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**IN THE SUPREME COURT OF THE STATE OF MONTANA**

PARKER NOLAND,

Appellant/Plaintiff,

vs.

STATE OF MONTANA, MONTANA  
PUBLIC SERVICE COMMISSION,  
JAMES BROWN, in his official  
capacity as President of the Montana  
Public Service commission, BRAD  
JOHNSON, in his official capacity as  
Vice President of the Montana Public  
Service Commission, and RANDY  
PINOCCI, TONY O'CONNELL, and  
JENNIFER FIELDER, in their official  
capacities as Commissioners of the  
Montana Public Service Commission,

Appellees/Defendants,

EVERGREEN DISPOSAL, INC.

Appellee/Intervenor.

Case No.: DA 24-0369

**MOTION FOR LEAVE TO  
APPEAR AS AMICUS CURIAE**

The Goldwater Institute (“Institute”), by and through the undersigned counsel of record, respectfully seeks leave to file an *amicus curiae* brief in support of the Appellant pursuant to Rule 12(7) of the Montana Rules of Appellate Procedure.

Counsel for the Institute has contacted counsel for all parties. Counsel for the Appellant/Plaintiff does not oppose this Motion. Counsel for the Appellees/Defendants does not oppose this Motion. Counsel for the Appellee/Intervenor does not oppose this Motion.

**I. Statement of Interest of the Institute.**

The Institute was established in 1988 as a nonpartisan public policy and research foundation devoted to advancing the principles of limited government, individual freedom, and constitutional protections. Headquartered in Phoenix, Arizona, the Institute is well known throughout the United States as an advocate for these principles. Through its Scharf-Norton Center for Constitutional Litigation, the Institute litigates cases and files amicus briefs when its or its clients’ objectives are directly implicated. The Institute has not appeared before this Court.

Among the Institute’s principal goals is defending the vital principle of economic liberty—and the independent protection for this and other rights in state constitutions—as well as challenging the constitutionality of “Certificate of Need” (CON) laws, which perpetuate monopolies and deprive people of the right to earn a living. The Institute has litigated and appeared as *amicus curiae* in many courts to promote enforcement of constitutional protections of economic liberty against irrational and unjust CON laws. *See, e.g., Singleton v. N.C. Dep’t of Health & Hum. Servs.*, No. 260PA22 (Sup. Ct. N.C. filed Aug. 15, 2022) (pending); *Newell-Davis v. Phillips*, 144 S. Ct. 98 (2023); *Tiwari v. Friedlander*, 143 S. Ct. 444 (2022); *Niang v. Tomblinson*, 139 S. Ct. 319 (2018); *Women’s Surgical Ctr., LLC v. Berry*, 302 Ga. 349, 806 S.E.2d 606 (2017).

Institute scholars have also written extensively about CON laws. *See, e.g.*, Mark Flatten, *CON Job: Certificate of Need Laws Used to Delay, Deny Expansion of Mental Health Options* (Goldwater Institute, Sept. 25, 2018)<sup>1</sup>; Timothy Sandefur, *The Permission Society* 104–33 (2016).

The Institute believes its legal and policy expertise will benefit this Court in its consideration of this case.

**II. Identity of the parties whose position the amicus supports.**

If granted leave to appear as *amicus* in this case, the Institute supports the position of the Appellant/Plaintiff Parker Noland.

**III. Date upon which the brief can be filed.**

The Institute can file its brief by October 31, 2024.

**IV. Whether the other parties consent to the request.**

Counsel for the Institute has contacted counsel for all parties and all parties have indicated that they do not oppose this Motion. Counsel for the Appellee/Intervenor will shortly file an unopposed motion to extend all deadlines in concordance with the Institute’s proposed deadline.

DATED THIS 11th day of October, 2024.

  
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<sup>1</sup> <https://www.goldwaterinstitute.org/wp-content/uploads/2023/06/CON-9-2018.pdf>

## **CERTIFICATE OF SERVICE**

I, Walter D Clapp, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 10-11-2024:

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Electronically Signed By: Walter D Clapp  
Dated: 10-11-2024