

1 direct, substantial, legally protectable interests in the subject matter of the action,
2 namely “whether the Legislature or [BOR] hold general police power to regulate
3 firearms on Montana University System property.”

4 In the State’s Rule 60 motion, it seeks “relief from this Order
5 under Montana Rules of Civil Procedure 60(a) and 60(b).” Specifically, the State
6 argues that “this Order incorrectly identifies the Legislature as a party to the
7 action and incorrectly characterizes [BOR] as an ‘equal governmental branch.’”

8 Rule 60 of the Montana Rules of Civil Procedure provides:

9 (a) *Corrections Based on Clerical Mistakes; Oversights and*
10 *Omissions.* The court may correct a clerical mistake or a mistake
11 arising from oversight or omission whenever one is found in a
12 judgment, order, or other part of the record. The court may do so on
13 motion or on its own, with or without notice. But after an appeal has
14 been docketed in the supreme court and while it is pending, such a
15 mistake may be corrected only with the supreme court’s leave.

16 (b) *Grounds for Relief from a Final Judgment, Order, or*
17 *Proceeding.* On motion and just terms, the court may relieve a party
18 or its legal representative from a final judgment, order, or proceeding
19 for the following reasons:

- 20 (1) mistake, inadvertence, surprise, or excusable neglect;
- 21 (2) newly discovered evidence that, with reasonable diligence,
22 could not have been discovered in time to move for a new trial under
23 Rule 59(b);
- 24 (3) fraud (whether previously called intrinsic or extrinsic),
25 misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it
is based on an earlier judgment that has been reversed or vacated; or
applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

M.R.Civ.P., Rule 60 (emphasis added).

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1 It is inherent in the District Court’s power to correct clerical
2 errors in its own judgments in order to make the record speak the
3 truth as to what was actually decided. The error must be apparent on
4 the face of the record to insure that the correction does not in effect
5 set aside a judgment actually rendered nor change what was
6 originally intended.

7 *State v. Owens*, 230 Mont. 135, 138, 748 P.2d 473, 474 (1988) (citation omitted).

8 “Clerical mistakes and errors are those errors which misrepresent the court’s
9 original intention. It is not the purpose of Rule 60(a) to set aside a judgment
10 actually rendered nor change what was originally intended.” *In re Marriage of*
11 *Schoenthal*, 2005 MT 24, ¶ 19, 326 Mont. 15, 19, 106 P.3d 1162, 1166 (citation
12 omitted).

13 **A. “incorrectly identifies the Legislature as a party to the action”**

14 The State argues that “the Order incorrectly identifies the
15 Legislature as a party. The defendant is the State of Montana. While the
16 Legislature’s power is at issue in this case, the Legislature is not a party.”

17 The Court’s extensive references to the Legislature are because it
18 is the Legislature’s power and actions which are at issue, even if the State is the
19 named party. Indeed, BOR claims that “*the Legislature* exercised control over the
20 [Montana University System] and impermissibly infringed on [BOR] authority
21 under the constitutional directive of Article X, Section 9.” (emphasis added).

22 Even the State admits, “This case is about the *Legislature’s* authority and BOR’s
23 authority.” (emphasis added).

24 The order does not mistakenly identify the Legislature as a party to
25 the action, as evidenced by the order’s caption.

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1 **B. “incorrectly characterizes the Board of Regents as an ‘equal**
2 **governmental branch”**

3 The State takes issue with language in the order that says “this
4 lawsuit concerns the delineation of power between two equal government
5 branches.” The State argues that this statement “doesn’t accurately describe this
6 case. This case is about the Legislature’s authority and [BOR’s] authority,” and “
7 [BOR] is not a branch of government; it is a subsidiary of the executive branch...
8 and therefore does not exercise the full power of that branch.”

9 Although BOR has in the past been so bold as to argue that it is the
10 “fourth branch of government,”² no such argument was made here. Moreover,
11 that was not this Court’s conclusion in its intervention order. Furthermore, even
12 if it had been it would be dicta because the order is merely a ruling on the
13 propriety of intervention by right, not a substantive ruling of the constitutional
14 structure of the Montana University System as it relates to the Legislature.

15 The State’s own statements and a reading of the plain language of
16 the intervention order dispose of the State’s complaints.

17 The Executive is a branch of government distinct from the
18 Legislature. Mont. Const. Art. III, § 1. The State admits that BOR is a part of the
19 Executive branch, (“[BOR] is ... a subsidiary of the executive branch”), and cite
20 authority holding the same, *Sheehy v. Comm’r of Political Practices for Mont.*,
21 2020 MT 37, ¶ 11 n.1, 399 Mont. 26, 32, 458 P.3d 309, 312 (“[BOR] and its
22 members, as well as the entire MUS, is an independent board within the
23 executive branch. See Mont. Const. art. III, § 1. “The power of the government of
24 this state is divided into three distinct branches; legislative, executive, and
25 judicial.” Mont. Const. art. III, § 1 (emphasis added). The fact that BOR

² *Bd. of Regents v. Judge*, 168 Mont. 433, 442, 543 P.2d 1323, 1329 (1975).

1 members are appointed by the governor provides even more clarity that it is part
2 of the executive branch. Mont. Const. art. X, § 9(2)(b).”)

3 Therefore, a legislative enactment that infringes on BOR’s express
4 constitutional powers and authority necessarily infringes the separation of powers
5 between two equal government branches, the Legislature and Executive. BOR’s
6 constitutional powers are exercised as part of an independent, co-equal branch
7 which has been constitutionally delimited.

8 The State’s qualified argument that BOR “does not exercise the
9 *full* power of that [Executive] branch,” is a tacit admission that BOR does
10 exercise limited executive power as defined by the Constitution (emphasis
11 added). Indeed, while the Governor does not wield all executive power, the
12 Legislature likewise does not wield all legislative power. *See* Mont. Const., Art.
13 V § 1 (“The people reserve to themselves the powers of initiative and
14 referendum.”)

15 The States ponders whether “[t]he Court may only have intended
16 to note that BOR is a body within the executive branch and thus part of the
17 executive branch.” Indeed, at no point did the Court’s order say that BOR was a
18 governmental branch, or an equal one. The Court stated what it meant, this
19 lawsuit concerns the delineation of power between two equal government
20 branches. That the specific power in question may be very circumscribed and
21 reserved for a unique, specialized appendage of the Executive, rather than for the
22 Executive as a whole under the Governor, is irrelevant to the question of whether
23 the dispute is between (parts of) constitutionally distinct branches of government.

24 The State admits that “This case is about the Legislature’s
25 authority and [BOR’s] authority.” The State admits that BOR is “a subsidiary

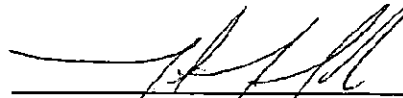
1 of the executive branch.” The State implicitly admits that BOR exercise some
2 degree of executive power. Nothing in the intervention order points toward the
3 preposterous conclusion that BOR exercise *all* executive power or that
4 BOR themselves are a co-equal branch.

5 The State believes the Legislature holds the power to determine
6 MUS property firearm policy. BOR, a part of the distinct and co-equal Executive
7 branch, believe the power is reserved to it relative to MUS property. Put simply,
8 this lawsuit concerns the delineation of power between two equal government
9 branches.

10 **Order**

11 The State’s Rule 60 motion³ is, and must be, **DENIED**.

12 DATED this 29th day of September 2021.

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14 
15 MICHAEL F. McMAHON
16 District Court Judge

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³ On September 1, 2020, this Court, based upon the parties’ stipulation, issued an amended briefing schedule.
Order on Rule 60 Motion – page 6
BDV-2021-598