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*Pro Querente*

**MONTANA FOURTH JUDICIAL DISTRICT COURT  
MISSOULA COUNTY**

**STAND UP MONTANA, a  
Montana non-profit corporation;  
BRONWEN LLEWELLYN-  
LITTLEWOLFAS, an individual;  
CROSSPOINT COMMUNITY  
CHURCH, INC., a Montana non-  
profit corporation; ACCU-ARMS,  
L.L.C., a Montana limited liability  
company; BI-LO FOODS INC., a  
Montana profit corporation;  
KINGDON ENTERPRISES, L.L.C.,  
a Montana limited liability  
company; LOLO COMMUNITY  
CLUB, a Montana non-profit  
corporation, dba LOLO  
COMMUNITY CENTER;**

Plaintiffs,

vs.

**MISSOULA CITY-COUNTY  
BOARD OF HEALTH, an agency  
of the City of Missoula and the  
County of Missoula; ELLEN  
LEAHY, in her official capacity as  
MISSOULA CITY-COUNTY  
HEALTH OFFICER,**

Defendants.

Cause No.:  
Department No.:

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

## **COMPLAINT**

Plaintiffs Stand Up Montana; Bronwen Llewellyn-Littlewolfas;  
Crosspoint Community Church, Inc.; Accu-Arms, L.L.C.; Bi-Lo Foods Inc.;  
Kingdon Enterprises, L.L.C.; and Lolo Community Club, dba Lolo  
Community Center for their Complaint allege against Defendants Missoula  
City-County Health Department and Ellen Leahy, Missoula City-County  
Health as follows:

## **PARTIES**

1. Plaintiff Stand Up Montana is a registered Montana non-profit corporation in good standing with its principal place of business 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 400 individuals and business entities, including many in Missoula County. Its Missoula County members have lost income, employees, customers, businesses and livelihoods as the proximate result of Defendants’ actions as 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 Defendants. 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 by 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.

2. Plaintiff Bronwen Llewellyn-Littlewolfas is an individual residing in Missoula County. She suffers from a medical disability that makes it unsafe for her to wear a cloth face covering or “mask.” Due to the activities of Defendants, as alleged herein, she has been refused public accommodations by private businesses, Mountain Line and other Missoula County services, and has otherwise been subjected to bullying, harassment and frightening confrontations. Defendants’ activities interfere with her ability to support herself and to access goods and services she needs for daily living.

3. Plaintiff Crosspoint Community Church, Inc. is a Montana non-profit corporation consisting of a Christian religious congregation with its principal meeting place in Missoula County, Montana. Defendants have threatened it with enforcement actions for failing to comply with Defendants' orders regarding capacity, social distancing and the wearing of masks.

4. Plaintiff Accu-Arms, L.L.C. is a Montana limited liability company which operates a gunsmith and gun shop with principal place of business in Missoula County, Montana. Defendants have threatened it with enforcement actions for failing to comply with Defendants' orders regarding capacity, social distancing and the wearing of masks.

5. Plaintiff Bi-Lo Foods Inc. is a Montana profit corporation which operates a grocery store with a principal place of business in Missoula County, Montana. Defendants have threatened it with enforcement actions for failing to comply with Defendants' orders regarding capacity, social distancing and the wearing of masks.

6. Plaintiff Kingdon Enterprises, L.L.C. is a Montana limited liability company which operates coffee kiosks with its principal place of business in Missoula County. Defendants have threatened it with enforcement

actions for failing to comply with Defendants' orders regarding capacity, social distancing and the wearing of masks.

7. Plaintiff Lolo Community Club, dba Lolo Community Center, is a Montana non-profit corporation which operates a community center at its principal place of business in Missoula County.

8. Defendant Missoula City-County Board of Health (MCCBH) is an agency of the County of Missoula and the City of Missoula organized under the authority of § 50-2-106, MCA.

9. Defendant Ellen Leahy is the Missoula City-County Health Officer and is sued in her official capacity, per § 50-2-116, MCA, as local health officer.

### **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 Missoula County.

## **GENERAL ALLEGATIONS**

### **MCCBH Comprehensive COVID-19 Mitigation Requirements**

12. On October 15, 2020, Defendant Leahy, on behalf of Defendant Missoula County Board of Health, executed an order (Face Mask Order) “[t]o reduce the spread of the pandemic disease COVID-19 by increasing use of face coverings among people in indoor public settings as recommended by the Centers for Disease Control and Prevention.” The Face Mask Order imposes a duty upon private businesses and individuals to enforce it. The Face Mask Order includes a list of exceptions, but none of them allow exceptions for those who cannot safely wear masks due to other health issues.

13. Defendants’ response to COVID-19 includes, among other things, an order executed by Leahy on October 26, 2020, adopted by MCCBH as rules on December 17, 2020, MCCBH. (The two hereinafter are referred to together as “Defendants’ response to COVID-19.”)

14. Defendants’ response to COVID-19 constitutes the latest iterations in a series of COVID-19 rules adopted by MCCBH rules and COVID-19 orders issued by Leahy which have put into effect intrusive and burdensome restrictions on residents and visitors to Missoula County who are not:

- a. infected with COVID-19;
- b. reasonably believed to be infected with COVID-19; or
- c. exposed to COVID-19.

15. Defendants' COVID-19 response includes regulations for, among other things: (a) mandatory face coverings; (b) restricting premise capacity, hours of operation, physical distancing, traffic flow, customer service and gathering size; (c) mandatory disclosure of private health status information by employees and guests; and (d) denial of human and family contact.

16. Defendants' have enforced and threatened to enforce their response to COVID-19 by ordering businesses to close and threatening fines and prosecution, §§ 50-2-123 and 124, MCA.

17. Defendants have conscripted private businesses and individuals into enforcing their mandatory masking rules included in Defendants' COVID-19 response by threatening them with closure, fines and prosecution.

18. Defendants have encouraged citizens to make anonymous denunciations of businesses and individuals who are not regarded as being "in compliance" with Defendants' COVID-19 response, turning neighbors against neighbors and dividing the community.

## Science

19. Defendants' 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.

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

21. 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.

22. 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

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

0-19 Years	99.997%
20-49 Years	99.98%

50-69 Years	99.5%
70+	94.6%

24. Unlike Defendants' response to COVID-19, rational public health principles consider all health implications of policies rather than these single COVID-19 outcomes.

25. Unlike Defendants' 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 quarantines 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 a pandemic.
- 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 Personal Protective Equipment (PPE).** To date, there have been no large-scale studies conducted under scientific rigor that suggest wide-spread use of cloth face coverings by the public to be efficacious in the control of a pandemic.

26. Nationally and in Montana, there has not been a 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**

27. While there is little or no science to support Defendants' response to COVID-19, the human and economic consequences are 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 Missoula County residents has plummeted by a wide variety of measures. Defendants' response to COVID-19 has resulted in economic crisis for small businesses in general, and the hospitality industry in particular. Defendants' response to COVID-19 has caused unprecedented damage to the heart and soul of Missoula County residents and their economy.

28. Meanwhile, Defendants' response to COVID-19 has done little to slow, much less curtail, the pandemic. As of close of business on December 31, 2020, Defendants reported

- a. 6,390 cumulative cases;
- b. 53 "COVID-related" deaths;
- c. 34 daily new cases per 100,000 people (7-day average); and
- d. Daily new cases per 100,000 people (7-day average) had been over 25, or in the "red zone" for over 90 days.

29. If Defendants' response to COVID-19 and Defendants' efforts to enforce their rules and orders, as alleged herein; if the Mask Mandate and the November Directive are not permanently enjoined, then 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**

### **(Separation of Powers/Republican Form of Government)**

30. Plaintiffs restate the foregoing.

31. 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.

32. Montana’s archaic statutory scheme for public health makes no provisions, gives no structure, nor adequate public policy guidance to local health boards and officers 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; or
- d. Conscriptio of private business and individual for the enforcement of health restrictions.

33. Despite the lack of legal authority, Defendants 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; or
- d. Conscription of private business and people for the enforcement of restrictions on people.

34. The Legislature's delegation of authority to local executive branch authorities 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.

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

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

37. As a result of the foregoing, Defendants' COVID-19 response violates 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.

38. As a result of the foregoing, Defendants' COVID-19 response violates 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 II**

### **(Inalienable Rights)**

39. Plaintiffs restate the foregoing.

40. 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.

41. 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.

42. Defendants' COVID-19 response 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 III**

#### **(Privacy)**

43. Plaintiffs restate the foregoing.

44. 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.<sup>1</sup> That history served to focus the 1972 Montana Constitutional Convention on the vigilant protection of individual rights from

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<sup>1</sup> FEATURE: BOOK: SOME HEAVY LEGAL READING TO USHER IN 2006: RELIVING OUR STATE'S SHAMEFUL SEDITION ACT, 31 Montana Lawyer 8.

the tyrannical impulses of government, especially when animated by popular sentiment in a time of perceived emergency.

45. 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.

46. Defendants' COVID-19 response, in their mask mandates, compels uninfected and unexposed individuals to wear face masks in all businesses, government offices and other indoor spaces open to the public. The mask mandates requires private 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.

47. Defendants' COVID-19 response, in their mask mandates, 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.

48. Because Defendants' COVID-19 response and their mask mandates infringe upon the right of privacy, they are void.

#### **COUNT IV**

##### **(Free Exercise of Religion)**

49. Plaintiffs reallege the foregoing.

50. 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.

51. 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.

52. Defendants' COVID-19 response infringes upon the free exercise of religion by worshippers and clergy with such convictions. In this way, it violates both the Montana and U.S. Constitutions. To this extent, it is void.

## COUNT V

### (Human Dignity)

53. Plaintiffs restate the foregoing.

54. “Human dignity” is a fundamental right ensconced expressly in the Montana Constitution’s Declaration of Rights.

55. 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.

56. 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.

57. 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.

58. 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.

59. Defendants' mask mandates included in their response to COVID-19 interfere with Missoula residents' ability to communicate with one another by means of facial expression.

60. 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.

61. 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.

## **COUNT VI**

### **(Freedom of Expression)**

62. Plaintiffs restate the foregoing.

63. Freedom of expression is a fundamental right ensconced expressly in the Montana Constitution's Declaration of Rights.

64. Given (a) the material lack of scientific basis for Defendants' COVID-19 response, included in their mask mandates, and (b) the response's lack of effectiveness both based on scientific studies and its demonstrated failure to curb the pandemic, compliance with Defendants'

rules and orders, especially mask wearing, is fraught with substantive meaning.

65. Wearing a mask constitutes to many an outward sign of trust in, loyalty to or submission to the honesty, wisdom, and power of government. Wearing a mask functions for others is a virtue signal and an outward demonstration of their own social and moral superiority over those who fail to comply. And still for others, refusing to wear a mask, is an outward signal of mistrust in a government who claims expertise, and defiance to unsupportable demands for compliance for its own sake. Wearing a mask or not wearing a mask is for some a demonstration of partisan political affiliation.

66. Defendants' mask mandates included in their response to COVID-19 violate Missoula residents' freedom to express their political and moral points of view, in violation of the fundamental constitutional right to freedom of expression and are, therefore, void.

### **REQUEST FOR RELIEF**

Accordingly, Plaintiffs request judgment in their favor and against Defendants by imposing a permanent injunction against enforcement of Defendants' COVID-19 response to the extent it:

1. Restricts residents who do not have COVID-19 and are reasonably believed not to have COVID-19;
2. Restricts residents who have not been exposed to COVID-19;
3. Requires private businesses and individuals to enforce Defendants' rules and orders; and
4. Infringes upon Plaintiffs' individual constitutional rights.

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

DATED this 19th day of January 2021.

Respectfully Submitted,  
RHOADES, SIEFERT & ERICKSON PLLC

By: /s/Quentin M. Rhoades  
Quentin M. Rhoades  
*Pro Querente*

**JURY DEMAND**

Plaintiffs demand a jury trial on all counts so triable.

Respectfully Submitted this 19th day of January 2021.

RHOADES SIEFERT & ERICKSON PLLC

By:  /s/Quentin M. Rhoades  
Quentin M. Rhoades  
*Pro Querente*