

IN THE SUPREME COURT OF THE STATE OF MONTANA
CASE NO.: DA 23-0575

Rikki Held, et al.,

Plaintiffs/Appellees,

-VS-

State of Montana, et al.,

Defendants/Appellants.

On Appeal from the Montana First Judicial District Court, Lewis & Clark County
Cause No. CDV 2020-307, Hon. Kathy Seeley

**FORMER JUSTICES' MOTION FOR LEAVE TO
FILE *AMICUS CURIAE* BRIEF**

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The Former Justices listed here:

Terry N. Trieweller
(Justice, Montana Supreme Court, 1990 to 2003)

James C. Nelson
(Justice, Montana Supreme Court, 1993 to 2013)

William Leaphart
(Justice, Montana Supreme Court, 1995 to 2010)

James M. Regnier
(Justice, Montana Supreme Court, 1997 to 2004)

Patricia O. Cotter
(Justice, Montana Supreme Court, 2001 to 2016)

Michael Wheat
(Justice, Montana Supreme Court, 2010 to 2017)

respectfully request the Court to grant them leave to submit an *amicus curiae* brief in this matter. In support of this motion, they state as follows:

1. Former Justices' Interest

The six former justices listed above have over 85 years of experience sitting as justices on the Montana Supreme Court. They seek to speak as amici curiae from concern for our constitutional system of government. They take no position on the merits of this case, insofar as the merits turn upon scientific evidence of record. Their concern is institutional. It involves the power of Montana's courts to interpret our constitution and to remedy violations of law by the executive or the legislative branches.

2. The Issues on Which the Former Justices Wish to Submit an Amicus Brief

The Montana Environmental Protection Act (MEPA) Limitations at issue in this case prohibit consideration of greenhouse gases in MEPA mandated environmental reviews. They also prohibit courts from vacating, voiding, or delaying agency decisions based in whole or in part on inadequate agency review of greenhouse gases.

These prohibitions to judicial action raise separation of powers issues for which the Former Justices seek to participate via an amicus curiae brief.

3. The Reason an Amicus Brief Is Desirable

There is a necessity of grounding any decision in a proper historical and institutional understanding of the separation of powers doctrine. Neither the decision below nor the parties have directly grounded their arguments on the separation of powers doctrine. An amicus curiae brief that provides the Court with a proper historical and institutional perspective on the importance of the separation of powers doctrine may assist the Court in its analytical process.

4. Identity of the Party Whose Position the Former Justices Support

The Former Justices support the separation of powers position of the Plaintiffs and Appellees in this matter.

**5. The Parties' Position Regarding the Former Justices Participation as
*Amici***

The authors of both of the State's opening briefs have been contacted, and they consent to the Former Justices' submission of the *amicus* brief.

6. The Date on Which the Former Justices' *Amicus Curiae* Can Be Filed

The Former Justices' *Amicus Curiae* Brief will be filed upon approval of this motion.

Respectfully submitted this 11th day of March 2024.

/s/Lawrence A. Anderson
Lawrence A. Anderson

CERTIFICATE OF SERVICE

I, Lawrence A. Anderson, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 03-11-2024:

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Dated: 03-11-2024