

IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. DA 23-0572

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SCARLET VAN GARDEREN, et al.,

*Plaintiffs and Appellees,*

v.

STATE OF MONTANA, et al.

*Defendants and Appellants.*

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**UNOPPOSED MOTION FOR LEAVE OF BIOMEDICAL ETHICS AND  
PUBLIC HEALTH SCHOLARS TO PARTICIPATE AS *AMICI CURIAE***

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On appeal from the Montana Fourth Judicial District Court, Missoula County  
Cause No. DV 2023–541, the Honorable Jason Marks, Presiding

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Biomedical ethics and public health scholars (collectively, “*Amici*”), respectfully request leave to submit a brief as *amici curiae* in the above-captioned matter, pursuant to Montana Rule of Appellate Procedure 12(7).

I. *Amici*’s interest

*Amici* listed in the Appendix are leading professors of law, medicine, and public health who teach and write about biomedical ethics and health-related rights and discrimination. Biomedical ethics, sometimes referred to as bioethics, is “the discipline of ethics dealing with moral problems arising in the practice of medicine and the pursuit of biomedical research.” J. R. Vervain et al., *Issues in biomedical ethics*, 39 Disease-a-Month 869 (1993) (available at <https://pubmed.ncbi.nlm.nih.gov/8243220>). *Amici* have a strong interest in ensuring that principles of biomedical ethics are accurately described and properly applied. They submit this brief to explain how Montana Senate Bill 99 (“SB 99,” the “Healthcare Ban,” or the “Ban”), effective on October 1, 2023, is inconsistent with foundational principles of biomedical ethics.

II. Issues on which *Amici* wish to submit an amicus brief

*Amici* seek this opportunity to submit a brief describing the foundational precepts of biomedical ethics including autonomy, beneficence, and justice, and how the Healthcare Ban is irreconcilable with these principles because it categorically bars patients from accessing the *only* evidence-based treatment available for a

specific medical need and only prohibits a certain group of patients from receiving such care because of their identity. *Amici* further aim to provide additional context on how medical knowledge is credibly generated and explain how the gender-affirming care prohibited by the Healthcare Ban has been developed through rigorous and appropriate methods and rests on a strong evidentiary basis.

### III. Reasons an *amicus* brief is desirable

*Amici* have a strong interest in the present case and can assist the Court in the resolution of the significant issues of public importance that it raises, such as with regard to the health and wellbeing of minor, transgender patients. In particular, *Amici* can provide the Court with their knowledge of biomedical ethics, the process through which medical knowledge is developed, and the evidentiary support underlying gender-affirming care so as to provide more context around the implications of the Healthcare Ban.

### IV. Party whose position *Amici* support

*Amici* seek to submit their brief in support of Plaintiffs and Appellees and in response to the arguments raised by Defendants and Appellants in their opening brief.

### V. Parties' positions regarding *Amici*'s participation

*Amici* have contacted both parties in this action regarding this motion. Neither party opposes or object to *Amici*'s participation.

VI. Proposed date for Filing the *Amicus Curiae* Brief

*Amici* propose to file an *amicus* brief on April 9, 2024. *Amici* will conform to any schedule adopted by the Court.

Respectfully submitted this 13th day of March, 2024.

/s/ Michelle T. Weinberg  
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## **APPENDIX**

### List of *Amici Curiae*

*Amici* include the following individuals, whose affiliations are provided for identification purposes only:

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I, Michelle Weinberg, hereby certify that I have served a true and accurate copy of the foregoing document to the following on this 03-14-2024:



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