

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court No. OP 21-0125

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BOB BROWN, DOROTHY BRADLEY, VERNON FINLEY, MAE NAN  
ELLINGSON, and the LEAGUE OF WOMEN VOTERS OF MONTANA,

Petitioners,

v.

GREG GIANFORTE, Governor of Montana,

Respondent,

and

MONTANA STATE LEGISLATURE,

Intervenor-Respondent.

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**PETITIONERS' MOTION TO AMEND PETITION**

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(Appearances on next page)

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## **TABLE OF CONTENTS**

BACKGROUND .....	1
ANALYSIS .....	3
A.    The motion to amend should be granted. ....	3
B.    SB 402 violates the Constitution’s one-subject rule. ....	3
C.    SB 402’s attempt to regulate the conduct of judges violates Article VII, Mont. Const. ....	4
D.    The recent amendment is also unconstitutional under free speech principles. ....	5
CONCLUSION .....	7

Petitioners move pursuant to Rule 16, M.R.App.P. to amend their Petition to include a constitutional challenge to Senate Bill No. 402 (“SB 402”) (Exhibit A). SB 402 proposes to add eight lay members to Montana’s Judicial Nomination Commission. It proposes to go into effect only in the event this Court finds SB 140 unconstitutional.

Counsel for the Respondents have been contacted and oppose this motion.

### **BACKGROUND**

The underlying Petition in this case raises a constitutional challenge to SB 140, a measure which proposes to eliminate Montana’s Judicial Nomination Commission. SB 140 was signed into law on March 17, 2021, and immediately challenged by Petitioners.

Shortly after Petitioners challenged SB 140, some members of the Legislature, understandably unconfident about winning on SB 140, introduced SB 402. Its contingency clause provides:

(2) [Section 2] is effective on the date that the clerk of the Montana supreme court certifies to the code commissioner that Senate Bill No. 140 is found unconstitutional or otherwise invalid.

SB 402 was introduced on March 29, **after the transmittal deadline** of March 3. *See* Exhibit B (legislative calendar). The Joint Rules of the Montana

Legislature<sup>1</sup> require that a bill, if passed by one house, “must be transmitted from one house to the other on or before the 45th legislative day.” Rule 40-200(1)(b)(i).

To avoid the transmittal deadline rule, the bill’s sponsor attempted to make SB 402 an appropriation measure by inserting a trivial provision (Section 3) which raises the fee for entry of judgment from \$45 to \$50. This was a transparent effort to take advantage of a limited exception to the transmittal rules (all bills “**except for an appropriation bill**, a revenue bill...” shall be submitted by the 45th legislative day. Rule 40-200(1)(b)(i) (emphasis added)). By employing this “appropriation” artifice, some in the Legislature apparently felt they could dodge their own rules.

However, by this maneuver, they have run afoul of the one-subject rule of the Montana Constitution. Art. V, §§ 11(2) and (4).

Moreover, SB 402, purporting to be an appropriation measure, violates the longstanding rule of law that all appropriation measures must originate in the House of Representatives. Rule 40-20, Rules of the Montana Legislature. *See* Exhibit C (drafter concerned about appropriation measure originating in Senate).

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<sup>1</sup> <https://leg.mt.gov/content/Sessions/65th/2017-Rules/2017-Rules-Full.pdf>

## ANALYSIS

### **A. The motion to amend should be granted.**

Because SB 140 and SB 402 are so interrelated, this Court should consider the constitutional challenges to both measures in this single original action. This motion is made in the interest of efficient judicial resolution of all issues relating to the Montana Judicial Nomination Commission.

Although Rule 15, M.R.Civ.P. applies to Montana district courts, its spirit applies here. Rule 15 provides that leave to grant amendments should be liberally granted. *Lien v. Murphy Corp.*, 201 Mont. 488, 656 P.2d 804 (1983).

### **B. SB 402 violates the Constitution's one-subject rule.**

Article V, § 11(2), Mont. Const., provides:

Each bill, except general appropriation bills and bills for the codification of the general revision of the laws, shall contain **only one subject**....

(Emphasis added). Article V, § 11(4) then defines “general appropriation bill” and requires any other appropriation bill to be made by a separate bill:

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. **Every other appropriation shall be made by a separate bill, containing but one subject.**

(Emphasis added). SB 402 violates this provision. It does not meet the “one subject” requirement, nor does the five-dollar increase in the fee for entry of judgment amount to a separate appropriation measure “containing but one subject.”

The violation of the one-subject rule is even more pronounced because in mid-April 2021, the Legislature added an amendment<sup>2</sup> which purports to regulate the conduct of Montana judges. For example, under SB 402, a judge may not participate if the judge has publicly opined on “an issue...or similar policy matter” which later comes before the court. SB 402, Section 1(2)(c).

**C. SB 402’s attempt to regulate the conduct of judges violates Article VII, Mont. Const.**

Not only does this amendment exacerbate the violation of the one-subject rule of the Constitution, it further unconstitutionally infringes upon the power of the Montana judiciary to regulate itself.

Article VII, § 1 (“JUDICIAL POWER”) vests the judicial power of the state in “one supreme court” and in the district courts and justice courts. Section 2(2) provides that the Supreme Court has “general supervisory control over all other courts[,]” and subsection (3) provides that “[i]t may make rules governing

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<sup>2</sup> Exhibit D is a draft of SB 402. The shading indicates the amendment of April 2021.



appellate procedure, practice and procedure for all other courts....” Further, Article VII, § 11 establishes the Judicial Standards Commission, the purpose of which is to investigate complaints against judges and make sanctions recommendations to the Supreme Court. *Paris v. Smartt*, 2003 MT 135; *Halverson v. Harada*, 2020 MT 89.

The recent amendment to SB 402 violates the Montana Constitution by arrogating to the Legislature powers constitutionally reserved to the Montana Supreme Court and the Judicial Standards Commission.

**D. The recent amendment is also unconstitutional under free speech principles.**

The amendment is also violative of the First Amendment to the United States Constitution and Article II, § 7 of the Montana Constitution guaranteeing freedom of speech. In particular, the measure is unconstitutionally vague because it prohibits judicial officers from sitting on cases on an “issue” that the Montana Judges Association has “expressed support or opposition” on the “same or similar policy matter[.]” Moreover, under First Amendment principles, this recent amendment is both unconstitutionally overbroad and underinclusive. *See Republican Party of Minnesota v. White*, 536 U.S. 765, 777-778 (2002).

The United States Supreme Court has stated: “[I]t would be unusual if [Justices] had not by [the time they are appointed to the bench] formulated at least

some tentative notions that would influence their interpretation [of the law.]”

*Laird v. Tatum*, 409 U.S. 824, 835 (1972).

As Chief Justice McGrath and others eloquently stated in a recent hearing before a legislative committee, the mere fact that a presiding judge may have expressed an opinion on the **desirability** of a piece of legislation does not mean that the judge has preconceived opinion on **constitutionality**. Only after constitutional objection is raised, fully briefed, and argued will a judge be in a position to rule on constitutionality.

No judge is free of personal opinions and we wouldn't want it otherwise. As the Court said in *White*:

[E]ven if it were possible to select judges who did not have preconceived views on legal issues, it would hardly be desirable to do so. “Proof that a Justice’s mind at the time he joined the Court was a complete *tabula rasa* in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias.” [Quoting *Laird*].

At 777, 778.

Thus, the new amendment is constitutionally defective from a procedural, as well as a substantive, standpoint.

## **CONCLUSION**

Petitioners respectfully request that this Court grant their motion, accept jurisdiction over SB 402, and provide for additional briefing and oral argument, if appropriate.

Ultimately, Petitioners request a declaratory ruling from this Court that both SB 140 and SB 402 are unconstitutional.

Respectfully submitted this 5th day of May, 2021.

EDWARDS & CULVER

/s/ A. Clifford Edwards  
A. Clifford Edwards

and

GOETZ, BALDWIN & GEDDES, P.C.

/s/ James H. Goetz  
James H. Goetz

*Attorneys for Petitioners*

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Equity Text A text typeface of 14 points; is double spaced (except that footnotes and quoted and indented material are single spaced); with left, right, top and bottom margins of 1 inch; and that the word count calculated by Microsoft Word, excluding the cover page, Table of Contents, Certificate of Service, and Certificate of Compliance, is 1,242 words, not in excess of the 1,250 -word limit.

By: /s/ James H. Goetz  
James H. Goetz



AN ACT GENERALLY REVISING LAWS RELATING TO THE JUDICIARY; PROVIDING THAT JUDGES MAY NOT PRESIDE IN CERTAIN SITUATIONS; PROVIDING THAT THE JUDICIAL NOMINATING COMMISSION INCLUDE EIGHT ADDITIONAL LAY MEMBERS; INCREASING THE FEE FOR ENTRY OF JUDGMENT; AMENDING SECTIONS 3-1-1001 AND 25-1-201, MCA; AND PROVIDING EFFECTIVE DATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Restrictions on judicial officers presiding over matters in which they have previously asserted position.** (1) This section applies to all judicial officers, as defined in 1-1-202.

(2) Judicial officers may not participate in any action or proceeding involving the constitutionality of a provision of a bill if:

(a) the judicial officer has appeared before the Montana legislature or otherwise contacted a legislator or another governmental entity in support or opposition of a bill involving the same legislation if it is an issue in a case in which the judicial officer presides;

(b) the judicial officer has served on a committee or group designed to evaluate legislation when the committee or group expressed support or opposition on a bill during the judicial officer's service on the committee or other group and a case involving the same legislation is pending before the judicial officer; or

(c) the judicial officer has publicly supported or opposed an issue or bill at the request of the Montana judges association or another entity and a case involving the legislation is pending before the judicial officer.

**Section 2.** Section 3-1-1001, MCA, is amended to read:

**"3-1-1001. Creation, composition, and function of commission.** (1) A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any vacancy on the supreme court or any district court and to provide the chief justice of the

supreme court with a list of candidates for appointment to fill any term or vacancy for the chief water judge or associate water judge pursuant to 3-7-221. The commission is composed of ~~seven~~15 members as follows:

(a) ~~four~~12 lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively engaged or retired, who are appointed by the governor;

(b) two attorneys actively engaged in the practice of law, one from that part of the state that is composed of judicial districts 1 through 5, 9, 11, and 18 through 21 and one from that part of the state that is composed of judicial districts 6 through 8, 10, 12 through 17, and 22, who are appointed by the supreme court;

(c) one district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to election by the chief justice of the supreme court. The election is considered an appointment for the purposes of this part.

(2) Appointments provided for in this section must be made within 30 days of the completion of the preceding terms."

**Section 3.** Section 25-1-201, MCA, is amended to read:

**"25-1-201. Fees of clerk of district court.** (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, \$170; for filing a petition for legal separation, \$150; and for filing a petition for a contested amendment of a final parenting plan, \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, ~~\$45~~ \$50;

(d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office in all criminal and civil proceedings, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

(ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

(iii) for providing copies of papers on file in the clerk's office by facsimile, e-mail, or other electronic

means in all criminal and civil proceedings, 25 cents per page;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years, and an additional \$1 for each name for any additional year searched;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, \$53;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

(o) for filing a declaration of marriage without solemnization, \$53;

(p) for filing a motion for substitution of a judge, \$100;

(q) for filing a petition for adoption, \$75;

(r) for filing a pleading by facsimile or e-mail in all criminal and civil proceedings, 50 cents per page.

(2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court must be deposited in the state general fund as specified by the supreme court administrator.

(3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's trust fund account established in 52-7-102, \$19 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund account established in 52-7-102 and \$30 must be deposited in the partner and family member assault

intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

(5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

(6) The fees collected under subsections (1)(d), (1)(g), (1)(j), and (1)(r) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.

(7) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without solemnization, \$13 must be deposited in the domestic violence intervention account established by 44-7-202 and \$10 must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.

(8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund."

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 3, chapter 1, part 6, and the provisions of Title 3, chapter 1, part 6, apply to [section 1].

**Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**Section 6. Effective date -- contingency.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 2] is effective on the date that the clerk of the Montana supreme court certifies to the



code commissioner that Senate Bill No. 140 is found unconstitutional or otherwise invalid. The clerk of the Montana supreme court shall submit certification within 5 days of the occurrence of the contingency.

- END -

I hereby certify that the within bill,  
SB 402, originated in the Senate.

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Secretary of the Senate

---

President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

SENATE BILL NO. 402

INTRODUCED BY C. SMITH, J. ELLSWORTH

AN ACT GENERALLY REVISING LAWS RELATING TO THE JUDICIARY; PROVIDING THAT JUDGES MAY NOT PRESIDE IN CERTAIN SITUATIONS; PROVIDING THAT THE JUDICIAL NOMINATING COMMISSION INCLUDE EIGHT ADDITIONAL LAY MEMBERS; INCREASING THE FEE FOR ENTRY OF JUDGMENT; AMENDING SECTIONS 3-1-1001 AND 25-1-201, MCA; AND PROVIDING EFFECTIVE DATES.

**UPDATED Calendar - 67th Legislature - 2021 Session Calendar**  
**AMENDED BY LEADERSHIP MARCH 12, 2021**  
**(No March or April Saturdays)**

**Note:** Legislative leadership holds the authority to further revise the schedule, including the days the Legislature meets and proposed breaks.

In accordance with 5-2-103, MCA, each regular session of the Legislature convenes on the first Monday in January of each odd-numbered year or, if January 1 is a Monday, on the first Wednesday.

Introduction deadlines: Generally, bills and resolutions must be introduced within 2 legislative days after delivery. JR 40-50, H40-10. "General bills" is used to denote all bills, except appropriation or revenue bills, and all joint resolutions.

Notes: Deadline dates are determined according to legislative days.

Certain bills and resolutions relating to administrative rules may be transmitted at any time during the session. JR 40-200(3).

Key to colors:

Request deadlines



Introduction deadlines



Transmittal deadlines



Days not in session

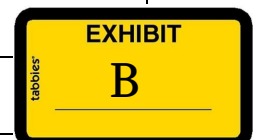


### January 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4 Leg Day 1	5 Leg Day 2	6 Leg Day 3	7 Leg Day 4	8 Leg Day 5	9
10	11 Leg Day 6	12 Leg Day 7	13 Leg Day 8	14 Leg Day 9	15 Leg Day 10	16
17	18 Leg Day 11	19 Leg Day 12 Last day to request General Bills & Resolutions	20 Leg Day 13	21 Leg Day 14	22 Leg Day 15	23
24	25 Leg Day 16	26 Leg Day 17 Last day to request Revenue Bills	27 Leg Day 18	28 Leg Day 19	29 Leg Day 20	30

### February 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
JAN 31	1 Leg Day 21	2 Leg Day 22	3 Leg Day 23	4 Leg Day 24	5 Leg Day 25	6
7	8 Leg Day 26	9 Leg Day 27	10 Leg Day 28	11 Leg Day 29	12 Leg Day 30	13
14	15 Leg Day 31	16 Leg Day 32	17 Leg Day 33	18 Leg Day 34	19 Leg Day 35	20 Leg Day 36 Last day for Committee to request General Bills & Resolutions
21	22 Leg Day 37	23 Leg Day 38 Approx. last day for Approp Subcommittees	24 Leg Day 39 Last day to introduce General Bills (ex. Committee bills)	25 Leg Day 40	26 Leg Day 41	27 Leg Day 42
28						



## March 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 Leg Day 43	2 Leg Day 44	3 Leg Day 45 Transmittal of General Bills to other chamber Last day to request Appropriation Bills	4 Transmittal Break	5 Transmittal Break	6 Transmittal Break
7 Transmittal Break	8 Leg Day 46	9 Leg Day 47	10 Leg Day 48	11 Leg Day 49	12 Leg Day 50	13
14	15 Leg Day 51	16 Leg Day 52	17 Leg Day 53	18 Leg Day 54	19 Leg Day 55	20
21	22 Leg Day 56 Last day for Committees to request Bills Proposing Referenda , Revenue Bills, or bills to implement HB 2	23 Leg Day 57	24 Leg Day 58	25 Leg Day 59	26 Leg Day 60 Transmittal of Revenue-Estimating Joint Resolution Last day to request Study Resolutions	27
28	29 Leg Day 61 Last day to introduce Appropriation Bills, Revenue Bills & Bills Proposing Referenda	30 Leg Day 62	31 Leg Day 63			

## April 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 Leg Day 64	2 Break	3 Break
4 Easter Break	5 Break	6 Leg Day 65	7 Leg Day 66	8 Leg Day 67 Transmittal of Appropriation Bills, Revenue Bills & Bills Proposing Referenda	9 Leg Day 68	10
11	12 Leg Day 69	13 Leg Day 70	14 Leg Day 71	15 Leg Day 72	16 Leg Day 73 Transmittal of amendments to General Bills	17
18	19 Leg Day 74	20 Leg Day 75	21 Leg Day 76	22 Leg Day 77	23 Leg Day 78	24
25	26 Leg Day 79 Last Day to Introduce Study Resolutions	27 Leg day 80 Transmittal of amendments to Appropriation and Revenue bills, Revenue-estimating Resolution & Bills Proposing Referenda	28 Leg Day 81	29 Leg Day 82 Transmittal of amendments to Revenue Estimating Joint Resolution	30 Leg day 83	

## May 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3 Leg Day 84	4 Leg Day 85 Transmittal of Interim Study Resolutions	5 Leg Day 86	6 Leg Day 87	7 Leg Day 88	8
9	10 Leg Day 89	11 Leg Day 90 -Sine Die	12	13	14	15  <i>Created: Mar. 9, 2021</i>



**Montana Legislative Services Division  
Office of the Executive Director**

PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

**REQUESTER REVIEW OF INITIAL BILL DRAFT**

DATE: March 21, 2021  
TO: Steve Fitzpatrick  
FROM: Julianne Burkhardt

Enclosed is a draft of LC0874, which I believe implements your request. After you have reviewed the draft, please immediately return the attached instruction letter to me or call me at 406-444-4025 with your instructions.

In accordance with Legislative Council Rules of Procedure, if I have not received instructions from you by 5 p.m. on Tuesday, March 23, 2021, I will place the enclosed draft on hold or submit the draft for legal review by the Legislative Services Division.

After this draft has been submitted for legal review, you may request additional changes. However, after one redo, additional changes requested by you will result in the draft being moved to the bottom of my bill drafting priority list. An exception may be made for clerical errors only.

**Drafter Note to Requester:**

Hi Senator Fitzpatrick-- Here is a draft of LC 874. I have also sent a copy to Todd Everts so he can take a look at the contingent effective date section. I just have never drafted one before and wanted to make sure I did it correctly before the draft is sent to legal review. I can include an appropriation if a House member is going to carry the bill but I left it out since you are in the Senate. It is clearly a revenue bill however based on JR 40-200(10)(c)(iii) because it increases fees. Feel free to call my cell today any time and I will check email frequently also. Thanks Julianne



SENATE BILL NO. 402

INTRODUCED BY C. SMITH, J. ELLSWORTH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE JUDICIARY;  
PROVIDING THAT JUDGES MAY NOT PRESIDE IN CERTAIN SITUATIONS; PROVIDING THAT THE  
JUDICIAL NOMINATING COMMISSION INCLUDE EIGHT ADDITIONAL LAY MEMBERS; INCREASING THE  
FEE FOR ENTRY OF JUDGMENT; AMENDING SECTIONS 3-1-1001 AND 25-1-201, MCA; AND PROVIDING  
EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Restrictions on judicial officers presiding over matters in which  
they have previously asserted position.** (1) This section applies to all judicial officers, as defined in 1-1-202.

(2) Judicial officers may not participate in any action or proceeding:

(a) when the judicial officer has appeared before the Montana legislature or otherwise contacted a  
legislator or another governmental entity in support or opposition of a bill involving the same or a similar policy  
matter that later comes before the court in which the judicial officer presides;

(b) when the judicial officer has served on the legislative committee of the Montana judges  
association and the Montana judges association expressed support or opposition on the issue or bill during the  
judge's service on the legislative committee and a case involving the same or a similar policy matter later  
comes before the court in which the judicial officer presides; or

(c) when the judicial officer has publicly supported or opposed an issue or bill at the request of the  
Montana judges association or another entity and a case involving the same or a similar policy matter later  
comes before the court in which the judicial officer presides.

**Section 2.** Section 3-1-1001, MCA, is amended to read:

**"3-1-1001. Creation, composition, and function of commission.** (1) A judicial nomination  
commission for the state is created. Its function is to provide the governor with a list of candidates for



1 appointment to fill any vacancy on the supreme court or any district court and to provide the chief justice of the  
2 supreme court with a list of candidates for appointment to fill any term or vacancy for the chief water judge or  
3 associate water judge pursuant to 3-7-221. The commission is composed of ~~seven~~15 members as follows:

4 (a) ~~four~~12 lay members who are neither judges nor attorneys, active or retired, who reside in different  
5 geographical areas of the state, and each of whom is representative of a different industry, business, or  
6 profession, whether actively engaged or retired, who are appointed by the governor;

7 (b) two attorneys actively engaged in the practice of law, one from that part of the state that is  
8 composed of judicial districts 1 through 5, 9, 11, and 18 through 21 and one from that part of the state that is  
9 composed of judicial districts 6 through 8, 10, 12 through 17, and 22, who are appointed by the supreme court;

10 (c) one district judge elected by the district judges under an elective procedure initiated and  
11 conducted by the supreme court and certified to election by the chief justice of the supreme court. The election  
12 is considered an appointment for the purposes of this part.

13 (2) Appointments provided for in this section must be made within 30 days of the completion of the  
14 preceding terms."

15  
16 **Section 3.** Section 25-1-201, MCA, is amended to read:

17 **"25-1-201. Fees of clerk of district court.** (1) The clerk of district court shall collect the following  
18 fees:

19 (a) at the commencement of each action or proceeding, except a petition for dissolution of marriage,  
20 from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a  
21 petition for dissolution of marriage, \$170; for filing a petition for legal separation, \$150; and for filing a petition  
22 for a contested amendment of a final parenting plan, \$120;

23 (b) from each defendant or respondent, on appearance, \$60;

24 (c) on the entry of judgment, from the prevailing party, ~~\$45~~ \$50;

25 (d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's  
26 office in all criminal and civil proceedings, \$1 a page for the first 10 pages of each file, for each request, and 50  
27 cents for each additional page;

28 (ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

- 1 (iii) for providing copies of papers on file in the clerk's office by facsimile, e-mail, or other electronic  
2 means in all criminal and civil proceedings, 25 cents per page;
- 3 (e) for each certificate, with seal, \$2;
- 4 (f) for oath and jurat, with seal, \$1;
- 5 (g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7  
6 years, and an additional \$1 for each name for any additional year searched;
- 7 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the  
8 fee for entry of judgment provided for in subsection (1)(c);
- 9 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
- 10 (j) for transmission of records or files or transfer of a case to another court, \$5;
- 11 (k) for filing and entering papers received by transfer from other courts, \$10;
- 12 (l) for issuing a marriage license, \$53;
- 13 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment of  
14 a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the  
15 applicant or petitioner, \$70, which includes the fee for filing a will for probate;
- 16 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of  
17 the estate of a nonresident decedent, \$55;
- 18 (o) for filing a declaration of marriage without solemnization, \$53;
- 19 (p) for filing a motion for substitution of a judge, \$100;
- 20 (q) for filing a petition for adoption, \$75;
- 21 (r) for filing a pleading by facsimile or e-mail in all criminal and civil proceedings, 50 cents per page.
- 22 (2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district  
23 court must be deposited in the state general fund as specified by the supreme court administrator.
- 24 (3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's  
25 trust fund account established in 52-7-102, \$19 must be deposited in the civil legal assistance for indigent  
26 victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and  
27 family member assault intervention and treatment fund established in 40-15-110.
- 28 (b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund

1 account established in 52-7-102 and \$30 must be deposited in the partner and family member assault  
2 intervention and treatment fund established in 40-15-110.

3 (4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an  
4 amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court  
5 may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan  
6 under subsection (1)(a).

7 (5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must  
8 be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-  
9 714.

10 (6) The fees collected under subsections (1)(d), (1)(g), (1)(j), and (1)(r) must be deposited in the  
11 county district court fund. If a district court fund does not exist, the fees must be deposited in the county general  
12 fund to be used for district court operations.

13 (7) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without  
14 solemnization, \$13 must be deposited in the domestic violence intervention account established by 44-7-202  
15 and \$10 must be deposited in the county district court fund. If a district court fund does not exist, the fees must  
16 be deposited in the county general fund to be used for district court operations.

17 (8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not  
18 otherwise specifically allocated must be deposited in the state general fund."  
19

20 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an  
21 integral part of Title 3, chapter 1, part 6, and the provisions of Title 3, chapter 1, part 6, apply to [section 1].  
22

23 **NEW SECTION. Section 5. {standard} Severability.** If a part of [this act] is invalid, all valid parts that  
24 are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
25 applications, the part remains in effect in all valid applications that are severable from the invalid applications.  
26

27 **NEW SECTION. Section 6. Effective date -- contingency.** (1) Except as provided in subsection (2),  
28 [this act] is effective on passage and approval.

## 67th Legislature

SB 402.1.1

4 - END -

## **CERTIFICATE OF SERVICE**

I, James H. Goetz, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 05-05-2021:

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Electronically signed by Luke Nelson on behalf of James H. Goetz  
Dated: 05-05-2021