

FILED

OCT 06 2021

ANGIE SPARKS, Clerk of District Court
By Maggin Deputy Clerk

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

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

Plaintiffs,

v.

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

Defendant.

Cause No. ADV-2021-611

**ORDER ON
MOTION TO DISMISS**

Before the Court is Defendant State of Montana's (State) motion to dismiss for lack of standing and failure to state a claim. Austin Knudsen, David M.S. Dewhirst, Patrick M. Risken, and Aislinn W. Brown represent the State. Raph Graybill, Rylee Sommers-Flanagan, and Constance Van Kley represent Plaintiffs Forward Montana, Leo Gallagher, Montana Association of Criminal Defense Lawyers (MACDL) and Gary Zadick.

1 The 2021 Legislature passed Senate Bill 319 (SB 319), titled, in
2 part, “An Act Generally Revising Campaign Finance Laws.” Plaintiffs argue the
3 bill contains multiple subjects in violation of the single-subject rule contained in
4 Article V, Section 11(3) of the Montana Constitution and that the offending
5 provisions are void. Plaintiffs allege sections 21 and 22 of SB 319 were
6 substantive, consequential and had nothing to do with the original bill or its
7 subject, in violation Article V, Section 11(3). Plaintiffs further allege SB 319
8 was “altered or amended on its passage through the legislature as to change its
9 original purpose,” in violation of Article V. Section 11(1). According to
10 Plaintiffs, because the amendments set forth in Sections 21 and 22 were
11 independent of the original bill, they changed the bill’s scope and purpose—from
12 a limited change to campaign finance laws regulating joint fundraising activities
13 “to a sweeping bill that purported to limit the political speech of Montanans in
14 certain university places, as well as a tectonic change in the administration of the
15 Montana courts system.”

16 In summary, Section 21 provides “[a] political committee may not
17 direct, coordinate, manage, or conduct any voter identification efforts, voter
18 registration drives, signature collection efforts, ballot collection efforts, or voter
19 turnout efforts for a federal, state, local, or school election inside a residence hall,
20 dining facility, or athletic facility operated by a postsecondary institution.” A
21 political committee which violates this section is subject to a \$1,000 civil penalty
22 for each violation. Section 22 establishes a judicial conflict of interest in which
23 judicial officers shall recuse themselves in any proceeding in which they received
24 more than \$90 in campaign contributions from a lawyer or party in an election
25 within the previous six years; or in which a lawyer or party contributed more than

1 \$90 to an independent political committee that supported the judge or the judge's
2 opponent.

3 Pursuant to Montana Rule of Civil Procedure 12(b)(6), the State
4 now moves to dismiss this matter because Plaintiffs lack standing and have failed
5 to state a claim upon which relief may be granted.

6 PRINCIPLES OF LAW

7 In reviewing a motion to dismiss pursuant to Montana Rule of
8 Civil Procedure 12(b)(6), courts must consider the complaint in the light most
9 favorable to the plaintiff and accept the allegations in the complaint as true.
10 *Goodman Realty, Inc. v. Monson*, 267 Mont. 228, 231, 883 P.2d 121, 123 (1994).
11 A complaint should not be dismissed under Rule 12(b)(6) unless it appears
12 beyond a doubt that the plaintiff can prove no set of facts to support his claim
13 which would entitle him to relief. *McKinnon v. W. Sugar Coop. Corp.*, 2010 MT
14 24, ¶ 12, 355 Mont. 120, 225 P.3d 1221. In other words, dismissal is justified
15 only when the allegations of the complaint itself clearly demonstrate the plaintiff
16 does not have a claim. *Buttrell v McBride Land & Livestock Co.*, 170 Mont.
17 296, 298, 553 P.2d 407, 408 (1976).

18 An asserted claim is subject to dismissal if, as pled, it is
19 insufficient to state a cognizable claim entitling the claimant to relief. Mont. R.
20 Civ. P. 12(b)(6). Under Rule 12(b)(6), the court must take all well-pled factual
21 assertions as true and view them in the light most favorable to the claimant,
22 drawing all reasonable inferences in favor of the claim. *Anderson v. ReconTrust*
23 *Co., N.A.*, 2017 MT 313, ¶ 8, 390 Mont. 12, 407 P.3d 692.

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ANALYSIS

According to the State, Forward Montana lacks standing because it failed to allege that it is a “political committee” subject to Section 21. Pursuant to Montana Code Annotated § 13-1-101(31)(a), a “political committee” means “a combination of two or more individuals or a person other than an individual who receives a contribution or makes an expenditure” to support or oppose a candidate, ballot issue, or other election communication. Conversely, the State acknowledges Forward Montana alleges “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.’” Upon review of its verified amended complaint, the Court is satisfied that Forward Montana has alleged facts sufficient to accept that it meets the definition of “political committee” subject to the provisions of SB 319.

The State further argues Forward Montana lacks standing because Forward Montana merely alleges that it conducts election related activity “on and around” public university campuses and did not specifically allege that it would seek to conduct such activity “inside a residence hall, dining facility, or athletic facility.” This argument is unavailing. The Court is satisfied that within Forward Montana’s stated intent to organize “on and around” public university campuses, includes its intent to utilize the common spaces of residence halls, dining facilities, and athletic facilities, even without Forward Montana using those precise words in its complaint. It is a perfectly reasonable to interpret ‘doing group activities on campus’ as including ‘doing group activities in the spaces designed for doing group activities on campus.’

1 Courts have the power to resolve cases or controversies, requiring
2 a plaintiff demonstrate, "at an irreducible minimum," the plaintiff "has suffered a
3 past, present, or threatened injury to a property or civil right, and that the injury
4 would be alleviated by successfully maintaining the action." *Schoof v. Nesbit*,
5 2014 MT 6, ¶ 15, 373 Mont. 226, 316 P.3d 831 (internal quotations omitted). "A
6 plaintiff's standing may arise from an alleged violation of a constitutional or
7 statutory right." *Mitchell v. Glacier County*, 2017 MT 258, ¶ 11, 389 Mont. 122,
8 406 P.3d 427 (citing *Schoof*, ¶ 23). For purposes of determining standing,
9 Forward Montana's verified amended complaint includes sufficient allegations
10 which demonstrate a "concrete," rather than an abstract or hypothetical injury
11 that allows Forward Montana to have its claims adjudicated in the courts of
12 Montana. *See Schoof*, ¶¶ 12-23.

13 Next, the State argues Gallagher, Zadick, and MACDL each lack
14 standing because they have not identified a specific case which would require
15 recusal of a judge under Section 22 of SB 319. Plaintiffs allege they all practice
16 before Montana judges and regularly contribute to judicial campaigns or
17 campaign committees. Plaintiffs claim they will be harmed by Section 22
18 because judges will be forced to recuse themselves in hundreds of cases,
19 including cases in which Plaintiffs are involved. According to the State,
20 Plaintiffs' complaint references only "pending" cases. Because the bill is not
21 retroactive and does not apply to any case filed before July 1, 2021, there can be
22 no injury and thus no standing. The Court disagrees. It is clear Plaintiffs are not
23 claiming they will only be harmed because past and current cases might be
24 impacted. Rather, Plaintiffs' injury claim includes future cases and the fact that
25 Section 22 would have a chilling effect on their rights to free speech and

1 participation in government. Plaintiffs have met the threshold to establish
2 standing.

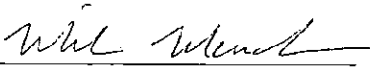
3 Finally, the State argues all Plaintiffs lack standing under Article
4 V, Section 11 of the Montana Constitution because Plaintiffs “assert a
5 constitutional violation but state no resultant injury.” In the present matter,
6 Plaintiffs claim they each have a right not to be subject to legislation enacted
7 through an unconstitutional process. Plaintiffs also clearly claim they will be
8 injured if Sections 21 and 22 of SB 319 become law. Forward Montana, as a
9 registered political committee, conducts the kind of work Section 21 prohibits in
10 the places (on public university campuses) proscribed. Similarly, Section 22
11 affects the attorney Plaintiffs in a distinct manner. These Plaintiffs’ prior
12 contributions to nonpartisan judicial campaigns will trigger judicial recusals,
13 preventing the Plaintiffs from appearing before certain judges and removing
14 judges from cases. These alleged injuries are sufficient to confer standing and
15 raise a cognizable claim. To establish standing, a party must allege “a past,
16 present, or threatened injury to a property or civil right.” *Mont. Immigration*
17 *Justice All. v. Bullock*, 2016 MT 104, ¶ 19, 383 Mont. 318, 371 P.3d 430.
18 Plaintiffs here have clearly done so.

19 Accordingly,

20 **ORDER**

21 **IT IS HEREBY ORDERED** the State’s motion to dismiss for
22 lack of standing and failure to state a claim is **DENIED**.

23 DATED this 6th day of October 2021.

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25 
MIKE MENAHAN
District Court Judge

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