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**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

REPRESENTATIVE ZOOEY ZEPHYR,
ANN WONG, DEAN CHOU, BRADY
SCHWERTFEGER, and SARAH VELK,

Plaintiffs,

v.

STATE OF MONTANA,
REPRESENTATIVE MATT REGIER,
in his official capacity as Speaker of the
Montana House of Representatives;
BRADLEY MURFITT, in his official
capacity as Sergeant at Arms for the
Montana House of Representatives,

Defendants.

Cause No. ADV-2023-300

**ORDER ON PLAINTIFFS’
MOTION FOR TEMPORARY
RESTRAINING ORDER**

Before the Court is Plaintiffs’ motion for temporary restraining order and preliminary injunction. John Amsden, Justin Stalpes, Sydney Best, Connor Bottomly, and Michael G. Black represent Plaintiff Representative Zooey Zephyr (Rep. Zephyr). Alex Rate and Akilah Deernose represent Plaintiffs Anna

1 Wong, Dean Chou, Brady Schwertfeger, and Sarah Velk (collectively constituent
2 Plaintiffs). Austin Knudsen, Christian B. Corrigan, Brent Mead, Thane Johnson,
3 Michael Russell, and Emily Jones represent Defendants State of Montana (State),
4 Representative Matt Regier (Regier) in his official capacity as Speaker of the
5 Montana House of Representatives, and Bradley Murfitt (Murfitt) in his official
6 capacity as Sergeant at Arms for the Montana House of Representatives.

7 **STATEMENT OF FACTS**

8 Plaintiffs have moved for a temporary restraining order seeking to
9 enjoin Defendants from preventing Rep. Zephyr from engaging in the legislative
10 process on behalf of her constituents. According to Plaintiffs' motion,
11 Defendants have prohibited Rep. Zephyr from speaking on the floor of the
12 Montana House of Representatives since April 20, 2023, following comments
13 Rep. Zephyr made in opposition to Senate Bill 99 (SB 99). Subsequently,
14 Defendants censured Rep. Zephyr and expelled her from the House floor. At the
15 time Plaintiffs filed this matter, Rep. Zephyr retains the ability to vote remotely
16 on all matters pending before the House of Representatives but cannot participate
17 in debate.

18 Plaintiffs seek a temporary restraining order until such time as the
19 Court conducts a hearing and rules on the merits of Plaintiffs' concurrently filed
20 application for a preliminary injunction. Plaintiffs argue a temporary restraining
21 order is necessary to prevent irreparable injury to Plaintiffs' fundamental rights
22 which Plaintiffs allege would result from enforcement of the censure and
23 Defendants' continued refusal to recognize Rep. Zephyr in debate on the House
24 floor.

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1 **PRINCIPLES OF LAW**

2 Pursuant to recent legislation (2023 Senate Bill 191 or “SB 191”),
3 as of March 2, 2023:

- 4 [a] preliminary injunction order or temporary restraining order may
5 be granted when the applicant establishes that:
6 (a) the applicant is likely to succeed on the merits;
7 (b) the applicant is likely to suffer irreparable harm in the absence
8 of preliminary relief;
9 (c) the balance of equities tips in the applicant’s favor; and
10 (d) the order is in the public interest.

11 *See* SB 191, 2023 Leg. Reg. Sess. (Mont. 2023) (amending Mont. Code Ann §
12 27-19-201). The new standard amends Montana’s statutory standards for
13 preliminary injunctions and temporary restraining orders. The Montana
14 Legislature intended for this standard to “mirror the federal preliminary
15 injunction standard,” and “closely follow United States supreme court case law.”
16 SB 191, § 1.

17 **ANALYSIS**

18 To obtain a temporary restraining order, Plaintiff must meet each
19 of the requirements set forth in Montana Code Annotated § 27-19-201. Plaintiffs
20 have asked this Court to issue injunctions prohibiting Defendants from enforcing
21 their censure of Rep. Zephyr and from refusing to recognize her on the House
22 floor. Based on the relief requested, the Court finds Plaintiffs are unlikely to
23 succeed on the merits and therefore cannot satisfy the first requirement.
24 Plaintiffs’ requested relief would require this Court to interfere with legislative
25 authority in a manner that exceeds this Court’s authority. Plaintiffs also seek
injunctive relief which far outpaces the facts at issue here.

1 Separation of powers is fundamental to the United States’ system
2 of government. The Constitution of the state of Montana provides specific grants
3 of authority to each of the three branches. “The power of the government of this
4 state is divided into three distinct branches--legislative, executive, and judicial.
5 No person or persons charged with the exercise of power properly belonging to
6 one branch shall exercise any power properly belonging to either of the others,
7 except as in this constitution expressly directed or permitted.” Mont. Const. Art.
8 III, § 1. Article V, Section 10 of the Montana Constitution explicitly grants each
9 house of the Montana legislature the authority to “expel or punish a member for
10 good cause.” Mont. Const. Art. V, § 10. Because the constitution explicitly
11 reserves this power for the Legislature, the Court’s powers are conversely
12 limited.

13 The Court also finds Plaintiffs are unlikely to succeed on the
14 merits because the ultimate relief they seek includes broad permanent injunctions
15 clearly outside the scope of this Court’s authority. Even if the Court ultimately
16 finds the House of Representatives, Speaker Regier, and Sergeant at Arms
17 Murfitt acted unlawfully under the facts of this case, it does not have the
18 authority to issue a broad permanent injunction to effectively remove all
19 legislative authority under Article V Section 10 in relation to a single member.
20 Because Plaintiffs are not able to meet the first requirement necessary to obtain a
21 temporary restraining order, there is no cause to address the remaining factors
22 currently.

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1 **ORDER**

2 **IT IS HEREBY ORDERED** Plaintiffs’ motion for temporary
3 restraining order is **DENIED**.

4
5 /s/ Mike Menahan
6 **MIKE MENAHAN**
7 **District Court Judge**

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