

DOCKET NO. 11-1149

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

GRAY PETERSON,

Appellant

v.

ALVIN LACABE, et. al.,

Appellees

Appeal from the United States District Court
for the District of Colorado
(Civil Action No. 10-CV-00059-WDM-MEH)

RESPONSE OF ALVIN LACABE IN OPPOSITION TO THE NRA'S MOTION
FOR LEAVE TO APPEAR AS AMICUS CURIAE

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Alvin LaCabe, through counsel, files this response in opposition to the motion filed by the NRA for leave to appear as amicus curiae, on the following grounds:

1. Appellee LaCabe¹ recognizes that this Court has discretion to grant or deny a request from a private organization to appear as an amicus curiae. However, the fact that the Court has such discretion does not mean that all parties must automatically consent, nor does it mean that the Court should automatically grant such a request without considering the advantages and disadvantages of an amicus curiae brief in this lawsuit.

2. LaCabe asks this Court to consider the position taken by the 7th Circuit, which “will deny permission to file an amicus brief that essentially duplicates a party’s brief.” *Voices for Choices, et. al., v. Illinois Bell Telephone Co., et. al.*, 339 F.3d 542, 544 (7th Cir. 2003); *National Organization for Women, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000). The reasons for this policy are: 1) federal appellate courts have heavy caseloads and therefore need to minimize extraneous reading; 2) amicus briefs, often solicited by parties, may be used as an end run around court-imposed limitations on the length of parties’ briefs; 3) the time and other resources required for the preparation and study of, and response to, amicus briefs drives up the cost of litigation, and 4) the filing of an amicus brief is often an attempt to inject interest group politics into the federal appeals process. *Id.*

3. The filing of an amicus brief should be granted when 1) the interests of the amicus curiae are not represented (or not adequately represented) by the existing parties; 2) when the would-be amicus has a direct interest in another case and the case in which he seeks to file an amicus brief may, by operation of stare decisis or res judicata, materially affect that interest, or 3) when the amicus has a unique perspective, or information, that can assist the court of appeals beyond what the parties are able to do. *National Org. for Women*, at 616.

4. The criteria articulated by the 7th Circuit for the filing of an amicus curiae brief are not present here. A review of the NRA’s proposed brief reveals that it

¹ Alvin LaCabe is sued in his official capacity as the Manager of Safety and *ex officio* Sheriff for the City and County of Denver, and as such, the City and County of Denver is the defendant in this lawsuit.

duplicates the legal arguments presented by Appellant Peterson. Moreover, the interests of the NRA and Appellant are identical. Peterson has brought a facial challenge to the constitutionality of a state statute that requires residency within the state as a condition to the issuance of a concealed handgun permit. By seeking a declaration that the residency requirement is unconstitutional, Peterson represents not only his own interests, but the interests of all non-residents who would like to obtain a concealed handgun permit in Colorado. The NRA has not demonstrated that it offers any unique perspective, arguments, facts, data, or theories that are not to be found in the parties' briefs.

5. While Appellee LaCabe will certainly defer to the Court's judgment on this matter, nevertheless, on behalf of the City and County of Denver, Appellee asks the Court to consider whether the filing of an amicus brief by a political interest group whose arguments and interests are the same as Appellant's would actually assist the Court in deciding the legal issues presented in this lawsuit.

Submitted this 14th day of June, 2011.

s/

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CERTIFICATE OF SERVICE

I certify that on June 14, 2011, I filed the foregoing Response via the Tenth Circuit's ECF System, which will automatically send email notification to all attorneys of record.

s/

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