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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

<p>SUSAN EDWARDS, et al.,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>THE STATE OF MONTANA, et al.,</p> <p style="text-align: right;">Defendants.</p>	<p style="text-align: center;">Dept. No. 1 Cause No. DV 23-1026 Hon. Leslie Halligan</p> <p style="text-align: center;"><b>BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR STAY</b></p>
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## INTRODUCTION

**ISSUE: WHETHER THIS COURT SHOULD GRANT A STAY PENDING THE APPEAL OF *REAGOR V. STATE*.**

Defendants urge this Court to stay this case pending Defendants’ appeal to the Montana Supreme Court. A stay is needed given the recent decision in *Reagor v. State*, which deemed that Senate Bill 458 (“SB 458”) is facially unconstitutional. This Court should exercise its inherent authority to stay the proceedings to allow the State to appeal the *Reagor* ruling. Given that SB 458 has been declared facially unconstitutional, there is nothing more for this Court to decide. Plaintiffs’ claims have been rendered moot unless and until the Montana Supreme Court overrules the *Reagor* decision. A stay is appropriate in this case.

## ARGUMENT

The district courts possess the inherent power to stay trial court proceedings. Both the U.S. Supreme Court and the Montana Supreme Court have held that “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); accord *Henry v. District Ct.*, 198 Mont. 8, 13, 645 P.2d 1350, 1352 (1982). Courts determine whether to grant the stay based upon an exercise of judgment, which includes weighing competing interests and maintaining balance. See *Landis*, 299 U.S. at 254–255.

## I. THIS CASE IS NO LONGER JUSTICIABLE.

The Montana Supreme Court has ruled that an unconstitutional statute is void and a void thing is nothing. *Hamilton v. Board of County Comm'rs*, 54 Mont. 301, 309 (1917). A void statute is not a law and imposes no duty, confers no authority, affords no protection, and no one is bound to observe it. *Id.* Here, under the current ruling of the District Court in *Reagor*, SB 458 is facially unconstitutional and as such is void. In short, the instant case has been rendered not justiciable by the *Reagor* ruling.

Once a statute has been deemed unconstitutional, there must be a determination whether a justiciable controversy remains. See *Advocates for Educ., Inv. v. Mont. Dept. of Natl. Res. & Cons.*, 322 Mont. 429 (2004). The question of justiciability is a threshold issue addressed by the courts, and without it a court cannot adjudicate a dispute. *Broad Reach Power, LLC v. Mont. Dept. of Pub. Serv. Regul., Pub. Serv. Comm'n*, 2002 MT 227, 304 (2022). The test for determining whether there is a justiciable controversy consists of three factors: (1) the parties must have existing genuine rights or interests distinguished from theoretical rights, (2) the controversy must be based upon a judgment that the court can effectively operate separate from an argument invoking a purely political conclusion, and (3) there must be a controversy that the judicial determination will have an effect of a final judgment in law upon the rights of one or more of the parties in interest. *Id.* at

432. Here, the case fails the three-factor test. Because SB 458 has been declared unconstitutional in its entirety and in every application, the parties' only interest would be theoretical and political at best. No real substantial controversy exists that would enable relief.

In addition, there is no justiciable controversy for the Court to effectively operate on since judicial determination would not influence the final judgment in law on the rights of the parties. Without a stay, the Court would effectively be ruling on a case without any real influence over the judgment of law; in other words, the Court would be rendering an impermissible advisory opinion. In addition, the Montana Supreme Court has previously "refused to entertain a declaratory judgment action on the ground that no controversy is pending which the judgment would affect." *Hardy v. Krutzfeldt*, 206 Mont. 521, 524 (1983).

### **CONCLUSION**

Due to the recent district court decision in *Reagor v. State* and the lack of justiciable controversy, a stay is appropriate in this case. Not only does a stay promote judicial economy, but the Court has been deprived of its jurisdiction to consider questions of constitutionality of SB 458 by the *Reagor* Court. For the reasons stated in this Brief, Defendants urge this Court to take immediate action and stay this case pending appeal of the *Reagor* action to the Montana Supreme Court.

DATED this 23rd day July, 2024.

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## CERTIFICATE OF SERVICE

I, Thane P. Johnson, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 07-23-2024:

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Dated: 07-23-2024