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**MONTANA ELEVENTH JUDICIAL DISTRICT COURT  
FLATHEAD COUNTY**

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PARKER NOLAND,

Plaintiff,

v.

STATE OF MONTANA, MONTANA PUBLIC  
SERVICE COMMISSION, JAMES BROWN, in  
his official capacity as President of the Montana  
Public Service Commission, BRAD JOHNSON,  
in his official capacity as Vice-President of the  
Montana Public Service Commission, and  
RANDY PINOCCI, TONY O'DONNELL, and  
JENNIFER FIELDER in their official capacities  
as Commissioners of the Montana Public Service  
Commission,

Defendants.

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) Case No. \_\_\_\_\_

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) Hon. \_\_\_\_\_

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**COMPLAINT**

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## INTRODUCTION

1. Plaintiff Parker Noland is a Flathead County entrepreneur who owns roll-off dumpsters and a truck to transport them. He is ready to go into business renting and servicing those dumpsters for local building contractors, who often complain of inadequate service from the current providers. But Montana's Certificate of Public Convenience and Necessity law allows established garbage companies to keep potential competitors like Noland out of the market. Noland applied for a Certificate, but was forced to withdraw his application after some of the largest garbage companies in the nation protested his application, which imposed massive delays and created enormous financial costs. The Certificate provisions challenged in this case prevent Noland and other would-be entrepreneurs from working—not because they are unfit to operate—but to protect incumbent garbage companies from having to compete fairly.

2. In Montana, anyone who transports “garbage” for a living is considered a Class D motor carrier and must obtain a Certificate of Public Convenience and Necessity (“Certificate”). Being qualified to operate safely is not enough to secure a Certificate. Instead, the application process allows established garbage companies to protest potential competitors, subjecting applicants to high costs and substantial delay in the form of discovery requests and a mandatory hearing. Incumbents can protest for the bare reason that they do not want to face new competition. The Montana Public Service Commission is further empowered to reject an applicant because it believes there is no “need” for a new company, and therefore that a new business would take away from the incumbent's profits. Together these provisions create a Competitor's Veto over those who wish to exercise their right to earn a living as a Class D hauler. This blatant economic protectionism is prohibited by the Montana and U.S. Constitutions.

3. Noland challenges the constitutionality of the protest procedure and need requirement of Montana's Class D Certificate scheme established in Mont. Code Ann. §§ 69-12-321, 69-12-323, and Title 38, chapter 3, of the Montana Administrative Rules, as a violation of his rights to pursue employment and earn a living in the lawful occupation of his choice. This right is guaranteed by Article II, Sections 3, 4, and 17 of the Montana Constitution and the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment to the United States Constitution.

4. Plaintiff seeks a declaratory judgment that the Competitor's Veto in Montana's Class D Certificate scheme is invalid, unenforceable, and void; a permanent injunction against further enforcement of the challenged provisions and implementation of any similar policy by the Defendant; costs of suit and reasonable attorney's fees, pursuant to Mont. Code Ann. § 27-8-313 and 42 U.S.C. § 1988; nominal damages in the amount of \$1.00; and any other relief as this Court may deem equitable and just.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this Complaint for declaratory and injunctive relief pursuant to Mont. Code Ann. § 27-8-201.

6. Venue is proper in this Court pursuant to Mont. Code Ann. § 25-2-126 because Plaintiff's claims arose in Flathead County, Montana.

### **PARTIES**

#### **Plaintiff**

7. Plaintiff Parker Noland is a resident of Flathead County, Montana. He founded PBN LLC to offer dumpster hauling services in Flathead County. Noland is qualified, ready, and able to

rent and service dumpsters in Flathead County today but is prevented from doing so by the challenged provisions.

### **Defendants**

8. Defendant State of Montana created a statutory scheme in which the state's existing garbage companies can effectively "veto" any application for a Certificate of Public Convenience and Necessity to provide dumpster services, without the need to present allegations or evidence regarding public health, welfare, or safety, or applicants' fitness to operate.

9. Defendant Montana Public Service Commission is an agency of the Montana state government charged with the statutory duty of encouraging a system of common carrier motor transportation for the convenience of the public in order "[t]o fully secure adequate motor transportation facilities for all users of such service and to secure the public advantages thereof." Mont. Code Ann. § 69-12-202.

10. Defendant James Brown is the President of the Montana Public Service Commission. Mr. Brown, in his official capacity, is authorized to adopt any rules and establish any policies to implement the Competitor's Veto set forth in Mont. Code Ann. § 69-12-321 *et seq.* and to enforce the Certificate requirement under Mont. Code Ann. § 69-12-314.

11. Defendant Brad Johnson is the Vice President of the Montana Public Service Commission. Mr. Johnson, in his official capacity, is authorized to adopt any rules and establish any policies to implement the Competitor's Veto set forth in Mont. Code Ann. § 69-12-321 *et seq.* and to enforce the Certificate requirement under Mont. Code Ann. § 69-12-314.

12. Defendants Randy Pinocci, Tony O'Donnell, and Jennifer Fielder are Commissioners of the Montana Public Service Commission. Messrs. Pinocci and O'Donnell and Ms. Fielder, in their official capacities, are authorized to adopt any rules and establish any policies to implement the

Competitor's Veto set forth in Mont. Code Ann. § 69-12-321 *et seq.* and to enforce the Certificate requirement under Mont. Code Ann. § 69-12-314.

## **FACTUAL ALLEGATIONS**

### **I**

#### **The Challenged Laws**

13. Noland is a 22-year-old entrepreneur who dreams of owning and operating his own business. His particular dream is to start a business and earn a living by renting and servicing dumpsters for building contractors.

14. Under Mont. Code Ann. § 69-12-301, motor carriers are divided among four classes. Anyone who transports garbage for a living is a Class D motor carrier. Mont. Code Ann. § 69-12-301(4). "Garbage" is broadly defined to mean "ashes, trash, waste, refuse, rubbish, organic or inorganic matter that is transported to a licensed transfer station, licensed landfill, licensed municipal solid waste incinerator, or licensed disposal well." Mont. Code Ann. § 69-12-101(10). Noland therefore qualifies as a Class D motor carrier and is required to secure a Certificate before operating. Mont. Code Ann. § 69-12-314(1).

15. Transporting garbage without a Certificate is punishable by fines up to \$500 for the first offense and up to \$1,000 for each subsequent offense. Mont. Code Ann. § 69-12-108.

16. To obtain a Certificate, an individual must file an application with the Public Service Commission. Mont. Code Ann. § 69-12-314.

17. The Commission must notify "any interested party" of a filed application. Mont. Code Ann. § 69-12-321(1)–(2). Established motor carriers are considered interested parties. Mont. Code Ann. § 69-12-321(2).

18. An “interested party” may offer testimony about an applicant in the form of a “protest.” Mont. Code Ann. § 69-12-321(1)–(2). Protests must include a statement regarding whether the application is being protested in whole or in part, an identification of the service areas in which the established motor carrier perceives a service conflict, and a “statement of the protesting motor carrier’s annual revenues received for services provided” in those service areas. Mont. Admin. R. 38.3.405. Protests need not address public health and safety or an applicant’s fitness or capacity.

Past protests have exclusively raised anticompetitive objections related to their own economic interests, and failed to include any allegations related to public health and safety or to applicants’ fitness or capacity to practice the trade.

19. In fact, the protest form provided on the Commission’s website only offers space to protest because the applicant would operate in the incumbent’s service area, and therefore compete with the incumbent. *Protest to Application for Intrastate Certificate of Public Convenience and Necessity*, Mont. Dep’t of Pub. Serv. Reg. 1 (last visited Nov. 10, 2022).<sup>1</sup>

20. If a protest is filed, the Commission must schedule a hearing. If no protest is filed, the Commission can act without a hearing. Mont. Code Ann. § 69-12-321(1).

21. Because protesting parties can subject applicants to discovery requests, incumbents are able to inflict substantial costs on their potential competitors. For example, incumbents can seek data requests, as well as “depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.” Mont. R. Civ. P. 26(a); *see also* Mont. Admin. R. 38.2.3301.

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<sup>1</sup> [https://psc.mt.gov/\\_docs/Transportation/pdf/revisedprotestform.pdf](https://psc.mt.gov/_docs/Transportation/pdf/revisedprotestform.pdf).

22. Moreover, protesting parties can testify at the hearing regarding whether they think another business is “needed.” *See* Mont. Code Ann. § 69-12-321(2).

23. The Commission must grant a Certificate after the hearing if it “finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part of the service proposed.” Mont. Code Ann. § 69-12-323(2)(a). No Montana statute, regulation, or case law defines the term “public convenience and necessity.” *Id.*

24. The Commission’s review of applications is focused on preventing competition: the Commission is required, by state code, to consider “the transportation service being furnished or that will be furnished by any ... existing transportation agency” and “the effect that the proposed transportation service may have on other forms of transportation service that are essential and indispensable to the communities to be affected by the proposed transportation service or that might be affected by the proposed transportation service.” Mont. Code Ann. § 69-12-323(2)(a). Additionally, “a determination of public convenience and necessity may include a consideration of competition.” Mont. Code Ann. § 69-12-323(2)(b).

25. At a hearing, the applicant bears the burden of establishing that the public convenience and necessity require a new business.

26. No statute, regulation, or case law specifies the kinds of evidence which may be admitted, weighed, or discarded by the Commission.

27. No statute, regulation, or other legal authority guides the Commission’s discretion to “consider” the Certificate factors or defines the weight that should be placed on each. Mont. Code Ann. § 69-12-323.

28. Applicants frequently face protests. Of the eight applications for a Class D Certificate that have been filed from January 1, 2018, through September 8, 2021 (when Noland applied), all eight faced protests.

29. After facing opposition (and potential costs and delay), four were withdrawn. One was denied. Two were granted after the applicants agreed to reduce their operating authority and the protesting companies withdrew their protests. One applicant, Madison Valley Waste, LLC, amended its application and agreed to restrict its operating authority to a smaller area. The other, Knerr Inc., filed a new application, this time for only temporary authority.

30. The only applicant who succeeded in securing a Certificate over a protest, and without reducing the scope of its business, was L&L Site Services, Inc., on December 15, 2020. After a lengthy legal fight before the Commission, which involved extensive discovery, including 13 supplemental responses to Allied Waste Services' data requests, a 5-day evidentiary hearing requiring legal representation, and contentious oral argument, L&L's application was granted on April 29, 2022, over two dissenting votes from Defendants Brad Johnson and Randy Pinocci. In response, Allied Waste Services filed a Motion for Reconsideration of the Commission's final order on May 13, 2022, which remains pending.

31. In practical terms, the protest, hearing, and need criteria operate as a Competitor's Veto. Over the past 3 years, the strongest predictor for getting permission to enter the trade of dumpster servicing was agreeing to reduce one's operating authority to not compete with incumbents. And even though one applicant was able to afford the time and expense of the legal battle required by an incumbent's protest, the challenged provisions still allowed the incumbent to inflict significant costs and delay on its potential competitor for purely anti-competitive reasons.



## II

### **Plaintiff Is Legally Barred from Operating Safe, Economical, and Satisfactory Dumpster Transportation Businesses**

32. At age 19, Plaintiff Parker Noland graduated from high school and decided to join the United States Army. A few months after basic training, he was medically discharged.

33. Noland returned home to Kalispell, Montana, and decided to pursue another dream. He got a loan from the local bank and set off to start a dumpster business at age 20. He bought a truck and dumpsters and formed PBN LLC to deliver dumpsters to construction sites and transport dumpsters full of construction debris to the county dump. Noland attached a roll-off trailer designed to load and unload dumpsters to his pickup truck. His dumpsters are simple metal boxes used to transport construction debris.

34. Noland's business charged more than incumbent companies, but construction companies sought out his services when incumbent companies failed to empty their bins in a timely manner.

35. Noland's more compact truck also allowed him to offer services to areas where the incumbent companies did not.

36. Because he lacked a Certificate to operate, Defendant Montana Public Service Commission ordered that he cease and desist operating. He thereafter applied for a Certificate on September 8, 2021.

37. Allied Waste Services, a subsidiary of Republic Services, the second largest garbage company in the United States, and Evergreen Disposal, a subsidiary of Waste Connections, the third largest garbage company in the United States, protested his application.

38. After the incumbent companies bombarded him with discovery demands, including extensive data requests, he quickly amassed thousands of dollars in legal expenses.

39. Recognizing that he could not afford the expense of continuing to pursue a Certificate in the face of a protest, Noland withdrew his application on November 9, 2021.

40. Noland's business complies with public health and safety standards and has all the legally required insurance for operating as a Class D motor carrier in Montana. All he lacks is a Certificate. He faces future penalties if he offers dumpster services in Montana without first complying with the Certificate procedure described in this Complaint.

41. The Competitor's Veto raises costs to consumers and destroys opportunity for entrepreneurs. It allows existing garbage companies to kill competition, prevents applicants from starting or expanding their dumpster service businesses, and imposes significant legal costs on applicants. This reduces competition and creates an artificial scarcity of dumpster services. This, in turn, allows existing companies to keep prices artificially high while providing inadequate service.

### **III**

#### **The Competitor's Veto Protects Incumbents from Competition at the Expense of the Public**

42. The Competitor's Veto does not protect the public from fraudulent, unsafe, or incompetent practices, nor does it rationally relate to an applicant's fitness or capacity to practice the trade of providing dumpster services.

43. The Competitor's Veto does not rationally relate to the statutory purposes of Montana's motor carrier laws. It does not secure adequate motor transportation services, it does not provide public advantages of adequate motor transportation facilities, and it does not provide convenience to the shipping public. *See* Mont. Code Ann. § 69-12-202.

44. The Competitor's Veto does not bear any relationship to protecting public health, safety, or welfare.

45. The Competitor's Veto allows existing garbage companies to force an applicant to undergo the time and expense of an administrative hearing that has nothing to do with the applicant's public safety record, or any other matter related to public health or safety, but instead simply because existing garbage companies seek to restrict market competition.

46. Plaintiff has felt the harms of the Competitor's Veto directly. Noland spent thousands of dollars in legal fees and underwent a lengthy administrative process that had nothing to do with his ability or fitness to operate, but instead protected two national garbage companies from facing market competition.

47. Not only are incumbent providers of dumpster services abusing the Competitor's Veto to prevent Plaintiff from operating, but they are not currently providing adequate services in Flathead County.

48. Kila, Montana, for example, is a remote unincorporated community with a population of less than 400. Because of its remoteness, incumbent providers of dumpster services have not been willing to provide services there, but Noland is willing to provide the services that the larger companies will not. A large construction firm has also asked Noland to provide faster services than the large companies can provide on a large government project. He cannot do so because of the Competitor's Veto.

49. The Competitor's Veto deprives Plaintiff of the rights to pursue employment and earn a living in a legal occupation, and does not protect the public from fraudulent, dangerous, or incompetent transportation services, protect the surface streets from falling into disrepair, protect the environment from pollution or other public dangers, or fulfil any other legitimate purpose. The statutory procedure for objecting to and assessing Certificate applications has no rational connection

to the public health, safety, or welfare, or any other legitimate government interest, is arbitrary and irrational, and serves only to protect a discrete interest group from economic competition.

## **LEGAL CLAIMS**

### **DECLARATORY RELIEF**

50. Plaintiff incorporates the allegations in the preceding paragraphs.

51. Plaintiff is a citizen of the United States and a person under the Fourteenth Amendment of the United States Constitution.

52. Plaintiff is a citizen of the United States and a person within the jurisdiction thereof under 42 U.S.C. § 1983.

53. Plaintiff is a person under Mont. Code Ann. § 27-8-202.

54. Plaintiff contends, pursuant to Mont. Code Ann. § 27-8-202, that the challenged statutes affect his rights under the Montana and U.S. Constitutions.

55. Defendants James Brown, Brad Johnson, Randy Pinocci, Tony O'Donnell, and Jennifer Fielder are persons under 42 U.S.C. § 1983.

56. An actual and substantial controversy exists between Plaintiff and Defendants regarding their respective legal rights and duties. Plaintiff contends, pursuant to 42 U.S.C. § 1983, that the challenged statutes violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment on their face and as applied to Plaintiff.

57. Plaintiff also contends, pursuant to 42 U.S.C. § 1983, that the challenged statutes violate the Privileges or Immunities Clause of the Fourteenth Amendment on their face and as applied to Plaintiff.

58. For the above reasons, declaratory relief is appropriate.

## **INJUNCTIVE RELIEF**

59. Plaintiff incorporates the allegations in the preceding paragraphs.

60. Plaintiff is subject to future fines and penalties if he provides roll-off dumpster services in Montana without a Certificate *See* Mont. Code Ann. §§ 69-12-108, 69-12-209.

61. Because of Defendants' enforcement of the challenged laws, Plaintiff and those similarly situated are now and will continue to be denied the right to pursue employment and the right to earn a living in a legal occupation free from restrictions imposed by their economic competitors through the protest and hearing procedure and the vague criteria for obtaining a Certificate challenged in this Complaint.

62. If not permanently enjoined by this Court, Defendants and their agents, representatives, and employees will continue to enforce the protest and hearing procedure established in Mont. Code Ann. §§ 69-12-321, 69-12-323, and Title 38, chapter 3, of the Montana Administrative Rules, as well as similar policies, which violate Plaintiff's right to pursue employment, deprive him of liberty without due process of law, deny him equal protection of laws, and abridge his privileges or immunities of citizenship.

63. Pursuant to Mont. Code Ann. § 27-8-313, a permanent injunction is necessary and proper in this case.

64. For the above reasons, injunctive relief is appropriate.

### **Count I: The Challenged Statutes Violate the Right to Pursue Employment**

#### **Mont. Const. art. II, § 3**

65. Plaintiff incorporates the allegations in the preceding paragraphs.

66. Article II, Section 3, of the Montana Constitution protects the right "of pursuing life's basic necessities."

67. The right to pursue employment is a “necessary incident to the fundamental right to pursue life’s basic necessities.” *Wadsworth v. State*, 275 Mont. 287, 302 (1996).

68. Fundamental rights may only be infringed if the State provides a compelling interest for doing so. *Id.* at 295–96.

69. Plaintiff may not pursue employment in his field in Montana unless he submits to the Certificate requirement, including the protest and hearing procedure and the consideration of criteria other than applicants’ fitness to operate.

70. The protest and hearing procedure and consideration of criteria unrelated to fitness establish a “Competitor’s Veto” that deprives Plaintiff of his fundamental right to pursue employment.

71. Plaintiff is subject to future fines and penalties if he provides roll-off dumpster services in Montana without a Certificate. *See* Mont. Code Ann. §§ 69-12-108, 69-12-209.

72. The purpose of the Competitor’s Veto is to protect established garbage companies in Montana from market competition.

73. The Competitor’s Veto protects established garbage companies in Montana from market competition.

74. The Competitor’s Veto does not achieve any compelling government interest that the state purports to have.

75. By enforcing the Competitor’s Veto, Defendants have deprived Plaintiff of his fundamental right to pursue employment in violation of Article II, Section 3, of the Montana Constitution.

76. Because of Defendants’ enforcement of the challenged laws, Plaintiff and those similarly situated are now and will continue to be denied the right to pursue employment and the

right to earn a living in a legal occupation free from restrictions imposed by their economic competitors through the Competitor's Veto challenged in this Complaint.

77. Plaintiff contends, pursuant to Mont. Code Ann. § 27-8-202, that the challenged statutes violate Article II, Section 3, of Montana's Constitution on its face and as applied to Plaintiff.

**Count II: The Challenged Statutes Deprive Plaintiff of Due Process of Law  
Under the Montana Constitution**

**Mont. Const. art. II, § 17**

78. Plaintiff incorporates the allegations in the preceding paragraphs.

79. Article II, Section 17, of Montana's Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law."

80. Plaintiff may not engage in his chosen occupation unless he submits to the Competitor's Veto, which enables existing businesses to prevent potential competitors from entering the market.

81. The Competitor's Veto does not bear "a fair and substantial relation," *Mont. Cannabis Indus. Ass'n v. State*, 382 Mont. 256, 276 (2016), to the statutory purposes of Montana's motor carrier laws. It does not secure adequate motor transportation services, it does not provide public advantages of adequate motor transportation facilities, and it does not provide convenience to the shipping public. *See* Mont. Code Ann. § 69-12-202.

82. The Competitor's Veto does not bear any relationship to protecting public health, safety, or welfare.

83. The Competitor's Veto does not achieve any other legitimate government interest that the state purports to have.

84. Subjecting Certificate applicants to protests by existing economic competitors, who may protest for reasons unrelated to applicants' fitness or capacity to provide dumpster services,

creates a capricious and arbitrary procedure which infringes on the right of Plaintiff to work in the occupation of his choice.

85. Furthermore, the criteria provided for assessing a Certificate application do not relate to an applicant's fitness or capacity to practice the trade of dumpster service. As a result, Defendants may deny any application for reasons unrelated to public health, safety, or welfare.

86. By enforcing the Competitor's Veto described in this Complaint, Defendants are depriving and will continue to deprive Plaintiff of his constitutional right to earn a living in his chosen profession without due process of law.

87. Because of Defendants' enforcement of the challenged laws, Plaintiff and those similarly situated are now and will continue to be denied the right to earn a living in a legal occupation free from restrictions imposed by his economic competitors through the Competitor's Veto challenged in this Complaint.

88. Plaintiff contends, pursuant to Mont. Code Ann. § 27-8-202, that the challenged statutes violate Article II, Section 17, of Montana's Constitution on its face and as applied to Plaintiff.

**Count III: The Challenged Statutes Deprive Plaintiff of Due Process of Law  
Under the United States Constitution**

**U.S. Const. amend. XIV and 42 U.S.C. § 1983**

89. Plaintiff incorporates the allegations in the preceding paragraphs.

90. The Fourteenth Amendment to the United States Constitution provides that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law."

91. The Competitor's Veto creates a conflict of interest by allowing existing competitors to exploit the Certificate process to restrict or substantially burden their own competition for reasons



unrelated to public health, safety, or welfare. *See New State Ice Co. v. Leibmann*, 285 U.S. 262 (1932).

92. Mont. Code Ann. § 69-12-323(2)(a) and the regulations and procedures through which Defendants enforce this section give Defendants and their staff unlimited and unguided discretion to determine (a) what constitutes “public convenience and necessity”; (b) what it means to “consider ... the transportation service being furnished ... by any railroad or other existing transportation agency”; (c) what it means to “consider ... the effect that the proposed transportation service may have on other forms of transportation service;” (d) what it means for an existing transportation service to be “essential and indispensable to the communities to be affected by [a] proposed transportation service”; and (e) what it means for an existing transportation service to be “affected” by an applicant’s “proposed transportation service.”

93. Because of this, the challenged statutes, regulations, and procedures provide no reasonable opportunity for Plaintiff to understand what conduct they authorize and prohibit. This enables arbitrary and discriminatory enforcement.

94. By enforcing the Competitor’s Veto described in this Complaint and exercising unlimited, unguided discretion over Certificate applications, Defendants, acting under color of state law, are depriving and will continue to deprive Plaintiff and those similarly situated of their constitutional right to earn a living in their chosen profession without due process of law.

95. Plaintiff contends, pursuant to 42 U.S.C. § 1983, that the challenged statutes violate the Due Process Clause of the Fourteenth Amendment on their face and as applied to Plaintiff.

**Count IV: The Challenged Statutes Deny Plaintiff Equal Protection of the Laws  
Under the Montana Constitution**

**Mont. Const. art II, § 4**

96. Plaintiff incorporates the allegations in the preceding paragraphs.

97. Article II, Section 4, of the Montana Constitution provides that “[n]o person shall be denied the equal protection of the laws.”

98. The Competitor’s Veto creates an arbitrary and capricious procedure which subjects haulers of garbage, unlike haulers of other materials, to a competitor’s veto.

99. Defendants’ enforcement of the Competitor’s Veto violates Plaintiff’s right to equal protection of the laws by arbitrarily and capriciously discriminating against Plaintiff in favor of haulers who do not transport garbage.

100. Subjecting haulers of garbage, but not haulers of any other materials, to a competitor’s veto bears no rational relationship to public health, safety, or welfare.

101. Subjecting haulers of garbage, but not haulers of any other materials, to a Competitor’s Veto does not bear “a fair and substantial relation,” *Mont. Cannabis Indus. Ass’n*, 382 Mont. at 276, to the statutory purposes of Montana’s motor carrier laws. It does not secure adequate motor transportation services, it does not provide public advantages of adequate motor transportation facilities, and it does not provide convenience to the shipping public. *See* Mont. Code Ann. § 69-12-202.

102. The Competitor’s Veto does not bear any relationship to protecting public health, safety, or welfare.

103. Subjecting dumpster service providers, who are merely transporting metal boxes full of construction debris, to the same regulations that govern all other garbage transportation similarly bears no rational or fair and substantial relationship to any legitimate governmental purposes.

104. By enforcing the Competitor’s Veto described in this Complaint, Defendants are denying and will continue to deny Plaintiff and those similarly situated equal protection of the laws.

105. Plaintiff contends, pursuant to Mont. Code Ann. § 27-8-202, that the challenged statutes violate Article II, Section 4, of Montana's Constitution on their face and as applied to Plaintiff.

**Count V: The Challenged Statutes Deny Plaintiff Equal Protection of the Laws  
Under the United States Constitution**

**U.S. Const. amend. XIV and 42 U.S.C. § 1983**

106. Plaintiff incorporates the allegations in the preceding paragraphs.

107. The Fourteenth Amendment to the United States Constitution provides that “[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws.”

108. The Competitor's Veto creates an irrational and arbitrary procedure which subjects haulers of garbage, unlike haulers of other materials, to a competitor's veto.

109. By enforcing the Competitor's Veto, Defendants arbitrarily and capriciously discriminate against Plaintiff in favor of haulers who do not transport garbage in violation of Plaintiff's right to equal protection of the laws.

110. Subjecting haulers of garbage, but not haulers of any other materials, to a competitor's veto bears no rational relationship to public health, safety, or welfare.

111. Additionally, by granting existing carriers a special privilege to protest and object to Certificate applicants, Mont. Code Ann. §§ 69-12-321, 69-12-323, and Title 38, chapter 3, of the Montana Administrative Rules create an irrational and arbitrary procedure which protects established businesses from market competition.

112. By enforcing these unequal procedures, Defendants are irrationally and arbitrarily discriminating against Plaintiff and in favor of existing Class D motor carriers in violation of Plaintiff's right to equal protection of the laws.

113. Allowing existing Class D motor carriers to exercise an exclusive privilege to prevent competitors from entering the trade of providing dumpster services bears no rational relationship to public health, safety, or welfare.

114. Subjecting dumpster service providers, who are merely transporting metal boxes full of construction debris, to the same regulations that govern all other garbage transportation similarly bears no rational or fair and substantial relationship to public health, safety, or welfare.

115. By enforcing the Competitor's Veto, Defendants, acting under color of state law, are denying and will continue to deny Plaintiff and those similarly situated equal protection of the laws.

116. Plaintiff contends, pursuant to 42 U.S.C. § 1983, that the challenged statutes violate the Equal Protection Clause of the Fourteenth Amendment on their face and as applied to Plaintiff.

**Count VI: The Challenged Statutes Abridge the Privileges or Immunities of  
Plaintiff as a Citizen of the United States**

**U.S. Const. amend. XIV and 42 U.S.C. § 1983**

117. Plaintiff incorporates the allegations in the preceding paragraphs.

118. The Fourteenth Amendment of the United States Constitution provides that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”

119. By enforcing the Competitor's Veto for a Certificate application to provide dumpster services, Defendants, acting under color of state law, arbitrarily and unreasonably interfere with Plaintiff's right to earn a living in a lawful occupation in violation of the Privileges or Immunities Clause of the Fourteenth Amendment of the United States Constitution.

120. Plaintiff contends, pursuant to 42 U.S.C. § 1983, that the challenged statutes violate the Privileges or Immunities Clause of the Fourteenth Amendment on their face and as applied to Plaintiff.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests relief as follows:

1. To enter a declaratory judgment that Montana's Competitor's Veto for applications for a Class D motor carrier certificate, established by Mont. Code Ann. §§ 69-12-321, 69-12-323, and Title 38, chapter 3, of the Montana Administrative Rules, facially and as interpreted by the Defendants, deprives Plaintiff of his right to pursue employment in violation of Article II, Section 3, of the Montana Constitution

2. To enter a declaratory judgment that Montana's Competitor's Veto for applications for a Class D motor carrier certificate, established by Mont. Code Ann. §§ 69-12-321, 69-12-323, and Title 38, chapter 3, of the Montana Administrative Rules, facially and as interpreted by the Defendants, deprives Plaintiff of liberty without due process of law, in violation of Article II, Section 17, of Montana's Constitution and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

3. To enter a declaratory judgment that Montana's Competitor's Veto for applications for a Class D motor carrier certificate, established by Mont. Code Ann. §§ 69-12-321, 69-12-323, and Title 38, chapter 3, of the Montana Administrative Rules, facially and as interpreted by the Defendants, denies Plaintiff equal protection of the laws in violation of Article II, Section 4, of the Montana Constitution and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

4. To enter a declaratory judgment that Montana's Competitor's Veto for applications for a Class D motor carrier certificate, established by Mont. Code Ann. §§ 69-12-321, 69-12-323, and Title 38, chapter 3, of the Montana Administrative Rules, facially and as interpreted by the

Defendants, abridges Plaintiff's privileges or immunities of citizenship in violation of the Privileges or Immunities Clause of the Fourteenth Amendment of the United States Constitution.

5. To permanently enjoin Defendants, their agents, their representatives, their employees, and all others in active concert or participation with them from enforcing the Competitor's Veto for applications for a Class D motor carrier certificate, established by Mont. Code Ann. §§ 69-12-321, 69-12-323, and Title 38, chapter 3, of the Montana Administrative Rules, facially and as interpreted by the Defendants, or any similar policy, as well as any and all implementing rules and regulations and the policies and practices by which Defendants enforce these provisions, including, but not limited to: (a) the policies of prohibiting Plaintiff from operating intrastate as a dumpster service provider without being subject to the arbitrary, capricious, and irrational elements of the certification scheme; (b) seeking or imposing fines against the Plaintiff; and (c) otherwise subjecting Plaintiff to harassment;

6. An award to Plaintiff of costs of suit and reasonable attorney fees, pursuant to Mont. Code Ann. § 27-8-313 and 42 U.S.C. § 1988(b);

7. An award to Plaintiff of \$1.00 in nominal damages; and

8. Any such further legal and equitable relief as the Court may deem just and proper.

DATED this 15th day of November, 2022.

Respectfully submitted,

/s/ Ethan W. Blevins

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*\*Pro Hac Vice forthcoming*