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**MONTANA FIRST JUDICIAL DISTRICT COURT,
LEWIS & CLARK COUNTY**

JORDAN WILLIAMS,

Plaintiff,

vs.

STATE OF MONTANA; GREG
GIANFORTE, in his official capacity as
GOVERNOR OF THE STATE OF
MONTANA; MARTA BERTOGLIO, in
her official capacity as the
APPOINTED DIRECTOR OF THE
DEPARTMENT OF COMMERCE;
AUSTIN KNUDSEN, in his official
capacity as ATTORNEY GENERAL
OF THE STATE OF MONTANA;
MISTY ANN GILES, in her official
capacity as DIRECTOR OF THE
MONTANA DEPARTMENT OF
ADMINISTRATION,

Defendants.

Cause No. _____

Complaint

INTRODUCTION

1. On June 16, 2025, Governor Greg Gianforte appointed sitting Montana House Representative Marta Bertoglio to serve as Director of the Montana Department of Commerce in violation of the Montana Constitution.
2. Article V, Section 9 of the Montana Constitution—the disqualification provision—provides that “No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state.” Mont. Const. art. V, § 9.
3. The Governor’s latest appointment is just one in a string of legislator appointments that contravene the clear text of the Montana Constitution and the legal advice of the Governor’s own staff and counsel for Legislative Services.
4. In 2021, shortly after staff advised the Governor that to appoint a sitting legislator to a civil office would plainly violate the Montana Constitution, the Governor went ahead, appointing a sitting legislator to the Board of Pardons and Parole—a civil office.
5. Although the press scrutinized the appointment and reported that delegates to the 1972 constitutional convention had discussed examples of forbidden appointments—examples that closely paralleled the 2021 circumstances—Governor Gianforte made two more appointments of the same type in 2024, picking one sitting legislator to become Lottery Director and another to lead the Department of Commerce.
6. Governor Gianforte has now done this for a fourth time.

7. The purpose of the disqualification provision is unambiguous. It prohibits corrupt use of the appointment power, stopping a governor from bribing, inducing, or otherwise interfering with legislators' votes. It reinforces the separation of powers and prevents the governor from manipulating the legislature's composition. Moreover, the disqualification provision protects against patronage, where a new legislator owes their appointment to the governor's machinations.

8. Unconstitutional gubernatorial appointments send the message that part-time citizen legislators—who in 2025 made a salary of \$128.86 per day—might win a six-figure golden ticket to an appointed state civil office, if they promote a governor's political interests over the needs of their own constituents.

9. And yet, the Governor has violated the provision again and again and again and finally, again, appointing Representative Bertoglio to serve as Director of Commerce, a “civil office under the state.” This abuse of the appointment power cannot continue unchecked.

PARTIES

10. Petitioner Jordan Williams is a resident of Jefferson County. Williams is a taxpayer and elector in Montana House District 75 (“HD 75”).

11. Defendant State of Montana is a duly admitted state of the United States.

12. Defendant Greg Gianforte is the Governor of the State of Montana and is responsible for the execution of state laws.

13. Defendant Marta Bertoglio is the appointed Director of the Montana Department of Commerce.

14. Austin Knudsen is the Attorney General of the State of Montana.
15. Defendant Misty Ann Giles is the Director of the Montana Department of Administration and oversees state payroll, compensation, and benefits.

JURISDICTION & VENUE

16. Plaintiffs bring this action under the Montana Constitution. Article VII, Section 4 of the Montana Constitution provides this Court with original jurisdiction, as does § 3-5-302, MCA.
17. This Court has jurisdiction to grant declaratory relief pursuant to § 27-8-101, *et seq.*, MCA, and injunctive relief pursuant to § 27-19-101, *et seq.*, MCA.
18. Venue is proper in Lewis & Clark County under § 25-2-126(1), MCA.

COMMON ALLEGATIONS

Disqualification

19. The disqualification provision, Article V, Section 9, of the Montana Constitution, bars the governor from appointing Montana legislators to civil office during their terms, even if the legislator resigns to accept the position.
20. During the constitutional convention, the delegates were intimately familiar with the disqualification provision language and its effect. The disqualification provision ensured sitting legislators could not serve as convention delegates. *Forty-Second Legislative Assembly v. Lennon*, 156 Mont. 416, 424–25, 481 P.2d 330, 334 (1971); *Mahoney v. Murray*, 159 Mont. 176, 184–85, 496 P.2d 1120, 1124–25 (1972).
21. The delegates debated whether to amend the provision, but ultimately retained the original language, “which has been construed through the years and which we

understand.” Mont. Const. Conv., V Verbatim Tr., at 1580 (Mar. 7, 1972) (Del. Habedank).

22. The disqualification provision “has been the law of Montana ever since 1890.” Mont. Const. Conv., V Verbatim Tr., at 1581 (Mar. 7, 1972) (Del. Joyce). For good reason. “[I]t’s one of the most corrupt things that can be done to the Legislature and to the people of the State of Montana to allow a member of the Legislature to accept an appointment to another office while he’s a member of the Legislature.” Mont. Const. Conv., III Verbatim Tr., at 591 (Feb. 19, 1972) (Del. Aronow).

23. The delegates’ debate focused on principles of independence, separation of powers, and political integrity. Though brief, their discussion identified at least two reasons for the provision’s existence. First, legislators cannot carry out their elected terms with independent judgment, or free from selfish motives, when they can expect to vie for political appointments from their governor. Second, the potential quid pro quo nature of these appointments undermines the separation of powers and sets the stage for political corruption.

24. Discussing the scope of Article V, Section 9, Delegate Thomas Joyce stated:

The effect of it is that a member of the Legislature can’t be appointed to any other office. So that if you are a member of the Legislature. . . during the full course of your term . . . [y]ou cannot be appointed to any other office.

Mont. Const. Conv., V Verbatim Tr., at 1581 (Mar. 7, 1972).

25. The disqualification provision applies through a legislator’s entire term. *Mahoney*, 159 Mont. at 189, 496 P.2d at 1126–27 (delegate could not run for public

office even after constitutional convention adjourned *sine die* and delegate had no further individual duties because the “term” had not run).

26. The delegates expressly debated the question. Delegate Noel Furlong asked, “Could you resign for [sic] the office for which you were elected and then be appointed?” Delegate Joyce responded, “No, you may not. Under the present Constitution, you could not do that.” Mont. Const. Conv., V Verbatim Tr., at 1581 (Mar. 7, 1972).

Governor Gianforte’s Previous Unconstitutional Appointments

27. Between 2021 and May 2025, Governor Gianforte appointed at least three legislators to civil offices during their terms.

28. State Representative Jimmy Patelis was elected to represent House District 52 in November 2020. His full two-year term as representative ran until January 4, 2023.

29. About one week after the 2021 legislative session began, on January 12, 2021, Patelis sought a legal opinion from the Montana Legislative Services Division (“Legislative Services”) regarding whether it would be permissible for the Governor to appoint him to the Montana Board of Pardons and Parole (“the Board”).

30. Legislative Services concluded that Patelis’s appointment would violate the disqualification provision.

31. Patelis then asked whether he could serve through the end of the legislative session, resign, and be appointed in the spring.

32. Legislative Services concluded the Montana Constitution barred this approach as well:

In summary, I believe the Montana Constitution would prohibit a Legislator from resigning from the Legislature to become a member of the Board of Pardons and Parole. This is the case, as Article V, section 9, of the Montana Constitution does not allow a member of the Legislature to be appointed to any civil office ‘during the term for which he shall have been elected.’ The term for which you were elected is a two year term pursuant to Article V, section 3, of the Montana Constitution, which provides in relevant part that a ‘member of the house of representatives shall be elected for a term of two years.’

....

[T]he plain language of the Constitutional provision and the Constitutional Convention transcripts seem to prevent a member of the Legislature from taking any civil office during the length of the term, regardless of whether the member resigns.

33. Nevertheless, the Governor instructed Patelis that he could be appointed to the Board if he resigned from his legislative position.

34. In 2020, State Senator Bob Brown was elected to represent Senate District 7, and he assumed office in January 2021. His full four-year term did not expire until January 6, 2025.

35. On February 29, 2024, the Governor appointed Brown as Director of the Montana Lottery.

36. The Director of the State Lottery “must be qualified by training and experience to direct the state lottery, including sports wagering.” Section 23-7-210, MCA.

37. Brown spent most of his career as a contractor in the construction industry and a special needs educational coordinator.

38. At the time of his appointment, Brown faced a potential primary against another sitting Montana State Senator, Greg Hertz, due to legislative redistricting.

39. Thanks to the Governor's appointment, Brown exchanged a competitive primary election for a full-time state job. The appointment simultaneously ensured Senator Hertz a non-competitive primary.

40. State Representative Paul Green was elected to represent House District 41 on November 8, 2022. His full two-year term as representative ran until January 6, 2025.

41. On January 11, 2024, Governor Gianforte appointed Green to serve as Director of the Montana Department of Commerce.

42. In February 2025, Green resigned from the Director position.

Governor Gianforte's Unconstitutional Appointment of Bertoglio

43. In November 2024, Jefferson County voters elected State Representative Marta Bertoglio to a two-year term to represent House District 75. Her term does not expire until January 6, 2027.

44. In June 2025, Governor Gianforte appointed Bertoglio to serve as Director of the Montana Department of Commerce.

45. Bertoglio's career has predominantly consisted of military service and real estate.

46. The Department of Commerce is a constitutional and legislative creation. *See* Mont. Const. art. VI, § 7 (requiring all executive and administrative offices, boards, bureaus, commissions, agencies, and instrumentalities of the executive branch be

allocated among not more than twenty principal departments); *see* § 2-15-1801, MCA (“There is a department of commerce.”).

47. The governor appoints the director of the Department of Commerce (“Commerce Director”). Section 2-15-1801, MCA.

48. The Commerce Department is Montana’s primary economic development agency. The department comprises four major operational divisions: Destination MT, Business MT, Community MT, and Montana Housing.

49. Destination MT includes tourism, communications, film, and marketing programs. Business MT seeks to grow business across the state and works closely with Indian Country and small business owners. Community MT covers a wide range of programs aimed at maintaining public facilities, social services, and more. Montana Housing includes the Montana Board of Housing Finance and Homeownership Bureau.

50. The following boards are attached to the Department of Commerce: Board of Horse Racing, Board of Housing, Coal Board, Hard Rock Mining Impact Board, Montana Facility Finance Authority, Montana Heritage Commission, Small Business Development Advisory Council, State Tribal Economic Development Commission, and Tourism Advisory Council. Mont. Dep’t Commerce, Org’l. Chart.¹

51. The Director of Commerce answers only to the Governor and oversees the Deputy Director of Commerce, the International Trade Office, the Business

¹ Available at <https://commerce.mt.gov/shared/about/Commerce-Org-Chart.pdf> (last visited August 5, 2025).

Attraction Manager, the Business MT Division Administrator, the Community MT Division Administrator, the Housing MT Division Administrator, the American Rescue Plan Act Housing MT Program Executive, and the Destination MT Division Administrator.

52. Additionally, the Commerce Director's Office oversees Legal Affairs, Human Resources, Information Technology, and the Offices of Accounting and Budget.

53. The Commerce Department is also responsible for administering the federal community development block grant program and adopting rules to implement the program. Section 90-1-103(1)(e), MCA.

54. The Commerce Director is a civil office as contemplated by Article V, Section 9 of the Montana Constitution.

55. "[T]he words 'civil office' in our Constitution mean any public office not of a military character." *State ex rel. Barney v. Hawkins*, 79 Mont. 506, 257 P. 411, 413 (1927). The terms "civil office" and "public office" are synonymous for purposes of the disqualification provision. *Id.*

56. The Commerce Director is statutorily defined as a "public officer," holding public office. Sections 2-2-102(10), (14), 2-15-102(6)(a), 2-15-1801, MCA; *see State ex rel. Nagle v. Page*, 98 Mont. 14, 37 P.2d 575, 579 (1934) (A public officer holds a "public office.").

57. Like all executive department heads, the Commerce Director's duties and powers are defined by statute. *See, e.g.*, § 2-15-112, MCA.

58. On July 10, 2025, Petitioner Williams sent a letter to Governor Gianforte and Attorney General Knudsen, and requested they remove Bertoglio from her unconstitutionally held office.

59. On July 25, 2025, the Governor responded and declined to remove Bertoglio from her unconstitutionally held office.

60. On August 4, 2025, the Attorney General responded and declined to seek Bertoglio's removal.

CLAIMS FOR RELIEF

COUNT I

Violation of the Disqualification Provision Mont. Const. art. V, § 9 (as to Commerce Director Bertoglio)

61. Plaintiffs incorporate all foregoing allegations.

62. The Governor appointed Bertoglio to serve as Director of the Montana Department of Commerce during her term as a Montana State Representative.

63. The Director of the Department of Commerce is a civil office.

64. Bertoglio's appointment as Commerce Director violates the disqualification provision. Mont. Const. art. V, § 9.

COUNT II

Injunctive Relief (Section 27-19-101)

65. Plaintiffs incorporate all foregoing allegations.

66. An injunction is an order requiring a person to refrain from a particular act.

67. Where a person unlawfully holds or exercises a civil office, an injunction is appropriate to prohibit payment of that person's salary.
68. The Director of the Montana Department of Administration is responsible for State payroll and benefits.
69. Due to the Governor's unconstitutional actions, Bertoglio is unlawfully holding or exercising a public office.
70. The Court should enjoin the State of Montana and Misty Ann Giles, as Director of the Montana Department of Administration, from paying Bertoglio's salary and benefits associated with her unconstitutional position as Director of the Montana Department of Commerce.
71. The Court should enjoin Representative Bertoglio from exercising the authority of the Commerce Director.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court enter:

1. A declaratory judgment that Representative Bertoglio's appointment as Commerce Director violates the Montana Constitution;
2. An order enjoining Representative Bertoglio from exercising the authority of the Commerce Director;
3. An order enjoining Director of the Department of Administration Misty Ann Giles and the State of Montana from paying Representative Bertoglio's salary and benefits as Commerce Director;

4. An award of attorneys' fees and costs incurred in bringing this action pursuant to the Declaratory Judgment Act and the private attorney general doctrine;
5. Any further relief this Court deems just and appropriate.

Respectfully submitted this 6th day of August, 2025.

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