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MONTANA FIRST JUDICIAL DISTRICT COURT,
LEWIS & CLARK COUNTY

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

Petitioner,

v.

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

Respondent.

Cause No. BDV-2021-598 *(amail)*

Hon. Michael F. McMahon

**STATE OF MONTANA'S REPLY IN
SUPPORT OF ITS MOTION FOR
RULE 60 RELIEF**

The State and the Board are in agreement that Rule 60(a) provides a remedy for “errors which misrepresent the court’s original intention.” *In re Marriage of Schoenthal*, 2005 MT 24, ¶ 19, 326 Mont. 15, 106 P.3d 1162. “It is inherent in the District Court’s power to correct clerical errors in its own judgments in order to make the record speak the truth as to what was actually decided.” *State v. Owens*, 230 Mont. 135, 138, 748 P.2d 473, 474 (1988). “The error must be apparent on the face of the record to insure that the correction does not in effect set aside a judgment actually rendered nor change what was originally intended.” *Id.* For example, in *Dahlman v. Dist. Court, Seventeenth Jud. Dist.*, 215 Mont. 470, 472, 698 P.2d 423, 425 (1985), the court corrected a clerical error after the court improperly termed a defendant’s reimbursement as “restitution.” This did not change the effect of the order but instead corrected a clerical error that affected the order’s accuracy. *Id.*

I. The Order Incorrectly Identifies the Legislature as a Party

Here, the State is the named defendant. Aspects of the Legislature’s (passing laws) and Governor’s (enacting laws) powers are at issue here, but neither are named individually. Both *could* be named as defendants, and both can seek to be represented by the Attorney General. The State, however, is not a discrete branch of government. It is the sum total of the body politic; the organs of government plus the people of Montana—the fullest expression of the State’s legal sovereignty. The State’s interests are obviously implicated where—such as here—any entity

challenges the constitutionality of a duly enacted law. And that remains the case even if the legal question asks about the reach of the State’s legislative power.

The Legislature is not a party here. The Legislature is not the same thing as the State. The Board suggests that because it knew what the Court meant, despite the words included in the Court’s order, the amendment is unnecessary. Respectfully, the State disagrees—court orders should say what courts mean. Even if the Board is correct and the Order “did not misrepresent the Court’s intention,” Board of Regents Response to State’s Rule 60 Motion at 3, the State’s request that the Order accurately identify the parties in the case does not prejudice the Board.

II. The Order’s Characterization of the Executive Branch is Inaccurate

With respect to the characterization of the Board and the executive branch, the Order clearly states that “this lawsuit concerns the delineation of power between two equal governmental branches.” Order at 9. The Board does not address this in its Response. It only asserts that the *Board* does not believe itself to be a fourth branch of government. Both the Board and the State can agree on that, but the fact that the Court has memorialized the Board as an equal branch of government prejudices the State moving forward in this litigation. If the Order only discussed the exercise of power by the “Executive branch, via the Regents,” *see, e.g.*, Order at 4, 8, 9, 11, then the State would agree that this is consistent with *Sheehy v. Commissioner of Political Practices*, 2020 MT 37, ¶ 11 n.1,

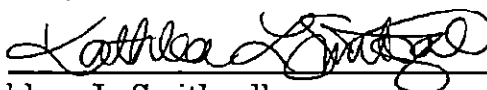
399 Mont. 26, 458 P.3d 309. But because the Order explicitly states that this lawsuit is about two equal governmental branches, the State must read the Order to mean that the Court finds the full scope of the executive branch's power to be at issue *or* the Board is a coequal branch. Neither of these can be true. The State asks the Court to clarify that this case is not about the full scope of the executive branch's authority and is instead about the authority exercised by the Legislature—a full branch of government—and the Board—a subsidiary in one of the branches of government.

CONCLUSION

The State's modest proposed amendments do not prejudice the Board in any way. Even if the Board considers these amendments unnecessary, it can't argue they are unfounded. The State is prejudiced by these clerical errors. Accordingly, the State requests the Court amend its Order as requested in the State's Brief in Support of Rule 60 Relief.

DATED this 24th day of September, 2021.

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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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