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

<p>BRAD MOLNAR,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>GREG GIANFORTE, in his official capacity as Governor of Montana, and JENNIFER FIELDER, in her official capacity as a member of the Montana Public Service Commission,</p> <p style="text-align: center;">Defendants.</p>	<p>Cause No. ADV-2025-535</p> <p style="text-align: center;">ORDER – MOTION FOR PRELIMINARY INJUNCTION</p>
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Before the Court is Plaintiff Brad Molnar’s (Molnar) motion for preliminary injunction. Defendant Jennifer Fielder (Fielder) opposes the motion. Defendant Greg Gianforte (Gianforte), Governor of the State of Montana, does not take a position on the motion. Matthew G. Monforton represents Molnar. Natsha Prinzing Jones, Tyler M. Stockton and Karston E. Erickson represent Fielder. Dale Schowengerdt and Timothy Longfield represent Gianforte. The
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1 parties appeared on September 16, 2025, for argument. The motion has been
2 fully briefed and is ready for decision.

3 **STATEMENT OF FACTS**

4 Molnar is a duly elected Commissioner of the Montana Public
5 Service Commission (PSC or Commission), representing District 2, having been
6 elected in November 2024. In January 2025, Commissioner Molnar was elected
7 President of the PSC by his fellow commissioners.

8 In 2024, the PSC adopted an Internal Policy Manual establishing
9 procedural requirements for complaints seeking gubernatorial suspension of
10 elected commissioners. Rule 2.17 of the Internal Policy Manual requires that
11 before the PSC may file any complaint seeking gubernatorial suspension of a
12 commissioner, it must (1) conduct a properly noticed public meeting on the
13 recommendation, and (2) obtain an affirmative vote of at least four of the five
14 commissioners.

15 On August 20, 2025, Fielder filed a complaint with Governor
16 Gianforte seeking Molnar's immediate suspension from the Commission. Fielder
17 filed the complaint without first completing Rule 2.17's procedural requirements,
18 to wit: no properly noticed public meeting was conducted and no affirmative vote
19 of at least four PSC commissioners was obtained before filing the complaint.
20 Fielder marked her complaint "CONFIDENTIAL" and failed to notify Molnar
21 when it was filed.

22 On September 3, 2025, Molnar moved the PSC to withdraw
23 Fielder's complaint. The motion failed 3-2. Governor Gianforte has not
24 dismissed the complaint and has requested briefs from both parties.

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1 **PRINCIPLES OF LAW**

2 Montana Code Annotated § 27-19-201 governs the grant of a
3 preliminary injunction or temporary restraining order:

4 (1) A preliminary injunction order or temporary restraining order
5 may 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 of
8 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 (2) An injunction order may be granted in either of the following
12 cases between persons, not including a person being sued in that
13 person’s official capacity:
14 (a) when it appears that the adverse party, while the action is
15 pending, threatens or is about to remove or to dispose of the adverse
16 party’s property with intent to defraud the applicant, in which case
17 an injunction order may be granted to restrain the removal or
18 disposition; or
19 (b) when it appears that the applicant has applied for an order under
20 the provisions of 40-4-121 or an order of protection under Title 40,
21 chapter 15.

22 (3) The applicant for an injunction provided for in this section bears
23 the burden of demonstrating the need for an injunction order.

24 (4)(a) It is the intent of the legislature that the language in subsection
25 (1) mirror the federal preliminary injunction standard, and that
interpretation and application of subsection (1) closely follow United
States supreme court case law.
(b) When conducting the preliminary injunction analysis, the court
shall examine the four criteria in subsection (1) independently. The
court may not use a sliding scale test, the serious questions test,
flexible interplay, or another federal circuit modification to the
criteria.

Mont. Code Ann. § 27-19-201

1 A preliminary injunction is an extraordinary remedy never awarded as of right.
2 *Montanans Against Irresponsible Densification, LLC v. State*, 2024 MT 200,
3 ¶ 10, 418 Mont. 78, 555 P.3d 759 [citing *Winter v. NRDC, Inc.*, 555 U.S. 7, 24,
4 129 S. Ct. 365, 376, 172 L. Ed. 2d 249 (2008)]. A preliminary injunction does
5 not resolve the merits of the case. *Four Rivers Seed Co. v. Circle K Farms, Inc.*,
6 2000 MT 360, ¶ 12, 303 Mont. 342, 16 P.3d 342 (citing *Knudson v. McDunn*,
7 271 Mont. 61, 65, 894 P.2d 295, 298 (1995)).

8 ANALYSIS

9 The current language in Montana Code Annotated § 27-19-201
10 was adopted in 2023. It substantially changed the test for determining when a
11 court may issue a temporary restraining order (TRO) or preliminary injunction
12 and instructed courts to look to “United States supreme court case law” when
13 determining whether to issue a TRO or preliminary injunction. Shortly after its
14 enactment, the Montana Supreme Court was asked to provide guidance to the
15 lower courts on how to interpret and apply the new statutory formulation in
16 *Stensvad v. Newman Ayers Ranch*, 2024 MT 246, 418 Mont. 378, 557 P.3d 1240.

17 First, and most basic, the Court concluded that unlike the previous,
18 disjunctive test, a party seeking a TRO or preliminary injunction must satisfy all
19 four parts of the test. Second, the Court noted that the most recent
20 pronouncement on the federal preliminary injunction standard was provided in
21 *Winter v. National Resources Defense Council*, 555 U.S. 7, 129 S.Ct. 365,
22 172 L.Ed.2d 249 (2008). The Court reviewed the history of the remedy of
23 preliminary injunction and the approaches taken by the various federal courts
24 following *Winter*. The Court ultimately concluded that the “serious question

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1 test” adopted by the Second, Seventh, D.C. and Ninth Circuits was the most
2 appropriate means of applying the federal preliminary injunction standard.
3 *Stensvad*, supra at ¶ 25.

4 In response to *Stensvad*, the 2025 Montana Legislature passed
5 House Bill 409, entitled “An Act Prohibiting a Court from Using Certain Tests
6 When Considering an Application for Preliminary Injunction or a Temporary
7 Restraining Order; Amending Section 27-19-201, MCA; and Providing an
8 Effective Date.” Governor Gianforte signed House Bill 409 on March 25, 2025.
9 House Bill 409 amended subsection (4) of Montana Code Annotated § 27-19-201
10 by adding the language in subsection (4)(b), requiring a court to consider each of
11 the four preliminary injunction factors independently and prohibiting a court
12 from using various tests that have been adopted by the federal circuit courts.
13 House Bill 409 effectively affirmed *Stensvad*’s holding that the four preliminary
14 injunction factors are conjunctive and reversed *Stensvad*’s holding that courts
15 should utilize the “serious questions test.”

16 Molnar’s prayer for relief seeks a preliminary injunction
17 “preventing Governor Gianforte from acting on the defective complaint.” With
18 the foregoing background, the Court turns to the analysis and application of the
19 four factors to Molnar’s application for a preliminary injunction.

20 **Likelihood of Success on the Merits**

21 The first factor is the likelihood the applicant will succeed on the
22 merits of their claim. At issue here is Fielder’s complaint to Governor Gianforte
23 requesting that Molnar be temporarily suspended from the Commission while the
24 Department of Public Service Regulation conducts an investigation into
25 allegations of Molnar’s workplace misconduct. Molnar argues Fielder’s

1 complaint is procedurally defective under the PSC’s own rules, fails to constitute
2 a valid complaint under Montana law, and, therefore, Governor Gianforte lacks
3 authority to act on the complaint.

4 Montana Code Annotated § 69-1-113 provides:

5 **69-1-113. Removal or suspension of commissioner.** If a
6 commissioner fails to perform the commissioner's duties as provided
7 in this title, the commissioner may be removed from office as
8 provided by 45-7-401. Upon complaint made and good cause shown,
9 the governor may suspend any commissioner, and if, in the
10 governor's judgment the exigencies of the case require, the governor
11 may appoint temporarily some competent person to perform the
12 duties of the suspended commissioner during the period of the
13 suspension.

14 Mont. Code Ann § 69-1-113.

15 The statute grants Gianforte the authority to suspend a
16 commissioner provided there is “good cause shown” for the suspension. The
17 determination of whether there is good cause to suspend a commissioner is
18 triggered “upon complaint made.” The statute does not place any type of
19 conditions or restrictions regarding the form of the complaint or who may file a
20 complaint.

21 “In the construction of a statute, the office of the judge is simply to
22 ascertain and declare what is in terms or in substance contained
23 therein, not to insert what has been omitted or to omit what has been
24 inserted. Where there are several provisions or particulars, such a
25 construction is, if possible, to be adopted as will give effect to all.”

Mont. Code Ann. § 1-2-101.

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1 “[W]henever the language of a statute is plain, simple, direct, and unambiguous,
2 it does not require construction but construes itself.” *State ex rel. Long v. Justice*
3 *Court, Lake Cty.*, 2007 MT 3, ¶ 8, 335 Mont. 219, 156 P.3d 5.

4 The language of Montana Code Annotated § 61-1-113 is plain,
5 simple and unambiguous. The governor has the authority to act when a
6 complaint is presented to him or her. While Molnar argues that the governor’s
7 review and suspension is triggered only upon the filing of a “valid” complaint,
8 the statute contains no such requirement. Moreover, Molnar does not define
9 what constitutes a “valid” complaint. The substance of Molnar’s argument
10 suggests that “valid” means “authorized.”

11 The statute does not place any restrictions on who may file a
12 complaint nor does it require the governor to conduct an inquiry into whether the
13 person who filed the complaint had the authority to do so. The statute only
14 requires the governor review the validity of a complaint and decide whether there
15 is or is not “good cause” to suspend a commissioner.

16 Good cause is not defined in Title 61 of the Montana Code
17 Annotated. It is, however, defined in Montana Code Annotated § 39-2-903(5).
18 “Whenever the meaning of a word or phrase is defined in any part of this code,
19 such definition is applicable to the same word or phrase wherever it occurs,
20 except where a contrary intention plainly appears.” Mont. Code Ann. § 1-2-107.
21 Good cause is defined in Mont. Code Ann. § 39-2-903(5) as:

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1 (5) "Good cause" means any reasonable job-related grounds for an
2 employee's dismissal based on:

3 (a) the employee's failure to satisfactorily perform job duties;

4 (b) the employee's disruption of the employer's operation;

5 (c) the employee's material or repeated violation of an express
6 provision of the employer's written policies; or

7 (d) other legitimate business reasons determined by the employer
8 while exercising the employer's reasonable business judgment. . .

9 Mont. Code Ann. § 39-2-903(5)

10 Pursuant to Montana Code Annotated § 69-1-113, Governor
11 Gianforte has the authority to act on Fielder's complaint and determine what
12 action, if any, to take in response, taking account of the factors enumerated in
13 Montana Code Annotated § 39-2-903(5).

14 Molnar's argument that Fielder did not follow PSC policy and the
15 party's disagreement on whose behalf Fielder was acting is not relevant to
16 Gianforte's authority to act on the complaint. Consequently, Molnar is not likely
17 to succeed on the merits.

18 **Likelihood the Applicant will Suffer Irreparable Harm**

19 The second factor the Court must consider is whether the applicant
20 is likely to suffer irreparable harm in the absence of preliminary relief. Molnar
21 lists several injuries he alleges will occur if he is temporarily suspended from the
22 PSC. Most of the injuries Molnar identifies are not injuries to himself but to the
23 public. "Perhaps the single most important prerequisite for the issuance of a
24 preliminary injunction is a demonstration that if it is not granted, *the applicant* is
25 likely to suffer irreparable harm before a decision on the merits can be rendered."
Montanans Against Irresponsible Densification, LLC v. State, 2024 MT 200,
¶ 15, 418 Mont. 78, 555 P.3d 759 (citing 11A Wright, Miller, & Kane, Federal

1 Practice and Procedure, § 2948.1 (2013)) (emphasis added). Moreover, Molnar
2 is not proceeding in this litigation in a representative capacity and does not have
3 associational standing to represent the electors whom he alleges will suffer
4 irreparable harm.

5 Molnar does identify two injuries personal to himself. The first is
6 loss of his ability to perform the statutory duties of a commissioner. The second
7 is the “continuing threat of arbitrary removal.” While those injuries may be
8 personal to Molnar, at this point they are entirely speculative. Any harm to
9 Molnar would occur only if, following the governor’s investigation into the
10 allegations in the complaint, he found good cause to suspend Molnar and acted to
11 do so.

12 Plaintiffs seeking preliminary relief must demonstrate that
13 irreparable injury is likely, not merely speculative, in the absence of an
14 injunction. *Id.* at ¶ 15 (citing *Winter v. NRDC, Inc.*, 555 U.S. 7, 22, 129 S. Ct.
15 365, 375, 172 L. Ed. 2d 249 (2008)). “Issuing a preliminary injunction based
16 only on a *possibility* of irreparable harm is inconsistent with our characterization
17 of injunctive relief as an extraordinary remedy that may only be awarded upon a
18 clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22,
19 129 S. Ct. at 375-76 (emphasis added).

20 Molnar has not offered any reason why the governor cannot
21 proceed with his investigation of Fielder’s complaint prior to a determination of
22 good cause. The harm Molnar identifies is either not personal to him or
23 speculative. In sum, it is not likely Molnar will suffer irreparable injury if a
24 preliminary injunction is not granted.

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1 **The Balance of Equities**

2 The third factor the Court must consider is whether the balance of
3 equities tips in Molnar’s favor. Molnar argues the equities favor the relief he
4 seeks because he simply wants to ensure that any gubernatorial action complies
5 with statutory and policy requirements; that Fielder violated PSC policy when
6 she sent the complaint to Governor Gianforte; that the timing of Fielder’s
7 complaint is “suspicious” as it was filed contemporaneously with Northwestern
8 Energy’s petition for a merger. According to Molnar, if Fielder has concerns
9 regarding Molnar’s job performance, she can address them through Rule 2.17 of
10 the PSC’s internal policy manual.

11 Fielder argues the equities do not tip in Molnar’s favor. If the
12 Court grants a preliminary injunction, Molnar will continue to impede the
13 internal investigation into the complaints regarding his alleged misconduct.
14 Moreover, Molnar’s argument that Fielder has alternative means to address his
15 job performance through Rule 2.17 are illusory, as that is the same process
16 Molnar is accused of disrupting and which Fielder seeks Molnar’s suspension
17 during the pendency of the internal investigation.

18 The Court agrees with Molnar it appears there are questions
19 whether Fielder acted in violation of internal policy when she sent the complaint
20 to Governor Gianforte. This would tip the equities in Molnar’s favor. However,
21 as already discussed, Fielder’s authority to send the complaint is not relevant to
22 Governor Gianforte’s authority to act on the complaint. Molnar’s argument that
23 Fielder filed the complaint to prevent Molnar from participating in Northwestern
24 Energy’s merger is entirely speculative.

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1 Granting the injunction would hamper the PSC’s ability to conduct
2 its investigation. Rule 2.17 does not provide a different avenue for reviewing
3 Molnar’s job performance. In sum, the Court concludes the equities tip in
4 Fielder’s favor.

5 **The Public Interest**

6 The final factor the Court must consider is whether granting the
7 preliminary injunction is in the public interest. According to Molnar, granting
8 the preliminary injunction is in the public interest because it protects election
9 integrity and the democratic process, ensures governmental compliance with
10 established procedures, and protects Montana ratepayers during a critical utility
11 merger process. Fielder counters that granting the injunction would harm the
12 PSC’s reputation, is contrary to legal requirements that prohibit discrimination
13 and retaliation against employees, poses liability risks and would harm morale of
14 PSC staff.

15 Molnar’s argument regarding election integrity and the democratic
16 process is premised upon his position Fielder’s complaint was not “authorized”
17 and therefore is defective. The Court concludes otherwise.

18 Granted, it is in the public interest to have qualified and informed
19 commissioners serving on the PSC. If Molnar is suspended there may be an
20 impact on the ability of the Commission to perform its duties. Nonetheless, the
21 issue here is not Molnar’s possible suspension but the authority of the governor
22 to act on the complaint and conduct an investigation to determine whether there
23 is good cause to suspend him. While Molnar’s arguments may have validity at
24 some future time, they do not relate to the case at hand. Fielder’s arguments
25 regarding prohibitions on discrimination and retaliation and staff morale are

1 relevant to the on-going investigation into Molnar’s conduct. Accordingly, it
2 serves the public interest to deny the preliminary injunction.

3 CONCLUSION

4 Molnar’s claim that election integrity and the democratic process
5 are harmed by the Governor’s investigation into his alleged misconduct are not
6 supported by law. The Department of Public Service Regulation is an executive
7 branch agency created by the legislature. Mont. Code Ann. §§ 2-15-104(1)(k),
8 69-1-102. The legislature designated the PSC as the head of the Department of
9 Public Service Regulation, and the legislature adopted the process by which
10 members of the PSC were appointed via elections. Mont. Code Ann.
11 §§ 69-1-103 through -105. The legislature likewise adopted the processes by
12 which members of the PSC could be suspended by the governor and by which the
13 governor appoints vacancies on the Commission. Mont. Code Ann. §§ 69-1-113,
14 69-1-106. The governor’s authority to manage the PSC and its members is
15 consistent with the governor’s authority to manage the executive branch, its
16 departments and its employees:

17 **2-15-103. Policymaking authority and administrative powers of**
18 **governor.** In accordance with Article VI, section 4, of the Montana
19 constitution, the governor is the chief executive officer of the state.
20 Subject to the constitution and law of this state, the governor shall
21 formulate and administer the policies of the executive branch of state
22 government. In the execution of these policies, the governor has full
23 powers of supervision, approval, direction, and appointment over all
24 departments and their units, other than the office of the lieutenant
25 governor, secretary of state, attorney general, auditor, and
superintendent of public instruction, except as otherwise provided by
law. Whenever a conflict arises as to the administration of the
policies of the executive branch of state government, except for

1 conflicts arising in the office of the lieutenant governor, secretary of
2 state, attorney general, auditor, and superintendent of public
3 instruction, the governor shall resolve the conflict, and the decision
of the governor is final.

4 Department heads, including the PSC, have reciprocal and
5 corresponding duties to the governor:

- 6 **2-15-112. Duties and powers of department heads.** (1) Except as
7 otherwise provided by law, each department head shall:
8 (a) supervise, direct, account for, organize, plan, administer, and
9 execute the functions vested in the department by this chapter or
10 other law;
11 (b) establish the policy to be followed by the department and
12 employees;
13 (c) compile and submit reports and budgets for the department as
14 required by law or requested by the governor;
15 (d) provide the governor with any information that the governor
16 requests at any time on the operation of the department;
17 (e) represent the department in communications with the governor;
18 (f) (i) prescribe rules, consistent with law and rules established by
19 the governor, for the:
20 (A) administration of the department;
21 (B) conduct of the employees;
22 (C) distribution and performance of business; and
23 (D) custody, use, and preservation of the records, documents, and
24 property pertaining to department business. . .
25

Montana Code Annotated § 69-1-113 was adopted pursuant to
democratic processes and is consistent with the governor’s constitutional and
statutory authority and responsibility to manage executive branch agencies,
including the PSC. The governor has the responsibility to investigate complaints
filed against commissioner. Similarly, Molnar has a corresponding duty to
cooperate in the investigation.

