

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

V.

CARL GIBSON

Docket No. 217-2015-CR-00625

**STATE'S OBJECTION TO BRIEF OF AMICUS CURIAE**

NOW COMES the State of New Hampshire (State) by and through its counsel, the Office of the Attorney General, and respectfully objects to the recognition of Edward Naile, as an amicus, and moves to strike the *amicus curiae* brief filed by Mr. Naile. In support of this objection the State pleads as follows:

1) On April 11, 2016 Edward Naile filed a document titled "Amicus Curie Brief" in the above captioned matter. Unlike the Supreme Court, which has rules and procedures for the filing of amicus briefs, *see Sup. Ct. R. 30*, the Superior Court has no provision for the participation of amicus in trial-level proceedings. "Classical participation as an amicus to brief and argue as a friend of the court was, and continues to be, a privilege within the 'sound discretion of the courts.'" *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991) (citation omitted). Participation is dependent "upon a finding that the proffered information of amicus is timely, useful, or otherwise necessary to the administration of justice." *Id.* (citation omitted).

2) Even if the Superior Court's Rules envisioned the participation of an amicus, it is doubtful that Mr. Naile would meet the criteria at this stage. Judge Posner of the Seventh Circuit Court of Appeals provided the following guidance in assessing whether to permit the filing of an amicus brief:

No matter who a would-be amicus curiae is, therefore, the criterion for deciding whether to permit the filing of an amicus brief should be the same: whether the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties' briefs. The criterion is more likely satisfied in a case in which a party is inadequately represented; or in which the would-be amicus has a direct interest in another case that may be materially affected by a decision in this case; or in which the amicus has a unique perspective or specific information that can assist the court beyond what the parties can provide.

*Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003); *see also Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1064 (7th Cir. 1997) (noting that if these factors are not met "leave to file an *amicus curiae* brief should be denied"); *Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970) ("[A] district court lacking joint consent of the parties should go slow in accepting, and even slower in inviting, an amicus brief unless, as a party, although short of a right to intervene, the amicus has a special interest that justifies his having a say, or unless the court feels that existing counsel may need supplementing assistance.")

WHEREFORE, the State respectfully requests the following relief:

- A. Strike Mr. Naile's amicus brief from the record; and
- B. Grant such other and further relief as the Court deems just.


Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

Joseph A. Foster  
Attorney General

April 21, 2016



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Stephen G. LaBonte, NH Bar # 16178

Assistant Attorney General

Civil Bureau

N.H. Department of Justice

33 Capitol Street

Concord, NH 03301

(603) 271-3650

[stephen.labonte@doj.nh.gov](mailto:stephen.labonte@doj.nh.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been mailed this 21<sup>st</sup> day of April 2016 first class mail, postage prepaid, to Attorney Michael J. Iacopino, Attorney William L. Chapman and Mr. Edward Naile.



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Stephen G. LaBonte, Esq.