ARIZONA SUPREME COURT

STATE OF ARIZONA, Respondent, v. CHRISTIAN ADAIR, Petitioner.	))))))))))	No. CR-15-0337-PR Court of Appeals No. 1 CA-CR 14-0115 Maricopa County Superior Court No. CR-2013-111090-001

BRIEF OF *AMICUS CURIAE* ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE (AACJ) IN SUPPORT OF PETITIONER

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INTRODUCTION

The question in this case is whether probationers forfeit all of their privacy rights by agreeing to be placed on supervised probation. The court of appeals' opinion in *State v. Adair*, 238 Ariz. 193, 358 P.3d 614 (App. 2015), ignores basic privacy rights that even probationers have by permitting suspicionless searches of one's home. The court of appeals focused entirely on what power government has over a person convicted of a crime, but showed no regard for the rehabilitative purposes of probation that are undermined by arbitrary searches. Although the court stated that the "reasonableness" standard would avoid arbitrary searches, the standard it created is in fact arbitrary because it removes the requirement of individualized suspicion.

Amicus curiae Arizona Attorneys for Criminal Justice (AACJ) asks this Court to affirm the trial court's analysis and vacate the court of appeals' opinion because the kind of search involved here should only be permitted when it is based on individualized suspicion. None of the other exceptions to the Fourth Amendment, such as special needs and consent, apply in this situation. AACJ also asks this Court to extend article II, section 8 of the Arizona Constitution to the searches of probationers' homes.

INTERESTS OF *AMICI CURIAE*

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

Amicus offers this brief in support of Petitioner because the rights of the criminally convicted do not vanish upon being placed on probation. Warrantless searches are *per se* unreasonable unless they fall within one of "a few well-delineated exceptions." *Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971). While probation searches are recognized as an exception to the warrant requirement, they have never been permitted without reasonable suspicion of criminal activity. This Court should not turn away from the fact that the police conducted this search. *Adair* suggested other potential bases for allowing the search in this case, but such probation searches are not conducted with consent and do not fall within the special needs doctrine. This Court should hold that the state constitutional right to privacy protects probationers' homes from such suspicionless searches.

ARGUMENTS

I. The rationale of reduced privacy rights for probationers is predicated on the search being conducted by probation officers. When police officers are actively engaged in the search, courts should recognize the searches for what they are, and require warrants based on probable cause.

Warrantless searches on probationers by their probation officers are permitted because of a lesser expectation of privacy. *State v. Walker*, 215 Ariz. 91, ¶ 19, 158 P.3d 220, 224 (App. 2007) (citing *United States v. Knights*, 534 U.S. 112, 119 (2001); *State v. Montgomery*, 115 Ariz. 583, 566 P.2d 1329 (1977)). However, "it is impermissible for police to use probation officers as a pretext for conducting a criminal investigation" turning the probation officer into a "'stalking horse' for the police." *State v. Hill*, 136 Ariz. 347, 349, 666 P.2d 92, 94 (App. 1983) (citing *Latta v. Fitzharris*, 521 F.2d 246 (9th Cir. 1975), and *State v. Jeffers*, 116 Ariz. 192, 568 P.2d 1090 (App. 1977)).

Despite this admonition from *Hill* and other cases, Arizona law does not delineate where a "probation search" ends and a "police search" begins. In fact, *Hill* itself permits for allowing "probation searches" so long as the probation officer is present. 136 Ariz. at 348, 666 P.2d at 93. This Court needs to provide a standard that is clearly and easily applied. *See State v. Gilstrap*, 235 Ariz. 296, ¶¶ 15-17, 332 P.3d 43, 46 (2014) (preference for the possession test because of its "simplicity, precision, and the guidance it offers to police and courts," while other tests "are more difficult for police to navigate and for courts to administer").

A bright-line rule should require that probation searches be conducted by the probation officers and not law enforcement. Police should be permitted to be present for scene security at most, but should not be allowed to participate in the search. *See Jeffers*, 116 Ariz. at 194, 568 P.2d at 1092 ("Because [the probation officers] had been informed that appellant might be armed, they were accompanied by deputy sheriffs who waited outside."). If the police are searching, the search then becomes a police search rather than a probation search. Officers present for scene security cannot ignore items in plain view. *But see Arizona v. Hicks*, 480 Ariz. 321, 323-24 (1987) (police could only detect incriminating nature of stereo equipment upon moving it, and thus plain view doctrine did not apply). However, when the officers are participating in conducting the search, such as walking around the residence and going through personal belongings, the search is now being conducted for investigatory law enforcement purposes rather than the rehabilitative and administrative purposes of a probation search.

This case is only one amongst many cases where law enforcement use probation officers as pawns to avoid the requirements of warrants and probable cause in an investigation that is separate and distinct from the individual's probation. While this issue is not squarely before the Court, the Court should not let it pass by without acknowledging the need for a bright-line rule for law enforcement to follow. If the police are allowed to use the probation officers as puppets in order to avoid

the requirements of probable cause, where does it end? To avoid the probable cause and warrant requirements, the police will drag a probation officer with them on all searches of probationers. In doing so, these searches are not to further purposes and goals of probation but to dodge the restrictions of the Fourth Amendment.

In *Griffin v. Wisconsin*, 483 U.S. 868, 875 (1987), the Court stated that the lower expectation of privacy for probation searches affords the probation department the ability to supervise the probationer and assure that the restrictions are being observed. In *Griffin*, the supervision of probationers fell within the Wisconsin State Department of Health and Social Services, whose role is truly rehabilitation. *Id*. at 870, 876. In fact, the probationer is considered a "client" under the Wisconsin regulations and the probation officer's job includes assisting in necessary treatment. *Id*. at 876-77, 878-79. In contrast, in Arizona, the principal purpose of the criminal statutes is punitive in nature, and probation is treated as a departure from the presumption of a prison sentence. See § 13-101(6) ("To impose just and deserved punishment on those whose conduct threatens the public peace"); § 13-901(I) ("When granting probation, the court shall set forth at the time of sentencing and on the record the factual and legal reasons in support of each sentence."). It is more palatable for a home search to be conducted by a probation officer who acts on behalf of the court, and not by the police with guns.

This is a critical difference. The search in *Griffin* was "carried out entirely by the probation officers under the authority of Wisconsin's probation regulation." *Griffin*, 483 U.S. at 871. The fact it was only the probation officers searching made it more clearly established as a "probation search." Similarly, the search in *Jeffers* was conducted solely by probation officers. According to the Uniform Conditions of Supervised Probation promulgated by this Court, probationers must agree to "submit to search and seizure of person and property ***by the APD*** without a search warrant." Arizona Code of Judicial Administration § 6-207, Condition #4 (emphasis added). The purpose is not to allow warrantless searches by law enforcement.

Arizona case law on this issue is outdated. In *Montgomery*, 115 Ariz. at 585, 566 P.2d at 1331, this Court found that, under most circumstances, a probationer should not be required to submit to a warrantless search by law enforcement as a condition of probation, while providing an exception where time or distance might be an issue. *Id.* In *United States v. Jeffers*, 573 F.2d 1074 (9th Cir. 1978), the Court found that the mere presence of police during a search by the probation department did not convert the search into a police search. *Id*. at 1075. In *Jeffers*, it was the probation officer who enlisted the assistance of law enforcement in marking items of stolen property after those items were discovered.[1] *Id*. In *Hill*, the court found that

[1] Jeffers was charged with various offenses in state and federal court; although the Ninth Circuit described the facts differently than did the Arizona Court of Appeals, the descriptions are entirely consistent with each other.

police may accompany probation officers to provide protection and expedite the search. In none of these cases did any court create a blanket exception for law enforcement to initiate a search solely based upon the presence of a probation officer.

The majority view is that the provision allowing for warrantless searches applies only to parole or probation officers and not to law enforcement officers. *United States v. Consuelo-Gonzalez*, 521 F.2d 259 (9th Cir. 1975); *United States v. Scott*, 678 F.2d 32 (5th Cir. 1982); *Roman v. State*, 570 P.2d 1235 (Alaska 1977) (consent provision only valid to authorize search by parole officer or police under the supervision of parole officer); *Grubbs v. State*, 373 So.2d 905 (Fla. 1979) (probation supervisor may search person and residence of probationer, other law enforcement may not). In *Grubbs*, the Florida Supreme Court found a requirement that a probationer submit to warrant searches by law enforcement to be a violation of the Florida and United State Constitution. 373 So.2d at 910. In *Consuelo-Gonzalez*, the Ninth Circuit held that any Fourth Amendment waiver was limited by the implied condition that the search be conducted by the defendant's probation officer. The Second Circuit has set forth an even greater protection for probationers by ruling that neither an individual's status as a probationer nor the special relationship between a probationer and probation officer serves to exempt the probation officer from the requirement that he obtain a warrant prior to conducting a search of probationer's home. *United States v. Rea*, 678 F.2d 382 (2d Cir. 1982).

The facts as provided in the court of appeals' opinion reflects that this is a textbook example of a "stalking horse" case. It was the police that initiated the search, not the probation department. The defendant's probation officer was not involved in the search and, rather, was merely informed by his supervisor of the search. It was the seven police officers who actually conducted the search of the home, not the three probation officers. *Adair*, 238 Ariz. 193, ¶ 4, 358 P.3d at 616. The way to ensure that the search is truly a probation search and not a means to avoid the warrant requirement is to place a restriction on probation searches requiring such search to be conducted by the probation officer. As soon as the police engage in a search, its character transforms from a probation search into a police search. The only reasonable inference that can be drawn here, particularly when considering that the police investigated for two months prior to contacting the probation officer, is that law enforcement failed to find substantial corroborating evidence to support the informant's claims and conceived the idea to enlist the probation department only to get around the requirement of a warrant based on probable cause.

II. The special needs doctrine does not fit the programmatic purposes of Arizona's probation supervision system.

It has been suggested that suspicionless searches of probationers' homes might fall under the "special need" of probation searches. *Adair*, 238 Ariz. 193, n.5, 358 P.3d at 620 n.5. The *Griffin* Court held that "[s]upervision, then, is a 'special need' of the State permitting a degree of impingement upon privacy that would not

be constitutional if applied to the public at large." Yet the Court also noted: "That permissible degree is not unlimited." *Id*. It required that the probation officer have "reasonable grounds" to conduct the search. *Id*. at 875-76. Justice Blackmun's dissenting opinion attacked the abandonment of the warrant requirement but otherwise agreed with the majority that a probation officer should not be required to articulate probable cause and stated that a reduced burden of reasonable suspicion would suffice. *Id*. at 883 (Blackmun, J., dissenting). Justice Blackmun also attacked the majority's failure to address the merits of Griffin's case. *Id*. at 888-90 (Blackmun, J., dissenting).

Since *Griffin*, the Court has explained that the special needs doctrine must be carefully circumscribed in cases involving suspicionless searches and seizures. In *Skinner v. Railway Labor Executives Assn.*, 489 U.S. 602 (1989), the Court held that railway employees involved in train accidents or who violated particular safety regulations could be subjected to drug testing, provided that those searches are appropriately limited. In *Treasury Employees v. Von Raab*, 489 U.S. 656, 670-71 (1989), drug testing could be permitted for U.S. Customs employees seeking promotion or transfer to certain positions, on the basis that persons in those positions are involved on the front lines of contraband interdiction and are expected to use deadly force responsibly. The Court also upheld suspicionless checkpoints of motorists that are located near the border to detect illegal aliens, *United States v.*

Martinez-Fuerte, 428 U.S. 543 (1976), and as sobriety checkpoints designed to remove drunk drivers from the road, *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990), but it struck down a checkpoint designed to detect general criminal wrongdoing in *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000).

It must be recognized that the probation program involved in *Griffin* was very unlike Arizona's. The program was run by the Health Department, and the Wisconsin equivalent of probation officers referred to their charges as "clients." 483 U.S. at 876-77, 878-79. *Griffin* in no way endorsed a program where probation officers and police work hand-in-hand to turn up evidence against the probationers. This was acknowledged in *Ferguson v. City of Charleston*, 532 U.S. 67 (2001), where the Court struck down the providing of urine samples of pregnant women using cocaine by medical professionals to law enforcement under the special needs doctrine. The dissent relied heavily on *Griffin* to show that the involvement of law enforcement does not per se render the search into one conducted by law enforcement. In response, the opinion of the Court dropped a footnote:

> The dissent, however, relying on *Griffin v. Wisconsin*, 483 U.S. 868 (1987), argues that the special needs doctrine "is ordinarily employe[d], precisely to enable searches by law enforcement officials who, of course, ordinarily have a law enforcement objective." *Post*, at 1300. Viewed in the context of our special needs case law and even viewed in isolation, *Griffin* does not support the proposition for which the dissent invokes it. In other special needs cases, we have tolerated suspension of the Fourth Amendment's warrant or probable-cause requirement in part because there was no law enforcement purpose behind the searches in those cases, and there was little, if any,

> entanglement with law enforcement. *See Skinner*, 489 U.S., at 620–621; *Von Raab*, 489 U.S., at 665–666; *Acton*, 515 U.S., at 658. **Moreover, after our decision in *Griffin*, we reserved the question whether "routine use in criminal prosecutions of evidence obtained pursuant to the administrative scheme would give rise to an inference of pretext, or otherwise impugn the administrative nature of the ... program." *Skinner*, 489 U.S., at 621, n.5.** In *Griffin* itself, this Court noted that "[a]lthough a probation officer is not an impartial magistrate, neither is he the police officer who normally conducts searches against the ordinary citizen." 483 U.S., at 876. Finally, we agree with petitioners that Griffin is properly read as limited by the fact that probationers have a lesser expectation of privacy than the public at large. *Id*., at 874–875.

532 U.S. at 79 n.15 (emphasis added, parallel cites omitted). Because the programmatic purpose was not just health of the mother and child but also to prosecute mothers for drug use, the program violated *Edmond* and the special needs doctrine did not apply.

"[I]t would be 'anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior.'" *New Jersey v. T.L.O.*, 469 U.S. 325, 335 (1985) (quoting *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 530 (1967)). Although the circumstances are significantly different, the standard provided in *T.L.O.* for allowing searches of schoolchildren deserves comparison. On the one hand, schoolchildren (presumably) have not been convicted of crimes serious enough to warrant supervised probation. Yet, on the other hand, children who attend school have a significantly reduced privacy interest, and school authorities' interests

in maintaining order is no less critical in a high school with hundreds or even thousands of teenagers present than is the need for probation officers to ensure that their charges are obeying the law. What makes *T.L.O.* useful is the balancing done between governmental and privacy interests, and that ultimately the Court still required that the search meet a standard of "reasonableness" under the circumstances. And the Court explained what the standard means: "Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive…" 469 U.S. at 343.

The language of the special needs doctrine, as developed post-*Griffin*, is very different from that discussed within *Griffin*. The special needs doctrine looks to the programmatic purpose of the policy as the determining factor:

> Our precedents establish that the proffered special need for drug testing must be substantial—important enough to override the individual's acknowledged privacy interest, sufficiently vital to suppress the Fourth Amendment's normal requirement of individualized suspicion. Georgia has failed to show … a special need of that kind.

Chandler v. Miller, 520 U.S. 305, 318 (1997) (internal cites omitted). In no case decided since *Griffin* did the Supreme Court apply the special needs doctrine to searches of individuals based on suspicious conduct by that individual. *Griffin* and *T.L.O.*, therefore, do not fall within the special needs doctrine as explained by the Court's later cases. Instead, they represent situations where an individual's privacy interest is substantially reduced and thus the searching authority may search without

obtaining a warrant based on suspicion that does not rise to the level of probable cause. Inherent in the *Griffin* standard is an individualized suspicion, which is contrary to the language of the special needs doctrine.

III. Probationers consent to warrantless searches of their premises; they do not consent to suspicionless searches.

It may be suggested that probationers have given consent to suspicionless searches, but this argument would similarly be erroneous. First, it cannot be said that probationers waive their constitutional right to be free from suspicionless searches. "First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U.S. 412, 421 (1975). "[M]ost constitutional rights … may be waived, but only if the waiver is knowing, voluntary, and intelligent." *State v. Bolding*, 227 Ariz. 82, ¶ 18, 253 P.3d 279, 285 (App. 2011) (citing *State v. Wilson*, 174 Ariz. 564, 567, 851 P.2d 863, 866 (App. 1993)). Last year, this Court held that a probationer could not waive his right to use medical marijuana while on probation: "could not have knowingly waived his rights under AMMA because it did not exist when he entered the plea agreement." *Reed-Kaliher v. Hoggatt*, 237 Ariz. 119, ¶ 25, 347 P.3d 136, 142 (2015).

Second, while it is true that contract principles may be instructive in interpreting agreement to conditions of probation, blind application of contract principles in this circumstance is not appropriate. Courts are "not always obligated to apply a contract analysis to plea agreements because contract law may not provide a sufficient analogy." *Coy v. Fields*, 200 Ariz. 442, ¶ 9, 27 P.3d 799, 802 (App. 2001). *See also United States v. Carrillo,* 709 F.2d 35, 36 n.1 (9th Cir. 1983) ("Cases may arise in which the law of contracts will not provide a sufficient analogy and mode of analysis. We do not purport to superimpose contract principles upon all such cases.").

Even in a civil context, under general contract principles, "[c]ontract provisions are unenforceable if they violate legislation or other identifiable public policy." *1800 Ocotillo, LLC v. WLB Grp., Inc.*, 219 Ariz. 200, ¶ 7, 196 P.3d 222, 224 (2008). This Court has recently reaffirmed this principle. *CSA 13-101 Loop, LLC v. Loop 101, LLC*, 236 Ariz. 410, ¶ 6, 341 P.3d 452, 453-54 (2014) (citing *Ocotillo* and Restatement (Second) of Contracts § 178 for principle that "if a contractual term is not specifically prohibited by legislation, courts will uphold the term ***unless an otherwise identifiable public policy clearly outweighs the interest in the term's enforcement***." (emphasis added)). "Even when not expressly prohibited, contract terms may be invalidated 'if the legislature makes an adequate declaration of public policy which is inconsistent with [them]." *Id*. ¶ 8, 341 P.3d at

454 (quoting *Shadis v. Beal*, 685 F.2d 824, 833-34 (3d Cir. 1982)). In the context of civil contracts, this Court decided that "the identifiable public policy served by [statute] clearly outweighs the interest in enforcing prospective waiver terms" and thus held the contractual terms unenforceable. *Id*. ¶ 24, 341 P.3d at 457.

In *Montgomery*, 115 Ariz. at 584, 566 P.2d at 1330, this Court held that terms of probation must not "violate fundamental rights." The constitutional right to privacy in one's home is so fundamental that allowing probation officers to conduct suspicionless searches clearly violates identifiable public policy. *State ex rel. Polk v. Hancock (Ferrell)*, 237 Ariz. 125, ¶ 9, 347 P.3d 142, 145-46 (2015) (probationers can waive constitutional rights but not if doing so violates an identifiable public policy). When viewing the conditions of probation in ACJA § 6-207, it is apparent that the probationer only consents to ***warrantless*** searches by APD, not to ***suspicionless*** searches by anyone.

IV. The Arizona Constitution should provide broader authority for home searches of probationers.

The United States Supreme Court and the Arizona Supreme Court have long held that there is an increased expectation of privacy in one's home. See *Silverman v. United States*, 365 U.S. 505, 511 (1961) ("At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."). "A probationer's home, like anyone

else's, is protected by the Fourth Amendment's requirement that searches be 'reasonable.'" *Griffin*, 483 U.S. at 873.

Ordinarily, corresponding constitutional provisions will be read similarly, though the Arizona courts are not required to read our state constitution in lock-step with the United States Supreme Court's reading of the federal constitution. *Compare State v. Noble*, 171 Ariz. 171, 173, 829 P.2d 1217, 1219 (1992) ("We ordinarily interpret the scope of a clause in the Arizona Constitution similarly to the United States Supreme Court's interpretation of an identical clause in the federal constitution."); *Pool v. Superior Court*, 139 Ariz. 98, 108, 677 P.2d 261, 271 (1984) (while giving great weight to United States Supreme Court decisions, "we cannot and should not follow federal precedent blindly"). While the United States Supreme Court has not yet addressed this question directly, this Court should nevertheless find the right at issue protected under article II, section 8 of the Arizona Constitution.

Article II, section 8 has long been recognized to provide special protection, beyond that provided by the Fourth Amendment, for individual privacy, especially in the home. *State v. Ault*, 150 Ariz. 459, 463, 724 P.2d 545, 549 (1986) (citing *State v. Bolt*, 142 Ariz. 260, 265, 689 P.2d 519, 524 (1984). Unlike the United States Constitution, the Arizona Constitution explicitly recognized the right to privacy: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Ariz. Const. art II, § 8. Arizona is one of just ten states to explicitly

recognize a right to privacy in its constitution. It did so because "[o]ur constitutional provisions were intended to give our citizens ***a sense of security*** in their homes…" *Bolt*, 142 Ariz. at 265, 689 P.2d at 524 (emphasis added). This Court has recognized that "there is no more sacred right." *State v. Mendoza*, 104 Ariz. 395, 399, 454 P.2d 140, 144 (1969). As this Court observed long ago:

> It is true that we have held . . . that section 8 of article 2 of the Constitution of Arizona is of the same general effect and purpose as the Fourth Amendment to the Constitution of the United States. We have the right, however, to give such construction to our own constitutional provisions as we think logical and proper, notwithstanding their analogy to the Federal Constitution and the federal decisions based on that Constitution.

Turley v. State, 48 Ariz. 61, 70-71, 59 P.2d 312, 316-17 (1936).

This Court should extend the protections of article II, section 8 to probation searches for three distinct reasons: (1) this was a home search; (2) probationers have not waived their right of privacy or their right against warrantless search and seizure by police officers just because probation officers are present; and (3) they have not waived their right to require a search by probation be based on reasonable grounds. The Court has explicitly recognized heightened protection for the home—which includes the search conducted in this case—and this heightened protection should not be eliminated so that law enforcement can use probation officers as "stalking horses" to initiate and investigate conduct for which law enforcement has not obtained probable cause. Our State provisions "are specific in preserving the sanctity

of homes *and in creating a right of privacy*." *Ault*, 150 Ariz. at 466, 724 P.2d at 552. Further, Arizona citizens' rights not to "be disturbed in [] private affairs" is absolutely more protective on its face and more explicit than the Fourth Amendment's right "to be secure in its person, houses, papers, and effects, against unreasonable searches and seizures." Thus, the specificity upon which this Court has relied in finding greater protections for homes also provide heightened protection for privacy.

In this case, there can be no doubt that the search was initiated and requested by law enforcement because law enforcement was unable to find probable cause on its own through surveillance of the home (that revealed no signs of illegal activity) and the uncorroborated information provided by a confidential informant provided months before the actual search. It was the officers conducting the search, with little to no involvement from the probation officer who has the interest in supervising the probationer and ensuring compliance with the terms of probation.

Allowing police officers to initiate an investigation through the use of the probation officers when independent probable cause does not exist violates the very premise of Arizona's right to privacy, not to mention the probationer's right against warrantless search and seizure. A probationer does not waive the right to privacy when it signs for conditions of probation. Further, the probationer does not waive his right to require probable cause and warrant before law enforcement search his

premise. The Arizona constitutional provisions should be expanded to protect citizens from law enforcement's misuse of probation officers to avoid warrant requirements. In the absence of such a protection, law enforcement officers are being given a free pass to continue violating Arizona citizens' constitutional rights under the guise of a probation search. This cannot be allowed to happen.

CONCLUSION

For these reasons, *amicus curiae* AACJ requests that this Court recognize that the probation search exception to the warrant requirement is one that requires individualized and reasonable suspicion that the particular probationer is engaged in criminal wrongdoing.

RESPECTFULLY SUBMITTED this 20th day of June, 2016

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