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*Attorney for Amicus Curiae*

Great Old Broads for Wilderness,  
Advocates for the West,  
Alliance for a Better Utah,  
Center for Biological Diversity,  
Grand Canyon Trust,  
Grand Staircase Escalante Partners,  
Sierra Club,  
Torrey House Press,  
Western Watersheds Project,  
Wild Earth Guardians,  
Wild Utah Project,  
Wilderness Watch,  
Wildlands Defense, and  
Wildlands Network

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**IN THE UTAH COURT OF APPEALS**

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STATE OF UTAH,  
  
Plaintiff/Respondent,  
  
v.  
  
ROSALIE JEAN CHILCOAT and,  
MARK KEVIN FRANKLIN,  
  
Defendants/Petitioners.

MOTION FOR LEAVE TO FILE AN  
AMICUS BRIEF

Appellate Case Nos.  
20180335 and 20180336

District Court Nos.  
171700040 and 171700041

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Putative *amici curiae* hereby move the Court for Leave to Submit an *Amicus* Brief in Support of Petitioners Chilcoat and Franklin's Petition for Interlocutory Review. A copy of the proposed Brief is attached hereto as Exhibit A.

### **Interests of the Amici Curiae**

*Amici* are environmental and conservation organizations who work to protect public lands, natural resources, and the environments within San Juan County, Utah or similar Utah counties. *Amici* are concerned that the petitioners in this matter may have been targeted for criminal prosecution because of their environmental advocacy, and because of their association with environmental organizations, including one or more of the *amici's* organizations. *Amici* are concerned that the decision to bind the petitioners over for trial based on their views and organizational affiliation would have a profound chilling effect on 1st Amendment rights throughout San Juan County and rural Utah. This chilling effect would directly harm *amici* and their members, who regularly engage in environmental advocacy involving public lands and public land management, and who may choose to refrain from participating in activities protected by the First Amendment in order to avoid possible prosecution or litigation.

***Great Old Broads for Wilderness*** is a national grassroots organization, led by women, that engages and inspires activism to preserve and protect wilderness and wild

lands. Formed in 1989, Broads has over 8,000 members and supporters across the country, including three chapters in Utah. Conceived by older women who love wilderness, Broads gives voice to the millions of Americans who want to protect their public lands as Wilderness for this and future generations. We bring knowledge, commitment, and humor to the movement to protect our last wild places on earth. Our organizational values have been impugned and our advocacy efforts have been misrepresented by officials in San Juan County. Our staff and members have also been threatened while in San Juan County, as well as on social media posts that come from residents of San Juan County. These actions intimidate our staff and members, and directly chill our First Amendment rights.

*Advocates for the West* is a public interest environmental law firm that represents conservation groups and activists protecting public lands, fish and wildlife, and clean water in Utah and other western states. As lawyers defending often unpopular conservation groups and causes, Advocates for the West frequently enforces First Amendment protections, and believes this case presents important First Amendment values that deserve review by the Utah Court of Appeals.

*Alliance for a Better Utah* is a nonpartisan, nonprofit organization that works to improve the lives of all Utahns by ensuring balance, transparency and accountability in Utah politics, policy, and government.

The *Center for Biological Diversity* is a nonprofit conservation organization founded on the principle that the welfare of human beings is deeply linked to nature. We work to secure a future for all species, great and small, hovering on the brink of extinction. We do so through science, law and creative media, with a focus on protecting the public lands, waters and climate that species need to survive.

The Center has consistently worked on the protection of southeastern Utah species and lands since our founding in 1989. It is one of our priority conservation focus area. Two of our staff are based in Utah and six others visit there regularly. Our work requires visiting, monitoring and exploring public lands in southeastern Utah. This necessarily and often involves visiting or passing through public livestock grazing allotments and interacting with fences, gates, cattle guards, and other livestock infrastructure in various states of repair and disrepair.

Our staff members are concerned that carrying out their standard and necessary job duties could put their safety, freedom, financial well-being and reputation at risk. The case to date has already had a chilling effect on our speech and advocacy. The chilling will be magnified if the case continues. It will become catastrophic if felony guilty verdicts are rendered based on a miscarriage of justice.

The *Grand Canyon Trust* is a non-profit advocacy organization founded in 1985 whose mission is to protect and restore the Colorado Plateau—its spectacular landscapes, flowing rivers, clean air, diversity of plants and animals, and areas of beauty and solitude.

The Trust is a frequent advocate for protecting the natural environment in San Juan County—by researching and pressing for improvements in public-lands grazing practices, by arguing for responsible all-terrain-vehicle route management, by seeking to safeguard the federal lands that President Obama designated as the Bears Ears National Monument in December 2016, by urging improvements in the plan for cleaning up the White Mesa mill, and by many other efforts to defend the exceptional landscapes of southeast Utah.

***Grand Staircase Escalante Partners*** is a nonprofit organization committed to preserving and protecting the vast landscape of Grand Staircase-Escalante National Monument for the use and enjoyment of present and future generations. We are the official “friends” organization for Grand Staircase-Escalante National Monument. Our mission is to promote science, education and conservation on the Monument, increase public awareness and understanding about the Monument, and provide resources to support the Monument’s scientific, interpretive and educational programs. Our staff, members, and volunteers regularly visit public lands in southern Utah to engage in scientific research, assist with service projects, and to recreate. Our organizational success depends on being able to safely advocate for public lands and any action that chills First Amendment rights directly harms us and our members.

The ***Sierra Club*** is a national nonprofit organization with 67 chapters and more than 808,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and

resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Utah Chapter of the Sierra Club has approximately 5,500 members. The Sierra Club's concerns encompass protecting public lands in southern Utah, and in ensuring that our members' rights to organize and advocate publicly to protect public health, the environment, and the places in which they live, recreate, work, and enjoy quiet solitude are not infringed. Threats to the exercise of First Amendment rights directly harm the Sierra Club and our members.

*Torrey House Press* is a nonprofit literary press promoting conservation through literature, and our programmatic focus is book publishing and community events that support open conversation about conservation. The First Amendment issues in this case are particularly troubling for us as a publisher, member of the conservation community, and part of the rich cultural life in Southern Utah.

*Western Watersheds Project* is a nonprofit conservation organization with over 6,000 members and supporters, and field offices in Idaho, Utah, Arizona, California, Oregon, Nevada, Montana, and Wyoming. Western Watersheds Project has a mission to protect and restore western watersheds and wildlife through education, public policy initiatives, and legal advocacy.

The *Wild Utah Project* is a Utah based nonprofit that provides science-based strategies for wildlife and land conservation. We seek to bring about positive outcomes

for wildlife and lands through science. As long-time, prominent voices within the Utah conservation community, we enthusiastically bridge the divide between scientific knowledge and public understanding by demonstrating collaborative expertise and tenacious persistence.

*WildEarth Guardians* is a nonprofit conservation organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. We envision a world where wildlife and wild places are respected and valued, and our world is sustainable for all beings. We defend wildness, empower life, end injustice, and stand for healthy, sustainable ecosystems and human communities. We are concerned about any action that discourages advocacy for protecting wild places, wild rivers, and health of the American West.

*Wilderness Watch* is a non-profit organization, headquartered in Missoula, MT, whose mission is the preservation and proper stewardship of lands and rivers in the National Wilderness Preservation System and the National Wild and Scenic Rivers System. To that end, since 1989 Wilderness Watch has engaged in public policy advocacy, congressional and agency oversight, public education and outreach, and litigation to promote sound stewardship of federal wilderness areas and Wild and Scenic River corridors, including those in Utah. Wilderness Watch is concerned that the prosecutions in this case, if allowed to proceed, will have a chilling effect on citizens'

willingness to speak out about important environmental issues and associate with other groups and individuals doing the same.

***WildLands Defense*** is a nonprofit conservation organization dedicated to protecting and improving the ecological and aesthetic qualities of the wild lands and wildlife of the western United States for present and future generations. We foster enjoyment and appreciation of public lands and biodiversity, conduct legal and administrative advocacy, and empower activism. We engage in a wide variety of federal agency processes affecting ecological and other values of public lands. We work on public lands livestock grazing, species conservation, vegetation treatments and land protection efforts. We often conduct field work in remote areas of BLM and Forest Service lands documenting environmental conditions, to enable us to most effectively comment on and participate in agency processes.

The mission of ***Wildlands Network*** is to reconnect, restore, and rewild North America so that life in all its diversity can thrive. We envision a world where nature is unbroken, and where humans co-exist in harmony with the land and its wild inhabitants.

### **Argument**

Petitioners have asked this Court for permission to appeal from an interlocutory order, pursuant to Rule 5 of the Utah Rules of Appellate Procedure. Rule 5 does not specifically provide (or prohibit) the filing of motions for leave to file an *amicus* brief.



Rule 5 does provide, however, that in determining whether to grant interlocutory review, the Court will consider whether granting interlocutory review “will better serve the administration and interests of justice.” *Amici* respectfully submit that their perspective on this case will aid the Court in making that determination and, accordingly, that authority for filing this motion is found in Rule 25 of the Utah Rules of Appellate Procedure.

To the extent that the Rules fail to address the specific question of *amicus* support for a petition for interlocutory review, this Court is, of course, empowered to suspend any of the rules in “the interest of expediting a decision.” Utah R. App. 2. *Amici* respectfully submit that accepting their filing will help expedite a decision by providing important information about the proper resolution of the pending petition for interlocutory review. Appellate courts have allowed the filing of *amicus* briefs in other circumstances not directed provided for in the appellate rules. *See, e.g., In re Young*, 976 P.2d 581, 583 & n.2 (Utah 1989) (allowing the filing of *amicus* briefs in support of a petition for rehearing).

In addition, the Utah Constitution expresses a strong preference for open courts, providing that “[A]ll courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law . . . .” *Amici* respectfully submit that they should be heard on the possible “chilling effect” that will occur unless the bindover decision below is reviewed by this Court. In theory, the *amici*

might be able to move to intervene in these proceedings. However, having their perspective heard via an *amicus* brief accomplishes the same objective without unduly complicating the proceedings. *Cf. Madsen v. Borthick*, 658 P.2d 627, 629 n.3 (Utah 1983) (denying motion to intervene but permitting filing of an amicus brief).

The State will not be prejudiced if this motion is granted, because the Court has not yet called for a response and, therefore, the State will have an opportunity to respond to the arguments in the proposed amicus brief (should the Court determine, as *amici* hope it will), that a response to the petition is warranted. *Amici* do not attempt to enlarge the issues presented by the petition, but simply to provide arguments in support of an issue that has already been raised.

The parties have been contacted for their position on this motion. Petitioners consent to this motion. The San Juan County Attorney's Office takes no position in advance of reviewing the Proposed Amicus Brief.

*Amici* therefore request leave of the Court to file an Amicus Brief in Support of Defendants' Petition for Interlocutory Review and encourage this Court to grant review.

Dated this 7th day of May, 2018.

Respectfully submitted,

A handwritten signature in blue ink that reads "Patrick A. Shea". The signature is written in a cursive style with a clear first name and a last name.

Patrick A. Shea, UT Bar No. 2929



## CERTIFICATE OF SERVICE

I certify that on May 7, 2018, the foregoing motion and attached proposed brief served on counsel of record, via e-mail, as follows:

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