

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court No. _____

STEVE BARRETT; ROBERT KNIGHT; MONTANA FEDERATION OF PUBLIC EMPLOYEES; Dr. LAWRENCE PETTIT; MONTANA UNIVERSITY SYSTEM FACULTY ASSOCIATION REPRESENTATIVES; FACULTY SENATE OF MONTANA STATE UNIVERSITY; Dr. JOY C. HONEA; Dr. ANNJEANETTE BELCOURT; Dr. FRANKE WILMER; MONTANA PUBLIC INTEREST RESEARCH GROUP; ASHLEY PHELAN; JOSEPH KNAPPENBERGER; and NICOLE BONDURANT,

Petitioners,

v.

STATE OF MONTANA; and GREG GIANFORTE, its Governor,

Respondents.

PETITION FOR ORIGINAL JURISDICTION

(Appearances on next page)

APPEARANCES

James H. Goetz
Jeffrey J. Tierney
GOETZ, BALDWIN & GEDDES, P.C.
35 North Grand
P.O. Box 6580
Bozeman, MT 59771-6580
Ph: 406-587-0618
Fax: 406-587-5144
email: jim@goetzlawfirm.com
jtierney@goetzlawfirm.com

Raphael Graybill
GRAYBILL LAW FIRM, PC
300 4th Street North
P.O. Box 3586
Great Falls, MT 59403
Ph: 406-452-8566
Fax: 406-727-3225
email: rgraybill@silverstatelaw.net

Attorneys for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PARTIES..... 1

 I. Ex-Regents. 1

 II. The Montana Federation of Public Employees. 2

 III. Ex-Commissioner of Higher Education..... 3

 IV. Faculty organizations. 3

 V. Individual faculty members..... 4

 VI. Student groups..... 6

 VII. Individual students..... 7

 VIII. Defendants..... 7

GENERAL ALLEGATIONS..... 8

THE FACTS WHICH MAKE IT APPROPRIATE THAT THE SUPREME
COURT ACCEPT JURISDICTION 11

THE PARTICULAR LEGAL QUESTIONS EXPECTED TO BE RAISED..... 11

THE ARGUMENTS AND AUTHORITIES FOR ACCEPTING
JURISDICTION AND PERTAINING TO THE MERITS..... 13

 I. THE AUTHORITIES FOR ACCEPTING JURISDICTION..... 13

 II. THE ARGUMENTS PERTAINING TO THE MERITS. 14

CONCLUSION..... 19

TABLE OF AUTHORITIES

Page No.

CASES:

Board of Regents v. Judge,
168 Mont. 433, 543 P.2d 1323 (1975) 3, 13-16

Confederated Salish & Kootenai Tribes of the Flathead Reservation v. Clinch,
1999 MT 342, 297 Mont. 448, 992 P.2d 244 13

Hernandez v. Bd. of County Commissioners,
2008 MT 251, 345 Mont. 1, 189 P.3d 630 13

Keller v. Smith,
170 Mont. 399, 553 P.2d 1002 (1976)..... 13

Mont. Assoc. of Counties v. Montana,
2017 MT 267, 389 Mont. 183, 404 P.3d 733 13

Sheehy v. Comm’r of Pol. Practices,
2020 MT 37, 399 Mont. 26, 458 P.3d 30916, 18

State ex rel. Judge v. Legislative Finance Committee,
168 Mont. 470, 543 P.2d 1317 (1975) 14

White v. State,
233 Mont. 81, 759 P.2d 971, (1988)..... 13

MONTANA CONSTITUTION

Article X, § 9*passim*

OTHER AUTHORITY

Deborah A. McKnight, *University of Minnesota Constitutional Autonomy: A Legal Analysis* 21 (2004) 15

Joseph Beckham, *Reasonable Independence of Public Higher Education: Legal Implications of Constitutionally Autonomous Status*, 7 J. L. & Educ., 177-79 (1978) .. 15

Hugh V. Schaefer, *The Legal Status of the Montana University System under the New Montana Constitution*, 35 Mont. L R. (Summer 1974) 15

Neal H. Hutchens, *Preserving the Independence of Public Higher Education: an Examination of State Constitutional Autonomy Provisions for Public Colleges and Universities*, 35 J. of Coll. and Univ. of L. 271 (2009)..... 15

This is an original proceeding challenging the constitutionality of various measures recently passed by the Montana Legislature: HB 349, HB 112, HB 102, and SB 319. This petition seeks a declaratory judgment and a writ of injunction under Rules 14(2) and (4), M.R.App.P.

This petition has been in preparation for a number of weeks, but Petitioners have delayed its filing, hoping that the Board of Regents would, itself, file to vindicate its constitutional authority. The Regents did so vote on May 19, 2021. Accordingly, Petitioners are synchronizing the filing of their Petition with that of the Regents. They support the Regents' request that this Court stay the implementation of HB 102. Petitioners may move to consolidate their Petition with that of the Regents, although the present Petition, because it raises challenges to bills other than HB 102, is broader than the Regents' petition.

PARTIES

The parties fall into various categories, including ex-Regents, the labor organization representing Montana University System ("MUS") faculty, an ex-Commissioner of Higher Education, university faculty groups, university student groups, individual university faculty members, and individual students.

I. Ex-Regents.

1. Petitioner Steve Barrett was appointed to the Board of Regents by

Governor Schweitzer in February of 2005 and served until March of 2012 when his seven-year term expired. Barrett served as vice chair of the Board for one year and two years as chair. During his tenure on the Board, various organizations asked the Regents at least twice to allow guns on campus generally, and were denied by the Regents. Barrett also serves on the MSU Honors College Advisory Board, as Chair of the MSU Hilleman Scholars Board, and as Vice Chair of the MSU Innovation Campus Board.

2. Petitioner Robert Knight is a former member of the Board of Regents, appointed by Governor Ted Schwinden in the early 1980s. He served on the Board for over two years.

II. The Montana Federation of Public Employees.

3. Petitioner Montana Federation of Public Employees (“MFPE”) is the largest labor union in the State of Montana. It is the successor organization to the MEA-MFT and the Montana Public Employees Association (MPEA) since their merger in 2018. MFPE represents the interests of more than 23,000 Montana public employees, including but not limited to public educators, higher education faculty, graduate employees, and support personnel, and law enforcement. MFPE has local bargaining units of faculty and/or staff on every campus in the MUS, with over 2,300 MUS employees among its membership. Its organizational interests

include the safety and wellbeing of educators, campus police, and other employees, and safeguarding the state public education system which is among the largest employers of MFPE's membership.

III. Ex-Commissioner of Higher Education.

4. Petitioner Dr. Lawrence K. ("Larry") Pettit, Ph.D., resident of Helena, was Montana's first commissioner of Higher Education, assuming that office in 1973, shortly after the enactment of the Montana Constitution. He served in that position until 1979. He was instrumental in initiating the seminal case on Regents' authority, *Board of Regents v. Judge*, 168 Mont. 433, 543 P.2d 1323 (1975). Since, he has served in various academic positions (including university presidencies) in the states of Texas, Illinois, and Pennsylvania. He served as chair of the Commission on Leadership for the American Council on Education and as President of the National Association of (University) System Heads.

IV. Faculty organizations.

5. Petitioner Montana University System Faculty Association Representatives ("MUSFAR") is an umbrella organization that represents and serves the faculty of the MUS, advocating for the interests of that faculty at all of the units in the MUS, including UM Missoula, UM Helena College of Technology, Montana Tech, UM Western, MSU Bozeman, MSU Billings, MSU Northern, and

MSU Great Falls. It works through and in collaboration with the units' respective Faculty Senates/Associations (hereinafter "Senates"). Whereas the Faculty Senates principally engage with their respective university faculties, administrations and student bodies, MUSFAR represents the Faculty Senates and individual faculty members by engaging with the Board of Regents in matters pertaining to academic affairs and campus administration that broadly affect the MUS and faculty statewide.

6. Petitioner Faculty Senate of Montana State University ("Faculty Senate") is the duly-elected governing body of the faculty at MSU. It is composed of representatives from each academic department, the Library, the Agricultural Research Centers, and the Agricultural Extension Service. Faculty Senate is the chief governance body of the faculty at MSU Bozeman. Under the governance authority of the MUS, the Faculty Senate frames policies, procedures and standards of the Faculty Handbook, oversees the curricula, evaluates new academic programs, and serves to enhance communication between MSU faculty, administration, and students.

V. Individual faculty members.

7. Petitioner Dr. Joy C. Honea is professor of sociology at MSU-Billings and president of the MSU Billings Faculty Association. Dr. Honea has been a

member of the MUS-Billings faculty for 18 years. Her primary areas of teaching and scholarship are social theory, gender studies and medical sociology. Since 2012, her primary area of research has been the sociology of mental health and mental illness with a focus on suicide prevention. As a 2019-2020 U.S. Fulbright Scholar, Dr. Honea spent four months in Finland, studying that country's successful suicide prevention programs.

8. Petitioner Dr. Annjeanette (“Annie”) Belcourt (Otter Woman), who graduated from Browning High School, is an American Indian Professor (enrolled tribal member of the Three Affiliated Tribes, Mandan, Hidatsa, Blackfeet, and Chippewa descent) in the College of Health at the University of Montana's Pharmacy Practice and School of Public and Community Health Sciences Departments. She currently teaches American Indian public health courses at The UM School of Pharmacy and Public Health. She has worked clinically with diverse populations, including combat veterans, Native Americans, and low-income populations specializing in posttraumatic stress reactions and multiple psychiatric conditions. Her research and clinical priorities include mental health disparities, posttraumatic stress reactions, risk, resiliency, psychiatric disorder, and environmental public health within the cultural context of American Indian communities. She was selected by the Harvard TH Chan School of Public Health

to serve as a JPB Environmental Health Fellow 2014-2018. Dr. Belcourt serves as a Faculty Senator for the University of Montana, reviews for the National Institute of Health, and formerly chaired the Ford Foundation Psychology Fellowship review panel guided by the National Academy of Sciences.

9. Petitioner Dr. Franke Wilmer is a professor in the political science department at Montana State University, which she joined in August 1991. She has twice served as head of that department. She also served on the Western Interstate Commission for Higher Education (WICHE)—the body that oversees Montana’s participation in an interstate compact among the 15 states and 2 Territories (Guam and the Northern Mariana Islands). From 2007-2013, she also served in the Montana House of Representatives. She was on the Education Committee, the State Administration and Veterans Affairs Committee, and the Fish, Wildlife, and Parks Committee. During the 2009 session, she was Speaker Pro Tempore.

VI. Student groups.

10. Petitioner Montana Public Interest Research Group (“MontPIRG”) is comprised of an on-campus recognized student group and an independent affiliated non-profit, non-partisan 501(c)(4) with a board composed entirely of UM students elected by student members. MontPIRG has operated for 40 years as part of the University of Montana and its campus. In 2020, MontPIRG student interns

worked on a variety of campaigns, including efforts to drive youth participation in the 2020 Census, a relaunch of its Tenant-Landlord Guide, and voter registration drives.

VII. Individual students.

11. Petitioner Ashley Phelan will be entering her junior year at MSU in the fall, majoring in English writing. She fears what will happen on the MSU campus if guns are allowed, as provided in HB 102.

12. Petitioner Joseph (“Joey”) Knappenberger is a sophomore at MSU, dual majoring in computer science and economics. He fears what will happen on the MSU campus if guns are allowed, as provided in HB 102.

13. Petitioner Nicole Bondurant is a junior at MSU, majoring in environmental studies. She fears what will happen on the MSU campus if guns are allowed, as provided in HB 102.

VIII. Defendants.

14. Defendant Greg Gianforte is the duly-elected Governor of the State of Montana and, as such, is Montana’s chief executive officer, ultimately responsible for the effectuation of all state laws.

15. Defendant State of Montana is a duly-admitted state of the United States.

GENERAL ALLEGATIONS

16. All of the individual Petitioners and Petitioner organizations are concretely and adversely impacted by the measures challenged. Ex-Regents Barrett and Knight and former Commissioner of Higher Education Pettit, as well as all of the other individual Petitioners and organizations, have a particular interest in assuring the continued constitutional autonomy of the Board of Regents and in preventing legislative overreach. In addition to the interests of their individual members and constituents, the Petitioner organizations (MFPE, MUSFAR, the MSU Faculty Senate, and MontPIRG) each have an interest in the subject matter of this litigation, which is germane to their organizational purposes. Each of these organizations sues on behalf of its individual constituents and members, all of whom have a strong interest in ensuring academic freedom, safe working conditions, and the independence of the Montana Board of Regents to supervise, coordinate, manage, and control the MUS. Each of the Petitioners will suffer injury in fact as a consequence of the challenged legislation. Each of the Petitioners stands to suffer harm as a consequence of the implementation of the challenged bills, including actual and prospective injuries to their interest in campus safety, freedom of speech, and non-discrimination. In particular, they are personally apprehensive about the apparent open invitation to harass and discriminate under HB 349 and

about the risk of injury and death presented by HB 102, the presence of guns on campus, their individual safety and the safety of the students, and erosion of the learning environment. They are also concerned about the negative effect on enrollment due to concerns of prospective students and their parents over student safety on the campuses.

17. Petitioner MontPIRG and the other Petitioners are further adversely affected by SB 319, which seeks to undercut MontPIRG's organizational funding. Specifically, should MontPIRG participate in ballot activity as it has done in the past, SB 319 would have onerous and unconstitutional restrictions on voter registration and other political activities in student dormitories and dining halls. The MontPIRG fee exists only at UM, where students can opt out of paying a \$5.00 MontPIRG fee every semester. MontPIRG has a particular concern about the feature of SB 319, which would undercut its campus funding by precluding the present "op-out" feature for student funding—a feature previously approved by the Montana Board of Regents—should MontPIRG engage in ballot initiative work and file as an incidental political committee as is required by the Montana Commissioner of Political Practices.

18. Each of these individual and organizational Petitioners suffer threatened injury in fact; each has a personal stake in the outcome of the present

controversy; and each alleges injury that is unique to them in that the challenged measures apply only to institutions of higher learning, and such threatened harms will not be suffered by the population generally. Further, the relief requested, determination of the unconstitutionality of the measures as inconsistent with Article X, § 9(2)(a), would redress the complained-of injuries.

19. The passage of these bills threatens an imminent disruption to the operation of campuses in the MUS system. If HB 102 is not overturned before its effective date of June 1, MUS campuses risk proliferation of guns during summer sessions and throughout the academic year. Given the palpable unconstitutionality of HB 102 and the imminent threat to the MUS's independence, the need for this Court's exercise of original jurisdiction is compelling. Petitioners have no remedy at law or otherwise, and each will suffer irreparable injury if these unconstitutional laws are not overturned.

20. Petitioners bring this case under the private attorney general doctrine, which supports citizens' rights to invoke state authority to rectify legal and constitutional grievances and which, in certain circumstances, allows the award of attorneys' fees.

THE FACTS WHICH MAKE IT APPROPRIATE THAT THE SUPREME COURT ACCEPT JURISDICTION

The issues presented are constitutional issues of statewide importance.¹

They affect the constitutionally-established Board of Regents and all the post-secondary faculty and students throughout the state of Montana. The “urgency or emergency factors” required by Rule 14(4), M.R.App.P., exist here because Section 6 of HB 102 purports to become effective on June 1, 2021 and immediately restrict the authority of the Regents to regulate the possession of firearms on MUS campuses. HB 349 went into effect upon passage, and HB 112 and SB 319 go into effect on July 1, 2021. Thus, urgency factors exist, making litigation in the trial courts and the normal appeal process inadequate.

This case involves purely legal questions of constitutional interpretation and state statutes.

THE PARTICULAR LEGAL QUESTIONS EXPECTED TO BE RAISED

Question 1: Whether the Legislature has unconstitutionally infringed upon the constitutional authority of the Montana Board of Regents under Mont. Const. Art. X, § 9(2)(a), and particularly through the following measures:

¹ Because this petition challenges the constitutionality of a State statute, the parties are filing a Notice of Constitutional Question and serving it on the Montana Attorney General pursuant to 5.1(a), M.R.Civ.P, and Rule 27, M.R.App.P.

1. HB 349, which purports to regulate the manner in which universities may regulate and supervise student organizations and the use of facilities;
2. HB 112, which purports to forbid university athletic teams from allowing transgender athletes to participate in women's sports;
3. HB 102, which purports to require the Regents and the universities to allow both open and concealed carrying of weapons on campus;
4. SB 319, which purports to restrict the ability of student organizations to register students to vote in student dormitories and dining facilities and undercuts the funding for student organizations such as MontPIRG.

Question 2: Whether the Legislature's conditional appropriation, which is forfeited if the MUS sues,² is unconstitutional because it strips the MUS, under the direction and control of the Regents, of its authority to manage and control the MUS and its fundamental right to seek judicial recourse.

McLaughlin v. Montana State Legislature, 2021 MT 120, ¶ 10, ___ Mont. ___, ___

P.3d ___ (finding the right to petition the courts to be fundamental).

² The Legislature appropriated \$1 million for the MUS's use in implementing HB 102. It seems to make this appropriation conditional by providing that sum is forfeited if the MUS takes legal action to vindicate its authority by invalidating HB 102. However, its wording is infelicitous. It seems to suggest that if HB 2 is challenged by the MUS, HB 102 is void. The actual language is: "If the Montana University System files a lawsuit contesting the legality of HB 102, **Implementation of HB 102 is void.**" HB 2, p. E-10 (emphasis added).

THE ARGUMENTS AND AUTHORITIES FOR ACCEPTING JURISDICTION AND PERTAINING TO THE MERITS

I. THE AUTHORITIES FOR ACCEPTING JURISDICTION.

This Court held in *Hernandez v. Bd. of County Commissioners*, 2008 MT 251, ¶ 9, 345 Mont. 1, 189 P.3d 630:

Assumption by this Court of original jurisdiction over a declaratory judgment action is proper when: (1) constitutional issues of major statewide importance are involved; (2) the case involves purely legal questions of statutory and constitutional construction; and (3) urgency and emergency factors exist making the normal appeal process inadequate. *Montanans for Coal Trust*, ¶ 27 (citing *Butte-Silver Bow Local Govern. v. State*, 235 Mont. 398, 401-402, 768 P.2d 327, 329 (1989); *State ex rel. Greely v. Water Court of State*, 214 Mont. 143, 691 P.2d 833 (1984).... All of these criteria are met here.

See also White v. State, 233 Mont. 81, 84, 759 P.2d 971, 973 (1988); *Confederated Salish & Kootenai Tribes of the Flathead Reservation v. Clinch*, 1999 MT 342, ¶¶ 5-9, 297 Mont. 448, 992 P.2d 244; *Mont. Assoc. of Counties v. Montana*, 2017 MT 267, ¶ 2, 389 Mont. 183, 404 P.3d 733; *Keller v. Smith*, 170 Mont. 399, 401, 553 P.2d 1002 (1976).

With respect to the constitutional authority of the Regents, this Court accepted original jurisdiction to interpret Mont. Const. Article X, § 9(2) in *Judge*, 168 Mont. at 436-37, 543 P.2d at 1326 (1975) (“By order this Court accepted original jurisdiction on the basis of the emergency nature of the controversy....

Thereafter the Court directed the Governor and his agents to refrain from withholding payments on claims and warrants by the university system until further order of this Court.”). This Court followed suit in the companion case, *State ex rel. Judge v. Legislative Finance Committee*, 168 Mont. 470, 476, 543 P.2d 1317, 1320 (1975) (citing *Regents v. Judge*: “[W]e deem this Court’s original jurisdiction proper under Rule 17....”).

II. THE ARGUMENTS PERTAINING TO THE MERITS.

Montana’s 1972 Constitution spells out the authority of the Montana Board of Regents to manage the University system. Article X, § 9(2)(a) provides:

The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

On the other hand, the Legislature has the undoubted power to appropriate, including appropriations for the MUS. It follows that it has the concomitant power to ensure strict accountability of the funds it appropriates. The Legislature also has the power to legislate for the general welfare through laws of general application.

Looking at these two constitutional powers, this Court has stated:

Our task then is to harmonize, in a practical manner, the

constitutional power of the Legislature to appropriate with the constitutional power of the Regents to supervise, coordinate, manage and control the university system.

Judge, 168 Mont. at 444, 543 P.2d at 1330; *see generally* Hugh V. Schaefer, *The Legal Status of the Montana University System under the New Montana Constitution*, 35 Mont. L R. (Summer 1974).

This interrelationship is summarized by one writer as follows:

Constitutional autonomy is a legal principle that makes a state university a separate department of government, not merely an agency of the executive or legislative branch. A university with this status is subject to judicial review and to the legislature's police power and appropriations power. However, its governing board has a significant degree of independent control over many university functions.

Deborah A. McKnight, *University of Minnesota Constitutional Autonomy: A Legal Analysis* 21 (2004)³ (quoted in Joseph Beckham, *Reasonable Independence of Public Higher Education: Legal Implications of Constitutionally Autonomous Status*, 7 J. L. & Educ., 177-79 (1978)).⁴

In *Judge*, this Court stated:

³ <http://www.house.leg.state.mn.us/hrd/pubs/umcnauto.pdf>

⁴ *See also* Neal H. Hutchens, *Preserving the Independence of Public Higher Education: an Examination of State Constitutional Autonomy Provisions for Public Colleges and Universities*, 35 J. of Coll. and Univ. of L. 271 (2009).

Inherent in the constitutional provision granting the Regents their power is the realization that **the Board of Regents is the competent body for determining priorities in higher education**. An important priority is the hiring and keeping of competent personnel. The limitation set forth in [the legislation in question] specifically denies the Regents the power to function effectively by setting its own personnel policies and determining its own priorities. The condition is, therefore, unconstitutional.

Id. at 454, 543 P.2d at 1335 (emphasis added); *see also Sheehy v. Comm’r of Pol. Practices*, 2020 MT 37, ¶¶ 33-49, 399 Mont. 26, 458 P.3d 309 (McKinnon, J., concurring).

Although the line between the Regents’ power and the authority of the Legislature is not always clear, the challenged measures are beyond the pale. They all amount to legislative overreach into the constitutional prerogative of the Regents.

The most obvious example is HB 349, which purports to be an act “generally revising laws related to freedom of association and freedom of speech on campuses of public post-secondary institutions....” Among other things, this act purports to prohibit “student-on-student discriminatory harassment.” But it does the opposite—it actually **forbids** a university from disciplining a student for harassing another student unless “the speech...is unwelcome and so severe, pervasive, and subjectively and objectively offensive that a student is effectively denied equal

access to educational opportunities or benefits....” *Id.* § 2(a). That is, it seems to **invite** student harassment as long as it doesn’t go too far. On its face, this seems to be a ridiculous policy.

The overarching purpose of this petition is not to challenge the specifics of the contested bills. Rather, the purpose is to vindicate the Regents’ authority. HB 349 plainly intrudes on the constitutional autonomy of the Regents.

The same is true of HB 112’s Section 4, which prohibits transgender intercollegiate athletes participating in women’s (but not men’s) sports. Athletic directors of the universities, subject to the supervision of the Regents, are responsible for participation policies. Montana’s major universities are members of the National Collegiate Athletic Association and must abide by the rules of that organization. It is up to the Regents, the universities, and their athletic directors to work with the NCAA to ensure compliance with its extensive regulations. Regardless of what one thinks of the merits of the new policy on transgender athletes, this, again, is a power constitutionally accorded the Regents, not the Legislature.

The same is true of guns on campus. The Regents frequently deal with issues and policies regarding guns on campus, and the institutions of higher learning have, **for years**, been able to deal with the “problem” effectively. In fact, the Regents

have a firearms policy in place (Policy 1006) (Exhibit 1). The Regents have both the authority and the capability to deal with that issue. It is not up to an overbearing majority of the Legislature to impose their view on guns onto the state universities.

Moreover, unlike the statewide State Ethics Code involved in *Sheehy, supra*, the present measures are specifically aimed at the Regents and the MUS. Justice McKinnon's special concurrence in *Sheehy* found that application of the statewide Ethics Code to Regents, although invalid for other reasons, did not violate Article X, § (9)(2)(a), in part because it applies statewide. She emphasized:

The Ethics Code is a law enacted for the general welfare of the public, and is of a broad scope, meant to prohibit transgressions which abuse the public's trust and violate public duty. Where, as here, the statute is **not aimed** at the Board alone, or at any activities under the authority of the Board, there is no reason [to find it conflicts with Regents' authority].

Id. ¶ 47 (emphasis added).

In contrast, each of the bills challenged here is specifically aimed at the universities. For example, the gun measure **is** explicitly aimed at the universities and the Regents and their authority. *See* HB 102, §§ 3, 5. Section 5 actually mentions the Regents' constitutional authority and cheekily proclaims by fiat that the right of the people to keep or bear arms prevails, "notwithstanding any authority of the board of regents under Article X, § 9(2)(a) of the Montana

constitution.” In sum, the challenged measures each amount to an unconstitutional legislative overreach.

Even worse, as if the Regents did not have enough to worry about, two of the measures, the transgender athletes and gun acts, create **new causes of action** for damages if they are violated.

There is significant additional law supporting Petitioners’ argument on the merits, but the word constraint of Rule 17, M.R.App.P. precludes further argument here. Hopefully, the Court will direct further briefing.

CONCLUSION

For the foregoing reasons, this Court should accept original jurisdiction and, after appropriate briefing, enter a declaratory judgment determining the contested measures are unconstitutional because they conflict with the Regents’ constitutional autonomy. Petitioners further request an award of their attorneys’ fees.

DATED this 20th day of May, 2021.

GOETZ, BALDWIN & GEDDES, P.C.

/s/ James H. Goetz
James H. Goetz
Jeffrey J. Tierney

and

GRAYBILL LAW FIRM, P.C.

/s/ Raphael Graybill
Raphael Graybill

Attorneys for Petitioners

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Equity Text A text typeface of 14 points; is double spaced (except that footnotes and quoted and indented material are single spaced); with left, right, top and bottom margins of 1 inch; and that the word count calculated by Microsoft Word, excluding the caption, Table of Contents, Table of Authorities, and Certificate of Compliance, is 3,983 words, not in excess of the 4,000-word limit.

By: /s/ James H. Goetz
James H. Goetz

CERTIFICATE OF SERVICE

I, James H. Goetz, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 05-20-2021:

Raphael Jeffrey Carlisle Graybill (Attorney)
300 4th Street North
PO Box 3586
Great Falls MT 59403
Representing: Montana Federation of Public Employees
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: State of Montana, Greg Gianforte
Service Method: eService

Jeffrey J. Tierney (Attorney)
35 N. Grand
P.O. Box 6580
Bozeman MT 59715
Representing: Steve Barrett, Robert Knight, Lawrence Pettit, Montana University System Faculty Association Repr, Joy C. Honea, Annjeanette Belcourt, Franke Wilmer, Montana Public Interest Research Group, Ashley Phelan, Joseph Knappenberger, Nicole Bondurant, Faculty Senate of Montana State University
Service Method: eService

Jeffrey J. Tierney (Attorney)
35 N. Grand
P.O. Box 6580
Bozeman MT 59715
Service Method: eService
E-mail Address: jtierney@goetzlawfirm.com

Electronically signed by Luke Nelson on behalf of James H. Goetz
Dated: 05-20-2021