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

Attorneys for Intervener MSSA

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY**

**BOARD OF REGENTS OF
HIGHER EDUCATION OF THE
STATE OF MONTANA,**

Petitioner,

v.

**THE STATE OF MONTANA, by
and through Austin Knudsen,
Attorney General of the State of
Montana in his official capacity,**

Respondents.

Cause No.: BDV-2021-598

***MONTANA SHOOTING SPORTS
ASSOCIATION'S
PRINCIPAL BRIEF IN
SUPPORT OF MOTION TO
INTERVENE***

Intervenor Montana Shooting Sports Association (MSSA), through
counsel, and in support of its Motion to Intervene, hereby respectfully
submits the following:

///

PRINCIPAL BRIEF

ISSUE

MSSA should be allowed to intervene in this action, on behalf of its members who live throughout the state of Montana, on grounds that MSSA was a key proponent of getting HB102 passed in the legislature over the course of decades. MSSA is also in the best position to vigorously defend the rights of its members. MSSA's proposed Answer to the Petition for Declaratory Relief is attached hereto as "Exhibit 1."

FACTUAL AND PROCEDURAL BACKGROUND

1. The Montana Legislature passed an act generally revising gun laws during the 2021 legislative session commonly referred to as HB102. HB102 was so politically popular that it was the second bill to clear both houses of the Legislature in the 2021 session, and with much ceremony, it was the second bill signed by the newly sworn-in Governor Greg Gianforte.¹

2. HB102, *inter alia*, includes sections that allows students on Montana University System (MUS) campuses to keep or bear arms,

¹ See, e.g., <https://montanafreepress.org/2021/02/18/gianforte-signs-constitutional-carry-gun-bill/>

commonly known as “campus carry”. (See Decl. of Gary Marbut, ¶ 11, attached hereto as “Exhibit 2.”)

3. The Board of Regents of Higher Education of The State of Montana (BoR) has filed the petition in this case seeking to have the campus carry sections of HB102 declared void as an unconstitutional infringement on their authority. (Doc. 1.)

4. Intervenor Montana Shooting Sports Association (MSSA) is a non-profit corporation organized under the laws of the State of Montana. (Ex. 2, ¶ 4.)

5. The purpose of MSSA is to support and promote firearm safety, the shooting sports, hunting, firearm collecting, and personal protection using firearms, to provide education to its members concerning shooting, firearms, safety, hunting and the right to keep and bear arms, to own and or manage one or more shooting facilities for the use of its members and or others, to conduct such other activities as serves the needs of its members. (Ex. 2, ¶¶ 8-9.)

6. MSSA regularly lobbies the Montana Legislature, and its efforts were instrumental in the passage of the Montana preemption statutes at issue in this civil action. MSSA members have a genuine and viable interest

in this case, as its goals and its existence depend upon the protection of the rights and interests of its members, and the enforcement of Montana law. (*Id.*)

7. MSSA's membership includes, without limitation, students and MUS employees from across the MUS. (Ex. 2, ¶ 7.)

8. The chief features of HB102 include permit-less carry of firearms (no government permit needed to put on a coat), campus carry, bar and restaurant carry, and enhancement of existing concealed weapon permits (CWP). All of this was included under the general title and purpose of eliminating alleged "gun free zones." (Ex. 2, ¶ 11.)

9. The history of HB102 begins in the 1989 session of the Legislature. Gary Marbut, current president of MSSA (then president of the Montana Rifle and Pistol Association - MSSA was founded in 1990) arranged for introduction of a bill to move Montana to a "shall issue" CWP system. In 1989 and before, permits were only issued by district court judges. Over half of the counties in Montana did not even have application forms. In only one county, Butte-Silver Bow, were permits routinely issued to law-abiding citizens. Montanans from across the state would travel to Butte to obtain a CWP. (*Id.*, ¶¶ 12-13.)

10. The 1989 “shall issue” bill sought CWP issuance by elected sheriffs with limited discretion for permit application denial. That bill was carried by Rep. Jerry Driscoll (D-Billings) but died with a 49-51 vote in the House upon Third Reading. It had been opposed by various law enforcement entities. (*Id.*, ¶ 14.)

11. Between the 1989 and 1991 sessions, MSSA met with law enforcement entities multiple times to negotiate a CWP bill acceptable to gun owners and law enforcement. A compromise bill was agreed upon and was introduced in the 1991 legislative session as HB90 by Rep. Dave Brown (D-Butte). Notwithstanding the agreement between gun owners and law enforcement, the lobbyist for the Montana Sheriffs and Peace Officers Association offered an amendment to HB90 in the House Judiciary Committee to create a list of “prohibited places” (bars, banks, college campuses and public buildings) where CWPs could not be used. That amendment was successful, created what became Mont. Code Ann. § 45-8-328, and kicked off a long public policy debate that was ultimately resolved with HB102 in 2021. (*Id.*, ¶ 15.)

12. Between 1991 and 2021 MSSA brought numerous bills before the Legislature to eliminate or modify the prohibited places prohibitions

enacted as a part of HB90 in 1991. One successful bill clarified that the prohibition on CWP usage in places with a liquor licenses only applied where the license allowed consumption on the premises, but not places that were carry-out only such as liquor stores. Another change clarified that the prohibition in banks did not include ATMs and drive-up tellers, but only in bank lobbies. Yet another change clarified that the prohibition on CWP exercise in public buildings did not include unstaffed structures such as parking garages and highway rest stops. (*Id.*, ¶ 16.)

13. One of the most debated issues surrounding concealed carry of firearms has long been about bars, defined as places that have a liquor license that allows serving of alcohol for consumption on the premises. This longstanding definition includes many restaurants. The prohibitory scheme that has been in effect since 1991 has some very odd consequences that result in awkward public policy. (*Id.*, ¶ 17.)

14. Under this scheme, if a person were having dinner with family members at a restaurant with a liquor license and the person had a CWP and was not drinking anything alcoholic, the person was still prohibited from using his CWP. However, the law did not prohibit the same conduct by a person wearing a firearm unconcealed. In a genuine bar, for

customers overtly drinking alcohol, the law did not prohibit patrons from carrying openly, but only prohibited people with CWP's from using their permits there. (*Id.*, ¶ 18.)

15. The “prohibited places” prohibition, Mont. Code Ann. § 45-8-328, long fraught with conceptual and interpretation problems, and always a bone of public policy contention, was finally all but eliminated with HB102 in 2021. (*Id.*, ¶ 19.)

16. The permit-less carry feature of HB102 was also the end result of a long public policy evolution, buoyed by ever-increasing public support for the right to keep or bear arms, and much debate in which MSSA was closely involved for nearly two decades. (*Id.*, ¶¶ 20-21.)

17. MSSA was heavily involved with the passage of HB102, in fact, Mr. Marbut drafted the version of the bill which was originally introduced to the legislature. (*Id.*, ¶ 25.)

18. As the legislative session progressed, HB102's sponsor, Representative Seth Berglee, MSSA, and representatives from the MUS engaged in numerous negotiations which resulted in amendments to the bill. (*Id.*, ¶¶ 25-26.)

19. On January 8, 2021, Helen C. Thigpen, Deputy Chief Legal Counsel for MUS sent an email to Representative Seth Berglee with a copy to House Judiciary Committee's staff attorney Rachel Weiss. (*Id.*, ¶ 27.)

20. Thigpen was the staff attorney for House Judiciary in the 2013, 2015, and 2017 legislative sessions. This email also copied Tyler Trevor Deputy Commissioner for Budget and Planning, and Chief of Staff for the Montana Commissioner of Higher Education. Declared in the email to be acting on behalf of the Commissioner of Higher Education, Clayton Christian, Thigpen officially asks Berglee to make amendments to HB 102 to accomplish three specified changes. (*Id.*, ¶ 28.)

21. The three changes to HB102 requested in this email from Thigpen to Berglee were:

a. That HB102 be amended to require that the campus carry element of HB102 be "limited to those individuals who possess a current and valid CWP." The concern expressed by MUS officials in separate communication with Berglee was to insure that people exercising prerogatives under HB102 on campus have some firearms safety training. Berglee subsequently satisfied this request with an amendment requiring that anyone possessing a firearm on campus must, at a minimum, have satisfied the firearms safety training detailed in law to apply for a CWP.

b. That HB102 be amended "to allow restrictions at campus events, including athletics, commencement, and live performances/concerts." Berglee and I discussed this request and in

response crafted amendatory language for HB102 to allow MUS restrictions for “ the possession of a firearm at an athletic or entertainment event open to the public with controlled access and armed security on site.”

c. That “the bill also be revised to allow restrictions in dormitories and other student housing facilities.” Berglee and I discussed this request but could not accommodate it because to do so would be counter to the core holding of *District of Columbia v. Heller*, 554 U.S. 570 (2008) concerning persons being prohibited by a government entity from possessing a firearm in the person’s domicile.

(*Id.*, ¶ 29.)

22. Amendment HB0102.001.002, made in the House Judiciary Committee to Section 6 of HB102 on January 11, 2021, limited campus carry to persons who had completed any one of the firearms safety training options listed in Montana law to qualify a person to apply for a CWP.² (*Id.*, ¶ 30.)

23. Amendment HB0102.002.002 was done in the Senate Judiciary Committee on January 26, 2021, and made to Section 6 of the bill. This amendment expanded on a list of regulations appropriate for the MUS to implement and added that the campuses could prohibit the possession of

² See, <https://leg.mt.gov/bills/2021/AmdPublicWeb/HB0102.001.002.pdf>

firearms at “an athletic or entertainment event open to the public with controlled access and armed security on site.”³ (*Id.*, ¶ 31.)

24. The third change made on January 26, 2021, to accommodate the MUS was also contained in amendment HB0102.002.008. This amendment was to Section 15 and established a delayed effective date for the campus carry portion of HB102. The MUS had asked that they be given a reasonable amount of time to implement HB102, so a delayed effective date of June 1, 2021, was amended into HB102 by the Senate Judiciary Committee. (*Id.*, ¶ 32.)

25. Also, during the legislative session, the Legislative Services Division recycled and reissued a Legal Note that had previously been issued for campus carry bills before the Legislature. This Legal Note raised some of the same questions posed by BoR in its Petition. The final version of this Legal Note includes the Requester Comments that address questions raised by the Legal Note. This complete Legal Note is a prime part of the legislative history of HB 102 and is attached as Intervenor’s Ex. 1. (*Id.*, ¶ 33.)

³ See: <https://leg.mt.gov/bills/2021/AmdPublicWeb/HB0102.002.008.pdf>

26. All of this is history that culminated with the enactment of HB 102. (*Id.*, ¶ 34.)

LEGAL STANDARD

A non-party has, under certain circumstances, a right to intervene in a civil action “of right” per M. R. Civ. P. 24(a)(2). Intervention is allowed “of right” when an applicant claims an interest merely “relating” to the property or transaction which is the subject of the action and “the applicant is so situated that the disposition of the action *may* as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties. *Id.* (emphasis added). “Rule 24 is designed to protect nonparties from having their interest adversely affect by litigation conducted without their participation.” *Clark Fork Coalition v. Montana Dept. of Environmental Quality*, 2007 MT 176, ¶ 10, 338 Mont. 205, 14 P.3d 902 (quoting *Gruman v. Hendrickson*, 416 N.W. 2d 497, 500 (Minn. App. 1987)). “Montana’s rule is essentially identical to the federal rule which is interpreted liberally.” *Sportsmen for I-143 v. Montana Fifteenth Judicial Dist. Court, Sheridan Cnty.*, 2002 MT 18, ¶ 7, 308 Mont. 189, 40 P.3d 400.

In *Estate of Schwenke v. Bechtold*, 252 Mont. 127, 827 P.2d 808 (1992), the Court promulgated four criteria which an intervenor must meet in moving for intervention as a matter of right. These criteria include:

- (1) The motion must be timely;
- (2) The intervenor must have an interest in the subject matter at issue;
- (3) The intervenor must have an interest which *may* be impaired by the disposition of the case; and
- (4) The intervenor must have an interest which was not adequately represented by an existing party.

Schwenke, 252 Mont. at 131, 827 P.2d at 811 (emphasis added). In addition, a determining factor in a motion for intervention is whether the motion seeks to relitigate or reopen issues already decided. *In re Marriage of Glass*, 215 Mont. 248, 253, 697 P.2d 96, 99 (1985). See, *Pengra v. State*, 2000 MT 291, ¶1, ¶ 4, 302 Mont. 276, 14 P.3d 499.

In this case as discussed in detail below, MSSA meets fully all four criteria set forth by the Court and M. R. Civ. P. 24(a)(2). The question of the constitutionality of HB102 as applied to MUS is also a matter of first impression, and therefore does not seek to relitigate or reopen any issues already decided.

DISCUSSION

1. The motion to intervene is timely because it has been filed at the outset of the litigation.

The threshold factor on a motion to intervene is timeliness. *In re Adoption of C.C.L.B.*, 2001 MT 66, ¶ 22, 305 Mont. 22, 22 P.3d 646. Timeliness turns on a functional analysis and is a product of the circumstances of each individual case. *Schwenke*, 252 Mont. at 131, 827 P.2d at 811. Employing the functional analysis, the Montana Supreme Court has ruled that even a post-judgment intervention for purposes solely of appeal is not untimely. *Aspen Trails Ranch, LLC v. Simmons*, 2010 MT 79, ¶ 35, 356 Mont. 41, 230 P.3d 808. In *Aspen Trails*, the intervenors sat on the sidelines while the underlying case proceeded to final judgment. After a government agency, whose regulatory decision was overruled by a district court, declined to appeal, certain of its constituents sought to intervene, on a permissive basis, post-judgment. The district court allowed for the “late” intervention, even though the intervention was not “of right” under Rule 24(a). The Montana Supreme Court affirmed, reasoning:

We agree with *Aspen Trails* that its intervention has not caused any delay in this matter, and that its interests are substantial and no longer adequately represented since the Commission has declined to appeal. We also agree that the Landowners cannot

claim prejudice simply because they are now required to defend the District Court's decision on appeal. While it may be inconvenient for the Landowners to have to defend their successful judgment on appeal, we cannot say it has caused them prejudice to defend against Aspen Trails, as opposed to the Commission.

Id.

Here, MSSA's intervention would not cause a delay in this matter or any other prejudice to either original party. *See, In re Adoption of C.C.L.B.*, 2001 MT 66, 305 Mont. 22, ¶ 22, 22 P.3d 646. The BoR filed its Petition for Declaratory Relief on May 27, 2021. (Doc. 1.) MSSA's motion is being filed at the onset of litigation. The Court has yet to issue a scheduling order or set any other deadlines other than a show cause hearing for June 7, 2021. MSSA seeks to intervene in order to assert the constitutional and statutory rights of its members and to argue the constitutionality of HB102 and does not seek to delay that hearing. Accordingly, MSSA's intervention will not cause delay in any proceedings or prejudice any party. MSSA's motion is timely. *See, Schwenke*, 252 Mont. at 131, 827 P.2d at 811.

- 2. MSSA members include MUS students and employees whose HB102 campus carry rights are jeopardized by the relief sought in the BoR's petition.**

A court must determine whether the party seeking intervention has made a merely *prima facie* showing of a direct, substantial, legally protectable interest in the proceedings.” *Sportsmen for I-143*, ¶ 9 (quoting *DeVoe v. State*, 281 Mont. 356, 363, 935 P.2d 26, 260 (1997)). Such a determination is a conclusion of law. *Id.* Here, MSSA Members have a right to keep and bear arms under the challenged statutory scheme, which, if implemented as drafted, they intend to exercise. It has been recognized that public interest groups have broad rights of intervention in matters that effect their members. *Sportsmen for I-143*, ¶ 12. For example, in *Sportsmen for I-143*, it was held that a public interest group has a right to intervene in an action merely because its members had supported a challenged ballot initiative. Significantly, in that case, no individual statutory rights were at stake. Still, the Court held: “[a] public interest group is entitled ***as a matter of right*** to intervene in an action challenging the legality of a measure it has supported.” *Id.* (emphasis added). In this case, MSSA has a long history of drafting and supporting gun rights legislation in Montana, HB102 being no exception. (See Ex. 2.) The history behind HB102 spans back decades, and MSSA and its predecessors have been involved every step of the way. (*Id.*) Now that

MSSA has emerged victorious in a hard-fought legislative battle, its members intend to exercise their campus carry rights under the statute. BoR seeks to strip them of those rights. Thus, MSSA and its members have a state law interest in the subject matter. *See, Schwenke*, 252 Mont. at 131, 827 P.2d at 811.

3. The interest of MSSA members on university campuses across Montana “may be impaired” if the challenged sections of HB102 are deemed unconstitutional.

BoR’s petition seeks to strip MSSA members who attend MUS of their statutory rights. BoR has brought an “as-applied” challenge to HB102, arguing the statute unconstitutionally limits its power promulgated by Article X, Section 9 of the Montana Constitution. (Doc. 1.) An as-applied challenge alleges that a particular application of a statute is unconstitutional and depends on the facts of a particular case. *City of Missoula v. Mountain Water Company*, 2018 MT 139, ¶ 25, 391 Mont. 422, 419 P.3d 685. BoR, as the challenging party, must prove HB102 is unconstitutional beyond a reasonable doubt. *State v. Walker*, 2001 MT 170, ¶ 7, 306 Mont. 159, 3 P.3d 1099. Statutes are presumed to be constitutional, and any doubt is to be resolved in favor of the statute. *Id.* It

is not for the courts to say whether the provisions of a statute or wise or not; the duty of the courts is to require enforcement thereof as they find it, whether the statutory provisions constitute an exercise of sound discretion is not at issue. *School Dist. No. 12, Phillips County v. Hughes*, 170 Mont.267, 276, 552 P.2d 328, 333 (1976).

Here, BoR alleges the Legislature has infringed upon its authority to “supervise, coordinate, manage and control the Montana university system” as set forth in Mont. Const. Art. X, Sec. 9(2)(a). (Doc. 1.) BoR currently has a policy addressing use and access to firearms on MUS campuses referred to as BOR Policy 1006. (*Id.*, ¶ 16.) As a basis for requesting preliminary injunctive relief, BoR argued the enactment of HB102 would cause confusion amongst citizens on MUS campuses on whether they are allowed to exercise their campus carry rights or must still abide by policy 1006. (Doc. 7, p. 12.) Should HB102 be declared unconstitutional as applied to BoR, it will continue to enforce the existing policy and disrupt the statutory rights granted by HB102. Therefore, the relief sought in this case, if granted, would impair the rights of MSSA members.

4. As a primary proponent of campus carry legislative reforms, MSSA members’ interest in HB102 is not adequately protected.

As did the successful intervenors in *Sportsmen for I-143*, ¶¶ 16-17, MSSA wants to ensure that the interests of its members “are vigorously represented at all times.” *Id.*, ¶ 16. In that case, the Sportsmen’s Groups were the authors, sponsors, active supporters, and defenders of a legislative initiative. *Id.*, ¶12. MSSA played identical roles in the drafting, support, and ultimate enactment of HB102. (See Ex. 2.) MSSA was a key grassroots supporter which promoted HB102 in the legislature, for years, before it was finally adopted and signed into law in 2021. (*Id.*) Like the successful intervenors in *Sportsmen for I-143*, MSSA actively drafted and supported HB102. (*Id.*) MSSA therefore “may be in the best position to defend their interpretation of the resulting legislation.” *Sportsmen for I-143*, ¶ 17.

In fact, in *Sportsmen for I-143*, the Court found the principle to be so compelling, it granted extraordinary relief, in the form of a writ of supervisory control, in allowing the interest groups to intervene “as of right.” MSSA seeks to be involved as early as possible in this case for the purpose of defending the rights of its members and the legislation it has labored to see passed. Due to MSSA’s extensive involvement as an HB102 proponent, it should be allowed to intervene in this action as of right.

CONCLUSION

Accordingly, MSSA requests:

1. That it be allowed to intervene in this case for the purposes of protecting its members individual rights under applicable constitutional and statutory law;
2. That the Court grant leave for MSSA to file its proposed Answer attached hereto as Ex. A;
3. That MSSA be awarded its attorney fees and costs under applicable law; and
4. That the Court grant such other relief as may be warranted in the circumstances.

DATED this 3rd day of June 2021.

Respectfully Submitted,
RHOADES SIEFERT & ERICKSON PLLC

By: 

Quentin M. Rhoades
Attorneys for Intervener MSSA

CERTIFICATE OF SERVICE

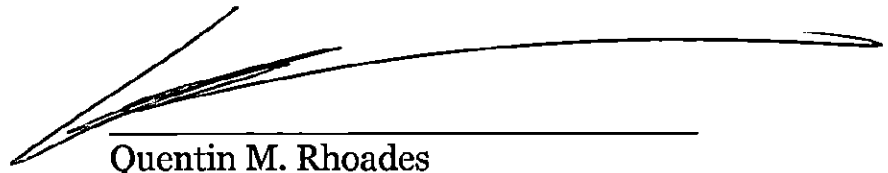
I hereby certify that on the 3rd day of June, 2021, I served upon the following a true and correct copy of the foregoing by depositing said copy in the U.S. mail, postage prepaid, and internet email addressed as follows:

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Ali Bovingdon
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Pro Respondent

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY**

**BOARD OF REGENTS OF
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**THE STATE OF MONTANA, by
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SHOOTING ASSOCIATION,
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Respondents.

Cause No.: BDV-2021-598

**INTERVENER MONTANA
SHOOTING SPORTS
ASSOCIATION'S ANSWER TO
PETITION FOR DECLARATORY
RELIEF**

Respondent Montana Sports Shooting Association, Inc.

("Respondent"), through counsel, hereby answers the Petition in this
matter as follows:

///

ANSWER

1. Respondent admits the allegations of ¶¶ 5, 9, 13, 21, 36, 46, and 48.
2. Respondent denies the allegations of ¶¶ 1 - 4, 7, 8, 10 - 14, 19, 20, 22 - 35, 37 - 43, 47, and 49 - 57.
3. Respondent lacks sufficient knowledge to confirm or deny the allegations of ¶¶ 6, 15, 16, 17, 18, 28, 44, 45, and therefore denies same.
5. Respondent denies all allegations of the Petition not specifically admitted.
6. Respondent denies that the Petition states a claim for which relief may be granted.

AFFIRMATIVE DEFENSES

7. Respondent realleges and incorporates by this reference all admitted allegations of the Petition.
8. Respondent alleges that the Petition is barred by the doctrines of estoppel; laches; and waiver and grounds that Petitioner received consideration in the form of negotiated changes to HB102 during the legislative session when it was adopted which would not included in HB102 absent Petitioner's requests for changes.

REQUEST FOR RELIEF

Accordingly, Respondent request dismissal of the Petition; an award of its attorney fees and costs incurred defending the Petition to the extent allowed by law; and such other relief as may be warranted in the circumstances.

DATED this 3rd day of June, 2021.

Respectfully Submitted,
RHOADES SIEFERT & ERICKSON PLLC

By: _____
Quentin M. Rhoades
Pro Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2021, I served upon the following a true and correct copy of the foregoing by depositing said copy in the U.S. mail, postage prepaid, and internet email addressed as follows:

David Dewhirst
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Quentin M. Rhoades

DECLARATION OF GARY MARBUT

I, Gary Marbut, pursuant to Mont. Code Ann. § 1-6-105, hereby declare, under penalty of perjury, the following to be true and correct:

1. I am over eighteen (18) years of age, and resident of Missoula County, Montana. I am mentally sound and competent to attest to the matters set forth herein. The matters set forth in this Declaration are based upon my own personal knowledge, unless otherwise stated.

THE MONTANA SHOOTING SPORTS ASSOCIATION

2. I am the president of the Montana Shooting Sports Association (MSSA) and have served in that capacity since 1990.

3. MSSA is established as the primary political advocate for Montana gun owners, of which there are many, hailing from every quarter of Montana society.

4. MSSA is a nonprofit corporation under Montana law and the Secretary of State's Website shows it was first incorporated on July 5, 1990. The Registered Agent listed is me, Gary Marbut, also current MSSA President. MSSA was founded specifically to be the political advocate for Montana gun owners and the Right to Keep or Bear Arms (RKBA). (Note: The U.S. Constitution says "keep and bear" but the Montana Constitution says "keep or bear".) MSSA is not an IRS tax exempt organization.

5. MSSA is affiliated or associated with the National Rifle Association, Gun Owners of America, the Second Amendment Foundation, and Citizens Committee for the Right to Keep and Bear Arms. MSSA has a working relationship with Jews for the Preservation of Firearms Ownership, the Firearms Policy Coalition, and many other national and state-level organizations.

6. Policy is set for MSSA by a nine-member Board of Directors who are geographically dispersed - Missoula, Kalispell, Great Falls (2), Butte, Billings, Helena (2), and Sidney. MSSA business is conducted at its Annual Meeting in Helena each March, or by phone and email among officers and Directors.

7. While MSSA membership and numbers is protected from disclosure by a privacy provision in MSSA Bylaws, MSSA has members in all Montana communities.

8. Although MSSA is involved in firearms safety education, litigation of RKBA-related issues, and local and federal issues, MSSA is most well known as being the most successful such entity in the U.S. for getting pro-gun legislation enacted at the state level. Since its founding, MSSA has gotten 70 pro-gun bills enacted into law in Montana. This does

not include various measures that have failed in process in one way or another, most commonly because of vetoes by various governors.

9. MSSA has been named by a national entity as a champion of the RKBA, and MSSA's president has twice been named as national grassroots activist of the year for the RKBA. MSSA and I, as its president, have been featured in the Wall Street Journal, on National Public Television in a documentary series concerning the Constitution, on live national cable television, and in too many other national and Montana publications to mention.

10. I am the author of *Gun Laws of Montana*, a trade paperback now in its Fifth Printing, and I am accepted as an expert in state and federal courts concerning firearm safety, self-defense, and related topics. I have been published in *The Defender*, the publication of the National Association of Criminal Defense Lawyers. I was also named as a champion of individual liberty by the delegates to the 1972 Montana Constitutional Convention.

MSSA AND HOUSE BILL 102

11. The chief features of HB102 include permit-less carry of firearms (no government permit needed to put on a coat), campus carry, bar and restaurant carry, and enhancement of existing concealed weapon

permits (CWP). All of this was included under the general title and purpose of eliminating alleged "gun free zones."

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16. Between 1991 and 2021 MSSA brought numerous bills before the Legislature to eliminate or modify the prohibited places prohibitions enacted as a part of HB90 in 1991. One successful bill clarified that the prohibition on CWP usage in places with a liquor licenses only applied where the license allowed consumption on the premises, but not places that were carry-out only such as liquor stores. Another change clarified that the prohibition in banks did not include ATMs and drive-up tellers, but only in bank lobbies. Yet another change clarified that the prohibition on CWP exercise in public buildings did not include unstaffed structures such as parking garages and highway rest stops.

17. One of the most debated issues surrounding concealed carry of firearms has long been about bars, defined as places that have a liquor

license that allows serving of alcohol for consumption on the premises. This longstanding definition includes many restaurants. The prohibitory scheme that has been in effect since 1991 has some very odd consequences that result in awkward public policy.

18. Under this scheme, if a person were having dinner with family members at a restaurant with a liquor license and the person had a CWP and was not drinking anything alcoholic, the person was still prohibited from using his CWP. However, the law did not the prohibit same conduct by a person wearing a firearm unconcealed. In a genuine bar, for customers overtly drinking alcohol, the law did not prohibit patrons from carrying openly, but only prohibited people with CWPs from using their permits there.

19. Section 45-8-328, M.C.A., the “prohibited places” prohibition, long fraught with conceptual and interpretation problems, and always a bone of public policy contention, was finally all but eliminated with HB102 in 2021.

20. The permit-less carry feature of HB102 was also the end result of a long public policy evolution and much debate. The original “shall issue” CWP bill in 1991, HB 90, allowed concealed carry of a firearm without a government permit outside the limits of a city or town. According

to the Montana League of Cities and Towns, this condition prevailed in 99.6% of Montana. Thus, since 1991, a permit has been required to cover a firearm with "clothing or wearing apparel" in only 6/10ths of 1% of Montana, inside city limits. Even inside city limits, a permit has not been required since 1991 for a person to conceal a firearm inside the person's home or place of business. Finally, a permit has not been required since 1991 for a person to conceal a firearm, even inside city limits, if the person were engaged in activity for which firearms are normally carried, such as hunting, fishing, hiking, or jogging.

21. Since 1991, there have been several bills introduced to allow people inside city limits, not in their homes or businesses, and not fishing or hiking, to carry a concealed firearm without a permit. More than one such bill passed the Legislature but was vetoed by the Governor. The argument has been made that since 1991 permit-less concealed carry for people in 99.4% of Montana has not resulted in any evidence of abuse or problems. That policy view finally prevailed in 2021 with HB102.

22. There has long been a question of whether or not the university system has the authority to deny or interfere with the RKBA the people have reserved to themselves in Article II, Section 12 of the Montana Constitution. That policy debate occurred with HB240 in 2013, which

passed House and Senate but was vetoed by Governor Bullock. It continued in 2015 with SB143 which passed the Senate but failed in the House on Second reading with a vote of 49-51. This debate was finally resolved in 2021 when the Legislature passed and the Governor signed HB102 on February 18, 2021.

23. Finally, it has long been known that citizens who will undergo required training and apply for a CWP and a criminal background check are the most problem-free, law-abiding segment of the population that can be identified. There is good reason to argue that CWP-holders should be allowed, as a matter of public policy, to exercise their permits anywhere.

24. For example, MSSA members and officers believe correctly that law enforcement personnel are very law-abiding. Statistics support this view. For every law enforcement officer convicted of a crime, there are between 43 and 57 (depending on which set of numbers one uses) members of the general public convicted of crimes. By comparison, for every CWP-holder convicted of a crime there are seven law enforcement officers convicted of crimes. This reality was finally recognized in 2021 by the Legislature and the Governor with HB102 and its enhanced ability for CWP-holders to use their permits.

MUS'S NEGOTIATED CHANGES TO THE ORIGINAL HB102

25. Not only was there considerable evolution leading up to the drafting of the introduced version of HB102—which I drafted—there were also negotiations that happened during the session that resulted in significant changes to HB102.

26. These included negotiations between the sponsor, Rep. Seth Berglee and agents of the Montana University System (MUS). I was constantly collaborating with the sponsor as proposed changes were suggested, revised, and made. There were several significant changes made to the campus carry feature of HB102 to accommodate requests made by the MUS.

27. On January 8, 2021, Helen C. Thigpen, Deputy Chief Legal Counsel for the Montana University System sent an email to HB102 sponsor Rep. Seth Berglee with a copy to House Judiciary Committee's staff attorney Rachel Weiss. A copy of this email is attached as "Exhibit 2.1."

28. Thigpen was the staff attorney for House Judiciary in the 2013, 2015, and 2017 legislative sessions. This email also copied Tyler Trevor Deputy Commissioner for Budget and Planning, and Chief of Staff for the Montana Commissioner of Higher Education. Declared in the email to be

acting on behalf of the Commissioner of Higher Education, Clayton Christian, Thigpen officially asks Berglee to make amendments to HB102 to accomplish three specified changes.

29. The three changes to HB102 requested in this email from Thigpen to Berglee were:

- a. That HB102 be amended to require that the campus carry element of HB102 be "limited to those individuals who possess a current and valid CWP." The concern expressed by MUS officials in separate communication with Berglee was to insure that people exercising prerogatives under HB102 on campus have some firearms safety training. Berglee subsequently satisfied this request with an amendment requiring that anyone possessing a firearm on campus must, at a minimum, have satisfied the firearms safety training detailed in law to apply for a CWP.
- b. That HB102 be amended "to allow restrictions at campus events, including athletics, commencement, and live performances/concerts." Berglee and I discussed this request and in response crafted amendatory language for HB102 to allow MUS restrictions for "the possession of a firearm at an athletic or entertainment event open to the public with controlled access and armed security on site."
- c. That "the bill also be revised to allow restrictions in dormitories and other student housing facilities." Berglee and I discussed this request but could not accommodate it because to do so would be counter to the core holding of D.C. v. Heller concerning persons being prohibited by a government entity from possessing a firearm in the person's domicile.

30. Amendment HB0102.001.002, made in the House Judiciary Committee to Section 6 of HB102 on January 11, 2021, limited campus

carry to persons who had completed any one of the firearms safety training options listed in Montana law to qualify a person to apply for a CWP.¹

31. Amendment HB0102.002.002 was done in the Senate Judiciary Committee on January 26, 2021, and made to Section 6 of the bill. This amendment expanded on a list of regulations appropriate for the MUS to implement and added that the campuses could prohibit the possession of firearms at "an athletic or entertainment event open to the public with controlled access and armed security on site."²

32. The third change made on January 26, 2021, to accommodate the MUS was also contained in amendment HB0102.002.008. This amendment was to Section 15 and established a delayed effective date for the campus carry portion of HB102. The MUS had asked that they be given a reasonable amount of time to implement HB 102, so a delayed effective date of June 1, 2021 was amended into HB102 by the Senate Judiciary Committee.

33. Also, during the legislative session, the Legislative Services Division recycled and reissued a Legal Note that had previously been issued

¹ See, <https://leg.mt.gov/bills/2021/AmdPublicWeb/HB0102.001.002.pdf>

² See: <https://leg.mt.gov/bills/2021/AmdPublicWeb/HB0102.002.008.pdf>

for campus carry bills before the Legislature. This Legal Note raised some of the same questions posed by BoR in its Petition. The final version of this Legal Note includes the Requester Comments that address questions raised by the Legal Note. This complete Legal Note is a prime part of the legislative history of HB102 and is attached as Intervenor's Ex. 1.

34. All of this is history that culminated with the enactment of HB 102.

MUS IMPLEMENTATION OF HB 102

35. HB102 was signed into law by Governor Gianforte on February 18, 2021. Beginning in late March, the OCHE began a process of developing policy to implement HB102 on MUS campuses. Since then, I have sent informative emails to OCHE on four separate occasions: April 7, 2021, May 8, 2021, May 12, 2021, and May 17, 2021.

36. On or about March 25, 2021, Brock Tessman, Deputy Commissioner, Office of the Commissioner of Higher Education, announced in an email to the MUS that the MUS was soliciting comment on the implementation of HB102. In response to that solicitation, on May 31, 2021, I emailed comment as indicated to the OCHE email address specified. That comment email is attached as "Exhibit 2.2."

37. On or about May 6, 2021, the OCHE published Online a draft policy set for implementation of HB102. On May 8, 2021, I emailed comment concerning that policy set to the OCHE. That comment is attached as "Exhibit 2.3."

38. On or about April 29, 2021, Brock Tessman announced in an email to the MUS that the BoR would conduct a listening session concerning HB102 implementation on May 12, 2021. I listened to that entire listening session Online. Following that session and also on May 12, I submitted comment to the OCHE and BoR concerning that session. That email is attached as "Exhibit 2.4."

39. Also following that May 12, 2021, listening session, and on May 17, 2021, I sent a follow up comment to the BoR and OCHE concerning the question raised in the listening session about whether or not to litigate in attempt to block implementation of HB102. That email is attached as "Exhibit 2.5."

40. On May 29, 2021, the Missoulian published a Guest Column that I wrote examining the BoR lawsuit to block implementation of the campus carry portion of HB102. This column was written when the BoR lawsuit was pending before the Montana Supreme Court, but was published after the MSC had rejected the lawsuit and the suit was refiled in state

District Court. Other than the venue of the suit, all of the issues addressed in this Guest Column are relevant to the case in District Court. This Guest Column is attached as “Exhibit 2.6.”

41. Before the BoR filed its initial lawsuit directly in the Montana Supreme Court, which is also before that dismissal and the subsequent refile in District Court, the MUS published at least two sets of new regulations to implement and manage campus carry under the guidelines of HB102.

42. One of these was a draft polity set published by the OCHE for BoR consideration that is attached as “Exhibit 2.7.” The other was a set of campus firearms rules published by the U. of M. Police Department. That publication is attached “Exhibit 2.8.”³

43. These two MUS publications suggest that the MUS and BoR were prepared to implement the campus carry features of HB102 before the BoR embarked on litigation to block campus carry. This preparedness is notwithstanding the claim in litigation that the MUS lacks time to implement campus carry by the June 1, 2021, delayed effective date previously negotiated between the MUS and the Legislature.

³ Exhibit 2.8 is a screenshot of the policy due to technological issues. The full webpage can be found at: <https://www.umt.edu/police/campus-carry/default.php>.

MSSA HISTORY, POLITICAL REACH AND POPULAR SUCCESS STORIES

44. One of MSSA's successes was to amend the Montana Constitution to put the right to hunt, fish, and trap into the Constitution as recognized and protected activities. When the people of Montana voted on this constitutional referendum, it received the highest percentage of voter approval of any constitutional change in Montana's history.

Montana has the best gun laws in the U.S., probably the World, primarily because of the effective pro-gun and pro-hunting political work MSSA has done in Montana.

~ David Kopel, legal scholar, Independence Institute. Following are some of the political and legal successes MSSA has achieved for Montana gun owners and hunters.

45. 1985 – Local governments preemption. Even prior to founding MSSA, the founding members worked hard for your gun rights. These founders backed law preventing local governments from passing arbitrary gun control ordinances, except for regulating the discharge of firearms inside city limits, and regulating the carrying of firearms into public parks and public buildings.

46. 1987 – Prevention of non-defective firearm liability. MSSA-backed law protects firearm manufactures and sellers from damages caused by firearms that are not defective.

47. 1989 – Sporting goods stores may exceed fire codes for storage of smokeless powder and primers. The Unified Fire Code used to specify that stores could not exceed 20 pounds of smokeless powder or 1,000 primers on premises at any time. This MSSA-backed law supersedes the UFC and allows stores to stock up to 400 pounds of smokeless powder and up to 125,000 small arms primers.

48. 1991 – Mandatory Issue Concealed Weapon Permits. MSSA-backed law states that law abiding residents can now get a permit issued within 60 days of application. Although many law enforcement agencies fought against the right to carry, MSSA prevailed.

49. 1991 – Montana Shooting Range Protection Act. MSSA-backed law prevents range closures due to contamination of soils by lead, copper, & other claims. Anti-gun groups use this to shut down ranges all over the USA. Not in Montana!

50. 1991 – Right to Keep and Bear Arms Week. This MSSA bill establishes law where the first week of March is an official period for Montanans to celebrate their cherished right to keep and bear arms.

51. 1991 – Hunting Heritage Week. This MSSA bill establishes law where the third week of September is set aside to celebrate Montana's heritage and culture of hunting game animals.

52. 1991 – Gun safety in schools. This MSSA Senate Joint Resolution encourages gun safety training in the elementary schools of Montana and directs schools to adopt a gun safety program for kids.

53. 1991 – Shooting sports in schools. This MSSA Senate Joint Resolution encourages the adoption of rimfire competition as an intramural and interscholastic sport in the high schools of Montana. In shooting sports, small, rural schools can compete on an equal footing with larger, urban schools.

54. 1993 – Easements to secure a safety zone around a shooting range. Owners and operators of a shooting range need to secure a safety zone of property adjacent to the range, but often do not have the financial resources to buy the necessary land. This MSSA-authored law allows range operators to use easements to secure safety zones around ranges.

55. 1993 – Handgun hunting districts. MSSA-backed law helped establish allowing big game hunting with handguns in special districts restricted to shotguns and muzzleloaders.

56. 1993 – Game Lawfully Taken Becomes the Personal Property of the Hunter. Prior to this law, all game was the property of the State. Even if it was in the freezer. MSSA-backed law states game (lawfully taken and tagged) is now personal property.

57. 1993 – Second Conviction of Hunter Harassment is a Felony. Formerly, conviction of hunter harassment was only misdemeanor crime. MSSA-backed law makes second conviction a felony, with hard time in state prison. Since passage of this law, Montana hunters have incurred no second hunter harassment incidents by protesters!

58. 1995 – Firearm Safety Instructors Exempt from Liability. It has become more and more difficult to recruit firearm instructors because of possible exposure of instructors' personal assets to lawsuits over gun accidents by an instructor's student. This law by MSSA exempts firearm safety instructors from acts or omissions of students as long as the instructor did not use gross negligence in training the student.

59. 1995 – Repeal the Brady Law. MSSA successfully lobbied through the Legislature a Joint Resolution of the House and Senate calling upon Congress to repeal the unwanted and unneeded federal Brady Law.

60. 1995 – Gun buys for CWP-holders under the Brady Law. MSSA-backed law specifies that if a person has a Montana Concealed Weapon Permit for which they have already had a background check pursuant to the federal Brady Law, they may buy guns from federally licensed dealers without submitting to or waiting for a background check.

61. 1997 – Gun owners not liable for criminal acts committed with stolen firearms. The 1997 Legislature passed an MSSA-backed law clarifying that a gun owner is not responsible for the misuse of a stolen firearm. Prior to this, a person could be charged with the crime committed with a stolen firearm.

62. 1997 – Over-zealous federal officers. Many people are concerned about the actions of over-zealous federal officers. MSSA believes the county sheriff should be able to protect us from federal police who exceed their authority. This MSSA-authored resolution passed in 1997:

a) asks all federal officers to notify the county sheriff prior to any arrest, search or seizure in the sheriff's county,

b) requires the Montana Department of Justice to maintain a log of federal operations in Montana and note which ones happened with the advance notice to the sheriff

c) requires the Montana Secretary of State to send copies of this resolution to a long list of federal agencies.

63. 1997 – Montana exempted from the federal “gun-free school zones”. Federal law makes it a Federal crime to travel within 1,000 feet of a school grounds if you have a firearm in your vehicle that is not both unloaded and locked away. Since Montana schools are on the main streets,

this federal law makes criminals of a majority of Montana citizens over the course of the year. Thanks to MSSA, state law is now in place that exempts anyone in Montana who is protected by Montana's constitutional right to keep and bear arms (all non-criminal adults) from this Federal law.

64. 1997 – Terrorist-free America Act. MSSA successfully lobbied in the House and Senate to pass a declaration that citizens must remain armed for national security against terrorism. Congress is now asked to pass a federal law to implement this determination.

65. 1999 – Funding shooting range development. MSSA-backed bill establishes the Shooting Range Development Act creating a program for matching grants for shooting range establishment and improvement using money from hunting license fees and administered by the Department of Fish, Wildlife and Parks. Every two years MSSA must fight for legislative appropriation to fund the SRDA. Since establishment of this program by MSSA, over \$20 million in improvements to Montana shooting ranges have occurred under the SRDA.

66. 1999 – Preventing cities from suing gunmakers. MSSA-backed bill now prevents Montana cities from filing harassment lawsuits against gunmakers.

67. 1999 – Machine guns and silencers – removal of old laws.

MSSA-written law wipes old laws off the books. As a holdover from the Prohibition era, Montana had laws making it illegal to possess full auto firearms using pistol-caliber ammo, or silencers, both in conflict with current federal law.

68. 1999 – Concealed Carry in “prohibited places”. Because of some under-the-table deal-making in 1991, the Montana law about concealed weapons permits had provisions preventing the exercise of CWP in “prohibited places”; bars, banks and public buildings. MSSA successfully advanced two bills in 1999 to roll back the “prohibited places” restrictions.

69. 1999 – Concealed Carry Reciprocity. MSSA-backed bill recognizes the permits of any states which do a criminal background check before issuing a CWP, and where the permittee has the permit and an official ID (e.g. drivers license) in possession. Many states have “we’ll recognize yours if you recognize ours”-type laws. Montana will gain immediate reciprocity with these states. Montana now recognizes the permits from most other states.

70. 2001 – Prevention of Victim’s liability for injuries to a criminal. MSSA-backed law prevents a criminal injured by his intended victim from

collecting damages from the victim for injuries sustained in the attempted crime.

71. 2001 – Wolf delisting. MSSA-backed resolution specifies the state must negotiate terms of wolf delisting favorable to Montana.

72. 2003 – Right to Hunt. MSSA-initiated measure creates a Right to Hunt, Fish, and Trap fully reserved in the Montana Constitution.

73. 2003 – Large predator management. MSSA-backed law requires the Montana Department of Fish, Wildlife and Parks to manage wolves, lions and bears for the preservation of hunting opportunities, protection of livestock and pets, and the safety of people in outdoor activities.

74. 2003 – Lautenberg warning. MSSA-backed law passed requiring judges to warn a person if an action is pending before a court that might have the effect of triggering a firearm possession disability under the federal Lautenberg law, such as a firearms-debarring divorce-action restraining order, or a guilty plea or conviction for a domestic disturbance.

75. 2005 – Non-resident minor children of Montana residents may hunt as residents. Some children of split homes have a parent who resides in Montana. Such parents have asked why their kids can't come to Montana and hunt with them using resident licenses. This MSSA-authored

law clarifies the non-resident minor children of Montana residents can hunt in Montana as residents.

76. 2003 – Game counts and methods made public. MSSA-backed law requires FWP to publish annually both game counts and game count methods, so the public may see if FWP is repairing faulty game-counting methods in the performance audit done by the Legislative Auditor.

77. 2007 – Be Safe, MSSA gun safety program for kids. This MSSA Senate Joint Resolution recognizes MSSA's Be Safe as the most suitable firearm safety program for kids in all Montana schools.

78. 2007 – No confiscation of firearms in a declared emergency. MSSA-fostered law outlaws confiscation of firearms in a declared emergency. After Hurricane Katrina, many Louisiana residents were forcibly disarmed by law enforcement authorities.

79. 2007 – Increased shooting range funding by 683%. The amount of money from hunting licenses to fund shooting range development was increased from \$180,000 to \$1,000,000 for the 2007 biennium. This money taken from hunter licenses would otherwise end up in the state general fund.

80. 2009 – Montana Firearms Freedom Act. MSSA-written law declares that any firearms, firearm accessories or ammunition made and

retained in Montana are not subject to any federal authority to regulate commerce “among the states.” Clones of our MFFA are now enacted in eight other states and introduced in 25 other states.

81. 2009 – Self-defense. MSSA’s landmark HB 228, passed in 2009 makes many important changes in Montana law about when and how a person may possess or use a firearm for self-defense without fear of prosecution for doing so. This bill does the following:

- Creates clear policy statement by the Legislature that self-defense is a natural right and that self-defense by citizens reduces crime
- Makes clear policy statement by the Legislature that the right to bear arms in Montana is a fundamental (important legal term) and individual right
- Reverses guilty-until-proven-innocent for people defending themselves
- Previously, defenders must have proven that they were justified in using force
- Legislative declaration of policy that a defender has no duty to summon help or flee before using force to defend in any place the defender has a lawful right to be
- Declares that open carry is legal in Montana
- Clarifies that a defender may announce “I have a gun,” with no more fear of prosecution under Montana’s overbroad felony “Intimidation” statute
- Clarifies that a person may show an attacker that the defender is armed, and may even draw the gun if the defender genuinely fears attack

- Requires that when police investigate an incident where self-defense is claimed investigators must collect evidence that may support a claim of self-defense as well as any other evidence
- Improves conditions for a defender to use force in any occupied structure. This applies to all occupied structures, not just a dwelling.
- Requires that police may not destroy any firearms seized – any firearms seized must either be returned to the rightful owner or sold back into the marketplace
- Specifies that landlords may not prevent tenants from possessing firearms. This not only protects travelers staying in motels, but also protects those who cannot afford to own their own homes.
- Allows restoration of the right to bear arms for people convicted of non-violent crimes who have done their time and been released from state supervision – this will not apply to a person who committed a violent crime or a crime where a weapon was used
- Creates the ability to use reasonable force to affect the citizen's arrest of a person believed to have committed a crime – to be able to hold the person until law enforcement can be summoned.

82. 2009 – Guns in National Parks. MSSA-backed bill urged Congress to permit visitors to National Parks to be able to carry firearms for self-defense (Congress subsequently passed a law to this effect.).

83. 2009 – Recruiting and retaining young hunters. MSSA-backed law allows full-time, non-resident college students, and Montana kids going to college out-of-state to purchase hunting licenses for the same cost as resident licenses.

84. 2011 – Preventing FWP from banning lead in ammunition. An MSSA-sourced bill prohibits the Department of Fish Wildlife and Parks from regulating the type of ammunition that may be used for hunting.

85. 2011 – Shooting ranges are not “nuisances”. An MSSA bill to clarify that shooting ranges may not be considered to be “nuisances” to be attacked by lawsuits.

86. 2013 – Concealed Weapon Permit info confidential. An MSSA-supported bill to require that information submitted by applicants for concealed weapon permits may not be released publicly by sheriffs or MT DoJ.

87. 2013 – Medical privacy for gun owners. Health care providers may not inquire about patients’ ownership or use of firearms.

88. 2013 – “Discharging firearms” not disorderly conduct. The act of “discharging firearms” is no longer a crime of disorderly conduct.

Note: 2012 through 2020 were the “dry years” for gun rights in Montana. Steve Bullock (D) was elected Governor and vetoed most significant pieces of pro-gun legislation for eight years. This legacy left him without much support outside the Democratic Party and he failed in his Senate bid against solidly pro-gun Steve Daines.

89. 2015 - Montana Ammunition Availability Act. This law provides tax breaks, liability protection, and access to all Montana economic development programs for any qualifying business that would manufacture small arms cartridge cases, smokeless powder, or small arms primers in Montana. It is both an economic development measure and an attempt to assure availability of ammunition components.

90. 2015 - Suppressors made legal for hunting.

91. 2017 - Montana Constitution. Defining, for the first time ever, the phrase "shall not be called in question" by which the Right to Keep and Bear Arms is reserved to the people in the Montana Constitution.

92. 2019 - HB 357, a legislative referendum to create LR-130, to restrict the powers of local governments to regulate firearms.

93. 2020 - LR-130, a referendum to change state law to curtail abuses by local governments in relation to firearm regulation.

94. 2021 - HB 102, to eliminate alleged "gun free zones," including permit-less carry, campus carry, restaurant and bar carry, and enhancement of concealed weapon permits.

95. 2021 - HB 258, to prohibit enforcement of new federal gun laws by state and local public employees.

96. 2021 - SB 283, to clarify the authority of school boards concerning firearms in schools.

97. 2021 - HB 504 was supported by MSSA but not introduced at the request of MSSA. This bill expanded on a law created by an MSSA bill in a previous session to prohibit the confiscation of ammunition, firearms accessories, and ammunition reloading equipment and supplies in a declared emergency, and prohibit the closure of businesses that sell firearms and these items and of shooting ranges.

98. 2021 - SB 370. Similar to HB 504, SB 370 was supported by MSSA but not introduced at the request of MSSA. This bill expanded on a law created by an MSSA bill in a previous session to prohibit the confiscation of ammunition, firearms accessories, and ammunition reloading equipment and supplies in a declared emergency, and prohibit the closure of businesses that sell firearms and these items and of shooting ranges.

MORE SUCCESS AND MORE SWAY

99. These are not all of MSSA's political successes, just many of them. It may also be worth note that this list of successes was achieved both when Republicans and when Democrats controlled the Legislature and the Governor's office.

100. One recent string of related successes may be worth detailing. A local government in Montana attempted to assert a form of gun control popular in coastal areas of the U.S. MSSA warned the relevant city council that this was a bad idea, unsuitable for Montana, and would be a violation of Montana preemption law at Mont. Code Ann. § 45-8-351. The city passed the proposed ordinance despite that warning.

101. MSSA arranged for an Attorney General's Opinion that informed the city that their gun control ordinance was unenforceable because it violated the Montana preemption law, just as MSSA had advised the city. The city sued to overturn the AG's Opinion, only to have the Montana Supreme Court ultimately agree with the AG in a terse decision. Then, MSSA got HB 357 passed by the Legislature to put a referendum on the ballot to tighten up the state preemption law and to prevent further such abuse of the law by local governments. That bill passed and created LR-130.

102. LR-130 was scheduled to be on the ballot for the General Election of 2020. MSSA mounted an entirely grassroots campaign to inform Montana voters about LR-130 and urge their support. MSSA spent exactly zero on this campaign. Opponents of LR-130 (mostly public employee unions) spent over \$2 million in a failed campaign to defeat LR-

130. LR-130 was approved by the voters despite the \$2 million spent by opponents and because of the effective, zero-dollar grassroots campaign mounted by MSSA.

103. In the past ten years, there have been two bills addressing campus carry. In 2013 HB 240 passed the House and Senate, but vetoed by Governor Bullock.

104. In 2015 SB 143, passed Senate, but failed failed House Second Reading by a vote of 49-51.

TEACHING EXPERIENCE

105. I was first employed as a teacher by the University of Montana in 1965. During my time as a lifelong teacher, I have instructed hundreds of people in skiing and hundreds more in first aid.

106. I have instructed many score people in fire science and in emergency medicine, both in a formal higher education setting such as university and college, as well as privately. I have also taught both in the United States and Europe.

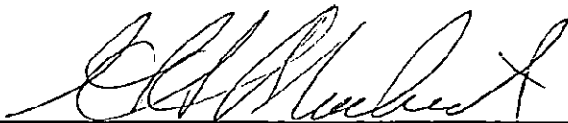
107. The Board of Regents argue that campus carry will usher in a parade of horrible and mayhem amongst the collegiate populace. One such predicted problem relates to instructors interacting with armed students. The implication seems to be such students may cause harm while

discussing controversial ideas or when receiving bad news such as a failing grade. The Board of Regents apparently base this worry off of nothing more than speculation.

108. I have taught hundreds of classes in which all of my students were armed with firearms. I have graduated over six thousand students from these classes with students ranging in age from seven to eighty-five years old. In all of these classes, my students were armed with firearms and held loaded firearms in their hands.

109. Despite having to fail students for cause and having to ask they leave the class, there has never been an instance during my career where a student threatened me or where I felt my safety was in jeopardy because of a dangerous student.

I DECLARE UNDER PENALTY OF PERJURY THAT THE
FOREGOING IS TRUE AND CORRECT.



Gary Marbut

Date of Signature: JUNE 3, 2021

City and State of: Missoula Montana

----- Forwarded message -----

From: **Thigpen, Helen** <hthigpen@montana.edu>

Date: Fri, Jan 8, 2021 at 14:41

Subject: HB 102 - Amendments

To: Rep.seth.berglee@gmail.com <Rep.seth.berglee@gmail.com>, Seth.Berglee@mtleg.gov
<Seth.Berglee@mtleg.gov>

CC: Weiss, Rachel <RWeiss@mt.gov>, Trevor, Tyler <ttrevor@montana.edu>

Representative Berglee,

On behalf of Commissioner Christian, I'm writing to share the attached amendments for House Bill 102. Our highest priority for the amendments is to ensure that if House Bill 102 is passed and approved, it is limited to those individuals who possess a current and valid CWP. The second priority is to allow restrictions at campus events, including athletics, commencement, and live performances/concerts. We would also ask that the bill also be revised to allow restrictions in dormitories and other student housing facilities.

Please do not hesitate to contact myself or Tyler Trevor with any questions. I can be reached this weekend at 406-546-4593. We understand that House Judiciary plans to take action on Monday.

Sincerely,

Helen

Helen C. Thigpen

Deputy Chief Legal Counsel

Montana University System

PO Box 203201

Helena, MT 59620-3201

406.449.9167 | hthigpen@montana.edu

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Subject: Comment on BoR HB 102 policy

From: MSSA <mssa@mtssa.org>

Date: 4/7/21, 2:07 PM

**To: oche@montana.edu, "Unsworth, Amy"
<AUnsworth@montana.edu>**

**CC: cchristian@montana.edu, Seth Berglee
<sethberglee@gmail.com>**

**BCC: Quentin Rhoades <qmr@montanalawyer.com>,
Stephanie Dwyer <stephanie.m.dwyer@gmail.com>**

Dear Regents,

This message is official comment concerning the Board's pending implementation of House Bill 102 of the 2021 Montana legislative session.

First, an introduction is in order. The Montana Shooting Sports Association (MSSA) is the primary political advocate for Montana firearm owners. MSSA was also the lead proponent for HB 102 before the Legislature. MSSA is a nonprofit corporation and has members in all Montana communities.

I wrote HB 102, as well as the campus carry bills introduced in previous sessions of the Legislature. I am also the author of *Gun Laws of Montana*, a trade paperback book now in its Fifth Printing and the accepted reference on that subject. Further, I am a veteran firearms safety instructor and accepted as an expert in state and federal courts concerning firearm safety, self defense, and related topics.

Some commenters may urge the Board to litigate the constitutionality of the campus carry provision of HB 102, based on the authority allowed the Board in Article X of the Montana Constitution to manage the affairs of the university system. This issue is addressed in Section 3(1) of HB 102 which says: " (1) Nowhere in Article X, section 9(2)(a), of the Montana constitution is any power granted to amend, suspend, alter, or abolish the Montana constitution, nor is any power granted to affect or interfere with the rights the people have reserved to themselves specifically from interference by government entities and government actors in Article II of the Montana constitution." This issue is also addressed by Section 5 of HB 102.

In addition, the HB 102 Sponsor addressed this question in his response to a Legal Review Note about HB 102 by the Legislative Services Division. That Sponsor's response is a part of the legislative history of HB 102 and is attached as a part of this comment.

This leads to the question, "What conduct may the Board regulate under the law created by HB 102?"

First, it is useful to note that the Board has no authority to create criminal sanctions or restrictions that

apply to the general public. The Board does have authority to adopt policies that apply to two classes of people, university system employees and university system students. These authorities will necessarily only apply when people of these two classes are on campus - present on property that is under the authority of the Board.

Then, the refined question posed to the Board becomes, "In what ways may the Board apply its authority to regulate employees and students on campus?"

The answer to this question is specifically detailed in Section 6 of HB 102.

It may be useful to note that the limitations on Board authority in HB 102 apply specifically to a "person eligible to possess a firearm under state or federal law." Thus, persons not eligible to possess firearms are subject to more restrictive policy adopted by the Board. Further, for a person to be subject to the policy limitations in Section 6 of HB 102, the person must also meet the minimum safety and training requirements of 45-8-321(3) (attached).

In the final distillation of the authority allowed the Board under HB 102, the Board may adopt policies that apply to employees and students on campus, any such policies are strictly limited to the list contained in Section 6(2), but only if the employee or student is eligible to possess firearms and meets the minimum safety training requirements specified in law.

HB 102's Section 6(2) is very specific about what conduct the Board may regulate for these two classes of qualified people on campus.

This dramatically narrows and focuses the task the Board has to fashion a policy consistent with HB 102.

Here is the list in Section 6(2) of HB 102, which is the limit of what the Board is allowed regulate for qualified employees and students on campus:

- (a) the discharge of a firearm on or within university system property unless the discharge is done in self-defense;
- (b) the removal of a firearm from a gun case or holster unless the removal is done in self-defense or within the domicile on campus of the lawful possessor of the firearm;
- (c) the pointing of a firearm at another person unless the lawful possessor is acting in self-defense;
- (d) the carrying of a firearm outside of a domicile on campus unless the firearm is within a case or holster;
- (e) the failure to secure a firearm with a locking device whenever the firearm is not in the possession of or under the immediate control of the lawful possessor of the firearm;
- (f) the possession or storage of a firearm in an on-campus dormitory or housing unit without the express permission of any roommate of the lawful possessor of the firearm;
- (g) the possession or storage of a firearm by any individual who has a history of adjudicated university system discipline arising out of the individual's interpersonal violence or substance abuse;
- (h) the possession of a firearm at an event on campus where campus authorities have authorized alcohol to be served and consumed; and
- (i) the possession of a firearm at an athletic or entertainment event open to the public with controlled access and armed security on site.

The Board's new firearm policy, to be consistent with HB 102, will contain no provisions limiting qualified persons that are more restrictive than what is on this list. It will likely be a simple restatement of this list, although the Board is allowed to adopt a policy less restrictive than this list.

A restatement of this list with some comment and explanation is attached for the Board's consideration and use.

Please feel free to contact me at 549-1252 or mssa@mtssa.org to discuss any of this.

Sincerely,

--
Gary Marbut, president
Montana Shooting Sports Association
<http://www.mtssa.org>
Author, Gun Laws of Montana
<http://www.MtPublish.com>

— Attachments: —

HB102LRN Sponsor comment.doc	33.5 KB
Safety_Training.doc	20.5 KB
Campus policies v1.doc	25.5 KB

Subject: Comment, DRAFT HB 102 MUS policy
From: MSSA <mssa@mtssa.org>
Date: 5/8/21, 5:03 PM
To: oche@montana.edu
CC: "Unsworth, Amy" <AUnsworth@montana.edu>, cchristian@montana.edu, Quentin Rhoades <qmr@montanalawyer.com>, Seth Berglee <sethberglee@gmail.com>, abovingdon@montana.edu

Dear Sirs,

This is comment on the recently posted and proposed MUS policy for implementing HB 102.

<https://www.mus.edu/board/draft-policy-recommendation.html>

1. Section A. Applicability. MUS authority over employees and students is assumed. Authority over affiliates, contractors, vendors may be debatable, but the MUS has no authority whatsoever over visitors on this public property who are not within the previous categories.

2. Section C. Certification process. Under Montana law (45-8-322(7), M.C.A.), the information contained on a Montana concealed weapon permit is "confidential criminal justice information." Therefore, retaining copies of concealed weapon permits or compiling any list of people who have a valid concealed weapon permit will be a violation of both statute and the right to privacy at Article II, Section 10 of the Montana Constitution. Further, subsection (7) of 45-8-322 was added to the law specifically to prevent disclosure of names of and information about individuals who have concealed weapon permits. If the MUS were to compile and retain such information, that compilation would become subject to disclosure under right to know, which would then be in conflict with 45-8-322(7) and the right of privacy.

Section D. Campus Housing. The proposed policy mostly refers to firearms correctly as firearms, except when using terms of legal art, such as referring to a "concealed weapon permit." However, Section D uses the word "weapon" as if it were synonymous with the word "firearm." It is not synonymous. When used as an alternative to "firearm", the word "weapon" is pejorative in that it implies an offensive purpose. Many things may be used as a weapon, including a fist, a baseball bat, or an automobile. They are not correctly called "weapons" unless they are used as a weapon. Nearly all firearms use is not as a weapon. This comment also applies to other occurrences of the word "weapon" in the draft policy.

Section E. Restricted areas. All of subsections 2 and 3 are beyond the authority of the MUS under a plain reading of state law enacted by HB 102. Certainly it will be argued that there are allegedly good reasons for including the prohibitions in subsections 2 and 3, but these will be the same reasons as for

the previous total denial of campus carry altogether, reasons that have been rejected by the Legislature and that are now invalid under prevailing law. Adding these prohibited places to those limited few contained in statute has the pretense of amending HB 102, of creating state law, and is without authority.

Section F. Rules and Restrictions Governing Firearm Possession. Concerning subsection 4, the Montana Operations Manual is inferior to the Montana Code Annotated. The M.C.A. as revised by HB 102, simply does not allow the restrictions contained in this subsection.

Section G. Penalty for Violation. Please specify what state statutes may be relied upon and what crimes may be alleged for subsection 1.

Section H. Enforcement. This section should include mention of and consequences for false reporting, reporting done to harass any person, or reporting done only out of irrational and unjustified fear.

Section I. Liability. The MUS may disclaim liability for itself and its agents, but it may not attribute or assign liability to others.

Section K. Definitions. Locking device. Trigger locks and cable locks are also commonly used and generally accepted as security devices for firearms.

Sincerely yours,

--

Gary Marbut, president
Montana Shooting Sports Association
<http://www.mtssa.org>
Author, Gun Laws of Montana
<http://www.MtPublish.com>

Subject: Comment on HB 102 listening session
From: MSSA <mssa@mtssa.org>
Date: 5/12/21, 7:40 PM
To: regentrogers@montana.edu, oche@montana.edu
CC: abovingdon@montana.edu, cchristian@montana.edu
BCC: Stephanie Dwyer <stephanie.m.dwyer@gmail.com>,
Quentin Rhoades <qmr@montanalawyer.com>

Dear Regent Rogers and others,

This is comment about two dominant themes from the May 12th listening session about HB 102 implementation. One comment is legal, and one is philosophical.

I trust you have seen my comment for MSSA on the current OCHE DRAFT proposal. If you have, you know of me as the author of HB 102 and the author of *Gun Laws of Montana*, a book now in its Fifth Printing. I hope those credentials cause my comments to be credible.

1. Litigation. Many commenters urged the BoR to not comply with HB 102, but to pursue litigation in attempt to rebuff HB 102. Before you make any decision about that, you should review the Requestor Comments to the Legal Review Note by the Legislative Services Division. I do not find that Legal Review Note available on the Legislature's Website, so I am attaching a .pdf file copy of it for your review. This is a part of the legislative record for HB 102, so it would become a part of any litigation over HB 102 and campus carry. The information contained in the Requestor Comment to this Legal Review Note will be critical to any decision you may make about litigation over HB 102.

2. Young adults are simply not competent. Several commenters mentioned, in one way or another, that young people in college have brains that are not fully formed, and that these young people are just not competent. I am not a psychologist or neurologist, so I cannot advise you about that. However, I must note a certain hypocrisy for those who are eager to register these same young people to vote. If these young adults are not competent to safely possess firearms, then they are also not competent to marry, to make personal health care choices, to vote, or to join the military. If they are competent to do all those other things, then they must also be competent to possess firearms.

As an addendum, many people commenting today declared various credentials associated with education. I should do the same. My first employment as an instructor was by the University of Montana in 1965. I taught mountain rescue and other subjects for the U.S. Army in the late 1960s. I taught first aid for the

American Red Cross and emergency cardiac care for the American Heart Association in the 1960s and 70s. I taught emergency medicine for the Tanana Valley Community College and Fire Science for the University of Alaska in the 1970s. Since then I have been a private instructor and have graduated over 6,000 students from curricula about firearms safety, Montana gun laws, and self defense. My primary calling is as an educator. I have a lot of experience in education, including curricula development.

That reminds me to say that many of the complaints voiced by HB 102 opponents today can well be addressed through education. Since education is the business of the MUS, it would seem natural to use that expertise to address susceptible issues. I would be glad to collaborate about that, as needed.

Best wishes,

--

Gary Marbut, president
Montana Shooting Sports Association
<http://www.mtssa.org>
Author, Gun Laws of Montana
<http://www.MtPublish.com>

—Attachments:—

HB0102LRN.pdf

88.6 KB

Subject: To litigate or not? Ask the right question.

From: MSSA <mssa@mtssa.org>

Date: 5/17/21, 6:31 PM

To: regentrogers@montana.edu, oche@montana.edu,
cchristian@montana.edu, abovingdon@montana.edu

BCC: Quentin Rhoades <qmr@montanalawyer.com>,
Stephanie Dwyer <stephanie.m.dwyer@gmail.com>

Dear Regents,

Greetings from Missoula.

The media reports, "The Board of Regents directs the commissioner of higher education to request, on behalf of the board, judicial review of HB 102 to determine whether the law improperly encroaches upon the constitutional role and autonomy of the board."

If this media report is correct, then you unfortunately have asked the wrong question. If you ask the wrong question, you are bound to get a wrong answer.

You see, HB 102 only announces that the Regents are controlled by the Constitution, just as all other elements of state and local government in Montana are. HB 102 is not so much the Legislature telling the Regents what to do as it is the Legislature reminding the Regents that there is more to the Montana Constitution than just Article X.

First, the Board of Regents is created by the Constitution, so it is subservient to the Constitution, just as are all other governmental elements in Montana.

Second, the Constitution contains both authorities and restrictions. For the Regents to look only at the authority offered in Article X and refuse to recognize the restrictions contained in Article II is an error of legal thinking - an error of basic Civics 101. This was discussed briefly by the Montana Supreme Court in *Board of Regents v. Judge*.

A more germane question would be, "Is the power of Board of Regents constrained by Article II as well as created and empowered by Article X?" Only if you ask the right question will you get an answer that is useful to you in the context of HB 102.

You may deliberately wish to ask the wrong question in order to get an answer you want and are predetermined to obtain. However, to do the people's business

To litigate or not? Ask the right question.

honestly, you should really ask the right question so that valid policy can be formulated on a correct answer.

I hope this is helpful.

Best wishes,

--

Gary Marbut, president
Montana Shooting Sports Association
<http://www.mtssa.org>
Author, Gun Laws of Montana
<http://www.MtPublish.com>

https://missoulian.com/opinion/columnists/online-opinion-regents-v-montana-the-philosophical-argument/article_014407de-4d09-5ea3-b965-1a496f6920c4.html

EDITOR'S PICK

Guest column

Online opinion: Regents v Montana, the philosophical argument

GARY MARBUT

May 29, 2021



Marbut

Provided photo

GARY MARBUT

The Montana Board of Regents has sued in the Supreme Court in attempt to block and disallow the campus carry feature of House Bill 102. In this lawsuit, the regents sweep in for undoing much more than just the campus carry sections of HB 102.

Regents argue that because they are given authority to manage the affairs of the university system in Article X of the Montana Constitution, then they are exempt from the restraints of Article II, the Declaration of Rights, in anything that has to do with their university management authority.

EXHIBIT 2.6

They do not declare this directly, but it is implicit in their argument for their own authority and for their assertion that the Legislature is unconstitutionally attempting to usurp their constitutional authority with HB 102.

First, when the regents seek to paint the Legislature as the usurping bully, they conveniently ignore that the governor also approved HB 102. So, it is not just the legislative branch involved in this alleged usurpation, it is also the executive branch. The regents should know that the governor and the Legislature are properly representing the will of the people in this contest.

Second, HB 102 is not a matter of the Legislature improperly assuming powers belonging to the regents. Rather, it is a matter of both the Legislature and the governor reminding the regents that all state governmental entities are subject to the restraints in Article II, including the regents.

Third, looking from the 10,000-foot view, all political power is vested in the people, as is overtly declared in Article II, Section 1. The people delegate a measured amount of their personal political power to governmental entities in a contract called the Montana Constitution. As a part of that contract, the people also spell out what powers are *not* delegated to governmental entities, restrictions primarily memorialized in Article II.

While the regents may be delegated some limited powers in Article X, that simply does not include the power to ignore the firm limitations of power for all governmental entities detailed in Article II. The people simply do not consent to any governmental exercise of power that they reserve to themselves specifically from government interference in Article II. The people declare this very overtly and clearly in Montana's Declaration of Rights, Article II of the Montana Constitution. These reservations of authority include freedom of the press, religion, speech, assembly, right to know, right to privacy, due process, trial by jury, right to keep and bear arms, and much more.

Fourth, for there to be any concurrence that the regents, having been created by Article X, are somehow therefore exempt from Article II restrictions, at least when operating in their own sphere, would logically require that any other entity created and given power by the Constitution would also be exempt from Article II restraint. This would include, at a minimum, the executive, the legislative, and judicial branches, and all state officers such as the governor,

EXHIBIT 2.6

the secretary of state, the attorney general, the state auditor, the superintendent of public instruction, the Public Service Commission and even local governments. All of these are created by the Constitution, just as the Board of Regents is.

Under the Regents' argument, any or all of these entities are free to conduct trials without juries, impose a death penalty regardless of state law, eradicate freedom of the press, ban religion, foul the environment, ban firearms, and much more.

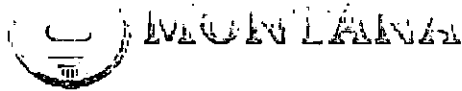
This construction, of course, would be absurd. But, this construction is what would be logically required if it is held that the regents, just because they are created and offered limited power by the Constitution, are somehow thereby exempt from the constraints on government overtly and purposefully put into the Constitution by the people at Article II.

The regents ask the Montana Supreme Court to support and enforce all of this. And, the Montana Supreme Court is unpredictable enough to concoct some convoluted rationale that supports the regents. Have no confusion about this. This is a bare power struggle between the education industry and the people of Montana.

The education establishment presumes the power to do whatever it wants, regardless of what the people of Montana want or any constraints on government power the people have built into the Montana Constitution. The Legislature and the governor have come down on the side of the people. It remains to be seen which side the Montana Supreme Court will take.

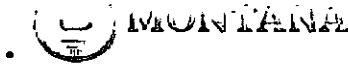
Gary Marbut has been observing and participating in Montana public policy formulation for a half century. Marbut drafted the introduced version of House Bill 102 on behalf of the Montana Shooting Sports Association, of which he is president. Marbut has drafted scores of bills for legislative consideration over the years. More than 50 of those have ultimately been enacted into law.

EXHIBIT 2.6



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Draft Policy Recommendation

DRAFT LANGUAGE FOR BOARD OF REGENTS CONSIDERATION

UPDATING POLICY 1006 GOVERNING FIREARMS, SECURITY AND LAW ENFORCEMENT
OPERATIONS

Section A. Applicability. This policy applies to all members of the MUS community including students, employees, affiliates, contractors, vendors, and visitors.

Section B. Eligibility. A person who 18 years of age or older is eligible to possess a firearm under state or federal law and who meets the minimum safety and training requirements in § 45-8-321(3), MCA, may possess a firearm on a MUS campus and in campus housing unless otherwise prohibited by state or federal law or this policy.

Section C. Certification Process. In order to establish that a person meets the minimum safety measures and training required to possess a firearm a person must provide documentation to the entity designated by the campus president of:

1. A valid Montana concealed weapons permit or a valid permit of another state having reciprocity with Montana;
2. If the person does not possess a valid Montana concealed weapons permit or permit of another state having reciprocity with Montana, they must provide:
 - a. Certification of:
 - i. completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;
 - ii. completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;
 - iii. completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;
 - iv. completion of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (a)(i) through (a)(iii); or
 - v. evidence of military service, during which the person was found to be qualified to operate firearms, including handguns.
3. A person living in campus housing must also complete a Campus Life Safety course offered by the MUS.
4. Certification under this part may be denied to a person who has a history of adjudicated university system discipline arising out of the individual's interpersonal violence or substance abuse.
5. A person must complete the certification process set forth in this policy in order to be eligible to be carry a firearm on a MUS campus.

Section D. Campus Housing. (1) Residents in campus housing shall notify the campus, whether they intend to store a firearm in their housing unit and whether they expressly consent to be assigned a roommate who intends to possess a firearm within their housing unit. Residents must be notified if they are assigned to a roommate who is certified to possess a weapon pursuant to this policy. A resident who wishes to withdraw their consent must notify campus housing in writing and campus housing must make alternative housing arrangements within a reasonable time after receiving written notice.

Section E. Restricted Areas.

1. Possession of a firearm is not allowed in the following areas:
 - a. any event on campus where campus authorities have authorized alcohol to be served and consumed; or
 - b. any event on campus open to the public with controlled access and armed security on site.
2. The campus may restrict the possession of a firearm in the following areas:
 - a. campus child care centers;
 - b. activities or events on campus serving k-12 youth groups, including in campus housing for overnight activities or events;

- c. any health care facility where licensed health care professionals or individual under their supervision receive or treat patients;
 - d. high hazard research areas, laboratories, or studios where the presence of high hazard materials or operations creates a significant risk of catastrophic harm due to a negligent discharge, for example, BioSafety Level 3 laboratories, animal care/use facilities, and areas having high magnetic fields, such as MRI research facilities; or
 - e. research areas and laboratories in which research subjects are high risk (e.g., subjects with diagnosed psychological disorders, subjects diagnosed with Post-Traumatic Stress Disorder), or where the integrity of psychological research could be compromised.
3. A campus may establish a limited number of secure hearing rooms where firearms and ammunition are restricted as needed to conduct hearings or disciplinary proceedings. The restriction of firearms, ammunition, or dangerous weapons in the secure hearing room may be in effect only during the time the room is in use for hearings or disciplinary proceedings and for a reasonable time before and after.
 4. The owner of private property, including a tenant or lessee, may expressly prohibit firearms.

Section F. Rules and Restrictions Governing Firearm Possession.

1. A person who has established eligibility to possess a weapon pursuant to this policy must secure the firearm with a locking device whenever the firearm is not in the person's possession.
2. Any firearm carried pursuant to this policy should be kept concealed on or about the eligible person at all times.
3. A person may not:
 - a. discharge a firearm on or within campus or campus housing unless the discharge is done in self-defense;
 - b. remove a firearm from a gun case or holster while on campus unless the removal is done in self-defense or within the domicile of the lawful possessor of the firearm;
 - c. point a firearm at another person unless the lawful possessor is acting in self-defense; or
 - d. carry a firearm outside of a domicile on campus unless the firearm is within a case or holster.
4. Consistent with the Montana Operations Manual, a person may not carry a concealed firearm without a valid permit issued pursuant § 45-8-321, MCA or recognized pursuant to § 45-8-329, MCA, or open carry a firearm in a state building in areas where classes are taught.

Section G. Penalty for Violation.

1. Violation of this policy may also constitute a criminal offense and be referred to campus police or a local law enforcement agency for investigation and prosecution.
2. A student who violates the terms of this policy will be subject to disciplinary action pursuant to the student code of conduct up to and including expulsion.
3. An employee who violates the terms of this policy will be subject to employee discipline up to and including termination.

Section H. Enforcement.

1. Any person who observes a violation of this policy should report it to campus law enforcement or the entity designated by the President.
2. Faculty and staff are not responsible for enforcement of this policy.

Section I. Liability. A person who carries a firearm pursuant to this policy is solely responsible for any injury or property damage involving the firearm. The MUS is not liable for any wrongful or negligent act or omission related to actions of a person who carries a firearm.

Section J. Security and Law Enforcement Operations. The CEO of each campus shall have general control and direction of the police or security department of his or her campus in accordance with the policies of the Board of Regents. A campus may contract with private security companies for the provision of security services.

Section K. Definitions.

Campus Housing means Montana University System campus-owned or -leased buildings or facilities for the purpose of student, employee, or affiliate residence. A unit in campus housing may be a single room or multi-room space.

Gun Case means a covering made for the purpose of protecting a gun that is generally hard-sided or made of cloth or leather that may be locked and sometimes including a handle for carrying the gun when it is not being used. Backpacks, duffel bags, purses or similar items are not gun cases under this policy.

Holster means a holder made for a firearm attached to the body by a belt or shoulder harness. A holster must completely cover the trigger and the entire trigger guard area and have sufficient tension or grip on the handgun to retain it, even when subjected to unexpected jostling.

Locking Device means a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

Roommate means residents assigned or approved (e.g. the spouse of a student) to live in the same campus housing unit by the university residence life or housing office.

Resident means a person residing for any length of time in campus housing. The term includes individuals on campus for non-MUS events such as summer youth camps, athletic events, or other community events utilizing campus housing.

Self Defense as defined by Montana law means the use of force or threat to use force against another when and to the extent that the person reasonably believes that the conduct is necessary for self-defense or the defense of another against the other person's imminent use of unlawful force. However, the person is justified in the use of force likely to cause death or serious bodily harm only if the person reasonably believes that the force is necessary to prevent imminent death or serious bodily harm to the person or another or to prevent the commission of a forcible felony.

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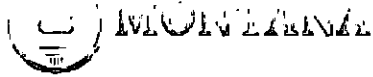
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Office of the Commissioner
of Higher Education

560 N. Park Ave, PO Box 203201
Helena, MT 59620-3201



[edit](#)

UM Campus Carry Information

Statement of Individual Rights and Responsibilities

The University of Montana recognizes the law supporting an individual's right to carry firearms on campus. It is every individual's duty to understand that with that right, there are also inherent responsibilities. Just like a person with a driver's license is expected to know the rules of the road in each state he or she drives through, it is the responsibility of the firearms carrier to understand the laws, rules, and regulations associated with their carrying of a firearm on the university campus.

A person who chooses to lawfully carry a firearm on campus is personally responsible for any death, injury, or damage, as a result of the unlawful or negligent use of their firearm or weapon. Any person who violates the laws or rules while on campus may be subject to criminal prosecution and/or discipline by the University, up to and including expulsion or termination. If you observe someone displaying a handgun or other weapon on campus, which is not in a holster or case, you should immediately report it to the University of Montana Police Department by dialing 911 or (406) 243-4000.

All persons carrying firearms on campus must always adhere to the universal firearm safety rules whenever the firearm is legally out of the holster or case. Any violation of these rules or the other prohibited actions listed here are considered a rule violation or law violation and is subject to disciplinary action up to and including expulsion or termination and/or criminal charges.

Rule #1: Treat every gun as if it is loaded. Even if you know the gun is unloaded, treat it with the same level of respect as you would a loaded gun.

Rule #2: Never let the muzzle cover anything you're not willing to destroy. The fact that the gun is unloaded is not an excuse to violate this rule (see rule #1).

Rule #3: Keep your finger off the trigger and outside the trigger guard until you are ready to shoot. The only time your finger goes on the trigger is when you are pointing the gun at a target and prepared to shoot.

Rule #4: Be sure of your target, what is in line with your target and what is beyond your target. You must be certain that what you are about to shoot is a valid target, and there is nothing in front of or behind it that you are not willing to shoot.

- The discharge of a firearm on or within university system property unless the discharge is done in self-defense is expressly prohibited.
- The removal of a firearm from a holster or gun case on university property and outside the possessors domicile, is expressly prohibited except in circumstances reasonably requiring legitimate self defense
- the removal of a firearm from a holster or case, by a person who is not the lawful possessor of said firearm, is expressly prohibited.
- removal of a firearm from a holster or case while in domicile is allowed for legitimate purposes such as storage.
- The pointing of a firearm at another person unless the lawful possessor is acting in self-defense is strictly prohibited and is a violation of Montana Law.
- When carrying a firearm outside of a domicile on campus the firearm MUST be within a case or holster at all times.

The university strongly encourages those who wish to bring firearms to campus to store them with the University of Montana Police Department. UMPD has a secure vault for storing firearms free of charge, and allows access to those stored firearms 24 hours a day, 7 days a week, 365 days a year. Storing firearms in this location eliminates the possibility of theft and provides for a safer campus.