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CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: OP 26-0292

OP 26-0292

IN THE SUPREME COURT OF THE STATE OF MONTANA

2026 MT 268

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

Petitioner,

v.

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

Respondent.

ORIGINAL PROCEEDING: Petition for Declaratory Judgment

COUNSEL OF RECORD:

For Petitioner:

Raph Graybill, Graybill Law Firm, PC, Great Falls, Montana

For Respondent:

Austin Knudsen, Montana Attorney General, Christian B. Corrigan, Solicitor General, Brent Mead, Deputy Solicitor General, Helena, Montana

For Amicus Curiae American Civil Liberties Union of Montana:

Alex Rate, Ashlee Rossler, American Civil Liberties Union of Montana, Missoula, Montana

For Amici Curiae Former Montana County Attorneys:

Leo J. Gallagher, Attorney at Law, Helena, Montana

Decided: November 6, 2026

Filed:

Clerk

Justice James Jeremiah Shea delivered the Opinion and Order of the Court.

¶1 Gallatin County Attorney ("GCA")[1] Audrey S. Cromwell seeks a declaratory ruling on original jurisdiction pursuant to M. R. App. P. 14(4). The GCA requests a ruling from this Court that Montana counties may not lawfully disseminate Confidential Criminal Justice Information ("CCJI") to Immigration and Customs Enforcement ("ICE"), upon receiving non-criminal civil or administrative requests without a court order.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 On October 2, 2025, the GCA responded to an inquiry from the Gallatin County Records Office regarding how to respond to ICE's request for an individual's non-public CCJI which was to be used for civil purposes. The GCA responded that "ICE is not authorized under Montana Law to access CCJI without a court order. Therefore, ICE is only entitled to public documents. All other documents being requested should be processed like a standard CCJI request."

¶3 Six months later, on April 2, 2026, the Attorney General ("AG") sent the GCA a letter asserting that the GCA's interpretation of the relevant law was incorrect, noting that § 44-5-103(7)(b), MCA, defines "criminal justice agency" as "any federal, state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice," and ordering "Gallatin County

[1] Unless otherwise noted, "GCA" includes all references to the Gallatin County Attorney's Office and to County Attorney Cromwell individually, and "AG" includes all references to the AG's Office and Attorney General Knudsen individually.

must immediately bring its practices into compliance with Montana law and recognize ICE as a criminal justice agency entitled to appropriate access to CCJI."

¶4 On April 6, 2026, the GCA responded to the AG's letter, reasserting her disagreement with the AG's interpretation of the relevant law. But noting the importance of this issue and the need for statewide clarity, the GCA formally requested an opinion from the AG's Office pursuant to § 2-15-501(7), MCA.

¶5 On April 23, 2026, the AG responded to the GCA's April 6, 2026 letter, reiterating its interpretation of the relevant statutes, and requesting that the GCA "issue a memorandum to all relevant personnel stating that Gallatin County may share CCJI with ICE for civil immigration enforcement functions." The AG advised that if the GCA refused to do so, he would invoke supervisory control of the GCA pursuant to § 2-15-501(5), MCA. Regarding the GCA's formal request for the AG to address the issue in a legal opinion pursuant to § 2-15-501(7), MCA, the AG refused to provide the opinion because the GCA had not sought the opinion before it emailed the Gallatin County Records Office that ICE was not a criminal justice agency.

¶6 On April 27, 2026, the GCA responded to the AG's April 23, 2026 letter. The GCA continued to disagree with the AG's legal analysis regarding ICE's entitlement to CCJI when it is acting in a civil capacity. The GCA took issue with the AG's refusal to provide a legal opinion pursuant to § 2-15-501(7), MCA, and asserted that the AG had a "clear statutory duty" to issue a formal opinion. The GCA acknowledged that if the formal opinion concluded that her interpretation of the law is incorrect, she would follow the AG's formal opinion "unless or until it is overturned by the courts." The GCA stated that pending

a formal opinion pursuant to § 2-15-501(7), MCA, she had directed the Gallatin County Records Department to direct any questions regarding the release of CCJI to ICE to the AG and concluded that she "remain[ed] prepared to follow a lawful and authoritative interpretation from your office."[2]

¶7 On April 30, 2026, the AG wrote to the GCA asserting supervisory control over the office pursuant to § 2-15-501(5), MCA, and directing the GCA to issue a memorandum adopting a policy of full disclosure of CCJI to ICE for all purposes. The GCA issued the memorandum the following day, with the caveat that it was being issued at the AG's direction and that she could not "vouch for the accuracy of the legal analysis underlying the directive," because she had not received a formal legal opinion from the AG. The GCA directed all inquiries regarding the matter to the AG's Office. The same day, the GCA filed this Petition with this Court. The AG ordered the GCA to dismiss the Petition, asserting his authority to do so under § 2-15-501(5), MCA. The GCA refused to dismiss the Petition.

[2] Section 2-15-501(7), MCA, provides in relevant part:

> [It is the duty of the AG] to give an opinion in writing, without fee . . . to any county attorney . . . when required upon any question of law relating to their respective offices. The AG shall give the opinion within 3 months following the date that it is requested unless the AG certifies in writing to the requesting party that the question is of sufficient complexity to require additional time.

Although the GCA persisted in her request for a formal legal opinion from the AG pursuant to § 2-15-501(7), MCA, and with her position that the statute compelled the AG to issue an opinion, she does not seek relief on that basis.

DISCUSSION

¶8 Before addressing whether this matter is properly before this Court as an original proceeding for declaratory relief, we have to address the AG's argument that the GCA's Petition does not present a justiciable controversy. Justiciability is a threshold question which this Court must address at the outset because "[o]nce a court no longer has before it a justiciable case or controversy, it is required to dismiss the action." *Moody's Mkt., Inc. v. Montana State Fund*, 2020 MT 217, ¶ 18, 401 Mont. 168, 471 P.3d 68 (citing *Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd.*, 2010 MT 26, ¶ 12, 355 Mont. 142, 226 P.3d 567). The AG argues three bases upon which it submits this dispute is nonjusticiable: (1) that it poses a political question; (2) the GCA lacks standing; and (3) our Opinion would be advisory.

Political Question

¶9 The AG argues that this dispute poses a political question because he frames the dispute as being "about whether [the GCA] may challenge, and this Court may interfere with, the [AG's] plenary supervisory authority of county attorneys under M.C.A. § 2-15-501(5)." The AG cites *State ex rel. Fletcher v. Dist. Ct. of 19th Jud. Dist.*, 260 Mont. 410, 859 P.2d 992 (1993) for the ostensible proposition that his exercise of supervisory authority over a county attorney constitutes an internal operation of the executive branch into which the Court cannot intrude without violating the separation of powers. In *Fletcher*, this Court accepted supervisory control over a district court's order denying the Lincoln County Attorney's motion to dismiss a number of prosecutions on grounds of outrageous government conduct. *Fletcher*, 260 Mont. at 414, 859 P.2d at 994.

The Attorney General filed a brief in support of the Lincoln County Attorney's motions to dismiss in which he explained to the district court that he had directed the County Attorney to move to dismiss the prosecutions after reviewing the records and determining that there was insufficient untainted evidence to proceed. *Fletcher*, 260 Mont. at 413, 859 P.2d at 994.

¶10 Contrary to the AG's argument that *Fletcher* stands for the proposition that his supervisory control is plenary and therefore beyond the scope of judicial review, in *Fletcher* we accepted supervisory control specifically to address, among other issues, "the authority of the Attorney General in supervising county attorneys." *Fletcher*, 260 Mont. at 414, 859 P.2d at 994. We reviewed the AG's actions in directing the County Attorney to move to dismiss the prosecutions and concluded that he was "well within his authority" to review the cases and to direct the Lincoln County Attorney to move to dismiss the prosecutions because there was insufficient, untainted evidence on which to proceed. *Fletcher*, 260 Mont. at 416, 859 P.2d at 996. But the separation of powers issue in *Fletcher* was not about whether the Attorney General's actions in exercising supervisory control over the Lincoln County Attorney were beyond the scope of judicial review. Obviously, the Attorney General's assertion of supervisory control was subject to judicial review because we reviewed it and determined that, in that particular instance, he did not exceed the supervisory authority conferred by § 2-15-501, MCA. The separation of powers issue we addressed in *Fletcher* was whether the district court's order denying the Lincoln County Attorney's motions to dismiss and that order's consequent intervention in what we had determined to be "the Attorney General's legitimate decision to direct the Lincoln County

Attorney to dismiss the cases . . . was improper and constituted an abuse of discretion." *Fletcher*, 260 Mont. at 418, 859 P.2d 997. We held that a district court may not deny a prosecutor's motion to dismiss

> when that motion meets the good cause and furtherance of justice elements of [§ 46-13-401(1), MCA]. When [prosecutors] are acting lawfully and within their constitutional and statutory authority, the district 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 of the Constitution of the State of Montana.

¶11 The AG's reliance on *Fletcher* is misplaced. "The political question doctrine [generally] excludes from judicial review [only] those controversies . . . which revolve around policy choices and value determinations constitutionally committed for resolution to other branches of government or to the people in the manner provided by law." *Lake Cnty. v. State*, 2024 MT 284, ¶ 17, 419 Mont. 201, 559 P.3d 1263 (quoting *Larson v. State*, 2019 MT 28, ¶ 39, 394 Mont. 167, 434 P.3d 241) (bracketed language in original). Just as we did in *Fletcher*, it does not violate the separation of powers for a court to address "the authority of the Attorney General in supervising county attorneys." This dispute does not present a political question that prohibits judicial review.[3]

[3] This is not to say that *Fletcher* stands for the proposition that an attorney general's assertion of supervisory authority may never present a political question; only that *Fletcher* does not support the AG's argument that his assertion of supervisory authority over a county attorney is a political question that categorically places it beyond the scope of judicial review in every instance. For purposes of our resolution of this issue in this case, we need not consider whether there may be other instances in which an attorney general's assertion of supervisory authority might present a political question.

The GCA's Standing

¶12 "A [party] has legal standing to assert an otherwise cognizable claim only if (1) the claim is based on an alleged wrong or illegality that has in fact caused, or is likely to cause, the plaintiff to personally suffer specific, definite, and direct harm to person, property, or exercise of right and (2) the alleged harm is of a type that available legal relief can effectively alleviate, remedy, or prevent." *Larson*, ¶ 46 (citations omitted).

¶13 The AG argues that "[the GCA] lacks standing because she identifies no 'past, present, or threatened injury' to her rights or duties" and any "speculative harm isn't tied to [a] duty or right—any 'legally protected interest'—that [the GCA] holds." The AG bases this assertion on his interpretation of § 2-15-505(5), MCA, as granting him "plenary authority" over all county attorneys and contends: "The law is clear: county attorneys have no duties independent of the [AG]." But § 2-15-505(5), MCA, is far from the only statute that addresses a county attorney's statutory duties and powers. County attorneys are not merely subordinates of the Attorney General; they are independently elected officials with specifically prescribed duties, powers, and obligations owed to the counties they serve and the constituents who elected them.

¶14 "In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." Section 1-2-101, MCA. To do so, we look to the statute "as a whole, without isolating specific terms from the context in which they are used by the Legislature." *Victory Ins.*

Co. v. State, 2026 MT 100, ¶ 18, 428 Mont. 89, 590 P.3d 387 (internal citations and quotations omitted). "When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it." Section 1-2-102, MCA. "When two statutes deal with a subject, one in general and comprehensive terms, and the other in minute and more definite terms, the more definite statute will prevail to the extent of any opposition between them." *Treasure Cnty. v. Edlund*, 2026 MT 134, ¶ 36, 428 Mont. 498, 591 P.3d 583 (quoting *State v. Smith*, 2004 MT 191, ¶ 17, 322 Mont. 206, 95 P.3d 137). Although § 2-15-505(5), MCA, may be broadly worded, the AG's *general* authority conferred by § 2-15-505(5), MCA, must be construed within the context of the *specific* provisions of Title 7, chapter 4, part 27, which set forth a county attorney's statutory duties and powers, and within the context of the specific provisions of Title 7, chapter 4, parts 21, 22, and 25, MCA, as they pertain to a county attorney's statutory duties and powers relative to other county offices.

¶15 A county attorney's duties to the state are prosecuting criminal laws and on occasion instituting or defending a civil suit in the name of the state. Section 7-4-2716, MCA. When operating in that capacity, the Attorney General has supervisory control over the county attorney. Section 2-15-501(5), MCA. But when the county attorney is serving on behalf of the county government, the county attorney's actions are under the direction of her client—the county commission or the appropriate local governmental entity. *See* §§ 7-4-2110, -2711, and 7-5-2104, MCA. The Attorney General does not supervise the county attorney in her representation of her local government, and cannot override the local government client's direction of a lawsuit. If that were the case, the Attorney General

could deprive a local government of due process by directing a county attorney to dismiss any civil suit against the State and prohibit a county attorney from representing a county on an issue. But even in that event—which the law does not contemplate—the county retains the right to "employ any attorney licensed in Montana" for civil legal work pursuant to § 7-4-2708, MCA.[4] This is because the statute does not give the Attorney General supervisory legal authority over the local government.

¶16 Relevant to this dispute, § 7-4-2711, MCA, designates the county attorney as the legal advisor of the county and other subdivisions within the county. The statute provides that the county attorney is the legal advisor to the board of county commissioners and requires the county attorney to give written opinions to "county, district, and township officers on matters relating to the duties of their respective offices." It is axiomatic that a statutory mandate imposing a duty on a county attorney to provide legal advice and give written opinions to other county officers relating to the duties of their office necessarily requires the advice and opinions be, in the county attorney's qualified judgment, legally correct. Correspondingly, a county attorney must have recourse to the courts to seek clarification on a point of law if she is being directed to provide legal advice or opinions she believes to be incorrect. That the AG fails to acknowledge that the Legislature has granted specific powers, and imposed specific duties, to county attorneys in their capacity

[4] Though not raised by the parties, the Criminal Justice Information Act—the statute at issue in this case—contains a cause of action granting standing to anyone. "Any person may apply for an order from a district court to enforce compliance with any provision of this chapter." Section 44-5-111, MCA. Even without a county attorney as counsel of record, a county retaining outside counsel could sue the AG in a dispute over this matter.

as duly elected county officials which may have equal or superior effect to his authority to assert supervisory control pursuant to § 2-15-505(5), MCA, is precisely why a county attorney who is subject to such an assertion must have standing to resolve this conflict. The GCA has standing to seek a declaration regarding the AG's assertion of supervisory control over her office.

Advisory Opinion

¶17 "A court lacks jurisdiction to . . . give advisory opinions insofar as an actual 'case or controversy' does not exist." *Plan Helena*, ¶ 11 (citations omitted). The AG's assertion of supervisory control over the GCA's office is ongoing. Correspondingly, the "case or controversy" as to the validity and extent of that assertion continues to exist. The Court's determination of this issue does not constitute an advisory opinion.

The AG's Assertion of Supervisory Control

¶18 As it pertains to the AG's assertion of authority in this particular instance, it is instructive that the very first words to the AG's Response to the GCA's Petition are: "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)" (emphasis added). As the AG himself characterizes the GCA's actions, she is acting within the scope of the authority conferred upon her by § 7-4-2711, MCA: advising "county . . . officers on matters relating to the duties of their respective offices." For the reasons discussed at length above, the AG does not have supervisory authority over a county attorney in such circumstances. The AG's assertion of supervisory control over the GCA in this instance exceeded his

authority under § 2-15-505(5), MCA, and infringed on the duties and powers conferred upon her as the duly elected legal advisor to Gallatin County.

The GCA's Petition for Declaratory Ruling Regarding ICE's entitlement to CCJI

¶19 M. R. App. P. 14(4), provides:

> An original proceeding in the form of a declaratory judgment action may be commenced in this Court when urgency or emergency factors make litigation in the trial courts and the normal appeal process inadequate and the case involves purely legal questions of statutory or constitutional interpretation that are of state-wide importance.

¶20 As it pertains to the dispute over ICE's entitlement to CCJI, the GCA asserts that "the issue is solely one of law—specifically, the requirements of the plain text of §§ 44-5-303 and -103(3) and (7), MCA." More specifically, the dispute in this case centers around whether ICE is a "criminal justice agency" as defined by § 44-5-103(7)(b), MCA. As the GCA acknowledges, "the [Criminal Justice Information Act] permits the automatic release of non-public CCJI only to . . . 'criminal justice agencies.'" In relevant part, § 44-5-103(7)(b), MCA, defines a "criminal justice agency" as an agency "designated by statute . . . to perform as its *principal function* the administration of criminal justice." (Emphasis added.) Section 44-5-103(2), MCA, defines "[a]dministration 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. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information."

¶21 The GCA asks this Court to declare, as a matter of law, that Montana counties may not lawfully disseminate CCJI to ICE. But such a declaration necessarily depends upon a determination that ICE is *not* a criminal justice agency which in turn necessarily depends upon a determination that ICE's principal function is *not* the "administration of criminal justice," as defined by § 44-5-103(2), MCA. The parties do not dispute that ICE performs both civil and criminal functions. But it is not clear whether determining if its *principal* function is the administration of criminal justice—within the meaning of §§ 44-5-103(2), and -103(7)(b), MCA—is a determination that can be made as a matter of law, or if it requires a fact-specific inquiry into the agency's operations. This is a threshold inquiry for determining whether this question is appropriate for declaratory ruling pursuant to M. R. App. P. 14(4). It likewise is not clear from the GCA's Petition whether she is maintaining the position that "dissemination of CCJI is restricted to criminal justice agencies acting within the 'administration of *criminal* justice'" (emphasis in original), as she indicated in her April 6, 2026 letter to the AG; or, if ICE satisfies the statutory definition of a criminal justice agency pursuant to §§ 44-5-103(2), and -103(7)(b), MCA, it would be entitled to CCJI solely by virtue of its status as a criminal justice agency.

¶22 Therefore, we determine it is appropriate to order further briefing on the following issues:

> *(1) Whether ICE is a "criminal justice agency" as defined by §§ 44-5-103(2), and -103(7)(b), MCA, and whether that determination can be made as a matter of law or requires a factual determination.*
>
> *(2) Whether a "criminal justice agency" as defined by §§ 44-5-103(2), and -103(7)(b), MCA, is entitled to confidential criminal justice information solely by virtue of its status as a "criminal justice agency."*

¶23 IT IS ORDERED that the GCA's Petition for Declaratory Judgment on Original Jurisdiction is GRANTED in part as follows:

1. The GCA's petition presents a justiciable question, and she has standing to seek a declaratory ruling as to whether Montana counties may lawfully disseminate CCJI to ICE without a court order.
2. The AG does not have supervisory authority over a county attorney when the county attorney acts as legal advisor to the county and its subdivisions. The AG exceeded his authority in this instance by attempting to direct the GCA's legal advice to county offices and employees. Accordingly, the AG's order asserting supervisory control over the Gallatin County Attorney's Office is unenforceable.
3. On or before December 7, 2026, the parties shall submit simultaneous briefs addressing the following issues:

> *(1) Whether ICE is a "criminal justice agency" as defined by §§ 44-5-103(2), and -103(7)(b), MCA, and whether that determination can be made as a matter of law or requires a factual determination.*
>
> *(2) Whether a "criminal justice agency" as defined by §§ 44-5-103(2), and -103(7)(b), MCA, is entitled to confidential criminal justice information solely by virtue of its status as a "criminal justice agency."*

The Clerk is directed to provide notice of this Order to all counsel of record.

DATED this 6th day of November, 2026.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ CORY J. SWANSON
/S/ BETH BAKER
/S/ KATHERINE M. BIDEGARAY
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ JIM RICE

Chief Justice Cory J. Swanson, concurring.

¶24 I concur in the Court's Opinion and Order. I write separately to address the Court's incomplete treatment of *Fletcher*, as it applies to the Attorney General's supervisory control over a county attorney, and in consideration of the political question doctrine.

¶25 The Court correctly describes the county attorney role as a dual state and local government officer, and this dispute involves Cromwell's role as a county officer advising her local government client on areas of civil law. This is not a dispute confined entirely within the functioning of the legal arm of the executive branch, as the Attorney General argues. If that were the case, I would agree it is a political question and the Court should not interfere between the Attorney General and a county attorney with regard to legal representation of state legal interests.

¶26 While the Court's treatment of *Fletcher* is correct, it addresses a slightly different question. *Fletcher* stands for the proposition that the Attorney General can entirely direct a county attorney's prosecution decisions when enforcing state criminal law, even to the point of requiring the county attorney to dismiss a case. *Fletcher,* 260 Mont. at 416, 859 P.2d at 996. But, crucially for analysis of the political question doctrine, *Fletcher* did

not come to us from a county attorney complaining about the Attorney General's oversight. It came to us because the Attorney General directed the Lincoln County Attorney to refrain from using certain tainted investigative evidence in the prosecution of twenty-four criminal cases, and then directed the Lincoln County Attorney to dismiss those cases due to lack of remaining untainted evidence. The district court declined to grant the motions to dismiss, and the erstwhile criminal defendants filed a petition for a writ of supervisory control. *Fletcher*, 260 Mont. at 412-14, 859 P.2d 993-94. The criminal defendants had standing to challenge the district court's refusal to grant the Lincoln County Attorney's motions (as directed by the Attorney General) to dismiss.

¶27 *Fletcher* holds not only that the Attorney General has authority to direct a county attorney in the manner she prosecutes a criminal case, but also that the district court violated the separation of powers by declining to grant the Attorney General-directed motions to dismiss. *Fletcher*, 260 Mont. at 416, 418, 859 P.2d at 996-97. Nowhere in *Fletcher* did we hold a county attorney's petition challenging the Attorney General's supervision of a county attorney's criminal prosecution duties is subject to judicial review and not amenable to the political question doctrine. The Court's treatment is incomplete when it observes, "Obviously, the Attorney General's assertion of supervisory control was subject to judicial review because we reviewed it and determined that, in that particular instance, he did not exceed the supervisory authority conferred by § 2-15-501, MCA." Opinion, ¶ 10. We reviewed it because the truly aggrieved parties—the criminal defendants—petitioned for our review when the District Court questioned the Attorney General's direction of the County Attorney and the merits of the Attorney General-directed

motions to dismiss. That does not necessarily mean a county attorney may petition us to review the Attorney General's direction to her in her role as an attorney representing the state in a legal matter.

¶28 That history, however, illustrates why this case is different. This is not a dispute about a county attorney's role enforcing state law under the direction of the Attorney General. It is a dispute about the Attorney General's assertion of state authority over the County Attorney's exercise of her legal duties to her local government client. Such assertion of authority is susceptible to judicial review for the reasons articulated by the Court.

/S/ CORY J. SWANSON