

IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. DA 23-287

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PLANNED PARENTHOOD OF MONTANA; ALL FAMILIES HEALTHCARE;  
BLUE MOUNTAIN CLINIC; SAMUEL DICKMAN, M.D.; and HELEN  
WEEMS, APRN-FNP, on behalf of themselves and their patients,  
*Plaintiffs and Appellees,*

v.

STATE OF MONTANA; MONTANA DEPARTMENT OF PUBLIC HEALTH  
AND HUMAN SERVICES; and CHARLIE BRERETON, in his official capacity  
as Director of the Department of Public Health and Human Services,

*Defendants and Appellants.*

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**UNOPPOSED MOTION TO PARTICIPATE AS *AMICUS CURIAE***  
by The National Association of Nurse Practitioners in Women's Health, the  
American College of Nurse-Midwives, the American Academy of Physician  
Associates, and the Association of Physician Associates in Obstetrics and  
Gynecology

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On Appeal from the Montana First Judicial District Court, Lewis and Clark  
County, Cause No. ADV 23-299, the Honorable Mike Menahan, Presiding

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The National Association of Nurse Practitioners in Women’s Health, the American College of Nurse-Midwives, the American Academy of Physician Associates, and the Association of Physician Associates in Obstetrics and Gynecology respectfully move this Court for leave to participate as *amici curiae* (hereinafter “*amici*”) in this matter. Pursuant to Rule 12(7), Mont. R. App. P., *amici* state as follows:

### Background About The Case

This case challenges a proposed state regulation that amends an administrative rule promulgated by DPHHS and two state laws that, among other things, limit Medicaid funding to only those medically necessary abortions that are provided by physicians (the “Abortion Restrictions”). Under the Abortion Restrictions, medically necessary abortions provided by Advanced Practice Clinicians (“APCs”) rather than physicians are not eligible for payment. Among the issues in this case is whether enforcement of the Abortion Restrictions denies Montanans of their fundamental right to select an abortion provider of their choice by preventing qualified and trained APCs from providing abortion care, despite their ability to provide this care with the same safety and efficacy as physicians.

### Statement of Interest

*Amicus curiae* National Association of Nurse Practitioners in Women’s Health (“NPWH”) is the national professional community for women’s health

nurse practitioners and advanced practice registered nurses who provide women's and gender-related healthcare. NPWH sets a standard of excellence by translating and promoting the latest women's healthcare research and evidence-based clinical guidance, providing high quality continuing education, and advocating for patients, providers, and the women's health nurse practitioner profession. NPWH's mission includes protecting and promoting women's and all individuals' rights to make their own choices regarding their health and well-being within the context of their lived experience and their personal, religious, cultural, and family beliefs.

*Amicus curiae* American College of Nurse-Midwives ("ACNM") is the professional association that represents certified nurse-midwives ("CNMs") and certified midwives ("CMs") in the United States. ACNM sets the standard for excellence in midwifery education and practice in the United States and strengthens the capacity of midwives in developing countries. Members of ACNM are primary care providers for women throughout their lifespans, with a special emphasis on pregnancy, childbirth, and gynecologic and reproductive health. ACNM's mission is to support midwives, advance the practice of midwifery, and achieve optimal, equitable health outcomes for the people and communities midwives serve through inclusion, advocacy, education, leadership development and research.

*Amicus curiae* American Academy of Physician Associates (“AAPA”) is the national professional association for physician associates/physician assistants (“PAs”). AAPA advocates and educates on behalf of the profession and the patients and communities PAs serve. Its mission includes enhancing PAs’ ability to improve the quality, accessibility, and cost-effectiveness of patient-centered healthcare, as well as ensuring the professional growth, personal excellence, and recognition of PAs.

*Amicus curiae* Association of Physician Associates in Obstetrics and Gynecology (“APAOG”) is the professional association representing Obstetrics and Gynecologic Physician Associates in the United States. APAOG supports PAs practicing obstetrics, gynecology, and all of its subspecialties by advancing the role of PAs to serve patients throughout their lifespan. APAOG’s mission is to promote equitable patient care through education, research, advocacy, inclusivity, and leadership.

*Amici* are interested in this matter because the resolution of the issue before the Court impacts the health and well-being of women in Montana as well as the ability of many of Montana’s healthcare providers to provide necessary healthcare services to their patients. Specifically, limiting Medicaid funding to only those medically necessary abortions that are provided by a physician affects Montanans’ access to abortion care and infringes upon Montanans’ fundamental right to choose

the qualified abortion care provider of their choice. Safety concerns do not warrant restricting abortion providers to physicians. Abortion is an extremely safe form of health care that has been, and should continue to be, competently and effectively provided by APCs.

#### The Issues On Which *Amici* Wish To Submit An *Amicus* Brief

*Amici* seek leave to submit a brief on issues that include (1) the safety of abortions generally; (2) the fact that abortion care falls within APCs' permissible scope of practice; (3) the ability of APCs to safely and effectively provide abortion care; and (4) relevant policy statements of medical associations that support allowing APCs to provide abortion care.

#### Reasons Why The *Amicus Curiae* Brief Is Desirable

*Amici* have a strong interest in the present case and can assist the Court in its consideration of the significant reproductive health issues that it raises. In particular, *amici* can provide the Court with information about APCs' expertise and experience in the provision of abortion care.

#### Identity of the Party Whose Position *Amici* Support

*Amici* support the position of Plaintiffs-Appellees Planned Parenthood of Montana, All Families Healthcare, Blue Mountain Clinic, Samuel Dickman, and Helen Weems.

The Proposed Date For Filing the *Amicus Curiae* Brief

If this Motion for Leave to Participate is granted, *amici* propose filing an *amicus* brief by February 5, 2024, seven days after the due date for the brief to be filed by Plaintiffs-Appellees. *Amici* will conform to any schedule adopted by the Court.

The Parties' Position Regarding *Amici*'s Participation

Thane Johnson, counsel for Defendant-Appellant, has been contacted and indicated on January 16, 2024 that he does not object to this Motion.

Peter Im, counsel for Plaintiffs-Appellees, has been contacted and indicated on January 16, 2024 that he consents to this Motion.

DATED this 17th day of January, 2024.

Respectfully submitted,

/s/ Lindsay Beck

LINDSAY BECK, ESQ.

*Counsel for Amici*



## **CERTIFICATE OF SERVICE**

I, Lindsay Beck, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 01-17-2024:

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Electronically signed by Kaitlin Pomeroy on behalf of Lindsay Beck

Dated: 01-17-2024