

IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. DA 23-0287

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PLANNED PARENTHOOD OF MONTANA, *et al.*,

*Plaintiffs and Appellees,*

v.

STATE OF MONTANA, *et al.*,

*Defendants and Appellants.*

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On Appeal from the Montana First Judicial District Court, Lewis and Clark County  
Cause No. ADV 2023-299, the Honorable Mike Menahan, Presiding

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**National Health Law Program**  
**UNOPPOSED MOTION TO PARTICIPATE AS AMICUS CURIAE**

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Appearance:

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*Counsel for Amicus Curiae*

The National Health Law Program respectfully moves this Court for leave to participate as *amicus curiae* in this matter. Pursuant to Rule 12(7), Mont. R. App. P., *amicus curiae* states as follows:

### **Background About The Case**

This case challenges 2023 House Bill 862, 2023 House Bill 544, and a Department of Public Health and Human Service rule, 8 Mont. Admin. Reg. 414 (April 28, 2023), (collectively, the “Challenged Restrictions”). Together, the Challenged Restrictions severely limit coverage of abortion services for Montana residents who are enrolled in the Medicaid program. HB 544 and the DPHHS rule limit coverage by: 1) narrowly defining when an abortion is medically necessary; 2) only permitting coverage for abortions performed by a physician; and 3) imposing prior authorization requirements that, in effect, eliminate coverage of medication abortions provided via telehealth. HB 862 bans coverage of abortion services except when the pregnancy is the result of rape or incest or when an abortion is necessary to save the life of the pregnant person. By limiting coverage of abortion services in these ways, the Challenged Restrictions dramatically curtail access to necessary health care services among Montana Medicaid enrollees.

## **Statement of Interest of Amicus Curiae**

Founded in 1969, *amicus curiae* the National Health Law Program (NHeLP) is a public interest organization dedicated to advancing access to quality health care, including the full range of reproductive health care services, and protecting the legal rights of low-income and other underserved individuals. To achieve its mission, *amicus curiae* advocates, educates, and litigates at the state and federal levels. As such, *amicus curiae* has a strong interest in the outcome of this case.

## **The Issues on Which Amicus Curiae Wishes to Submit an Amicus Brief**

*Amicus curiae* seeks to submit a brief to inform the Court which groups of Montanans will be harmed by the Challenged Restrictions. Specifically, the proposed brief will discuss: 1) who is eligible for Medicaid in Montana due to pregnancy; and 2) who will be disproportionately affected by the elimination of coverage for medication abortions provided to Medicaid enrollees via telehealth.

## **Reasons Why the Amicus Curiae Brief is Desirable**

Given its deep knowledge of the Medicaid program and the population groups that the program supports, *amicus curiae* brings a unique perspective to this case and can assist the Court in its consideration of the effect of the Challenged Restrictions.

## **Identity of the Party Whose Position Amicus Supports**

*Amicus curiae* supports the position of Plaintiffs-Appellees, 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.

**The Proposed Date for Filing the Amicus Curiae Brief**

If this Motion for Leave to Participate is granted, *amicus curiae* was prepared to file its brief on January 29, 2024, and its attempted filing on such date was unsuccessful, which necessitated filing on this date. *Amicus curiae* will conform to any schedule adopted by the Court.

**The Parties' Positions Regarding NHeLP's Participation as Amicus Curiae**

Counsel for *amicus curiae* has contacted counsel for Plaintiffs-Appellees and counsel for Defendants-Appellants regarding this Motion. Peter Im, counsel for Plaintiffs-Appellees indicated on January 22, 2024, that Appellees consent to this Motion. Emily Jones, counsel for Defendants-Appellants indicated on January 26, 2024, that Appellants do not oppose this Motion.

NHeLP's proposed amicus brief is attached hereto.

Dated: January 31, 2024

Respectfully submitted,

/s/ Michael G. Black  
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## **CERTIFICATE OF SERVICE**

I, Michael G. Black, hereby certify that I have served true and accurate copies of the foregoing Brief – Amicus to the following on January 31, 2024:

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Electronically signed by Michael G. Black  
Dated: 1-29-24





## **CERTIFICATE OF SERVICE**

I, Michael G. Black, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 01-31-2024:

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Dated: 01-31-2024