

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 21-0605

**BOARD OF REGENTS OF HIGHER EDUCATION
OF THE STATE OF MONTANA,**

PETITIONER AND APPELLEE,

v.

**STATE OF MONTANA, by and through Austin Knudsen, Attorney
General of the State of Montana in his official capacity,**

RESPONDENT AND APPELLANT.

**UNOPPOSED MOTION FOR LEAVE TO FILE AMICUS BRIEF
OF WESTERN MONTANA FISH & GAME ASSOCIATION, INC.**

ON APPEAL FROM THE MONTANA FIRST JUDICIAL DISTRICT COURT,
LEWIS AND CLARK COUNTY, THE HONORABLE MIKE MCMAHON, PRESIDING

APPEARANCES

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Pursuant to M.R.App.P. 12(7), the Western Montana Fish & Game Association, Inc. (“WMFGA”) moves the Court for an order granting leave to file an amicus curiae brief on the important issues presented for the Court’s consideration in this appeal. In support of this motion, the WMFGA states as follows:

1. The interest of the Applicant.

The WMFGA is a nonprofit corporation headquartered in western Montana. It currently has 4,009 active members, among which include enrolled students who attend and employees who work at the University of Montana in Missoula. The WMFGA was organized to support and promote the sports of hunting and fishing, to own and or manage one or more shooting facilities for the use of its members, to conduct such other activities as serve the needs of its members, and to research, consider and provide comment on public policy and issues affecting the Association and its members. It supports the Second Amendment to the United States Constitution and Article II, Section 12 of the Montana Constitution, and will consider and take public positions on public issues concerning the interests of the WMFGA and its members.

The WMFGA owns and operates the Deer Creek Shooting Center (“DCSC”) which is located just east of Missoula. The DCSC is one of the

safest and most well-developed shooting facilities in the Northwest. Photos and a map are available on the WMFGA website at <https://www.wmfga.org>. The DCSC is only two miles from the University of Montana campus in Missoula. Members of the University of Montana's Police Department are also WMFGA members who regularly use the DCSC for ongoing training and qualification needs. The University of Montana's Department of Military Science, Reserve Officer Training Corps Program, also uses the DCSC for firearms training purposes, free of charge. The ROTC Program brings groups of students to the DCSC range to learn firearms handling and use, and its students are subject to the Range Rules for safety training and enforcement. The Department of Military Science's use of the DCSC range does not cost the University of Montana anything.

2. The reasons why an amicus brief is desirable.

The Montana Legislature enacted HB 102 in 2021. HB 102 generally revises gun laws with respect to open carry and concealed carry. In Section 4, the Act allows concealed carry "anywhere in the state" except at specific locations designated by the Legislature. Those excepted locations include primary and secondary schools, courtrooms, federal property, and airports, but the Legislature did not extend the exception to the MUS or its campuses and locations. In Section 8, the Legislature revised the existing "open carry

law,” § 45-3-111, MCA, in only one way; the Legislature deleted the prior exception in the open carry law acknowledging the Board’s authority to regulate the presence of weapons on campus.

The proceedings held in the District Court below included the declaration of Brianne Rogers, a member of the Board of Regents. In her declaration, Ms. Rogers predicted that mayhem and mass exodus (health and safety concerns causing students and staff to leave the Montana University system) would follow if the campus carry feature of House Bill 102 were to become effective. See, *Decl. Brianne Rogers*, ¶¶ 7, 13, 15, 16, 17, 18, and 20; Dkt. No. 6. Based in part upon her declaration and the Board’s authority to prioritize student, visitor, faculty, administration and staff protection, safety and well-being on MUS campuses and locations, the District Court entered a preliminary injunction as it relates to the carrying of firearms on Montana University campuses and locations.

The WMFGA regularly lobbies the Montana Legislature, and the efforts of its members were instrumental in the passage of HB 102. The WMFGA strongly disagrees with the predictions of mayhem and mass exodus expressed by the Appellee in the event that HB 102 is implemented. An amicus brief from WMFGA will address the Appellees’ safety concerns if the campus carry feature of HB 102 were to become effective. An amicus brief

from the WMFGA is desirable in this case because it will provide the Court with information specifically contradicting Appellee's predictions of peril and vulnerability on, and flight from, Montana University campuses as a result of HB 102.

3. The brief will support the Appellant's position.

The State disputed the Appellee's allegations of harm resulting from the implementation of HB 102. The State contends that HB 102 will enhance the safety of the people expanding their legal ability to provide for their own defense. In other words, the bill's purpose is to promote self-defense.

WMFGA agrees with that position and its brief will support that position.

4. The date the brief can be filed.

WMFGA's brief can be filed one week after the Appellant's Brief is filed.

5. The Appellee consents to the request.

The Undersigned has consulted with Counsel for the Appellee, Martha Sheehy, and Ms. Sheehy indicated that "[t]he Board of Regents has no objection to the proposed amicus participation on the condition that the amicus brief must be filed within one week of the filing of Appellant's Opening Brief."

Counsel for the Appellant State of Montana, Attorney General Knudsen, also consents to the filing of WMFGA's amicus brief.

WHEREFORE the Western Montana Fish & Game Association, Inc.
prays that its motion be granted.

DATED this 11th day of February, 2022.

By: s/ Palmer Hoovestal
Palmer Hoovestal
Attorney for Amicus Curiae
Western Montana Fish & Game
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CERTIFICATE OF SERVICE

I, Palmer A. Hoovestall, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 02-11-2022:

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