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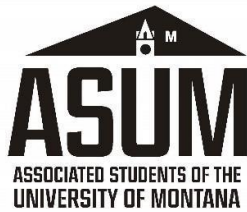
### Documents from the May 21, 2021 Emergency Meeting of the Associated Students of the University of Montana (ASUM)

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**ASUM SENATE MINUTES  
FRIDAY MAY 21, 2021  
Zoom – 6:00 P.M.**

To view a Zoom recording of this meeting, please [click here](#).

**1. CALL MEETING TO ORDER**

Meeting Called to Order at 6:00 pm

**2. ROLL CALL**

Present: Senators Bell, Bowles, Crisp, Feeley, Glueckert\*, Gudmundsson, Hawthorne, Jolly, Kayne\*, Keller, Kiefer, Kuney, La'a\*, McKenzie, Read, Ververis, Williams ;  
President Durnell, Vice President Lock, Business Manager Rinck

Excused: Senator Vanderkar

Unexcused: Senators Shaver, Berget\*

*(Present Senators with an asterisk next to their name were formally sworn in to the 2021-2022 ASUM Senate; Senate candidate Berget was not present to be sworn-in)*

**3. PUBLIC COMMENT**

a. None.

**4. PRESIDENT'S REPORT**

- a. Brian Reed- Swearing in of New Senators
- i. Swearing in completed by President Durnell (Designated proxy by Liaison Reed)
  - ii. Motion to swear in candidates Glueckert, Kayne, and La'a by **Ververis-Bowles** ;  
UC Called
  - iii. Senators Glueckert, La'a, and Kayne sworn-in to ASUM Senate 21-22

**5. VICE PRESIDENT'S REPORT**

a. SB2-21/22: Resolution Authorizing Legal Action to Protect Constitutional Authority of the Board of Regents

- i. Preparatory Remarks: I want to sincerely thank you all for being here. I understand that this meeting was called with very short notice, so I am really pleased to see how willing you are to take your jobs as Senators seriously. I assure you that President Durnell was correct to assess this situation as deserving of an emergency meeting. I am also aware that for many of you this is your first or second meeting and I know it can be intimidating to participate in a discussion if you do not feel totally confident in your command of parliamentary procedure or are unfamiliar with other Senators. I want to encourage you all to set aside any inclination toward shyness or uncertainty and to participate as actively as possible in this discussion. Throughout the discussion I intend to be as patient as necessary, so please feel free to participate even if you feel you will make a mistake because your voice is needed as we deliberate. I want to make it especially clear that this decision is yours to make. The decision of the Executives was to write a resolution for your consideration, so the decision of whether or not to allow for ASUM to participate in litigation is under the prerogative of the Senate. We are not asking you to vote one way or another, but only to assess all of the information and all of the views offered by others to make an informed vote. To reach your conclusion, please speak your mind and ask as many questions as you see fit. ASUM's legal counsel, Lou Villemez, has generously agreed to be in attendance to answer any legal questions. It should be noted that nowhere in this resolution does it guarantee ASUM's participation in a lawsuit, rather the resolution authorizes President Durnell to join any potential litigation if he judges it to be in the best interest of ASUM. You are voting to authorize this only as a possibility. The situation continues to develop rapidly and there are more discussions to be had with the university to ensure that our participation is in our best interest. I am aware that many of the aspects of whether we should give President Durnell the authority to participate in this lawsuit are sensitive and that some Senators may feel passionate, and I welcome this passion in discussion and invite it. My expectation, both now and in every meeting of which I am the chair, is for us to treat one another with civility and respect. Your arguments will be better received if they are articulated without hostility.
- ii. Authorship (BM Rinck): This memo sent alongside the resolution and agenda was prepared in lieu of the potential litigation of four separate bills that have been interpreted as unconstitutional in terms of Board of Regents (BOR) authority. This serves as an informational resource, which is the honest intent of the memo. It is not to persuade you, but to give you an overview of these

bills and pertinent policy and ASUM resolution history as well as BOR policy. I did my best to leave the interpretation of constitutionality out of these because this is an informational overview. *HB102*: This bill expands where gun owners may carry firearms and allows individuals to carry concealed weapons without a permit in most public settings. As it pertains to the Montana University System (MUS), this bill would require the BOR to allow the carry of concealed weapons on campus. The ASUM Senate in the spring passed SB50, a bill establishing ASUM's position against the open-carry of firearms on the UM campus. Although this resolution does not directly pertain to HB102, it is important to note that in the resolution it established that "ASUM opposes any bill passed by the Montana State Legislature during the 67th legislative session that will allow open carry on the University of Montana campus or reduce the authority of the Montana Board of Regents in creating policies relating to firearms on the UM campus". *HB112*: This bill would limit the participation in athletics to an individual's sex assigned at birth. In practice this bill bans the participation of transgender athletes in both NCAA athletics and intramural and club sport. The ASUM Senate passed SB66- Resolution Opposing Montana HB 112. This resolution simply established a firm and clear position that ASUM is an opponent of this bill. I will note that there was a fiscal note associated with this bill, which you can find in the appendix of this memo, which outlined a few interesting points. First, the note established that the passage of this bill would have a zero-dollar impact to the MT General Fund (state budget), but there are two underlying assumptions that this operated under. The first being that passage of the bill may lead to NCAA policy violations that would prevent the MUS from hosting championship events, playoff events, or tournament events. Although not directly from the general fund, the argument is that communities hosting these events suffer financial impact from loss of revenue in not being able to host. The second assumption was in regard to President Biden's Executive Order #13988 which, as a resolution, could jeopardize funding if HB112 was found discriminatory in the context of Title IX. *SB319*: This bill accomplishes a number of things, some of which do not pertain to MUS, UM, or ASUM. There were two associated amendments to the bill that were added very late in the session that would impact the current function of political committees on MUS campuses. The first amendment titled "Prohibiting certain political activities in certain places operated by public post-secondary institutions and providing penalties" drastically limits the ability of on-campus political committees to complete activities such as registering voters and collecting signatures, namely in dormitories. The second amendment titled "Establishing that if student organizations that are required to register as political committees are funded

through additional optional student fees, they must be opt-in". This amendment would change UM's current fee structure. The amendment implicates any on-campus political committee that charges a fee, that being MontPIRG at UM. That would change two things, the first being that the MontPIRG fee which currently exists would have to be opt-in. Second, it would curtail the ability of UM to collect the fee at all, forcing these organizations to collect the fee separately. *HB349*: This bill would change the current recognition and funding processes in the ASUM Constitution, our fiscal policy, and our bylaws. It would force ASUM's hand into recognizing and funding groups regardless of inclusivity and accessibility to students. *HB349* in turn mandates that ASUM must fund and recognize groups who are not inclusive. The thought is that this bill could lead to student groups conducting discriminatory practices against other groups of people. In response to that, ASUM passed SB61- Resolution opposing *HB349*. This established a firm and clear stance of ASUM against the bill. There was also a legal review note (found in memo appendix) associated with this bill that outlined a review of the constitutionality of the bill and quoted that "HB349, as drafted, may raise potential constitutional concerns associated with Article 10, Section 9 2A of the Montana Constitution". That is the part of the MT Constitution where the BOR gains authority over MUS. To review parts of ASUM governing documents that would have to be amended if these bills were in effect: Sections mandate that we must be in accordance with state law, federal law, and BOR policy and sets checks on ASUM that we must not interfere with First Amendment rights of our affiliate groups. Sections in the Bylaws outline how we recognize groups and Fiscal Policy, particularly section 3.4, assure student group rights that we do not discriminate against them.

- iii. Authorship (President Durnell): I am going to go through the timeline we have spent over the last month in pursuing these conversations, provide an overview of petitions, and guide you through the resolution. Legal Director Lou Villemez will provide insight as well. Nearly immediately upon my assumption of the position of ASUM President, we caught wind of interest around the state to pursue litigation of *HB102* and *HB349* because they superseded the constitutional authority of the BOR to govern the MUS. The same consideration surrounded *HB112* at the time as we awaited the decision of the governor to pass or veto the bill. During the Spring 2021 semester, ASUM took formal stances through resolutions opposing open-carry of firearms on campus and of *HB349*. Due to our prior involvement in these bills and their possible impact on UM students, the ASUM Executives met with Attorney Jim Goetz to discuss the ways ASUM may be involved in potential litigation. When *HB112* was signed into law, ASUM began including *HB112*

and SB219 in our consideration of potential litigation. I held meetings with many individuals and organizations to better understand the state's professional opinion of bills that superseded the authority of the BOR in MUS matters. We sought legal counsel regarding ASUM standing in potential litigation. ASUM Executives drafted public comments which we delivered to the BOR on May 12 to formally discuss the opinion of ASUM pursuant with SB50 aforementioned, that students opposed any action taken by the legislature that superseded the authority of the BOR to govern the MUS and asked them to litigate HB102. The sentiment was shared over an overwhelming majority of the individuals who also provided public comment that day. There are two petitions out right now. Yesterday, May 20, pursuant to a unanimous vote from the BOR, individuals filed a petition for declaratory relief on original jurisdiction. To quote, "this is an original proceeding challenging the constitutionality of HB102, an act generally revising gun laws. HB102 invades the soul and full authority of the Board of Regents to supervise, coordinate, manage, and control the MUS. By enacting HB102, the 2021-2022 Montana legislature has impermissibly curtailed the Board of Regents authority to determine the best policies to ensure the health and stability of the MUS. Petitioners seek a judicial declaration that the offending sections of HB102 are unconstitutional. In conjunction with the original proceeding, BOR seeks expedited process to stay implementation of HB102, Section 6, pursuant to this court's power under Article 7 Sections 1 and 2 under the Constitution to hear and determine an immediate writ as may be necessary or proper to complete exercise of its jurisdiction. A stay of implementation of Section 6 of HB 102 is necessary for the meaningful exercise of this court's jurisdiction and to the safe and effective management of the entire MUS." The constitutional delegates carefully crafted a framework for determining the policies and programs of the MUS, free of political interference. BOR has exercised its authority to ensure the health and stability of its institutions by adopting a policy regarding firearms on campus decades ago and has revised it numerous times. HB102 eliminates the existing policy governing firearms on campus and directs the BOR to take specific action in replacing policy 1006. When as here "The legislature attempts to exercise control of the MUS by legislative enactment. This court must engage in a case by case analysis to determine whether the legislature's action impermissibly infringes on the board's authority. Petitioners request that this court accept original jurisdiction and join in stay implementation of Section 6 of HB102 pending consideration of the court and direct such briefing as it deems suitable. Petitioner further requests that after consideration this court declares Sections 4, 5, 6, 7, and 8 of HB102 violate Article 10, Section 9 of the MT Constitution and are therefore void". Parties

involved in this include the MT BOR and the named respondent is MT Attorney General Austin Knudsen who is charged to defend all causes in the Supreme Court in which the state is a party. Yesterday on May 20, Attorney Jim Goetz filed a petition for original jurisdiction. To quote, "This is an original proceeding challenging the constitutionality of multiple measures recently passed by the MT legislature: HB249, HB112, HB102, and SB219. This petition seeks a declaratory judgement and writ of injunction under rules 15, 2, and 4". Petitioners have delayed its filing in hopes that the BOR itself would file to vindicate its constitutional authority. The regents did so by vote on May 19, 2021. Accordingly, petitioners are synchronizing the filing of their petition with that of the regents. They support the regents request that this court stay the implementation of HB102. Petitioners may move to consolidate their petition with that of the regents, although the present petition as it raises challenges to bills other than HB102, is broader than the regents petition. Yesterday on May 20, ASMSU met to discuss an amicus brief and will meet again next Tuesday to discuss the authorization of their organization to take legal action regarding HB102, HB112, HB349, and SB319. We considered three avenues in potential litigation of these bills. The resolution drafted provides for the option of ASUM and/or myself as the ASUM sole legal representative to use legal action to litigate the implementation of these bills. The resolution drafted provides for the option for ASUM and/or myself as the ASUM sole legal representative to file an amicus brief, which is a petition statement written as a letter to the court regarding the litigation of these bills. The resolution drafted provides for the option for ASUM to not involve ourselves in similar litigation. The resolution provides that the ASUM Senate authorizes the use of legal action if deemed necessary to litigate the implementation of aforementioned bills on the grounds that they were passed in offense of the United States Constitution, the MT Constitution, BOR policy, and/or UM policy. It provides that ASUM is authorized to file an amicus brief regarding any lawsuit filed in reference to the aforementioned bills. It provides that ASUM is authorized to appear in a lawsuit as a plaintiff. It provides that the ASUM President, Noah Durnell, is authorized to appear as a plaintiff in his official capacity as ASUM President. It provides that the ASUM Senate has unilateral authority in regards to such litigation to the ASUM President, Noah Durnell. It provides that the ASUM Senate vests authority in the ASUM President, Noah Durnell including but not limited to: (A) The retention of an attorney, who shall represent the ASUM in a court of law; (B) The ability to appear in a lawsuit as a plaintiff in his official capacity as ASUM President; (C) The representation of the ASUM in all matters pertaining to said lawsuit, including but not limited to appearing in a court of law and communicating

with the press; (D) Be the exclusive spokesperson regarding all communication on behalf of ASUM in all matters pertaining to said lawsuit; (E) File an amicus brief on behalf of ASUM for any lawsuit pertaining to HB102, HB112, HB349, and/or SB319. The resolution also provides that no ASUM student fee-paying monies shall be expended in litigation and that the actions taken by this body of representatives of an unincorporated association of students via this Resolution are knowingly taken without the consent, agreement, authorization or endorsement of the University of Montana, the Montana Board of Regents, or the Montana University System. Finally, the resolution provides that this resolution in no way guarantees or contracts ASUM's participation in a lawsuit regarding HB102, HB112, HB349, and/or SB319. ASUM has been recognized by the MT Supreme Court as an unincorporated association of students. It is important to note, Senators, other Executives, and ASUM administrators are capable of speaking on any matters as an individual but may only speak on behalf of the organization if granted authority to do so by this body. Thus if the resolution were to pass, Senators, other Executives, and ASUM administrators may speak on these issues in their capacity as an individual only as they will not be authorized to do so. There were some concerns raised by Lucy France, UM Legal Counsel, Brain Reed, Associate Vice Provost for Student Success, and Sarah Swager, Vice Provost for Student Success regarding the full extent of potential consequences regarding a lawsuit. The Senate investing authority in ASUM per this resolution does not make ASUM subject to these consequences unless ASUM were to file a lawsuit. I welcome discussion on all benefits and risks.

- iv. Legal Counsel (Lou Villemez): This resolution presents two options to join litigation that has been detailed. The primary option would be as a party, a plaintiff or a petitioner. This is the person or organization doing the suing or responding. These were filed directly in the MT Supreme Court, so this would be a petitioner option. The second option is not as a party, but as an amicus curiae, "friend of the court", which is common in significant matters to file an amicus brief in petition with the court. The person filing the brief has to be affected by the pending litigation and the court typically grants amicus briefs when parties are affected or has some expertise.
- v. Motion by **President Durnell** to include friendly amendments to provide for amicus brief option, a word change, a capitalization correction, and a guarantee that this does not contract ASUM to legal inclusion ; Called Friendly by Co-Authors
- vi. Bowles: To BM Rinck- I am going to ask you this in your previous lobbyist capacity. I want to know how far you testified against HB102 specifically?



1. BM Rinck: I did not testify against HB102 for two reasons. First, it fell outside of the original legislative priorities we set, so I needed the Senate body to authorize me to testify. Second, that bill passed the legislature at an incredibly quick speed and was signed into law in early February. In an official capacity, ASUM did not have a stance against the bill.
  2. Bowles: Would you have testified against it [HB102] if the bill had not moved so quickly?
  3. BM Rinck: Yes. That was the intent of the resolution [SB50] and seemed to be the intent of the SPA committee at the time.
- vii. Glueckert: To the Executives- President Durnell, has there been more discussion with other colleges in MAS that are taking a stance on this or are signing on?
1. Pres. Durnell: I can only speak on the petitions that have been filed, but the MAS discussion is not complete yet because we were not yet open for discussion. Other universities have been involved through individual students, though not through specific student groups. Faculty from UM and MSU have been involved, as well as the group including all of the MT Faculty Senate has been involved.
- viii. Kuney: To President Durnell- You mentioned some possible consequences of this resolution, can you elaborate?
1. Pres. Durnell: In a meeting with Lucy France, Brian Reed, and Sarah Swager we discussed consequences, though none of them are currently assured because these discussions were held extremely recently. The concern they have is not ASUM's legal standing but if ASUM can represent itself as a subsidiary of BOR to UM and then to us.
  2. Director Villemez: Their position is that it would be a violation of policy for ASUM to pursue litigation independent of the BOR, but I agree with Noah that the consequences are uncertain in terms of what they would be or if they would come to light.
  3. BM Rinck: The possible consequences do not come from a legal standpoint, but us joining might fall outside of the authority that the BOR and UM grants to us. Again, those consequences remain vague at this point.
  4. Pres. Durnell: Regardless of the potential consequences, the Senate is well within their rights to vote in any way on this resolution. We are actively pursuing conversations with UM to understand possible concrete consequences, which we will continue to follow up with.
- ix. Ververis: I think it is very important for us to vote yes on this. For one, we all took an oath of office about our duty to students to represent their best interests

and ensure their rights as students of UM. This is kind of a pinnacle because the legislature has decided to take away some of these rights, and whether it is through any of these provided litigation possibilities, I think it is important for ASUM to be involved. Our sole job is to represent students and make sure their interests are forwarded.

- x. Gudmundsson: I would like to echo Senator Ververis' sentiments. This resolution offers us flexibility moving forward. This was a significantly anti-academic legislative session and I think the wheels are starting to turn on people pushing against it. We are the people who stand up for the rights of our students, so we need to get on sooner rather than later. I think we as a Senate want to be on the right side of this, and this gives Pres. Durnell the flexibility to move through a rapidly changing body.
- xi. Hawthorne: To Pres. Durnell- Whether we join this lawsuit or not, what would happen if we won this lawsuit?
  - 1. Pres. Durnell: Our involvement in a lawsuit would be involving ourselves in a petition that seeks to sue on behalf of these bills overstepping the constitutional authority of the BOR. The decision would be perhaps not necessarily about the bills themselves, but the divide between legislative authority and BOR authority. Currently with how these bills stand, to implement HB349 would be to change a lot of our policies. If the lawsuit were to win, our policies would remain regarding inclusive and accessible recognition and funding policies of student groups. If the lawsuit were to win, parts of SB319 would not go into effect, and if it did go into effect MontPIRG would lose a significant amount of funding and an avenue to receive this funding. If the lawsuit was successful and the bills are seen to be violating constitutional authority, the bills in full or in part would not go into effect.
- xii. Bowles: I want to speak on why we should vote yes on this tonight. We have an opportunity to tell the legislature that they do not get to decide how ASUM and UM operate. We have attempted to tell them during the legislative session, so legal action is a predicted response on our behalf. I hope you all consider passing this resolution, and I encourage you to speak up with any questions.
- xiii. Glueckert: I want to echo sentiments that we would be doing a big disservice to our students if we do not vote yes. The legislature decided to not listen to many students at MUS campuses and many of these bills make students feel unsafe and unwelcome on our campuses and campuses around MT. I think any consequences that may come from this will be very much outweighed by us taking a stance today. I would encourage you to speak now, especially if you are leaning toward voting no.

- xiv. McKenzie: I want to reiterate what has been said and urge you to consider voting yes. I encourage you all to look at the Constitution and understand further why these bills are considered unconstitutional. The MT Constitution states “the government in control of the Montana University System is vested in the Board of Regents of Higher Education which shall have full power, responsibility, and authority to supervise, coordinate, manage, and control the Montana University System and shall supervise and coordinate other public educational institutions assigned by law” It is very important to consider the fact that the governor does not have the authority to pass these laws.
- xv. Kiefer: I want to voice my support for this resolution because ASUM serves as a voice for students. These bills are unconstitutional and are very harmful and I think we all need to remember that. The ramifications of these bills are a more dangerous and less welcoming campus. As someone who experienced a school shooting in high school, I can tell you I never want to experience that again. Please vote yes on this resolution.
- xvi. Kuney: I want to share my thoughts and reasoning for why I will be voting yes on this bill, particularly due to the involvement of HB102 and HB112. Last year when I was a student living on campus and I found out about HB102 being passed, it was very shocking and I would be scared to have students in possession of weapons on campus. With HB112, myself personally and the body of ASUM have made it very clear our stances against discrimination and discriminatory legislation. I would like to encourage everyone to vote yes and if you are thinking of voting no, please speak up now and share your thoughts so we can all have a discussion.
- xvii. *3 minute recess called; Returned at 7:01 pm*
- xviii. VP Lock: The discussion so far has been rather uniform. If there is anybody who has perhaps a dissenting opinion, you are invited to voice that. The Code of Ethics makes clear that there is a no hazing policy in ASUM, so you will not be ridiculed or judged for voicing a dissenting view or voting contrary to any other member of the body.
- xix. Glueckert: I want to echo what VP Lock just said. When I spoke earlier, I did not want it to sound as if I thought anyone having a different opinion is not respectable. This is my third year on Senate and it is really frustrating when we get to a vote and someone has not expressed why they voted in a different way than the majority of the body. We should have those good discussions whether we do or do not agree.
- xx. Kuney: I think it is important to make sure future legislatures don't think they can do this without action or repercussions from student bodies. I think that if we were to not take action, that would set a dangerous precedent that future legislatures can pass these bills that affect students directly without

repercussions. I feel it is our obligation as a body that represents UM students to take action and at least open up the possibility for our involvement in this litigation.

xxi. *SB2 passed 15Y-2A-2N [Roll Call SB2]*

## **6. BUSINESS MANAGER'S REPORT**

- a. A couple things regarding SB02: This has not been an easy process to get to this emergency meeting today, and that information was the outcome of weeks of deliberation and some solemn and heavy conversations. Us voting yes today likely made very clear is no guarantee that we move forward with litigation, though it grants us some authority to do so. I say with the utmost sincerity that President Durnell, with my and VP Lock's support, as well as the support of Senators, would all like to hear your feedback. Please reach out to us with any concerns or thoughts you have. We will move forward with weighing quite seriously the implications and benefits of joining. Thank you all for your maturity and respectfulness.

## **7. ADJOURNMENT**

Motion to Adjourn by **Kuney-Glueckert** ; UC Called

Meeting Adjourned at 7:10 pm