No. 16-8457

In The
Supreme Court of the United States

CHRISTIAN ADAIR,

Petitioner,

vs.

STATE OF ARIZONA,

Respondent.

On Petition For A Writ Of Certiorari To The Arizona Supreme Court

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

RHONDA E. NEFF
KIMERER & DERRICK, P.C.
1313 E. Osborn, Suite 100
Phoenix, Arizona 85014
Telephone: (602) 279-5900
rneff@kimerer.com

CAROL LAMOUREUX
HERNANDEZ & HAMILTON, P.C.
455 W. Paseo Redondo
Tucson, Arizona 85701
Telephone: (520) 882-8823
Carol@hernandez-hamilton.com

DAVID J. EUCHNER
Counsel of Record
PIMA COUNTY PUBLIC DEFENDER'S OFFICE
33 N. Stone, 21st Floor
Tucson, Arizona 85701
Telephone: (520) 724-6800
David.Euchner@pima.gov

Attorneys for Amicus Curiae Arizona Attorneys for Criminal Justice

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

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IDENTITY AND INTERESTS OF *AMICUS CURIAE*[1]

Arizona Attorneys for Criminal Justice ("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.

AACJ offers this brief in support of Petitioner Christian Adair 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

[1] No counsel for a party authored this brief, in whole or in part. No person or entity, other than *amicus curiae*, has made a monetary contribution to the preparation or submission of this brief. Undersigned counsel timely notified the parties of the filing of this brief on May 2, 2017, more than 10 days before the due date. Counsel for both parties consented to the filing of this brief on May 2, 2017.

criminal activity. Because probationers are entitled to some reasonable expectation of privacy, particularly in their homes, they should be entitled to some protection from unreasonable searches. The rule proposed by Adair – that probation officers need only have reasonable suspicion in order to conduct a warrantless search – is eminently reasonable.

SUMMARY OF ARGUMENT

In *Samson v. California*, 547 U.S. 843 (2006), this Court announced a rule that parolees could be subjected to suspicionless searches by law enforcement. The rationale for this rule was that parolees' expectation of privacy should be significantly reduced due to their status. Yet this Court has consistently maintained that there is a line between the relative statuses of parolees and probationers – a line that the Arizona Supreme Court not only blurred but even erased in this case.

Although the Arizona Supreme Court claimed that Adair abandoned any argument that this was actually a search conducted by law enforcement, *see State v. Adair (Adair II)*, 383 P.3d 1132 (Ariz. 2016), the facts and argument presented in Adair's petition show that this is not the case. *Amicus* asks that this Court clarify that a "probation search" requires it to be conducted principally by probation officers; and that police officers who wish to conduct a search of a probationer must abide by the usual rule of obtaining a search warrant

upon an affidavit stating probable cause. U.S. Const. amend. IV. Furthermore, *amicus* asks this Court to address an issue suggested in *State v. Adair (Adair I)*, 358 P.3d 614 (Ariz. Ct. App. 2015): that this search might be justified under the "special needs" doctrine. For the reasons stated in this brief, Arizona's program for supervising probationers is entirely inconsistent with the special needs doctrine.

ARGUMENT

I. The distinction between parolees and probationers was central to this Court's determination in *Samson*. Because probationers retain a greater expectation of privacy than parolees and because the government's interest in detecting criminal violations and reducing recidivism is less compelling with regard to probationers than with parolees, this Court should conclude that the balance of these considerations weighs in favor of requiring reasonable suspicion to search a probationer.

Probationers do not enjoy "'absolute liberty to which every citizen is entitled,'" *Samson v. California*, 547 U.S. 843, 848-49 (2006) (quoting *United States v. Knights*, 534 U.S. 112, 119 (2001)), but their expectation of privacy is not extinguished by virtue of their probationary status. *See United States v. Amerson*, 483 F.3d 73, 84 (2d Cir. 2007) (probationers have diminished – but far from extinguished – expectations of

privacy); *Griffin v. Wisconsin*, 483 U.S. 868, 875 (1987) (probationary status "permit[s] a degree of impingement upon privacy that would not be constitutional if applied to the public at large" but "[t]hat permissible degree is not unlimited"). This Court noted in *Samson* that probationers and parolees are on the "continuum" of state-imposed punishments, and that on this continuum, "parolees have fewer expectations of privacy than probationers, because parole is more akin to imprisonment than probation is to imprisonment." 547 U.S. at 850. This makes clear that probationers have a greater expectation of privacy than parolees and suggests that a suspicionless search of a probationer may be unconstitutional.

Given that probationers fall somewhere between ordinary citizens and parolees on the continuum of state-imposed punishment, it follows that their reasonable expectations of privacy would also fall somewhere between that of ordinary citizens and parolees. *Cf. Knights*, 534 U.S. at 121 (Fourth Amendment ordinarily requires probable cause unless the balance of government and private interests makes a lesser standard reasonable); *Samson*, 547 U.S. at 850 (balance of government and private interests permits suspicionless search of parolees). Requiring reasonable suspicion to search a probationer would ensure that their intermediate privacy interests are protected.

The constitutional distinction between parolees' and probationers' reasonable expectations of privacy stems from the significant differences between the two forms of government supervision. "Unlike parolees,

who were sent to prison for substantial terms, probationers attain that status from a judicial determination that their conduct and records do not suggest so much harmfulness or danger that substantial imprisonment is justified." *United States v. Crawford*, 372 F.3d 1048, 1077 (9th Cir. 2004) (Kleinfeld, J., concurring). Implicit in such determination is that probationers are afforded their status because their conduct and criminal history suggested to the court that they did not pose a serious danger to society. A review of the empirical data suggests that the government's interest in detecting crime, reducing recidivism, and integrating offenders back into the community is reduced with the probationer population. *Cf. Samson*, 547 U.S. at 849, 853 (citing reducing recidivism and promoting reintegration and positive citizenship among government's substantial interests).

Most probationers were convicted of relatively low-level, non-violent offenses. At the end of 2015, approximately 3,789,800 individuals were on probation in the United States. *See* Danielle Kaeble & Thomas P. Bonczar, *Probation and Parole in the United States, 2015*, U.S. Dep't of Justice 3 (Dec. 2016), https://www.bjs.gov/content/pub/pdf/ppus15.pdf. Of that population, 57% of probationers were convicted of felonies and 41% were convicted of misdemeanor offenses. *Id*. at 5. Only 19% of probationers committed violent offenses; the vast majority were convicted of drug-related offenses, traffic offenses, and property crimes. *Id*. In Maricopa County, Arizona, more than half of probationers were convicted of class-one misdemeanor or

class-six felony offenses, and only 7% were convicted of class-two felonies.[2] *See* Maricopa County Adult Probation Annual Report 2015, *available at* https://www.superiorcourt.maricopa.gov/adultprobation/docs/2015AnnualReport.pdf. In contrast, there were 870,500 offenders on parole during the same time frame; nearly all parolees were convicted of felony offenses that required a year or more in prison, and 32% were serving prison terms for violent offenses. Kaeble at 3.

More importantly, parolees often face greater challenges than probationers during the reintegration process. In most states, probation occurs before or as an alternative to prison, providing an opportunity for probationers to function as a member of society while serving their terms under a probation officers' supervision. Unlike parolees, most probationers are required to have steady housing and, in Arizona, probationers generally must maintain employment or full-time student status as a condition of probation. *See* Kathy Waters, *et al.*, Arizona Adult Probation, FY 2016 Annual Report, 7, https://www.azcourts.gov/Portals/25/AnnRepPop/FY2016_%20REPORT.pdf (intensive probationers are required to maintain employment or full-time student status, or perform community service at least six days a week).

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[2] In Arizona, there are six classes of felonies. The only two class 1 felonies are first-degree murder and second-degree murder. Ariz. Rev. Stat. §§ 13-1104(C) & -1105(D). Only those sentenced for nondangerous, nonrepetitive offenses are eligible for probation. Ariz. Rev. Stat. §§ 13-703(O) & -704(G).

Furthermore, parolees often return to the community after prolonged incarceration and usually face an adjustment period as they re-acclimate to life out of prison. *See* Nathan James, *Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism*, Congressional Research Service (2015); *see also* Sampson, R.J. & J.H. Laub, *Crime in the Making*, Harvard University Press (1993) (imprisonment weakens an offender's social bonds and reduces opportunities to participate in conventional society). This transition, which probationers do not face, requires more supervision as parolees reintegrate into society. Most parolees will not have employment or income upon their release and many struggle to maintain regular employment. *See* Christy Visher, et al., Employment after Prison: A Longitudinal Study of Releasees in Three States, *available at* http://www.urban.org/sites/default/files/publication/32106/411778-Employment-after-Prison-A-Longitudinal-Study-of-Releasees-in-Three-States.PDF (eight months after prison, only 45% of responders were employed). This lack of income or support could lead parolees to become more incentivized to reoffend. *See id.* (criminal justice research suggests that finding and maintaining a legitimate job reduces prisoners' risk of reoffending).

In light of these differences, the government's interest in reintegrating offenders back into the community may be served by allowing suspicionless searches of parolees, but not with probationers. Although the recidivism rate of probationers is higher than the general crime rate, *see Knights*, 532 U.S. at 120, it is

substantially lower than the recidivism rate of parolees. *Compare Knights*, 543 U.S. at 120 (citing a 43% recidivism rate for felons on probation as a factor in allowing searches of probationers based on reasonable suspicion), *with Samson*, 547 U.S. at 853-54 (citing a 68-70% recidivism rate for parolees as a factor in permitting suspicionless searches of parolees). And Arizona does not have as substantial an interest as California did in *Samson* in reducing recidivism because its overall recidivism rate is significantly lower. An Arizona Department of Corrections study reflected that only 42.4% of Arizona inmates returned to ADC for any reason within three years of their release. Arizona Inmate Recidivism Study, Executive Summary (May 2005), https://corrections.az.gov/sites/default/files/recidivism_2005.pdf. Studies have also shown that over-supervising low-risk probationers can actually increase recidivism. Christopher T. Lowenkamp, *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders*, http://www.jdaihelpdesk.org/deependresearchreports/Understanding%20the%20Risk%20Principle%20-%20How%20and%20Why%20Correctional%20Interventions%20Can%20Harm%20Low-Risk%20Offenders.pdf. Thus the state's interests in reducing recidivism among probationers is weaker here than in *Samson* and warrants less privacy intrusion than is permissible in supervising parolees. *See United States v. King*, 736 F.3d 805, 816 (9th Cir. 2013) (Berzon, J., dissenting).

Requiring reasonable suspicion also ensures the people living with probationers have some form of protection against unreasonable government intrusion. The Fourth Amendment exists to prevent substantial intrusions on the fundamental right to privacy from becoming a routine part of American life. *King*, 736 F.3d at 816 (Berzon, J., dissenting) (quoting *City of Indianapolis v. Edmond*, 531 U.S. 32, 42 (2000)); *see also Payton v. New York*, 445 U.S. 573, 585, 590 (1980) ("physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed"). Allowing warrantless searches of probationers would, in effect, cause millions of Americans, including many who are not probationers, to be subject to substantial and routine intrusions of their privacy. As noted above, there were approximately 3,789,000 adults on probation in the United States in 2015. Extending *Samson* to probationers would allow the government to search private homes throughout the country for any reason, so long as one of the residents is a probationer. This would subject millions of additional American households to suspicionless searches.

Courts around the nation have upheld such searches where a parolee was living at a residence. In California, where suspicionless searches of probationers are permissible, this is already occurring. *See, e.g.*, *People v. Robles*, 23 Cal.4th 789, 798 (2000) (common or shared areas of residence shared with probationer may be searched in probation searches); *People v. Pleasant*, 123 Cal.App.4th 194, 197 (2005) ("Persons who live with probationers cannot reasonably expect

privacy in areas of a residence that they share with probationers."). One of the key differences between probationers and parolees' risks of recidivism is the availability of support, *see* Sampson, but permitting suspicionless searches of probationers' homes could disincentivize family members and friends from housing probationers due to fear of regular, unannounced searches. Though the government has an interest in preventing recidivism and detecting criminal activity among probationers, that interest is not so compelling to warrant suspicionless searches of probationers and their homes, which are often occupied by other law-abiding residents.

II. 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 it is a law enforcement search and require warrants based on probable cause.

The Arizona Supreme Court refused to consider the distinction between a "probation search" and a "law enforcement search of a probationer." It incorrectly found that the issue was uncontested and, thus, it did not address the constitutionality "of a law enforcement officer's warrantless search of a probationer's residence." *Adair II*, 383 P.3d at 1135. This issue, however, was contested before the Arizona courts and is now contextually before this Court. The question raised by Petitioner is whether a warrantless probation search

requires reasonable suspicion. The current cases fail to delineate what constitutes a valid "probation search" versus a "police search." In determining the proper level of suspicion, if any, required for a "probation search," this Court must define what constitutes a "probation search."

The search at issue in this case was initiated and conducted solely by law enforcement that admittedly lacked probable cause for a search warrant. *Adair I*, 358 P.3d at 616; Petition for Writ of Certiorari, at 3-4. The officers sought to turn the otherwise unlawful search into a lawful probation search by the mere presence of probation officers at the search. *Id.* The probation officers who were asked to accompany the officers, however, had no role in supervising Adair, had no background knowledge of his probation terms or compliance, and did not approve of the search to further any probationary goal. Law enforcement merely sought the presence of ***any*** probation officer at the warrantless search to avoid the Fourth Amendment warrant requirements. The question posed is therefore whether the mere presence of a probation officer at a search initiated and performed by law enforcement without probable cause or a warrant renders the search a lawful probation search.

This case raises an additional question beyond that addressed in *Knights*: Does a probation officer's presence, as requested by law enforcement, at a warrantless search initiated and performed by law enforcement separate and apart from any belief of a probation violation render the search a "probation

search" rather than an unlawful "police search"? A determination that probationers are subject to warrantless searches by law enforcement at any time without any reasonable suspicion and with no probationary purpose is detrimental to Fourth Amendment principles and completely destroys any expectation of privacy, however diminished, that a probationer has.

There is a split among the circuits when it comes to law enforcement's proper role in probation searches. The majority view is that the provision allowing for warrantless searches applies only to parole and probation officers and not to law enforcement officers, even though law enforcement may be present at the search and, in some cases, may assist in the search if requested by the probation officer. In *Griffin*, 483 U.S. at 875, this Court acknowledged a lesser expectation of privacy for probationers due, in part, to the need for probation officers to supervise the individual and ensure compliance with probation terms as a rehabilitative measure. The search in *Griffin* was conducted entirely by probation officers. 483 U.S. at 871. In *United States v. Consuelo-Gonzalez*, 521 F.2d 259 (9th Cir. 1975), the court found the Fourth Amendment waiver was limited by the implied condition that the search was conducted by defendant's probation officer. The mere presence of law enforcement at a probation search does not render the search a "law enforcement search," where the probation officer enlists the assistance of law enforcement in marking items of stolen property after those items were initially discovered by

the probation officers. *United States v. Jeffers*, 573 F.2d 1074, 1075 (9th Cir. 1978).[3]

In *United States v. Brown*, 346 F.3d 808, 812 (8th Cir. 2003), a valid probation search occurred where a tip was initiated by the drug task force and the task force assisted in the search because "the task force agents acted only at [the probation officer's] direction" and the probation officer had reasonable suspicion that the probationer was violating the terms of his probation. In *United States v. Scott*, 678 F.2d 32 (5th Cir. 1982), a parole officer's actions were upheld where the parole officer obtained exemplars from a parolee after receiving information about illegal activity from law enforcement and being requested to obtain the exemplars. In *Scott* as well, it was the parole officer, not law enforcement, performing the actual search of the parolee. The Second Circuit provided even greater protection for probationers in ruling that even a probation officer was not exempt from the requirement to obtain a warrant prior to conducting a search of a probationer's home. *United States v. Rea*, 678 F.2d 382 (2d Cir. 1982). The Eleventh Circuit in *Owens v. Kelley*, 681 F.2d 1362, 1368-69 (11th Cir. 1982), upheld the constitutionality of the warrantless search probation term while acknowledging that the search must be "carried out in a reasonable manner and only in furtherance of the purposes of probation." It further found that "[t]he

[3] Jeffers was also charged with related offenses in state court. *See State v. Jeffers*, 568 P.2d 1090 (Ariz. Ct. App. 1977); although the federal and state court opinions use different language, they are consistent with each other.

terms of condition do not authorize any 'intimidating and harassing search to serve law enforcement ends totally unrelated' to either Owens' conviction or rehabilitation." *Id*. at 1368-69. Searches conducted as "a subterfuge for criminal investigations" were prohibited. *Id*.

There is commonality in the cases that have upheld warrantless probation searches conducted by law enforcement. First, the searches are intended to further the probationary goals and limited to searches conducted in anticipation of a probation violation. Second, the law enforcement officers conducting the searches are largely acting at the behest of the probation officers or are acting where there was an agreed-upon term permitting warrantless searches by probation officers ***or*** law enforcement. Third, the probation officers are the ones conducting the search or, at a minimum, are actively involved in the search. None of these facts is present in the current case.

In *Adair* the law enforcement officers used the probation officers as pawns to conduct a suspicionless and warrantless search after law enforcement failed to obtain sufficient grounds for a search warrant. Adair's probation conditions permitted warrantless searches by probation officers, not law enforcement officers whose goals here were unrelated to any probationary purpose. Adair's probation officer was not even involved in the search but, 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 that were merely present. *Adair I*, 358 P.3d at 616.

This case is yet another example of law enforcement using the probation officers to avoid the warrant requirement in an investigation that is separate and distinct from the individual's probation. The way to ensure that a warrantless search is a probation search is to restrict probation searches to those that are conducted by probation officers in furtherance of the goals of probation and to require that the probation officer have reasonable suspicion to believe that a violation of the probation terms exists. It is apparent that this search, the product of a failed two-month investigation, was a law enforcement search conducted under the guise of a probation search.

This Court should set a clear standard that defines a probation search in a way that prevents law enforcement from using probation officers as pawns to avoid the Fourth Amendment warrant requirements. Defining a probation search is a critical step in determining the level of suspicion that is required for a valid warrantless probation search. Requiring that probation searches be conducted by probation officers in furtherance of the goals of probation rather than as a guise for an unlawful police search properly balances the interest between the necessity of supervising a probationer to ensure rehabilitation and public safety while also ensuring compliance with Fourth Amendment principles.

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

The Arizona Court of Appeals suggested that suspicionless searches of probationers' homes might fall under the "special need" of probation searches. *Adair I*, 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." 483 U.S. at 875. 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).

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 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 medical professionals' providing of urine samples of pregnant women using cocaine 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.

Ferguson, 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 prosecuting 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 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 this 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.

CONCLUSION

For the foregoing reasons, AACJ requests that this Court accept review of the Arizona Supreme Court's opinion and hold that probationers have Fourth Amendment rights to be protected from suspicionless searches.

Respectfully submitted,

RHONDA E. NEFF
KIMERER & DERRICK, P.C.
1313 E. Osborn, Suite 100
Phoenix, Arizona 85014
Telephone: (602) 279-5900
rneff@kimerer.com

CAROL LAMOUREUX
HERNANDEZ & HAMILTON, P.C.
455 W. Paseo Redondo
Tucson, Arizona 85701
Telephone: (520) 882-8823
Carol@hernandez-hamilton.com

DAVID J. EUCHNER
Counsel of Record
PIMA COUNTY PUBLIC DEFENDER'S OFFICE
33 N. Stone, 21st Floor
Tucson, Arizona 85701
Telephone: (520) 724-6800
David.Euchner@pima.gov

Attorneys for Amicus Curiae Arizona Attorneys for Criminal Justice