

Court of Appeals, State of Colorado Colorado State Judicial Building 2 East 14th Avenue Denver, CO 80203	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Appeal from District Court, Larimer County Judge Gregory M. Lammons Case No. 13CV31385	
Appellant: CITY OF FORT COLLINS v. Appellee: COLORADO OIL AND GAS ASSOCIATION	
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Attorney for <i>Amicus Curiae</i> Conservation Colorado	
MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF	

Conservation Colorado respectfully moves this Court under Colorado Appellate Rule 29 for leave to file an amicus curiae brief in support of Appellant City of Fort Collins. The brief is conditionally filed with this motion.

Courts have broad discretion to accept submissions by amicus curiae. Conservation Cong. v. U.S. Forest Serv., No. 14-CV-2228-GEB-AC, 2015 WL 300754, at *1 (E.D. Cal. Jan. 22, 2015) (participation as amicus is within court's

sound discretion). Permitting amicus briefs is advisable where third parties can contribute to the court's understanding of the case. Funbus Sys., Inc. v. State of Cal. Pub. Utilities Comm'n., 801 F.2d 1120, 1125 (9th Cir. 1986). Colorado courts have a long tradition of welcoming the participation of amici curiae. See Mitchell v. People, 232 P. 685, 687 (Colo. 1924) ("We welcomed the appearance and argument of amici curiae").

This Court will decide whether or not the City of Fort Collins' moratorium on hydraulic fracturing is preempted by state law. Conservation Colorado has an interest in this case because the district court's decision, if affirmed, could adversely affect local communities and Conservation Colorado members across the state.¹ Conservation Colorado is a statewide grassroots organization made up of more than 8,300 members working to protect Colorado's air, land, water and people. Its mission is to protect Colorado's environment and quality of life by mobilizing people and electing conservation-minded policymakers. Many Conservation Colorado members live in communities where oil and gas wells have been drilled in residential neighborhoods and in close proximity to homes and schools. Many more of its members reside in cities and towns adjacent to heavily-

¹ This motion is timely because it is filed "within the time allowed" for Fort Collins to file its opening brief. Colo. App. R. 29; see December 26, 2014 Order (directing Appellant to file opening brief by February 6, 2015).

drilled areas and where future oil and gas development presents a significant threat. Conservation Colorado (including its predecessor organizations) has worked for years at both the legislative and administrative levels to minimize impacts from oil and gas drilling in Colorado.

Conservation Colorado's brief will contribute to the Court's understanding of the important consequences of this case for local governments and citizens in many areas of Colorado. The brief highlights for the Court the important role that moratoria play in land use planning, as well as the substantial research gaps that exist about the impacts hydraulic fracturing and oil and gas development have on public health and the environment. The scientific uncertainty about those impacts makes it impractical for local governments to ensure their land use planning decisions provide an adequate margin of safety for their citizens. Those research gaps are why governments have adopted moratoria like the one in this case.

This brief also addresses three fundamental errors in the district court's decision that, unless reversed, could have broad implications for many Colorado communities facing oil and gas development. First, the district court erred in ruling that Fort Collins' moratorium is impliedly preempted by the Colorado Oil and Gas Conservation Act (the Act), C.R.S. § 34-60-101 et seq. Colorado Supreme Court precedent makes clear that the Act does not impliedly preempt a

home-rule city's authority to enact land-use regulation of oil and gas activities within its borders.

Second, this brief explains why the district court made a legal error when it ruled that the Fort Collins moratorium is preempted by way of operational conflict with the Act. As a matter of law, a reasonable moratorium cannot operationally conflict with the Act because delay caused by such a moratorium does not materially impede any state interests.

Third, there is no evidence in the record of any state permits or approvals that conflict with Fort Collins' moratorium. As a result, the district court erred in finding an operational conflict without a fully-developed evidentiary record. This brief provides additional evidence illustrating why such a record is important. For example, state records call into question whether any drilling or hydraulic fracturing would be occurring inside Fort Collins even in the absence of the moratorium.

For the foregoing reasons, Conservation Colorado believes that its participation as amicus is advisable and would contribute to the Court's understanding of the case.

Respectfully submitted this 6th day of February, 2015.

A handwritten signature in cursive script that reads "Michael S. Freeman".

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CERTIFICATE OF SERVICE

I do hereby certify that on this 6th day of February, 2015 a true and correct copy of **MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF** was served electronically via ICCES or e-mail, or placed in the U.S. Mail, addressed to the following persons:

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