

**BEFORE THE COMMISSION ON PRACTICE OF THE
SUPREME COURT OF THE STATE OF MONTANA**

IN THE MATTER OF AUSTIN)	Supreme Court Cause No. PR 23-
MILES KNUDSEN,)	0496
)	
An Attorney at Law,)	ODC File No. 21-094
)	
Respondent.)	

**MOTION FOR LEAVE TO
FILE AMICUS BRIEF IN
SUPPORT OF RESPONDENT
AUSTIN MILES KNUDSEN**

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A multistate coalition led by Iowa and Texas (“*amici* States”) respectfully submit this motion to the Court for leave to file a brief as *amicus curiae*, pursuant to Mont. R. App. P. 12(7).¹ If granted, the States’ brief would be generally in support of Attorney General Knudsen. If granted, *amici* States will file their brief no later than March 14, 2025—two weeks before the argument date.

I. Statement of Interest.

Amici States each have elected or appointed Attorneys General. These States each have an interest in ensuring that State Attorneys General may exercise their discretionary authority conferred by their respective State Constitutions without improper interference or distractions.

Litigation, even against other State agencies—and even against the State Judiciary—is, sometimes necessary. Engaging in normal litigation practices, including even aggressive discovery, cannot be the basis for ethics complaints. And potential suspension

¹ Counsel for Respondent consent to the filing. Special Counsel for the Office of Disciplinary Counsel has not replied to multiple emails requesting consent or otherwise stated a position on this motion.

for an Attorney General for engaging in his lawful duty representing his client, here the Legislature, implicates fundamental separation of power concerns.

The States and their Attorneys General have a unique perspective in this litigation that will present to this Court their unique perspective. Their interest is aligned with but differentiated from that of Attorney General Knudsen and thus will aid the Court.

II. Argument.

Whether an Attorney General may face disciplinary action for litigating against a State's judicial branch is a fundamental question that implicates separation of powers concerns in each of our States. This is a vital question that affects the Attorneys' General constitutional role in their States.

Sometimes there are interbranch disputes and the litigation relating to those disputes can put State Attorneys General in the position of defending one State agency or constitutional branch of government from another. Granting the State Attorneys General here the opportunity to weigh in can provide their nationwide perspective on this issue.

A. An amicus brief from *amici* States is desirable.

Forty-three States have independently elected Attorneys General. In those States, the Attorneys General play a vital role in the Constitutional systems of their respective States. Each independently elected Attorney General has broad discretion in exercising her constitutional duties.

Issues involving attorney discipline related to Attorney Generals' offices have percolated around the country. Two recent examples raised similar concerns to those raised here—and in those cases, the Supreme Court of Texas dismissed the allegations against the Attorney General and senior staff. *See Webster v. Comm'n for Law. Disc.*, No. 23-0694, ---S.W.3d---, 2024 WL 5249494, at *1 (Tex. Dec. 31, 2024); *Paxton v. Comm'n for Law. Disc.*, No. 24-0452, ---S.W.3d---, 2025 WL 492748, at *1 (Tex. Feb. 14, 2025).

The Supreme Court of Texas assessed that discipline for actions related to core executive action by an attorney in the Attorney General's office related to “the attorney general's exclusive authority to determine the arguments and assess the

evidence that warrant bringing suit on behalf of the State.” *Webster*, 2024 WL 5249494, at *6. Relying on longstanding history preceding the Founding, that court observed “that the office of the attorney general ‘is one of ancient origin.’” *Id.* (quoting *Charles Scribner’s Sons v. Marrs*, 262 S.W. 722, 727 (1924)). That includes the “judgment and discretion” to “investigate the facts and to exercise his judgment and discretion regarding the suits in which the State is an interested party.” *Id.* at 11. (cleaned up). The Court posed the question of whether the judicial branch’s “authority to demand compliance with the rules of professional discipline from attorneys who invoke a court’s jurisdiction, including those from the executive branch . . . trump[ed]” the executive branch’s authority to make determinations about lawsuits “without other branches’ attempts at control.” *Id.* at 12.

That Court held it did “not find the call to be close.” *Id.* Ultimately, that boiled down to an understanding that not only is the decision to file a suit privileged but “his authority to file suit and his authority to populate the suit with the representations that give it force and led him to file it” is protected. *Id.*

Here, the underlying dispute involves three coordinate branches of Montana’s government—the Judiciary, Legislature, and Attorney General. The strategic litigation decisions at issue in how to proceed face a justifiably high bar before discipline is appropriate. Otherwise, the disciplinary commission—and this Court—risk violating core separation of powers principles.

Courts should carefully weigh when it is appropriate and necessary to weigh in with attorney discipline when that implicates core executive functions exercised by other statewide constitutional officers. Attorneys General across the country must be allowed to authorize their authority to defend State laws—and other coordinate branches, including those States’ judiciaries—without fear of drawing disciplinary proceedings as a result. This Court should decline to answer such a fraught political question.

If their motion for leave to file is granted, *amici* States will present these arguments in their ultimate brief.

B. Party that the *amici* States support.

Amici States support Respondent Attorney General Knudsen.

C. Proposed Date for *amici curiae* brief.

Amici States request a filing date of March 14, 2025—which is fourteen days before argument has been set in this case.

D. Parties’ positions regarding *amici* States’ motion.

Amici States contacted counsel for Respondent and for the Special Counsel. Respondent consents to the motion. Special Counsel has not responded to consent or oppose the motion.

CONCLUSION

For the above reasons, *amici* States respectfully request the Court grant leave for the States to file a brief as *amici curiae* on or before March 14, 2025

DATED this 25th day of February, 2025.

Respectfully submitted,

/s/ Dale Schowengerdt

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CERTIFICATE OF SERVICE

I, Dale Schowengerdt, hereby certify that I have served true and accurate copies of the foregoing Motion - Amicus to the following on 02-25-2025:

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