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FILED

MAY 29 2009

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

COOPERATING ATTORNEYS FOR  
LEGAL VOICE

IN THE SUPREME COURT OF THE STATE OF  
MONTANA

ROBERT BAXTER, STEVEN SOELB, )  
STEPHEN SPECKART, M.D., C. PAUL )  
LOEHNEN, M.D., LAR AUTIO, M.D., )  
GEORGE RISI, JR., M.D., and )  
COMPASSION & CHOICES, )  
Plaintiffs and Respondents, )  
v. )  
STATE OF MONTANA and STEVE )  
BULLOCK, )  
Defendants and Appellants. )

No. DA 09-0051

**MOTION FOR LEAVE  
TO FILE *AMICUS CURIAE*  
BRIEF**

COMES NOW Legal Voice (formerly the Northwest Women's Law Center) and moves this Court for leave to file an *amicus curiae* brief in the above-captioned matter, in accordance with Rule 12(7) of Mont.R.App.P. Legal Voice is supported in this Motion and in its proposed brief by the following interested parties: the National Women's Law Center, the National Health Law Program, the

National Institute for Reproductive Health, the MergerWatch Project, and Working for Equality & Economic Liberation.

Counsel for Appellants and Respondents have been contacted regarding this motion, and made no objection to the filing of this *amicus* brief.

## **1. IDENTITY AND INTEREST OF MOVING PARTIES**

*Amici* are local and national organizations dedicated to upholding women's legal rights to equality, privacy, self-determination, and bodily autonomy. They are described more fully as follows:

**Legal Voice**, formerly known as the Northwest Women's Law Center, is a regional non-profit public interest organization that works to advance the legal rights of all women through litigation, legislation, education and the provision of legal information and referral services. Since its founding in 1978, Legal Voice has been dedicated to protecting and ensuring women's rights to equality, reproductive freedom, and self-determination. Toward that end, Legal Voice has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country.

In Montana, Legal Voice (then the Northwest Women's Law Center) served as co-counsel in *Gryczan v. State of Montana*, the landmark case in which this Court declared that Montana's statute criminalizing consensual sexual conduct

between adults of the same gender violated Montanans' constitutional right to privacy. Legal Voice (when known as the Northwest Women's Law Center) has also appeared before this Court as *amicus*, most recently in *Snetsinger v. Montana University System* and in *Stoneman v. Drollinger*. In both of those cases, this Court's opinions rested, in part, on arguments raised by Legal Voice. The above-captioned case is of equal significance to women's legal rights because it will make an important pronouncement on the contours of the Montana Constitution's privacy clause and its protection of the right to self-determination.

The **National Women's Law Center (NWLC)** is a Washington, D.C. based non-profit organization committed to improving the lives of women and girls. NWLC works to protect and advance access to affordable, high quality health care through research, public education, advocacy and litigation. The Center's mission includes promoting and protecting individuals' right to privacy and informed consent in health care decision-making. NWLC has seen tremendous opposition to certain care at the end of life from the same forces that oppose women's right to reproductive health care. Because these two issues implicate similar interests of privacy, autonomy, bodily integrity, and respect for the patient's conscience and beliefs, NWLC is compelled to join this brief urging this Court to affirm the lower court's interpretation of the Montana Constitution.

The **National Health Law Program (NHeLP)** is a national public interest law firm that seeks to improve health care for America's working and unemployed poor, minorities, the elderly and people with disabilities. NHeLP serves legal services programs, community-based organizations, the private bar, providers and individuals who work to preserve a health care safety net for the millions of uninsured or underinsured low-income people, by providing research, policy analysis, and legal representation. NHeLP has long been committed to human rights and constitutional protections of the right to privacy for all. Consequently, NHeLP has expertise in issue relevant and useful to the Court in this case.

The **National Institute for Reproductive Health (NIRH)** is an innovative national institute working to ensure that all people have access to the highest quality reproductive health care, especially young women, low-income women, and women of color. NIRH offer strategic guidance, technical support, and funding to help state and local leaders remove barriers to health care, win public battles and change public policies. Together, NIRH and local organizations are helping women in communities throughout the country gain access to the full range of quality reproductive health care options, the freedom to exercise their reproductive rights and the opportunity to have healthy pregnancies. NIRH is committed to ensuring full personal autonomy throughout a person's life span.

The **MergerWatch Project** is a non-profit, national initiative that works to protect patients' rights and access to comprehensive health care (such as in end-of-life decision-making) from the impact of religious or morally-based health care restrictions. MergerWatch strategies include public education, policy analysis, community organizing and regulatory intervention, with an emphasis on empowering communities to fight for patients' rights and access to care. Founded in 1996 at Family Planning Advocates of new York State and now an affiliate of Community Catalyst, a national consumer health advocacy organization, MergerWatch is committed to ensuring that medical care is guided by scientifically-accurate, unbiased medical information and each patient's own religious or ethical beliefs.

**Working for Equality & Economic Liberation (WEEL)** is a non-profit, grass roots social justice organization located in Helena, Montana. WEEL is made up of people experiencing poverty and their supporters, and works to ensure that those most affected by poverty are civically engaged and part of the democratic process from voting to policy creation and implementation. WEEL believes that everyone deserves access to quality healthcare regardless of income, and that it is time to approach healthcare in a way that brings everybody in and leaves nobody out. In a health care system where all are cared for and have equal access to care,

patient autonomy and health care decision-making are honored and respected at all stages of life.

## **2. REASONS WHY AMICUS BRIEF IS DESIRABLE & POSITION SUPPORTED**

Pursuant to Rule of Appellate Procedure 12(7), *Amici* seek leave to file an *amicus curiae* brief in the case described by the caption above, supporting the position of Respondents Baxter *et al.* *Amici* bring to this case considerable expertise in legal and social advocacy for women's reproductive freedom and autonomy, issues directly implicated by this case. An individual's right to self-determination – in the context of both health care decision-making and choices made in private life - is firmly grounded in the constitutional right to privacy, a right the Montana Constitution accords heightened protections. Further, opposing *amici* have asserted that protecting vulnerable women is a basis for this Court to reject the lower court's decision – a position *Amici*, as women's rights advocates, reject. *Amici* believe a brief addressing these issues would be of service to the Court in resolving this case.

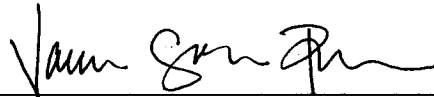
## **3. DATE FOR FILING**

Legal Voice will file its brief by June 22, 2009, the deadline set forth by the Court for briefs supporting the Respondents' position.

**4. CONCLUSION**

For the reasons stated above, Legal Voice respectfully asks this Court for leave to file the brief of *amicus curiae*.

DATED this 28<sup>th</sup> day of May, 2009.



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**CERTIFICATE OF SERVICE**

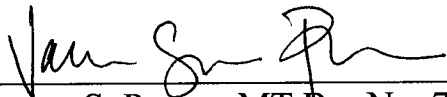
I, Vanessa Power, hereby certify that I served true and accurate copies of the foregoing Motion for Leave to File *Amicus Curiae* Brief upon all parties of record on the 28th day of May, 2009, by sending via Federal Express Overnight delivery to:

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DATED this 28th day of May, 2009.

  
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