

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

WYNN LAS VEGAS, LLC, d/b/a WYNN  
LAS VEGAS, a Nevada Limited Liability  
Company,

Appellant,

vs.

YVONNE O'CONNELL, an individual,

Respondent.

Supreme Court Case No.: 70583

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Appeal from Judgment on Jury Verdict entered December 15, 2015,  
District Court Case No. A-12-671221-C, Eighth Judicial District of Nevada

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**RESPONDENT YVONNE O'CONNELL'S  
OPPOSITION TO MOTION FOR LEAVE  
TO FILE AMICUS BRIEF**

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### **NRAP 26.1 DISCLOSURE**

The law firm representing Respondent Yvette O'Connell in the District Court, in the Court of Appeals, and in the Nevada Supreme Court is the NETTLES LAW FIRM.

Dated this 28 day of March, 2019.

#### **NETTLES LAW FIRM**

*/s/ Christian M. Morris*

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## **I. ARGUMENT**

The Motion by Caesars Entertainment Corporation’s (“Caesars”) for leave to file an amicus brief should be denied because the proposed amicus brief<sup>1</sup> would be cumulative to the Opening Brief by Defendant Wynn Las Vegas, LLC d/b/a WYNN Las Vegas (“Wynn”).<sup>2</sup>

Caesars grounds its request to file an amicus brief in the fact that it “is one of many companies in the hotel/casino industry in Nevada[,]” and that it often must defend against slip and fall litigation similar to this case. *Motion*, 2-3. However, Defendant Wynn fits precisely the same description, is competently represented by counsel in this matter, and has already provided legal authority and argument from Caesars’s perspective.

Courts across the country (including this Court) have uniformly held that amicus briefing is improper where such briefing would simply supplement the briefing of a party competently represented by counsel—as the Seventh Circuit Court of Appeals aptly put it, “The term ‘amicus curiae’ means friend of the court,

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<sup>1</sup> It must be noted that Caesars did not include its proposed amicus brief in its filing served on the parties, and that Plaintiff therefore cannot comment upon the actual content of the amicus brief. Counsel for Plaintiff has been informed by the Clerk of Court that Caesars separately delivered its proposed brief to the Court via U. S. Mail. Caesars thereby avoided disclosing its proposed brief to Plaintiff.

<sup>2</sup> Pursuant to NRAP 28(d), to promote clarity, the parties are referred to herein by their respective designations in the District Court, *i.e.*, “Plaintiff” and “Defendant.”

not friend of a party.” *Ryan v. Commodity Futures Trading Com’n*, 125 F.3d 1062, 1063 (7th Cir. 1997).

Caesars’s proposed amicus brief offers no unique information or perspective that has not been (or could not have been) raised by Defendant Wynn itself. Moreover, allowing Caesars to file an amicus brief would unfairly prejudice Plaintiff, as the admission of this additional brief would effectively serve as a supplemental brief in support of Wynn, because the amicus brief does nothing more than rehash the same argument presented by Wynn.

Thus, Plaintiff respectfully requests that the Court deny Caesars’s Motion For Leave To File Amicus Curiae Brief. However, should the Court grant the Motion, Plaintiff respectfully requests an opportunity to respond.

**A. LEGAL STANDARD FOR GRANTING LEAVE TO FILE AN AMICUS BRIEF.**

This Court’s Rules provide that the filing of an amicus brief is a matter of leave rather than a matter of right. *See Nev. R. App. P. 29(a)*. “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). Rather, this Court ultimately retains broad discretion to either permit or reject the appearance of amicus curiae. *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).

Caesars identifies no legal standard, from this Court or any other, for determining whether an amicus brief is appropriate from a particular movant in a particular case. However, as many other courts have noted, most amicus briefs (including the proposed brief by Caesars here) simply advocate on behalf of one party to the litigation, thereby unfairly prejudicing the opposing party:

The vast majority of amicus curiae briefs are filed by allies of litigants and duplicate the arguments made in the litigants' briefs, in effect merely extending the length of the litigant's brief. **Such amicus briefs should not be allowed. They are an abuse.**

*Ryan v. Commodity Futures Trading Com'n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (emphasis added); see also *Gabriel Technologies Corp. v. Qualcomm Inc.*, 2012 WL 849167, 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").

This reasonable perspective has been adopted by courts across the nation in rejecting proposed amicus briefs. See, e.g., *Beesley v. International Paper Co.*, 2011 WL 5825760 (S.D. Ill., Nov. 17, 2011); *JPMorgan Chase Bank, N.A. v. Fletcher*, 2008 WL 73233 (N.D. Okla., Jan. 7, 2008). As one federal District Court aptly stated, "The term 'amicus curiae' means friend of the court, not friend of a party." *Ryan*, 125 F.3d at 1063.

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In recognition of these principles, courts generally have held that an amicus brief should be allowed only under narrow and specific circumstances not present here. As the Seventh Circuit Court of Appeals succinctly stated,

[t]he policy of this court is, therefore, *not to grant rote permission* to file an amicus curiae brief; *never to grant permission to file an amicus curiae brief that essentially merely duplicates the brief of one of the parties* [ ]; to grant permission to file an amicus brief only when (1) a party is not adequately represented (usually, is not represented at all); or (2) when the would-be amicus has a direct interest in another case, and the case in which he seeks permission to file an amicus curiae 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.

*Nat'l Org. for Women, Inc. v. Scheidler*, 223 F.3d 615, 617 (7th Cir. 2000) (emphases added); *see also Rock Springs Grazing Ass'n v. Salazar*, 2011 WL 13162054, at \*1 (D. Wyo. Dec. 15, 2011); *Ryan v. Commodity Futures Trading Com'n*, 125 F.3d 1062, 1063 (7th Cir. 1997).<sup>3</sup>

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<sup>3</sup> This healthy skepticism regarding the motivations, usefulness, and appropriateness of the majority of proposed amicus briefs is essentially universal among courts at all levels in the United States. *See, e.g., United States v. Michigan*, 940 F.2d 143, 164-65 (6th Cir. 1991); “When the party seeking to appear as amicus curiae is perceived to be an interested party or to be an advocate of one of the parties to the litigation, leave to appear amicus curiae should be denied.” *Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp.*, 149 F.R.D. 65, 82 (D.N.J. 1993). “Where a petitioner’s attitude toward a litigation is patently partisan, he should not be allowed to appear as amicus curiae.” *Yip v. Pagano*, 606 F. Supp. 1566, 1568 (D.N.J. 1985); *Northern Securities Co. v. United States*, 191 U.S. 555, 556 (1903); *American College of Obstetricians & Gynecologists v. Thornburgh*, 699 F.2d 644 (3d Cir. 1983); *Rucker v. Great Scott Supermarkets*, 528 F.2d 393 n.2 (6th Cir. 1976), *overruled on other grounds by Wright v. State of Tenn.*, 628 F.2d 949 (6th Cir. 1980); *Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970); *United States v. Gotti*, 755 F.Supp. 1157 (E.D.N.Y. 1991); *Fluor Corp. v. United States*, 35 Fed. Cl. 284 (1996).

By contrast, leave to appear amicus curiae is appropriately denied where the entity “seeking to appear as amic[us] represented business interests which would be ultimately and directly affected by the court’s ruling on the substantive matter before it.” *Yip v. Pagano*, 606 F. Supp. 1566, 1568 (D.N.J. 1985) (distinguishing prior case on that basis).

**B. CAESARS’S AMICUS BRIEF IS UNWARRANTED.**

As noted above, an amicus brief should be allowed only when (1) a party is not represented competently by counsel, or is not represented at all; (2) when the amicus has an interest in some other case that may be affected by the decision in the present case; or (3) when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. *Nat’l Org. for Women, Inc.*, 223 F.3d at 617 (emphasis added).

**1. Defendant Wynn Is Competently Represented By Legal Counsel.**

In the present case, Defendant Wynn is represented by competent legal counsel—namely, Lawrence J. Semenza, III, Esq., Christopher D. Kircher, Esq., and Jarrod L. Rickard, Esq. of Semenza Kircher Rickard. Caesars does not argue otherwise in its attempt to justify leave to file its proposed amicus brief.

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**2. Caesars Has Not Demonstrated That It Has An Interest In Some Other Case That May Be Affected By The Decision In This Litigation.**

Rather than identify any pending case that may be affected by the decision in the present case, Caesars instead seeks leave based on the fact that it “is one of many companies in the hotel/casino industry in Nevada[,]” and that it often must defend against slip and fall litigation similar to this case. *Motion*, 2-3.

Of course, another such entity that “is one of many companies in the hotel/casino industry in Nevada” that often must defend against slip and fall litigation similar to this case is Defendant Wynn itself. Caesars’s Motion could not be a more obvious attempt to “duplicate the arguments made in [Wynn]’s briefs, in effect merely extending the length of [Wynn]’s brief. **Such amicus briefs should not be allowed. They are an abuse.**” *Ryan*, 125 F.3d at 1063 (emphasis added).

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**3. Caesars’s Proposed Amicus Brief Would Merely Mirror Defendant Wynn’s Legal Argument And Would Not Present Unique Information Or Perspective.**

Caesars’s proposed amicus brief would offer no “unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Nat’l Org. for Women, Inc.*, 223 F.3d at 617. Instead, Caesars acknowledges that it is in exactly the same position as Defendant Wynn—*i.e.*, “one of many companies in the hotel/casino industry in Nevada” that frequently defends against slip and fall claims and therefore “needs to know the legal framework in which [it] operate[s].” *Motion*, 2-3.

Thus, far from bringing some “unique information and perspective[,]” Caesars openly admits that it would simply duplicate the efforts of Defendant Wynn, which is situated exactly as Caesars.

Therefore, Caesars’s request to file an amicus brief is nothing more than an attempt to boost Defendant Wynn’s position in the eyes of this Court by submitting an additional brief supporting the same positions and making the same arguments in an apparent attempt to sway this Court in their direction. Emphasis by an amicus in favor of one party’s analysis of the law is of absolutely no use to this Court. *Ryan*, 125 F.3d at 1063. Caesars’s reiteration of Defendant Wynn’s description of the law and analysis of the facts would be improper and should not be permitted.

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### **C. CAESARS’S PROPOSED AMICUS BRIEF WOULD UNFAIRLY PREJUDICE PLAINTIFF.**

It is clear from Caesars’s description of its position that Caesars would be an advocate for Defendant Wynn, not a friend of this Court. *Ryan*, 125 F.3d at 1063 (“The term ‘amicus curiae’ means friend of the court, not friend of a party.” *Ryan*, 125 F.3d at 1063.).

The brief proposed by Caesars would be precisely the type of brief that provides no assistance to this Court, and it would do nothing more than extend the length of Defendant Wynn’s brief. *Id.* Allowing Caesars to file an amicus brief would place Plaintiffs at a disadvantage because that brief would effectively serve as a supplemental brief in support of Defendant Wynn’s position, whereas Plaintiff is limited to one brief. Thus, Plaintiff would be unfairly prejudiced.

## **II. CONCLUSION**

Because Caesars is situated identically to Defendant Wynn within the hotel/casino industry, Caesars brings nothing to the table that would assist this Court in evaluating this case that is not already available from the parties. Caesars’s attempt to “add weight” on Defendant Wynn’s side of the scale by filing what would essentially be a supplemental Opening Brief is precisely the sort of purported amicus briefing that courts have universally rejected as an “abuse” and improper.

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Defendant Wynn is competently represented by counsel and is perfectly capable of presenting argument and legal authority on behalf of a company in the hotel/casino industry that frequently defends against slip and fall litigation—because Defendant Wynn, like Caesars, is precisely so situated. Caesars proposed brief would at best be duplicative of Defendant Wynn’s brief, and at worst would simply look to prejudice Plaintiff with strength in numbers.

For the foregoing reasons, Plaintiff respectfully requests that this Court deny Caesar’s Motion For Leave To File Amicus Curiae Brief.

Dated this 28th day of March, 2019.

**NETTLES LAW FIRM**

*/s/ Christian M. Morris*

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### **III. CERTIFICATE OF COMPLIANCE PER NRAP 28.2**

1. I hereby certify that this brief complies with the formatting requirements, the typeface requirements, and the type style requirements of NRAP 32 because this brief has been prepared in a proportionally-spaced typeface using Microsoft Word For Mac v. 15.34 (2017), in 14-point Times New Roman type. It complies with the length requirements of NRAP 32(a)(7) because it contains 2,046 words.

2. I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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3. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 28th day of March, 2019.

**NETTLES LAW FIRM**

*/s/ Christian M. Morris*

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 28th day of March, 2019, I served the foregoing, **RESPONDENT YVONNE O'CONNELL'S OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS BRIEF**, on counsel by this Court's electronic filing system, to the persons and at the addresses listed below:

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/s/ Christian M. Morris

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