

APPLICATION FOR  
**DISTRICT COURT JUDGESHIP**  
**Eleventh Judicial District Court**

**A. PERSONAL INFORMATION**

1. Full Name: Amy Poehling Eddy
  - a. What name do you commonly go by? Amy Eddy
2. Birthdate: [REDACTED] Are you a U.S. citizen? Yes
3. Home Address: [REDACTED]  
Phone: [REDACTED]
4. Office Address: 33 Second Street East, Suite 1, Kalispell, MT 59901  
Phone: (406) 755-6428 (direct line)
5. Length of residence in Montana: 17 years
6. List your place of residence for the past five years:

<u>Dates</u>	<u>City</u>	<u>State</u>
10/1/2013-present	Kalispell	MT
2007-10/1/2013	Whitefish	MT

## B. EDUCATIONAL BACKGROUND

7. List the name and location of schools attended, beginning with high school:

<u>Name</u>	<u>Location</u>	<u>Date of Degree</u>	<u>Degree</u>
Wood River H.S.	Hailey, ID	1993	H.S. Diploma
College of Idaho	Caldwell, ID	-----	-----
California Polytechnic State University (“Cal Poly”)	San Luis Obispo, CA	1997	B.S., Social Science <i>Cum Laude</i>
University of Montana School of Law	Missoula, MT	2001	J.D.

8. List any scholarships, awards, honors or citations that you have received:

College of Idaho:

- Academic Scholarship;
- Nordic Ski Racing Scholarship

University of Montana School of Law:

- National Moot Court Team, Regional Champions;
- Order of Barristers;
- Karlberg Scholarship;
- Judicial Clerkship, Magistrate Leif Erickson

Professional Recognitions:

- Martindale Hubble AV Preeminent Rating;
- Member, Board of Visitors for the University of Montana School of Law;
- 2012 Montana Trial Lawyers Association Appellate Advocacy Award;
- National Trial Lawyers Association “Top 100” and “Top 40 Under 40”;
- 2015 Women Leaders in the Law Invitation

9. Were you a member of the Law Review? If so, please state the title and citation of any article that was published and the subject area of the article.

I was not a member of Law Review.

### C. PROFESSIONAL BACKGROUND AND EXPERIENCE

10. List all courts (including state and federal bar admissions) and administrative bodies having special admission requirements in which you are presently admitted to practice, giving the dates of admission in each case.

<u>Court or Administrative Body</u>	<u>Date of Admission</u>
United States Court of Federal Claims	2014
United States Supreme Court	2012
Ninth Circuit Court of Appeals	2012
Tribal Court for the Confederated Salish and Kootenai Tribe	2002
U.S. District Court for the District of Montana	2001
Montana Supreme Court	2001

11. Indicate your present employment (list professional partners or associates, if any).

The Law Offices of Amy Eddy, pllc  
 33 Second Street East, Suite 1  
 Kalispell, MT 59901

I currently have a solo practice.

12. State the names, dates and addresses of all law firms with which you have been associated in practice, all governmental agencies or private business organizations in which you have been employed, periods that you have practiced as a sole practitioner, and other prior practice:

<u>Employer's Name</u>	<u>Position</u>	<u>Dates</u>
Boone Karlberg & Haddon	Legal Intern	1997-1998
Beck & Richardson	Legal Intern	2000
Bottomly Law Offices	Associate	2001
Bottomly & Ellingson, pllp	Associate	2005
Bottomly Ellingson Eddy, pllp	Partner	2007
Bottomly & Eddy, pllp	Partner	2009
Bottomly Eddy Sandler, pllp	Partner	2011
EDDY SANDLER Trial Attorneys, pllp	Partner	2013-9/2014
The Law Offices of Amy Eddy, pllc	Owner	9/2014-present

13. If you have not been employed continuously since the completion of your formal education, describe what you were doing.

I have been employed continuously since graduating from law school.

14. Describe the nature of your present law practice, listing the major types of law that you practice and the percentage each constitutes of your total practice.

My present law practice primarily focuses on complex civil litigation. The primary areas of law would include:

- Construction Defects (25%);
- Employment Law (25%);
- Personal Injury (20%);
- Insurance Coverage (15%);
- Appellate Advocacy (10%);
- Professional Malpractice (5%)

15. List other areas of law in which you have practiced, including teaching, lobbying, etc.

Over the years I have taught trial practice classes at the University of Montana School of Law; I have testified in the Montana Legislature on various pieces of legislation; and I have handled a variety of cases including vaccine injury, adoptions, child custody matters, landlord tenant disputes, and real estate disputes. Recently I have begun doing more work for the Montana Office of the Appellate Defender, handling criminal matters on appeal.

16. If you specialize in any field of law, what is your specialty?

My overall specialty is complex civil litigation, as described in Question No. 14.

17. Do you regularly appear in court? Yes

What percentage of your appearance in the past five years was in:

Federal Court	5%
State or local courts of record	85%
Administrative bodies	10%
Other	0%

18. During the past five years, what percentage of your practice has been trial practice?

90%

19. How frequently have you appeared in court?

My court appearances vary widely, but would likely be 2-3 times per month on average.

20. How frequently have you appeared at administrative hearings?

I have participated in approximately 12 administrative hearings over the years.

21. What percentage of your practice involving litigation has been:

Civil	97%
Criminal	3%
Other	0%

22. Have you appeared before the Montana Supreme Court within the past five years? If so, please state the number and types of matters handled. Include the case caption, case citation (if any), and names, addresses and phone numbers of all opposing counsel for the five most recent cases.

I have appeared in front of the Montana Supreme Court seventeen times in the past five years. As requested, this is the relevant information on the five most recent cases:

<b>Caption</b>	<b>Case Citation</b>	<b>Opposing Counsel</b>	<b>Case Description</b>
<i>Matter of S.G.R.</i>	DA-15-0077	Timothy C. Fox Montana Attorney General 215 North Sanders PO Box 201401 Helena MT 59620  Thomas P. Meissner Fergus County Courthouse 801 W. Broadway Lewistown MT 59457	Representing criminal defendant on appeal involving an involuntary commitment.
<i>Allstate v. Posnien</i>	DA 14-0183	Peter Habein Kimberly More Crowley Fleck, PLLP 490 N. 31 <sup>st</sup> Street, Suite 500 Billings, MT 59103	Representing a former Allstate agent in the sale of her Allstate agency and extent of secured interest in the collateral that was wrongfully converted by Allstate.
<i>Meek v. Eighth Judicial District Court</i>	OP 14-0786	Amicus Brief	Regarding whether the billed amount of medical expenses represents the reasonable value of medical expenses incurred by a plaintiff.
<i>State v. Morse</i>	DA 14-0052	Timothy C. Fox MONTANA ATTORNEY GENERAL	Represented criminal defendant convicted of sexual intercourse without consent on appeal of

		P.O. Box 201401 Helena, MT 59620-1401 (406) 444-2026  Ole Olson and Mary Cochenour SPECIAL DEPUTY DEER LODGE COUNTY ATTORNEYS P.O. Box 201401 Helena, MT 59620-1401	whether the trial court was time-barred in ordering a new trial, whether a new trial was necessary to prevent a miscarriage of justice, and whether the district court erred in allowing the victim's sisters to testify.
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23. State the number of jury trials that you have tried to conclusion in the past ten years.

2

24. State the number of non-jury trials that you have tried in the past ten years.

2

25. State the names, addresses and telephone numbers of adversary counsel against whom you have litigated your primary cases over the past two years. Please include the caption, dates of trial, and the name and telephone number of the presiding judge. If your practice does not involve litigation, give the same information regarding opposing counsel and the nature of the matter.

<b>Caption</b>	<b>Dates</b>	<b>Judge</b>	<b>Opposing Counsel</b>
<i>Brown v. Sands Surveying et al</i>	Ongoing	Hon. Heidi Ulbricht (406) 758-5906	Todd A. Hammer HAMMER, HEWITT, JACOBS & QUINN, PLLC P.O. Box 7310 Kalispell, MT 59904-0310 (406) 752-2250  Daniel Hileman KAUFMAN, VIDAL, HILEMAN, ELLINGSON P.C. 22 2 <sup>nd</sup> Avenue West, #4000 Kalispell, MT 59901 (406) 755-5700  Sarah Simkins JOHNSON, BERG & SAXBY, PLLP P.O. Box 3038 Kalispell, MT 59903 (406) 755-5535

			<p>Paul Tranel BOHYER, ERICKSON, BEAUDETTE &amp; TRANEL, P.C. P.O. Box 7729 Missoula, MT 59807 (406) 532-7800</p> <p>Randall Snyder SNYDER LAW OFFICES, P.C. P.O. Box 717 Bigfork, MT 59911-0717 (406) 837-4383</p> <p>Anne Biby HASH, O'BRIEN, BIBY &amp; MURRAY, PLLP 136 1<sup>st</sup> Ave West Kalispell, MT 59901 (406) 755-6919</p>
<i>Fisher v. Butte School District</i>	2015	Montana Human Rights Bureau	<p>Patrick Fleming FLEMING &amp; O'LEARY, pllp 480 East Park Butte, MT 59701 (406) 723-5600</p>
<i>Owens v. Northwest Montana Real Estate, et al.</i>	Ongoing	Hon. Jim Wheelis (406) 293-8120	<p>Jennifer Merriman COCKRELL, MOORE, GOICOECHEA &amp; JOHNSON, PLLP P.O. Box 7370 Kalispell, MT 59901 (406) 751-6000</p>
<i>Mattson v. PPLM</i>	Ongoing	Hon. Katherine Curtis (406) 758-5665	<p>Martin King Sean Morris WORDEN THANE, P.C. 111 North Higgins, Suite 600 P.O. Box 4747 Missoula, Montana 59806 (406) 721-3400</p>
<i>Brunetto v. State</i>	2014	Hon. Robert Allison (406) 758-5870	<p>Mikel Moore COCKRELL, MOORE, GOICOECHEA &amp; AXELBERG, PLLP P.O. Box 7370 Kalispell, MT 59901 (406) 751-6000</p> <p>Pam Snyder-Varns Montana Dept. of Administration</p>

			Risk Management & Tort Defense P. O. Box 200124 Helena, MT 59620 (406) 444-2421
<i>Haymond v. Denman Construction, et al.</i>	2013	Hon. Heidi Ulbricht (406) 758-5906	Kristin Omvig HAMMER, HEWITT, JACOBS & QUINN, PLLC P.O. Box 7310 Kalispell, MT 59901 (406) 755-2225  Sarah D. Simkins JOHNSON, BERG & SAXBY, pllp P.O. Box 3038 Kalispell, MT 59901 (406) 755-5535  C.J. Johnson KALKSTEIN, JOHNSON & DYE P.O. Box 8568 Missoula, MT 59807 (406) 721-9800
<i>Pearl v. Winter Sports, Inc.</i>	2013	Hon. Heidi Ulbricht (406) 758-5906	Mikel Moore COCKRELL, MOORE, GOICOECHEA & AXELBERG, PLLP P.O. Box 7370 Kalispell, MT 59901 (406) 751-6000
<i>Posnien v. Allstate</i>	Ongoing	Hon. Ted Lympus (406) 758-5906	Kim More CROWLEY FLECK, PLLP P.O. Box 759 Kalispell, MT 59903 Phone: (406) 752-6644

26. Summarize your experience in adversary proceedings before administrative boards or commissions during the past five years.

My experience before administrative boards or commissions has been education and employment discrimination claims brought before the Equal Employment Opportunity Commission (EEOC) and Montana Human Rights Bureau. These cases have dealt primarily with sex, pregnancy and disability discrimination.

27. If you have published any legal books or articles, other than Law Review articles, please list them, giving citations, dates, and the topics involved. If you lectured on legal issues at continuing legal education seminars or otherwise, please state the date, topic and group to which you spoke.

<b>Date</b>	<b>Topic</b>	<b>Organization</b>
7/18/13	<i>Medical Coding for Attorneys</i>	Melvin Belli Society
2012-present	Quarterly MTLA <i>Amicus</i> Committee Reports	<i>Trial Trends</i>
11/4/11	<i>How to Organize and Manage Auto Liability Cases to Enhance Your Pretrial Practice and Maximize Your Client's Recovery</i>	Montana Trial Lawyers Association
2011	Quarterly President's Messages	<i>Trial Trends</i>
2008-2009	Quarterly Education Committee Columns	<i>Trial Trends</i>
2005	<i>What You Need to Know About Stipulated Judgments, Covenants Not to Execute, and Assignments</i>	<i>Trial Trends</i>

#### **D. PROFESSIONAL AND PUBLIC SERVICE**

28. List all bar associations and legal professional societies of which you are a member and give titles and dates of any office that you have held in such groups and committees to which you belong. These activities are limited to matters related to the legal profession. List the dates of your involvement.

State Bar of Montana

- Member (2001-present)

Northwest Montana Bar Association

- President (2014-present)
- President-Elect (2014)
- Local Rules Committee (2013-present)

Board of Visitors, University of Montana School of Law

- Member (2012-present)

Montana Justice Foundation

- Board Member (2011-2012)

Montana Trial Lawyers Association

- President (2011)
- Board Member (2004-present)
- Chair, *Amicus* Committee (2012-present)
- Member, *Amicus* Committee (2003-2012)
- Member, Education Committee (2004-present)
- *Trial Trends* Editorial Board (2005-2008)

American Association for Justice

- Board of Governors (2011-2013)
- General Member (2008-2011)
- Member, *Amicus* Committee (2011-present)
- Member, Legal Affairs Committee (2011-present)

Public Justice

- Member (2010-present)

The Pound Civil Justice Institute

- Member (2010-present)

29. List organizations and clubs, other than bar associations and professional societies, of which you have been a member during the past five years. Please state the title and date of any office that you have held in each such organization. If you have held any offices, please describe briefly your activities in the organization.

- Flathead Valley Ski Education Foundation
- Whitefish School District Education Foundation
- Flathead Land Trust
- Montana Innocence Project

30. Have you ever run for or held public office? If so, please give the details.

Yes. I was a Trustee for the Whitefish School District between 2003-2007.

31. Please explain your philosophy of public involvement and practice of giving your time to community service.

Public involvement provides opportunities for citizens to meaningfully engage and contribute to the well-being of their community, and inform the perspective of their elected officials. Public involvement is imperative to a well-functioning society. Since we have lived in Montana I have devoted many hours to community service. Right after our first daughter was born I ran successfully for the Whitefish School Board. After serving on the Whitefish School Board for several years I then co-founded the Whitefish School District Education Foundation as a way to provide private grants for a variety of projects and supplies that would otherwise not have been available. Since then I have been involved in numerous community projects and organizations from the local ski team, local skate park, and arts organizations, to presentations at local schools, among other involvement.

## **E. PROFESSIONAL CONDUCT AND ETHICS**

32. Have you ever been publicly disciplined for a breach of ethics or unprofessional conduct (including Rule 11 violations) by any court, administrative agency, bar association, or other professional group? If so, give the particulars.

No.

33. Have you ever been found guilty of contempt of court or sanctioned by any court for any reason? If so, please explain.

No.

34. Have you ever been arrested or convicted of a violation of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations unless they also included a jail sentence.

No.

35. Have you ever been found guilty or liable in any civil or criminal proceedings with conduct alleged to have involved moral turpitude, dishonesty, or unethical conduct? If so, please give details.

No.

36. Is there any circumstance or event in your personal or professional life that, if brought to the attention of the Commission, Governor or Montana Supreme Court, would affect adversely your qualifications to serve on the court for which you have applied? If so, please explain.

No.

## **F. BUSINESS AND FINANCIAL INFORMATION**

37. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? If so, please give details, including dates.

No.

38. If you are an officer, director, or otherwise engaged in the management of any business, please state the name of such business, its nature, and the nature of your duties. If appointed as district court judge, state whether you intend to resign such position immediately upon your appointment.

No.

39. State whether during the last five years you have received any fees or compensation of any kind, other than for legal services rendered, from any business enterprise or organization. If so, please identify the source and approximate percentage of your total income it constituted over the past five years.

No.

40. Do you have any personal relationships, financial interests, investments or retainers that might conflict with the performance of your judicial duties or which in any manner or for any reason might embarrass you? If so, please explain.

No.

41. Have you filed appropriate tax returns as required by federal, state, local and other government authorities?

Yes.

If not, please explain.

N/A.

42. Do you have any liens or claims outstanding against you by the Internal Revenue Service (IRS)?

No.

If yes, please explain.

N/A.

43. Have you ever been found by the IRS to have willfully failed to disclose properly your income during the past five years? If so, please give details.

No.

## **G. WRITING SKILLS**

44. In the past five years, explain the extent to which you have researched legal issues and drafted briefs. Please state if associates or others have generally performed your research and the writing of briefs.

During the course of my career, and particularly the past five years, I have researched and written all of my own briefs. Well over half of my professional time is spent researching and writing on legal issues, and it is a routine part of every day. I have a robust pretrial motion and appellate practice, as is necessitated by complex civil litigation.

I have written numerous *amicus* briefs before the Montana Supreme Court for a variety of entities; and have also had the honor of filing *amicus* briefs before the Ninth Circuit Court of Appeals, and the United States Supreme Court.

I have also written a variety of columns for *Trial Trends*, a publication of the Montana Trial Lawyers Association, as reflected in the answer to Question No. 27. Approximately four times per year I peer review and edit articles for *Trial*, a publication of the American Association for Justice with a circulation of over 21,000. The topics of these articles have ranged from overcoming gender bias in the law to handling products liability cases.

45. If you have engaged in any other types of legal writing in the past five years, such as drafting documents, etc., please explain the type and extent of writing that you have done.

In addition to briefing, I regularly write coverage letters, mediation brochures, settlement and release agreements, and employment contracts.

46. Please attach a writing sample of no more than ten pages that you have written yourself. A portion of a brief or memorandum is acceptable.

Attached as Exhibit A is a portion of the *amicus* brief I filed in the United States Supreme Court on behalf of the Former Montana Supreme Court Justices in *American Tradition Partnership, et al. v. Bullock*, No. 11-1179.

47. What percentage of your practice for the past five years has involved research and legal writing?

50-75%

48. Are you competent in the use of Westlaw and/or Lexis?

Yes.

## H. MISCELLANEOUS

49. Briefly describe your hobbies and other interests and activities.

In my free time I enjoy spending time with my husband and our two young daughters (12 and 8). We spend most of the winter alpine and nordic skiing, and traveling around Montana to ski races. During the other months we spend as much time as possible boating, camping and hiking around Northwest Montana. Time at home is spent reading, cooking, with extended family, and managing soccer and gymnastic practices.

50. Describe the jobs that you have held during your lifetime.

I was raised as a working member of a family-owned business, Redfish Lake Lodge, in Stanley, Idaho. My earliest job there was working as a prep cook, and I then advanced to waiting tables and catering weddings and other special events. I spent all of my summers there until after I

graduated from college. During high school and college I worked a variety of jobs including catering, retail sales and ski instructing. Following college I went to work as a Research Assistant for the Idaho State Auditor, primarily working on State Land Board issues. Upon entering law school I had a variety of legal internships before entering private practice, as outlined in the answer to Question No. 12.

51. Please identify the nature and extent of any pro bono work that you have personally performed during the past five years.

Every lawyer has a professional responsibility to provide legal services to those who cannot pay, as well as a moral obligation to do so. Over the years I have provided hundreds of hours of pro bono services to such individuals and entities. This has included adoption, child custody, and landlord tenant matters. It has also included assisting local nonprofits with Articles of Incorporation, Bylaws, and related filings. I have offered to volunteer my time to mediate disputes between pro bono clients, as facilitated by our local organizations providing access to justice for low-income individuals.

52. In the space provided, please explain how and why any event or person has influenced the way you view our system of justice.

I once had the pleasure of hearing now retired Montana Supreme Court Justice Nelson give a speech in the middle of a hotly contested re-election campaign. A member of the audience asked him why he didn't exercise his First Amendment rights to defend himself during the course of the campaign. Justice Nelson responded that his own First Amendment rights would never outweigh a litigant's fundamental right to due process, including a fair and impartial judiciary. His commitment deeply influenced my view of our system of justice. While attorneys must be zealous advocates for their clients, they must also respect and defend the integrity of the judicial system so that all litigants may have a meaningful day in court.

Years later I was honored to be asked to represent the Former Montana Supreme Court Justices in the *Western Tradition Partnership* litigation. During this litigation, my views on our system of justice crystallized. The *Western Tradition Partnership* litigation sought, in the context of judicial elections, to balance the conflicting interests of corporate free speech rights, a litigant's right to due process, and the State's compelling interest in preserving a fair and impartial judiciary. The United States Supreme Court ultimately ruled that balance tipped in favor of corporate free speech.

However, I continue to assign great value to the preservation of an independent, fair and impartial judiciary. It is essential to the public's trust and confidence, and remains a compelling state interest for Montana. A litigant's due process rights are no less important. It is the responsibility of all citizens, but particularly the bench and bar, to protect the independence of the judiciary. It is a responsibility I would take very seriously as a district court judge.

53. In the space provided, explain the qualities that you believe to be most important in a good district court judge.

- Character and judicial temperament that treats all partners of the justice system with civility and respect;
- The ability to get to the heart of an issue and make decisions;
- Rigorous intellect, an open mind, and curiosity;
- Devotion to fairness and propriety for all who come before the Court, and commitment to equitable application of the law;
- Resiliency;
- A sincere interest in the parties before the court; and
- Respect for precedent, context, and the limited nature of the judicial role.

54. In the space provided, explain how a court should reach the appropriate balance between establishment of a body of precedent and necessary flexibility in the law.

District court judges must operate within the boundaries of the powers and protections provided by the Montana Constitution, laws passed by the Montana Legislature, actions of the Executive Branch, and the common law as articulated by the Montana Supreme Court. District court judges must adhere to their own precedent, and that of the Montana Supreme Court, to foster the consistent development of the law, bearing in mind that flexibility in the law is best preserved through judicial restraint. In this context, “judicial restraint” is used to describe the idea that the judiciary should not second-guess policy decisions made by the other branches of the government, unless unconstitutional.

There will be cases though where existing precedent cannot determine the outcome due to the facts, procedural posture, or specific legal question. In these cases, the Constitution and existing statutory and common law must still guide the decision making of district court judges. The consistent exercise of judicial restraint will have preserved flexibility for these cases. By following this approach the body of law that emerges will be predictable and produce results that are just to the litigants.

55. In the space provided, state the reasons why you are seeking office as a district court judge.

I have always looked for new challenges and opportunities to advance the justice system and meet the needs of litigants. This is the next step in my career. I look forward to confronting all types of legal issues that are of great consequence to the individuals, governmental entities and businesses navigating the judicial system; reconciling those differences when possible; and resolving them on behalf of the parties when necessary.

I have a solid set of legal skills that I would bring to the system in terms of research and writing, knowledge of the rules of procedure and evidence, and case management. Just as importantly, I have the interpersonal skills necessary including, a fair demeanor, patience, a sense of humor, and the mental and emotional resiliency to face difficult decisions and the consequences thereof.

I also possess the requisite level of organization and efficiency that is crucial to being able to effectively serve one of the busiest judicial districts in the state, and the vision and resiliency to fulfill the job for many years.

56. What items or events in your career have distinguished you or of which you are most proud?

I am proud of my professional career and achievements, as highlighted in this application. Over the course of my practice, however, I have come to realize I am most proud of the way I interact with those I choose not to represent, but nonetheless do everything in my power to help.

Over the course of my career I have turned down far more cases than I have taken. In every instance, I still took the time to help that potential client problem-solve their legal options. I helped them engage in a meaningful cost-benefit analysis to manage their personal, professional or business risk. I advised them on how they could proceed, with or without legal representation.

These conversations with thousands of people from across the State provided important opportunities to assist people in understanding our justice system—with its inherent benefits and limitations. These conversations also reinforced for me the important lesson that although desperate for guidance and scared of litigation, all these people were confident the justice system could fix any wrong. That trust of citizens is what all judges and attorneys must strive to preserve. I am proud to have been a part of that process as an attorney, and look forward to continuing it as a district court judge.

57. State any pertinent information reflecting positively or adversely on you that you believe should be disclosed to the Judicial Nomination Commission.

I believe that all pertinent information has been disclosed in this application.

58. Is there any comment that you would like to make that might differentiate you from other applicants or that is unique to you that would make you the best district court judge candidate?

I have not been able to review the applications of other attorneys interested in this appointment, so I am not in a position to compare my qualifications at this point in time. However, I do believe my experience distinguishes me from the current Eleventh Judicial District Court Judges, and would complement their expertise. I would bring a perspective and expertise to the Eleventh Judicial District Court that is not otherwise represented. Complex civil litigation is not an area of expertise otherwise represented by the prior experience of our current District Court Judges. I would also be coming from a busy private practice, which may distinguish me from other applicants. While Judge Allison came immediately from private practice, both Judges Ortley and Ulbricht came from being lower court judges, Justice Court and City Court, respectively. I believe the private practice perspective is essential to be retained at the District Court level.

**I. CERTIFICATE OF APPLICANT**

I understand that the submission of this application expresses my willingness to accept appointment as District Court Judge for the 11<sup>th</sup> Judicial District, if tendered by the Governor, and further, my willingness to abide by the rules of the Judicial Nomination Commission with respect to my application and the Canons of Judicial Ethics, if appointed.

July 20, 2015

/s/ Amy Eddy

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(Date)

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(Signature of Applicant)

**EXHIBIT A**

No. 11-1179

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In The  
**Supreme Court of the United States**

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AMERICAN TRADITION PARTNERSHIP, INC., fka  
WESTERN TRADITION PARTNERSHIP, INC., et al.,

*Petitioners,*

v.

STEVE BULLOCK,  
Attorney General of Montana, et al.,

*Respondents.*

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**On Petition For A Writ Of Certiorari To The  
Supreme Court Of The State Of Montana**

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**AMICUS CURIAE BRIEF OF  
RETIRED JUSTICES OF THE MONTANA  
SUPREME COURT AND JUSTICE AT STAKE  
IN SUPPORT OF RESPONDENTS**

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AMY POEHLING EDDY  
*Counsel of Record*  
BOTTOMLY EDDY & SANDLER, PLLP  
1230 Whitefish Stage Road  
Kalispell, MT 59901  
(406) 752-3303  
amyeddy@belawyers.com

*Counsel for Amicus Curiae*

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**INTEREST OF AMICI CURIAE<sup>1</sup>**

*Amici curiae* are eight of the eleven living<sup>2</sup> retired Justices of the Montana Supreme Court – Diane Barz, William E. Hunt, Sr., W. William Leaphart, R.C. McDonough, James M. Regnier, Terry N. Trieweler, Jean Turnage, and John Warner – and Justice at Stake.

These retired Justices filed a brief as *amici curiae* before the Montana Supreme Court asking that court to uphold the law challenged in this case. They have all run nonpartisan statewide campaigns for election to the Montana Supreme Court, or have been appointed to the Montana Supreme Court and, with one exception, faced subsequent re-election. These *amici* are interested in the issue before the Court because the *Citizens United* paradigm authorizing corporate political speech implicates the fundamental due process rights of litigants, as well as the

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<sup>1</sup> The parties were notified ten days prior to the due date of this brief of the intention to file. The parties' letters of consent to the filing of this brief have been filed with the Clerk. *Amici* state that no counsel for a party authored this brief in whole or in part; nor did any person or entity, other than *amici* or their counsel, make a monetary contribution to the preparation or submission of this brief. Matthew Lee Wiener, while affiliated with the firm of Cuneo Gilbert & LaDuca, LLP, assisted in the preparation of this brief.

<sup>2</sup> The three other retired Justices are: Judge Charles E. Erdmann, who is currently sitting on the Military Court of Appeals; Justice John C. Sheehy, who is 93 years old; and former Chief Justice Karla M. Gray, who has not participated in any *amicus curiae* efforts since her retirement in 2008.

compelling state interest in preserving a fair and independent judiciary.

Justice at Stake is a nonpartisan campaign of more than fifty organizations working to keep the courts fair and impartial. Justice at Stake and its partner organizations educate the public and work for reforms to ensure special interests do not affect judicial proceedings.<sup>3</sup>

*Amici* are united in their concern that skyrocketing spending in state judicial elections – especially expenditures from corporate and union treasuries – impermissibly impacts litigants’ constitutional due process rights, and erodes the public’s confidence that the judiciary is fair and impartial. Invalidating laws like Montana’s leaves states powerless to protect these important interests.



#### SUMMARY OF ARGUMENT

*Amici* join Respondents in asking the Court to deny the petition for a writ of certiorari because the decision of the Montana Supreme Court does not conflict with *Citizens United v. Federal Election Commission*.<sup>4</sup>

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<sup>3</sup> The arguments expressed in this brief do not necessarily reflect the opinions of every Justice at Stake partner organization or board member. Members of Justice at Stake’s board of directors who are judges did not participate in the formulation or approval of this brief.

<sup>4</sup> 130 S. Ct. 876 (2010).

Instead, the Montana Supreme Court's decision below directly addressed the constitutional tension between *Citizens United* and *Caperton v. A.T. Massey Coal Co., Inc.*,<sup>5</sup> and held that, within the context of Montana's compelling state interest in protecting the integrity of its courts, the Corrupt Practices Act struck a proper balance between the competing constitutional rights of due process and free speech.

If this Court concludes otherwise and grants the petition, it should docket the case for full briefing and argument. As two Justices of this Court put in their statement respecting the stay, it may be time to consider "whether, in light of the huge sums currently deployed to buy candidates' allegiance, *Citizens United* should continue to hold sway."<sup>6</sup> As it relates to judicial elections, this question cannot be answered without carefully considering the competing constitutional rights at issue. The proper balance is essential to the integrity of independent judiciaries, which are fundamental to the fabric of our system of government.

Enormous special interest expenditures in state judicial elections are threatening one of the Constitution's most central guarantees – the right to due process and a fair trial. The compelling state interest in maintaining fair, impartial courts has been

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<sup>5</sup> 129 S. Ct. 2252 (2009).

<sup>6</sup> *American Tradition Partnership v. Bullock*, 132 S. Ct. 1307 (2012) (statement Ginsburg, J., joined by Breyer, J., respecting grant of application for stay).

endangered by the surge in judicial campaign spending, creating the appearance and expectation that judges are beholden to special interests. These interests were not addressed in *Citizens United*, and are ripe for substantive consideration by this Court.

Invalidating state laws on the authority of *Citizens United* cripples the ability of the 39 states whose judges are elected to maintain the integrity of their judiciaries.<sup>7</sup> Contrary to the suggestion of Petitioners' *amicus*, *Citizens United*, case-by-case recusal by judges simply cannot vindicate this compelling state interest. The Petitioners' parallel challenges to Montana's disclosure requirements<sup>8</sup> demonstrate the practical impossibility of bringing these types of motions.

These important considerations are unique to the constitutional status of state laws regulating independent expenditures by corporations in judicial

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<sup>7</sup> See generally American Judicature Society, *Judicial Selection in the States: Appellate and General Jurisdiction Courts: Initial Selection, Retention, and Term Length*, available at [http://www.judicialselection.us/uploads/documents/Selection\\_Retention\\_Term\\_1196092850316.pdf](http://www.judicialselection.us/uploads/documents/Selection_Retention_Term_1196092850316.pdf).

<sup>8</sup> *Western Tradition Partnership, Inc. v. Bullock*, 2011 MT 328, ¶9, 363 Mont. 220, 271 P.3d 1 (noting that in Montana state and federal courts “Western Tradition appears to be engaged in a multi-front attack on both contribution restrictions and the transparency that accompanies campaign disclosure requirements . . . challeng[ing] the constitutionality of most of the limits and disclosure requirements contained in §13-37-216, MCA.”).

elections, and they counsel strongly against a summary disposition of this case.<sup>9</sup>

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## ARGUMENT

Erosion of public trust in the judiciary was the exact concern that led Montana citizens to enact the Corrupt Practices Act in 1912 through a citizens' initiative. At that time, state trial judges had literally been bought by the Copper Kings to do their bidding – resulting in corruption of the highest order – even though *quid pro quo* bribery was never proven.<sup>10</sup>

For example, in 1903, following an adverse district court decision in favor of a competitor, Amalgamated Copper shut down its mines in protest and laid off 15,000 workers – the majority of wage earners in Montana at the time. The corporation blackmailed Governor Toole into calling a special session of the Legislature to adopt a bill allowing a judge to be removed on a simple charge of bias – thereby allowing the corporation to have its cases heard only by judges

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<sup>9</sup> *Citizens United*, 130 S. Ct. at 968 (Stevens, J., joined by Ginsburg, Breyer, & Sotomayor, JJ.) (dissenting) (noting the unaddressed “consequences” of the Court’s holding on state judicial elections).

<sup>10</sup> See Howell, Larry, *Once Upon a Time in the West: Citizens United, Caperton, and the War of the Copper Kings*, 73 Mont. L. Rev. 25 (2012) (describing the bribery, corruption and favors that characterized this “colorful” period of history for the Montana judiciary).

it approved of or literally “owned.”<sup>11</sup> In the face of certain economic ruin, the Legislature passed the “Fair Trials Bill.” Amalgamated Copper promptly sent the miners back to work, assured the judiciary would protect its economic interests.

The public’s right to due process and confidence in the integrity and independence of state judicial systems is now being undermined again by the dramatic increase in independent expenditures by special interest groups. Only through narrowly tailored state campaign finance regulations can these interests be protected, especially in sovereign states like Montana whose citizens have adopted constitutional provisions for the nonpartisan popular election of judges. As demonstrated below, while the “Copper Kings are a long time gone to their tombs,”<sup>12</sup> their specter hangs over Montana. The Corrupt Practices Act has insulated Montana’s courts from the factors that have diminished public confidence in courts across the country; without it, Montana may find its courts once again bought by corporate special interests.

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<sup>11</sup> Howell, *supra* note 10, at 39-41.

<sup>12</sup> *Id.* at 25.

**I. The dramatic increase in independent expenditures in judicial elections has adversely impacted the judiciary's effective functioning.**

The surge in spending in judicial elections has already had a profound and detrimental impact on the public's confidence in the integrity and independence of state judicial systems.

**A. Judicial election spending by outside interest groups has been skyrocketing.**

Between 2000 and 2009, state high court candidates raised and spent over \$206.9 million nationally in their judicial elections.<sup>13</sup> That is more than double the \$83.3 million raised for the same purpose from 1990 to 1999.<sup>14</sup> All but two of the 22 states with contestable high court elections had their costliest-ever contests between 2000 and 2009.<sup>15</sup>

Despite this surge in candidate fundraising, independent spending by special interest groups frequently has dwarfed spending by the candidates themselves. These special interest "super-spenders," which are strikingly similar to the super PACs now fueling national campaigns, have added to the spending records

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<sup>13</sup> James Sample, et al., Justice at Stake, *The New Politics of Judicial Elections 2000-2009* 1 (2010), available at [http://brennan.3cdn.net/d091dc911bd67ff73b\\_09m6yvpvgv.pdf](http://brennan.3cdn.net/d091dc911bd67ff73b_09m6yvpvgv.pdf).

<sup>14</sup> *Id.* at 8.

<sup>15</sup> *Id.* at 1.

being set in judicial races around the country. In 29 of the most expensive judicial elections between 2000 and 2009, the average non-super-spender donated \$850, while the top five super-spender in each election spent an average of nearly \$500,000.<sup>16</sup>

In the 2010 Michigan Supreme Court race, for instance, candidates raised and spent just over \$2.3 million, while special interest groups spent nearly \$6.8 million, mostly on television advertisements.<sup>17</sup> In fact, four of the top five spenders on television advertisements in 2010 were independent special interest groups.<sup>18</sup> The one candidate on that list, Illinois Justice Thomas Kilbride, spent heavily to defend his seat on the bench against an attack by independent groups.<sup>19</sup> By paving the way for unlimited corporate and union independent expenditures on these elections, *Citizens United* will only exacerbate the problem.

The 2011 Wisconsin Supreme Court race highlights the immense impact of this super-spending.

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<sup>16</sup> Sample, *supra* note 13, at 10.

<sup>17</sup> Charles Hall, ed., Justice at Stake, *The New Politics of Judicial Elections 2009-2010*, 5 (2011), available at <http://newpoliticsreport.org/site/wp-content/uploads/2011/10/JAS-NewPolitics2010-Online-Imaged.pdf>. See also *id.* at 4 n.2, 12 (noting that limitations on disclosure in Michigan hides many independent expenditures, and that some estimates indicate that spending may be higher).

<sup>18</sup> *Id.* at 16.

<sup>19</sup> *Id.* at 20.

Both candidates for the seat agreed to take public financing, limiting the amount they could spend on their respective campaigns to approximately \$400,000.<sup>20</sup> But various special interest groups spent \$3.5 million on independent expenditures and issue advertisements.<sup>21</sup> The result was one of the most partisan “nonpartisan” judicial races in recent history. The independent spending was all clearly directed at, and perceived by the public as, buying a vote in a very specific and politicized case.<sup>22</sup> The incumbent and eventual victor, Justice David Prosser, cast the tie-breaking vote in that case, consistent with the interests of the outside groups who paid for his re-election.<sup>23</sup>

Recently, the surge in independent judicial election spending moved squarely into retention elections, with special interest groups seeking to unseat judges that do not share their views.<sup>24</sup> The 2010 retention election in Iowa was particularly alarming. There, in an unprecedented move, out-of-state special interest groups purposefully poured money into a successful campaign to remove three justices who had

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<sup>20</sup> Press Release, Justice at Stake, *Nasty Campaign Deepens ‘Crisis’ for Wisconsin High Court* (Apr. 6, 2011), available at [http://www.justiceatstake.org/newsroom/press-releases-16824/?nasty\\_campaign\\_deepens\\_crisis\\_for\\_wisconsin\\_high\\_court&show=news&newsID=10401](http://www.justiceatstake.org/newsroom/press-releases-16824/?nasty_campaign_deepens_crisis_for_wisconsin_high_court&show=news&newsID=10401).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Patrick Marley and Don Walker, *Court Allows Union Limits*, Milwaukee Journal Sentinel (June 15, 2011, at A1).

<sup>24</sup> Hall, *supra* note 17, at 5.

joined a unanimous decision under the Iowa Constitution.<sup>25</sup> Groups involved in funding the campaign included the National Organization for Marriage, the American Family Association, the Family Research Council, the Campaign for Working Families, and petitioners' amicus in this case, Citizens United.<sup>26</sup> Fueled by almost \$1 million from these groups, television ads labeled the judges "activist" and accused them of "usurp[ing] the will of the voters."<sup>27</sup>

The justices, not wanting to politicize the courts or their decisions, did not campaign or raise money. At a forum, Chief Justice Marsha Ternus explained: "We [do] not want to contribute to the politicization of the judiciary here in Iowa and so we have not formed campaign committees and we have not engaged in fundraising."<sup>28</sup> In the end, the justices were each defeated by margins of roughly 55 percent to 45

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<sup>25</sup> The court ruled under the Equal Protection Clause of the Iowa Constitution that a class of Iowa families could not be denied equal rights. *Varnum v. Brien*, 763 N.W.2d 862, 906 (Iowa 2009) ("We have a constitutional duty to ensure equal protection of the law. Faithfulness to that duty requires us to hold Iowa's [Defense of Marriage Act] violates the Iowa Constitution. To decide otherwise would be an abdication of our constitutional duty.").

<sup>26</sup> Hall, *supra* note 17, at 8.

<sup>27</sup> *Id.* at 8-9.

<sup>28</sup> Josh Nelson, *Chief Justice: Don't Politicize Judicial System*, Waterloo-Cedar Falls Courier (Oct. 21, 2010), available at [http://wfcourier.com/news/local/article\\_722dbfe9-90d1-5ab3-b37f-a5a7f988e9ee.html](http://wfcourier.com/news/local/article_722dbfe9-90d1-5ab3-b37f-a5a7f988e9ee.html).