

1 SENATE BILL NO. 49

2 INTRODUCED BY B. USHER

3 BY REQUEST OF THE SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

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5 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING JUDICIAL OFFICERS FROM INITIATING OR
6 CONDUCTING ANY PROFESSIONAL DISCIPLINARY PROCEEDINGS OR TAKING ANY DISCIPLINARY
7 MEASURES AGAINST CERTAIN ATTORNEYS FOR ACTIONS TAKEN WHILE SERVING AS A
8 CONSTITUTIONAL OFFICER OR A MEMBER OF THE LEGISLATURE; PROVIDING EXCEPTIONS;
9 PROVIDING A DEFINITION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
10 APPLICABILITY DATE."
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12 WHEREAS, the Governor, Lieutenant Governor, Attorney General, Secretary of State, and
13 Superintendent of Public Instruction are constitutional officers because their offices are provided for in the
14 Montana Constitution and these officials form a part of the executive branch; and

15 WHEREAS, legislators are also provided for in the Montana Constitution and form the legislative
16 branch; and

17 WHEREAS, the First Amendment to the United States Constitution and Article II, section 7, of the
18 Montana Constitution, both protect freedom of speech; and

19 WHEREAS, the Fourteenth Amendment to the United States Constitution and Article II, section 17, of
20 the Montana Constitution both guarantee due process of law before any official deprivation of "life, liberty, or
21 property"; and

22 WHEREAS, Article II, section 4, of the Montana Constitution provides, "Neither the state nor any
23 person... or institution shall discriminate against any person in the exercise of his civil or political rights on
24 account of... political... ideas"; and

25 WHEREAS, elected officials who are also licensed to practice law in the State of Montana must be
26 allowed to perform their official duties without the threat of disciplinary measures from the judicial branch,
27 including the Office of Disciplinary Counsel and the Commission on Practice, pursuant to the doctrine of
28 separation of powers and the protections for free speech, due process, and freedom from political

1 discrimination.

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3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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5 NEW SECTION. Section 1. Restrictions on disciplinary proceedings. (1) Except as provided in
6 subsection (3), a judicial officer may not initiate or conduct any professional disciplinary proceedings or take
7 any disciplinary measures against an attorney who serves as a constitutional officer as defined in 2-6-1002 or
8 as a member of the legislature for actions taken by the attorney during the attorney's term of public office THAT
9 COULD DETER, RETALIATE AGAINST, OR PREVENT THE LAWFUL EXERCISE OF THE ATTORNEY'S CONSTITUTIONAL RIGHTS
10 OR WOULD OTHERWISE IMPEDE THE FAITHFUL EXECUTION OF OFFICE.

11 (2) A judicial officer is barred from conducting proceedings described in subsection (1) after the
12 attorney leaves office if the basis for the proceeding arises while the attorney is in office.

13 (3) A judge or justice of the peace may take disciplinary measures against an attorney identified in
14 subsection (1) for courtroom behavior that disrupts a judicial proceeding.

15 (4) IF PROFESSIONAL DISCIPLINARY PROCEEDINGS ARE INITIATED AGAINST AN ATTORNEY SERVING AS A
16 CONSTITUTIONAL OFFICER OR MEMBER OF THE LEGISLATURE, THAT INDIVIDUAL MAY FILE A MOTION TO DISMISS OR A
17 MOTION TO QUASH UNDER THIS SECTION.

18 (4)(5) For the purposes of this section, "judicial officer" means a judge, a justice of the peace, a
19 supreme court justice, any court of law, the office of disciplinary counsel, and the commission on practice.

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21 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an
22 integral part of Title 3, chapter 1, part 6, and the provisions of Title 3, chapter 1, part 6, apply to [section 1].

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24 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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26 NEW SECTION. Section 4. Retroactive applicability. [This act] applies retroactively, within the
27 meaning of 1-2-109, to any disciplinary proceedings occurring on or after January 1, 2024.

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