

HOUSE BILL NO. 409

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A COURT FROM USING CERTAIN TESTS WHEN CONSIDERING AN APPLICATION FOR A PRELIMINARY INJUNCTION OR A TEMPORARY RESTRAINING ORDER; AMENDING SECTION 27-19-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, in 2023, the Montana Legislature amended section 27-19-201, MCA, to establish a standard for preliminary injunctions and temporary restraining orders based on United States Supreme Court precedent; and

WHEREAS, that section states, "It is the intent of the legislature that the language in subsection (1) mirror the federal preliminary injunction standard, and that interpretation and application of subsection (1) closely follow United States supreme court case law"; and

WHEREAS, in *Stensvad v. Newmay Ayers Ranch, Inc.*, the Montana Supreme Court adopted the serious questions test, a sliding scale approach to evaluating applications for preliminary injunctions and temporary restraining orders; and

WHEREAS, the use of the serious questions test or any other sliding scale test is contrary to the legislative intent expressed in section 27-19-201, MCA; and

WHEREAS, the amendments to section 27-19-201, MCA, contained in this legislation are intended to express the intent of the Legislature that any applications for preliminary injunctions or temporary restraining orders must be based on United States Supreme Court precedent and not on 9th Circuit Court of Appeals decisions.

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

**Section 1.** Section 27-19-201, MCA, is amended to read:

**"27-19-201. When preliminary injunction may be granted -- when injunction order may be granted -- legislative intent.** (1) A preliminary injunction order or temporary restraining order may be granted

1 when the applicant establishes that:

2 (a) the applicant is likely to succeed on the merits;

3 (b) the applicant is likely to suffer irreparable harm in the absence of preliminary relief;

4 (c) the balance of equities tips in the applicant's favor; and

5 (d) the order is in the public interest.

6 (2) An injunction order may be granted in either of the following cases between persons, not

7 including a person being sued in that person's official capacity:

8 (a) when it appears that the adverse party, while the action is pending, threatens or is about to

9 remove or to dispose of the adverse party's property with intent to defraud the applicant, in which case an

10 injunction order may be granted to restrain the removal or disposition; or

11 (b) when it appears that the applicant has applied for an order under the provisions of 40-4-121 or

12 an order of protection under Title 40, chapter 15.

13 (3) The applicant for an injunction provided for in this section bears the burden of demonstrating

14 the need for an injunction order.

15 ~~(4) When considering an application for a preliminary injunction or a temporary restraining order, a~~  
16 ~~court may not use a sliding scale test or the serious questions test.~~

17 ~~(4)(5) (4)~~ (A) It is the intent of the legislature that the language in subsection (1) mirror the federal  
18 preliminary injunction standard, and that interpretation and application of subsection (1) closely follow United  
19 States supreme court case law.

20 ~~(B) WHEN CONDUCTING THE PRELIMINARY INJUNCTION ANALYSIS, THE COURT SHALL EXAMINE THE FOUR~~  
21 ~~CRITERIA IN SUBSECTION (1) INDEPENDENTLY. THE COURT MAY NOT USE A SLIDING SCALE TEST, THE SERIOUS~~  
22 ~~QUESTIONS TEST, FLEXIBLE INTERPLAY, OR ANOTHER FEDERAL CIRCUIT MODIFICATION TO THE CRITERIA."~~

23

24 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

25 - END -