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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 REPRESENT-
ATIVES; 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-21-581B
Hon. Rienne H. McElyea

**PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

Plaintiffs respectfully submit that the legislative measures challenged in this case are facially unconstitutional beyond a reasonable doubt and as a matter of law. Plaintiffs move the Court pursuant to Rule 56, M.R.Civ.P., to:

- (1) Grant summary judgment in Plaintiffs' favor and declare the following legislative enactments unconstitutional and void *ab initio*, having been promulgated in violation of Article X, § 9 of the Montana Constitution;
 - (A) HB 349 (2021), codified at § 20-25-518 and 519, MCA;
 - (B) The portion of HB 112 (2021), codified at § 20-7-1305 through 1307, MCA, addressed to public institutions of higher education; and
 - (C) Section 2 of SB 319 (2021), codified at § 20-25-452, MCA;¹
- (2) Permanently enjoin the enforcement of the above-described unconstitutional measures; and
- (3) Award plaintiffs their attorneys' fees and costs under the Private Attorney General Doctrine.

¹ Plaintiffs also challenged HB 102 (2021) and § 21 of SB 319 (2021), both of which were declared unconstitutional in other cases during the pendency of this case.

HB 102 was found to violate Mont. Const. Art. X, § 9 for the same reasons asserted by Plaintiffs here, *see* McMahon, J., Summary Judgment Order, *Bd. of Regents of Higher Ed. v. State of Montana*, No. BDV-2021-598 (Mont. 1st Jud. Dist. Ct., Nov. 30, 2021) (Doc. 29, Ex. A), so this Court deemed the issue moot for purposes of this case, *see* Order Denying State's Motion to Dismiss (Doc. 34), pp. 6-7. Judge McMahon's decision is currently on appeal before the Montana Supreme Court in Cause No. DA 21-0605.

SB 319, § 21, was found unconstitutional on different grounds than urged by Plaintiffs in this case. *See* Menahan, J., Summary Judgment Order, *Forward Montana, et al. v. State of Montana*, ADV 2021-611 (Mont. 1st Jud. Dist. Ct., Feb. 3, 2022) (finding a violation of Mont. Const. Art. V, §§ 11(1) and (3)). The State did not appeal this decision so it is unnecessary for this Court to decide whether § 21 is also unconstitutional under Art. X, § 9. This issue is therefore also moot.

Pursuant to Uniform Local Rule 2, the undersigned certify that opposing counsel has been contacted about this motion. Defendants state that they need additional time to consider it. Because this is a summary judgment motion, Plaintiffs assume that Defendants oppose. If the undersigned is notified otherwise and the motion is unopposed in whole or in part, Plaintiffs will promptly notify the Court and amend this certification.

Submitted this 27th day of May, 2022

GOETZ, GEDDES & GARDNER, P.C.

/s/ Jeffrey J. Tierney _____

James H. Goetz
Jeffrey J. Tierney

and

GRAYBILL LAW FIRM, P.C.

/s/ Raphael Graybill _____

Raphael Graybill

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served upon the following counsel of record, by the means designated below, this 27th day of May, 2022.

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/s/ Jeffrey J. Tierney _____
Jeffrey J. Tierney