

Hon. Olivia Rieger  
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 Montana Seventh Judicial District, Dpt. 1  
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CERTIFICATE OF SERVICE  
 This is to certify that the foregoing was duly served by  
 prepaid mail upon Yvonne Klemm on  
 this 14th day of February, 2022  
 BY [Signature]  
 Clerk of District Court  
 1-406-333-1709 Sidney, MT

FILED Jamie Klemm  
 CLERK OF DISTRICT COURT  
 FEB 1 2022  
 BY [Signature]  
 DEPUTY

MONTANA SEVENTH JUDICIAL DISTRICT COURT, RICHLAND COUNTY

<p>NETZER LAW OFFICE, P.C. and          DONALD L. NETZER,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</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 style="text-align: center;">Defendant.</p>	<p>Cause Number: DV-21-89</p> <p style="text-align: center;">Hon. Olivia Rieger</p> <p style="text-align: center;">FINDINGS OF FACT, CONCLUSIONS OF          LAW AND ORDER DENYING          PLAINTIFFS' APPLICATION FOR          PRELIMINARY INJUNCTION</p>
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The Court came for hearing on December 14, 2021, to hear Oral Argument from the parties on the Application. Plaintiff Netzer Law Office, P.C. (hereinafter known as "Netzer Law") and Plaintiff Donald L. Netzer appeared with their attorneys Joel G. Krautter of Netzer Law Office, P.C. and Jared Wigginton of Good Steward Legal, PLLC. Assistant Solicitor General Brent Mead appeared on behalf of the State. The Court received various exhibits for consideration into the record. Based thereupon, the Court herein enters the following:

**FINDINGS OF FACT**

1. Plaintiff Netzer Law is a Montana Professional Corporation headquartered in Sidney, Montana, with offices in Sidney and Billings, Montana. Netzer Law currently employs

three attorneys and two legal assistants. Aff. of Donald L. Netzer, ¶ 4. Plaintiff Donald L. Netzer is an employee and majority shareholder of Netzer Law Office. Id.

2. Defendant State of Montana is the sovereign entity representing the people of Montana. Defendant Austin Knudsen is the Montana Attorney General and is named in his official capacity. Defendant Laurie Esau is the Montana Commissioner of Labor and Industry and is named in her official capacity.
3. The State of Montana continues to experience the effects of a global COVID-19 pandemic. SARS-Co-V-2 (the virus that causes COVID-19) is primarily spread through exposure to respiratory fluids carrying the virus. Exposure occurs in three principal ways: (1) inhalation of very fine respiratory droplets and aerosol particles, (2) deposition of respiratory droplets and particles on exposed mucous membranes in the mouth, nose, or eye by direct splashes and sprays, and (3) touching mucous membranes with hands that have been soiled either directly by virus-containing respiratory fluids or indirectly by touching surfaces with the virus on them.<sup>1</sup> (Aff. of Donald L. Netzer, ¶ 29: Exhibit 4: CDC, “Scientific Brief: SARS-Co V-2 Transmission,” May 7, 2021.)
4. During the 2021 Legislative session, the State of Montana enacted House Bill 702, now codified as Mont. Code Ann. § 49-2-312. The law went into effect on May 7, 2021.<sup>2</sup>
5. HB 702, as codified in Mont. Code Ann. § 49-2-312, states:

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

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<sup>1</sup> To the extent necessary, the Court takes Judicial Notice of the Centers for Disease Control and Prevention (“CDC”) reports and statements.

<sup>2</sup> The Court takes Judicial Notice of the effective date of HB 702. 2021 Mont. Sess. L. Ch. 418 (Sections 1, 2, and 4-6 had an effective date of May 7, 2021).

(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.

6. As codified, Mont. Code Ann. § 49-2-312 no longer contains HB 702's title therefore claims on this point are redundant.
7. Mont. Code Ann. § 49-2-312 applies to all vaccines and immunity statuses and is not limited to those vaccines and immunity statuses related to COVID-19.

8. Plaintiffs Netzer Law and Donald L. Netzer are not among those exempted facilities such as schools, day-care facilities, or healthcare facilities from adhering to Mont. Code Ann. § 49-2-312.
9. Plaintiffs Netzer Law and Donald L. Netzer seek a preliminary injunction to stop Mont. Code Ann. § 49-2-312's enforcement claiming the law violates Plaintiffs' constitutional rights under Art. II, § 3; Art. II, § 4; Art. II, § 34; Art. V, § 11, Cl. 3; and Art. IX, § I.
10. As a corporate entity, Plaintiff Netzer Law is not entitled to constitutional protections.
11. This Court finds Plaintiff Netzer Law has standing to bring this suit due to its economic injury from the loss of billing hours directly related to shifting its focus from clients to pandemic-related matters and its potential economic injury of future losses for the same reason.
12. This Court finds Plaintiff Donald L. Netzer has standing to bring this suit as the threatened injuries to his fundamental rights as a business owner and employer is sufficient for standing.
13. It is an employer's duty to provide equipment necessary for a safe workplace.
14. The term "environment" as used in M.T. Const. Art. II, § 3 includes indoor environments.
15. Plaintiff Netzer Law has not suffered the type of harm required for a preliminary injunction because it has not demonstrated a prima facie showing of a great or irreparable injury and is therefore unlikely to succeed on the merits.
16. Plaintiff Donald L. Netzer has not suffered the type of harm required for a preliminary injunction because he has not demonstrated a prima facie showing of a great or irreparable injury and is therefore unlikely to succeed on the merits.

Based upon the foregoing Findings of Fact, the Court now enters:

### **CONCLUSIONS OF LAW**

1. The Court has jurisdiction over the parties and over this matter.
2. Venue is proper in Richland County District Court.
3. Any prior Finding of Fact also constituting a Conclusion of Law is incorporated herein by reference.
4. "The mere fact that a person is entitled to bring an action under a given statute is insufficient to establish standing; the party must allege some past, present or threatened

injury which would be alleviated by successfully maintaining the action.” Sanders v. Yellowstone County, 276 Mont. 116, 119, 915 P.2d 196 (1996); *see also* Vainio v. Vainio (In re Vainio) 284 Mont. 229, 235, 943 P.2d 1282 (1997); In re B.F., 2004 MT 61, ¶ 15, 320 Mont. 261, 87 P.3d 427; Jones v. Mont. Univ. Sys., 2007 MT 82, 337 Mont. 1, 155 P.3d 1247; Heffernan v. Missoula City Council, 2011 MT 91, ¶ 33, 360 Mont. 207, 255 P.3d 80.

5. Potential economic harm is sufficient to establish a threatened injury. Montana Human Rights Div. v. City of Billings, 199 Mont. 434, 649 P.2d 1283 (1982); *see also* Rosebud Cty. v. Dept. of Rev., 257 Mont. 306, 849 P.2d 177 (1993); Missoula City-County Air Pollution Control Bd. v. Bd. of Envtl. Review, 282 Mont. 255, 262, 937 P.2d 463 (1997); Reichert v. State, 2012 MT 111, ¶ 58, 365 Mont. 92, 278 P.3d 455.
6. The Court has also required the alleged injury to be distinguishable from the injury to the public generally, though not necessarily exclusive to the plaintiff. Armstrong v. State, 1999 MT 261, ¶6, 296 Mont. 361, 989 P.2d 364; *see also* Bryan v. Yellowstone Cty. Elem. Sch. Dist. No. 2, 2002 MT 264, ¶ 20, 312 Mont. 257, 60 P.3d 381; Fleenor v. Darby School Dist., 2006 MT 31, ¶7, 331 Mont. 124, 128 P.3d 1048; Bd. of Trs. v. Cut Bank Pioneer Press, 2007 MT 115, ¶ 15, 337 Mont. 229, 160 P.3d 482.
7. Netzer Law experienced injury when it lost billing time due to redirecting that time for internal consultations [[related to pandemic-related matters]]. Accordingly, this is an economic injury sufficient to establish standing as Netzer Law alleges the injury would be alleviated by successfully maintaining the action because it would be able to bar those unvaccinated or without immunity to infectious diseases from being employed by Netzer Law or entering Netzer Law’s property, thus allowing the firm to refocus on clients. Netzer Law has a total of five employees, each of whom contribute to the operation of the firm. The absence of just one employee could impact the firm’s ability to meet the needs of its clients thus reducing the firm’s income. Therefore, Netzer Law has an injury distinguishable from the general public. Furthermore, Plaintiff Netzer Law is likely to experience additional economic harm if the firm needs to pause operations due to pandemic-related matters. Therefore, Netzer Law’s potential economic harm is sufficient to establish standing.

8. “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.
9. Plaintiff Donald L. Netzer has more than a general or abstract interest in the legality of Mont. Code Ann. § 49-2-312 as he asserts the loss of several constitutional rights is directly caused by the implementation of the statute. The loss of a constitutional right is specific and definite harm.
10. An injunction order may be granted in the following cases:
  - (1) when it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;
  - (2) when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;
  - (3) when it appears during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;
  - (4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of the adverse party's property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;
  - (5) when it appears that the applicant has applied for an order under the provisions of 40-4-121 or an order of protection under Title 40, chapter 15.

Mont. Code Ann. § 27-19-201.

11. The Court has held the subsections of Mont. Code Ann. § 27-19-201 are disjunctive, meaning “findings that satisfy one subsection are sufficient. Consequently, only one subsection need be met for an injunction to issue.” Sweet Grass Farms, Ltd. v. Bd. of Cty. Comm'rs, 2000 MT 147, ¶ 27, 300 Mont. 66, 2 P.3d 825; *see also* Sandrock v.

DeTienne, 2010 MT 237, ¶ 16, 358 Mont. 175, 243 P.3d 1123 (citing Benefis Healthcare v. Great Falls Clinic, LLP, 2006 MT 254, ¶ 14, 334 Mont. 86, 146 P.3d 714). Here, only the first two requirements are applicable.

12. “An applicant for a preliminary injunction must establish a prima facie case or show that it is at least doubtful whether or not he will suffer irreparable injury before his rights can be fully litigated.” Id. “Prima facie” means “sufficient to establish a fact or raise a presumption unless disproved or rebutted.” Mont. Code Ann. § 26-1-102(6). A prima facie case requires “a party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor. § 26-1-301, MCA.” Jones v. All Star Painting Inc., 2018 MT 70, ¶ 20, 391 Mont. 120, 415 P.3d 986.
13. Mont. Code Ann. § 50-71-21 requires employers to provide a safe workplace including purchasing and furnishing health and safety devices, safeguards, protective safety clothing, or other health and safety items as well as adopting and using practices reasonably adequate to render the place of employment safe in order to protect the life, health, and safety of the employer's employees. As such, Netzer Law’s expenses in supplying masks and other safety equipment to all entering its offices do not meet the standard of economic injury because it is already the legal obligation of the firm to provide such.
14. Plaintiff Netzer Law experienced economic harm due to loss of billing hours directly related to providing a safe workplace. At the time of ruling, the loss is neither specific nor definite; therefore, the plaintiff has not shown the economic injury is irreparable nor that it will suffer irreparable injury before its rights can be fully litigated. Netzer Law also alleges economic injury because of supplying masks to those who enter its offices. As previously established, it is the legal duty of Netzer Law to ensure a safe workplace, and that includes providing facemasks. Finally, Netzer Law alleges future economic injuries in the form of office closures, reduced business development opportunities, required non-discriminatory remote work policies, and potential liability due to possible outbreaks. These potential injuries could occur whether individuals are vaccinated against infectious diseases or not.<sup>3</sup> Netzer Law alleges requiring active proof of COVID-

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<sup>3</sup> CDC, “Science Brief: COVID-19 Vaccines and Vaccination” last updated Sept. 15, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated->

19 vaccination or immunity status and for those without active vaccination or immunity to take regular COVID-19 tests, wear masks, wash their hands, and potentially work from home would best protect the health and safety of Netzer Law owners, employees and clients. Regular testing, wearing a mask, washing hands, and working from home are measures that can be applied equally to individuals regardless of vaccination status. Therefore, Netzer Law’s potential economic injuries may occur with or without the injunction and does not rise to the level of a prima facie case for irreparable injury.

15. Plaintiff Netzer Law is a corporation, not a citizen entitled to constitutional protections.

“It might also be added that corporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their ‘personhood’ often serves as a useful legal fiction. But they are not themselves members of ‘We the People’ by whom and for whom our Constitution was established.” Citizens United v. FEC (2010), 558 U.S. 310.

16. The loss of a constitutional right has been found to equal irreparable harm “for the purpose of determining whether a preliminary injunction should be issued.” Mont. Cannabis Indus. Ass'n v. State, 2012 MT 201, ¶ 15, 366 Mont. 224, 286 P.3d 1161, quoting Elrod v. Burns, 427 U.S. 347 (1976); see also Driscoll v. Stapleton, 2020 MT 247, ¶ 15, 401 Mont. 405, 473 P.3d 386.

17. Plaintiff Donald L. Netzer asserts Mont. Code. Ann. § 49-2-312 violates his fundamental rights found in M.T. CONST. Art. II, § 3; Art. II, § 4; Art. II, § 34; Art. V, § 11, Cl. 3; and Art. IX, § I.

18. M.T. CONST. Art. II, § 3 states: “All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.”

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people.html#:~:text=Evidence%20suggests%20the%20US%20COVID,interrupting%20chains%20of%20transmissi on (“Evidence suggests the currently approved or authorized COVID-19 vaccines are highly effective against hospitalization and death for a variety of strains...the risk for COVID-19 infection in fully vaccinated people cannot be completely eliminated as long as there is continued community transmission of the virus.)



- a. Plaintiff Donald L. Netzer asserts a clean and healthful environment includes indoor environments. The Court agrees. The Montana Code Annotated refers to the term “environment” several times throughout, and in many instances the reference is not limited to the State’s definition of applying only to natural resources found in outdoor settings. Furthermore, the Court is unpersuaded by the State’s argument that “[o]ccupational disease and workplace infectious diseases are historically regulated through statutes outside the ambit of environmental rights” as stated in Orr v. State (2004) as these statutes were repealed during the 2009 Montana Legislative Session. Sec. 22, Ch. 27, L. 2009; State’s Proposed Findings, ¶ 23. However, nothing in Mont. Code Ann. § 49-2-312 prevents Donald L. Netzer from enjoying a clean and healthful environment in his office. The statute prohibits employers from hiring/firing employees based on vaccination or immunity status. The statute does not, as the Plaintiff argues, prevent employers from implementing health and safety regulations to ensure a clean and healthful environment for all owners, current employees, future employees, clients, and future clients regardless of vaccination or immunity status. While the current vaccines available to defend against infectious diseases including those vaccines for COVID-19 (currently approved or authorized in the United States: Pfizer-BioNTech/Comirnaty, Moderna, and Janssen [Johnson & Johnson])<sup>4</sup> have proven to be effective against hospitalization and even death, no vaccine will ever be 100% effective against a disease because each person’s body reacts differently.<sup>5</sup> Donald L. Netzer is entitled to a clean and healthful environment but it is an impossibility for that right to depend solely on a person’s vaccination status.
- b. Plaintiff Donald L. Netzer is entitled to pursue life’s basic necessities in all lawful ways. As courts have previously held, this necessarily includes the right to pursue employment. Donald L. Netzer argues this right then certainly includes owning

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<sup>4</sup> Id.

<sup>5</sup> CDC, “Overview, History, and How the Safety Process Works,” Sept. 9, 2010.

<https://www.cdc.gov/vaccinesafety/ensuringsafety/history/index.html> (“Vaccines are the best defense we have against infectious diseases, but no vaccine is actually 100% safe or effective for everyone because each person’s body reacts to vaccines differently.”)

and operating a business. The Court agrees. However, this right is not without limitation and business owners are still subject to State regulation in their pursuit of life's basic necessities. There is nothing in Mont. Code Ann. § 49-2-312 that prevents Donald L. Netzer from pursuing employment. Furthermore, Donald L. Netzer's claim of assuming potential legal liability created by this government action is too remote. The Plaintiff argues life's basic necessities would have little meaning if doing so required employers and employees to unnecessarily jeopardize their health, livelihoods, and potentially lives due to government regulation, but fails to demonstrate how his ability to fire current employees and hire future employees based solely on their vaccination status advances his right to pursue life's basic necessities and prevents him from pursuing employment and operating a business as an owner. Plaintiff also fails to demonstrate how requiring only non-vaccinated or immune owners, employees, and clients to engage in health and safety practices while at the office does not jeopardize the health, livelihood, and potentially lives of all who enter the office when, at least in the case of COVID-19, even vaccinated individuals can carry and transmit the virus.<sup>6</sup>

- c. Plaintiff Donald L. Netzer argues the right to enjoy and defend life and liberty necessarily includes the right to defend one's life against deadly diseases and government actions that unnecessarily or seriously threaten one's life by increasing exposure to such diseases. The Court agrees the right to defend life is broader than the State's misstatement of the statute but disagrees Mont. Code Ann. § 49-2-312 burden's the Plaintiff's right. Nothing in the statute prevents Donald L. Netzer from defending his life and liberty against deadly diseases in all lawful ways. Plaintiff has not demonstrated the prohibitions in Mont. Code Ann. § 49-2-312 seriously threaten his life by increasing his exposure to deadly diseases because he has not shown that without the prohibitions, his exposure would decrease as vaccinated individuals can still carry viruses. As previously

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<sup>6</sup> CDC, "The Possibility of COVID-19 after Vaccination: Breakthrough Infections," last updated Dec. 17, 2021. <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measure-effectiveness/breakthrough-cases.html>

stated, Donald L. Netzer can still implement measures such as face coverings, social distancing, remote work policies, and setting hygiene requirements designed to reduce the risk of exposure to deadly diseases. In fact, it is his legal obligation to do so to ensure a safe workplace.

- d. Plaintiff Donald L. Netzer argues the right to acquire, possess, and protect his property—the Netzer Law Firm offices—is substantially burdened by Mont. Code Ann. § 49-2-312 because the statute denies him the right to adopt and implement needed safety and health measures. The Court disagrees. As previously stated, Mont. Code Ann. § 49-2-312 does not prevent Donald L. Netzer from adopting and implementing health and safety measures; it prevents him from implementing the health and safety measure he wants, which is to treat vaccinated and unvaccinated individuals differently. The Montana Legislature has added Mont. Code Ann. § 49-2-312 to the Montana Human Rights Act and has named “vaccination status” a protected right. While the best way to prevent the spread of COVID-19 may be vaccination, it is not the only way.<sup>7</sup> Donald L. Netzer is not prevented from acquiring and possessing his property as he is not denied the right to adopt and implement lawful health and safety measures to protect it.
- e. Plaintiff Donald L. Netzer argues Mont. Code Ann. § 49-2-312, for all the reasons previously stated, necessarily burdens his right to seek safety, health and happiness. The Court disagrees. In seeking safety, health, and happiness, Plaintiff is still bound by lawful state regulation. “[I]t is well-established that the right to seek health is not absolute and is bounded by the State’s police powers. *See Mont. Cannabis Indus. Ass’n v. State*, 2012 MT 201, ¶ 22, 366 Mont. 224, 286 P.3d 1161 (“As with the right to pursue employment, the Constitution is clear that the right to seek health is circumscribed by the State’s police power to protect the public’s health and welfare.”)

- 19. Plaintiff Donald L. Netzer argues Mont. Code Ann. § 49-2-312 further violates M.T. CONST. Art. II, § 4, the right to equal protection. “An equal protection analysis generally requires a two-tier system of review. First, courts will identify the classes involved then

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<sup>7</sup> CDC, “How to Protect Yourself & Others,” Jan. 20, 2022. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

determine whether they are similarly situated. Henry v. State Comp. Ins. Fund, 1999 MT 126, ¶ 27, 294 Mont. 449, 982 P.2d 456. To decide whether classes are similarly situated, courts will isolate “the factor allegedly subject to impermissible discrimination; if two groups are identical in all other respects, they are similarly situated.” Snetsinger v. Mont. Univ. Sys., 2004 MT 390, ¶ 27, 325 Mont. 148, 104 P.3d 445; *see also* Oberson v. U.S. Dept. of Agric., 2007 MT 293, ¶¶ 19-20, 339 Mont. 519, 171 P.3d 715; Goble v. Mont. State Fund, 2014 MT 99, ¶ 28, 374 Mont. 453, 325 P.3d 1211; Hensley v. Mont. State Fund, 2020 MT 317, ¶ 19, 402 Mont. 277, 477 P.3d 1065. Here, Plaintiff Donald L. Netzer argues Netzer Law is similarly situated to those facilities exempt from strictly adhering to Mont. Code. Ann. § 49-2-312. The Court disagrees. The facilities named by the statute include schools, day-cares, and health-care facilities as defined by statute. These facilities traditionally serve vulnerable populations and in the case of health-care facilities, are available twenty-four hours a day without the option of working remotely. These facilities are heavily regulated by both the federal and state governments. Netzer Law is a business offering legal services to those who seek that type of service from the attorneys at Netzer Law. While Netzer Law serves a wide variety of clients, including those served by the exempted facilities, Netzer Law is also afforded the discretion to refuse clients. Netzer Law is not an education facility, childcare facility, and it does not provide medical care. Plaintiff Donald L. Netzer’s business is not similarly situated to the exempted facilities. Therefore, Plaintiff has not been denied equal protection of the law.

20. Plaintiff Donald L. Netzer further argues Mont. Code Ann. § 49-2-312 necessarily violates enumerated rights unnamed but guaranteed by the Montana Constitution. The Court disagrees. Without the articulation of specific rights violated, it cannot be determined whether there was a right to be had or indeed a violation of it.

From the foregoing Finds of Fact and Conclusions of Law, the Court makes the following:


### **ORDER**

#### **IT IS HEREBY ORDERED**

Plaintiffs’ have not satisfied the burden of establishing a prima facie case they will suffer irreparable harm caused by the implementation Mont. Code Ann. § 49-2-312 thus failing to meet

the requirement for a preliminary injunction. There is no basis for the relief Plaintiffs' request. The Plaintiffs' Application for a Preliminary Injunction is DENIED. The Clerk of Court is directed to file this Order and provide a copy to the parties of record in this matter.

Dated this 1st day of February, 2022.

A handwritten signature in cursive script that reads "Olivia Rieger". The signature is written in black ink and is positioned above a horizontal line.

HON. OLIVIA RIEGER

District Court Judge