

No. DA 21-0521

**In the Supreme Court of the State of Montana**

PLANNED PARENTHOOD OF MONTANA AND JOEY BANKS, M.D.,

*Plaintiffs-Appellees,*

v.

STATE OF MONTANA,

*Defendant-Appellant.*


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On Appeal from the Thirteenth Judicial District, Yellowstone County, No. DV-21-999  
The Honorable Michael G. Moses, Presiding

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**Affidavit of Anita Milanovich Supporting the Motion of Governor Gianforte for  
Supplemental Briefing and Leave to Participate as Amicus Curiae**

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**Affidavit of Anita Milanovich Supporting the Motion for Supplemental  
Briefing and Leave to File Amicus Brief**

I, Anita Y. Milanovich, pursuant to Mont. Code Ann. § 1-6-105 and M. R. App.

P. 12(10), attest as follows:

1. I am over 18 years old, and I have personal knowledge of the facts stated in this Affidavit.
2. I serve as General Counsel for the Office of the Governor.
3. This case challenges the constitutionality of three abortion-related bills—House Bills 136, 171, and 140—under the Montana Constitution, in particular alleging violations of the rights to privacy, speech, and equal protection under Montana’s Bill of Rights. (Appellees’ Resp. Br. at 1.)
4. Briefing in this appeal concluded on April 15, 2022, with the case assigned to a five-judge panel on May 11, 2022. A fundamental issue preliminarily raised in that briefing was the merit of *Armstrong v. State*, 1999 MT 261. (See, e.g., Appellants’ Opening Br. at 15-22; Appellees’ Resp. Br. at 35-43.) *Armstrong* relied on *Roe v. Wade*, 410 U.S. 113 (1973), to conclude that Montana’s constitutional right to privacy included the right to an abortion.
4. On June 24, 2022, the United States Supreme Court overruled *Roe v. Wade* and its progeny in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228, returning the policy decision of regulating abortion to the state legislatures. *Id.* at 2243.

5. On June 27, 2022, counsel for the State of Montana advised this Court of that decision and “invite[d] he Court to order supplemental briefing that can fulsomely address *Dobbs*’ effect on the issues presented in this appeal.”

(Appellants’ Notice Supp. Auth. at 7.)

6. To date, the Court has not taken any action in this matter, including the invitation for supplemental briefing in this case.

7. Given the seismic shift in the legal landscape surrounding abortion jurisprudence nationally, and the only preliminary briefing presented to this Court regarding the merit of *Armstrong*, uninformed by *Dobbs*, more robust supplemental briefing would meaningfully assist the Court in its task of impartially navigating this fundamental policy question under the Montana Constitution.

I declare under the penalty of perjury that the forgoing is true and correct.

Date: August 2, 2022

Respectfully submitted,

Helena, Montana

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## Certificate of Service

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I, Anita Yvonne Milanovich, hereby certify that I have served true and accurate copies of the foregoing Affidavit - Other to the following on 08-02-2022:

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