

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 executive privilege, shaped the meaning and scope of the Right to Know. The effect was to incorporate these long-standing privileges into the Montana Constitution for all three branches of government.

On January 2, 2025, the Montana Supreme Court held that as a matter of constitutional law, limited executive privilege exists in Montana where a governor is executing his constitutional duties. Specifically, the Court concluded in *O'Neill v. Gianforte* that “recognition of a gubernatorial privilege, rooted in the 1889 Constitution and reaffirmed in Article VI, Section 15, of the 1972 Constitution at the time of adoption, is also ‘necessary for the integrity of government.’”

While we all cherish and value the fundamental principles of transparency, the public has a strong interest in a governor making thoughtful, well-reasoned decisions. To make those decisions, a governor requires robust conversations with employees, relies on their ability to freely disagree,

and needs candid debate, dissent, and advice. This interest does not fade with the passage of time: the ability to speak freely necessarily requires absolute confidentiality.

House Bill 271 attempts to repeal this constitutional privilege. Not only does it reject executive privilege, but it also categorically limits a governor's constitutional expectation of privacy "where policy, politics, or legislative matters" are implicated, as House Bill 271 describes. That is, House Bill 271 categorically limits a governor's constitutional expectation of privacy where he is executing his constitutional duties.

When the House of Representatives considered House Bill 271 on February 11, 2025, the House Majority Leader assessed the bill's constitutionality, finding, "And here we are, looking at a bill that is unconstitutional. And I think there's probably a majority of people that want to vote for this unconstitutional bill, and there is no doubt it is unconstitutional."

Finally, the Legislature itself has legislative privilege. House Bill 271 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 House Bill 271 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 House Bill 271: "AN ACT GENERALLY REVISING LAWS TO NARROW THE SCOPE OF EXECUTIVE EXEMPTIONS TO PUBLIC RECORDS REQUESTS; PROVIDING FOR A LIMITED EXECUTIVE EXEMPTION OVER CERTAIN DOCUMENTS IN STATUTE; PROVIDING FOR A WAIVER OF EXECUTIVE EXEMPTION; PROVIDING THAT THE EXECUTIVE EXEMPTION EXPIRES AT A CERTAIN TIME; REVISING DEFINITIONS; AMENDING SECTIONS 2-6-1002 AND 90-1-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Sincerely,



Greg Gianforte
Governor

Enclosure

cc: Legislative Services Division
Christi Jacobsen, Secretary of State