

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-147

PLANNED PARENTHOOD OF MONTANA, and SAMUEL DICKMAN, M.D.,
On behalf of themselves and their parents,

Plaintiffs and Appellees,

v.

STATE OF MONTANA, by and through AUSTIN KNUDSEN, in his official
capacity as Attorney General,

Defendant and Appellant.

**BRIEF IN SUPPORT OF *AMICI CURIAE*
THE CENTER FOR REPRODUCTIVE RIGHTS AND ACLU OF
MONTANA MOTION
FOR PRO HAC VICE ADMISSION OF AMY MYRICK**

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County, the Honorable Kurt Krueger Presiding

APPEARANCES:

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**Pro hac vice application pending*

Amici respectfully move the Court for an Order permitting Amy Myrick, of the Center for Reproductive Rights, to join Alex Rate and Marthe VanSickle, ACLU of Montana Foundation, as co-counsel in the above-entitled matter. This would be Ms. Myrick's second appearance and the Center for Reproductive Rights' sixth appearance. Counsel for Defendants were contacted and indicated that they do not oppose provided that the applicable rules for *pro hac vice* admission are satisfied. Amici have complied with the applicable rules and submit this brief in support.

After an attorney or firm's second appearance *pro hac vice*, a *pro hac vice* admission may be approved upon a showing of good cause. Mont. R. Admis. § VI.C. This would be the Center's sixth *pro hac* appearance before this Court. Good cause exists to approve Amy Myrick's admission *pro hac vice*.¹

The Center for Reproductive Rights ("the Center") and Ms. Myrick have extensive and specialized experience litigating reproductive rights cases "not commonly found in the state bar of Montana." Mont. R. Admis. § VI.C. There is also strong presumption in favor of a party's ability to be represented by its counsel of choice, and the Center has longstanding clients in Montana who would be seriously

¹ Although this would be the Center for Reproductive Rights' sixth appearance before this Court, the Center a non-profit organization whose various advocacy activities include pro bono legal representation, not a law "firm." Counsel contend that the requirement for firms to show good cause upon a third (or subsequent) *pro hac vice* appearance does not apply to a non-profit organization such as the Center.

impacted by the outcome of this case. *See* § 37-61-403(1), MCA. Moreover, in similar cases—including another case involving a Center for Reproductive Rights attorney—Montana courts Court has approved the admission *pro hac vice* of attorneys with similar expertise although their admission was opposed.

The attached declaration demonstrates that out-of-state counsel has expertise litigating complex constitutional issues involved in this case. *See* Exhibit A, Declaration of A. Myrick. This expertise will help ensure that the issues in this litigation are properly and thoroughly presented for the Court’s consideration.

Since its founding in 1992, the Center has been involved in nearly all major litigation in the U.S. concerning reproductive rights in state and federal courts, including state supreme courts and the U.S. Supreme Court. Among other cases, the Center represented the plaintiffs in *Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364, the landmark ruling in which the Montana Supreme Court held that Montana’s state constitution affords the most robust protections for the right to privacy, including the right to abortion. The Center also served as lead counsel in *Weems v. State*, in which the Montana Supreme Court twice affirmed lower court rulings applying and enforcing *Armstrong* and holding restrictions on abortion unconstitutional. *See Weems v. State*, 2023 MT 82, 412 Mont. 132, 529 P.3d 798; *Weems v. State*, 2019 MT 98, 395 Mont. 350, 440 P.3d 4. The Center is currently serving as counsel in *Planned Parenthood of Montana v. State*, ADV-23-299 (1st

Jud. Dist. Ct. Apr. 28, 2023), and *All Families Healthcare v. State*, No. DDV-2023-592 (1st Jud. Dist. Ct. Sept. 1, 2023), both of which involve challenges to abortion restrictions under the *Armstrong* standard the State is challenging in this case. The Center has also served as lead counsel in every major U.S. Supreme Court case concerning abortion rights since its founding, from *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) through *Dobbs v. Jackson Women's Health Organization* 142 S. Ct. 2228 (2022), and numerous state high court cases.

Specifically, Ms. Myrick, a senior staff attorney with the Center for Reproductive Rights, has significant experience and expertise litigating reproductive rights cases in both state and federal court, including in Montana. Ms. Myrick's knowledge and expertise on the legal arguments advanced in the *amici* brief is of significant importance to the lawsuit in which she is now seeking leave to appear. Ms. Myrick was first admitted to practice *pro hac vice* in 2022, when this case reached the Montana Supreme Court for the first time. *Planned Parenthood of Montana v. State by & through Knudsen*, 2022 MT 157, 409 Mont. 378, 515 P.3d 301. She is familiar with the legal arguments in this case and its potential to set precedent and impact other cases and the Center's clients. Ms. Myrick has extensive expertise in how *Dobbs v. Jackson Women's Health*

Organization, 142 S. Ct. 2228 (2022), interacts with state constitutional law, an issue that the State has introduced into this case.

Additionally, the strong presumption in favor of a party's ability to be represented by its counsel of choice weighs in favor of finding good cause here. *See* § 37-61-403(1), MCA; *State v. Garcia*, 2003 MT 211, ¶ 12, 317 Mont. 73, 75 P.3d 313 (“[T]he right to the effective assistance of counsel encompasses the right to retain counsel of one’s own choosing.”). Here, this presumption manifests through the Center’s longstanding attorney-client relationships with abortion providers in Montana. The Center has represented abortion providers in Montana, including Blue Mountain Clinic, for decades, including as one of the plaintiffs in *Armstrong v. State*. Since 2018, the Center has also represented Ms. Weems, the owner and sole practitioner at All Families Healthcare, and the named plaintiff in *Weems v. State*, 2023 MT 82, 412 Mont. 132, 529 P.3d 798. The outcome of this case will profoundly affect the Center’s clients, and there is every reason for the Center to serve as amicus in opposing the State’s arguments that cases recognizing abortion rights under the Montana Constitution should be undermined.

Finally, Montana courts have granted opposed motions for admission *pro hac vice* in similar cases. Less than a year ago, the First Judicial District Court found good cause to admit another Center attorney over Defendants objections in *All Families Healthcare v. State*, No. DDV-2023-592, Order on Motion for *Pro Hac*

Vice Admission of Hillary Schneller (1st Jud. Dist. Ct. Sept. 21, 2013). There, Defendants opposed plaintiffs’ *pro hac vice* motion because the appearance would have been the attorney’s third and the Center’s fourth. The court’s reasons for finding good cause apply with equal force here: (1) “the State Bar’s interests in regulating its membership are not substantially implicated by *pro hac vice* admission in this context,” where “the firm and attorney at issue are focused on a single category of issue—abortion and reproductive rights matters—and are unlikely to ever appear in Montana outside of cases that implicate that topic;” (2) “in constitutional challenges, the implications of a ruling extend beyond the parties and have an impact on the state as a whole,” and “the Court and society” benefit when the parties have “wide latitude to bring in whatever expertise they can to the case;” and (3) “these cases can have factual and legal complexity aided by specialist attorneys who routinely litigate these cases around the country.” *Id.* 2-3. Montana courts have come to similar conclusions about attorneys from other reproductive rights organizations, also granting their admission *pro hac vice* over Defendants’ objections. *See, e.g.*, Order Granting Pro Hac Vice Admission of Diana O. Salgado, Melissa Cohen, and Dylan Cowit, Planned Parenthood of Mont. v. State, ADV-23-231 (1st Jud. Dist. Ct. May 17, 2023); Order Granting Pro Hac Vice Admission of Dylan Cowit, Planned Parenthood of Mont. v. State, ADV-23-299 (1st Jud. Dist. Ct. May 17, 2023).

For the foregoing reasons, Plaintiffs respectfully request this Court approve the admission of Amy Myrick to practice pro hac vice.

Respectfully submitted August 13, 2024.

/s/ Alex Rate _____
Alex Rate, Legal Director
ACLU of Montana

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify on this date I filed a true and accurate copy of the foregoing document with the electronic filing system for Montana courts and electronic service was sent to:

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Electronically signed by Krystel Pickens on behalf of Alex Rate
Dated August 13, 2024