AUSTIN KNUDSEN
Montana Attorney General
DAVID M.S. DEWHIRST
Solicitor General
PATRICK M. RISKEN
AISLINN W. BROWN
Assistant Attorneys General
P.O. Box 201401
Helena, MT 59620-1401
Phone: (406) 444-2026
david.dewhirst@mt.gov
prisken@mt.gov
aislinn.brown@mt.gov

Attorneys for Defendant

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

FORWARD MONTANA; LEO GALLAGHER; MONTANA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS; GARY ZADICK, Plaintiffs, vs. THE STATE OF MONTANA, by and through GREG GIANFORTE, Governor, Defendant.	Cause No. BDV-2021-611 Hon. Michael F. McMahon (email) **DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs' request to preliminarily enjoin SB 319 must be denied for two reasons. First, they lack standing—having failed to show that SB 319's judicial recusal provisions or on-campus location-based campaign activity restrictions will cause them direct, personal injury—and thus have also failed to meet their burden to show irreparable injury. Second, they have not demonstrated a prima facie case that

SB 319 facially violates the Montana Constitution. Under the relevant preliminary injunction standards, Plaintiffs' motion must fail.

PRELIMINARY INJUNCTION STANDARD

"A preliminary injunction is an extraordinary remedy and should be granted with caution based in sound judicial discretion." *Citizens for Balanced Use v. Maurier*, 2013 MT 166, ¶ 11, 370 Mont. 410, 303 P.3d 794 (citation omitted). Montana law sets forth five circumstances under which an injunction may be granted. *See* Mont. Code Ann. § 27-19-201. Plaintiffs rely on the first two: "(1) when it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of;" and "(2) when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant." *Id.*; Doc. 4 at 6.

"The purpose of a preliminary injunction is to preserve the status quo and to minimize the harm to the parties pending trial." *Citizens for Balanced Use*, ¶ 11 (citation omitted). The applicant must demonstrate "a prima facie case that he will suffer irreparable injury before the case can be fully litigated." *Id.* "In the context of a constitutional challenge, an applicant . . . *must establish a prima facie case of a violation of its rights under the constitution.*" *Weems v. State*, 2019 MT 98, ¶ 18, 395 Mont. 350, 440 P.3d 4 (citation omitted) (emphasis added). "If a preliminary injunction will not accomplish [its limited] purposes, then it should not issue." *Davis v. Westphal*, 2017 MT 276, ¶ 24, 389 Mont. 251, 405 P.3d 73 (citation omitted and brackets in original). In other words, "even on proof of any grounds enumerated in § 27-19-201, MCA, a preliminary injunction should not issue absent an accompanying

prima facie showing, or showing that it is at least uncertain, that the applicant will suffer irreparable injury prior to final resolution on the merits." *Id.* (citations omitted and emphasis in original).

ARGUMENT

I. Plaintiffs have not demonstrated that SB 319 will cause them a concrete injury, and thus lack standing and cannot show irreparable injury.

Standing is a threshold jurisdictional question, "especially . . . where a . . . constitutional violation is claimed." *Olson v. Dep't of Revenue*, 223 Mont. 464, 469, 726 P.2d 1162, 1166 (1986). To establish standing, Plaintiffs must demonstrate "a past, present, or threatened injury to a property or civil right, and that the injury would be alleviated by successfully maintaining the action." *Bullock v. Fox*, 2019 MT 50, ¶ 31, 395 Mont. 35, 435 P.3d 1187 (citation and internal quotation marks omitted). Further, "[t]he alleged injury must be concrete, meaning actual or imminent, and not abstract, conjectural, or hypothetical; redressable; and distinguishable from injury to the public generally." *Id.* (citations omitted).

Plaintiffs' claims allege constitutional violations stemming from Sections 21 and 22 of SB 319. These claims do not meet standing requirements.

A. Plaintiffs' speculative, unspecific allegations as to Section 21 fail to demonstrate a concrete injury.

Forward Montana—the only Plaintiff making a claim regarding Section 21 of SB 319 (on-campus location-based campaign activity restrictions)—states that much of its work "occurs on and around public university campuses" and that it "plans to engage in voter identification, get out the vote, and other efforts prohibited by SB 319

on and around public university campuses ...." Doc. 2, ¶ 1. But Forward Montana can still engage in these activities "on and around" university campuses under SB 319; Section 21 only prevents political committees from doing so "inside a residence hall, dining facility, or athletic facility." Doc. 2 at Exh. A, § 21. Nowhere in the Amended Complaint does Forward Montana state it has or intends to engage in its activities in these specific areas, or that Section 21's location restrictions would hamper its activities in any meaningful way. Nor does Forward Montana allege that it currently is a "political committee" subject to Section 21. Doc. 2, ¶ 1. Because "[s]tanding is determined as of the time the action is brought," these errors are fatal. *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 30, 360 Mont. 207, 255 P.3d 80.

To the extent Forward Montana's alleged injury is that it may be subject to an investigation and enforcement action by the Commissioner of Political Practices (COPP), such allegations are far too speculative to constitute an injury. *See Montanans for Cmty. Dev. v. Motl*, 216 F.Supp 3d 1128, 1139-40 (D. Mont. 2016) (holding a pre-enforcement challenge to Montana's campaign finance laws must demonstrate a "credible threat" of enforcement, otherwise such challenges are "too conjectural" to support standing), *aff'd in part, rev'd in part on other grounds*, *Montanans for Cmty. Dev. v. Mangan*, 735 Fed. Appx. 280, 282 (9th Cir. 2018) (unpublished).

Forward Montana's generic allegations are insufficient to demonstrate "a past, present, or threatened injury." *Bullock*, ¶ 31. For this reason alone, this Court should deny a preliminary injunction with respect to Section 21.

B. Plaintiffs are not concretely injured by Section 22 because the provision only applies to cases filed on or after July 1, 2021.

Plaintiffs base their preliminary injunction request with respect to Section 22—the judicial-recusal provision—almost entirely on their unsupported fear that judges will "*en masse*" have to recuse themselves from pending litigation on July 1, 2021. Doc. 4 at 3, 16–17; Doc. 5. But SB 319 is not retroactive, and thus applies only to cases filed on or after July 1, 2021. It does not alter the rights of litigants who have litigation pending on July 1, 2021.

In Montana, "[t]here is a presumption against applying statutes retroactively," *United States v. Juvenile Male*, 2011 MT 104, ¶ 7, 360 Mont. 317, 255 P.3d 110 (citations omitted), and "[n]o law contained in any of the statutes of Montana is retroactive unless expressly so declared," Mont. Code Ann. § 1-2-109; *see Mordja v. Mont. Eleventh Judicial Dist. Court*, 2008 MT 24, ¶ 18, 341 Mont. 219, 177 P.3d 439 ("A statute is not retroactive merely because it draws upon antecedent facts for its operation.") (citations and internal quotation marks omitted).

The operative text of the judicial recusal provision provides:

> A judicial officer shall disqualify the judicial officer in a proceeding if: (a) The judicial officer has received one or more combined contributions totaling at least one-half of the maximum amount allowable under 13-37-216 from a lawyer or party to the proceeding in an election within the previous 6 years; or (b) A lawyer or party to the proceeding has made one or more contributions directly or indirectly to a political committee or other entity that engaged in independent expenditures that supported the judicial officer or opposed the judicial officer's opponent in an election within the previous 6 years if the total combined amount of the contributions exceed at least one-half of the maximum amount that would otherwise be allowed under 13-37-216 if the contributions had been made directly to the judicial candidate.

Doc. 2, Ex. A, 29–30. SB 319 contains no retroactivity clause here or anywhere else. *See* Mont. Code Ann. § 1-2-101 (the court's role is "not to insert what has been omitted"). And though it is irrelevant to the textual analysis, nothing in the legislative history indicates the Legislature intended Section 22 of SB 319 to be retroactive. *See* Hearing, Free Conf. Committee Hearing on SB 319 (Apr. 27, 2021); Mont. House Rep., 2nd Reading on SB 319 (Apr. 28, 2021); Mont. Sen., 2nd Reading on SB 319 (Apr. 28, 2021).[1] Perhaps reading Section 22 to apply retroactively could implicate some constitutional rights, but that reading is foreclosed by the statute's text and the court's duty "to avoid an unconstitutional interpretation if possible." *Brown*, ¶ 32. Indeed, "[e]very possible presumption must be indulged in favor of the constitutionality of a legislative act." *Hernandez v. Bd. of Cnty. Comm'rs*, 2008 MT 251, ¶ 15, 345 Mont. 1, 189 P.3d 368. Here, the constitutional construction is not only available, it is the best—perhaps only— plausible construction. Section 22 therefore applies only to actions commenced on or after July 1, 2021 and does not affect the rights of existing litigants under the Montana or U.S. Constitutions.

SB 319's effective date is July 1, 2021, so Section 22 logically applies only to proceedings initiated on or after that date. Additionally, applying SB 319 prospectively avoids the "chaos" Plaintiffs fear. *See Brown*, ¶ 33 (holding statutory interpretation "should not 'lead to absurd results, if reasonable construction will

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[1] Available at http://laws.leg.mt.gov/legprd/LAW0203W$BSRV.ActionQuery?P_SESS=20211&P_BLTP_BILL_TYP_CD=SB&P_BILL_NO=319&P_BILL_DFT_NO=&P_CHPT_NO=&Z_ACTION=Find&P_ENTY_ID_SEQ2=&P_SBJT_SBJ_CD=&P_ENTY_ID_SEQ=.

avoid it'") (quoting *Nelson v. City of Billings*, ¶ 16, 390 Mont. 290, 412 P.3d 1058). No "*en masse*" substitutions on pending cases will take place because, while Section 22 requires judges to look back on their campaign contributions, it does not require them to apply the recusal provision to pending cases filed prior to July 1. *E.g.*, Doc. 4 at 16.

Plaintiffs' alleged injuries—nearly all of which focus on harms that *might* occur to other, unnamed individuals should Section 22 apply retroactively—will never materialize. Colin Stephens' allegations, for example, identify no cognizable injury because they are based only on his alleged inability to represent clients in litigation that is *pending* as of July 1. *See generally* Doc. 5. And because SB 319 does not apply to litigation pending on July 1, Plaintiffs do not have standing based on their statement that "SB 319's judicial recusal provisions will injure [them] ... by requiring potentially hundreds of substitutions in *pending* cases ...." Doc. 2 at 4–5 (emphasis added); *Bullock*, ¶ 31 ("[T]he complaining party must *clearly allege* past, present, or threatened injury to a property or civil right.") (citation and internal quotation marks omitted) (emphasis added).

Moreover, by their own admission, Plaintiffs have not taken necessary steps to understand how, or if, SB 319 will apply to them. *See* Doc. 4 at 17 ("Plaintiffs are generally unaware of whether any of their clients have contributed to judicial campaigns in Montana."). Plaintiffs have a duty to plead the facts necessary to establish their injury, and they have failed to do so here; it is not the duty of the courts or the State to do that for them. *Cossitt v. Flathead Indus.*, 2018 MT 82, ¶9, 391 Mont. 156,

415 P.3d 486 (even a "liberal application of the rules does not excuse omission of facts necessary to entitle relief").

Finally, Plaintiffs have not alleged that any proceeding involving them even implicates SB 319 and that the presiding judge will imminently recuse under Section 22, and thus cannot show that they are or will imminently be affected by Section 22, a core requirement for standing. *Olson*, 223 Mont. at 469–71, 726 P.2d at 1166–67 (finding plaintiffs' challenge to a county residence requirement for hunting licenses and to run for county office failed to allege a personal injury because they did not allege they were denied a license or that they were prohibited from running for office).

Plaintiffs failure to allege a concrete, particularized injury means they have no standing to challenge SB 319.

C. Plaintiffs' alleged injuries are not redressable through the Governor, the only person named as a defendant.

An injunction against the Governor—the only person Plaintiffs named as a defendant in their Complaint—would not grant the relief Plaintiffs seek. "An injunction is an order requiring a person to refrain from a particular act." Mont. Code Ann. § 27-19-101. But the Governor is not tasked with any "act" with respect to enforcing Sections 21 or 22. Section 21 is codified in Title 13, Chapter 35, which is within the province of the COPP. Doc. 2, Exh. A, § 23. Section 22 is codified in Title 3, chapter 1, which is within the province of the judiciary. *Id.* Plaintiffs thus do not, and cannot, point to any "act" under SB 319 *the Governor* should be enjoined from undertaking that would redress Plaintiffs' alleged injuries.

Because they lack standing under both the injury and redressability prongs, Plaintiffs have not established they are likely to suffer irreparable injury that is redressable by this Court in this action.

II. Plaintiffs have not established a prima facie case that the judicial-recusal provision of SB 319 is unconstitutional.

Plaintiffs have not met their burden to establish a prima facie violation of their constitutional rights based on SB 319's judicial-recusal provision. Plaintiffs' conclusory assertions that "[t]he judicial recusal requirements violate provisions of the Montana Constitution that secure access to the courts," and "[t]he requirements are vague, overbroad, and likely to impinge particularly on Montana's guarantees to redress and court access" are insufficient. Doc. 4 at 15 (citing Mont. Const. art. II, §§ 16, 17, 24). Plaintiffs do not even allege *how* they believe these rights are violated. This alone is sufficient to defeat their preliminary injunction motion because it does not establish a prima facie—or even colorable—constitutional violation. *See Weems*, ¶ 18.

Moreover, the Legislature has significant authority in regulating campaign contributions, and courts "should not — and indeed cannot — be in the business of fine tuning contribution limits for states. These judgments are for state lawmakers to make ...." *Lair v. Motl*, 873 F.3d 1170, 1183 (9th Cir. 2017). The Legislature indisputably has a compelling interest in regulating judicial campaign contributions and judicial recusal: "safeguarding 'public confidence in the fairness and integrity of the nation's elected judges.'" *Williams-Yulee v. Florida Bar,* 575 U.S. 433, 445 (2015) (quoting *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009) (holding campaign contributions proved "sufficiently substantial" to require judicial recusal under the

due process clause)). A state's compelling interest in protecting the integrity of the judiciary "extends beyond its interest in preventing the appearance of corruption ...." *Williams-Yulee*, 575 U.S. at 446; *see also French v. Jones*, 876 F.3d 1228, 1238, 1240 (9th Cir. 2017) ("no one denies that [Montana's interest in a fair and impartial judiciary] is genuine and compelling").

By requiring recusal where parties or their counsel have donated more than $90 to a judge's campaign, Section 22 is closely drawn to advance the Legislature's compelling interest in protecting "public confidence in the fairness and integrity of [Montana's] elected judges." *Caperton*, 556 U.S. at 889 (citation omitted). As the *Lair* court noted, "[i]n 2010 state house races ... the average individual contributed about $90, when the per cycle limit was $320." *Lair*, 873 F.3d at 1183. The Legislature tailored Section 22 to ensure it does not create the widespread recusal crisis Plaintiffs paint for this Court.

Several states have similarly required judicial recusal where parties contributed certain amounts to the judge's campaign. *E.g.*, Utah Code of Jud. Conduct Ann. R. 2.11(A)(4) (requiring recusal when "the judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous three years made aggregate contributions to the judge's retention in an amount that is greater than $50"); *see also Caperton*, 556 U.S. at 889 (referencing Ala. Code §§ 12-24-1, 12-24-2 (2006); Miss. Code of Judicial Conduct, Cannon 3E(2) (2008)). That Montana's recusal standard differs slightly from other states can be justified on the grounds that "the threat of actual or perceived quid pro quo corruption

in Montana politics is not illusory," *Lair*, 873 F.3d at 1179, especially as "the mere *perception* of quid pro quo in judicial campaigns might undermine the public's trust in the impartiality and independence of its judiciary," *French*, 876 F.3d at 1240 (emphasis in original).

Plaintiffs' blanket assertions of constitutional violations do not establish a prima facie case that SB 319's judicial recusal provisions violate Plaintiffs' constitutional rights, particularly given the broad deference accorded to the Legislature to regulate recusal based on judicial campaign contributions.

III. Plaintiffs have not established a prima facie case that SB 319's on-campus political activity restrictions are unconstitutional.

Without citing any caselaw or factual evidence, Plaintiffs contend SB 319's on-campus location-based campaign activity restrictions "violate[] both the First Amendment and Montanans' fundamental free speech and assembly rights." Doc. 4 at 15. Their blanket assertions of constitutional harm are patently insufficient to state a prima facie constitutional violation. *See Weems*, ¶ 18.

The Montana Supreme Court has made clear a court "will not consider unsupported issues or arguments." *Griffith v. Butte Sch. Dist. No. 1*, 2010 MT 246, ¶ 42, 358 Mont. 193, 206, 244 P.3d 321, 332 (refusing "to formulate arguments for the parties" when they presented only "a two-paragraph, underdeveloped argument" on constitutional issues). This follows the Court's settled precedent that "general contentions" without "supporting legal authority" are insufficient and will not be considered. *In re Marriage of McMahon*, 2002 MT 198, ¶ 6, 311 Mont. 175, 53 P.3d 1266. Plaintiffs also cannot shore up these unsupported, conclusory arguments in

their reply, because a reply may not raise new issues or arguments. *See WLW Realty Partners v. Cont'l Partners VIII*, 2015 MT 312, ¶ 20, 381 Mont. 333, 360 P.3d 1112 (applying principle to district court reply brief). This Court should likewise refuse to formulate this argument for Plaintiffs here.

By contrast, Montana has a compelling interest in regulating its elections, including activities related to voter registration, voting, and campaigning. *See* Mont. Const. art. IV, § 3 ("The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections ... and shall insure the purity of elections and guard against abuses of the electoral process."); *Burdick*, 504 U.S. 428, 433 (1992) (holding states have "the power to regulate their own elections") (citation omitted).

Plaintiffs are not entitled to a preliminary injunction of Section 21.

IV. Plaintiffs have not established a prima facie violation of Article V, Section 11 of the Montana Constitution.

SB 319 involves a general revision of campaign finance laws and retained that purpose throughout the legislative process, as identified in its title. It therefore comports with Mont. Const. Article V, § 11(3).

A. SB 319 Generally Revises Campaign Finance Laws.

Article V, § 11(3) of the Montana Constitution provides:

> Each bill, except general appropriations bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

This section "is substantively identical" to Article V, Section 23 of the 1889 Montana Constitution. *MEA-MFT v. State*, 2014 MT 33, ¶ 8, 374 Mont. 1, 318 P.3d 702.

Article V, § 11(3) is meant to "prevent the enactment of laws surreptitiously; to give notice to the legislature and to the people that they may not be misled; [and] to guard against fraud in legislation." *State ex rel. Boone v. Tullock*, 72 Mont. 482, 488, 234 P. 277, 279 (1925). But "courts should give to this provision a liberal construction, so as not to interfere with or impede proper legislative functions." *Id.*[2] The "Legislature has discretion in determining what matters are in further of or necessary to accomplish the general objects of a Bill." *MEA-MFT*, ¶ 10 (internal citations and quotations omitted).[3]

As enacted, SB 319's title reads:

> An act generally revising campaign finance laws; creating joint fundraising committees; providing for certain reporting; establishing that if student organizations are required to register as political committees are funded through additional optional student fees, those fees must be opt-in; prohibiting certain political activities in certain places operated by a public postsecondary institution; providing for judicial recusals under certain circumstances; providing penalties; amending sections 13-1-101, 13-35-225, 13-35-237, 13-37-201, 13-37-202, 13-37-203, 13-37-204, 13-37-205, 13-37-207, 13-37-208, 13-37-216, 13-37-217, 13-37-218, 13-37-225, 13-37-226, 13-37-227, 13-37-228, and 13-37-229, MCA; and providing an effective date.

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[2] Prior cases from the First Judicial District similarly support a broad reading of Article V, § 11(3). *E.g.*, *Rickert v. McCulloch*, No. CDV-2012-1003, 2013 Mont. Dist. LEXIS 10, 16-18 (Dec. 20, 2013).

[3] Plaintiffs incorrectly conflate the separate-vote requirement with the single-subject rule. *See e.g.*, Doc. 4 at 8. The "separate-vote requirement for constitutional amendments is a different and narrower requirement than is a single-subject requirement." *Marshall v. State by and through Cooney*, 1999 MT 33, ¶ 22, 293 Mont. 274, 975 P.2d 325.

Doc. 2 at Exh. A, 1.[4] The plain text of SB 319 states that it is a bill "generally revising campaign finance laws."

Campaign finance regulation generally involves regulating campaign funding, spending, and disclosures in elections. *See, e.g.*, Mont. Code Ann. § 13-1-101(9), (14), (16), (25), and (31). Conceptually, such regulation seeks to provide an orderly election process that protects first amendment values and ensures that the election process does not undermine public confidence in our democratic institutions. *See Burdick*, 504 U.S. at 433 ("[T]here must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.") (internal citations and quotations omitted); *Lair*, 873 F.3d at 1179 ("the threat of actual or perceived quid pro quo corruption in Montana politics is not illusory"). By requiring certain disclosures, campaign finance regulation also lets the public know who is speaking during an election cycle. *E.g.*, Mont. Code Ann. § 13-37-225 (requiring candidates and political committees to file contribution and expenditure reports); *id.* at § 13-35-225 (prohibiting certain campaign materials from being anonymous).

[4] Plaintiffs misstate the bill title of SB 319. *See* Doc. 4 at 5 ("SB 319's original subject matter of 'revising campaign finance laws…'"). The first clause in the bill title reads, "[a]n act generally revising campaign finance laws…" Doc 2 Exh. A, 1. By omitting "generally" from the phrase "generally revising," Plaintiffs infer that SB 319 is not a bill of general revision. *See* Doc 4 at 11. Courts—unlike Plaintiffs—may not simply omit inconvenient statutory text.

Plaintiffs concede that the sections of SB 319 dealing with joint fundraising committees and reporting plainly fall within the heading of generally revising campaign finance laws. *See* Doc. 4. at 10 (stating SB 319 codifies these sections in "a sensible place"). Further, Plaintiffs do not challenge the appropriateness of regulating student organizations filing as political committees under the "generally revise campaign finance law" title. *See id.* (only two sections are "new–and discordant–Sections 21 and 22").

Contrary to Plaintiffs' arguments, both Section 21 and Section 22 are facially constitutional under Article V, Section 11 of the Montana Constitution because they concern campaign finance activities.

i. Section 21

SB 319 "prohibits certain political activities in certain places operated by a public postsecondary institution." Doc. 2, Exh. A, Title. Section 21(1) states, "[a] political committee may not direct, coordinate, manage, or conduct any voter identification efforts, voter registration drives, signature collection efforts, ballot collection efforts, or voter turnout efforts ... inside a residence hall, dining facility, or athletic facility operated by a public postsecondary institution." *Id.* at § 21. Section 21 is codified as an integral part of Title 13, chapter 35, part 2. *Id.* at § 23.

Section 21 regulates permissible "election communications," "electioneering communications," and "political committees." *See* Mont. Code Ann. § 13-1-101(14), (16), (31). These definitions form the heart of Montana's campaign-finance scheme. *See* Senate Bill 289 (2015) ("An act generally revising campaign finance laws" that

created the current definitions found in Mont. Code Ann. § 13-1-101, commonly known as the DISCLOSE Act). Section 21 adds to current law by restricting where certain, already reportable, activities may occur. *See e.g.*, Mont. Code Ann. § 13-35-225 (requiring attributions for election and electioneering communications). SB 319 takes an area already regulated by Montana campaign finance laws and adds to those regulations, thus fitting squarely within the bill title.

SB 319 also codifies Section 21 in Title 13, chapter 35, part 2 ("Election and Campaign Practices and Criminal Provisions, Specific Provisions") where specific provisions related to violations of Montana campaign finance law are found. Plaintiffs' argument that Title 13, chapters 35 and 37, are "vastly different" provisions of code runs counter to the clear statutory framework found in Title 13. Doc. 4 at 10. These two chapters are key part of campaign finance regulation. *See* Mont. Code Ann. § 13-37-111(1) (The COPP has the responsibility to investigate "alleged violations of the election laws" found in Title 13, chapters 35 and 37). These chapters also repeatedly cross-reference one another. *E.g.*, Mont. Code Ann. § 13-35-225 (providing anonymous election materials are subject to a civil penalty pursuant to § 13-37-128). Statutorily, chapters 35 and 37 of Title 13 work together to regulate campaign finance. In any event, where to place this section is well with the Legislature's discretion. *MEA-MFT*, ¶ 10.

Section 21 thus complies with the single-subject rule.

ii. Section 22

SB 319's title provides, in part, "for judicial recusals under certain circumstances." Section 22 in turn states a judicial officer shall disqualify themselves in cases where a lawyer or party has made election-related contributions totaling more than $90 to the judicial officer's benefit in the previous six years. While appropriately codified in Title 3, as it regulates the judiciary, Section 22 also plainly regulates campaign finance as it concerns contributions made to a candidate for judicial office, or contributions to entities making independent expenditures in judicial contests.

As explained above, states may act to "eliminate even the appearance of partiality" in their judicial systems. *Caperton*, 556 U.S. at 888. State codes are "[t]he principal safeguard against *judicial campaign abuses* that threaten to imperil public confidence in the fairness and integrity of the nation's elected judges." *Id.* at 889 (internal citations and quotations omitted) (emphasis added). The "mere *perception* of quid pro quo in judicial campaigns might undermine the public's trust in the impartiality and independence of its judiciary." *French,* 876 F.3d at 1240 (emphasis in original). Recusal standards based on judicial campaign contributions are a reasonable campaign finance tool to address the appearance of judicial partiality and protect public confidence in judicial integrity.

Whether to place a State's judicial-recusal campaign-finance regulation in the campaign finance code or a code of judicial conduct is ultimately a matter of legislative discretion, since it regulates both campaign finance and judicial conduct. *MEA-MFT*, ¶ 10. And Section 22's recusal standards are based on the same considerations

and interests that govern campaign finance generally: the rights of individuals and groups to support candidates of their choosing while maintaining public confidence in our democratic institutions.

Section 22—like Section 21—thus complies with the single-subject rule.

B. SB 319 retained its original purpose of generally revising campaign-finance laws.

Article V, § 11(1) of the Montana Constitution provides:

> A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose.

For the reasons previously stated, the amendments added to SB 319 relate to the general subject of generally revising campaign finance laws.

Furthermore, the legislative process necessarily involves compromise and amendments, a process the Constitution vests solely in the Legislature. Mont. Const. art. V, § 1. Montana courts consequently provide great deference to the Legislature when applying Article V, § 11 so as not to hinder the legislative process. *State ex rel. Boone*, 72 Mont. at 488, 234 P. at 279 (1925); *MEA-MFT*, ¶ 10. In this case, SB 319 contained a "generally revise campaign finance laws" title, and the free conference committee added amendments to the bill that generally revised campaign finance laws. The amendments were properly noticed, debated, and adopted.[5] The Legislature met the requirements of Article V, § 11.

[5] Plaintiffs' opinion that the amendments were "poorly drafted" is nothing more than a policy critique having no bearing on the constitutionality of the legislative process. Doc. 4 at 13. The proper venue for these disagreements is the Legislature, not the courts.

V. Severability

Plaintiffs seek to enjoin the entirety of SB 319, but their claims pertain only to Sections 21 and 22. *See* Doc. 2. In drafting SB 319, the Legislature included a severability provision, a clear indication of Legislative intent. *See Sheehy v. Pub. Emps. Ret. Div.*, 262 Mont. 129, 142, 864 P.2d 762, 770 (1993) (holding the incorporation of a severability provision "creates a presumption ... that the legislature would have enacted the law without its invalid portions being incorporated therein") (citation omitted). Moreover, Article V, § 11(3) explicitly provides: "If any subject is embraced in any act and is not expressed in the title, *only so much of the act not so expressed is void.*" (Emphasis added). Thus, should this Court decide to grant Plaintiffs' motion for preliminary injunction or any portion thereof, its order should be limited to only those specific provisions for which this Court determines an injunction is warranted.

CONCLUSION

Plaintiffs are not entitled to a preliminary injunction. *See Citizens for Balanced Use*, ¶ 11. They lack standing and haven't articulated cognizable harms. Their arguments are conclusory and misleading. Their best argument, in fact, hinges upon omitting a troublesome word from the statutory text and then claiming the Legislature committed a procedural foul. None of that is enough to obtain the extraordinary relief they seek—a preliminary injunction of a law this Court must presume constitutional. By contrast, Montana's interests in regulating campaign finance and assuring the public of the judiciary's integrity are obvious, strong, and well-

established in caselaw. This Court should deny Plaintiffs' request for a preliminary injunction.

DATED this 21st day of June, 2021.

Greg Gianforte
GOVERNOR OF MONTANA

/s/ Anita Milanovich
Anita Milanovich
General Counsel
Office of the Montana Governor
PO Box 200801
Helena, MT 59620
Anita.Milanovich@mt.gov
406.444.5554

Austin Knudsen
ATTORNEY GENERAL OF MONTANA

Aislinn W. Brown
Assistant Attorney General
Montana Department of Justice
215 N Sanders
Helena, MT 59601

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document by email to the following addresses:

Raph Graybill
Graybill Law Firm, PC
300 4th Street North
PO Box 3586
Great Falls, MT 59403
rgraybill@silverstatelaw.net

Rylee Sommers-Flanagan
Upper Seven Law
1008 Breckenridge Street
Helena, MT 59601
rylee@uppersevenlaw.com

Date: June 21, 2021

Rachel Standish