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**MONTANA FOURTH JUDICIAL DISTRICT COURT,  
MISSOULA COUNTY**

CASEY PERKINS, an individual;  
SPENCER MCDONALD, an  
individual; KASANDRA  
REDDINGTON, an individual; JANE  
DOE, an individual; and JOHN DOE,  
an individual; and MISSOULA  
COUNTY,

Plaintiffs,

vs.

STATE OF MONTANA;  
GREGORY GIANFORTE, in his  
official capacity as Governor of  
the State of Montana; and AUSTIN  
KNUDSEN, in his official capacity  
as Attorney General of the State of  
Montana,

Defendants,

DV-32-2025-282

Hon. Shane Vannatta

**PLAINTIFFS' BRIEF IN  
SUPPORT OF MOTION TO  
STRIKE DEFENDANTS' AND  
INTERVENOR-DEFENDANT'S  
MOTION FOR  
DISQUALIFICATION FOR  
CAUSE**

<p>and</p> <p>KERRI SEEKINS-CROWE,</p> <p>Intervenor-Defendant.</p>	
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COME NOW, the Plaintiffs, by and through their counsel of record, and hereby file and serve their brief in support of their Motion to Strike Defendants' Motion for Disqualification for Cause.

### **INTRODUCTION**

Defendants' Motion to Disqualify the District Court Judge is a baseless attack on the judiciary, and Plaintiffs are confident it will be roundly rejected if the merits are ultimately reviewed by another arbiter. But the motion need not be resolved on the merits.

First, Defendants knowingly relinquished their opportunity at the outset of the case to substitute the District Court Judge without cause pursuant to § 3-1-804, MCA, thus waiving their right to seek disqualification at a later time based on information reasonably available to them when the case began. Second, given Defendants' dilatory conduct in filing their motion five months into the litigation and its resulting prejudice to Plaintiffs, the doctrine of laches applies to bar Defendants' requested relief.

## ARGUMENT

Under Montana law, “[a]cquiescence in [alleged] error takes away the right of objecting to it,” § 1-3-207, MCA, and “[t]he law helps the vigilant before those who sleep on their rights,” § 1-3-218, MCA. Although Defendants had the right to substitute the District Court Judge without cause at the start of this case, they elected not to assert that right and continued to litigate the case for months. Then, only after the District Court Judge had ruled against them on preliminary injunctive relief and the discovery period had begun, Defendants sought his disqualification for purported cause based on information that was publicly available before this case was even filed.

Defendants’ unreasonable delay in moving for disqualification triggers the doctrines of waiver and laches. Waiver is “the intentional or voluntary relinquishment of a known right or conduct which implies relinquishment of a known right.” *St. Peter & Warren, P.C. v. Purdom*, 2006 MT 172, ¶ 23, 333 Mont. 9, 140 P.3d 478. Similarly, “laches is an equitable remedy by which a court denies relief to a claimant who has unreasonably delayed or been negligent in asserting a claim.” *Smith v. Lindemulder*, 2022 MT 119, ¶ 21, 409 Mont. 69, 512 P.3d 260 (cleaned up). Both doctrines foreclose the relief Defendants seek.

Montana law gives any party the right to substitute a district court judge for any reason at the start of a case. § 3-1-804, MCA. Importantly, however, a party

must invoke that right “within 30 calendar days after the first summons is served or an adverse party has appeared.” *Id.* § 3-1-804(1)(a), MCA. This time limitation serves a crucial purpose: It conserves judicial economy by ensuring judges are substituted before the case and the judge’s familiarity with it have developed, and it permits litigation to proceed according to orderly schedules without interruption. No-cause substitution serves another purpose as well: It prevents gamesmanship and politicization of cases to the detriment of the orderly administration of justice.

Rather than avail themselves of the right to automatic substitution at the outset of the case, Defendants waited five months to move to disqualify the District Court Judge. Although the motion is ostensibly “for cause,” it is based entirely on events that occurred before the time for automatic substitution lapsed.<sup>1</sup> And Defendants knew or through reasonable diligence could have known about those events within that time. Indeed, most of the purported evidence on which Defendants rely—including social media activity and the District Court Judge’s service on an American Bar Association committee—is many years old and pre-dates his appointment to the bench. *See, e.g.,* Br. in Support of Defs.’ and Intervenor-Def.’s Mot. for Disqualification for Cause (“Defs.’ Mot.”) at 6, 13–14. Given that § 3-1-804, MCA, allows defendants to consider substitution of a judge

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<sup>1</sup> Defendants’ motion references the Court’s preliminary injunction order in this case, but that appealable ruling cannot be the basis of a disqualification motion. *See* § 3-1-805(1)(b), MCA (“An affidavit will be deemed not to have been made in good faith if it is based solely on rulings in the case which can be addressed in an appeal from the final judgment.”).

within 30 days of being served, Defendants could and should have found this information with reasonable diligence. And the District Court Judge’s actions from two *other* cases that Defendants cite all occurred before this case was filed. *See* Defs.’ Mot. at 7–9, 16–17. Defendants unquestionably knew about those actions because they were parties to those cases.

The motion should also be stricken because it is barred by the doctrine of laches. “Laches is appropriate where a party is actually or presumptively aware of his rights but fails to act.” *Carter v. Badrock Rural Fire Dist.*, 2021 MT 280, ¶ 21, 406 Mont. 174, 512 P.3d 241 (citation omitted). The elements of laches are: “(1) the party against whom the defense is asserted lacked diligence in asserting a claim; and (2) that lack of diligence resulted in prejudice to the party asserting the defense.” *Smith*, ¶ 21 (citation omitted). “Although elapsed time is relevant in considering laches’ elements, the principal consideration is the inequity of permitting a claim to be enforced.” *Id.*

As set forth above, Defendants lacked diligence in filing this motion. They admit that the purported evidence for the motion existed and was publicly available before this case was even filed. *See* Defs.’ Mot. at 20 (asserting that, in light of the alleged facts, the Judge “should have recused himself from” even earlier cases). Yet they waited more than five months—and only after the Judge had granted a preliminary injunction against them, they had filed an appeal, and the trial court

had entered a scheduling order—before seeking disqualification. *See Algee v. Hren*, 2016 MT 166, ¶ 9, 384 Mont. 93, 375 P.3d 386 (“One way by which a lack of diligence may be demonstrated is when a claimant contemporaneously believes another is violating his or her right, yet the claimant allows the alleged unlawful act to finalize before objecting to such action.”).

Moreover, Defendants’ delay prejudices Plaintiffs. Disqualification for cause under § 3-1-805, MCA, is ordinarily a more time-consuming process than automatic substitution under § 3-1-804, MCA. The disqualification motion is first referred to the Supreme Court and then generally assigned to a different district court judge, who must assess the merits of the motion and “hear the matter.” § 3-1-805, MCA. Defendants have attempted to set this protracted process in motion in the middle of discovery and a case schedule that Defendants themselves requested move expeditiously to trial. *See* Scheduling Order, Dkt. No. 40 (July 8, 2025). The late filing of the disqualification motion likewise harms the judiciary, which will, at minimum, have to invest time in resolving Defendants’ baseless motion. In short, Defendants’ motion is disruptive, dilatory, and wasteful of judicial resources.

## **CONCLUSION**

For these reasons, Defendants’ Motion for Disqualification for Cause should be stricken.

DATED: September 5, 2025.

Respectfully submitted,

/s/ Alex Rate

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## CERTIFICATE OF SERVICE

I, Alex Rate, hereby certify that I have served true and accurate copies of the foregoing document via the e-filing system to the following on September 5, 2025.

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Dated:  
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I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 09-05-2025:

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