IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0127

STATE OF MONTANA,

Plaintiff and Appellee,

v.

CHRISTOPHER ROBIN LEDEAU,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, the Honorable John A. Kutzman, Presiding

APPEARANCES:

CHAD WRIGHT
Appellate Defender
MICHAEL MARCHESINI
Assistant Appellate Defender
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena, MT 59620-0147
Michael.Marchesini@mt.gov
(406) 444-9505

ATTORNEYS FOR DEFENDANT
AND APPELLANT

AUSTIN KNUDSEN
Montana Attorney General
TAMMY K PLUBELL
Bureau Chief
Appellate Services Bureau
P.O. Box 201401
Helena, MT 59620-1401

JOSHUA A. RACKI
Cascade County Attorney
RYAN BALL
Deputy County Attorney
121 Fourth Street North, Ste. 2A
Great Falls, MT 59401

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Laws and Regulations

Other Authorities

STATEMENT OF THE ISSUES

1. Whether a probation condition authorizing law enforcement's unrestricted search of Christopher Ledeau's smartphone and personal computer, upon mere suspicion that he is "attempting" to contact his ex-girlfriend, is unreasonable and unconstitutional.

2. Whether a condition requiring Christopher to divulge to his probation officer the names, home addresses, and phone numbers of anyone with whom he becomes "romantically involved," and compelling him to tell said romantic interests about his criminal record, is unreasonable and unconstitutional.

STATEMENT OF THE CASE

Christopher Ledeau pled guilty to felony partner or family member assault (PFMA) for causing reasonable apprehension of bodily injury in his ex-girlfriend, M.E. (District Court Document (Doc.) 16; 6/7/2022 Change of Plea Hearing Transcript (6/7 Tr.) at 9–11.) The District Court sentenced him to three years to the Department of Corrections, with all but 30 days suspended. (Doc. 30 at 2 (Judgment, attached as Appendix A).)

The District Court imposed various conditions on the suspended portion of Christopher's sentence. (Doc. 30 at 4–10.) Three of these conditions—numbers 29, 30, and 31—are part of an experimental "pilot program" that Cascade County's probation and parole office has instituted for domestic violence offenders. (11/29/2022 Sentencing Hearing Transcript (11/29 Tr.) at 8–9.) Christopher challenges the legality of two of these—conditions 29 and 31.[1]

Condition 29 authorizes a limitless, warrantless search of Christopher's cell phone, personal computer, and social media accounts upon reasonable suspicion that he "is attempting to contact" M.E.[2] (Doc. 30 at 9.) Condition 31 requires Christopher to disclose to his probation officer the names, phone numbers, and addresses of any people with whom he becomes "romantically involved" in the future and to tell those people about his criminal record. (Doc. 30 at 9; Doc. 24, Ex. B.)

Christopher filed a timely notice of appeal. (Doc. 33.)

---

[1] Without conceding condition 30 is legal, Christopher declines to challenge that condition on appeal.

[2] A separate condition, condition 23, prohibits Christopher from contacting M.E., whether orally, in writing, or electronically. (Doc. 30 at 8.)

STATEMENT OF THE FACTS

On September 23, 2021, Christopher went to M.E.'s house and tried to speak with her. (Doc. 1 at 4.) Christopher was on probation for a previous PFMA against M.E., and one of his conditions was that he not contact her.[3] (*See* 7/19/2022 Hearing Transcript (7/19 Tr.) at 13–14.)

When M.E. refused to let Christopher inside or speak to him, Christopher allegedly began threatening M.E., threw a rock through her window, and broke into her home through another window. (Doc. 1 at 4.) M.E. ran from the house towards her neighbor's house while screaming for help, and either M.E. or her neighbor called the police. (Doc. 1 at 4–5.)

The State charged Christopher with PFMA, burglary, and criminal mischief. (Doc. 3.) The State separately filed a petition to revoke Christopher's suspended sentence from his prior PFMA conviction, based on him contacting M.E. in violation of his probation conditions. (*See* Doc. 15 at 6; 7/19 Tr. at 14.)

[3] The present offense is Christopher's fifth PFMA conviction. M.E. was the victim in his fourth and fifth PFMAs. The record does not speak to whether the prior three convictions also involved her or instead involved other women. (*See* Doc. 21 at 2–4.)

Christopher and the State entered into a global plea agreement to resolve this case, the revocation case, and a third, separate matter. (Doc. 16.) In this case, Christopher agreed to plead guilty to PFMA, and the State agreed to dismiss the burglary and criminal mischief charges. (Doc. 16 at 3–4.) The court accepted Christopher's guilty plea. (6/7 Tr. at 11.)

The PSI author recommended numerous conditions on the suspended portion of Christopher's sentence, including the three pilot program conditions. (Doc. 21 at 10.) The PSI author also noted that Christopher was continuing to have daily contact with M.E. while at the detention center. (Doc. 21 at 4.) The PSI's proposed condition 29 read: "Probation and Parole Officer may conduct a search of electronic devices, to include, cell phone, personal computer, and social media, if reasonable suspicion exists that the Defendant is attempting to contact the victim in violation of the Defendants conditions of supervision [sic]." (Doc. 21 at 10.)

Proposed condition 31 read, "The Defendant shall sign and abide by an Intimate Partner Disclosure and an Offensive Contact Contract provided by his/her Probation and Parole Officer if required by his

supervising Officer."[4] (Doc. 21 at 10.) The Intimate Partner Disclosure form requires Christopher to "Provide your PO with the full name, telephone number, and address of any person that you are romantically involved with (dating, girlfriend, wife, or other sexual/romantic relationship). This includes anyone you become involved with in the future." (Doc. 24, Ex. B.) It also forces Christopher to "Disclose the extent and nature of your domestic violence to your current intimate partner." (Doc. 24, Ex. B.) And it informs him, "Your intimate partner will be contacted by the Domestic Violence Supervision Unit to verify that you have completely disclosed all public information relating to your domestic violence." (Doc. 24, Ex. B.)

The State argued condition 29 was necessary to "enforce the no victim contact through electronic means conditions." (Doc. 23 at 4.) The prosecutor fretted that even if M.E. "comes in and says, 'he keeps contacting me, I want him to stop,'" the only way law enforcement could

[4] Without conceding its legality, Christopher does not challenge on appeal the portion of condition 31 that requires him to sign and abide by the "Offensive Contact Contract." He challenges only the "Intimate Partner Disclosure" requirement.

confirm if this was true would be to "look at his phone." (11/29 Tr. at 11.)

The State also argued as to condition 29 that, generally speaking, "an increasing number of violent offenders are now reaching out through phone, social media, and electronic means to intimidate, harass, and contact their victims." (Doc. 23 at 4.) The State presented no evidence or argument, however, that Christopher himself had ever done this.

The State argued condition 31 was necessary because, in general, abusers tend to victimize multiple women. (Doc. 23 at 5.) The State claimed this condition would "help mitigate the risk to any future victims" who otherwise might be "unaware of [the offender's] conviction and available services." (Doc. 23 at 5–6.) The State did not mention that a separate condition, condition 14, already required Christopher to register as a violent offender, thus making the record of his PFMA conviction readily available to the general public. (Doc. 30 at 7.)

The defense objected to conditions 29 through 31. (Doc. 24 at 4–7; Doc. 25 at 1–2; 11/29 Tr. at 7–8, 13.) At the sentencing hearing, the District Court expressed serious doubt about the legality of these

conditions. The court stated, "I'm not comfortable with (29), (30), or (31) and I believe you've [speaking to defense counsel] raised substantial questions about each one of them." (11/29 Tr. at 15.) The court added condition 31 "gets pretty deeply into that individual's zone of otherwise constitutionally protected privacy." (11/29 Tr. at 17.) Referring to all the pilot program conditions, the court reiterated, "I am not comfortable with any of the three of them." (11/29 Tr. at 17.)

Despite recognizing their dubious legality, the District Court imposed these conditions anyway. Its rationale was that if it did not impose them, then "we don't get any input from the Montana Supreme Court on whether these are legal" and "I would like to have these reviewed." (11/29 Tr. at 12, 15.) The court thus imposed the conditions not because it believed they were lawful, but simply in order to "find out what the Supreme Court thinks about it." (11/29 Tr. at 15.)

The court stated, "I don't like being reversed, and I'm likely, I think, to get my face rubbed in these." (11/29 Tr. at 15.) The court encouraged defense counsel to appeal and said, "And then, I'll be on the receiving end of a decision that says, I got this wrong." (11/29 Tr. at 16.)

STANDARDS OF REVIEW

This Court reviews "the reasonableness of conditions or restrictions imposed on the sentence for an abuse of discretion." *State v. Johnson*, 2023 MT 143, ¶ 6, 413 Mont. 114, 533 P.3d 335. The constitutionality of a probation condition is subject to plenary review. *See State v. Marquart*, 2020 MT 1, ¶ 16, 398 Mont. 233, 455 P.3d 460.

SUMMARY OF THE ARGUMENT

Condition 29 authorizes an unreasonable, warrantless search of Christopher's most private digital information and is detached from the goals of probation supervision. The conduct that could trigger this search is incredibly broad: any *attempt* by Christopher to contact M.E. (even if unsuccessful), including an in-person attempt that did not use electronic means at all, would trigger a search of his cell phone, personal computer, and social media accounts.

The search itself would be equally overbroad. The condition on its face does not limit the scope of the search at all. It does not, for instance, restrict a probation officer to search only for direct evidence of communications with M.E., or to search only particular cell phone or computer applications (or "apps") that could be used for communication.

This condition also does nothing to protect M.E. from Christopher's unwanted contact. The present offense occurred in person—without even the tangential use of electronic devices—and there is no evidence Christopher has ever used electronic devices to unlawfully contact M.E. If Christopher does contact M.E. electronically, M.E. can present law enforcement with the proof of that communication on her own electronic device.

Condition 31 amounts to a breathtaking privacy invasion, both against Christopher and against anyone with whom he becomes romantically involved in the future. It unconstitutionally compels Christopher's speech by forcing him to tell people about his criminal history. It is overly broad, and it does nothing to rehabilitate Christopher or protect M.E. It is also redundant; its purpose is to inform Christopher's future romantic interests of his criminal record, but his publicly available violent offender registration already does that.

ARGUMENT

I. Condition 29 violates Christopher's constitutional protection against unreasonable searches and is not reasonably related to the goals of his supervision.

A. This condition authorizes an unconstitutional search of Christopher's most private digital data.

Christopher has a right under the United States and Montana constitutions to be free from unreasonable government searches. U.S. Const. amend. IV; Mont. Const. art. II, § 11; *State v. Ballinger*, 2016 MT 30, ¶ 15, 382 Mont. 193, 366 P.3d 668. The Montana Constitution's right to privacy affords Christopher even stronger protection than the federal Constitution's search and seizure clause. Mont. Const. art. II, § 10; *State v. Hardaway*, 2001 MT 252, ¶ 31, 307 Mont. 139, 36 P.3d 900.

A "search" occurs when the government intrudes on an individual's "reasonable expectation of privacy." *State v. Mefford*, 2022 MT 185, ¶ 12, 410 Mont. 146, 517 P.3d 210. If an individual has a subjective expectation of privacy that is objectively reasonable, as judged by the society at large, then he has a reasonable expectation of privacy. *Mefford*, ¶ 12. Once a reasonable expectation of privacy is established, courts look at "the nature of the State's intrusion" to

determine whether the search is "reasonable under the circumstances." *Mefford*, ¶ 12.

Although probationers have a diminished expectation of privacy, being on probation does "not eviscerate all of the defendant's rights of privacy." *State v. Conley*, 2018 MT 83, ¶ 17, 391 Mont. 164, 415 P.3d 473. A probationer's privacy interests, while diminished, are "still substantial." *United States v. Lara*, 815 F.3d 605, 610 (9th Cir. 2016); *accord Samson v. California*, 547 U.S. 843, 850 (2006) (noting expectations of privacy for people under criminal supervision fall on a "continuum," and probationers retain greater privacy expectations than parolees). "[W]hen privacy-related concerns are weighty enough, a search may require a warrant, notwithstanding" the person's "diminished expectations of privacy." *Riley v. California*, 573 U.S. 373, 392 (2014) (holding the search-incident-to-arrest exception did not justify a warrantless search of the arrestee's cell phone data, despite the arrestee's diminished expectation of privacy) (internal quotations omitted).

Warrantless searches "are *per se* unreasonable under the Fourth Amendment and Montana Constitution, Article II, section 11." *State v.*

Hoover, 2017 MT 236, ¶ 14, 388 Mont. 533, 402 P.3d 1224. The State has the burden of proving a warrantless search is justified by one of a limited number of exceptions to the warrant requirement. *State v. Peoples*, 2022 MT 4, ¶ 16, 407 Mont. 84, 502 P.3d 129.

One exception to the warrant requirement is a probation search. *Peoples*, ¶ 17. Law enforcement may search a probationer's property without a warrant only if the following three conditions are met: (1) the search is "generally authorized by an established state law regulatory scheme that furthers the special government interests in rehabilitating probationers and protecting the public from further criminal activity by ensuring compliance with related conditions of probation and the criminal law"; (2) the officer has reasonable cause to suspect a probation "violation"; and (3) the search is "limited in scope to the reasonable suspicion that justified it in the first instance," except in the case that additional cause arises during a lawful search. *Peoples*, ¶ 17.

Even as a probationer, Christopher has a reasonable expectation of privacy in the contents of his electronic devices. Condition 29 unconstitutionally authorizes a warrantless search of that information without satisfying the criteria for a probation search exception.

1. As a PFMA probationer whose offense has nothing to do with electronic devices, Christopher retains a reasonable expectation of privacy in his personal electronic data.

Christopher committed the present offense in person, at M.E.'s house. Nothing in the record—from the State's charging documents to the plea colloquy—mentions Christopher's direct or even tangential use of a cell phone, computer, or social media account to commit or facilitate the present offense. (*See* Doc. 1; 6/7 Tr. at 9–10.) Nor does the offense of PFMA itself require the use of electronic communications. *See* Mont. Code Ann. § 45-5-206.

There may certainly be cases in which an offender forfeits his expectation of privacy in his digital data as a result of using an electronic device to facilitate criminal activity, such as with a privacy in communications, online stalking, or child pornography violation. This is not one of those cases. Christopher did not relinquish his expectation of privacy in his personal digital data simply by committing an in-person assault.

Christopher has a substantial and reasonable expectation of privacy in the information stored on his personal electronic devices, even though he is subject to probation supervision. *See Mefford*, ¶¶ 14–

15 (recognizing the defendant, even as a parolee, had both a subjective and objectively reasonable expectation of privacy in his cell phone, given "the vast quantity of personal information it contained"). This is particularly true with respect to his cell phone.

As the U.S. Supreme Court recognized in *Riley* and this Court recognized in *Mefford*, "Cell phones have become storage devices for all manner of private information." *Mefford*, ¶ 15 (holding the parole officer's lawful authority to search one app on the defendant's cell phone did not justify searching a different app); *Riley*, 573 U.S. at 393. "Smartphones" are the cell phone of choice for 97% of Americans in Christopher's age demographic of 30–49 years (Christopher was 32 at sentencing).[5] Smartphones are essentially "minicomputers that also happen to have the capacity to be used as a telephone." *Riley* 573 U.S. at 393. They are "a palm-sized portal into an individual's personal life." *Mefford*, ¶ 15.

Smartphones have "immense storage capacity." *Riley*, 573 U.S. at 393. At the time of the U.S. Supreme Court's decision in *Riley* in 2014,

[5] *Mobile Fact Sheet*, Pew Research Center (Jan. 31, 2024), https://www.pewresearch.org/internet/fact-sheet/mobile/.

the top-selling smartphone came with a standard storage capacity of 16 gigabytes—which could translate to "millions of pages of text, thousands of pictures, or hundreds of videos." *Riley*, 573 U.S. at 394. Today, the entry-level storage capacity of a new-model Apple iPhone is 128 gigabytes—eight times the standard capacity as when *Riley* was decided.[6] A standard, modern smartphone can thus store unimaginable quantities of pictures, videos, documents, and apps, as well as "information about a person's health and activity, dating, video streaming, mobile shopping, banking, and password storage." *Mefford*, ¶ 15 (internal quotations omitted).

A cell phone search "would typically expose to the government far *more* than the most exhaustive search of a house." *Mefford*, ¶ 15 (emphasis in original). This is because a typical cell phone "not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form." *Mefford*, ¶ 15.

[6] Apple, *Compare iPhone Models*, https://www.apple.com/iphone/compare/ (last visited March 25, 2024).

A smartphone may contain the "sum of an individual's private life" and "a digital record of nearly every aspect of" one's life, "from the mundane to the intimate." *Riley*, 573 U.S. at 394–95. Giving law enforcement the green light to search a person's cell phone without a warrant or strict guardrails in place effectively gives the searching officer "unbridled discretion to rummage at will among a person's private effects." *Riley*, 573 U.S. at 399.

The data a cell phone contains may be immensely personal. A cell phone retains the user's internet browsing history, which can "reveal an individual's private interests or concerns." *Riley*, 573 U.S. at 395.

"Data on a cell phone can also reveal where a person has been." *Riley*, 573 U.S. at 396. Location data is a "standard feature" on smartphones "and can reconstruct someone's specific movements down to the minute." *Riley*, 573 U.S. at 396. This can reveal "a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations." *Riley*, 573 U.S. at 396 (quoting *United States v. Jones*, 565 U.S. 400 415 (2012) (Sotomayor, J., concurring)). In this manner, a cell phone acts as a round-the-clock GPS tracking device.

Carpenter v. United States, 138 S.Ct. 2206, 2218 (2018) ("A cell phone faithfully follows its owner beyond public thoroughfares and into private residences, doctor's offices, political headquarters, and other potentially revealing locales.").

In addition, the collection of apps on a person's cell phone "can form a revealing montage of the user's life." *Riley*, 573 U.S. at 396. Cell phone apps "offer a range of tools for managing detailed information about all aspects of a person's life." *Riley*, 573 U.S. at 396. There are apps for political party affiliation, alcohol or gambling addictions, sharing prayer requests, tracking health data, planning budgets, managing finances, buying and selling goods and services, dating, and "for every conceivable hobby or pastime." *Riley*, 573 U.S. at 396.

Because of its highly revealing nature, society recognizes as reasonable one's expectation of privacy in his or her personal digital data. *See Mefford*, ¶ 15. This is particularly true in Montana. On November 8, 2022—three weeks before Christopher's sentencing hearing—the people of Montana voted by a landslide 82%–18% margin

to enact Constitutional Amendment 48.[7] This referendum amended Article II, section 11 of the Montana Constitution to explicitly add "electronic data and communications" to the list of things the government generally may not search or seize without a warrant. 2021 Mont. Laws ch. 370, § 1. Although this amendment did not become effective until July 1, 2023, after Christopher's sentencing, it is instructive. Montana overwhelmingly views a person's expectation of privacy in his or her electronic data as objectively reasonable.

2. Condition 29 does not meet the three requirements for a probation search exception to the warrant requirement.

a. This condition is not authorized by statute or administrative rule.

Probation searches must be "authorized by an established state law regulatory scheme" and "conducted pursuant to state law." *Peoples*, ¶ 17; *State v. Fischer*, 2014 MT 112, ¶ 10, 374 Mont. 533, 323 P.3d 891. The legal authority for probation searches emanates from Title 46, chapter 18 of the Montana Code Annotated and section 20.7.1101 of the

[7] John Riley, *Montana Passes Electronic Data Privacy Ballot Measure*, KTVH, Nov. 9, 2022, https://www.ktvh.com/news/montana-passes-electronic-data-privacy-ballot-measure (last accessed March 19, 2024).

Administrative Rules of Montana (A.R.M.). *See Peoples*, ¶ 20. These provisions do not authorize what is occurring in Cascade County: the imposition of sweeping electronic data searches as a stock probation condition for all domestic violence offenders.

Under the A.R.M., a probation officer may "search the person, vehicle, and residence of the offender" upon reasonable suspicion of a violation, but this provision says nothing of electronic devices. Admin. R. M. 20.7.1101(7). Because a cell phone search will "typically expose to the government far *more* than the most exhaustive search of a house," *Mefford*, ¶ 15 (emphasis in original), this home-search provision cannot reasonably be interpreted to permit cell phone searches.

A sentencing judge has statutory authority to impose probation conditions that are "reasonably related to the objectives of rehabilitation and the protection of the victim and society." Mont. Code Ann. § 46-18-202(1)(g); *accord* Mont. Code Ann. § 46-18-201(4)(p). The offense of PFMA does not inherently implicate electronic devices, and Christopher's offense did not even tangentially involve his use of electronic devices. An electronic device search condition that is categorically imposed in all PFMA cases in Cascade County—without

regard to whether a particular offender has actually used electronic devices to facilitate criminal activity—is not "reasonably related" to rehabilitating probationers like Christopher or protecting victims like M.E. Montana's probation-supervision regulatory scheme did not authorize this stock condition that Cascade County's probation and parole office invented.

b. This condition does not require suspicion of an actual probation violation.

Condition 29 authorizes a probation officer to rummage through Christopher's most sensitive electronic data merely upon suspicion "that the Defendant *is attempting to contact* the victim in violation of the Defendant's conditions of supervision." (Doc. 30 at 9 (emphasis added).) The related condition that prohibits Christopher from contacting M.E., condition 23, states he "shall not knowingly *have any contact*, written, electronic, or through a third party, with the victim." (Doc. 30 at 8 (emphasis added).) Condition 23 prohibits *actual* contact with M.E., not attempted contact.

According to condition 29, a probation officer may search Christopher's electronic devices upon reasonable suspicion of an *attempted*, not an *actual* probation violation. Suppose Christopher

shows up at M.E.'s old house and knocks on the door, only to find out she no longer resides there. Or suppose he calls her old phone number that she has since disconnected. He will not have had "any contact" with M.E., and thus will not have violated his no-contact condition. (*See* Doc. 30 at 8.) But because he will have *attempted* to contact M.E., condition 29 would authorize a search of all of his electronic devices. Because condition 29 authorizes a search without first requiring reasonable suspicion that Christopher may be "*in violation* of his [ ] probation conditions," it fails to satisfy the second prong of the probation search exception to the warrant requirement. *See Peoples*, ¶ 17 (emphasis added).

c. This condition authorizes a search that is not at all "limited in scope."

Condition 29 places no limitations on the officer's search. The condition states that upon reasonable suspicion of any attempted communication, the officer "may conduct a search of electronic devices, to include, cell phone, personal computer, and social media," period. (Doc. 30 at 9.) Nothing in this clause limits the scope of the search to only those apps or programs that can be directly used for communication. Nor does it limit the officer to search only for *direct*

evidence of actual communications with M.E. A probation officer could reasonably read condition 29 to allow a search for *any* evidence that even circumstantially corroborated Christopher's attempts to communicate with M.E.

Suppose M.E. received calls or texts from a number she did not recognize but suspected this might be Christopher contacting her from a burner phone. A probation officer could reasonably read condition 29 to authorize a search of Christopher's credit card transactions, mobile banking information, and internet browser history to see if he had searched for or purchased any burner phones recently. Or suppose M.E. received a delivery of chocolates and a card that she suspected might be from Christopher. A probation officer could rely on condition 29 to search all of Christopher's online purchase history to confirm whether he was the sender.

Thus, in conducting a search for tangential evidence of Christopher's attempts to communicate with M.E. under the authority of condition 29, the probation officer would uncover reams of revealing information about Christopher's "private interests or concerns." *Riley*, 573 U.S. at 395. Condition 29 would effectively give the officer

unbridled access to a "portal into [Christopher's] personal life." *Mefford*, ¶ 15.

Even if Christopher's probation officer tried to limit the scope of his or her search, the probability of an unwarranted privacy intrusion is substantial. Most probation officers are not trained digital forensic analysts with the skills or equipment to carefully parse out data that pertains to their reasonable suspicion from that which does not. An officer looking through Christopher's text messages, emails, or direct messages on social media for communications with M.E., for instance, would be hard-pressed to *not* see innocent and deeply private messages between Christopher and his friends, family, therapist, pastor, or medical provider. By perusing through Christopher's phone records looking for calls to M.E., an officer would necessarily see other phone numbers and contacts that give a glimpse into Christopher's private associations.

Moreover, the collection of apps on Christopher's phone in itself would give his probation officer "a revealing montage" of Christopher's personal life—such as his interests, hobbies, religious beliefs, political affiliation, medical conditions, or how he manages his money. *Cf. Riley*,

573 U.S. at 396. Simply by thumbing through Christopher's phone looking for a particular app that the officer had reasonable suspicion to search, the officer would learn much about Christopher's private life that has nothing to do with criminal activity or probation supervision.

It would also be troublingly easy for Christopher's probation officer to instantly expand the scope of a cell phone search. Smartphone apps are designed for the user to navigate quickly and seamlessly within and between them. An officer searching Christopher's outgoing calls in his phone app could, with the split-second tap of a finger, view his entire contacts list. An officer intending to open one relevant app could, by accident or spontaneous curiosity, navigate his or her finger a couple millimeters to the side, tap a different app, and suddenly be viewing Christopher's photographs or journal entries.

This is starkly different from a home search, where an officer with lawful cause to search one part of the house would have to make a conscientious, deliberate, and somewhat time-consuming choice to expand the scope of the search. An officer lawfully searching a garage, for instance, would have to go well out of his way to rummage through the homeowner's bedside drawer. By contrast, a cell phone contains

much more private content in an exponentially smaller space. *See Mefford*, ¶ 15. The searching officer can move seamlessly from the digital "garage" to the digital "bedroom" and back with near-instantaneous taps of the finger.

Condition 29 authorizes an electronic device search for almost any reason, and it places no guardrails on the search itself. This broadly worded condition opens the floodgates to sweeping, invasive searches of Christopher's most private digital information. These searches will be "limited" only by the scope of the probation officer's curiosity.

3. This condition is unnecessary, highlighting its unreasonableness.

The ultimate question in determining the lawfulness of a search is whether "the nature of the State's intrusion" is "reasonable under the circumstances." *Mefford*, ¶ 12. The nature of the State's intrusion here is significant, but there is no compelling reason for it. This is not "reasonable under the circumstances."

Realistically, if Christopher's probation officer determines "reasonable suspicion exists that the Defendant is attempting to contact the victim," (*see* Doc. 30 at 9), that will be because M.E. has reported Christopher's unwanted contact. If M.E. reports Christopher has

contacted her electronically, she will almost certainly have electronic proof in the form of an incoming call, voice message, text message, email, or social media post from Christopher. After all, electronic communications necessarily show up on both the sender's *and* the recipient's devices.

Law enforcement does not need to search Christopher's phone to get this evidence, because M.E. can simply give it to them. The prosecutor was incorrect when he implied that if M.E. reports Christopher's unwanted contact, the only way the State could confirm his violation would be to look at *his* phone. (11/29 Tr. at 11.) It would be much easier, and far less violative of the constitution, to look at *her* phone.

M.E.'s report and the evidence on her phone would most likely be sufficient to revoke Christopher's suspended sentence, because the State need only establish a probation violation "by a preponderance of the evidence." Mont. Code Ann. § 46-18-203(6)(a). If the State somehow needed more proof, it could use M.E.'s report to establish probable cause for a warrant to search Christopher's phone.

There is simply no need for a warrantless search of Christopher's phone. Because this massive privacy intrusion lacks any compelling justification, it is unreasonable and thus unconstitutional.

B. Condition 29 is not reasonably related to facilitating Christopher's supervision.

A district court has no power to impose a sentencing condition absent "a specific grant of statutory authority." *State v. Melton*, 2012 MT 84, ¶ 17, 364 Mont. 482, 276 P.3d 900. The statutory authority to impose probation conditions emanates from §§ 46-18-201 and -202. *Melton*, ¶ 17; *Johnson*, ¶ 7. These statutes authorize the judge to impose "reasonable restrictions or conditions" on a period of suspended sentence, including any conditions "reasonably related to" and "considered necessary for rehabilitation or for the protection of the victim or society." §§ 46-18-201(4)(p), -202(1)(g).

Probation restrictions—particularly those that burden the defendant's constitutional rights—are supposed to be "narrowly tailored" to rehabilitate the offender and protect the community. *State v. Guill*, 2011 MT 32, ¶¶ 67–68, 359 Mont. 225, 248 P.3d 826; *accord* 6 Wayne R. LaFave, *Criminal Procedure* § 26.9(b) (4th ed. Dec. 2023 update) (stating such conditions are "impermissible if the impact upon

the probationer's rights 'is substantially greater than is necessary to carry out the purposes' of probation").

To constitute a "reasonable restriction," a probation condition must satisfy two criteria. First, there must be a clear nexus between the probation condition and the offense or offender. *State v. Ashby*, 2008 MT 83, ¶ 15, 342 Mont. 187, 179 P.3d 1164. A "nexus" means a logical relationship between the probation condition and "the particular context of an offender's crime or the unique background, characteristics, or conduct of the offender." *Zimmerman*, ¶ 17. Second, even if there is a nexus, a probation condition may not be "overly broad or unduly punitive." *Johnson*, ¶ 7. Although a district court has broad discretion to impose sentencing conditions, that discretion "is not without limit," and this Court's review of such conditions "is not without teeth." *Zimmerman*, ¶ 17.

1. The nexus between condition 29 and Christopher's offense is tenuous.

This condition is part of a "pilot program" created by the Cascade County probation and parole office. The State routinely seeks to impose this exact same condition in domestic-violence related cases in that county. (*See* 11/29 Tr. at 8–9.) The State argued below that this

condition was necessary because "an increasing number of violent offenders are now reaching out through phone, social media, and electronic means to intimidate, harass, and contact their victims." (Doc. 23 at 4.) But the State made no assertion—and there is no evidence—that *Christopher* has ever done this. There is simply no relation between Christopher's conduct and the use of electronic devices.

Further, as charged here, PFMA occurs when a person "purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member." Mont. Code Ann. § 45-5-206(1)(c). There is nothing inherent in this offense that requires the use of a cell phone, computer, or social media account. It is perfectly possible for a person to commit this offense without using any electronic device—as evidenced by this case. Nothing about this condition is tailored to Christopher himself or to his offense.

2. This condition is overly broad.

Shielding M.E. from Christopher's contact is a legitimate goal of probation supervision. But this goal is already covered by condition 23, which explicitly prohibits him from contacting her. Condition 29 is not tailored to achieve this goal.

In *Johnson*, the defendant pled guilty to sexual intercourse without consent. *Johnson*, ¶ 3. Johnson had communicated with his victim via text messaging and Snapchat, a cell phone app. *Johnson*, ¶ 3. The district court imposed conditions that Johnson not access the internet or possess a computer or cell phone without first obtaining permission from his probation officer. *Johnson*, ¶ 4.

On appeal, this Court held the technology restrictions were overly broad because they went "beyond what is reasonably related to Johnson's criminal history, and the offense of which he was convicted." *Johnson*, ¶ 9. Rather than being narrowly tailored to advance Johnson's rehabilitation and protect the victim and society, these conditions unduly restricted Johnson's freedom to use the internet for a host of legitimate purposes. *Johnson*, ¶ 13.

Similarly, in *State v. Hotchkiss*, 2020 MT 269, 402 Mont. 1, 474 P.3d 1273, the defendant was convicted of sexual assault and tampering with evidence. The offenses were "not committed using any type of electronic device." *Hotchkiss*, ¶ 18. Nonetheless, the District Court imposed conditions prohibiting Hotchkiss from accessing the internet or possessing certain electronic devices without permission from his

probation officer. *Hotchkiss*, ¶ 18. This Court held that the "broad scope of these conditions goes beyond what is reasonably related to Hotchkiss's criminal history, and the offense of which he was convicted." *Hotchkiss*, ¶ 18. The Court thus held the conditions were "overbroad" and could not be lawfully imposed as written. *Hotchkiss*, ¶ 19.

As in *Johnson* and *Hotchkiss*, condition 29 "goes beyond what is reasonably related to" Christopher's criminal history and the offense of which he was convicted. *Hotchkiss*, ¶ 18; *Johnson*, ¶ 9. As discussed above, there is no evidence Christopher has a tendency to use electronic means to contact or harass M.E. The evidence is that he assaulted her in person. Condition 29 would do nothing to prevent this type of in-person contact.

Nothing about this condition is tailored to Christopher's criminal history or the offense he committed here. It is therefore unreasonable, in violation of §§ 46-18-201 and -202. *See Johnson*, ¶ 9; *Hotchkiss*, ¶ 18.

II. The Intimate Partner Disclosure requirement of condition 31 is unreasonable and unconstitutional.

A. Forcing Christopher to disclose the identities of anyone with whom he becomes "romantically involved" violates his constitutional right to privacy.

Christopher has a constitutional right to privacy under both the Montana and United States constitutions. The right to privacy is implicit under the United States Constitution. *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965). The Montana Constitution makes this right explicit: "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." Mont. Const. art. II, § 10. Montana's right to privacy is "one of the most stringent . . . in the country," and its "treatment of privacy rights is more strict than that offered by the Federal Constitution." *State v. Burns*, 253 Mont. 37, 40, 830 P.2d 1318, 1320 (1992).

The constitutional right to privacy—or "the right to be let alone"—is perhaps "the most comprehensive of rights and the right most valued by civilized men." *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting). The right to privacy "encompasses and protects the personal intimacies of the home." *Paris Adult Theatre I*

v. Slaton, 413 U.S. 49, 65 (1973). It includes "avoiding disclosure of personal matters" to the government. *Whalen v. Roe*, 429 U.S. 589, 599 (1977).

The right to privacy extends to "certain kinds of personal bonds," *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984), and "certain intimate conduct," *Lawrence v. Texas*, 539 U.S. 558, 562 (2003). "[C]hoices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme." *Roberts*, 468 U.S. at 617–18. "[H]ighly personal relationships" warrant a "substantial measure of sanctuary from unjustified interference by the State." *Roberts*, 468 U.S. at 618. "The freedom of intimate association" goes hand in hand "with the right of privacy." *Griffin v. Strong*, 983 F.2d 1544, 1547 (10th Cir. 1993).

In *Griswold*, the U.S. Supreme Court recognized a constitutional right to privacy in the closed-door workings of a marital relationship. *Griswold*, 381 U.S. at 485–86 (holding a law banning contraceptive use was unconstitutional). In *Eisenstadt*, that Court extended the

constitutional privacy right to unmarried individuals. *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) (striking down a law that prohibited distribution of contraceptives to unmarried persons). And in *Lawrence*, it held the right to privacy meant consenting adults may engage in "intimate conduct" without interference from the government. *Lawrence*, 539 U.S. at 567, 578 (striking down a state law criminalizing same-sex sodomy).

Above and beyond the federal right to privacy in one's own intimate conduct and intimate relationships, the Montana Constitution provides even greater privacy protections. In Montana, privacy is an explicit, "fundamental" constitutional right. *Armstrong v. State*, 296 Mont. 361, 373, 989 P.2d 364, 374 (1999). Its distinct "textual protection in our Constitution reflects Montanans' historical abhorrence and distrust of excessive governmental interference in their personal lives." *Armstrong*, 296 Mont. at 373, 989 P.2d at 374 (internal quotations omitted).

Christopher has a constitutional right to keep his intimate conduct private from the government. *See Lawrence*, 539 U.S. at 562; *Roberts*, 468 U.S. at 617–18. His assault of M.E. may have forfeited his

right to privacy in his relationship with *her*, but it did not forfeit his right to privacy in his intimate contact with *any person* in the future. Forcing him to tell the State the names, home addresses, and phone numbers of anyone with whom he becomes "sexually" or "romantically" involved directly affronts the right to individual privacy that is "essential to the well-being of a free society." Mont. Const. art. II, § 10.

Given that privacy is a *fundamental* constitutional right, "the State must show that the restriction furthers a compelling governmental interest and is narrowly tailored to achieve that interest." *Guill*, ¶ 67; *accord* Mont. Const. art. II, § 10 (stating a privacy intrusion is not allowed "without the showing of a compelling state interest"). Nothing about this wildly overbroad Intimate Partner Disclosure requirement is "narrowly tailored to achieve" the government's purported interest in protecting hypothetical future victims from Christopher's hypothetical future abuse.

First, this condition does nothing to protect M.E.—Christopher's only actual, documented victim. Second, the key terms of this condition are overbroad, wide open to interpretation, and extremely invasive of Christopher's personal life. He must notify his probation officer not just

whenever he establishes a long-term relationship like he had with M.E., but whenever he becomes "romantically involved" or has a "sexual/romantic relationship" with someone. These incredibly vague terms could potentially cover *any* romantic or sexual encounter Christopher may have in the future, not just long-term romantic partnerships.

Third, this condition needlessly infringes on the constitutional privacy and association rights of anyone with whom Christopher becomes "romantically involved" in the future, highlighting its overbreadth. People have a right to associate with others without disclosing their private associations to the government. Mont. Const. art. II, § 6; U.S. Const. amend. I; *Nat'l Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958) (noting the "vital relationship between freedom to associate and privacy in one's associations"); *Montana Auto. Ass'n v. Greely*, 193 Mont. 378, 397, 632 P.2d 300, 310 (1981). But any person who goes on a date or has sex with Christopher will automatically have their intimate association with him reported to local law enforcement. And nothing in condition 31 or the Intimate Partner Disclosure form requires that these people consent to

(or even know in advance of) this forced disclosure of their romantic associations. (*See* Doc. 24, Ex. B; Doc. 30 at 9.)

"A privacy violation exists where the subject of the intrusion holds an objectively reasonable expectation of privacy and where the State's intrusion is not justified by a compelling government interest or taken with sufficient procedural safeguards." *State v. Wolfe*, 2020 MT 260, ¶ 11, 401 Mont. 511, 474 P.3d 318. It is objectively reasonable for an ordinary, law-abiding citizen in Cascade County who meets Christopher, hits it off with him, goes on a couple of dates, and possibly has sex with him to expect that local law enforcement will not be notified of her intimate conduct and provided with her name, phone number, and home address without her consent. A condition that causes such collateral damage to the constitutional rights of law-abiding citizens is not "narrowly tailored" to prevent Christopher from committing more assaults.

Rather than using a scalpel with surgical precision to achieve the government's goals, condition 31 uses a sledgehammer, swings wildly in all directions, and strikes not only the patient but also innocent bystanders. Nothing about this condition protects M.E. It goes too far by

requiring Christopher to disclose *all* of his romantic or sexual encounters to law enforcement, no matter how casual or fleeting. And it unjustifiably infringes on the rights of ordinary people who may wish to keep their identities, contact information, and sexual associations private from the State's prying eyes.

Because this condition is not "narrowly tailored" to achieve an important government interest, its substantial privacy intrusion is unconstitutional. *Guill*, ¶ 67.

B. This condition unconstitutionally compels Christopher's speech.

Part of the Intimate Partner Disclosure form requires that Christopher "Disclose the extent and nature of your domestic violence to your current intimate partner." (Doc. 24, Ex. B.) This violates Christopher's right to freedom of speech under the U.S. and Montana constitutions. U.S. Const. amend. I; Mont. Const. art. II, § 7.

It is "a basic First Amendment principle that 'freedom of speech prohibits the government from telling people what they must say.'" *Agency for Int'l. Dev. v. All. for Open Soc'y Int'l., Inc.*, 570 U.S. 205, 213 (2013). The right to freedom of speech "includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*,

430 U.S. 705, 714 (1977). "[M]easures compelling speech are at least as threatening" to constitutional rights as measures restricting speech. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 892 (2018).

If and when Christopher takes a woman out on a date, he may wish to not discuss with her the details of his criminal history. But condition 31 compels him to do so, under threat of revocation of his suspended sentence. Christopher has a constitutional right "to refrain from speaking" about his criminal record. *Wooley*, 430 U.S. at 714.

If the State wants Christopher's future romantic interests to know about his domestic violence history, the State can tell them. And the State has done this: Christopher's PFMA convictions are *publicly* displayed on the Montana Department of Justice's Sexual or Violent Offender Registry, for anyone with an internet connection to see.[8] There is no good reason to force Christopher to speak about his already publicly available criminal record. Given the absence of any compelling

[8] The violent offender registry is publicly available at https://dojmt.gov/sexual-or-violent-offender-registry/. Appellate counsel's search of this registry, as of March 20, 2024, shows Christopher is listed as a violent offender with multiple PFMA convictions.

justification, this forced speech is unconstitutional. *See Agency for Int'l. Dev.*, 570 U.S. at 213.

C. This condition is not reasonably related to the goals of probation supervision.

1. The nexus is inadequate.

The Intimate Partner Disclosure requirement forces Christopher to disclose his criminal record to anyone with whom he becomes "romantically involved," but there is no evidence Christopher has abused women with whom he is simply "romantically involved." The only evidence in this case is that he has abused M.E., a long-term girlfriend. Nor is there a nexus to the offense of PFMA in general, which is concerned with abuse of long-term or serious "partners," not isolated dates, romantic flings, or budding romantic relationships. § 45-5-206(2)(b). Applying this condition to Christopher is like trying to fit a square peg in a round hole—it is simply unrelated to the nature of his behavior or the offense charged.

2. This condition is overbroad.

Basic principles of due process require that a probationer "know in advance what behavior is prohibited." 6 Wayne R. LaFave, *Criminal Procedure* § 26.9(b) (4th ed. Dec. 2023 update) (citing *Grayned v. City of*

Rockford, 408 U.S. 104 (1972)). A probation condition "does not afford fair notice" of its requirements unless "the average person would understand the meaning of the admonition." 6 Wayne R. LaFave, *Criminal Procedure* § 26.9(b) (4th ed. Dec. 2023 update).

In *United States v. Reeves*, 591 F.3d 77 (2nd Cir. 2010), the Second Circuit Court of Appeals considered the validity of a supervised release condition that required the offender to disclose any "significant romantic relationship." The court noted that if a condition is so vague that it requires one to "guess at its meaning," due process requires that it not be imposed. *Reeves*, 591 F.3d at 81.

That court held the condition was overly vague and could not be imposed. "What makes a relationship 'romantic,'" the court explained, "let alone 'significant' in its romantic depth, can be the subject of endless debate that varies across generations, regions, and genders." *Reeves*, 591 F.3d at 81. For some, a romantic relationship could be defined by "the exchange of gifts such as flowers or chocolates; for others, it would depend on acts of physical intimacy." *Reeves*, 591 F.3d at 81. The court stated, "The history of romance is replete with precisely these blurred lines and misunderstandings." *Reeves*, 591 F.3d at 81.

The court held that condition had "no objective baseline," and "[n]o source provides anyone—courts, probation officers, prosecutors, law enforcement officers, or [the defendant] himself—with guidance as to what constitutes a 'significant romantic relationship.'" *Reeves*, 591 F.3d at 81. The court agreed Reeves' continued freedom during supervised release "should not hinge on the accuracy of his prediction of whether a given probation officer, prosecutor, or judge would conclude that a relationship was significant or romantic." *Reeves*, 591 F.3d at 81.

Just like the condition in *Reeves*, the requirement that Christopher tell his probation officer every time he becomes "romantically involved" or has an "other sexual/romantic relationship" with someone is vague, overbroad, and impossible to understand. There is no objective definition of these terms upon which Christopher, his probation officer, the prosecutor, or the judge can rely. What "romantic" involvement or a "romantic relationship" mean could be "the subject of endless debate." *Reeves*, 591 F.3d at 81. Christopher must unfairly "guess at [the] meaning" of these terms. *Reeves*, 591 F.3d at 81.

The vagueness and overbreadth of these terms leaves many questions unanswered for anyone seeking to comply with or enforce

condition 31. Does Christopher have to report every time he buys a woman flowers or chocolates? What about when he flirts with a woman on whom he has a crush? Must he call his probation officer every time he has sex?

The Intimate Partner Disclosure form is clear that Christopher must report "dating" relationships, but even this a vague term. If Christopher takes a woman out to dinner or a movie one time, must he report it? What if he does so a second time, or a third? What if he does not consider these outings formal "dates," but his probation officer does? Will he be revoked for not disclosing them?

The form is also clear Christopher must disclose any serious, long-term relationships (*i.e.*, "girlfriend" or "wife"). But at what point on the continuum of an emerging relationship must Christopher disclose it—after he and his prospective partner have held hands, after they have kissed, after they have had sex, or only after they officially and publicly declare themselves boyfriend and girlfriend?

There is simply "no objective baseline" of what constitutes "romantically involved." *See Reeves*, 591 F.3d at 81. Christopher's continued freedom during his suspended sentence "should not hinge on

the accuracy of his prediction of whether a given probation officer, prosecutor, or judge would conclude that" certain intimate conduct in which he engages falls within the purview of condition 31. *Reeves*, 591 F.3d at 81. This condition should be struck for its vagueness and overbreadth.

3. This condition does not advance the goals of probation supervision—rehabilitation of Christopher and the protection of M.E. and the community.

This condition does nothing to rehabilitate Christopher; it only stigmatizes him. It humiliates Christopher by forcing him to tell any woman he so much as asks on a date that he is a convicted felon and abuser. It further humiliates him by forcing him to hand over his date's name, phone number, and home address so his probation officer can call her and make sure Christopher told her he is an abuser. "[T]he effect of such a scarlet letter condition tends to over-shadow any possible rehabilitative potential that it may generate." *State v. Muhammad*, 2002 MT 47, ¶ 37, 309 Mont. 1, 43 P.3d 318 (reversing a condition requiring the defendant in a child sex case to post signs at his residence that children were not allowed inside by court order).

This condition does not even purport to protect M.E. The condition's stated purpose is to make sure Christopher's prospective future partners know about his criminal history. (Doc. 23 at 5–6.) But M.E. already knows this, so this condition does nothing for her.

Nor does this condition do anything meaningful to keep Christopher's future romantic partners—the "community," so to speak—safe. In *Johnson* and *Muhammad*, this Court reversed certain harsh probation conditions in part because the district courts had also "imposed less restrictive means to rehabilitate [the defendant] and to protect the victim and society," thus obviating the need for the harsh conditions. *Muhammad*, ¶ 28 (reversing a banishment condition designed to protect the victim, because the defendant was also subject to other conditions, such as sexual and violent offender registration and a no-contact requirement); *Johnson*, ¶¶ 11–12 (curtailing conditions restricting the defendant's internet access in light of the ample "monitoring and supervision" that other conditions provided).

Here, the District Court has already imposed less-restrictive means to protect future potential victims from Christopher's abuse; namely, the violent offender registration requirement. (Doc. 30 at 7.)

Anyone who becomes romantically involved with Christopher and who has basic internet access can easily discover that Christopher is a "violent" offender who stands convicted of multiple PFMAs. That person can then make an informed decision whether they wish to pursue a relationship with him in light of this knowledge. This obviates the need for the Intimate Partner Disclosure requirement. *Cf. Muhammad*, ¶ 28; *Johnson*, ¶ 11–12.

Because this requirement is "not reasonably related to the goals of rehabilitation and the protection of the victim and society," it violates §§ 46-18-201(4)(p) and -202(1)(g). *Muhammad*, ¶¶ 29, 37.

CONCLUSION

Condition 29 and the Intimate Partner Disclosure requirement of condition 31 are unconstitutional and not reasonably related to the goals of probation supervision. The District Court correctly recognized the dubious legality of these experimental conditions. The District Court imposed them anyway, simply to get this Court to weigh in on the subject and with the full expectation of being reversed. This Court should do what the District Court has invited it to do, clarify these conditions are in fact unlawful, and reverse their imposition.

Respectfully submitted this 25th day of March, 2024.

OFFICE OF STATE PUBLIC DEFENDER
APPELLATE DEFENDER DIVISION
P.O. Box 200147
Helena, MT 59620-0147

By: /s/ Michael Marchesini
MICHAEL MARCHESINI
Assistant Appellate Defender

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 8,720, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

/s/ Michael Marchesini
MICHAEL MARCHESINI

APPENDIX

CERTIFICATE OF SERVICE

I, Michael Marchesini, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 03-25-2024:

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

Joshua A. Racki (Govt Attorney)
121 4th Street North
Suite 2A
Great Falls MT 59401
Representing: State of Montana
Service Method: eService

Electronically signed by Pamela S. Rossi on behalf of Michael Marchesini
Dated: 03-25-2024