

**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; NATHANIEL K., by and through his guardian Laura King; CLAIRE VLASES; RUBY D., by and through her guardian Shane Doyle; LILIAN D., by and through her guardian Shane Doyle; TALEAH HERNÁNDEZ,

Plaintiffs/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/Appellants.

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

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**DECLARATION OF MARK L. STERMITZ**

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**Appearances:**

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*Attorneys for Plaintiffs/Appellees*

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I declare under the penalty of perjury that:

1. I am an attorney for Appellant the State of Montana (State). I have personal knowledge of the facts contained herein and make this Declaration in support of the joint motion for a thirty (30) day extension of the deadline for the reply brief for the State of Montana and Appellants Department of Environmental Quality, Department of Natural Resources and Conservation, Department of Transportation, and Governor Gianforte in the above captioned appeal.

2. The reply brief of the State and Agency Appellants is currently due March 27, 2024. The State and Agency Appellants are jointly requesting a thirty (30) day extension of the deadline so that their reply briefs would be due April 26, 2024.

3. I will be responsible for preparing the draft reply brief for the State of Montana, and even with adjustments to my calendar to free up time, am quite concerned about having sufficient time to evaluate and respond to the lengthy brief filed by Appellees, which is about 7,500 words more than the standard word limit.

4. Additionally, this case has seen an unusual if not unprecedented number of amicus briefs that need to be reviewed. Although they are not briefs of the parties themselves, the State must review them and respond if necessary. As of the time of this declaration there have been 18 requests to file amicus briefs, 11 have been filed, and none have been denied. That means that amicus briefs will still be outstanding while our reply brief is being drafted, which an extension could minimize.

5. Within the next two weeks that encompass the time before the current deadline of March 27 arrives, I have other commitments I cannot change or find other counsel to handle. Primarily that includes final preparation for a jury trial in San Diego, California, and travel for an in-person final pretrial conference (in California called a “Trial Readiness Conference”) on March 29, 2024. In the days leading up to March 29, I must prepare the final pretrial order, including jury instructions and the usual final witness and exhibit lists must be completed in conjunction with opposing counsel. The case is *Estate of Freeman, et al. v. Yantos, et al.*, Cal. Sup. Court, San Diego County North Div., Case No. 37-2023-

00001914- CU- BC-NC. There are also depositions for the same case scheduled for March 20, and a mediation to be held on Monday, March 25.

6. In addition to the Yantos case referenced above, both in the time since Appellees filed their brief and in the next few weeks, I have other major cases and projects pending that require my time and for which finding additional counsel is either impractical or not in the best interests of my clients.

7. I am requesting a thirty day extension to facilitate delivering the best possible reply brief for the Court.

*I declare under the penalty of perjury that the foregoing is true and correct.*

Dated: March 19, 2024.

/s/ Mark L. Stermitz