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MONTANA FIRST JUDICIAL DISTRICT COURT
COUNTY OF LEWIS AND CLARK

<p>REPRESENTATIVE ZOOEY ZEPHYR, ANNA WONG, DEAN CHOU, BRADY SCHWERTFEGER, and SARAH VELK,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>STATE OF MONTANA, REPRESENTATIVE MATT REGIER, in his official capacity as Speaker of the Montana House of Representatives; BRADLEY MURFITT, in this official capacity as Sergeant at Arms for the Montana House of Representatives,</p> <p style="text-align: center;">Defendants.</p>	<p>Cause No.</p> <p>Hon. _____</p> <p>COMPLAINT AND PETITION FOR DECLARATORY RELIEF, PERMANENT INJUNCTION, AND TEMPORARY RESTRAINING ORDER</p>
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Plaintiffs Zooney Zephyr, Anna Wong, Dean Chou, Brady Schwertfeger and Sarah Velk bring this Complaint against Defendants the State of Montana, Representative Matt Regier and Sergeant at Arms Bradley Murfitt, and in support thereof state the following:

INTRODUCTION

1. This is an action for emergency declaratory and injunctive relief against Defendants arising out of their unconstitutional Censure and retaliatory silencing of Representative Zooney Zephyr, a member of the Montana House of Representatives who engaged in Constitutionally protected speech.

2. Montana voters elect their Representatives to fully engage with the democratic process at the State Capitol. Voters elect their Representatives to do more than simply vote on bills. Representatives also are elected to use of the floor of the House to pursue their constituents' interests and views—using the platform provided by the People's House to educate and persuade their colleagues and the public through speech, debate, and lobbying. In addition, the testimony from elected Representatives is critical in creating the legislative history of enacted statutes, which in turn informs the interpretation of those statutes.

3. As a result of the Censure, Representative Zephyr -- elected to represent 11,000 constituents in House District 100 – is physically barred from entering the Montana State Capitol and cannot engage in speech and debate on important matters of public concern.

4. By depriving Representative Zephyr of her right to freely engage with the legislative process, Defendants have also deprived her 11,000 constituents of the right to full representation in their government. Defendants' lawless silencing and Censure of Representative Zooney Zephyr extinguishes a vital part of the job her constituents elected her to do. And even before her Censure, Defendants unlawfully silenced her by refusing to recognize her in debate on the House floor in

retaliation for her speech on a matter of life-or-death importance to her constituents and her community.

5. Representative Zephyr's unconstitutional Censure and silencing are the result of not just what she said, but who she is. Representative Zephyr is the first openly transgender woman elected to the Montana legislature.

6. Montana's 68th Legislative Session is blighted with attacks on vulnerable individuals and communities in Montana. Those attacks are perhaps felt most acutely by members of the 2S-LGBTQIA+¹ community. The Legislature has passed numerous bills attacking and marginalizing transgender and nonbinary Montanans. The Censure of Representative Zephyr reflects the culmination of those attacks.

7. In the waning days of the legislative session the Montana House of Representatives is poised to consider critical legislation. House Bill 2 – the State's budget bill, touching all corners of government and affecting every citizen in the State – will be debated on the floor of the House this week. Representative Zephyr's Censure prevents her voice – and by extension the voices of her 11,000 constituents - from being heard on perhaps the most consequential bill the Legislature will consider this session.

8. This action seeks to restore the full set of rights and benefits to which Representative Zephyr, on behalf of herself and her constituents, is entitled as a duly elected member of the Montana House of Representatives, representing the citizens of Montana's 100th House District, and of which she has been deprived since and on the basis of her unconstitutional and unlawful Censure.

¹ "2S-LGBTQIA+" refers to Two Spirit, Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Asexual plus all gender identities and sexual orientations that letters and words cannot yet fully describe.

PARTIES

Representative Zooey Zephyr

9. Representative Zooey Zephyr was elected in November, 2022 to represent House District 100 in the Montana Legislature.
10. Representative Zephyr's duties in the House of Representatives include sponsoring legislation, shepherding bills through the legislative process, voting on legislation, and participating in committee hearings and debates on the House floor.
11. Representative Zephyr sits on the House Human Services Committee and the House Judiciary Committee.

Constituents

12. Constituent Anna Wong lives in Missoula County, Montana within the bounds of House District 100. She is a registered voter and voted in the November, 2022 election. Representative Zephyr is Ms. Wong's state representative to the Montana House of Representatives.
13. Constituent Dean Chou lives in Missoula County, Montana within the bounds of House District 100. He is a registered voter and voted in the November, 2022 election. Representative Zephyr is his state representative to the Montana House of Representatives.
14. Constituent Brady Schwertfeger lives in Missoula County, Montana within the bounds of House District 100. He is a registered voter and voted in the November, 2022 election. Representative Zephyr is his state representative to the Montana House of Representatives.
15. Constituent Sarah Velk lives in Missoula County, Montana within the bounds of House District 100. She is a registered voter and voted in the November, 2022 election. Representative Zephyr is her state representative to the Montana House of Representatives.

State of Montana

16. The Montana State House of Representatives is one chamber of the legislative branch of the State of Montana. A majority of the Montana State House of Representatives voted to Censure Plaintiff Representative Zooey Zephyr.

Bradley Murfitt, Sergeant at Arms for the Montana House of Representatives

17. Bradley Murfitt is the Sergeant at Arms for the Montana House of Representatives.

18. The Sergeant at Arms, under the direction of the Speaker, is responsible for monitoring and controlling access to all areas of the House and for the physical removal of individuals from the House.

19. Mr. Murfitt is sued in his official capacity.

Matt Regier, Montana House Speaker

20. Speaker Matt Regier, a Republican representing the 4th District, is the Speaker of the Montana House of Representatives.

21. The House Speaker is the chief officer of the House, responsible for presiding over sessions on the floor of the House of Representatives and for administering and enforcing House rules.

22. Speaker Regier presided over the floor session on April 27, 2023 in which the House voted to Censure Representative Zephyr.

23. Speaker Regier is sued in his official capacity.

JURISDICTION AND VENUE

24. Jurisdiction is conferred on this Court by article VII, section 4 of the Montana Constitution and § 3-5-302, MCA.

25. Plaintiffs' claims for declaratory and injunctive relief are authorized by § 27-8-101 *et seq.*, MCA, as well as the general equitable powers of this Court.

26. Venue is appropriate pursuant to §§ 25-2-126, 25-2-117, MCA, because the actions described herein occurred in Helena, County of Lewis and Clark.

STANDING

27. Plaintiffs have standing to bring the claims asserted in this Verified Complaint because Defendants' actions described herein infringe on their rights under the Montana Constitution and state law, and their injuries can be redressed by injunctive relief ordered by this Court.

28. Plaintiffs have suffered injury-in-fact because they have been denied their constitutionally guaranteed right to speak and be heard in the legislature, have suffered retaliation as a result of engaging in protected speech, and have lost their ability to meaningfully participate in the democratic process. If Rep. Zephyr cannot speak or debate in House proceedings, she cannot voice her views — which represent the views of her 11,000 constituents — on myriad issues that remain pending before the State Legislature, including the State budget.

29. Judicial determination of this controversy will resolve the rights, status and legal relationships of the parties, and further is of overriding public concern.

FACTUAL ALLEGATIONS

30. According to “A Guide to the Montana Legislature,” (“the Guide”) published by the Montana Legislative Services Division in January 2019, the “main job of legislators” is to enact new laws or amend or repeal existing laws. Discussion and debate are central to that function: “If a committee recommends passage of a bill, the bill is placed on second reading. At this time, the entire chamber, called into a Committee of the Whole, *debates* the bill during a floor session. Legislators may offer amendments.” *Id.* (emphasis added).

31. Representatives' responsibility to participate in debate—absorbing and articulating the beliefs of constituents—is part of why “the job of a state legislator is very demanding. . . . Your

legislator must make important decisions under heavy pressure from people with many different beliefs and interests. Ultimately, your legislator helps to determine the quality of life in Montana. It's an important job!" (The Guide).

32. The 68th Session of the Montana Legislature has seen a proliferation of bills targeting the 2S-LGBTQIA+ community, and in particular transgender Montanans.

33. One bill in particular, Senate Bill 99, bans potentially life-saving health care for transgender youth. SB 99 was passed by both chambers of the Legislature and was signed into law by Governor Greg Gianforte on April 28, 2023.

34. Throughout the 68th Legislative Session, Representative Zephyr repeatedly registered her strong opposition to the attacks on transgender Montanans.

35. In the final floor debate over SB 99, on April 18, 2023, Representative Zephyr rose to speak in opposition to the legislation, arguing that it would have severe, even life-threatening consequences for transgender Montanans.

36. Representative Zephyr stated, "If you vote yes on this bill and yes on these amendments, I hope the next time there's an invocation, when you bow your heads in prayer, you see the blood on your hands."

37. Representative Zephyr's comments represent the factual reality of gender-affirming care. Gender-affirming medical care can be lifesaving treatment for transgender individuals, including minors, experiencing gender dysphoria.

38. Gender dysphoria is a medically recognized condition defined by a marked incongruence between a person's gender identity and the sex they were assigned at birth. It is a serious medical condition. Some, but not all, transgender people have gender dysphoria.

39. Untreated, gender dysphoria can result in significant lifelong distress, clinically significant anxiety and depression, self-harming behaviors, substance misuse, and suicidality. Among other things, studies have shown that experiencing discrimination in health care settings poses a unique risk factor for heightened suicidality among transgender and nonbinary individuals. And the 2022 National Survey on LGBTQ Youth Mental Health found that LGBTQ youth who had experienced discrimination based on sexual orientation or gender identity had attempted suicide in the past year at nearly three times the rate as those who had not (19% vs. 7%). The same survey revealed that 93% of transgender and nonbinary youth have worried about transgender people being denied access to gender-affirming medical care due to state or local laws, while a different survey found that for 86% of transgender and nonbinary youth, the debates about bills like the Act had negatively impacted their mental health.

40. Representative Zephyr is hardly the first legislator to use the phrase, “blood on your hands”; she is unique only in that she was silenced for it. For example, in 2021 Texas Governor Greg Abbot stated: “The Democrats have blood on their hands for failing to step up and do their job.” In 2022, Alabama state Representative Merika Coleman said, “And I tell you, some of you are going to have blood on your hands because this piece of legislation passes.” Upon information and belief, no sitting legislator has faced discipline for using this phrase.

41. Other Montana legislators have used inflammatory rhetoric this session and have not been disciplined for it.

42. In fact, in defense of Representative Zephyr, Representative Windy Boy stated, “This is nothing compared to some of the events that occurred that we're making this as egregious as they are. We had a Democrat leader, that sat right there in that--third row--fourth row--go almost, go

fisticuffs with the representative on the other party on the other side over there. And the Great Falls Tribune even has pictures in the gallery that had them going at it.”

43. Following Representative Zephyr’s comments on SB 99, the Montana Freedom Caucus (several ultraconservative Representatives) issued a statement calling for Representative Zephyr to be Censured. The Montana Freedom Caucus has repeatedly and deliberately misgendered Representative Zephyr in all of its external communications.

44. On Wednesday, April 19, 2023, Speaker Matt Regier asked Representative Zephyr to apologize for her actions through a message relayed by House Minority Leader Kim Abbott.

45. Immediately prior to the House floor session on April 19, 2023, Representative Zephyr notified the Speaker Regier that she would not issue an apology. Nevertheless, she agreed to be silent on all bills that day in order to give Speaker Regier time to decide how to respond.

46. Following the House floor session on April 19, 2023, Representative Zephyr was asked to join a meeting with Speaker Regier, Speaker Pro Temp Rhonda Knudsen, and Majority Leader Sue Vinton. During that meeting, Speaker Regier told Representative Zephyr that her comments had broken decorum, and that he would no longer recognize her to speak until he believed she could “maintain decorum” going forward. On Thursday, April 20, Representative Zephyr asked to be recognized to speak on another bill, House Bill 458, but Speaker Regier refused to recognize her. HB 458 is a bill intended to attack and marginalize transgender Montanans by officially defining “sex” based on reproductive systems alone, precluding legal recognition of transgender people and those with intersex conditions.

47. The same day, Thursday, April 20, the House Minority Leader objected to the decision by Speaker Regier to refuse to recognize Representative Zephyr, and a Rules Committee meeting was

held. The Rules Committee voted to uphold Speaker Regier's decision to refuse to allow Representative Zephyr to speak.

48. In the days that followed, Representative Zephyr was repeatedly denied the right to participate in the legislative process. She repeatedly asked to be recognized during debate, but Speaker Regier and other leaders in the House refused to recognize her, regardless of how many times she asked to speak. Each time Representative Zephyr was denied the opportunity to speak, the Minority Leader objected, and each time the House voted to uphold the decision of the Speaker not to allow Representative Zephyr to speak.

49. On April 24, 2023, Representative Zephyr was present at the State Capitol, and she again attempted to speak regarding SB 518. The Speaker again refused to recognize Representative Zephyr. Minority Leader Abbot rose and appealed the Speaker's refusal to allow Representative Zephyr to speak. Speaker Regier responded, "Once again, no representative is above our house rules, our house rules apply to all 100 representatives. We'll take this to the Board." Speaker Regier put his decision not to allow Representative Zephyr to speak on the House Floor. The House voted in favor of disallowing Representative Zephyr to speak 63-34.

50. The same day, a rally organized by Montana citizens, including some of Representative Zephyr's constituents from House District 100, came to the State Capitol.

51. Several attendees of the rally entered the House gallery to observe the proceedings that day. Only after the vote to disallow me to speak passed on the House Floor, some of those watching the proceedings began chanting, "Let her speak."

52. Representative Zephyr rose from her seat and held her microphone over her head in an effort to demonstrate that the voices of her constituents were being silenced in the People's House. Representative Zephyr did not speak, her microphone was turned off, so her demonstration had no

audible effect. At all times, the protesters were peaceful. They did not access the House floor, destroy property, assault anyone, or threaten anyone with bodily harm.

53. On Wednesday, April 26, 2023, the House of Representatives took up a motion to Censure Representative Zephyr for the events that transpired on April 24. The motion, sponsored by Majority Leader Sue Vinton, read:

“Mr. Speaker, I move that pursuant to Article V, section 10(1), of the Montana Constitution, the House of Representatives finds that the Representative from House District No. 100, clearly violated the rules, collective rights, safety, dignity, integrity and decorum of the House of Representatives on the Floor of the House on April 24, 2023. Based upon this finding, the Representative shall be disciplined and the terms of this discipline are as follows: the Representative from House District No. 100 will no longer be admitted to this Floor, House anteroom, or House gallery. The Representative has the option to continue to vote remotely in floor proceedings via the process currently in place, for the duration of the session, until the 68th legislature adjourns sine die.”

54. The House approved the motion 68-32.

55. The articulated basis for the Censure, in this motion and the debate that followed, is Representative Zephyr’s action on the House floor on April 24, 2023: silently raising a silenced microphone above her head.

56. In debate on the motion, one legislator additionally faulted Zephyr for failing to “calm” the crowd—an impossible task when the Speaker would not permit her to speak or turn on her microphone—and for failing to join other legislators in clearing the floor. Standing silently falls far short of “clearly violat[ing] the rules, collective rights, safety, dignity, integrity and decorum of the House of Representatives,” and does not satisfy the requirement of “good cause” for punishment under Article V Section 10 of the Montana Constitution.

57. The House did not have good cause to censure Representative Zephyr.

58. Like impassioned rhetoric by legislators, protests at the Capitol in Helena are routine. On issues from bison to abortion, Montanans regularly exercise their rights to free expression and

association at the Capitol. Nor is brief chanting the most disruptive or threatening behavior that has been seen in Capitol in recent years. For example, during the coronavirus pandemic, individuals brandished guns during their protests. Despite this, no legislator was disciplined in those situations for the behavior of those with whom they are politically aligned, for acknowledging their views, or for failing to “calm” them.

59. The Censure treats Representative Zephyr unequally to other legislators by disciplining her but not other legislators for the actions of protestors with whom they are politically aligned.

60. The Sergeant at Arms of the House is responsible for enforcing the terms of the Censure.

61. On Thursday, April 27, 2023, Representative Zephyr was told by Sergeant at Arms Bradley Murfitt and Speaker Regier that she was not allowed to work on a public bench outside the House anteroom.

62. That same day, Representative Zephyr’s key card to access Capitol entrances, bathrooms, and party workspaces was deactivated.

63. Since the motion was passed, Representative Zephyr has been effectively removed from the legislative process, and the voices of her 11,000 constituents have been collectively silenced.

64. The Censure only permits Representative Zephyr to vote remotely on pending legislation; the Censure bars her from engaging in speech and debate, participating in floor discussions, or effectively lobbying her colleagues.

65. Representative Zephyr sits on the House Judiciary Committee and the House Health and Human Services Committee. Since the House voted to censure her, four study bills awaiting votes in those committees were either transferred to a different committee or elevated to the House floor, effectively eliminating all public committee hearings in which she might be able to participate.

66. The Legislature is still working on critical pieces of legislation in advance of sine die. In fact, the legislature is still debating the state budget – House Bill 2 – which will have significant impacts on Representative Zephyr’s constituents. There is perhaps no more consequential single bill than the state budget; it determines the level and type of government services—and even their existence—available to Montanans.

67. HB 2 will be heard on the House floor after being amended in the Senate. The House will debate the amendments, and either concur with them or send the bill to a free conference committee. That floor debate will be critically important in determining which amendments survive and which fail. Representative Zephyr and her 11,000 constituents will be denied the right to participate in debate on legislation that will have enormous and far-reaching effects on their day-to-day lives.

68. Representative Zephyr’s constituents are being denied their right to adequate representation. Caroline Simms states “in silencing [Representative Zephyr], the House deprived me and my fellow constituents of our voice in the legislature. . . . By banning Representative Zephyr from equally and meaningfully participating in the processes of the Legislative body to which she was duly elected, Representative Zephyr’s censure has stripped me and my fellow constituents of our rights to equal representation.”

69. Anna Wong, another constituent, states that, “in addition to casting ‘yea’ or ‘nay’ votes consistent with Representative Zephyr’s platform, I elected Representative Zephyr with the expectation that she would preserve in Montana’s Legislative record the voice and views of her constituents through vigorous debate. Representative Zephyr’s Censure and expulsion from debate prevents her from performing that function.”

70. Constituent Dean Chou asserts that, “I feel alienated and disenfranchised to have my Representative expelled from debate. Representative Zephyr is my Representative on all issues—not just those that directly impact or target transgender Montanans.”

71. Constituent Brady Schwertfeger also speaks the loss of representational rights, stating: “Nor do I believe that the power to cast votes on bills, standing alone, amounts to equal and meaningful representation. As long as the censure against Representative Zephyr is enforced, she is stripped of her ability to speak, advocate and shape legislation on the very issues that motivated my vote for her.” He also notes that “the loss of Representative Zephyr’s rights as a legislator extends beyond the enforcement of the censure motion. Her work on my behalf has been further impaired because important pending bills have been moved out of committees on which Zephyr sits. Not only has she lost her chance to advocate for me and my community on the House floor; she also could be shut out of vital debates in House committees.”

72. Constituents also point to the vital need for representation during the final days of the session, including in debate on the state budget. Sarah Velk declares that “As long as Representative Zephyr is denied her rights to debate with her colleagues and speak on the floor, I am deprived of a voice in the Montana House. I know that the legislature, in its final days, will deliberate on issues of great importance to me, including our state budget. By enforcing this action, the Montana House has denied representation and voice to me and all of my fellow constituents in House District 100.”

73. Constituents also point to the unique platform that the People’s House provides for Representative Zephyr. Simms states that “I appreciate that the “People’s House” provides Representative Zephyr with vital opportunities to educate her colleagues on vital issues. I believe that debates and proceedings in the House provide a unique and important forum for advocacy and

true human connection that simply does not exist elsewhere, particularly in our polarized media environment.”

74. Similarly, Velk asserts that Zephyr “brings important lived experience to Helena, where she is uniquely able to engage and educate her fellow legislators on issues that matter to me. I also believe that the mere fact of her humanity on the House floor can change people’s lives.”

CLAIMS FOR RELIEF

First Claim

(On Behalf of Representative Zephyr)

Violation of Mont. Const. Art. II, Section 7 (Freedom of Speech, Expression, and Press)

75. Plaintiffs incorporate by reference all of the foregoing allegations.

76. Representative Zephyr engaged in activity protected by the Article II, Section 7 of the Montana Constitution on April 18, 2023, when she spoke on the House floor about HB 99 and the need for medical care for transgender youth.

77. Representative Zephyr attempted to engage in activity protected by Article II, Section 7 of the Montana Constitution on April 20, 2023 when she asked to speak about HB 458 regarding the State’s binary definition of “sex” that would eradicate recognition of transgender and nonbinary people, but was prevented from doing so when Speaker Regier refused to recognize her, deactivated her microphone, and would not permit her to participate in debate about HB 458.

78. Speaker Regier’s stated basis for his refusal to recognize Representative Zephyr was that the content of her speech “broke decorum” and that she refused to apologize or to assure him that she would not “break decorum” with her speech in the future.

79. Representative Zephyr again asked to speak on the House floor on April 24, 2023, regarding HB 513, which would revise laws to give parents more involvement in education, and

again Speaker Regier refused to recognize her, deactivated her microphone, and did not permit her to speak.

80. At the close of the floor debate on April 24, Minority Leader Kim Abbot rose and sought to appeal the Speaker's decision not to recognize Rep. Zephyr. Speaker Regier refused and called an immediate "decorum vote," which passed.

81. The Speaker's Decorum Vote on April 24 was based solely on the content of Representative Zephyr's constitutionally protected speech.

82. The Decorum Vote was retaliation against protected speech.

83. The Decorum Vote prevented Representative Zephyr from performing her job and curbed the authority she was due upon her election.

84. Representative Zephyr's engagement in constitutionally protected activity by speaking on matters of public concern was a substantial cause of the Decorum Vote.

85. The Decorum Vote was enacted pursuant to a House vote and therefore Defendant Regier acted under color of state law in disciplining Representative Zephyr.

86. The Decorum Vote had the effect of chilling Representative Zephyr, and would chill a person of ordinary firmness, from continuing to engage in constitutionally protected activity.

87. The subject matter of HB 99, HB 458, and HB 518 are matters of public concern.

88. Representative Zephyr's interest in speaking about matters of public concern outweighs Defendants' interest in restricting the content of representatives' speech.

89. As a direct and proximate result of the Decorum Vote's violation of Article II Section 7, Representative Zephyr suffered irreparable harm. Specifically, as a result of the unconstitutional Decorum Vote, Representative Zephyr has been silenced: she has been deprived of her ability to

participate in committee discussions, to engage in speech and debate on behalf of her constituents, and to lobby her House colleagues for the remainder of this legislative term.

90. As a direct and proximate cause of the Decorum Vote, Representative Zephyr will continue to suffer irreparable harm for the remainder of this legislative term while she remains prohibited from participating in any speech or debate, committee discussions, or lobbying efforts on bills that remain to be considered on matters of great public concern, including HB 2, the State’s budget bill.

91. Continued enforcement of the Decorum Vote would be an unconstitutional violation of Rep. Zephyr’s right to free speech.

92. To remedy the irreparable harm caused by the unconstitutional Decorum Vote, the Speaker must be enjoined from refusing to recognize Rep. Zephyr in future House proceedings.

Second Claim
(On Behalf of Representative Zephyr)
Violation of Montana Const. Art. II, Section 7
(Freedom of Speech, Expression, and Press)

93. Plaintiffs incorporate by reference all of the foregoing allegations.

94. Representative Zephyr’s participation in speech and debate on the House Floor on April 18, 2023, is activity protected by the Article II Section 7 of the Montana Constitution.

95. Representative Zephyr attempted to engage in speech protected the Montana Constitution on April 20 and April 24, 2023, but the Speaker refused to recognize her, denying her right to speak and debate bills related to matters of public concern.

96. After Minority Leader Abbott sought to appeal the Speaker’s refusal to recognize Representative Zephyr, and the Speaker called for the Decorum Vote, Montana citizens present in the gallery on April 24 began chanting, “Let her speak.”

97. Representative Zephyr did not participate in the peaceful protest or speak; she stood silently with her deactivated microphone held aloft.
98. After Speaker Regier instructed representatives to clear the floor, other representatives remained on the House floor with Representative Zephyr.
99. Representative Zephyr's interest in speaking about matters of public concern outweighs Defendants' interest in restricting the content of representatives' speech or in preserving quiet during a legislative session.
100. On April 27, 2023, Defendant(s) censured Representative Zephyr allegedly for "rules" violations. The Censure expelled Rep. Zephyr from the State Capitol, prohibited her from engaging in speech and debate in committees and during floor discussions, and barred her from effectively lobbying her colleagues in the Montana House of Representatives.
101. Representative Zephyr's engagement in constitutionally protected activity by speaking on matters of public concern was a substantial cause of the Censure.
102. The Censure was enacted pursuant to a House vote and therefore Defendant Regier acted under color of state law in disciplining Representative Zephyr.
103. The Censure had the effect of chilling Representative Zephyr, and would chill a person of ordinary firmness, from continuing to engage in constitutionally protected activity.
104. Representative Zephyr's engagement in constitutionally protected activity by speaking on matters of public concern was a substantial or motivating factor in the House decorum vote and the Censure.
105. As a direct and proximate result of Defendants' violation of Representative Zephyr's free speech and expression rights, Representative Zephyr has suffered irreparable harm. Specifically, as a result of the unconstitutional Censure, Representative Zephyr has been silenced: she has been

deprived of her ability to participate in committee discussions, to engage in speech and debate on behalf of her constituents, and to lobby her House colleagues for the remainder of this legislative term.

106. As a direct and proximate cause of the Censure, Representative Zephyr will continue to suffer irreparable harm for the remainder of this legislative term while she remains prohibited from participating in any speech or debate, committee discussions, or lobbying efforts on bills that remain to be considered on matters of great public concern, including HB 2, the State's budget bill.

107. Continued enforcement of the Censure by Defendants would be an unconstitutional violation of Rep. Zephyr's right to free speech.

108. To remedy the irreparable harm caused by the unconstitutional Censure, the Speaker and Sergeant at Arms must be enjoined from enforcing the provisions of the Censure that prohibit Rep. Zephyr from full participation in future House proceedings.

Third Claim
(On Behalf of Representative Zephyr)
Violation of the Right to Equal Protection of the Laws
Of Article II, Section 4 of the Montana Constitution

109. Plaintiffs incorporate by reference all of the foregoing allegations.

110. Article II, Section 4 of the Montana Constitution states that "No person shall be denied the equal protection of the laws."

111. Defendants denied Representative Zephyr equal protection of the laws on the basis of her political alignment with transgender rights.

112. On April 18, 2023, Representative Zephyr participated in debate on the House Floor regarding a bill to restrict health care for transgender youth.

113. The House Freedom Caucus demanded that Representative Zephyr be censured for her comments in opposition to SB99, and misgendered Representative Zephyr in the process. House Speaker Matt Regier asked Representative Zephyr to apologize for her comments, and on April 20, refused to let her speak on the House floor, later telling reporters that he did not intend to recognize Representative Zephyr's right to speak until she apologized.

114. Other Montana lawmakers have made colorful and controversial comments without facing similar calls for discipline, including State Senator Dan Saloman, who opened a hearing on April 7, 2023, on House Bill 234 by saying, "If [debate] gets out of line, I will use the gavel to knock you down," and Representative Kerri Seekins-Crowe, who on March 23, 2023, suggested in debate over Montana's proposed ban on gender-affirming care that she would rather risk having her own child commit suicide than allow her to have gender-affirming surgery.

115. Neither Senator Saloman nor Representative Seekins-Crowe were subjected to discipline or Censure for their inflammatory remarks.

116. Representative Zephyr attempted to engage in speech and debate regarding other bills on April 20 and April 24, 2023, but Speaker Regier refused to recognize her, denying her right to debate bills related to matters of concern to her constituents.

117. At the close of the floor debate on SB 518 on April 24, Minority Leader Kim Abbot rose and sought to appeal the Speaker's decision not to recognize Rep. Zephyr. Speaker Regier refused and called an immediate "decorum vote," which passed.

118. After the Decorum Vote, Montana citizens present in the gallery on April 24 began chanting, "Let her speak."

119. Representative Zephyr did not participate in the peaceful protest or speak; she stood silently with her deactivated microphone held aloft.

120. Speaker Regier instructed the Sergeant at Arms to clear the gallery, and instructed representatives to clear the floor; however, other representatives remained on the House floor with Representative Zephyr.

121. The House of Representatives voted to censure Representative Zephyr following the April 24, 2023 protest at the State Capitol.

122. Only Representative Zephyr, and no other representative, was censured in connection with the April 24 protest.

123. Representative Zephyr was censured for standing silently during a peaceful protest by Montana citizens, including District 100 constituents, even though, in the past, other members of the Montana Legislature have not been disciplined after participating in, or otherwise showing support for, protests held at the State Capitol.

124. No lawmakers were disciplined after abortion rights advocates gathered at the Capitol in June 2022, where Rep. Mary Ann Dunwell asked protesters: “Are we ready to take our fight into the halls and galleries and committee rooms of the state Capitol?”²

125. No lawmakers were disciplined after protestors descended on the Capitol to protest school mask mandates, where Senator Theresa Manzella told protestors: “When I have been forced to put on a mask, I immediately find that my respiration shortens, I become closed in. My whole psyche is demented by this mask, this face diaper.”³

² Jonathon Ambarian, John Riley, and Sam Hoyle, “More Than A Thousand March on Montana Capitol Opposing Roe v. Wade Overturn,” KTVH (June 26, 2022), <https://www.ktvh.com/news/hundreds-march-on-montana-capitol-opposing-roe-v-wade-overturn>.

³ Alex Sakariassen, “Dozens Rally For Parental Rights, And Against Mask Mandates,” Montana Free Press (Oct. 1, 2021), <https://montanafreepress.org/2021/10/01/montana-parental-rights-masking-rally/>.

126. Neither Rep. Eric Matthews nor Sen. Shannon O'Brien were disciplined or Censured following their attendance at an April 14, 2023 protest at the Capitol concerning proposed legislation to expand Montana's charter school network.⁴

127. The Censure was issued to punish Representative Zephyr not for "violating decorum" but for being a vocal proponent of transgender rights amidst an onslaught of anti-transgender legislative activity.

128. In issuing and enforcing the Censure, Defendants discriminated against and treated Representative Zephyr differently than similarly-situated lawmakers.

129. By censuring Representative Zephyr in an arbitrary and discriminatory fashion, the House failed to properly exercise its authority under Article V, Section 10 of the Montana Constitution, to "expel or punish a member for good cause,"

130. The Censure was enacted without good cause.

131. The Censure discriminates against Representative Zephyr in the exercise of her civil and political rights on account of her political ideas.

132. The Censure deprives Representative Zephyr of her right of freedom of speech and expression under Article II Section 7 of the Montana Constitution, which guarantees that "[e]very person shall be free to speak or publish whatever [s]he will on any subject, being responsible for all abuse of that liberty."

133. The Censure was enacted pursuant to a House vote and thus Defendant Regier acted under color of state law in disciplining Representative Zephyr.

134. As a direct and proximate result of the Censure, Representative Zephyr suffered irreparable harm. Specifically, as a result of the unconstitutional Censure, Representative Zephyr has been

⁴ MFPE Holds State Capitol Rally, Says Legislature Shows Teachers Disrespect," WT Local (Apr. 14, 2023), <https://wtlocal.com/2023/04/mfpe-holds-state-capitol-rally-says-legislature-shows-teachers-disrespect/>.

silenced: she has been deprived of her ability to participate in committee discussions, to engage in speech and debate on behalf of her constituents, and to lobby her House colleagues for the remainder of this legislative term.

135. As a direct and proximate cause of the Censure, the Representative Zephyr will continue to suffer irreparable harm for the remainder of this legislative term while she remains prohibited from participating in any speech or debate, committee discussions, or lobbying efforts on bills that remain to be considered on matters of great public concern, including HB 2, the State’s budget bill.

136. Continued enforcement of the Censure by Defendants would be an unconstitutional violation of the Representative Zephyr’s right to equal protection of the laws guaranteed under the Montana Constitution.

137. To remedy the irreparable harm caused by the unconstitutional Censure, the Speaker and Sergeant at Arms must be enjoined from enforcing the provisions of the Censure that prohibit Rep. Zephyr from full participation in future House proceedings.

Fourth Claim
(On Behalf of Constituent Plaintiffs)
Denial of the Right to Representation Guaranteed by
Article II, Section 4 – Equal Protection of the Laws
Article II, Section 2 – Self Government
Article II, Section 6 – Freedom of Assembly and Right to Petition for Redress

138. Plaintiffs incorporate by reference all of the foregoing allegations. Plaintiffs expressly incorporate and re-allege paragraphs 111–131, *supra*.

139. Article II, Section 4 of the Montana Constitution states that “No person shall be denied the equal protection of the laws.”

140. The Censure discriminates against Constituent Plaintiffs in the exercise of their civil and political rights on account of their political ideas. .

141. The Censure deprives the Constituent Plaintiffs of their right to self-government under Article II Section 2 of the Montana Constitution, which guarantees that “[t]he people have the exclusive right of governing themselves as a free, sovereign, and independent state.”

142. The Censure deprives the Constituent Plaintiffs of their right to freedom of assembly under Article II Section 6 of the Montana Constitution, which guarantees that “[t]he people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.”

143. The Censure was enacted pursuant to a House vote and thus Defendant Regier acted under color of state law in disciplining Representative Zephyr.

144. By discriminating against Representative Zephyr, and treating her dissimilarly from her fellow lawmakers, the Censure impermissibly discriminates against Representative Zephyr’s constituents. Thus, Representative Zephyr’s constituents are being treated differently from similarly-situated voters in other districts based on their own and Representative Zephyr’s political ideas.

145. As a direct and proximate result of the Censure, the Constituent Plaintiffs suffered irreparable harm. Specifically, as a result of the unconstitutional Censure, the Representative of District 100 has been silenced, depriving her constituents of a voice in floor debates, committee discussions, and lobbying of other House representatives since the Censure.

146. As a direct and proximate cause of the Censure, the Constituent Plaintiffs will continue to suffer irreparable harm for the remainder of this legislative term while Representative Zephyr remains prohibited from participating in any speech or debate, committee discussions, or lobbying

efforts on bills that remain to be considered on matters of concern to District 100, including HB 2, the State's budget bill.

147. Continued enforcement of the Censure by Defendants would be an unconstitutional violation of the Constituent Plaintiffs' right to equal protection of the laws guaranteed under the Montana Constitution.

148. To remedy the irreparable harm caused by the unconstitutional Censure, the Speaker and Sergeant at Arms must be enjoined from enforcing the provisions of the Censure that prohibit Rep. Zephyr, and by extension her constituents, from full participation in future House proceedings.

INJUNCTIVE RELIEF

149. Defendants' actions described herein cause irreparable harm to Plaintiffs and violate fundamental rights guaranteed by the Montana Constitution. Plaintiffs are entitled to a permanent injunction. § 27-19-101, MCA.

150. Plaintiffs are entitled to preliminary injunctive relief under §§ 27-19-201(1), (2), MCA because they have established that they are likely to succeed on the merits of their claims under the Montana Constitution, that they will suffer irreparable injury if Representative Zephyr's legislative privileges are not fully restored during the pendency of the litigation, and that the public interest and balance of the equities weigh in favor of granting preliminary relief.

151. Plaintiffs are entitled to a temporary restraining order reinstating Representative Zephyr's legislative privileges and duties until such time as this Court can set a hearing and consider Plaintiffs' application for a preliminary injunction, filed concurrently herewith. On these verified pleadings, the concurrently filed brief in support of application for preliminary injunction and temporary restraining order, and accompanying affidavits, "it clearly appears . . . that a delay would cause immediate and irreparable injury to the applicant before the adverse party or the party's

attorney could be heard in opposition.” Section 27-19-315(1), MCA. Absent a temporary restraining order, Representative Zephyr and her 11,000 constituents will be denied the right to participate in the democratic process.

152. Further, Plaintiffs, through the undersigned counsel, “certify to the court in writing the efforts . . . that have been made to give notice and the reasons supporting the [Plaintiffs’] claim that notice should not be required.” Section 27-19-315(2), MCA. Undersigned counsel also provided a copy of these filings to the Attorney General’s Office simultaneous with their filing with the Court and will serve the Defendants with conformed copies of the filings and a summons as soon as possible.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court issue:

1. A declaration that the Montana House of Representatives’ Censure of Representative Zooey Zephyr violates Plaintiffs’ constitutional rights to free speech, equal protection of the laws, self-government, freedom of assembly and and right to petition for redress.
2. A temporary restraining order prohibiting Defendants, their agents, employees, appointees, or successors from enforcing, threatening to enforce, or otherwise applying the Censure, and restoring all of Representative Zephyr’s legislative privileges, until such time as the Court can conduct a hearing and rule on the merits of Plaintiffs’ application for a preliminary injunction;
3. A temporary restraining order prohibiting Defendants, their agents, employees, appointees, or successors from refusing to recognize Representative Zephyr in House floor debate;
4. A preliminary injunction prohibiting Defendants, their agents, employees, appointees, or successors from enforcing, threatening to enforce, or otherwise applying the Censure, and restoring all of Representative Zephyr’s legislative privileges;

5. A preliminary injunction prohibiting Defendants, their agents, employees, appointees, or successors from refusing to recognize Representative Zephyr in House floor debate;
6. A permanent injunction prohibiting Defendants and their agents, employees, appointees, and successors from enforcing, threatening to enforce, or otherwise applying the Censure, and restoring all of Representative Zephyr's legislative privileges;
7. A permanent injunction prohibiting Defendants, their agents, employees, appointees, or successors from refusing to recognize Representative Zephyr in House floor debate;
8. An order awarding Plaintiffs attorney's fees and costs pursuant to the Declaratory Judgment Act and the Private Attorney General Doctrine; and
9. Such further relief as may be just and proper.

Respectfully submitted this 1st day of May, 2023.

Michael G. Black

Attorney for Plaintiff Zooey Zephyr

