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SENATE BILL NO. 43

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INTRODUCED BY D. EMRICH

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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 GENERALLY REVISING INJUNCTIVE POWERS OF THE
6 JUDICIARY; PROHIBITING THE GRANT OF AN INJUNCTION IN THE DISTRICT COURT TO RESTRAIN
7 THE ENFORCEMENT OF A STATUTE AGAINST A NONPARTY; REQUIRING AN INJUNCTION BE
8 APPEALED TO THE SUPREME COURT TO ACHIEVE STATEWIDE ENFORCEMENT LIMITING THE
9 SCOPE OF INJUNCTIONS THAT RESTRAIN THE ENFORCEMENT OF A STATUTE; AND AMENDING
10 SECTION- SECTIONS 27-19-101, AND 27-19-103, MCA."

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12 WHEREAS, the Montana Supreme Court has stated that courts cannot enforce an order against a
13 nonparty, as in *In re Parenting of P.H.R.*, 2021 MT 231, 405 Mont. 334, 495 P.3d 38; Montana Department of
14 Public Health & Human Services v. Eighth Judicial District Court, OP 23-0676, 414 Mont. 389, 539 P.3d 1109
15 (2023); and *In re Estate of Johnson*, 2024 MT 224, 418 Mont. 198, 557 P.3d 36; and

16 WHEREAS, this statement of law is a basic rule of fairness and is consistent with the due process
17 clause of the 14th Amendment to the United States Constitution and Article II, section 17, of the Montana
18 Constitution; and

19 WHEREAS, despite this statement of the rule, the Montana Supreme Court has on various occasions
20 extended its order to affect nonparties, such as in *McLaughlin v. Montana State Legislature*, 2021 MT 120, 404
21 Mont. 166, 489 P.3d 482, in which it vacated a subpoena issued by a nonparty, and *State of Montana ex rel.*
22 *Montanans for the Preservation of Citizen's Rights v. Waltermire*, 231 Mont. 406, 757 P.2d 746 (1988), in which
23 it imposed a decision against the proponents of one voter initiative against the nonparty proponents of another;
24 and

25 WHEREAS, placing this rule in statute would remind the courts of the foundational nature of this
26 principle; and

27 WHEREAS, it is also a basic rule of law that, in general, the scope of an injunction should not exceed
28 the scope required to enforce the court's order; and

1 WHEREAS, the Legislature has decided to embody this basic rule of law in statute.

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

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5 **Section 1.** Section 27-19-101, MCA, is amended to read:

6 **"27-19-101. Definition of injunction -- by whom granted** -- against whom granted. (1) An
7 injunction is an order requiring a person to refrain from a particular act. The order may be granted by the court
8 in which the action is brought or by a judge thereof of the court and, when made by a judge, be enforced as the
9 order of the court.

10 (2) (a) When an injunction is granted by a district court judge it is only enforceable in the judicial
11 district in which it was granted.

12 (b) If statewide enforcement of the injunction is sought, an action for injunction must be appealed
13 to the supreme court."

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15 **Section 2.** Section 27-19-103, MCA, is amended to read:

16 **"27-19-103. When injunction may not be granted.** An injunction cannot may not be granted:

17 (1) to stay a judicial proceeding pending at the commencement of an action in which the injunction
18 is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings;
19 (2) to stay proceedings in a court of the United States;
20 (3) to stay proceedings in another state upon a judgment of a court of that state;
21 (4) to prevent the execution of a public statute by officers of the law for the public benefit;
22 (5) to prevent the breach of a contract the performance of which would not be specifically
23 enforced;

24 (6) to prevent the exercise of a public or private office, in a lawful manner, by the person in
25 possession;

26 (7) to prevent a legislative act by a municipal corporation;

27 (8) in labor disputes under any other or different circumstances or conditions than if the
28 controversy were of another or different character or between parties neither or none of whom were laborers or

1 interested in labor questions; or

2 (9) to prevent the secretary of state from issuing a temporary or final administrative rule before the
3 administrative rule is issued; or

4 (10) to restrain the enforcement of a statute against a nonparty to the proceedings before the district
5 court. An injunction to restrain the enforcement of a statute to remedy a constitutional violation must directly
6 address and bear a substantial connection to the violation and may not require more than is necessary to
7 ensure compliance by the parties before the court."

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