

**MONTANA FIRST JUDICIAL DISTRICT COURT,  
LEWIS & CLARK COUNTY**

JORDAN WILLIAMS,

*Plaintiff,*

vs.

GREG GIANFORTE, in his official capacity as GOVERNOR OF THE STATE OF MONTANA; MARTA BERTOGLIO, in her official capacity as the APPOINTED DIRECTOR OF THE DEPARTMENT OF COMMERCE; MISTY ANN GILES, in her official capacity as DIRECTOR OF THE MONTANA DEPARTMENT OF ADMINISTRATION,

*Defendants.*

Cause No. DV-2025-466  
Hon. Elizabeth A. Best

**Order  
on Motions for Summary  
Judgment**

Plaintiff Jordan Williams (Williams) and Defendants Governor Greg Gianforte, Marta Bertoglio, and Misty Ann Giles (Defendants) cross-moved for summary judgment on Williams's claim that the Governor violated Article V, § 9 of the Montana Constitution by appointing Bertoglio to be the Director of Commerce

during her legislative term. The motions are fully briefed. The Court held a hearing on March 27, 2026, and heard argument from the parties. For the reasons set forth below, the Court finds and concludes that Williams is entitled to summary judgment.<sup>1</sup>

## LAW

Summary judgment is proper when the moving party proves the absence of genuine issues of material fact and that party is entitled to judgment as a matter of law. Mont. R. Civ. P. Rule 56. The interpretation and application of the Montana Constitution is a question of law. *Clark Fork Coal. v. Mont. Dep't. of Nat. Res. & Conservation*, 2021 MT 44, ¶ 32, 403 Mont. 225, 481 P.3d 198.

## RELEVANT FACTS

### **I. History of the Disqualification Provision.**

Article V, § 9 of the Montana Constitution mandates that: “No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state[.]” *See* Mont. Const. art. V, § 9 (“Disqualification”). Montana first adopted this prohibition in 1889. *See* Mont. Const. art. V, § 7 (1889)

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<sup>1</sup> The Court acknowledges Defendants’ pending appeal of this Court’s denial of their request to return the case to Judge Seeley. However, this Court has authority to deny Defendants’ motion. *See* Mont. R. Civ. P. 62.1(a)(2). Moreover, this Court can issue an “indicative ruling” stating it would grant Plaintiffs’ motion. *Id.* 62(a)(3). Thus, to the extent Defendants’ interlocutory appeal affected this Court’s authority to grant Plaintiffs’ motion, *cf.* Dkt. 43, Order on Jurisdiction Pending Appeal and Setting Hearing, this Order may be construed as a Rule 62.1 indicative ruling.

(“No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state[.]”).

The record is clear that the delegates to the 1972 Constitutional Convention carried the disqualification provision forward to “[e]nsure[] the independence of representatives” and protect against corruption, consolidation of power, and conflicts of interest between the executive and legislative branches. *Mont. Const. Conv., Rep. Number 12: The Legislature*, at 102 (“*Rep. No. 12*”) (citing *Forty-Second Legis. Assembly v. Lennon*, 156 Mont. 416, 481 P.2d 330 (1971) (“*Lennon*”)); *Mont. Const. Conv., III Verbatim Tr.* at 597<sup>2</sup> (1972) (Del. Aronow) (“[I]t’s one of the most corrupt things that can be done to the Legislature and to the people of the State of Montana to allow a member of the Legislature to accept appointment to another office while he’s a member of the Legislature.”) (hereinafter, “[Volume number] Conv. Tr.”). The disqualification provision makes clear that the Governor’s appointment of legislators to civil office violates Montana’s “morals and principles and separation of powers.” *Id.* (Del. Aronow); see *State ex rel. Nagle v. Kelsey*, 102 Mont. 8, 55 P.2d 685, 690 (1936) (“*Kelsey*”); see also *Mont. Const. art. II, § 1* (“All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.”).

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<sup>2</sup> The transcripts contain an erroneous page “591” between pages 596 and 598.

The delegates considered the disqualification provision to be critical to the separation of powers. Without it, they understood that the executive could exert undue influence over a coordinate branch through the enticement of winning appointment to civil office in exchange for votes. *Rep. No. 12* at 100 (“Early in the history of representative government, the people realized a man who owed his livelihood to the . . . government’s chief executive was a poor choice to represent the interests against . . . the executive.”); III Conv. Tr. at 590 (Del. Berg) (“[I]t is essential in any constitution that there be a provision prohibiting legislators from holding any other civil office during the term of their office, and I think that’s perfectly consistent with the fundamental principle of a separation of powers.”).

The delegates were intimately familiar with the 1889 disqualification provision because it prevented legislators from serving as convention delegates.<sup>3</sup> *Lennon*, 156 Mont. at 418, 481 P.2d at 331; see *Rep. No. 12* at 102 (“The Montana Supreme Court decided in [*Lennon*] that a legislator cannot resign his seat to accept another office.”); 34 Op. Att’y Gen. No. 4 (1971) (reaching the same conclusion).

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<sup>3</sup> By the time of the convention, the Montana Supreme Court had interpreted the 1889 disqualification provision numerous times. See, e.g., *State v. Hawkins*, 79 Mont. 506, 257 P. 411 (1927); *State ex rel. Nagle v. Page*, 98 Mont. 14, 37 P.2d 575 (1934) (“*Page*”); *Kelsey*, 102 Mont. 8, 55 P.2d 685; *Lennon*, 156 Mont. 416, 481 P.2d 330; *Mahoney v. Murray*, 159 Mont. 176, 496 P.2d 1120 (1972).

Upon request from Chairman Graybill, Delegate Joyce explained the 1899 disqualification provision to others during the convention:

[T]he effect of [the 1889 disqualification provision] is that a member of the Legislature can't be appointed to any other office. So that if you are a member of the Legislature and you're—during the full course of your term—say you're a Senator and you're just newly elected; you've got three years to run; you are—only served the 60 days. You cannot be appointed to any other office. . . . And that has been the law of Montana ever since 1890.

V Conv. Tr. at 1580–81 (Del. Joyce).

This provision was uncontroversial among the bipartisan delegates. The text and intent of the 1889 disqualification provision prohibited appointing a sitting legislator to public office at any time during the term for which that legislator was elected, regardless of whether the legislator remained in office for that full term. *See id.*; Mont. Const. art. V, § 7 (1889). By carrying the provision forward to the 1972 constitution, the delegates retained the original meaning and purpose. Consistent with more than eight decades of precedent, they sought to maintain separation of powers, protect against corruption, and uphold the morals and principles of the people of Montana. Mont. Const. art. V, § 9; *see* V Conv. Tr. at 1580 (Del. Habedank) (speaking in favor of retaining the language in the disqualification provision “which has been construed through the years and which we understand.”); *see also* III Conv. Tr. at 598 (Del. Aronow) (stating that “the Supreme Court held that no member of

the Legislature could be a member of this Convention” under the 1889 disqualification provision).

## **II. The Factual and Procedural History is Undisputed.**

The people of Montana House District 75 (HD 75) elected Bertoglio to represent them on November 5, 2024. She assumed office on January 6, 2025, for a term to expire on January 7, 2027. *See* Mont. Const. art. V, § 3; § 5-2-102, MCA. On June 16, 2025, a year-and-a-half before her term expired, Bertoglio resigned from the legislature and the Governor appointed her to be Director of the Department of Commerce. On July 22, 2025, the Jefferson County Commission appointed Mark Reinschmidt to serve out the remainder of Bertoglio’s term of office.

Williams is a taxpayer and voter who resides in Jefferson County and HD 75. Until the Governor’s appointment, Bertoglio represented Williams in the legislature. Williams filed this action on August 6, 2025, alleging that the Governor violated Article V, § 9 of the Montana Constitution.<sup>4</sup> The parties cross-moved for summary judgment and briefing concluded on December 22, 2025. The Court heard oral argument on the cross-motions on March 27, 2026.

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<sup>4</sup> Williams named the Attorney General and the State of Montana as defendants to his original complaint. After the State moved to dismiss, Williams amended his complaint and removed the Attorney General and the State as defendants, mooting the motion to dismiss. *See Ramirez v. Cnty. of San Bernardino*, 806 F.3d 1002, 1009 (9th Cir. 2015) (a timely amended complaint moots a pending motion to dismiss).

As of today, Bertoglio continues to serve as Commerce Director.<sup>5</sup>

### ANALYSIS

The parties agree there are no disputes of material fact and thus summary judgment is appropriate. The parties present three disputed legal issues. First, the parties dispute whether Article V, § 9 prohibits appointing legislators to public office during the entire term for which they are elected, or whether it merely prohibits legislators from serving in the legislature and in another public office simultaneously. Second, the parties dispute whether the Commerce Director is a “civil office” subject to the disqualification provision. Finally, the parties dispute whether the *quo warranto* statute bars Williams from challenging Bertoglio’s appointment under the disqualification provision.

#### **I. Williams has standing as a citizen and taxpayer.**

Initially, the Court must determine whether Williams has standing to bring this case. *Barrett v. State*, 2024 MT 86, ¶ 18, 416 Mont. 226, 547 P.3d 630. A plaintiff has constitutional standing when (1) their claim stems from “an alleged wrong or illegality that has caused, or is likely to cause, the plaintiff to suffer a past, present, or threatened injury to person, property, or exercise of civil or constitutional right,”

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<sup>5</sup> The Court renders judgment based on the parties’ pleadings and materials. Mont. R. Civ. P. 56. The Court also takes judicial notice of certain uncontested facts as requested by Williams. Mont. R. Evid. 201.

and (2) when “legal relief can effectively alleviate, remedy, or prevent” that harm. *Held v. State*, 2024 MT 312, ¶ 32, 419 Mont. 403, 560 P.3d 1235. “The violation of a constitutional or statutory right may confer standing.” *Gottlob v. Desrosier*, 2025 MT 56, ¶ 15, 421 Mont. 176, 565 P.3d 1196 (citation omitted). And “[t]he Montana Constitution is to be given a broad and liberal interpretation.” *Bryan v. Yellowstone Cnty. Elementary Sch. Dist. No. 2*, 2002 MT 264, ¶ 23, 312 Mont. 257, 60 P.3d 381; *see Held*, ¶ 78 (Sandefur, J., concurring) (observing that Montana possesses “liberal jurisprudential standing requirements”).

Citizens and taxpayers have previously challenged unconstitutional appointments under the 1889 Montana Constitution’s disqualification provision. *See Hawkins*, 79 Mont. 506, 257 P. at 412 (adjudicating the merits of a challenge under Montana’s 1889 disqualification provision brought by Julius Barney, a “citizen and taxpayer”). Bertoglio’s appointment left Williams, an HD 75 resident, without representation in the Montana House for over a month, and denied him representation by a popularly elected state house representative. And Williams’s tax dollars funded both Bertoglio’s unconstitutional appointment and the subsequent appointment process in Jefferson County. *See, e.g.*, §§ 2-16-406; 5-2-401, *et seq.*, 7-4-2107, 7-4-2502, MCA. Moreover, the relief Williams seeks is similar to that sought by other residents and taxpayers in unlawful appointments cases, and will “alleviate,

remedy, or prevent” the injuries he suffered. *Held*, ¶ 32; *see also, e.g., Hawkins*, 79 Mont. 506, 257 P. at 412; *State ex rel. Schara v. Holmes*, 130 Mont. 108, 113, 295 P.2d 1045, 1047 (1956) (granting taxpayer injunction to prohibit payment of illegally appointed committee members); *Lennon*, 156 Mont. at 420, 481 P.2d at 332 (declaratory judgment action was the “proper proceeding in which to reach and answer the legal issues raised” concerning the 1889 disqualification provision); *Brown v. Gianforte*, 2021 MT 149, ¶¶ 11–19, 404 Mont. 269, 488 P.3d 548 (concluding Montana residents, voters, and taxpayers had standing to challenge law concerning judicial appointments in part because any acts performed by an improperly appointed judge would be void).<sup>6</sup> Thus, Williams has constitutional standing as a “citizen and taxpayer.” *Hawkins*, 79 Mont. 506, 257 P. at 412; *see Larson v. State*, 2019 MT 28, ¶ 46, 394 Mont. 167, 434 P.3d 241 (“Economic harm caused by, or likely to be caused by, an alleged illegality is sufficient to establish

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<sup>6</sup> Defendants do not dispute that Williams has standing in the traditional sense. Instead, they assert that Williams is statutorily barred from bringing his claim. *See infra*, Part III. In so doing, Defendants ask this Court to disregard *Hawkins*, which resolved a taxpayer challenge under Article V, § 9 on the merits, because “the concept of standing as a threshold, pre-merits question did not emerge in Montana law until” decades later. But this assertion is incorrect. *See, e.g., Spratt v. Helena Power Transmission Co.*, 37 Mont. 60, 94 P. 631, 638 (1908) (plaintiffs “may not avail themselves” of a constitutional challenge if they are not the ones adversely affected by the unconstitutional act); *Holt v. Custer County* (1926), 75 Mont. 328, 330, 243 P. 811, 811 (“To maintain an action the plaintiff must show that he has a right to be enforced or a wrong to be prevented or redressed. . . . [B]ut he is without standing where it is not shown that his rights have been, or are about to be, invaded.”). *Hawkins* remains instructive and confirms that a citizen and taxpayer has standing to challenge a violation of Article V, § 9.

standing to assert an otherwise cognizable claim for relief.”); *Sawyer Stores v. Mitchell*, 103 Mont. 148, 62 P.2d 342, 355 (1936) (“Every taxpayer of this state is interested in seeing to it that the public funds are not expended uselessly.”).<sup>7</sup>

## **II. Article V, § 9 of the Montana Constitution prohibits Bertoglio’s appointment to be Commerce Director until her legislative term expires.**

The disqualification provision states, “No member of the legislature shall, during the term for which [they] shall have been elected, be appointed to any civil office under the state.” Mont. Const. art. V, § 9. Accordingly, a legislator’s appointment to another office violates the disqualification provision if (1) she is appointed “during the term for which” she was elected,” and (2) the appointed office is a “civil office under the state.” *Id.* Both elements are met here.

### **A. The disqualification provision applies to Bertoglio for her entire legislative term.**

“The intent of the Framers controls the Court’s interpretation of a constitutional provision.” *Nelson v. City of Billings*, 2018 MT 36, ¶ 14, 390 Mont. 290, 295, 412 P.3d 1058, 1064. In determining intent, courts first consider “the plain language of the words used.” *State ex rel. Racicot v. Dist. Ct. of First Jud. Dist.*, 243

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<sup>7</sup> Because the potentially unconstitutional appointment of a sitting legislator to public office is an issue of significant “importance . . . to the public” that would otherwise “effectively be immunized from review,” Montana prudential standing doctrine favors allowing Williams to press his claim here. *See, e.g., Heffernan v. Missoula City Council*, 2011 MT 91 ¶ 33, 360 Mont. 207, 255 P.3d 80.

Mont. 379, 385, 794 P.2d 1180, 1183 (1990). The Montana Supreme Court previously determined that “[t]he expression, term of office, uniformly designates a fixed and definite period of time.” *State v. Knight*, 76 Mont. 71, 245 P. 267, 268 (1926) (citation omitted); *see Racicot*, 243 Mont. at 386, 794 P.2d at 1184 (noting that the expression “refers to a fixed and definite period of time”). Thus, based on its plain language, the disqualification provision’s prohibition on legislator appointments applies during the entire two-year term for which a house member is elected. *See* Mont. Const. art. V, § 3.

Defendants’ arguments to the contrary are unpersuasive. Defendants assert that because Bertoglio ceased being a “member of the legislature” when she resigned from office, the disqualification provision no longer applies to her. But this interpretation renders the phrase “during the term for which he shall have been elected” superfluous and illusory. At bottom, Defendants ask this Court to construe “term” to mean “tenure.” But an official’s term and tenure in office are distinct. *Racicot*, 243 Mont. at 386, 794 P.2d at 1184 (“This Court has already rejected this type of argument because it confuses ‘term’ with ‘tenure.’ ‘Tenure’ refers to the time an official actually spends in office, whereas ‘term’ refers to a fixed and definite period of time.”); *see State v. Page*, 20 Mont. 238, 50 P. 719, 722–23 (1897) (interpreting vacancy law in the political code and differentiating between a scenario

“where the term of office of an incumbent has expired,” versus “a vacancy caused by a resignation”). Because an officer’s term of office is fixed and definite, the officer may not artificially end their term by resigning. *See Mahoney*, 159 Mont. at 178–179, 182, 189, 496 P.2d at 1120–21, 1123, 1127 (holding the 1889 disqualification provision prohibited a Constitutional Convention delegate from seeking nomination to another civil office, despite the Convention adjourning, because the “term continues to run” for the full period for which the delegates were elected); *see also Lennon*, 156 Mont. 416, 481 P.2d 330. Thus, the Governor appointed Bertoglio during her term of office as HD 75’s representative, regardless of whether Bertoglio remained a member of the legislature. *See Mahoney*, 159 Mont. at 189, 496 P.2d at 1126 (“Mahoney’s status as a delegate is continuing whether he, as an individual, has any duties or not.”).<sup>8</sup>

Moreover, assuming, *arguendo*, that there is any ambiguity in the disqualification provision’s text, the 1972 Constitutional Convention Transcripts clear things up. *Planned Parenthood of Montana v. State*, 2025 MT 120, ¶ 41 n.10,

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<sup>8</sup> Defendants cite one line from *State ex rel. Nagle v. Kelsey*, 102 Mont. 8, 55 P.2d 685, 690 (1936), to contend that the disqualification provision only prohibits a legislator from *simultaneously* holding other public office. But that case involved the Governor appointing a legislator *who remained in office* to another civil office. *See id.* The *Kelsey* Court’s use of the word “simultaneous” merely reflected the facts of the case—it did not limit the scope of the 1889 disqualification provision. *See id.* (“Whenever the right of a legislator to hold another office during the term for which he was elected has been the subject of consideration by this court, only the case before the court has been decided.”).

422 Mont. 241, 570 P.3d 51 (collecting cases and recognizing the transcripts as the authoritative source of the Framers' intent). All parties agree that the delegates intended to carry the 1889 disqualification provision's meaning over to the 1972 Constitution. *See, e.g.,* V Conv. Tr. at 1580 (Del. Habedank) (speaking in favor of retaining the language in the disqualification provision "which has been construed through the years and which we understand."). And the delegates understood the 1889 disqualification provision to prohibit a legislator from artificially terminating their term of office by resigning. *See, e.g., id.* (Del. Habedank) ("The purpose of my motion was to prevent a person from resigning and being appointed, rather than allowing it. And if it cannot be done in this method . . . I would suggest that the wording of the Style and Drafting Committee be deleted in its entirety and go back to the original wording of the Constitution."); *id.* at 1581 (Del. Joyce) ("[T]he effect of [the 1889 disqualification provision] is that a member of the Legislature can't be appointed to any other office. So that if you are a member of the Legislature and you're—during the full course of your term—say you're a Senator and you're just newly elected; you've got 3 years to run; you are—only served the 60 days. You cannot be appointed to any other office. . . . And that has been the law of Montana ever since 1890"); *see also Rep. No. 12* at 102 ("The Montana Supreme Court decided in [*Lennon*] that a legislator cannot resign his seat to accept another office.").

Indeed, one delegate proposed suspending the Convention rules to amend Article V, Section 9 to allow legislators to resign and be appointed to another office. *See* V Conv. Tr. at 1617–18 (Del. Furlong) (“I can envision where a person elected for 4 years may, for healthful reasons, decide that he best not serve in the Legislature and could still be barred during that period of time from any appointment.”). A majority of the delegates rejected that proposal. *Id.* at 1620. Thus, the transcripts make clear that the delegates sought to retain the meaning of the 1889 disqualification provision, which barred a legislator from resigning from office to secure a different appointment during their term of office. *See Lennon*, 156 Mont. at 418, 481 P.2d at 331; *see also Montana Democratic Party v. Jacobsen*, 2024 MT 66, ¶ 27 n.5, 416 Mont. 44, 545 P.3d 107 (“Although we will refrain from using the Framers’ discussion when it shows two, or even three positions that do not manifest a collective intent, we will use them, as here, when the discussion shows an intent of the majority.” (internal citation omitted)).

Accordingly, Bertoglio is constitutionally disqualified from holding another civil office until her term as HD 75 Representative expires on January 7, 2027.

**B. The Director of the Department of Commerce is a civil office.**

The disqualification provision bars legislators “from holding any other ‘public office’ or ‘civil office’ of the state” because those “two terms are synonymous.”

*Lennon*, 156 Mont. at 422, 481 P.2d at 333. “[T]he words ‘civil office’ in our Constitution mean any public office not of a military character.” *Hawkins*, 79 Mont. 506, 257 P. at 413. To determine whether a particular office constitutes a “public office,” courts first look to whether the legislature has statutorily designated the office as a “public” or “civil” office. In the absence of any statutory definition, courts apply the five-part *Hawkins* test. *See Hawkins*, 79 Mont. 506, 257 P. at 418.

The Court concludes that the Commerce Director is a “civil office” both as defined in statute and under the *Hawkins* test.<sup>9</sup>

**1. The Legislature statutorily defines the Commerce Director as a civil office.**

In the Ethics Code, the legislature defined a “public officer” as “any state officer.” Section 2-2-102(10)(a), MCA. This includes all “directors of the executive branch of state government as defined in 2-15-102,” Section 2-2-102(14), MCA. “Director,” in turn, means any department head specifically referred to in Title 2 Chapter 15, MCA. Section 2-15-102(6)(a), MCA. The Commerce Director is specifically referred to in Title 2, Chapter 15: “There is a department of commerce. The department head is a director of commerce appointed by the governor in accordance with 2-15-111.” § 2-15-1801, MCA. As a result, the Director of the

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<sup>9</sup> Defendants assert that the *Hawkins* test applies regardless of whether the legislature has provided a statutory definition. Because the Court finds that the Commerce Director is a civil office under either test, it need not resolve this question.

Department of Commerce is a statutorily designated public officer who occupies a public office under Montana law.

Defendants contend that the Court cannot rely on statutory definitions to determine whether the Commerce Director is a public office because it is the province of the judicial branch to determine the meaning of constitutional provisions. Thus, Defendants claim that the *Hawkins* test is the exclusive means by which this court may determine whether a state office constitutes a “public office.”

But Defendants ignore that the *Hawkins* Court only developed its five-part test because no definitions, statutory or otherwise, existed at the time. *See Hawkins*, 79 Mont. 506, 257 P. at 418 (“The term ‘officer’ or the term ‘office’ does not appear to have been defined heretofore by this court, *nor is there, in this state, any statutory general definition of either.*” (emphasis added)). Since *Hawkins*, however, the legislature has intentionally incorporated executive agency directors into the definition of a “public officer.” *See* §§ 2-2-102(10)(a), (14), 2-15-102(6)(a), MCA. Moreover, the legislature was aware of the *Hawkins* test and declined to incorporate it into Section 2-2-102, MCA. *Cf. Musselshell Ranch Co. v. Seidel-Joukova*, 2011 MT 217, ¶ 14, 362 Mont. 1, 261 P.3d 570 (“We presume that the legislature is aware of the existing law, including our decisions interpreting individual statutes . . . . We presume that if the legislature disagreed with our interpretation . . . it would have

amended the statute accordingly.” (citation omitted)). Instead, it expressly defined directors as public officers.

Of course, courts have the authority to interpret constitutional provisions. *Larson v. State*, 2019 MT 28, ¶ 42, 394 Mont. 167, 434 P.3d 241. But in so doing, courts apply the rules of statutory construction. *Nelson*, ¶ 14. In Montana, “[w]henver the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.” § 1-2-107, MCA. This rule is especially relevant here because the legislature can create public offices and did create the Department of Commerce and Commerce Director. *State ex rel. Bonner v. Dist. Ct.*, 122 Mont. 464, 470, 206 P.2d 166, 169 (1949) (“An office created by an Act of the legislature is within the control of the legislature.”); *See* § 2-15-1801 (“There is a department of commerce.”). The legislature also exercised its power to define the Commerce Director as a civil or public office. *See* §§ 2-2-102(10)(a), 2-2-102(14), 2-15-102(6)(a), MCA. There is no basis to disturb this definition in applying the disqualification provision. *See Elliott v. Montana Dep’t of Revenue*, 2006 MT 267, ¶ 15, 334 Mont. 195, 146 P.3d 741 (where the legislature has exercised its constitutional power to enact a statute, a court has no basis to reject that statute, absent a constitutional challenge). Because the Commerce Director is a civil or

public office, the disqualification provision bars Bertoglio from being appointed thereto until her term of office as HD 75 Representative expires in January 2027.

**2. The Director of the Department of Commerce is a civil office under *Hawkins*.**

The Court also finds and concludes that the Commerce Director is a civil office under the *Hawkins* test. To satisfy this test, a position must meet five elements:

- (1) It must be created by the Constitution or by the Legislature or created by a municipality or other body through authority conferred by the Legislature;
- (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public;
- (3) the powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the Legislature or through legislative authority;
- (4) the duties must be performed independently and without control of a superior power, other than the law, unless they may be those of an inferior or subordinate office, created or authorized by the Legislature, and by it placed under the general control of a superior officer or body;
- (5) it must have some permanency and continuity and not be only temporary or occasional.

*Lennon*, 156 Mont. at 422–23, 481 P.2d at 333–34 (quoting *Hawkins*, 79 Mont. 506, 257 P. at 418). The Commerce Director satisfies all five elements.<sup>10</sup>

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<sup>10</sup> Defendants contest only the second and fourth elements.

**i. The Constitution and the Legislature created the Commerce Director.**

As it relates to the first element, “[a]n office does not spring into existence spontaneously. It is brought into existence, either under the Constitution, by legislative enactment, or by some municipal body, pursuant to the authority delegated to it.” *Hawkins*, 79 Mont. 506, 257 P. at 417 (citation omitted). The Commerce Department is one of twenty constitutionally authorized and legislatively created principal departments. Mont. Const. art. VI, § 7 (authorizing the creation, by statute, of up to twenty principal executive and administrative offices); § 2-15-104, MCA (creating the Department of Commerce as one of the twenty).

The legislature also statutorily created the office of Commerce Director. § 2-15-1801, MCA. And the Governor’s appointment power is also governed by statute. *See* § 2-15-111, MCA. Thus, the Commerce Director position was created by “force of law,” and satisfies the first element. *Hawkins*, 79 Mont. 506, 257 P. at 417 (citation omitted).

**ii. The Commerce Director possesses sovereign power.**

The second element, whether the office possesses a delegation of sovereign power, is the “most important characteristic which distinguishes an office from an employment or contract.” *State ex rel. Running v. Jacobson*, 140 Mont. 221, 225, 370 P.2d 483, 485 (1962) (citation omitted). Sovereign power is granted not by

contract but through public authority, “in the sense that it impl[ies] the element of personal responsibility, as distinguished from . . . merely clerical act[s.]” *State ex rel. Paugh v. Bradley*, 231 Mont. 46, 50, 753 P.2d 857, 860 (1988) (citation omitted) (“*Bradley*”); *Kelsey*, 102 Mont. 8, 55 P.2d at 689 (commissioners’ capacity to purchase land and enter contracts made them civil officers). Sovereign power “mak[es], administer[s], or execut[es] the laws.” *State ex rel. Boyle v. Hall*, 53 Mont. 595, 600, 165 P. 757, 758 (1917). It is the exercise of state power in the way the state “thinks, acts, determines[,] and administers, to the end that the Constitution may be effective and its laws operative.” *Page*, 98 Mont. 14, 37 P.2d at 578. Importantly, “the delegation of unlimited power is not essential to the exercise of sovereign power.” *Lennon*, 156 Mont. at 424, 481 P.2d at 334.

The Director of Commerce, the principal of one of twenty constitutionally authorized and statutorily created executive branch departments, undoubtedly exercises sovereign power. *See* § 2-15-112, MCA. In its own words, the Commerce Department:

[W]orks with local and statewide partners to support economic growth across Montana. By offering grants, loans and technical assistance, Commerce promotes economic opportunities and administers quality, affordable housing programs. Commerce also aids business development, tourism promotion and public infrastructure planning and improvements. Commerce is dedicated to assisting Montana’s businesses and communities, helping them thrive and build a prosperous future for the entire state.

Mont. Dep't of Commerce, <https://commerce.mt.gov/> (last visited April 13, 2026).

In leading the Department, the Commerce Director directly administers the Office of Public Information, Office of Legal Affairs, Office of Human Resources, Office of Accounting and Budgeting, and Office of Information Technology. *See* Mont. Admin. R. 8.1.101. Beyond the direct administration of these departments, the Commerce Director oversees the Housing Division, the Community Development Division, and the Office of Tourism and Business Development Division. *See id.*; *see also* § 90-1-101, MCA. The Director also exercises broad regulatory authority on behalf of the Department. *See, e.g.*, §§ 90-1-147, 90-1-204, 90-1-608(3), 90-2-1105, MCA (setting forth the Commerce Department's regulatory authority over, *inter alia*, financial assistance programs, broadband projects, economic development funding priorities, and reclamation and development grants).

Indeed, the Commerce Director is delegated and exercises numerous executive, quasi-legislative and quasi-judicial powers. She may “enter into agreements with federal, state, and local agencies necessary to carry out the department's functions.” § 2-15-112(2)(d), MCA; *see Kelsey*, 102 Mont. 8, 55 P.2d at 688–89 (concluding that appointees to the Montana Relief Commission were public officers because commissioners had “the authority to acquire property for the State of Montana,” and “to enter into contracts with the [Federal] government”). She

may also exercise rulemaking authority, a delegation of executive and quasi-legislative powers. *See* § 2-15-101(11) (defining quasi-legislative as “having the power to make rules”); *Page*, 98 Mont. 14, 37 P.2d at 578 (holding that, prior to statutory amendment, boiler inspector’s authority to “make rules” constituted a delegation of “sovereign power”) *see also* 49 Op. Att’y Gen. No. 15 (2002) (designation of rulemaking authority, alone, establishes a delegation of sovereign “executive powers designed to benefit the public”). And she oversees and issues final agency decisions in contested case proceedings—a quasi-judicial function. *See* § 2-4-623, MCA (Final Orders); Mont. Admin. R. 1.3.223 (Contested Cases, Proposed Orders); § 2-15-102(10)(a) & (j), MCA (defining quasi-judicial function as “interpreting, applying, and enforcing existing rules and laws” and “holding hearings”). In addition, the Commerce Director has authority to issue declaratory rulings—another quasi-judicial act. *See* § 2-4-501, MCA; Mont. Admin. R. 1.3.228; Mont. Admin. R. 1.3.229; § 2-15-102(10)(a), (e), MCA (defining quasi-judicial function as “interpreting, applying, and enforcing existing rules and laws” and “evaluating and passing on facts”). These are all sovereign powers.

Despite these various duties, Defendants insist that the Commerce Director does not wield sovereign power because she answers to the Governor. *See* § 2-15-111, MCA; Mont. Admin. R. 8.1.101. But though the Commerce Director answers

to the Governor, she independently exercises broad regulatory authority that carries both weight and effect without any subsequent action or approval by the Governor. Defendants' invocation of *Bradley*, 231 Mont. 46, is therefore unavailing. The *Bradley* Court determined that a court-appointed special master did not exercise sovereign judicial power because her role was advisory and her adjudications did not carry weight or effect until adopted by the district court. 231 Mont. 46 at 52, 753 P.2d at 861 (special master "does not sit as a court" and merely makes recommendations to a district court "for action by that court" (citation omitted)). And though special masters could exercise some power and authority in civil matters in 1988, they did so either by consent of the parties or by initial and subsequent district court approval. *See* Mont. R. Civ. P. 53. By contrast, the people of Montana may not opt out of the Commerce Director's regulatory and adjudicatory authority, nor must the Governor initially or subsequently approve of the Commerce Director's authority for her actions to be effective.

Again, "the delegation of unlimited power is not essential to the exercise of sovereign power." *Lennon*, 156 Mont. at 424, 481 P.2d at 334 (constitutional delegates exercised sovereign power even though the electors had to approve the Constitution); *Kelsey*, 102 Mont. 8, 55 P.2d at 688–89 (Montana Relief Commissioners exercised sovereign power, despite gubernatorial appointment). The

Commerce Director “supervise[s], direct[s], account[s] for, organize[s], plan[s], administer[s], and execute[s] the functions vested in the department.” Section 2-15-112, MCA. The Commerce Director possesses sovereign power.

**iii. The Legislature defines the Commerce Director’s powers and duties.**

The third element asks whether the legislature or the Constitution defines the duties imposed and the powers conferred on the position. *Hawkins*, 79 Mont. 506, 257 P. at 418. If not found in the Constitution, the public character of the position must be “fixed by legislative enactment.” *Id.* In *Hawkins*, the Court considered whether a State Representative violated the 1889 disqualification provision because the representative was contemporaneously employed as an auditor for the board of railroad commissioners. *Id.* The Court held that the auditor role was not a civil office, in part because no statute defined the role. *Id.* The Court explained, “be his duties what they may, they are subject absolutely to the control of the board, so there is no certainty, nothing fixed or definite about them.” *Id.*

Unlike in *Hawkins*, Montana law fixes and defines the duties and powers of principal executive agency heads, including the Commerce Director. *See* § 2-15-112, MCA. The legislature assigns the Commerce Director to administer and execute the law, establish policy, compile reports, represent the Commerce Department when informing the Governor, prescribe interagency rules, make appointments to

subordinate positions, and maintain an effective and efficient operation within the Department. *Id.* The legislature also charges the Commerce Director with additional departmental duties, including state planning; community development; recreational development; economic development; assessing and maintaining housing assistance; entering contracts and coordinating with private and public groups to carry out the planning, research, and development of Montana's economy; and establishing a census and economic information center. *See* § 90-1-101, MCA. Because the legislature has defined and fixed the Commerce Director's duties and powers, the position satisfies the third element.

**iv. The Commerce Director performs tasks independently, and is an inferior or subordinate office, created by the legislature and placed under the general control of the Governor.**

Under the fourth element, a civil office must act either “independently without control of a superior power, other than the law” or be an “inferior or subordinate office, created or authorized by the legislature, and by it placed under the general control of a superior office or body.” *Hawkins*, 79 Mont. 506, 257 P. at 418. This element comes down to whether a public officer has been assigned independent discretionary authority, or whether *all* authority is assigned to a superior. *See Page*, 98 Mont. 14, 37 P.2d at 578 (statutes afforded all “independence of action” to Industrial Accident Board, not boiler inspectors); *Hawkins*, 79 Mont. 506, 257 P. at

418 (Railroad Board, not employee, had all powers); *Bradley*, 231 Mont. at 52, 753 P.2d at 861 (judge exercised all “supervision and control” over special master).

The Commerce Director is the head of a constitutionally and legislatively recognized department who answers only to the Governor. *See* § 2-15-112, MCA; Mont. Admin. R. 8.1.101. But though the Governor appoints the Commerce Director, she must nonetheless act independently, exercising substantial discretion and sovereign authority. Thus, the Governor does not exercise *all* discretion in administering Department of Commerce. Instead, the Commerce Director is vested with broad discretion in both the internal and external functioning of the Department, including personnel decisions, organization, operation of programs, adjudication of matters, and the promulgation of administrative rules.

Nonetheless, Defendants assert that the Commerce Director exercises no independence because she serves at the will of the Governor and the Governor may exercise his powers of supervision, approval, direction, and appointment over the Department of Commerce. But the Governor’s general supervision over the Commerce Director does not mean that the position is not a civil office. Indeed, *Hawkins* and its progeny recognizes that subordinates can be public officers:

[T]he duties must be performed independently and without control of a superior power, other than the law, *unless they be those of an inferior or subordinate office, created or authorized by the Legislature, and by it placed under the general control of a superior officer or body.*

*Hawkins*, 79 Mont. 506, 257 P. at 418 (emphasis added); *see id.* (noting that prison guard is a public office because officers’ duties were “described by statute, so that he was independent in the discharge thereof” (citation omitted)); *Page*, 98 Mont. 14, 37 P.2d at 577–78 (confirming that, prior to statutory amendments, boiler inspectors acted independently and exercised delegated sovereign power despite being appointed and subject to removal by the governor).

Thus, courts evaluate whether an office satisfies this element based on the *statutory* delegation of authority and independence to the office, not whether a specific superior exercises greater or lesser control of the officer. *See, e.g., Page*, 98 Mont. 14, 37 P.2d at 578 (statutes provided that Industrial Accident Board was public officer); *Kelsey*, 102 Mont. 8, 55 P.2d at 689 (explaining “provisions of the act” established the Commission was an “independent functioning body”); *Montana Pub. Employee’s Ass’n v. Off. of Governor*, 271 Mont. 450, 453, 898 P.2d 675, 677 (1995) (absent gubernatorial direction, directors had independent discretion to manage pay).

The legislature, not the Governor, created the Department of Commerce and delegated sovereign powers to the Commerce Director. *See, e.g.,* §§ 2-15-112 & 2-15-1801, MCA; *see also supra*, Part II.B.2.i–iii. The legislature also determined that the Commerce Director—a public office—serves at the pleasure of the Governor. *See* § 2-15-103, MCA; *Bonner*, 122 Mont. at 470, 478, 206 P.2d at 169, 173

(Governor-appointed Unemployment Commissioners—public officers—served at the pleasure of the Governor). And the legislature retained for itself the authority to confirm the Governor’s Commerce Director appointments. *See* § 2-15-111, MCA. While the Governor may remove someone from the position of Commerce Director, he does not have independent authority to, among other things, promulgate administrative rules for the Department, sign off on administrative actions, or “enter into agreements with federal, state, and local agencies necessary to carry out the department’s functions.” *See, e.g.*, §§ 2-15-112(2)(d), 90-1-103(1)(e), 90-6-710(4), MCA; *supra*, Part II.B.2.iii; *see also Kelsey*, 102 Mont. 8, 55 P.2d at 688. The Governor’s actual support, direction, acquiescence, or objection to the exercise of any of these powers is not relevant here. Rather, what matters is that the legislature authorized the Commerce Director’s independence and discretion. Given this authorization, the fourth element is met.

**v. The Commerce Director has permanency and continuity.**

To be a civil office, a position “must have some permanency and continuity, and not be only temporary or occasional.” *Hawkins*, 79 Mont. 506, 257 P. at 418. The court considers the permanency and continuity of position as a “relative matter . . . interpreted in the light of the purpose for which the position was created.” *Lennon*, 156 Mont. at 422, 481 P.2d at 333. Thus, the position “need not be conceived

and created in perpetuity in order to qualify.” *Id.* For example, the position of convention delegate is a civil office. *See id.* Because the people elected the delegates for a particular purpose, the position possessed “permanency and continuity until its purpose [was] complete.” *Id.*

The position of Commerce Director arises in part from the Montana Constitution’s establishment of twenty principal executive branch departments. Mont. Const. art. VI, § 7; § 2-15-104, MCA. Appointed by the Governor and confirmed by the Senate, the Commerce Director serves at the pleasure of the Governor. *See* §§ 2-15-104 & -111, MCA. To serve “at the pleasure” means that the Governor may “terminate without any cause,” which is unrelated to the position’s permanency and continuity as understood under *Hawkins. Bonner*, 122 Mont. at 471, 206 P.2d at 169 (clarifying meaning of “at the pleasure of the Governor”). Thus, because the purposes for having the Commerce Director have not ceased, the position satisfies fifth element.

Because the Commerce Director satisfies all five *Hawkins* elements, the Court finds it is a civil office. Accordingly, even under Defendants’ preferred test, the disqualification provision bars Bertoglio from being appointed as Commerce Director until her term of office as HD 75 Representative expires in January 2027.

### III. The *quo warranto* statute does not bar Williams's claim.

Defendants also argue that, regardless of whether Bertoglio's appointment violates Article V, § 9, Williams is statutorily barred from bringing his constitutional claim. Williams neither pleaded a *quo warranto* claim, nor seeks *quo warranto* relief, but Defendants claim that Montana's *quo warranto* statute provides the exclusive mechanism to challenge unlawful appointments of government officials. The Court is not persuaded.

*Quo warranto* is a common law remedy now controlled by statute. *Bradley*, 231 Mont. at 48, 753 P.2d at 859 (citations omitted); *see* § 27-28-101, *et seq.*, MCA. As relevant here, the statute allows a civil action to be brought in Montana's name to remove from office "a person who usurps, intrudes into, or unlawfully holds or exercises a public office." § 27-28-101, MCA. A person found guilty in a *quo warranto* proceeding, is "ousted and altogether excluded from the office, franchise, or privilege," and the party that brought the action may recover costs. § 27-28-205, MCA.

Only the Attorney General, at their discretion, or by direction of the Governor, or an individual claiming to be entitled to the public office can commence a *quo warranto* proceeding against a person unlawfully holding that office. *See* §§ 27-28-103 & -301, MCA; *Bradley*, 231 Mont. at 49–50, 753 P.2d at 860 ("Quo warranto is

a prerogative writ (that is it is a writ that belongs particularly to the state) and as such it is administered cautiously and in accordance with well-defined principles.” (citation omitted)).

While *quo warranto* belongs to the State, the disqualification provision belongs to the people. Mont. Const. art. II, § 1 (“All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.”). “It was the people who declared that members of the Legislature should not be eligible to simultaneously hold office in other departments of state.” *Kelsey*, 102 Mont. 8, 55 P.2d at 690; see *Comm. for an Effective Jud. v. State*, 209 Mont. 105, 109, 679 P.2d 1223, 1225 (1984) (“The concern of the delegates [in creating a provision restricting judicial office holding] was not to confer benefits on the judiciary nor on individual members of the judiciary. Rather, their concern was for the health of the judicial system itself—for the public interest.”). The people and the delegates intended the disqualification provision to protect against corruption, consolidation of power, and conflicts of interest between the executive and legislative branches. *Rep. No. 12* at 102 (citing *Lennon*, 156 Mont. 416, 481 P.2d 330); *State ex rel. Mitchell v. Holmes*, 128 Mont. 275, 280, 274 P.2d 611, 613 (1954) (“The members of the legislative department, like the members of the executive and judicial departments of our state

government, are bound by the plain mandates and prohibitions of the State Constitution as it is written.”), *overruled on other grounds by State ex rel. James v. Aronson*, 132 Mont. 120, 314 P.2d 849 (1957). They did not intend to instill a self-policing regime between the executive and legislative branches when it comes to the disqualification provision. III Conv. Tr. at 597 (Del. Aronow) (“[I]t’s one of the most corrupt things that can be done to the Legislature and to the people of the State of Montana to allow a member of the Legislature to accept appointment to another office while he’s a member of the Legislature.”); *see Comm. for an Effective Jud.*, 209 Mont. at 109, 679 P.2d at 1225.

Moreover, Defendants’ reading of the *quo warranto* statute would render the disqualification provision toothless by elevating a limited statutory writ over the Montana Constitution’s clear prohibition on appointing legislators to other public offices. This reading cannot be squared with Constitutional text or the delegates’ intent. *See In re Lacy*, 239 Mont. 321, 325, 780 P.2d 186, 188 (1989) (“While the legislature is free to pass laws implementing constitutional provisions, its interpretations and restrictions will not be elevated over the protections found within the constitution.”). Instead, “[w]here the public and the electorate were so clearly intended to benefit by a constitutional provision,” they are entitled to “assert that public interest by contending that the constitutional provision has been the victim of

legislative strangulation.” *Comm. for an Effective Jud.*, 209 Mont. 105 at 108, 679 P.2d at 1225; see *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 2005 MT 69, ¶ 18, 326 Mont. 304, 109 P.3d 257 (“[P]rovisions that directly implicate rights guaranteed to individuals under our Constitution are in a category of their own.”).<sup>11</sup>

Even if the legislature could restrict who may challenge unlawful appointments under the disqualification provision, it has not done so. A statutory remedy is not exclusive unless the legislature expressly provides for exclusivity in the statute’s plain language. See, e.g., *ISC Distributors, Inc. v. Trevor*, 273 Mont. 185, 196–98, 903 P.2d 170, 176–78 (1995); *Tucker v. Missoula Light & Water Co.*, 77 Mont. 91, 250 P. 11, 14 (1926). The legislature knows how to insert exclusivity language into a statute. See, e.g., *Harrison v. Chance*, 244 Mont. 215, 219, 797 P.2d 200, 202–03 (1990) (detailing how legislature added exclusivity language in response to a Montana Supreme Court decision). And the legislature has known for over 100 years that the quo warranto statute is not exclusive. See, e.g., *Hawkins*, 79 Mont. 506, 257 P. at 412; *State ex rel. Brooks v. Fransham*, 19 Mont. 273, 48 P. 1, 3 (1897) (recognizing quo warranto concurrent with other proceedings, “in the

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<sup>11</sup> Given that the people are the beneficiaries of the disqualification provision, Defendants’ citation to *Mitchell v. Glacier Cnty.*, 2017 MT 258, 389 Mont. 122, 406 P.3d 427 is unavailing. And Defendants’ assertion that the disqualification provision is only a “structural provision that protects the separation of powers” and does not involve “direct individual rights” is incorrect. See *Comm. for an Effective Jud.*, 209 Mont. 105 at 108, 679 P.2d at 1225.

absence of express provision” regarding exclusivity); *see also Musselshell Ranch Co.*, ¶ 14. The Court declines to usurp the legislative role by reading exclusivity into the statute. *See* § 1-2-101, MCA.

Finally, neither *Common Cause v. Statutory Committee to Nominate Candidates for Commissioner of Political Practices*, 263 Mont. 324, 868 P.2d 604 (1994), nor *Steel v. Board of Railroad Commissioners*, 144 Mont. 432, 397 P.2d 101 (1964) preclude Williams’s claim.<sup>12</sup> *Common Cause* did not address a challenge under the disqualification provision. *See* 263 Mont. at 326, 332, 868 P.2d at 605, 609. Instead, the plaintiffs sought to void an appointment under § 2-3-213, MCA, based on violations of the right to know and the open meeting statutes. *Id.* *Steel* involved a discretionary appointment of a public employee based on statutory criteria. 144 Mont. at 438, 387 P.2d at 104. The opinion made no mention of *quo warranto*, the disqualification provision, or exclusivity. *See id.*

Moreover, the *Common Cause* Court expressly recognized that *quo warranto* is not an exclusive remedy, instead identifying three separate mechanisms, including

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<sup>12</sup> Defendants also reference *State v. Martin*, 68 Mont. 392, 219 P. 632, 635 (1923), and *State ex rel. Mitchell v. District Court*, 128 Mont. 325, 341, 275 P.2d 642, 650 (1954). Neither are availing. *Martin* rejected “a bill in equity in the nature of *quo warranto*” because *quo warranto* was codified, it did not concern a challenge under the disqualification provision. 68 Mont. 392, 219 P. at 633. Likewise, *Mitchell* concerned a request to enjoin an ongoing election and “prevent appointments to, assumption of, or removals from” elective office. 128 Mont., 341, 275 P.2d at 650. It has no bearing on an individual seeking an *appointed* office.

*quo warranto*, to remove someone from office. 263 Mont. at 333, 868 P.2d at 610. Similarly, *Steel* acknowledged that a taxpayer may be able to seek an injunction to enjoin the salary of an unlawfully appointed public officer when the record was “indisputable” and the case presented only a question of statutory interpretation. *Id.* at 436; 397 P.2d at 103; see *Schara*, 130 Mont. at 113, 295 P.2d at 1047 (holding that a taxpayer may “bring an action to prevent an ‘illegal act’” and “an action to restrain waste because an individual assumes to act illegally in an official capacity.” (citations omitted)). Because there are no factual disputes here and the parties only present legal disputes concerning the application of the disqualification provision and the definition of a public office, *Steel* does not preclude relief here. See, e.g., *Hawkins*, 79 Mont. 506, 257 P. at 412; *Lennon*, 156 Mont. at 418, 481 P.2d at 331.<sup>13</sup>

The *quo warranto* statute does not bar Williams’s constitutional challenge to Bertoglio’s appointment. Concluding otherwise would allow legislators to insulate themselves from even the most flagrant violations of the disqualification provision by eliminating the people’s right to challenge unlawful appointments. Montanans require more public accountability than that. Mont. Const. art II, § 1.

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<sup>13</sup> Defendants urge the Court to look to various other states’ interpretations of *quo warranto*. Because these cases are based on different “historical considerations peculiar to such state, legislative precedent, . . . constitutional provisions” the Court finds the out-of-state cases unpersuasive. *Lennon*, 156 Mont. at 423, 481 P.2d at 334.

## **ORDER**

For the reasons set forth above, Williams's Motion for Summary Judgment is **GRANTED**, and Defendants' Motion for Summary is **DENIED**. It is **HEREBY DECLARED AND ORDERED** that:

1. Defendant Greg Gianforte's June 16, 2025 gubernatorial appointment of Defendant Marta Bertoglio as Director of the Department of Commerce violates Article V, § 9 of the Montana Constitution;
2. Defendant Marta Bertoglio is hereby enjoined from exercising the authority of the Director of the Department of Commerce; and
3. Defendant Misty Ann Giles is hereby enjoined from paying Defendant Marta Bertoglio's salary and benefits as Commerce Director.

**ELECTRONICALLY SIGNED AND DATED BELOW**

cc: Plaintiff – c/o Counsel  
Defendants - c/o Counsel