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**FILED**

SEP 13 2021

ANGIE SPARKS, Clerk of District Court  
 By *[Signature]* Deputy Clerk

*Attorneys for Defendant*

**ORIGINAL**

MONTANA FIRST JUDICIAL DISTRICT COURT  
 LEWIS AND CLARK COUNTY

INDEXED

FORWARD MONTANA; LEO GALLAGHER; MONTANA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS; GARY ZADICK,	Cause No. BDV-2021-611  Hon. Michael F. McMahon
Plaintiffs,	<b>AFFIDAVIT OF PATRICK M.          RISKEN IN SUPPORT OF          DEFENDANTS' MOTION TO          STAY PLAINTIFFS' MOTION FOR          SUMMARY JUDGMENT -          Mont. R. Civ. P. 56(f)</b>
vs.	
THE STATE OF MONTANA, by and through GREG GIANFORTE, Governor,	
Defendant.	

STATE OF MONTANA            )  
   :  
 County of Lewis & Clark    )

PATRICK M. RISKEN, sworn upon oath, deposes and states:

AFFIDAVIT OF PATRICK M. RISKEN RE:  
 DEFENDANTS' MOTION TO STAY, ETC. - 1

1. I am co-counsel for Defendant in the above action, am over the age of 18 years, am competent to testify as to the matters set forth herein, and make this Affidavit based upon my own personal knowledge and/or belief. I am generally familiar with the claims, materials, documents and pleadings regarding this matter.

2. One of my roles in defending this case is to conduct discovery into the Plaintiffs' claims, including the specific factual allegations made in the Verified Amended Complaint.

3. The Amended Verified Complaint was filed on June 4, 2021, in tandem with the Plaintiffs' Application for Preliminary Injunction and supporting pleadings. That hearing was held before this Court on June 28, 2021 and the Preliminary Injunction Order was entered on July 1, 2021. The application of SB 319 was stayed pending the ultimate outcome of the case, preserving the status quo "during the pendency of this action." Ct. Doc. 28.

4. Defendants then filed a Motion to Dismiss under Mont. R. Civ. P. 12 in a timely manner and briefing on that motion will close today.

5. By filing the Motion to Dismiss under Rule 12 the Defendants challenged the entirety of the Plaintiffs' case, in large part for lack of subject matter jurisdiction due to lack of standing. Defendants made the same argument during the preliminary injunction proceedings but that issue was not resolved at that time. Defendants did not waive the issue, either. The Defendants' pending Rule 12 motion is intended to resolve that issue before an Answer to the Verified Amended Complaint is filed.

6. On August 18, 2021, Plaintiffs responded to Defendants' Rule 12 motion. Ct. Doc. 34. Defendants' Rule 12 motion was not fully briefed at that point. Yet Plaintiffs filed a summary judgment motion and brief on that date, seeking a dispositive ruling in this case. Ct. Docs. 35-37.

7. At this stage of the litigation no discovery has occurred.

8. It appears that Plaintiffs' strategy is to bypass Defendants' Rule 12 motion, deny Defendants discovery into facts relevant to Plaintiffs' standing, and therefore jurisdiction, and proceed directly to dispositive decision without the development of any defense available to Defendants.

9. If the Defendants' Rule 12 motion is denied the Defendants must be allowed to put this case at issue through the admissions and denials of an Answer to the Verified Amended Complaint. Permitting discovery into the facts specific to the allegations made in that Complaint and the Affidavit of Colin M. Stephens, both filed under oath, would allow a full defense of those claims and facts, data or admissible opinions supporting allegations of:

a. The organization, purpose, and activities of Forward Montana under Rule 30(b)(6), including its previous or historical activities that might be affected by SB 319; *Verified Amended Complaint ("VAC")* ¶ 1, Ct. Doc. 5;

b. Plaintiff Leo Gallagher's knowledge of all facts alleged in the Amended Verified Complaint, including facts specific to other plaintiffs, upon his verification signature thereto, *VAC* at page 23;

c. That Plaintiffs Gallagher and/or Gary Zadick have or will be injured by the recusal of any judge before whom any of them are appearing or will appear going forward and the underlying facts, data or other admissible information that support that allegation; VAC, ¶¶ 2, 4;

d. The organization, purpose, and activities of the Montana Association of Criminal Defense Lawyers (MACDL) under Rule 30(b)(6), VAC ¶ 3;

e. The specific facts upon which the MACDL (or its members) contend that SB 319 will “require potentially hundreds of substitutions” and the underlying facts, data or other admissible information that support that allegation;

f. Forward Montana’s status as a “political committee;”

g. Forward Montana’s history as a “political committee;”

h. Forward Montana’s electioneering activities in relation to SB 319;

i. What if any specific political activities Forward Montana pursues or performs;

i. How Forward Montana’s political activities will be hindered by SB 319;

j. The factual bases of any perceived threats to any person, organization or entity from the enforcement of SB 319;

k. Facts specific to any injury claimed by any Plaintiff for an alleged violation of Mont. Const. art. V, § 11;

l. Factual bases of claims that SB 319 “prohibits political committees in election-related speech and assembly” and the underlying facts, data or other admissible information that support that allegation, VAC ¶ 58;

m. Harms claimed on behalf of “young Montanans” and the underlying facts, data or other admissible information that support that allegation, VAC ¶ 61;

n. Facts supporting the contention that SB 319 “will fundamentally alter the administration of justice in Montana” and the underlying facts, data or other admissible information that support that allegation, VAC ¶ 73;

o. Facts specific to the interpretation of SB 319 by judges and the underlying facts, data or other admissible information that support that allegation, VAC ¶¶ 74-75;

p. Facts specifically supporting the “extreme delays” and “legal forum shopping” and the underlying data, reports, analyses or other admissible information that support that allegation claimed in VAC ¶¶ 76-77;

q. Any facts supporting the contentions of VAC ¶¶ 83-85 regarding actual obstacles to litigants and attorneys who wish to participate in electing judicial officials; and/or

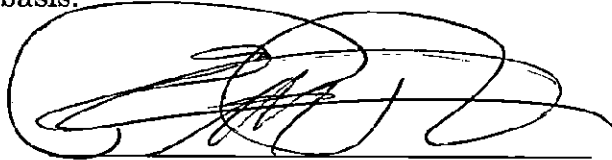
r. Any facts, data, surveys, reports, complaints or other relevant information supporting allegations of the *en masse* substitution of judges claimed in VAC ¶ 91.

10. The Defendants have identified a significant number of “facts” that the Plaintiffs have alleged supporting their legal status, activities, and claimed harms or injuries to which the Defendants must be permitted discovery in order to defend this case. Many of those claims directly involve the Plaintiffs’ standing to bring this case, collectively or individually, including their respective organization, activities, predictions, perceived harms, concerns or speculated injuries. If proof of those allegations is unavailable to the Plaintiffs the claims affected should be dismissed in a later round of summary judgment.

11. The Plaintiffs cannot be prejudiced by the stay of their pending summary judgment motion in order to allow Defendants appropriate discovery pursuant to a scheduling order issued by the Court in the normal course. The Preliminary Injunction Order entered on July 1, 2021 has put SB 319 on hold so the Plaintiffs concerns have been met. No emergency exists justifying the breakneck processing of this case outside the normal course of civil litigation.

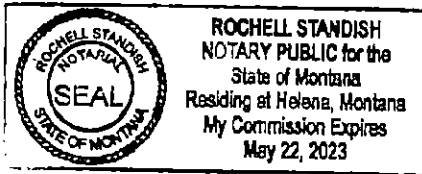
12. Conversely, proceeding with the Plaintiffs’ Motion for Summary Judgment at this time will significantly (if not completely) prejudice the Defendants by denying discovery into the claims made by the Plaintiffs specific to jurisdictional issues, including perceived harm, which must be supported by more than unproven allegations. Discovery may demonstrate a lack of jurisdiction over the any or all claims made by Plaintiffs, or that the perceived harm is not supported by sufficient admissible facts. Those facts and defenses must be fleshed out before any dispositive motion is entertained.

13. Defendants submit that this case should proceed in the normal course of civil litigation. Plaintiffs' pending summary judgment motion should be stayed, Defendants' Motion to Dismiss should be decided and, if that motion is denied, the Defendants should be allowed to Answer the Amended Verified Complaint, request a scheduling order and proceed with discovery as is the practice in all civil cases that are not processed on an emergency basis.



PATRICK M. RISKEN

SUBSCRIBED AND SWORN TO before me this 7<sup>th</sup> day of September, 2021.



Notary Public in and for the State of Montana

Residing at: Helena MT

My Commission Expires: May 22, 2023

## CERTIFICATE OF SERVICE

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

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Date: September 7, 2021

Rachel Standish