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**FILED**

FEB 3 2022

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, and  
GARY ZADICK,

Plaintiffs,

v.

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

Defendant.

Cause No. ADV-2021-611

**ORDER ON MOTION FOR  
SUMMARY JUDGMENT**

This matter is before the Court on Plaintiffs Forward Montana, Leo Gallagher, Montana Association of Criminal Defense Lawyers and Gary Zadick's motion for summary judgment on count one (violation of the single subject rule) and count two (violation of the rule on amendments) of their amended complaint. Defendant State of Montana, by and through Governor Greg Gianforte, opposes. Raphael Graybill, Rylee Sommers-Flanagan and

1 Constance Van Kley represent the Plaintiffs. Brent Mead, Assistant Solicitor  
2 General and Patrick M. Risken, Assistant Attorney General represent the State.

### 3 STATEMENT OF FACTS

4 Senator Greg Hertz introduced Senate Bill 319 (SB 319) during the  
5 67<sup>th</sup> Regular Session of the Montana Legislature on February 16, 2021. The bill  
6 as introduced would revise Montana’s campaign finance laws by establishing and  
7 regulating joint fundraising committees. The bill’s original title contained the  
8 following:

9 An Act generally revising campaign finance laws; creating joint  
10 fundraising committees; providing for certain reporting; and  
11 amending sections [listing sections].

2021, Mont. Laws SB 319.

12 SB 319 passed the Senate and House with minor changes. Because the Senate  
13 and House passed slightly different versions of the bill, reconciliation was  
14 necessary. When bills require reconciliation, the introducing chamber may seek  
15 appointment of a conference committee to resolve the differences. Members of a  
16 conference committee are confined to “discussing an amendment on which the  
17 two houses cannot agree.” Rule 30-30(1), Joint Rules of the 67<sup>th</sup> Montana  
18 Legislature (2021). If one chamber requests a free conference committee and the  
19 other concurs, a free conference committee “may discuss and pose amendments  
20 to a bill in its entirety and is not confined to a particular amendment. However, a  
21 free conference committee is limited to consideration of amendments that are  
22 within the scope of the title of the introduced bill.” Joint Rule 30-30(3)(a)(1).

23 Here, both Senate and House proceeded directly by appointing  
24 three of their members to a free conference committee. The free conference  
25 committee met on April 27, 2021, for sixteen minutes. There was no public

1 participation and/or public testimony, which are not permitted during a  
2 conference committee or free conference committee. During these sixteen  
3 minutes, the committee adopted several amendments, two of which are at issue in  
4 this case and will be discussed below.

5 The final version of SB 319 was titled as follows, with original  
6 underlines highlighting the amendments:

7 An Act generally revising campaign finance laws; creating joint  
8 fundraising committees; providing for certain reporting; establishing  
9 that if student organizations that are required to register as political  
10 committees are funded through additional optional student fees,  
11 those fees must be opt-in; prohibiting certain political activities in  
12 certain places operated by a public postsecondary institution;  
13 providing for judicial recusals under certain circumstances;  
14 providing penalties; and amending sections [listing sections]; and  
15 providing an effective date.

2021, Mont. Laws SB 319.

14 The following day, on April 28, 2021, both Senate and House passed SB 319.  
15 Governor Gianforte signed SB 319 into law on May 12, 2021.

16 Plaintiffs filed an amended complaint on June 4, 2021, alleging SB  
17 319 violates the single subject rule, Montana Constitution, Art. V, § 11(3) and the  
18 rule on amendments, Montana Constitution Art. V, §11(1).

## 19 PRINCIPLES OF LAW

### 20 Summary Judgment

21 Summary judgment is proper when no genuine issues of material  
22 fact exist, and the moving party is entitled to judgment as a matter of law. Mont.  
23 R. Civ. P. 56(c)(3). Since the controlling issue before this Court is strictly a legal  
24 question, summary judgment is appropriate at this juncture as a matter of law.  
25 See *Lingscheit v. Cascade County*, 249 Mont. 526, 531, 817 P.2d 682 (1991).

1 **Constitutional Issue**

2 “Statutes are presumed to be constitutional, and it is the duty of  
3 this Court to avoid an unconstitutional interpretation if possible.”  
4 *Hernandez*, ¶ 15 (citing *Montanans for the Responsible Use of the*  
5 *School Trust v. State ex rel. Bd. of Land Comm’rs*, 1999 MT 263,  
6 ¶ 11, 296 Mont. 402, 989 P.2d 800; *State v. Nye*, 283 Mont. 505,  
7 510, 943 P.2d 96, 99 (1997)). The party challenging a statute’s  
8 constitutionality bears the heavy burden of proving the statute is  
9 unconstitutional “beyond a reasonable doubt.” *Molnar v. Fox*,  
10 2013 MT 132, ¶ 49, 370 Mont. 238, 301 P.3d 824.

11 When interpreting constitutional provisions, we apply the same  
12 rules as those used in construing statutes. *Nelson v. City of Billings*,  
13 2018 MT 36, ¶ 14, 390 Mont. 290, 412 P.3d 1058. But just as with  
14 statutory interpretation, constitutional construction should not “lead  
15 to absurd results, if reasonable construction will avoid it.” *Nelson*,  
16 ¶ 16 (citing *Grossman v. Mont. Dep’t of Natural Res.*, 209 Mont.  
17 427, 451, 682 P.2d 1319, 1332 (1984)). “The principle of reasonable  
18 construction ‘allows courts to fulfill their adjudicatory mandate and  
19 preserve the [Framers’] objective.’” *Nelson*, ¶ 16 (citation omitted).  
20 Thus:

21 Even in the context of clear and unambiguous language . . .  
22 we have long held that we must determine constitutional intent  
23 not only from the plain meaning of the language used, but also in  
24 light of the historical and surrounding circumstances under  
25 which the Framers drafted the Constitution, the nature of the  
subject matter they faced, and the objective they sought to  
achieve.

*Brown v. Gianforte*, 2021 MT 149, ¶¶ 32-33, 404 Mont. 269, 488 P.3d. 548  
(citing authority).

Moreover, statutes conflicting with the Montana Constitution are subordinate to  
the constitution but, if possible, must be interpreted to harmonize with it. See  
*Pengra v. State*, 2000 MT 291, ¶ 14, 302 Mont. 276, 14 P.3d 499. In addition, a

1 statute’s constitutionality “is prima facie presumed, and every intendment in its  
2 favor will be made unless its unconstitutionality appears beyond a reasonable  
3 doubt.” *Judge*, 168 Mont. at 444 (citing authority). Notwithstanding, however,  
4 statutory application that is contrary to a “constitutional directive” is  
5 unconstitutional “under any level of scrutiny.” *City of Missoula v. Mountain*  
6 *Water Co.*, 2018 MT 139, ¶ 31, 419 P.3d 685. Whether a statute is constitutional  
7 is a legal question. *Id.*

### 8 ANALYSIS

9 Through the Montana Constitution, the people of Montana have  
10 authorized the Montana Legislature to pass laws by bill. In adopting the  
11 Constitution, the people of Montana have also imposed limitations on legislative  
12 power. Two such limitations are at issue in this case. First, the Legislature may  
13 not alter or amend a bill during the legislative process so as to change its original  
14 purpose. Second, each bill shall contain only one subject, clearly expressed in its  
15 title.

16 Article V, Section 11 of the Montana Constitution provides,  
17 in relevant part:

18 (1) A law shall be passed by bill which shall not be so altered or  
19 amended on its passage through the legislature as to change its  
20 original purpose.

21 ...

22 (3) Each bill, except general appropriation bills and bills for the  
23 codification and general revision of the laws, shall contain only one  
24 subject, clearly expressed in its title. If any subject is embraced in  
25 any act and is not expressed in the title, only so much of the act not  
so expressed is void.

...

(6) A law may be challenged on the ground of noncompliance with  
this section only within two years after its effective date.

Mont. Const. art. V, ¶ 11.

1 The Montana Supreme Court has explained the purpose of this restriction on  
2 legislative power:

3 Stated briefly, those purposes are to restrict the Legislature to the  
4 enactment of laws the subjects of which are made known to the  
5 lawmakers and to the public, to the end that anyone interested may  
6 follow intelligently the course of pending bills to prevent the  
7 legislators and the people generally being misled by false or  
8 deceptive titles, and to guard against the fraud which might result  
9 from incorporating in the body of a bill provisions foreign to its  
10 general purpose and concerning which no information is given by the  
11 title.

12 *Johnson v. Meagher Cty.*, 116 Mont. 565, 570, 155 P.2d 750, 752 (1945)  
13 (quoting *State ex rel. Foot v. Burr*, 73 Mont. 586, 588, 238 P. 585, 585 (1925)).

14 The final version of SB 319 contains 27 sections, 21 of which  
15 directly relate to the establishment and regulation of joint fundraising  
16 committees. Section 1 provides for the creation of joint fundraising committees.  
17 Sections 3 through 20 amend statutes in Title 13, which incorporate references to  
18 joint fundraising committees. Sections 24 and 26 are contingent coordinating  
19 clauses also related to joint fundraising committees. Three of the sections in SB  
20 319 are procedural. Section 23 is a codification instruction. Section 25 is a  
21 severability clause. Section 27 provides an effective date. Of the three  
22 remaining sections, two are at issue in this case.

23 Section 2 establishes that student fees to fund student political  
24 committees must be opt-in. Section 2 has not been challenged in this case.

25 Section 21 prohibits political committees from engaging in various  
political activities in specific locations on college campuses. Section 21 states, in  
primary part:

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1 A political committee may not direct, coordinate, manage, or  
2 conduct any voter identification efforts, voter registration drives,  
3 signature collection efforts, ballot collection efforts, or voter turnout  
4 efforts for a federal, state, local, or school election inside a residence  
5 hall, dining facility, or athletic facility operated by a public  
6 postsecondary institution.

2021, Mont. Laws, SB 319, § 21.

6 Section 22 requires judges to recuse themselves in any case in  
7 which any party or attorney has made more than 50% of the allowable campaign  
8 contribution to that judge's campaign.

9 Plaintiffs challenge Sections 21 and 22 of SB 319, claiming these  
10 provisions violate the single-subject rule expressed in Article V, Section 11(3) of  
11 the Montana Constitution. Plaintiffs contend SB 319 contains at least three  
12 subjects. In their complaint, Plaintiffs contend "[t]he creation of joint fundraising  
13 committees, standards for judicial conflicts of interest, and political speech on  
14 campus are independent and incongruous subjects. They are plainly unrelated."

15 Plaintiffs also challenge Sections 21 and 22 of SB 319, claiming  
16 these provisions violate the prohibition against amending a bill so as to change its  
17 original purpose. According to Plaintiffs, the legislative history of SB 319  
18 clearly demonstrates the bill passed both the Senate and House without Sections  
19 21 and 22. Those sections were only incorporated in the bill during a free  
20 conference committee—without public notice one day before the Legislature  
21 adjourned. Plaintiffs argue the Legislature violated Montana Constitution Art. V,  
22 § 11 by passing SB 319 by altering or amending the bill in such a manner it  
23 changed the bill's original purpose.

24 ////

25 ////

1           The State argues SB 319 satisfies Article V, Section 11 because the  
2 titular purpose of the bill, “generally revise campaign finance laws,” is a single  
3 subject description encompassing all sections of the bill. According to the State,  
4 the bill’s “unitary, clear, topic” is “campaign and election practices” and Sections  
5 21 and 22 of SB 319 “deal with campaign and election practices.” Section 21,  
6 which prohibits political committees from conducting certain activities inside  
7 specific areas of public postsecondary institutions, is a campaign finance  
8 regulation “because section 21 plainly governs political committee expenditures  
9 and contributions.”

10           Nonetheless, Section 21 bans select campaign activities and has no  
11 effect on campaign contributions, spending or disclosures. It does not regulate  
12 money in political activities. Rather, it places conditions on those who may  
13 participate in campaign activities like “voter identification” in on-campus  
14 residential, dining, and athletic facilities according to the identity of the person or  
15 organization engaged in the conduct. Section 21 regulates campaign activities. It  
16 does not regulate campaign finance.

17           The State argues Section 22 is properly a campaign finance  
18 provision because it requires recusal of a judge, based upon a contribution to the  
19 judge’s campaign. According to the State, “[r]ecusal standards based on  
20 campaign contributions falls within the umbrella of ‘campaign finance.’” In  
21 support of its argument, the State cites *Caperton v. A. T. Massey Coal Co.*, 556  
22 U.S. 868, 889, 129 S. Ct. 2252, 2266 (2009) and *Boland v. Boland (In re Estate*  
23 *of Boland)*, 2019 MT 236, ¶ 64, 397 Mont. 319, 450 P.3d 849, for the proposition  
24 that rules governing judicial recusal, if they relate to campaign contributions, are  
25 in fact campaign finance rules. While these cases relate to judicial recusal and

1 campaign contributions, they don't support the State's argument that rules  
2 regulating judicial recusal based upon campaign contributions *are* campaign  
3 finance rules.

4 Section 22 regulates judicial recusal—not campaign finance. Its  
5 purpose is to establish and define a judicial conflict of interest and to regulate  
6 when judges may preside over cases in which they've received certain campaign  
7 contributions. Section 22 does not change Montana's campaign finance law. It  
8 does not place limits on campaign contributions or alter campaign reporting  
9 requirements. Similarly, it does not change disclosure requirements or otherwise  
10 modify the regulatory framework which governs campaign financing.

11 Accordingly, the Court concludes SB 319 contains two subjects  
12 not related to campaign finance, in violation of the single subject rule embodied  
13 in the Montana Constitution, Article V, § 11(3). The Court further concludes  
14 SB 319 was amended during its passage through the legislature to an extent the  
15 bill's original purpose was changed, in violation of the Montana Constitution,  
16 Article V, § 11(1). Prior to its final amendment during a free conference  
17 committee, SB 319's entire purpose was to revise campaign finance laws  
18 regarding the establishment and regulation of joint fundraising committees. By  
19 amending the bill to include provisions regarding political activities on college  
20 campuses and judicial recusal requirements, the Legislature altered the original  
21 purpose of the bill.

22 ////

23 ////

24 ////

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1 **Severability**

2 Plaintiffs ask the Court to declare the entirety of SB 319 void. The  
3 State argues that in the event the Court invalidates part of SB 319, the remainder  
4 of law should remain. The Court agrees. SB 319 contains a severability clause  
5 which provides:

6 If a part of [this Act] is invalid all parts that are severable from the  
7 invalid part remain in effect. If a part of [this Act] is invalid in one or  
8 more of its applications, the part remains in effect in all valid  
9 applications that are severable from the invalid applications.  
2021, Mont. Laws, SB 319.

10 The presence of a severability clause operates as affirmative evidence the  
11 Legislature intended the courts apply judicial severability to “strike only those  
12 provisions of the statute that are unconstitutional” to preserve the remaining  
13 objectives and purposes of the statute. *Williams v. Bd. of Cnty. Comm’rs*, 2013  
14 MT 243, ¶ 64, 371 Mont. 356, 308 P.3d 88.

15 Though “the presumption is against the mutilation of a statute,” []  
16 if removing the offending provisions will not frustrate the purpose or  
17 disrupt the integrity of the law, we will strike only those provisions  
18 of the statute that are unconstitutional.  
*Williams*, ¶ 64 (citations omitted).

19 Because SB 319 contains a severability clause, the Legislature clearly  
20 demonstrated its intent the courts should strike only those provisions which are  
21 unconstitutional.

22 Accordingly,

23 ////

24 ////

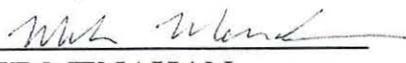
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1 **ORDER**

2 **IT IS HEREBY ORDERED** Forward Montana's motion for summary  
3 judgment is **GRANTED**. Sections 21 and 22 of SB 319 are unconstitutional in  
4 that they violate the Montana Constitution, Article V, §§ 11(1) and (3).

5 **IT IS HEREBY FURTHER ORDERED** the July 1, 2021 Preliminary  
6 Injunction is converted to a Permanent Injunction.

7 DATED this 3<sup>rd</sup> day of February 2022.

8  
9   
10 **MIKE MENAHAN**  
11 **District Court Judge**

12  
13  
14 cc: Raph Graybill,(via email to: rgraybill@silverstatelaw.net  
15 Ryle Sommers-Flanagan, via email to: rylee@uppersevenlaw.com  
16 Kristin N. Hansen, via email to: kris.hansen@mt.gov  
17 Brent Mead, via email to: Brent.mead@mt.gov  
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19 Patrick M. Risken, via email to: prisken@mt.gov

20 MFM/sm/ADV-2021-611 Forward Montana, et al. v. State of Montana - Order on Motion for Summ Judgment  
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