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Fall 9-8-2021

### SB7-21/22: Resolution Establishing ASUM's Demands Regarding COVID-19 Vaccine Requirement

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#### Recommended Citation

Durnell, Noah; Glueckert, Mary Melissa; Gudmundsson, Tor; Kiefer, Emma; and O'Neill, Lauren, "SB7-21/22: Resolution Establishing ASUM's Demands Regarding COVID-19 Vaccine Requirement" (2021). *Senate Resolutions, 2007-Present*. 916.

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1                                   **The Associated Students of the University of Montana**  
2       **Resolution Establishing ASUM’s Demands Regarding COVID-19 Vaccine Requirement**  
3                                   **August 31, 2021**  
4                                   **SB7-21/22**

5       **Authored by: Noah Durnell, ASUM President; Mary Melissa Glueckert, ASUM Senator;**  
6       **Tor Gudmundsson, ASUM Senator; Emma Kiefer, ASUM Senator; Lauren O’Neill,**  
7                                   **Student-At-Large;**  
8

9       Whereas, The COVID-19 virus has been known to be present in the state of Montana since  
10       March 11, 2020<sup>1</sup>;

11  
12       Whereas, The COVID-19 pandemic directly and negatively impacts the safety and academic  
13       success of students at the University of Montana (UM);

14  
15       Whereas, The Associated Students of the University of Montana (ASUM) advocates for the  
16       general welfare of all students at UM<sup>2</sup>;

17  
18       Whereas, The COVID-19 pandemic is an unprecedented threat to the public health and safety of  
19       the UM campus;

20  
21       Whereas, The current data shows that Missoula County has 734 active cases (as of 9/8/2021)<sup>3</sup>;

22  
23       Whereas, The current data shows that Missoula County has 82 new confirmed cases (as of  
24       9/8/2021)<sup>4</sup>;

25  
26       Whereas, Based on this number Missoula County has remained at what is referred to as the  
27       “Tipping Point” in terms of risk level (25+ cases per 100,000 people) for almost the entire month  
28       of August 2021 until now<sup>5</sup>;

29  
30       Whereas, Missoula County has an average of 54 new cases daily per 100,000 people in the past 7  
31       days<sup>6</sup>;

32  
33       Whereas, COVID-19 vaccines are safe, effective, and free<sup>7</sup>;

34  
35       Whereas, COVID-19 vaccines are widely available on campus and in the Missoula community  
36       through the Curry Health Center, the Missoula City-County Health Department Immunization

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<sup>1</sup> <https://www.nytimes.com/interactive/2021/us/montana-covid-cases.html>  
<sup>2</sup> ASUM Constitution Article 2, Section 1  
<sup>3</sup> <https://www.missoulainfo.com/copy-of-data-dashboard>  
<sup>4</sup> Ibid.  
<sup>5</sup> Ibid.  
<sup>6</sup> Ibid.  
<sup>7</sup> <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/index.html>

37 Clinic, CVS Pharmacy, Walgreen's Pharmacy, OSCO Pharmacy, and Granite Pharmacy, among  
38 others<sup>8</sup>;

39  
40 Whereas, There are no existing mandates requiring students to be vaccinated against COVID-19  
41 to attend UM;

42  
43 Whereas, The 67<sup>th</sup> Montana State Legislature passed House Bill (HB) 702<sup>9</sup>;

44  
45 Whereas, HB 702 could create legislative restrictions to enacting a COVID-19 vaccine mandate  
46 for students, faculty, and staff at UM;

47  
48 Whereas, Section 1(2)(a) of HB 702 provides:

49  
50 *... it is an unlawful discriminatory practice for: (a) a person or a governmental entity to*  
51 *refuse, withhold from, or deny to a person any local or state services, goods, facilities,*  
52 *advantages, privileges, licensing, educational opportunities, health care access, or*  
53 *employment opportunities based on the person's vaccination status or whether the person*  
54 *has an immunity passport* <sup>10</sup>;

55  
56 Whereas, HB 702 recognizes exemptions to Section 1(2)(a) in Section 2. ("Exemption");

57  
58 *A licensed nursing home, long-term care facility, or assisted living facility is exempt from*  
59 *compliance with [section1] during any period of time that compliance with [section1]*  
60 *would result in a violation of regulations or guidance issued by the centers for Medicare*  
61 *and Medicaid Services of the Center for Disease Control and Prevention*<sup>11</sup>;

62  
63 Whereas, HB 702 Section 2 ("Exemptions") emphasizes the importance of adhering to COVID-  
64 19 vaccine guidance issued by the Center for Disease Control and Prevention (CDC);

65  
66 Whereas, Current CDC guidance advises individuals to get fully vaccinated against COVID-19  
67 as soon as possible without exemption<sup>12</sup>;

68  
69 Whereas, The Montana Code Annotated (Mont. Code Ann.) § 20-5-403(1) ("Immunization  
70 Required – Release and Acceptance of Immunization Records") outlines the governing authority  
71 of postsecondary educational institutions to deny any person the privilege of attending as a pupil,  
72 unless the person has been immunized against varicella, diphtheria, pertussis, tetanus,  
73 poliomyelitis, rubella, mumps, and measles in the manner and with immunizing agents approved  
74 by the Department of Public Health and Human Services (DPHHS)<sup>13</sup>;

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<sup>8</sup> <https://www.vaccines.gov/results/?zipcode=59801&medications=779bfe52-0dd8-4023-a183-457eb100fcc, a84fb9ed-deb4-461c-b785-e17c782ef88b, 784db609-dc1f-45a5-bad6-8db02e79d44f&radius=25&appointments=true; https://covid19.missoula.co/get-vaccinated/>

<sup>9</sup> <https://leg.mt.gov/bills/2021/billpdf/HB0702.pdf>

<sup>10</sup> <https://leg.mt.gov/bills/2021/billpdf/HB0702.pdf>

<sup>11</sup> <https://leg.mt.gov/bills/2021/billpdf/HB0702.pdf>

<sup>12</sup> <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/vaccine-benefits.html>

<sup>13</sup> [https://leg.mt.gov/bills/mca/title\\_0200/chapter\\_0050/part\\_0040/section\\_0030/0200-0050-0040-0030.html](https://leg.mt.gov/bills/mca/title_0200/chapter_0050/part_0040/section_0030/0200-0050-0040-0030.html)

75  
76 Whereas, The Montana Code Annotated § 20-5-403(2)(b) (“Immunization Required – Release  
77 and Acceptance of Immunization Records”) outlines the governing authority of postsecondary  
78 educational institutions to impose immunization requirements as a condition of attendance that  
79 are more stringent than those required by Mont. Code Ann. § 20-5-403(1)<sup>14</sup>;  
80  
81 Whereas, The 67<sup>th</sup> Montana State Legislature created an implicit exemption in HB 702 Section 2  
82 to HB 702 Section 1 for schools pursuant to Mont. Code Ann. § 20-5-4 (“Education; Pupils;  
83 Health”);  
84  
85 Whereas, The Montana Department of Labor states:  
86  
87 *HB 702 applies to all vaccines and is not limited to COVID-19 vaccines*<sup>15</sup>;  
88  
89 Whereas, The Montana DPHHS provided guidance on HB 702 that states:  
90  
91 *Postsecondary schools may impose immunization requirements as a condition of*  
92 *attendance*<sup>16</sup>;  
93  
94 Whereas, DPHHS Rule 37.114.712 stipulates:  
95  
96 *Postsecondary schools must keep immunization data for each pupil*<sup>17</sup>;  
97  
98 Whereas, The Board of Regents of Higher Education of the State of Montana (BOR) policy on  
99 “Student Requirements” includes “Immunizations” as its largest subsection<sup>18</sup>;  
100  
101 Whereas, BOR policy 301(1)(E) states:  
102  
103 *Before enrolling for an initial term, all post-secondary students must comply with*  
104 *immunization requirements of ARM 37.114.701-721:*  
105 *1. Students born in 1957 or later must provide evidence that they have received*  
106 *two measles and two rubella immunizations...*  
107 *2. Under ARM 37.114.711, a student may be conditionally enrolled for an initial*  
108 *term if the student has not received the second dose of measles and/or rubella*  
109 *vaccine provided they receive the second dose at least 28 days after the first dose*  
110 *and before the beginning of the succeeding school term.*<sup>19</sup>;  
111  
112 Whereas, BOR policy 301 (1)(E)(5) states:  
113

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<sup>14</sup> [https://leg.mt.gov/bills/mca/title\\_0200/chapter\\_0050/part\\_0040/section\\_0030/0200-0050-0040-0030.html](https://leg.mt.gov/bills/mca/title_0200/chapter_0050/part_0040/section_0030/0200-0050-0040-0030.html)

<sup>15</sup> <https://erd.dli.mt.gov/human-rights/human-rights-laws/employment-discrimination/hb-702>

<sup>16</sup> <https://dphhs.mt.gov/assets/HB702Guidance09012021.pdf>

<sup>17</sup> <https://rules.mt.gov/gateway/ruleno.asp?RN=37%2E114%2E712>

<sup>18</sup> <https://mus.edu/borpol/bor300/301.pdf>

<sup>19</sup> <https://mus.edu/borpol/bor300/301.pdf>

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*Individual campuses or programs may have additional immunization/testing requirements<sup>20</sup>;*

Whereas, The UM has always required immunizations and students have always provided records of them<sup>21</sup>;

Whereas, UM immunization practices directly reflect stated BOR and Mont. Code Ann. policies that are implicitly reinforced by HB 702;

Whereas, Societal immunization practices by learning communities helped to eradicate polio and greatly reduce the spread of measles and rubella;

Whereas, Section 1(4) of HB 702 provides:

*An individual may not be required to receive any vaccine whose use is allowed under an emergency use authorization or any vaccine undergoing safety trials;*

Whereas, The Pfizer-BioNTech vaccine was approved by the U.S Food and Drug Administration (FDA) on August 23, 2021<sup>22</sup>;

Whereas, the United States (U.S) DPHHS has reported COVID-19 vaccines are effective at helping protect against severe disease and death from variants of the virus that cause COVID-19, and that the use of the FDA-approved Pfizer-BioNTech COVID-19 Vaccine for individuals aged sixteen and older is one of the recommended vaccines to protect against COVID-19<sup>23</sup>;

Whereas, The Pfizer-BioNTech COVID-19 vaccine is free and widely available in Missoula County;

Whereas, BOR filed a petition for declaratory relief challenging HB 102 in that it violates BOR's Constitutional authority to make decisions for Montana University System (MUS) campuses<sup>24</sup>;

Whereas, There exists a judicial trend advocating for BOR's Constitutional authority to make decisions for MUS campuses;

Whereas, The 67<sup>th</sup> Montana Legislature has demonstrated consistent disregard for the autonomy and safety of the MUS;

Whereas, ASUM believes that the public health and safety of the student body significantly outweighs unfounded arguments against COVID-19 mitigation;

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<sup>20</sup> <https://mus.edu/borpol/bor300/301.pdf>  
<sup>21</sup> <https://www.umt.edu/curry-health-center/new-students/>  
<sup>22</sup> <https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine>  
<sup>23</sup> <https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine>  
<sup>24</sup> *Board of Regents of Higher Education of the State of Montana v. The State of Montana, et al.*, Montana First Judicial District Court, Lewis and Clark County Cause No. BDV-2021-59B.

154 Whereas, The *Annals of Internal Medicine* published a study stating:  
155  
156 *Colleges returning to pre-COVID-19 campus activities without either broad vaccination*  
157 *coverage or high-frequency testing put their campus population at risk for widespread*  
158 *viral transmission*<sup>25</sup>;  
159  
160 Whereas, The CDC updated its public health guidelines for fully vaccinated people on July 27,  
161 2021 to recommend wearing masks in all public indoor spaces where transmission is categorized  
162 as substantial or high<sup>26</sup>;  
163  
164 Whereas, The CDC asserts that individuals should continue wearing masks until their county is  
165 no longer categorized as having substantial transmission;  
166  
167 Whereas, Missoula County has strong potential to continue being categorized as having  
168 substantial or high transmission while vaccination rates rise, whether by mandate or by incentive;  
169  
170 Whereas, Individual action towards getting vaccinated slows the spread of the COVID-19 virus  
171 in the community and contributes to the collective goal of ending the pandemic;  
172  
173 Whereas, The health and safety of students is at least as important as their academic success;  
174  
175 Therefore, Let It Be Resolved, That ASUM calls on BOR to implement a COVID-19 vaccination  
176 requirement for all students, faculty, and staff at UM;  
177  
178 Therefore, Let It Be Further Resolved, That ASUM calls for the implementation of a campus-  
179 wide mask requirement in all indoor spaces at UM until COVID-19 transmission falls beneath  
180 the “substantial transmission” category defined by the CDC;  
181  
182 Therefore, Let It Be Further Resolved, That ASUM calls for UM and BOR to support the  
183 aforementioned COVID-19 mitigation efforts;  
184  
185 Therefore, Let It Be Further Resolved, That ASUM calls for UM to represent the student demand  
186 for the aforementioned COVID-19 mitigation efforts alongside the demands of other shared  
187 governance bodies at UM to BOR and the Office of the Commissioner of Higher Education  
188 (OCHE) in order to honestly reflect the demands of UM;  
189  
190 Therefore, Let It Be Further Resolved, That ASUM calls for institutional support for any  
191 potential litigation efforts proposed by OCHE and/or BOR against HB 702 in order to secure the  
192 authority to mandate COVID-19 vaccination for all students, faculty, and staff at UM;  
193  
194 Therefore, Let It Be Further Resolved, That this resolution be sent to Seth Bodnar, President of  
195 UM; Sarah Swager, UM Vice Provost of Student Success; Paula Short, UM Associate Vice

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<sup>25</sup> <https://www.acpjournals.org/doi/full/10.7326/M21-2965>

<sup>26</sup> <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html#:~:text=CDC%20recommends%20universal%20indoor%20masking,layered%20prevention%20strategies%20in%20place.>

196 President of Campus Preparedness and Response; Kimber Mckay, Chair of UM Faculty Senate;  
197 Amanda Dawsey, President of University Faculty Union; Brady Schwertfeger, Chair of UM  
198 Staff Senate; Jeff Adams, Director of Curry Health Center; Loren Bough, Regent; Todd  
199 Buchanan, Regent; Joyce Dombrowski, Regent; Casey Lozar, BOR Chair; Robert A. Nystuen,  
200 Regent; Brianne Rogers, Regent; Amy Sexton, Student Regent; Clayton Christian,  
201 Commissioner of Higher Education.

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205 Passed by Committee: September 5, 2021

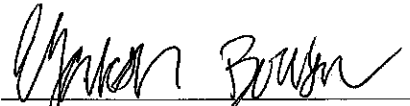
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207 Passed by ASUM Senate: September 8, 2021

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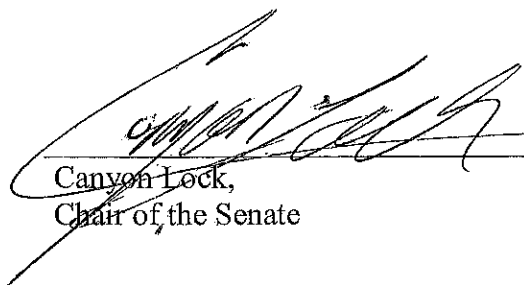
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211   
Elizabeth Bowles,

212 Chair of the Relations and Affairs Committee

213

214 Passed on a 16Y-2N-0A Vote.

  
Canyon Lock,  
Chair of the Senate