

IN THE SUPREME COURT OF THE STATE OF MONTANA

CASE No. OP 21-0395

L.B.,
PLAINTIFF-APPELLANT,

V.

UNITED STATES OF AMERICA,
DEFENDANT-APPELLEE.

CERTIFIED QUESTIONS FROM NINTH CIRCUIT COURT OF APPEALS
CAUSE No. 20-35514

NOTICE OF SUPPLEMENTAL AUTHORITY

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NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to Rule 12(6) of the Montana Rules of Appellate Procedure, the United States submits the following notice of supplemental authority.

In their briefs in this matter, both parties discussed recent legislation enacted by the State of Montana addressing sexual assault by law enforcement officers. *See Appellant's Op. Br. at 9-10, Appellee's Br. at 36.* The United States respectfully recommends the Court's attention to similar legislation that has been enacted by Congress last month.

On March 15, 2022, President Biden signed into law the *Violence Against Women Act Reauthorization Act of 2022*, Pub. L. No. 117-103. Title XII of the legislation is the *Closing the Law Enforcement Consent Loophole Act of 2022*, 136 Stat. 923-25. (*See attached.*) Among other changes, the law creates new a code section, 18 U.S.C. § 250, entitled “Penalties for civil rights offenses involving sexual misconduct,” which provides that an individual who, in the course of committing listed civil rights violation—including 18 U.S.C. § 242, the provision under which Bullcoming was convicted, *see Appellee's Br. at 3*—“engages in, or causes another to engage in, sexual misconduct,” are subject to enhanced penalties. Most relevantly, an individual who in the course of committing a civil rights violation engages in sexual abuse under 18 U.S.C. § 2242, would be subject to a term of up to life in prison.

In addition, the new law adds a provision to 18 U.S.C. § 2243, now called “Sexual Abuse of Minor, Ward, or an Individual in Custody.” The new provision, 18 U.S.C. § 2243(c), makes it a federal crime for a federal law enforcement officer to “knowingly engage in a sexual act with an individual who is under arrest, under supervision, in detention, or in Federal custody.” Consent is not a defense. A parallel change is made to 18 U.S.C. § 2244(a)(6) to prohibit sexual contact (e.g., groping) by federal law enforcement officers.

DATED this 7th day of April, 2022.

Respectfully submitted,

Leif M. Johnson
United States Attorney

/s/ Victoria L. Francis

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CERTIFICATE OF SERVICE

I, Victoria Laeder Francis, hereby certify that I have served true and accurate copies of the foregoing Notice - Supplemental Authority to the following on 04-07-2022:

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