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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

Jerry O'Neil, Eugene Kirschbaum,
Russell Sias, (Assembled Voter),
Barbara Levitt (Assembled Voter),
Darell Levit (Assembled Voter), and other
Assembled Voters,

Plaintiffs,

vs.

The Montana Supreme Court,
The State Bar of Montana, and,
The Montana Supreme Court and the
State Bar of of Montana, joined together
as the Integrated Bar of Montana, and
Montana Secretary of State Christi Jacobsen.

Defendants.

Cause No. CV 23-161-M-DLC-KLD

**AMENDED COMPLAINT
FOR DECLARATORY
AND INJUNCTIVE RELIEF**

BACKGROUND and PURPOSE

Plaintiffs challenge, and seek to abolish two requirements which are presently

imposed before one may run for the office of District Court Judge or Justice of the Montana Supreme Court in the state of Montana. These requirements are imposed by Defendants Montana Supreme Court, State Bar of Montana, and the Montana Supreme Court and the State Bar of Montana, joined together as the Integrated Bar of Montana. These unconstitutional requirements are:

1. Having to be admitted to the practice of law in Montana for at least five years, as required by the Montana Constitution, Article VII, Section 9; and
2. Having to be a member of the Integrated Bar of Montana as required by Montana Supreme Court rules.

The Court should declare these requirements unconstitutional/unenforceable for the following reasons:

1. Requiring attorneys to belong to and pay dues to the Integrated Bar of Montana creates a prohibited public sector monopoly and amounts to the prohibited requirement to join a union and pay union dues. [See *Janus v. State, County, and Muniocipal Employees*, 585 U.S. ___, 138].
2. Being forced to join Defendant Integrated Bar of Montana is classed based due to the educational requirements for membership. As such, it amounts to a title of nobility which is prohibited under Article I, Section 9, Clause 8, and Section 10, Clause 1 of the United States Constitution.
3. Which is a title of nobility as is prohibited under Article I, Section 9, Clause 8, and Section 10, Clause 1.
4. These arbitrary and capricious requirements establish and maintain a system

which blocks at least 99.7% of otherwise eligible citizens of Montana from running for and, if elected, being a justice on the Montana Supreme Court or a District Court Judge.

5. The members of the Integrated Bar of Montana are active market participants in the occupation they regulate and they are not subject to active supervision by the State of Montana.

Plaintiffs seek a declaratory judgment or judgments that classifications based on educational or employment history, and/or membership in any professional organization, are unconstitutional denials of equal protection of the law, and that the State of Montana, and the Supreme Court of Montana, and the Attorney General of Montana, must be specifically enjoined from enforcing all laws applying, construing, interpreting, or implementing such laws to limit eligibility to election to the Third and “Final Recourse” Branch of Government to members of favored classes with certain “noble” educational or professional membership.

Plaintiffs also seek a declaration that Plaintiff Jerry O’Neil’s admission to practice law in the Blackfeet Tribal Court on the Blackfeet Indian Reservation meets the “admitted to practice of law in Montana” requirement of Montana Constitution, Article VII, Section 9(1), and he is consequently eligible to the office of Supreme Court Justice of District Court Judge.

JURISDICTION AND VENUE

This court has Federal Question Jurisdiction under 28 U.S.C. §1331. But in addition, this Court has constitutional Article III jurisdiction over all cases arising under the constitution of the United States of America. Specifically, this Court has jurisdiction over civil rights actions for prospective declaratory and injunctive relief against judges and other judicial officers pursuant to 42 U.S.C. Chapter 21, §§1981, 1983, & 1988(a). Declaratory judgment under 28 U.S.C. Chapter 28, §§2201, 2202 does not provide any separate grounds for Federal Jurisdiction but 28 U.S.C. §1343 grants Federal Courts plenary jurisdiction over all cases involving civil rights.

Furthermore, Plaintiffs sue to clarify the application of the Parker Antitrust Doctrine to “U.S.A. v. Carolene Products, Footnote 4” enumerated rights such as freedom of speech, freedom of the press, and freedom of association, which cover all the activities constituting, in any sense, the practice of law.

This court has jurisdiction by virtue of 42 U.S.C. Chapter 21, §§1981, 1983, & 1988(a), as well as by 28 U.S.C. Chapter 28, §§2201, 2202; & Chapter 85, §§ 1331, 1337(a) & 1343(a); 15 U.S.C. Chapter 1, §§ 4, 15 & 26; the Montana Unfair Trade Practices and Consumer Protection Act MCA § 30-14-101 et seq., and Article III of the United States Constitution. Insofar as this action asserts certain state-law claims that are inextricably related to the federal Constitutional claims under Article III of the United States Constitution, this Court has supplemental jurisdiction over any such state-law claims pursuant to 28 U.S.C. § 1367(a).

PARTIES

1. Plaintiffs are residents and citizens of the State of Montana;
2. Plaintiff **Jerry O’Neil** is well versed in the legal system, having earned the equivalent of a JD degree from the “School of Hard Knocks.” [See attached *Affidavit of*

Jerry O'Neil].

3. Plaintiff Eugene Kirschbaum practiced law in the United States Air Force and then in private practice in Wisconsin before he retired and moved to Montana approximately five years ago. He practiced in Federal and State Courts, litigating or offering advice on a multitude of legal matters including: Contracts, Environmental, Landlord/Tenant, Real Estate, Aviation, Medical Malpractice, Divorce, Custody, Guardianship, Estates, Torts, Law of War, Geneva Conventions, and the defense and prosecution of criminal matters. Although he is well versed in the practice of law, he has never been licensed to practice by the Integrated Bar of Montana.

4. Therefore, Plaintiffs are filing this action for Declaratory and Injunctive Relief to have this Court declare that Plaintiffs do not have to be members of the Integrated Bar of Montana in order to run for the office of Justice, or Chief Justice, of the Montana Supreme Court before they pay their filing fees and run for said offices.

5. The Montana voters whom are joining in this petition desire to vote for Plaintiffs O'Neil and Kirschbaum so they will get elected to, and serve in, the offices of Justice, and Chief Justice, of the Montana Supreme Court. Unless this Court directs the Defendants to allow Plaintiffs to run for judicial office in the State of Montana these voters will not be allowed to vote for either O'Neil nor Kirschbaum, and against the anti-competitive monopolistic practices that presently control their Judicial Branch of Government.

6. The State Bar of Montana was integrated by order of the Montana Supreme Court on January 23, 1975. [*In re the Unified Bar of Montana*, 530 P.2d 765 (Mont

1975)].

7. Due solely to the Integrated Bar of Montana's monopolistic practices, it appears that both a retired JAG officer's right to practice law in Montana, and a long time licensed practitioner of a Montana located tribal court, Plaintiffs O'Neil and Kirschbaum, are presently being denied their right to run for the office of Justice and/or Chief Justice of the Montana Supreme Court. But this shouldn't be the case. As applied to O'Neil, Article VII, Section 9, Qualifications, states:

(1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

O'Neil has resided in the state most of his life, has been admitted to the practice of law in Montana (before the Blackfeet Tribal Court) for at least five years (since 1984) prior to the date of appointment or election. It appears that in 1972, when the delegates composed the new constitution, they wanted to create the opportunity for tribal representation on the Montana Supreme Court.

THE MONOPOLY

8. Defendant The Integrated Bar, through their head, the Montana Supreme Court, in order to maintain their monopoly over helping the public with their legal affairs, under their *Rules for Admission to the Bar of Montana - I. Application Process, part C,*

has made up the requirement than only graduates of ABA accredited law schools may be members of the integrated bar, and that only members of the integrated bar are allowed to be appointed or elected to join their members as judges and justices of the courts of Montana. Their intent appears to be to prevent competition from “scoundrels” such as O’Neil and Kirchsbaum.

9. The Integrated Bar, the organization that has determined who can be admitted to the practice of law before the courts in Montana, and by extension, who can be on the ballot as Judge of a district court, or Justice of the Montana Supreme Court, is composed by a majority of the practitioners who are protected by the monopoly that they define and enforce. They do not answer to the Montana Legislature, the Governor of Montana, nor to the people of Montana. [See: *Matter of McCabe*, 544 P. 2d 825 - Mont: Supreme Court 1975, and *McLaughlin v. Montana State Legislature*, 493 P. 3d 980 (Mont 2021). They are also acting in violation of the federal anti monopoly laws and are not protected by the Parker doctrine. [See *State Bd. of Dental Examiners v. FTC*, 574 US 494 (2015)].

10. The Integrated Bar has used their power to limit who can practice law before the courts in Montana only to law school graduates, and then only to law schools that are accredited by the American Bar Association.

ANTITRUST LAW

11. Montana’s Integrated Bar has limited who can run for judicial positions as district court and supreme court judges and justices to their chosen few, ie: those who

have graduated from ABA accredited law schools; have been certified by the Commission on Character and Fitness; have submitted a qualifying MPRE score; have submitted a qualifying Unified Bar Exam score; have attended the Montana Law Seminar; and have paid their license tax and dues to the State Bar of Montana.

<https://www.montanabar.org/Membership-Regulatory/Admissions/Admissions-Home#Eligibility%20for%20Admission>

12. The United States Department of Justice, Antitrust Division states:

The Justice Department is concerned about efforts across the country to prevent non-lawyers from competing with lawyers through the adoption of excessively broad unauthorized practice of law restrictions by state courts and legislatures. Some of these proposals appear to be little more than overt attempts by lawyers to eliminate competition from alternative, lower-cost non-lawyer service providers; others, while appearing to be good faith efforts to protect consumers, have not been tailored narrowly enough to avoid unnecessary harm to competition. . . [See *U.S. Department of Justice April 17, 2009 letter to Montana Supreme Court attached*]

13. The Integrated Bar of Montana, through its head, the Montana Supreme Court -- without supervision by the Legislative or Executive branches of the Montana government, took it upon itself to limit admission to the practice of law in Montana to a cartel of their choosing.

14. In order to bolster the monopoly of Montana's integrated bar, they will only allow "out of state" attorneys such as Plaintiff Kirschbaum to help Montana litigants with their legal problems if they have been admitted *Pro Hac Vice*, and have been engaged in the active practice of law for five of the past seven years.

15. The Integrated Bar excludes on-the-job experience such as O'Neil has

through his practice before the Blackfeet Indian Tribal Court System since 1984, his service on legislative judiciary committees, his practice as an independent paralegal for at least 40 years, and his successfully conducting jury trials.

16. According to *The Justice Gap In Montana: As Vast as Big Sky Country*¹:

The Montana Access to Justice Commission learned that nearly half of all low-income Montanans have at least one civil legal problem each year that they do not address. . .

17. Even if the monopoly can rule that Kirschbaum and O'Neil can not appear before the Montana courts, that does not justify them forbidding O'Neil and Kirschbaum from running for the public office of Justice or Judge of the Montana Supreme Court. It is the voting public's prerogative to choose or reject them, not the Integrated Bar's.

18. The right to practice law is protected by the Privileges and Immunities Clause, Article IV, Section 2 of the United States Constitution [*Supreme Court of NH v. Piper*, 470 US 274 - Supreme Court 1985].

19. Defendants' concerted action to exclude Plaintiffs' (and others with similar credentials) from the market of the practice of law in Montana constitutes an anticompetitive and unfair method of competition under the Federal Trade Commission Act. The anticompetitive and unfair conduct of the Integrated Bar of Montana does not receive the active supervision of the State, and thus is not cloaked with *Parker* immunity. [See: *State Bd. of Dental Examiners v. FTC*, 574 US 494 - Supreme Court 2015].

20. The Montana "Legislature cannot impose any additional conditions to those

¹ <https://courts.mt.gov/portals/189/supreme/boards/a2j/docs/justicegap-mt.pdf>

enumerated in the Constitution.” *Reichert v. State ex rel. McCulloch*, 278 P.3d 455 (Mont. 2012) (internal brackets removed).

21. It is a monopolistic violation to exclude O’Neil from running for justice on the Montana Supreme Court because his license to practice law comes from a tribal court rather than from the Montana Integrated Bar, and his legal experience and training did not include attending a law school that was accredited by the American Bar Association.

22. It is a monopolistic violation to exclude Kirschbaum from running for justice on the Montana Supreme Court because his license to practice law comes from the Wisconsin court system rather than from the Montana Integrated Bar and his legal experience was largely through the United States Air Force’s Judge Advocate General’s Office.

23. Except for the antitrust violations of the Integrated Bar of Montana, both Kirschbaum and O’Neil would have been allowed to practice before the courts of Montana for more than five years preceding the date of this action.

STATUTES AND CONSTITUTIONS

24. With some exceptions, such as reasonable residency requirements, and age, the act of running for office is protected by the United States Constitution, and by federal law.

25. The act of voting for your candidate of choice, are similarly protected by the United States Constitution, and by federal law.

26. The right to help those in need before a court of law is protected by the

Montana Constitution, Article II, Section 25, and, for criminal charges, by the Sixth Amendment of the United States Constitution.

27. The right to appear before the courts of Montana and represent those charged with violations of the criminal law should be afforded to anyone who has the ability - as determined by the person being charged.

28. It is the policy of the federal government to promote cooperation and coordination among tribal justice systems and the Federal and State judiciary systems.
[25 USC 3611(c)(4)]

29. Defendants are in violation of 42 USC § 1983 and our state and federal anti competition statutes and laws.

TITLES OF NOBILITY, STRUCTURAL AND FUNCTIONAL

30. Two clauses of Article I of the US Constitution of 1787 prohibit "Titles of Nobility" without defining what that phrase means. Plaintiffs submit that the "Nobility" includes a special class of individuals with special power within the government to apply, construe, or implement law, analogous to but not necessarily identical with either the membership of the "House of Lords" of the United Kingdom or the First and Second Estates of Estates General of the French "Ancien Régime" until July of 1789. Neither in England or France were all "Titles of Nobility" necessarily inherited, although parallels to the Hindu Caste system are readily apparent. [See *Declaration of Opinion & Qualifications* by Charles Edward Lincoln, III, attached hereto].

31. The Constitution's comprehensive, state and federal, prohibition on titles of

nobility reflects both the American aversion to aristocracy and the republican character of the government established by the Constitution. The Clause thus complements other constitutional provisions—most notably the Thirteenth, Fourteenth, and Fifteenth Amendments—that prohibit invidious governmental distinctions between classes of American citizens.

32. As James Madison observed in the Federalist No. 44: The prohibition with respect to titles of nobility is copied from the articles of Confederation and needs no comment. Alexander Hamilton, in the Federalist No. 84, was only slightly more loquacious:

Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner-stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people.

33. Very few courts have had occasion to interpret the meaning of the Title of Nobility Clauses. The Supreme Court has only discussed the Title of Nobility Clause in passing, as when Justices cite the Clause to make a rhetorical point in a concurring or dissenting opinion.

34. Plaintiffs submit that requiring admission to the Bar as a prerequisite for service as an Officer of one of the three elemental branches of government, the Judiciary, constitutes an analogous title of nobility inconsistent with two clauses of Article I: Section 9, Clause 8 (which forbids the United States from granting any title of nobility), and Article I, Section 10, Clause 1.5 (which prohibits the states from doing so).

35. Plaintiffs submit that the Third Branch of the Government, also known as

“The Judicial Branch,” resembles the British Monarch and Nobility much more than the Revolutionary Era Founding Fathers could ever have dreamt possible in this country.

36. For example, See *Zobel v. Williams*, 457 U.S. 55, 70 n.3 (1982) (Brennan, J., concurring) (noting that both the Title of Nobility Clause and the Fourteenth Amendment forbid degrees of citizenship); and *Fullilove v. Klutznick*, 448 U.S. 448, 533–55 (1980) (Stevens, J., dissenting) (discussing the Title of Nobility Clauses as one aspect of our commitment to the proposition that the sovereign has a fundamental duty to govern impartially):

PLAINTIFF KIRSCHBAUM OUT OF STATE LAW LICENSE DOES NOT DISQUALIFY HIM FROM SITTING ON THE MONTANA SUPREME COURT

As Justice Brennan wrote in his concurrence in *Zobel v. Williams*:

But it is significant that the Citizenship Clause of the Fourteenth Amendment expressly equates citizenship only with simple residence.² That Clause does not provide for, and does not allow for, degrees of citizenship based on length of residence.³ And the Equal Protection Clause would not tolerate such distinctions.

37. “[A] citizen of the United States can, of his own volition, become a citizen of any State of the Union by a bona fide residence therein, with the same rights as other citizens of that State.” *Slaughter-House Cases*, 16 Wall. 36, 80 (1873). See *id.*, at 112-113 (Bradley, J., dissenting)

A citizen of the United States has a perfect constitutional right to go to and reside in any State he chooses, and to claim citizenship therein, and an equality of rights with every other citizen.

38. The American aversion to aristocracy developed long before the Fourteenth Amendment and is, of course, reflected elsewhere in the Constitution. See Art. I, § 9, cl. 8 ("No Title of Nobility shall be granted by the United States"). See also Virginia Declaration of Rights (1776), in R. Rutland, *The Birth of the Bill of Rights*, App. A (1955):

- - - no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of publick services.
457 U.S. at 69.

39. Plaintiffs submit that the reservation of the third branch of the government, charged with "ultimate decision making" and "final sovereignty" over questions of the validity of laws and the rights of all other people, to ONE class of professionals certified by ONE state professional organization, and educated according to the standards and accreditation of ONE private national association of professionals, (a) creates an invidious governmental distinction between classes of American citizens, in that it (b) creates degrees of citizenship and (c) denies even the possibility of impartial government. Experience has taught that state bar and ABA lawyers and judges inevitably favor those "of their own kind" of like "class" or "caste" and this is the inevitable experience of every non-state bar attorney participant in the judicial process. This violates Article II, Section 4 of the Montana Constitution, which states:

INDIVIDUAL DIGNITY. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

The comparisons and parallels between caste and class and the provisions of **Article VII, Section 9** of the Constitution of the State of Montana manifest themselves particularly in the career and history of Plaintiff Jerry O'Neil, who has served eight years as a Senator in the State of Montana and 4 years in the Montana House of Representatives.

40. Legislators, by definition and etymology, **MAKE THE LAW OF THE LAND**. How can it be anything other than a class or caste distinction that those who are qualified to be elected to **MAKE THE LAW OF THE LAND** cannot also pass ultimate judgment on how law can or should be applied, construed, implemented and to interpret the law, or what penalties should be imposed on those who violate the law?

41. The Montana Constitution, Article VII, Section 9, irrationally and invidiously establishes that Legislators, who make our laws, are a **LOWER CLASS**, require less education and qualification than those who apply, construe, implement and interpret the law. Do the members of the Integrated Bar, constitute a **HIGHER** and **EXCLUSIVE** class, superior to the voters (at the bottom), the legislators who make the law, and the executives who enforce the law.---for **NOT ONE** of these First or Second Branch offices are there any qualifications other than age, citizenship, and residency. There is no reason that the state bar licensed attorneys should be the only citizens eligible for election to judicial office.

42. Article VII, Section 9, creates invidious classes and hence **DEGREES** of citizenship, placing the vast majority of the population at the mercy of a tiny minority.

Montana's Population in 2023 is said to be 1,139,507². That is while the number of individuals qualified to run for judicial office is approximately 3,183³. That equals to less than 3/10th of 1% of the population are thus qualified to be members of the Noble class in Montana.

43. As the Ninth Circuit held in 1991, when one of us, O'Neil, previously challenged Article VII, Section 2, purely on equal protection grounds, without reference to any of the issues we raise for the first time here:

The Supreme Court has not recognized the right to run for elective office as a fundamental right, and only applies heightened scrutiny if the restriction involves classifications based on wealth or access to the ballot by new or small political parties. *Clements v. Fashing*, 457 U.S. 957, 964 (1982). *O'Neil v. Supreme Court of Montana*, 935 F.2d 275 (Hug, Kozinski, and Leavy, "per curiam" 9th Circuit, June 4, 1991).

44. But in fact, the requirements of the Montana state bar, to attend and graduate from an ABA approved law school, is in fact a classification based on wealth. On this ground, again, it is too clear and plain that both structurally and functionally, the limitation of eligibility to judicial office to those who graduated from ABA law schools, constitutes the erection of a noble class, "a professional caste", which alone is allowed to occupy the highest decision making role in the government of the state of Montana.

45. The professional limitation on lawyers licensed in Montana as the sole source of Judges has the structural and functional effect of creating a professional class equivalent to a title of nobility, but the existence of this class clearly denies both due

² <https://worldpopulationreview.com/>

³ <https://www.ilawyermarketing.com/lawyer-population-state/>

process and the equal protection of the laws under the Fourteenth Amendment, and also has the equally invidious effect of suppressing freedom of speech, freedom of the press, and freedom of association by denying to non-lawyers the equal rights to render "valid" opinions or conclusions about the law, or even to argue for the judicial extension, modification, or reversal of existing law, or to make new law.

46. Our Montana Supreme Court is not even in sync with Montana's Constitution. They sometimes have the opinion that litigants are entitled to trial by a jury of their peers in the Montana courts. But they do not grant such a right in the Montana Water Court. Of course this fits into their pattern since cases before the Water Court in the litigation over the Water Compact with the Confederated Salish and Kootenai Tribes are sent to mandatory mediation before a mediator who says at the first of the session that the compact supporters are unable to make any changes in their position.

OTHER STATUTES, LAWS, AND CONSTITUTIONAL PROTECTONS

47. The Third (Judicial) Branch of government should be open to all citizen who are eligible to be elected to office in the First (Legislative) and Second (Executive) Branches, subject ONLY to the same types of reasonable age and residence requirements. As spelled out under the Fourteenth Amendment of the United States Constitution, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . ."

- a. NO MEMBERSHIP in any professional organization,
- b. NO HISTORY of membership in any professional organization,

c. **NO EMPLOYMENT HISTORY WHATSOEVER** is required of those who may be elected to make and enforce the laws of the land. So it is irrational and indefensible that a former legislator, sheriff, sheriff's deputy, or even a former governor, for example, who seeks to counsel others on how to apply, construe, interpret, or in any specific case to implement the law, would [if he lacks a Montana Bar License, never had one, and never went to an ABA approved law school] would be *a priori* summarily, (a) barred from doing so, and (b) subject to pains and penalties for such conduct as "unauthorized practice of law." **ANYONE WHO CAN MAKE AND ENFORCE THE LAW IS EQUALLY QUALIFIED TO RUN FOR JUDICIAL OFFICE TO BE ELECTED TO JUDGE THE LAW'S APPLICATION, CONSTRUCTION, INTERPRETATION, OR IMPLEMENTATION.**

48. As Justice Harlan stated in his historic dissent in the infamous case of

Plessy v. Ferguson, 163 US 527 (Supreme Court 1890):

The Thirteenth Amendment does not permit the withholding or the deprivation of any right necessarily inhering in freedom. It not only struck down the institution of slavery as previously existing in the United States, but it prevents the imposition of any burdens or disabilities that constitute badges of slavery or servitude. It decreed universal civil freedom in this country. This court has so adjudged. But that amendment having been found inadequate to the protection of the rights of those who had been in slavery, it was followed by the Fourteenth Amendment, which added greatly to the dignity and glory of American citizenship, and to the security of personal liberty, by declaring that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside," and that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person

within its jurisdiction the equal protection of the laws." These two amendments, if enforced according to their true intent and meaning, will protect all the civil rights that pertain to freedom and citizenship. Finally, and to the end that no citizen should be denied, on account of his race, the privilege of participating in the political control of his country, it was declared by the Fifteenth Amendment that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude.

49. Plaintiffs Kirschbaum and O'Neil submit that the U.S. Fourteenth Amendment, adopted in 1868, prohibits STATES from abridging the equal Constitutional rights of citizens without due process of law. As it is found in the Fourteenth Amendment:

- - - No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States - - without due process of law.

- - - But when the right to vote at any election for the choice of - - - the - - - judicial officers of a state, - - - or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

50. In terms of strict linguistic construction, the existence of the State Bar Monopoly creates certain privileges and immunities for attorneys and judges not otherwise authorized by the federal or state constitutions. The existence of a bar membership monopoly, with its restriction on how one must learn the law, on who can be eligible for the judiciary violates the guarantees of due process and equal protection of the laws required of the states by the Fourteenth Amendment. The statutes and Supreme Court rules having the force or effect of law in Montana restrict the pool of eligible judges by stating that only people who have graduated from ABA approved law

schools may practice law, hold state bar licenses, and run for Judicial Office for the district courts and for the Montana Supreme Court.

51. The essence of "equal protection" is that laws must be applied to all citizens equally, absent either rational, important, or compelling governmental interests. All expressly enumerated constitutional rights are by definition "fundamental" in nature.

52. Unlike the Constitution of the United States, Montana, under the Montana Declaration of Rights (Article II of the State Constitution) acknowledges, enumerates and expressly guarantees governmental respect for a number of individual rights. Plaintiffs submit that Article VII, Section 9 of the Montana Constitution denies equal protection of each of the following fundamental rights guaranteed by the Montana Constitution, over and above the First, Fifth, and Ninth Amendments to the Constitution of the United States, in addition to violations of Article I, Sections 9 and 10, as described above.

53. Specifically, Plaintiffs allege that the existence of the Integrated Bar violates the specific Montana Declarations of Rights enumerated in Article II, which are subject to "strict scrutiny" and may only be circumscribed, limited or infringed upon a showing of compelling governmental interest:

Section 1: Popular Sovereignty: "All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole."

Section 3: Inalienable rights: "The[se] include the right to a clean and healthful environment and 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."

Section 4: Individual dignity: "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall

discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas."

Section 6: Freedom of Assembly: "The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action."

Section 7: Freedom of speech, expression and press: "No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts."

Section 8: Right of Participation: "The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law."

Section 9: Right to Know: "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure."

Section 13: Right of Suffrage: "All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

Section 16: The Administration of Justice: "Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay."

Section 31: Ex post facto obligation of contracts and irrevocable privileges or immunities: "No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature."

54. Article VII, Section 9 of the Montana Constitution violates and infringes upon the fundamental rights articulated in Article II, of the Declaration of Rights, of the Constitution of the State of Montana.

55. Plaintiffs submit that these rights are legitimately protected by strict scrutiny in the tradition of "USA v. Carolene Products, Footnote 4" federal constitutional rights. But whether strict or rational basis scrutiny be applied, these constitutional rights cannot be applied, construed, enforced, implemented, or interpreted so as to create hierarchically ranked classes or "professional castes" which place certain classes of people a priori above others in their right to seek and hold public office.

56. Article III, Section 3 provides that no special tests shall be given to discriminate among eligible citizens for election to office in any of these three branches:

"Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be required as a qualification for any office or public trust." [Emphasis added]

57. Plaintiffs submit that "no...other test" should be construed literally, according to the plain meaning of its words, and that the imposition of the State Bar requirements constitutes an unconstitutional test of qualification for any office or public trust. Comparing Article III, Section 3, with Article II, Section 13 "Right of Suffrage," it will be seen that the Montana Constitution, outside of Article VII, Section 9, does not contemplate any limitation on the right of the people to vote for a candidate for judicial office. Indeed, even Article VII, Section 8, makes no mention of membership in the bar as a prerequisite for service as a judge or justice in Montana when it states:

Supreme court justices and district court judges shall be elected by the qualified electors as provided by law."

58. Plaintiffs would note that the Supreme Court of Montana has now abolished their Commission on the Unauthorized Practice of Law on the grounds that it was impossible to define, with constitutionally required precision, what was the "practice of law," [See attached order dissolving Montana Supreme Court's Commission on the Unauthorized Practice of Law]. [This action was based in part on a letter from the United States Department of Justice - Antitrust Division. [See attached letter].

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

1. A declaration Plaintiff Kirschbaum qualifies to be a candidate for judicial office in the State of Montana, and that his practice of law that was limited to the State of Wisconsin and the United States Air Force, and does not include practice within the State of Montana, does not disqualify him to be a candidate for the Montana Supreme Court, as such would violate the Dormant Commerce Clause and Privileges and Immunities Clause of the U.S. Constitution, as well as the First and Fourteenth Amendments to the U.S. Constitution.

2. A declaration that Plaintiff O'Neil's practice of law on the Blackfeet Indian Reservation, other courts, and on legislative judiciary committees, qualifies him to be a candidate for the Montana Supreme Court under the Dormant Commerce Clause and Privileges and Immunities Clause of the U.S. Constitution, as well as the First and

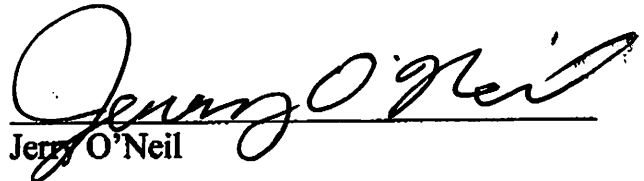
Fourteenth Amendments to the U.S. Constitution.

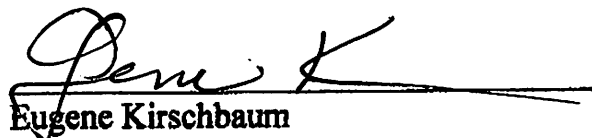
3. Plaintiffs request this Court to direct the Defendants to allow Plaintiff Jerry O'Neil, and others similarly situated as being licensed to practice before the Tribal Courts located in Montana, to run for the offices of district court judge, Justice, and Chief Justice of the Montana Supreme Court.

4. Plaintiffs request this Court to direct the Defendants to allow Plaintiff Eugene Kirschbaum, and others similarly situated as being honorably retired from the practice of law from Montana, or other states, to run for the offices of district court judge, Justice, and Chief Justice of the Montana Supreme Court.

5. And, Plaintiffs request this Court to direct the Defendants to reimburse their court costs and to award them attorney fees as allowed under MCA § 30-14-133, or other proper fees for their time expended pursuing this case.

DATED: 1/22/2024


Jerry O'Neil


Eugene Kirschbaum