

IN THE COURT OF COMMON PLEAS OF THE 41ST JUDICIAL DISTRICT OF
PENNSYLVANIA PERRY COUNTY BRANCH

Barbara Hench, Donna Jones and
Kimberly McMullen, in their official
capacity as Auditor of Perry County,
Pennsylvania,
Plaintiffs

vs.

CARL NACE, in his official capacity as
Sheriff of Perry County, Pennsylvania,
Defendant

Civil Division - Law

A.D. No. 2014 - 454

Type of Filing:

**PETITION FOR LEAVE TO
PARTICIPATE *AMICUS CURIAE***

Filed on Behalf of:

Pennsylvania Sheriffs' Association;
The Honorable Mike Kelly, U.S.
Representative; The Honorable Mike
Turzai, Majority Leader, PA State
Representative; The Honorable Daryl
Metcalf, PA State Representative;
The Honorable John Maher, PA State
Representative; The Honorable Ted
Harhai, PA State Representative; The
Honorable Dave Reed, PA State
Representative; The Honorable Richard
Alloway, PA State Senator; The Honorable
Mike Brubaker, PA State Senator; The
Honorable Jake Corman, PA State Senator;
The Honorable John H. Eichelberger, Jr.,
PA State Senator; the Honorable Elder
Vogel, PA State Senator; The Honorable
Don White, PA State Senator; The
Honorable Stephen Bloom, PA State
Representative; The Honorable Michele
Brooks, PA State Representative; The
Honorable Brian Cutler, PA State
Representative; The Honorable Brian
Ellis, PA State Representative; The
Honorable Jaret Gibbons, PA State
Representative; The Honorable Scott
Hutchison, PA State Representative;
The Honorable R. Lee James, PA State
Representative; The Honorable Mark
Keller, PA State Representative; The

: Honorable David Maloney, PA State
: Representative; The Honorable Jim
: Marshall, PA State Representative; The
: Honorable Kurt Masser, PA State
: Representative; The Honorable John Payne,
: PA State Representative; The Honorable
: Jeff Pyle, PA State Representative; The
: Honorable Tom Sankey, PA State
: Representative; The Honorable Will
: Tallman, PA State Representative;
: Allegheny County Sportsmen's League
: (ACSL); Concerned Gun Owners of
: Pennsylvania (CGOPA); Firearms Owners
: Against Crime (FOAC); Gun Owners of
: America (GOA); Open Carry.org; Pennsyl-
: vania Federation of Sportsmen's Clubs
: (PFSC); Pennsylvanians for Self Protection
: (PA4SP); The Firearms Coalition; The
: Pennsylvania State Fish & Game Protective
: Association; Lehigh Valley Open Carry,
: Inc.; National Shooting Sports Foundation,
: Inc.; Pennsylvania Sportsmen's Association;
: Beaver County Sportsmen's Conservation
: League; and Unified Sportsmen of Pennsyl-
: vania

:
: Counsel of Record:

: Thomas W. King, III, Esquire
: PA Id. #21580

: Andrea C. Parenti, Esquire
: PA Id. #80483

: DILLON McCANDLESS KING
: COULTER & GRAHAM, L.L.P.
: 128 West Cunningham Street
: Butler, PA 16001
: Telephone: (724) 283-2200
: Fax: (724) 283-2298

IN THE COURT OF COMMON PLEAS OF THE 41ST JUDICIAL DISTRICT OF
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Barbara Hensch, Donna Jones and	:	Civil Division - Law
Kimberly McMullen, in their official	:	
capacity as Auditors of Perry County,	:	A.D. No. 2014 - 454
Pennsylvania,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
Carl Nace, in his official capacity as	:	
Sheriff of Perry County, Pennsylvania,	:	
	:	
Defendant.	:	

PETITION FOR LEAVE TO PARTICIPATE *AMICUS CURIAE*

AND NOW, come the Petitioners, the Pennsylvania Sheriffs' Association, The Honorable Mike Kelly, U.S. Representative; The Honorable Mike Turzai, Majority Leader, PA State Representative; the Honorable Daryl Metcalfe, House State Government Committee, Majority Chair, PA State Representative; The Honorable John Maher, House Agriculture and Rural Affairs Committee, Majority Chair, PA State Representative; The Honorable Ted Harhai, House Urban Affairs Committee, Minority Chair, PA State Representative; The Honorable Dave Reed, House Majority Policy Committee Chair, PA State Representative; The Honorable Richard Alloway, PA State Senator; The Honorable Mike Brubaker, PA State Senator; The Honorable Jake Corman, PA State Senator; The Honorable Jake Corman, PA State Senator; The Honorable John H. Eichelberger, Jr., PA State Senator; The Honorable Elder Vogel, PA State Senator; The Honorable Don White, PA State Senator; The Honorable Stephen Bloom, PA State Representative; The Honorable Michele Brooks, PA State Representative; The Honorable Brian Cutler, PA State Representative; The

Honorable Brian Ellis, PA State Representative; The Honorable Jaret Gibbons, PA State Representative; The Honorable Scott Hutchison, PA State Representative; The Honorable R. Lee James, PA State Representative; The Honorable Mark Keller, PA State Representative; The Honorable David Maloney, PA State Representative; The Honorable Jim Marshall, PA State Representative; The Honorable Kurt Masser, PA State Representative; The Honorable John Payne, PA State Representative; The Honorable Jeff Pyle, PA State Representative; The Honorable Tom Sankey, PA State Representative; The Honorable Will Tallman, PA State Representative; Allegheny County Sportsmen's League (ACSL); Concerned Gun Owners of Pennsylvania (CGOPA); Firearms Owners Against Crime (FOAC); Gun Owners of America (GOA); Opencarry.org; Pennsylvania Federation of Sportsmen's Clubs (PFSC); Pennsylvanians for Self Protection (PA4SP); The Firearms Coalition; The Pennsylvania State Fish & Game Protective Association; Lehigh Valley Open Carry, Inc.; National Shooting Sports Foundation, Inc.; Pennsylvania Sportsmen's Association; Beaver County Sportsmen's Conservation League; and Unified Sportsmen of Pennsylvania, ("*Amicus* Participants") by and through, DILLON McCANDLESS KING COULTER & GRAHAM L.L.P., per Thomas W. King, III, Esquire, and Andrea C. Parenti, Esquire, and file the within Petition for Leave to Participate *Amicus Curiae* in the above-captioned action which is pending before this Honorable Court and in support thereof submit the following:

1. The above-captioned case relates to the Auditors of Perry County, Barbara Hench, Donna Jones, and Kimberly McMullen seeking to obtain original and unredacted records in which the Sheriff records the receipt and disbursement of the application fees paid by applicants for Licenses to Carry Firearms (LTCF), (by disclosing the names of the licensees).

2. Sheriff Carl Nace has at all times agreed to provide all records relative to the receipt and disbursement of the application fees paid for LTCF but has redacted the names and addresses of the applicants in accordance with the confidentiality provisions of the Uniform Firearms Act and regulations thereto. 18 Pa. C.S.A. § 6111(i).

3. The Uniform Firearms Act is clear that this information is confidential. Relevant statutory provisions include the following:

All information provided by the potential purchaser, transferee or applicant, including, but not limited to, the potential purchaser, transferee or applicant's name or identity, furnished by a potential purchaser or transferee under this section or any applicant for a license to carry a firearm as provided by Section 6109 shall be confidential and not subject to public disclosure.

The statute goes on to provide that:

In addition to any other sanction or penalty imposed by this chapter, any person licensed dealer, state or local governmental agency or department that violates this subsection shall be liable and civil damages in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well reasonable attorney fees.

Additional statutory provisions dealing with the confidentiality of the issuance of a License to Carry a Firearm are as follows:

18 Pa. C.S. § 6109(I)(2) provides:

Notwithstanding any other law regarding the confidentiality of information, inquiries to the Firearms License Validation System regarding the validity of any Pennsylvania license to carry a firearm may only be made by law enforcement personnel acting within the scope of their official duties. ("Law Enforcement Officer" is defined as "Any person employed by any police department or organization of the Commonwealth or political subdivision thereof who is empowered to effect an arrest with or without warrant and who is authorized to carry a firearm in the performance of that person's duties.")

18 Pa.C.S. §6111(g)(3.1) provides:

Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly and intentionally obtains or furnishes information collected or maintained pursuant to section 6109 for any purpose other than compliance with this chapter or who knowingly or intentionally disseminates, publishes or otherwise makes available such information to any person other than the subject of the information commits a felony of the third degree.

4. In addition to the clear statutory language that identity information on a LTCF application is confidential, the Commissioners of Perry County hired the firm of Robert W. Morris & Company, P.C. to conduct an audit of Sheriff Nace's redacted records and were able to complete said audit with the redacted documentation thereby demonstrating that the redaction in no way hindered the ability of the Plaintiffs to audit the records of the Sheriff's office.

5. The Pennsylvania Sheriffs' Association represents the 67 County Sheriffs of the Commonwealth of Pennsylvania. The decision in this case will affect each Sheriff in Pennsylvania, as well as the citizens of Pennsylvania.

6. In light of the Association's and Amicus Participants' substantial interest in the outcome of the case, the Petitioner respectfully requests permission to participate in the case as an *amicus curiae* participant. The Brief that the Amicus Participants intend to file, if permitted, is attached hereto as Exhibit "A".

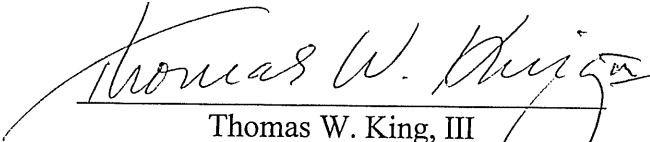
7. Petitioner has discussed the within Petition with counsel for the Sheriff's Office and he has consented to the granting of the within Petition.

8. Petitioner has discussed the within Petition with counsel for the Plaintiffs. He did not consent to the granting of the within Petition.

WHEREFORE, showing these things, Petitioner respectfully requests that this Honorable Court grant its Petition for Leave to Participate *Amicus Curiae*.

Respectfully submitted,

DILLON McCANDLESS KING COULTER & GRAHAM, L.L.P.


Thomas W. King, III
Andrea C. Parenti
Attorneys for Pennsylvania Sheriffs' Association

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Civil Division - Law

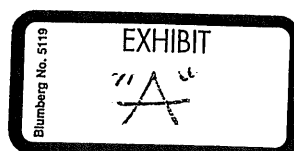
A.D. No. 2014 - 454

Type of Filing:

**AMICUS CURIAE BRIEF IN
SUPPORT OF DEFENDANT, CARL
NACE, SHERIFF OF PERRY COUNTY,
PENNSYLVANIA**

Filed on Behalf of:

Pennsylvania Sheriffs' Association;
The Honorable Mike Kelly, U.S.
Representative; The Honorable Mike
Turzai, Majority Leader, PA State
Representative; The Honorable Daryl
Metcalf, PA State Representative;
The Honorable John Maher, PA State
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Pennsylvania,	:	
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Plaintiffs,	:	
	:	
v.	:	
	:	
Carl Nace, in his official capacity as	:	
Sheriff of Perry County, Pennsylvania,	:	
	:	
Defendant.	:	

AMICUS CURIAE BRIEF IN SUPPORT OF
DEFENDANT CARL NACE, SHERIFF OF PERRY COUNTY, PENNSYLVANIA
FILED ON BEHALF OF THE PENNSYLVANIA SHERIFFS' ASSOCIATION

I. Statement of Facts:

On or about June 11, 2014, Plaintiffs, Barbara Hensch, Donna Jones and Kimberly McMullen, Auditors of Perry County, Pennsylvania filed a Complaint in Civil Action against Carl Nace, Sheriff of Perry County, Pennsylvania in the Court of Common Pleas of the 41st Judicial District of Pennsylvania, Perry County Branch seeking declaratory judgment pursuant to 42 Pa. C.S.A. § 7533 declaring that the Sheriff must provide the Plaintiffs with access to any and all original and unredacted records in which the Sheriff records the receipt and disbursement of the application fees paid by applicants for Licenses To Carry Firearms (LTCF).

The Pennsylvania Sheriffs' Association represents the 67 County Sheriffs in the Commonwealth of Pennsylvania. The Pennsylvania Sheriffs' Association; The Honorable Mike Kelly, U.S. Representative; The Honorable Mike Turzai, Majority Leader, PA State Representative; the Honorable Daryl Metcalfe, House State Government Committee, Majority Chair, PA State Representative; The Honorable John Maher, House Agriculture and Rural Affairs Committee, Majority Chair, PA State Representative; The Honorable Ted Harhai, House Urban Affairs Committee, Minority Chair, PA State Representative; The Honorable Dave Reed, House Majority Policy Committee Chair, PA State Representative; The Honorable Richard Alloway, PA State Senator; The Honorable Mike Brubaker, PA State Senator; The Honorable Jake Corman, PA State Senator; The Honorable Jake Corman, PA State Senator; The Honorable John H. Eichelberger, Jr., PA State Senator; The Honorable Elder Vogel, PA State Senator; The Honorable Don White, PA State Senator; The Honorable Stephen Bloom, PA State Representative; The Honorable Michele Brooks, PA State Representative; The Honorable Brian Cutler, PA State Representative; The Honorable Brian Ellis, PA State Representative; The Honorable Jaret Gibbons, PA State Representative; The Honorable Scott Hutchison, PA State Representative; The Honorable R. Lee James, PA State Representative; The Honorable Mark Keller, PA State Representative; The Honorable David Maloney, PA State Representative; The Honorable Jim Marshall, PA State Representative; The Honorable Kurt Masser, PA State Representative; The Honorable John Payne, PA State Representative; The Honorable Jeff Pyle, PA State Representative; The Honorable Tom Sankey, PA State Representative; The Honorable Will Tallman, PA State Representative; Allegheny County Sportsmen's League (ACSL); Concerned Gun Owners of Pennsylvania (CGOPA); Firearms

Owners Against Crime (FOAC); Gun Owners of America (GOA); Opencarry.org; Pennsylvania Federation of Sportsmen's Clubs (PFSC); Pennsylvanians for Self Protection (PA4SP); The Firearms Coalition; The Pennsylvania State Fish & Game Protective Association; Lehigh Valley Open Carry, Inc.; National Shooting Sports Foundation, Inc.; Pennsylvania Sportsmen's Association; Beaver County Sportsmen's Conservation League; and Unified Sportsmen of Pennsylvania, ("Amicus Participants") submits this Brief for consideration by this Honorable Court as *amicus curiae* participant in this matter. The issue pending before this Court has critical repercussions for not only the Sheriffs of the Commonwealth of Pennsylvania but the citizens of the Commonwealth of Pennsylvania as well.

An individual who is 21 years of age or older may apply to a Sheriff for a License To Carry a Firearm concealed on or about his person within the Commonwealth of Pennsylvania. If such an applicant is a resident of the Commonwealth of Pennsylvania, said applicant is required to apply with the Sheriff of the County in which he resides. 18 Pa. C.S.A. § 6109(b). The Application for a License to Carry Firearm is uniform throughout the Commonwealth of Pennsylvania and on a form prescribed by the Pennsylvania State Police. *Id.* An applicant is further required to submit the application fee of \$20.00. Nineteen dollars of the application fee are then paid to Perry County and one dollar from the application fee to the Treasury of the Commonwealth of Pennsylvania in accordance with 18 Pa. C.S.A. § 6109(h). The Sheriff maintains accurate records of the fees collected and disbursed on the applications to carry firearms submitted to the Sheriff of Perry County. The Plaintiffs have filed the within action pursuant to the Declaratory Judgment Act,

specifically 42 Pa. C.S.A. § 7533 seeking a Declaration of Rights relative to the Uniform Firearms Act and the obligation of the Sheriff to provide auditors with unredacted documents.

II. Argument.

At the outset, the *Amicus* Participants do not agree that the Plaintiff Auditors are acting in their “official capacity” as auditors of Perry County. The Complaint filed by the auditors is requesting Sheriff Nace to violate the laws of the Commonwealth of Pennsylvania which is clearly outside of the scope of their position as Auditors of Perry County. Defendant, Sheriff Carl Nace has at all times complied with the law, specifically the provisions of the Uniform Firearms Act. Sheriff Nace agreed to provide all records relative to the receipt and disbursement of the application fees paid for LTCF with the understanding that the names and addresses of the applicants would be redacted in accordance with the confidentiality provisions of the Uniform Firearms Act. 18 Pa. C.S.A. § 6111(i) and regulations thereto. This section provides in relevant part as follows:

All information provided by the potential purchaser, transferee or applicant, including, but not limited to, the potential purchaser, transferee or applicant’s name or identity, furnished by a potential purchaser or transferee under this section or any applicant for a license to carry a firearm as provided by Section 6109 shall be confidential and not subject to public disclosure.

The statute goes on to provide that:

In addition to any other sanction or penalty imposed by this chapter, any person licensed dealer, state or local governmental agency or department that violates this subsection shall be liable and civil damages in the amount of \$1,000 per occurrence or three times the actual damages incurred as a result of the violation, whichever is greater, as well reasonable attorney fees.

Additional statutory provisions dealing with the confidentiality of the issuance of a License to Carry a Firearm are as follows:

18 Pa.C.S. § 6109(I)(2) provides:

Notwithstanding any other law regarding the confidentiality of information, inquiries to the Firearms License Validation System regarding the validity of any Pennsylvania license to carry a firearm may only be made by law enforcement personnel acting within the scope of their official duties. (“Law Enforcement Officer” is defined as “Any person employed by any police department or organization of the Commonwealth or political subdivision thereof who is empowered to effect an arrest with or without warrant and who is authorized to carry a firearm in the performance of that person’s duties.”

18 Pa.C.S. § 6111(g)(3.1) provides:

Any person, licensed dealer, licensed manufacturer or licensed importer who knowingly and intentionally obtains or furnishes information collected or maintained pursuant to section 6109 for any purpose other than compliance with this chapter or who knowingly or intentionally disseminates, publishes or otherwise makes available such information to any person other than the subject of the information commits a felony of the third degree.

The Plaintiffs argue that the provisions of the Uniform Firearms Act do not prevent the Sheriff from providing the auditors with unredacted records in that they are not members of the “public” but are rather duly “elected/appointed public officials that are statutorily required to review these complete and unredacted records in order to carry out their duties.” Even in the event that the Plaintiffs could be considered not a member of the public as they argue in their Complaint, non-public disclosure is limited to “criminal justice agencies.” Specifically, the Pennsylvania Code at

37 Pa. Code § 33.103 entitled “Confidentiality” provides as follows regarding non-public disclosure of information collected or maintained under the Uniform Firearms Act:

(d) No disclosure of information forwarded, collected or maintained under this chapter will be made to requests of noncriminal justice agencies, or individuals other than the applicant, licensee, purchaser or transferee as described in Section 6109 and 6111 of the Act.

Therefore, disclosure may only be made to “criminal justice agencies” which are defined by this regulation as follows:

Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to this function. Criminal justice agencies include: organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards and agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal Constitutions, or both.

The auditors’ obligation to audit the accounts of the Office of the Perry County Sheriff would not be impeded by the redaction of the names and addresses on the Applications for Licenses to Carry Firearms. Specifically, the auditors are required to audit, settle and adjust the accounts of all County officers of the County and make an annual report thereof...said report shall be in detail, showing distinctly and separately all receipt and expenditures of the several offices, and all debts and accounts due, and the amount raised from each source of revenue, and the expenditures in detail and

classified by reference to the object thereof, together with a full statement of the financial conditions of the County, and a statement of the balance due from or to such County officers. 16 P.S. § 1721. The auditors reports required by the section could be completed by auditing the reports and the accounts but using numbers rather than names and addresses to identify the applications. There is no reason that the name and identity information of the applicant is required for the auditors to complete their duty under this statute. Not only has the Plaintiff failed to prove how the redacted information would hinder their ability to audit the records but the Commissioners of Perry County hired the firm of Robert W. Morris & Company, P.C. to conduct an audit of Sheriff Nace's redacted records and they were able to complete their audit with the redacted documentation.

Recently, a proposed settlement was announced in the class action suit of John Doe, et al. v. City of Philadelphia et al. Case No. 121203785. This case was filed by approximately 3,265 current or former LTCF applicants who alleged that the City of Philadelphia failed to adequately secure a website database that included the individuals' names and addresses which allowed this confidential information to be accessed by individuals not entitled to the information. Under the proposed settlement, the City will pay \$1.425 million to the class and has voluntarily agreed to implement substantial changes in its policies and procedures including the following:

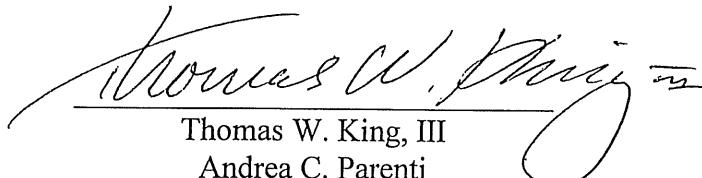
- a) Not to disclose LTCF applicant information either electronically or in person;
- b) Annual training of the Philadelphia Police Department and the Philadelphia License and Inspection Board of Review on the confidentiality of the LTCF applicant information.

III. Conclusion.

Carl Nace, the Sheriff of Perry County, complied in all respects with the Uniform Firearms Act in agreeing to provide only redacted copies of the Applications for Licenses to Carry Firearms to the auditors of Perry County. To do otherwise would constitute a felony of the third degree. The only entities that the Sheriff may provide this information to are criminal justice agencies as defined by the Uniform Firearm's Act and the regulations thereto. Regardless of the fact that the auditors are "duly elected/appointed public officials" there are not entitled to the names and identity information of the applicants of a License to Carry a Firearm in the Commonwealth of Pennsylvania. It is the position of the Pennsylvania Sheriffs' Association that the Complaint filed by the auditors of Perry County should be dismissed. To do otherwise would have statewide implications to not only to Sheriff Offices across the Commonwealth of Pennsylvania but would violate the expectation of privacy held by the citizens of the Commonwealth of Pennsylvania that this information is confidential.

Respectfully submitted,

DILLON McCANDLESS KING COULTER & GRAHAM, L.L.P.


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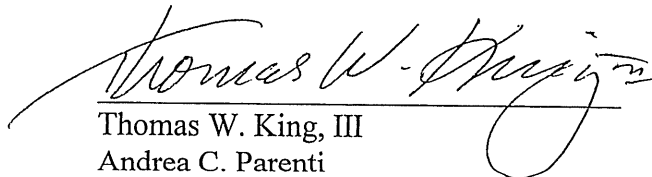
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 7th day of August, 2014, a true and correct copy of the foregoing **AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT CARL NACE, SHERIFF OF PERRY COUNTY, PENNSYLVANIA FILED ON BEHALF OF THE PENNSYLVANIA SHERIFFS' ASSOCIATION** was served via first-class U.S. Mail postage pre-paid upon the following persons:

Craig J. Staudenmaier, Esquire
Joshua D. Bonn, Esquire
NAUMAN, SMITH, SHISSLER & HALL, LLP
200 North Third Street, 18th Floor
P.O. Box 840
Harrisburg, PA 17108-0840

Joshua Prince, Esquire
Prince Law Office, P.C.
646 Lenape Road
Bechtelsville, PA 19505

Robin Holman Loy, Esquire
P.O. Box 97
16 East Main Street
New Bloomfield, PA 17068


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Carl Nace, in his official capacity as	:	
Sheriff of Perry County, Pennsylvania,	:	
	:	
Defendant.	:	

ORDER OF COURT

AND NOW, this _____ day of _____, 2014, upon consideration of the averments of the foregoing Petition for Leave to Participate *Amicus Curiae* filed on behalf of the Pennsylvania Sheriffs' Association, it is hereby ORDERED that said Petition is GRANTED.

BY THE COURT:

J.

