

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0808

GATEWAY CONSERVATION ALLIANCE,

Plaintiff / Appellant,

v.

STATE OF MONTANA, and MONTANA DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Defendants / Appellees,

and

TMC, Inc.,

Intervenor-Defendant / Appellee.

OPPOSITION TO MOTION FOR LEAVE

On Appeal from the Montana Eighteenth Judicial District Court, Gallatin County,
Cause No. DV-2024-838, the Honorable Peter Ohman Presiding

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“There is no inherent right to file an *amicus curiae* brief with the Court.” *Long v. Coast Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999); *see also Reichert v. State*, 2012 MT 111, ¶ 25, 365 Mont. 92, 278 P.3d 455 (“[T]he right to be heard as amici curiae is within the discretion of the court.”). While DEQ is respectful of the interested public’s ability to participate in proceedings as amici when timely and appropriate, to grant Montana Environmental Information Center and Park County Environmental Quality Council’s (collectively “Conservation Groups”) Motion for Leave to Appear Amicus Curiae here is untimely, prejudicial to DEQ, and contravenes the purpose of amici filings. This Court should, accordingly, deny Conservation Groups’ motion.

First, Conservation Groups’ motion is untimely and, as a result, prejudicial to DEQ. While Rule 12(7) of the Montana Rules of Appellate Procedure does not explicitly impose time limits on when amici briefs may be filed, most jurisdictions generally recognize that amici briefs should be filed in short proximity to the principal brief of the party amici are supporting. Rule 29(6), F. R. App. P.; *see also Denmark Liberty Life Assur. Co. of Bos.*, 530 F.3d 1020, 1020 (1st Cir. 2008) (explaining court would only entertain motions for leave to file amicus briefs that “comply with the timetable and procedural requirements of Fed. R. App. P. 29”); *Friends of Animals v. United States v. Fish & Wildlife Serv.*, 2021 U.S. Dist. LEXIS 187246, at *5 (D. Utah, Sept. 28, 2021) (denying State Amici leave to file

amicus because “State Amici did not allow Plaintiff an opportunity to respond to the information raised in the proposed amicus brief. Granting leave to the State Amici to now participate in the case would necessitate granting leave for Plaintiff to file a sur-reply. This would further extend the case’s briefing schedule and delay the disposition of the case to the prejudice of the parties.”).

This appeal was filed nearly six months ago. Appellants Gallatin Conservation Alliance (“Alliance”) filed its opening brief nearly four months ago. And DEQ and TMC, Inc. filed their respective response briefs six weeks ago on March 26, 2026. Conservation Groups are essentially asking this Court—without being bound to any argument made in the District Court—to now participate near the conclusion of this case and submit unrefuted argument on behalf of a particular party. This Court recently denied an applicant’s motion for leave to file an amicus because it was untimely. *See Montanans for Nonpartisan Cts. v. Knudsen*, 2025 Mont. LEXIS 1387 (Nov. 18, 2025). The Court should do so again here for the same reason.

Additionally, Conservation Groups’ interests are already competently represented by the Alliance. An amicus is supposed to be a friend of the court, not a friend of a party. *Ryan v. Commodity Futures Trading Com’n*, 125 F.3d 1062, 1063 (7th Cir. 1997); *U.S. v. Mich.*, 940 F.2d 143, 164-65 (6th Cir. 1991). Thus, “[w]hen the party seeking to appear as *amicus curiae* is perceived to be an

interested party or an advocate of one of the parties to the litigation, leave to appear as *amicus curiae* should be denied.” *Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp.*, 149 F.R.D. 65, 82 (D.N.J. 1993).

Here, one of the Alliance’s counsel also serves on the Board of Directors for Montana Environmental Information Center, which has “complete legal control of MEIC.”¹ Accordingly, not only should Conservation Groups have known about this appeal and the ability to seek amici participation months ago, but given the overlap of representation with an existing party, Conservation Groups’ requested participation suggests it doesn’t merely seek to provide the Court with “unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Cnty. Ass’n for Restoration of Env’t v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999). Instead, Conservation Groups seem to seek amicus participation to advocate for a party as an “end run around court-imposed limitations on the length of parties’ briefs,” *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 544 (7th Cir. 2003), and without any opportunity for DEQ to respond.²

¹ See MEIC, “Our People,” available at: <https://meic.org/about/our-people/> (last accessed May 7, 2026).

² The undersigned offered to counsel for Conservation Groups that DEQ would not oppose the request if Conservation Groups were willing to provide DEQ an opportunity to provide a brief response. The offer was declined.

Relatedly, Conservation Groups' motion also raises the question of what "unique information or perspective" could be offered beyond what the parties have already argued in briefing other than to simply extend the length of the Alliance's brief. *Gabriel Technologies Corp. v. Qualcomm Inc.*, 2012 U.S. Dist. LEXIS 33417, at *4 (S.D. Cal., Mar. 13, 2012) ("An *amicus* brief is meant to assist the court and not merely extend the length of the litigant's brief"). Conservation Groups point to the fact that they "routinely litigate" against the state, and their generalized interest in environmental litigation. Opp. Mot. for Leave, at 3-4. The sole issue on appeal, however, remains a straightforward legal question regarding the exhaustion of administrative remedies that has already been extensively briefed by the parties in the District Court and now this Court. As such, this Court should have little difficulty answering that legal question without additional briefing from a non-party submitted at the 11th hour. *See Long*, 49 F. Supp. 2d at 1178 (recognizing amici particularly unnecessary when "applicant's only concern is the manner in which [the] Court will interpret the law.") (citing *American College of Obstetricians and Gynecologists, Pennsylvania Section, et al. v. Thornburgh*, 699 F.2d 644, 645 (3d Cir. 1983)).

What's more, Conservation Groups don't merely offer redundant arguments of the parties that, standing alone, would be insufficient to confer amici participation. *See, e.g., Int'l Union of Operating Eng'rs Loc. 139 v. Schimel*, 210 F.

Supp. 3d 1088, 1101 (E.D. Wis. 2016) (denying request to appear as amicus party where proposed brief “add[ed] no materially significant argument that was not or could not have been raised by the [Defendant].”). Conservation Groups go much farther, engaging in seven pages of extensive argument regarding the purported “non-exclusivity clause of MAPA” and claiming the District Court’s decision violates legislative intent. *See* Ex. A at 4-11. Amici curiae must take the case as they found it and “cannot raise separate issues not raised by the parties.” *Reichert*, ¶ 25. At the very least, the time for Conservation Groups to offer such argument was before DEQ filed its response, not six weeks after the response and without any opportunity for the agency to respond.

To grant Conservation Groups’ motion and permit its belated filing contravenes the purpose of amici curiae and is prejudicial to DEQ. DEQ, accordingly, respectfully requests this Court deny Conservation Groups’ motion. Alternatively, if this Court is inclined to grant Conservation Groups’ motion, DEQ respectfully requests the opportunity to file a brief response within three (3) weeks of the submission of the amicus brief, not to exceed 5,000 words pursuant to Rule 11(4)(a), M. R. App. P.

Respectfully submitted this 8th day of May 2026.

/s/ Samuel J. King
Samuel J. King

Counsel for the Department

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with proportionately spaced Times New Roman typeface 14-point font, is double-spaced except for footnotes, and the word count calculated by Microsoft Word is 1,203 words.

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CERTIFICATE OF SERVICE

I, Samuel James King, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 05-08-2026:

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