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ATTORNEYS FOR PLAINTIFFS

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

STEVE BARRETT; ROBERT KNIGHT;
MONTANA FEDERATION OF PUBLIC
EMPLOYEES; Dr. LAWRENCE PETTIT;
MONTANA UNIVERSITY SYSTEM
FACULTY ASSOCIATION
REPRESENTATIVES; FACULTY
SENATE OF MONTANA STATE
UNIVERSITY; Dr. JOY C. HONEA; Dr.
ANNJEANETTE BELCOURT; Dr.
FRANKE WILMER; MONTANA PUBLIC
INTEREST RESEARCH GROUP;
ASSOCIATED STUDENTS OF
MONTANA STATE UNIVERSITY;
ASHLEY PHELAN; JOSEPH
KNAPPENBERGER; NICOLE
BONDURANT; and MAE NAN
ELLINGSON,

Plaintiffs,

v.

STATE OF MONTANA; GREG
GIANFORTE; and AUSTIN KNUDSEN,

Defendants.

Cause No. DV-21-581 B
Hon. Rienne H. McFleyea

Complaint

This complaint challenges the constitutionality of four measures recently passed by the Montana Legislature: HB 349, HB 112, HB 102, and SB 319. Plaintiffs seek a declaratory judgment and injunctive relief.

This case has been in preparation for a number of weeks, but plaintiffs delayed filing, hoping that the Board of Regents would, itself, seek to vindicate its constitutional authority. The Regents did so vote on May 19, 2021. The Regents then filed for original jurisdiction in the Montana Supreme Court, and these plaintiffs followed suit, also filing for original jurisdiction.

On May 26, 2021, the Montana Supreme Court dismissed both the Regents' case and the case filed by these plaintiffs, without prejudice, determining there was insufficient basis for original jurisdiction. The Regents followed up on May 27, 2021, filing in the First Judicial District Court for Lewis and Clark County, Cause No. BDV 2021-598. Plaintiffs now file this complaint in this District Court. This complaint is broader than the complaint of the Regents. The Regents challenge only HB 102 (the firearms measure). These plaintiffs challenge HB 102 as well as three other bills.

Plaintiffs Steve Barrett; Robert Knight; Montana Federation of Public Employees; Dr. Lawrence K. Pettit; Montana University System Faculty Association Representatives; Faculty Senate of Montana State University; Dr. Joy C. Honea; Dr. Annjeanette Belcourt; Dr. Franke Wilmer; Montana Public Interest Research Group; Associated Students of Montana State University; Ashley Phelan; Joseph Knappenberger; Nicole Bondurant; and Mae Nan Ellingson, through counsel, allege for their complaint against defendants State of Montana and Greg Gianforte as follows:

THE BILLS CHALLENGED BY THIS COMPLAINT

1. The main question presented in this case is whether certain Acts of the Legislature unconstitutionally intrude into the constitutional authority of the Montana Board of Regents under Article X, § 9(2)(a) of the Montana Constitution. The particular legislative measures here challenged are the following:

- a. HB 349, which purports to regulate the manner in which universities may regulate and supervise student organizations and the use of facilities;
- b. HB 112, which purports to forbid university athletic teams from allowing transgender athletes to participate in women's sports;
- c. HB 102, which purports to require the Regents and the universities to allow concealed carrying of weapons on campus;
- d. Those aspects of SB 319 which purport to restrict the ability of student organizations to register students to vote in student dormitories and dining facilities and which undercut the funding for student organizations such as MontPIRG, specifically Sections 2 and 21 of SB 319.

2. This complaint also challenges a provision of the appropriations law, HB 2, which purports to void an appropriation of \$1 million earmarked for campus safety, in the event that the Montana University System ("MUS") challenges the constitutionality of HB 102.

3. The Regents and/or the individual institutions of higher learning supervised by the Montana Board of Regents have policies governing matters addressed by HB 349, HB 112, HB 102, and SB 319.

4. HB 349 purports to be an act "generally revising laws related to freedom of association and freedom of speech on campuses of public post-secondary institutions...." Among other things, this act purports to prohibit "student-on-student discriminatory harassment." But it does the opposite—it actually **forbids** a university from disciplining a student for harassing another student unless "the speech...is unwelcome and so severe, pervasive, and subjectively

and objectively offensive that a student is effectively denied equal access to educational opportunities or benefits....” *Id.* § 2(a). That is, it seems to **invite** student harassment as long as it doesn’t go too far. The overarching purpose of this complaint is not to challenge the specifics of the contested bills. Rather, the purpose is to vindicate the Regents’ authority. HB 349 plainly intrudes on the constitutional autonomy of the Regents.

5. With respect to non-discrimination and harassment, areas that are impacted by the newly-enacted HB 349, the Regents already have a policy in place which provides:

Each campus of the Montana University System shall insure that no employment or educational policy is discriminatory on the basis of race, color, religion, creed, political ideas, sex, gender identity, sexual orientation, age, marital status, physical or mental disability, national origin, or ancestry unless based on reasonable grounds.

Montana Board of Regents Policy 703—Non-discrimination, Montana University System

(effective June 76, 1976, revised July 15, 2013).¹ That policy then provides for procedures

directed at the president or chancellor of each campus. Each unit has implemented this policy.

For example, at UM, there is an extensive policy titled “DISCRIMINATION, HARASSMENT,

AND RETALIATION [INTERIM].” *See* Policy 735 (adopted 8/14/2020).² MSU also has such

a policy, titled “Discrimination, Harassment, and Retaliation Policy.”³ Both are extensive and

detailed, providing for reporting on the responsible officers, prohibited conduct, adjudication,

supportive and protective measures, protection of confidentiality, emergency removal, free

¹ <https://mus.edu/borpol/bor700/703.pdf>

² <https://www.umt.edu/policies/browse/personnel/discrimination-harassment-and-retaliation>

³ <http://www.montana.edu/equity/policies/>

expression and academic freedom, and prevention of discrimination and discriminatory harassment. For example, MSU's policy on discriminatory harassment provides:

Discriminatory Harassment is unwanted conduct that is: (a) based upon an individual's race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, gender, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation; and (b) that has the purpose or effect of unreasonably interfering with a reasonable person's participation in a University Program or Activity.

MSU Discrimination, Harassment, and Retaliation Policy, § X(B)(1). HB 349 clearly undercuts these carefully-drafted and detailed policies of the units and Regents.

6. HB 112's Section 4 prohibits transgender intercollegiate athletes participating in women's (but not men's) sports. Athletic directors of the universities, subject to the supervision of the Regents, are responsible for participation policies. Montana's major universities are members of the National Collegiate Athletic Association and must abide by the rules of that organization. It is up to the Regents, the universities, and their athletic directors to work with the NCAA to ensure compliance with its extensive regulations.

7. Certain features of SB 319 trammel on the authority of the Regents. Specifically, Section 2 purports to regulate student organizations "functioning as political committees" and purports to regulate the process of "opt-out" fees that the Regents and the universities have traditionally regulated. Section 2 is limited to student groups at public postsecondary institutions. Section 21 purports to prohibit various activities including voter registration drives and voter turnout efforts at institutions of higher education. It provides:

(1) A political committee may not direct, coordinate, manage, or conduct any voter identification efforts, voter registration drives, signature collection efforts, ballot collection efforts, or

voter turnout efforts for a federal, state, local, or school election inside a residence hall, dining facility, or athletic facility operated by a public postsecondary institution.

SB 319, Section 21(1). It purports to create a private cause of action for violations. *Id.*, subsection (3).

These challenged features of SB 319 are intrusions into the constitutional autonomy of the Montana Board of Regents.

8. With respect to firearms, the Regents' Policy 1006—Security and Law Enforcement Operations, provides as follows:

A. The president, chancellor or dean of each campus of the Montana University System 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 of Higher Education....

B. Except as provided in subsection C, only the following may carry firearms on or at any campus of the Montana University System:

1. those persons who are acting in the capacity of police or security department officers and who:
 - a. successfully completed the basic course in law enforcement conducted by the Montana Law Enforcement Academy or an equivalent course conducted by another state agency and recognized as such by the Crime Control Division of the Montana Department of Justice; or;
 - b. have passed the state approved equivalency examination administered by the Montana Law Enforcement Academy...

Montana Board of Regents Policy 1006.⁴

⁴ <https://mus.edu/borpol/bor1000/1006.pdf>

9. Pursuant to this Regents policy, the various units of the MUS have adopted implementing firearms policies. For example, the University of Montana’s Policy 1009 limits the possession and use of firearms on its campus to peace officers and authorized federal authorities and provides:

Students living in residence halls or Residence Life facilities must store any firearm with the University of Montana Police and follow mandatory requirements for possession....

University of Montana Policy No. 1009.⁵

10. Likewise, Montana State University has a “University Weapons Policy”⁶ following Board of Regents Policy 1006. It provides, subject to certain narrow exceptions, that “[n]o person may carry or possess a weapon, regardless of whether the person has a permit to carry a concealed weapon on university premises except as authorized by this policy.”

PARTIES

I. EX-REGENTS.

11. Plaintiff **Steve Barrett** was appointed to the Board of Regents by Governor Schweitzer in February of 2005 and served until March of 2012 when his seven-year term expired. Barrett served as vice chair of the Board for one year and two years as chair. During his tenure on the Board, various organizations asked the Regents at least twice to allow guns on campus generally, and were denied by the Regents. Barrett also serves on the MSU Honors College Advisory Board, as Chair of the MSU Hilleman Scholars Board, and as Vice Chair of the MSU Innovation Campus Board.

⁵ <http://www.umt.edu/policies/browse/facilities-security/firearms-on-campus>

⁶ https://www.montana.edu/policy/firearms_policy/

12. Plaintiff **Robert Knight** is a former member of the Board of Regents, appointed by Governor Ted Schwinden in the early 1980s. He served on the Board for over two years.

II. THE MONTANA FEDERATION OF PUBLIC EMPLOYEES.

13. Plaintiff **Montana Federation of Public Employees** (“MFPE”) is the largest labor union in the State of Montana. It is the successor organization to the MEA-MFT and the Montana Public Employees Association (MPEA) since their merger in 2018. MFPE represents the interests of more than 23,000 Montana public employees, including but not limited to public educators, higher education faculty, graduate employees, and support personnel, and law enforcement. MFPE has local bargaining units of faculty and/or staff on every campus in the MUS, with over 2,300 MUS employees among its membership. Its organizational interests include the safety and wellbeing of educators, campus police, and other employees, and safeguarding the state public education system which is among the largest employers of MFPE’s membership.

III. EX-COMMISSIONER OF HIGHER EDUCATION.

14. Plaintiff **Dr. Lawrence K. (“Larry”) Pettit**, Ph.D., resident of Helena, was Montana’s first commissioner of Higher Education, assuming that office in 1973, shortly after the enactment of the Montana Constitution. He served in that position until 1979. He was instrumental in initiating the seminal case on Regents’ authority, *Board of Regents v. Judge*, 168 Mont. 433, 543 P.2d 1323 (1975). Since, he has served in various academic positions (including university presidencies) in the states of Texas, Illinois, and Pennsylvania. He served as chair of the Commission on Leadership for the American Council on Education and as President of the National Association of (University) System Heads.

IV. FACULTY ORGANIZATIONS.

15. Plaintiff **Montana University System Faculty Association Representatives** (“MUSFAR”) is an umbrella organization that represents and serves the faculty of the MUS, advocating for the interests of that faculty at all of the units in the MUS, including UM Missoula, UM Helena College of Technology, Montana Tech, UM Western, MSU Bozeman, MSU Billings, MSU Northern, and MSU Great Falls. It works through and in collaboration with the units’ respective Faculty Senates/Associations (hereinafter “Senates”). Whereas the Faculty Senates principally engage with their respective university faculties, administrations and student bodies, MUSFAR represents the Faculty Senates and individual faculty members by engaging with the Board of Regents in matters pertaining to academic affairs and campus administration that broadly affect the MUS and faculty statewide.

16. Plaintiff **Faculty Senate of Montana State University** (“Faculty Senate”) is the duly-elected governing body of the faculty at MSU. It is composed of representatives from each academic department, the Library, the Agricultural Research Centers, and the Agricultural Extension Service. Faculty Senate is the chief governance body of the faculty at MSU Bozeman. Under the governance authority of the MUS, the Faculty Senate frames policies, procedures and standards of the Faculty Handbook, oversees the curricula, evaluates new academic programs, and serves to enhance communication between MSU faculty, administration, and students.

V. INDIVIDUAL FACULTY MEMBERS.

17. Plaintiff **Dr. Joy C. Honea** is professor of sociology at MSU-Billings and president of the MSU Billings Faculty Association. Dr. Honea has been a member of the MUS-Billings faculty for 18 years. Her primary areas of teaching and scholarship are social theory, gender studies and medical sociology. Since 2012, her primary area of research has been the

sociology of mental health and mental illness with a focus on suicide prevention. As a 2019-2020 U.S. Fulbright Scholar, Dr. Honea spent four months in Finland, studying that country's successful suicide prevention programs.

18. Plaintiff **Dr. Annjeanette (“Annie”) Belcourt (Otter Woman)**, who graduated from Browning High School, is an American Indian Professor (enrolled tribal member of the Three Affiliated Tribes, Mandan, Hidatsa, Blackfeet, and Chippewa descent) in the College of Health at the University of Montana's Pharmacy Practice and School of Public and Community Health Sciences Departments. She currently teaches American Indian public health courses at The UM School of Pharmacy and Public Health. She has worked clinically with diverse populations, including combat veterans, Native Americans, and low-income populations specializing in posttraumatic stress reactions and multiple psychiatric conditions. Her research and clinical priorities include mental health disparities, posttraumatic stress reactions, risk, resiliency, psychiatric disorder, and environmental public health within the cultural context of American Indian communities. She was selected by the Harvard TH Chan School of Public Health to serve as a JPB Environmental Health Fellow 2014-2018. Dr. Belcourt serves as a Faculty Senator for the University of Montana, reviews for the National Institute of Health, and formerly chaired the Ford Foundation Psychology Fellowship review panel guided by the National Academy of Sciences.

19. Plaintiff **Dr. Franke Wilmer** is a professor in the political science department at Montana State University, which she joined in August 1991. She has twice served as head of that department. She also served on the Western Interstate Commission for Higher Education (WICHE)—the body that oversees Montana's participation in an interstate compact among the

15 states and 2 Territories (Guam and the Northern Mariana Islands). From 2007-2013, she also served in the Montana House of Representatives. She was on the Education Committee, the State Administration and Veterans Affairs Committee, and the Fish, Wildlife, and Parks Committee. During the 2009 session, she was Speaker Pro Tempore.

VI. STUDENT GROUPS.

20. Plaintiff **Montana Public Interest Research Group** (“MontPIRG”) is comprised of an on-campus recognized student group and an independent affiliated non-profit, non-partisan 501(c)(4) with a board composed entirely of UM students elected by student members.

MontPIRG has operated for 40 years as part of the University of Montana and its campus. In 2020, MontPIRG student interns worked on a variety of campaigns, including efforts to drive youth participation in the 2020 Census, a relaunch of its Tenant-Landlord Guide, and voter registration drives.

21. Plaintiff **Associated Students of Montana State University** (“ASMSU”) is the student government of Montana State University. ASMSU is administered by an elected body of students with diverse backgrounds and interests. It serves as the representative voice of students attending Montana State University by engaging with university administration and the Board of Regents on behalf of the student body regarding matters affecting education, athletics and extracurricular activities, student wellness and safety, and other issues germane to the student population and campus life

VII. INDIVIDUAL STUDENTS.

22. Plaintiff **Ashley Phelan** will be entering her junior year at MSU in the fall, majoring in English writing. She fears what will happen on the MSU campus if guns are allowed, as provided in HB 102.

23. Plaintiff **Joseph (“Joey”) Knappenberger** is a sophomore at MSU, dual majoring in computer science and economics. He fears what will happen on the MSU campus if guns are allowed, as provided in HB 102.

24. Plaintiff **Nicole Bondurant** is a junior at MSU, majoring in environmental studies. She fears what will happen on the MSU campus if guns are allowed, as provided in HB 102.

VIII. OTHER INDIVIDUALS.

25. Plaintiff **Mae Nan Ellingson**, a resident of Missoula, was the youngest delegate to serve in the 1972 Montana Constitutional Convention and is now one of the few surviving delegates. Now retired, Ms. Ellingson previously practiced public finance law, including serving as a bond counsel for State and local governments. She is a long-time advocate for good government and equality under the law. Ms. Ellingson recently offered cogent comments at a hearing before the Montana Board of Regents regarding the inadvisability of allowing concealed carry of firearms on Montana campuses.

IX. DEFENDANTS.

26. Defendant **Greg Gianforte** is the duly-elected Governor of the State of Montana and, as such, is Montana’s chief executive officer, ultimately responsible for the effectuation of all state laws.

27. Defendant **Austin Knudsen** is the duly-elected Attorney General for the State of Montana. In that capacity, he is generally in charge of law enforcement throughout the State of Montana and those duties may include enforcement of Section 6 of HB 102, which prohibits any unit of the MUS from regulating or restricting firearms on campuses except under a number of very limited circumstances.

28. Defendant **State of Montana** is a duly-admitted state of the United States.

VENUE

29. Venue is proper in Gallatin County under § 25-2-125 and § 25-2-126, MCA, as amended by recently-passed House Bill 537.

30. Plaintiff Steve Barrett is a resident of Bozeman, in Gallatin County.

31. Plaintiff Ashley Phelan lives and attends Montana State University in Bozeman, in Gallatin County.

32. Plaintiff Joseph Knappenberger lives and attends Montana State University in Bozeman, in Gallatin County.

33. Plaintiff Nicole Bondurant lives and attends Montana State University in Bozeman, in Gallatin County.

34. Plaintiff Franke Wilmer is a professor at Montana State University, and resides and works in Bozeman, in Gallatin County.

35. Plaintiff Faculty Senate is an organization representing faculty members of Montana State University in Bozeman and is comprised of representatives who reside and work in Gallatin County.

36. Plaintiff ASMSU is the student government comprised of and representing students attending MSU in Bozeman, in Gallatin County.

FACTS AND GENERAL ALLEGATIONS

37. All of the individual Plaintiffs and Plaintiff organizations are concretely and adversely impacted by the measures challenged. Ex-Regents Barrett and Knight and former Commissioner of Higher Education Pettit, as well as all of the other individual Plaintiffs and organizations, have a particular interest in assuring the continued constitutional autonomy of the

Board of Regents and in preventing legislative overreach. In addition to the interests of their individual members and constituents, the Plaintiff organizations (MFPE, MUSFAR, the MSU Faculty Senate, and MontPIRG) each have an interest in the subject matter of this litigation, which is germane to their organizational purposes. Each of these organizations sues on behalf of its individual constituents and members, all of whom have a strong interest in ensuring academic freedom, safe working conditions, and the independence of the Montana Board of Regents to supervise, coordinate, manage, and control the MUS. Each of the Plaintiffs will suffer injury in fact as a consequence of the challenged legislation. Each of the Plaintiffs stands to suffer harm as a consequence of the implementation of the challenged bills, including actual and prospective injuries to their interest in campus safety, freedom of speech, and non-discrimination. In particular, they are personally apprehensive about the apparent open invitation to harass and discriminate under HB 349 and about the risk of injury and death presented by HB 102, the presence of guns on campus, their individual safety and the safety of the students, and erosion of the learning environment. They are also concerned about the negative effect on enrollment due to concerns of prospective students and their parents over student safety on the campuses.

38. Plaintiff MontPIRG and the other Plaintiffs are further adversely affected by SB 319, which seeks to undercut MontPIRG's organizational funding. Specifically, should MontPIRG participate in ballot activity as it has done in the past, SB 319 would have onerous and unconstitutional restrictions on voter registration and other political activities in student dormitories and dining halls. The MontPIRG fee exists only at UM, where students can opt out of paying a \$5.00 MontPIRG fee every semester. MontPIRG has a particular concern about the feature of SB 319, which would undercut its campus funding by precluding the present "opt-out"

feature for student funding—a feature previously approved by the Montana Board of Regents—should MontPIRG engage in ballot initiative work and file as an incidental political committee as is required by the Montana Commissioner of Political Practices.

39. Each of these individual and organizational Plaintiffs suffer threatened injury in fact; each has a personal stake in the outcome of the present controversy; and each alleges injury that is unique to them in that the challenged measures apply only to institutions of higher learning, and such threatened harms will not be suffered by the population generally. Further, the relief requested, determination of the unconstitutionality of the measures as inconsistent with Article X, § 9(2)(a), would redress the complained-of injuries.

40. The passage of these bills threatens an imminent disruption to the operation of campuses in the MUS system. If HB 102 is not overturned before its effective date of June 1, MUS campuses risk proliferation of guns during summer sessions and throughout the academic year. Given the palpable unconstitutionality of HB 102 and the imminent threat to the MUS's independence, the need for this Court's exercise of original jurisdiction is compelling. Plaintiffs have no remedy at law or otherwise, and each will suffer irreparable injury if these unconstitutional laws are not overturned.

41. Plaintiffs bring this case under the private attorney general doctrine, which supports citizens' rights to invoke state authority to rectify legal and constitutional grievances and which, in certain circumstances, allows the award of attorneys' fees.

COUNT ONE (HB 349, HB 112, HB 102, and SB 319 are facially unconstitutional)

42. Plaintiffs incorporate herein all of the foregoing allegations in paragraphs 1-41 as if set forth in full.

43. Montana's 1972 Constitution spells out the authority of the Montana Board of

Regents to manage the university system. Article X, § 9(2)(a). It provides:

The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

44. Each of bills challenged, HB 349, HB 112, HB 102, and SB 319 is unconstitutional because each arrogates to the Legislature powers that are reserved to the Montana Board of Regents.

COUNT TWO (the conditional appropriation of HB 2 is facially unconstitutional)

45. Plaintiffs incorporate herein all of the foregoing allegations in paragraphs 1-44 as if set forth in full.

46. HB 2, the general appropriations measure, appropriated \$1,000,000 for the MUS's use in implementing HB 102. It purports to make this appropriation conditional by providing that sum is forfeited if the MUS takes legal action to vindicate its authority by invalidating HB 102. Although the wording is awkward, it seems to suggest that if HB 2 is challenged by the MUS, HB 102 is void. The actual language is: "If the Montana University System files a lawsuit contesting the legality of HB 102, **Implementation of HB 102 is void.**" HB 2, p. E-10 (emphasis added).

47. The purported conditional appropriation of HB 2 is unconstitutional because it strips the MUS, under the direction and control of the Regents, of its authority to manage and control the MUS and because it strips the fundamental right of the MUS and the Regents to seek judicial recourse as most recently set forth in *McLaughlin v. Montana State Legislature*, 2020 MT 120, ¶ 10, ___ Mont. ___, ___ P.3d ___ (finding the right to petition the courts to be fundamental).

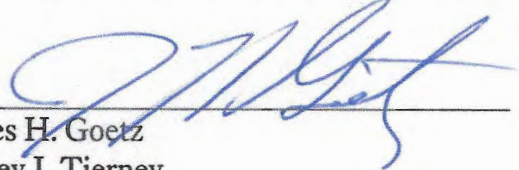
PRAYER FOR RELIEF

Wherefore, plaintiffs pray that this Court:

1. Enter a declaratory judgment declaring HB 349, HB 112, HB 102, and SB 319 unconstitutional and unenforceable;
2. Enter a declaratory judgment declaring void the conditionality of the appropriation of \$1 million earmarked for campus safety, invalidating the feature of HB 2 which purports to make this appropriation void if the MUS challenges the constitutionality of HB 102, and declaring that said \$1 million be allocated for campus safety at the discretion of the Regents;
3. Issue appropriate injunctive relief, including preliminary injunctive relief if necessary, enjoining the defendants from implementing any of the aforementioned measures;
4. Award plaintiffs their reasonable attorney fees and costs under the Montana private attorney general doctrine; and
5. Issue such other and further relief as the Court deems appropriate.

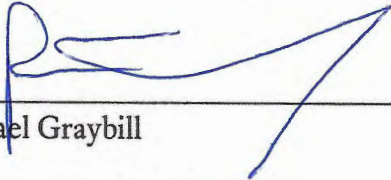
Respectfully submitted this 3rd day of June, 2021.

GOETZ, BALDWIN & GEDDES, P.C.

By: 
James H. Goetz
Jeffrey J. Tierney

and

GRAYBILL LAW FIRM, P.C.

By: 
Raphael Graybill

Attorneys for Plaintiffs