IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 24-0501

NETZER, KRAUTTER & BROWN, P.C. and DONALD L. NETZER,

Plaintiffs, Appellants, and Cross-Appellees,

v.

STATE OF MONTANA by and through AUSTIN KNUDSEN, in his official capacity as Attorney General and SARAH SWANSON, Montana Commissioner of Labor and Industry,

Defendants, Appellees, and Cross-Appellants.

APPELLEES/CROSS-APPELLANTS' ANSWERING BRIEF AND CROSS-APPEAL OPENING BRIEF

On Appeal from the Montana Seventh Judicial District Court, Richland County
Cause No. DV-21-89. The Honorable Olivia Rieger, Presiding

APPEARANCES:

Austin Knudsen
Montana Attorney General
Michael Russell
Thane Johnson
Alwyn Lansing
Michael Noonan
Assistant Attorneys General
MONTANA DEPARTMENT OF JUSTICE
PO Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
Fax: 406-444-3549
michael.russell@mt.gov
thane.johnson@mt.gov
alwyn.lansing@mt.gov
michael.noonan@mt.gov

Attorneys for Defendants/Appellees/Cross-Appellants

Jared R. Wigginton
GOOD STEWARD LEGAL, PLLC
2065 Jupiter Lane
Henderson, NV 89012
Phone: (725) 205-4875
jared@goodstewardlegal.com

Joel G. Krautter
NETZER, KRAUTTER, & BROWN, P.C.
301 North 27th Street, #100
Billings, MT 59101
Phone: (406) 433-5511
joel@nkbattorneys.com

Attorneys for Plaintiffs/Appellants/Cross-Appellees

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STATEMENT OF THE ISSUES

Appellees/Cross-Appellants raise the following issue on cross-appeal:

1. Did the district court err by concluding that MCA § 49-2-312(4) violates the single-subject rule in Article V, § 11(3) of the Montana Constitution?

Appellants raised the following issues in their appeal, which are restated by Appellees here:

2. Did the district court err by concluding that MCA § 49-2-312(1) does not violate the single-subject rule in Article V, § 11(3) of the Montana Constitution?

3. Did the district court err in dismissing Counts I-II of the First Amended Complaint, including by issuing a Supplemental Order that explained its reasoning?

4. Should this case be reassigned to a new judge on remand?

STATEMENT OF THE CASE

This case involves constitutional challenges to 2021 Montana Laws ch. 418 (HB 702), which relates to prohibiting discrimination based on a person's vaccination status or possession of an immunity passport. Section 1 of HB 702 is codified at MCA § 49-2-312. The district court ultimately dismissed all of Appellants' challenges except their single-subject challenge to § 49-2-312(4).

Plaintiffs/Appellants/Cross-Appellees Netzer Krautter & Brown, P.C. and Donald L. Netzer ("Appellants" or "Plaintiffs") filed their First Amended Complaint ("FAC") and Brief in Support of Motion for Preliminary Injunction on October 26,

2021. Dkt. 9, 15.[1] Count I of the FAC alleged a violation of inalienable rights under Montana Constitution Article II, § 3. Dkt. 9 at 10. Count II alleged a violation of the duty to maintain a clean and healthful environment under Article IX, § 1. *Id.* at 12. Count III alleged a violation of equal protection under Article II, § 4. *Id.* at 13. Count IV alleged a violation of unenumerated rights under Article II, § 34. *Id.* at 15. Count V alleged a violation of the single-subject rule for MCA § 49-2-312(1) and (4) under Article V, § 11(3). *Id.* at 16.

On November 15, 2021, Defendants/Appellees/Cross-Appellants the State, by and through its Attorney General, and the Commissioner of Labor and Industry ("Appellees" or the "State") moved to dismiss the complaint under Mont. R. Civ. P. 12(b) and filed a Combined Brief in Opposition to Plaintiffs' Application for Preliminary Injunction and in Support of Motion to Dismiss Pursuant to Mont. R. Civ. P. 12(b). Dkt. 23; Ex. L, APP0131.[2]

On December 2, 2021, Appellants filed a Reply to the State's Opposition to Preliminary Injunction. Dkt. 27. Appellants also filed a Cross-Motion for Summary Judgment "on all counts of the [FAC]," stating "[n]o material facts are in dispute, leaving only questions of law." Dkt. 28. Appellants filed a brief in support of their Motion for Summary Judgment and in opposition to the State's Motion to Dismiss.

[1] "Dkt." cites are to the docket in district court.
[2] Citations to the Exhibits to Appellants' Opening Brief are abbreviated "Ex." and citations to page numbers in the Exhibits are to APP.

Dkt. 29. On December 16, 2021, the State filed a Reply in support of its Motion to Dismiss. Dkt. 34.

On February 1, 2022, the district court issued its Findings of Fact, Conclusions of Law and Order Denying Plaintiffs' Application for Preliminary Injunction ("PI Order"). Dkt. 40, Ex. D, APP0028. That Order did not decide the State's Motion to Dismiss or Appellants' Motion for Summary Judgment. *See id.* On February 3, 2022, the district court indicated it would rule on the Motion to Dismiss in a future proceeding. Dkt. 41.

On March 3, 2022, Appellants filed a notice of appeal of the PI Order. Dkt. 43. On November 16, 2022, this Court issued its opinion related to the PI Order. *Netzer L. Off., P.C. v. State*, 2022 MT 234, 410 Mont. 513, 520 P.3d 335 ("*Netzer I*"). This Court affirmed in part and remanded with instructions to evaluate HB 702 under the single-subject rule in Article V, § 11(3) of the Montana Constitution. *Id.* at ¶¶ 36-37.

On June 29, 2023, Appellants moved to set a hearing on the State's pending Motion to Dismiss. Dkt. 51. Appellants also moved to partially withdraw their Motion for Summary Judgment (Dkt. 28). Dkt. 52. On July 27, 2023, Appellees filed their opposition to Appellants' request and stated the Court should rule on the pending Motion to Dismiss and then address summary judgment to the extent any claims remained. Dkt. 58.

On November 11, 2023, the district court issued its Order Granting Partial Dismissal of Claims ("Order Granting Partial Dismissal"). Dkt. 62, Ex. C at APP0015. The court dismissed Counts I-IV of the FAC but denied dismissal of Count V, relating to the single-subject rule. *Id.* at APP0027.

On December 19, 2023, Appellants filed a Motion to Alter or Amend the Order Graning Partial Dismissal under Rule 59(e), as well as a brief in support of that motion. Dkt. 65, 66; Ex. I, J, APP0066, APP0072. On December 27, 2023, the State filed its Brief in Opposition. Dkt. 67; Ex. H, APP0060. On January 3, 2024, Appellants filed their Reply. Dkt. 68; Ex. G, APP0053.

On January 16, 2024, the district court ruled on the Rule 59(e) motion in its Supplemental Order Granting Motion to Dismiss Counts I-IV ("Supplemental Order"). Dkt. 71, Ex. B, APP0010. The Court stated that its Supplemental Order "affirms its previous rulings and adds this Supplemental Order for judicial clarity." *Id.* The Court explained its reasons for dismissing Counts I-II on the merits. *Id.* at APP0011-14.

Following the Order Granting Partial Dismissal and Supplemental Order, only Count V remained, which challenged MCA § 49-2-312(1), (4) on single-subject grounds. The State filed an Answer to Count V on January 10, 2024. Dkt. 69. On January 25, 2024, it filed a Motion for Judgment on the Pleadings Regarding Count V and a Brief in Support. Dkt. 72, 73; Ex. F, APP0045. On February 8, 2024,

Appellants filed a Brief in Opposition to the Motion for Judgment on the Pleadings. Dkt. 74. That brief requested that the Court treat the State's Motion for Judgment on the Pleadings as a "competing motion for summary judgment." *Id.* at 3 n.2. On February 20, 2024, the State filed its Reply. Dkt. 75.

On June 24, 2024, the district court issued its Order on Title. Dkt. 77, Ex. A at APP0001. It held that MCA § 49-2-312(1) did not violate the single-subject rule. *Id.* at APP0008. The Court further held, however, that MCA § 49-2-312(4) did violate that rule. *Id.* at APP0009. On August 22, 2024, Appellants filed a notice of appeal. Dkt. 80. On September 6, 2024, Appellees filed a notice of cross-appeal. Dkt. 81.

STATEMENT OF THE FACTS

Appellants are a law firm and its owner, Donald L. Netzer. Dkt. 9 at ¶ 1. Appellees are the State of Montana, by and through its Attorney General, and the Commissioner of Labor and Industry. *Id.* at ¶¶ 4-5.

This case involves a challenge to HB 702, which added MCA § 49-2-312 and is titled "An Act Prohibiting Discrimination Based on a Person's Vaccination Status or Possession of an Immunity Passport; Providing an Exception and an Exemption; Providing an Appropriation; and Providing Effective Dates." 2021 Mont. Laws ch. 418.

In Count V of the FAC, Appellants allege that MCA § 49-2-312(1), (4) violate the single-subject rule. Dkt. 9 at ¶¶ 82-89. Section 49-2-312(1) provides:

> Except as provided in subsection (2), it is an unlawful discriminatory practice for:
> (a) a person or a governmental entity to refuse, withhold from, or deny to a person any local or state services, goods, facilities, advantages, privileges, licensing, educational opportunities, health care access, or employment opportunities based on the person's vaccination status or whether the person has an immunity passport;
> (b) an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment based on the person's vaccination status or whether the person has an immunity passport; or
> (c) a public accommodation to exclude, limit, segregate, refuse to serve, or otherwise discriminate against a person based on the person's vaccination status or whether the person has an immunity passport.

Section 49-2-312(4) provides: "An individual may not be required to receive any vaccine whose use is allowed under an emergency use authorization or any vaccine undergoing safety trials."

Appellants also allege in Count I that HB 702 conflicts with the inalienable rights set forth in Article II, § 3 of the Montana Constitution. Dkt. 9 at ¶¶ 40-57. Finally, Appellants allege in Count II that HB 702 violates the State's duty to maintain a clean and healthful environment under Article IX, § 1. Dkt. 9 at ¶¶ 58-63. Appellants have expressly abandoned their claims in Counts III-IV. Opening Brief ("OB") at 22 n.8.

STANDARD OF REVIEW

This Court reviews a district court's grant of dismissal under Mont. R. Civ. P. 12(b)(6) de novo. *Flathead Props., L.L.C. v. Flathead Cnty.*, 2024 MT 323, ¶ 8, 420 Mont. 77, 561 P.3d 930. "Dismissal is proper … if the plaintiff would not be entitled to relief based on any set of facts that could be proven to support the claim." *Id.* (quoting *Puryer v. HSBC Bank USA, Nat'l Ass'n,* 2018 MT 124, ¶ 10, 391 Mont. 361, 419 P.3d 105). The same standard applies to a grant of judgment on the pleadings under Mont. R. Civ. P. 12(c). *Fennessy v. Knight*, 2021 MT 95N, ¶ 10, 404 Mont. 552, 485 P.3d 205.

This Court also reviews a district court's grant of summary judgment de novo, applying the same criteria of Mont. R. Civ. P. 56. *Kilby Butte Colony, Inc. v. State Farm Mut. Auto. Ins. Co.*, 2017 MT 246, ¶ 7, 389 Mont. 48, 403 P.3d 664 (citations omitted). Summary judgment is appropriate when there is no genuine issue of material fact, and the movant is entitled to judgment as a matter of law. *Id.*; Mont. R. Civ. P. 56(c)(3).

"A statute is 'presumed constitutional unless it conflicts with the Montana Constitution, in the judgement of the court, beyond a reasonable doubt.'" *State v. Akhmedli*, 2023 MT 120, ¶ 3, 412 Mont. 538, 531 P.3d 562 (quoting *Mont. Indep. Living Project v. DOT*, 2019 MT 298, ¶ 14, 398 Mont. 204, 454 P.3d 1216). Every possible presumption must be indulged in favor of the constitutionality of a

legislative act. *Powell v. State Comp. Ins. Fund*, 2000 MT 321, ¶ 13, 302 Mont. 518, 15 P.3d 877 (citations omitted). The party challenging a statute bears the burden of proving that it is unconstitutional. *Id.* (citations omitted).

When interpreting constitutional provisions, this Court applies ordinary rules of statutory construction. *See Brown v. Gianforte*, 2021 MT 149, ¶ 33, 404 Mont. 269, 488 P.3d 548. It first looks at the plain meaning of the constitutional text. *Nelson v. City of Billings*, 2018 MT 36, ¶ 14, 390 Mont. 290, 412 P.3d 1058. In doing so, the Court construes the constitutional text as a whole, avoiding isolating specific terms from the context in which they appear. *See Mont. Sports Shooting Ass'n v. State*, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003.

SUMMARY OF THE ARGUMENT

In enacting HB 702, the legislature properly exercised the State's police power to prohibit what it determined was discrimination based on a person's vaccination status or possession of an immunity passport. And it complied with the single-subject rule when enacting that bill by fixing a broad title that did not mislead the public or legislators about the bill's purpose. While Appellants vehemently disagree with the legislature's actions, their complaint boils down to that—a strongly-held policy difference—and nothing more. This Court should therefore affirm the district court's dismissal of FAC Counts I-II and grant of summary

judgment on Count V as it relates to § 49-2-312(1). This Court should reverse the grant of summary judgment on Count V as it relates to § 49-2-312(4).

First, subsections (1) and (4) of § 49-2-312 comply with the single-subject rule in Article V, § 11(3) because they "treat[] only, directly or indirectly, of the subjects mentioned in the title, and of other subjects germane thereto, or of matters in furtherance of or necessary to accomplish the general objects of the Bill, as mentioned in the title." *MEA-MFT v. State*, 2014 MT 33, ¶ 8, 374 Mont. 1, 318 P.3d 702 (citation omitted). Subsection 1 prohibits certain persons and entities from engaging in any of a list of adverse actions against, or withholding benefits from, a person "based on the person's vaccination status or whether the person has an immunity passport." MCA § 49-2-312(1)(a), (b), (c). Engaging in adverse actions or withholding benefits clearly aligns with the common understanding of "discrimination," which is the subject of HB 702.

Subsection 4 relates to the subject in HB 702's title because the legislature acted to prohibit "requir[ing]" a vaccine, and that prohibition protects against the effects or disparate impacts of what the legislature viewed as discrimination against persons who object to the procedure. "[B]e[ing] required to receive a[] vaccine" inherently involves suffering some enforcement or consequences for non-compliance. And the legislature determined that those consequences against individuals who object to the procedure constitute the disparate effects or impacts of

discrimination. Prohibiting disparate impact discrimination is a well-recognized subject for anti-discrimination laws. *See, e.g., Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.,* 576 U.S. 519, 545 (2015) ("The Court holds that disparate-impact claims are cognizable under the Fair Housing Act."). This subsection therefore directly or indirectly relates to the subject of prohibiting discrimination, is germane to that subject, or is in furtherance of the general objects of the bill.

Second, the district court did consider Counts I-II of the FAC, which alleged constitutional challenges to HB 702, and it therefore complied with this Court's remand in *Netzer I*. Appellants' sole argument is that the district court refused to consider the merits of these claims. But this is demonstrably false based on the district court's Supplemental Order, *see* Ex. B, which Appellants barely cite and then completely fail to address. OB at 38-40. The Supplemental Order stepped through each of Appellants' many constitutional claims in Counts I-II and ultimately held that HB 702 did not, as a matter of law, violate those various constitutional provisions. Persuasive federal cases, particularly *Luig v. N. Bay Enters., Inc.*, 817 F.3d 901, 905 (5th Cir. 2016), recognize that a district court can rectify a procedural error by subsequently ruling on a Rule 59(e) motion, as it did here.

Finally, Appellants' request for this Court to take the extraordinary step of reassigning this case to a new judge is baseless, particularly given their complete

lack of discussion of the Supplemental Order when accusing the district court of refusing to rule on Counts I-II on the merits.

ARGUMENT

I. HB 702's title covers subsections 1 and 4 of MCA § 49-2-312

This Court should conclude, on *de novo* review, that HB 702's title adequately informed legislators and the public of the subject it covered—Prohibiting Discrimination Based on a Person's Vaccination Status or Possession of an Immunity Passport—and that subsections 1 and 4 of MCA § 49-2-312 both relate to that subject. This Court should therefore uphold the statute it its entirety. It should affirm the district court's Order on Title, Ex. A, as to subsection 1 and reverse it as to subsection 4.

A. The Single-Subject Rule allows the Legislature discretion to define a subject and include provisions directly or indirectly related to, or germane to, that subject in a single bill.

Article V, Section 11(3) of the Montana Constitution provides in relevant part that "[e]ach bill … shall contain only one subject, clearly expressed in its title." It further provides that "[i]f any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void."[3]

[3] This single-subject requirement is "less arduous" and "broader" than the separate-vote requirement that applies to constitutional initiatives. *Mont. Ass'n of Ctys. ("MACo") v. State*, 2017 MT 267, ¶¶ 23, 26, 389 Mont. 183, 404 P.3d 733.

In reviewing whether an act complies with this provision, courts deferentially review whether the legislature has 1) set forth a proper "subject" for the act in its title; and 2) included only provisions in the body of the act that are expressed in the title. The first step is met unless "two or more independent and incongruous subjects are embraced in" the act's title. *See Forward Montana v. State*, 2024 MT 75, ¶ 26, 416 Mont. 175, 546 P.3d 778 (citation omitted).[4] And the second step is met if "the body of the Act treats only, directly or indirectly, of the subjects mentioned in the title, ***and*** of other subjects germane thereto, or of matters in furtherance of or necessary to accomplish the general objects of the Bill, as mentioned in the title." *MEA-MFT*, ¶ 8 (citing *State v. McKinney*, 29 Mont. 375, 381-82, 74 P. 1095, 1096 (1904)) (emphasis added). Finally, it is important to note that the constitution expressly limits the remedy for failure at the second step to voiding "only so much of the act not so expressed" in the title, rather than voiding the entire law. Montana Const. art. V, § 11(3).

These two steps for review appropriately adhere to the text of the single-subject rule, and they recognize the Constitution's express separation of powers and command that "[t]he legislative power is vested in a legislature." Mont. Const. art III and art. V, § 1; *see MEA-MFT*, ¶ 8 ("This Court has long given 'liberal construction'

[4] In addition, by its express terms, the single-subject rule does not apply to "general appropriation bills" and "bills for the codification and general revision of the laws," neither of which is implicated here. Montana Const. art. V, § 11(3).

to [the single-subject] provision in granting deference to the Legislature to fix the title of its own acts, 'bearing in mind that the legislature is a coordinate branch of the government, and that its action, if fair, should be sustained.' The Court 'has no right to hold a title void because, in its opinion, a better one might have been used.'" (cleaned up; citation omitted)); *see also Forward Mont.*, ¶ 30 (When "legislative acts are at issue," courts "use caution so as not to interfere with the proper functioning of the legislative branch."); *Harper v. Greely*, 234 Mont. 259, 266, 763 P.2d 650, 654 (1988) (repeating the "five principles for the construction of the titles by Montana courts").

In addition, absent deception as to the subjects in a bill, the single-subject rule is met. In *Forward Montana*, this Court reiterated that the purposes of the single-subject rule are to ensure reasonable transparency for the public and legislators and prevent deception. It quoted an earlier case, stating the provision's purposes are:

> to restrict the legislature to the enactment of laws the subjects of which are made known to the lawmakers and to the public, to the end that anyone interested may follow intelligently the course of pending bills; to prevent the legislators and the people generally being misled by false or deceptive titles, and to guard against the fraud which might result from incorporating in the body of a bill provisions foreign to its general purpose and concerning which no information is given by the title.

Forward Mont., ¶ 26 (quoting *State ex rel. Foot v. Burr*, 73 Mont. 586, 588, 238 P. 585, 585 (1925)).

The facts of *Forward Montana* provide a clear, contrasting example to the instant case. In that case, the bill at issue initially related to campaign finance; it was later amended to cover political activities in university facilities and judicial recusal. *Id.* ¶ 27. Those subjects were not covered by the subject of campaign finance. *Id.*

B. The Legislature fixed an appropriate subject for HB 702 in its title.

Appellants do not contend that the subject of HB 702, expressed in its title, violates the Montana Constitution. That subject is "Prohibiting Discrimination Based on a Person's Vaccination Status or Possession of an Immunity Passport." 2021 Mont. Laws ch. 418. There is no argument that the title is so broad as to cover "two or more independent and incongruous subjects." *See Forward Mont.*, ¶ 26. In fact, Appellants concede that HB 702 survives the first step of the single-subject analysis when they argue at length that the title is actually "restrictive." *See* OB at 35-38; *see also infra* Part I(C)(2). Given that its title communicates a proper subject, HB 702 survives this step of the Court's review.

C. MCA § 49-2-312(1) relates to prohibiting discrimination based on vaccination status or an immunity passport because it prohibits taking adverse action or withholding benefits based on that status.

1. The district court correctly held that subsection (1) is covered by The Act's title.

Subsection (1) of § 49-2-312 "treats only, directly or indirectly, of the subjects mentioned in the title" of HB 702. *MEA-MFT*, ¶ 8. Subsection 1 prohibits a person

or governmental entity, an employer, or a public accommodation from engaging in any of a list of adverse actions against, or withholding a benefit from, a person "based on the person's vaccination status or whether the person has an immunity passport." MCA § 49-2-312(1)(a), (b), (c).

Taking an adverse action or withholding a benefit is conduct that clearly fits within the common understanding of the term "discrimination," which is the subject of HB 702. *See State Dep't of Revenue v. Alpine Aviation, Inc.*, 2016 MT 283, ¶ 12, 385 Mont. 282, 384 P.3d 1035 ("[S]tatutory interpretation begins with an examination of the plain language of the statute itself, . . . and dictionary definitions may be considered.").

For example, Black's Law Dictionary defines "discrimination" to include "[t]he effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class." *Discrimination*, Black's Law Dictionary (12th ed. 2024). It also defines it to include "[d]ifferential treatment." *Id.*

Common dictionaries have a similarly broad definition of discrimination. The Oxford Languages dictionary used by Google in its popular search engine defines "discrimination" as "the unjust or prejudicial treatment of different categories of people."[5] And the Cambridge dictionary defines discrimination as "treating a person

[5] Search the phrase discrimination meaning in https://www.google.com. The results can be accessed at https://tinyurl.com/2f97vund (last visited March 10, 2025).

or particular group of people differently, especially in a worse way from the way in which you treat other people."[6]

The provisions of subsection 1 thus track this definition of discrimination precisely. They focus on conferring or denying privileges and differential treatment. As the district court succinctly stated: "Subsection (1) does what the title declares it does." Ex. A at APP0008.

Finally, the purposes of the single-subject rule are met because legislators and the public would not be misled. *See Forward Mont.*, ¶ 26. A legislator or member of the public following legislative proceedings, who saw a bill title on prohibiting discrimination based on a person's vaccination status or possession of an immunity passport, would be on notice to inquire further about what the legislature was prohibiting, and would find that the legislature was prohibiting certain adverse actions or withholding of benefits.

2. Appellants' apply an incorrect standard that injects subjective review into the single-subject test.

In response to the straightforward analysis described above, Appellants propose a grab-bag approach that would transform judicial review of the single-subject rule from an objective review of a bill's "subject(s)" into an unpredictable, subjective review of the "significant effects" of a bill. That argument is foreclosed

[6] DISCRIMINATION, *Cambridge English Dictionary*, https://dictionary.cambridge.org/us/dictionary/english/discrimination.

by the plain language of the Montana Constitution and *MEA-MFT*, which Appellants fail to even acknowledge in their brief.[7]

First, Appellants repeatedly and incorrectly argue that the single-subject rule requires the title of a bill to "fairly inform[] the public of each bill's … significant effects." OB at 22-27, 31-32. None of the authorities cited by Appellants (at 22 n.9) supports any such freestanding requirement, but rather every case Appellants cited turned on failure to include a subject. *White v. State* held squarely that a subject—"pledg[ing] the credit of the State of Montana to secure … bonds"—was not expressed in the title. 233 Mont. 81, 92, 759 P.2d 971, 977-78 (1988). Similarly, *Sigety v. State Board of Health* held that "a 'dredge' and a 'sluice-washing plant' are distinct and different objects," and since sluice-washing plants were not included in the bill's title, that portion of the bill was void. 157 Mont. 48, 54, 482 P.2d 574, 578 (1971). Appellants argue that *Billings v. Smith* "characteriz[es] *Sigety*'s holding as arising from the 'effect' arising from 'the body of the act.'" OB at 32 (citing *Billings*, 158 Mont. 197, 205, 490 P.2d 221, 226 (1971)). That is wrong. The *Billings* Court's focus was on the fact that the law at issue in *Sigety* "added … other forms of mining than simple dredge mining." *Billings*, 158 Mont. at 205, 490 P.2d at 226. Again, another form of mining was an additional subject. Finally, in *State ex rel. Foot v.*

[7] Appellants' failure is striking because *MEA-MFT* was one of only two cases this Court cited on the single-subject rule in *Netzer I,* ¶ 13.

Burr, the issue was that the change in county lines would "completely swallow[] up" Petroleum County, but the subject of Petroleum County was not mentioned at all in the bill's title. 73 Mont. at 589, 238 P. at 585. In sum, each of these authorities cited by Appellants supports comparing a bill's subjects to the subject in the title, not engaging in a subjective inquiry into the effects of a bill.

Second, Appellants allege HB 702 contains a "hidden ban of all employer requirements for proof of vaccine and immunity status." OB at 25-26, 30-35. But they never explain how this alleged hidden ban involves a different subject. It does not, because "proof of vaccination" is not a different subject from "vaccination status or possession of an immunity passport," which are the express subjects in HB 702's title. One is simply a means of determining the other. Moreover, an employer is free to *ask* for vaccination status, *see* Ex. A at APP006, and it can adopt a policy that any employee that does not provide proof of vaccination is presumed not to be vaccinated. The employer could then apply whatever accommodations it is applying to unvaccinated employees to that employee as well. Those accommodations would be subject to the limitations and restrictions in MCA § 49-2-312. In sum, the ability to require or not require proof of vaccination under § 49-2-312 is simply a red herring and does not create a violation of the single-subject rule.

Finally, Appellants argue that HB 702's title is "restrictive," so the courts must strictly construe it. OB at 35-38. In their discussion, Appellants fail to cite *MEA-*

MFT, which makes clear that Montana courts "ha[ve] long given 'liberal construction' to [the single-subject] provision of the Constitution in granting deference to the Legislature to fix the title of its own acts." *MEA-MFT*, ¶ 8. Appellants also make no attempt to explain how their proposed test is consistent with the test outlined in *MEA-MFT*—which recognizes that the body of a bill may contain provisions related "directly or indirectly" to the subjects mentioned in the title *and* "other subjects germane thereto, or of matters in furtherance of or necessary to accomplish the general objects of the Bill, as mentioned in the title." *Id.* The *MEA-MFT* court also noted that "[t]he Legislature has discretion in determining what matters are 'in furtherance of or necessary to accomplish the general objects of [a] Bill.'" *Id.* ¶ 10.

Appellants' request for a restrictive construction of HB 702's title fails for another key reason: the text of HB 702's title is not restrictive. Instead, it applies to "discrimination based on a person's vaccination status or possession of an immunity passport." 2021 Mont. Laws ch. 418 (HB 702). As described above, *see supra* Part I(C)(1), the term discrimination has common meanings that are broad, not restrictive. And the term "based on" is also broad, not restrictive. *See, e.g., Clear Blue Specialty Ins. Co. v. TFS NY, Inc.,* 690 F. Supp. 3d 138, 144 (E.D.N.Y. 2023) ("Courts have uniformly held that 'based on,' 'arising out of[,]' 'involving,' and 'related to' are broad, 'clear and unmistakable' terms." (citations omitted)).

D. MCA § 49-2-312(4) relates to prohibiting discrimination based on vaccination status because it prevents disparate impacts for persons who object to "be[ing] required to receive a[] vaccine."

1. Subsection (4) is covered by HB 702's title.

Subsection (4) relates to the subject in HB 702's title because the legislature acted to prohibit "requir[ing]" a vaccine, and that prohibition directly or indirectly relates to the subject of prohibiting discrimination, is germane to that subject, or is in furtherance of the general objects of the bill. *See MEA-MFT*, ¶ 8. Any of those relationships is sufficient to meet the Montana Constitution's single-subject requirement. *Id.*

a. Prohibiting a "requirement" to obtain a vaccine "directly or indirectly relates to" the subject of prohibiting discrimination based on vaccination status.

The very nature of a "requirement" to obtain a vaccine is meaningless *unless* there is some sort of enforcement or consequences against the person. In other words, the Legislature concluded that a requirement or mandate by its very nature discriminates against those who have objections to the procedure. As noted above, the common meaning of discrimination includes conferring or denying privileges to a certain class, differential treatment, or unjust or prejudicial treatment of different categories of people. *See supra* Part I(C)(1). The district court thus erred when it stated that "Subsection (4) is about the optional receipt of a vaccine at two different stages" and "subsection (4) is about the requirement or non-requirement of receiving

a vaccine in two specific stages, not an employer's actions in response to vaccination status or possession of an immunity passport." Ex. A at APP0008.

The word "required" in subsection (4) must be given meaning, and that meaning is distinct from merely asking or recommending a person get a vaccine. "Required" necessarily includes some sort of consequence for non-compliance. In fact, appellants concede (OB at 25) the effect of the ban on requiring a vaccine would be to prevent them from "enforce[ing] a requirement of proof of vaccination for a vaccine falling within the purview of subsection 4."[8]

Once it is established that "be[ing] required to receive a[] vaccine" also involves suffering some consequence for non-compliance, the legislature's enactment of subsection 4 was an action to prevent disparate impacts of that consequence on those who object to the procedure. And prohibiting such discrimination has been recognized as a type of anti-discrimination legislation. *See, e.g.*, *Tex. Dep't of Hous. & Cmty. Affs.*, 576 U.S. at 545 ("The Court holds that disparate-impact claims are cognizable under the Fair Housing Act."). This shows that the subject of subsection 4, just like the subsection of the other provisions of

[8] If the Court disagrees with this, it can simply adopt a reasonable construction of the word "required" in subsection (4) that includes some sort of consequences for noncompliance. The Court can do this under the constitutional avoidance cannon. *See, e.g.,* S*olem v. Dep't of Revenue,* 2024 MT 217, ¶ 26, 418 Mont. 176, 557 P.3d 919 (We have long held that the courts should avoid constitutional issues whenever possible. … This is particularly true where the constitutionality of a legislative act is at issue.).

HB 702 directly or indirectly relates to the subject of prohibiting discrimination. *See also Students for Fair Admis., Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 206 (2023) ("Eliminating … discrimination means eliminating all of it.").

In sum, the legislature concluded that any consequence that a person suffers from a vaccine "require[ment]" relates to discrimination against persons who object to vaccines, and banning such a requirement was covered by the subject of prohibiting discrimination. Appellants' complaint regarding subsection 4 boils down to a policy disagreement with the legislature, not a valid claim that the bill contains provisions that do not relate to its subject.

b. Alternatively, this subsection is germane to HB 702's subject or is in furtherance of its general objects.

Even if the Court disagrees that prohibiting a requirement to obtain certain types of vaccines directly or indirectly relates to HB 702's subject of prohibiting discrimination, it should still uphold the bill on the alternative grounds that it is germane to that subject or in furtherance of the general objects of HB 702. *See MEA-MFT*, ¶ 8.

Subsection 4 meets both alternative requirements. "Germane" is defined as "relevant [or] pertinent." *Germane*, Black's Law Dictionary (12th ed. 2024). Here, a requirement to be vaccinated is relevant or pertinent to prohibiting discrimination based on vaccination status because any enforcement of such a requirement could

lead to disparate treatment. In addition, the legislature could rationally conclude that prohibiting requirements for certain types of vaccines furthered the purpose of prohibiting discrimination based on vaccine status. It is important to note that the *MEA-MFT* Court stated that the single-subject rule is met for "matters in furtherance of or necessary to accomplish the general objects of the Bill, as mentioned in the title." *MEA-MFT*, ¶ 8. The use of "in furtherance" is thus broader than "necessary," and requires deference to the legislature's judgment. And the legislature has authority to enact prophylactic legislation to further a purpose, as it has done in HB 702. *See, e.g.,* S*tate v. McCarthy,* 1999 MT 99, ¶ 24, 294 Mont. 270, 980 P.2d 629 ("Such a result clearly falls within the prophylactic radius of the statute…."); *see also Students for Fair Admis., Inc.*, 600 U.S. at 206 ("Eliminating … discrimination means eliminating all of it.").

Finally, Appellants cannot convincingly argue that a person would be misled by the title of HB 702. *See supra* Part I(C)(1). If a legislator or member of the public saw a title relating to prohibiting discrimination based on vaccine status, they would be on notice to look at the text of the bill and see how the bill went about prohibiting such discrimination. As noted, the term "based on" is "broad, clear and unmistakable." *Clear Blue Specialty Ins. Co.*, 690 F. Supp. 3d at 144.

While Appellants may vehemently disagreement with the legislature on matters of policy, they cannot argue that the Legislature included a <u>*subject*</u> in the

body of the bill that was not covered by its title or misled the public that it intended to enact provisions to prohibit discrimination based on vaccination status. That satisfies this Court's single-subject inquiry.

2. Appellants' contrary arguments as to subsection (4) fail.

Appellants cite (OB at 29) to *Sigety* and *Coolidge v. Meagher* to support their approach to the single-subject rule, but the bills at issue in those cases are distinguishable from HB 702. *Sigety* related to two different types of mining, even though its title only related to a single type of mining (dredge mining). *See supra* Part I(C)(2). Similarly, in *Coolidge* the title was limited to "officers," and the question is whether provisions in the bill related to "witnesses" were under its subject. *Coolidge v. Meagher*, 100 Mont. 172, 46 P.2d 684, 687 (1935). In contrast, the title of HB 702 relates to discrimination based on vaccine status—it is a broad subject that covers all types of vaccines. Appellants' argument would be stronger if the title of HB 702 were limited to discrimination on the basis of vaccine status as to approved vaccines, and then it contained provisions related to unapproved or emergency vaccines. But that is not how the legislature titled HB 702, and therefore Appellants' arguments are unavailing.

E. Appellants' request to void HB 702 in its entirety is contrary to Article V, § 11(3)'s plain text and HB 702's severability clause.

Even if this Court concludes that subsections (1) or (4) of MCA § 49-2-312 violate the single-subject rule, it must reject Appellants' argument that HB 702 is

void in its entirety for two independent reasons. OB at 23. First, the text of the single-subject rule makes clear that "[i]f any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void." Mont. Const. art. V, § 11(3). It therefore limits the remedy for the situation where a bill contains a proper subject but includes provisions in the body of the bill that are not clearly expressed in the subject to voiding "only so much of the act not so expressed." *Id.* As noted above, HB 702 had a proper subject and therefore this is the greatest remedy Appellants would be entitled to. *See supra* Part I(B).[9]

Second, HB 702 itself contains a severability clause making clear the legislature's own conclusion that provisions could properly be severed. *State v. Theeler*, 2016 MT 318, ¶ 12, 385 Mont. 471, 385 P.3d 551 ("The inclusion of a severability clause in a statute is an indication that the drafters desired a policy of judicial severability to apply to the enactment."). Section 5 provides: "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

[9] Appellants cite *State ex rel. Holliday v. O'Leary* for the proposition that an entire act is void, but that case is easily distinguishable because the title of the act related to "nonpartisan nominations," which were "already provided for in" law. 43 Mont. 157, 165, 115 P. 204, 206 (1911). The only actual change made by the bill in *O'Leary* "was not to provide for nonpartisan nominations, for which provision was already made, but to prohibit judicial nominations by partisan political organizations." *Id.* That is not the case with HB 702.

applications." 2021 Mont. Laws ch. 418. Therefore, if this Court concludes that subsections (1) or (4) violate the single subject rule, only so much of the act not so expressed in HB 702's title is void.

II. The district court properly dismissed Counts I-II.

A. Contrary to Appellants' sole argument, the district court did consider the merits of Counts I-II in its Supplemental Order, and this rectified any procedural defect.

Appellants' sole argument regarding their constitutional challenges to HB 702 in Counts I-II is that the district court refused entirely to consider the merits of these claims in violation of this Court's remand in *Netzer I*. OB at 38-40.[10] However, the district court's Supplemental Order proves this claim to be demonstrably false, as the Supplemental Order examined each of Appellants' numerous constitutional claims—rejecting some of the State's arguments, while accepting others—and ultimately held that HB 702 did not, as a matter of law, violate those various constitutional provisions. *See* Ex. B. The Supplemental Order's reasoned analysis is completely consistent with considering the State's Rule 12(b)(6) motion and Appellants' responses *on the merits*, and therefore the district court discharged its duty on remand to consider Appellants' claims.

[10] If Appellants' argument is that this Court in *Netzer I* held that Counts I-II stated claims upon which relief could be granted, that is simply incorrect. As Appellants expressly noted in their Rule 59 Motion, this Court "indicated that it was not addressing the merits—'We make no conclusions as to the ultimate merits of Netzer's claim[s]….'" Ex. I at APP0067 (quoting *Netzer I*, ¶ 17); *see also* OB at 39.

Persuasive federal case law supports the commonsense principle that any procedural error by the district court in its Order Granting Partial Dismissal, Ex. C at APP0015, was rectified when it ruled on the Rule 59(e) motion in the Supplemental Order, Ex. B. In *Luig*, North Bay challenged the "district court's dismissal of [its] counterclaim as improper." 817 F.3d at 905. The Fifth Circuit treated that "dismissal as a sua sponte grant of summary judgment for Luig." *Id.* And it noted that while it would normally review that action for harmless error, "because the district ruled on North Bay's 59(e) motion for reconsideration, which gave North Bay the opportunity to present all of its arguments and evidence in support of the contract counterclaim, the procedural defect of the district court's effective sua sponte grant of summary judgment was cured." *Id.* The Fifth Circuit concluded, "a district court can 'rectif[y] [this] initial procedural error' by ruling on a motion for reconsideration." *Id.*

Similarly, in *Barney v. IRS*, the Eighth Circuit held that, even though the district court initially granted a summary judgment motion "only one day after it was filed" and without allowing any opportunity to respond, "any defect was substantially cured." 618 F.2d 1268, 1271 n.8 (8th Cir. 1980). This is because "upon plaintiffs' motion for reconsideration, the district court permitted plaintiffs to respond to defendants' motion, reconsidered the decision in light of the additional

materials submitted, yet reached the same conclusion that summary judgment was warranted and reinstated the judgment." *Id.*

In *Czarnecki v. United States*, the district court noted that even if it initially failed to afford a non-moving party a reasonable opportunity to respond prior to granting summary judgment, "the initial procedural error is harmless if the party … is given the opportunity to present its evidence in a motion for reconsideration." No. C15-0421JLR, 2016 U.S. Dist. LEXIS 194082, at *3 (W.D. Wash. Oct. 17, 2016) (citing *O'Keefe v. Van Boening*, 82 F.3d 322, 324 (9th Cir. 1996); *Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 402 (5th Cir. 1998)).[11]

These federal cases are particularly persuasive because the procedural posture and relevant rules are similar. Here, the Montana district court initially granted a dismissal, and Appellants filed a Rule 59(e) motion, which the district court resolved on the merits. In addition, Appellants had previously filed a Cross-Motion for Summary Judgment "on all counts of the [FAC]," stating "[n]o material facts are in dispute, leaving only questions of law." Dkt. 28. This further confirms that the district court rectified any prior error by ruling on Appellants' Rule 59 motion and issuing a reasoned order on the merits of Counts I-II of the FAC.

Finally, it would make no sense to remand to the district court to conduct the very analysis that it undertook in the context of the Supplemental Order because this

[11] *Winters* was overruled in part on unrelated grounds.

Court already has the benefit of the district court's reasoning on whether Counts I-II state claims upon which relief can be granted. Yet Appellants have made no effort to dispute the district court's conclusions or reasoning as to those two counts in the Supplemental Order.

This Court should stop its analysis on this issue here. Appellants limited their Opening Brief to arguing that the district court did not consider the merits of their claims in Counts I-II at all and violated the mandate in *Netzer I*. OB at 38-40. But the district court did in the context of Rule 59(e), and this disposes of the sole issue Appellants raised. Moreover, under binding precedent, Appellants waived the argument that the district court erred in how it actually resolved their claims in the Supplemental Order because they presented *no argument whatsoever* regarding whether the Supplemental Order was correct or incorrect on Counts I-II. *Griffith v. Butte Sch. Dist. No. 1*, 2010 MT 246, ¶ 42, 358 Mont. 193, 244 P.3d 321 ("Parties must present a reasoned argument to advance their positions, supported by citations to appropriate authority. … It is not this Court's job to conduct legal research on [a party's] behalf, to guess as to [a party's] precise position, or to develop legal analysis that may lend support to that position") (citations and quotations omitted).

Nonetheless, the next subsection of this Brief walks through Counts I-II and why the district court's reasoning is correct. This further shows how Appellants simply refused to engage with the district court's reasoning in their Opening Brief

and instead misleadingly accused the district court of refusing to rule on their claims. (This Brief does not address Counts III-IV because Appellants expressly disclaimed "challenging the dismissal of those claims." OB at 22 n.8.)

B. The district court considered the merits of Appellants' Counts I-II in its Supplemental Order and properly granted dismissal.

1. Count I: Violation of Inalienable Rights

This Count contains several alleged constitutional violations, which the district court addressed in its Supplemental Order. The Court analyzed whether HB 702 infringed Appellants' right to pursue life's basic necessities, specifically to safely operate a business and pursue employment. Ex. B at APP0012. The Court concluded there was nothing in HB 702 that prevented Appellants from doing either of these things. *Id.* The Court also rejected the argument that HB 702 is somehow unconstitutional if it forces Netzer to face legal liability. It held that Appellants failed to demonstrate how this is the case, or how the law "requires employers and employees to unnecessarily jeopardize their health and the health of others." *Id.* at APP0013. The district court's conclusions are further supported by the State's briefing. Ex. L at APP0148-50. The State noted that this constitutional right is limited by the state's police power. *Id.* (citing *Wiser v. State*, 2006 MT 20, ¶ 24, 331 Mont. 28, 129 P.3d 133 ("[O]ne does not have the fundamental right to practice his or her profession free of state regulation promulgated to protect the public's welfare.")). Here, the legislature has determined that prohibiting discrimination

based on vaccine status is necessary to protect the public welfare, and that is an appropriate exercise of its police power. It could rationally make this determination based on the need to encourage employment of all individuals (those vaccinated and not). *Mtn. States Tel. & Tel. Co. v. Comm'r of Labor. & Indus.*, 187 Mont. 22, 31, 608 P.2d 1047, 1051-52 (1979) (discussing decision recognizing that Wisconsin law was "designed to prohibit discrimination in employment and is grounded on the state's police power"). Appellants' claim on this ground fails.

The district court also expressly analyzed whether HB 702 infringed Appellants' right to enjoy and defend one's life and liberties. Ex. B at APP0013. The district court concluded that the right "may be broader" than just responding to the unlawful use of force, but it nonetheless concluded that "[t]here is nothing in the statute preventing Donald L. Netzer from defending his life and liberty against deadly diseases in all lawful ways." *Id.* This is in part because "Donald L. Netzer can still implement measurers such as face coverings, social distancing, remote work policies, and setting hygiene requirements designed to reduce the risk of exposure to deadly diseases." *Id.* The State also addressed Appellants' argument in its briefing, Ex. L at APP0150, demonstrating that "the right to self-defense involves a reasonable response to an unlawful use of force." *Id.* (citing *State v. Courville*, 2002 MT 330, ¶ 29, 313 Mont. 218, 61 P.3d 749). If this Court reaches the issue, it should hold that the right is limited to responding to the use of force. Even if the Court

disagrees, it should affirm the district court's alternative holding that, as a matter of law, HB 702 does not infringe the right to defend one's life and liberties.

The Court also expressly analyzed whether HB 702 infringed Appellants' right to acquire, possess, and protect property. Ex. B at APP0013. Again, the district court concluded that "nothing in the statute prevents Donald L. Netzer from adopting and implementing health and safety measures to protect the health of employees, owners, and clients through face coverings, social distancing, remote work policies, and setting hygiene requirements designed to reduce the risk of exposure to deadly diseases." *Id.* at APP0013-14. It therefore concluded HB 702 is not preventing Appellants "from acquiring and possessing property and not denying them the right to adopt and implement lawful health and safety measures to protect it." *Id.* This is consistent with the State's Briefing, Ex. L at APP00151, which cited multiple cases of this Court holding that exercises of the police power do not encumber that right. *See, e.g., Freeman v. Bd. of Adjustment,* 97 Mont. 342, 355, 34 P.2d 534, 538 (1934); *Williams v. Bd. of Cnty. Comm'rs*, 2013 MT 243, ¶ 41, 371 Mont. 356, 308 P.3d 88. As discussed above, HB 702 is a legitimate exercise of the state's police powers.

Finally, the Court also expressly analyzed whether HB 702 infringed Appellants' right to seek health and safety. It noted that under this right "Plaintiff is still bound by lawful state regulation." *Id.* at APP0014 (citing *Mont. Cannabis Indus. Ass'n v. State*, 2012 MT 201, ¶ 22, 366 Mont. 224, 286 P.3d 1161). And it concluded

that "nothing in the language of [HB 702] prevents Donald L. Netzer from protecting the safety and health of its owners, employees, and clients through means other than discrimination based on vaccine status." Ex. B at APP0014. The State's arguments further bolster this conclusion. Ex. L at APP00152.

2. Count II: Violation of Duty to Maintain a Clean and Healthful Environment

The district court also addressed Count II in its Supplemental Order. Ex. B at 2, APP 00011. The district court assumed that "environment" includes Netzer's law office. *Id.* at APP0012 ("[T]he term 'environment' may apply to indoor environments.").[12] But the district court further concluded that there was nothing in HB 702 that "prevents Donald L. Netzer from enjoying a clean and healthful environment in his office. … The statute does not prevent employers from implementing health and safety regulations to ensure a clean and healthful environment for all employees, clients, and future clients regardless of vaccination or immunity status." *Id.*

[12] If this Court reaches the issue, it should conclude that "environment" refers to the natural environment, not office cleaning or infectious disease control. *See Mont. Env't Info. Ctr. v. Dep't of Env't Quality*, 1999 MT 248, ¶¶ 63-77, 296 Mont. 207, 988 P.2d 1236 (discussing the intentions of the 1972 Constitutional Convention, specifically, the intentions of the Natural Resources Committee, which drafted Article IX). Moreover, as this Court stated in *Park Cty. Envtl. Council v. Mont. Dep't of Envtl. Quality*, the environmental provisions apply to the "air, water, and soil of Montana." 2020 MT 303, ¶ 62, 402 Mont. 168, 477 P.3d 288, superseded by statute on other grounds.

III. If this Court remands, it should not reassign the case to a new judge

Appellants' request for this Court to take the extraordinary step of reassigning this case to a new judge is baseless, particularly given their complete lack of discussion of the Supplemental Order. *See supra* Part II. As multiple federal courts have noted, district courts commit no error—let alone reversable error that is so egregious as to require reassignment—when they rectify a prior procedural defect with a later ruling. *E.g., Luig*, 817 F.3d at 905; *Barney*, 618 F.2d at 1271 n.8. Appellants also never acknowledge in their request for reassignment that the district court ruled in their favor on one of their single-subject claims, *see supra* Part I(D)—further undercutting their request for reassignment.

Appellants first accuse the district court of violating this Court's remand instructions in *Netzer I*, OB at 42, but as noted in the previous section, the district court rectified any prior procedural error in the detailed Supplemental Order. *See supra* Part II. Appellants also point to an error regarding the title ruling that was reversed in *Netzer I* (OB at 43). But they fail to acknowledge that the district court subsequently ruled *in their favor* on one of the two title challenges—showing that the District Judge clearly does not have "substantial difficulty" in changing her mind following remand. *Coleman v. Risley*, 203 Mont. 237, 249–50, 663 P.2d 1154, 1161 (1983).

Second, appellants cite cases where this Court has reassigned a case or remanded for a hearing on reassignment. *Washington v. Mont. Mining Props.*, involved a situation where a member of the judge's family worked for a law firm appearing before him. 243 Mont. 509, 515, 795 P.2d 460, 464 (1990); *see also In re Marriage of Markegard*, 2006 MT 111, ¶ 26, 332 Mont. 187, 136 P.3d 532 ("*Washington* concerned … a judge's multiple interactions with the opposing party … which 'snowballed' to create an appearance of impropriety…."), *overruled on other grounds by In re Marriage of Funk*, 2012 MT 14, ¶ 26, 363 Mont. 352, 270 P.3d 39. *Draggin' Y Cattle Co. v. Addink* involved a judge failing to disclose information about a similar factual situation as was raised in the case that the judge was facing in his own personal life. 2016 MT 98, ¶¶ 25, 28, 383 Mont. 243, 371 P.3d 970. Finally, *State v. Smith* was a death penalty case and the issue was the judge's failure to consider mitigating evidence. 261 Mont. 419, 446, 863 P.2d 1000, 1017 (1993). None of these circumstances resemble Appellants' arguments of mere procedural error—which was subsequently rectified—in this case.

Appellants are also incorrect that reassignment would not create any waste or duplication. The district court has already issued a detailed order on the constitutional claims, Ex. B, and Findings of Fact and Conclusions of Law on a Preliminary Injunction Record, Ex. D. The District Judge is therefore familiar with the allegations in the case, facts that would likely be re-introduced if this case

proceeds past dismissal, and the applicable legal standards for the various constitutional provisions invoked in Counts I-II of the Complaint. Requiring a new judge to rehash all this material would clearly constitute duplication and waste. Appellants cite no case to the contrary. OB at 46.

CONCLUSION

For the reasons set forth above, the district court's judgment that MCA § 49-2-312(4) violates the single subject matter should be reversed. The remainder of the district court's judgment should be affirmed.

DATED this 17th day of March 2025.

Austin Knudsen
Montana Attorney General

/s/ Michael Russell
Michael Russell
Thane Johnson
Alwyn Lansing
Michael Noonan
Assistant Attorneys General
MONTANA DEPARTMENT OF JUSTICE
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

Attorneys for Defendants/
Appellees/Cross-Appellants

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 8,981 words, excluding certificate of service and certificate of compliance.

/s/ Michael Russell
Michael Russell

CERTIFICATE OF SERVICE

I, Michael D. Russell, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee and Cross to the following on 03-17-2025:

Alwyn T. Lansing (Govt Attorney)
215 N. Sanders St.
Helena MT 59620
Representing: Austin Miles Knudsen, State of Montana, Sarah Swanson, Laurie Esau
Service Method: eService

Thane P. Johnson (Govt Attorney)
215 N SANDERS ST
P.O. Box 201401
HELENA MT 59620-1401
Representing: Austin Miles Knudsen, State of Montana, Sarah Swanson, Laurie Esau
Service Method: eService

Michael Noonan (Govt Attorney)
215 N SANDERS ST
HELENA MT 59601-4522
Representing: Austin Miles Knudsen, State of Montana, Sarah Swanson, Laurie Esau
Service Method: eService

Jared R Wigginton (Attorney)
2065 Jupiter Hills Ln
Henderson NV 89012
Representing: Donald L. Netzer, Netzer, Krautter & Brown, P.C.
Service Method: eService

Joel G. Krautter (Attorney)
301 N. 27th St. #100
Billings MT 59101
Representing: Donald L. Netzer, Netzer, Krautter & Brown, P.C.
Service Method: eService

Electronically signed by Rochell Standish on behalf of Michael D. Russell
Dated: 03-17-2025