

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. OP 26-0292

AUDREY CROMWELL, in her official capacity as GALLATIN COUNTY
ATTORNEY,

Petitioner,

v.

AUSTIN KNUDSEN, in his official capacity as MONTANA ATTORNEY
GENERAL,

Respondent.

RESPONDENT'S SUMMARY RESPONSE TO PETITION

APPEARANCES:

AUSTIN KNUDSEN

Montana Attorney General

CHRISTIAN B. CORRIGAN

Solicitor General

BRENT MEAD

Deputy Solicitor General

MONTANA DEPARTMENT OF JUSTICE

PO Box 201401

Helena, MT 59620-1401

Phone: 406-444-2026

Fax: 406-444-3549

Christian.Corrigan@mt.gov

Brent.Mead2@mt.gov

Attorneys for Respondent

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INTRODUCTION

Since October 2025, Gallatin County Attorney Audrey Cromwell has advised Gallatin County offices and employees that they shouldn't share confidential criminal justice information (CCJI) with Immigration and Customs Enforcement (ICE). Cromwell's guidance misinterprets Montana law by imposing an atextual, use-based restriction on a criminal justice agency's access to CCJI. So the Attorney General exercised his supervisory authority to ensure ICE, a criminal justice agency whose functions help to keep Montanans safe, will receive the information it's entitled to under Montana law.

Cromwell now takes the extraordinary step of challenging the Attorney General's plenary supervisory authority. At bottom, her Petition does little more than disagree with the Attorney General's legal interpretation.

The Court should deny Cromwell's petition. This dispute is non-justiciable. The factors governing the Court's discretionary jurisdiction in this context weigh against Cromwell. And if the merits bear any weight

here, the Attorney General’s reading of Montana’s Criminal Justice Information Act is correct.¹

FACTUAL BACKGROUND

On October 2, 2025, Cromwell’s office advised two Gallatin County employees that ICE is not “a law enforcement agency entitled to receive [CCJI] ... without a court order.” Pet., Ex. 2 at 5 (J. Veil email).

When the Attorney General learned of Cromwell’s erroneous guidance, he sent Cromwell a letter on April 2, 2026. Pet., Ex. 2. He explained that Cromwell’s legal determination was wrong and instructed the County to “immediately bring its practices into compliance with Montana law and recognize ICE as a criminal justice agency entitled to appropriate access to CCJI, consistent with applicable statutes and regulations.” *Id.* at 3.²

Cromwell didn’t correct course. She doubled down. Cromwell argued in her April 6 response that because the ICE request underlying

¹ If the Court is inclined to take action on the Petition other than dismissal, the Attorney General respectfully requests full briefing and oral argument.

² Cromwell alleges the Attorney General stated in the April 2 Letter that “[i]t is well established that immigration enforcement is a civil function.” Pet. at 7. Not true. See Pet., Ex. 2.

her October guidance “involved ICE seeking [CCJI] for a civil administrative immigration purpose,” ICE wasn’t entitled to CCJI. Pet., Ex. 3 at 1. Cromwell thus erected an atextual, use-based restriction on a criminal justice agency’s access to CCJI. *Id.* at 1, 4. She also requested—for the first time—a formal opinion on the issue. *Id.* at 4.

In reply, the Attorney General explained that Montana law doesn’t distinguish between an agency’s civil and criminal use of CCJI. Pet., Ex. 4 at 1-3. If an entity is a criminal justice agency, it is entitled to CCJI. *Id.* The Attorney General also advised that he would invoke supervisory control if Cromwell didn’t update her guidance. *Id.* at 4.

Cromwell again refused to comply. She maintained that Montana law “does not authorize disclosure based solely on the identity of the requesting entity, it also requires examination of the purpose for which the information is sought.” Pet., Ex. 5 at 1. So the Attorney General exercised supervisory control and directed Cromwell’s office to share CCJI with ICE as Montana law requires and produce documents. Pet., Ex. 1. This extraordinary Petition followed. The Attorney General then further exercised supervisory authority by ordering Cromwell to dismiss this Petition. She refused.

ARGUMENT

The Court should deny Cromwell’s Petition for three reasons. First, the Petition presents a nonjusticiable dispute. At its core, this is a political question about the Attorney General’s exercise of his plenary supervisory authority over the duties of a county attorney. Cromwell presents a question she lacks standing to raise. And any decision on the merits would be an advisory opinion.

Second, none of the relevant favors weigh in favor of the Court exercising its discretionary jurisdiction here. The interpretive question isn’t purely legal. There’s no emergency. And if a justiciable dispute exists, a district court could resolve it.

Third, Cromwell is wrong on the merits. Montana law doesn’t require inquiring into the purpose of a criminal justice agency’s access to CCJI. ICE is a criminal justice agency and therefore must be given access to CCJI.

I. This dispute is nonjusticiable.

Courts resolve only “justiciable controversies.” *Plan Helena, Inc. v. Helena Reg’l Airport Auth.*, 2010 MT 26, ¶6, 355 Mont. 142, 226 P.3d 567. This justiciability principle means that courts can decide only issues that

are “definite and concrete, touching legal relations of parties having adverse legal interests.” *Id.* ¶9 (cleaned up).

“[J]usticiability is a mandatory prerequisite to the initial and continued exercise of [] jurisdiction.” *Larson v. State*, 2019 MT 28, ¶18, 394 Mont. 167, 434 P.3d 241. And it applies fully to declaratory judgment petitions. *See Marbut v. Sec’y of State*, 231 Mont. 131, 134, 752 P.2d 148, 149-50 (1988). Justiciability also “confines the courts to a role consistent with the separation of powers.” *Bullock v. Fox*, 2019 MT 50, ¶28, 395 Mont. 35, 435 P.3d 1187.

Cromwell’s Petition is nonjusticiable for three independent reasons: (1) the dispute is a political question, (2) Cromwell lacks standing to seek interpretive guidance from the Court, and (3) the Court cannot issue an advisory opinion.

A. Cromwell’s Petition presents a nonjusticiable political question.

The alleged dispute here is a nonjusticiable political question. Cromwell claims her Petition presents an issue that’s “solely one of law”—the proper interpretation of Montana law governing the dissemination of CCJI. Pet. at 11. Not so. This case is about whether Cromwell may challenge, and this Court may interfere with, the Attorney

General's plenary supervisory authority of county attorneys under M.C.A. § 2-15-501(5). It cannot because Cromwell's Petition presents a political question that the Montana Constitution mandates the Court avoid. *See State ex rel. Fletcher v. Dist. Ct. of 19th Jud. Dist.*, 260 Mont. 410, 418, 859 P.2d 992, 997 (1993) (citing Mont. Const. art. III, § 1).

The Legislature has granted the Attorney General authority "to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge." M.C.A. § 2-15-501(5). The Legislature specified that "[t]he supervisory powers granted to the attorney general by this subsection include the power to order and direct county attorneys in all matters pertaining to the duties of their office." *Id.* A county attorney cannot refuse to comply with an Attorney General's order instituting supervisory authority.

Entertaining this petition would chart a path for any county attorney to run to this Court to resolve any interpretive or policy disagreement she had with the Attorney General. A decision on the merits would nullify the Legislature's grant of comprehensive

supervisory authority under § 2-15-501(5). It also “would infringe upon the power of a co-equal branch of government” where the law “does not provide a standard for adjudication of the issue.” *Larson*, ¶39. Because § 2-15-501 doesn’t provide the relief Cromwell seeks, her Petition presents the type of political question—one within “the exclusive legal domain of the ... executive branch”—the Court must avoid. *Id.*

This Court’s precedent confirms that the Attorney General’s exercise of supervisory authority—and the consequences of that exercise—present a non-justiciable political question. In *Fletcher*, the Attorney General exercised supervisory authority to direct a county attorney to (1) not use certain evidence and (2) dismiss charges against a criminal defendant. 260 Mont. at 416, 859 P.2d at 997. Because state law permitted dismissal of criminal prosecutions for good cause and the attorney general had good cause, this Court determined that a “court may not interfere in the prosecutorial functions of the Attorney General and the county attorney—the executive branch—without violating the separation of powers embodied in Article III, Section 1.” *Id.*; *cf. Larson*, ¶39 (case presents a non-justiciable political question when the dispute falls within the “exclusive legal domain” of another branch).

Here, as in *Fletcher*, there is no question that the Attorney General acted within the bounds set by § 2-15-501(5). See *Imperial Sovereign Court of Montana v. Knudsen*, 170 F.4th 820, 841 (9th Cir. 2026) (“Section 2-15-501(5) expressly gives the Attorney General the power to direct county prosecutors in a binding fashion.”). So the Court cannot intrude into the executive branch’s internal operations to determine why the Attorney General’s exercised authority or to weigh the merits of the legal determinations underlying that decision. *Fletcher*, 260 Mont. at 418, 859 P.2d at 997. And because the Attorney General has ordered Cromwell to dismiss the Petition, the Court must dismiss.

Ultimately, the Court can reach the interpretive question only if it first wades into the exclusive domain of the executive branch.

B. Cromwell lacks standing to challenge the interpretation of the statute.

The Petition should also be denied because Cromwell lacks standing to challenge either (1) the Attorney General’s exercise of supervisory authority or (2) the Attorney General’s interpretation of Montana law.

Standing presents a question about whether “a particular claimant is a proper party to assert the claim regardless of whether the claim is

otherwise cognizable or justiciable.” *Larson*, ¶45. To establish standing, Cromwell must identify “a recognized legal right or duty,” “infringement or breach of that right or duty,” “resulting injury or harm,” and “an available remedy at law or in equity.” *Larson*, ¶19; *see also Lake County v. State*, 2024 MT 284, ¶15, 419 Mont. 201, 559 P.3d 1263. And “a general or abstract interest in the constitutionality of a statute or the legality of government action is insufficient for standing absent a direct causal connection between the alleged illegality and specific and definite harm personally suffered, or likely to be personally suffered, by the plaintiff.” *Larson*, ¶46.

Cromwell lacks standing because she identifies no “past, present, or threatened injury” to her rights or duties. *Lake County*, ¶15. Her only claimed harm is “the immediate prospect of severe civil and criminal penalties” to Cromwell and “her clients” if “they follow incorrect advice and improperly release CCJI in response to a civil request without a court order.” Pet. at 10. If this is Cromwell’s “injury,” it fails to satisfy standing for two reasons.

First, the alleged injury is not sufficiently “concrete.” *Mitchell v. Glacier Cnty.*, 2017 MT 258, ¶38, 389 Mont. 122, 406 P.3d 427.

Cromwell’s concerns about liability are entirely “conjectural or hypothetical,” *id.* ¶37; injury would arise only if (1) Cromwell or some other Gallatin County office is sued because of the Attorney General’s interpretation of § 44-5-303(1) and (2) Cromwell’s interpretation prevails. Both concerns are speculative. There’s no lawsuit on the issue—in Gallatin County or elsewhere—and the Attorney General’s interpretation is correct. *See infra* Part III. In any event, that others *might* bring claims doesn’t prove Cromwell’s standing. If anything, that fact militates against the Court’s consideration of Cromwell’s petition. *Heffernan v. Missoula City Council*, 2011 MT 91, ¶33, 360 Mont. 207, 255 P.3d 80 (noting a “prudential rule that a litigant may only assert her own ... rights or immunities” except for when “the statute at issue would effectively be immunized from review” if the plaintiff were denied standing).

Second, this speculative harm isn’t tied to duty or right—any “*legally protected interest*”—that Cromwell holds. *Heffernan*, ¶35. She has no right to her preferred interpretation of the law. And any duty she has as county attorney to interpret the law is legally subordinate to the Attorney General’s supervisory authority under § 2-15-501(5). The law is

clear: county attorneys have no duties independent of the Attorney General. So even if at one point she had an independent obligation to interpret the law, she no longer does—at least with respect to ICE’s access to CCJI. Nor does § 2-15-501 or any other statute contemplate that a county attorney can challenge the Attorney General’s exercise of his supervisory authority. Thus, Cromwell has suffered no infringement or invasion of a legally protected interest. *Heffernan*, ¶35.

C. The Court cannot render an advisory opinion.

The Court should also deny Cromwell’s Petition because she seeks an “advisory opinion [about] what the law would be upon a hypothetical state of facts or upon an abstract proposition.” *Plan Helena*, ¶12. Because, as discussed, there’s no concrete “case or controversy” at issue, any opinion would be advisory.

The Petition arose from the Attorney General’s denial of Cromwell’s request for an advisory opinion under M.C.A. § 2-15-501(7). Pet. at 8-10. And her present request for a “declaration of what Montana law is” with “[n]o factual record” is a near-black letter definition of an advisory opinion. Pet. at 12. As in *Fletcher*, Cromwell cannot refuse to comply with supervisory authority and then “request [the Court’s] guidance” on the

underlying legal issue because it would constitute an advisory opinion. *See* 260 Mont. at 418-19, 859 P.2d at 997.

Ultimately, Cromwell asks the Court to resolve “an abstract difference of opinion regarding a moot question”—a quintessential advisory opinion. *Plan Helena*, ¶9 (cleaned up).

II. The Court should refuse to exercise its discretionary jurisdiction over Cromwell’s Petition.

Even if the Court disregards those threshold justiciability deficiencies, it shouldn’t consider Cromwell’s Petition because it doesn’t meet the relevant criteria under Rule 14(4), which permits an “original proceeding in the form of a declaratory judgment action” only when “urgency or emergency factors exist making litigation in the trial courts and the normal appeal process inadequate and when the case involves purely legal questions of statutory or constitutional interpretation which are of state-wide importance.” Cromwell’s petition fails those criteria.

A. If a party with standing ever challenges the sharing of CCJI with ICE, it could require fact development.

Examining Montana law’s application to ICE may require some factual development. As the Attorney General explains below, *infra* Part III.B, ICE meets the definition of a criminal justice agency under

§ 44-5-103(7)(b). But because the relevant statute requires an inquiry into an entity’s “principal function” to determine whether it is a criminal justice agency, a district court interpreting this statute on a blank slate might find factual development beneficial. Thus, Cromwell’s petition does not present a “purely legal question.” *Cf. Smith v. Gen. Mills, Inc.*, 1998 MT 280, ¶11, 291 Mont. 426, 968 P.2d 723 (“Whether or not a person qualifies as a merchant under the [UCC] is a mixed question of law and fact.”).

B. Resolving this interpretive question is not a state-wide emergency.

Cromwell is an outlier. No other county has distorted the plain meaning of Montana’s Criminal Justice Information Act to create a *de facto* sanctuary jurisdiction that is uniquely hostile to ICE’s important operations. This manufactured conflict has thus created no “confusion far beyond Gallatin County.” Pet. at 12. And because the plain meaning of Montana law is clear and no one but Cromwell has refused to read and interpret the law as written, other county attorneys are not under “threat of losing control over their elected offices.” *Id.*

The Petition cites document production as an “urgent” or emergency factor. Pet. at 11, 13. That document production isn’t tethered

to Cromwell’s legal theory. *E.g.* Pet. at 9 (asserting her Oct. 2025 policy was limited to a single case and not a policy). Instead, the Attorney General seeks documents relating to the truthfulness of Cromwell’s sworn statement that no policy exists and other attempts to circumvent state law and institute sanctuary policies.³ These are independent bases for the Attorney General’s supervisory authority.

C. Litigation in a district court could resolve any justiciable claim related to the interpretive question Cromwell raises.

Even if this dispute were justiciable, no urgency justifies circumventing a district court. The Attorney General’s exercise of supervisory authority doesn’t create an emergency. And Cromwell apparently has no real concern about “comply[ing] with the Attorney General’s demand[s]” or “openly defy[ing] the chief legal officer of the state.” Pet. at 12-13. She’s already defied the Attorney General and refused to comply with several directives.

³ Withholding public documents from inspection also undermines public trust.

III. Cromwell’s novel interpretation of § 44-5-303 fails on the merits.

The interpretive question here is straightforward: ICE is a criminal justice agency entitled to CCJI regardless of why it obtains that information. Cromwell’s flawed legal arguments conflate two distinct issues: (1) whether § 44-5-303 imposes a purpose-based limitation on a criminal justice agency’s use of CCJI, and (2) whether ICE is a criminal justice agency. The Attorney General addresses each in turn.

A. Section 44-5-303 imposes no purpose-based limitation on a criminal justice agency’s use of CCJI.

Cromwell’s view that § 44-5-303(1) imposes a purpose-based limitation on a criminal justice agency’s use of CCJI is atextual, counterstatutory, and ignores context.

First, Cromwell’s interpretation has no textual basis. Montana law allows dissemination of CCJI to “criminal justice agencies.” M.C.A. § 44-5-303. Full stop. It doesn’t “authorize disclosure based solely on the identity of the requesting entity.” Pet., Ex. 5 at 1. It doesn’t limit dissemination of CCJI to criminal justice agencies “acting within the administration of criminal justice.” Pet., Ex. 3 at 1-2; *accord* Pet. at 8. And it doesn’t “require[] examination of the purpose for which the

information is sought.” Pet., Ex. 5 at 1; Pet. at 17-18. Cromwell provides no statutory basis for those claims because there is none.

Second, Cromwell’s interpretation cannot be squared with the statutory definition of “criminal justice agency.” A criminal justice agency is “any federal ... agency designated by statute ... to perform as its *principal function* the administration of criminal justice.” M.C.A. § 44-5-103(7)(b) (emphasis added). The statute thus expressly contemplates that a criminal justice agency might engage in some functions other than criminal justice. Yet that didn’t stop the Legislature from authorizing CCJI dissemination to “criminal justice agencies.” M.C.A. § 44-5-303(1).

Cromwell’s reading of § 44-5-303(1) wreaks havoc on the statutory scheme. Cromwell apparently understands this; her analysis proves she is unwilling to stand by the consequences of her own interpretation. Cromwell offers two exemplar criminal justice agencies: the “county sheriff and local police.” Pet. at 15. But like ICE, neither the sheriff nor the police engages exclusively in the administration of criminal justice. *See* M.C.A. § 7-32-2121 (duties of a sheriff); *id.* § 7-32-4105 (duties of the chief of police). The Gallatin County Sheriff has a dedicated civil division, yet Cromwell accepts that a sheriff may obtain CCJI without examining

whether it will use it to further a civil or criminal function. Pet. at 15. Cromwell thus creates a special threshold requirement for ICE’s access to CCJI that doesn’t apply equally to other criminal justice agencies—casting into doubt Cromwell’s assertion that her position on ICE’s access to CCJI is “not grounded in policy or preference.” Pet., Ex. 5 at 1.

The statutory framework leaves no room to conclude that “ICE may be deemed a criminal justice agency in some contexts,” but not in others. Pet., Ex. 5 at 1. Because Cromwell’s interpretation of § 44-5-303(1) is counterstatutory and creates irreconcilable tension within the Act, it must be rejected given this Court’s harmonious-reading canon. *City of Missoula v. Shumway*, 2019 MT 38, ¶9, 394 Mont. 302, 434 P.3d 918.

Third, context shows that a criminal justice agency’s purpose for obtaining CCJI is irrelevant under § 44-5-303. The Legislature understood how to impose purpose- or use-based limitations on CCJI. Any county attorney must know this; the statute’s purpose-based limitations apply to her official position as county attorney. Section 44-5-303(4) limits a county attorney’s use of CCJI “for the purpose of cooperating with local fetal, infant, child, and maternal mortality review teams.” But no such restrictions attach to a criminal justice agency’s use

of CCJI. *Id.* § 44-5-303(1). This confirms that the Legislature intentionally chose not to limit a criminal justice agency’s access to CCJI.

Cromwell suggests that § 10-1-112 leads to the opposite conclusion. Not so. That statute governs the adjutant general’s access to CCJI “relating to a member of the national guard for use in an administrative action.” M.C.A. § 10-1-112. At most, this provision shows that the National Guard ordinarily would not have access to CCJI. It doesn’t even bear on—much less support—Cromwell’s interpretation of when criminal justice agencies may access CCJI.

In sum, once an entity falls within the statutory definition of a “criminal justice agency,” it may obtain CCJI. There’s no need or basis to examine whether the agency needs the information for a criminal or civil purpose. Because Cromwell’s interpretation of the relevant provisions requires reading additional requirements into the statute, the Court must reject it. *Stenstrom v. Child Support Enf’t Div.*, 280 Mont. 321, 930 P.2d 650 (1996).

B. ICE is a criminal justice agency under Montana law.

Because criminal justice agencies can obtain CCJI regardless of purpose, just one question remains: Is ICE a “criminal justice agency” as defined by § 44-5-103(7)(b)? It is.

A criminal justice agency is “any federal ... agency designated by statute ... to perform *as its principal function* the administration of criminal justice.” M.C.A. § 44-5-103(7)(b) (emphasis added). And Montana law defines the administration of criminal justice as “the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.” *Id.* § 44-5-103(2).

Cromwell doesn’t contest that ICE performs some criminal functions. Nor could she. *Arizona v. United States*, 567 U.S. 387, 397 (2012) (ICE is a federal agency that “conducts criminal investigations involving the enforcement of immigration-related statutes”). She instead

argues that ICE’s “principal function” is civil—not the administration of criminal justice. Pet. at 15-16.⁴

Cromwell is wrong. ICE is a criminal justice agency because its principal function is the administration of criminal justice. As the Attorney General explained at length in his April 2 Letter to Cromwell, ICE plays a significant role in the enforcement of federal immigration and customs law. See Pet., Ex. 2 at 1-2.

Cromwell’s only rebuttal is that ICE’s “deportation and removal proceedings—actions that comprise a great deal of ICE’s activities—are civil in nature.” Pet. at 15. Setting aside that Cromwell offers no support for her assertion that ICE’s deportation and removal proceedings make up a “great deal of ICE’s activities,” it’s true that some of ICE’s conduct involves civil enforcement. But even ICE’s exercise of its civil enforcement authority still satisfies § 44-5-103(2)’s definition of the

⁴ At risk of belaboring the point, the Attorney General again points out the absurdity of Cromwell’s interpretation of § 44-5-105(7)(b). If she truly believes ICE is not principally involved in the administration of criminal justice, it’s unclear why she maintains that it’s still entitled to CCJI at all—even if in limited contexts—under § 44-5-303(1). If ICE is not a criminal justice agency, then it should never be granted CCJI under § 44-5-303(1).

“administration of criminal justice” 70% of the time.⁵ Indeed, ICE’s publicly accessible arrest and detention statistics⁶ prove false Cromwell’s unsupported assertion that ICE’s “civil activities do not generally involve criminally accused persons or offenders.” Pet. at 15. As the statistics show, most individuals in ICE detention are either convicted criminals or have pending criminal charges.⁷ ICE’s apprehension, detention, prosecution, adjudication, etc., of these persons thus constitutes the “administration of criminal justice” under § 44-5-103(2).

By any measure, ICE is a criminal justice agency under § 44-5-105(7)(b) and is entitled to CCJI under § 44-5-303(1).

A final note regarding Cromwell’s arguments. A proper reading of Montana’s Criminal Justice Information Act does not implicate the

⁵ Department of Homeland Security, *ICE Arrests Worst of Worst Criminal Illegal Aliens including Pedophiles, Sexual Deviants, and Violent Assailants*, Jan. 16, 2026 Press Release, available at <https://www.dhs.gov/news/2026/01/16/ice-arrests-worst-worst-criminal-illegal-aliens-including-pedophiles-sexual>.

⁶ ICE Detention Statistics, available at <https://www.ice.gov/detain/detention-management#stats>.

⁷ See ICE, *ICE Detention Data, FY2026*, available at https://www.ice.gov/doclib/detention/FY26_detentionStats_04092026.xlsx (last accessed May 10, 2026).

Montana Constitution’s privacy protections. Criminal justice agencies may access and, consistent with the Act, use CCJI without creating conflict with the Montana Constitution.

CONCLUSION

The Attorney General has plenary authority to invoke supervisory authority over county attorneys. Cromwell’s attempt to challenge that authority fails at each turn—it’s non-justiciable, not sufficiently urgent to justify this Court’s discretionary exercise of its jurisdiction, and wrong on the merits. The Court should deny the Petition.

DATED this 14th day of May 2026.

AUSTIN KNUDSEN
Montana Attorney General

/s/Christian B. Corrigan
CHRISTIAN B. CORRIGAN
Solicitor General

BRENT MEAD
Deputy Solicitor General
MONTANA DEPARTMENT OF JUSTICE
Christian.Corrigan@mt.gov
Brent.Mead2@mt.gov

Attorneys for Respondent

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that the foregoing response 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 3,997 words, excluding table of contents, table of authorities, certificate of service, and certificate of compliance.

/s/Christian B. Corrigan
CHRISTIAN B. CORRIGAN

CERTIFICATE OF SERVICE

I, Christian Brian Corrigan, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Petition to the following on 05-14-2026:

Raphael Jeffrey Carlisle Graybill (Attorney)
300 4th Street North
PO Box 3586
Great Falls MT 59403
Representing: Audrey S. Cromwell
Service Method: eService

Rachel Elizabeth Parker (Attorney)
300 4th St North
Great Falls MT 59403
Representing: Audrey S. Cromwell
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: Austin Miles Knudsen
Service Method: eService

Electronically signed by Rochell Standish on behalf of Christian Brian Corrigan
Dated: 05-14-2026