

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

No. DA 22-0512

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MICHAEL L. GOGUEN,

Plaintiff, Appellee, and Cross-Appellant,

v.

NYP HOLDINGS, INC. AND ISABEL VINCENT,

Defendants and Appellants;

and

WILLIAM DIAL,

Defendant and Cross-Appellee.

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**MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF  
ON BEHALF OF THE REPORTERS COMMITTEE FOR FREEDOM OF  
THE PRESS AND 14 MEDIA ORGANIZATIONS IN SUPPORT OF  
DEFENDANTS AND APPELLANTS NYP HOLDINGS, INC. AND ISABEL  
VINCENT**

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On Appeal from the Montana Eleventh Judicial District Court,  
Flathead County, the Honorable Judge Amy Poehling Eddy Presiding.

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Proposed amici curiae the Reporters Committee for Freedom of the Press, Freedom of the Press Foundation, Lee Enterprises, Inc., The Media Institute, Montana Broadcasters Association, Montana Free Press, Montana Newspaper Association, National Newspaper Association, The National Press Club, The National Press Club Journalism Institute, National Press Photographers Association, The News Leaders Association, News/Media Alliance, Online News Association, and the Society of Professional Journalists (collectively, “amici”), by and through counsel, respectfully move this Court for leave to file a brief as amici curiae in this matter in support of Defendants-Appellants NYP Holdings, Inc. and Isabel Vincent (collectively, the “Post”), pursuant to Rule 12(7), Mont. R. App. P. If this motion is approved by the Court, amici propose to file the attached amici curiae brief on December 16, 2022, to coincide with the date the Post’s opening brief is to be filed, though amici will conform to any schedule adopted by the Court.

## **I. STATEMENT OF INTEREST AND IDENTITIES OF THE AMICI**

Amici are news media organizations and organizations that advocate on behalf of the First Amendment and newsgathering rights of the press. Amici have a strong interest in ensuring that Montana’s statutory fair report privilege § 27-1-804(4), MCA, (hereinafter, the “Fair Report Privilege”), is interpreted and applied in a manner that protects the news media’s ability to publish newsworthy

information found in reports of official government proceedings, including, specifically, complaints filed in federal and state court proceedings.

This appeal arises from defamation claims made against the Post for accurately reporting about complaints filed in federal and state court proceedings. The Fair Report Privilege shields the news media from liability for accurate reporting of allegations made in judicial records—whether or not such allegations are false—provided the reporting was, as here, made without malice. In so doing, the Fair Report Privilege helps to foster free and open discussion of matters of public concern. The trial court erroneously denied the Post’s motion to dismiss, incorrectly concluding that the Post’s failure to conduct an independent investigation into the veracity of statements made in the complaints was sufficient to create a question of malice for the jury. The decision below, if permitted to stand, would undercut the Fair Report Privilege’s vital statutory protections for speech about pending litigation matters of public interest, particularly at the pretrial stage, and hamper the news media’s ability to inform the public.

**The Reporters Committee for Freedom of the Press** (the “Reporters Committee”) is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970 when the nation’s news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation,

amicus curiae support, and other legal resources to protect First Amendment Freedoms and the newsgathering rights of journalists.

**Freedom of the Press Foundation** (“FPF”) is a non-profit organization that supports and defends public-interest journalism in the 21st century. FPF works to preserve and strengthen First and Fourth Amendment rights guaranteed to the press through a variety of avenues, including building privacy-preserving technology, promoting the use of digital security tools, and engaging in public and legal advocacy.

**Lee Enterprises, Inc.** owns and operates daily newspapers of general circulation throughout the State of Montana, including The Billings Gazette, The Montana Standard, The Helena Independent Record, and Missoulian. All of these newspapers cover matters of state and local government of interest to the citizens of Montana and surrounding areas.

**The Media Institute** is a nonprofit foundation specializing in communications policy issues founded in 1979. The Media Institute exists to foster three goals: freedom of speech, a competitive media and communications industry, and excellence in journalism. Its program agenda encompasses all sectors of the media, from print and broadcast outlets to cable, satellite, and online services.

**Montana Broadcasters Association** is a membership organization dedicated to serving the needs of radio and television stations in Montana and educating the public on the value of free, over the air, broadcasting.

**Montana Free Press** (“MTFP”) is an independent, 501(c)(3) nonprofit source for Montana news, information, and analysis. Our mission is to produce in-depth public-service journalism that creates positive change and helps move society toward justice and equity. MTFP seeks to uncover the truth and bring to light essential news stories by studying arcane bureaucratic processes, seeking out dark corners of major institutions, digging deep into data and documents, and holding power accountable to the people.

**Montana Newspaper Association** is a membership organization dedicated to serving the needs of the print and digital news media in Montana and educating citizens about matters of public concern.

**National Newspaper Association** is a 2,000 member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Pensacola, FL.

**The National Press Club** is the world’s leading professional organization for journalists. Founded in 1908, the Club has 3,100 members representing most major news organizations. The Club defends a free press worldwide. Each year,

the Club holds over 2,000 events, including news conferences, luncheons and panels, and more than 250,000 guests come through its doors.

**The National Press Club Journalism Institute** is the non-profit affiliate of the National Press Club, founded to advance journalistic excellence for a transparent society. A free and independent press is the cornerstone of public life, empowering engaged citizens to shape democracy. The Institute promotes and defends press freedom worldwide, while training journalists in best practices, professional standards and ethical conduct to foster credibility and integrity.

**The National Press Photographers Association** (“NPPA”) is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. NPPA’s members include television and still photographers, editors, students and representatives of businesses that serve the visual journalism industry. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism. The submission of this brief was duly authorized by Mickey H. Osterreicher, its General Counsel.

**The News Leaders Association** was formed via the merger of the American Society of News Editors and the Associated Press Media Editors in September 2019. It aims to foster and develop the highest standards of

trustworthy, truth-seeking journalism; to advocate for open, honest and transparent government; to fight for free speech and an independent press; and to nurture the next generation of news leaders committed to spreading knowledge that informs democracy.

**The News/Media Alliance** represents news and media publishers, including nearly 2,000 diverse news and magazine publishers in the United States—from the largest news publishers and international outlets to hyperlocal news sources, from digital-only and digital-first to print news. Alliance members account for nearly 90% of the daily newspaper’s circulation in the United States. Since 2022, the Alliance is also the industry association for magazine media. It represents the interests of close to 100 magazine media companies with more than 500 individual magazine brands, on topics that include news, culture, sports, lifestyle and virtually every other interest, avocation or pastime enjoyed by Americans. The Alliance diligently advocates for news organizations and magazine publishers on issues that affect them today.

**The Online News Association** is the world’s largest association of digital journalists. ONA’s mission is to inspire innovation and excellence among journalists to better serve the public. Membership includes journalists, technologists, executives, academics and students who produce news for and



support digital delivery systems. ONA also hosts the annual Online News Association conference and administers the Online Journalism Awards.

**Society of Professional Journalists** (“SPJ”) is dedicated to improving and protecting journalism. It is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

## **II. REASONS THAT THE AMICI BRIEF IS DESIRABLE**

Because of amici’s collective experience reporting the news, and relying on the Fair Report Privilege in Montana and similar privileges elsewhere, amici are well-positioned to provide the Court not only with additional, non-duplicative legal argument, but also contextualize the legal issues before this Court from a national perspective. Amici write to bring to the Court’s attention the broader, real-world implications of the trial court’s holding for members of the news media. As the attached brief explains, under the trial court’s reasoning, a defamation plaintiff could avoid dismissal of his claims against a news media organization arising out of news reporting that quotes, verbatim, allegations made in court records, merely by alleging that the news organization failed to independently investigate the

veracity of those allegations. Such a result runs contrary to Montana and U.S. Supreme Court precedent, and the very purpose of the Fair Report Privilege. And, if journalists and news organizations are required to independently investigate the accuracy of statements contained in official judicial or government records before publishing—or otherwise face the specter of costly, protracted defamation litigation—news organizations may not publish such information at all.

For these reasons, amici seek leave to file the attached brief as amicus curiae to assist this Court in its consideration of the Fair Report Privilege issue presented in this case.

### **III. PARTIES' POSITIONS**

Counsel for Michael L. Goguen, counsel for the Post, and counsel for William Dial have been contacted and have no objection to this Motion.

DATED this 16th day of December, 2022.

Respectfully submitted,



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## **CERTIFICATE OF SERVICE**

I, Elizabeth L. Griffing, hereby certify that I have served a true and accurate copy of the foregoing document to the following on December 16, 2022:

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I, Elizabeth L. Griffing, hereby certify that I have served true and accurate copies of the foregoing Motion - Amicus to the following on 12-19-2022:

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