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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT
GALLATIN COUNTY

STEVE BARRETT, et al., Plaintiffs, vs. STATE OF MONTANA, et al., Defendants.	Case No. DV-21-581 B Hon. Rienne H. McElyea **STATE OF MONTANA'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

In accordance with the Court's December 15, 2021, Order, the State hereby submits its proposed Findings of Fact and Conclusions of Law. The Court heard arguments on the State's motion to dismiss on December 15, 2021.

FINDINGS OF FACT

CHALLENGED STATUTORY PROVISIONS

1. During the 2021 Legislative session, the State of Montana enacted HB 102, HB 112, HB 349, and SB 319.

2. HB 102 permits individuals to open and concealed carry on Montana University System ("MUS") campuses. *See* HB 102, 67th Leg. §§ 8, 10 (2021).

3. HB 102 amends MCA § 45-3-111 to remove language that previously authorized the Board of Regents (the "Board") "to regulate the carrying of weapons," thereby allowing individuals to open carry on MUS campuses. HB 102, 67th Leg. § 8 (2021). HB 102 also limits the Board of Regents from regulating firearms "on or within university system property by a person eligible to possess a firearm under state or federal law" except in certain circumstances as outlined in Section 6. *Id.* § 6.

4. The First Judicial District permanently enjoined HB 102. *See Board of Regents v. State*, Judgment and Permanent Injunction, DV-25-2021-598 (1st Jud. Dist. Dec. 13, 2021).

5. HB 112 protects equal opportunity rights of women in sports. *See* HB 112, 67th Leg. § 2 (2021).

6. HB 112 designates athletic teams on the basis of biological sex, mandating that "[a]thletic teams or sports designated for females, women, or girls may not be open to students of the male sex." HB 112, 67th Leg. § 2 (2021).

7. HB 349 prohibits discrimination against student organizations and protects students' free speech rights. *See* HB 349, 67th Leg. §§ 1–2 (2021).

8. HB 349 "generally revis[es] laws related to freedom of association and freedom of speech on campuses of public postsecondary institutions." HB 349, 67th Leg. (2021). It prohibits public postsecondary institutions from discriminating against "a student organization based on the student organization's expressive activity." *Id.* § 1. And it requires covered institutions to "adopt a policy prohibiting student-on-student discriminatory harassment.' *Id.* § 2.

9. SB 319 covers campaign finance issues, including the requirement that students opt-in to certain student fees that go to political committees. *See* SB 319, 67th Leg. § 2 (2021).

10. SB 319 covers several campaign finance laws. Plaintiffs challenge the entirety of the bill, which addresses multiple campaign finance issues, including joint fundraising committees and electioneering communications. SB 319, 67th Leg. §§ 1, 4 (2021). Plaintiffs only assert harms that appear to relate to Section 2, although they fail to allege this explicitly. Section 2 states that "[a] student organization that is required to register as a political committee and is regularly active may be funded in the same manner as other student organizations, except that if the organization is funded by an additional optional student fee, the fee must be an opt-in fee." SB 319, 67th Leg. § 2 (2021).

11. SB 319, importantly for this case, contains a severability provision. SB 319, 67th Leg. § 25 (2021).

12. During the 2021 Legislative session, the State of Montana also enacted HB 2, which is the General Appropriations Act.

13. HB 2, in relevant part, states: "Implementation of HB 102 is restricted to the provision of full implementation of open and concealed carry of firearms on the Montana University System campuses, including but not limited to firearms training, metal detectors for events, gun safes for campus resident housing, or awareness campaigns. If the Montana University System files a lawsuit contesting the legality of HB 102, Implementation of HB 102 is void." HB 2, 67th Leg. E-10 (2021).

14. Plaintiffs challenge the entirety of HB 102, HB 112, HB 349, and SB 319. Plaintiffs only challenge the conditional appropriation contained in HB 2.

CONSTITUTIONAL PROVISIONS

15. The Montana Constitution divides the power of the government of this State into "three distinct branches—legislative, executive, and judicial." Mont. Const. art. III, § 1.

16. The Legislature is a branch of government and has a broad grant of authority under the Montana Constitution. Mont. Const. art. III, § 1; V, § 1.

17. Included in the Legislature's broad power is the police power to protect "the public health, safety and general welfare." *Yellowstone Valley Elec. Coop. v. Ostermiller*, 187 Mont. 8, 14, 608 P.2d 491, 495 (1980).

18. The Board of Regents is not a fourth branch of government. Mont. Const. art. III, § 1; *see also Bd. of Regents v. Judge*, 168 Mont. 433, 442–43, 543 P.2d 1323, 1328–29 (1975).

19. The Board of Regents has the limited authority to "supervise, coordinate, manage and control the Montana university system." Mont. Const. art. X, § 9(2)(a).

20. The Board's power must be read to be consistent with the Constitution's core structural mechanisms: the Legislature's power under Article V, the Executive's power under Article VI, and the Judiciary's power under Article VII. *See* Mont. Const. art. III, § 1 (identifying three, distinct branches of government); *see also Hilger v. Moore*, 56 Mont. 146, 163, 182 P. 477, 479 (1919) (Those "who seek[] to limit the power of the [Legislature] must be able to point out the particular provision of the Constitution which contains the limitation expressed in no uncertain terms.").

PARTIES TO THE PROCEEDING

21. Plaintiffs are 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.

22. The Board of Regents is not a Plaintiff and has not asserted any legal interest in this litigation by intervention or otherwise.

23. Plaintiff Steve Barret is a former member of the Board of Regents. Compl. ¶ 11.

24. Plaintiff Robert Knight is a former member of the Board of Regents. Compl. ¶ 12.

25. Plaintiff Montana Federation of Public Employees is a labor union that represents Montana public employees. Compl. ¶ 13.

26. Plaintiff Dr. Lawrence Pettit was Montana's first commissioner of Higher Education. Compl. ¶ 14.

27. Plaintiff Montana University System Faculty Association Representatives the faculty of the MUS. Compl. ¶ 15.

28. Plaintiff Faculty Senate of Montana State University is the governing body of the faculty at MSU. Compl. ¶ 16.

29. Plaintiff Dr. Joy C. Honea is a professor of sociology at MSU-Billings and president of the MSU Billings Faculty Association. Compl. ¶ 17.

30. Plaintiffs Dr. Annjeanette Belcourt is an American Indian Professor at the University of Montana. Compl. ¶ 18.

31. Plaintiff Dr. Franke Wilmer is a professor in the political science department at MSU. Compl. ¶ 19.

32. Plaintiff Montana Public Interest Research Group ("MontPIRG") is a student group at University of Montana. Compl. ¶ 20.

33. Plaintiff Associated Students of Montana State University is the student government of Montana State University. Compl. ¶ 21.

34. Ashley Phelan is a student at MSU. Compl. ¶ 22.

35. Plaintiff Joseph Knappenberger is a student at MSU. Compl. ¶ 23.

36. Plaintiff Nicole Bondurant is a student at MSU. Compl. ¶ 24.

37. Plaintiff Mae Nan Ellingson was a delegate to the 1972 Montana Constitutional Convention. Compl. ¶ 25.

38. Defendants are Governor Greg Gianforte, Attorney General Austin Knudsen, and the State of Montana.

39. The Board of Regents is not a party to this proceeding.

PLAINTIFFS' CLAIMS

40. Plaintiffs assert that each of the challenged bills "is unconstitutional because each arrogates to the Legislature powers that are reserved to the Montana Board of Regents." Compl. ¶ 44.

41. Plaintiffs also assert that the conditional appropriation of HB 2 is unconstitutional "because it strips the MUS ... 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." Compl. ¶ 47.

42. Plaintiffs Ashley Phelan, Joseph Knappenberger, and Nicole Bondurant claim that they "fear[] what will happen on the MSU campus if guns are allowed, as provided in HB 102." Compl. ¶¶ 22–24.

43. Plaintiffs assert that each "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." Compl. ¶ 37.

44. Plaintiffs assert they are "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." Compl. ¶ 37.

45. Plaintiff MontPIRG asserts that "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." Compl. ¶ 38.

46. Plaintiff MontPIRG also asserts that SB 319 will undercut its campus funding "should MontPIRG engage in ballot initiative work and file as an incidental political committee." Compl. ¶ 38.

47. Plaintiffs provide no other factual assertions to support their claims of injury.

CONCLUSIONS OF LAW

VENUE

48. Venue is proper in this Court because this is a suit against the State and several Plaintiffs reside in Gallatin County. MCA §§ 25-2-125–126.

APPLICABLE STANDARDS

49. Standing is a threshold jurisdictional question, "especially ... where a ... constitutional violation is claimed." *Olson v. Dep't of Revenue*, 223 Mont. 464, 469, 726 P.2d 1162, 1166 (1986).

50. Each Plaintiff must "demonstrate standing for each claim he seeks to press" and "for each form of relief" that is sought. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006) (internal quotations omitted).

51. Standing is rooted in two principles. The first, and most important, is constitutional standing. The second is prudential standing, which provides an additional restriction on who can meet a claim. *Olson*, 223 Mont. at 469–70, 726 P.2d at 1166.

52. Constitutional standing comes from Article VII, Section of the Montana Constitution, and it imposes the same limitations as found in federal courts under Article III. *Olson*, 223 Mont at. 470, 726 P.2d at 1166.

53. A plaintiff must show that (1) they have been personally injured or have been threatened with immediate injury as a direct result of the statute's enforcement, (2) that this injury is fairly traceable to the alleged violation, and (3) that it is likely the injury will be redressed by a favorable decision. *Olson.* 223 Mont. at 470, 726 P.2d at 1166.

54. To show an injury, a plaintiff "must clearly allege past, present, or threatened injury to a property or civil right. The alleged injury must be: concrete, meaning actual or imminent, and not abstract, conjectural, or hypothetical; redressable; and distinguishable from injury to the public generally." *Bullock v. Fox*, 2019 MT 50, ¶ 31, 395 Mont. 35, 435 P.3d 1187; *see also see also Mitchell v. Glacier City,* 2017 MT 258, ¶ 10, 389 Mont. 122, 406 P.3d 427 ("The alleged injury must be concrete rather than abstract. To qualify as concrete, an injury must be actual or imminent, not conjectural or hypothetical.") (citations and quotations omitted). "[A] general or abstract interest in the constitutionality of a statute or the legality of government action is insufficient for standing absent a direct causal connection between the alleged illegality and specific and definite harm personally suffered, or likely to be personally suffered, by the plaintiff." *Larson v. State,* 2019 MT 28, ¶ 46, 394 Mont. 167, 434 P.3d 241.

PLAINTIFFS LACK CONSTITUTIONAL STANDING

55. Plaintiffs are the wrong party to bring this action to assert and protect the Board of Regents' constitutional authority. "[I]t is not enough ... [to] allege an injury which *others* may have suffered by the operation of some statute." *Olson*. 223 Mont. at 470, 726 P.2d at 1166 (emphasis added). The parties seeking review must be among the ones actually injured. Here, Plaintiffs are not injured by the Legislature's alleged encroachment on the Board's authority.

56. To the extent Plaintiffs allege that they are injured by the substance of the bills themselves, this Court will address each in turn.

HB 102

57. Plaintiffs have failed to establish an injury in fact that is fairly traceable to the implementation of HB 102.

58. The three student plaintiffs allege "fear" of "what will happen on the MSU campus if guns are allowed." Compl. ¶¶ 22–24.

59. The remaining plaintiffs explain that they are "apprehensive about ... the risk of injury and death presented by HB 102." Compl. ¶ 37.

60. Because the First Judicial District permanently enjoined HB 102, Plaintiffs can suffer no injury under HB 102. Plaintiffs, therefore, lack standing to challenge HB 102.

61. Even if the First Judicial District did not enjoin HB 102, though, Plaintiffs claims of injury would still fail.

62. Plaintiffs' claims of injury must be imminent, particularized, and concrete. *Bullock*, ¶ 20.

63. To show an imminent injury, Plaintiffs most show an "immediate danger of sustaining some direct injury," *Olson*, 223 Mont. at 470, 726 P.2d at 1166, or that the injury is "virtual certain[]," *Comm. for an Effective Judiciary v. State*, 209 Mont. 105, 112, 679 P.2d 1223, 1227 (1984); *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 401, 414 n.5 (2013) (requiring a "substantial risk" that is "certainly impending"); *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 36, 360 Mont. 207, 255 P.3d 80 (harm is "likely"); *Helena Parents Comm'n v. Lewis & Clark Cty. Comm'rs*, 277 Mont. 367, 372, 922 P.2d 1140 (1996).

64. Plaintiffs here only allege fear and apprehension of a risk of injury and death. But this level of attenuation does not meet the imminence requirement. For Plaintiffs to suffer an injury, we have to assume the following: the Montana Supreme Court will overturn the permanent injunction; someone will lawfully possess a firearm on MUS property; this person will use that firearm in an unlawful manner against one of the Plaintiffs; and no one else who is exercising their own right to lawfully possess a firearm will intervene. Plaintiffs provide no factual statements explaining how the risk of injury or death is certainly impending or imminent as required to establish standing. *See Olson*, 223 Mont. at 470, 726 P.2d at 1166; *Committee for an Effective Judiciary*, 209 Mont. at 112, 679 P.2d at 1227; *see also Clapper*, 568 U.S. at 410–11 (rejecting highly attenuated chains of possibilities).

65. Plaintiffs also fail to allege facts showing that the risks they fear are unique to MUS campuses. The purported risk of firearms that Plaintiffs fear exists both on and off MUS campuses—the risk of someone using a firearm in an unlawful manner

is the same in a grocery store, a mall, and a church, just as it is on MUS campuses. Generalized claims of a possible future risk is insufficient to establish standing. *Bullock*, ¶ 31.

66. The question before this Court is not whether the Board has in fact suffered an injury from this legislative action, but whether *these* Plaintiffs—who are distinct from the Board—can claim this injury as their own. Here, Plaintiffs have failed to establish an injury in fact that gives rise to standing to challenge HB 102 on the grounds that it encroaches on the Board's authority to supervise and control MUS campuses.

HB 112

67. Plaintiffs have failed to establish an injury in fact that is fairly traceable to the implementation of HB 112.

68. Plaintiffs do not assert any harms relating to HB 112, nor do they allege that any of the Plaintiffs have an interest in athletic teams that may be impacted by HB 112.

69. Plaintiffs merely assert that they will "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." Compl. ¶ 37. Plaintiffs do not explain how HB 112 is related to campus safety or freedom of speech. And to the extent Plaintiffs mean that these laws, including HB 112, are discriminatory, this is a conclusory statement that this Court cannot accept as true. *Threkeld v. Colorado*, 2000 MT 369, ¶ 33, 303 Mont. 432, 16 P.3d 359.

70. A broad interest in "non-discrimination" fails to establish a particularized, concrete injury that stems from the implementation of HB 112. *See Bullock*, ¶ 20. Plaintiffs fail to cite any facts that show how HB 112 impacts Plaintiffs.

71. Plaintiffs have failed to establish an injury in fact that is fairly traceable to the alleged encroachment on the Board's authority in enacting HB 112. Plaintiffs, therefore, lack standing to assert their claim with respect to HB 112.

HB 349

72. Plaintiffs have likewise failed to establish an injury in fact that is fairly traceable to the implementation of HB 349.

73. Plaintiffs state that they are "apprehensive about the apparent open invitation to harass and discriminate under HB 349." Compl. ¶ 37. But Plaintiffs fail to explain the connection between this apprehension and HB 349. Plaintiffs "must state something more than facts which, at the most, would breed only a suspicion that the claimant may be entitled to relief." *Cossitt v. Flathead Indus.*, 2018 MT 82, ¶ 9, 319 Mont. 156, 415 P.3d 486 (quotation and internal quotation marks omitted).

74. Plaintiffs' claim of apprehension is at best conjectural and hypothetical. And nowhere do Plaintiffs articulate how this apprehension is fairly traceable to a claim that the Legislature infringed upon the Board's authority to manage MUS campuses when it passed HB 349. *See, e.g., Bullock*, ¶ 31; *Olson*, 223 Mont. at 470, 726 P.2d at 1166; *see also Clapper*, 568 U.S. at 401, 414 n.5.

75. Plaintiffs, therefore, lack standing to bring their claims with respect to HB 349.

SB 319

76. Plaintiffs have failed to establish an injury in fact that is fairly traceable to the implementation of SB 319.

77. Because Plaintiffs only assert harm that could be reasonably interpreted as stemming from Section 2, and because SB 319 contains a severability provision, this Court will not consider challenges to any other provision of SB 319. *See Reichert v. State*, 2012 MT 111, ¶ 86 ("It is a well-established principle that a statute is not destroyed in toto because of an improper provision ....").

78. Even so, Plaintiffs' claims of injury related to Section 2 are insufficient.

79. Plaintiffs first assert in Paragraph 38 that *if* MontPIRG chooses to engage in activity similar to what it has done in the past, it will face "onerous and unconstitutional restrictions on voter registration." Compl. ¶ 38.

80. As an initial matter, stating that these are restrictions are "onerous and unconstitutional" is a legal conclusion that this Court cannot accept as true. *Threkeld* ¶ 33.

81. Plaintiffs also provide no facts to support this claim. *See Cossitt*, ¶ 9. Plaintiffs fail to provide facts stating, for example, what kind of activity MontPIRG engaged in the past, how MontPIRG engaged in this activity, whether MontPIRG will engage in this activity in the future, or how SB 319 impacts these operations. This claim of injury is abstract, and not concrete as required for purposes of standing. *Bullock*, ¶ 20.

82. Furthermore, MontPIRG only claims an injury *if* it chooses to engage in activity in the future. This is by definition a hypothetical injury—only *if* MontPIRG

engages in future activity and *if* their conclusion that SB 319 is unconstitutional is correct will MontPIRG suffer any harm. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992) (rejecting "'someday' intentions--without any description of concrete plans").

83. The Supreme Court rejected these hypothetical injuries in *Lujan v. Defenders of Wildlife*, noting that hypothetical, future plans to observe endangered species was insufficient. *Lujan*, 504 U.S. at 564. Plaintiffs needed "concrete plans" of future activity. *Id.* Here, there are no concrete plans but rather hypothetical statements about what might happen if MontPIRG engages in certain activity.

84. Plaintiffs claimed injuries are distinct from the injuries alleged in *Lee v. State*, where the Plaintiff showed what his activities were prior to the new law and explained how the new law would impact these activities. 195 Mont. 1, 5, 635 P.2d 1282, 1284 (1981). He stated that he previously drove a certain speed limit on specific highways, and under the new law, he would continue to drive that same speed limit on those same highways, which would be a criminal offense and thus cause him to suffer an injury. *Id.* In *Lee*, this injury was concrete and directly traceable to his claim that the new law was unconstitutional. *Id.* at 7–8. Here, Plaintiffs have merely asserted hypothetical future scenarios that may or may not happen, and they have failed to assert how the potential injuries are fairly traceable to the Legislature's enactment of SB 319.

85. Plaintiffs next assert that SB 319 will undercut its campus funding. Compl. ¶ 38. But again, Plaintiffs provide no facts to support this claim. *See Cossitt*,

¶ 9. Plaintiffs do not, for example, explain how it currently receives its funding or how SB 319 will result in less funding for the organization.

86. Plaintiffs have thus failed to state an injury in fact that is fairly traceable to its claim that by implementing SB 319, the Legislature invaded the Board's authority.

87. Because Plaintiffs have failed to establish standing to challenge HB 102, HB 112, HB 349, and SB 319, Plaintiffs' first claim must be dismissed.

HB 2

88. Plaintiffs have also failed to assert an injury stemming from the conditional appropriation attached to HB 102. Plaintiffs do not assert anywhere in the Complaint that HB 2 causes any harm personal to Plaintiffs. *See Bullock*, ¶ 41; *Missoula City-County Air Pollution Control Bd. v. Bd. of Envtl. Review.*, 282 Mont. 255, 262, 937 P.2d 463, 467 (1997) (finding the claimed injury was personal because of the obligations imposed on the party by law). The only harm stemming from this bill, according to Plaintiffs, is that the Board of Regents cannot vindicate its own rights in Court.

89. It is first worth noting that the *Board of Regents* did bring its dispute over HB 102 in the First Judicial District. *See Board of Regents v. State*, DV-25-2021-598 (1st Jud. Dist. filed May 27, 2021). Plaintiffs—whose ultimate claim is that the Board has been harmed—cannot claim an injury stemming from a harm that was not realized by the Board itself.

90. But more importantly, this is an injury to the Board of Regents and the Board of Regents alone. This is not an injury personal to Plaintiffs, nor is it even an

injury to the general public. *See Bullock*, ¶ 41; *Missoula City-County Air Pollution Control Bd.*, 282 Mont. at 262, 937 P.2d at 467. This is an injury personal to the Board, which is not a party here.

91. Accordingly, Plaintiffs have failed to establish standing with respect to its second claim, which challenges HB 2. Plaintiffs' second claim must be dismissed.

PLAINTIFFS LACK PRUDENTIAL STANDING

92. Prudential standing alone cannot establish standing—Plaintiffs must still establish constitutional standing. *Heffernan*, ¶ 34. Because Plaintiffs have failed to establish constitutional standing, the Court need not address prudential standing.

93. But even if Plaintiffs had established constitutional standing, they have failed to establish prudential standing, which requires that a party assert its own constitutional rights. *Bullock*, ¶ 45.

94. *Committee for an Effective Judiciary* and *Lee*, which are both cited by Plaintiffs, Plaintiffs' Br. in Opp. at 15–16, are distinguishable from the facts here. First, in both cases, the parties still satisfied the constitutional standing requirement. *See* State's Reply in Support at 9–10. In *Committee for an Effective Judiciary*, the plaintiff electors were effectively denied the right to vote by not being able to select from a broad selection of judicial candidates. 209 Mont. at 112–13, 679 P.2d at 1227. This harm was virtually certain and flowed directly from the claim that they were denied the right to vote. *Id.* Likewise, in *Lee*, the plaintiff's injury was both personal and direct, even if it was not necessarily unique. 195 Mont. at 7, 635 P.2d at 1285. Lee drove over 55 mph on a certain stretch of highway and would no longer be able to do so under the new proclamation. *Id.*

95. Here, though, Plaintiffs' claim is that the Board is not able to exercise the full extent of its own constitutional authority. This is not a harm that is direct or personal to Plaintiffs like it was in *Committee for an Effective Judiciary* and *Lee*. Even if Plaintiffs' assertions about how the laws impact them are correct—which they are not—their claim is *not* that these laws are unconstitutional because they violate their individual rights, but rather these laws are unconstitutional because they arrogate to the Legislature powers that are reserved to the Board.

96. Plaintiffs' reliance on *Armstrong v. State* is misplaced. The doctor-patient relationship is well established for purposes of standing. *Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364. And it is the only relationship of its kind. The relationship between Plaintiffs and the Board of Regents is not well established, nor do Plaintiffs assert *any* facts in their Complaint suggesting that the groups even have a relationship, let alone the type of close, well-established relationship as in *Armstrong*.

97. Plaintiffs, therefore, lack prudential standing to bring these claims.

CONCLUSION

98. Plaintiffs lack standing to bring their first claim that the Legislature encroached on the Board's authority when it passed HB 102, HB 112, HB 349, and SB 319.

99. Plaintiffs lack standing to bring their second claim that the Legislature stripped the Board of its fundamental right to seek judicial recourse when it passed the conditional appropriation in HB 2.

ORDER

The State's Motion to Dismiss is hereby GRANTED, and Plaintiffs' claims are DISMISSED with prejudice.

DATED this 14th day of January, 2022.

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