the Jewish Community Relations Council of the Jewish Federation of the Greater East Bay in the mid-1990's. Rabbi Bennett, who has long been active in interfaith and civil rights efforts, served on the San Francisco Human Rights Commission, the Conference of Black and Jewish Clergy, the Coalition for Civil Rights, the San Francisco Conference on Religion, Race and Social Concerns, the Race and Community Relations Planning Team of the FAITHS Initiative of the San Francisco Foundation, and the San Francisco Interfaith Council.

Dr. James A. Donahue is President of the Graduate Theological Union (GTU) and Professor of Ethics. The GTU is an ecumenical and interreligious crossroads, building bridges among Christian denominations and other faith traditions, and dedicated to educating students for teaching, research, ministry, and service. Dr. Donahue served as professor of theology and ethics, dean of students and vice president of student affairs at Georgetown University for fifteen years before assuming his current position at the GTU.

He has also held faculty and administrative positions at Boston College and Santa Clara University. Dr. Donahue has been committed to the public role of ethics and theology throughout his career, and has served as an ethics consultant to various governmental entities and private corporations.

Souleiman Ghali is founder and former President of the Islamic Society of San Francisco, an umbrella organization established in 1991 to administer the largest Mosque in San Francisco, as well as other local institutions. Mr. Ghali has devoted himself to improving the understanding of Islam as a tolerant and just religion through his public speaking and advocacy for American Muslims. He is committed to building bridges between faith communities, and to the elimination of religiously motivated conflicts and wars. Mr Ghali is a regular speaker and lecturer about Islam and interfaith dialogue at many churches, synagogues, universities and businesses.

The Rev. Cannon Charles Gibbs is the Executive Director of United Religions Initiative (URI), which is committed to promoting enduring, daily interfaith cooperation, ending religiously motivated violence, and creating cultures of peace and justice around the globe. The URI is based in San Francisco and includes thousands of members in over 65 countries representing more than 100 religions, spiritual expressions, and indigenous traditions. He also served as a parish priest for the Episcopal Church of the Incarnation

for six years, and as Executive Director of the San Rafael Canal Ministry, an interfaith ministry dedicated to service and issues of social justice in a predominantly immigrant and refugee community for six years. He has published broadly and spoken around the world on issues of inclusion and interfaith cooperation for the good of all.

The Rev. Dr. Cecil L. Murray holds the John R. Tansey Chair in Christian Ethics and is Adjunct Professor in Religion at the University of Southern California. Rev. Murray served for twenty-seven years before retiring as senior pastor of Los Angeles' oldest black church, the First African Methodist Episcopal (A.M.E.) Church. His ministry extended services to the homeless, persons with HIV, seniors, and at-risk-youth, among others. Rev. Dr. Murray is a senior fellow at the Center for Religion and Civic Culture, where he works to improve relationships between the African-American and Latino communities. He also served on the General Boards of the A.M.E. Church and the National Council of Churches.

B. Interest Of Amici Curiae In This Litigation.

This Court granted review to answer the following question: “Must an appellate court perform a comparative juror analysis for the first time on appeal to evaluate the genuineness of the prosecutor's reasons for peremptorily challenging prospective jurors.”

The parties have set forth their respective positions on that issue. Defendant argues comparative juror analysis is permissible on appeal even where it is not performed at trial. The state argues that unless trial counsel presents the comparative juror analysis at trial, it may not be argued on appeal.

In its brief, amici will take a third position based on the United States Supreme Court's recent decision in *Snyder v. Louisiana* (2008) ___ U.S. ___, 128 S.Ct. 1203. This intermediate position -- adopted by the Court in *Snyder* and applied by numerous other courts throughout the country -- recognizes that there are some situations in which comparative analysis may be performed for the first time on appeal and some situations where an appellate court may not perform such an analysis without it having been presented to the trial court. Because neither party has advanced this position, or discussed the practical and policy considerations which bear on the issue, amici seek to fill that gap. Moreover, although the Court's question specifically involves whether trial counsel must perform comparative analysis in order to preserve the defendant's right to present the argument on appeal, neither party has addressed the question of prospective application of any default rule which the Court may announce. Amici address this issue as well.

Amici, in their organizational and individual capacities, have a long-standing interest in ensuring that the criminal justice system in our diverse nation operates free of

discrimination based upon race, ethnicity, or religion. They are committed to the view that allegations of race discrimination by government representatives must be reviewed scrupulously to assure just and reliable outcomes, to safeguard the constitutional right of all citizens to be fairly considered for jury service, and to promote public confidence in the criminal justice system. Amici have a unique interest in ensuring fair and balanced procedures to assess whether a prosecutor's decision to dismiss from jury service members of a racial, ethnic, religious or other minority springs from improper motives.

Accordingly, the NAACP of California., Rabbi Allen B. Bennett, Dr. James A. Donahue, Mr. Suleiman Ghali, Rev. Cannon Charles Gibbs, and Rev. Dr. Cecil L. Murray respectfully request permission to file this brief, informing the Court on arguments which have not yet been presented to the Court.

DATED: _____.

Respectfully submitted,

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By Cliff Gardner
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