

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:  TEHUM CARE SERVICES, INC.  Debtor.	Chapter 11  Case No. 23-90086 (CML)
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**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT  
OF *PRO SE* LITIGANTS' REQUESTS FOR NOTICE AND OPPORTUNITY  
TO PARTICIPATE IN CHAPTER 11 PROCEEDINGS AND CERTAIN  
OBJECTIONS TO ENTRY OF A FINAL DIP ORDER**

The American Civil Liberties Union, the Center for Constitutional Rights, Public Justice, Rights Behind Bars, the Roderick & Solange MacArthur Justice Center, and the Southern Center for Human Rights (together, the “proposed *amici*”), by and through undersigned counsel, hereby move for leave to file an *amicus curiae* brief in this case.

“The decision whether to permit a person to appear as *amicus curiae* is committed to the Court's discretion.” *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 550 B.R. 241, 256 (Bankr. S.D.N.Y. 2016); *see also In re Ginaldi*, 463 B.R. 314, 316 (Bankr. E.D. Pa. 2011) (recognizing bankruptcy court has “broad

discretion to permit an amicus curiae to participate in a pending action”); *In re Edison Mission Energy*, 610 B.R. 871, 878 (Bankr. N.D. Ill. 2020) (same); *United States v. Alkaabi*, 223 F. Supp. 2d 583, 592 (D.N.J. 2002) (same).

Although there is no rule in the Federal Rules of Bankruptcy Procedure or the Local Bankruptcy Rules of this Court governing the appearance of *amicus curiae* in these proceedings, Federal Rule of Appellate Procedure 29 provides that a motion for leave to appear as *amicus curiae* “must be accompanied by the proposed brief and (A) state the movant’s interest and (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” F.R.A.P. 29(a)(3). The Fifth Circuit, in the context of a bankruptcy case, has explained:

An amicus brief should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the amicus to intervene and become a party in the present case), or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.

*In re Halo Wireless, Inc.*, 684 F.3d 581, 596 (5th Cir. 2012) (quoting *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997)). The Fifth Circuit has also explained that courts would be “well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted” because “if a good brief is rejected,” the court “will be deprived of a

resource that might have been of assistance.” *Lefebure v. D’Aquila*, 15 F.4th 670, 676 (5th Cir. 2021).

Here, the proposed *amicus curiae* brief satisfies the conditions set forth in Federal Rule of Appellate Procedure 29 because it helps represent the interests of pro se incarcerated litigants, and also offers a unique perspective regarding the barriers incarcerated people face in accessing the courts that raise unique due process concerns in the bankruptcy context.

### **Interest of Proposed Amici**

Consistent with Federal Rule of Appellate Procedure 29, proposed *amici* have a strong interest in this case. They are non-profit, civil rights organizations with decades of experience advocating for the rights of incarcerated people, including involvement in litigation relating to Corizon’s failures to provide adequate care. As a result, they have a strong interest in defending the rights of incarcerated people who may have claims against Corizon. Proposed *amici* also have a strong interest in ensuring that the bankruptcy process does not become a tool for corporations to evade accountability for civil rights abuses.

The **American Civil Liberties Union** (“ACLU”) is a nationwide, nonprofit, nonpartisan organization of more than 1.7 million members dedicated to protecting the fundamental rights guaranteed by the Constitution and the laws of the United States. Consistent with that mission, the ACLU established the National Prison

Project (“NPP”) in 1972 to protect and promote the civil and constitutional rights of incarcerated people. NPP has decades of experience in complex prisoners’ rights class action suits, including multiple cases regarding minimal standards for correctional health care in jurisdictions where debtor Corizon has operated or continues to operate.

The **Center for Constitutional Rights** (“CCR”) is a national, not-for-profit legal, educational, and advocacy organization dedicated to protecting and advancing rights guaranteed by the U.S. Constitution and international law. Founded in 1966 to represent civil rights activists in the South, CCR has litigated numerous landmark civil and human rights cases. CCR has represented numerous incarcerated people in state and federal custody across the country challenging their conditions of confinement. As such, CCR is deeply familiar with the barriers to participation in court proceedings—bankruptcy or otherwise—faced by incarcerated people and is committed to dismantling those barriers.

**Public Justice** is a national public interest legal organization that specializes in precedent-setting, socially significant civil litigation, with a focus on fighting corporate and governmental misconduct. The organization maintains an Access to Justice Project that pursues litigation and advocacy efforts to remove procedural obstacles that unduly restrict the ability of consumers, workers, and people whose civil rights have been violated to seek redress in the civil court system. Public Justice

has engaged in significant advocacy efforts to prevent abuse of the bankruptcy system to evade the civil justice system, which hinders and delays justice for survivors of corporate wrongdoing. For example, Public Justice filed an *amicus curiae* brief opposing Johnson & Johnson's use of the Texas Two Step; the Third Circuit recently dismissed that bankruptcy. *In re LTL Mgmt., LLC*, 64 F.4th 84 (3d Cir. 2023).

**Rights Behind Bars** (RBB) legally advocates for people in prison to live in humane conditions and contributes to a legal ecosystem in which such advocacy is more effective. RBB seeks to create a world in which people in prison do not face large structural obstacles to effectively advocating for themselves in the courts. RBB helps incarcerated people advocate for their own interests more effectively and through such advocacy push towards a world in which people in prison are treated humanely.

The **Roderick & Solange MacArthur Justice Center** ("MJC") is a not-for-profit organization founded by the family of J. Roderick MacArthur to advocate for civil rights and a fair and humane criminal legal system. As part of this mission, MJC represents incarcerated and formerly incarcerated individuals in cases concerning medical care, conditions of confinement, and access to courts. MJC has served as merits counsel, *amicus* counsel, or *amicus curiae* in numerous cases around the country related to these issues, in both state and federal courts. As such,

MJC has both expertise and interest in ensuring that people incarcerated in prisons and jails have sufficient due process protections in bankruptcy court proceedings.

The **Southern Center for Human Rights** (“SCHR”) is a nonprofit law firm dedicated to advancing equality, dignity, and justice for people impacted by the criminal legal system. Through litigation and advocacy, SCHR has worked for over 45 years to defend the civil and human rights of incarcerated people, ensure humane conditions of confinement in jails and prisons, and end degrading law enforcement practices. In light of its experience, SCHR has a unique perspective on the issues raised in this case, including the due process rights of people in prisons and jails, and an interest in ensuring that those rights are protected in any context, including bankruptcy court.

### **Desirability and Relevance**

The proposed *amicus curiae* brief is also desirable and relevant, in accordance with how that standard has been interpreted by the Fifth Circuit. The Fifth Circuit has recognized that *amicus curiae* briefs are particularly desirable, relevant, and proper when they support parties that are not adequately represented in these proceedings and then they present unique information or a unique perspective that can aid the court. *See In re Halo Wireless, Inc.*, 684 F.3d 581, 596 (5th Cir. 2012). This brief does both.

First, the primary purpose of the brief is to further defend the arguments of incarcerated pro se litigants regarding the unique barriers they have face in accessing and participating in this bankruptcy proceeding. The brief also makes arguments regarding notice and due process on behalf of known and unknown potential creditors that do not know these proceedings are happening or how their rights will be impacted by these proceedings. Other parties to this litigation do not have the same incentives as *amici* to ensure adequate notice of additional incarcerated creditors. Nonprofit, civil rights organizations are well-positioned to represent those interests that may not otherwise be adequately represented in the bankruptcy proceeding.

Second, proposed *amici* present a unique perspective that will aid the court in effectively safeguarding the due process rights of incarcerated creditors. These bankruptcy proceedings present a unique situation where many of the creditors are unrepresented and currently incarcerated. The perspective of proposed *amici* will be useful because they are non-profit, civil rights organizations with decades of experience advocating for the rights of incarcerated people and are familiar with the barriers that incarcerated people face in accessing the legal system. Proposed *amici* have a unique perspective regarding how those barriers may pose a threat to the due process rights of incarcerated people in these bankruptcy proceedings, as well as creative ideas for how this Court can help safeguard those due process rights. The

*amicus curiae* brief highlights very practical facts and aspects of civil rights law that have not been discussed before this Court and may lead this Court to modify its procedures for notifying and adequately including incarcerated creditors in this bankruptcy. Accordingly, *amici*'s proposed *amicus curiae* brief is desirable and relevant.

For the foregoing reasons, *amici* respectfully submit that the attached proposed *amicus curiae* brief satisfies the standard in Federal Rule of Appellate Procedure 29, and request the Court exercise its discretion to accept this brief.

### **CONCLUSION**

For the reasons stated above, proposed *amici* request that this Court grant this motion for leave to file an *amicus curiae* brief.

Dated: May 17, 2023

Submitted,

/s/ Jacqueline Aranda Osorno  
Counsel for *Amici Curiae*

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### **Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was served on May 17, 2023, via this Court's electronic case filing (ECF) system on all parties receiving ECF notices in this case.

/s/ Jaqueline Aranda Osorno  
Jaqueline Aranda Osorno