

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

STEVE FITZPATRICK, individually;
LLEW JONES, individually; and TED
KRONEBUSCH, individually,

Plaintiffs,

v.

CHRISTI JACOBSEN, in her capacity as
Montana's Secretary of State; and
AUSTIN KNUDSEN, in his capacity as
Montana's Attorney General,

Defendants.

Cause No.: DDV-2026-571

**OPINION AND ORDER ON
MOTION FOR PRELIMINARY
INJUNCTION**

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1 In Montana, the people are sovereign, and their will governs. The
2 Framers gave this idea primacy of place in the Montana Declaration of Rights,
3 declaring before any other right that all “political power is vested in and derived
4 from the people. All government of right originates with the people, is founded
5 upon their will only, and is instituted solely for the good of the whole.” Mont.
6 Const. art. II, § 1. The concept of popular sovereignty undergirds both Montana’s
7 preference for electing its leaders and its reservation of the people’s right to make
8 law directly through the powers of initiative and referendum.

9 This year, the people of Senate District 9 nominated Llew Jones to
10 represent the Republican Party in the upcoming general election. The people of
11 House District 24 similarly nominated Steve Fitzpatrick to represent the
12 Republican Party. Although both men had previously served in the Senate and
13 House, respectively, the prevailing view was that they had a sufficient break in
14 service to comply with Montana’s term limits. That is, this was the view until the
15 Attorney General on August 11, 2026—nine days before the Secretary of State
16 must certify the general election ballot—issued an opinion reversing the
17 prevailing view and reaching a conclusion that would render both ineligible to
18 the office to which each has already been nominated. The question now before
19 the Court is whether the Attorney General’s opinion should effectively be paused
20 for the upcoming election.

21 Plaintiffs Fitzpatrick, Jones, and Ted Kronebusch move the Court
22 for a preliminary injunction restraining Defendants Attorney General Austin
23 Knudsen and Secretary of State Christi Jacobsen from enforcing the Attorney
24 General’s August 11, 2026, opinion. Plaintiffs are represented by Jesse A.
25 Laslovich and Timothy J. Racicot. The Attorney General, who opposes the

motion, is represented by Christian B. Corrigan and Brent Mead. The Secretary, who does not take a position on the motion, is represented by Austin M. James. An expedited hearing was held August 18, 2026. For the reasons that follow, the motion for a preliminary injunction will be granted.

BACKGROUND¹

Llew Jones is a longtime Republican lawmaker who resides in Pondera County. He is a sitting member of the Montana House of Representatives. Jones was initially elected to the House in 2004 and served three terms covering the 2005, 2007, and 2009 legislative sessions. In 2010, he was elected to the Montana State Senate and served two terms covering the 2011, 2013, 2015, and 2017 sessions. His final Senate term concluded January 2019. Jones was elected again to the House in 2018 and served an additional four terms there, covering the 2019, 2021, 2023, and 2025 sessions. He is currently seeking office in the Montana Senate, and if he prevails in the general election, his term will begin January 2027 and end December 2028.² His service, defined by the term covering each general legislative session, can be charted as follows:

↓16-year look-back (term ending January 3, 2027) ↓													
↓16-year look-back (term ending January 6, 2031) ↓													
	2005	2007	2009	2011	2013	2015	2017	2019	2021	2023	2025	2027	2029
H	X	X	X					X	X	X	X		
S				X	X	X	X					X?	X?

¹ The following constitutes the Court's findings of fact for purposes of Mont. R. Civ. P. 52(a)(2).

² Legislative terms begin on the first Monday of the January following election. Mont. Code Ann. § 5-2-102. In 2029, the first Monday in January is January 1, meaning the term will expire December 31, 2028.

Steve Fitzpatrick is also a longtime Republican lawmaker, but he resides in Cascade County. He is a sitting member of the House of Representatives and the incumbent House Majority Leader. Fitzpatrick was initially elected in 2010 to the House of Representatives, and served three terms covering the 2011, 2013, and 2015 sessions. In 2016, he was elected to the Montana Senate and served two terms covering the 2017, 2019, 2021, and 2023 sessions. In 2024, he was elected to the House again for the 2025 session. He is seeking re-election and, if successful, his term would begin January 2027 and end December 2028. His service can be charted as follows:

↓ 16-year look-back (term ending January 3, 2027) ↓									
↓ 16-year look-back (term ending December 31, 2028) ↓									
	2011	2013	2015	2017	2019	2021	2023	2025	2027
H	X	X	X					X	X?
S				X	X	X	X		

In both cases, regardless of whether the reference point selected is the term ending January 3, 2027, or the term beginning January 4, 2027, neither will serve more than eight years in a sixteen-year period.

Ted Kronebusch is a resident of Conrad, Montana, in Pondera County. He is a registered voter in Senate District 9 who voted for Llew Jones on the Republican Party primary ballot. He desires to vote for Jones in the general election.

In 1992, the voters adopted CI-64, a citizen initiative to amend the Constitution to impose term limits on most elected state and federal

1 officeholders. The amendment, codified as Article IV, Section 8 of the Montana
2 Constitution, took effect for all legislative terms ending after January 1993,
3 meaning many long-time legislators would be “termed out” by the start of the
4 2001 legislative session. In 1997, Secretary of State Mike Cooney requested an
5 opinion from Attorney General Joe Mazurek on several interpretive questions
6 that had arisen about the amendment. That year, Mazurek issued an opinion
7 answering those questions, including the following question: “How does article
8 IV, section 8 affect a potential candidate who has served eight years in office and
9 then left office for a period of eight years?” 47 Op. Att’y Gen. 9, 1997 WL
10 718623, at *2 (Nov. 6, 1997). Mazurek effectively concluded that the wording of
11 Article IV, Section 8 requires an officeholder who was previously termed out and
12 took an eight-year break from the office to wait one additional term before they
13 could run again for that office.

14 In 2011, the legislature enacted Senate Bill 311, which purported
15 to clarify how legislative terms are defined for purpose of applying Article IV,
16 Section 8. Following its passage, Secretary of State Linda McCullough sought an
17 opinion from Attorney General Steve Bullock regarding the impact of Senate Bill
18 311 on the “eight-year break” question answered by Mazurek. In early 2012,
19 Bullock issued an opinion concluding that an office-holder who had been termed
20 out and then took an eight-year hiatus from that office was eligible to run for the
21 next term. 54 Mont. Op. Att’y Gen. 4, 2012 WL 417659, at *1 (Jan. 11, 2012)
22 (“Held:. . . a candidate may file for office if, at the time the candidate begins to
23 serve in that office, he or she will have had an 8-year break in service over a 16-
24 year period of time.”). Since the Bullock Opinion was issued, multiple
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1 legislators, including both Jones and Fitzpatrick, have moved back and forth
2 between the House and Senate after serving eight years in the other chamber.

3 In 2026, both Fitzpatrick and Jones filed declarations of candidacy
4 as Republicans with the Secretary of State during the filing period for the 2026
5 general election, for Senate District 9 and House District 24, respectively. Both
6 were placed on the Republican primary ballot without incident. Both prevailed in
7 the primary election held in June. Both campaigned and raised substantial funds.

8 On July 9, 2026, Senate President Matt Regier requested an
9 opinion from the Attorney General “on the question of whether Representative
10 Llew Jones is constitutionally eligible to appear on the ballot as the Republican
11 nominee for Montana State Senate District 9 in the November 2026 general
12 election.” He described his interest in the question as follows:

13 Representative Jones has now won the Republican primary for Senate
14 District 9, held June 2, 2026, and a Democratic candidate has also
15 qualified for the general election. Should Representative Jones be
16 found ineligible, the Republican Party will need sufficient time to
17 designate a replacement nominee pursuant to § 13-10-327, Montana
18 Code Annotated, which requires such appointments to be made no
19 later than 76 days before the general election. With the general
election scheduled for November 3, 2026, that deadline falls on or
about August 19, 2026. Accordingly, an expedited opinion is urgently
requested.

20
21 The President’s letter did not include any reference to any duty of the Senate
22 President, the Senate, or the legislature. The stated concern was the potential that
23 if Jones were to be disqualified under Article IV, Section 8, there would be no
24 Republican on the ballot to oppose the Democratic Party candidate.
25

1 On August 11, 2026, the Attorney General issued an opinion in
2 response to this request. The Attorney General declined to opine directly on
3 Jones’s eligibility as a candidate. Instead, the Attorney General addressed the
4 “eight-year break” issue covered by the Bullock and Mazurek Opinions. The
5 Attorney General determined to withdraw the Bullock Opinion and affirmed the
6 Mazurek Opinion holding that previously termed-out officeholders must wait an
7 additional two years after an eight-year break from the office before they may run
8 again.

9 Following the issuance of the August 11 opinion, the Republican
10 Party began a process of replacing both Fitzpatrick and Jones on the ballot. On
11 August 14, 2026, Jones contacted the chairs of the Toole, Pondera, and Teton
12 County Republican Central Committees and requested they convene a meeting to
13 nominate a replacement candidate in the event he did not prevail in court. The
14 Republican State Central Committee likewise issued a call for the relevant central
15 committees covering both Senate District 9 and House District 24 to convene
16 meetings for the purpose of nominating replacement candidates before the
17 general election ballot certification deadline.

18 By statute, the candidates for the general election ballot must be
19 certified 75 days before the general election. Mont. Code Ann. § 13-12-201. On
20 that date, the Secretary must “certify to the election administrators the name and
21 party or other designation of each candidate who filed with the secretary of state
22 and whose name is entitled to appear on the ballot.” *Id.* § 13-12-201(1). The
23 election statutes do not cleanly provide for a mechanism to replace a candidate on
24 the general election ballot after the primary election where the candidate vacancy
25

1 arises for reasons other than death, withdrawal, or disqualification for failure to
2 file certain campaign finance reports. *See* Mont. Code Ann. § 13-10-327.

3 Jones and Fitzpatrick timely filed this action on August 14, three
4 days after the Attorney General opinion was issued. The general election
5 certification deadline is tomorrow.

6 STANDARDS

7 To obtain a preliminary injunction, the applicant must establish the
8 following: [1] “the applicant is likely to succeed on the merits”; [2] “the applicant
9 is likely to suffer irreparable harm in the absence of preliminary relief”; [3] “the
10 balance of equities tips in the applicant's favor”; and [4] “the order is in the
11 public interest.” Mont. Code Ann. § 27-19-201(1). The Court must interpret this
12 standard in a manner that “closely follow[s] United States supreme court case
13 law.” *Id.* § 27-19-201(4). This test requires movants to satisfy all four factors.
14 *Planned Parenthood of Mont. v. State*, 2024 MT 228, ¶ 12, 418 Mont. 253,
15 557 P.3d 440. The statute further mandates that the “court shall examine the four
16 criteria. . . independently. The court may not use a sliding scale test, the serious
17 questions test, flexible interplay, or another federal circuit modification to the
18 criteria.” Mont. Code Ann. § 27-19-201(4)(b) (2025).

19 DISCUSSION

20 For the reasons that follow, the Court concludes that this matter is
21 justiciable. Additionally, Plaintiffs have amply established that they will likely
22 suffer imminent and irreparable injury in the absence of an injunction, that the
23 balance of the equities tips in their favor, and that the injunction is in the public
24 interest. Finally, Plaintiffs are likely to succeed on the merits of their claims for
25 the following reasons: (1) the Senate President’s July 9, 2026, request for an

1 Attorney General opinion likely did not relate to his office; and (2) Article IV,
2 Section 8 likely does not preclude either Fitzpatrick or Jones from being certified
3 for the 2026 general election ballot.

4 **A. Standing and Justiciability**

5 Standing is a threshold issue in every case. *Heffernan v. Missoula*
6 *City Council*, 2011 MT 91, ¶ 29, 360 Mont. 207, 255 P.3d 80. The plaintiff must
7 satisfy three elements: [1] “injury in fact (a concrete harm that is actual or
8 imminent, not conjectural or hypothetical)”; [2] “causation (a fairly traceable
9 connection between the injury and the conduct complained of); and [3]
10 redressability (a likelihood that the requested relief will redress the alleged
11 injury).” *Heffernan*, ¶ 32 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555,
12 560–561 (1992)). Where a case has multiple plaintiffs seeking the same relief,
13 “the standing of any one plaintiff is sufficient for a claim to proceed and, upon
14 finding that one plaintiff has standing, ‘the standing of the other parties [does] not
15 merit further inquiry.” *Barrett v. State*, 2024 MT 86, ¶ 19, 416 Mont. 226, 547
16 P.3d 630 (quoting *Aspen Trails Ranch, LLC v. Simmons*, 2010 MT 79, ¶ 45, 356
17 Mont. 41, 230 P.3d 808) (alteration in original). Applying these standards, the
18 Court has little difficulty concluding that Jones and Fitzpatrick have standing.

19 First, injury. Both Jones and Fitzpatrick are seeking to hold office
20 in 2027. They have invested time and money seeking those offices. If the
21 Attorney General opinion remains in effect, the inexorable result is the Secretary
22 of State cannot certify their nomination as the Republican candidates on the
23 general election ballot and no election administrator can “cause to be printed on
24 any ballot” their name. The record establishes that this result is widely
25 anticipated, so much so that the Republican State Central Committee and the

1 state Republican Party chair and executive director are requesting that local
2 central committees convene so a replacement candidate can be named today, 76
3 days before the general election. *See* Mont. Code Ann. § 13-10-327(2). This
4 injury is concrete and particularized, and it is neither conjectural nor
5 hypothetical. To the contrary, every indication is that injury is imminent absent
6 judicial intervention. Moreover, the Supreme Court has previously rejected the
7 argument that term limits cannot be challenged until a candidate has actually
8 been decertified. *See Cole v. State ex rel. Brown*, 2002 MT 32, ¶¶ 34–35, 308
9 Mont. 265, 42 P.3d 760.

10 Second, causation. Attorney General opinions are binding on
11 executive branch officers and attorneys. Mont. Code Ann. § 2-15-501(7) (an
12 opinion binds any “city attorney, county attorney, or an attorney employed or
13 retained by any state officer, board, commission, or department” and is
14 “controlling unless overruled” by the courts); *O’Shaughnessy v. Wolfe*, 212
15 Mont. 12, 16, 685 P.2d 361, 363 (1984). If no injunction is issued, then the
16 Secretary’s legal counsel must advise her that she cannot certify and cannot
17 “cause to be printed on the ballot” the name of either Jones or Fitzpatrick. This
18 advice binds her. Thus, Fitzpatrick and Jones’s threatened injury is directly
19 traceable to the actions of the Attorney General.

20 Finally, redressability. As the Court observed at the hearing, it is
21 not necessary to issue an affirmative injunction compelling the Secretary to
22 certify Jones and Fitzpatrick. Thus, the Attorney General’s concern that an
23 injunction would “prevent the execution of a public statute by officers of the law
24 for the public benefit,” Mont. Code Ann. § 27-19-103, need not be implicated.
25 Indeed, the Attorney General’s proposed remedy—a partial “administrative” stay

1 of the certification deadline—seems to the Court far more likely to unduly
2 interfere with the Secretary’s administration of the election statutes. Should the
3 Court enjoin the binding effect of August 11 Opinion, the Secretary would revert
4 to relying on two sources of authority, the 2012 Bullock Opinion and Mont. Code
5 Ann. §§ 13-10-201(9) and 2-16-214. The likely result of such an injunction is
6 that, consistent with the regular practice since 2012, the Secretary will not to
7 refuse to certify Jones or Fitzpatrick on grounds that they are term-limited.

8 The Attorney General argues that Plaintiffs’ correct remedy is
9 mandamus. As the Court pointed out at the hearing, however, the Attorney
10 General appears to upend the logic of mandamus. Extraordinary writs are
11 disfavored forms of relief that exist primarily to fill in the gaps between other
12 causes of action. Mandamus directed to the Secretary would not be available
13 unless the Court finds “there is not a plain, speedy, and adequate remedy in the
14 ordinary course of law.” Mont. Code Ann. § 27-26-102(2). Given that the
15 Secretary’s actions would be dictated by the Attorney General opinion, there
16 *would* be a plain, speedy, and adequate remedy of injunction or an action for
17 declaratory relief. Indeed, mandamus is particularly ill-suited in this circumstance
18 because the deadline for nominating replacement candidates (assuming § 13-10-
19 327 applies to this situation) is 76 days before the election, and the certification
20 deadline that would need to pass before Plaintiffs could petition for a writ is 75
21 days before the election. Mandamus is clearly not appropriate against the
22 Attorney General because the issuance of the attorney general opinion is not a
23 ministerial act. *Kageco Orchards, LLC v. Mont. Dep’t of Transp.*, 2023 MT 71,
24 ¶ 21, 412 Mont. 45, 528 P.3d 1097. Thus, the theoretical availability of a post-
25

1 certification mandamus action is not a reason that Plaintiffs cannot now proceed
2 on their action for a declaratory judgment and injunction.

3 For the foregoing reasons, this matter is justiciable.

4 **B. Likelihood of Success on the Merits**

5 The most involved question in this case is whether Plaintiffs are
6 likely to succeed on the merits. It is unnecessary to definitively address all of
7 Plaintiffs' arguments because the Court concludes they are likely to succeed with
8 respect to at least two grounds: (1) whether the Senate President's request for the
9 Attorney General opinion was on a question of law relating to his office; and (2)
10 whether the authority of the Senate President under Mont. Code to request this
11 opinion; and (2) whether Article IV, Section 8 permits a previously termed-out
12 legislator to run for the term immediately following an eight-year break in
13 service. Because these grounds are sufficient to support an injunction, the Court
14 declines to address the other claims advanced by Plaintiffs.

15 **1. Whether the Senate President's request for the Attorney**
16 **General opinion was on a question of law relating to his office.**

17 Although the practice of the Attorney General issuing opinions
18 dates back at least to statehood, it is not an inherent constitutional power of the
19 Attorney General, but rather a duty created by statute. *See* Mont. Const. art. VI,
20 § 4(4) (the duties of the attorney general are to established by law); Mont. Code
21 Ann. § 2-15-501(7). That statute provides the following:

22 It is the duty of the attorney general:
23 . . .

24 (7) to give an opinion in writing, without fee, to the legislature or
25 either house of the legislature, to any state officer, board, or

1 commission, to any county attorney, to the city attorney of any city or
2 town, or to the board of county commissioners of any county of the
3 state when required upon any question of law relating to their
4 respective offices. The attorney general shall give the opinion within 3
5 months following the date that it is requested unless the attorney
6 general certifies in writing to the requesting party that the question is
7 of sufficient complexity to require additional time. If an opinion
8 issued by the attorney general conflicts with an opinion issued by a
9 city attorney, county attorney, or an attorney employed or retained by
any state officer, board, commission, or department, the attorney
general's opinion is controlling unless overruled by a state district
court or the supreme court.

10 Mont. Code Ann. § 2-15-501(7). Notably, the legislature did not give the
11 Attorney General unfettered authority to opine on the law, but rather imposed
12 several important constraints:

13 First, the Attorney General's authority to give an opinion is only
14 triggered when a request is made from a person or body enumerated in the
15 statute. For example, a private citizen cannot request an attorney general.

16 Second, the Attorney General's authority extends only to questions
17 of law. The statute does not give the Attorney General the power to issue binding
18 opinions on how the law should be applied to a particular set of facts or to advise
19 an officer, board, or commission how they should exercise their discretion within
20 the constraints of the law. This is a necessary constraint, for the power to
21 adjudicate cases and controversies is generally reserved for the judicial branch.
22 Here, the Attorney General, cognizant of this limitation, declined to address the
23 specific question of Jones's eligibility.

24 Third, state officers and the legislature cannot ask the Attorney
25 General about whatever they want. Rather, the statute constrains the Attorney

1 General’s opinions to questions of law “relating to their respective offices.” As
2 the Attorney General has correctly noted, this is broader than allowing opinions
3 only on questions about laws *administered* by the officer. And indeed, the Court
4 could locate some Attorney General opinions where the connection to the office
5 of the requester is unclear. *See, e.g.*, 60 Op. Att’y Gen. 1 (Sept. 20, 2024)
6 (responding to Senate President question about rulemaking by the Judicial
7 Standards Commission); 57 Op. Att’y Gen. 4 (Oct. 15, 2018) (responding to
8 Senate President question about necessity of FWP obtaining approval of the Land
9 Board for acquisition of conservation easements of a certain size or value); 57
10 Op. Att’y Gen. 1 (Jan. 26, 2017) (responding to House Speaker question about
11 local government imposition of firearm sales background checks); 51 Op. Att’y
12 Gen. 4 (July 5, 2005) (responding to Hill County commissioner about whether
13 the legislature can bind the appropriations authority of future legislatures).
14 Although these examples appear largely to be of relatively recent vintage, the
15 Attorney General’s historical interpretation of the scope of his authority under
16 Mont. Code Ann. § 2-15-501(7) is entitled to “respectful consideration” by the
17 Court. *See Belk v. Mont. Dep’t of Environmental Quality*, 2022 MT 38, ¶ 15, 408
18 Mont. 1, 504 P.3d 1090.

19 The Senate President is the presiding officer of the Senate and
20 performs duties assigned by the Senate. Mont. Code Ann. § 5-2-222. The
21 President is the “chief administrative officer of the Senate,” although his duties
22 extend beyond that. *See State v. Ellsworth*, DDC-2025-477, Opinion & Order on
23 Pending Mots. Dkt. 101 at 6–7 (1st Jud. Dist. Ct. June 10, 2026). For the
24 purposes of the preliminary injunction stage, the Court will assume without
25 deciding that the President has authority to speak for the Senate during the

1 interim. At the same time, the President cannot logically have greater authority
2 under Mont. Code Ann. § 2-15-501 than the Senate itself.

3 However broad the scope of the phrase “relating to their respective
4 offices may be,” it cannot extend beyond the legitimate interests of government.
5 Here, the President’s letter is not about his duties as the presiding officer of the
6 Senate. It is not about the Senate’s powers or authority. It is not even a question
7 relevant to pending or contemplated legislation in the Senate, which is likely the
8 connection in some of the attorney general opinions cited above. Rather, the
9 President’s question is about the electoral and political fortunes of the Republican
10 Party in a partisan election.

11 For good reason, there is a separation between a public official’s
12 performance of their duties and their participation in partisan and electoral
13 activities. Thus, as is true elsewhere, Montana law generally prohibits legislators,
14 judges, and other public officials from using state resources “to solicit support for
15 or opposition to any political committee, the nomination or election of any person
16 to public office, or the passage of a ballot issue,” although such activity is
17 permitted to the extent it is properly incidental to the lawful exercise of the
18 official’s ordinary duties. Mont. Code Ann. § 2-2-122(1). There is nothing wrong
19 with elected public officials in the legislative and executive branches taking
20 official action with political or partisan objectives in mind, but official action
21 must still maintain some separation from electoral politics.

22 Thus, the Court’s chief concern here is that the President’s request
23 appears solely concerned with the electoral consequences of Jones being certified
24 on the ballot. Specifically, Senator Regier’s stated basis for requesting an
25 opinion—and expediting that opinion—is the concern that if Jones were to be

1 found ineligible after the certification deadline, “the Republican Party will need
2 sufficient time to designate a replacement nominee” within 76 days of the general
3 election. He further notes that “a Democratic candidate has also qualified for the
4 general election,” with the clear implication is that if an answer is not timely
5 provided, the Democrat could win by default. Whether a particular candidate or
6 party can compete or succeed in a particular election does not relate to the duties
7 of office of any public official (except perhaps the Secretary of State and other
8 election administrators acting in those capacities). Attorney General opinions are
9 not a mechanism to advise any political candidate, committee, or party about how
10 best to ensure they can field a candidate in an election.³

11 The Attorney General argues that the request relates to the Senate’s
12 constitutional authority to “judge the election and qualifications of its members.”
13 Mont. Const. art. V, § 10(1). This, however, is mentioned nowhere in the
14 President’s request. The request does not ask any question about the Senate’s
15 authority to refuse to seat a member. The question that is asked, and the section
16 the President invokes (Article IV, Section 8), is a provision that textually
17 commits its enforcement to the Secretary of State.

18 In short, Plaintiffs are likely to succeed in their claim that the
19 August 11 Opinion did not comport with Mont. Code Ann. § 2-15-501(7)
20 because the President’s request did not relate to his office.
21
22

23 ³ To be clear, the Court does not purport to speculate on the subjective motivations of or otherwise question the
24 subjective good faith of the Attorney General, who notably declined to opine directly on Jones’s eligibility for office
25 and supported his opinion with extensive legal analysis. The Court’s point is simply that because the question was
about a matter of political, and not official, concern, it falls outside the scope of the requests for which the Attorney
General can issue a binding opinion.

1 **2. Whether Article IV, Section 8 permits a previously**
2 **termed-out officeholder to run for the term immediately following an eight-**
3 **year break in service.**

4 Article IV, Section 8, provides, in relevant part:

5
6 **Limitation on terms of office.** (1) The secretary of state or other
7 authorized official shall not certify a candidate's nomination or
8 election to, or print or cause to be printed on any ballot the name of a
9 candidate for, one of the following offices if, at the end of the current
term of that office, the candidate will have served in that office or had
he not resigned or been recalled would have served in that office:

10 ...

11 (b) 8 or more years in any 16-year period as a state representative;

12 (c) 8 or more years in any 16-year period as a state senator;

13 ...

14 (2) When computing time served for purposes of subsection (1), the
15 provisions of subsection (1) do not apply to time served in terms that
16 end during or prior to January 1993.

17 (3) Nothing contained herein shall preclude an otherwise qualified
18 candidate from being certified as nominated or elected by virtue of
19 write-in votes cast for said candidate.

20 Mont. Const. art. IV, § 8. The question that has bedeviled three separate attorneys
21 general is this: whether the phrase “if, at the end of the current term of that office,
22 the candidate will have served in that office” refers (a) to the term that is ending
23 at the time the candidate files for office; or (b) to the term that the candidate will
24 be serving if elected. This question matters a great deal here: if the former is true,
25 then Jones and Fitzpatrick cannot be placed on this year’s ballot because, as of
this moment, they have served eight years of the last sixteen in the Senate (for
Jones, the years covering the 2011, 2013, 2015, and 2017 sessions) and the
House (for Fitzpatrick, the years covering the 2011, 2013, 2015, and 2025

1 sessions), respectively. If the latter is true, however, then at the end of the terms
2 they are seeking (for Jones, the end of the term covering the 2029 session, and for
3 Fitzpatrick, the end of the term covering the 2027 session), they will not have
4 served more than eight years out of the last sixteen.

5 This Court is to interpret the Constitution “by giving ‘effect to the
6 intent of the people adopting it.’” *Mont. Ass’n of Counties v. State ex rel. Fox*,
7 2017 MT 267, ¶ 25, 389 Mont. 183, 404 P.3d 733 (quoting *State ex rel. Hinz v.*
8 *Moody*, 71 Mont. 473, 481, 230 P. 575, 578 (1924)). In general, the same rules
9 governing the construction of statutes pertain to the Constitution. *Nelson v. City*
10 *of Billings*, 2018 MT 36, ¶ 14, 390 Mont. 290, 412 P.3d 1058. Courts thus “must
11 discern the Framers’ intent from the plain meaning of the language used and may
12 resort to extrinsic aids only if the express language is vague or ambiguous.”
13 *Nelson*, ¶ 14. When evaluating the plain language, the Court must read it not in a
14 vacuum, “but also in light of the historical and surrounding circumstances under
15 which the Framers drafted the Constitution, the nature of the subject matter they
16 faced, and the objective they sought to achieve.” *Nelson*, ¶ 14. In other words,
17 textualism is not literalism. *United States v. Palomares*, 52 F.4th 640, 648 (5th
18 Cir. 2022) (Oldham, J., concurring) (citing John F. Manning, *Textualism and the*
19 *Equity of the Statute*, 101 Colum. L. Rev. 1, 108 (2001)). A plain meaning review
20 of the language must still recognize “that language is a social construct” and “ask
21 how a reasonable person, conversant with the relevant social and linguistic
22 conventions, would read the text in context.” *Id.* (quoting John F. Manning, *the*
23 *Absurdity Doctrine*, 116 Harv. L. Rev. 2387, 2392–2393 (2003)).

24 Here, a purely literal reading of Article IV, Section 8, indeed leads
25 to the result reached by Attorneys General Mazurek and Knudsen. At the end of

1 the “current term” as of the time of filing or certification, both Jones and
2 Fitzpatrick have eight years of service in that sixteen-year lookback period. When
3 viewed in context, however there are several cues that this is not the result
4 intended by CI-64.

5 First, Article IV, Section 8 uses both the present and future perfect
6 tense to describe the condition that triggers ineligibility for the ballot: the
7 Secretary cannot certify the candidate “if, at the end of the current [present tense]
8 term of that office, the candidate will [future perfect tense] have served in that
9 office” for the requisite term of years. Because terms are never shorter than a
10 two-year increment, there is no reason to define it by the end of the term; the
11 same result pertains if one simply uses the date of the general election or the date
12 of ballot certification. If the proponents of CI-64 had consciously wanted the
13 result reached by the Mazurek and Knudsen Opinions, there was a
14 straightforward way to do so: they could have simply said: “the secretary. . . shall
15 not certify a candidate’s nomination or election to. . . one of the following offices
16 if, at the time of certification [or the election], the candidate will have served in
17 that office. . . 8 or more years in any 16-year period.” The drafters, however, did
18 not do that, opting instead to use the more abstruse “will have served” and
19 “current term of that office” phrasing.

20 Second, Article IV, Section 8 should be placed in its historical
21 context. At the time of its adoption, there were no term limits on legislative
22 office. As a result, the legislature had numerous members who had served for
23 many years and accrued substantial power. In the 1992 voter information
24 pamphlet, the proponents argued:
25

1 And it is the long-term incumbents who are the problem. . . . Fifty-six
2 percent (56%) of the Montana Senators have held their seats for over
3 eight (8) years. Thirty-seven percent (37% of the Montana House of
4 representatives have been there over eight (8) years. . . . Many of
5 these lawmakers have held their rein of political power since the
6 1970s and one has been in the Montana House of Representatives
7 since 1959.

8 Montana Voter’s Guide to the 1992 General Election, at 17.⁴ The objective of CI-
9 64 was to dislodge these long-term legislators who, as of 1992, had been
10 occupying their seats for decades. When viewed from the perspective of someone
11 considering this initiative in 1992, the reason for using the “current term”
12 language becomes clearer: it was aimed at current officeholders *still in those*
13 *offices*. For instance, in *Cole v. State ex rel. Brown*, 2002 MT 32, 308 Mont. 265,
14 42 P.3d 760, Senator Mack Cole, who was first elected to the Montana Senate in
15 1990, and reelected in 1994 and 1998, was barred from running for a fourth term
16 in 2002 because he would be serving in that office for more than eight years. The
17 objective was to require the longtime incumbents to leave, at least for a while, to
18 disrupt their power and encourage new participants in the legislative process.

19 Given this context, the initiative’s proponents—and the average
20 voter—likely thought little about how this phrasing could affect *non-incumbent*
21 legislators who had previously served eight years in the office and were seeking a
22 return. If the proponents had wanted those legislators banished from that office
23 forever, they would have said so. If the proponents wanted to guarantee that
24 legislators who moved to another office sat out at least one two-year cycle before
25

⁴ Available: <https://sosmt.gov/Elections/archives/>.

1 seeking their old office, there were more straightforward ways of saying that. It is
2 difficult to understand why the proponents would not have just said that a
3 legislator must have a ten-year break in service if that had been their intent.

4 Finally, the Court respectfully disagrees with the characterization
5 that Article IV, Section 8 is a “ballot access measure.” The weight of the
6 evidence suggests it was not. The 1992 ballot asked voters if they were for or
7 against “amending the Constitution to impose limits on how long statewide
8 executive officers, state legislators and members of congress may hold office.”
9 (Emphasis added.) The text of CI-64 submitted to the voters included the heading
10 that described its purpose and remains part of the Constitution today: “Limitation
11 on terms of office.” The proponents and opponents alike at the time characterized
12 the measure as a question of limits on service. To be sure, CI-64 sought to
13 *enforce* the limits through denial of access to the ballot by the Secretary of State,
14 but that does not alter the measure’s character as concerned principally with
15 uninterrupted length of service.

16 This is not unlike the Twenty-Second Amendment to the United
17 States Constitution, which is widely understood as imposing a limit on the length
18 of presidential tenure. Virtually any person who is reasonably informed on the
19 Constitution would say that the Constitution provides that the President may not
20 serve more than two terms (with an exception for partial terms due to vacancy).
21 Like CI-64, the Twenty-Second Amendment *implements* this limit through ballot
22 access: “No person *shall be elected* to the Office of the President more than
23 twice[.]” But its fundamental goal is to create a limit on length of service.

24 Similarly, when Article IV, Section 8 is read in a common-sense,
25 holistic fashion that accounts for the historical context of its enactment, the

1 objectives it sought to achieve, its text, and its structure, it is reasonably clear that
2 its intent is to ensure that legislators not serve in either house more than eight
3 years without taking at least an eight-year break in service. To be sure, its
4 language is a somewhat clunky means of effectuating that intent, but that is its
5 intent all the same. Just as an ordinary, reasonably well-informed person on the
6 street understands that the Twenty-Second Amendment limits Presidents to two
7 terms, that same person voting on CI-64 would have thought they were requiring
8 legislators to take eight years off before they could hold the office again. The
9 eight-year break in service theory appears to be the most natural reading of the
10 CI-64.

11 To show a likelihood of success on the merits, Plaintiffs must
12 present a *prima facie* case. *Stephenson v. Lone Peak Preserve, LLC*, 2025 MT
13 148, ¶ 24, 423 Mont. 46, 571 P.3d 1042. A *prima facie* case is one that appears
14 meritorious “at first sight or on first appearance but subject to further evidence or
15 information.” *Stephenson*, ¶ 24. This lawsuit began on Friday and was not fully
16 briefed until yesterday. There is the potential that as the parties (and the Court)
17 have more time to conduct research and gather evidence on the meaning of CI-64
18 that the Court’s tentative conclusions here could change. But Plaintiffs need not
19 show at this stage “a certainty of winning.” *Stephenson*, ¶ 24. The Court is
20 satisfied that on the preliminary record and preliminary briefing presented to it—
21 in other words, “at first appearance but subject to further evidence of
22 information”—that Plaintiffs will likely ultimately demonstrate that Article IV,
23 Section 8 does not preclude Jones or Fitzpatrick from appearing on the 2026
24 general election ballot.
25

1 **3. Likelihood of Irreparable Injury, Balance of the**
2 **Equities, and whether an Injunction is in the Public Interest**

3 In addition to a demonstration of a likelihood of success on the
4 merits, Plaintiffs must establish a likelihood of irreparable injury in the absence
5 of an injunction, that the balance of equities tip in favor of an injunction, and that
6 an injunction is in the public interest. These requirements are easily established
7 here.

8 Plaintiffs face a likelihood of irreparable injury for the same
9 reasons they have standing. For Fitzpatrick and Jones, they likely cannot serve in
10 office in 2027 if an injunction does not issue before this litigation is resolved.
11 The Kody Farkell declaration appended to Plaintiffs’ reply brief demonstrates the
12 peril. Seventy-five days is not a long period of time. Once names are certified,
13 election administrators must create and proof ballots, a complex task given
14 overlapping jurisdictions, the need to rotate names on the ballot, the number of
15 questions on the ballot, and the importance of avoiding errors and matching
16 ballots to electors. Because many voters use mail ballots in recent elections,
17 ballots must be printed and sent out long before Election Day. After the
18 certification deadline, the window in which a wrongfully rejected candidate can
19 feasibly be placed back on the ballots closes rapidly. Action is needed now to
20 avert irreparable injury.

21 Similarly, the balance of equities and public interest factors sharply
22 favor Plaintiffs. When an injunction is sought against the government, these
23 factors merge. *Cross v. State*, 2024 MT 303, ¶ 53, 419 Mont. 290, 560 P.3d 637.
24 The distinction is that balance of the equities balances the impact on parties; the
25 public interest factors considers the impact on non-parties.

1 Powerful equitable factors favor Plaintiffs. There was no imminent
2 need to seek an attorney general opinion so close in time to an election. Notably,
3 both the 1997 Mazurek and 2012 Bullock opinions were requested and issued
4 well in advance of any election that would be affected. Since the 2012 Bullock
5 Opinion and the passage of Senate Bill 311, numerous legislators have taken
6 advantage of the opportunity to move between the House and Senate every eight
7 years. There is no apparent reason why *this* election, at *this* time, is the time to be
8 concerned that a legislator will be disqualified from the ballot when no legislators
9 have been disqualified in the nearly 15 years since the Bullock Opinion was
10 issued. Likewise, the Attorney General could have chosen to issue the opinion
11 after the ballot certification deadline, ensuring that the opinion would have only
12 prospective effect. The current tumult is entirely the consequence of the choices
13 to request, and issue, an opinion upending the status quo while an election is
14 underway.

15 Contrary to the Attorney General’s argument at the hearing, the
16 Court does indeed find the “*Purcell* principle” to be implicated here. The
17 principle itself is straightforward: the goalposts should not be moved during the
18 game. Justice Kavanaugh explained the principle thusly:

19 When an election is close at hand, the rules of the road must be clear
20 and settled. Late judicial tinkering with election laws can lead to
21 disruption and to unanticipated and unfair consequences for
22 candidates, political parties, and voters, among others.

23 *Merrill v. Milligan*, 142 S.Ct. 879, 881 (Kavanaugh, J., concurring in grant of
24 application for stay) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (*per curiam*)).
25

1 To be sure, this case does not involve *judicial* tinkering in an
2 election. But the principle is not a slap at judges; it is a plea for predictability,
3 reliance, and confidence in elections given their importance to the republican
4 form of government. Just as courts should generally refrain from issuing opinions
5 that unsettle the status quo while an election is underway, the same holds for
6 executive or legislative interference in elections. While there is certainly no legal
7 *bar* to the Attorney General issuing an opinion during an election, his choice to
8 do so weighs heavily against him in the balance of the equities.

9 Finally, this case is not just about the interests of Fitzpatrick and
10 Jones in holding office. Both seek to serve the State as representatives of their
11 districts, and because they are elected, their agenda is their constituents' agenda,
12 and vice versa. The people of Senate District 9 and House District 24 have a
13 strong interest in seeing that the people they nominated (and presumably, the
14 voters who supported them in the primary are largely likely to favor them in the
15 general election as well) will represent them in the legislature. The status quo
16 understanding of term limits shapes not only who decides to run—perhaps other
17 candidates would have come forward if they thought there was a chance Jones or
18 Fitzpatrick, formidable incumbents each, would not be eligible to run—but also
19 how the primary voters vote. Had this opinion been issued much sooner, those
20 voters would have had information they need to exercise their will through the
21 electoral process.

22 The Court recognizes there are some equitable factors that run
23 counter to an injunction. The principal concern is that if this Court is wrong, then
24 two candidates who should not be eligible to run have been placed on the ballot.
25 Given that this has represented the status quo practice for well over a decade, that

1 these candidates already have the endorsement of the people to represent the
2 Republican Party in the election, and the impact on those voters if their choice is
3 denied, this concern is amply outweighed by the factors favoring relief.

4 **CONCLUSION**

5 For the foregoing reasons, the Court concludes that Plaintiffs have
6 standing, that this case is justiciable, that Plaintiffs have demonstrated a
7 likelihood of success on the merits, that Plaintiffs face likely and imminent
8 irreparable injury if an injunction does not issue, that the balance of the equities
9 tips in their favor, and that an injunction would be in the public interest. The
10 intended effect of this conclusion is to revert to the status quo legal regime that
11 existed prior to the issuance of the August 11, 2026, Attorney General Opinion.
12 In other words, the Court's intent is to restore the effective operation of the 2012
13 Bullock Opinion and Mont. Code Ann. §§ 13-10-201(9) and 2-16-214.

14 Accordingly,

15 **IT IS ORDERED:**

16 1. Plaintiffs' Motion for *Ex Parte* Temporary Restraining
17 Order (Dkt. 2), filed August 14, 2026, which the Court converts to a motion for a
18 preliminary injunction because a hearing has now been held, is **GRANTED**.

19 2. Until further order of this Court, the Attorney General and
20 the Secretary of State, and their employees, agents, successors, and assigns are
21 **PRELIMINARILY ENJOINED** and **RESTRAINED** from enforcing or
22 according binding weight to the August 11, 2026, Attorney General Opinion
23 responding to the July 9, 2026, request of Senate President Matt Regier,
24 including the portion of that opinion withdrawing the January 11, 2012, opinion
25 of former Attorney General Steve Bullock, 54 Op. Att'y Gen. 4.

3. The requirement for a written undertaking is waived in the interests of justice.

DATED this 19th day of August 2026.

/s/ Christopher D. Abbott
CHRISTOPHER D. ABBOTT
District Court Judge

cc: Jesse A. Laslovich, via email
Timothy J. Racicot, via email

Austin Knudsen, Montana Attorney General, via email
Christian B. Corrigan, Solicitor General, via email
Brent Mead, Deputy Solicitor General, via email
Austin James, via email

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