

IN THE SUPREME COURT OF MONTANA

DA 23-0575

RIKKI HELD, *et al.*,

Plaintiffs and Appellees,

v.

STATE OF MONTANA, *et al.*,

Defendants and Appellants.

On appeal from the Montana First Judicial District Court, Lewis and Clark
County Cause No. DDV 2013–407, the Honorable Kathy Seeley, Presiding

**AMERICAN CIVIL LIBERTIES UNION OF MONTANA AND
AMERICAN CIVIL LIBERTIES UNION
MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF**

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Dated: March 20, 2024

The American Civil Liberties Union of Montana (“ACLU of Montana”) and the American Civil Liberties Union (“ACLU”) 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. The ACLU of Montana’s and the ACLU’s Interests

The American Civil Liberties Union of Montana (“ACLU of Montana”) is a non-profit, non-partisan membership organization devoted to protecting civil rights and liberties for all Montanans. The American Civil Liberties Union (“ACLU”), with approximately 1.6 million members, is among the oldest, largest, and most active civil rights organizations in America. For decades, the ACLU of Montana and the ACLU have litigated questions involving civil liberties in the state and federal courts.

2. The Issue on Which the ACLU of Montana and the ACLU Wish to Submit an Amicus Brief

In the proceedings before the District Court and in the submissions in this appeal, the Defendants/Appellants and Plaintiffs/Appellees have raised arguments concerning the applicability and scope of the political question doctrine.

3. The Reason an Amicus Brief is Desirable

The political question doctrine has rarely been utilized in Montana courts but has been more developed in the federal courts. But while this Court has referenced the political question doctrine as a persuasive authority, it has never adopted the

federal doctrine or tethered Montana courts to developments of the doctrine in federal courts. There are sound reasons for that, both because the federal doctrine is rooted in considerations that are inapplicable to the states, and because the text and history of Montana's Constitution weigh against an expansive political question doctrine. Neither Party has explored the history of the doctrine in their submissions. An amicus curiae brief that provides the Court with a proper historical perspective of the political question doctrine may assist the Court in its adjudication of the issue.

4. Identity of the Party Whose Position the ACLU of Montana and the ACLU Support

The ACLU of Montana and the ACLU support the Plaintiffs'/Appellees' argument against the expansion of the political question doctrine.

5. The Parties' Position Regarding the ACLU of Montana's and the ACLU's Participation as Amici

Counsel to all Parties consent to the ACLU of Montana's and the ACLU's submission of the amicus brief.

6. The Date on Which the ACLU of Montana's and the ACLU's Amicus Curiae Brief Can be Filed

The ACLU of Montana's and the ACLU's Brief will be filed contemporaneously with the filing of this motion.

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