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MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY

STATE OF MONTANA, -vs- JASON ELLSWORTH, Defendant.	Cause No. DDC-25-2025-477 EXPEDITED MOTION TO VACATE COURT'S JANUARY 20, 2026 ORDER RE: ARRAIGNMENT AND TO STAY PROCEEDINGS PENDING AN ORDER ON THE MOTION TO DISMISS ON LEGISLATIVE IMMUNITY

I. MOTION

Past Senate President Jason Ellsworth moves this Court for an immediate order vacating its ORDER RE: ARRAIGMENT dated January 20, 2026 and reasserts his request that the Court dismiss this case with prejudice on the grounds of absolute, not qualified, legislative immunity.

Any judicial action outside ruling on absolute legislative immunity and separation of powers should be stayed pending a final determination of the motion. Good cause exists to promptly rule on a shortened timeframe, because the existing orders, including most recently the January 20, 2026 order, are unconstitutional, violating legislative immunity and separation of powers. Past President Senator Ellsworth has been prejudiced by the State's actions to include its press release pandering to the media that Ellsworth has been removed from office. His constituents are presently confused over his authority to advocate for them given the media coverage and reporting on the Court's orders. He has been wrongfully maligned as a criminal based upon false statements of fact. He has had to hire and retain counsel to assert his rights whose attention is being diverted and redirected to procedural functions that are unnecessary and needless because the Past President is immune from suit, not just liability, but from the entirety of this action. The Court has erred as a matter of law when supposing a civil litigant must file an answer rather than a motion to dismiss to stay proceedings when asserting absolute immunity in the civil context or that a criminal matter may proceed pending a ruling on absolute immunity. All proceedings in civil and criminal matters are properly stayed pending a final determination on absolute immunity. Orders on immunity are immediately appealable to afford the official the benefits of immunity to include avoiding procedural appearances.

This Motion is supported by the legal authorities set forth below.

II. BRIEF IN SUPPORT

A. FACTUAL BACKGROUND

Past President Senator Ellsworth has moved on grounds of legislative immunity and separation of powers well supported in Federal and State constitutions to dismiss this matter outright and absolutely. He has simultaneously moved to vacate the orders entered ex parte in

advance of any notice or service to him that have preceded this motion. The State moved for and obtained an ex parte order purporting to suspend Senator Ellsworth and permitting the filing of a criminal misdemeanor information. The State alleges one count of official misconduct under MCA 45-7-401(c) in a conclusory and legally insufficient Information. The State obtained permission to file using an attorney affidavit replete with provably false attestations and without the requisite citation to any act performed by Ellsworth in excess of his lawful authority. All acts alleged involved Ellsworth's legislative activities on judicial reform legislation. All acts alleged were within the express investigative and corresponding powers of a Senate President, M.C.A. 5-5-106, M.C.A. 5-2-107, S10-50(9). Montana's Senate disciplined Ellsworth already on his actions based on the factual conclusion that he was engaged in required legislative matters that estops any further judicial action here. See, M.C.A. 2-2-112(3) and App. A and B to Ellsworth Motion to Dismiss.

III. LEGAL ARGUMENT

The Court has erred in its initial ruling on Past President Ellsworth's Motion to Dismiss and to vacate. The Court has not relied upon any authority citing the constitutional speech and debate clause, but rather has pointed to case law interpreting common law authorities not well established. Legislative immunity is grounded in the speech and debate clause that provides absolute immunity from prosecution, not qualified immunity from liability.

The Court reasoned that civil litigants must file and answer and endure civil procedures when asserting absolute immunity, which is clearly erroneous. Civil litigants claiming both absolute and qualified immunity are routinely afforded a stay of proceedings with no duty to answer pending the outcome of a motion to dismiss. *Hunter v. Bryant*, 502 U.S. 224, 227, 112 S. Ct. 534 (1991)(Immunity questions to be resolved at the earliest stage in the litigation. Delaying

costly and time-consuming litigation may be justified); *Behrens v. Pelletier*, 516 U.S. 299, 116 S.Ct. 834 (1996)(Immunity is meant to give government officials the right to avoid trial and the burdens of pretrial matters that can be peculiarly disruptive of effective government); *Van de Kamp v. Goldstein,* 55 U.S. 335, 129 S.Ct. 855 (2009); *DiMartini v. Ferrin,* 889 F. 2d 922, 924 (9th Cir. 1989)*; Rae v. Union Bank,* 725 F. 2d 478, 481 99th Cir. 1984)(denying appeal of a stay of discovery pending resolution of motion to dismiss); *Renenger v. State*, 392 Mont. 495, 426 P.3d 559 (2018)(Motion to dismiss granted on prosecutorial immunity); *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987); *see also, Obert v. State*, 419 Mont. 1, 558 P.3d 1110 (2024)(Civil complaint dismissed on motion to dismiss on prosecutorial immunity grounds and due process claim dismissed because criminal court held evidentiary hearing on transactional immunity immediately post indictment).

Orders on absolute immunity are immediately appealable because the benefits of immunity are lost where the case proceeds, compelling an immune party to answer for his conduct. *Mitchell v. Forsyth*, 472 U.S. 511 (1985); *Nixon v. Fitzgerald*, 457 U.S. 731, 102 S. Ct. 2690 (1982); *Stapley v. Pestalozzi*, 733 F. 3d 804 (9th Cir. 2013); *Lisker v. City of Los Angeles*, 780 F.3d 1237 (2015). Where interlocutory appeals are authorized, stays are presumptively automatic because the harm of continued proceedings is apparent. *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023). The fact that this is a case of absolute immunity rather than qualified immunity is particularly compelling because absolute immunity means immunity from suit, which includes preliminary procedural matters, whereas qualified immunity is immunity from liability not suit. *WhatsApp Inc. v. NSO Group Technologies, Limited*, 491 F. Supp. 3d 584 (2020). Under all civil authority, Ellsworth is

entitled to a stay of these proceedings and should have no obligation to appear whatsoever.[1] The protection is absolute whether improper motives are at issue. *Chappell v. Robbins*, 73 F.3d 918 (9th Cir. 1996)(Civil RICO charges regarding legislator's alleged pursuit of legislation for bribes). The 9th Circuit has explained that legislative immunity serves a "prophylactic function central to the proper functioning of a democratic government, making representatives answerable to the entire electorate rather than a select few." *Id.* at 921. "For our founding fathers…the growth of democracy and the right of the nation's legislators to be free from civil suit went hand-in-hand. It was well understood that for a democratic government to function democratically, our elected officials, when acting in their legislative capacity, must answer only to their constituents and only on election day." *Id.*

Regarding criminal authorities, the Court has cited *Trump v. United States*, 603 U.S. 593 (2014) as authority regarding a post-arraignment motion to dismiss, which the Defense believes to be incorrect. Procedurally, *Trump* moved the Court post indictment, however, President Trump was never arraigned. The lower court orders were interlocutory appeals on immunity all the way to the Supreme Court which stayed all trial court proceedings. The Supreme Court vacated the trial court orders. Further, Trump claimed federal common law immunity, not legislative immunity under the speech and debate clause. State legislators are immune from criminal prosecution for their legislative activities under the speech and debate clause, not federal common law. The Court also cited *United States v. Dugan*, 797 F.Supp. 3d 855 (E.D. Wis. 2025) which analyzed common law judicial immunity previously applied in the civil context to extend it to criminal proceedings. It too, was not grounded in the constitutional speech and debate clause that

[1] Importantly, the State has never served him, so procedurally the Court does not have personal jurisdiction to compel him to appear. *See Cos v. CoinMarketCap OPCO, LLC*, 112 F.4th 822 (2024).

protects legislators absolutely. In *Dugan*, the judge chose to appear then raise the defense not previously recognized because the Judge did not have an established constitutionally grounded absolute immunity recognized in case law. Here, absolute legislative immunity and separation of powers are a well-established bar to judicial action of any kind against legislators. *Bogan v. Scott-Harris*, 523 U.S. 44, 118 S. Ct. 966 (1988); *Supreme Court of Virginia v. Consumers Union of U.S., Inc.,* 446 U.S. 719, 100 S. Ct. 1967 (1980). Montana's speech and debate clause is very broad, prohibiting any order to appear anywhere to answer for his legislative actions. Past President Ellsworth does not ask this Court to immunize him from felony misconduct, and express exception, he asks the Court to recognize the Senate has finally decided his punishment for acts it necessarily considered within the scope of his legislative activities. The State is in pursuit of a misdemeanor prosecution for official misconduct allegations that it failed to adequately articulate to surpass basic pleading requirements, let alone legislative immunity.

On December 19, 2025, the District Court Granted and authorized filing the State's Information in this matter listing a criminal charge of Count I: Official Misconduct, a Misdemeanor, as specified in Mont. Code Ann. § 45-7-401(c) [sic] (ROA 4). Currently no reference to Mont. Code Ann. § 45-7-401(c) exists under the Montana Code. Title 45 of the Montana Code governs Crimes. Chapter 7 of the Montana Code governs Offenses against public administration. Part 4 of the Montana Code governs Official Misconduct. Mont. Code Ann. § 45-7-401 is separated into five (5) different sub statutes, numbered 45-7-401(1)(a-e), 45-7-401(2), 45-7-401(3), 45-7-401(4), and 45-7-401(5). Montana Code Ann. § 45-7-401 does not contain a statute as plead in the Information of "45-7-401(c)".

Montana adopted its "official" misconduct statute following Illinois, which requires an affirmative attestation regarding what act the official did that exceeded his authority. See § 720

ILCS 5/33-3. It is not sufficient to plead an official engaged in official misconduct. The precise act that violated the law must be spelled out. To properly state the offense of official misconduct, the Information and charging document must specify facts indicating a violation of an identifiable statute, rule, regulation, or tenet so as to demonstrate how a defendant exceeded his lawful authority. *People v. Bassett*, 169 Ill.App.3d 232, 235, 523 N.E.2d 684 (1988). It is well established that a charge of official misconduct must specify the "law" allegedly violated by the officer or employee in the course of committing the offense. *Fellhauer v. City of Geneva*, 142, Ill. 2d 495, 506, 568 N.E.2d 870 (1991).

Similarly, the Montana Supreme Court has held that when an Information lacks sufficient factual allegations as related to the listed "misconduct" allegations, that a criminal Information is legally insufficient to constitute grounds to move forward in a criminal prosecution when the State has failed to sufficiently list factual allegations that rise to the level of a legal nexus between the allegations and specific misconduct allegations. *See Foster v. Kovich*, 207 Mont. 139, 150, 673 P.2d 1239, 1244-46 (1983). Because the Information in this case as to Count I, specifically alleges a violation of a nonexistent statute, Montana Code Ann. § 45-7-401(c), and because the State has not identified the law Ellsworth purportedly violated that shows he exceeded his authority, the State does not have case. The reason it failed to meet pleading requirements was because Ellsworth never did anything to exceed his lawful authority. Even the Senate had to concede the money was the President's to spend at his discretion with whoever he wanted. The Department of Administration approved the agreement as an exigency contract, not subject to sole source contracting competitive procurement requirements. There simply is no criminal case to allege.

The Supreme Court long ago established that a criminal prosecution may not advance at all where legislative acts are implicated, indeed any criminal misconduct must stand alone discrete

from all legislative activities. *U.S. v. Brewster*, 408 U.S. 501, 92 S. Ct. 2531 (1972)(Legislator not immune on charges of bribery where bribe was accepted in advance of and independent from any legislative activity.); *U.S. v. Johnson*, 383 U.S. 169, 86 S.Ct. 749 (1966)(A prosecution under a general criminal statute dependent on inquiries as to motives underlying the making of speech by congressman necessarily contravenes the speech or debate clause of the Federal Constitution.)

The State's information fails to allege any discrete act outside the President's legislative activities. There is no allegation within the information at all, just a legal conclusion. As to the supporting affidavit, that too is replete with descriptions of legislative activities to include President Regier acting as the complainant, reliance on the Legislative Auditor for findings, referral to and findings before the Senate Ethics Committee, Senate floor action on allegations specific to his legislative activities, and Committee votes and floor activity on the services sought and legislative authority to pursue and investigate judicial reform policy measures.

To proceed as if the State has asserted valid claim for which Ellsworth may not be liable is clearly erroneous in violation of the Constitution. Ellsworth is immune from prosecution to include having to appear at all.

IV. CONCLUSION

For the reasons previously stated, the Court must vacate its order directing Senator Ellsworth to appear for arraignment. The Court should stay these proceedings because Senator Ellsworth has claimed immunity from suit, not immunity from liability, until a final determination has been made on legislative immunity and separation of powers.

Dated this 20th day of January, 2026.

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CERTIFICATE OF SERVICE

I, Martin W. Judnich, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion to the following on 01-20-2026:

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Dated: 01-20-2026