

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Case No. DA 23-0575

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RIKKI HELD; LANDER B., by and through his guardian Sara Busse; BADGE B., by and through his guardian Sara Busse; SARIEL SANDOVAL; KIAN T., by and through his guardian Todd Tanner; GEORGIANNA FISCHER; KATHRYN GRACE GIBSON-SNYDER; EVA L., by and through her guardian Mark Lighthiser; MIKA K., by and through his guardian Rachel Kantor; OLIVIA VESOVICH; JEFFREY K., by and through his guardian Laura King; NATHANIAL K., by and through his guardian Laura King; CLAIRE VLASES; RUBY D., by and through her guardian Shane Doyle; LILLIAN D., by and through her guardian Shane Doyle; TALEAH HERNÁNDEZ,

Plaintiffs and Appellees,

v.

STATE OF MONTANA, GOVERNOR GREG GIANFORTE, MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, and MONTANA DEPARTMENT OF TRANSPORTATION,

Defendants and Appellants.

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On appeal from the Montana First Judicial District Court, Lewis and Clark County  
Cause No. CDV 2020-307, the Honorable Kathy Seeley, Presiding

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**MOTION FOR LEAVE FOR THE FRONTIER INSTITUTE TO FILE  
*AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANTS**

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## **REQUEST FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

Pursuant to Rules 16 and 12(7) of the Montana Rules of Appellate Procedure, the following entity respectfully requests leave of Court to file an Amicus Curiae brief in the above-captioned matter: The Frontier Institute (“The Institute”). The brief will support Appellants. The Institute seeks to file its brief on the same date Appellants are required to file their opening brief, which is currently set for Tuesday, February 13, 2024, or as otherwise extended by the Court.

Counsel for Appellants and Appellees have been contacted. Appellants consent to the motion, while Appellees have not responded. A proposed order accompanies this Motion. Should leave be granted, the Institute will file a single brief setting forth its arguments in support of Appellants. The Institute’s brief may be joined by other amici curiae sharing the Institute’s interest and position.

### **INTERESTS OF AMICUS CURIAE**

Founded in 2020, the Frontier Institute advocates for a Montana state government that respects its boundaries. The Institute believes that more freedom, and not more government, is the best way to help Montanans thrive. Critical to the Institute’s mission is a proper understanding and functioning of the State’s separation of powers doctrine. The separation of powers, particularly Montana’s standing doctrine, is a central consideration in this case, and the Institute believes that a ruling in favor of Appellees will fundamentally alter the relationship between Montana’s three branches of government. It is axiomatic that courts may not hear a case in which the plaintiff does not have standing. A ruling in favor of Appellees in this case will alter that axiom, grafting onto the judiciary power that properly belongs to the people’s representatives. The Frontier Institute’s mission of working with citizens and legislators to craft policies best suited for Montanans would be undermined if Appellees prevail on their standing argument.

## **DESIRABILITY OF AMICUS CURIAE BRIEF**

This case presents a number of challenging issues, each of which could be the sole subject of a brief. The Institute believes that submitting a brief to the Court focused on Montana's standing doctrine, and its application to this case, would be helpful to the Court in its evaluation of this fundamental issue. Given the potentially vast impact of the Court's decision in this case, the Institute believes the Court should have a chance to consider all relevant arguments before ruling.

## **CONCLUSION**

Wherefore, the Institute requests an order granting its Motion, pursuant to Mont. R. App. 12(7), and permitting it to file its amicus brief one week after the dates that Appellants are required to file their opening brief, which is currently set for Tuesday, February 13, 2024, or as otherwise extended by the Court. Alternatively, the Institute seeks to file in accordance with any briefing schedule ordered by the Court or at the Court's convenience.

DATED this 19th day of January, 2024.

Respectfully submitted,

**BAKER & HOSTETLER LLP**

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I, Keeley Cronin, hereby certify that I have served true and accurate copies of the foregoing Motion to the following on January 19, 2024:

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Electronically signed by Stephanie Bliss on behalf of Keeley Cronin

Dated: 01-19-2024