IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 24-0153

WILD MONTANA; MONTANA WILDLIFE FEDERATION; AND MONTANA ASSOCIATION OF COUNTIES,

Petitioners/Plaintiff and Appellees,

v.

GREG GIANFORTE, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF MONTANA; AND CHRISTI JACOBSEN, IN HER OFFICIAL CAPACITY AS SECRETARY OF STATE,

Defendants and Appellants.

APPELLEES' ANSWER BRIEF

On Appeal from the Montana First Judicial District Court
Lewis & Clark County
Cause No. DV-25-2023-411
Honorable Judge Mike Menahan

Rylee Sommers-Flanagan
Dimitrios Tsolakidis
UPPER SEVEN LAW
P.O. Box 31
Helena, MT 59624
Phone: (406) 998-6067
rylee@uppersevenlaw.com
dimitrios@uppersevenlaw.com

Attorneys for Appellees Wild Montana and Montana Wildlife Federation

Michael Black
BLACK LAW OFFICE
P.O. Box 1311
Helena, MT 59624
Phone: 406-546-0017
blacklaw@blackfoot.net

Attorney for Appellee Montana Association of Counties

Dale Schowengerdt
Timothy Longfield
LANDMARK LAW PLLC
7 W. 6th Ave., Ste. 518
Helena, MT 59601
Telephone: 406-457-5496
dale@landmarklawpllc.com

Anita Milanovich
General Counsel
OFFICE OF THE GOVERNOR
1301 E. 6th Ave.
Helena, MT 59601
406-449-9173
anita.milanovich@mt.gov

Attorneys for Appellant
Greg Gianforte

Austin Markus James
Chief Legal Counsel
Clay R. Leland
Attorney
SECRETARY OF STATE
1301 E. 6th Ave., Rm. 260
Helena, MT 59620
(406) 444-6197
austin.james@mt.gov
clay.leland@mt.gov

Attorneys for Appellant
Christi Jacobsen

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STATEMENT OF THE ISSUES

I. Is this appeal moot because the legislature voted not to override the Governor's veto of Senate Bill 442 ("SB 442") such that no decision by this Court can affect whether SB 442 becomes law?

II. Did the District Court correctly conclude that Appellees' claims were justiciable prior to the override vote?

III. Did the District Court correctly conclude that the legislature was not "in receipt of" the veto for purposes of Article VI, Section 10, when it adjourned *sine die* without knowledge of the veto?

STATEMENT OF THE CASE

The separation of powers, central to our constitutional system of government, pervades every issue in this appeal. First, because the judicial power does not extend to abstract grievances, this appeal is moot: nothing this Court does can alter Appellants' actions or the legislature's decision not to enact SB 442. Second, because citizen participation in the legislative process is essential to popular sovereignty, and the judiciary's role is to say what the law is, Appellees' claims were justiciable when they initiated this case. Third, on the merits, the Constitution is

unequivocal—the legislature has ultimate authority over lawmaking, no matter how and when a veto is delivered.

On May 2, 2023, Governor Greg Gianforte vetoed SB 442, a bipartisan bill passed by a legislative supermajority. Also on May 2, the Senate adjourned *sine die* without having received the Governor's veto. On May 5, SB 442's sponsor asked Secretary of State Christi Jacobsen to poll the legislature by mail consistent with Article VI, Section 10, of the Montana Constitution (the "veto provision"), which governs post-session veto override procedures. Although she was cc'd on the Governor's veto letter, the Secretary refused to poll the legislature, stating that she had not received the Governor's veto. Members of the public, including Appellees, asked the Secretary and the Governor ("Appellants") to comply with their ministerial duties under the veto provision. When Appellants again refused, Wild Montana and the Montana Wildlife Federation ("Conservation Organizations") and the Montana Association of Counties ("MACo") (together, "Appellees") sought writs of mandamus from the First Judicial District Court. On July 25, the cases were consolidated.[1]

[1] The case MACo brought in Lewis and Clark County began as Cause No. DV-25-2023-413.

Following a hearing on all dispositive motions, the District Court granted summary judgment to Appellees because Appellees demonstrated they had standing, their claim was justiciable, and Appellants had a clear legal duty to act under the veto provision. The court therefore issued a writ of mandamus, ordering the Governor to transmit SB 442's veto message to the Secretary and the Secretary to conduct the legislative override poll.

Appellants appealed and moved to stay the writ of mandamus, arguing in part that the override poll may moot the case. Both the District Court and this Court denied the stay request. This Court explained that Appellants did not face irreparable harm absent a stay because "SB 442 could ultimately go either way," and thus the override vote would not necessarily moot the case. Ord., at 4 (Mar. 15, 2024).

Appellants complied with the writ, and the legislature voted not to override the Governor's veto.

STATEMENT OF THE FACTS

On the penultimate day of the 2023 legislative session, a supermajority of 130 legislators voted to pass SB 442, a bill that reallocated marijuana tax revenue. The next day, the Governor vetoed

the bill when it was too late for the legislature to consider an in-session override vote, and the Senate adjourned *sine die* without knowledge of SB 442's status. Despite requests from legislators and the public, Appellants refused to facilitate a post-session override poll.

I. The legislature passed SB 442 by supermajority.

SB 442 was a broadly supported, bipartisan bill meant to provide a comprehensive framework for marijuana tax revenue. *See generally* S. 442, 68th Leg., Reg. Sess. (Mont. 2023). Senator Mike Lang introduced SB 442 on February 21, 2023. App. 037.

As introduced, the bill eliminated funding for Habitat Montana—Montana's premier habitat conservation program—focusing instead on county road maintenance. App. 023. Over the course of the session, however, Senator Lang worked closely with conservation organizations and other stakeholders to balance many interests. App. 020, 023–24, 037. In its final form, SB 442 would have allocated 20% of excess funds from the marijuana state special revenue account to county road maintenance, restored approximately $30 million per biennium in funding for Habitat Montana, and increased funding for veterans. S. 442, at 6–11; App. 023; Suppl. App. 003–04. When SB 442 passed, it was with bipartisan

supermajority support, as 130 out of 150 legislators voted in favor of the bill. App. 037.

II. The Senate voted to adjourn *sine die* on May 2, 2023, unaware whether the Governor had vetoed SB 442.

The Governor vetoed SB 442 on May 2, 2023. Suppl. App. 009. Although no one knows exactly when SB 442 was vetoed, App. 074, it occurred sometime after 2:00 p.m., *id.*; *see* Gov.'s Br., at 7. The Senate adjourned *sine die* at roughly 3:20 p.m., without knowledge of the veto. Gov.'s Br., at 7; App. 034, 037. At an unknown time on May 2, the Governor transmitted his veto message to the legislature and to the Secretary of State. Suppl. App. 009–10.

The presiding officer never read the veto message over the Senate rostrum, and senators who voted to adjourn were not aware the bill had been vetoed. App. 034, 037. The Senate can take no action on a veto until the veto message has been received and read. App. 034; Suppl. App. 007; Mont. Leg., Joint R. 40-220.

III. Appellants refused to initiate or conduct the override procedure enshrined in Article VI, § 10.

Three days after SB 442's veto, Senator Lang wrote to the Secretary, asking her to poll the legislature by mail for an override vote.

App. 038–40. Over 1,200 Wild Montana members and supporters petitioned the Secretary to poll the legislature by mail. App. 024. The Secretary refused, stating that the Governor had not sent SB 442 to her office. App. 044. Wild Montana also wrote to the Governor, asking him to return the bill and his veto message to the Secretary, citing Article VI, Section 10. App. 023–28. The Governor's office acknowledged receipt of the letter but took no action. App. 030.

Appellees were among the foreseeable beneficiaries of SB 442. Conservation Organizations are committed to environmentally conscious management and conservation of public lands, waters, and wildlife, which Habitat Montana funds. App. 019–20, 022–23. MACo was set to benefit directly from SB 442's funding of rural roads. Suppl. App. 002–05. All three organizations were architects and supporters of SB 442 and played a prominent role in the bill's passage. *id.*; App. 020, 022–23.

After Appellants refused to facilitate an override poll, Conservation Organizations and MACo filed separate lawsuits in the Lewis and Clark County District Court, which the court consolidated. Suppl. App. 011–12.

IV. The District Court ordered Appellants to initiate the override process, Appellants complied, and the legislature did not override the veto.

Appellees sought a writ of mandamus requiring Appellants to facilitate the post-session override procedure. After a hearing, the court granted summary judgment and mandamus relief to Appellees. Doc. 45, Ord. – Mots. for Summ. J., at 8 (Jan. 16, 2024). The court ordered the Governor to transmit his veto message to the Secretary and ordered the Secretary to poll the legislature by mail. *Id.*; Suppl. App. 013. Appellants then filed motions to stay in the District Court and in this Court. Suppl. App. 015; Gov.'s Rule 22 Mot. for Stay (Mar. 13, 2024) ("Stay Mot."). The Governor argued in part that he would suffer irreparable harm absent a stay because allowing the legislature to move forward with an override vote "may" moot his appeal. Suppl. App. 027; Stay Mot. at 2, 8–9. The Secretary advanced a similar argument. *See* Suppl. App. 038.

Both stay motions were denied. *See* Doc. 59, Ord. – Mot. to Stay (Mar. 5, 2024); Ord. (Mar. 15, 2024). The District Court concluded the case would not necessarily be rendered moot, depending on the outcome of the vote and on this Court's holding. Doc. 59, at 6. It reasoned that the interest in proceeding with the override poll without further delay

outweighed the risk of mootness. *Id.* at 5–6. Similarly, this Court determined that the Governor would not suffer irreparable harm absent a stay "[b]ecause the fate of SB 442 could ultimately go either way." Ord., at 4. But the Court did not comment on the possibility that the legislature might vote against overriding the Governor's veto. *See id.*

Appellants subsequently complied with the District Court's writ, and the Secretary polled the legislature. S. 442, Veto Poll (Apr. 18, 2024).[2] The override failed, the Governor's veto stood, and SB 442 did not become law. Nevertheless, Appellants proceeded with this appeal.

V. The text and history of the veto provision carefully protect the legislature's veto override power.

Article VI, Section 10, of the Montana Constitution authorizes the governor to veto bills, Mont. Const. art. VI, § 10(1), and sets out the legislature's ultimate authority to override vetoes by supermajority vote, § 10(3)–(4). Article VI, Section 10(4)(1) specifically defines the executive branch's duty to facilitate the override process.

First, Subsection (1) provides:

> Each bill passed by the legislature . . . shall be submitted to the governor for his signature. If he does not sign or veto the

[2] *Available at* https://sosmt.gov/elections/veto-polling-results/ (last visited Feb. 18, 2025).

> bill within 10 days after its delivery to him, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

Id. § 10(1). Next, Subsection (3) provides, "If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law." *Id.* § 10(3). Finally, Subsection (4) accounts for vetoes of supermajority bills that occur after the close of the legislative session and defines the executive's duty to facilitate a veto override when the legislature is out of session:

> If the legislature is not in session when the governor vetoes a bill approved by two-thirds of the members present, he shall return the bill with his reasons therefor to the secretary of state. The secretary of state shall poll the members of the legislature by mail and shall send each member a copy of the governor's veto message. If two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

Id. § 10(4)(a).

A. The veto provision was meant to protect the legislature's lawmaking authority.

Under the 1889 Constitution, a bill did not become law without executive approval. That is, if the governor did not sign or veto a bill before the end of a legislative session, it did not become law. Mont. Const. art. VII, § 12 (1889) ("If any bill shall not be returned . . . within five days

. . . the same shall be law, . . . unless the Legislative Assembly shall by their adjournment prevent its return in which case it shall not become law."). Because the governor could irreversibly veto a bill simply by failing to sign it in the final days of a session, the 1889 Constitution allowed for a "pocket veto." *See Veto*, *Black's Law Dictionary* (11th ed. 2019); Mont. Const. art. VII, § 12 (1889). Once the legislative session closed, the governor controlled the bill's fate.

The 1972 Constitution both limited the governor's veto power and strengthened the legislature's override authority. The Legislative and Executive Committees of the 1972 Constitutional Convention proposed updating the veto provision. Mont. Const. Conv., I Comm. Proposals, at 390, 450–51 (Feb. 17, 1972). Not only did they abrogate the executive's power to veto resolutions and constitutional amendments, *id.* at 450–51, but both committees agreed to eliminate the pocket veto, *id.* at 390–91, 451; Mont. Const. Conv., VI Verbatim Tr., at 954 (Feb. 25, 1972) (Del. Robinson) ("The Legislative Committee was in complete agreement with the Executive Committee that we would eliminate the pocket veto.").

The delegates then created an enforcement mechanism to terminate the pocket veto:

> [S]ubsection 1 would read: "All bills passed by the legislature . . . shall be submitted to the governor and shall become law if he neither approves nor vetoes such bill within 5 days," and the rest of the language is exactly the same. . . . We checked the constitutions of other states that had eliminated the pocket veto, . . . [a]nd we merely make that provision that if he does not sign it or if he does not veto it, it becomes law. We are demanding that he cannot simply let it die.

Mont. Const. Conv., VI Verbatim Tr. at 954 (Del. Robinson). The delegates overwhelmingly agreed with this sentiment and amended the veto provision accordingly. *Id.* at 953–54; Mont. Const. art. VI, § 10(1) (1972).

In addition to eliminating the pocket veto, the delegates gave the legislature the power to override out-of-session vetoes and required the governor to allow the legislature to override when it is out of session: "If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his objections to the legislature in a manner authorized by law. The legislature may reconvene to reconsider any bill so vetoed." Mont. Const. art. VI, § 10 (1972); Mont. Const. Conv., I Comm. Proposals, at 451.

The delegates left the post-session override procedure up to the legislature. *See* Mont. Const. Conv., VI Verbatim Tr., at 954–58. They did not envision any rigid formula for post-session overrides:

> In this section, the committee tries to meet the problem that if the Legislature is not in session and the Governor vetoes a bill, that he will return his objections to the Legislature in a manner authorized by law. Now, what we had in mind there is that he probably would send it to the Secretary of State to advise all the legislators, who were not in session, of what had happened.

Id. at 956 (Del. Joyce).

B. In 1982, Montanans passed Constitutional Amendment No. 12, which fulfilled the delegates' promise that the legislature have the final say on vetoed bills.

In 1982, Montanans clarified the override process for out-of-session vetoes of supermajority bills in Constitutional Amendment No. 12 ("C-12"). Const. Amend. No. 12 (Nov. 2, 1982); *see also* Mont. Const. Amend. No. 12, Voter Info. Pamphlet, at 6 (1982) ("Currently, the legislature must come back into session if it wishes to reconsider a bill vetoed by the governor after the session has ended. This proposal would allow the secretary . . . to poll the legislature by mail.").[3] C-12 brought Subsection (4) of the veto provision to its current form. *See* Mont. Const. art. VI, § 10(4). It resolved procedural ambiguities, and it removed any need for the legislature to implement post-session override procedures by

[3] *Available at* https://scholarworks.umt.edu/montanaconstitution/55/ (last visited Feb. 18, 2025).

law. *Id.* § 10(4)(a); Voter Info. Pamphlet, at 6. The voter information pamphlet explained that C-12's intent was to restore power to the legislature:

> The veto power is one of those checks and balances in our government which has become unbalanced in recent years and tilted too much toward the governor. The reason for this is that if the legislators are not in session and available to vote on whether to override the governor's veto of a bill they just passed and sent to him, then his veto is not subject to their ultimate power to make the laws.
>
> Most significant vetoes in recent years have come after the legislature has adjourned. . . .
>
> It is impractical and undesirable to expect the legislature to call itself back in session two or three weeks after adjournment just to try to override a veto.

Voter Info. Pamphlet, at 6.[4] Opponents argued that the amendment was unnecessary because the legislature could override vetoes by calling a special session. *Id.* at 7. But Montana voters were unpersuaded: on November 2, 1982, they voted "Yes" on C-12. Mont. Sec'y of State, *Rep. of Official Canvass by Cty.*, at 2 (1982).[5]

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[4] Historically, the legislature has only successfully called a special session twice—once in 1973 and again in 2000. Mont. Leg., *Statistics: Special Sessions 1889–Present*, legmt.gov (last visited Feb. 6, 2025), *available at* https://www.legmt.gov/statistics/special/. This does not include special sessions called by governors. *Id.*

[5] *Available at* https://archive.org/details/reportofofficial1982montrich/page/n1/mode/2up (last visited Feb. 16, 2025).

STANDARD OF REVIEW

"Whether an appeal is justiciable is a threshold question that this Court determines before proceeding to the merits." *Serrania v. LPH, Inc.*, 2015 MT 113, ¶ 12, 379 Mont. 17, 347 P.3d 1237. "[T]his Court has an independent obligation to determine whether . . . constitutional justiciability requirements, such as mootness, have been met." *Mountain W. Bank, N.A. v. Cherrad, LLC*, 2013 MT 99, ¶ 31, 369 Mont. 492, 301 P.3d 796. "An otherwise justiciable case may become moot if the disputed issue has ceased to exist or is no longer live." *Wilkie v. Hartford Underwriters Ins. Co.*, 2021 MT 221, ¶ 8, 405 Mont. 259, 494 P.3d 892 (cleaned up). "The fundamental question to be answered in any review of possible mootness is whether it is possible to grant some form of effective relief to the appellant." *Id.*

This Court reviews appeals from summary judgment rulings, motions to dismiss, and writs of mandamus de novo. *Sudan Drilling, Inc. v. Anacker*, 2014 MT 72, ¶ 6, 374 Mont. 272, 320 P.3d 977; *Lake Cty. v. State*, 2024 MT 284, ¶ 11, __ Mont. __, 559 P.3d 1263; *Jefferson Cty. ex rel. Bd. of Comm'rs v. DEQ*, 2011 MT 265, ¶ 16, 362 Mont. 311, 264 P.3d 715. The Court "may affirm a trial court on any ground supported by the

record, regardless of its reasoning." *Hubbell v. Gull Scuba Ctr., LLC*, 2024 MT 247, ¶ 17, 418 Mont. 399, 558 P.3d 1094.

SUMMARY OF THE ARGUMENT

The legislature's vote not to override SB 442 rendered this appeal moot. But if this Court reaches the merits, it should affirm because the Montana Constitution gives the legislature, not the Governor, the last word on whether a bill should become law.

This appeal is moot because the Court cannot grant Appellants the relief they seek, as it cannot unwind compliance with the writ of mandamus or invalidate a law that never took effect. Moreover, the circumstances of SB 442 are unlikely to recur; therefore, no mootness exception applies, and the Court should dismiss this appeal without reaching Appellants' arguments.

If the Court proceeds, however, to review the District Court's order, it should affirm. The District Court correctly ruled that Appellees' claim is justiciable. Appellants' failure to act threatened to cause Appellees economic and organizational harm and prevented them from seeing SB 442 through to the end of the legislative process. The override vote redressed in part Appellees' harm because it allowed them to participate

in the constitutionally required legislative process, and it made redress of their economic and organizational injuries possible. Appellees' claim did not implicate the political question doctrine because the veto provision is self-executing and does not commit the interpretation of post-session override procedures to a coordinate branch.

Finally, on the merits, the District Court's ruling was true to the veto provision and consistent with the delegates' intent. Should the Court reach Appellants' arguments, it should affirm.

ARGUMENT

I. This appeal is moot because the Court cannot offer Appellants effective relief.

This appeal is moot because the legislature voted not to override the Governor's veto of SB 442, and the Court cannot undo the override poll. Effective relief is unavailable because a reversal will change nothing. Thus, there is no live controversy. Appellants seek only an advisory opinion: what law would apply to a future set of hypothetical facts? Because no mootness exception applies, the Court should dismiss this appeal without reaching Appellants' arguments.

Mootness is a threshold question of justiciability. *Griffith v. Butte Sch. Dist. No. 1*, 2010 MT 246, ¶ 23, 358 Mont. 193, 244 P.3d 321.

"Mootness is the doctrine of standing set in a time frame: the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Progressive Direct Ins. Co. v. Stuivenga*, 2012 MT 75, ¶ 17, 364 Mont. 390, 276 P.3d 867. "This Court has described a moot question as one which existed once but because of an event or happening, it has ceased to exist and no longer presents an actual controversy." *Id.* ¶ 28 (cleaned up).

The issue presented below has ceased to exist. This appeal is moot because an intervening event—the failed override poll—prevents the Court from granting effective relief, and no mootness exception applies.

A. The legislature's decision not to override the veto is an intervening event or change in circumstances that prevents the Court from granting effective relief to Appellants.

"[I]f the issue presented at the outset of the action has ceased to exist or is no longer 'live,' or if the court is unable due to an intervening event or change in circumstances to grant effective relief . . . then the issue before the court is moot." *Stuivenga*, ¶ 17 (collecting cases). Of course, "compliance with [a] judgment, whether voluntary or involuntary, does not necessarily" moot an appeal. *Id.* ¶ 43. The question, rather, "is whether th[e] Court can grant effective relief, which will depend on the

specific factual and procedural circumstances of the particular case and the relief sought by the appellant." *Id.*; *see also Sudan Drilling, Inc.*, ¶ 11. "[W]hen a party complies with a judgment to such an extent that effective relief by an appellate court is impossible, that party's appeal is moot." *In re Marriage of Nevin*, 284 Mont. 468, 471–72, 945 P.2d 58, 61 (1997) (compliance with contempt order rendered appeal moot).

Nothing about appeals from writs of mandamus exempt them from the general rule. *See Stuivenga*, ¶¶ 26–37 (retracing history of mandamus appeals); *see also, e.g.*, *Johnson v. Rosenbeck*, 141 Mont. 72, 74–75, 375 P.2d 221, 222–23 (1962) (appeal was moot where defendant's compliance with writ of mandamus was irreversible); *State ex rel. Hagerty v. Rafn,* 130 Mont. 554, 557–58, 304 P.2d 918, 920 (1956) (a reversal would be "without effect," regardless whether compliance with the writ was voluntary or involuntary); *State v. Tyler*, 64 Mont. 124, 208 P. 1081 (1922); *State ex rel. Brass v. Horn*, 36 Mont. 418, 93 P. 351 (1908); *State ex rel. Begeman v. Napton*, 10 Mont. 369, 25 P. 1045 (1891). *Cf. In re Marriage of Nevin*, 284 Mont. at 471–72, 945 P.2d at 61 (appeal from contempt order); *Adkins v. City of Livingston*, 121 Mont. 528, 194 P.2d 238 (1948) (injunction); *State v. Beadle*, 90 Mont. 24, 300 P. 197 (1931)

(prohibitory writ).

Begeman is the "foundational precedent" on when an appeal from a writ of mandamus becomes moot. *Stuivenga*, ¶ 26 (citing *Begeman*, 10 Mont. 369, 25 P. at 1046). There, a juror sought a writ of mandamus requiring the clerk of court to issue him a certificate of mileage and attendance as a trial juror. *Begeman*, 10 Mont. 369, 25 P. at 1046. The court granted the writ, and the clerk appealed. *Id.* After appealing, however, the clerk complied with the writ and issued the certificate. *Id.* The Court dismissed the appeal as moot, stating:

> A judgment of any kind from this court would present a peculiar result. An affirmance would be to direct the district court to issue a writ, which that court has already issued, and which has been obeyed. A reversal would be to say to the lower court: "You may not order the clerk to do that which he has already fully performed." It is apparent that there is no controversy before us. The case is fictitious.

Id.

Similarly, in *Brass*, a district court issued a writ of mandamus ordering the defendant to transfer a detainee. 36 Mont. 418, 93 P. at 352. On the same day that he appealed the writ, the defendant complied. *Id.* This Court dismissed the appeal as moot, stating, "the only purpose sought by the appeal is to have this court decide the moot question

whether the statutes defining the jurisdiction of police and justice of the peace courts authorize a change of venue." *Id.*

The Court reached a different but consistent result in *State ex rel. Kurth v. Grinde*, 96 Mont. 608, 32 P.2d 15 (1934). There, the district court mandated that Kurth be reinstated as the Great Falls water registrar. *Id.*, 32 P.2d at 15–16. The defendant, the water registrar at the time, complied with the writ and filed an appeal to this Court. *Id.* Although the defendant complied with the writ, the Court proceeded to the merits because determining who held proper title to the water registrar position—Kurth or the defendant—remained a live controversy, and the Court could fashion some relief to the defendant by resolving that question. *Id.*, 32 P.2d at 16.

Here, there are no legal rights left to resolve. Appellants seek a reversal of the District Court's order, but such relief is wholly theoretical because the Court "cannot undo that which has been done," and "[n]othing would be achieved if [the Court] were to reverse the trial court." *Beadle*, 90 Mont. 24, 300 P. at 198. All that remains is for the Court to "decide the moot question" of whether the veto provision required Appellants to facilitate the post-session override process. *See*

Brass, 36 Mont. 418, 93 P. at 352. Appellants want this Court to hold either that they did not need to facilitate the override process or that the court overstepped its authority by filling a procedural gap. *See* Gov.'s Br., at 14–15; Sec.'s Br., at 11–12. But neither holding could reverse the writ of mandamus, undo the legislature's failed override vote, or have any other effect on the Governor's veto of SB 442.

The Court's stay order is of no consequence to the question of mootness because the legislature could have voted to override the veto after the Court denied the stay. *See* Ord., at 4 ("the fate of SB 442 could ultimately go either way"). Had the legislature overridden the veto, the appeal would be justiciable because the Court could render SB 442 ineffective. But the legislature did not override SB 442's veto. Appellants stand to gain nothing from a reversal, other than favorable precedent for future, hypothetical cases—a quintessential advisory opinion. "The case is fictitious." *Begeman*, 10 Mont. 369, 25 P. at 1046.

B. No mootness exception applies because these facts are unlikely to recur.

A moot case is ineligible for review unless it meets an exception. *Meyer v. Jacobsen*, 2022 MT 93, ¶ 9, 408 Mont. 369, 510 P.3d 52. The Court recognizes several such exceptions, including (1) "public interest"

and (2) "capable of repetition, yet could evade review." *Id.* The party invoking either exception bears the burden of establishing its elements. *Id.* ¶ 10. Appellants cannot meet their burden to show that either exception applies.

The public interest exception requires proof of three elements: (1) an issue of public importance, (2) that is likely to recur, and (3) that should be answered to guide public officers in the performance of their duties. *Ramon v. Short*, 2020 MT 69, ¶ 21, 399 Mont. 254, 460 P.3d 867. The capable of repetition exception applies only when "(1) the challenged action was in its duration too short to be fully litigated," and "(2) there was a reasonable expectation the same complaining party would be subjected to the same action." *Meyer*, ¶ 10.

Both exceptions require a likelihood of recurrence, which Appellants cannot establish. To show that the issue is likely to recur, Appellants "must establish a reasonable expectation that the same complaining party would be subject to the same action in the future." *Id.* ¶ 16. But there is no such evidence in the record, and Appellants repeatedly describe these facts as unlikely to recur. *See* Gov.'s Br., at 1, 9 (describing the underlying facts as "unusual events"); *id.* at 3 (referring

to the timing of the Governor's veto as "unusual"); *id.* at 10 (noting that this case presents an "anomaly"); *id.* at 26, 31 (describing the circumstances of the veto as "unique"); Sec.'s Br., at 13 ("this unique situation"). Indeed, the legislators who wrote to this Court last March described SB 442 as a "unique situation." Mont. House Ltr. to Mont. Supreme Ct. (Mar. 20, 2024); *see also id.* ("Senate Bill 442 has had a very unique ride through the legislature and has landed in a never before addressed circumstance.").

Further, recurrence is unlikely because, as the Governor posits, the legislature knows of this "procedural anomaly," Gov.'s Br., at 21, and has means to address it, *id.* (arguing that "the Legislature has the exclusive authority to make rules facilitating those processes"); *id.* at 23 ("The Legislature enacted a statute to fill this gap"); *id.* at 25 (the legislature has the "power to create rules for facilitating the veto process"). Because the issue is unlikely to arise again, there is limited need for this Court's guidance, and neither exception to mootness applies.

Both exceptions also fail on the other elements. First, the public interest exception requires an answer that will "guide public officers in the performance of their duties." *Ramon*, ¶ 21. But Appellants seek no

guidance here. Rather, they protest that the Court has no business determining the merits of their constitutional obligations. The Governor spends nearly all of his argument section asking this Court not to address the merits. Gov.'s Br., at 16–38; *see also* Sec.'s Br., at 19–20. Dismissing this appeal without reaching the merits accomplishes what Appellants want: for the legislature—not the Court—to address last-minute veto scenarios. *See* Gov.'s Br., at 38; Sec.'s Br., at 19 (incorporating the Governor's justiciability arguments by reference).

As to the capable of repetition exception, Appellants cannot show that the "challenged conduct . . . invariably ceases before courts fully can adjudicate the matter." *Zunski v. Frenchtown Rural Fire Dep't Bd. of Trs.*, 2013 MT 258, ¶ 22, 371 Mont. 552, 309 P.3d 21 (emphasis in original). Even if the issue were to recur, not every appeal would become moot. Had the override succeeded, the matter would have been justiciable. And had Appellants sought expedited review, this Court may have resolved the appeal essentially concurrently with the override poll. *See* Doc. 59, at 6 ("The process of conducting the poll takes time. . . . [I]f the poll proceeds concurrently with the appeal process, the entire issue may be resolved at the same time."). In the unlikely event that the same

situation arises again, there is no reason to think that litigation will be "so short as to evade review." *See Zunski*, ¶ 22.

Because the appeal is moot and no exception applies, the Court "is required to dismiss the action." *Moody's Market, Inc. v. Mont. State Fund*, 2020 MT 217, ¶ 18, 401 Mont. 168, 471 P.3d 68.

II. The District Court correctly concluded that Appellees' claims were justiciable.

If the Court proceeds to review the District Court's Order, it should hold that Appellees' claims were justiciable because (1) Appellees satisfied all three elements of constitutional standing and (2) this matter does not present a political question.

A. Appellees have case-or-controversy standing.

Case-or-controversy standing requires (1) "a concrete harm that is actual or imminent," (2) "a fairly traceable connection between the injury and the conduct complained of," and (3) "a likelihood that the requested relief will redress the alleged injury." *Barrett v. State*, 2024 MT 86, ¶ 30, 416 Mont. 226, 547 P.3d 630 (emphasis added) (cleaned up). The injury prong is met by a "past, present, or threatened injury to a property or civil right." *Brown v. Gianforte*, 2021 MT 149, ¶ 10, 404 Mont. 269, 488 P.3d 548. "[P]otential economic harm is sufficient to establish a

threatened injury." *Reichert v. State ex rel. McCulloch*, 2012 MT 111, ¶ 58, 365 Mont. 92, 278 P.3d 455 (cleaned up). "In a multi-plaintiff case . . . the standing of any one plaintiff is sufficient." *Barrett*, ¶ 19.

First, Appellees' injuries were particularized and concrete. Under SB 442, MACo's members would have received the benefits of increased funding for rural roads—of critical importance to MACo's members and the elected county officials who serve in MACo's leadership. Suppl. App. 004. Conservation Organizations and their members faced similar harm in the loss of Habitat Montana funding. App. 019–20, 022–23. Further, Appellees invested significant time and resources toward SB 442's revision and passage during the session and the override poll. *Id.*; Suppl. App. 003–05. They had a direct stake in the lawmaking process.

The Governor mischaracterizes both Appellees' injuries and this Court's holding in *Mitchell v. Glacier County*, 2017 MT 258, 389 Mont. 122, 406 P.3d 427. In *Mitchell*, the Court stated that if a plaintiff's "injury" arises from an alleged "violation of constitutional and statutory rights," the constitutional or statutory provision must itself grant a right to judicial relief. *Id.* ¶ 11 (emphasis added). Replacing "injury" with the word "claim," the Governor argues that Appellees have no standing

unless the veto provision provides a private right of action. Gov.'s Br., at 33. Not so. *See, e.g.*, *Larson v. State ex rel. Stapleton*, 2019 MT 28, ¶ 27, 394 Mont. 167, 434 P.3d 241 ("[T]he Legislature's failure to expressly specify a private remedy for enforcing a statutory duty or requirement does not necessarily preclude the availability of a private remedy."). Appellees' concrete and particularized injuries are not, as the Governor suggests, less cognizable because they arise from unconstitutional action—such a rule would be absurd.

Appellees' harm is "distinguished from one suffered by the community in general" because Appellees were among the participants in and the intended, foreseeable beneficiaries of SB 442. *See Helena Parents Comm'n v. Lewis & Clark Cty. Comm'rs*, 277 Mont. 367, 371, 922 P.2d 1140, 1143 (1996). In any event, harms that "directly concern large segments of the public, or all the public, are not thereby insulated from judicial attack." *Id.* at 373, 922 P.2d at 1144.

Second, Appellees' injuries resulted directly from the Secretary's refusal to poll the legislature by mail, under Article VI, Section 10(4)(a), and the Governor's refusal to send the veto and his veto message to the Secretary. The Governor claims that the legislature caused Appellees'

injuries, Gov.'s Br., at 36, but Appellees never claimed to be entitled to SB 442's passage—only to a fair chance to participate in the legislative process, including through the override poll. It cannot be the case that Montanans have no right to fair government processes unless they are assured of a particular outcome. Appellants' refusal to comply with their constitutional duties under the veto provision directly interfered with Appellees' legal right to participate in the process.

Third, Appellees' claims were redressable—indeed, were redressed—by this litigation. Appellees did not and could not ask the District Court to put SB 442 into effect, so the failed override poll does not affect redressability. The writ redressed Appellees' injuries by restoring their opportunity to participate in the legislative process. Although the results of the poll did not turn out as Appellees hoped, redressability is not analyzed in hindsight—further underscoring the mootness of this appeal. *See Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 30, 360 Mont. 207, 255 P.3d 80 ("Standing requires . . . a personal stake in the outcome of the controversy at the commencement of the litigation, whereas mootness doctrine requires [it] to continue throughout the litigation.") (emphasis added). The Governor's assertion

that redress was unavailable because the legislature voted not to override the veto is like suggesting that a civil claim for damages is not redressable if the defendant later turns out to be judgment-proof.

Appellees had standing to challenge Appellants' breaches of their constitutional duties.

B. This case does not present a political question; it falls squarely within the Court's power of judicial review.

"The political question doctrine generally excludes from judicial review only those controversies which involve policy choices and value determinations[.]" *City of Great Falls v. Bd. of Comm'rs of Cascade Cty.*, 2024 MT 118, ¶ 13, 416 Mont. 494, 549 P.3d 1158 (cleaned up). Of course, "not every matter touching on politics is a political question." *Brown*, ¶ 21. "[I]t is particularly and exclusively within the province of the judiciary to construe and adjudicate provisions of constitutional . . . law as applied to facts at issue in particular cases." *City of Great Falls*, ¶ 14.

Political questions involve "a textually demonstrable constitutional commitment of the issue to a coordinate political department" or "a lack of judicially discoverable and manageable standards for resolving the issue." *Bullock v. Fox*, 2019 MT 50, ¶ 44, 395 Mont. 35, 435 P.3d 1187 (quoting *Nixon v. United States*, 506 U.S. 224, 228 (1993)). Neither exists

here. First, the veto provision does not commit to the political branches the interpretation of the post-session override duties. Second, Subsection (4) of the veto provision, which outlines the procedures for veto override polls, contains clear, judicially manageable standards on its face. And third, Appellants' argument that the veto provision is non-self-executing ignores both its plain language and its history. *See Brown*, ¶ 23. Subsection (4) is not addressed to the legislature and does not require legislation to render it operative. *See id.*

1. Subsection (4) of the veto provision imposes obligations on the executive, but only the judiciary can adjudicate whether those duties were violated.

"[C]ourts must, in the first instance, interpret the text in question and determine whether and to what extent the issue is textually committed [to a coordinate branch]." *Nixon*, 506 U.S. at 228. As Justice White explained in *Nixon*:

> Of course, the issue in political question doctrine is not whether the constitutional text commits exclusive responsibility for a particular governmental function to one of the political branches. There are numerous instances of this sort of textual commitment[.] . . . Rather, the issue is whether the Constitution has given one of the political branches final responsibility for interpreting the scope and nature of such power.

Id. at 240 (White, J., concurring) (emphasis in original).

The plain text of Subsection (4) does not commit the interpretation of the provision to a coordinate branch. Although it imposes mandatory constitutional duties on the executive branch, it neither says nor implies that the executive or legislative branches have the "sole [p]ower" to determine whether the Governor and the Secretary complied with their duties. *See id.* at 229 (majority opinion). In the absence of such a textual commitment, it is the province of the judiciary "to say what the law is." *McLaughlin v. Mont. State Leg.*, 2021 MT 178, ¶ 18, 405 Mont. 1, 493 P.3d 980; *see also* Mont. Const. art. III, § 1.

Bullock is instructive. At issue there was Article X, Section 4, which establishes a board of land commissioners with the "authority to direct, control, lease, exchange, and sell" school trust lands. *Bullock*, ¶ 21 (citing Mont. Const. art. X, § 4). Two board members—the governor and the attorney general—disagreed about the proper scope of the board's authority, and the governor sought declaratory relief. *Id.* ¶¶ 7–8. The Court held that the "issue before [it] [was] one of constitutional and statutory interpretation, ultimately within the province of the judiciary." *Id.* ¶ 25. The Court explained that "[t]he issue presented here is not a question of policy or other political consideration," but rather "a basic

question of constitutional and statutory interpretation well-suited to the province of the judiciary." *Id.* ¶ 46.

The Governor argues that Appellees' claim is unreviewable because the veto provision instructs the executive and legislative branches without mentioning the judiciary. *See* Gov.'s Br., at 18. But neither does Article 10, Section 4—the constitutional provision at issue in *Bullock*. *See* Mont. Const. art. X, § 4. The thrust of the political question doctrine is not whether a provision imposes duties on another branch—"[t]here are numerous instances of this sort of textual commitment"—but whether it commits the question of interpretation to another branch. *See Nixon*, 506 U.S. at 240 (White, J., concurring).

No textual or historical evidence suggests that Subsection (4) does not contemplate judicial review. Of course, the judiciary cannot undo the Governor's veto of SB 442 or order the legislature to override the veto. The question whether a law should be passed or vetoed is clearly a political question. But just as the Court could decide whether, *e.g.*, the Governor violated Subsection (1) by refusing to return a vetoed bill to the legislature, *see* Mont. Const. art. VI, § 10(1), or Subsection (2) by attempting to "return a bill for amendment a second time," *see id.* § 10(2),

it is well within the Court's authority to determine whether Appellants violated their duties under Subsection (4). As in *Bullock*, these are "basic question[s] of constitutional . . . interpretation well-suited to the province of the judiciary." *Bullock*, ¶ 46. And the veto provision does not commit the interpretation or enforcement of these duties to another branch. *See Nixon*, 506 U.S. at 240.

2. Subsection (4) contains clear and judicially manageable standards on its face.

The second inquiry within political question doctrine "is not completely separate from" the textual commitment question. *Nixon*, 506 U.S. at 228–29 (majority opinion). The central concern is whether there are "judicially discoverable and manageable standards for resolving" the issue at hand, *id.* 228–29, or whether the case "turn[s] on standards that defy judicial application." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012). Appellees' claim involves the application of "familiar principles of constitutional interpretation" to clearly defined duties. *See id.*

At issue is the constitutionality of Appellants' inaction when the Senate adjourned without notice of the Governor's veto. Subsection (4) imposes two clear legal duties on executive branch officials: the governor

"shall return the bill with his reasons therefor to the secretary," and "the secretary of state shall poll the members of the legislature by mail." Mont. Const. art. VI, § 10(4)(a). Appellees' claim therefore "asserted noncompliance with well-defined . . . standards." *See Larson*, ¶ 43. "Indeed, both sides offer detailed legal arguments regarding whether [Appellants' inaction] is constitutional." *See Zivotofsky*, 566 U.S. at 197. In sum, this case involves "familiar principles of constitutional interpretation," which "is enough to establish that this case does not turn on standards that defy judicial application." *Id.* at 201; *see also City of Great Falls*, ¶ 14.

3. Subsection (4) is self-executing.

The Governor contends that Subsection (4) is non-self-executing and therefore not subject to judicial review. Gov.'s Br., at 19–20. But Subsection (4) requires no legislative implementation to be effective and plainly is not addressed to the legislature. *See Brown*, ¶ 23. Similar to the "textual commitment" inquiry within the political question doctrine, "[t]o determine whether a provision is self-executing, we ask whether the Constitution addresses the language to the courts or to the Legislature." *Id.* "A provision is self-executing when it can be given effect without the

aid of legislation and there is nothing to indicate that legislation is contemplated in order to render it operative." *Gen. Agric. Corp. v. Moore*, 166 Mont. 510, 514, 534 P.2d 859, 862 (1975).

Examples of non-self-executing clauses include Article IX, Section 3(4) ("The legislature shall provide for the administration, control, and regulation . . . ."), *see Gen. Agric. Corp.*, 166 Mont. at 514–15, 534 P.2d at 862; Article VIII, Section 12 ("The legislature shall by law insure strict accountability."), *see Reep v. Bd. of Cty. Comm'rs*, 191 Mont. 162, 169, 622 P.2d 685, 689 (1981); Article X, Section 1(3) ("The legislature shall provide a basic system of . . . ."), *see Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 2005 MT 69, ¶ 17, 326 Mont. 304, 109 P.3d 257. By contrast, self-executing clauses do not anticipate legislation prior to enforcement. *See, e.g.*, *City of Missoula v. Mountain Water Co.*, 2018 MT 139, ¶¶ 11–13, 391 Mont. 422, 419 P.3d 685 (right to attorney's fees in Takings Clause litigation is self-executing because "legislative action is not required to understand and implement the [constitutional language]"); *Gen. Agric. Corp.*, 166 Mont. at 514–15, 534 P.2d at 862.

Subsection (4) provides a clear procedure that executive branch officials must follow when facilitating post-session overrides. Mont.

Const. art. VI, § 10(4)(a); Const. Amend. No. 12 (1982). As initially drafted, Subsection (4) may have relied on legislative action to render it operative. *See* Mont. Const. art. VI, § 10(4) (1972) ("he shall return the bill . . . in a manner provided by law") (emphasis added). But Montanans made violations of Subsection (4) immediately actionable by setting out a clear procedure through C-12. Voter Info. Pamphlet, at 6. At least since its 1982 amendment, therefore, Subsection (4) has been self-executing.

The Governor next argues that the legislature could make a rule to address this procedural anomaly, citing examples of other departmental rules that fill "procedural gaps." Gov.'s Br., at 22–24. But the legislature's ability to create a rule does not mean that the Court cannot interpret and compel compliance with the veto provision. *Cf. Gen. Agric. Corp.*, 166 Mont. at 514, 534 P.2d at 862 ("The fact that a right granted by a constitutional provision may be better or further protected by supplementary legislation does not of itself prevent the provision in question from being self-executing; nor does the self-executing character of a constitutional provision necessarily preclude legislation."). Moreover, the examples the Governor cites (*e.g.*, the Court's appellate rules), *see* Gov.'s Br., at 22–24, are inapposite because they do not involve the

encroachment of one branch into the province of another—which is what this case is about. *See City of Missoula*, ¶ 13 ("While the legislature is free to pass laws implementing constitutional provisions, its interpretations and restrictions will not be elevated over the protections found within the Constitution.") (cleaned up).

Appellees' claim does not present a political question.

III. The District Court correctly determined that Appellants had a clear legal duty to facilitate the post-session override process.

The Montana Constitution prohibits any branch of government from interfering with the powers of a co-equal branch. Mont. Const. art. III, § 1; *see State ex rel. Livingstone v. Murray*, 137 Mont. 557, 568, 354 P.2d 552, 557–58 (1960). SB 442's veto lands at the heart of the separation of powers. The veto provision grants the legislature an absolute power to override executive vetoes, regardless of timing. Mont. Const. art. VI, § 10(3)–(4). Appellants interfered with that power by refusing to effectuate an override poll, despite knowing that the Senate lacked notice of the veto when it adjourned *sine die*.

A. The text, structure, and intent of the veto provision support the District Court's interpretation.

The delegates' "intent controls . . . interpretation of a constitutional

provision." *Mont. Democratic Party v. Jacobsen*, 2024 MT 66, ¶ 18, 416 Mont. 44, 545 P.3d 1074. The Court "look[s] first to the plain language of the text, but even when [it] is clear and unambiguous," the Court considers the delegates' "objective[s]" and the "historical and surrounding circumstances under which the Constitution was drafted." *Id.*

The veto provision evinces the framers' clear intent to give the legislature the final say on whether a bill becomes law. Whether in or out of session, the legislature always retains the power to override a veto. Mont. Const. art. VI, § 10(3)–(4). While in session, it may override any veto "after receipt of a veto message." *Id.* § 10(3) (emphasis added). The in-session override process is therefore triggered by "receipt" of the veto message and requires both houses to be in session. *Id.* Unless both houses receive the veto message, the legislature cannot initiate an override. The Senate simply cannot act on a veto until it has been received and read over the rostrum. App. 034, 037. The District Court thus correctly ruled that the question of which override procedure applies depends in part on whether the legislature has notice of the veto. Doc. 45, at 6.

Consistent with the veto provision's text and intent, the legislature must remain able to override all vetoes. Both the 1972 delegates and the

1982 voters clearly intended to stop the executive from encroaching on the legislative branch's lawmaking power. Because the Senate lacked notice when it adjourned *sine die*, the District Court correctly concluded that Subsection (4), which provides for out-of-session procedures, controls.

The Governor wants this Court to read "when the governor vetoes a bill," *see* Mont. Const. art. VI, § 10(4)(a) (emphasis added), in isolation to import a rigid temporal requirement that is absent from the plain text, *see* Gov.'s Br., at 39. But the Court must not "insert what has been omitted" from the provision. *Lindeen v. Mont. Liquor Control Bd.*, 122 Mont. 549, 551, 207 P.2d 977, 977 (1949). The word "when" is not so constrictive. If it were, the Governor's interpretation of Subsection (4) would mean that if he signed the veto at 3:19 p.m., and the Senate adjourned at 3:20 p.m. without knowledge of the veto, the legislature would be robbed of its override power. But if he signed the veto at 3:21 p.m., and the Senate adjourned at 3:20 p.m., then it would not—even if the Governor lacked notice that the Senate had adjourned *sine die*. This would be a farcical rule, and "constitutional construction should not lead to absurd results if reasonable construction will avoid it." *Powder River*

Cty. v. State, 2002 MT 259, ¶ 70, 312 Mont. 198, 60 P.3d 357.[6]

Nor can the delegates' and the voters' intent support the Governor's position. The delegates contemplated a flexible procedure for post-session vetoes. *See* Mont. Const. Conv., VI Verbatim Tr. at 956 (Del. Joyce). More importantly, voters in 1982 determined that flexibility too much favored the governor's ability to play games with vetoes and overrides, so they amended the Montana Constitution to include procedures that would ensure the legislature retained ultimate override authority. Voter Info. Pamphlet, at 6–7; Const. Amend. No. 12 (Nov. 2, 1982).

Appellants' contention that the legislature could have called a special session also cannot succeed. First, the legislature's ability to call a special session does not relieve Appellants of their duties under Subsection (4). *Compare* Mont. Const. art. VI, § 10(4)(a) (using mandatory language to describe governor's duties), *with id.* § 10(4)(b)

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[6] The Governor also argues that he would not know which procedure to follow if the post-session procedure hinged on the legislature's receipt of the veto. Gov.'s Br. at 41. This is equally absurd because the point of the veto provision is to allow the governor to veto bills and the legislature to override vetoes. The only time this would not work is when one branch prevented the other from exercising its powers—as occurred here. And regardless, the Governor and the Secretary both had notice because legislators and the public alerted them of the issue in the days following the session. *See* pp. 5–6, *supra*.

(stating the legislature "may reconvene as provided by law"). Second, Montanans voted in favor of C-12 to ensure a mandatory mechanism for facilitating post-session overrides—*i.e.*, to guarantee that the legislature was never left without its override power. The Governor repeats the same failed argument C-12's opponents made in the voter information pamphlet in 1982. Voter Info. Pamphlet, at 7. And third, calling a special session is expensive, time-consuming, and inconvenient. Forcing the legislature to call a special session to exercise a core legislative power is a senseless remedy.

The District Court correctly interpreted the veto provision.

B. Appellants had a clear legal duty to facilitate the legislature's post-session override.

A writ of mandamus compels the performance of ministerial acts. Section 27-26-102, MCA. Appellants' duties under the veto provision are no exception. The Governor and the Secretary have independent ministerial obligations under Subsection (4). First, "[i]f the legislature is not in session when the governor vetoes a bill approved by two-thirds of the members present, he shall return the bill with his reasons therefor to the secretary of state." Mont. Const. art. VI, § 10(4)(a). And second, "[t]he

secretary of state shall poll the members of the legislature by mail and shall send each member a copy of the governor's veto message." *Id.*

Appellants contend that they were unable to comply with Subsection (4) because they lacked possession of the vetoed bill, which the Governor sent to the legislature. Gov.'s Br., at 27, 30, 39–41; Sec.'s Br., at 3, 6, 14–15. But legislators do not need the original bill to vote on the veto override—the location of a piece of paper cannot circumvent the separation of powers. *See* Mont. Const. art. VI, § 10(4)(a). The veto provision does not require the Secretary to do anything with the bill itself. *See id.* ("The secretary of state shall . . . send each member a copy of the governor's veto message."). And here, the Governor already sent a copy of his veto message to the Secretary on May 2, 2023. Suppl. App. 009–10. There is no reason why formalism can or should stand in the way of constitutional duty, especially when the delegates initially imagined that the governor would merely send "copies of the bill" to the adjourned legislators, Mont. Const. Conv., VI Verbatim Tr., at 957, and if necessary, the legislature "could just send [the bill] back up to him," *id.* at 955. Appellants' argument that they could not comply with Subsection (4) without the original bill is formalism at its worst.

The District Court correctly granted mandamus relief.

CONCLUSION

Appellees respectfully ask the Court to dismiss this appeal as moot or, alternatively, to affirm the District Court's ruling on the merits.

Respectfully submitted this 18th day of February 2025.

/s/ Dimitrios Tsolakidis
Dimitrios Tsolakidis
Rylee K. Sommers-Flanagan
UPPER SEVEN LAW

Attorneys for Appellees Wild Montana and Montana Wildlife Federation

/s/ Michael G. Black
Michael G. Black
BLACK LAW OFFICE

Attorney for Appellee Montana Association of Counties

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rule of Appellate Procedure 11, I certify that this Brief is printed with a double-spaced, proportionately spaced Century typeface of 14 points and that the word count, as calculated by Microsoft Word, is 9,024 words, including footnotes.

/s/ *Dimitrios Tsolakidis*

CERTIFICATE OF SERVICE

I, Dimitrios Tsolakidis, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 02-18-2025:

Dale Schowengerdt (Attorney)
7 West 6th Avenue, Suite 518
Helena MT 59601
Representing: Greg Gianforte
Service Method: eService

Anita Yvonne Milanovich (Attorney)
1301 E 6TH AVE
HELENA MT 59601-3875
Representing: Greg Gianforte
Service Method: eService

Michael G. Black (Attorney)
PO Box 318
Clinton MT 59825
Representing: Montana Association of Counties (MACo)
Service Method: eService

Rylee Sommers-Flanagan (Attorney)
P.O. Box 31
Helena MT 59624
Representing: Montana Wildlife Federation, Wild Montana
Service Method: eService

Austin Markus James (Attorney)
1301 E 6th Ave
Helena MT 59601
Representing: Secretary of State, Office of the
Service Method: eService

Clay Richard Leland (Attorney)
1301 E 6TH AVE
HELENA MT 59601-3875
Representing: Secretary of State, Office of the
Service Method: eService

Timothy Longfield (Attorney)
7 West 6th Avenue
Helena MT 59601
Representing: Greg Gianforte
Service Method: eService

Electronically Signed By: Dimitrios Tsolakidis
Dated: 02-18-2025