

Peter Michael Meloy
MELOY LAW FIRM
P.O. Box 1241
Helena, MT 59624
(406) 442-8670
mike@meloylawfirm.com

FILED

FEB 10 2021

ANGIE SPARKS, Clerk of District Court
By *Mary Reynolds* Deputy Clerk

Attorney for Petitioner

**IN THE MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

THE ASSOCIATED PRESS, THE)
BILLINGS GAZETTE, THE BOZEMAN)
DAILY CHRONICLE, THE HELENA)
INDEPENDENT RECORD, THE)
MISSOULIAN, THE MONTANA)
STANDARD, MONTANA FREE)
PRESS, THE RAVALLI REPUBLIC,)
LEE ENTERPRISES, HAGADONE)
MEDIA MONTANA, THE MONTANA)
BROADCASTERS ASSOCIATION, and)
THE MONTANA NEWSPAPER)
ASSOCIATION.)

Petitioners,)

vs.)

BARRY USHER in his capacity as Chair)
of the Montana House of Representatives,)
Judiciary Committee)

Respondent.)

ADV 2021-124

pd

PETITION

**MIKE MENAHAN
PRESIDING JUDGE**

COME NOW, Petitioners, and for their Petition for relief from violations of the Montana Constitution and pursuant the Uniform Declaratory Judgments Act, MCA Title 27, Chapter 8 state as follows:

1. Petitioner Associated Press is a wire news service providing coverage of local and statewide events in Montana and nationwide.
2. Petitioners, The Billings Gazette, The Montana Standard, The Helena Independent Record, The Bozeman Daily Chronicle, and Missoulian are daily newspapers of general circulation throughout the State of Montana. All of these newspapers cover matters of state government of interest to the citizens of Montana and surrounding areas.
3. Petitioner Montana Free Press is a source for fact-based news and data reporting from Montana's leading digital-first newsroom focusing on news of statewide interest.
4. Petitioner Ravalli Republic is a newspaper of general circulation in southwest Montana covering matters of state government of interest to the citizens of the Bitterroot Valley and surrounding areas.
5. Petitioner Lee Enterprises owns and publishes newspapers throughout Montana reporting events of state and local concern.
6. Petitioner Hagadone Media Montana owns newspapers in Montana, including, The Bigfork Eagle, The Clark Fork Valley Press, The Daily Inter Lake,

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The Hungry Horse News, The Lake County Leader, The Mineral Independent, The Western News and the Whitefish Pilot. All of these newspapers cover matters of state government of interest to the citizens of Montana and surrounding areas.

7. Petitioner Montana Broadcasters Association is a membership organization dedicated to serving the needs of radio and television stations in Montana and educating the public on the value of free, over the air, broadcasting.

8. Petitioner Montana Newspaper Association is a membership organization dedicated to serving the needs of the print and digital news media in Montana and educating citizens about matters of public concern.

9. The Respondent, Barry Usher, is the Chair of the Montana House of Representatives Judiciary Committee a committee of the Legislature subject to the open meetings requirements of Article II, Section 9 and Article V, Section 10 of the Montana Constitution.

10. On January 12, 2021, the Respondent conducted a meeting in which the matter of executive action was to be taken on several controversial bills involving transgender health care and abortion. After convening the meeting, but before a vote was taken, the Respondent recessed the meeting to discuss the vote on the bills in private with other members of the Republican majority on the committee. A reporter for Montana Free Press followed several Republican members of the committee to a room in the basement of the Capitol building to

observe and report on the matters to be discussed in the caucus. She was told by the Respondent that she was not welcome to stay during the discussion. He informed her that he made three of the members stay out of the meeting so there would be no quorum of the Committee in attendance. He explained that he did this "on purpose" so the meeting could be conducted in private. He told her he did this on a normal basis, not just on controversial bills. A majority of the House Judiciary members on the committee remained in the room. Accordingly, any decisions made in the room, whether a vote was taken or not, controlled the Judiciary Committee votes on the bills because a majority of that committee was involved in the closed session. No rights of privacy were affected by the ensuing discussion on the bills.

11. After this meeting, the Respondent reconvened the Judiciary Committee and proceeded to take executive action on the bills. Respondent said he was following protocol established by those before him: "We just always have, that's the way I was taught. Some of the things we have to talk about when we're talking and discussing how we're going to vote are personal and you know, as you can see, our committee does get a little emotional."

12. The Respondent's actions described above, have adversely affected Petitioners, and prejudiced their right to know, guaranteed by Article II, Section 9 and Article V, Section 10 of Montana Constitution. Article II, Section 9 states that

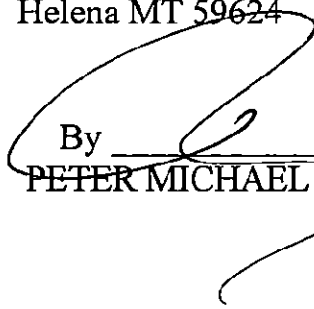
“[n]o person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.” Article V, Section 10(3) requires “[t]he sessions of the legislature and of the committee of the whole, all committee meetings and all hearings shall be open to the public.

WHEREFORE, Petitioners respectfully ask the Court to grant relief as follows:

1. That the Court find, determine and declare that the manner in which Respondent conducted the secret meeting of members of the Republican Party violated Petitioners’ constitutional right to know;
2. That the Court issue an order setting aside any decisions made in the illegally closed meeting and order the Respondent to refrain from conducting another meeting in a closed session;
3. That the Court order that Petitioners be reimbursed for their costs and attorney fees incurred in bringing this matter; and
4. For such other and further relief as this Court may deem just and proper.

DATED this th 10 day February 2021.

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Helena MT 59624

By  _____
PETER MICHAEL MELOY