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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

FORWARD MONTANA; LEO GALLAGHER; MONTANA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS; GARY ZADICK, Plaintiffs, v. THE STATE OF MONTANA, by and through GREG GIANFORTE, Governor, Defendant.	Cause No. ADV-2021-611 Hon. Mike Menahan **DEFENDANT'S RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

The Montana Legislature enacted SB 319 to regulate campaign finance activity. SB 319's regulations concern political joint-fundraising committees, student political committees, political committee activities on certain areas of campus, and

judicial recusals based on campaign donations. Each area of regulation concerns campaign finance—a broad term encompassing the regulation of political practice in Montana.

Plaintiffs allege that SB 319 violates various enumerated rights and legislative procedures set forth in article V, section 11 of the Montana Constitution. During this litigation, the State has repeatedly attempted to investigate the factual bases of Plaintiffs' claims, but Plaintiffs objected to all discovery in this case. And disappointingly, this Court agreed. So the State has had no opportunity to test the facially deficient factual allegations set forth in Plaintiffs' pleadings. Based on the known facts—not just the unsupported assertions and inferences of the Verified Amended Complaint—this case should be dismissed for want of standing.

In the present motion, Plaintiffs seek relief only under their procedural article V, section 11 claims. As the State previously argued, this section does not create a freestanding cause of action and Plaintiffs must allege SB 319 violates a property or civil right. Doc. 30 at 13–16. Plaintiffs therefore lack standing. But even getting to the merits of their claims, they must fail because of the strong deference afforded the Legislature to affix titles to its acts. Further, SB 319's title and purpose from introduction through enactment entailed generally revising campaign finance laws. Plaintiffs fail to demonstrate any provision that violates SB 319's title or that SB 319's amendments misled or deceived legislators in violation of article V, section 11. Instead, this case involves a matter of public policy disagreement. Plaintiffs wish Montana's campaign finance law did not apply to them and their activities. But SB 319's

rules apply to all, including Plaintiffs, and the act's history followed constitutional process.

APPLICABLE STANDARDS

Summary judgment requires the moving party demonstrates an absence of disputed material facts and an entitlement to judgment as a matter of law. *Moe v. Butte-Silver Bow Cnty.*, 2016 MT 103, ¶ 14, 383 Mont. 297, 371 P.3d 415. Courts draw all reasonable inferences from offered evidence in favor of the party opposing summary judgment. *Id.*.

A plaintiff bringing a constitutional challenge must prove, beyond a reasonable doubt, that the statute is unconstitutional. *See City of Great Falls v. Morris*, 2006 MT 93, ¶ 12, 332 Mont. 85, 134 P.3d 692. When reviewing a constitutional claim against a statute, courts must "avoid an unconstitutional interpretation if possible," and resolve any doubt about the constitutionality of a statute in favor of the statute. *See Brown v. Gianforte*, 2021 MT 149, ¶ 32, 404 Mont. 269, 488 P.3d 548; *State v. Davison*, 2003 MT 64, ¶ 8, 314 Mont. 427, 67 P.3d 203 ("Every possible presumption must be indulged in favor of the constitutionality of a legislative act."); *GBN, Inc. v. Mont. Dep't of Revenue*, 249 Mont. 261, 265, 815 P.2d 595, 597 (1991) ("If a doubt exists, it is to be resolved in favor of the legislation"); *State v. Stark*, 100 Mont. 365, 368, 52 P.2d 890, 891 (1935) ("[T]he constitutionality of any act shall be upheld if it is possible to do so .... ").

ARGUMENT

I. Plaintiffs' failure to state facts sufficient to establish standing can no longer be presumed and this Court must dismiss for lack of jurisdiction.

Plaintiffs bear the burden of establishing the elements of standing at each successive stage of litigation. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). They must support standing "with the manner and degree of evidence required" at each stage. *Id.* In deciding a motion to dismiss, plaintiffs may rest on "general factual allegations of injury" because courts "presume that general allegations embrace those specific facts that are necessary to support the claim." *Id.* At summary judgment, however, plaintiffs must "set forth by affidavit or other evidence specific facts," necessary to establish standing. *Id.*

The State incorporates all previous arguments and briefing that Plaintiffs lack standing to bring this challenge. *See* Doc. 24 at 3–9; Doc. 30; Doc. 40.

A. Clear evidence rebuts Forward Montana's naked assertions they conduct activity in the places regulated by SB 319.

At the motion to dismiss stage, the Court drew a "perfectly reasonable" inference that Forward Montana's allegations of 'doing group activities on campus' included doing such activities in the areas regulated by SB 319. Doc. 61 at 4. At the summary judgment stage, that doesn't cut it. *See Lujan*, 504 U.S. at 561. Plaintiff Forward Montana fails to allege specific facts that they undertake any activities regulated by SB 319 in the areas covered by SB 319.

A cursory review of existing campus policy demonstrates the inadequacy of Forward Montana's 'mere allegations.' Current student handbooks prohibit, in

residence halls, the activity regulated by SB 319. *See Mead Affidavit.*, Exhibit A at 21, Section 15 "Sales in Residence Halls." ("In regards to resident and community privacy, safety, and security (with exception of local newspaper delivery), general sales and non-commercial and commercial solicitation are prohibited in residence halls (e.g., political campaigning, event promotion, etc.)"). Board of Regents Policy 1008 governs, along with SB 319, use of state facilities on campus—including dining halls, residence halls, and athletic facilities. *See Mead Affidavit*, Exhibit B. University of Montana-Western carries out Policy 1008 by prohibiting political activity broadly across campus, including the SB 319 restricted areas. *See Mead Affidavit*, Exhibit C at 1, 3.1 Procedures, "Political Campaigning." ("All political campaigners are requested to use the space between Short Center and the Student Union Building.").[1] Montana State University's Freedom of Expression Policy states "no political campaign activities are allowed inside any MSU buildings, facilities or stadiums, or temporary facilities such as tents, except where space is reserved in accordance with facility use policies." *Mead Affidavit*, Exhibit D at 5, "Political Activity on Campus." In short, these university policies duplicate SB 319's regulations that prohibit certain political activities inside a residence hall, dining facility, or athletic facility on campus.

[1] An interactive map of the University of Montana-Western campus is available at: https://umwestern.university-tour.com/interactive-map. The space between the Short Center and Student Union Building is outdoors, not an athletic facility, dining hall, or residence hall.

To the extent that the State's evidence does not speak to every facility on every campus, this Court must nonetheless construe the evidence in the light most favorable to the State. *See Moe*, ¶ 14. The State submitted competent evidence demonstrating that residence halls broadly prohibit all forms of campaign activity and campuses acting under Policy 1008 disallow such activity inside both athletic facilities and dining halls. Plaintiffs entered no evidence—none—that they conduct any regulated activity in any of the specific locations named by SB 319.

Throughout this litigation, Plaintiffs have refused to amend, or otherwise offer additional support for their claims. The State sought discovery into Forward Montana's allegations. *See* Doc. 43 at 5–7. Plaintiffs objected to *all* discovery. *See* Doc. 68, 69. At this stage, therefore, Plaintiff Forward Montana should be dismissed for lack of standing because of their continued failure to state an injury resulting from SB 319 and their steadfast refusal to supplement their deficient allegations.

Because no other plaintiff alleges a violation of any right under SB 319, section 21, any claims related to SB 319, section 21 should likewise be dismissed.

B. Plaintiffs fail to state sufficient facts demonstrating SB 319, section 22, injures them.

Plaintiffs' theory of injury relies on a proposition that attorneys possess some right to appear before particular judges. *See* Doc. 61 at 6 (Section 22 "prevent[s] the Plaintiffs from appearing before certain judges...."). But SB 319's purpose belies the limitations of this theory. Montana courts must be open to all, but no person may be denied due process of the law. *See* Mont. Const. art. II, §§ 16–17. The right to due process, at a minimum, guarantees the right to a fair tribunal. *See Caperton v. A.T.*

Massey Coal Co., 556 U.S. 868, 876 (2009) ("[A] fair trial in a fair tribunal is a basic requirement of due process.") (internal quotation and citation omitted). As the Supreme Court stated:

> We conclude that there is a serious risk of actual bias--based on objective and reasonable perceptions--when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent.

Id. at 884. States retain their traditional authority to regulate judicial campaign finances in order to further protect the right to due process. *Id.* at 889 ("States may choose to adopt recusal standards more rigorous than due process requires.") (internal citation and quotation omitted). Montana protected fair tribunals by imposing overall campaign donation limits as well allowing for recusal if a campaign donation goes above a certain level. *See* SB 319, § 22. Plaintiffs would flip fair tribunal principles on their head by declaring that the individual who donated large sums to a judge has a right to have their case heard by that judge.

Plaintiffs cannot allege an injury related to SB 319, section 22, because they don't possess any underlying right to have cases heard by judges they donate to.

Even if Plaintiffs could allege SB 319 substantially burdens a right, they fail to enter sufficient specific facts supporting an injury. To the extent the Plaintiffs allege that the donations of third parties cause them harm, they necessarily rely on the hypothetical actions of others. *See e.g.* Doc. 5, ¶ 2 (Plaintiff Gallagher is injured "anytime a defense attorney, prosecutor, or party has made a donation in the past six years covered by the bill."). But Plaintiffs' own words fail to state any such actions

by third parties. *See* Doc. 7-1, ¶¶ 29–31 ("I [Collin Stephens] am unaware ..." of whether his clients or opposing counsel would be subject to SB 319.).

As to their own donations, Plaintiffs' claims must fail for the reasons previously argued. *See e.g.* Doc. 40 at 6. Plaintiffs' allegations are based on unfounded assertions of potential judicial substitutions in pending cases. At this stage, Plaintiffs must enter specific facts supporting their claims, but they continue to rely on the same vague assertions as in earlier stages of litigation.

First, as to pending cases, Plaintiffs misread the statute by inserting a retroactivity clause into the bill. *See* Doc. 24 at 5–7. "When interpreting statutes, our role is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." *Comm'r of Political Practices for Mont. v. Mont. Republican Party*, 2021 MT 99, ¶ 7, 404 Mont. 80, 485 P.3d 741. And "[t]here is a presumption against applying statutes retroactively." *United States v. Juvenile Male*, 2011 MT 104, ¶ 7, 360 Mont. 317, 255 P.3d 110 (citations omitted). "No law contained in any of the statutes of Montana is retroactive unless expressly so declared." MCA, § 1-2-109. Plaintiffs ground their section 22 injury in "pending" cases. *See* Doc. 5 at 4–5 ("SB 319's judicial recusal provisions will injure [them] ... by requiring hundreds of substitutions in *pending* cases.") (emphasis added). SB 319 cannot apply to pending cases because it lacks a retroactivity clause and cannot be read to contain such a clause. *See* Doc. 24 at 5–7. Plaintiffs, therefore, cannot state an injury in pending cases.

Second, for the reasons previously stated, for cases going forward, Plaintiffs cannot state an injury because they don't possess a right to have specific judges, i.e. those judges Plaintiffs donated to, hear Plaintiffs' cases.

In either case, Plaintiffs' claims range from the unfounded to the open acknowledgement of ignorance. *See* Doc. 7-1 at ¶¶ 29–31 ("I [Collin Stephens] am unaware ..."). It is past time for Plaintiffs to support their allegations with sufficient, specific facts, but because they've repeatedly failed to do so this action must be dismissed.[2]

II. SB 319 satisfies article V, section 11 of the Montana Constitution.

SB 319 regulates different aspects of campaign finance, but all parts fall within its broad title to "generally revise campaign finance." Plaintiffs ask this Court to draw an artificial distinction between campaign finance and election activity. *See* Doc. 36 at 7–8 (Plaintiffs argue that even though Section 21 regulates permissible expenditures of campaign funds, it does not regulate campaign finance. Similarly, even though Section 22's recusal mechanism depends on campaign donations, Plaintiffs argue it doesn't involve campaign finance.). Further, Plaintiffs ask this Court to ignore the Supreme Court's decision in *Caperton* that treats recusal standards arising from campaign donations as part of campaign finance. *See Caperton*, 554 U.S. at 889.

[2] To the extent Plaintiffs respond that the State makes only a blanket denial, the State again points out that it sought discovery and Plaintiffs objected to *all* discovery. *See* Doc. 68, 69. The burden on proving allegations through sufficient facts lies entirely with the Plaintiffs, especially so when they seek to deny any investigation into their claims.

SB 319, as originally proposed, was an act to *generally revise* campaign finance. *See Mead Aff.*, Exhibit E at 1 (emphasis added). SB 319, as enacted, was an act to *generally revise* campaign finance. *See* Doc. 5, Exhibit A. The amendments offered during the Free Conference Committee all retained the bill's original purpose to generally revise campaign finance law. Plaintiffs' argument consists of conclusory statements that the amendments added "independent and incongruous" provisions to SB 319. But as stated, the amendments continued to regulate campaign finance and remained congruous with the bill's original purpose.

A. SB 319 complies with article V, section 11(3) of the Montana Constitution because it comprises "one subject, clearly expressed in its title."

Article V, section 11(3) requires that "[e]ach bill" the Legislature passes "contain only one subject, clearly expressed in its title." Mont. Const., art. V, § 11(3).[3] Article V, section 11(3)'s single-subject requirement does not allow a court to "hold a title void because, in its opinion, a better one might have been used." *MEA-MFT*, ¶ 8 (quoting *Harper v. Greeley*, 234 Mont. 259, 763 P.2d 650 (1988)). Rather, Montana courts liberally construe the single-subject requirement and recognize that it grants broad "deference to the Legislature to fix the title of its own acts." *MEA-MFT v. State*, 2014 MT 33, ¶ 8, 374 Mont. 1, 318 P.3d 702. Courts will invalidate bills that fail to mention the object of the legislation in the title. *See Sigety v. State Bd. of Health*, 157 Mont. 48, 53 (1971). Or where the body of an act conflicts with the title. *See Helena v. Omholt*, 155 Mont. 212, 221 (1970). But a bill meets the single-subject requirement

[3] The provision contains a few exceptions that do not apply here.

if it "treats only, *directly or indirectly*, of the subjects mentioned in [its] title, and of *other subjects germane thereto*, or *of matters in furtherance of or necessary to accomplish the general objects of the [b]ill.*" *Id.* (quoting *State v. McKinney*, 29 Mont. 375, 381, 74 P. 1095, 1096 (1904)) (emphasis added).[4]

Montana courts determine the meaning of a statute by looking to its "plain language." *In re N.A.*, 2021 MT 228, ¶ 11, 405 Mont. 277, 495 P.3d 45. Courts construe the words of a statute—including the title—"as a whole" and refuse to "isolate [any term] from the context of the statute." *Id.*.

The Title of SB 319 reads:

> AN ACT GENERALLY REVISING CAMPAIGN FINANCE LAWS; CREATING JOINT FUNDRAISING COMMITTEES; PROVIDING FOR CERTAIN REPORTING; ESTABLISHING THAT IF STUDENT ORGANIZATIONS THAT ARE REQUIRED TO REGISTER AS POLITICAL COMMITTESS ARE FUNDED THROUGH ADDITIONAL OPTIONAL STUDENT FEES, THOSE FEES MUST BE OPT-IN; PROHIBITING CERTAIN POLITICAL ACTIVITIES IN CERTAIN PLACES OPERATED BY A PUBLIC POSTSECONDARY INSTITUTION; PROVIDING FOR JUDICIAL RECUSALS UNDER CERTAIN CIRCUMSTANCES; PROVIDING PENALTIES.

"Generally revise campaign finance laws," in context applies to Montana's overall statutory and regulatory scheme overseeing the conduct of political campaigns, including non-campaign effects such as conflicts of interest that arise from political donations. The breadth of campaign finance regulation is inherent in the definitions of our laws. *See e.g.* MCA, § 13-1-101(32) (defining political committee as "a

[4] Prior cases from the First Judicial District similarly support a broad reading of Article V, § 11(3). *E.g., Rickert v. McCulloch,* No. CDV-2012-1003, 2013 Mont. Dist. LEXIS 10, 16-18 (Dec. 20, 2013).

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 or ballot measure, or make an electioneering communication.). Plaintiffs attempt to dice up an interlocking statutory scheme to exempt themselves from Montana's campaign finance regime. But as the Montana Supreme Court recited in *Omholt*, the proper test under the Montana constitution is whether the "body of a bill [contains] provisions foreign to its general purpose and concerning which no information is given by the title." 155 Mont. at 220. Here, SB 319 contains all its provisions, both specifically and generally, in the title and complies with Article V, section 11(3).

Plaintiffs first err by trying to draw distinctions between statutory provisions that simply don't exist. Doc. 35 at 9. The absurdity of Plaintiffs' reading can be seen in the words they use: campaign finance related to "Control of *Campaign Practices*" is somehow discordant and incongruous with "Election and *Campaign Practices* and Criminal Provisions." *Id.* (emphasis added). Plaintiffs' argument requires this Court to determine that 'campaign practices' carries wildly divergent meanings within Title 13 that render a bill which amends 'campaign practices' in both Chapters 35 and 37 unconstitutional. *But see Kottel v. State*, 2002 MT 278, ¶ 43, 312 Mont. 387, 60 P.3d 403 (words carry the same meaning throughout a document). Plaintiffs understandably fail to elaborate on how campaign finance applies to campaign practices, but also doesn't apply to campaign practices. This Court should adopt the common-sense reading that campaign finance applies to campaign practices because those terms are intertwined. *See Monforton v. Motl*, 2020 MT 202, ¶ 20, 401 Mont. 38, 469 P.3d 709

(The Commissioner of Political Practices regulates campaign finance and campaign practices.).

As Plaintiffs themselves point out, courts construe "the words of a statute"—title included—"in their context and with a view to their place in the overall statutory scheme." *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989). When one reads the entire title of SB 319, it becomes clear that the title—while lengthy and thorough—comprises a unitary, clear, topic: campaign and election practices. And the sections plaintiffs challenge—Section 21 and Section 22—deal with campaign and election practices. Section 21 generally prohibits political committees from conducting certain activities inside specific areas of "public postsecondary institution[s]." *See generally* SB 319, § 21. Plaintiffs argue this regulation fails to govern campaign finance. Doc. 36 at 9. Plaintiffs miss that mark because section 21 plainly governs political committee expenditures and contributions. *See* MCA, §§ 13-1-101(9), (19). Section 22, generally, requires a judge to recuse when a party or lawyer before the judge made a campaign finance contribution to the judge or a political committee supporting the judge "totaling at least one half" of the maximum allowable amount. *See generally* SB 319, § 22. Recusal standards based on campaign contributions falls within the umbrella of 'campaign finance.' *See Caperton*, 554 U.S. at 889; *see also Boland v. Boland*, 2019 MT 236, ¶¶ 64–65, 397 Mont. 319, 450 P.3d 849 (Baker, J. concurring) (Discussing the link between campaign finance and judicial recusal and inviting the Montana Supreme Court to "review its rules and consider changes" to recusal rules based on campaign donations). These sections deliver what the bill's

title promises: they regulate campaign and election practices. *Cf. Harper*, 234 Mont. at 266, 763 P.2d at 655 (courts review bill titles to "guard against fraud in legislation, and against false and deceptive titles."). SB 319 thus complies with article V, section 11(3) of the Montana Constitution. *Accord, McKinney*, 29 Mont. at 381, 74 P. at 1096.

Montana's constitution does not require the Legislature to craft "the best conceivable statement" to title bills. *MEA-MFT*, ¶ 10 (quoting *Harper*, 234 Mont. at 269, 763 P.2d at 657). Nor does it hand the judicial branch a red pen and establish it as the final editor of legislative bill titles. *See Harper*, 234 Mont. at 266 ("[A] court has no right to hold a title void because in its opinion, a better one might have been used."); *see also* Mont. Const. art. V, § 1 (vesting all legislative power in the Legislature). As Montana courts have recognized for over a century,[5] article V, section 11(3) just requires the title of a bill to give fair notice of its content. *Harper*, 234 Mont. at 266, (citing *McKinney*, 29 Mont. at 380–82). The Legislature has broad discretion in determining "what matters are in furtherance of or necessary to accomplish the general objects of a bill." *MEA-MFT*, ¶ 10 (quoting *McKinney*, 29 Mont. at 382, 74 P. at 1096) (cleaned up).

Plaintiffs next argue that because SB 319 is codified in three different titles of the MCA, it deals with three different subjects. This argument simply does not work. That a bill contains sections which end up in different titles of the MCA doesn't show

[5] As the Supreme Court noted in *MEA-MFT*, Article V, Section 11(3) of the 1972 Constitution is "substantively identical to its predecessor, Article V, Section 23 of the 1889 Montana Constitution." ¶ 8.

the bill covers different "subjects." Plaintiffs reading would convert the "single subject" rule into a "single title," or "single chapter" rule. But as stated, that isn't the proper test.

Indeed, the Legislature regularly passes laws containing sections that end up in different titles of the MCA. To give just one example: in 1995, Legislature passed a bill adjusting the salaries of many state employees. *See* 1995 Mt. HB 17. To do this, it had to amend parts of Titles 2, 3, Title 15, 19, and 44. Of course, this didn't mean that the law governed multiple "subject[s]."[6]—it dealt with the singular subject of adjusting state employee salaries.

Here, the Legislature wanted to regulate some areas of campaign finance and election practices. And it's axiomatic that the "Legislature ha[d] discretion in determining what matters are in furtherance of or necessary to accomplish the general objects of a bill." *MEA-MFT*, ¶ 10 (quoting *McKinney*, 29 Mont. at 382, 74 P. at 1096) (cleaned up). In keeping with over a century of Montana Supreme Court precedent granting deference to the legislature to "fix the titles of its own acts." *See MEA-MFT*, ¶ 8 (quoting *McKinney* 29 Mont. 375 at 381, 74 P. at 1096), this Court should grant summary judgment in favor of the State.

B. SB 319 does not violate the rule on amendments

Article V section 11(1) provides that "A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose." To determine the "purpose" of any statute, courts determine the

[6] HB 17 in 1995.

Legislature's intent, first by looking to the plain language, "interpret[ing] the statute as a whole, without isolating specific terms from the context in which they are used by the Legislature." *Sheehy v. Comm'r of Political Practices for Mont.*, 2020 MT 37, 399 Mont. 26, 458 .3d 309. As stated, Sections 21 and 22 regulate certain campaign and election-related practices, just like the rest of SB 319.

Plaintiffs blithely state, "[n]o set of facts can change the obvious conclusion that the uncontested facts set forth here require ...." The only facts Plaintiffs offer in this section include the Governor's veto of a separate bill. If Plaintiffs, instead, refer to the purpose and subject of SB 319 then the State disagrees with their baseless legal conclusion that SB 319 contains multiple subjects.

Plaintiffs try to liken SB 319 to SB 231, a bill the Governor vetoed on article V, section 11(1) grounds. Doc. 36 at 10. But this cuts against Plaintiffs. The Governor, exercising his independent judgment on the constitutionality of proposed legislation vetoed SB 231. *Id.* Exercising that same independent constitutional judgment, the Governor signed SB 319. Because, as Plaintiffs admit, the Governor does evaluate laws for compliance with article V, section 11(1), his signing SB 319 stands as a statement that SB 319 complies with article V, section 11(1).

Plaintiffs fare no better in their case citations as they do not cite to any case in which a court concluded a law violated article V, section 11(1). They cite only cases where laws complied with article V, section 11(1) of the Montana Constitution. Doc. 36 at 10 citing *Evers v. Hudson*, 36 Mont. 135, 92 P. 462 (1907); *State ex rel. Griffin v. Greene*, 104 Mont. 460, 67 P.2d 995, 996 (1937). This Court should consider the

analysis in *Omholt*, that violations of article V, section 11 of the Montana Constitution require actual conflict—either expressed or through omission—between the body of a bill and the title of the bill. *Cf.* 155 Mont. at 220. Here, SB 319 contains a harmonious purpose where the title mentions each specific topic. None of the topics addressed by SB 319 conflict with each other, or the title, and all fall under the umbrella of generally revising campaign finance.

Finally, Plaintiffs attempt to argue that SB 319 violates the Montana Legislature's joint rules by considering amendments outside the scope of the bill. Doc. 36 at 11. But Plaintiffs enter no facts demonstrating any legislator objected to the amendments on such grounds.[7] Instead, during the debates on SB 319 as amended, legislators vigorously debated the policy of the bill. *See generally*, Free Conf. Comm. Hrg. on SB 319 (April 27, 2021); House 2nd Reading Free Conf. Comm. Report (April 28, 2021); Senate 2nd Reading Free Conf. Comm. Report (April 28, 2021). Which is to say, SB 319 didn't mislead anyone, including its opponents, as to its contents. SB 319, after amendments, received a full vetting before the Legislature including being exposed to vigorous and impassioned debate on the floor.

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[7] In previous years, legislators have objected under the rules to consideration of amendments allegedly outside the scope of the title. *See e.g.* Senate Journal, 63rd Legislature (2013), Eightieth Day (April 16, 2013) at 55–56 (Considering objection to an amendment to expand Medicaid under the Affordable Care Act in a bill whose title read in part, "AN ACT GENERALLY REVISING LAWS RELATED TO HEALTH CARE AND HEALTH INSURANCE TO IMPROVE ACCESS WITHOUT EXPANDING THE MEDICAID PROGRAM AS ALLOWED UNDER PUBLIC LAW 111-148 AND PUBLIC LAW 111-152" (HB 623)).

SB 319's history demonstrates its constitutionality. SB 319 contains a continuous unchanged policy related to campaign finance. The specific policies embodied within sections 21 and 22 faced debate in the Free Conference Committee and on the floors of the House and Senate. The Montana Legislature acted in a fully informed manner, both in support and opposition to SB 319, and there can be no question the act complies with article V, section 11(1), (3) of the Montana Constitution. Especially in light of the presumption of constitutionality afforded all duly enacted laws, and the special presumptions favoring the ability of the Legislature to fix titles to its own acts.

III. SB 319 contains an express severability clause

Even if this Court invalidates part of SB 319, the remainder of the law must stand. "The severability of an unconstitutional provision from a statute is a matter of statutory interpretation." *Williams v. Bd. of Cnty. Comm'rs*, 2013 MT 243, ¶ 24, 371 Mont. 356, 308 P.3d 88. "If a law contains both constitutional and unconstitutional provisions, [courts] examine the legislation to determine if there is a severability clause." *Id.*, ¶ 64. This flows from the rule that courts must "construe statutes in a manner that avoids unconstitutional interpretation whenever possible." *Id.* The presence of a severability clause operates as affirmative evidence the Legislature intended courts apply judicial severability to "strike only those provisions of the statute that are unconstitutional" to preserve the remaining objectives and purposes of the statute. *Id.*

SB 319 contains a severability clause. *See* SB 319, § 25. Ignoring the clause violates ordinary rules of statutory construction. *See Comm'r of Political Practices for Mont.*, ¶ 6. Thus, the Legislature presented clear evidence that courts should strike only those provisions that are unconstitutional. In this case, the very nature of the Plaintiffs' argument relies on Sections 21 and 22 having a different purpose than the remainder of SB 319. Thus, under the Plaintiffs' logic this Court should leave intact the other provisions of SB 319 because their object and purpose must be different and unaffected by invalidated provisions.

In response to this straightforward construction and understanding, Plaintiffs claim that the whole statute should fall. Doc. 36 at 11–12. Their reliance on *MACo v. State* is unpersuasive. *Id.* 2017 MT 267, 389 Mont. 183, 404 P.3d 733. First *MACo* involved the 'separate-vote' rule for ballot measures, not the 'single-subject' rule under article V, section 11(3) of the Montana Constitution. *See Marshall v. State by and through Cooney*, 1999 MT 33, ¶ 22, 293 Mont. 274, 975 P.2d 325 (The "separate-vote requirement for constitutional amendments is a different and narrower requirement than is a single-subject requirement."). Second, the constitutional ballot measure in *MACo* lacked a severability clause. Plaintiffs argument requires this Court to ignore the express terms of the statute and relies on inapplicable caselaw to get there.

This Court should reject this argument and instead apply a plain reading construction of the statute and its express severability clause.

CONCLUSION

For the reasons stated, this Court should dismiss this action for lack of standing. Additionally, the State demonstrated disputed material facts related to

Plaintiffs' standing to bring this challenge. These factual disputes render summary judgment inappropriate at this stage. Further, for the reasons stated this Court should deny Plaintiffs' Motion for Summary Judgment on Counts I and II on the merits. Finally, if this Court invalidates part of SB 319, it should sever the unconstitutional parts and leave the remainder of the law intact.

DATED this 20th day of December, 2021.

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