In the Supreme Court of the State of Montana

No. DA 22-0512

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.

BRIEF OF AMICI CURIAE THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 14 MEDIA ORGANIZATIONS IN SUPPORT OF DEFENDANTS AND APPELLANTS NYP HOLDINGS, INC. AND ISABEL VINCENT

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

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INTEREST OF AMICI CURIAE

Amici curiae are 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"). As members and representatives of the news media 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. To expose the news media to liability for accurately reporting the allegations made in such complaints would not only be unprecedented on a nationwide scale but also would have a chilling effect on the exercise of First Amendment rights by members of the news media.

Here, the trial court erroneously denied Appellant NYP Holdings, Inc. and Isabel Vincent (collectively, the "Post")'s motion to dismiss a defamation claim arising out of reporting on allegations in judicial proceedings and records involving Appellee Michael Goguen ("Goguen"). *See* Isabel Vincent, *Tech billionaire allegedly kept spreadsheet of 5,000 women he had sex with*, N.Y. Post (Nov. 20, 2021), https://perma.cc/A9VR-ATFG (the "Article").[1] In doing so, the trial court found that Goguen's claim that the Post showed "malicious intent" was sufficient to raise a question of fact for a jury as to whether the Article was protected under the Fair Report Privilege. *See* Appendix to Opening Br. of Defs.-Appellants ("Post Br.") (the "Order") at 18. The trial court's holding is contrary to Montana and U.S. Supreme Court precedent and, if left undisturbed, would undercut the Fair Report Privilege's vital statutory protections for speech, and significantly hinder the news media's ability to inform the public on matters of social and political importance. By shielding the news media from liability for accurately reporting on allegations made in judicial records—even allegations that may be false or defamatory—the Fair Report Privilege helps to foster free and open debate on matters of public

[1] Amici write to address only the trial court's denial of the Post's motion to dismiss Goguen's claims pursuant to the Fair Report Privilege. Amici do not address the Post's argument that the trial court erred in determining that Montana law, not New York law, governs the privilege applicable to fair and true reports of judicial proceedings published by a New York newspaper. *See* Post Br. at 13–20.

concern. Amici therefore write to underscore the importance of the Fair Report Privilege, and to urge this Court to reverse the trial court's holding.

INTRODUCTION

The Fair Report Privilege ensures that a journalist who publishes, without malice, a fair and true report of a judicial, legislative, or other official public proceeding—or of anything said in the course thereof—cannot be liable for defamation. § 27-1-804(4), MCA. Thus, "[n]ewspaper articles that describe [without malice] allegations against an individual in a judicial proceeding are privileged publications as a matter of law." *Jonas v. Lake Cnty. Leader*, 953 F. Supp. 2d 1117, 1126 (D. Mont. 2013) (citing § 27-1-804(4), MCA).

The Article at issue in this case reports on allegations made in complaints and other court documents filed in lawsuits against Goguen. *See* Article. Goguen sued the Post for defamation, alleging, in part, that the Post demonstrated malicious intent by failing to investigate the veracity of statements made in the court documents and in publishing the Article prior to receiving Goguen's comment. *See* Supplemental Appendix of Defs.-Appellants Ex. 1 at 21, ¶ 50.

As the trial court correctly recognized, the referenced complaints "and ensuing litigation fall[] within the definition of a judicial proceeding," for purposes of the Fair Report Privilege. *See* Order at 17 (citing *Cox v. Lee Enters., Inc.*, 222

Mont. 527, 530, 723 P.2d 238, 240 (1986)).[2] However, citing Goguen's allegations that the Post acted with "malicious intent," the trial court denied the Post's motion to dismiss, erroneously concluding that "[w]hether the Post['s] Article was fair, true and published without malice are questions of fact for the jury to decide." *Id.* at 18. In so concluding, the court relied on *Sible v. Lee Enterprises, Inc.*, 224 Mont. 163, 167–68, 729 P.2d 1271, 1273–74 (1986), an inapposite case in which this Court found that a jury had not been properly instructed on the definition of "reckless disregard of the truth" when considering whether a defamation defendant had acted with "actual malice"; i.e., with knowledge that the allegedly defamatory statement was false or with reckless disregard for the truth. *See N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964).[3] However, as the Post explains in its opening brief, the Court's holding in *Sible* is distinguishable from the present case. *See* Post Br. at 31. Moreover, as the U.S. Supreme Court has held, mere failure to investigate does not constitute actual malice. *See, e.g.*, *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989) ("[F]ailure to

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[2] Amici agree with the Post that the trial court erred in finding that allegedly defamatory Statement Nos. 10, 13, and 14 were not "based" on the referenced complaints and thus outside the scope of the Fair Report Privilege. *See* Post Br. at 21. Accordingly, amici urge this Court to reverse the trial court and to find that all of the allegedly defamatory statements in the Article are privileged pursuant to § 27-1-804(4), MCA.

[3] As the Post explains in its opening brief, although the trial court here purportedly applied the actual malice standard, this Court has not yet had cause to decide what standard applies to claims of malice under the Fair Report Privilege. *See* Post Br. at 31. However, amici agree with the Post that Goguen's allegations are insufficient to plead malice under any standard. *Id.*

investigate before publishing . . . is not sufficient to establish reckless disregard."); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 332 (1974) ("[M]ere proof of failure to investigate, without more, cannot establish" actual malice); *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968) ("[R]eckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing."). Nor, as the Post explains, does failure to obtain comment overcome the Fair Report Privilege. *See* Post Br. at 33–35; s*ee also Lence v. Hagadone Inv. Co.*, 258 Mont. 433, 438–40, 853 P.2d 1230, 1233–35 (1993), *overruled on other grounds by Sacco v. High Country Indep. Press, Inc.*, 271 Mont. 209, 896 P.2d 411 (1995) (holding that the privilege was not overcome where the defendant "published the story without giving [the plaintiff] an opportunity to comment").[4] In sum, the Article comprises fair and true reports of judicial proceedings without malice as a matter of law, and the trial court erred in holding otherwise. *See Jonas*, 953 F. Supp. 2d at 1126; *Lence*, 258 Mont. at 444, 853 P.2d at 1237 ("Whether a publication is privileged is a question of law for the court, where there is no dispute about the content of the proceedings on which the publication is based.").

[4] Amici agree with the Post that Goguen's allegations that the publication acted with malicious intent because it did not obtain comment from Goguen before publishing are insufficient to establish malice under either the common law or constitutional standard. Amici write specifically to address Goguen's allegations that the Post acted with malicious intent by failing to investigate the statements made in the court documents cited in the Article.

If affirmed, the trial court's decision would gut the important statutory protections afforded by the Fair Report Privilege, particularly at the pretrial stage. If the trial court's reasoning were adopted, defamation plaintiffs could routinely survive motions to dismiss or motions for summary judgment merely by alleging that a reporter did not sufficiently, independently investigate purportedly libelous claims made in complaints or other judicial documents.

But such reporting is precisely what the Fair Report Privilege is intended to protect. No privilege is needed for statements that are true; such statements are not actionable defamation. *See* § 27-1-802, MCA ("Libel is a false and unprivileged publication . . . ."). Rather, the Fair Report Privilege is "an exception to the republication rule [where one who repeats a defamatory statement is as liable as the original defamer] and is designed to mitigate its harsh effects." *Reuber v. Food Chem. News, Inc.*, 925 F.2d 703, 712 (4th Cir. 1991). Because the Fair Report Privilege "encourages the media to report regularly on government operations so that citizens can monitor them . . . defamation law has traditionally stopped short of imposing extensive investigatory requirements on a news organization reporting on" documents protected by the Fair Report Privilege. *Id.* For these reasons, the Fair Report Privilege protects fair and truthful *reporting* on allegations made in judicial records and proceedings, regardless of whether those allegations are true or false. *See* 1 Robert D. Sack, *Sack on Defamation* § 7:3.5 (5th ed. 2017) ("[The

Fair Report Privilege] is designed to enable the public to know what is being said in its courts . . . ***irrespective*** of whether the person who conveys the statements believes they are true or is confident he or she can establish that belief in court." (emphasis added)).

If the trial court's decision is affirmed, news media organizations will be placed in an untenable position in which they must choose between: (1) reporting on newsworthy allegations in court documents despite the risk of being subjected to costly, protracted litigation should those statements be false or defamatory; or (2) declining to publish such newsworthy but potentially false or defamatory allegations, thereby avoiding litigation risk but leaving the public in the dark.

For the reasons herein, amici urge this Court to reverse the lower court's decision denying the Post's motion to dismiss.

ARGUMENT

I. A failure to investigate is insufficient as a matter of law to demonstrate actual malice, and does not bring reporting outside the scope of the Fair Report Privilege.

The Fair Report Privilege "reflect[s] Montana's commitment to the public's right to know what is occurring within the judicial system"—a commitment that "finds strong expression in [Montana's] state constitution." *Cox*, 222 Mont. at 529–30, 723 P.2d at 240; *see also Skinner v. Pistoria*, 194 Mont. 257, 262, 633 P.2d 672, 675 (1981) ("Strong policy reasons exist to assure free and open

channels of communication between citizens and the authorities responsible for investigating public wrongdoing. . . . So that information may be freely given, it is necessary to protect those who give the information . . . .”). Accordingly, this Court has embraced “[a] broad interpretation of the privilege.” *Cox*, 222 Mont. at 529–30, 723 P.2d at 240.

Courts in Montana and around the country have held that the Fair Report Privilege and similar statutory fair report privileges in other states do not impose a duty to investigate the veracity of statements made in official judicial or government proceedings. Indeed, as this Court recognized in *Cox*, “pleadings are one-sided and may contain, by design, highly defamatory statements.” 222 Mont. at 529, 723 P.2d at 240 (quoting *Newell v. Field Enters., Inc.*, 415 N.E.2d 434, 444 (Ill. App. Ct. 1980) (cleaned up)). However, “the information found in such pleadings is of sufficient value as to warrant the encouragement of its publication.” *Id.*

Nor is a mere failure to investigate sufficient to establish actual malice. For example, in *Spreadbury v. Bitterroot Public Library*, No. CV 11–64–M–DWM–JCL, 2011 U.S. Dist. LEXIS 114270, at *5 (D. Mont. Oct. 4, 2011), a federal district court applying Montana law granted a newspaper’s motion to dismiss defamation claims arising out of the paper’s reporting on criminal trespass charges against the plaintiff. The plaintiff argued that the report was not privileged, as the

newspaper "should have known" that he was on public property and could not have been charged with criminal trespass. *Id.* The district court expressly rejected those arguments, holding that because the newspaper accurately reported on a judicial proceeding involving a charge of criminal trespass, the paper "did not report false information," and the plaintiff had failed to plead facts sufficient to show that the paper had acted with actual malice. *Id.* Here, too, the Post accurately reported on judicial proceedings involving allegations made against Goguen. The Post did not report "false information"; it truthfully reported allegations made in judicial records and had no duty to investigate the veracity of the litigants' allegations.

Similarly, in *Lence*, this Court held that a newspaper's reporting about an investigation into alleged violations of building codes was protected under the Fair Report Privilege notwithstanding the plaintiffs' claims that the newspaper was negligent in failing to independently investigate the allegations before publishing them. In doing so, the Court recognized that a reporter's role is "to let the public know that an investigation ha[s] been initiated, not to undertake an investigation herself." *Lence*, 258 Mont. at 445–46, 853 P.2d at 1237–38.

The decisions in *Lence* and *Spreadbury* comport with decisions of courts around the country interpreting qualified statutory fair report privileges like Montana's. For example, in a case involving the application of a statutory fair report privilege identical to Montana's, SDC 47.0503 (current version at S.D.

Codified Laws § 20-11-5),[5] the South Dakota Supreme Court held that a newspaper's failure to investigate did not constitute actual malice and did not remove the publication from the protection of the privilege. *See Hackworth v. Larson*, 165 N.W.2d 705, 711 (S.D. 1969). The plaintiffs in *Hackworth* had sued various news media organizations for defamation for their reporting about a news release issued by the South Dakota Secretary of State. *Id.* at 707. The plaintiffs, appealing from a lower court's award of summary judgment on the pleadings in favor of the news media defendants, argued that the news media's "failure to make a further investigation into the matter . . . constitute[d] malice." *Id.* at 711. The plaintiffs submitted no additional evidence in support of their malice claims. *Id.* In affirming the lower court's ruling that the reporting was privileged under SDC 47.0503, the South Dakota Supreme Court squarely rejected the plaintiffs' argument as to malice, recognizing that it was incompatible with the U.S. Supreme Court's holding that a "failure . . . to investigate the validity of statements [is] constitutionally insufficient to show reckless disregard." *Id.* (citing *Sullivan*, 376 U.S. at 270).

The U.S. Court of Appeals for the Sixth Circuit similarly affirmed an award of summary judgment to a defendant TV news station in a defamation action,

[5] SDC 47.0503 defines a privileged communication as one made: "By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding or of anything said in the course thereof."

finding that the station's alleged "failure to conduct an independent investigation" into statements contained in an arrest warrant did not constitute actual malice or remove the reporting from the protection of Tennessee's fair report privilege. *Milligan v. United States*, 670 F.3d 686, 698–99 (6th Cir. 2012).[6] As here, the plaintiffs in *Milligan* argued that the station "should have read the arrest file or conducted independent research on the validity of Milligan's arrest warrant" before reporting on it. *Id.* at 698. The Sixth Circuit rejected these arguments, finding plaintiffs' "contention that a reporter should investigate prior to publication, even when he has no doubts as to the truth," was "not a legally cognizable basis for establishing actual malice." *Id*.

Here, Goguen's allegation that the Post did not independently investigate the veracity of the statements made in the court records on which it reported is not a legally cognizable basis for establishing actual malice. Because the Article is a fair, true report of judicial proceedings made without malice, it is a "privileged publication[] as a matter of law," *Jonas*, 953 F. Supp. 2d at 1126, and the trial court should have dismissed Goguen's defamation claim.

In ruling to the contrary, the lower court misinterpreted and misapplied this Court's decision in *Sible*, a case that does not address the Fair Report Privilege or

[6] The Tennessee Supreme Court held in *Funk v. Scripps Media, Inc.*, 570 S.W.3d 205, 216 (Tenn. 2019) that even "a showing of actual malice cannot defeat the fair report privilege," adopting the approach set forth in the Restatement (Second) of Torts § 611 (Am. L. Inst. 1977).

what constitutes malice with respect to the privilege. At issue in *Sible* was whether a jury received erroneous instructions concerning the definition of "reckless disregard of the truth" for purposes of a finding of actual malice in a defamation case in which the defendant reporter allegedly knew that a political operative assisted in preparing an allegedly false notarized statement to the Governor of Montana. 224 Mont. at 164–65, 729 P.2d at 1271–72. The statement alleged that the plaintiff had committed a theft and subsequently covered it up. *Id.* At trial, the victim of the alleged theft claimed that he attempted to dissuade the reporter from publishing the story, insisting it was "garbage," but that the reporter responded that "the story would be published no matter what he said." 224 Mont. at 166, 729 P.2d at 1273.

The Court ultimately concluded that the instructions—which stated, *inter alia*, that "reckless disregard of the truth . . . does not mean mere negligence, or even gross negligence or wanton conduct. Rather, it means publishing an article with a high degree of awareness of its probable falsity, or that the Defendants, in fact, entertained serious doubts as to the truth of the publication"—were erroneous. *Sible*, 224 Mont. at 167, 729 P.2d at 1273. In doing so, the Court noted that "[w]hen a newspaper has facts that indicate material is highly suspect, it should, and it does, have a duty to investigate before publishing." 224 Mont. at 168, 729 P.2d at 1274.

Simply put, *Sible* is inapposite; the issue in *Sible* was not the sufficiency of a mere allegation of a failure to investigate to establish that a statement was made with malice and falls outside the scope of the Fair Report Privilege. *See Harte-Hanks Commc'ns, Inc.*, 491 U.S. at 692 ("[F]ailure to investigate will not *alone* support a finding of actual malice . . . ." (emphasis added)). Unlike the reporting in *Sible*, the Article here accurately reported on allegations made by litigants in complaints filed against Goguen in federal and state courts. That some of those statements made in the complaints are, unsurprisingly, disputed by Goguen, or that allegations made in one of the lawsuits were—*as reported in the Article*—found to be "false and defamatory," does not place the Post's reporting outside the scope of the Fair Report Privilege.

The Article fairly and truthfully reported on court proceedings in the public interest. Goguen's allegation of a failure to investigate does not create a question of fact for the jury as to whether the Article is privileged.

II. The Fair Report Privilege is essential to protecting the news media's ability to inform the public on matters of public concern.

The U.S. Supreme Court has repeatedly "emphasize[d] the special and constitutionally recognized role of . . . [the press] in informing and educating the public." *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 781 (1978); *see also Saxbe v. Wash. Post Co.*, 417 U.S. 843, 863 (1974) (Powell, J., dissenting) ("[The press] is the means by which the people receive that free flow of information and

ideas essential to intelligent self-government."); *Mills v. Alabama*, 384 U.S. 214, 219 (1966) ("The Constitution specifically selected the press . . . to play an important role in the discussion of public affairs." (discussing *Lovell v. City of Griffin*, 303 U.S. 444 (1938))). The Fair Report Privilege plays a critical part in the news media's ability to carry out this important role by insulating accurate reporting about official government proceedings, including statements made in complaints and other judicial records, from liability. Indeed, a key principle underlying the common law fair report privilege, upon which Montana's statutory privilege is based, is to enable "citizens to learn, from whatever source, about important matters generally and about the operations of their courts and other governmental agencies, specifically, without imposing a risk upon those who bring the information to them." Sack, *supra*, § 7:3.5[B][2].

If the lower court's decision is affirmed, it would enable defamation plaintiffs to avoid the dismissal of defamation claims against news media organizations for reporting about official court proceedings—even if that reporting quotes from court records verbatim—by merely alleging that the news organizations failed to independently investigate the veracity of the statements made in those court records. If journalists 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. The trial court's decision thus threatens to chill the news media's exercise of its First Amendment rights and damage its ability to inform the public about information contained in complaints and other official court documents.

As a practical matter, it would be nearly impossible to verify the accuracy of every assertion made in the context of litigation, where allegations are, by their very nature, contested. Indeed, it is properly the purview of the court, not the media, to make factual findings and adjudicate their accuracy.

Further, the Fair Report Privilege is, by design, meant to protect the publication of *accurately reported* allegations—not only those allegations that are found to be true. To hold otherwise would render the Fair Report Privilege no privilege at all. Indeed, no privilege is needed to report on allegations that are true—such truthful statements, by definition, can never be defamatory and therefore require no protection. *See* § 27-1-802, MCA. That is why the Fair Report Privilege covers fair and truthful *reporting*, not fair and truthful *allegations*. *See* § 27-1-804(4), MCA. This robust Fair Report Privilege allows the news media to report on matters of public concern involving judicial and government proceedings without fear of liability or the threat of protracted litigation.

Journalists in Montana and around the country routinely rely on information contained in judicial records to inform the public about matters impacting public

safety and other issues. For example, in December of 2021, *The Missoulian* reported that a vascular surgeon operating in Kalispell and Missoula entered into a $3.75 million civil agreement with, among others, the U.S. Attorney's Office for the District of Montana and the U.S. Department of Health and Human Services to settle claims that he had used "improper techniques and unnecessary medical procedures to create and submit false claims to four federal health care programs." David Erickson, *Missoula Vascular Surgeon to Pay $3.7M to Settle Federal Fraud Claims*, Missoulian (Dec. 16, 2021), https://perma.cc/XZ3Y-JCTZ. The reporting is based on court documents filed by the federal government and by a former patient detailing the incidents that were the predicate for the allegations of fraud against the surgeon which were, allegedly, also carried out by the staff at his facilities. *Id.*

And, just last month, several Montana news outlets, including the *Missoula Current* and Montana Public Radio, reported on a warrant issued by a federal judge in Missoula for the arrest of Andrew Anglin, the founder of the neo-Nazi website, the Daily Stormer, who had been ordered to pay $14 million in damages "after he unleashed an anti-Semitic 'troll storm'" against Whitefish resident Tanya Gersh and her family. Keila Szpaller, *Missoula Judge Issues Warrant for Arrest of Neo-Nazi Publisher Andrew Anglin,* Missoula Current (Nov. 11, 2022), https://perma.cc/B225-UZYZ. Gersh filed suit against Anglin in 2017 for

harassment, invasion of privacy, and intentional infliction of emotional distress after Anglin encouraged his readers to target her and her family with anti-Semitic messages and death threats. *Id.*; *see also* Aaron Bolton, *Judge Issues Arrest Warrant for Neo-Nazi Website Founder*, Montana Public Radio (Nov. 9, 2022), https://perma.cc/CJ9J-67KQ. The news media's reporting relies on court documents to provide details and context about the claims made in the lawsuit and the basis for the current arrest warrant against Anglin, highlighting the real-world impacts of political and ideological extremism in Montana and how Montana courts are responding to corresponding claims of harassment.

At the national level, the fair report privilege has played a vital role in, for example, news reporting about the #MeToo movement. That reporting, which necessarily reported allegations of toxic workplace environments, sexual harassment, and abuse of power, prompted others to come forward with their own stories. *See, e.g.*, Chloe Hart, *It's still hard for women who report sexual harassment. Here's how #MeToo is changing that*, Pennsylvania Capital-Star (May 22, 2019), https://perma.cc/3BWF-KYJ5; Kathryn Lindsay, *The Bombshell Articles That Defined The #MeToo Movement*, Refinery29 (Oct. 7, 2019), https://perma.cc/AW8B-DBMK. Notably, the *New York Times* journalists who reported on sexual misconduct allegations against Harvey Weinstein, Jodi Kantor and Megan Twohey, relied extensively on legal records as part of their

investigation into the media mogul, as did numerous other journalists who reported on the allegations. *See* Jodi Kantor & Megan Twohey, *Harvey Weinstein Paid Off Sexual Harassment Accusers for Decades*, N.Y. Times (Oct. 5, 2017), https://perma.cc/QP6W-EVEB. Here, too, the Article reports on claims of alleged sexual harassment and misconduct by Goguen as set forth in court records. Like the journalists who reported allegations made against Weinstein and others, the Post informed the public about allegations of serious crimes made against a prominent Montana businessman and influential public figure in the financial industry. The fact that—as the Article reports—some of the allegations were found to be "false and defamatory," does not remove them from the protection of the Fair Report Privilege or discount their value to the public and to the larger national conversation on sexual harassment and abuse of power.

If the trial court's holding is affirmed, news media organizations in Montana would be unable to rely on the Fair Report Privilege when publishing stories like these that report on allegations in judicial proceedings made against high-profile subjects. The Fair Report Privilege is essential to ensuring that "debate on public issues" remains "uninhibited, robust, and wide-open." *Sullivan*, 376 U.S. at 270. The trial court's decision, by weakening that essential protection, threatens to deprive Montanans of information about matters of public importance.

CONCLUSION

For the foregoing reasons, amici respectfully urge this Court to reverse.

Dated: December 16, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Amici Curiae Brief is printed with a proportionately spaced Times New Roman typeface in 14 point font, is double spaced, and the word count calculated by the word processing software is 4,444 words, excluding the cover page, tables, and certificates.

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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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