

FILED

JUL 1 2021

ANGIE SPARKS, Clerk of District Court
By ~~MARY M GOYINS~~ Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

FORWARD MONTANA; LEO
GALLAGHER; MONTANA
ASSOCIATION OF CRIMINAL
DEFENSE LAWYERS; GARY
ZADICK,

Plaintiffs,

v.

STATE OF MONTANA, by and
through GREG GIANFORTE,
Governor,

Defendant.

Cause No.: ADV-2021-611

**PRELIMINARY INJUNCTION
ORDER**

This matter is before the Court on Plaintiffs Forward Montana, Leo Gallagher, Montana Association of Criminal Defense Lawyers and Gary Zadick's application for preliminary injunction. Defendant State of Montana, by and through Governor Greg Gianforte, opposes. The parties appeared for a show

1 cause hearing on June 28, 2021. Raph Graybill and Rylee Sommers-Flanagan
2 represents the Plaintiffs. Assistant Attorney Generals Patrick M. Risken and
3 Aislinn W. Brown represent the State.

4 **STATEMENT OF FACTS**

5 Plaintiffs' complaint for declaratory and injunctive relief
6 challenges Senate Bill 319 (SB 319), which, as introduced during the 2021
7 legislative session, concerned campaign finance laws governing joint fundraising
8 committees. Shortly before the legislature adjourned, a free conference
9 committee was appointed to reconcile House amendments with the Senate
10 version of the bill. The free conference committee amended the bill by adding
11 two provisions at issue here. First, Section 21 provides "[a] political committee
12 may not direct, coordinate, manage, or conduct any voter identification efforts,
13 voter registration drives, signature collection efforts, ballot collection efforts, or
14 voter turnout efforts for a federal, state, local, or school election inside a
15 residence hall, dining facility, or athletic facility operated by a postsecondary
16 institution." A political committee which violates this section is subject to a
17 \$1,000 civil penalty for each violation. Second, Section 22 establishes a judicial
18 conflict of interest in which judicial officers shall recuse themselves in any
19 proceeding in which they received \$91 or more in campaign contributions from a
20 lawyer or party in an election within the previous six years; or in which a lawyer
21 or party contributed \$91 or more to an independent political committee that
22 supported the judge or the judge's opponent.

23 The Montana Constitution forbids the legislature from passing bills
24 which contain more than one subject, and from modifying bills in a manner that
25 changes their original purpose. With few exceptions, Article V, Section 11(3)

1 provides that each bill “shall contain only one subject, clearly expressed in its
2 title.” Any subject in a bill not expressed in the title is void. Moreover, Article
3 V, Section 11(1) provides that no bill shall “be so altered or amended on its
4 passage through the legislature as to change its original purpose.” Because SB
5 319 contains multiple subjects and was modified in a manner which changed its
6 original purpose, Plaintiffs allege it violates Article V, Section 11 of the Montana
7 Constitution and is void.

8 **PRINCIPLES OF LAW**

9 **Preliminary Injunction Standard**

10 A district court may issue a preliminary injunction in any of the
11 following cases:

12 (1) when it appears that the applicant is entitled to the
13 relief demanded and the relief or any part of the relief consists in
14 restraining the commission or continuance of the act complained
15 of, either for a limited period or perpetually;

16 (2) when it appears that the commission or continuance of some
17 act during the litigation would produce a great or irreparable injury
18 to the applicant;

19 (3) when it appears during the litigation that the adverse party is
20 doing or threatens or is about to do or is procuring or suffering to be
21 done some act in violation of the applicant’s rights, respecting the
22 subject of the action, and tending to render the judgment ineffectual;

23 (4) when it appears that the adverse party, during the pendency of
24 the action, threatens or is about to remove or to dispose of the
25 adverse party’s property with intent to defraud the applicant, an
injunction order may be granted to restrain the removal or
disposition; [or]

(5) when it appears that the applicant has applied for an order
under the provisions of [Section] 40-4-121 or an order of protection
under Title 40, chapter 15.

Mont. Code Ann. § 27-19-201 (2019).

1 Plaintiffs need only meet the criteria in one of the subsections to
2 obtain a preliminary injunction order. *Sweet Grass Farms, Ltd. v. Bd. of Co.*
3 *Comm'rs*, 2000 MT 147, ¶ 27, 300 Mont. 66, 2 P.3d 825. A preliminary
4 injunction does not resolve the merits of the case, but rather prevents further
5 injury or irreparable harm by preserving the status quo of the subject in
6 controversy pending adjudication on its merits. *Four Rivers Seed Co. v. Circle K*
7 *Farms, Inc.*, 2000 MT 360, ¶ 12, 303 Mont. 342, 16 P.3d 342 (citing *Knudson v.*
8 *McDunn*, 271 Mont. 61, 65, 894 P.2d 295, 298 (1995)). When considering an
9 application for a preliminary injunction, a district court has the duty to balance
10 the equities and minimize potential damage. *Id.* It is error for a district court to
11 determine the ultimate merits of the case at the preliminary injunction stage.

12 In determining the merits of a preliminary injunction, it is not the
13 province of either the District Court or this Court on appeal to
14 determine final matters that may arise upon a trial on the merits. The
15 limited function of a preliminary injunction is to preserve the *status*
16 *quo* and to minimize the harm to all parties pending full trial;
17 findings and conclusions directed toward the resolution of the
18 ultimate issues are properly reserved for trial on the merits. In
19 determining whether to grant a preliminary injunction, a court should
20 not anticipate the ultimate determination of the issues involved, but
21 should decide merely whether a sufficient case has been made out to
22 warrant the preservation of the *status quo* until trial. A preliminary
23 injunction does not determine the merits of the case, but rather,
24 prevents further injury or irreparable harm by preserving the *status*
25 *quo* of the subject in controversy pending an adjudication on the
merits.

26 *Yockey v. Kearns Props., LLC*, 2005 MT 27, ¶ 18, 326 Mont. 28, 106 P.3d 1185.
27 (citations omitted).

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1 “Section 27-19-201(1), MCA, provides that a preliminary
2 injunction may issue when an applicant has demonstrated that he is
3 entitled to the injunctive relief he has requested. To prevail under
4 Section 27-19-201(1), MCA, an applicant must establish that he has
a legitimate cause of action, and that he is likely to succeed on the
merits of that claim.”

5 *Cole v. St. James Healthcare*, 2008 MT 453, ¶ 15, 348 Mont. 68, 72, 199
6 P.3d 810, 814 (citing *Benefis Healthcare v. Great Falls Clinic, LLP*, 2006
7 MT 254, ¶ 22, 334 Mont. 86, 146 P.3d 714; *M.H. v. Mont. High Sch. Assn.*,
280 Mont. 123, 135, 929 P.2d 239 (1996)).

8 ANALYSIS

9 Plaintiffs are entitled to a preliminary injunction. They have
10 demonstrated a prima facie case they will suffer some degree of harm and are
11 entitled to relief pursuant to Montana Code Annotated § 27-19-201(1) or a prima
12 facie case they will suffer an ‘irreparable injury’ through the loss of a
13 constitutional right pursuant to Montana Code Annotated § 27-19-201(2).

14 SB 319 contains at least three subjects: joint fundraising
15 committees, prohibitions on political speech in certain public university settings,
16 and the creation of a judicial recusal requirement. Plaintiffs have established a
17 prima facie case that SB 319 violates the “single subject rule” set forth in Article
18 V, Section 11(3) of the Montana Constitution. Plaintiffs have also established a
19 prima facie case SB 319 violates Article V, Section 11(1) in that it has been “so
20 altered or amended on its passage through the legislature as to change its original
21 purpose.”

22 A preliminary injunction is necessary in this instance to preserve
23 the status quo and to prevent irreparable injury to Plaintiffs. SB 319 becomes
24 effective on July 1, 2021. If it takes effect while this matter is pending, it may
25 result in recusals of judicial officers affecting the substantial rights of numerous

1 litigants in civil and criminal proceedings. Similarly, the campus organizing ban
2 affects Plaintiffs' fundamental rights under the Montana and United States
3 Constitutions, by prohibiting political committees from engaging in election-
4 related speech and assembly on the campus environments of Montana's colleges
5 and universities—possibly in violation of students' rights of free speech and
6 assembly.

7 Accordingly,

8 **ORDER**

9 **IT IS HEREBY ORDERED** that Plaintiffs' application for
10 preliminary injunction is **GRANTED**.

11 **IT IS HEREBY FURTHER ORDERED** the Defendant State of
12 Montana is enjoined from enforcing Sections 21 and 22 of Senate Bill 319 during
13 the pendency of this action.

14 DATED this 1st day of July 2021.

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16 
17 **MIKE MENAHAN**
18 District Court Judge

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