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FILED

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

Attorneys for Respondent

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

(email)

<p>BOARD OF REGENTS OF HIGHER EDUCATION OF THE STATE OF MONTANA,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>THE STATE OF MONTANA, by and through Austin Knudsen, Attorney General of the State of Montana in his official capacity,</p> <p style="text-align: center;">Respondent.</p>	<p>Cause No. BDV-2021-598</p> <p>Hon. Michael F. McMahon</p> <p>RESPONDENT'S ANSWER TO PETITION FOR DECLARATORY RELIEF</p>
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Respondent the State of Montana (the State) answers the Petition for Declaratory Relief filed May 27, 2021, by the Board of Regents (Petitioner or the Board) as follows:

FIRST DEFENSE

Responses to Specific Allegations

In paragraphs numbered to correspond to those in the Petition, the State answers and responds to the specific allegations in the Petition as follows:

PARTIES AND VENUE

1. As to the first sentence in Paragraph 1, admit. The remaining allegations in Paragraph 1 consist of legal conclusions for which no response is required and cite Montana Constitution, Article X, § 9(2)(b), Montana Code Annotated § 20-25-301, and *Sheehy v. Commissioner of Political Practices*, 2020 MT 37, 399 Mont. 26, 458 P.3d 309, which speak for themselves and are the best evidence of their contents.

2. The allegations in the first sentence of Paragraph 2 are legal conclusions for which no response is required and cite Montana Constitution, Article X, § 9(2)(c), which speaks for itself and is the best evidence of its contents. As to the second sentence of Paragraph 2, admit. The last sentence is a legal conclusion for which no response is required.

3. In response to the first sentence of Paragraph 3, admit. The remaining allegations are legal conclusions for which no response is required

and cite Montana Code Annotated § 2-15-501(6) and Mont. R. Civ. P. 5.1, which speak for themselves and are the best evidence of their contents.

4. The allegations in Paragraph 4 are legal conclusions for which no response is required, and *Western Traditions Partnership, Inc. v. State*, 2012 MT 271, 367 Mont. 112, 291 P.3d 545, and *Finke v. State*, 2003 MT 48, 314 Mont. 314, 65 P.3d 576, speak for themselves and are the best evidence of their contents.

5. The allegations in Paragraph 5 are legal conclusions for which no response is required.

GENERAL ALLEGATIONS

6. Paragraph 6 sets forth Petitioner's request for relief, to which no response is necessary. To the extent a response is necessary, the State denies that Petitioner is entitled to relief on any claim alleged in the Petition.

7—12. In response to Paragraphs 7 through 12, the State refers to HB 102 for its contents and denies allegations to the extent they state or imply legal conclusions outside the plain text of HB 102.

13. In response to the first sentence of Paragraph 13, admit. As to the remaining allegations, HB 102 speaks for itself and is the best evidence of its contents.

14. In response to Paragraph 14, the phrase "unconstitutional overreach" is a characterization to which no response is required. The

remaining allegations are legal conclusions for which no response is required, and HB 2 speaks for itself and is the best evidence of its contents.

15. As to the first sentence of Paragraph 15, deny. The remaining allegations are legal conclusions for which no response is required. The State refers to *Sheehy v. Commissioner of Political Practices*, 2020 MT 37, 399 Mont. 26, 458 P.3d 309, for its contents and denies allegations to the extent they state or imply otherwise.

16. In response to Paragraph 16, the phrase “longstanding policy” is a characterization to which no response is required. Policy 1006 speaks for itself and is the best evidence of its contents. The State admits that what appears to be Policy 1006 is attached to the Petition as Exhibit 2.

17. The State lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 17.

18. As to the first sentence of Paragraph 18, the State lacks sufficient knowledge or information to admit or deny. The remaining allegations are legal conclusions for which no response is required.

19. In response to Paragraph 19, HB 102 speaks for itself and is the best evidence of its contents. Petitioner’s remaining allegations are speculative, and the State therefore lacks sufficient knowledge or information to admit or deny the allegations.

20. In response to Paragraph 20, the allegations are legal conclusions for which no response is required and cite HB 2, which speaks for itself and is the best evidence of its contents. The State admits that what appears to be an excerpt of HB 2 is attached to the Petition as Exhibit 3.

COUNT I: DECLARATORY RELIEF

21. The State incorporates by reference its responses to the allegations of the preceding paragraphs.

22. The allegations in Paragraph 22 are statements of law to which no response is required. Montana Code Annotated § 27-8-202 speaks for itself and is the best evidence of its contents.

23.—27. The allegations in Paragraphs 23 through 27 are legal conclusions for which no response is required. *Bullock v. Fox*, 2019 MT 50, 395 Mont. 35, 435 P.3d 1187, *Sheehy v. Commissioner of Political Practices*, 2020 MT 37, 399 Mont. 26, 458 P.3d 309, *Duck Inn, Inc. v. Montana State University-Northern*, 285 Mont. 519, 949 P.2d 1179 (1997), *Board of Regents v. Judge*, 168 Mont. 433, 543 P.2d 1323 (1975), and Montana Code Annotated § 27-8-202 speak for themselves and are the best evidence of their contents.

28. The State admits that Policy 1006 has been in place in its current form since 2012. As to the remaining allegations in Paragraph 28, deny.

29.—30. The allegations in Paragraphs 29 and 30 are legal conclusions for which no response is required. HB 102 speaks for itself and is the best evidence of its contents.

31. The allegations in Paragraph 31 are legal conclusions to which no response is required. Article X, § 9 and *Sheehy v. Commissioner of Political Practices*, 2020 MT 37, 399 Mont. 26, 458 P.3d 309, speak for themselves and are the best evidence of their contents. As to the allegation that the Legislature “impermissibly infringed on BOR’s authority,” deny.

32. The allegations in Paragraph 32 are a characterization of the Petition for which no response is required.

33. Paragraph 33 contains legal conclusions for which no response is required. *Montana Association of Counties v. State*, 2017 MT 267, 389 Mont. 182, 404 P.3d 733, speaks for itself and is the best evidence of its contents. To the extent Paragraph 33 constitutes a characterization of Petitioner’s challenge, no response is required.

34. In response to Paragraph 34, deny.

35. Paragraph 35 states the relief Petitioner is requesting and requires no response. To the extent a response is necessary, the State denies that Petitioner is entitled to relief on any claim alleged in the Petition.

COUNT II: INJUNCTIVE RELIEF

36. The State incorporates by reference its responses to the allegations of the preceding paragraphs.

37.—39. In response to Paragraphs 37 through 39, the State refers to Montana Code Annotated § 27-19-201, *Driscoll v. Stapleton*, 2020 MT 247, 401 Mont. 405, 473 P.3d 386, and the Montana Supreme Court's Order in cause number OP 21-0246, *Board of Regents v. State*, for their contents and denies allegations to the extent they state or imply otherwise.

40. In response to Paragraph 40, deny.

41. As to the first sentence of Paragraph 41, deny. The allegations of the second sentence are speculative and do not require a response. As to the third sentence of Paragraph 41, admit that the Board received public comment regarding HB 102 but otherwise deny. The State admits that what appears to be an unofficial transcript of the Board's May 12, 2021 listening session is attached to the Petition as Exhibit A to Exhibit 4.

42.—43. The allegations in Paragraphs 42 and 43 are legal conclusions for which no response is required. *Driscoll v. Stapleton*, 2020 MT 247, 401 Mont. 405, 473 P.3d 386, and Montana Code Annotated § 27-19-201 speak for themselves and are the best evidence of their contents.

44.—45. Paragraphs 44 and 45 set forth the relief Petition is requesting and require no response.

COUNT III: TEMPORARY RESTRAINING ORDER

46. The State incorporates by reference its responses to the allegations of the preceding paragraphs.

47. The allegations in Paragraph 47 are legal conclusions for which no response is required, and Montana Code Annotated § 27-19-314 speaks for itself and is the best evidence of its contents.

48. Paragraph 48 sets forth the relief Petitioner seeks in Count II; therefore, no response is required.

49.—50. The allegations in Paragraphs 49 and 50 are legal conclusions for which no response is required.

51.—52. In response to Paragraphs 51 and 52, the State admits that the Board adopted Policy 1006. As to the remaining allegations, Policy 1006 and HB 102 speak for themselves and are the best evidence of their contents. Argumentative assertions in Paragraph 51 are denied.

53. In response to Paragraph 53, deny.

54. The allegations in Paragraph 54 are legal conclusions for which no response is required. *Boyer v. Karagacin*, 178 Mont. 26, 528 P.2d 1173 (1978), speaks for itself and is the best evidence of its contents.

55. In response to Paragraph 55, deny.

56.—57. Paragraphs 56 and 57 contain legal conclusions for which no response is required. Argumentative assertions in Paragraphs 56 and 57 are denied.

The remainder of the Petition sets forth Petitioner's request for relief, to which no response is necessary. To the extent a response is necessary, the State denies that Petitioner is entitled to relief on any claim alleged in the Petition.

GENERAL DENIAL

To the extent the above answers do not expressly admit or deny the allegations and an express answer is required, the State denies.

ADDITIONAL DEFENSES

1. Petitioner fails to state a claim against the State upon which relief may be granted.
2. Petitioner's claims should be barred on the grounds of equity, including the doctrines of waiver, laches, and unclean hands.
3. Petitioner cannot demonstrate this case meets the requirements for an injunction.
4. Petitioner lacks standing to assert the causes of action and claims of which it claims.
5. Petitioner's causes of action and claims are not justiciable.


6. The State reserves the right to amend this Answer to allege new and additional defenses as they might arise or become known through discovery or further investigation.

WHEREFORE, the State respectfully requests the Court to enter the following relief:

- (a) Deny the relief sought by Petitioner;
- (b) Dismiss the Petition with prejudice; and
- (c) Award such further relief as the Court may find just and equitable.

DATED July 8, 2021.

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By: 

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CERTIFICATE OF SERVICE

Pursuant to the parties' Stipulation of Electronic Service (Doc. 26), I certify a true and correct copy of the foregoing was delivered by email to the following:

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Date: July 8, 2021


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