

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR



KRISTEN JURAS
LT. GOVERNOR

May 16, 2025

The Honorable Brandon Ler
Speaker of the House
State Capitol
Helena, MT 59620

The Honorable Matt Regier
President of the Senate
State Capitol
Helena, MT 59620

Dear Speaker Ler and President Regier:

Throughout our nation's history, internal communications between government officials have been considered privileged information. Under the U.S. Constitution, members of Congress can discuss and deliberate official actions with their staff in confidence. The President can discuss and deliberate official actions with agency employees under his direction and control. And Supreme Court justices can discuss and deliberate with each other as they issue official decisions.

The same is true of Montana's Constitution. While the Right to Know provision of Montana's Constitution contains some of the strongest—if not *the strongest*—rights to public information in the Western world, when the framers adopted it, they did so fully aware of the longstanding history of privilege in the United States. In convention, the delegates acknowledged that privileges already existing in law, such as judicial privilege, shaped the meaning and scope of the Right to Know. The effect was to incorporate these long-established privileges into the Montana Constitution for all three branches of government.

While we all cherish and value the fundamental principles of transparency, the public has a strong interest in its government executing thoughtful, well-reasoned decisions for its citizens, which necessarily requires candid, robust conversations and the ability to freely disagree. This interest does not fade with the passage of time: the ability to speak freely necessarily requires absolute confidentiality.

In response to rampant judicial activism on the part of some judges in Montana, the Legislature passed Senate Bill 40 to allow the publication of candid, robust discussions among Montana Supreme Court justices after they issue a final opinion. Under Senate Bill 40, any lawyer can

request publication of judicial deliberations to use anything a justice said, even if he or she is wrestling with a very real tension in law or simply brainstorming, to secure a future win.

I understand and share the Legislature's deep frustration with judicial activism and see it as a threat to our constitutional order. Time and time again, judges across Montana issue rulings that infringe on the Legislature's policymaking authority and a Governor's ability to faithfully execute the laws. The effect of Senate Bill 40, however, will chill candor among justices against the public's interest and weaponize those discussions in future litigation. Legal arguments will no longer be properly focused on majority decisions of the Court and discussion among justices may become less honest and robust.

Furthermore, the Legislature itself has legislative privilege. Senate Bill 40 upsets the separation of powers by eroding the privilege of one branch of government while retaining it in another.

With these concerns in mind, I conclude that Senate Bill 40 is contrary to the public interest and the Montana Constitution.

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 Senate Bill 40: "AN ACT REVISING PUBLIC RECORD LAWS RELATING TO THE SUPREME COURT; REQUIRING THE RECORDING OF A CLOSED JUDICIAL DELIBERATION MEETING; PROVIDING FOR THE DISCLOSURE OF JUDICIAL DELIBERATIONS AND CASE INFORMATION AFTER A CASE IS FINAL; AMENDING SECTIONS 2-3-203, 2-3-212, AND 2-6-1002, MCA; AND PROVIDING AN EFFECTIVE DATE."

Sincerely,



Greg Gianforte
Governor

Enclosure

cc: Legislative Services Division
Christi Jacobsen, Secretary of State