

Montana Law Review

2021 Write-On Information

First and second-year students who are interested in joining the *Montana Law Review* may write and submit a case note for evaluation by current *MLR* staff.

How It Works:

- Choose one of the four cases listed below. No other cases will be considered for write-on submissions.
- Submissions must be original material prepared solely for *Montana Law Review* write-on purposes. No previous work from other classes or projects may be submitted.
- Use the latest edition of the ALWD citation manual, using academic footnotes rather than in-text citations. Be sure to pay attention to the special rules for law review citations. For reference, look to recently published case notes in the *Montana Law Review*. Please note that older case notes conformed to Bluebook rather than ALWD citation style.
- The Honor Code mandates NO HELP FROM ANYONE in writing the case note (except in very limited circumstances as discussed below in “Submission Assistance”). Applicants may not receive help from classmates, family members, professors, employers, or friends during any phase of writing the case note. This includes help in editing, cite-checking, or assistance on any substantive issues.
- The current second-year staff will select anywhere from 10–20 case notes, based on the quality of submissions, the number of submissions, and the projected personnel needs of the *Montana Law Review*. If necessary, selected attorneys and professors may also evaluate submissions.
- All submissions must be anonymous. Applicants must not discuss their case note, or the fact that they are writing a case note, with any current second-year staff member. Do not put any identifiable information anywhere on the submission. Failure to keep a submission anonymous will disqualify the submission.
- We strongly recommend that applicants read several previously published case notes before beginning the write-on process. Previously published case notes are located in back issues of *Montana Law Review*. Back issues can be found on the *Montana Law Review* website, on Westlaw, LexisNexis, HeinOnline, or in print in the Jameson Law Library or *Montana Law Review* office. Please note that case notes are different than legal shorts and are listed under Notes in the Table of Contents of each *Montana Law Review* issue. Keep in mind that previously published case notes are much longer and analytically detailed than

write-on case notes, due to more time and less-stringent page limitations.

2020 Cases and Secondary Sources (choose one case):

***State v. Pelletier*, 473 P.3d 991 (Mont. 2020).**

David Crump, *An Edifice of Misshapen Stones: Interpreting Federal Rule of Evidence 404(a)*, 43 HOFSTRA L. REV. 667 (2015).

***State v. Christensen*, 472 P.3d 622 (Mont. 2020).**

Michael C. Barnes & Stacey L. Sklaver, *Active Verification and Vigilance: A Method to Avoid Civil and Criminal Liability When Prescribing Controlled Substances*, 15 DEPAUL J. HEALTH CARE L. 93 (2013).

***Hensley v. Mont. State Fund*, 2020 MT 317.**

William Mac Morris, *A Lack of Deference: Rational Basis with Bite in Caldwell v. MACo Workers' Compensation Trust*, 73 MONT. L. REV. 417 (2012).

***Donald J. Trump for President, Inc. v. Bullock*, No. CV 20-66-H-DLC, __F. Supp. 3d__, 2020 WL 5810556 (D. Mont. Sept. 30, 2020).**

Michael T. Morley, *Election Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks*, 67 EMORY L.J. 545 (2018).

Case Note Research and Authority Citation Guidelines:

The research process is OPEN. All relevant material may be cited in your case note. Provided is a relevant secondary source for each case. In addition to the briefs submitted by the parties and the authority cited in each case, these secondary sources are an excellent starting point for your research. Not all sources may be available on your preferred legal database. Research may require use of multiple sites including, but not limited to, Westlaw, Lexis Advance, or HeinOnline. The fact that we have provided these secondary sources does not imply that you must use them. Do not be misled by the content of these sources. They introduce the general legal issues but are not meant to substitute the key issues raised in the cases. Your case note will not be evaluated on your ability to use the sources provided. Rather, it will be evaluated primarily on your ability to synthesize and critically analyze the issues presented in the selected cases.

Submission Guidelines:

- Submissions are due **May 10th at 5:00 p.m. MST**. Please submit your case note by email to joseph.gresham@umontana.edu. The subject line of your email should be “Write-on Submission.” Submissions emailed to other *Montana Law Review* members will not be considered.
- Submissions should be no more than 16 pages in length, including footnotes.
- Submissions must be typed, double-spaced, using either Century Schoolbook or Times New Roman twelve-point font, with one-inch margins on all sides.
- The applicant’s Spring 2021 Midterm Anonymous Number 1 should appear on the front page of the submission. Applicants should also indicate whether they are a current 1L or 2L in the header of the submission. (Example: Anon. No. 12345 – 1L). The purpose of the 1L/2L distinction is to ensure we have a sufficient number of members to form the 2021–22 Editorial Board.
- Do not put the applicant’s name or any identifiable information on the submission.

Submission Assistance:

- Questions about the application process may **only** be addressed to the designated third-year students, joseph.gresham@umontana.edu and dimitrios.tsolakidis@umontana.edu, and will be limited to questions about the application process—substantive, research, and citation questions will not be answered. Do not ask any second-year staff member any questions about your case note, and do not indicate to any second-year staff members that you are writing on.
- Library staff may provide general assistance with instruction in or location of a particular research tool, but not detailed assistance in finding particular information.

General Case Note Information:

A case note analyzes a recent court decision and its legal context. A case note examines the relationship between the decision and the existing law and discusses important issues, cases, and legislation within that area.

A case may be chosen for the write-on competition because it represents an important change in the law, creates significant effects, or displays interesting judicial reasoning. It is the applicant’s responsibility to identify the significance of the case. Note that cases often address several issues. Not all of the issues will be noteworthy. You only have 16 pages, so choose carefully when deciding which issue(s) to discuss. Case notes will be evaluated in part on the ability of the author to decipher which issues are significant.

A case note begins with a brief introduction and then clearly states—in the

author's own words—the important facts and procedural history of the case. Next, the case note states the case's specific holding on each important issue, summarizing the court's reasoning for each holding. The author's analysis of the case follows in the substantive portion of the case note, which describes relevant existing law and the arguments both supporting and opposing the holding of the case. The case note ends with a legal conclusion. Please note that this basic framework may be adjusted, depending on the case, legal arguments, and author's style.

Writing a Case Note:

I. What is a Case Note?

The basic difference between a case note, a comment, and an article is the breadth of the subject matter covered. A case note should analyze a single case. In contrast, a comment addresses an area of the law, focusing on specific issues, cases, and legislation. An article is broader still and, unlike a case note or comment, is a non-student legal essay written either by a noted legal authority or a person with expertise in a certain area.

In selecting a case for the write-on, the *Montana Law Review* Staff looks for a noteworthy case. A case is noteworthy if it is a case of first impression, it represents a significant departure from precedent, or if it has some other significance to Montana law. Please note, however, that a selected case may merely present a noteworthy aspect. For example, a case where the court reached the right conclusion for the wrong reasons also qualifies as noteworthy. The following list of possible noteworthy aspects should assist you in understanding this fundamental feature of a case note.

- An area of significant concern.
- The possibility of intriguing results in later cases.
- The court fails to follow the majority of jurisdictions.
- The court's analysis represents a departure from precedent.
- The first case in a newly legislated area.
- A likely effect on an extra-legal area such as business, consumers, employment, or education.

Note: A case note does not have to address every aspect or issue in the selected case but should address all those that are significant.

II. Where do you begin?

The *Montana Law Review* Staff suggests the following plan of attack. First, read the case carefully and attempt to recognize and fully understand the "noteworthiness" of the case. Second, read all relevant authority cited by the court. Third, check the court's use of authority for accuracy. Fourth, if available, read the briefs of counsel to familiarize yourself with the opposing arguments. Additional

guidance and authority may also be found elsewhere—treatises, law reviews, etc.

III. How is a case note organized?

A quality case note requires good organization and clear analysis. The *Montana Law Review* Staff believes one lends itself to the other. Generally, a case note is divided into topical sections. The following organization is a flexible guideline. You may wish to refer to other law reviews for alternative organizations.

The particular format you use matters less than the format's contribution to the readability and substance of your note. Your note should have clear thesis sentences and section headings.

- A. **Introduction.** Briefly introduce the reader to the area of the law and the organization of the case note. Begin forcefully, a few lines may suffice. Explain the “noteworthiness” of your case.
- B. **Facts.** Include only the relevant facts presented in a clear, concise, and interesting manner. The idea is to focus the reader's attention on those critical facts controlling the issue(s). Remember, courts often distinguish cases on their facts. Also, describe the lower court's holding, appeals, and any subsequent action.
- C. **Holding.** State the court's holding on each relevant issue. Note that there may be multiple opinions (concurrences/dissents) to discuss.
- D. **Background or Discussion of Prior Law.** In this section, provide the reader with the relevant background law relating to the issues regardless of whether discussed in the decisions. Describe the existing law and its development. In closing this section, relate the selected case to the prior law to illustrate how, if at all, the selected case affects prior law.
- E. **Reasoning or Analysis.** Describe and critically analyze the court's reasoning and decision. Remain objective, but do not be afraid to express original ideas. If by some accident the reasoning makes sense, say so and support your conclusion. If not, say so and support your conclusion. Present in its full context the law as you contend it is or ought to be. If appropriate, attempt to predict the impact your case will have on future decision. Furthermore, address any ambiguous statements made by the court and questions the court left unanswered. This section affords you the opportunity to demonstrate legal skill and prowess by dissecting the case and raising important issues involved.

- F. Conclusion.** This section is reserved for your exclusive use as an author. Just as each topical section requires a conclusion, so should the case note itself. Bring your case note full circle, reinforcing the “noteworthiness” of the selected case.

Final Comments:

The *Montana Law Review* attempts to provide research, information, and original thinking to our readers. We do not attempt to instruct judges, courts, or the legislature. You must support your statements fully by logic, authority, or, where possible, by both. Know the law. If you cite to a case, be certain the case stands for the proposition or rule of law you intend. Do not depend on or cite to the head notes. While you need not agree with the court, remember you need not always disagree.