ETHAN W. BLEVINS
Montana Bar No. 37415893
Pacific Legal Foundation
839 W 3600 S
Bountiful, UT 84010-8423
Telephone: (916) 288-1392
eblevins@pacificlegal.org

MARK MILLER*
Pacific Legal Foundation
4440 PGA Blvd., Ste. 307
Palm Beach Gardens, FL 33410
Telephone: (561) 691-5000
mark@pacificlegal.org

DAVID MCDONALD*
Pacific Legal Foundation
3100 Clarendon Blvd., Ste. 1000
Arlington, VA 22201
Telephone: (202) 888-6881
DMcDonald@pacificlegal.org
**Pro Hac Vice forthcoming*

Counsel for Proposed Intervenor

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT
GALLATIN COUNTY

MONTANANS AGAINST IRRESPONSIBLE DENSIFICATION, LLC, Plaintiff, v. STATE OF MONTANA, Defendant, DAVID KUHNLE, Proposed Intervenor.	Cause No. DV-16-2023-1248-DK Hon. John C. Brown **PROPOSED INTERVENOR DAVID KUHNLE'S MOTION TO INTERVENE AND INCORPORATED MEMORANDUM OF LAW**

I. Introduction

David Kuhnle moves to intervene as a defendant in support of the laws challenged by Montanans Against Irresponsible Densification, LLC ("MAID") in its Amended Complaint, which

was filed on December 19, 2023. Kuhnle moves to intervene as a matter of right pursuant to Montana Rule of Civil Procedure 24(a)(2), but alternatively moves for permission to intervene consistent with Rule 24(b)(1)(B).

Plaintiffs MAID, a collection of Montanans who own property within the state, challenge the State of Montana's suite of new laws passed last session; laws designed to increase the production of housing in the state to lower the prices of housing in the state, which is—according to all observers—so high as to be a crisis that shuts many out of the housing market altogether. *See, e.g.*, First Amended Complaint ("FAC"), ¶ 8 ("Many municipalities in the State of Montana have a shortage of what is known as 'affordable housing'. What that means is that some segments of the population of Montana's cities do not have sufficient means with which to purchase a house."); Executive Order Creating the Housing Advisory Council, No. 5-2022 (July 14, 2022) ("driven by shortage of housing supply, Montana faces a crisis of affordable, attainable housing that poses substantial challenges to hardworking Montanans, employers, communities, and the state's economic health"). By increasing supply, the first law of economics says that prices of any good will go down, and that is as true for housing as anything else. *See* Lida R. Weinstock, Congressional Research Service Report, *U.S. Housing Supply: Recent Trends and Policy Considerations* 1 (July 7, 2023).[1]

MAID objects to the new laws, contending at bottom that the "nest egg" value of their homes will decrease if the production of new homes is increased. *See* FAC ¶ 34. They assert they have a due process and equal protection right to interfere with other property owners within the state, *id.* at ¶ 33; property owners like Kuhnle, who would seek to rely upon the suite of new

[1] https://crsreports.congress.gov/product/pdf/R/R47617.

housing laws to expand the number of houses available for purchase or rent within the state by building upon their own property. *See* Declaration of David Kuhnle ("Kuhnle Decl.") ¶ 5.

MAID asked this Court to enjoin two of the new housing laws last session, and this Court granted that ask. Decision and Order (Doc. 17), at 17. The State of Montana has appealed that order.

Kuhnle seeks to intervene to defend one of the two laws the Court enjoined: SB 528, now codified as § 76-2-345, MCA, which would require all cities to allow "accessory dwelling units" of up to 1,000 square feet on lots located in all areas now zoned for single-family residences. He has an interest in this law because he intended to build an Accessory Dwelling Unit ("ADU") on his property that this new law would allow; he intended to rent the ADU. Thus, he has an interest and would be affected by this case since this case will either lead to the law being permanently enjoined or put in force. No one involved in the case now is a property owner, thus nobody in the case can adequately represent his interests. Therefore, he is entitled to intervene as a matter of right. Mont. R. Civ. P. 24(a). Alternatively, Kuhnle moves for permissive intervention. Fed. R. Civ. P. 24(b).

In support of this motion, Kuhnle has filed its proposed answer in intervention and has served the instant motion and accompanying exhibits on the existing parties as required by Montana Rule of Civil Procedure 5. Kuhnle asks that the Court expedite its consideration of this motion such that, if the Court grants the motion, there will be time for Kuhnle to participate in the already-initiated appellate proceedings.

II. Facts

David Kuhnle, a realtor and property manager, is an adult male and lives in Missoula, Montana. Kuhnle Decl. ¶ 1. Kuhnle has been working for the past year to build an ADU behind a

rental property he owns in Missoula. Kuhnle Decl. ¶ 2. Kuhnle originally designed the ADU to be 600 square feet, which pursuant to Missoula City Code is the maximum size an ADU can be within city limits. Kuhnle Decl. ¶ 3.

Last summer, however, Kuhnle redesigned the ADU to the larger 1,000-square-foot size because of the laws at issue in this case, which require Montana cities to allow ADUs up to 1,000 square feet in size. Kuhnle Decl. ¶ 4. The laws at issue in the case most pertinent to Kuhnle's plans include: SB 323, now codified as §§ 76-2-304(3), (5), and 76-2-309, MCA; and SB 528, now codified as § 76-2-345, MCA. SB 323 requires that affected municipalities of at least 5,000 in population allow duplexes in areas now zoned for single-family residences, and SB 528 requires all cities to allow ADUs of up to 1,000 square feet on lots located in all areas now zoned for single-family residences.

As noted above, Kuhnle was relying upon SB 528 to build the ADU he planned for his property. Kuhnle Decl. ¶ 4. Expanding the size of the ADU allowed him to add a bedroom to the ADU, making it more valuable as a rental property. Kuhnle Decl. ¶ 5. Kuhnle was ready to submit his completed plans once the new laws became effective on January 1, 2024. Kuhnle Decl. ¶ 6. But, because of the injunction entered in this case, he is now facing building delays that will drive up his costs and prevent a renter from moving into this rental property. Kuhnle Decl. ¶ 6. Kuhnle had contractors and excavators ready to go on the ADU, and he hoped to start as soon as the 2024 building season began in late winter/early spring. Kuhnle Decl. ¶ 7. Instead, due to the injunction, he cannot build as he planned, and he's facing months and years of delays or even a wholesale elimination of the ADU plan he intended to follow, all because of the injunction. Kuhnle Decl. ¶ 8.

III. Argument

A. Kuhnle Should be Allowed to Intervene as a Matter of Right.

Montana Rule of Civil Procedure 24 sets out what Kuhnle must show for this Court to grant his request to intervene in this case as a matter of right, and the facts set out by Kuhnle above more than sufficiently make the necessary showing to justify the granting of his motion. The Rule provides in relevant part:

> On timely motion, the court must permit anyone to intervene who:
>
> ***
> (2) claims an interest relating to the property or transaction which is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless the existing parties adequately represent that interest.

The test for mandatory intervention thus requires that: (i) Kuhnle's motion be timely; (ii) Kuhnle have an interest in the laws that are the subject of the action; (iii) disposal of the case will as a practical matter impair or impede Kuhnle's ability to protect his interest in the case; and (iv) the existing parties can't adequately represent his interest. *See Estate of Schwenke by and Through Hudson v. Becktold* (1992), 252 Mont. 127, 131, 827 P.2d 808, 811 (setting out the four factors that must be met to allow intervention as of right). Kuhnle notes that in considering whether to grant intervention the Montana Supreme Court has applied federal case law since Montana Rule of Civil Procedure 24 "is almost identical to Federal Rule 24(a)," *id.* at 811.

In applying this four-part standard, courts "normally follow 'practical and equitable considerations' and construe the Rule 'broadly in favor of proposed intervenors.'" *Wilderness Soc'y v. U.S. Forest Service*, 630 F.3d 1173, 1179 (9th Cir. 2011) (en banc) (internal quotation omitted). This is because "'[a] liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the Courts.'" *Id.* (quotation omitted). Simply put, a "prospective

intervenor 'has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation.'" *Id.* (quoting *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006)). As will be shown below, Kuhnle meets all four parts of the test.

1. Kuhnle's Motion Is Timely.

First, Kuhnle's motion is timely. Although MAID initiated this lawsuit on December 15, 2023, the case only became generally, publicly-known when this Court enjoined the ADU and duplex laws on December 29, 2023—which led to media coverage. *See, e.g.*, Nora Shelly, *Montana Judge Orders Injunction on Two Housing Bills*, Bozeman Daily Chronicle (Jan. 2, 2024);[2] Darrell Ehrlick, *Judge issues injunction against two 'affordable housing' bills passed by Montana Legislature*, The Daily Montanan (Dec. 29, 2023).[3]

Upon learning of the order enjoining the laws and the implications of those laws for his plan to build his ADU, in short order Kuhnle retained counsel to intervene in the case. This motion to intervene thus is filed less than one month after the order that alerted Kuhnle to his personal stake in the matter, and less than seven weeks after the case was initiated by MAID.

Whether the Court counts from December 15 or December 29, under Montana law this motion to intervene is timely. Montana courts look to four factors to determine the timelines of a motion to intervene: "(1) the length of time the intervenor knew or should have known of its interest in the case before moving to intervene; (2) the prejudice to the original parties, if intervention is granted, resulting from the intervenor's delay in making its application to intervene;

---

[2] https://www.bozemandailychronicle.com/news/business/montana-judge-orders-injunction-on-two-housing-bills/article_98121390-a990-11ee-bfd9-17d9d91834c4.html.

[3] https://dailymontanan.com/2023/12/29/judge-issues-injunction-against-two-affordable-housing-bills-passed-by-montana-legislature/.

(3) the prejudice to the intervenor if the motion is denied; and (4) any unusual circumstances mitigating for or against a determination that the application is timely." *In re Adoption of C.C.L.B.*, 2001 MT 66, ¶ 24, 305 Mont. 22, 22 P.3d 646.

a. The Brief Length of Time Between When Suit Was Filed and Kuhnle Moves to Intervene Supports Allowing Kuhnle to Intervene.

Here, Kuhnle knew of the case and how it impacted his plans for his property for less than a month before filing this motion to intervene. There is no credible argument that he should have known of the suit before it became publicly known by way of the media coverage of this Court's entry of an injunction, but even if the Court were to say he should have been aware of it when the lawsuit was filed, seeking intervention within seven weeks of the case first being filed is hardly dilatory. *See Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (noting that a motion to intervene was timely when it was filed within three months of the filing of the complaint and two weeks of the filing of an answer). Thus, the first factor for timeliness counts in favor of allowing intervention. *Id.* Courts regularly find timely motions to intervene filed much later than Kuhnle's, including motions filed several months or even years after the initiation of litigation. *See, e.g.*, *Western Watersheds Project v. Haaland*, 22 F.4th 828, 836 (9th Cir. 2022) ("more than two years"); *Smith v. Los Angeles Unified School District*, 830 F.3d 843, 848–53 (9th Cir. 2016) (twenty years); *United States v. Oregon*, 745 F.2d 550, 551–52 (9th Cir. 1984) (fifteen years).

b. Granting Kuhnle's Intervention Will Not Prejudice the Parties.

Second, neither MAID nor the state will be prejudiced by Kuhnle intervening in this case. As far as MAID goes, their interest in the case is less significant from a constitutional perspective than Kuhnle's interest. MAID complains that Montana allowing ADUs and duplexes on other people's properties—especially their neighbors' properties—will injure their property interests.

But Kuhnle's interest in this case, unlike MAID's, is direct—it is his own property that he would build an ADU on but for MAID's legal arguments that this Court found preliminarily persuasive. He has a real stake in the case and that stake more than legally justifies his intervention. *See Forest Conservation Council v. United States Forest Serv.*, 66 F.3d 1489, 1494 (9th Cir. 1995), *abrogated on other grounds*, *Wilderness Soc'y*, 630 F.3d 1173:

> [W]hen, as here, the injunctive relief sought by plaintiffs will have direct, immediate, and harmful effects upon a third party's legally protectable interests, that party satisfies the "interest" test of Fed. R. Civ. P. 24(a)(2); [it] has a significantly protectable interest that relates to the property or transaction that is the subject of the action.

MAID is only prejudiced in the sense that a property owner impacted by MAID's successful (so far) effort to prevent the owner from using his property consistently with how the Legislature and Governor of the State intend will argue that legally MAID's position is legally untenable. That is not the kind of prejudice that justifies denying Kuhnle's motion to intervene.

Likewise, the State would not be prejudiced by his intervention—to the contrary, the State is defending the laws that Kuhnle also seeks to defend, and the State does not oppose Kuhnle's intervention.

Furthermore, no dispositive motions have been filed, and Kuhnle is willing and able to comply with any briefing schedules this Court may establish going forward. Kuhnle's intervention, at this preliminary stage of litigation, would not result in any undue delay prejudicing either existing party. *See Kalbers v. U.S. Dep't of Justice*, 22 F.4th 816, 825–26 (9th Cir. 2021) (reversing district court's denial of intervention as of right where applicant "offered to comply with the existing summary judgment briefing schedule"). In fact, Kuhnle is the only party or proposed party to this lawsuit that *would* be directly prejudiced by a delay of litigation, considering Plaintiff benefits from the status quo under this Court's preliminary injunction order and Kuhnle's planned

construction of an ADU on his property will be indefinitely delayed until this case's conclusion, which if anything provides Kuhnle a greater incentive to avoid unnecessary delays than either existing party.

c. Conversely, Kuhnle Will be Prejudiced if the Court Denies the Motion to Intervene.

Third, Kuhnle will be prejudiced if the Court were to deny his motion. As set out above, Kuhnle had plans to build a 1,000-square-foot ADU that he has had to stand down on because of this Court's injunction. But for the injunction, he'd be moving forward. Moreover, if this Court permanently enjoins the ADU law and that decision is upheld, then he will be forced to settle for a smaller ADU that will have two, rather than three, bedrooms, and thus bring in less on the rental market. The injury Kuhnle will suffer if this case is decided against property owners like him is real, and for that reason he should be allowed to intervene to defend that substantial dollars and cents interest.

d. There is Nothing Unusual About the Case That Would Support Denying Motion to Intervene.

Finally, the last prong as to timeliness—unusual circumstances—really has no bearing here. Kuhnle's effort to intervene in a case that affects his property interests is the opposite of unusual. What would be unusual is denying his motion as untimely when his property rights are at stake, and where he sought to intervene within a month of the case becoming publicly known and within a month and a half of the case being originally filed.

Ultimately, denial of intervention based on a lack of timeliness is only proper where intervention would result in undue delay, circuity, or multiplicity of suits. *Schwenke*, 252 Mont. at 131, 827 P.2d at 811 (citing *Grenfell v. Duffy* (1982), 198 Mont. 90, 95, 643 P.2d 1184, 1187).

Granting this motion will not lead to undue delay, circuity, or a multiplicity of suits. This element of the test for intervention is met.

2. Kuhnle Has an Interest in the Laws That Are the Subject of This Action.

To intervene as of right, a party must claim an "interest relating to the property or transaction which is the subject of the action. . . ." Mont. R. Civ. P. 24(a)(2). As noted previously, the Montana Supreme Court interprets this rule consistent with Federal Rule 24, since it reads virtually identically. The federal courts explain that this "interest relating to . . . [what is] . . . the subject of the action" test is not a bright-line rule but is instead met if the proposed intervenors will "suffer a practical impairment of [their] interests as a result of the pending litigation." *California ex rel. Lockyer*, 450 F.3d at 441. Consistent with this approach, a court should make a "practical, threshold inquiry," *Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993), and "'involv[e] as many apparently concerned persons as is compatible with efficiency and due process.'" *Cnty. of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). The types of interests protected are interpreted "'broadly, in favor of the applicants for intervention.'" *Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993) (quotation omitted).

As described above, Kuhnle owns a rental property in Missoula that he plans to build an ADU upon. Kuhnle Decl. ¶ 2. Based on the ADU law at issue here, he planned to build a 1,000-square-foot ADU—but those plans are now on hold pending the outcome of this case. Kuhnle Decl. ¶ 4. If the ADU law is forever enjoined, then Kuhnle will be forced to either not build an ADU on the property or build a much smaller ADU, less than 600 square feet, consistent with what Missoula's local ordinances allow. Kuhnle Decl. ¶ 3–8. If forced to build this smaller ADU, he will be forced to forego the additional rent he would bring in from a larger ADU with the third bedroom

that a 600-square- foot cap does not allow for. Kuhnle Decl. ¶ 6. This interest is more than enough for this Court to conclude that this prong of the four-prong test for mandatory intervention is met. *See Forest Conservation Council*, 66 F.3d at 1494 ("[W]hen, as here, the injunctive relief sought by plaintiffs will have direct, immediate, and harmful effects upon a third party's legally protectable interests, that party satisfies the 'interest' test of Fed. R. Civ. P. 24(a)(2); [it] has a significantly protectable interest that relates to the property or transaction that is the subject of the action.").

3. This Case Will Impair or Impede His Ability to Protect His Interest in the Case.

To satisfy this prong of the inquiry, Kuhnle "must show only that impairment of [his] substantial legal interest is possible if intervention is denied." *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997). The burden is "minimal," and "[c]ourts generally allow intervention if a party *might* be practically disadvantaged by the disposition of the action." *Id*. (emphasis added).

Kuhnle notes that the pressures of resolving the case on the State could impact Kuhnle's interests, and if he is not allowed to intervene his interests "might be practically disadvantaged by the disposition of the action." MAID has challenged four laws here, but it is only one of them—the ADU law—that concerns Kuhnle. The State could choose to settle with MAID and agree to the injunction as to the ADU law if MAID agreed to allow some combination of the other laws to be reinstated and effective. While that outcome may serve the State, it would not serve Kuhnle's interests at all; his interests would be impaired, and he would have been prevented from stopping it. With that being the case, there can be no serious argument that the State cannot represent his interests, and in saying so it does not impugn the Government's motivations at all. Its motives are

simply different from Kuhnle's, and that presents a unique and more than sufficient reason to find this prong of the mandatory intervention test met.

4. The Existing Parties Cannot Adequately Represent His Interest.

To be sure, the State of Montana will proffer an excellent defense of why the laws at issue do not violate the Constitution. But Kuhnle's interest in this case is not just a matter of intellectual principle—it is his property rights and the value of his property that this lawsuit will impact. The courts have recognized in property rights disputes that involve the government, an intervenor aligned with the government has a distinct interest apart from the government's interest that requires the conclusion that the government cannot adequately represent the property owner's interest. Any number of examples exist of this occurring in the past, and those examples also are similar enough to the instant case facts to justify the conclusion that the state's interests here do not adequately represent Kuhnle's interest, either.

In *North Hempstead v. North Hills*, 80 FRD 714 (E.D. N.Y. 1978), the proposed intervenors owned property within a village that had been rezoned to permit certain construction. *Id.* at 715. The underlying litigation addressed whether the downzoning by a village of various parcels of land located within the village violated federal environmental laws; the defendants were the decisionmakers for the village, and the plaintiffs that sued were a neighboring town, an HOA, and several homeowners within the village who wanted to block the downzoning; the defendants were the village as well as various village official leaders (Mayor, Trustees, and Zoning Board members). *Id.* The court held that the interest of proposed intervenors under Rule 24(a)(2) was not adequately represented by the existing parties, all of whom were in one form or another the government, because—while they may want to preserve their authority to act—they did not share the economic interests of the proposed intervenors in the outcome of the litigation, and there was

a likelihood that the property owner intervenors would make a more vigorous presentation of the economic side of the argument than would the governmental defendants. *Id.* at 716.

That the owners of the property affected by a zoning change have a different interest, one focused on the economic impact of the change, from the government in defending the zoning change, is exactly what makes Kuhnle's interests here different from the State of Montana's interests. In *North Hempstead*, the court concluded that the proposed intervenors had satisfied this prong of the mandatory intervention test and granted the motion. *Id.* So should the Court allow Kuhnle to intervene, because his economic interests are real and are different in kind from the State's interest in upholding the statutes that MAID challenges.

Another case that makes for a good comparison to the instant case involved federal milk marketing rules applicable to reconstituted milk products that a consumer organization and consumers challenged as invalid. In that case, *Community Nutrition Institute v Bergland*, No. Civ.A. 80–3077, 1981 WL 380679, at *1 (D. D.C. Feb. 19, 1981). The proposed intervenors who wanted to intervene to defend these proposed rules were the National Milk Producers Federation, which is a national farm commodity organization, the Associated Milk Producers, Inc., a dairy farmer's cooperative association, and Central Milk Producers Cooperative, a federation of fourteen dairy cooperatives. *Id.* at *2. The court recognized the different interest between the government and the private entities with their economic interests at stake. *Id.* The court compared the two interests, noting that the government's ultimate objective was "to maintain orderly marketing conditions for agricultural commodities in interstate commerce," and "protecting the interest of consumers." *Id.* On the other hand, the proposed intervenors wanted to protect and advance their own private economic interest. *Id.* Accordingly, the court granted the motion to intervene.

Like the zoning case from New York, this milk rules case again illustrates that the interests of a government defendant, like the State of Montana here, do not adequately represent the interests of those who, like Kuhnle, have their own personal economic state in the underlying legal dispute. When that circumstance arises, then the Court should grant the intervenor's motion to intervene under Rule 24(a)(2).

Neither would the other proposed intervenor in this case adequately represent Kuhnle's interests should its motion to intervene be granted, for the same reasons stated above. Shelter WF, which filed its motion to intervene as Defendant on January 17, 2024, is "a Montana nonprofit public benefit corporation" that advocates for the construction of affordable housing and specifically advocated for the laws challenged in this lawsuit prior to their enactment. Shelter WF's Motion to Intervene (Doc. 22), ¶¶ 1–25. Shelter WF does not purport to represent any Montana property owners impacted by this case and makes significantly different arguments than those made by Kuhnle. For example, like the State of Montana, Shelter WF seeks to defend the entirety of the new zoning regime it advocated for and may be willing to accept a settlement that serves its broader policy interests at the expense of Kuhnle's specific economic interests in his ADU. Nor is Shelter WF likely to present as vigorous a defense of the economic side of the arguments in this case as Kuhnle—who, again, would be the only actual property owner represented in the case.

B. If the Court Does Not Grant Intervention as a Matter of Right, then the Court Should Allow Kuhnle Permissive Intervention.

Mont. R. Civ. P. 24(b)(1)(B) provides: "On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Under that standard, which the Montana Supreme Court has interpreted consistently with the analogous federal rule, courts have broad discretion to grant intervention. *See Orange*

Cnty. v. Air California, 799 F.2d 535, 539 (9th Cir. 1986). That standard is certainly met on these facts.

There is no serious question that Kuhnle has a claim or defense that shares with the main action a common question of law or fact—MAID asked for an injunction prohibiting SB528, now codified as § 76-2-345, MCA, the law allowing ADUs of up to 1,000 square feet, from becoming effective, and Kuhnle planned to build a 1,000-square-foot ADU on his rental property until this Court entered the injunction blocking SB528 that MAID sought. Kuhnle will show, if allowed to intervene, that MAID's contention that a law allowing for a property owner to use his property to build an ADU does not violate his neighbors' due process or equal protection rights. To the contrary, it is his property rights that the injunction violates since his right to use his property to build an ADU has been taken away by the Court's injunction. *See Wineries of the Old Mission Peninsula Ass'n v. Township of Peninsula, Michigan*, 41 F. 4th 767, 773 (6th Cir. 2022) (granting association of property owners intervention as of right to defend zoning ordinance relating to the operation of wineries, because of the potential impact striking down the ordinance would have on their property values).

IV. Conclusion

Kuhnle respectfully requests that the Court grant his Motion to Intervene as of Right but in the Alternative requests that the Court grant his Motion for Permissive Intervention.[4]

[4] Kuhnle has contacted both the Plaintiff and the Defendant in this case. The Defendant State of Montana does not oppose this motion, but MAID opposes Kuhnle's intervention.

DATED: February 2, 2024.

Respectfully submitted,

/s/ Ethan W. Blevins

ETHAN W. BLEVINS
Montana Bar No. 37415893
Pacific Legal Foundation
839 W 3600 S
Bountiful, UT 84010-8423
Telephone: (916) 288-1392
eblevins@pacificlegalfoundation.org

MARK MILLER*
Pacific Legal Foundation
4440 PGA Blvd., Ste. 307
Palm Beach Gardens, FL 33410
Telephone: (561) 691-5000
mark@pacificlegal.org

DAVID MCDONALD*
Pacific Legal Foundation
3100 Clarendon Blvd., Ste. 1000
Arlington, VA 22201
Telephone: (202) 888-6881
DMcDonald@pacificlegal.org

Counsel for Proposed Intervenor

**Pro Hac Vice forthcoming*