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

MONTANA QUALITY EDUCATION
COALITION and DISABILITY
RIGHTS MONTANA;

Plaintiffs,

v.

STATE OF MONTANA, GREG
GIANFORTE, in his official capacity as
GOVERNOR OF THE STATE OF
MONTANA; and SUSAN HEDALEN,
in her official capacity as
SUPERINTENDENT OF PUBLIC
INSTRUCTION,

Defendants,

And

SUE VINTON, in her official capacity
as a member of the Montana House of
Representatives and Sponsor of HB 393,

Intervenor-Defendant.

Cause No. ADV-2024-44

**ORDER – PLAINTIFFS’
OPPOSED MOTION TO
VACATE OPPOSED STAY**

1 declaratory judgment HB 393 is unconstitutional; an order enjoining the
2 Defendants and all agencies, agents, and employees from enforcing any aspect of
3 HB 393; an order granting any other appropriate relief that may be necessary to
4 enjoin implementation of HB 393; and attorney fees and costs.

5 On December 8, 2025, the Court issued an Order (1) granting
6 Disability Rights motion as to Count III – alleging HB 393 violates Montana
7 Constitution, Article V; (2) denying Disability Rights motion as to Counts I and
8 IV, and (3) denying Vinton’s motion for summary judgment. On December 12,
9 2025, Disability Rights filed a request for entry of judgment along with a
10 proposed judgment, which the Court signed on December 15, 2025. The
11 judgment declared House Bill 393 unconstitutional under Article VIII, Section 14
12 of the Montana Constitution and ordered that Defendants, their agents,
13 employees, representatives, and successors were enjoined from enforcing any
14 aspect of House Bill 393.

15 Pursuant to Montana Rule of Appellate Procedure 22(1)(a)(i), on
16 December 17, 2025, the State filed a motion to stay the judgment pending a
17 determination on Disability Rights’ motion for attorney fees and the State’s
18 appeal to the Montana Supreme Court. The Court granted the motion on
19 December 17, 2025. On the same date, the State filed a joint motion for a partial
20 stay of judgment for authorized payments for the forty-three families currently
21 enrolled in the ESA Program. The joint motion was signed by counsel for all
22 parties. The joint motion sought an order authorizing the Office of Public
23 Instruction (OPI) to reimburse the families for payments they have incurred for

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1 their special needs students and already approved for reimbursement by OPI from
2 October 25, 2025, through November 25, 2025. The Court granted the motion on
3 December 17, 2025.

4 On December 18, 2025, Disability Rights filed a motion to vacate
5 opposed stay, which is the subject before the Court. On December 30, 2025,
6 before the Court issued an order on the motion to vacate, Disability Rights filed a
7 petition seeking a writ of supervisory control with the Montana Supreme Court.
8 On January 13, 2026, the Supreme Court issued an order denying and dismissing
9 the petition. The motion to vacate opposed stay is fully briefed and ready for the
10 Court's decision.

11 PRINCIPLES OF LAW

12 Montana Rule of Appellate Procedure 22 provides in relevant part:

13 **Rule 22. Stay of judgment or order pending appeal.**

14 (1) Motion for stay in the district court.

15 (a) A party shall file a motion in the district court for any of the
16 following relief:

17 (i) To stay a judgment or order of the district court pending appeal;

18 (ii) For approval of a supersedeas bond; or

19 (iii) For an order suspending, modifying, restoring, or granting an
20 injunction pending appeal.

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22 (c) The district court retains the power to entertain and rule upon a
23 motion filed pursuant to this rule despite the filing of a notice of
24 appeal or the pendency of an appeal.

25 (d) The district court must promptly enter a written order on a
motion filed under this rule and include in findings of fact and
conclusions of law, or in a supporting rationale, the relevant facts
and legal authority on which the district court's order is based. A
copy of any order made after the filing of a notice of appeal must be
promptly filed with the clerk of the supreme court.

M. R. App. P. 22.

1 **ANALYSIS**

2 Disability Rights argues the State’s motion and Court’s Order
3 granting the stay are procedurally deficient. Further, the equities here do not
4 favor granting the stay.

5 **I. Procedural Issues**

6 Disability Rights first argues the State failed to file a brief in
7 support of its motion, or, alternatively, the State failed to file a separate brief and
8 motion in violation of Uniform District Court Rule 2, which provides, in part:

9 (b) Filing Briefs in Support of Motions. The moving party shall file
10 with the court a supporting brief upon filing a motion. The brief
11 may be accompanied by appropriate supporting documents. Except
12 as provided in M. R. Civ. P. 56(c), within fourteen days after service
13 of the movant's brief, the opposing party shall file an answer brief
14 which also may be accompanied by appropriate supporting
15 documents. Within fourteen days after service of the opposing
16 party's answer brief, the movant may file a reply brief or other
17 appropriate responsive documents.

18 (c) Failure to File Briefs. Failure to file briefs may subject the
19 motion to summary ruling. The moving party's failure to file a brief
20 shall be deemed an admission that the motion is without merit.
21 Failure to file an answer brief by the opposing party within the time
22 allowed shall be deemed an admission that the motion is well taken.
23 Reply briefs by movant are optional, and failure to file will not
24 subject a motion to summary ruling.

25 Uniform District Court Rule 2.

26 The State filed a document entitled “Motion for Stay of Judgment
27 Pending Attorney’s Fee Determination and Appeal and Brief in Support.”
28 Contrary to Disability Rights assertion - and as the title of the document indicates
29 - the State filed a brief in support of its motion.

1 Alternatively, Disability Rights argues the State failed to file a
2 separate brief, the failure of which constitutes an admission the motion is without
3 merit. See *In re Marriage of Grounds*, 256 Mont. 397, 403, 846 P.2d 1034, 1038
4 (1993). Rule 2 does not specifically require a brief be filed separately from a
5 motion. It simply requires a brief to be filed contemporaneously with a motion
6 without requiring the brief to be filed as a separate document. Similarly, nothing
7 in *Grounds* suggests a moving party must file a motion and brief in separate
8 documents. Although it may be better practice to file the documents separately,
9 neither Rule 2 or *Grounds* require it.

10 Next, Disability Rights argues this Court’s Order granting the stay
11 did not comply with Montana Rule of Appellate Procedure 22(1)(d), which
12 requires “findings of fact and conclusions of law, or in a supporting rationale, the
13 relevant facts and legal authority on which the district court's order is based.” It
14 argues the Court erred when it issued the order to stay without affording
15 Disability Rights the opportunity to respond to the State’s motion. Disability
16 Rights has since filed a brief in support of its motion, giving it the opportunity to
17 address the substance of the State’s motion seeking to stay the proceedings while
18 this matter is on appeal. Although the Court agrees its Order did not comply with
19 the requirement it contain relevant facts and legal authority on which it based its
20 decision, the error is harmless as the Court has cured that deficiency in the
21 present order.

22 **II. The Equities**

23 According to Disability Rights, the Court should vacate the stay
24 because the equities do not support the State’s position. See *Torgison v. Lincoln*
25 *Cnty. Port Auth.*, DA 25-0550, 2025 LEXIS 1043 (Mont. Sept. 9, 2025). There,

1 the Montana Supreme Court, citing *Hilton v. Braunskill*, 481 U.S. 770 (1987),
2 articulated four general factors governing stays of civil judgments: “(1) whether
3 the stay applicant has made a strong showing that it is likely to succeed on the
4 merits; (2) whether the applicant will be irreparably injured absent a stay;
5 (3) whether issuance of the stay will substantially injure the other parties
6 interested in the proceeding; and (4) where the public interest lies.” *Torgison*
7 at *3. “Hilton emphasizes that even “failing” a strong likelihood of success on
8 the merits, the party seeking a stay may be entitled to prevail if it can
9 demonstrate a ‘substantial case on the merits’ and the second and fourth factors
10 militate in its favor.” *NRDC v. Winter*, 502 F.3d 859, 863 (9th Cir. 2007).

11 Although the Court concluded Disability Rights was entitled to
12 summary judgment, it nonetheless believes the State has a substantial case on the
13 merits. Disability Rights mounted a broad four-count attack on HB 393 but
14 ultimately prevailed on a single count on a technical point concerning the
15 Legislature’s compliance with the statutory provisions of Montana Code
16 Annotated § 17-7-502. Further, as Vinton observes, there are substantial issues
17 on the interplay between the Constitution’s appropriation clause and statutory
18 requirements.

19 Regarding the second *Hilton* factor, the real party in interest in the
20 litigation is not the State but the special needs children who are impacted by HB
21 393. Changing educational curricula, teachers, and classrooms mid-year would
22 be disruptive to any child, as recently demonstrated during the Covid outbreak.
23 The disruption would undoubtedly be more difficult for special needs children
24 enrolled in Education Savings Accounts created by HB 393. Moreover, parents

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