IN THE SUPREME COURT OF THE STATE OF MONTANA
No. OP 26-0292

AUDREY CROMWELL, in her official capacity as GALLATIN COUNTY ATTORNEY,

Petitioner,

v.

AUSTIN KNUDSEN, in his official capacity as MONTANA ATTORNEY GENERAL,

Respondent.

REPLY IN SUPPORT OF PETITION FOR ORIGINAL JURISDICTION

Raph Graybill
Rachel Parker
Graybill Law Firm, PC
300 4th Street North
PO Box 3586
Great Falls, MT 59403
(406) 452-8566
raph@graybilllawfirm.com
rachel@graybilllawfirm.com

Attorneys for Petitioner

Austin Knudsen
Montana Attorney General
Christian B. Corrigan
Solicitor General
Brent Mead
Deputy Solicitor General
MONTANA DEPARTMENT OF JUSTICE
PO Box 201401
Helena, MT 59620-1401
(406) 444-2026
Christian.Corrigan@mt.gov
Brent.Mead2@mt.gov

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

INTRODUCTION

The AG's justiciability argument is, at base, an assertion that his legal determinations are immune from judicial review when he supervises a county attorney. He asks this Court to recognize a zone of executive action beyond judicial accountability: a power to compel independently elected local officials to follow *his* interpretation of Montana law, while simultaneously preventing any court from determining whether that interpretation is correct. Accepting this reasoning would make the AG a singularly powerful office, exempt from judicial checks and balances in a manner that eclipses the role of any other governmental office. This result is as dangerous as it is illogical.

Nothing in the supervisory control statute or Montana's constitutional separation of powers authorizes such a result. The AG invokes the political question doctrine as if it were a doctrine against deciding legal questions with political overtones. But those concepts are not the same. Courts routinely resolve legal disputes with profound political consequences. The political question doctrine simply ensures that disputes are resolved by the proper branch of government. The relevant determination is whether the question presented has been textually committed to another branch of government and whether there is a lack of judicially discoverable and manageable standards to resolve the question. Neither barrier to justiciability applies here. This Petition asks the Court to

determine the meaning of a statute—the *essential* function of the judicial branch, and decidedly not a "political question" within the meaning of that doctrine.

To avoid adjudication of the merits, the AG seeks to drastically reframe the Petition and what this case is about. But Cromwell has not challenged the AG's ability to exercise supervisory control generally. Cromwell simply asks this Court to declare the statutory requirements for responding to CCJI requests for civil purposes. With the Court's declaration of the law, the parties' respective legal obligations become clear and the need for continuing supervisory control necessarily falls away. In answering this statutory interpretation question, the Court does not intrude upon the executive branch. Rather, it performs its most core constitutional role: to say what Montana law requires.

The AG's arguments that Cromwell lacks standing or seeks an advisory opinion fail for the same reasons. Both rest upon the false premise that the AG's legal determinations are unreviewable anytime he exercises supervisory control. But Cromwell is not seeking abstract legal guidance or asserting a generalized disagreement with a policy choice. The AG took over her office and demanded she give incorrect legal advice, (1) placing her client in jeopardy of the severe criminal and civil penalties associated with the improper dissemination of CCJI, (2) invading Cromwell's attorney-client relationship with Gallatin County and her associated professional obligations of competence and candor, and (3) depriving

the people of Gallatin County of their duly elected county attorney. The dispute is concrete and ongoing. This Court's declaration of the law will resolve it.

ARGUMENT

I. The Court can and should decide the question of statutory interpretation at the heart of this dispute.

A. The political question doctrine is inapplicable to this case, which presents an ordinary question of statutory interpretation under emergency circumstances.

The political question doctrine is not a doctrine against resolving a legal dispute because it involves a "political" topic. As this Court has recognized, "'[n]ot every matter touching on politics is a political question.'" *Larson v. State*, 2019 MT 28, ¶ 39, 394 Mont. 167, 434 P.3d 241 (quoting *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 229 (1986)). Rather, the doctrine applies where (1) the exercise of judicial power would infringe upon a power textually committed to a co-equal branch of government; or (2) there is a lack of judicially discoverable or manageable standards for resolving the dispute. *Id.* (citing *Nixon v. United States*, 506 U.S. 224, 228 (1993)); see also *Baker v. Carr*, 369 U.S. 186, 217 (1962). Neither barrier to adjudication applies here.

Though Cromwell's Petition arose under emergency circumstances necessitating this Court's original jurisdiction, the legal dispute revolves around a basic question of statutory interpretation—a core judicial function. Determining the effect of a statutory and constitutional scheme on a given set of facts is the

basic role of the judicial branch. *See Larson*, ¶ 39 ("[I]t is particularly within the province of the judiciary to construe and adjudicate provisions of constitutional, statutory, and the common law as applied to facts at issue in particular cases." (citing *Japan Whaling Ass'n*, 478 U.S. at 230)).

The AG attempts to refashion this dispute into a question of whether he may invoke supervisory control, so that he may argue that accepting jurisdiction requires the Court to weigh in on a statutory power exclusive to his office. The Petition is not about the proper scope of supervisory control, however, no matter how much the AG wants it to be. Rather, it is about what Montana's Criminal Justice Information Act ("CJIA") requires when receiving a request for CCJI to be utilized for civil purposes—exactly the kind of question committed to courts and the judiciary under our separation of powers. *See McLaughlin v. Mont. State Leg.*, 2021 MT 178, ¶ 17, 405 Mont. 1, 493 P.3d 980 ("The judiciary has an unflagging responsibility to decide cases and controversies, even those that involve the authority of a coordinate branch of government."). As a matter of statutory interpretation, the judicial standards at issue are both discoverable and manageable, as they would be in any interpretive dispute about the meaning and requirements of a statute. Neither condition triggering abstention under the political question doctrine applies.

B. Cromwell has standing to challenge the AG's directive that she provide her client with incorrect legal advice.

The AG's standing argument simply repackages his political question argument. He asserts that, once supervisory control has been invoked, a county attorney possesses no independent duties and thus can suffer no individual, legally cognizable injury because she is a mere instrument of the AG. That premise is incorrect, and proposes precisely the type of unchecked executive authority Montana's constitutional structure forbids.

Constitutional standing requires that a plaintiff "clearly allege a past, present, or threatened injury to a property or civil right . . . the injury must be one that would be alleviated by successfully maintaining the action." *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 33, 360 Mont. 207, 255 P.3d 80 (internal citations omitted). The injury must be "concrete, meaning actual or imminent, and not abstract, conjectural, or hypothetical; redressable; and distinguishable from injury to the public generally." *Bullock v. Fox*, 2019 MT 50, ¶ 31, 395 Mont. 35, 435 P.3d 1187. Cromwell readily satisfies this standard: her injuries are concrete, ongoing, personal, and redressable. She was elected by the people of Gallatin County, pursuant to that County's system of government, to serve as its county attorney. In that role, she took on professional responsibilities to provide loyal, competent advice to her client, Gallatin County (including the records office that prompted the dispute). The AG's directive usurps her independent exercise of the

duties the people of Gallatin County elected her to perform. The AG steps directly into her attorney-client relationship with Gallatin County, requiring her to give incorrect legal advice that places her client at risk for suffering the substantial criminal and civil penalties associated with improper dissemination of CCJI under the statute. This is exactly the kind of actual, concrete, and ongoing injury that supports standing to adjudicate this case.

The AG cites *Larson* for the proposition that Cromwell has only "a general or abstract interest in . . . the legality of government action. . . ." *Larson*, ¶ 49. He quotes, but does not engage with, the rest of that sentence: "absent a direct causal connection between the alleged illegality and specific and definite harm personally suffered, or likely to be personally suffered, by the plaintiff." *Id.* Cromwell's position differs markedly from the plaintiffs in *Larson*. She does not simply believe the AG has interpreted the law incorrectly and fear its potential future improper application. Rather, she has standing because the AG has taken over her office and directed her to disseminate his incorrect interpretation of the law, contrary to her own duties to her clients and placing her clients at substantial risk. The injury is personal to her, not belonging to the public generally. The individual nature and direct causal link between the dispute and this ongoing injury is clear, as is the fact that a ruling by this Court will resolve it.

Accepting the AG's argument that Cromwell's injury is neither sufficiently cognizable nor sufficiently personal requires a feat of mental gymnastics that entirely overlooks the duties Cromwell has as an elected official and as an attorney. The Montana Rules of Professional Conduct and the duties that come with an elected office cannot be conditional for only the times when an AG is not exercising supervisory authority.

C. A declaration of the parties' present legal obligations resolves the instant dispute; it is the opposite of an advisory opinion.

The Petition presents a question of statutory interpretation that will resolve the live dispute between the parties, full stop. Montana courts are limited to deciding actual cases or controversies— "a real and substantial controversy, admitting of specific relief through decree of conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts, or upon an abstract proposition." *Chovanak v. Matthews*, 120 Mont. 520, 526, 188 P.2d 582, 585 (1948); *see also Plan Helena, Inc. v. Helena Regional Airport Auth. Bd.*, 2010 MT 26, ¶ 9, 355 Mont. 142, 226 P.3d 567.

This is no hypothetical set of facts or abstract proposition. A declaration resolving this dispute would end the conflict and immediately define the scope of the parties' respective ongoing obligations. Thus, the controversy is "one upon which a court's judgment will effectively and conclusively operate." *Reichert v. State*, 2012 MT 111, ¶ 53, 365 Mont. 92, 278 P.3d 455.

II. This Court has consistently rejected efforts to insulate the conduct of co-equal branches from judicial review.

This Petition presents exactly the kind of statutory interpretation question that the Montana Supreme Court should answer under the constitutional structure of government. The AG's effort to avoid adjudication is telling. Prudential justiciability doctrines play a limited role in Montana's courts of general jurisdiction. The political question doctrine, in particular, is an invention of the federal courts and has only recently come into this Court's prudential vocabulary. *See Columbia Falls Elem. Sch. Dist. No. 6 v. State*, 2005 MT 69, 326 Mont. 304, 109 P.3d 257. This makes sense; the political question doctrine typically operates against the basic backdrop that federal courts are courts of limited jurisdiction. But Montana's courts are courts of general jurisdiction. If a critical matter of Montana law is not properly heard in Montana's state courts, it is likely not heard anywhere. Thus, this Court has generally ruled in favor of justiciability, *especially* when the matter has important and immediate effects on questions of political significance.

In *Bullock v. Fox*, this Court accepted original jurisdiction in a dispute based on an interpretive disagreement between the Governor, FWP, and the AG over whether certain conservation easement transactions required approval from the Board of Land Commissioners. *Bullock*, ¶ 3. The AG asserted first that the Governor and FWP Director had not suffered concrete and individualized injury. The Court disagreed, finding that the AG's actions "precluded them from

effectuating the constitutional and statutory duties of their respective offices." *Id.* ¶ 35; *see also id.* ¶¶ 40-41. The AG separately asserted that the parties lacked prudential standing because the question was a matter of public policy committed to the Legislature. *Id.* ¶ 42. Here, too, the Court disagreed, holding,

> The issue presented here is not a question of policy or other political consideration. The issue presented is a basic question of constitutional and statutory interpretation well-suited to the province of the judiciary. This Court has clear constitutional authority to interpret the statutory language at issue. Disputes with the executive interpreting the effect of the statutory language do not mitigate this Court's authority.

Id. ¶ 46.

In *Brown v. Gianforte*, 2021 MT 149, 404 Mont. 269, 488 P.3d 548, a group of petitioners brought an original proceeding in this Court challenging the 2021 bill that changed the procedures by which judicial vacancies are nominated and filled. *Brown*, ¶ 1. The respondents argued that the petitioner group of voters and taxpayers lacked both constitutional and prudential standing—no judge had actually been nominated or appointed under the new statute, and the legal question dealt directly with a constitutional provision granting authority to the Legislature to determine how vacancies are presented to the Governor. *Id.* ¶¶ 12, 22. The Court rejected both standing arguments, noting that the seriousness of the threatened injury conferred constitutional standing, *id.* ¶ 19, and that determining the constitutionality of a statute—even where the statute exists pursuant to a duty

committed to a co-equal branch by the Constitution—was "the exclusive province of the judicial branch." *Id.* ¶ 24.

These justiciable cases—just two examples of many politically complex but prudentially appropriate controversies—have much in common with the dispute at hand. In each, the respondents attempted to characterize the controversy as one hypothetical to the petitioner and exclusively committed to another branch of government. In each, the Court rejected this framing, recognizing that the existence of authority in a coordinate branch does not diminish the judiciary's own constitutional obligation to determine what the law requires. The Court should do the same here.

CONCLUSION

Cromwell presents a justiciable controversy arising from an active and ongoing exercise of supervisory control based on a bona fide question of statutory interpretation—a controversy that presently compels her to provide legal advice she believes violates Montana law and the professional obligations of her office.

The AG, by contrast, asks this Court to recognize something altogether novel: that once he invokes supervisory control, his own legal interpretation becomes immune from judicial review. Under his theory, he may order independently elected local officials to conform their conduct to his unofficial interpretation of Montana law without any plausible avenue for judicial review.

His argument is not truly an invocation of political question doctrine. It is not truly a valid concern regarding standing. It is not truly a supportable contention that this Court's decision would be an advisory opinion. It is executive supremacy by another name, plain and simple.

This Court need not address unraised questions about the scope and propriety of supervisory control in order to resolve this dispute. It need only do what it does every day: answer a straightforward question of statutory interpretation and declare what Montana law requires.

DATED this 8th day of June, 2026.

/s/ Raph Graybill
Raph Graybill
Rachel Parker
Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing brief complies with the requirements of Rule 11, M. R. App. P., is double-spaced, except for footnotes, quoted, and indented material, and is proportionally spaced utilizing a 14-point Times New Roman typeface. The total word count for this document is 2,452 words, as calculated by the undersigned's word processing program.

/s/ Raph Graybill
Raph Graybill
Attorney for Petitioners

CERTIFICATE OF SERVICE

I, Raphael Jeffrey Carlisle Graybill, hereby certify that I have served true and accurate copies of the foregoing Brief - Other to the following on 06-08-2026:

Rachel Elizabeth Parker (Attorney)
300 4th St North
Great Falls MT 59403
Representing: Audrey S. Cromwell
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: Austin Miles Knudsen
Service Method: eService

Christian Brian Corrigan (Govt Attorney)
215 North Sanders
Helena MT 59601
Representing: Austin Miles Knudsen
Service Method: eService

Brent A. Mead (Govt Attorney)
215 North Sanders
Helena MT 59601
Representing: Austin Miles Knudsen
Service Method: eService

Alexander H. Rate (Attorney)
P.O. Box 1968
Missoula MT 59806
Representing: ACLU of Montana Foundation, Inc.
Service Method: eService

Ashlee Nichole Rossler (Attorney)
P.O. Box 1968
Missoula MT 59806
Representing: ACLU of Montana Foundation, Inc.
Service Method: eService

Electronically signed by Emma Edwards on behalf of Raphael Jeffrey Carlisle Graybill
Dated: 06-08-2026