

**IN THE SUPREME COURT OF THE STATE OF MONTANA**  
No. DA 22-0667

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MONTANA DEMOCRATIC PARTY and MITCH BOHN, WESTERN NATIVE  
VOICE, et al., MONTANA YOUTH ACTION, et al.,

Plaintiffs and Appellees,

v.

CHRISTI JACOBSEN, in her official capacity as Montana Secretary of State,

Defendant and Appellant.

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**UNOPPOSED MOTION OF SCHOLARS OF STATE CONSTITUTIONS  
AND ELECTION LAW FOR LEAVE TO APPEAR AS AMICI CURIAE**

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On Appeal from the Montana Thirteenth Judicial District, Yellowstone County,  
Cause No. DV-21-0451  
Honorable Judge Michael G. Moses

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The movants respectfully request the Court to grant them leave to submit an *amicus curiae* brief in this matter.

### **I. *Amici's* Identity and Interest**

Proposed *Amici Curiae*, listed below, are ten nationally recognized legal scholars with expertise in state constitutional law and the law of democracy. They have researched and published extensively in these areas, and they have a professional interest in promoting a proper understanding of the constitutional and democratic principles at issue in this case:

- Richard Briffault, Joseph P. Chamberlain Professor of Legislation, Columbia Law School
- Jessica Bulman-Pozen, Betts Professor of Law and a Director of the Center for Constitutional Governance, Columbia Law School
- Joshua A. Douglas, Ashland, Inc-Spears Distinguished Research Professor of Law, University of Kentucky Rosenberg College of Law
- Helen Hershkoff, Herbert M. and Svetlana Wachtell Professor of Constitutional Law and Civil Liberties, New York University School of Law
- Bertrall L. Ross II, Justice Thurgood Marshall Distinguished Professor of Law and Director of the Karsh Center for Law and Democracy, University of Virginia School of Law
- Miriam Seifter, Professor of Law and Faculty Co-Director of the State Democracy Research Initiative, University of Wisconsin Law School
- Joshua S. Sellers, Professor of Law, University of Texas School of Law
- Justin Weinstein-Tull, Associate Professor of Law, Arizona State University Sandra Day O'Connor College of Law
- Robert F. Williams, Distinguished Professor of Law Emeritus and Director of the Center for State Constitutional Studies, Rutgers Law School

- Robert Yablon, Associate Professor of Law and Faculty Co-Director of the State Democracy Research Initiative, University of Wisconsin Law School<sup>1</sup>

## **II. The Issues on Which Movants Wish to Submit an Amicus Brief**

Movants wish to submit an *amicus* brief regarding the standard of scrutiny that should be applied to the statutes at issue in this matter.

## **III. The Reason an Amicus Brief is Desirable**

The matter before this Court involves important constitutional questions on which movants hold expertise as scholars of state constitutional law. An *amicus* brief is desirable to provide the Court with information regarding the underlying democratic principles advocated by the delegates of the Montana Constitutional Convention and embodied by the Montana Constitution; how these principles inform the standard of scrutiny applied to statutes facing constitutional challenges; and insight into how other states have approached similar questions.

## **IV. Identity of the Party Whose Position Movants Supports**

Movants support the position of the Plaintiffs/Appellees in this matter.

## **V. The Parties' Positions Regarding Participation**

The parties have been contacted regarding movants' participation as *amicus*.

All indicate no objection or opposition to this Motion.

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<sup>1</sup> Institutional affiliations are provided for identification purposes only.

**VI. Filing Date**

Movants are prepared to file its amicus brief on July 7, 2023, or as may be otherwise directed by the Court.

Dated this 7th day of July, 2023.

Respectfully submitted,

By: /s/ Caitlin Boland Aarab  
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BOLAND AARAB PLLP  
Local Counsel for *Amici Curiae*

## CERTIFICATE OF SERVICE

I, Caitlin Boland Aarab, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 07-07-2023:

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Dated: 07-07-2023