

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 23-0575

RIKKI HELD, et al.,

Plaintiffs / Appellees

v.

STATE OF MONTANA, et al.,

Defendants / Appellants

PLAINTIFFS/APPELLEES' NOTICE OF SUPPLEMENTAL AUTHORITY

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

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Plaintiffs/Appellees, pursuant to the provisions of Rule 12 (6), M.R.App.P., submit this Notice of Supplemental Authority. Plaintiffs hereby notify the Court that its decision in *Montana Democratic Party, et al v. Jacobsen*, 2024 MT 66, issued March 27, 2024, two weeks *after* Plaintiffs/Appellees’ Answer Brief was filed on March 13, 2024, provides supplemental authority in the case at bar and supports arguments made in Plaintiffs/Appellees’ Answer Brief. Both *Montana Democratic Party* and *Held* implicate fundamental constitutional rights and involve challenges to the constitutionality of statutes. In each instance the District Court made its determination of unconstitutionality of statutes after multi-day trials involving fact and expert witnesses. Specifically, *Montana Democratic Party* supports arguments in Plaintiffs/Appellees’ Answer Brief regarding: 1) the applicable standards of review, set forth on page 11 of Plaintiffs/Appellees’ Answer Brief; *see, Montana Democratic Party* at ¶11 (“If the challenger shows an infringement on a fundamental right, a presumption of constitutionality [of a statute] is no longer available.”); 2) the resolution of the issue as to whether the District Court correctly applied Montana’s constitutional jurisprudence, including recognition of the Framers’ intent as controlling the courts’ interpretation of the constitutional provisions at issue, as set forth in pages 54 through 60 of Plaintiffs/Appellees’ Answer Brief; *see, e.g., Montana Democratic Party* at ¶¶17, 26, 27, 66; and 3) the District Court’s proper reliance on the record developed at trial in determining the challenged statutes

burden fundamental rights of Plaintiffs, and having done so, determining the Defendants failed to meet their burden of demonstrating that the MEPA Limitation (§75-1-201(2)(a), MCA) and Judicial Prohibition (§75-1-201(6)(a)(ii), MCA) pass strict scrutiny, as set forth in pages 60 through 69 of Plaintiffs/Appellees' Answer Brief; *see, e.g., Montana Democratic Party* at ¶¶40, n.8, 70-74, 77-79, 82, 84, 110, 114.

RESPECTFULLY SUBMITTED this 8th day of April 2024.

/s/ Roger Sullivan

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CERTIFICATE OF SERVICE

I, Roger M. Sullivan, hereby certify that I have served true and accurate copies of the foregoing Notice - Supplemental Authority to the following on 04-08-2024:

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