



FILED

05/09/2024

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA  
Case Number: DA 24-0039

COMMISSION ON CHARACTER AND FITNESS  
OF THE SUPREME COURT OF THE STATE OF MONTANA

33 South Last Chance Gulch, Suite 1B • P.O. BOX 577 • HELENA, MONTANA 59624  
(406) 442-7660 Fax (406) 442-7763 Web Site: [www.montanabar.org](http://www.montanabar.org)

May 6, 2024

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Mr. Bowen Greenwood,  
Clerk Montana Supreme Court  
P.O. Box 203003  
Helena, MT 59620

RE: Montana *Pro Hac Vice* Application

Dear Clerk:

Enclosed is a copy of an application to appear *pro hac vice* before your court or agency from the attorney listed below:

Joseph R. Gay  
Institute for Justice  
901 N. Glebe Rd., Suite 900  
Arlington, VA 22203

The attorney has complied with the rules governing a *pro hac vice* appearance and is currently in good standing with the other state or jurisdiction(s) in which they are admitted. Further, the Montana counsel listed in the application is in good standing with the State Bar of Montana.

**This is the 1st appearance for the attorney and the 3rd appearance for the firm.** under the *pro hac vice* rules. Section VI(C) of the Rules for Admission to the State Bar of Montana states: *Except upon a showing of good cause, no attorney or firm may appear pro hac vice in more than two actions or proceedings in any state court or administrative agency in Montana.* Please provide my office with a copy of your decision to grant or deny this application. Please contact me at (406) 447-2217 if you have questions or need further information.

Sincerely,

Laura Frovarp  
Bar Admissions Coordinator

Enclosure

Cc: David F. Knobel  
Joseph R. Gay

<i>Atty Status</i>	<i>Jurisdiction(s)</i>
_____	_____
<i>Discipline</i>	_____
<i>Appearance: Applicant</i>	<i>Firm</i>
_____	_____
<i>MT Attorney</i>	<i>SBM</i> _____ <i>ODC</i> _____

(Boxes for State Bar use only.)

<i>Application Number</i>	
<i>Date Received</i>	<i>Staff Initials</i>
<i>Fee Paid</i>	<i>Check No.</i>
<i>Date Sent to Court or Agency</i>	

STATE BAR OF MONTANA  
P.O. Box 577, Helena, MT 59624  
Street Address: 33 S. Last Chance Gulch, Suite 1B, Helena, MT 59601  
Telephone: (406) 442-7660  
Fax: (406) 442-7763

### **PRO HAC VICE APPLICATION**

The original application must be submitted to the State Bar of Montana with a fee of **\$515.00** for each *pro hac vice* appearance requested **and** a certificate of good standing from each state the attorney is a member of.

- Joseph R. Gay (703) 682-9320 jgay@ij.org  
Applicant's Name Phone E-Mail
- Institute for Justice  
Firm Name (List all firm(s) with which you are associated.)
- 901 N. Glebe Rd., Suite 900 Arlington VA 22203  
Office Address City State Zip
- 6223 22nd Street North Arlington VA 22203  
Residence Address City State Zip
- List the name, address, and telephone number of the active member of the State Bar of Montana who is the attorney of record in the case for which this application is being made.  
David F. Knobel, CROWLEY FLECK PLLP (406) 255-7343  
Attorney & Firm Name Daytime Phone Number  
490 N 31st Street Billings MT 59101  
Address City State Zip
- List all state and federal courts in which you have been admitted to practice and the dates of admission **and provide certification of good standing for each State only. Do not** include pro hac vice admissions.  
A. State Courts: New York State Bar (2/18/2010), DC Bar (11/16/2012).  
\_\_\_\_\_  
\_\_\_\_\_  
B. Federal Courts: U.S. Supreme Court (10/13/2015), U.S. Court of Appeals Federal Circuit (6/7/2013), U.S. Court of Appeals 11th Circuit (7/27/2022), U.S. Court of Appeals 9th Circuit (10/12/2022)  
\_\_\_\_\_

7. Are you currently suspended, disbarred, or otherwise not licensed to practice in any of the above courts? If so, attach copies of all relevant court documents or disciplinary documents. ☐ Yes ☒ No
8. Are you subject to pending disciplinary proceedings in any jurisdiction? If so, attach a description of the nature and status of each pending disciplinary proceeding. ☐ Yes ☒ No
9. Do you maintain a residence in Montana? ☐ Yes ☒ No
10. Are you regularly employed in Montana? ☐ Yes ☒ No
11. Are you regularly engaged in the practice of law or in substantial business or professional activities in Montana? ☐ Yes ☒ No
12. Do you have an application for admission to the State Bar of Montana pending? ☐ Yes ☒ No
13. List the title of each state court and cause in Montana in which you **OR YOUR FIRM** have filed an application to appear as counsel pro hac vice, the date of each application, and whether it was granted or denied. *(Do not list Federal court pro hac vice appearances.)*

**List the current title, court, and cause number for which you are applying.**

	Title, Court, Cause #	County	Date	Granted: (Yes, No)
A. <b>Previous Cases:</b>	Kendra Espinoza, et al. v. Montana Dept. of Revenue, et al., Montana Eleventh Judicial District, Cause No. DV 15-1152A.	Flathead County	12/18/2015	Yes
	Bridges, et al. v. Montana Board of Medical Examiners et al., Montana Fourth Judicial District, Cause No. DV-32-2020-0000647-DK.	Missoula County	6/15/2020	Yes
B. <b>CURRENT Case:</b> (please include County)	M.A.I.D., LLC. v. State of Montana, Supreme Court of the State of Montana, Cause No. DA 24-0039.	Gallatin County	4/29/2024	Pending

14. I agree to comply with the applicable statutes, laws, and procedural rules of the State of Montana. I further agree to be bound by the Montana Rules of Professional Conduct (except as to Rules 6.1-6.4) and will submit to the jurisdiction of the Montana courts, the Montana disciplinary process, and the State Bar of Montana with respect to acts and omissions occurring during admission under this application.
15. I understand that a lawyer not admitted to practice in Montana is subject to the disciplinary authority of Montana for conduct that constitutes a violation of the Montana Rules of Professional Conduct and that: a) involves the practice of law in Montana by that lawyer; or b) involves that lawyer holding himself or herself out as practicing law in Montana; or c) involves the practice of law in Montana by another lawyer over whom this lawyer has the obligation of supervision or control.
16. I state that payment has been made to the State Bar of Montana in accordance with the requirements of Section IV of the Rules for Admission and in accordance with the requirements of Rule 6 of the Rules for Lawyer Disciplinary Enforcement.
17. I understand I have an on-going obligation to advise the State Bar of Montana and court/administrative agency if my standing or status changes in any of the jurisdictions in which I am admitted during the term of my pro hac vice admission.

18. I agree to provide the State Bar of Montana with the court or administrative agency's order to grant or deny this application. (All applications will be counted as an appearance unless the State Bar of Montana is advised the application was denied by the Court.)
19. I agree to notify the State Bar of Montana of any appeals if the case is referred to a higher court. (If the above action proceeds to a court of higher jurisdiction, I understand the appealed case will not be counted as an additional appearance.)
20. I agree to provide current certificates of good standing from the jurisdiction(s) in which I am admitted.
21. I understand that the \$515.00 assessment is an annual assessment and agree to promptly pay the assessment as long as this proceeding is pending before a Montana administrative agency or any Montana court (except federal court).

State of Virginia

County of Arlington

The above statements are true based upon applicant's knowledge and belief. Further, I agree to submit to the pro hac vice rules, the Montana Rules of Professional Conduct, and the Montana Rules for Lawyer Disciplinary Enforcement.

Joseph Gay 4/24/2024  
Signature of Applicant Date

Subscribed and sworn to (or affirmed) before me this 24<sup>th</sup> day of April, 2024.

(SEAL)



Notary Signature: Cara Di Silvo  
Printed Name of Notary: Cara Di Silvo  
Notary Public for the State of: Virginia  
Residing in: Manassas, VA  
My commission expires: 11/30/2027

**ATTACH: Certificate(s) of Good Standing  
\$515.00 Pro Hac Vice Fee**

Rules and information about pro hac vice are available on the State Bar's website at [www.montanabar.org](http://www.montanabar.org).  
Please direct questions to Kathie Lynch: [klynch@montanabar.org](mailto:klynch@montanabar.org) or (406) 447-2210.



*Appellate Division of the Supreme Court  
of the State of New York  
Third Judicial Department*

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*I, Robert D. Mayberger, Clerk of the Appellate Division of the Supreme Court of the State of New York, Third Judicial Department, do hereby certify that*

*Joseph Randall Gay*

*was duly licensed and admitted to practice as an Attorney and Counselor at Law in all the courts of this State on **February 18, 2010**, has duly taken and subscribed the oath of office prescribed by law, has been enrolled in the Roll of Attorneys and Counselors at Law on file in this office, is duly registered with the Office of Court Administration, and according to the records of this Court is currently in good standing as an Attorney and Counselor-at-Law.*



*In Witness Whereof, I have hereunto set  
my hand in the City of Albany on April  
5, 2024.*

*Robert D Mayberger*

*Clerk of the Court*

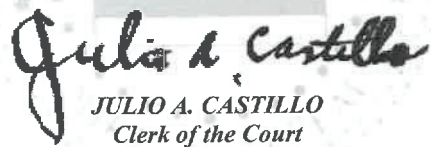


*On behalf of JULIO A. CASTILLO, Clerk of the District of Columbia Court of Appeals,  
the District of Columbia Bar does hereby certify that*

***Joseph Randall Gay***

*was duly qualified and admitted on November 16, 2012 as an attorney and counselor entitled to  
practice before this Court; and is, on the date indicated below, an Active member in good  
standing of this Bar.*

*In Testimony Whereof,  
I have hereunto subscribed my  
name and affixed the seal of this  
Court at the City of  
Washington, D.C., on April 05, 2024.*

  
**JULIO A. CASTILLO**  
Clerk of the Court

Issued By:



David Chu - Director, Membership  
District of Columbia Bar Membership

***For questions or concerns, please contact the D.C. Bar Membership Office at 202-626-3475 or email  
memberservices@dcbbar.org.***

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Cause No. DA 24-0039

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MONTANANS AGAINST IRRESPONSIBLE DENSIFICATION, LLC,

Plaintiff and Appellee,

v.

STATE OF MONTANA,

Defendant and Appellant.

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On Appeal from the Montana Eighteenth Judicial District Court,  
Gallatin County, DV-16-2023-1248,  
Hon. Michael Salvagni, Presiding Judge

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**AFFIDAVIT OF JOSEPH R. GAY IN SUPPORT OF APPLICATION FOR  
ADMISSION TO APPEAR *PRO HAC VICE***

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I, JOSEPH R. GAY, declare under penalty of perjury that the following is true:

1. I, Joseph R. Gay, by and through Montana counsel, respectfully apply to this Court to appear *pro hac vice* in the above-captioned matter on behalf of *amicus curiae* the Institute for Justice.

2. I am an attorney with the Institute for Justice. Before filing for *pro hac vice* admission in this case, I had not previously sought *pro hac vice* admission in the State of Montana. Although I have not previously received *pro hac vice* admission in the courts of Montana, attorneys affiliated with the Institute for Justice have appeared *pro hac vice* in two proceedings before Montana state courts since

November 17, 1998. Pursuant to Rule VI(C) of the Rules of Admission to the Bar of Montana, I hereby make the following submission of good cause for my admission *pro hac vice* in this matter.

3. Good cause for my admission *pro hac vice* exists because of my subject-matter expertise with issues presented in this matter and because of my relationship with *amicus*.

4. *Amicus* Institute for Justice (IJ) is a national civil liberties law firm that seeks to secure constitutional rights that everyday people use to pursue their dreams. It pursues its mission by, among other things, filing lawsuits in state and federal courts across the country seeking to vindicate its clients' constitutional rights. Those cases often include claims under the federal and state due process and equal protection clauses, including several challenges to irrational zoning and land-use laws. As an attorney at IJ working on these issues, I have developed subject-matter expertise on the constitutionality of zoning laws under due process and equal protection clauses. That expertise is implicated by this lawsuit's due process and equal protection challenges to state legislation that regulates how local governments exercise zoning powers.

5. IJ also pursues its mission through public advocacy and by filing amicus briefs in cases that raise important constitutional issues. As a nonprofit, public-interest organization, IJ has a distinct and constitutionally protected interest

in pursuing and expressing its advocacy through its own attorneys, who are intimately familiar with its mission and who associate with IJ for the purpose of advancing that mission.

6. I have been an attorney with IJ since May 2021. In that role, I am responsible for working on litigation and public outreach relating to constitutional rights, including on subjects relating to zoning and property rights. In fulfilling these responsibilities, I have become intimately familiar with IJ's public advocacy, litigation, and public-interest goals relating to, among other things, zoning, procedural and substantive due process protections, equal protection guarantees, and property rights.

7. This expertise in the subject matter and experience working on behalf of *amicus* are not commonly available among the membership of the State Bar of Montana. *See, e.g.,* Application to Appear *Pro Hac Vice*, *Planned Parenthood of Montana v. State*, DA 23-0272 (Mont. Mar. 8, 2024) (stating good cause based on four-year relationship with *amici* associations and experience with similar cases); Order, *Planned Parenthood of Montana v. State*, DA 23-0272 (Mont. Mar. 12, 2024) (finding good cause and granting application); Application to Appear *Pro Hac Vice*, *Planned Parenthood of Montana v. State*, DA 23-0272 (Mont. Sept. 11, 2023) (application by attorney employed by nonprofit organization that was representing a local affiliate, with no separate discussion of good cause); Order, *Planned*


*Parenthood of Montana v. State*, DA 23-0272 (Mont. Sept. 12, 2023) (finding good cause and granting application).

8. For these reasons, I respectfully request that the Court find good cause for my admission *pro hac vice* in this matter.

Dated this 24<sup>th</sup> day of April, 2024.

  
\_\_\_\_\_  
Joseph R. Gay

Subscribed and sworn to before me  
This 24<sup>th</sup> day of April, 2024.

  
\_\_\_\_\_  
Notary Public

