


**FILED**

OCT 06 2021

ANGIE SPARKS, Clerk of District Court  
By  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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1 ANALYSIS

2 According to the State, Forward Montana lacks standing because it  
3 failed to allege that it is a “political committee” subject to Section 21. Pursuant  
4 to Montana Code Annotated § 13-1-101(31)(a), a “political committee” means “a  
5 combination of two or more individuals or a person other than an individual who  
6 receives a contribution or makes an expenditure” to support or oppose a  
7 candidate, ballot issue, or other election communication. Conversely, the State  
8 acknowledges Forward Montana alleges “that much of its work ‘occurs on and  
9 around public university campuses’ and that it ‘plans to engage in voter  
10 identification, get out the vote, and other efforts prohibited by SB 319 on and  
11 around public university campuses.’” Upon review of its verified amended  
12 complaint, the Court is satisfied that Forward Montana has alleged facts  
13 sufficient to accept that it meets the definition of “political committee” subject to  
14 the provisions of SB 319.

15 The State further argues Forward Montana lacks standing because  
16 Forward Montana merely alleges that it conducts election related activity “on and  
17 around” public university campuses and did not specifically allege that it would  
18 seek to conduct such activity “inside a residence hall, dining facility, or athletic  
19 facility.” This argument is unavailing. The Court is satisfied that within Forward  
20 Montana’s stated intent to organize “on and around” public university campuses,  
21 includes its intent to utilize the common spaces of residence halls, dining  
22 facilities, and athletic facilities, even without Forward Montana using those  
23 precise words in its complaint. It is a perfectly reasonable to interpret ‘doing  
24 group activities on campus’ as including ‘doing group activities in the spaces  
25 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.

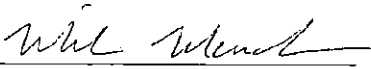
3 Finally, the State argues all Plaintiffs lack standing under Article  
4 V, Section 11 of the Montana Constitution because Plaintiffs “assert a  
5 constitutional violation but state no resultant injury.” In the present matter,  
6 Plaintiffs claim they each have a right not to be subject to legislation 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 6<sup>th</sup> day of October 2021.

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MIKE MENAHAN  
District Court Judge

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