

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABEL CANTARO CASTILLO,

Appellant,

vs.

WESTERN RANGE ASSOCIATION,

Respondent.

Case No. 85926

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Elizabeth A. Brown
Clerk of Supreme Court

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
IN SUPPORT OF RESPONDENT**

Pursuant to Rule 29 of the Nevada Rules of Appellate Procedure, American Sheep Industry Association, Inc. (“ASI”) and Nevada Wool Growers Association (“NWG”; collectively, the “Sheep Industry”), by and through their undersigned counsel, hereby move this Court for leave to file an *amicus curiae* brief in support of Respondent, Western Range Association.

This Motion is made and based upon the following Memorandum of Points and Authorities. In accordance with Rule 29(c), the Sheep Industry are including their proposed *amicus* brief for filing, and ask the Court for leave for a brief extension of time, *nunc pro tunc*, relating back to the filing of Respondents’ briefs. See NRAP 29(c) (“A motion for leave to file an *amicus* brief shall be accompanied

by the proposed brief”). This is the first request for an extension of time for the Sheep Industry, and the first request for leave to submit an *amicus* brief.

MEMORANDUM OF POINTS AND AUTHORITIES

Amicus briefs are desirable when *amici* have unique information or perspective that can help a court decide a case. *See, e.g., Youming Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 137 (D.D.C. 2008). This Court accordingly accepts *amicus* briefs in appropriate cases to help resolve significant legal issues presented to it. *See, e.g., Fullerton v. State*, 116 Nev. 906, 908 n.1 (2000); *Labastida v. State*, 115 Nev. 298, 299 n.1 (1999).

A question has been certified to this Court that affects not only the rights of the Appellant sheep herder and Respondent association, but of all of Nevada range sheep production, and potentially range sheep production in other states. Given the significance of this case, the Sheep Industry respectfully request that they be permitted to be heard as a friend of the Court.

The American Sheep Industry Association (“ASI”) is a federation of 45 state sheep associations, representing sheep producers nationwide, including pasture-raised sheep in the Eastern United States and ranches producing sheep on the range in Nevada and throughout the Western United States. ASI is based in Englewood, Colorado, providing vital information to its members around the country and serving

as their advocate in the nation's capital on issues ranging from labor, as in this matter, to conservation and environmental matters to international trade.

The Nevada Wool Growers represent and are led by 33 members in the State, including 12 sheep ranches. Most of the 58,000 sheep in the state are under the care of those 12 ranches, who graze them on federal lands under specific permits from the U.S. Forest Service or the Bureau of Land Management. Unlike cattle, which can be left largely unsupervised for long periods of time, the federal sheep grazing permits explicitly require that the "bands" of sheep, numbering 1,000 or more, be accompanied by herders at all times. The sheep in their care do not require constant, 24/7 activity by the herders, but only that they maintain a general proximity to them during the herders' off-hours between periods of work.

The Sheep Industry seek leave to file their *amicus* brief in support of Respondent to address the important question certified to this Court, how sheep herding is part of the history and culture of the State of Nevada, and how the answer to the certified question could affect the future of sheep ranching. There is a crucial distinction between needing to be near the sheep and actively working in a manner that is compensable time. Finding that the range sheep herders "work" 24 hours/day and must be paid for each of those hours in a day would destroy the sheep industry that has been part of Nevada history for more than 200 years.


It is important for this Court to hear that context and history, and how Appellant's proposed interpretation would ruin all of that in a very short amount of time. The Sheep Industry are uniquely positioned to give insight on these issues and can speak beyond the employer-employee context to the community, at large.

The Respondent's brief was filed June 26, 2023. Proposed amici seek leave to file this brief outside of the Court's normal time limits because separate approval of the contents of the brief was required from both associations, and the timing of the Respondent's brief being filed and filing of this brief occurred outside of normally scheduled meetings of the associations' Boards of Directors. The associations and counsel have worked as promptly and diligently as possible to secure that approval and permission to file, and ask the Court to accept this brief nunc pro tunc, as though timely filed, in spite of this brief delay to secure such approval.

For the foregoing reasons, the Sheep Industry respectfully request that this Court grant them leave to file the *amicus* brief submitted concurrently with this Motion.

Dated this 18th day of July, 2023.

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**DECLARATION OF MARK WRAY IN SUPPORT OF MOTION FOR
LEAVE TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF RESPONDENT**

I, Mark Wray, declare:

1. I am an attorney duly admitted to practice before this Court since 1991.
2. I am currently engaged as local Nevada counsel for American Sheep Industry Association, Inc. and Nevada Wool Growers Association.
3. In assisting my co-counsel, Christopher J. Schulte, I have become familiar with the information set forth in the instant motion for leave to file an amicus brief on behalf of the associations.
4. I am informed and believe that the information contained in the motion for leave to file the amicus brief was personally obtained by and/or known to my co-counsel, who wrote the proposed amicus brief, and that those facts are accurate.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct and that this declaration was executed on July 18, 2023 at Reno, Nevada.


MARK WRAY

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Law Offices of Mark Wray and that on the 18th day of July, 2023, I electronically filed the foregoing with the Clerk of the Court using the Supreme Court Electronic Filing System, which will send notification of such filing to all attorneys of record.

/s/ Holly Mitchell