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IN THE SUPREME COURT OF THE STATE OF MONTANA
CAUSE NO: DA 24-0492

ROBERT SAYERS,
Plaintiff and Appellant,

vs.

CHOUTEAU COUNTY,
Defendant and Appellee.

APPELLANT'S BRIEF IN REPLY

On Appeal from the Montana Twelfth Judicial District Court,
Chouteau County, the Honorable Kaydee Snipes Ruiz, Presiding

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Introduction

This appeal presents a narrow but consequential legal issue of first impression in Montana: whether a certiorari action can be time-barred when the act being challenged is void ab initio for lack of jurisdiction. It cannot be. As reaffirmed in *GBSB Holding, LLC v. Flathead County*, 2025 MT 22, a board of county commissioners must substantially comply with statutorily mandated procedures to lawfully abandon a county road. Chouteau County's 1916 action did not come close.

Rather than address the jurisdictional defects that render its 1916 action void, Chouteau County seeks to shield that action from review by invoking a statute of limitations that does not apply and a deferential review standard that misstates the law. But the County's own record shows it never appointed viewers, gave notice of hearing, held a hearing, produced a viewers' report, adopted a resolution, or notified affected landowners — basic steps required even under the curative statute, even were that to apply, which it does not. These are not minor lapses; they are fatal jurisdictional omissions.

The District Court compounded these errors by sua sponte invoking a limitations bar that was never pled, contrary to the longstanding rule that void actions may be challenged at any time. See *State ex rel. Whiteside v. Dist. Ct*., 24 Mont. 539 (1900); *Heinle v. Fourth Judicial Dist. Ct*., 260 Mont. 489 (1993). The court further

misapplied its role under a writ of review by evaluating its own ruling rather than the Board's record, a misstep squarely rejected in *Williams v. Stillwater County*, 2021 MT 159, and *GBSB Holding, 2025 MT 22*.

This Court should reverse and remand with instructions to declare the 1916 abandonment of Lippard Road void for lack of jurisdiction.

1. The Statute of Limitations Does Not Bar Review of a Jurisdictionally Void Action

This is a case of first impression in Montana: whether a statute of limitations bars a certiorari action challenging a county road abandonment order alleged to be void ab initio for lack of jurisdiction. It does not. Chouteau County's 1916 abandonment action, which was not performed in substantial compliance with then-governing statutes, was without legal effect from the start. As a matter of law, "time does not confirm a void act." Mont. Code Ann. § 1-3-230.

Chouteau County's reliance on *Jones v. Montana Nineteenth Judicial District Court*, 2001 MT 276, is inapposite. Jones addressed time limits applicable to review of contempt orders — not to jurisdictionally void actions. *Id.* Indeed, Jones recognized that its holding did not apply to collateral attacks on void acts and explicitly overruled prior precedent only "to the extent" it treated all certiorari proceedings as subject to limitations without regard to jurisdiction. *Id.*, ¶¶ 21–22.

Nor does *State v. Rich*, 2022 MT 66, support the County's position. There, the Court reaffirmed that categorical time prescriptions — even when expressed in mandatory terms — do not implicate subject matter jurisdiction unless the legislature explicitly says so. Procedural deadlines are claim-processing rules, not jurisdictional bars. *Id.,* ¶¶ 14–16. So, too, in BNSF the Court held that statutory deadlines "do not 'withdraw,' 'circumscribe,' 'limit,' or 'affect' the District Court's subject matter jurisdiction." *BNSF Ry. Co. v. Cringle*, 2010 MT 290*,* ¶ 20.

Procedural time bars are affirmative defenses subject to forfeiture and waiver. See *Id.*, ¶ 18; M. R. Civ. P. 8(c). Yet Chouteau County failed to plead such an affirmative defense in its answer, and the District Court raised the issue sua sponte, without notice or briefing — conduct expressly disapproved in *Estabrook v. Baden*, 284 Mont. 419, 425–26 (1997).

More fundamentally, the premise of a limitations defense assumes there was something lawful to limit. But as this Court has long held, "[a] void judgment may be attacked at any time, in any court, either directly or collaterally." *State ex rel. Whiteside, 24 Mont. 539*; *Heinle, 260 Mont. 489*.

Because the County's action was void — not voidable — it was never valid, and never ripened into a judgment to which repose could attach. The Court should reject Chouteau County's statute of limitations defense accordingly.

2. This Court Reviews the County's Records and the Board's Action, Not the District Court's Judgment, on Writ of Review

On review of a writ under Title 27, Chapter 25, Mont. Code Ann., the Montana Supreme Court's task is not to affirm or reverse the district court's order. Rather, the Court must conduct its own direct review of the record that was before the inferior tribunal — here, the Board of County Commissioners — to determine whether the Board exceeded its jurisdiction or failed to act in regular pursuit of its authority. Secondly, the Court must also determine whether there is substantial evidence to support the Board's abandonment.

The Court reaffirmed the applicability of this two-pronged approach for both the Court and district courts in *Williams*, 2021 MT 159, ¶¶ 14–17 . There, the Court emphasized that the proper role of the reviewing court is to examine whether the Board's action was within its jurisdiction and supported by substantial evidence — not whether the district court thought so.

Contrary to the County's assertion, when reviewing a decision under a writ of review, the Court does not simply affirm or reject the judgment of the district court. This Court has jurisdiction to issue, hear, and determine remedial writs. Mont. Const. Art. VII §2(1); Mont. Rules App. Proc. 14(1)-(2). When warranted, and regardless of a district court's ruling, "[a] writ of review may be granted by… the

supreme court or the district court or any judge of those courts… ". Mont. Code Ann. §27-25-102.

For more than 100 years, this Court has reviewed the record of lower tribunals to determine jurisdictional compliance and whether the record contains substantial evidence. *State ex rel. Griffiths v. Mayor of Butte*, 57 Mont. 368, 374 (1920); see also *State ex rel. Wentworth v. Baker*, 101 Mont. 226, 229–30, (1935) (the Court engaged in a "careful and painstaking search of the record made before the [lower tribunal], consisting of 143 typewritten pages… ."); see also *GBSB Holding, 2025 MT 22*, ¶¶ 46-47 (the Court emphasized that the proper role of the reviewing court is to examine whether the Board's action was within jurisdiction and supported by evidence — not whether the district court thought so).

The Court's responsibility under a writ of review is therefore direct and independent — it must conduct its own "careful and painstaking" examination of the Board's record for evidentiary sufficiency and jurisdictional regularity. If the Board's decision is unsupported by the evidence, or if the Board failed to substantially comply with statutory procedures on abandonment, the Court must reverse, not because of an error by the district court, but because the Board's action was void as a matter of law.

A. Jurisdiction Requires Ongoing Substantial Compliance — Not a Single Procedural Trigger

Chouteau County argues that jurisdiction is a threshold issue, satisfied by nothing more than a legally sufficient petition to abandon, such that all subsequent actions by the Board necessarily occurred within the Board's jurisdiction. Answer Br., p. 4. Jurisdiction, however, must be "exercised with regularity". *Williams,* 2021 MT 159, ¶ 15 (citations omitted). Jurisdiction in this context is not like flipping a switch. It's like navigating a legally defined trail. The initial petition may get you onto the path, but if the Board ignores the legislature's trail markers, the Board loses the route. It may believe it has reached the destination (abandonment), but it has not followed the only route the law allows. In form, the abandonment may appear complete — but in law, it never arrived.

The term "regularity" in the phrase "[t]he writ is limited to keeping an inferior tribunal within the limits of its jurisdiction and ensuring that such jurisdiction is exercised with regularity" refers to the requirement that the inferior tribunal, board, or officer must follow all of the statutory procedures in order to exercise the authority conferred upon it by the legislature. *Id.*, ¶¶ 20-22 (holding that an act of abandonment is within jurisdiction only by complying with the legislature's statutorily prescribed requirements).

Chouteau County's theory that this Court's jurisdictional analysis is limited to a review of whether the petition to abandon was statutorily sufficient would effectively transform the statutory procedure into a hollow ritual: once a petition is filed, the Board could disregard all other steps and still claim it acted within its jurisdiction. But abandonment is not a formality, it is a deprivation of a public right, and it requires meaningful due process.

B. The Board's Failure to Substantially Comply with the Statute Means Jurisdiction Was Never Properly Exercised

Treating jurisdiction as a threshold matter is problematic not only because it divorces jurisdiction from the abandonment procedure, but also because it eliminates any meaningful standard for what constitutes lawful abandonment. Chouteau County does not merely downplay the need for compliance — it disputes that any identifiable level of compliance is even necessary. Answer Br. p. 26. According to the County, once a petition is filed, the Board is free to act — or not act — in any number of ways, without risking the validity of its actions. That view is inconsistent with the structure of Montana's abandonment statutes and with how this Court has reviewed Board actions under a writ of review.

The Montana Supreme Court has never held that jurisdiction to abandon is conferred permanently by the act of receiving a petition. To the contrary, the Court

has treated jurisdiction as contingent upon the Board's adherence to statutory procedure. In Williams, the Court emphasized that jurisdiction must be exercised "with regularity" — a phrase it applied by reviewing the Board's conduct from receipt of petition through final decision. *Williams*, 2021 MT 159 ¶¶ 15-16 (internal citations omitted). Had the Court believed that a petition alone secured jurisdiction, this Court's procedural analysis in Williams would have been irrelevant. See *Williams*, 2021 MT 159 ¶¶ 6-9, 20-22 (internal citations omitted).

That analysis was even more pointed in *GBSB Holding, 2025 MT 22*. There, the Court did not simply defer to the board's authority—it upheld the abandonment because the record created by the board enabled judicial confirmation that **each step** of the statutory process had been substantially satisfied. As the Court noted, "[t]he District Court carefully walked through each section of the statutory requirements and reasoned that while not perfect, the petition substantially complied with the requirements of § 7-14-2602, MCA." *GBSB Holding, 2025 MT 22,* ¶ 41. But for the Board's documentation of a petition, staff/viewer reports, notice, a hearing, formal findings, and a recorded decision, the Court could not have affirmed the action.

Abandonment is not a ministerial act; it is the divestiture of a public right. That power exists only so long as the Board follows the legal path the legislature has mandated, in the same way as regulatory agencies are bound by the limits of statutory

authority. If these procedures are ignored, or if the record contains no evidence that they occurred, Appellee cannot just imagine that evidence into being. The Board has not "regularly pursued its authority," and the action is void.

Here, the record only shows that the Board failed to appoint viewers to investigate the abandonment, failed to provide notice of the hearing (assuming arguendo that a hearing was held), failed to make a record of its decision in the minutes by instead re-affirming its prior adoption of the viewers' report that created Lippard Road, and failed to provide notice of an act of abandonment by certified mail. These failures collectively demonstrate a consistent lack of compliance rather than substantial compliance and thus mean that the Board did not "regularly pursue" its authority as required under Montana law. Without substantial compliance, there was no jurisdiction to abandon Lippard Road.

C. Substantial Compliance Is a Constitutional Mandate, Not a Technicality

In *Chennault v. Sager*, 187 Mont 455 (1980), the Court affirmed that a failure to comply with the statutory requirements — including securing the requisite number of signatures and providing adequate notice — invalidates the entire abandonment process. There, as here, a board of county commissioners purported to abandon a portion of a public road without satisfying the foundational and

mandatory statutory steps. The Court held the abandonment void ab initio and elevated the issue beyond procedural nicety — grounding it in constitutional principle and public trust. Article X, Section 11 of the Montana Constitution requires that public lands — including public rights-of-way — be held in trust for the people and disposed of only in strict accordance with law. Mont. Const. Art. X § 11. The Court in Chennault rejected an invitation to excuse noncompliance based on equitable estoppel or reliance on public officials' guidance, holding instead that: "Where public lands are disposed of and there has been insufficient compliance with laws providing for their disposition, the public interest must be protected." *Chennault v. Sager*, 187 Mont 455, 460-464.

This case is no different. Public roads are held in trust for all Montanans. The Board's authority to extinguish public rights is not a matter of pure discretion or convenience — it is a matter of law, and substantial compliance with that law is a condition precedent to jurisdiction to abandon.

3. The Board's Decision Is Unsupported by Substantial Evidence and Thus Is Legally Deficient

Even if the Board exercised jurisdiction with regularity, the Court's analysis does not end there. Under Mont. Code Ann. § 27-25-303, a reviewing court does not evaluate whether the inferior tribunal made the "right" decision, but whether its

decision is "unsupported by evidence, or the findings are contrary to all the substantial evidence, or the decision below has no evidence to support it." *GBSB Holding, 2025 MT 22*, ¶ 46 (internal citations omitted). Substantial evidence is such that reasonable minds may not differ. *State ex rel. Wentworth*, 101 Mont. 226 (1935). Here, reasonable minds differ, ergo there is no substantial evidence.

The district court came to its conclusion that the Board abandoned Lippard Road by supplanting a statutory conformance standard with a "slow and deliberate pace" standard and ignoring substantial evidence contrary to abandonment. See Order Following Writ of Rev., p. 14. A distinguishing feature of the Lippard Road abandonment, as compared to other abandonments effectuated by Chouteau County, and abandonment cases more generally, is the absence of an affirmative act decisively and conclusively manifesting the Board's clear intent to abandon Lippard Road. See *Soup Creek LLC v. Gibson*, 2019 MT 58, ¶¶ 27 & 32 (holding that the record must demonstrate both a clear intent to abandon and an act of relinquishment). The records indicate that the County knew how to clearly and decisively express the intent to abandon in its notices to the public:

> Notice is hereby given that the following described road in Chouteau County, Montana, is declared to be abandoned and erased from the records as a County Road from and after sixty (60) days from date hereof, to-wit: The Road known as Lidstone Ferry Road, described as: Beginning at Station 52 to Station 102 a point on the Luther Bain Road. …

> I, F.J. Clark, County Surveyor of Chouteau County, Montana, do hereby certify that I posted on April 30, 1934, three notices of the abandonment of Lidstone Ferry Road as ordered by the Board of County Commissioners... one at each terminus and one at the center of said road.
>
> See Notice and Certification of Posting at CC 00048

John S. Culbertson, one of the viewers appointed to review the petition to create Lippard Road, could clearly articulate his recommendation to abandon when necessary:

> And abandon that part of the Braithwaite's Saw Mill to Fort Benton Road from said point of beginning to its intersection with the east line of Sec. 16 T. 22 N. R. 8 E., and abandon that part of the Clearwaters Road from the N.W. corner of Sec. 27, T. 24 N. R. 8 E., south ¾ mile to this proposed new road.
>
> See Viewer's Report for County Road at CC00052.

In this case, the district court could not find a clear and unequivocal expression of the intent to abandon that manifested into an act of abandonment. By comparison, this Court recently affirmed an abandonment because the records of the board of county commissioners commanded no other conclusion:

> The petition's statements, the attorney report, the surveyor report, and testimony at the Board hearing all reveal substantial record evidence that the portion of Brady Way to be abandoned was not constructed or developed. The District Court did not err in concluding that—on these facts—the petition complied with the statutory requirements. Substantial evidence—including the petition, the Deputy County Attorney's report, the Deputy County Attorney's testimony, and a surveyor report—all established the evidence that the Board used to come to its decision. We affirm the District Court's denial of the writ of review and determination that substantial evidence supported the Board's decision.

GBSB Holding, 2025 MT 22, ¶ 55.

A similarly clear record was found in Williams:

> The record produced by the Board in response to the writ of review adequately documents the Board followed this procedure. The Board appointed viewers to investigate the petition and the viewers submitted their report to the Board. The record shows the Board received historical records, written comments, and public testimony regarding the road. It held multiple public meetings and hearings, to, as the Board explained, "further educate themselves on this road issue" and "review all information received." The Board made its decision to abandon the road on the minutes of its March 13, 2018 regular meeting and sent notice of the decision through certified mail. The Board adequately documented its decision as required under the statutes governing county road abandonment.
>
> *Williams*, 2021 MT 159, ¶ 22.

The record must furnish a legal and substantial basis for the Board's determination. *GBSB Holding, 2025 MT 22*, ¶ 52. If the record is neither thorough nor clear as to abandonment it should not be tortured into compliance by way of speculation and conjecture. The record was clear, for example, in the January of 1916 minutes where the Board explicitly rejected the notion that "Lippard Road in Twp. 26 N., Rng. 10 E." was ever abandoned and then reaffirmed Lippard Road is a county road via the "Montana Codes of 1895 and by virtue … of Sec. 2600"[1]. See

[1] Often referred to as a "curative statute", this Court has held that a country road can be deemed a public highway under § 2600, The Codes and Statutes of Montana (1895), if it had been used by the public continuously and uninterruptedly for more than five years prior to July 1, 1895. The court emphasized that § 2600 declared public highways to include those established by public authorities, recognized and used by the public, or made such by prescription or adverse use at the time of enactment. See generally *Soup Creek LLC*, 2019 MT 58.

CC 00037-38. The record was clear that a hearing was never held on abandonment because there are no minutes, road records, or any other indication of an abandonment hearing. Nonetheless, from the absence of evidence, in spite of clear evidence, and through the application of a novel "slow and deliberate pace" standard offered by the County, the district court concluded an affirmative act decisively and conclusively manifesting a clear intent to abandon Lippard Road.

Sayers is not asking the Court to re-weigh the evidence. The district court's evidentiary determinations were arbitrary in that reasonable minds cannot ignore the plain language of the minutes and affidavits, nor can reasonable minds conjure an abandonment hearing from the record where there is no evidence that a hearing ever occurred.

4. The Curative Statute Cannot Save a Proceeding That Was Jurisdictionally Void

Chouteau County's attempt to invoke the curative statute to validate its abandonment of Lippard Road fails for a fundamental reason: the County never complied with the jurisdictional requirements in effect at the time. On August 4, 1915, the Board received a petition to abandon Lippard Road. See Appellant's Br. at 6; Appellee's Br. at 4. That petition was governed by § 1341 of the Revised Codes of Montana (1907), as amended by Chapter 72 of the 1913 Session Laws and

published in the 1915 Supplement, which became effective on March 10, 1915. See 1913 Mont. Laws, Ch. 72, § 1, at 139. The statute provided in pertinent part: "No order to abandon any highway shall be valid unless preceded by due notice and hearing as provided in this act." Rev. Code Mont. § 1341 (1915 Supp.).

This was not aspirational — it was a jurisdictional command. In *Bailey v. Ravalli County*, 201 Mont. 138, 145, 653 P.2d 139, 143 (1982), the Montana Supreme Court interpreted this exact language and concluded that no notice and hearing were required in 1944 because "those provisions… were eliminated by subsequent amendments." But the Court made clear that where those provisions remained operative, compliance was required.

The Court in Bailey was not rewriting the statute; it was harmonizing § 1614 of the 1935 codes with its legislative history. *Id.* The Court emphasized that due notice and hearing were mandatory under the 1913 General Highway Law, but no longer required only because they had been repealed before 1944. Thus, Bailey reaffirms that due notice and a hearing were still jurisdictionally required in 1915 — a point fatal to Chouteau County's argument. *Id*. (holding that procedural provisions, once repealed, no longer governed; but implicitly confirming their effect during the period they were in force).

Although a hearing was scheduled for October 5, 1915, the record reflects only that "action [was] deferred" the next day. See Appellant's Br. at 6–7. No minutes of a hearing exist. No record of viewer appointments exists. No record of a report exists. No record of the adoption of a formal resolution exists. These are not technical defects. The silence of the record is indicative only of a wholesale failure of substantial compliance with statutory requirements.

This Court has consistently held that boards of county commissioners must act within their statutorily delegated authority. See *Chennault*, 187 Mont. 455, 457, 610 P.2d 173, 174 (1980); *McCauley v. Thompson-Nistler*, 2000 MT 215, ¶ 23. The procedural requirements for abandonment are not mere formalities; they are conditions precedent to jurisdiction. Receiving a petition is not enough. The statute demands that the County substantially comply with all the procedural steps — appointment of viewers, notice to the public and affected landowners, a hearing, and a formal act of abandonment.

The County's reliance on § 1380 — the curative statute — is misplaced. First, § 1380 pertains to defects in proceedings under Chapter IV of the General Highway Law. But § 1341, the provision that mandates "due notice and hearing," appears in Chapter I. See Rev. Code Mont. §§ 1341, 1380 (1915 Supp.). A jurisdictional failure under § 1341 cannot be "cured" by a statute that applies to a different chapter.

Second, curative statutes cannot validate proceedings wholly lacking jurisdiction. See *Jefferson Cnty. v. McCauley Ranches*, 1999 MT 333, ¶ 33, 297 Mont. 392, 405; *Miller v. Murphy*, 119 Mont. 393, 409, 175 P.2d 182, 190 (1946); *Lamont v. Vinger*, 61 Mont. 530, 545, 202 P. 769, 775 (1921) ("A curative Act cannot go to the extent of supplying jurisdiction where there was none in the first instance because of lack of notice and an opportunity to be heard.").

Because § 1341 became effective on March 10, 1915, and the County received the abandonment petition on August 4, 1915, it could not lawfully abandon Lippard Road without complying with that statute. Its failure to appoint viewers, provide notice, hold a hearing, receive a viewers' report, or adopt a resolution renders the purported abandonment void. The curative statute cannot breathe life into a noncompliant and jurisdictionally void action.

5. Conclusion

The 1916 proceeding was not a lawful abandonment. It lacked the essential procedural prerequisites to confer jurisdiction. This Court's recent decision in GBSB Holding confirms that a Board's authority to abandon a road depends not just on receiving a petition, but on continuing to act in substantial compliance with governing law. Chouteau County failed at every turn, and the District Court's reliance on procedural shortcuts and unsupported inferences cannot cure the defect.

This Court should reverse and declare the abandonment void.

Dated this 11th day of April, 2025.

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Certificate of Compliance

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this primary 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 4,036, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

CERTIFICATE OF SERVICE

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