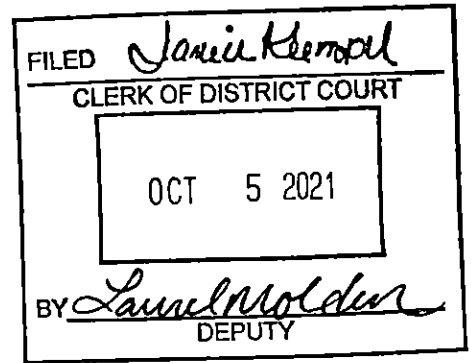


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MONTANA SEVENTH JUDICIAL DISTRICT COURT, RICHLAND COUNTY

<p>NETZER LAW OFFICE, P.C.,</p> <p>Plaintiff,</p> <p>vs.</p> <p>STATE OF MONTANA, by and through AUSTIN KNUDSEN, in his official capacity as Attorney General and LAURIE ESAU, Montana Commissioner of Labor and Industry,</p> <p>Defendants.</p>	<p>Cause No. DV-21-89</p> <p>COMPLAINT</p> <p>Hon. Katherine M. Bidegaray</p>
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The Plaintiff, Netzer Law Office, P.C., (“Netzer Law”) for its Complaint against the Defendants, the State of Montana, by and through Austin Knudsen in his official capacity as Attorney General and Laurie Esau, in her official capacity as Montana Commissioner of Labor and Industry, states as follows:

Parties

1. Plaintiff, Netzer Law Office, P.C., is a Montana professional corporation headquartered in Sidney, Montana, with offices in Sidney and Billings.
2. The State of Montana is a governmental entity subject to suit for injuries to persons. Montana Constitution, art. II, § 18. The State of Montana adopted Montana HB 702.

3. Austin Knudsen is the Montana Attorney General and generally charged with the enforcement of the laws of the State of Montana, as they affect the public interest.
4. Laurie Esau is the Montana Commissioner of Labor and Industry and is charged with the enforcement of Montana HB 702 § 1 through the Montana Human Rights Commission.

Jurisdiction and Venue

5. This Court has original jurisdiction over this civil matter. Mont. Code Ann. § 3-5-302.
6. Venue in this matter is proper in Richland County because this county is where the cause or some part of the cause of action arose and the county of the Plaintiff's residence.
Mont. Code Ann. § 25-2-126.
7. This case is also founded on Mont. Code Ann. § 27-8-201, which authorizes the Court to grant declaratory relief.

Summary of the Claim

8. This suit asserts that Montana House Bill 702, 67th Legislature, Regular Session (Mont. 2021) ("Montana HB 702"), Section 1 is invalid and unconstitutional on its face to the extent those statutory provisions restrict and interfere with Netzer Law's ability to exercise its professional judgment and choice in determining how to best provide a safe and healthy environment for its employees, clients, potential clients and other third-parties.
9. Montana HB 702 is invalid and unconstitutional because on its face the statutory provisions violate the following sections of the Montana Constitution:
 - A. the inalienable right to "a clean and healthful environment" under article II, section 3 of the Montana Constitution,

- B. the obligation of the State of Montana to “maintain ... a ... healthful environment” in Montana, article IX, section 1 of the Montana Constitution, and
- C. the Equal Protection Clause under article II, section 4 of the Montana Constitution that provides, “No person shall be denied the equal protection of the laws.”

Statute Under Review

10. Montana HB 702, in relevant part, states as follows:

Section 1. Discrimination based on vaccination status or possession of immunity passport prohibited -- definitions. (1) Except as provided in subsection (2), it is an unlawful discriminatory practice for:

- (a) a person or a governmental entity to refuse, withhold from, or deny to a person any local or state services, goods, facilities, advantages, privileges, licensing, educational opportunities, health care access, or employment opportunities based on the person's vaccination status or whether the person has an immunity passport;
- (b) an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment based on the person's vaccination status or whether the person has an immunity passport; or
- (c) a public accommodation to exclude, limit, segregate, refuse to serve, or otherwise discriminate against a person based on the person's vaccination status or whether the person has an immunity passport.

(2) This section does not apply to vaccination requirements set forth for schools pursuant to Title 20, chapter 5, part 4, or day-care facilities pursuant to Title 52, chapter 2, part 7.

(3) (a) A person, governmental entity, or an employer does not unlawfully discriminate under this section if they recommend that an employee receive a vaccine.

(b) A health care facility, as defined in 50-5-101, does not unlawfully discriminate under this section if it complies with both of the following: (i) asks an employee to volunteer the employee's vaccination or immunization status for the purpose of determining whether the health care facility should implement reasonable accommodation measures to protect the safety and health of employees, patients, visitors, and other persons from communicable diseases. A health care facility may consider an employee to be nonvaccinated or nonimmune if the employee declines to provide the employee's vaccination or immunization status to the health care facility for purposes of determining whether reasonable accommodation measures should be implemented. (ii) implements reasonable accommodation measures for employees, patients, visitors, and other persons

who are not vaccinated or not immune to protect the safety and health of employees, patients, visitors, and other persons from communicable diseases.

(4) An individual may not be required to receive any vaccine whose use is allowed under an emergency use authorization or any vaccine undergoing safety trials.

(5) As used in this section, the following definitions apply: (a) "Immunity passport" means a document, digital record, or software application indicating that a person is immune to a disease, either through vaccination or infection and recovery. (b) "Vaccination status" means an indication of whether a person has received one or more doses of a vaccine.

Section 2. Exemption. A licensed nursing home, long-term care facility, or assisted living facility is exempt from compliance with [section 1] during any period of time that compliance with [section 1] would result in a violation of regulations or guidance issued by the centers for medicare and medicaid services or the centers for disease control and prevention. . . .

11. Montana HB 702 is not limited in scope to applying solely to vaccinations or immunity related to the COVID-19 virus. It applies to all vaccinations and immunity status against any and all diseases, known and unknown, which may now or in the future pose a threat to the health of Montanans.
12. Montana HB 702 § 1 applies to all Montana employers except those exempted in Section 2.
13. Montana HB 702 § 2 exempts licensed nursing homes, long-term care facilities, and assisted living facilities from the requirements of Montana HB 702 § 1.
14. Montana HB 702 § 1(2) allows schools and day-care employers to require vaccinations of individuals using their facilities and services.
15. Montana HB 702 § 1 limits the ability of Netzer Law from exercising its professional judgment in determining the conditions of employment when necessary to address the health and safety of employees or potential employees, or to provide for the health and

safety of its clients, potential clients, or other third-parties that may interact with employees at Netzer Law.

16. Per Montana HB 702 § 4, Montana HB 702 § 1 is to be codified, with certain exceptions, as an integral part of Title 49, chapter 2, part 3, MCA.
17. Title 49, MCA is the Montana Human Rights Act.

General Allegations

18. Netzer Law is a Montana employer that includes employees who are lawyers and legal assistants, in its Sidney and Billings offices. Netzer Law is therefore subject to the requirements of Montana HB 702 § 1.
19. Montana HB 702 § 1 prevents Netzer Law from providing a safe, clean and healthful environment for its clients, prospective clients and for its employees and potential employees in at least one of the following ways:
 - A. Unvaccinated employees are more likely to spread infectious diseases and pathogens, including, but not limited to, the COVID-19 virus, than vaccinated employees;
 - B. Unvaccinated employees are more likely to spread pathogens through airborne, blood-borne, surface contamination, and other transmission mechanisms than are employees who are vaccinated against these pathogens;
 - C. Netzer Law has a duty to provide a clean and healthy environment to its employees, potential employees, clients, potential clients, and other third-parties that may enter its offices.
20. Netzer Law has employees and clients who represent a broad cross section of Montanans and include elderly and immunocompromised individuals.

21. Netzer Law is injured by Montana HB 702 § 1 because it is legally prohibited from taking measures to protect its employees from coming into contact with unvaccinated fellow employees or potential new employees that are unvaccinated or from unvaccinated members of the public wishing to use their services, due to the prohibitions of HB 702 regarding an individual's vaccination status, placing Netzer Law employees at increased risk to their health and safety.
22. Netzer Law is unable to require its employees to be vaccinated against the COVID-19 virus, or any other known or unknown viruses or communicable diseases and as such is prohibited from providing a safe and healthful environment to all Netzer Law employees.
23. Montana is seeing a resurgence of COVID-19 cases throughout the state, with the current number of active COVID-19 cases standing at 11,498, as of October 4th, 2021, per the State of Montana COVID-19 data dashboard.
24. Yellowstone County has 2,728 active COVID-19 cases and Richland County has 72 active COVID-19 cases, as of October 4th, 2021, per the State of Montana COVID-19 data dashboard.
25. The COVID-19 virus poses a serious risk of causing bodily injury or death to individuals who contract the virus and as of October 4th, 2021, approximately 2,022 deaths have been attributed to the virus since the outbreak of the pandemic in March of 2020, per the State of Montana COVID-19 data dashboard.
26. Employees who contract COVID-19 or some other infectious disease and miss work can cause substantial economic harm to both themselves and their employer.
27. Yellowstone County hospitals are at or near capacity due to the surge in COVID-19 cases and on September 21st, 2021, Montana Governor Greg Gianforte announced he was

sending 10 additional National Guard members to assist Billings Clinic, in addition to the 10 prior National Guard members he sent to Billings Clinic on September 15th, 2021. Governor Gianforte also announced on September 21st, 2021, that 10 National Guard members would assist St. Vincent Healthcare in Billings.

28. On September 28th, 2021, Montana Governor Greg Gianforte announced he was sending four National Guard members to assist Sidney Health Center, in Richland County.
29. Data from the Montana Department of Health and Human Services, released on September 20, 2021, reports that on or about August 28th, 2021, 86.9 percent of hospitalizations in Montana were of people not fully vaccinated.
30. According to the State of Montana COVID-19 data dashboard, as of October 4th 2021, only 40% of the eligible population of Richland County residents have been fully vaccinated against the COVID-19 virus. Only 53% of the eligible population of Yellowstone County have been fully vaccinated against the COVID-19 virus.

**First Claim - Violation of Montanans'
Constitutional Right to a Safe and Healthy Environment**

31. The allegations of Paragraphs 1-30 are incorporated in this claim as though set forth fully herein.
32. The Montana Constitution, in its Declaration of Rights, provides: "All persons are born free and have certain inalienable rights. They include the right to a . . . healthful environment and the rights of . . . seeking their safety [and] health . . . in all lawful ways." Mont. Const. art. II, § 3.
33. Montana HB 702 § 1 impedes Netzer Law from maintaining a healthful environment for its employees.

34. Montana HB 702 § 1 prevents clients, potential clients, and other third parties from enjoying a safe and healthy environment when entering Netzer Law due to the prohibitions of 702 § 1.
35. Montana HB 702 § 1 burdens the fundamental right to a safe and healthy environment and does not advance any state interest, nor is it tailored to the advancement of any state interest.
36. Montana HB 702 § 1 is unconstitutional on its face and violates § 3 of the Montana Constitution's Declaration of Rights.

**Second Claim – Violation of Montana's Constitutional
Obligation to Maintain a Healthy Environment**

37. The allegations of Paragraphs 1-36 are incorporated in this claim as though set forth fully herein.
38. The Montana Constitution provides:

(1) The state and each person shall maintain and improve a . . . healthful environment in Montana

Mont. Const. art. IX, § 1.
39. Montana HB 702 § 1 violates the obligation to maintain and improve a healthful environment by facilitating and even mandating the employment in Montana businesses like Netzer Law of persons who are more likely to spread disease.
40. Montana HB 702 § 1 impedes Netzer Law from complying with its obligations under the constitution to provide a healthful environment.
41. Montana HB 702 § 1 impairs the ability of Montanans from enjoying a healthy environment when they enter Netzer Law offices.
42. Montana HB 702 § 1 therefore violates article IX, section 1 of the Montana Constitution.

**Third Claim – Violation of Montana’s Constitutional
Obligation to Provide Equal Protection of the Laws**

43. The allegations of Paragraphs 1-42 are incorporated in this claim as though set forth fully herein.
44. The Montana Constitution requires that “[n]o person shall be denied the equal protection of the laws.” Mont. Const. art. II, § 4.
45. Under Montana HB 702 § 2, Netzer Law is treated differently under the law than nursing homes, long-term care facilities, assisted living facilities on being able to require vaccinations, due to the exemption created in Montana HB 702.
46. Under Montana HB 702, Netzer Law is prohibited from requiring individuals seeking their services to be vaccinated, unlike schools and day-care providers.
47. Due to the prohibitions in Montana HB 702, Netzer Law is unable to provide to its employees, potential employees, clients, potential clients and other third-parties the same healthy workplace environment that Montana nursing homes, long-term care facilities, and assisted living facilities are able to provide, due to their exemption in Montana HB 702.
48. Due to the prohibitions in Montana HB 702, Netzer Law is unable to provide to its employees, potential employees, clients, potential clients and other third-parties the same healthy workplace environment that Montana schools and day-care facilities are able to provide, due to their exemptions from Montana HB 702.
49. The distinction drawn in the exception by Montana HB 702 § 2 burdens the fundamental right of equal protection, does not advance any state interest, nor is it tailored to the advancement of any state interest.
50. Montana HB 702 § 1 therefore violates article II, section 4 of the Montana Constitution.


Relief Requested

The Plaintiff prays for the following relief:

- A. A declaration that Montana HB 702 § 1 is unconstitutional in its entirety and as such is invalid and unenforceable against Netzer Law;
- B. A preliminary injunction prohibiting the Defendants from enforcing Montana HB 702 § 1 in its entirety;
- C. A permanent injunction prohibiting the Defendants from enforcing Montana HB 702 § 1 in its entirety;
- D. Attorney's fees, including litigation expenses, and costs; and
- E. Such other relief as may be just and proper.

Dated this 5th day of October, 2021.

NETZER LAW OFFICE, P.C.


Joel G. Krautler
Attorney for Plaintiff