

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 67th 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].
12 2021, Mont. Laws SB 319.

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

24 Here, both Senate and House proceeded directly by appointing
25 three of their members to a free conference committee. The free conference
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
26 subject matter they faced, and the objective they sought to
27 achieve.

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

30 Moreover, statutes conflicting with the Montana Constitution are subordinate to
31 the constitution but, if possible, must be interpreted to harmonize with it. See
32 *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.

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

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

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

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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 /////

25 /////

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 ////

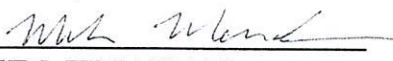
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1 **ORDER**

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 3rd day of February 2022.

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

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13
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20 MFM/sm/ADV-2021-611 Forward Montana, et al. v. State of Montana - Order on Motion for Summ Judgment
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