



To: Members of the Senate Select Committee on Judicial Oversight and Reform  
From: Julie Johnson, Staff Attorney  
Re: 2021 and 2023 Legislation Litigation in Lewis and Clark County  
Date: July 12, 2024

### **2021 Legislation Litigation in Lewis and Clark County**

Description of Bill SB 319, Hertz, Campaign Finance laws

Description of Case (DV 21-611) *Forward Montana*, Plaintiffs allege that amendments made in Free Conference Committee violated the single subject of title provision in the Montana Constitution, Article V, Section 11(6).

Judge Mike Menahan

Substitution Yes, initially assigned to Judge McMahon. State filed a motion to substitute, and case was assigned to Judge Seeley. The State filed a second motion to substitute and Judge Menahan assumed jurisdiction.

Summary of Outcome The court permanently enjoined enforcement of Sections 21 and 22 as violative of Article V, Sections 11(1) and (3), of the Montana Constitution, but denied plaintiffs attorney fees.

Appealed to Supreme Court Yes. (2024 MT 75)

Status of Legal Process Supreme Court reversed the District Court on its denial of attorney fee and remanded it to determine appropriate attorney fees.

Plaintiffs Forward Montana, Montana Association of Criminal Defense Lawyers and 8 individuals.

Plaintiffs' Law Firm Raph Graybill

2021

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#### Description of Bills

1. HB 224, Fielder, Allows trappers to snare wolves
2. HB 225, Fielder, Authorizes wolf trapping
3. SB 314, Brown, Night vision for wolf hunting
4. SB 267, Brown, Authorize reimbursement for wolf hunting

Description of Case (DV 22-896) Plaintiffs want protections for grey wolves and to enjoy the 2021 legislation.

Judge Christopher Abbott

Substitution Yes, initially assigned to Judge McMahon then Judge Abbott assumed jurisdiction. Could not locate a motion to substitute.

Summary of Outcome Awaiting ruling on State's Motion to Dismiss

Appealed to Supreme Court No

Status of Legal Process Ongoing litigation

Plaintiffs Footloose Montana, Gallatin Wildlife Association, Project Coyote, and Wildearth Guardians

Plaintiffs' Law Firm Brian Gallik and Robert Farris-Olsen

2021

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Description of Bill HB 379, Vinton, Sex-based insurance rate-making authorized

Description of Case (DV 22-925) Plaintiffs allege that the bill constitutes state-sanctioned discrimination and violates both the equal protection and special legislation provisions of the Montana Constitution.

Judge Mike Menahan

Substitution No

Summary of Outcome ongoing proceedings in District Court

Appealed to Supreme Court No

Status of Legal Process Motion to Dismiss denied and State has filed its Answer to Amended Complaint

Plaintiffs American Association of University Women, Montana Chapter, and three individuals

Plaintiffs' Law Firm Rylee Sommers-Flanagan

2021

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Description of Bill HB 701, Hopkins, Recreational Marijuana

Description of Case (DV 23-498) Plaintiff requests a preliminary injunction

Judge Christopher Abbott

Substitution No

Summary of Outcome State's motion to dismiss pending

Appealed to Supreme Court No

Status of Legal Process ongoing District Court proceedings

Plaintiff Jerry Reed

Plaintiffs' Law Firm Brian Miller

2021

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Description of Bill SB 199, Hertz, Food Freedom

Description of Case (DV 23-766) Plaintiff alleges that SB 199 (2021) and SB 202 (2023)000 prohibit local health boards from taking precautions to safeguard consumers "from very preventable sources of a future botulinum toxin."

Judge Christopher Abbott

Substitution No

Summary of Outcome Complaint filed, service of process in dispute

Appealed to Supreme Court No

Status of Legal Process ongoing proceedings in District Court

Plaintiffs Jeff Hazen

Plaintiffs' Law Firm *pro se*

2021

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Description of Bill HB 407, Noland, banning local governments from restricting single-use plastics

Description of Case (DV-23-754) Plaintiff alleges that the law is facially unconstitutional based on Art. III, sec. 4 (citizen initiatives) and Art. 11, sec. 8 (citizen initiatives and local governments)

Judge Mike McMahon

Substitution No.

Summary of Outcome Summary judgment in favor of Plaintiffs. State has appealed. Opening brief with Supreme Court to be filed.

Appealed to Supreme Court Yes (DA 24-324)

Status of Legal Process Beginning stages at the Montana Supreme Court

Plaintiffs Cottonwood Environmental Law Center and nine individuals

Plaintiffs' Law Firm John Meyer

2021

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Description of Bill SB 99, Smith, K-12 Sex Education parameters

Description of Case (DV 24-230) Plaintiffs request injunction of legislation.

Judge Christopher Abbott

Substitution No.

Summary of Outcome no rulings, pending in District Court

Appealed to Supreme Court No

Status of Legal Process beginning of case, no rulings, recent scheduling order.

Plaintiffs Montana Association of School Psychologists, Montana School Counselors Association, Empower Montana, and four individuals.

Plaintiffs' Law Firm Alex Rate

2021

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Description of Bill A.P. v. Usher

Description of Case (DV 2021-124) Plaintiff alleged a quorum existed and meeting violated right to know.

Judge Mike Menahan

Substitution No.

Summary of Outcome District Court granted Rep. Usher's motion to dismiss (holding no quorum existed) and Supreme Court affirmed the ruling.

Appealed to Supreme Court Yes, (2022 MT 24)

Status of Legal Process Resolved

Plaintiffs Associated Press

Plaintiffs' Law Firm Meloy Law Firm

### **2023 Legislation Litigation in Lewis and Clark County**

Description of Bill HB 562, Vinton, Charter school bill

Description of Case (DV 2023-425) Plaintiffs allege independent commission structure is likely unconstitutional

Judge Christopher Abbott

Substitution No

Summary of Outcome Temporary Injunction Issued

Appealed to Supreme Court No

Status of Legal Process District Court proceedings ongoing, amicus briefs filings at District Court level

Plaintiffs Montana Quality Education Coalition, Montana League of Women's Voters, and 8 individuals

Plaintiffs' Law Firm Rylee Sommers-Flanagan

2023

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Description of Bill SB 93, Cuffe, Requirements for ballot initiatives

Description of Case (DV 2023-388) Plaintiffs allege fee and AG review violate Constitution.

Judge Mike Menahan

Substitution Yes, initially with Judge Seeley, State moved to substitute.

Summary of Outcome Partial summary judgment granted, ruling increased fee of \$3,700 and AG review unconstitutional

Appealed to Supreme Court No

Status of Legal Process Plaintiffs' Motion for Summary Judgment Pending, fully briefed.

Plaintiffs 10 individuals, including some ConCon delegates

Plaintiffs' Law Firm John Meyer

2023

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Description of Bills

1. HB 721, M. Regier, Dismemberment Abortion Prohibition Act
2. HB 575, Sheldon-Galloway, prohibits abortion of unborn children after 24 weeks, viability presumed at 24 weeks
3. HB 544, Gillette, Medicaid funding for abortions only where mother's life/rape/incest or medically necessary
4. HB 862, Hopkins, prohibits state money from being used except in certain cases

Description of Case (DV-2023-231) Plaintiffs challenge constitutionality of abortion legislation

Judge Mike Menahan

Substitution Yes, initially assigned to Judge Abbott, then Judge McMahon assumed jurisdiction, Plaintiffs filed a motion to substitute, and case assigned to Judge Seeley. State moved to substitute Judge Seeley and Judge Menahan assumed jurisdiction.

Summary of Outcome Temporary Injunction issued

Appealed to Supreme Court Yes (DA-23-0288)

Status of Legal Process Appeal of TRO pending with Montana Supreme Court (fully briefed) while District Court proceedings continue.

Plaintiffs Planned Parenthood and a medical doctor

Plaintiffs' Law Firm Raph Graybill

2023

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Description of Bill (SB 442), Lang, county roads

Description of Case (DV 2023-411) Plaintiffs challenging Governor's veto without Legislative ability to conduct override polling

Judge Mike Menahan

Substitution Yes. Consolidation of cases. One filed with Judge Menahan, a similar case filed with Judge Seeley. Parties agreed to consolidate cases with Menahan presiding.

Summary of Outcome District Court ruled Legislature must be polled. Veto override polling conducted and override failed.

Appealed to Supreme Court No

Status of Legal Process Resolved, motion for attorneys' fees denied by District Court.

Plaintiffs MACo, Montana Wildlife Federation, Wild Montana

Plaintiffs' Law Firm Mike Black, Rylee Sommers-Flanagan

2023

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Description of Bills

1. HB 971, Kassmier, prohibits evaluation of greenhouse gases in MEPA
2. SB 557, Noland, Additional requirements for those suing under MEPA

Description of Case (DV-2020-307) Plaintiffs alleges this revision to MEPA is unconstitutional and violates the right to a clean and healthy environment.

Judge Judge Seeley

Substitution No

Summary of Outcome District Court ruled in favor of Plaintiff declaring the legislation unconstitutional.

Appealed to Supreme Court Yes, (DA-23-0575)

Status of Legal Process Oral argument held before Montana Supreme Court on July 10, 2024.  
Opinion pending.

Plaintiffs 10 minors

Plaintiffs' Law Firm Western Environmental Law Center, Gregory Law Group, Our Children's Trust, McGarvey Law

2023

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Description of Bill HB 937, Sheldon-Galloway, Licensure of Abortion Clinics

Description of Case (DV-23-592) Plaintiffs allege legislation is unconstitutional.

Judge Christopher Abbott

Substitution No

Summary of Outcome TRO issued (DPHHS has not proposed any rules under the legislation)

Appealed to Supreme Court No



Status of Legal Process TRO extended, nothing filed since October of 2023.

Plaintiffs Blue Mountain Clinic, All Families Healthcare, and one individual

Plaintiffs' Law Firm Alex Rate

2023

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Description of Bill SB 109, K. Regier, Redistrict PSC

Description of Case (DV-23-702) Plaintiffs alleges the redistricting set forth in the legislation is unconstitutional.

Judge Christopher Abbott

Substitution No

Summary of Outcome preliminary injunction denied, law currently in effect

Appealed to Supreme Court No

Status of Legal Process Ongoing proceedings in district court (discovery)

Plaintiffs Montana Conservation Voters and eight individuals

Plaintiffs' Law Firm Constance Van Kley

2023

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Description of Bill HB 903, Hopkins, revision of marijuana laws and licensing fees

Description of Case (DV-23-570) Plaintiffs allege fees unconstitutional.

Judge Mike Menahan

Substitution No

Summary of Outcome Consent judgment entered into by parties enjoining cumulative dispensary fees.

Appealed to Supreme Court No

Status of Legal Process Resolved

Plaintiffs Granite Peak Holdings, Marmint, LLC, and TSB Montana, LLC

Plaintiffs' Law Firm Angela LeDuc

2023

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Description of Bill SB 202, Hertz, Food Freedom

Description of Case (DV 23-766) Plaintiff alleges that SB 199 (2021) and SB 202 (2023) prohibit local health boards from taking precautions “to safeguard consumers from preventable sources of a future botulinum toxin.”

Judge Christopher Abbott

Substitution No.

Summary of Outcome Complaint filed, service of process in dispute

Appealed to Supreme Court No

Status of Legal Process ongoing

Plaintiff Jeff Hazen

Plaintiffs' Law Firm *pro se*

2023

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Description of Bill HB 393, Vinton, Education Savings Accounts

Description of Case (DV 24-44) Plaintiffs argue that accounts are unconstitutional.

Judge Mike Menahan

Substitution Yes, initially assigned to Judge McMahon, Plaintiffs filed a motion for substitution and Judge Menahan assumed jurisdiction.

Summary of Outcome Ongoing case, hearing for preliminary injunction held on June 27, 2024, and order issued denying injunction on July 10, 2024

Appealed to Supreme Court No.

Status of Legal Process Plaintiffs' request for a preliminary injunction denied July 10, 2024.

Plaintiffs Disability Rights Montana, Montana Quality Education Coalition

Plaintiffs' Law Firm Rylee Sommers-Flanagan

2023

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Description of Litigation Zephyr v. Regier

Description of Case (DV 23-300) Challenging Speaker's ruling and seeking TRO

Judge Mike Menahan

Substitution Yes, first assigned to Judge McMahon, Plaintiffs filed a motion to substitute.

Case assigned to Judge Seeley and State filed a motion to substitute and Judge Menahan assumed jurisdiction.

Summary of Outcome TRO denied

Appealed to Supreme Court No.

Status of Legal Process Resolved.

Plaintiffs Five individuals, including Rep. Zephyr

Plaintiffs' Law Firm Justin Staples and John Amsden