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Pro Querente

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

**STAND UP MONTANA, a
Montana non-profit
corporation; ALLAN BAKER,
as an individual and doing
business as BAKER
ENGINEERING AND
STRUCTURES; JANE
RECTENWALD, an individual;
DR. CHUCK BALDWIN, dba
LIBERTY FELLOWSHIP, a
nondenominational Christian
fellowship; THE FILLING
STATION, INC., a Montana for
profit corporation,**

Plaintiffs,

vs.

**GOVERNOR STEVE
BULLOCK, in his official
capacity as governor of the
state of Montana; and
DEPARTMENT OF PUBLIC
HEALTH AND HUMAN
SERVICES, an agency of the
State of Montana,**

Defendants.

Cause No.:
Department No.:

***COMPLAINT, REQUEST FOR
INJUNCTIVE RELIEF, AND
DEMAND FOR JURY TRIAL***

COMPLAINT

Plaintiffs Stand Up Montana; Allan Baker, d/b/a Baker Engineering and Structures; Jane Rectenwald; Dr. Chuck Baldwin, d/b/a Liberty Fellowship; and The Filling Station, Inc., for their Complaint, allege against Defendant Governor Steve Bullock and Defendant Department of Public Health and Human Services as follows:

SUMMARY

1. **Separation of powers.** Defendant Governor Steve Bullock (the Governor) responded to the COVID-19 pandemic on March 12, 2020, with an “emergency”¹ declaration and a state-wide lockdown. The lockdown came at a time when Montana had not yet had a single confirmed case of COVID-19. Montanans were told to suspend their lives to “flatten the curve.” Eleven weeks later, on June 1, 2020, the Governor lifted the lockdown to enter his “Phase Two Reopening.” By then, the lockdown had devastated Montana, ripping the very fabric of its social, psychological and economic life. Despite these dire consequences, however, on July 15, 2020, the Governor doubled down, mandating that all citizens wear masks in public indoor settings. To enforce the new “Mask Mandate,” the Governor

¹ “Emergency” as used herein “means the *imminent* threat of a disaster causing immediate peril to life or property that *timely* action can avert or minimize.” Section 10-3-103(8), MCA (emphasis added).

conscripted private businesses and people to serve as state mask-police. Finally, in November, the Governor re-implemented severe capacity and hours restrictions on taverns and restaurants and imposed new restrictions on public gatherings of people regardless of whether they were infected, exposed to the infected, or were in low-risk demographics. The businesses, already reeling from the economic fallout of the Governor's earlier restrictions, now face insolvency and dissolution.

The unsubstantiated benefits of the Governor's lockdown, mask mandate and other restrictions on people who are not infected and who have not been exposed to COVID-19 have not been worth the astronomical social, psychological and economic costs. Montanans have borne these costs even though the mortality rate of COVID-19 is 0.1%. Equally important, these response measures were and are not authorized by law. Similarly, conscription of private business in the enforcement of COVID-19 directives, as a condition of doing business in Montana, is neither based on science nor authorized by law. Finally, the Governor's indefinite extension of the public health care "emergency" is not authorized by law. It expired rather, as a matter of law, on April 13, 2020. As such, the Governor's response efforts—and similar efforts by local City-County Health Boards across Montana, including those in, for example, Yellowstone, Gallatin and

Missoula Counties—are *ultra vires* and constitute violations of the Montana Constitution’s separation of powers clause. Art. III, § 1, Mont. Const. His response also violates the U.S. Constitution’s guarantee of a republican form of state government, as he has usurped legislative powers in acting without legislative authority. Art. IV, § 4, U.S. Const. Finally, the Governor’s response violates Montana and U.S. citizens’ inalienable rights to pursue life’s basic necessities, enjoy and defend their lives and liberties, acquire, possess and protect property, and seek their safety, health and happiness in all lawful ways. The foregoing aspects of the Governor’s response to COVID-19 are, therefore, unconstitutional and should be permanently enjoined.

2. **Fundamental Individual Rights.** The Governor’s “Mask Mandate,” which broadly requires the wearing of cloth face coverings, is without scientific support as a public health measure. Moreover, it violates the constitutional rights of Montanans and U.S. citizens to (a) privacy and (b) the free exercise of religion. Montanans and U.S. citizens enjoy fundamental constitutional rights to privacy in making their own health care decisions, which the Mask Mandate infringes upon. The Mask Mandate and social distancing rules similarly violate the religious freedoms of Montanans and U.S. citizens whose religious convictions call them into

close, personal contact in fellowship with those around them. Finally, Montanans also enjoy a constitutional right to human dignity. The Mask Mandate violates the human dignity of Montanans by humiliating them. It subverts their individual facial identities and forces them to wear a universal symbol of submission to tyrannical power. The Governor's Mask Mandate, as applied to Plaintiffs, is therefore unconstitutional and should be permanently enjoined.

PARTIES

3. Plaintiff Stand Up Montana is a registered Montana non-profit corporation in good standing. Its principal place of business is in Gallatin County, Montana. Its mission is to encourage Montanans, during the COVID-19 restrictions, to “stand up for the constitutionally protected liberties, to provide resources and support to individuals and businesses who have been discriminated against or harassed by unfair rules and regulations, and to support similar initiatives.” It has a membership of over 300 individuals and business entities. Its members have lost income, employees, customers, businesses and livelihoods as the proximate result of the Governor's actions alleged herein. They have been forced to wear masks or forego public accommodations in violation of their consciences. They have had their religious worship interfered with or curtailed. They

have suffered severe medical complications from the effects of being forced to wear masks in public settings and other restrictions imposed by the Governor. They have suffered depression, anxiety, bouts of post-traumatic stress disorder and other emotional and psychological damage from the effects of being forced to wear masks in public settings. They have been targeted, accosted, subjected to public humiliation, and refused service for not wearing masks, even when medically exempt. They have been humiliated from being forced to wear what they view as an outward symbol of political submission and to hide their most distinguishing outward characteristic, their faces, behind government mandated masks.

4. Plaintiff Allan Baker is an individual who also does business as Baker Engineering and Structures. He resides in Flathead County, Montana, and his principal place of business is in Flathead County, Montana. Baker suffers personal detriment by the actions of the Governor alleged herein. He objects on religious, personal, ethical and political grounds to being forced to wear a mask or forego public accommodation.

5. Plaintiff Jane Rectenwald is an individual residing in Missoula County, Montana. Rectenwald suffers economic and personal detriment by the actions of the Governor alleged herein. She has religious convictions that forbid her, on theological grounds, from wearing a mask. On this

basis, she has been denied public accommodation for not wearing a mask. Due to the Governor's conscription of private business, she has faced hostility and been refused service from business proprietors who are threatened with closure by government if they fail to enforce the Mask Mandate against Rectenwald and people who share her conscientious objection to wearing a mask.

6. Plaintiff Dr. Chuck Baldwin is pastor of Liberty Fellowship. He resides in Flathead County, Montana, and Liberty Fellowship holds regular weekly religious services in Flathead County, Montana. Baldwin and Liberty Fellowship suffer personal detriment by the actions of the Governor alleged herein. They have religious convictions against requiring parishioners to wear masks, restricting religious meeting sizes and on engaging in social distancing during religious gatherings. The Governor's actions have forced Dr. Baldwin to choose between compliance with orders or the violation of strongly held religious convictions.

7. Plaintiff the Filling Station, Inc. (FSI) is a Montana for profit corporation with its principal place of business in Bozeman, Montana. It operates a restaurant and tavern. FSI has suffered and continues to suffer economic detriment by the actions of the Governor alleged herein. Its business as a tavern and music venue has been devastated as the proximate

result of the restrictions imposed by the Governor's COVID-19 response, including those described herein.

8. Defendant Steve Bullock is the Governor (the Governor) and chief executive officer of the State of Montana. He is sued solely in his official capacity as the Governor of Montana.

9. Defendant Montana Department of Public Health and Human Services (DPHHS) is an executive branch agency of the State of Montana organized pursuant to Title 2, Section 15, Part 22, MCA.

JURISDICTION AND VENUE

10. The Court, as a court of general jurisdiction, has jurisdiction over the parties and the subject matter of this civil action for declaratory and injunctive relief.

11. Venue is proper before this Court because the defendants are agents of the State of Montana.

GENERAL ALLEGATIONS

The Governor's COVID-19 Response

12. On March 12, 2020, the Governor issued an executive order declaring a state of emergency in response to the risks of COVID-19 virus pandemic.

13. On March 13, 2020, the Governor issued an executive order (Emergency Declaration) amending his March 12, 2020 executive order that initially declared a state of emergency. The Emergency Declaration provided that the “state of emergency runs concurrent with the president’s emergency declaration,” which presidential declaration was issued on the same day. The Governor’s Emergency Declaration includes no express or certain date of expiration.

14. Since issuing the Emergency Declaration, the Governor has neither lifted nor modified it and, nominally, it remains fully in place.

15. At no point has the Governor consulted with the legislature or the people in imposing or extending the state of emergency. He has promulgated no regulation or even guidance for the conditions which would constitute an end to the declared emergency. The citizens of the State of Montana have had no input into Governor Bullock’s decisions to declare or extend the state of emergency, nor into the myriad of other decisions he has made on an emergency basis to restrict their rights.

16. On July 15, 2020, Governor Bullock issued a directive entitled “Face Covering Requirement in Indoor Spaces Open to the Public” (Mask Mandate). The Mask Mandate reads:

[A]ll ***businesses***, government offices, ***or other persons*** responsible for indoor spaces open to the public shall require and

take reasonable measures to ensure that all employees, contractors, volunteers, **customers, or other members of the public** wear a face covering that covers their mouth and nose at all times while entering or remaining in any indoor spaces open to the public.

- Face coverings shall be provided for all employees and volunteers.
- All points of entry open to the public shall have a clearly visible sign posted stating: “Mask or face covering use required for ages five and older.”

(Emphasis added.)

17. The Governor claims legal authority for his Mask Mandate and November Directive under §§ 10-3-104, -103, -302, and -305, MCA; §§ 50-1-202, -101, -203, and -204, MCA; Executive Orders 2-2020 and 3-2020; Montana Constitution, Art. VI, Sections 4 and 13; and “all other applicable provisions of state and federal law.”

18. On November 17, 2020, the Governor issued a directive entitled “Directive implementing Executive Orders 2-2020 and 3-2020 and limiting size for public gatherings and events and limiting bars and restaurant capacity and hours” (November Directive). The November Directive reads:

- Capacity in all restaurants, bars, breweries, distilleries, and casinos must be limited to 50 percent of normal operating capacity to allow for adequate group spacing.
- Tables must be limited to six people per table.
- Establishments must provide for 6 feet of physical distancing between groups and or tables by:

- Increasing table spacing, removing tables, or marking tables as closed.
 - Providing for a physical barrier between tables.
 - Note: back-to-back booth seating provides adequate separation.
- These businesses will be required to close their doors and have all patrons out by 10:00 p.m.
 - Businesses may reopen after 4:00 a.m.
 - Breweries and distilleries shall follow existing laws on closing time.

In addition, the November Directive further reads:

- Any public gatherings or events where it is not possible to practice social distancing or where social distancing is not being practiced must be strictly limited to 25 people or fewer.

19. The restrictions contained in both the Mask Mandate and the November Directive nominally apply to all people and places regardless of whether they have been exposed, or are reasonably believed to have been exposed to COVID-19. None of the restrictions included in the two Directives are limited to only people and places known to be, or reasonably believed to have been infected with or exposed to COVID-19.

20. In neither the Mask Mandate nor the November Directive does the Governor recite specific science or other specialized professional authority to support the factual bases for the Directives. While the Directives invoke “science” in the abstract, they point to no reference or

authority upon which they support their scientific claims, nor has any been provided to the citizens beyond generalized claims.

21. The November Directive has no expiration date. It reads: “This Directive becomes effective at 5 a.m. on November 20, 2020, and expires at the end of the declared state of emergency in Executive Orders 2-2020 and 3-2020.”

22. The Governor has charged DPHHS with enforcing the Mask Mandate and November Directive. DPHHS has undertaken enforcement of the Mask Mandate by filing civil actions against businesses alleged to have failed in their duty to enforce the Governor’s Directives. Local health officers have also undertaken enforcement action under both the Mask Mandate and November Directive.

The Science

23. The Governor’s response to COVID-19, contrary to good public health practice, does not address the key risk metrics and assumes, inaccurately, that COVID-19 is equally dangerous to all populations.

24. The median infection survival rate from COVID-19 infection is 99.77% (23 deaths per thousand infections). For COVID-19 patients under 70, the COVID-19 infection survival rate of 99.95% (5 deaths per thousand infections).

25. Mortality risks based on data for COVID-19 are now, for most age groups, very similar to those of the seasonal flu, typically around 0.1% overall, and much lower than for respiratory viruses such as SARS or MERS. For younger age groups, in particular, the rates are lower.

26. The infection fatality ratio of COVID-19 is as follows:

<u>Age</u>	<u>IFR Estimate</u>
0-19 Years	1 in 33,333
20-49 Years	1 in 5,000
50-69 Years	1 in 200
70+	1 in 18

27. The same estimates stated as a percentage of all those infected (symptomatic and asymptomatic) who are surviving are:

<u>0-19 Years</u>	99.997%
<u>20-49 Years</u>	99.98%
<u>50-69 Years</u>	99.5%
<u>70+</u>	94.6%

28. Unlike the Governor's response to COVID-19, rational public health principles consider all health implications of policies rather than these single COVID-19 outcomes.

29. Unlike the Governor's response to COVID-19, policies that restrict and remove freedoms and impact overall health and well-being of citizens must be supported by a demonstratable potential for significant effectiveness based on science and data.

- a. **Quarantines.** Given the limited effectiveness of large-scale quarantine or “lockdowns,” and the clear science showing the consequences of lockdowns to be extreme, this mitigation measure is unsupportable by science. Home quarantine for individuals who are asymptomatic to keep possibly contagious, but still asymptomatic, people out of circulation also raises significant practical and ethical issues.
- b. **Travel restrictions.** Travel restrictions, such as closing airports and screening travelers at borders, have historically been ineffective and, similarly, scientific evidence does not show such measures prevent the spread of a pandemic.
- c. **Social gatherings.** There are no certain scientific indications that cancelling large religious, social and other gathering have any definitive effect on the severity or duration of an epidemic.
- d. **Social distancing.** The efficacy of this measure is unknown to science, while it is known that the measure infringes upon a citizen’s freedom to conduct normal daily tasks like grocery shopping, banking, and the like.
- e. **Masks and PPE.** To date, there have been no large-scale studies conducted under scientific rigor that suggest widespread use of cloth face coverings by the public to be efficacious in the control of a pandemic.

30. The Governor’s written Directives and memoranda supporting his response to COVID-19 lack recitation to the specific science or other evidence he claims supports his Directives. The most likely reasonable inference is that he knows of no real science to which to recite that would support his restrictions. Ultimately, despite any inference, there is almost no science to support the severe restrictions entailed in the Governor’s response to COVID-19, while a body of science suggests to the contrary.

31. This inference is further supported by Governor Bullock's personal conduct, which has been to violate his own Directives by, for example, attending high school basketball games unmasked. His personal feeling of security in such settings strongly implies he does not believe himself at risk either by attending large gatherings or by doing so without a mask.

32. Nationally and in Montana, there has been little correlation between tight restrictions and low infection rates for COVID-19. Highly restrictive jurisdictions like New York, California, Missoula County and Yellowstone County have seen no better outcomes than lightly restrictive jurisdictions like Florida and Flathead County.

Irreparable Harm

33. While there is little or no science to support the Governor's response to COVID-19, the human and economic consequences of the Governor's response have been, again, devastating. Government statistics and other indicators show suicide has spiked, domestic violence and other crime have seen dramatic rises, substance abuse has increased at an alarming rate and the mental health of Montanans has plummeted by a wide variety of measures. The Governor's response has resulted in economic crisis for small businesses in general, and the hospitality industry

in particular. The Governor's response has caused unprecedented damage to the heart and soul of Montana's citizens and their economy.

34. Meanwhile, the Governor's response has done little to slow, much less curtail, the pandemic. It is now worse in Montana than at any point since it began.²

35. Based on the unconstitutional activities and directives of the Governor and the efforts of DPHHS to enforce them, as alleged herein, if the Mask Mandate and the November Directive are not permanently enjoined, Plaintiffs will suffer irreparable harm in the denial of their constitutional rights to:

- a. A republican form of government;
- b. Pursue a living;
- c. Make their own health care choices;
- d. Freely exercise their religion; and
- e. Basic human dignity.

COUNT I

(Expiration of Emergency Powers)

36. Plaintiffs restate the foregoing.

² See <https://covidusa.net/?autorefresh=1&state=Montana>

37. A state of emergency may be declared by the governor when the governor determines that an emergency exists. Section 10-3-302, MCA. An emergency can be the outbreak of communicable disease. Section 10-3-103(4), MCA.

38. Under a declared state of emergency, the governor assumes emergency powers which allow him, *inter alia*, discretion to control ingress and egress to and from an incident or an emergency or disaster area, the movement of persons within the area, and the occupancy of premises within the area. Section 10-3-104, MCA.

39. To implement his powers under a declared state of emergency, the governor may issue valid and enforceable executive orders, proclamations, and regulations and amend and rescind them. Section 10-3-104, MCA.

40. A declared state of emergency, however, may not continue for longer than 30 days unless “continuing conditions” of the state of emergency exist, which must be determined either by a declaration of an emergency by the president of the United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency. Section 10-3-302, MCA

41. On March 13, 2020, the president of the United States issued a declaration of a state of emergency. The president of the United States has not, however, ever issued a declaration establishing continuing conditions of a state of emergency.

42. Since Governor Bullock issued his March 12, 2020, state of emergency declaration, there has been no declaration of the legislature by joint resolution of continuing conditions of the state of emergency.

43. The state of emergency declared by Governor Bullock on March 12, 2020, expired by operation of law on April 12, 2020, and neither the president of the United States nor the legislature has ever issued a declaration since such expiration stating any continuing conditions of the state of the original emergency. The Governor's emergency powers granted him under Title 10, Chapter 1-4, Montana Code Ann., therefore expired on April 12, 2020.

44. Since April 12, 2020, the Governor has declared no new state of emergency. Given the expiration of his initial declaration state of emergency, the Governor may no longer exercise emergency powers or issue emergency orders to, for example, control ingress and

egress to and from the emergency area, the movement of persons within the area, and the occupancy of premises within the area.

45. Given the expiration of the state of emergency, the Governor may issue no executive orders, proclamations, and regulations and amend and rescind them with respect to any of his other emergency powers.

46. Any orders, proclamations or regulations issued by Governor Bullock after April 12, 2020, on the authority of his March 12, 2020, state of emergency declaration are, therefore, void. In addition, Governor Bullock may not issue any more emergency orders, proclamations or regulations unless or until a declaration continuing conditions of the state of the original emergency is issued by the president of the United States or by the legislature.

47. As a court of record within its jurisdiction, this Court has power to declare rights, status, and other legal relations regarding whether further relief is or could be claimed.

48. Plaintiffs are persons whose rights, status, or other legal relations are affected by statute, as set forth in this Count. They have a right, therefore, to have determined any question of construction or validity arising under the statutes described herein and to obtain a declaration of rights, status, or other legal relations thereunder.

49. There is currently a controversy among the parties with regard to the existence of a declared state of emergency in Montana. Specifically, Governor Bullock stated in his “Executive Order Amending Executive Order 2-2020 and Providing that the State of Emergency Runs Concurrent with the President’s Emergency Declaration” (EO-02-2020) that the president of the United States on March 13, 2020, issued an emergency declaration “establishing continuing conditions of the state of emergency, as defined in §§ 10-3-103 and 10-3-302(3), MCA.” Governor Bullock invoked EO-02-2020, for example, in his November Directive.

50. Plaintiffs contend that no declaration of continuing conditions, as defined by Montana law, has been issued by the president of the United States or by the legislature. The Governor’s declared state of emergency, they contend, expired long ago on April 12, 2020.

51. In the alternative, Plaintiffs contend that if the mere declaration of the president of the United States that an emergency exists is sufficient for the Governor to extend a state of emergency indefinitely, without the legislature of Montana issuing a declaration establishing continuing conditions of the state of the original

emergency, it is an unconstitutional violation of the separation of powers clause of the Montana Constitution, Art. III, § 1, Mont. Const., and of the guarantee in the U.S. Constitution of a republican form of government.

Art. IV, § 4, U.S. Const.

52. In view of the controversy, a declaratory judgment by this Court will terminate the controversy or remove an uncertainty.

53. Plaintiffs therefore request a declaratory judgment that (a) the declared state of emergency expired on April 12, 2020; (b) since that time no legally declared state of emergency has existed; and (c) any exercise by the Governor of emergency powers since April 13, 2020, is void.

COUNT II

(Separation of Powers/Republican Form of Government)

54. Plaintiffs restate the foregoing.

55. Montana's statutory scheme for public health is archaic. It has remained largely unchanged since territorial days and the first set of Montana statutes, sometimes referred to as the Bannack Statutes (from when Bannack was the territorial capital). They were adopted to deal with epidemics in the mining camps—cholera, typhoid, tuberculosis, etc.—at a time before pervasively available health care (e.g., hospitals, physicians, medicines, modern personal and public sanitation practices), when there

was little understanding of the mechanisms of communicable disease and the protection of public health.

56. Montana's archaic statutory scheme for public health makes no provision and gives no structure, or adequate public policy guidance to the executive branch, the Governor or DPHHS for:

- a. Restrictions on people who are not infected or not reasonably believed to be infected;
- b. Restrictions on people who are not or may not have been exposed to a communicable disease;
- c. Restrictions on occupancy or the closure of buildings which are not established sources of infection, or reasonably believed to be sources of infection by a communicable disease;
- d. Conscription of private business and people for the enforcement of restrictions on people; or
- e. Extension of a state-wide public health emergency for an indefinite term absent review and affirmative consent of the legislature or the people and without a definition of the emergency and of what would entail cessation of the emergency.

57. Despite the lack of legal authority, the Governor and DPHHS have imposed and are attempting to impose:

- a. Restrictions on people who are not infected or not reasonably believed to be infected;
- b. Restrictions on people who are not or may not have been exposed to a communicable disease;

- c. Restrictions on occupancy or the closure of buildings which are not established sites for infection, or reasonably believed to be sites of infection by a communicable disease;
- d. Conscription of private business and people for the enforcement of restrictions on people; or
- e. Extension of a state-wide public health emergency for an indefinite term absent review and affirmative consent of the legislature or the people and without a definition of the emergency and of what would entail cessation of the emergency.

58. The Governor and DPHHS have brought civil enforcement action against businesses that allegedly failed, in their eyes, to effectively police their customers and other invitees.

59. While the legislature may constitutionally delegate its legislative functions to the executive branch, if it does so, it must provide, with reasonable clarity, limitations upon executive discretion and specific policy guidance. In the Montana public health law invoked by the Governor as authority in his Mask Mandate and in his November Directive, the legislature has failed to do so.

60. The legislature's delegation of authority to the executive branch, as set forth herein, suffers at least three separate bases of constitutional infirmity. First, the delegation of authority is too broad and too vague. The delegation lacks reasonable clarity, limitations upon executive discretion and specific policy guidance.

61. Second, it fails to include adequately clear provision for enforcement against private citizens who fail to comply with executive branch restrictions and regulations promulgated thereunder.

62. Third, there are no procedures for review of state or local health officer decisions, such as appeal, or for the consideration of special cases.

63. As a result of the foregoing, the Mask Mandate and the November Directive violate the separation of powers clause of the Montana Constitution, Art. III, § 1, Mont. Const., as they entail the performance of legislative functions by the executive branch of government without constitutionally sufficient legislative authority, delegation or guidance.

64. As a result of the foregoing, the Mask Mandate and the November Directive violate the U.S. Constitution's guarantee of a republican form of government, Art. IV, § 4, U.S. Const., as they entail the performance of legislative functions by the executive branch of government without constitutionally sufficient legislative authority, delegation or guidance.

Count III
(Inalienable Rights)

65. Plaintiffs restate the foregoing.

66. The Montana Constitution, Article II, § 3, guarantees that all people are born free and have certain inalienable rights. These rights include 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. The opportunity to pursue employment is necessary to enjoy the right to pursue life's basic necessities.

67. The Montana Constitution, Article II, § 17 and the 5th and 14th Amendments to the U.S. Constitution guarantee that no Montanan shall be deprived of life, liberty or property without due process of law. This provision denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to worship God according to the dictates of one's own conscience and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free people.

68. The November Directive violates Plaintiffs' inalienable rights, stated above, and as set forth in the Montana and U.S. Constitutions. As such, it is unconstitutional and void.

COUNT IV

(Privacy)

69. Plaintiffs restate the foregoing.

70. Montana has a history of trampling on individual rights. For example, Montana passed sedition laws before and during WWI that were the strongest in the nation.³ That history served to focus the 1972 Montana Constitutional Convention on the vigilant protection of individual rights from the tyrannical impulses of government, especially when animated by popular sentiment in a time of perceived emergency.

71. Privacy is one of the fundamental individual rights ensconced in the Montana Constitution's Declaration of Rights by the 1972 framers of the Montana Constitution.

72. The Mask Mandate compels uninfected and unexposed individuals to wear face masks in all businesses, government offices and other indoor spaces open to the public. The Mask Mandate requires private

³ FEATURE: BOOK: SOME HEAVY LEGAL READING TO USHER IN 2006: RELIVING OUR STATE'S SHAMEFUL SEDITION ACT, 31 Montana Lawyer 8.

businesses and persons to enforce this rule through means of the law of trespass. If individuals who are not infected with a communicable disease, and not reasonably believed to be infected, choose to exercise their right to make their own private health-care choices by declining to use a face covering, they are barred from the use of indoor public accommodations.

73. The Mask Mandate denies the right of individual privacy guaranteed by Art. II, § 10, Mont. Const. and Amend. IX, U.S. Const. Medical care choices are protected by the right of individual privacy. The right of privacy broadly guarantees individuals the right to make medical judgments affecting their bodily integrity and health free from the interference of the government. The right to privacy is implicated when a law infringes upon a person's ability to obtain or reject a lawful medical treatment.

74. Because the Mask Mandate infringes upon the right of privacy, it is void.

COUNT V

(Free Exercise of Religion)

75. Plaintiffs reallege the foregoing.

76. Under the Montana constitution's Declaration of Rights and Amend. I, U.S. Const., as incorporated by Amend XIV, the government of Montana shall make no law prohibiting the free exercise of religion.

77. Certain religious convictions reject capacity restrictions for houses of worship, social distancing between worshippers or between worshippers and clergy, and mask mandates. Mask mandates, capacity restrictions and social distancing rules on houses of worship infringe upon worshippers' rights to freely exercise their religion.

78. The Governor's Mask Mandate and his November Directive both infringe upon the free exercise of religion by worshippers and clergy with such convictions. In this way, they violate both the Montana and U.S. Constitutions. To this extent, both are void.

COUNT VI

(Human Dignity)

79. Plaintiffs restate the foregoing.

80. "Human dignity" is a fundamental right ensconced expressly in the Montana Constitution's Declaration of Rights.

81. The right of human dignity is the only right in Montana's Constitution that is "inviolable." It is the only right in Article II carrying the absolute prohibition of "inviolability." No individual may be stripped of

human dignity. No private or governmental entity has the right or the power to do so. Human dignity simply cannot be violated—no exceptions.

82. In the Western ethical tradition, especially after the Religious Reformation of the 16th and 17th centuries, dignity has typically been associated with the normative ideal of individual persons as intrinsically valuable, as having inherent worth as individuals, at least in part because of their capacity for independent, autonomous, rational, and responsible action. Under this conception, dignity is directly violated by degrading or demeaning a person.

83. Similarly, dignity is indirectly violated by denying a person the opportunity to direct or control his own life in such a way that his worth is questioned or dishonored. For example, dignity could be indirectly undermined by treatment which is paternalistic—treating adults like children incapable of making autonomous choices for themselves, or by trivializing what choices they do make about how to live their lives.

84. Respect for the dignity of each individual demands that people have for themselves the moral right and moral responsibility to confront the most fundamental questions about the meaning and value of their own lives and the intrinsic value of life in general, answering to their own consciences and convictions.

85. The human face is the most distinguishing visible characteristic reflecting a person's individuality. The human face is what makes the individual most easily and readily recognizable. The human face is extremely expressive, able to convey countless emotions without saying a word. And unlike some forms of nonverbal communication, facial expressions are universal. The facial expressions for happiness, sadness, anger, surprise, fear, and disgust are the same across cultures. Science has long recognized that people signal their feelings and emotions to each other by subtle movements, gestures and facial expressions, and that people's ability (or inability) to accurately "send" and "receive" these nonverbal messages must have important implications for their social and emotional lives.

86. The Mask Mandate, by forcing people to cover their faces, demeans their human dignity by undermining their individuality, interfering with their ability to read and show emotions and hindering their interpersonal communications and relations. It also strips them of their autonomy in deciding the appearance they wish to present to the public. It is therefore a violation of the Montana constitutional right to human dignity and, as such, is void.

REQUEST FOR RELIEF

Accordingly, Plaintiffs request judgment in their favor and against Defendants as follows:

1. Declaring that the Governor has no further authority to exercise emergency powers under his Executive Orders 02-2020 and 03-2020 and that any orders issued since their expiration on April 12, 2020, are declared void;
2. Imposing a permanent injunction against enforcement of the Mask Mandate and the November Directive.

Plaintiffs also request, under the private attorney general doctrine or other applicable law, an award of attorney fees, expert witness fees and other costs of suit, and such other and further relief as may be appropriate in the circumstances.

DATED this 8th day of December 2020.

Respectfully Submitted,
RHOADES, SIEFERT & ERICKSON PLLC

By: 

Quentin M. Rhoades
Pro Querente

JURY DEMAND

Plaintiffs demand a jury trial on all counts so triable.

Respectfully Submitted this 8th day of December 2020.

RHOADES SIEFERT & ERICKSON PLLC

By: 

Quentin M. Rhoades
Pro Querente