

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

**AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION OF MONTANA
AND AMERICAN CIVIL LIBERTIES UNION FOUNDATION
UNOPPOSED MOTION FOR *PRO HAC VICE* APPEARANCE
OF ROPES & GRAY LLP**

Andrew B. Cashmore*
Joshua S. Dulberg*
ROPES & GRAY LLP
Prudential Tower, 800 Boylston Street
Boston, Massachusetts 02199
Phone: (617) 951-7000
Fax: (617) 951-7050
andrew.cashmore@ropesgray.com
joshua.dulberg@ropesgray.com

Alex Rate
AMERICAN CIVIL LIBERTIES UNION
OF MONTANA
P.O. Box 1968
Missoula, Montana 59806
Phone: (406) 224-1447
ratea@aclumontana.org

* All attorneys designated with an asterisk have been admitted *pro hac vice* or have applied for admission *pro hac vice*.

Robert A. Skinner*
Kaitlin R. O'Donnell*
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10036-8704
Phone: (212) 596-9000
Fax: (212) 596-9090
robert.skinner@ropesgray.com
kaitlin.odonnell@ropesgray.com

Amici American Civil Liberties Union of Montana and American Civil Liberties Union Foundation, through their counsel of record, respectfully move the Court, based on good cause, for the entry of an order allowing Robert A. Skinner, Andrew B. Cashmore, Kaitlin R. O'Donnell, and Joshua S. Dulberg of Ropes & Gray LLP to appear *pro hac vice* in this matter, on behalf of Plaintiffs/Appellees Rikki Held, et al., as co-counsel to Alex Rate of the ACLU of Montana.

INTRODUCTION

In accordance with Rule VI of the Rules for Admission to the Bar of Montana and the Montana Supreme Court's decision in *Larson v. State*, 2019 MT 28, ¶¶ 61–64, Plaintiffs/Appellees now move for the admission of their out-of-state counsel. As set forth below, good cause exists to grant leave to appear *pro hac vice*.

ARGUMENT

This case involves the justiciability of the youth plaintiffs' constitutional rights to a clean and healthful environment under the Montana Constitution. The State and multiple *amici* have asserted that the youth plaintiffs' claims are a nonjusticiable political question. This view would take key issues impacting Montanans' constitutional rights completely out of judicial review and leave significant injuries without recourse.

The *amici* will counter that argument and illustrate to the Court that the political question doctrine has no bearing on this dispute, and that the Court should decline to expand the doctrine's applicability in Montana or tether Montana's political question doctrine to its federal counterpart. In doing so, the *amici* rely on out-of-state counsel on their expertise litigating justiciability issues in state constitutional issues. This expertise will help *amici* and the Court by ensuring that the issues in this litigation are properly and thoroughly presented for the Court's consideration.

For example, Robert Skinner and Andrew Cashmore have experience litigating individual rights under the United States and various state constitutions and justiciability issues. Messrs. Skinner and Cashmore were co-counsel in the matter *Natalie R. v. State of Utah*, No. 20230022-SC, a case pending before the Utah Supreme Court, where they co-authored an amicus brief concerning the applicability of the political question doctrine in Utah courts.

The type of expertise offered by *amici's* out-of-state counsel will help the Court adjudicate the important issues before it in this case.

In addition, *amici* do not have the funds to hire private counsel. The out-of-state attorneys will provide no-cost legal work to assist *amici* in this matter.

Finally, *amici's* out-of-state counsel from Ropes & Gray LLP, along with the ACLU Foundation and its state affiliate, are committed to protecting individual

rights under the state constitution and ensuring meaningful judicial review, and associate with one another to achieve that goal. The ACLU of Montana is a lightly staffed affiliate of the ACLU Foundation, Inc., consisting of only two attorneys and limited support staff. It relies on its partnership with the ACLU Foundation, Inc., and other civil- rights litigators, including but not limited to lawyers who practice with private law firms, to successfully litigate cases intended to protect Montanans' civil liberties.

CONCLUSION

For these reasons, *Amici* respectfully request the entry of an order allowing Robert A. Skinner, Andrew B. Cashmore, Kaitlin R. O'Donnell, and Joshua S. Dulberg to appear *pro hac vice* in this matter.

A proposed order is attached.

DATED: March 21, 2024.

Respectfully submitted,

/s/ Alex Rate
Alex Rate (Bar No.
11226) ACLU of
Montana
P.O. Box 1968
Missoula, MT 59806
406-224-1447
ratea@aclumontana.
org

CERTIFICATE OF SERVICE

I, Alex Rate, hereby certify that I have served true and accurate copies of the foregoing document via the e-filing system to the following on March 21, 2024.

Nathan Bellinger (Attorney)

1216 Lincoln St

Eugene OR 97401

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer,
Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika
K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses
Service Method: eService

Andrea K. Rodgers (Attorney)

3026 NW Esplanade

Seattle WA 98117

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer,
Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika
K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses
Service Method: eService

Roger M. Sullivan (Attorney)

345 1st Avenue E

MT

Kalispell MT 59901

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer,
Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika
K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses
Service Method: eService

Melissa Anne Hornbein (Attorney)

103 Reeder's Alley

Helena MT 59601

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer,
Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika
K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses
Service Method: eService

Philip L. Gregory (Attorney)

1250 Godetia Drive

Woodside CA 94062

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer,
Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika
K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses
Service Method: eService

Barbara L Chillcott (Attorney)

103 Reeder's Alley

Helena MT 59601

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer,
Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika
K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses
Service Method: eService

Dustin Alan Richard Leftridge (Attorney)

345 First Avenue East

Montana

Kalispell MT 59901

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer,
Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika
K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses
Service Method: eService

Michael D. Russell (Govt Attorney)

215 N Sanders

Helena MT 59620

Representing: State of Montana

Service Method: eService

Mark L. Stermitz (Attorney)

304 South 4th St. East

Suite 100

Missoula MT 59801

Representing: State of Montana

Service Method: eService

Thane P. Johnson (Govt Attorney)
215 N SANDERS ST
P.O. Box 201401
HELENA MT 59620-1401
Representing: State of Montana
Service Method: eService

Emily Jones (Attorney)
115 North Broadway
Suite 410
Billings MT 59101
Representing: State of Montana
Service Method: eService

Selena Zoe Sauer (Attorney)
1667 Whitefish Stage Rd.
#101
Kalispell MT 59901-2173
Representing: State of Montana
Service Method: eService

Dale Schowengerdt (Attorney)
7 West 6th Avenue, Suite 518
Helena MT 59601
Representing: Greg Gianforte, MT Dept Environmental Quality, Department of
Natural Resources,
Billings Regional Office, MT Dept of Transportation
Service Method: eService

Lee M. McKenna (Govt Attorney)
1520 E. Sixth Ave.
HELENA MT 59601-0908
Representing: MT Dept Environmental Quality
Service Method: eService

Quentin M. Rhoades (Attorney)
430 Ryman St.
2nd Floor
Missoula MT 59802
Representing: Friends of the Court
Service Method: eService

Brian P. Thompson (Attorney)
PO Box 1697
Helena MT 59624
Representing: Treasure State Resource Association of Montana
Service Method: eService

Steven T. Wade (Attorney)
PO Box 1697
Helena MT 59624
Representing: Treasure State Resource Association of Montana
Service Method: eService

Hallee C. Frandsen (Attorney)
PO Box 1697
801 N. Last Chance Gulch, Ste. 101
Helena MT 59624
Representing: Treasure State Resource Association of Montana
Service Method: eService

Keeley Cronin (Attorney)
c/o Baker & Hostetler LLP
1801 California Street, Suite 4400
Denver CO 80202
Representing: The Frontier Institute
Service Method: eService

Lindsay Marie Thane (Attorney)
1211 SW 5th Ave
#1900
Portland OR 97204
Representing: Navajo Transitional Energy Company, LLC
Service Method: eService

Ryen L. Godwin (Attorney)
1420 Fifth Ave., Ste. 3400
Seattle WA 98101
Representing: Navajo Transitional Energy Company, LLC
Service Method: eService

Matthew Herman Dolphay (Attorney)
401 N. 31st Street, Suite 1500
P.O. Box 639
Billings MT 59103-0639
Representing: Montana Chamber of Commerce, Chamber of Commerce of The
United States of America, Billings Chamber of Commerce, Helena Chamber of
Commerce, Kalispell Chamber of Commerce
Service Method: eService

Frederick M. Ralph (Attorney)
125 Bank Street
Suite 600
Missoula MT 59802
Representing: Northwestern Corporation
Service Method: eService

John Kent Tabaracci (Attorney)
208 N. Montana Ave. #200
Helena MT 59601
Representing: Northwestern Corporation
Service Method: eService

Abby Jane Moscatel (Attorney)
PO Box 931
Lakeside MT 59922
Representing: Montana Senate President as Officer of the Legislature and Speaker
of the House of Representatives as Officer of the Legislature
Service Method: eService

Timothy M. Bechtold (Attorney)
PO Box 7051
317 East Spruce Street
Missoula MT 59807
Representing: Public Health Experts and Doctors
Service Method: eService

James H. Goetz (Attorney)
PO Box 6580
Bozeman MT 59771-6580
Representing: Environmental and Constitutional Law Professors'
Service Method: eService
Juan Carlos Rodriguez (Interested Observer)
Service Method: E-mail Delivery

Byron L. Trackwell (Amicus Curiae)
7315 SW 23rd Court
Topeka KS 66614
Service Method: E-mail Delivery
Alex Guillen (Interested Observer)
Service Method: E-mail Delivery

Rebecca Leah Davis (Other)
1939 Harrison St., Suite 150
Oakland CA 94612
Service Method: E-mail Delivery
Brian Flynn (Other)
1939 Harrison St., Suite 150
Oakland CA 94612
Service Method: E-mail Delivery

Julia A. Olson (Attorney)
1216 Lincoln St.
Eugene OR 97401
Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer,
Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika
K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses
Service Method: E-mail Delivery

Shannon M. Heim (Attorney)
2898 Alpine View Loop
Helena MT 59601-9760
Representing: Northwestern Corporation
Service Method: E-mail Delivery

Robert Cameron (Attorney)
203 N. Ewing Street
Helena MT 59601
Representing: State of Alabama, State of Alaska, State of Arkansas, State of Idaho,
State of North Dakota, State of Indiana, State of Mississippi, State of Missouri,
State of Nebraska, State of South Carolina, State of South Dakota, State of Utah,
State of Wyoming, Commonwealth of Virginia, State of Iowa
Service Method: E-mail Delivery

/s/ Alex Rate

Alex Rate

CERTIFICATE OF SERVICE

I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 03-21-2024:

Nathan Bellinger (Attorney)

1216 Lincoln St

Eugene OR 97401

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses

Service Method: eService

Andrea K. Rodgers (Attorney)

3026 NW Esplanade

Seattle WA 98117

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses

Service Method: eService

Roger M. Sullivan (Attorney)

345 1st Avenue E

MT

Kalispell MT 59901

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses

Service Method: eService

Melissa Anne Hornbein (Attorney)

103 Reeder's Alley

Helena MT 59601

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses

Service Method: eService

Philip L. Gregory (Attorney)

1250 Godetia Drive

Woodside CA 94062

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses
Service Method: eService

Barbara L Chillcott (Attorney)
103 Reeder's Alley
Helena MT 59601

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses
Service Method: eService

Dustin Alan Richard Leftridge (Attorney)
345 First Avenue East
Montana
Kalispell MT 59901

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses
Service Method: eService

Michael D. Russell (Govt Attorney)
215 N Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

Mark L. Stermitz (Attorney)
304 South 4th St. East
Suite 100
Missoula MT 59801
Representing: State of Montana
Service Method: eService

Thane P. Johnson (Govt Attorney)
215 N SANDERS ST
P.O. Box 201401
HELENA MT 59620-1401
Representing: State of Montana
Service Method: eService

Emily Jones (Attorney)
115 North Broadway
Suite 410
Billings MT 59101
Representing: State of Montana
Service Method: eService

Selena Zoe Sauer (Attorney)
1667 Whitefish Stage Rd.
#101
Kalispell MT 59901-2173
Representing: State of Montana
Service Method: eService

Dale Schowengerdt (Attorney)
7 West 6th Avenue, Suite 518
Helena MT 59601
Representing: Greg Gianforte, MT Dept Environmental Quality, Department of Natural Resources,
Billings Regional Office, MT Dept of Transportation
Service Method: eService

Lee M. McKenna (Govt Attorney)
1520 E. Sixth Ave.
HELENA MT 59601-0908
Representing: MT Dept Environmental Quality
Service Method: eService

Quentin M. Rhoades (Attorney)
430 Ryman St.
2nd Floor
Missoula MT 59802
Representing: Friends of the Court
Service Method: eService

Brian P. Thompson (Attorney)
PO Box 1697
Helena MT 59624
Representing: Treasure State Resource Association of Montana
Service Method: eService

Steven T. Wade (Attorney)
PO Box 1697
Helena MT 59624
Representing: Treasure State Resource Association of Montana
Service Method: eService

Hallee C. Frandsen (Attorney)
PO Box 1697
801 N. Last Chance Gulch, Ste. 101
Helena MT 59624
Representing: Treasure State Resource Association of Montana
Service Method: eService

Keeley Cronin (Attorney)
c/o Baker & Hostetler LLP
1801 California Street, Suite 4400

Denver CO 80202
Representing: The Frontier Institute
Service Method: eService

Lindsay Marie Thane (Attorney)
1211 SW 5th Ave
#1900
Portland OR 97204
Representing: Navajo Transitional Energy Company, LLC
Service Method: eService

Ryen L. Godwin (Attorney)
1420 Fifth Ave., Ste. 3400
Seattle WA 98101
Representing: Navajo Transitional Energy Company, LLC
Service Method: eService

Matthew Herman Dolphay (Attorney)
401 N. 31st Street, Suite 1500
P.O. Box 639
Billings MT 59103-0639
Representing: Montana Chamber of Commerce, Chamber of Commerce of The United States of America, Billings Chamber of Commerce, Helena Chamber of Commerce, Kalispell Chamber of Commerce
Service Method: eService

Frederick M. Ralph (Attorney)
125 Bank Street
Suite 600
Missoula MT 59802
Representing: Northwestern Corporation
Service Method: eService

John Kent Tabaracci (Attorney)
208 N. Montana Ave. #200
Helena MT 59601
Representing: Northwestern Corporation
Service Method: eService

Abby Jane Moscatel (Attorney)
PO Box 931
Lakeside MT 59922
Representing: Montana Senate President as Officer of the Legislature and Speaker of the House of Representatives as Officer of the Legislature
Service Method: eService

Timothy M. Bechtold (Attorney)
PO Box 7051
317 East Spruce Street

Missoula MT 59807
Representing: Public Health Experts and Doctors
Service Method: eService

James H. Goetz (Attorney)
PO Box 6580
Bozeman MT 59771-6580
Representing: Environmental and Constitutional Law Professors'
Service Method: eService

Lawrence A. Anderson (Attorney)
Attorney at Law, P.C.
P.O. Box 2608
Great Falls MT 59403-2608
Representing: Former Justices
Service Method: eService

John Martin Morrison (Attorney)
401 North Last Chance Gulch
P.O. Box 557
Helena MT 59624-0557
Representing: Children's Rights Advocates
Service Method: eService

Paul J. Lawrence (Attorney)
1191 Second Avenue
Suite 2000
Seattle WA 98101
Representing: Outdoor Recreation Industry
Service Method: eService

Amanda D. Galvan (Attorney)
313 East Main Street
Bozeman MT 59715
Representing: Tribal and Conservation
Service Method: eService

Jenny Kay Harbine (Attorney)
313 E Main St
Bozeman MT 59715
Representing: Tribal and Conservation
Service Method: eService

Justin P. Stalpes (Attorney)
610 Professional Drive
Bozeman MT 59718
Representing: Trial Lawyers Association
Service Method: eService

Domenic Cossi (Attorney)
303 W. Mendenhall, Ste. 1
Bozeman MT 59715
Representing: Outdoor Athletes
Service Method: eService

Monte Tyler Mills (Attorney)
William H. Gates Hall
Box 353020
Seattle WA 98195-3020
Representing: Denise Juneau, Kathryn Shanley, Native Nations in Montana
Service Method: eService

Robert J. Guite (Attorney)
4 Embarcadero Center, 17th Fl
Sheppard Mullin
San Francisco CA 94111
Representing: Montana Interfaith Power and Light
Service Method: eService

Juan Carlos Rodriguez (Interested Observer)
Service Method: Conventional

Byron L. Trackwell (Amicus Curiae)
7315 SW 23rd Court
Topeka KS 66614
Service Method: Conventional

Alex Guillen (Interested Observer)
Service Method: Conventional

Julia A. Olson (Attorney)
1216 Lincoln St.
Eugene OR 97401
Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlases
Service Method: Conventional

Shannon M. Heim (Attorney)
2898 Alpine View Loop
Helena MT 59601-9760
Representing: Northwestern Corporation
Service Method: Conventional

Robert Cameron (Attorney)
203 N. Ewing Street
Helena MT 59601

Representing: State of Alabama, State of Alaska, State of Arkansas, State of Idaho, State of North Dakota, State of Indiana, State of Mississippi, State of Missouri, State of Nebraska, State of South Carolina, State of South Dakota, State of Utah, State of Wyoming, Commonwealth of Virginia, State of Iowa

Service Method: Conventional

Rebecca Leah Davis (Attorney)

1939 Harrison St., Suite 150

Oakland CA 94612

Representing: Outdoor Recreation Industry

Service Method: Conventional

Brian Flynn (Attorney)

1939 Harrison St., Suite 150

Oakland CA 94612

Representing: Outdoor Recreation Industry

Service Method: Conventional

Electronically Signed By: Alexander H. Rate

Dated: 03-21-2024