

HOUSE BILL NO. 517

INTRODUCED BY M. HOPKINS, E. BUTCHER, G. HERTZ, D. ZOLNIKOV, J. HINKLE, S. GUNDERSON, M. REGIER, S. VINTON, R. KNUDSEN, J. KASSMIER, T. MOORE, B. LER, B. PHALEN, F. NAVE, L. BREWSTER, B. MITCHELL, A. REGIER, S. KERNS, K. SEEKINS-CROWE, C. HINKLE, G. FRAZER, M. BINKLEY, S. ESSMANN, T. SMITH, R. MINER, G. PARRY, N. NICOL, G. NIKOLAKAKOS, P. GREEN

A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE X, SECTION 9, OF THE MONTANA CONSTITUTION TO PROVIDE DULY ELECTED LAWMAKERS AUTHORITY TO ENACT LAWS TO PROTECT CONSTITUTIONAL RIGHTS OF STUDENTS, FACULTY, AND STAFF OF THE MONTANA UNIVERSITY SYSTEM."

WHEREAS, in *Healy v. James*, the Supreme Court of the United States held that "the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools"; and

WHEREAS, the current official text of the Montana Constitution has been interpreted by Montana courts to forbid the state from enacting law to protect the constitutional rights of students, the public, faculty, or staff; and

WHEREAS, the state must not violate the state or federal constitutional rights of enrolled or prospective students, faculty, or staff; and

WHEREAS, the state must provide remedies for parties whose constitutional rights have been violated by the Montana University System; and

WHEREAS, the state has a compelling interest in ensuring that the Montana University System complies with the state and federal constitutions; and

WHEREAS, the state is responsible for paying damages awarded to parties who have proven in court that their constitutional rights have been violated by the Montana University System; and

WHEREAS, the Montana Constitution's text should provide duly elected lawmakers the authority to protect the state and federal constitutional rights of students, the public, faculty, or staff at the Montana University System; and

WHEREAS, this amendment will ensure the state may enact legislation to require the Montana

1 University System to maintain policies and practices that protect the state and federal constitutional rights of
2 enrolled or prospective students, faculty, or staff, or from providing remedies for parties whose constitutional
3 rights have been violated by the Montana University System.

4

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6

7 **Section 1.** Article X, section 9, of The Constitution of the State of Montana is amended to read:

8 **"Section 9. Boards of education.** (1) There is a state board of education composed of the board of
9 regents of higher education and the board of public education. It is responsible for long-range planning, and for
10 coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified
11 budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each
12 component board.

13 (2) (a) ~~The Except as provided in subsections (2)(e) and (2)(f), the~~ government and control of the
14 Montana university system is vested in a board of regents of higher education which shall have full power,
15 responsibility, and authority to supervise, coordinate, manage and control the Montana university system and
16 shall supervise and coordinate other public educational institutions assigned by law.

17 (b) The board consists of seven members appointed by the governor, and confirmed by the
18 senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex
19 officio non-voting members of the board.

20 (c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

21 (d) The funds and appropriations under the control of the board of regents are subject to the same
22 audit provisions as are all other state funds.

23 (e) The legislature may enact laws requiring the board of regents of higher education and units of
24 the Montana university system to adopt and maintain policies and practices that protect the rights and
25 associated civil liberties provided in the Montana constitution and those provided in the United States
26 constitution. In pursuit of these protections the state may provide judicial remedies. THIS SUBSECTION (2)(E) MAY
27 NOT BE CONSTRUED TO ALLOW THE LEGISLATURE TO DIRECT CURRICULUM, RESEARCH, OR HIRING PRACTICES WITHIN
28 THE MONTANA UNIVERSITY SYSTEM.

