

SENATE BILL NO. 49

INTRODUCED BY B. USHER

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

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING JUDICIAL OFFICERS FROM INITIATING OR  
CONDUCTING ANY PROFESSIONAL DISCIPLINARY PROCEEDINGS OR TAKING ANY DISCIPLINARY  
MEASURES AGAINST CERTAIN ATTORNEYS FOR ACTIONS TAKEN WHILE SERVING AS A  
CONSTITUTIONAL OFFICER OR A MEMBER OF THE LEGISLATURE; PROVIDING EXCEPTIONS; AND  
PROVIDING A DEFINITION; ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE~~  
~~APPLICABILITY DATE.~~"

WHEREAS, the Governor, Lieutenant Governor, Attorney General, Secretary of State, and  
Superintendent of Public Instruction are constitutional officers because their offices are provided for in the  
Montana Constitution and these officials form a part of the executive branch; and

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

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

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

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

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

discrimination.

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

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

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

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

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

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

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

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

~~**NEW SECTION. Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to any disciplinary proceedings occurring on or after January 1, 2024.~~

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