

In the Supreme Court of the United States

AMY YOUNG and JOHN SCOTT, as Co-Personal
Representatives of the Estate of Andrew Lee Scott,
Deceased, and MIRANDA MAUCK, individually,
Petitioners,

v.

GARY S. BORDERS, in his official capacity as
Sheriff of Lake County, Florida, and
RICHARD SYLVESTER, in his individual capacity,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

**RESPONDENTS' OPPOSITION RESPONSE TO MOTION FOR LEAVE
TO FILE BRIEF OF THE RUTHERFORD INSTITUTE AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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Pursuant to Supreme Court Rule 37.5, the Respondents, Sheriff of Lake County, Florida, in his official capacity,¹ and Richard Sylvester, in his individual capacity, hereby file their response opposing the Court granting leave to The Rutherford Institute to file its *amicus curiae* brief in this case. Rule 37.1 provides that an *amicus curiae* brief that does not bring to the Court's attention relevant matter not already brought to its attention by the parties is merely a burden on the Court.

1. The Motion for Leave of the *amicus* claims that the purpose of its brief is to “illuminate the facts and law regarding the knock and talk police practice that led to the needless death of Petitioners’ decedent, and to urge this Court to address the standards applicable to this tactic.” (Mot. 1-2.)² The sentence reveals the *amicus*’ bias and that it is not “concerned solely about the legal, social and policy issues” raised by the case and the judgment below of the district court. (Mot. 2.)

The Questions Presented are duplicated from the Petition for Writ of Certiorari. (ACB i-ii.) Thus, like the Petition, they reference the Second Amendment, which was not an issue in this case, as discussed thoroughly in the Respondents’ Brief In Opposition. They also continue the same misstatements of fact found in the Petition, citing the officers’ “intrusion . . . onto the curtilage and

¹ Gary S. Borders, the former Sheriff of Lake County, was the Sheriff on the incident date.

² References to the Motion for Leave are “(Mot. #)”; and to the Brief of *Amicus Curiae* are “(ACB #)”.

past the privacy fence to look into the windows . . .” (ACB i.) These incorrect assertions regarding the facts are also addressed in the Brief In Opposition.

The amicus brief argues the facts of the case for at least ten pages and states they “demand . . . this Court’s attention and require review and reversal of the judgment below.” (ACB 3-13; ACB 8.) The alleged facts, the arguments of the parties, and the decisions of the district court and the Eleventh Circuit Court of Appeals have been set out at length for the Court by both the Petitioners and the Respondents. Most of the amicus brief is merely repetitious and does not assist the Court as it only urges a consideration of whether the case was correctly decided below. As Supreme Court Rule 10 states, “A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.” The Rutherford Foundation’s Motion for Leave to file the amicus brief should be denied.

2. The purpose of the remainder of the amicus brief is to “urge this Court to . . . establish that police use of the knock and talk is not limitless and that there is accountability when the tactic is used in such a dangerous way as to cause severe injury and loss of life.” (ACB 17.) In this case, the actions of Deputy Richard Sylvester and the other deputies were within the established parameters of a knock-and-talk, a procedure the Court recognizes as constitutional. The brief states the Court needs to provide guidance “limiting the manner in which knock and talks are conducted.” (ACB 13.) The Court has done this, in cases such as *Kentucky v. King*, 563 U.S. 452 (2011) and *Florida v. Jardines*, 569 U.S. 1 (2013), and the lower

courts have applied the procedure's limitations in the many varied factual situations that come before them. The amicus brief does not demonstrate that this case is a proper vehicle for the Court's consideration of the knock-and-talk procedure, and the Motion for Leave should be denied.

Respectfully submitted,

/s/ Linda L. Winchenbach

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CERTIFICATE OF SERVICE

I, Linda L. Winchenbach, a member of the Bar of this Court, hereby certify that on November 16, 2017, in *Young, et al. v. Borders, et al.*, Case No. 17-249, a copy of the Respondents' Opposition Response to Motion for Leave to File Brief of The Rutherford Institute as *Amicus Curiae* in Support of Petitioners was sent by third-party commercial carrier for two-day delivery and via email to Petitioners' Counsel of Record, Dorothy F. Easley, Easley Appellate Practice, PLLC, 1200 Brickell Ave., Ste 1950, Miami, FL 33131, admin2@easleyappellate.com, administration@easleyappellate.com. A copy was sent via email to Counsel of Record for The Rutherford Institute, John W. Whitehead, at johnw@rutherford.org. I hereby certify that all parties required to be served have been served.

/s/ Linda L. Winchenbach
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