

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 22-0018

S.W., A MINOR, BY AND THROUGH HER GUARDIAN,
JEFFREY FERGUSON,
Plaintiff-Appellee,

v.

STATE OF MONTANA, BY AND THROUGH THE MONTANA DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES,
Defendant-Appellant.

On Appeal for the Eighth Judicial District Court,
Cascade County Cause No. DDV 18-813(b)
Honorable Elizabeth A. Best

**PLAINTIFF-APPELLEE'S RESPONSE TO MACO'S
MOTION FOR LEAVE TO FILE A LATE AMICUS BRIEF**

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Ordinarily, parties should freely consent to amicus briefs, provided of course that they are timely. On October 11, 2022, MACo filed an untimely, and therefore opposed, motion for leave to file an amicus brief under Rule 16. That rule grants the party opposing the motion eleven days to respond. But on October 11, 2022—before the plaintiff-appellee had a chance to respond—the Court granted MACo’s motion.

Because MACo’s motion for leave to file the amicus brief did not clearly indicate that it was opposed and that it was untimely, this Court may have understandably overlooked those facts. The plaintiff-appellee therefore respectfully requests reconsideration of the decision to grant leave to file an untimely brief. This Court should deny leave because MACo’s proposed amicus brief is untimely and would deny the appellee any opportunity to respond. MACo first sought consent to appear as amicus on October 7, 2022—well after the plaintiff-appellee’s answering brief was on file. No good cause supports its motion for leave to introduce new arguments into the appeal at this late hour, and MACo does not attempt to provide any. Permitting the amicus brief would prejudice the appellee by denying him of any meaningful opportunity to respond.

If the Court’s order granting MACo’s motion stands, however, the plaintiff-appellee requests that he be granted leave to file a sur-response brief not to exceed 5,000 words and confined to any new matters raised by MACo.

CONCLUSION

This Court should deny MACo's leave to file an amicus brief or, in the alternative, grant the plaintiff-appellee leave to file a 5,000-word sur-response brief.

Respectfully submitted,

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October 12, 2022

CERTIFICATE OF SERVICE

I, Benjamin R. Graybill, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 10-12-2022:

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