

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

Chelsey Nelson Photography LLC,  
and Chelsey Nelson,

Plaintiffs,

v.

Louisville/Jefferson County Metro  
Government; Louisville Metro  
Human Relations Commission–  
Enforcement; Louisville Metro  
Human Relations Commission–  
Advocacy; Verná Goatley, in her  
official capacity as Executive Director of  
the Louisville Metro Human Relations  
Commission–Enforcement; and Marie  
Dever, Kevin Delahanty, Charles  
Lanier, Sr., Leslie Faust, William  
Sutter, Ibrahim Syed, and Leonard  
Thomas, in their official capacities as  
members of the Louisville Metro Human  
Relations Commission–Enforcement,

Defendants.

Case No. 3:19-cv-00851-BJB-CHL

**Plaintiffs' Response to Motion  
for Leave to File Brief of *Amici  
Curiae* American Civil Liberties  
Union of Kentucky and  
American Civil Liberties Union  
Supporting Defendants**

The American Civil Liberties Union and the American Civil Liberties Union of Kentucky (collectively, ACLU) ask to file an *amici curiae* brief. The ACLU's request should be denied because it is too late and prejudices Plaintiffs Chelsey Nelson and her photography studio (Chelsey). Alternatively, if the ACLU's request is granted, Chelsey asks to file a response to the ACLU's brief.

Courts have “sound discretion” to permit parties to participate as *amici curiae*. *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991). In exercising that discretion, courts consider whether *amici curiae*'s briefs are “timely, useful, or otherwise necessary to the administration of justice.” *Id.*

The ACLU's brief is not timely. Federal Rule of Appellate Procedure 29 provides district courts with guidance on the timeliness of *amici curiae* briefs. *See, e.g., United States v. Bd. of Cnty. Commrs of the Cnty. of Otero*, 184 F. Supp. 3d 1097, 1115 n.7 (D.N.M. 2015) (collecting cases); *Am. Humanist Ass'n v. Maryland-Nat'l Cap. Park & Plan. Comm'n*, 303 F.R.D. 266, 269 (D. Md. 2014) (same); *Smith v. Chrysler Fin. Co.*, 2003 WL 328719, at \*8 (D.N.J. Jan. 15, 2003) (collecting cases and noting district court's authority to appoint or deny amici “is derived from” Rule 29); *Ferguson v. Dolphins*, 2021 WL 2823581, at \*1 n.6 (S.D. Fla. July 7, 2021). Rule 29(a)(6) requires an *amicus curiae* to “file its brief ... no later than 7 days after the principal brief of the party being supported is filed.”

The ACLU's brief supports Louisville's summary-judgment motion. Mot. for Leave to File Br. of *Amici Curiae* Am. Civ. Liberties Union of Ky. and Am. Civ. Liberties Union Supp. Defs. (ACLU Mot.) 1, ECF No. 108. But the ACLU filed its brief more than a month after Louisville filed its summary-judgment motion. *Compare* ACLU Mot. (filed October 27, 2021) *with* Defs.' Cross-Mot. for Summ. J., ECF No. 97 (filed September 22, 2021). That's late four times over according to Rule 29(a)(6). And there's no reason for this delay—the ACLU has followed this case for

almost two years. Br. of Amici Curiae Am. Civ. Liberties Union of Ky. & Am. Civ. Liberties Union Supporting Defs., ECF No. 18–1 (filed January 2020).

The ACLU’s delay also prejudices Chelsey. Chelsey already filed her response to Louisville’s summary-judgment motion. Pls.’ Combined Resp. to Defs.’ Cross-Motion for Summ. J. and Reply in Supp. of Their Summ. J. Mot., ECF No. 104. So she cannot respond to the ACLU’s brief. *See Friends of Animals v. United States Fish & Wildlife Serv.*, 2021 WL 4440347, at \*2 (D. Utah Sept. 28, 2021) (rejecting untimely amici curiae motion because it was filed “on the deadline for Plaintiff’s reply brief” and “did not allow Plaintiff an opportunity to respond to the information raised in the proposed amicus brief”). If the ACLU can file its brief, Chelsey will never have a chance to respond to it or address any distinct arguments raised by the ACLU.

None of the ACLU’s timeliness arguments persuade otherwise. The ACLU is wrong to suggest that “a deadline for summary judgment briefing still has not been set.” ACLU Mot. 3. This Court set summary-judgment deadlines on October 6, 2021. *See* Text Order, ECF No. 103. The ACLU never explains how a request to supplement the evidentiary record makes the ACLU’s request timely. *Contra* ACLU Mot. 3. And the ACLU’s brief never mentions either of the parties’ proposed experts, so the pending motions to exclude are irrelevant to the ACLU’s brief. *Contra id.* In any event, the parties have already fully briefed this issue.

If the Court accepts the ACLU’s brief, Chelsey alternatively requests permission to file a 15-page response to the ACLU’s brief—six pages less than the ACLU’s brief and ten pages less than the normal page limits for responses (L.R. 7.1(d))—so that she has an opportunity to rebut the ACLU’s arguments. Rule 29 assumes that a party will have the chance to respond to an adverse amicus brief. *See* Fed. R. App. P. 29 cmt e (noting the rule’s timing requirements are intended to give the “opposing party ... sufficient time to review arguments made by the amicus

and address them in the party's responsive pleading"). *Cf. Friends of Animals* 2021 WL 4440347, at \*2 ("Granting leave to the State Amici to now participate in the case" after the deadline for the plaintiff's reply brief "would necessitate granting leave for Plaintiff to file a sur-reply."). That should be permitted here too if the ACLU's brief is accepted.

For these reasons, the ACLU's motion for leave to file an *amici curiae* brief should be denied, or, in the alternative, Plaintiffs should be given an opportunity to file a 15-page response to the ACLU's proposed *amici curiae* brief within 14 days of the Court accepting the ACLU's brief.

Respectfully submitted this 1st day of November, 2021.

By: s/ Bryan D. Neihart

Ryan Bangert  
TX Bar No. 24045446\*  
Jonathan A. Scruggs  
AZ Bar No. 030505\*  
Katherine L. Anderson  
AZ Bar No. 033104\*  
Bryan D. Neihart  
AZ Bar No. 035937\*  
**Alliance Defending Freedom**  
15100 N. 90th Street  
Scottsdale, AZ 85260  
Telephone: (480) 444-0020  
rbangert@adflegal.org  
jscruggs@adflegal.org  
kanderson@adflegal.org  
bneihart@adflegal.org

Hailey M. Vrdolyak  
IL Bar No. 6333515\*  
**Alliance Defending Freedom**  
440 First Street NW, Suite 600  
Washington, DC 20001  
Telephone: (202) 393-8690  
hvrldolyak@adflegal.org

David A. Cortman  
GA Bar No. 188810\*  
**Alliance Defending Freedom**  
1000 Hurricane Shoals Road NE  
Suite D-1100  
Lawrenceville, GA 30043  
Telephone: (770) 339-0774  
dcortman@adflegal.org

Joshua D. Hershberger  
KY Bar No. 94421  
**Hershberger Law Office**  
P.O. Box 233  
Hanover, IN 47243  
Telephone: (812) 274-0441  
josh@hlo.legal

*Attorneys for Plaintiffs*

\* Admission *Pro Hac Vice*

Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of November, 2021, I electronically filed the foregoing document with the Clerk of Court using the ECF system which will send notification of such filing to all counsel of record who are registered users of the ECF system.

By: s/ Bryan D. Neihart

Bryan D. Neihart  
AZ Bar No. 035937\*  
Alliance Defending Freedom  
15100 N. 90th Street  
Scottsdale, AZ 85260  
Telephone: 480-444-0020  
bneihart@ADFlegal.org

*Attorney for Plaintiffs*

*\* Admitted Pro Hac Vice*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

---

**Chelsey Nelson Photography LLC  
and Chelsey Nelson,**

Plaintiffs,

v.

**Louisville/Jefferson County Metro  
Government; Louisville Metro  
Human Relations Commission-  
Enforcement; Louisville Metro  
Human Relations Commission-  
Advocacy; Verná Goatley, in her  
official capacity as Executive Director of  
the Louisville Metro Human Relations  
Commission-Enforcement; and Marie  
Dever, Kevin Delahanty, Charles  
Lanier, Sr., Leslie Faust, William  
Sutter, Ibrahim Syed, and Leonard  
Thomas, in their official capacities as  
members of the Louisville Metro  
Human Relations Commission-  
Enforcement,**

Defendants.

**Case No. 3:19-cv-00851-BJB-CHL**

**[Proposed] Order Denying Leave to  
File Brief of *Amici Curiae*  
American Civil Liberties Union of  
Kentucky and American Civil  
Liberties Union Supporting  
Defendants**

---

This matter is before the Court on Motion for Leave to File Brief of Amici Curiae American Civil Liberties Union of Kentucky and American Civil Liberties Union Supporting Defendants (ECF No. 108) and Plaintiffs' Response to Motion for Leave to File Brief of Amici Curiae American Civil Liberties Union of Kentucky and American Civil Liberties Union Supporting Defendants. The Court, having reviewed the motion and response and being otherwise sufficiently advised, orders as follows:

IT IS HEREBY ORDERED that the Motion for Leave to File Brief of *Amici Curiae* American Civil Liberties Union of Kentucky and American Civil Liberties Union Supporting Defendants is DENIED.

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

---

**Chelsey Nelson Photography LLC  
and Chelsey Nelson,**

Plaintiffs,

v.

**Louisville/Jefferson County Metro  
Government; Louisville Metro  
Human Relations Commission-  
Enforcement; Louisville Metro  
Human Relations Commission-  
Advocacy; Verná Goatley, in her  
official capacity as Executive Director of  
the Louisville Metro Human Relations  
Commission-Enforcement; and Marie  
Dever, Kevin Delahanty, Charles  
Lanier, Sr., Leslie Faust, William  
Sutter, Ibrahim Syed, and Leonard  
Thomas, in their official capacities as  
members of the Louisville Metro  
Human Relations Commission-  
Enforcement,**

Defendants.

**Case No. 3:19-cv-00851-BJB-CHL**

**[Proposed Alternative] Order  
Granting Plaintiffs Leave to File  
Response to Brief of *Amici Curiae*  
American Civil Liberties Union of  
Kentucky and American Civil  
Liberties Union Supporting  
Defendants**

---

This matter is before the Court on Motion for Leave to File Brief of *Amici Curiae* American Civil Liberties Union of Kentucky and American Civil Liberties Union Supporting Defendants (ECF No. 108) and Plaintiffs' Response to Motion for Leave to File Brief of *Amici Curiae* American Civil Liberties Union of Kentucky and American Civil Liberties Union Supporting Defendants. The Court, having reviewed the motion and response and being otherwise sufficiently advised, orders as follows:

IT IS HEREBY ORDERED that the Plaintiffs' request for an opportunity to respond to Brief of *Amici Curiae* American Civil Liberties Union of Kentucky and American Civil Liberties Union Supporting Defendants (ECF No. 108-1) is GRANTED. Plaintiffs may file a response to the Brief of *Amici Curiae* American Civil Liberties Union of Kentucky and American Civil Liberties Union Supporting Defendants. Plaintiffs' response shall be no longer than 15 pages and shall be filed within 14 days of the date of this order.