

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 21-0395

L.B.,
Plaintiff-Appellant,
v.
UNITED STATES OF AMERICA, et al.,
Defendants-Appellees.

**UNOPPOSED MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF ON
BEHALF OF CIVIL RIGHTS, WOMEN'S RIGHTS, AND GOVERNMENT
ACCOUNTABILITY ORGANIZATIONS IN SUPPORT OF PLAINTIFF-
APPELLANT L.B.**

On Certification From The Ninth Circuit Court of Appeals
Cause No. 20-35514

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The Roderick and Solange MacArthur Justice Center, National Women’s Law Center, Women’s Law Project, Institute for Constitutional Advocacy and Protection, National Police Accountability Project, and Institute for Justice (hereinafter “*amici*”), by and through counsel, respectfully move this Court for leave to participate as *amici curiae* and file a brief in this matter, pursuant to Rule 12(7), Mont. R. App. P. If this motion is approved by the Court, *amici* propose to file a brief on or before October 15, 2021, the date upon which Plaintiff-Appellant L.B.’s opening brief is to be filed, though *amici* will conform to any schedule adopted by the Court. *Amici* support the position of the Plaintiff-Appellant.

I. STATEMENT OF INTEREST AND IDENTITIES OF THE AMICI

Amici are non-profit entities that work at the intersection of civil rights, women’s rights, and government accountability. *Amici*’s interest in this case is in ensuring that Indigenous women and other survivors of sexual violence in Montana receive due compensation from governmental entities when officers employed by those entities sexually assault them. To this end, *amici* seek to aid this Court’s analysis of the scope-of-employment issue in this case by detailing the systemic nature of sexual assault by police as well as the power imbalance inherent to police-public interactions.

If permitted to file a brief, *amici* will canvass data showing that sexual assault by police occurs at more than double the rate of sexual assault by the general public,

and will explain how law enforcement officers who commit such acts do so using the power and discretion bestowed by their employers. Given this dynamic, *amici* will show that fundamental principles of tort law point to governmental liability as the optimal route to both accountability and prevention. Further, *amici* wish to bring to this Court's attention other legal doctrines and statutory authority that already incorporate the unavoidable power imbalance between officers and the general public into their treatment of on-duty police action. *Amici* hope to assist in this Court's consideration of the certified question by highlighting this crucial background.

Amicus Curiae Roderick and Solange MacArthur Justice Center (RSMJC) is a public interest law firm founded by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. RSMJC attorneys have led civil rights battles in areas including police misconduct, sexual assault in prisons, jails, and detention centers, and compensation for those whose rights have been violated. RSMJC has an interest in ensuring that people are able to bring suit to vindicate their rights and hold government accountable.

Amicus Curiae National Women's Law Center (NWLC) is a nonprofit legal organization dedicated to advancing and protecting the legal rights of women and girls and all people to be free from sex discrimination, including sexual harassment and assault. Since 1972, NWLC has engaged in policy advocacy and participated as

counsel or *amicus curiae* in a range of cases to secure equal opportunity in income security, workplace justice, education, child care, and reproductive rights and health, with particular attention to women and girls who face multiple and intersecting forms of discrimination.

Amicus Curiae Women's Law Project (WLP) is a public interest legal organization working to defend and advance the rights of women, girls, and LGBTQ+ people. WLP leverages impact litigation, policy advocacy, public education, and direct assistance and representation to dismantle discriminatory laws, policies, and practices, and eradicate institutional biases and unfair treatment based on sex or gender. WLP seeks justice for survivors of gender-based violence, including accountability of law enforcement in responding to sexual assault.

Amicus Curiae Institute for Constitutional Advocacy and Protection is a nonprofit litigation and advocacy organization dedicated to defending constitutional rights and values. A significant part of the Institute's work involves the representation of individuals who have experienced a violation of their rights at the hands of criminal justice system actors, including law enforcement officers. The Institute also gives guidance and advocates for best practices by law enforcement to ensure jurisdictions may effectively protect public safety while respecting the constitutional rights of community members. The Institute therefore has a strong interest in ensuring that the legal system provides appropriate and adequate relief for

individuals who have suffered a violation of their rights as a result of law enforcement misconduct.

Amicus Curiae National Police Accountability Project (NPAP) was founded in 1999 by members of the National Lawyers Guild to address misconduct by law enforcement officers through coordinating and assisting civil rights lawyers. NPAP has approximately six hundred attorney members practicing in every region of the United States, including several members in Montana. Every year, NPAP members litigate the thousands of egregious cases of law enforcement abuse that do not make news headlines as well as the high-profile cases that capture national attention. NPAP provides training and support for these attorneys and resources for community groups working on police accountability issues. NPAP also advocates for legislation to increase police accountability and appears regularly as *amicus curiae* in cases, such as this one, where egregious harm was caused by federal law enforcement agents.

Amicus Curiae Institute for Justice (IJ) is a nonprofit, public-interest law firm committed to defending the essential foundations of a free society through securing greater protections for individual liberty and restoring constitutional limits on the power of government. IJ litigates in state and federal courts nationwide to enforce these guarantees. IJ's most recent case before the U.S. Supreme Court dealt with the interpretation of the judgment bar provision of the FTCA.

II. REASONS THAT THE AMICUS BRIEF IS DESIRABLE

Because of *amici*'s collective experience in issues of civil rights, women's rights, and government accountability, *amici* are uniquely well-positioned to provide context for the legal issues before this Court. *Amici*'s proposed brief, if accepted by this Court, would supplement—and not duplicate—the parties' briefing with a systemic view essential for assessing the implications of this important case.

III. AMICI WILL FILE A BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT

Amici respectfully request that the Court grant this motion and permit *amici* to appear in support of the position of Plaintiff-Appellant L.B. *Amici* propose to file their brief on or before October 15, 2021, the date upon which Plaintiff-Appellant's opening brief is to be filed, or on any other date for such filing established by this Court.

IV. PARTIES' OBJECTIONS

Counsel for Plaintiff-Appellant and counsel for Defendants-Appellees have been contacted and have no objection to this Motion.

DATED this 30th day of September, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Caitlin Boland Aarab, hereby certify that I have served true and accurate copies of the forgoing Motion using electronic service to the following on September 30, 2021.

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CERTIFICATE OF SERVICE

I, Caitlin Boland Aarab, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 09-30-2021:

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