



Montana Legislative Services Division

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TO: Legislative Council

FROM: Jaret Coles, Deputy Director of Legal Services

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RE: Litigation Update for *Saslav v. Howe* (junque files)

In July 2024, the 1st Judicial District Court quashed a subpoena served on a sitting state senator on the grounds that Article V, section 8, of the Montana Constitution grants members of the Legislature a privilege against compelled disclosure of documents or records that reveal the legislator's internal motivations or deliberations. *Mont. Conservation Voters v. Jacobsen (MCV)*, DDV-2023-702 (Mont. 1st Jud. Dist. Ct., July 12, 2024). In this order, legislative staff was specifically mentioned as holding protected documents. Additionally, the 1st Judicial District Court used a recent Montana Supreme Court case entitled *Nelson v. City of Billings* to conclude that the right to know in the Montana Constitution does not abrogate legislative privilege. The 1st Judicial District Court held further that it was bound by *Nelson*.

To comply with *MCV*, the Montana Legislative Services Division (LSD) revised its internal policy for responding to public information requests in September 2024, requiring redaction of any material subject to legislative privilege in the responsive documents unless the legislator expressly waives the privilege. In early October 2024, Plaintiffs David Saslav and Kaylee Hafer, as well as Eric Dietrich, Deputy Editor for Plaintiff-Intervenor Montana Free Press, submitted public information requests for the complete "junque" files for several bill draft requests. LSD responded to those requests by producing the requested junque files but redacting information in accordance with its September 2024 policy.

A few weeks later, the Plaintiffs sued LSD in the 8th Judicial District Court, seeking a *writ of mandamus* ordering LSD to produce unredacted versions of all the requested documents. *Saslav v. Howe*, DV-7-2024-0539-WM (Mont. 8th Jud. Dist. Ct., Oct. 30, 2024). Plaintiffs also moved for a preliminary injunction preventing LSD from withholding or redacting information contained in junque files from public disclosure requests.

Over the next several weeks of November 2024, the State of Montana and State Senator Barry Usher (The State), as well as Montana Free Press, The Associated Press, Montana Broadcasters Association, Montana Newspaper Association, Daily Montanan, Hagadone Media Montana, LLC, Lee Enterprises, Inc., and Adams Publishing Group, successfully moved to intervene as defendants and plaintiffs, respectively.

A hearing was held on January 3, 2025, and on January 21, 2025, the 8th Judicial District Court granted the Plaintiffs' motion for preliminary injunction and application for *writ of mandamus*. The district court ordered LSD to produce unredacted copies of the requested files within five business days of the order. The State and LSD appealed immediately. Given the abbreviated deadline for compliance, the State filed emergency motions to stay with the district court and with the Montana Supreme Court, and LSD sought clarification from the district court on the deadline for compliance. During briefing on these motions, LSD produced the requested junque files. On January 31, 2025, the district court denied the motion to stay the January 21 order, and it explained that LSD must respond to future junque file requests within "a day or two".

The State appealed the 8th Judicial District Court orders to the Montana Supreme Court. *Saslav v. Howe*, No. DA 25-0054 (Mont. Sup. Ct.). LSD is not a participant in the Montana Supreme Court appeal. The State contested the issuance of a preliminary injunction and a *writ of mandamus*. Governor Gianforte submitted an *amicus* brief in support of the State. On September 10, 2025, the Montana Supreme Court classified the appeal for submission on briefs to a five-justice panel. Oral argument was not ordered by the Montana Supreme Court, and LSD is waiting for the panel's decision before further action in this matter.