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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

Montana Democratic Party, Mon-  
tanans for Tester, Macee Patritti,

Plaintiffs,

v.

Christi Jacobsen, in her official  
capacity as Montana Secretary of  
State, Jeffrey Mangan, in his offi-  
cial capacity as Montana  
Commissioner of Political Prac-  
tices,

Defendants.

CV-21-119-M-DWM

**DEFENDANT'S  
PRELIMINARY PRETRIAL  
STATEMENT**

Defendants Montana Secretary of State Christi Jacobsen and Montana Commissioner of Political Practices Jeffrey Mangan (collectively “Defendants”) hereby submit their Preliminary Pretrial Statement.

#### **A. BRIEF FACTUAL OUTLINE OF CASE**

On May 12, 2021, Governor Gianforte signed Senate Bill 319 (“SB 319”). SB 319, section 21, the provision at issue in this litigation states in the relevant part, a “political committee may not direct, coordinate, manage, or conduct any voter identification efforts, voter registration drives, signature collection efforts, ballot collection efforts, or voter turnout efforts for a federal, state, local, or school election inside a residence hall, dining facility, or athletic facility operated by a public postsecondary institution.” SB 319, § 21(1). SB 319 does not limit “any communications made through mail, telephone, text messages, or electronic mail inside a residence hall, dining facility, or athletic facility or any political advertising made through radio, television, satellite, or internet service.” SB 319, § 21(2).

SB 319’s provisions constitute reasonable time, place, and manner regulations of various campaign activities in specific places on public campuses.

## **B. JURISDICTION AND VENUE**

Defendants don't contest venue in this matter.

The Court's subject matter jurisdiction is limited to cases or controversies under Article III. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Defendants will likely raise a jurisdictional defense that Plaintiffs lack standing to bring this claim because they cannot demonstrate an injury-in-fact caused by SB 319.

## **C. FACTUAL BASIS FOR DEFENSES TO CLAIMS**

Defendants believe, and will submit substantiating evidence after discovery, that SB 319 compliments existing Montana University System policies that restrict the activities outlined in SB 319 in the places mentioned in SB 319. As such, Plaintiffs will be unable to demonstrate an injury arising from SB 319.

Defendants believe, and will submit substantiating evidence, that restrictions on the activities outlined in SB 319 in the places mentioned by SB 319 constitute a well-understood time, place, and manner restriction consistent with First Amendment principles.

Finally, Defendants will submit appropriate evidence rebutting any claims that SB 319 constitutes intentional age-based discrimination or

that SB 319 abridges the right to vote based on age. Ample opportunity exists for all Montanans, including students and campus residents, to register and vote.

#### **D. LEGAL THEORY UNDERLYING LIKELY DEFENSES TO CLAIMS.**

##### **a. Standing**

As stated, Defendants will likely contest Plaintiffs standing to bring this claim. At a minimum, standing requires the Plaintiffs to prove an injury-in-fact caused by SB 319, that is fairly redressable through this action. *See Lujan*, 504 at 560–61. Plaintiffs cannot demonstrate they conduct any of the specific actions listed by SB 319 in the specific locations set forth in SB 319. Plaintiffs, therefore, lack a cognizable injury and they lack standing.

##### **b. SB 319 doesn't violate the First Amendment**

SB 319 constitutes a reasonable time, place, and manner regulation. “Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker’s activities.” *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1885 (2018). This challenge,

therefore, should be viewed as to whether SB 319’s regulations are “reasonable in light of the purpose served by the forum.” *Id.* at 1886.

SB 319 easily meets this requirement because the State has a longstanding interest in controlling where individuals and groups may conduct door-to-door solicitations, or similar activity, to maintain the campus environment for students and residents. SB 319 allows the activity Plaintiffs wish to engage in,

**c. SB 319 doesn’t violate the Twenty-Sixth Amendment**

The Twenty-Sixth Amendment provides the right to vote, “shall not be denied or abridged by ... any State on account of age.” SB 319 complies with the Twenty-Sixth amendment because it doesn’t prohibit anyone, regardless of age, from voting or registering to vote. SB 319 only applies in very specific areas of campus, while leaving ample opportunity for political, election, and voter registration activities on campus. Plaintiffs cannot demonstrate how SB 319’s restrictions will infringe upon anyone’s right to vote. Finally, Plaintiffs’ legal theory lacks established precedent from the Ninth Circuit or the United States Supreme Court. *See Compl.* ¶¶ 63–68.

## **E. COMPUTATION OF DAMAGES**

Plaintiffs seek only injunctive relief in this case and therefore do not have damages to calculate.

## **F. PENDENCY OF RELATED STATE OR FEDERAL LITIGATION**

*Forward Montana, et al. v. State of Montana*, No. ADV-2021-611, is currently pending before the Montana First Judicial District Court, Lewis & Clark County. This case involves a challenge to SB 319, including Section 21, on various Montana and federal constitutional grounds. The state court issued a preliminary injunction which remains in effect. There is a hearing scheduled for January 25, 2022, on the Plaintiffs' partial motion for summary judgment.

*Steve Barrett, et al. v. State of Montana*, No. DV-21-581B, is currently pending before the Montana Eighteenth Judicial District Court, Gallatin County. This case involves challenges to numerous laws, including SB 319, under the Montana constitution. The State moved to dismiss under Mont. R. Civ. P. 12(b)(1) and (b)(6) on July 16, 2021. A hearing was held on the motion December 15, 2021. The court denied the motion under Mont. R. Civ. P. 12(b)(6) on the basis of a decision in *Board of Regents v. State of Montana*, No. BVD 2021-598 (Mont. 1st Judicial Dist.)

(Order granting permanent injunction Dec. 13, 2021). But the *Barrett* court is still considering the 12(b)(1) motion to dismiss.

**G. PROPOSED STIPULATIONS OF FACT AND LAW**

Defendants refer the Court to the separately submitted list of stipulated facts by Plaintiffs and incorporate that list herein. At this stage, Defendants are unwilling to stipulate to additional facts or points law pending availability of initial discovery and investigation into Plaintiffs' claims.

**H. PROPOSED DEADLINES FOR JOINDER OF PARTIES OR AMENDMENT OF PLEADINGS**

Defendants propose that the deadlines for joinder of parties and amendment of pleadings be those dates set forth in the Report of Parties' Planning Meeting.

**I. IDENTIFICATIONS OF CONTROLLING ISSUES OF LAW SUITABLE FOR PRETRIAL DISPOSITION**

Defendants believe both of Plaintiffs' claims will be suitable for pre-trial dispositive motions.

**J. THE NAME AND RESIDENCE OF INDIVIDUALS WITH INFORMATION ABOUT CLAIMS OR DEFENSES**

NAME	CONTACT INFORMATION
Angela Nunn	Operations Director, Montana Secretary of State

	<b>Contact through undersigned counsel</b>
Jeffrey Mangan	Montana Commissioner of Political Practices <b>Contact through undersigned counsel</b>
Sheila Hogan	Executive Director, Montana Democratic Party <b>Contact through opposing counsel</b>
Dylan Laslovich	Senior Advisory, Montanans for Tester <b>Contact through opposing counsel</b>
Patrick Eisenhauer	Former MDP employee, 2018 Deputy Organizing Director <b>Contact through opposing counsel</b>
Nicholas Phalen	Former MDP employee, 2020 Organizing Director
Macee Patritti	Plaintiff <b>Contact through opposing counsel</b>

Defendants anticipate that current and former employees, agents, and associates of the Office of the Commissioner of Higher Education, Board of Regents, and the Montana University System may have discoverable information related to current campus policy regarding election, political, and voter registration activities on campus. Defendants will provide notice when they are able to identify the appropriate individual.



**K. SUBSTANCE OF ANY INSURANCE COVERAGE.**

As Plaintiffs' claims are non-monetary, no insurance agreement applies.

**L. STATUS OF SETTLEMENT DISCUSSIONS AND PROSPECTS FOR COMPROMISE OF THE CASE.**

No settlement discussions have taken place. Defendants do not believe settlement or compromise in this litigation is likely.

**M. SPECIAL PROCEDURES.**

Defendants do not believe any special procedures are necessary or appropriate. They believe the case should be ready for trial in 2022 as set forth in the Report of Parties' Planning Meeting.

DATED this 29th day of December, 2021.

AUSTIN KNUDSEN  
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KRISTIN HANSEN  
*Lieutenant General*

DAVID M.S. DEWHIRST  
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*/s/ Brent Mead*

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### CERTIFICATE OF SERVICE

I hereby certify that on this date, an accurate copy of the foregoing document was served electronically through the Court's CM/ECF system on registered counsel.

Dated: December 29, 2021

*/s/ Brent Mead*

BRENT MEAD