IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0364

NATIONAL ORDER OF COWBOY RANGERS,

Petitioner/Plaintiff and Appellant,

v.

MONTANA DEPARTMENT OF REVENUE,
CANNABIS ALCOHOL REGULATION DIVISION,

Respondent/Defendant and Appellee.

APPELLEE'S ANSWER BRIEF

On Appeal from the Montana Thirteenth Judicial District Court,
Yellowstone County,
Cause No. DV-56-2025-0000052-JR
The Honorable Colette Davies, Presiding

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STATEMENT OF THE ISSUES

The Appellant National Order of Cowboy Rangers ("Cowboy Rangers") frames three issues for appeal. The Department of Revenue, Cannabis Alcohol Regulation Division ("Department") contends and restates that the dispositive issues before the Court are:

1. Whether the Cowboy Rangers demonstrated sufficient grounds to excuse its noncompliance with the thirty-day filing deadline in § 2-4-702(2)(a), MCA.

2. Whether the District Court erroneously dismissed the Cowboy Rangers case for failure to state a claim upon which relief can be granted.

3. Whether the District Court abused its discretion by granting the Department's M. R. Civ. P. 12(b)(6) motion to dismiss without holding a hearing.

STATEMENT OF THE CASE

This appeal concerns the District Court's dismissal of the Cowboy Rangers' untimely petition for judicial review of the Department's decision denying its all-alcoholic beverages license application as a recognized national fraternal organization in existence since 1944. During the application process, the Department reviewed the Department of Justice (DOJ) investigation regarding the application. Also during the process, the Department published notice of the application and received enough protest letters to require a hearing pursuant to § 16-4-207, MCA. On December 8, 2023, the Department held the protest hearing

and took testimony from witnesses in support and in protest. The evidence showed that Travis Peterson ("Peterson") stumbled upon the idea of a fraternal license, which the Cowboy Rangers framed as a loophole in the alcohol license quota system, and then attempted to "resurrect" a defunct fraternal order. The Cowboy Rangers did not provide a membership list and had not received a 501(c)(10) designation from the U.S. Internal Revenue Service. On October 31, 2024, the Department issued the Findings of Facts, Conclusion of Law and Order ("Decision") denying the Cowboy Rangers' application, because the Cowboy Rangers failed to meet the criteria under § 16-4-201(8)(c), MCA, as a recognized national fraternal organization in continuous existence for 5 years or more prior to January 1, 1949. Decision at 35–40, Admin. Rec. Doc. 10, attached to Appellant's Brief as Ex. 1.

Section 2-4-702(2)(a), MCA, required that the Cowboy Rangers institute judicial review of the Decision in the District Court within 30 days after service. The deadline to file its petition for judicial review ran on November 30, 2024. The Cowboy Rangers did not file its Petition for Judicial Review and Complaint ("Petition") until January 13, 2025, which is 75 days after issuance of the Decision. Dist. Ct. Rec. Doc. 1. The claims all arise from the Department's fact-based Decision, and none presented pure constitutional or facial challenges to the applicable statutes.

The Department moved to dismiss the petition under M. R. Civ. P. 12(b)(6) because it was untimely and failed to state a claim upon which relief can be granted. The Cowboy Rangers responded that equity mandates it be excused from missing the deadline because the Department missed its deadline to issue the Decision in violation of § 2-4-623, MCA. Pet.'r Resp. Mot. Dismiss, Dist. Ct. Rec. Doc. 9. It also asserted that the Decision was issued during the holiday season between Halloween and New Years, its initial counsel declined to take the appeal, and it did not retain new counsel until after the deadline passed, all of which constitute good cause under equitable principles. *Id.*

The District Court granted the motion to dismiss without holding a hearing and determined that the Montan Administrative Procedures Act (MAPA) provided the Cowboy Rangers a plain, adequate, and speedy remedy to adjudicate its claims, and that a busy holiday season and delay retaining new counsel does not constitute a legally sufficient reason to justify its noncompliance with the 30-day deadline to petition for judicial review. Order Granting Dep't Mot. Dismiss ("Order"), Dist. Ct. Rec. Doc. 14, attached to Appellant's Brief as Ex. 2.

STATEMENT OF THE FACTS

The Montana Alcoholic Beverage Code establishes a quota limit for retail all-beverages licenses granted by the Department. Decision at 13, 31. Exceptions to the quota limitations exist for recognized national fraternal organization that

have been in existence since January 1, 1944, and are applying for a license at a location occupied for the last five years. *Id*. The U.S. Tax Code recognizes two types of fraternal organizations. Decision at 24–25, 39. "Fraternal beneficiary societies, orders, or associations" under 26 USCS § 501(c)(8) operate under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and provide for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents. *Id*. "Domestic fraternal societies, orders, or associations operating under the lodge system" under 26 USCS § 501(c)(10) have net earnings devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and do not provide for the payment of life, sick, accident, or other benefits. *Id.*; s*ee also* https://www.irs.gov/charities-non-profits/other-non-profits/fraternal-societies (accessed Feb. 7, 2025).

Travis Peterson owns and operates Meadowlark Brewing and Meadowlark Spirits (collectively, "Meadowlark"), as the sole member of the limited liability company that holds the Meadowlark licenses. Decision at 3–4. Meadowlark holds two alcoholic beverage manufacturer's licenses, one for a brewery and another for a distillery. Decision at 3–4. These manufacturer's licenses limit public consumption amounts and operating hours. Decision at 3–4. At some point, Peterson became aware of the fraternal license and began looking for a fraternal

organization with which to affiliate himself and his business. Decision at 4.

In March 2022, Rhonda Peterson ("Rhonda"), Peterson's mother, applied for one fraternal all-alcoholic beverage license with new gambling on behalf of "Meadowlark Grange." Decision at 5. The application identified the license would be operated next to Meadowlark, located at 3970 Pierce Parkway in Billings. Decision at 3–4. The March 2022 application provided an affiliation with the National Grange of the Order of Patrons of Husbandry. Decision at 3–4. Peterson did not provide a charter or evidence of any contact with that organization. Decision at 4–5. Rhonda and Peterson withdrew this initial application after the Department and Montana Department of Justice (DOJ) investigation discovered that the National Grange of the Order of Patrons of Husbandry maintained by-laws that disallowed the use of alcohol in association with any of its chapters or properties. Decision at 5.

On May 2, 2023, Rhonda filed a new application for one fraternal license with new gambling, this time on behalf of Supreme Ranch of the World National Order of Cowboy Rangers. Decision at 12. On August 12, 19, 26, and September 2, 2023, the Department published the official "Public Opportunity to Protest Issuance of One New Montana All-Alcoholic Beverages License" in the Billings Gazette. Decision at 1, 16–17. On or before September 12, 2023, the Department received 106 protest letters. Decision at 17–18. On December 8, 2023, the

Department conducted a hearing at the Billings Hotel and Convention Center. Decision at 18.[1]

At the hearing, the Cowboy Rangers' counsel asked Peterson how he came "upon this notion of applying for a liquor license as a fraternal organization?" Decision at 12–13. Peterson responded:

> I spent a lot of time reading the code and the [Administrative Rules of Montana] and I noticed that Montana seems to complicate licensing more than it simplifies and of course reading through these things I found besides all the variations of beer and wine, beer, liquor, liquor with gaming, beer and wine with gaming, restaurant beer and wine and all the other, there was also licenses for fraternal and veteran affair organizations, and I thought 'well that's interesting, what is that?' and so I started looking into it and thought 'well, that makes a lot of sense' from my standpoint and it didn't seem any more complicated than any other application.

Id. Peterson also testified he believed the original National Order of Cowboy Rangers ceased operations sometime around 1928. Decision at 6. Peterson created a "charter" for the Cowboy Rangers that purports to establish "Ranch No. 1" of the Supreme Ranch of the World on January 25, 2023. Decision at 6–7. Peterson filed for a 501(c)(10) designation with the IRS in March 2023. Decision at 8. However, as of the hearing, the Cowboy Rangers had not received federally recognized status as a 501(c)(10) entity. *Id*. Also, the Cowboy Rangers did not submit evidence into the record of a membership list. Decision, ¶ 22.

[1] The Cowboy Rangers incorrectly asserts on appeal that the hearing occurred on September 12, 2023, which was the deadline for letters. Decision at 1.

Additionally, the DOJ Compliance Investigator "was not able to locate any existing Chapters of Cowboy Rangers." Decision at 13. When the Investigator interviewed Peterson and Rhonda, and "asked if [Peterson] just made up the Charter [and] named himself Big Boss," Peterson said "yes." Decision at 14.

Also at the hearing, protesters presented evidence that as of August 23, 2023, the minimum bid for an all-beverage license in the quota area in which Peterson would operate started around $558,000.[2] Decision at 13. In contrast, a fraternal license, which is exempt from the quota system, only costs the applicant the application fee of $850. *Id*.

The Department ordered that the parties file post-hearing proposed findings of fact and conclusions of law within 30 days of receipt of the transcript. Post-Hearing Filings Order, Admin. Rec. Doc. 8. The protesters filed proposed findings and conclusions on January 17, 2024. Protesters Proposed Findings of Fact and Conclusions of Law, Admin. Rec. Doc. 9. The Cowboy Rangers did not file proposed findings and conclusions or any motions after the hearing.

On October 31, 2024, the Department issued its Decision denying the Cowboy Rangers' application for a fraternal license. Decision, 41. The Department

[2] $558,000 is 75% of market value for an all-alcoholic beverage license. Hrg. Tr. at 45.

determined that the Cowboy Rangers failed to meet the statutory criteria provided in § 16-4-201(8)(c), MCA, which provides in pertinent part:

> (8) The [quota system limitations] do not prevent the issuance of a nontransferable and nonassignable, as to ownership only, retail license to: (c) . . . any lodge of a recognized national fraternal organization if the [] fraternal organization has been in continuous existence for a period of 5 years or more prior to January 1, 1949, and is applying for a license at the same location that it has occupied for the last 5 years. . . .

Decision at 35–40. The Cowboy Rangers counsel informed it of the Department's Decision and around the same time declined to represent it if it pursued a petition for judicial review. Appellant's Brief at 6. On December 11, 2024, the Cowboy Rangers first contacted its current counsel regarding this matter. Pet.'r Resp. Mot. Dismiss at 5, Dist. Ct. Rec. Doc. 9. On January 13, 2025, the Cowboy Rangers filed its Petition in the District Court and served copies on the Department via email the same day. Petition, Dist. Ct. Rec. Doc. 1.

The Department moved to dismiss the Petition under M.R. Civ. P. 12(b)(6). Dep't Mot. Dismiss, Dist. Ct. Rec. Docs. 7, 8. In response to the motion, the Cowboy Rangers argued equity should excuse its delay, which is only fair because the Department was also delayed in issuing its Decision. Pet.'r Resp. Mot. Dismiss at 3–4. It asserted that the period to appeal fell during the holidays and having to find new counsel were circumstances outside its control. *Id*. at 5. It also asked the District Court to invoke equity jurisdiction to declare the alcohol license quota

system a "byzantine injustice." Pet.'r Resp. Mot. Dismiss, at 7–8. The District Court granted dismissal without a hearing, holding MAPA provided a plain, adequate, and speedy remedy of which the Cowboy Rangers did not avail itself, and that the busy holidays and retaining new counsel are not legally sufficient reasons to excuse noncompliance with the deadline to institute review. Order at 6.

STANDARD OF REVIEW

The Supreme Court reviews de novo a district court's decision to grant a motion to dismiss for missing a statutory filing deadline, determining whether the factual circumstances warrant the grant of an equitable exception to the statutory deadline. *Brilz v. Metro. Gen. Ins. Co.,* 2012 MT 184, ¶ 13, 366 Mont. 78, 285 P.3d 494; *BNSF Ry. Co. v. Cringle*, 2012 MT 143, ¶ 16, 365 Mont. 304, 281 P.3d 203 (*Cringle II*); *Davis v. State*, 2008 MT 226, ¶ 10, 344 Mont. 300, 187 P.3d 654 ("We review de novo a trial court's decision to deny a motion for equitable tolling where the underlying facts are undisputed."). Upon review of a motion to dismiss under M.R.Civ.P. 12(b)(6), the complaint is construed in the light most favorable to the plaintiff, and all allegations of fact contained therein are taken as true. *Plouffe v. State*, 2003 MT 62, ¶ 8, 314 Mont. 413, 66 P.3d 316. This Court will affirm a district court's dismissal when the Court concludes that the plaintiff would not be entitled to relief based on any set of facts that could be proven to support the

claim. *Id*. Whether a complaint states a claim is a conclusion of law, and the Court reviews the district court's conclusions of law for correctness. *Id*.

The Court reviews a district court's decision not to hold a hearing for an abuse of discretion, because whether to hold a hearing is a matter left to the discretion of the district court. *In re Marriage of Sampley*, 2015 MT 121, ¶¶ 9, 12 379 Mont. 131, 347 P.3d 1281.

SUMMARY OF THE ARGUMENT

The District Court correctly dismissed the Cowboy Rangers' Petition as untimely because it failed to act with reasonable diligence and pursue its right to challenge the Department's Decision. The Cowboy Rangers' factual assertions that a busy holiday season made it difficult to retain new counsel after its original counsel declined to take the case are not legally sufficient, particularly when it failed to articulate any reasonable efforts it took to secure new counsel before the deadline expired. Therefore, the Court correctly concluded that the Cowboy Rangers offered no legally sufficient reasons to excuse its 45-day delay and are not entitled to equitable relief.

The District Court correctly concluded that MAPA expressly provided the Cowboy Rangers' remedy to challenge the Decision, which negates a court's ability to invoke equity jurisdiction. The Cowboy Rangers assertion that the Department's delay in issuing the Decision created a presumptive entitlement to

the fraternal license—for which it is ineligible—and thus a basis to claim constitutional and equitable rights violations is legally groundless. Moreover, the Department's procedural noncompliance with § 2-4-623(1)(a), MCA, which the Cowboy Rangers failed to raise before the Department, is not a pure constitutional question exempt from exhaustion of administrative remedies requirements and not a substantive constitutional claim on its own.

The District Court possessed the discretion to grant the Department's M. R. Civ. P. 12(b)(6) motion based on the filings. As required, the District Court took all the Cowboy Rangers' well-pleaded factual allegations as true and in the light most favorable. The Department did not dispute the Cowboy Rangers' factual assertions, and no party requested a hearing. Therefore, the District Court did not abuse its discretion by granting the motion to dismiss for failure to state a claim without holding a hearing when no party requested a hearing, no material facts were disputed, and a hearing would not have added anything to the proceedings.

ARGUMENT

I. The District Court correctly concluded that neither a busy holiday season nor a delay in retaining new counsel are legally sufficient reasons to excuse the Cowboy Rangers' failure to comply with MAPA's 30-day deadline to petition for judicial review of the Department's Decision.

Section 2-4-702(2)(a), MCA, provides in pertinent part that "proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency." A procedural time bar is an

affirmative defense subject to forfeiture and waiver that courts apply "regularly and consistently" when properly raised. *BNSF Ry. Co. v. Cringle, 2010 MT 290,* ¶ 18, 359 Mont. 20, 247 D.3d 706 (*Cringle I*). Firm timelines for instituting an appeal advance the parties' and the legal system's interests in fair notice and finality. *Cringle II*, ¶ 21 (citing *Greenlaw v. U.S.*, 554 U.S. 237, 252 (2008)). Nevertheless, the application of a procedural time bar is subject to constitutional review and equitable principles. *Cringle I*, ¶¶ 18–20.

Equitable principles may excuse strict compliance with a categorical time bar under some circumstances and require that "good cause" exist for such relief. *Cringle II*, ¶ 21. "Good cause is generally defined as a 'legally sufficient reason'" and depends upon the totality of facts and circumstances of a particular case. *Cringle II*, ¶ 21 (citing *City of Helena v. Roan*, 2010 MT 29, ¶ 13, 355 Mont. 172, 226 P.3d 601). A legally sufficient reason to overcome a categorical time bar requires a greater and more demanding showing than a legally sufficient reason to excuse noncompliance with a statute that expressly provides a good cause exception. *Cringle II*, ¶ 21. Because litigants have a duty to monitor their litigation, a legally sufficient reason to excuse noncompliance with a deadline, at a minimum, requires reasonable efforts to purse one's legal rights. *Cringle II*, ¶ 21 (citing *Puhto v. Smith Funeral Chapels, Inc.*, 2011 MT 279, ¶¶ 10, 14, 362 Mont. 447, 264 P.3d 1142). Therefore, a party must act with reasonable diligence to preserve its legal

rights but be prevented from doing so by circumstances reasonably beyond its control to excuse noncompliance with the categorial time bar. *Cringle II*, ¶ 22.

The District Court correctly concluded that, because § 2-4-702(2)(a), MCA, imposes a time-bar that does not provide a good cause exception, the 30-day deadline is the type of categorical time bar where equitable principles apply. Order at 4. The District Court also correctly concluded that, for equitable relief to apply, a party who petitions for judicial review after the deadline is required to show it acted with reasonable diligence to preserve its rights but was prevented from timely filing by circumstances reasonably beyond its control. Order at 5; s*ee Cringle II*, ¶¶ 21–23.

Before the District Court and here, the Cowboy Rangers argues, without support, that the Department's delay in issuing the Decision violated § 2-4-623(1)(a), MCA, and is prima facia evidence of good cause for the Cowboy Rangers' own delay in filing its Petition.[3] Order at 2; Appellant's Brief at 11. The Cowboy Rangers also assert its former counsel declined to represent it in a petition for judicial review, notifying it around the same time she informed it of the Decision. Order at 6; Appellant's Brief at 6. Because the Cowboy Rangers is a "startup fraternal organization" and not a mega corporation with legions of

[3] Whether the Department's procedural violation constitutes viable and separate constitutional or equitable claims is argued below.

lawyers, it was left to find new counsel during the busy holiday season.[4] Order at 2. Without explanation on its efforts to retain new counsel, the Cowboy Rangers' current counsel stated that he was not even contacted until after the 30-day deadline to file the Petition passed. Order at 2; Pet'r Resp. Mot. Dismiss at 5.

After taking the Cowboy Rangers' factual allegations as true and in a light most favorable to it as required when presented with the motion to dismiss, the District Court correctly determined the Cowboy Rangers failed to articulate a legally sufficient reason or that circumstances reasonably beyond its control prevented its timely appeal that would excuse noncompliance. Order at 4–6. The Court reasoned the Cowboy Rangers had a duty to monitor litigation. Order at 6. And when its former counsel declined to take the petition for review, the Cowboy Rangers needed to retain new counsel prior to the deadline to pursue its rights with reasonable diligence. Order at 6.

Although its former counsel's withdrawal is not necessarily a circumstance within the Cowboy Rangers' control, it fails to articulate any reasonable steps it took to find new counsel between October 31, 2024, and November 30, 2024, or

[4] On appeal, the Cowboy Rangers add that the issuance of the decision during *hunting season* also made it difficult to retain new counsel and timely file. Appellant's Brief at 11. "It is well settled that [this Court] will not consider new arguments or legal theories raised for the first time on appeal." *Sampley*, ¶ 18. However, to the extent that the right to hunt is enshrined in the Montana Constitution, art. IX, § 7, this Court may conclude hunting season to fall within the holiday season and thus not constitute a new argument on appeal.

that some specific circumstance, like a natural disaster, reasonably prevented it from timely filing its Petition. *See Cringle I*, ¶ 26. Also, the date the Department issued its Decision did not reduce the 30 days in which the Cowboy Rangers had to file its Petition under § 2-4-702, MCA.

The District Court correctly relied on and applied *Cringle II*. In *Cringle II*, an employee prevailed in a discrimination claim against BNSF before the Human Rights Bureau. Section 49-2-503(3)(c), MCA, required BNSF to appeal the bureau's decision to the Human Rights Commission within fourteen days. BNSF missed the deadline by four days when it filed a request for extension of the filing deadline with its notice of appeal. *Cringle II*, ¶¶ 5–6. BNSF asserted that the decision arrived on a particularly busy day when staff, who were shorthanded, were working on a large discovery project and failed to calendar the deadline. *Cringle II*, ¶¶ 5, 23; *Cringle I*, ¶ 8. BNSF asserted it filed the appeal immediately upon discovering the decision, which was swept up under other documents. *Cringle II*, ¶ 5. BNSF's failure to correctly calendar and file the appeal with no factor outside its control preventing it from filing the appeal timely was not legally sufficient. *Cringle II*, ¶ 23. The misplacement of the decision by counsel, "who reasonably knew or should have known the importance of responding quickly to the hearing officer's decision but simply made a mistake[,]" failed to establish

BNSF took reasonable steps to preserve its legal rights. *Cringle II*, ¶ 23. Thus, BNSF was not entitled to equitable relief. *Cringle II*, ¶ 23.

If BNSF's counsel misplacing its decision and missing a deadline by four days showed BNSF failed to take reasonable steps to preserve its rights, then the Cowboy Rangers letting the deadline pass before even contacting counsel and missing the deadline by 45 days shows the Cowboy Rangers failed to take reasonable steps to preserve its MAPA rights. The Cowboy Rangers had a duty to monitor litigation and act with reasonable diligence. *See Cringle II*, ¶¶ 21–22; *Puhto*, ¶¶ 10, 14. Diligence in pursuing one's rights should include contacting potential new counsel before a statutory deadline—of which one is aware—passes. *See* Order at 6. Also, the implication that a decision issued during the holiday season between October 31st and January 1st, in and of itself, adversely affects a party's ability to timely file an appeal is unreasonable.

The Cowboy Rangers' failure to act with reasonable diligence and pursue its right to judicial review does not warrant equitable relief. *See Cringle II*, ¶¶ 21–23; *Puhto*, ¶¶ 10, 14. The District Court reasoned that filing 75 days after the Department issued the Decision "is simply too late, given the justifications offered[.]" Order at 6. The Department raised that the Petition is time-barred in its motion to dismiss, and the District Court correctly imposed the time-bar because

the Cowboy Rangers have no legally sufficient reason to apply equitable relief for missing the 30-day deadline in § 2-4-702(2)(a), MCA.

II. The District Court correctly concluded MAPA expressly provides the plain, adequate, and speedy remedy for the Cowboy Rangers claims, which are all grounded in the Department's fact-based Decision, and the Cowboy Rangers failed to avail itself of that remedy within the 30 days required without legally sufficient reasons, thus also precluding exercise of the District Court's equity jurisdiction.

A district court's jurisdiction derives from the Montana Constitution. Mont. Const. art. VII § 4. Under Mont. Const. art. VII § 4(1), a "district court has original jurisdiction in . . . all civil matters and cases at law and in equity." Equitable remedies allow courts to fashion relief for wrongs where no remedy or no adequate remedy at law exists. *Bullard v. Zimmerman*, 82 Mont. 434, 453, 268 P. 512, 520 (1928). Section 1-1-108, MCA, provides "there is no common law in any case where the law is declared by statute." "It is well-settled in Montana that a court may accept jurisdiction in equity only where no statutory or legal remedy is available." *Billings Post No. 1634, VFW of the United States v. Mont. Dep't of Revenue*, 284 Mont. 84, 93, 943 P.2d 517, 522 (1997). Only when the law does not provide a plain, adequate, and speedy remedy, may a district court accept equity jurisdiction. *Billings Post No. 1634*, 284 Mont. at 93, 943 P.2d at 522 (citing *Eagle Watch Inv., Inc. v. Smith*, 278 Mont. 187, 192, 924 P.2d 257, 260 (1996)). In other words, a litigant may not invoke a court's equity power to obtain relief when the ordinary course of law afforded a plain, adequate, and speedy remedy. *Meyer v.*

Lemley, 86 Mont. 83, 92, 282 P. 268, 270 (1929) (citing *Philbrick v. Am. Bank & Tr. Co.*, 58 Mont. 376, 387, 193 P. 59, 62 (1920)). "Inadequacy or deficiency of the legal remedy is the fundamental concept of equity jurisdiction." *Id*.

Under Mont. Const. art. VII, § 4(2), the "legislature may provide for direct review by the district court of decisions of administrative agencies." The Legislature established MAPA to expressly provide for judicial review of administrative decisions. Title 2, ch. 4, part 7, MCA. Section 2-4-701(1)(a), MCA, requires a party exhaust all administrative remedies available within the agency as a procedural condition precedent. *City of Great Falls v. Int'l Ass'n of Fire Fighters*, 2024 MT 302, ¶ 16, 419 Mont. 262, 560 P.3d 621, 630; *N. Star Dev., LLC v. Mont. Pub. Serv. Comm'n*, 2022 MT 103, ¶¶ 13–16, 408 Mont. 498, 510 P.3d 1232. "The express exhaustion of administrative remedies requirement of § 2-4-702(1)(a), MCA, 'applies equally to the ultimate case decision, constituent or related issues adjudicated therein or thereby, as well as any other related issue that could have been timely raised and adjudicated by the agency pursuant to the available administrative process.'" *City of Great Falls*, ¶ 17 (quoting *N. Star*, ¶ 13). Exhaustion on all issues allows an agency to make a factual record and correct its own errors within its specific expertise before a court interferes. *City of Great Falls*, ¶ 17 (citing *N. Star*, ¶ 13). Exhaustion also furthers the interests of judicial economy, relieving congestion on the overburdened judicial system, and the

interests of agency efficiency in performing legislatively assigned duties. *City of Great Falls*, ¶ 18.

Section 2-4-702(1)(b), MCA, embodies a narrow, pure question of constitutional law exception to the exhaustion of administrative remedies requirement of § 2-4-702(1)(a), MCA. *City of Great Falls*, ¶¶ 28–30. The limited exception to the exhaustion requirement applies "only when the matter at issue involves a pure question of *constitutional* law, *not accompanied by* an issue regarding a fact-based determination within the pertinent jurisdiction of the agency to decide. *City of Great Falls*, ¶¶ 23 (emphasis in the original) (citing *Shoemaker v. Denke*, 2004 MT 11, ¶¶ 20-23, 319 Mont. 238, 84 P.3d 4; *Mitchell v. Town of West Yellowstone*, 235 Mont. 104, 105–07 and 109-10, 765 P.2d 745, 745–48 (1988); *Jarussi v. Board of Trustees*, 204 Mont. 131, 134–36, 664 P.2d 316, 317–18 (1983); *Larson v. State*, 166 Mont. 449, 456–57, 534 P.2d 854, 858 (1975); and *Belknap Realty Co. v. Simineo*, 67 Mont. 359, 215 P. 659 (1923)).

Here, the Cowboy Rangers applied for a fraternal license purporting to be a recognized nationally fraternal organization in existence since 1944, pursuant to § 16-4-201(8)(c), MCA. Decision at 1, 12, 35. As part of the application process, the Department held a protest hearing at which it took testimony and received evidence to determine "whether the Cowboy Rangers is a nationally recognized fraternal organization, which was established five or more years prior to 1949, and

therefore is qualified to apply for, and potentially eligible to receive, the specialized licensure." Decision at 3. Between the expiration of the 90-days after submission of post-hearing filings and October 31, 2024, the Cowboy Rangers did not file a motion challenging procedural compliance with § 2-4-623(1)(a), MCA.

Seventy-five days after issuance of the Decision, the Cowboy Rangers filed its Petition "pursuant to §§ 16-4-411 and 2-4-702, MCA." Dist. Ct. Rec, Doc. 1. The Petition did not include a claim for declaratory judgment or assert a facial challenge to any statute. *Id*. Instead, the Cowboy Rangers complained that the Department retaliated against its utilization of its voice and violated its constitutional due process rights by issuing a decision after the time provided in § 2-4-623(1)(a), MCA, and by arbitrarily ruling against it. *Id*. The Cowboy Rangers' characterization of "separate" constitutional and independent equitable claims is an attempt to circumvent the time-bar for which it has no legally sufficient reason to justify its noncompliance. The District Court correctly concluded when dismissing the Petition as time-barred that the Cowboy Rangers failed to state a claim upon which relief can be granted. Order at 7.

First, the Cowboy Rangers argue that the Department's delay in violation of § 2-4-623(1)(a), MCA, constitutes a separate constitutional claim for which it is entitled to equitable damages. Appellant's Brief at 12–13. A state due process claim requires the plaintiff to first establish that it has a property interest. *Germann*

v. Stephens, 2006 MT 130, ¶ 27, 332 Mont. 303, 137 P.3d 545. The Cowboy Rangers assert it was presumptively granted the fraternal license 90 to 120 days after the hearing, and that the Department "stripped" that license with the Decision. Appellant's Brief at 12–13. It cites no law for this premise because none exists. Section 16-4-401, MCA, provides that an alcoholic beverage license is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled. *Germann*, ¶ 29. Section 16-4-405(3)(c), MCA, provides that the Department may not issue a license if an applicant fails to meet the eligibility or suitability criteria established by the Montana Alcoholic Beverage Code under Title 16, chapters 1 through 4 and 6, MCA. The Department did not grant the Cowboy Rangers the license—nor could it—because the Cowboy Rangers does not qualify as a recognized national fraternal organization in existence since 1944. Decision at 40–41. It even refers to itself as a new "start-up fraternal organization" before this Court. Appellant's Brief at 6, 11. The Cowboy Rangers never possessed a fraternal license and therefore fails to establish the threshold property interest for a constitutional due process claim. *See Germann*, ¶ 27. The District Court did not err in dismissing the Petition when it granted the Department's motion to dismiss for failure to state a claim.

Also tangled within this argument is that the Department's procedural violation of § 2-4-623(1)(a), MCA, is itself a separate claim that should have

withstood dismissal. This is a substantially similar issue that this Court previously considered in *North Star Development v. Public Service Commission*, determining that § 2-4-702(1)(b), MCA, and the exhaustion of remedies requirements of § 2-4-702(1)(a), MCA, precluded a party from raising assertions of an agency's non-compliance with § 2-4-623(1)(a), MCA, for the first time in a petition for judicial review. *N. Star*, ¶ 17,

There, North Star Development ("North Star") applied for the Public Service Commission (PSC) to increase water rates. *N. Star*, ¶ 3. North Star did not file a motion with the PCS to challenge the delay after expiration of the 90-day deadline provided in § 2-4-623(1)(a), MCA. *N. Star*, ¶ 17. The PSC issued its final decision on August 11, 2020. *N. Star*, ¶ 5. North Star filed a petition for judicial review on October 2, 2020. *N. Star*, ¶ 5. The PSC moved to dismiss because North Star failed to exhaust administrative remedies. *N. Star*, ¶ 6. On November 12, 2020, North Star filed an amended "complaint" pursuant to M. R. Civ. P. 15(a)(1)(B), that asserted, among other things, the PSC's final order was void ab initio due to the PSC's failure to issue a decision within 90 days of submission of the case in violation of § 2-4-623(1)(a), MCA. *N. Star*, ¶ 7. Neither North Star's petition nor its complaint included a claim for declaratory judgment. *N. Star*, ¶ 17. This Court determined the void-for-violation of § 2-4-623(1)(a), MCA, issue was not a constitutional or pure issue of law regarding the validity of any particular statute

under which North Star proceeded before the PSC. *N. Star*, ¶ 17, dicta regarding "pure issue of law," overruled by *City of Great Falls*, ¶¶ 28–30, ("To the extent inconsistent with our narrow holding and analysis here, *Shoemaker*, ¶¶ 13–30, and our similar inconsistent dicta in *North Star Dev*., ¶ 16 (citing *Shoemaker* and *Taylor, supra*), are hereby prospectively repudiated and superseded."). North Star was precluded from raising the issue on appeal because it failed to exhaust remedies before the PSC on its assertion that the decision was or would be void-for-violation of § 2-4-623(1)(a), MCA. *N. Star*, ¶ 17.

Here, the Cowboy Rangers neither moved to challenge the delay after the expiration of the deadline with the Department nor asserted a claim for declaratory judgment in its Petition. *See N. Star*, ¶ 17. This Court should determine that the Cowboy Rangers are precluded from raising the issue regarding the Department's violation of § 2-4-623(1)(a), MCA, for the first time on judicial review because it failed to exhaust remedies before the Department on the issue. *See N. Star*, ¶ 17. Moreover, the Cowboy Rangers should be precluded from asserting the issue as a separate claim, one that is not a pure constitutional question, to resurrect its otherwise time-barred challenge to the Department's Decision. *See City of Great Falls,* ¶¶ 28-30; *N. Star,* ¶ 17. As the District Court correctly concluded, the Cowboy Rangers failed to avail itself of judicial review by filing its Petition timely. Order at 6–7.

Finally, all the Cowboy Rangers claims' rest on and challenge the Department's findings of fact and conclusions of law in its Decision, and do not assert pure questions of constitutional law. *See City of Great Falls*, ¶¶ 23; *Shoemaker*, ¶ 26. MAPA's process provides remedies expressly; however, those remedies are contingent upon the exercise of timeliness and reasonable diligence by the aggrieved party. Order at 6; *see Cringle II*, ¶¶ 21-22; *Puhto,* ¶¶ 10, 14. The Cowboy Rangers failed to avail itself of the available remedies and seek judicial review of the Decision by filing its petition within 30 days as required by § 2-4-702(2)(a), MCA. Order at 6 (citing §§ 2-4-701 through -711, MCA); *see Billings Post No. 1634*, 284 Mont. at 93, 943 P.2d at 522. The District Court considered the Cowboy Rangers' claims and, because MAPA provided a plain, adequate, and speedy remedy, the District Court could not invoke equity jurisdiction to save the Cowboy Rangers' time-barred claims. *See* § 1-1-108, MCA; *see Billings Post No. 1634*, 284 Mont. at 93, 943 P.2d at 522; *Meyer*, 86 Mont. at 92, 282 P. at 270 (holding that a court's equity power may not be invoked by a litigant to obtain relief when the ordinary course of law afforded a plain, adequate, and speedy remedy); *Bullard*, 82 Mont. at 453, 268 P. at 520.

This Court shall affirm a district court's dismissal when a review concludes that the plaintiff would not be entitled to relief based on any set of facts that could be proven to support the claim. *Plouffe*, ¶ 8. The District Court did not err in

dismissing the Petition for failure to state a claim for which relief can be granted. The Cowboy Rangers would not be entitled to relief based on any set of facts that could be proven to support its claims. *See Plouffe*, ¶ 8.

III. The District Court did not abuse its discretion by granting the motion to dismiss without holding a hearing when the Court took all Cowboy Rangers factual assertions as true and in a light most favorable, no party requested a hearing, no facts were disputed, and a hearing would not have added anything to the proceedings.

Whether to hold a hearing is a matter left to the discretion of the district court under Mont. Unif. Dist. Ct. R. 2(d). *Sampley*, ¶ 9. When no dispute of material fact exists, district courts may resolve M. R. Civ. P. 12(b) motions without a hearing. *Sampley*, ¶ 9 (citing *Richards v. Cnty. of Missoula*, 2009 MT 453, ¶ 26, 354 Mont. 334, 223 P.3d 878 (holding that a hearing was not necessary on a motion for summary judgment because it "would not have added anything to the proceedings.")). Upon review of a motion to dismiss under M. R. Civ. P. 12(b)(6), a district court construes a complaint in a light most favorable to the plaintiff and all allegations of fact contained therein are taken as true. *Plouffe*, ¶ 8. This Court will affirm a district court's dismissal when a review concludes that the plaintiff would not be entitled to relief based on any set of facts that could be proven to support the claim. *Id*.

Here, the District Court correctly construed the Cowboy Rangers' factual assertions as true and in a light most favorable to it. Order at 1–2, 4 (citing *Plouffe,*

¶ 8). No factual dispute existed regarding the Cowboy Rangers "good cause" factual assertions raised in its Petition or response brief to the Department's motion to dismiss. Dep't Reply Mot. Dismiss, Dist. Ct. Rec. Doc. 13. Moreover, no party requested a hearing, including the Cowboy Rangers, who agree that the District Court has discretion to determine on the filings if the Cowboy Rangers had good cause for its delay. Pet.'r Resp. Mot. Dismiss at 6. The District Court did not abuse its discretion in this case because no dispute concerning any material facts regarding the Cowboy Rangers' equitable good cause factual assertions existed and a hearing would not have added anything to the proceedings. *See Sampley*, ¶¶ 9–10.

CONCLUSION

For the reasons set forth above, this Court should affirm the District Court's Order granting the Department's motion to dismiss pursuant to M. R. Civ. P. 12(b)(6).

Respectfully submitted this 19th day of September, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 6,473 words, excluding certificate of service and certificate of compliance.

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CERTIFICATE OF SERVICE

I, Hannah Schremser Cail, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 09-19-2025:

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