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IN THE SUPREME COURT OF THE STATE OF MONTANA  
PR 23-0496

IN THE MATTER OF AUSTIN MILES )  
KNUDSEN, )  
An Attorney at Law, )  
Respondent. )

ODC File No. 21-094

**RESPONDENT'S SUPPLEMENTAL  
BRIEF IN RESPONSE TO THE  
COURT'S MARCH 12, 2025  
ORDER**

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## ARGUMENT

Suspending the Attorney General from the practice of law for 90 days will not create a vacancy under MCA §2-16-501(7).

I. Article VI, §6(2) states that the office of Attorney General may become “vacant” by “death, resignation, or disability as determined by law.” And MCA §2-16-501(7) states that an office becomes vacant if the incumbent “cease[s] to discharge the duty of the incumbent’s office for a period of 3 consecutive months.” A 90-day suspension would not create a vacancy under §2-16-501(7).

*First*, the Attorney General would continue to discharge “the duty” of his office. His duties appear in MCA §2-15-501. Many of them—maintaining “a register of cases,” “direct[ing] county attorneys,” serving on “the board of examiners and the state board of land commissioners”—do not require an active law license. And those that do can be discharged by authorized attorneys under his supervision who appear in court on his behalf—just as the U.S. Attorney General and 23 other state attorneys general can adequately discharge their legal duties without being licensed attorneys. 28 U.S.C. §503; NAAG, *Attorney General Office Characteristics*, <https://perma.cc/ZG9N-FGHZ> [perma.cc]. Since the

Attorney General will continue to directly or indirectly discharge his statutory duties, any temporary suspension from practice will not create a vacancy.

*Second*, §2-16-501(7) does not apply to temporary vacancies. Interpreting a prior statute, this Court held that since the term “vacant” is modified first by “death” and “resignation”—both of which indicate “finality or permanency”—the vacancy provisions are intended to apply only when “the office shall become permanently vacant.” *Gullickson v. Mitchell*, 113 Mont. 359, 126 P.2d 1106, 1110 (1942). Thus, Article VI, §6 and §2-16-501(7) “both relate to conditions resulting in permanent vacancies, and not to situations in the nature of leave of absence, suspension, or relief from duty resulting in temporary vacancies.” *Id.*; see 43 Mont. Op. Atty. Gen. 93 (1989) (no vacancy under §2-16-501 since “no indication” that the absence “is anything other than temporary”).

*Third*, a suspension for “90 days” does not trigger §2-16-501(7). “3 consecutive months” must elapse before a permanent vacancy is declared. And MCA §1-1-301(3) provides that any statutory use of “month” means “a calendar month,” not just “a specific number of days.” *State v. Chesarek*, 1998 MT 15, ¶ 10, 287 Mont. 215, 953 P.2d 698. Any three

consecutive months between now and February 27, 2026, consists of at least 91 days. A 90-day suspension, therefore, will not meet §2-16-501(7)'s "3 consecutive months" requirement.

**II.** It is not responsive to argue that the Montana Constitution requires a candidate seeking the office of Attorney General to be "in good standing admitted to the practice of law in Montana" and to have "engaged in the active practice thereof for at least five years before election." Art. VI, §3(2). When interpreting this provision, "the intent of the framers ... is controlling." *Cross v. VanDyke*, 375 Mont. 535, 332 P.3d 215, 2014 MT 193 ¶10. Both text and convention debates reveal that the "good standing" provision was intended only as a qualification of election—not a requirement of continuing tenure in office.

*First*, when a provision lists a series of items or nouns, a "postpositive modifier normally applies to the whole series." Scalia & Garner, *Reading Law* 147 (2012). So the postpositive modifier "for at least five years before election" applies equally to "good standing," "admitted," and "active practice."

*Second*, the 1889 Constitution required only that candidates "be in good standing at the time of his election." 1889 Const. art. VII, §3. The

1972 convention transcripts reveal that the drafters intended to keep this same structure and add the five-year practice requirement. Mont. Const. Conv., Vol. IV at 893-99. The drafters meant this provision to “parallel” the provision for judges, which established eligibility requirements “prior to the date of appointment or election” to ensure that candidates had “experience in the actual practice in Montana” before assuming office. *Id.* at 899, 1119-20.

Thus, the Constitution’s drafters intended Article VI, §3 to establish only criteria for eligibility at time of election. Post-election events do not implicate Article VI, §3(2)’s “good standing” provision since that provision does not implicate his continued service in office.

**III.** Finally, the doctrine of constitutional avoidance counsels against finding that a 90-day suspension would create a vacancy in the office of Attorney General.

The Constitution establishes two distinct processes for removing constitutional officers. First, Article V, §13 provides that the Legislature may impeach public officers—including the Attorney General—and remove them from office or provide by law for cause removal. Second, Article VII, §11(3)(a) provides that this Court may remove from office

“any justice or judge.” Any other act by one branch that purports to remove a constitutional officer of another branch would exceed constitutional bounds and raise grave constitutional concerns.

This proceeding does not arise under Article V, §13. And the Attorney General is not a judge. Because no other constitutional or statutory provision grants this Court authority to remove the Attorney General from office, any action by this Court that resulted in removing the Attorney General from office would upend the delicate balance of powers between the branches.

“All political power is vested in and derived from the people.” Art. II, §1. And this Court recently reminded that while “[t]he Constitution ... determines minimum eligibility,” “the voters decide who is qualified to serve.” *Cross*, ¶31. The voters of Montana overwhelmingly reelected the Attorney General while this case was publicly pending. This Court should avoid constitutional conflict and respect the voters’ will by declining an invitation to exercise unwritten authority to remove constitutional officers from office.

## CONCLUSION

As previously briefed, the Commission's findings and conclusions should be vacated and this case dismissed. But the Commission's recommended discipline implicates several constitutional and statutory issues and raises multiple matters of first impression. Should this Court find it necessary to consider discipline, the Attorney General requests the chance to submit additional briefing on the issue of what discipline could be imposed consistent with the Montana Constitution.

Dated this 24th day of March 2025.

Respectfully submitted,

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## 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 Century Schoolbook 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 999 words, excluding the certificate of service and the certificate of compliance.

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## CERTIFICATE OF SERVICE

I, Christian Brian Corrigan, hereby certify that I have served true and accurate copies of the foregoing Brief - Supplemental to the following on 03-24-2025:

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