IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 22-0639

FORWARD MONTANA; LEO GALLAGHER; MONTANA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS; GARY ZADICK,

Plaintiffs and Appellants,

v.

THE STATE OF MONTANA, by and through, GREG GIANFORTE, Governor,

Defendant and Appellee.

On Appeal from the First Judicial District Court
Lewis and Clark County, Cause No. ADV-21-611
The Hon. Mike Menahan, Presiding

LEGISATORS' AMICI CURIAE BRIEF IN SUPPORT OF RESPONDENT STATE'S CR 20 MOTION FOR REHEARING

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I. INTRODUCTION AND AMICI INTERESTS

This Court recently opined the Legislature intentionally passed an unconstitutional law in bad faith evidenced by the bill's procedural history in the Court's order granting fees under the private attorney general doctrine. The Supreme Court looked behind the enrolled bill, determined procedural irregularities existed, then labeled them bad faith legislative acts. Amici are Legislative leaders intimately familiar with legislative rules who believe the Court erred when citing legislative rules and acts to find bad faith to shift fees.

The bad faith analysis implicates fundamental separation of powers principles and legislators' rights to free speech and debate. The decision will impair legislative function and independence because legislators are now exposed to scrutiny of legislative procedure in search of bad faith to win a fee award. Legislative rules are the prerogative of the legislative branch. So long as those rules do not conflict with the Montana Constitution, the judicial branch is constitutionally restrained from interpreting and applying legislative rules. The Court's bad faith analysis should be modified to remove any reference to legislative rules.

II. ERRORS OF FACT - OVERLOOKED MATERIAL FACTS

In the Court's decision, the Court makes numerous references to legislative rules. This section illustrates legislative interpretation of its legislative rules.

A. Legislative Rules Do Not Require a Regular Conference Committee Before a Free Conference Committee

In paragraphs 30-31, the Court determined the Legislature acted in bad faith by conducting a free conference committee instead of a regular conference committee. However, legislative rules do not mandate regular conference before free conference. When a bill is returned from the other chamber with amendments, the primary sponsor of a bill has two choices: the sponsor may choose to accept the amendments or choose to go to a conference committee. ***See* (Appendix A).**[1] If the sponsor elects to go to a conference committee, the sponsor may request a free conference committee or regular conference committee. A bill is not required to go to a regular conference committee before going to a free conference committee.

B. Legislative Rules Do Not Prohibit the Legislature from Using Text from Failed Legislation

In paragraph 32, the Court concluded the Legislature acted in bad faith by using text from a failed piece of legislation. Although not routine, from time to time, text is taken from a failed piece of legislation and incorporated into other bills through amendments. Legislative rules do not prohibit this practice.

The Court referenced Joint Rule 40-70(1) (2021). That rule states "[a] bill may not be introduced or received in a house after that house, during that session,

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[1] A court may take judicial notice of public records. *See e.g., State v. Rensvold,* 2006 MT 146, n.2, 332 Mont. 392, 139 P.3d 154 (Supreme Court took judicial notice of public records).

has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception." Joint Rule 40-70(1) is a rule of narrow applicability. Historically, the rule has been interpreted to prohibit the introduction of a bill that is identical to a failed piece of legislation. Rule 40-70(1) has not been interpreted to apply to the introduction of bills in the same conceptual area or to amendments to different bills.

C. Legislative Rules Did Not Require Hearings in Conference Committee

In paragraph 32, the Court determined the Legislature acted in bad faith by not allowing public participation in the free conference committee. However, prior to 2023, the Legislature did not allow public testimony in conference committee meetings. No conference committee, including the SB 319 conference committee, allowed public testimony.

In response to the District Court's ruling, in 2023, the Montana Legislature amended the Joint Rules to allow public testimony in conference committees. Beginning in the 2023 session, as part of the conference committee process, witnesses may testify on proposed amendments or potential amendments to the bill. Joint Rule 30-30(4) (2023). However, this rule did not exist in the 2021 session. *Compare* Joint Rule 30-30(4) (2023) with Joint Rule 30-30 (2021). Thus, the

Legislature did not violate legislative rules by failing to conduct a hearing in the SB 319 free conference committee.

D. The Public Had Notice of the Proposed Changes and Had an Opportunity to Comment on Proposed Changes to SB 319

In paragraph 32, the Court concluded the Legislature acted in bad faith by not providing notice of the proposed changes to SB 319. However, this assumption is erroneous. In response to the COVID-19 outbreak, the Legislature began posting amendments to bills online to ensure members of the Legislature and the public could see the proposed amendments. The four amendments to SB 319 were prepared and published on April 26, 2021, two days before the free conference committee meeting and later debated on the floor. ***See*** **Appendix B**.

E. The Legislature Did Not Violate Any Rules by Conducting a Vote on Amendment Days After Bill Failed

In paragraph 32, the Court concluded the Legislature acted in bad faith by voting on language that failed in another piece of legislation "mere days before the free conference committee." Legislative rules do not prohibit the Legislature from voting on amendments in a conference committee merely because a bill on a similar subject failed prior to the conference committee. Legislators cast votes every date of a legislative session. Whether a vote is cast on the first day or last day of a legislative session has no bearing on the validity of a vote.

III. ERRORS OF LAW

A. Scrutiny of Legislative Acts for Bad Faith Violates Separation of Powers

The Court's bad faith analysis focused on the procedural history of SB 319 to link irregularities to improper motives or a malicious intent to violate the Constitution. In Article III, Section 1 of the Montana Constitution, the Montana Constitution states "[n]o person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted." In Article V, Section 10 of the Montana Constitution, the Montana Constitution grants the Legislature the power to make rules for its proceedings.

The Legislature has plenary power in the enactment of legislation, the Constitution being the sole guidepost. *Mills v. State Board of Equalization*, 97 Mont. 13, 33 P.2d 563, 567 (1934). Judicial interpretation of legislative intent must be gathered from the act itself, not extrinsic aids describing legislative acts outside the journal. *Id.* at 566. The province of the judiciary is to construe and adjudicate constitutional, statutory, and common law provisions as applied to the facts at issue in a particular case. *Larson v. State By and Through Stapelton*, 394 Mont. 167, 197, 434 P.3d 241 (2019).

Montana's Supreme Court long ago forbade judicial intermeddling with the legislative branch in an action to invalidate legislation. *State v. Erickson*, 39 Mont.

280, 102 P. 336, 339 (1909) ("The enrolled bill is conclusive upon the courts."); *Vaughn & Ragsdale Co., Inc., v. State Board of Equalization, et al.,* 109 Mont. 52, 96 P.2d 420, 421 (1939), citing *McTaggart v. Middleton*, 94 Mont. 607, 28 P.2d 186, 187 (1933) ("This court can look behind the enrolled bill for one purpose only, and that is to see whether the constitutional mandate requiring that on the final passage of a measure the vote has been taken by ayes and noes, and the names of those voting have been entered on the journal."); *Woodward v. Moulton*, 57 Mont. 414, 423-24, 189 P. 59, 63 (1920).

SB 319 was an enrolled bill signed by the Governor, Senate President, and Speaker of the House. The Court violated the enrolled bill doctrine with its "bad faith" procedural history analysis. The enrolled bill doctrine derives from separation of powers, a constitutionally protected barrier, Mont. Const. art. III Sec. 1:

> "we do not hesitate to say that a due respect for co-ordinate branch of government compels the court to accept the enrolled bill, bearing the signatures of the presiding officers of the two Houses, and the approval of the Governor, as conclusive…functus officio." *Erickson*, 102 P. at 340.
>
> "It has been declared that the rule against going behind the enrolled bill is required by the respect due to a coequal and independent department of the government, and it would be an inquisition into the conduct of the members of the legislature, a very delicate power, the frequent exercise of which must lead to endless confusion in the administration of the law." *Vaughn and Ragsdale Co.,* 96 P.2d at 425.

Judicial scrutiny of legislative procedure to infer bad faith crosses the barrier. "It is not the function of the courts to second-guess and substitute their judgment at every

turn of the road for the judgment of the legislature in matters of legislation…" *State Bar of Montana v Krivec*, 193 Mont. 477, 481, 632 P.2d 07 (1981).

The enrolled bill doctrine also limits the volume of bills that may be subjected to judicial scrutiny:

> "If every law could be contested in the courts on the grounds of informality in its enactment, the floodgates of litigation would be opened so widely, society would be deluged in the flow." *Vaughn and Ragsdale Co.,* 96 P.2d at 425.

Disregarding the enrolled bill doctrine to allow common law fee shifting to private litigants invites bill challenges and incentivizes litigants to bring every bill into court.

Jurisdictions outside Montana have exercised judicial restraint on questions of legislative procedure:

In *Ex Parte Marsh*, 145 So.3d 744, 750 (Ala. 2013), the Alabama Supreme Court explained "[U]nless controlled by other constitutional provisions, the courts cannot look to the wisdom or folly, the advantages or disadvantages of the rules which a legislative body adopts to govern its own proceedings." *Id.* "The rules controlling legislative procedure are usually formulated or adopted by legislative bodies themselves, and the observance of such rules is a matter that is entirely subject to legislative control and discretion and is not subject to review by a court unless the rules conflict with the constitution." *Id.* (emphasis added).

In *Des Moines Register & Tribune Co. v. Dwyer*, 542 N.W.2d 491, 496 (Iowa 1996), "[i]t is entirely the prerogative of the legislature, however, to make, interpret, and enforce its own procedural rules, and the judiciary cannot compel the legislature to act in accordance with its own procedural rules so long as constitutional questions are not implicated." *Id.* (emphasis added). "[T]he legislature has complete control and discretion whether it shall observe, enforce, waive, suspend, or disregard its own rules of procedure . . ." *Id.; see also Hughes v. Speaker of N.H. House of Rep.*, 876 A.2d 276, 284 (N.H. 2005); *Board of Trustees v. Att. Gen. of Com.*, 132 S.W.3d 770, 777 (Ky. 2003).

"[C]ourts generally consider that the legislature's adherence to the rules or statutes prescribing procedure is a matter entirely within legislative control and discretion, not subject to judicial review unless the legislative procedure is mandated by the constitution." *State ex rel. La Follette v. Stitt*, 338 N.W.2d 684, 687 (Wis. 1983). "If the legislature fails to follow self-adopted procedural rules in enacting legislation, and such rules are not mandated by the constitution, courts will not intervene to declare the legislation invalid." *Id.* "The rationale is that the failure to follow such procedural rules amounts to an implied *ad hoc* repeal of such rules." *Id.* (emphasis added).

The Legislature has a process to address violations of legislative rules. If a legislator believes there is a rules violation, the Rules Committee has jurisdiction to

resolve rules disputes. Legislators and stakeholders should not be encouraged to overlook suspect procedure prior to final passage. Timely rule challenges permit correction so that a bill may advance unencumbered. The fee shifting here incentivizes stakeholders to lie in wait to the prejudice of the legislators who otherwise, if given notice and time, would have perfected any error. Malice should not be derived from procedural imperfections never sought to be corrected because they may simply have been the innocent byproduct of end of session time constraints. Thus, the court should vacate the bad faith portion of its opinion pertaining to legislative rules.

B. Legislative Immunity – Freedom of Debate Violated

In its ruling, the Court navigated around statutory immunity under MCA 2-9-111 on grounds the statute only applies to non-administrative torts. Op. at *6. Yet, the conduct the Court chose to criticize was not "administrative". The Court attacked legislative acts – action by a legislative body that resulted in the creation of law. MCA 2-9-111. In each instance the Court described the evidence of "bad faith", the Court referenced actions in crafting and adopting public policy. There was no ad hoc decision making, legislators were formulating policy - SB 319 applicable to the public at large that was formally legislative in character and bore all the hallmarks of traditional legislation. *Boquist v. Courtney*, ECF Case No. 6:19-cv-01163 MC *10 2023 WL 4563725 (D. Or. July 17, 2023), citing the four-part test for

legislative acts. Legislative acts include those things "generally done in a session of the House by one of its members in relation to the business before it." *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1880). The Court improperly suggested the conduct at issue was purely administrative when it was not.

The Court failed to analyze constitutional and common law legislative immunity. Legislative immunity dictates against any fee award grounded on legislative acts. Mont. Const. Art. V. Sec. 8 prohibits questioning a legislator's speech or debate in the legislature. Montana's speech and debate clause mirrors the federal speech and debate clause. *Cooper v. Glaser*, 355 Mont. 342, 228 P. 3d 443 (2010). Legislative privilege has been recognized as an important protection of the independence and integrity of the legislature. *United States v. Johnson*, 383 U.S. 169, 178, 86 S. Ct. 749 (1966). The privilege protects the deliberative and communicative process by which members participate in consideration and passage or rejection of proposed legislation. *Gravel v. United States,* 408 U.S. 606, 625, 92 S. Ct. 2614 (1972). Legislative privilege applies to all legislative acts, not just literal speech or debate. *Doe v. McMillan*, 412 U.S. 306, 311-12, 93 S. Ct. 2018 (1973). The privilege protects legislators from judicial inquiry into their motives. *United States v. Gillock*, 445 U.S. 360, 367, 100 S. Ct. 1185 (1980); *League of Women Voters of Pa. v. Pennsylvania*, 177 A.3d 1000, 1003 (Pa. Commw. Ct. 2017). A civil action diverts time, energy and attention from legislative tasks and otherwise disrupts

legislative function – imperiling legislative independence. *Eastland v. US Servicemen's Fund, et al,* 421 U.S. 491, 502, 95 S. Ct 1813 (1975)(Clause is to "prevent intimidation of legislators by the Executive and accountability before a possibly hostile judiciary"). Within the legitimate legislative sphere, the Clause is an absolute bar to interference. *Id.* Legislators may not be burdened with defending their acts done in session in relation to the business before it even where there are allegations of improper motive. *Id.* at 508; *Common Cause v. Biden*, 748 F. 3d 1280, 1284 (D.C. Cir. 2014). A "bad faith" analysis necessarily questions the motives of the members about their legislative acts for which they are immune.

C. Disregard of the American Rule

The private attorney general fee shifting theory is a common law exception in equity to the American Rule. The American Rule prohibits fee awards absent statutory or contractual authority. *Goodover v. Lindey's Inc.*, 255 Mont. 430, 843 P.2d 765 (1992). The private attorney general rule typically operates independently from any fee award grounded in bad faith linked to conduct before the tribunal. MCA 25-10-711; CR 11. This Court merges principles of "bad faith" and "common benefit." The Court cited statutory bad faith when declining an award of fees in *Western Tradition Partnership, Inc. v. Attorney General of State,* 367 Mont. 112, ¶18, (2012) in its private attorney general analysis critiquing the Attorney General's defenses. Here this Court used *W. Tradition P'ship* at ¶19 to segway into its bad faith

analysis without acknowledging its bad faith authority there derived from statute, MCA 25-10-711, rather than the private attorney general exception and applied solely to conduct before the judicial tribunal. *See also, Rafes v. McMillan*, 407 Mont. 254, ¶6, 502 P.3d 674 (2022), analyzing the *Foy v. Anderson,* 176 Mont. 507, 580 P.2d 114 (1978). The Court ignored prior precedent rejecting a common law equitable bad faith exception to the American Rule for conduct outside the litigation, *Goodover v Lindey's Inc.*, 255 Mont. 430, 448, 843 P.2d 765, 843 P.2d 765 (1992). Other overlooked precedent holds a petitioner has no right to fees on bad faith grounds because a petitioner elects to file suit. *Braach v. Graybeal*, 296 Mont. 138, ¶6, 988 P.2d 761 (1999).

A fee award on bad faith grounds requires subjective bad faith – "some proof of malice entirely apart from inferences arising from the possible frivolous character of a particular claim." *Joshua David Mellberg, LLC v Will*, 639 F.Supp.3d 926 (2022); *Copeland v. Martinez*, 603 F.2d 981, 991 (D.C. Cir. 1979), cert. denied, 444 U.S. 1044 (1980). It is not malicious to amend a bill to gain a vote or perfect the language. Bad faith is an impermissible legal concept to apply to legislating.

IV. THE COURT'S RULING WILL HAVE NUMEROUS UNINTENDED CONSEQUENCES ON THE LEGISLATIVE PROCESS

The Court's decision to impose liability for the failure to follow legislative rules and norms will have numerous unintended consequences. Strict adherence to rules as interpreted here will require allocation of time and resources that do not

exist. In addition, certain bills will not survive without legislative discretion to modify rules or norms.

A. The Court's Ruling Will Limit the Ability of the Legislature to Develop and Pass Bipartisan Legislation

A strict reading of legislative rules, to a certain degree, empowers leadership or a minority of legislators and inhibits the majority from passing legislation. The most significant deviations from legislative "norms" over the years have been in the use of procedures which are intended to reduce or eliminate supermajority requirements or to reduce the number of steps a bill must go through.

On certain issues, a coalition of members may support passage of a particular bill. However, if a bill is referred to a certain committee, there may not be enough votes to remove the bill from committee. For example, in the House, the House Rules require fifty-five votes to withdraw a bill from committee. House Rule 50-160.

Many of the most significant pieces of legislation which have passed the Legislature in the last decade have moved through the Legislature based upon procedures which deviated from normal legislative procedures. If the Legislature had not deviated from legislative norms, these bipartisan pieces of legislation, which were supported by a coalition of Republicans and Democrats, would not have been enacted into law.

1. Senate Bill 289 (2015) - Dark Money Campaign Finance Reform

Senate Bill 289 contained the dark money campaign finance reforms. When the bill arrived in the House, the members of the House referred the bill, a campaign finance reform bill, to the Business and Labor committee. Normally, the Speaker would make the referral and the referral would be made to the State Administration Committee. According to the House Rules Appendix, bills relating to elections must be referred to the State Administration committee. Before executive action could be taken in the Business and Labor Committee, the bill was removed from committee and placed on the second reading agenda. By sending the bill to the Business and Labor Committee and not taking executive action, the Legislature deviated from at least two legislative norms.

2. Senate Bill 262 and Senate Bill 405 (2015) - Medicaid Expansion and the CSKT Water Compact

Senate Bill 262 contained the CSKT Water Compact. Senate Bill 405 contained Medicaid expansion. When both bills arrived in the House, the bills were referred to committees where a hearing was conducted. After the hearing, the respective committees made "be not concurred" motions. Under House Rule 40-100 (2015), a "be not concurred" recommendation must be read over the rostrum and adopted or rejected on Order of Business No. 2. However, when the House came into session, the committee reports were not treated like other "be not concurred" motions. Instead of going to a vote, through a procedural motion, the bills were

placed on the second reading agenda. After debate on second reading, a motion was made to refer the bills to the Appropriations committee. In both cases, the motion failed. By failing to conduct a vote on the "be not concurred" motion and not going to Appropriations for a hearing, the Legislature deviated from at least two legislative norms.

3. House Bill 473 (2017) – Infrastructure Improvements

House Bill 473 increased the amount of the gas tax to help pay for Montana road and highway construction and maintenance. When the bill arrived in the Senate, the bill was originally referred to the Highways and Transportation Committee. However, the bill was subsequently rereferred to the Finance and Claims Committee before a hearing could be conducted. Generally, tax bills receive two hearings in each chamber. The first hearing is scheduled in the policy committee and then another is conducted in the fiscal committee. The idea behind this process is that the policy committee examines the policy issues, and the fiscal committee examines the financial impact. By failing to conduct a hearing in a policy committee, the Legislature deviated from at least one legislative norm.

B. The Inability to Use Free Conference Will Limit the Ability of the Legislature to Modify Legislation and Negotiate Compromise Agreements

The threat of litigation over the use of free conference in the legislative process may significantly disrupt operations. First, the threat of litigation will hinder

the ability to make edits and amendments to legislation. As legislation moves through the legislative process, it is not uncommon to have issues raised regarding the content and the text of the bill. From time to time, these concerns are raised after the bill passes the second chamber. Without a mechanism to work on the bill language, the Legislature may be unable to draft a workable piece of legislation. Second, the inability to use free conference will hinder the ability of the Legislature to negotiate with members of the legislative branch or the executive branch. As a matter of timing, the key negotiations over legislation and the budget often happen toward the end of the legislative session. Toward the end of the session, it is not possible to introduce and pass legislation. There are time limits to when bills must be introduced. As such, free conference is often the only tool available to amend a bill to implement any compromise agreements.

To illustrate the use of free conference in the legislative process, one of the best examples can be found when looking at House Bill 2, the primary budget bill for the State of Montana. When House Bill 2 goes to free conference, the entire bill, including all budgeted items is subject to amendment. Any member of the free conference committee may offer amendments to adjust the various items listed in House Bill 2. The use of a free conference committee for House Bill 2 is important for two reasons. First, the budgeting process for House Bill 2 begins in the year proceeding the legislative session. As the session progresses, additional information

is gathered regarding the condition of state finances. As the Legislature develops a better understanding of the financial picture, the Legislature may need to either make adjustments to compensate for lower revenue or may be more comfortable making adjustments upward if revenue is higher than projected. Second, to a large degree, the final product contained in House Bill 2, is often the result of a negotiation between the executive branch and legislative branch. To incorporate the negotiated changes into House Bill 2, a free conference committee may be needed to amend the bill.

Free conference is an important part of the legislative process. Restrictions will have real world impacts to Montanans.

C. The Inability to Use Text from Failed Legislation Will Prevent the Passage of Critical Legislation.

Although not common practice, there have been many times when text from failed bills has been incorporated by amendment into other pieces of legislation. These examples include the following:

2017 Session. House Bill 13, as drafted, contained the state pay plan. The bill was tabled in the House Appropriations committee and a motion to remove the bill from the committee failed on a 44-55 vote. The text of the pay plan, with some modifications, was amended into Senate Bill 294 in a free conference committee.

2023 Session. House Bill 546, as drafted, authorized additional funding for low-income and moderate-income housing loans from the permanent coal tax trust

fund. House Bill 825, as drafted, established a housing infrastructure revolving account. House Bill 546 was tabled in the Senate Business, Labor, and Economic Affairs committee. House Bill 825 failed on the House floor on a 30-69 vote. Text from both bills was subsequently amended into House Bill 819.

There are many reasons why text from a failed bill is later incorporated into other bills. A bill may fail at one stage of the process for an assortment of reasons. It is not uncommon for legislators to not understand a bill and vote against it. Consequently, the bill may fail, but legislators, at a different time, may decide to support the policy contained in the bill. Given the timing of a vote on the legislative calendar, the only option may be to insert text into another bill.

The threat of litigation over the use of text from a failed will have an impact on the ability of the Legislature to pass and implement policy. As the examples above show, there have been several instances where text from a failed bill has been added to other bills and those bills have had a real-world impact on the people of Montana. A limit on the use of failed text will prevent future legislatures from addressing real world problems facing the people of Montana. Thus, any limit on the use of text from failed legislation is a significant intrusion into the legislative process and detrimental to the ability of the legislative branch to enact public policy for the benefit of Montanans.

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D. Scrutiny of Meeting Length Will Affect Committee Operations

During the legislative process, the length of hearings varies substantially. Some hearings can last for less than a minute while others last up to a day. House Bill 2, the budget, has months of hearings. The variation depends upon the topic, the size of the committee, the number of witnesses, the presentation by the sponsor, and the number of questions from a committee. An analysis regarding the length of a hearing by the judicial branch will affect operations.

One of the basic responsibilities of a committee chair is to run and manage committee hearings. Committee chairs are given discretion as to how long a hearing may go, how long witnesses may testify, and the number of questions that a committee member may ask. The Court's ruling implies that hearings of a short duration are suspect. Some committees, given its jurisdiction, hold hearings on many controversial bills and the hearings can be long. If the Court analyzes the length of the hearings and the procedure that occurred in a meeting, the Legislature may have no choice but to limit the discretion of a chairman. Consequently, it may be difficult to process all the bills, and changes may need to be made to the legislative calendar.

Montana legislative process is different than other states. In many state legislatures, leadership has substantially more power to restrict the flow of bills. In

some states, committee chairs or legislative leaders have the authority to prevent a bill from getting a hearing, which in essence, kills the bill.

In the Montana Legislature, the rules are written to allow any legislator to introduce a bill and have a hearing. The benefit of this practice is that it allows members of the minority – whether they are members of the minority party or a minority of the majority party – to introduce legislation and have a fair opportunity at passing a bill. The downside of this practice is that the Legislature handles many more bills than other legislatures. To ensure every legislator has an opportunity to present their bills, the rules allow a hearing on every bill. However, to manage the bill volume, committee chairs must have appropriate discretion to manage the workflow.

Committee chairs need discretion and they should not be second guessed by the judicial branch. An analysis into the length and conduct of a hearing will impact the ability to handle the different types of legislation introduced.

E. Scrutiny of the Timing of Votes May Disrupt Workflow

During the legislative process, members of the Legislature may take hundreds, if not, thousands of votes. The timing of a vote should not have any relevance as to whether a vote is made in good faith. Every bill moves at a different speed. Given the nature of the topic, some bills require more work. This work includes amendments, additional hearings, or conference committees.

If the Court examines the date and time of a vote to determine whether the Legislature acted in bad faith, the Legislature may need to significantly overhaul its rules and calendar to ensure votes are more evenly spread out. This may disrupt the workflow and the allocation of staff and other resources.

IV. CONCLUSION

For the reasons previously stated, the Court should amend or modify its decision to remove references to legislative rules in its bad faith analysis.

CERTIFICATION

I, Joan K. Mell, certify that the Brief of Amicus meets the word count requirements for amici briefs RAP 12(7) at less than 5000 words and is double spaced 14 pt font Times New Roman.

Dated this March 1, 2024 at Hamilton, MT

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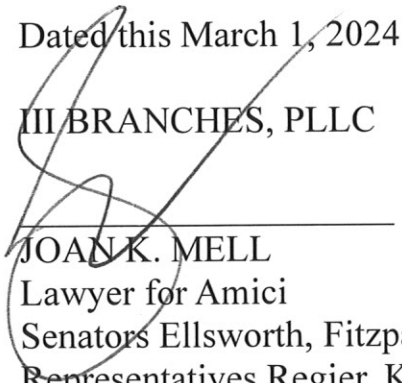

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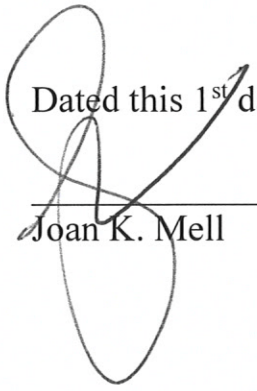

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