

Nos. 21-1533, 21-2431

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Latasha Holloway, et al.,

Plaintiffs-Appellees,

v.

City of Virginia Beach, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Eastern District of Virginia
Case No. 2:18-cv-00069
The Honorable Raymond A. Jackson

Appellants' Response to Motion for Leave to File *Amicus Curiae* Brief

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Counsel for Defendants-Appellants

Defendants-Appellants take no position on the outstanding motion of two proposed *amici* (Movants) to submit a brief and entrust the issue to the Court's discretion. *See* ECF No. 76. But the Court may wish to consider two factors in exercising its discretion.

First, Movants did not seek Defendants' consent to their motion for leave or confer on that matter, as required by Local Rule 27(a).¹ It is for that reason that Movants were unable to represent with their filing that the parties consented.

Second, Movants filed their motion after Defendants submitted their reply brief on the deadline set by this Court's briefing order, leaving Defendants no opportunity to address the brief in their reply and depriving the Court of such a response. The appellate rules are structured to avoid that result. *Cf.* FRAP 29(b)(5); FRAP 31(a)(1).

¹ Instead, counsel for Movants asked whether Defendants would consent to service of the *amicus* brief by email but did not solicit Defendants' position regarding the motion. *See* Exhibit A. Movants initially filed their motion with the incorrect notation that all parties consented, but promptly corrected the error when counsel for Defendants notified them that Defendants had neither consented nor even been asked to consent.

Dated: February 16, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to FRAP 32(g)(1), I hereby certify that the foregoing response complies with the type-volume limitation in FRAP 27(d)(2). According to Microsoft Word, the response contains 200 words and has been prepared in a proportionally spaced typeface using Calisto MT in 14-point size.

Dated: February 16, 2022

/s/ Katherine L. McKnight
Katherine L. McKnight

Counsel for Defendants-Appellants

CERTIFICATE OF SERVICE

I certify that on February 16, 2022, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

Dated: February 16, 2022

/s/ Katherine L. McKnight

Katherine L. McKnight

Counsel for Defendants-Appellants

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Exhibit A to
Appellants' Response to Motion for Leave to File *Amicus Curiae* Brief

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Prouty, Erika Dackin

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Cc: Phinny, C. Wendy
Subject: RE: Service in Appeal No. 21-1533, 21-2431

Mr. Raile,

Thank you for your message. We appreciate the comment, and we will prepare either an amended filing or take other appropriate action.

Best regards,
Nathaniel Edmonds

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Counsel,

The docket notion accompanying amicus filing of the Brennan Center represents that the motion for leave has the “consent of all parties.” That is not true. The appellants did not consent and were not asked to consent.

The correspondence of counsel below clearly reflects a request for consent for e-mail service of the filing only, which we granted “reserving all other rights”—including the right to oppose the motion for leave. Please correct your misstatement to the Court as soon as possible, or we will need to notify the Court.

Richard Raile
Partner

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Subject: RE: Service in Appeal No. 21-1533, 21-2431

Dear Counsel,

To the extent additional service or consent is necessary beyond what is provided in the Court's ECF practices and rules, we consent to electronic service of the contemplated filing on behalf of the appellants, reserving all other rights.

Richard Raile

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Cc: Edmonds, Nathaniel <nathanieledmonds@paulhastings.com>; Phinny, C. Wendy <WendyPhinny@paulhastings.com>

Subject: Service in Appeal No. 21-1533, 21-2431

[External Email: Use caution when clicking on links or opening attachments.]

Counsel,

We represent The Brennan Center for Justice, who will be filing an amicus brief with the court today in Appeal No. 21-1533, 21-2431. We are reaching out to obtain consent to effectuate service to you via email. Please let us know if you consent to such service or have any objection.

Thank you,
Mary



Mary E. Rogers | Associate, Litigation Department (she/her/hers)
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