

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0478

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CITY OF HELENA,

Plaintiff and Appellee,

v.

MATTHEW GORDON MAYFIELD,

Defendant and Appellant.

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**UNOPPOSED MOTION FOR LEAVE OF  
FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION  
AND AMERICAN CIVIL LIBERTIES UNION OF MONTANA  
TO PARTICIPATE AS *AMICI CURIAE***

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On Appeal from the Montana First Judicial District Court,  
Lewis and Clark County, the Honorable Mike Menahan, Presiding

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**APPEARANCES:**

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## **MOTION FOR LEAVE**

The Foundation for Individual Rights and Expression (FIRE) and the American Civil Liberties Union of Montana respectfully request leave to contemporaneously file the attached brief as *amici curiae* in the above-captioned matter in support of Defendant-Appellant, Matthew Gordon Mayfield. M. R. App. P. 12(7). Both parties consented to the filing of this brief, and a proposed order is also attached.

### **INTERESTS OF AMICI CURIAE**

The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit that defends the rights of all Americans to free speech and free thought—the essential qualities of liberty. Since 1999, FIRE has successfully defended these rights nationwide through public advocacy, targeted litigation, and *amicus curiae* filings in cases implicating First Amendment freedoms, without regard to speakers' views. FIRE frequently represents and advocates on behalf of individuals across the United States who have suffered retaliation by the police for exercising their First Amendment right to criticize public officials. *See, e.g., Villareal v. City of Laredo*, 94 F.4th 374, 398 (5th Cir. 2024) (en banc), *vacated*, *Villareal v. Alaniz*, 145 S. Ct. 368 (2024); Compl., *Rishel*

*v. City of Allentown*, No. 5:25-cv-03779 (E.D. Pa. July 23, 2025); Compl., *Gibbons v. City of Kingsport*, No. 2:23-cv-00138 (E.D. Tenn. Oct. 17, 2023); Compl., *Bombard v. Rikken*, No. 21-CV-176 (Vt. Super. Ct. Feb. 3, 2021).

FIRE also regularly participates as *amicus* in cases concerning police retaliation against protected expression. *See, e.g.*, Brief of FIRE as *Amicus Curiae* in Supp. of Petitioner, *Frese v. Formella*, No. 22-939, 144 S.Ct. 72 (2023); Brief of FIRE, et al., as *Amici Curiae* in Supp. of Pl.-Appellant, *Bailey v. Iles*, 87 F.4th 275 (5th Cir. Nov. 14, 2022); Brief of FIRE as *Amicus Curiae* in Supp. of Pl.-Appellant and Reversal, *Novak v. City of Parma, Ohio*, 33 F.4th 296 (6th Cir. Aug. 6, 2021).

FIRE likewise routinely defends the First Amendment rights of law enforcement and military members. *See, e.g.*, Compl., *Meeks v. Lawrence*, No. 3:25-cv-01431 (M.D. Tenn. Dec. 10, 2025); Compl., *Bushart v. Perry Cnty.*, No. 1:25-cv-01288 (W.D. Tenn. Dec. 17, 2025); Compl., *Gray v. City of Alpharetta*, No. 1:23-cv-00463-MLB (N.D. Ga. Jan. 31, 2023).

The American Civil Liberties Union of Montana is a non-profit, non-partisan membership organization devoted to protecting civil rights and liberties for all Montanans. The American Civil Liberties Union

(together, “ACLU”), with more than two million members, is among the oldest, largest, and most active civil rights organizations in America. For decades, the ACLU has litigated questions involving civil rights and liberties in the state and federal courts, including cases involving the First Amendment.

*Amici*’s work therefore encompasses advocacy for keeping the “starch in our constitutional standards,” *Ashcroft v. ACLU*, 542 U.S. 656, 670 (2004) (internal quotation marks and citation omitted), especially those governing the “few categories where the law allows content-based regulation” as a “general exception to the First Amendment” for “unprotected” speech. *United States v. Alvarez*, 567 U.S. 709, 718, 720 (2012). That includes “fighting words” under *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571–72 (1942), even if the doctrine has largely lost force as a category of unprotected speech. *See, e.g., Counterman v. Colorado*, 600 U.S. 66, 77 n.4 (2023).

#### **ISSUE ON WHICH *AMICI* WISH TO SUBMIT A BRIEF**

*Amici*’s proposed brief is narrow in scope—it exclusively addresses whether this Court’s fighting words decision in *State v. Robinson*, 2003 MT 364, 319 Mont. 82, 82 P.3d 270, should be overruled and, therefore,

whether the trial court's denial of Mayfield's motion to suppress should be reversed insofar as it relied on *Robinson*. *Amici's* proposed brief does not address any other issue presented in this appeal.

### **REASONS AMICI'S BRIEF IS DESIRABLE**

*Amici* possess expertise and experience in First Amendment law and are therefore uniquely well-qualified to assist the Court in deciding whether to expressly overrule *Robinson*. Moreover, *amici's* proposed brief provides the Court with a more comprehensive analysis of this ancillary issue than that presented by the parties. Finally, this Court's decision will have ramifications far beyond this case. If this Court declines to expressly overrule *Robinson*, it will continue to be invoked by lower courts—as it was here—to authorize government retaliation against clearly protected expression. *Amici's* proposed brief will serve as a valuable resource to this Court in making a deeply important decision.

### **PARTY WHOSE POSITION AMICI SUPPORT**

*Amici* support Mayfield's position that *Robinson* should be overruled and, to the extent the trial court relied on *Robinson* in denying Mayfield's motion to suppress, it should be reversed. *Amici* take no position on any other issue presented in this appeal.

**PARTIES' POSITIONS REGARDING AMICI'S PARTICIPATION**

Both parties consented to the filing of this brief.

**PROPOSED DATE OF FILING**

*Amici's* proposed brief is attached and filed contemporaneously with this Motion.

A proposed order is also included in this filing.

Respectfully submitted this 26th day of February, 2026.

*/s/ Alex Rate*  
Alex Rate

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, I certify that this motion does not exceed 1,250 words.

*/s/ Alex Rate*

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Alex Rate

## CERTIFICATE OF SERVICE

I, Alex Rate, hereby certify that I have served true and accurate copies of the foregoing document via the e-filing system to the following on 02-26-2026:

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Electronically signed by Alex Rate  
Dated: 02-26-2026

## CERTIFICATE OF SERVICE

I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 02-26-2026:

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