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IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. OP 21-0125

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BOB BROWN, DOROTHY BRADLEY, VERNON FINLEY, MAE NAN  
ELLINGSON, and the LEAGUE OF WOMEN VOTERS OF MONTANA,

Petitioners,

v.

GREG GIANFORTE, Governor of Montana,

Respondent.

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**UNOPPOSED MOTION OF MONTANA TRIAL LAWYERS  
ASSOCIATION AND MONTANA DEFENSE TRIAL LAWYERS FOR  
LEAVE TO JOINTLY APPEAR AS *AMICI CURIAE***

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COME NOW the Montana Trial Lawyers Association (“MTLA”) and Montana Defense Trial Lawyers (“MDTL”), and respectfully seek leave of the Court to file an *amicus curiae* brief in this matter. Pursuant to Mont. R. App. P. 12(7), MTLA and MDTL provide the following:

**Statement of Interest**

MTLA and MDLA are member organizations that represent hundreds of attorneys that represent civil litigants. MTLA and MDTL members routinely appear before Montana courts on both sides of litigation. Both the MTLA and MDTL have an interest in ensuring that qualified and impartial attorneys are appointed as district court judges and Montana Supreme Court justices in Montana.

**Reasons Why A Joint MTLA and MDTL *Amicus* Brief Is Desirable**

Both MTLA and MDTL periodically appear in the Montana Supreme Court as *amici* on various matters involving tort, insurance, civil procedure, workers’ compensation, and constitutional issues. On these various issues, the Montana Supreme Court often invites MTLA and MDTL to participate as *amici*.

MTLA and MDTL are specifically interested in this matter because SB 140 threatens to erode away judicial independence in Montana. The Montana

Constitution specifically envisions “nominees” submitted to the Governor to fill judicial vacancies. Mont. Const. Art. VII, § 8. Since 1973, Montana has relied upon the Judicial Nomination Commission to vet, publicly interview, and forward nominees to the Governor for consideration. SB 140 upends decades of reliance of the Judicial Nomination Commission to comply with the Montana Constitution and is an assault on Mont. Const. Art. VII, § 8’s requirements that the Governor select a “nominee” to fill judicial vacancies. Under SB 140, the Governor may handpick whomever he or she wishes to serve as a judge or justice, regardless of the appointee’s qualifications.

Should the Court grant MTLA and MDTL leave to jointly appear, they will advocate for attorneys that represent civil litigants in Montana courts. In the vast majority of instances, the MTLA and MDTL support opposite sides on cases before this Court. Here, MTLA and MDTL are united in their belief that SB 140 violates the Montana Constitution and threatens the independence of the judiciary that all civil litigants rely upon.

**Identity of Party Whose Position MTLA and MDTL Support**

MTLA and MDTL support the position of the Petitioners.

**Whether the Parties Object to MTLA and MDTL’S Participation**

Both the Petitioners and Respondent have been contacted and do not object this motion.

**The Proposed Date for Filing MTLA and MDTL Joint *Amicus* Brief**

MTLA and MDTL seek to file their *amicus* brief on or before the same date that the Respondent's Summary Response is due or at another appropriate time as determined by the Court if it orders further briefing pursuant to Mont. R. App. P. 14(7)(b).

WHEREFORE, based on the foregoing, MTLA and MDTL respectfully request leave from the Court to participate in this matter as *amici curiae*. A proposed order to allow MTLA and MDTL's joint participation is submitted herewith.

RESPECTFULLY SUBMITTED this 29th day of March, 2021.

MONTANA TRIAL LAWYERS ASSOCIATION

By: /s/ Colin Gerstner  
GERSTNER ADAM LAW PLLC

/s/ Seamus Molloy  
KNIGHT NICASTRO MACKAY

*Attorneys for Amicus MTLA*

MONTANA DEFENSE TRIAL LAWYERS

By: /s/ Sean Goicoechea  
MOORE, COCKRELL, GOICOECHEA &  
JOHNSON, P.C.

*Attorney for Amicus MDTL*

## CERTIFICATE OF SERVICE

I, Colin Michael Gerstner, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 03-29-2021:

A. Clifford Edwards (Attorney)

1648 Poly Drive

Bilings MT 59102

Representing: Dorothy Bradley, Bob Brown, Mae Nan Ellingson, Vernon Finley, Montana League of Women Voters

Service Method: eService

James H. Goetz (Attorney)

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Representing: Dorothy Bradley, Bob Brown, Mae Nan Ellingson, Vernon Finley, Montana League of Women Voters

Service Method: eService

Austin Miles Knudsen (Govt Attorney)

215 N. Sanders

Helena MT 59620

Representing: Greg Gianforte

Service Method: eService

Electronically Signed By: Colin Michael Gerstner

Dated: 03-29-2021