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Pro se

**FILED**

JUN -7 2021

ANGIE SPARKS, Clerk of District Court  
By *[Signature]* Deputy Clerk

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

<p>BOARD OF REGENTS OF HIGHER EDUCATION OF THE STATE OF MONTANA,</p> <p>Petitioner,</p> <p>v.</p> <p>THE STATE OF MONTANA, by and through Austin Knudsen, Attorney General of the State of Montana in his official capacity,</p> <p>Respondent.</p>	<p>Cause No. BDV-2021-598</p> <p>BRIEF IN SUPPORT OF MOTION TO INTERVENE</p> <p><i>(email)</i></p>
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COMES NOW David Diacon (hereinafter David), *pro se*, and hereby submits this brief in support of his motion to intervene in the above captioned matter.

**Issue**

At the core of the dispute between the Petitioner Board of Regents and the Respondent State of Montana is the issue of the right of an individual citizen to carry a firearm for self-defense on a Montana university system (MUS) campus.

The Board of Regents asserts, with MUS Policy 1006, its authority to categorically deny anyone but campus security or police from carry a firearm on campus. The Legislature has established public policy, by passing HB 102, to allow for persons who may lawfully possess a firearm to carry without a permit on most government owned or controlled properties, including the campuses of the MUS. The dispute between Petitioner and Respondent focuses on determining whether the Legislature or the Board of Regents has the authority to make that determination.

In determining whether an Act of the Legislature is violative of the Board of Regents' constitutional authority, all relevant provisions of the Montana Constitution are to receive appropriate attention and be construed together. *Bd. of Regents v. Judge*, 168 Mont. 433, 444, 543 P.2d 1323, 1330 (1975). In *Judge*, the dispute was whether the Legislature could implement line-item appropriations in the MUS budget. There, the issue was between the Legislature's constitutional mandate to ensure strict accountability of all revenue received and spent by governmental entities, and the authority of the Board of Regents to have complete power and control over the governance of the MUS.

Unlike *Judge* which involved two constitutional issues, the current matter involves three – the Legislature's authority to set public policy that the Board of Regents must follow, the extent that the Board of Regents' constitutional grant of authority isolates the MUS from Montana public policy, and the infringement of

individual rights guaranteed under the Second Amendment to the United States and Article II, Parts 3 and 12 of the Montana Constitution. The State of Montana represents the interest of the Legislature in setting public policy relating to the MUS, and the Board of Regents represents its interests in complete control over the Montana university system. David seeks to intervene to protect his individual constitutional rights.

### Argument

David has an intervention of right and must be allowed to intervene. A movant has an intervention of right when he has a claim relating to the transaction which is the subject of the action and where disposal of the action may as a practical matter “impair or impede the movant’s ability to protect [his] interest,” where the existing parties may not adequately represent his interest. M.R.Civ.P. 24. “[In] determining the adequacy of representation under Rule 24(a), the court will look to see if “there is a party charged by law with representing [the absent party's] interest.” *State ex rel. Palmer v. Dist. Ct.*, 190 Mont. 185, 189, 619 P.2d 1201, 1204 (1980)(internal citations omitted). In this matter, the existing parties are asserting their respective authority as a limit to the other party’s authority in determining public policy. David asserts his individual rights against the authority of the Board of Regents to establish and enforce policy which categorically denies his right to carry a firearm for self-defense. Although the State’s assertion of

authority aligns with David's constitutional rights, it is not "charged by law" to represent David's individual interests. David is best situated to defend his rights and must be allowed to intervene.

David's individual rights are a direct, substantial, legally protected interest in this proceeding. A movant must make a *prima facie* showing of a "direct, substantial, legally protectable interest in the proceedings." *Devoe v. State*, 281 Mont. 356, 363, 935 P.2d 256, 260 (1997). David's rights guaranteed under the federal and State constitutions are a direct, substantial, legally protectable interest in this matter and he therefore demonstrates a *prima facie* showing and must be allowed to intervene.

David has made a timely motion. A motion to intervene must be timely. M.R.Civ.P 24(a). "Timeliness is determined from the particular circumstances surrounding the action and such determination is within the sound discretion of the trial court." *Estate of Schwenke v. Bechtold*, 252 Mont. 127, 131-132, 827 P.2d 808, 811 (citing *NAACP v. New York*, 413 U.S. 345, 366, 93 S.Ct. 2591, 2603 (1973)). The immediate question is whether this Court will grant a permanent injunction. David's intervention in the last hour should neither come as a surprise to either existing party nor cause hardship for either. A delay of a few days in filing should be foreseeable where the request for an injunction occurred immediately before a holiday weekend in which many people have family plans

and commitments and will likely not have resources at hand to address the issue. The remaining four business days after the holiday left limited time to analyze and research the legal issue and prepare the argument.

Additionally, the State's case will likely be aided by David's position regarding the Board of Regents request for permanent injunction and the Board of Regents is represented by no less than five experienced and competent attorneys who undoubtedly have anticipated potential counter arguments to its claim. A claim of intervention based on individual rights against the Board's assertion that "BOR has exercised its authority to ensure the health and stability of its institutions by adopting a policy regarding firearms on campuses decades ago..."<sup>1</sup> should hardly come as a surprise to the Board's legal team. Intervention is timely under the circumstances and should not cause delay or hardship to either existing party at the Show Cause hearing regarding permanent injunction and David must be allowed to intervene.

David's intervention will allow for a complete analysis and determination of the Board of Regents' constitutional authority. Judicial discretion regarding intervention is to promote judicial efficiency by avoiding delay, circuitry and multiplicity of suits. *Id.* at 132-133, 827 P.2d at 811. David's intervention will have the effect of prevent multiplicity of suits regarding the determination of the

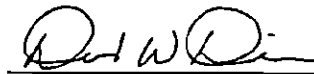
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<sup>1</sup> Pet. for Declaratory Relief on Original Jurisdiction, Mont. OP 21-246, 7, May 20, 2021.

constitutional authority of the Board of Regents to have complete control and authority to categorically deny a Montana citizen from carrying a firearm on MUS campuses for self-protection. David's intervention will avoid delay and multiplicity of suits in the complete determination of the Board of Regent's authority that would occur if he should have to file a separate action.

For the foregoing reasons, David's motion to intervene should be granted.

Respectfully submitted this 7th day of June, 2021.



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David W. Diacon

*Pro se*

Certificate of Service

I, the undersigned, hereby certify that I have served a true and correct copy of the foregoing Brief in Support of Motion to Intervene by email and USPS, 1st-class postage prepaid, upon the following:

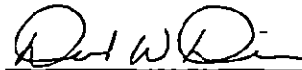
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