

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 21-0395

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

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**UNOPPOSED MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF  
ON BEHALF OF MONTANA ASSOCIATION OF COUNTIES AND  
MONTANA LEAGUE OF CITIES AND TOWNS**

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On Certification from the Ninth Circuit Court of Appeals  
Cause No. 20-35514

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Appearances:

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*Attorneys for Amici Curiae Montana Association*

*of Counties and Montana League of Cities and Towns*

Montana Association of Counties and Montana League of Cities and Towns respectfully request leave to submit a joint *amici curiae* brief in this matter. Counsel for Plaintiff-Appellant L.B. and counsel for Defendants-Appellees do not oppose the motion. In support of their motion, Montana Association of Counties and Montana League of Cities and Towns state the following:

**1. Montana Association of Counties and Montana League of Cities and Towns Interest**

Montana League of Cities and Towns (the “League”) is an incorporated, nonpartisan, nonprofit association of all 127 incorporated municipalities in Montana. The League has as its sole purpose the cooperative improvement of municipal government in Montana. Similarly, the Montana Association of Counties (“MACo”) is a cooperative group of Montana county governments which works together to promote the common interests of serving the citizens of their respective counties.

A substantial interest of both the League and MACo is risk management for their respective government agencies. The League and MACo’s members have law enforcement agencies which are tasked with serving their local communities. The League and MACo are specifically

interested in this matter due to the nature of the certified question involving criminal sexual assault by law enforcement officers. Specifically, the League and MACo are concerned with the potential implications of expanding *respondeat superior* liability beyond this Court's previous analysis in *Maguire v. State of Montana*, 835 P.2d 755 (Mont. 1992), and the effect that could have on city, town and county governments in Montana.

**2. The issue on which Montana Association of Counties and Montana League of Cities and Towns wish to submit an *amici* brief**

The issue on which the League and MACo wish to file an *amici* brief is the certified question of whether “[u]nder Montana law [] law enforcement officers act within the course and scope of their employment when they use their authority as on duty officers to sexually assault members of the public.”

**3. The reason an *amici* brief is desirable**

The League and MACo work tirelessly to promote the interests of their city, town and county governments and their respective taxpayers. If the Court were to determine “law enforcement officers act within the course and scope of their employment when they use their authority as on duty officers to sexually assault members of the public,” this would have significant and far-reaching implications by greatly expanding *respondeat*

*superior* liability for the League and MACo's members and, as such, taxpayers. Because of the above, the League and MACo are acutely interested in the outcome of this appeal. Allowing the League and MACo to file an *amici curiae* brief would be desirable because they can provide the Court with necessary context as to the status of direct and *respondeat superior* liability for local governments in Montana as it pertains to law enforcement officers, and can relate how exactly the Court's ultimate decision could affect city, town and county governments in Montana.

**4. Identity of the party whose position Montana Association of Counties and Montana League of Cities and Towns support**

The League and MACo support the position of the United States and the Bureau of Indian Affairs with respect to *respondeat superior* liability for government agencies.

**5. The parties' position regarding Montana Association of Counties and Montana League of Cities and Towns participation as *amici***

Counsel for Plaintiff-Appellant L.B. and counsel for Defendants-Appellees do not oppose the League and MACo's participation as *amici*.

6. The date on which Montana Association of Counties and Montana League of Cities and Towns' *amici curiae* brief can be filed

The League and MACo plan to file the *amici* brief on or before the date the Defendants-Appellees' brief is due.

#### CONCLUSION

For the reasons above, the League and MACo respectfully request the Court grant them leave to file a joint *amici curiae* brief in this matter.

DATED this 4<sup>th</sup> day of October, 2021.

BOONE KARLBERG P.C.

/s/ Tracey Neighbor Johnson  
Tracey Neighbor Johnson  
*Attorneys for Amici Curiae Montana  
Association of Counties and Montana  
League of Cities and Towns*

## **CERTIFICATE OF SERVICE**

I, Tracey Neighbor Johnson, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 10-04-2021:

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Electronically signed by Shannon Holdsambeck on behalf of Tracey Neighbor Johnson

Dated: 10-04-2021