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STATE OF MONTANA

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May 5, 2023

The Honorable Jason Ellsworth
President of the Senate
State Capitol
Helena, MT 59620

The Honorable Matt Regier
Speaker of the House
State Capitol
Helena, MT 59620

Dear President Ellsworth and Speaker Regier:

The constitutionally recognized Right to Know serves the critical function of ensuring transparency and accountability in government's official duties. And yet, like all constitutional rights, "the fundamental right to know is not absolute." *Nelson v. City of Billings*, 2018 MT 36, ¶ 31. In addition to the balance that must be necessarily struck between the Right to Know and other constitutional rights, such as the Right to Individual Privacy, *id.* at ¶ 19, the Montana Supreme Court has recognized key limitations to the application of the Right to Know, such as attorney-client privilege or work-product privilege. *See id.* at ¶ 20 (observing there are circumstances "in which the [R]ight to [K]now does not apply: when 'necessary for the integrity of government.'"). Among them is when the Right to Know is used as a tool for private litigation interests. *Id.* at ¶ 31 ("the [R]ight to [K]now is not a tool for private litigation interests") (citing *Friedel, LLC v. Lindeen*, 2017 MT 65).

Let's be clear: trial lawyers with well-funded clients are the only winners with House Bill 693, while Montanans, who can't afford big-money trial lawyers, lose. House Bill 693 encourages trial lawyers with deep pockets to abuse the Right To Know, giving them an unfair advantage.

House Bill 693 creates a new litigation tool for trial lawyers and their well-heeled clients – from large out-of-state corporations to well-funded, dark money special interest groups – to bombard the state and our courts with concurrent litigation, abusing Montanans' Right to Know guarantees for their singular advantage. With House Bill 693, trial lawyers have a taxpayer-funded incentive to seek the materials using two different tracks, all for their pocket-lining benefit. Ultimately, Montana taxpayers will foot the bill for trial lawyers' manipulation of our Right to Know with House Bill 693.

Let me present an example. A well-funded, out-of-state dark money special interest group files suit against a state agency, say the Montana Department of Natural Resources and Conservation (DNRC). Currently and appropriately, the special interest group would gather information through the discovery process, a well-established part of the litigation process managed through our courts.

The discovery process is designed to be fair to both parties. In this example, the discovery process would help the special interest group's attorneys and the state's attorneys representing DNRC prepare for trial, getting the evidence they need and ensuring all parties have access to the same information before the case goes to trial.

If House Bill 693 were to become law, the discovery process would be undermined, and trial lawyers would misuse and abuse the Right to Know as a taxpayer-funded cudgel in litigation against the state, while also undermining and potentially circumventing the well-established discovery process.

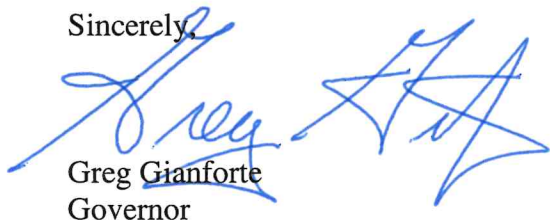
Continuing the example from above, with House Bill 693, the special interest group's trial lawyers could go to discovery while also running a parallel, self-interested track by abusing the Right to Know. While going through the discovery process or even before they bring a case against DNRC, the trial lawyers could submit to DNRC a broad, sweeping public records request, wasting taxpayer resources and consuming staff time. The trial lawyers' abuse of our Right to Know provides them with a tool they don't currently have, a tool outside of the discovery process, to mine DNRC for extra information, likely outside the scope of the discovery process.

There may be a misconception that House Bill 693 protects and enhances the public's Right to Know. House Bill 693 is not about preserving our constitutionally guaranteed and protected Right to Know. Serving to benefit trial lawyers looking to maximize their payouts, House Bill 693 is about giving them a windfall and an unfair advantage, all at taxpayers' expense.

Ultimately, House Bill 693 is an abuse of the Right to Know, and it serves only as a boon for trial lawyers' private litigation interests, giving them two bites at the apple that most Montanans couldn't afford.

Therefore, in accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill 693: "AN ACT CLARIFYING REQUIREMENTS FOR PUBLIC AGENCIES REGARDING PUBLIC INFORMATION THAT IS OR MAY BE PART OF LITIGATION; PROHIBITING AN AGENCY FROM REFUSING TO DISCLOSE PUBLIC INFORMATION SOLELY BECAUSE THE INFORMATION IS OR MAY BE PART OF LITIGATION; AND AMENDING SECTION 2-6-1003, MCA."

Sincerely,



Greg Gianforte
Governor

Enclosure

cc: Legislative Services Division
Christi Jacobsen, Secretary of State