

26-5883

No. _____

ORIGINAL

SUPREME COURT OF THE UNITED STATES

Robert L. Allum,

Petitioner,

vs.

STATE OF MONTANA and
MONTANA STATE FUND

Respondents.

On Petition for a Writ of Certiorari to
the Ninth Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

Robert L. Allum
Pro Se
132 West Magnolia Drive
Belgrade, Montana 59714
Tel.: (406) 580-3912
E-Mail: None

FILED

AUG 26 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

QUESTION I

Did the appellate court, err in issuing, a cryptic Memorandum, dismissing the entire complaint, based upon the Eleventh Amendment (sovereign immunity) and qualified immunity defenses, without addressing, the applicability to all of the defendants and claims for relief?

QUESTION II

Are the decisions of successive state and federal courts, citing, and relying upon a state court of last resort's decision, which specifically refused to adjudicate the subject matter jurisdiction, of both, the state appellate and inferior administrative judge, render all successive court decisions, relying on said decision, void?

LIST OF PARTIES

ROBERT L. ALLUM is an injured U.S. citizen, residing in Montana;

STATE OF MONTANA is a political subdivision of the United States of America;

MONTANA STATE FUND is a non-profit, **independent public corporation**, per 39-71-2313, MCA; is subject to a legislative directive to "be neither more nor less than self-supporting" (39-71-2311, MCA), and enabled under 39-71-2316, MCA, to "perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or **convenient** for the administration of the state fund."

DOES 1-100 are legal entities, yet to be determined, and legal capacities unknown.

LIST OF ALL PROCEEDINGS

Allum v. Montana State Fund, 2020 MT 159N, 400 Mont. 561, 464 P.3d 1012 (*Allum I*).

Allum v. State of Montana, U.S. District Court for Montana, CV 19-12-BU-BMM-KLD; Judgment entered October 27, 2020 (*Allum II*).

Allum v. State of Montana, No. 21-7823, *cert. denied*, October 3, 2022, (*Allum II*)

Allum v. State of Montana, Eighteenth Judicial Court of Montana, DV-21-16219, Judgment entered September 27, 2021 (*Allum III*)

Allum v Montana State Fund, and State of Montana, WCC# 2022-5873 ("Workers' Compensation Court"); Judgment entered October 20, 2022 (*Allum IV*).

Allum v Montana State Fund and State of Montana, 2023 MT 121, DA 22-0625; Opinion entered June 20, 2023 (*Allum V*).

Allum v. State of Montana, Ninth Circuit Court of Appeals, No. 24-7586, unpublished Memorandum filed May 29, 2026.

TABLE OF CONTENTS

	Page
JURISDICTION.....	1
OPINIONS BELOW	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2&3
STATEMENT OF THE CASE	3-32
THE FOLLOWING ILLUSTRATES HOW THE INSTANT PETITION MEETS THE REQUIREMENTS OF <i>WEBB</i>	12
Question I. Did the appellate court, err in issuing, a cryptic Memorandum, dismissing the entire complaint, based upon the Eleventh Amendment (sovereign immunity) defense, without addressing, the applicability to all of the defendants and claims for relief?	25-27
Question II. Are the decisions, of successive state and federal courts, citing, and relying upon a state court of last resort's decision, which specifically refused to adjudicate the subject matter jurisdiction, of both, the state appellate and inferior administrative judge, render all successive court decisions, relying on said decision, void?	27-32
REASONS FOR GRANTING THE WRIT	32
CONCLUSION	33

INDEX TO APPENDICES

- APPENDIX A Memorandum filed May 29, 2026, in Ninth Circuit Court of Appeals
- APPENDIX B Order, filed November 12, 2024, in District Court for Montana
- APPENDIX C Second Amended Complaint, Constitutional Challenges Only,
filed October 3, 2019, in District Court for Montana as
Case No. CV 19-12-BU-BMM-KLD

TABLE OF AUTHORITIES CITED

CASE	PAGE NUMBER
<i>Allum v. Montana State Fund</i> , 2020 MT 159N (<i>Allum I</i>)	13,14,15,27,28
<i>Allum v. State of Montana</i> , U.S. District Court for Montana, CV 19-12-BU-BMM-KLD (<i>Allum II</i>)	5
<i>Allum v. Montana State Fund and State of Montana</i> , 2023 MT 121 (<i>Allum V</i>)	15,16
<i>Birkenbuel v. Montana State Compensation Insurance Fund</i> , 212 Mont. 139, 687 P.2d 698 (1984)	4,5,27
<i>Ex Parte Terry</i> , 128 U.S. 289, 305 (1888)	31
<i>Ex parte Young</i> , 209 U.S. 123, 150-152 (1908)	26
<i>Kelleher Law Office v. State Comp. Ins. Fund</i> , 213 Mont. 412, 691 P.2d 823 (1984)	11
<i>Montana v. United States</i> , 440 U.S. 147, 153-154 (1979)	28
<i>Moody's Market, Inc., et al v. Montana State Fund</i> , <i>et al.</i> , 2020 MT 217	8
<i>Skrukrud v. Gallatin Laundry Co.</i> , Docket Number: 13359; Decision Date: December 14, 1976	12
<i>Smyth v. Ames</i> , 169 U.S. 466, 518-19 (1898)	25
<i>Thompson v. State</i> , 2007 MT 185	18,20
<i>V. L. v. E. L.</i> , 577 U.S. 464, ___, (2016)	31
<i>Webb v. Webb</i> , 451 U.S. 493, 495-496 (1981)	1
<i>Williamson v. Berry</i> , 49 U.S. 495, (8 How.) 495 (1850)	29

STATUTES AND RULES

PAGE NUMBER

Montana Rules of Civil Procedure

Rule 5.1 13

Other

Chapter 537 Montana Sessions Laws; H.B. 100
of the 44th Legislature 12

Montana State Fund, 2025 Annual Report, Independent
Auditor's Report, Note 1 9

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254.

The Order, denying the appeal, by the Ninth Circuit Court of Appeals, was filed May 29, 2026.

This Petition, because the original complaint, denied by the district court, and the Ninth Circuit Court, contained, in Claim for Relief VII, ¶¶ 370-423, constitutional challenges to Montana statutes and Administrative Rules, the necessary requirements, also apply, outlined in *Webb v. Webb*, 451 U.S. 493, 495-496 (1981)

that statute requires that, in the state courts, petitioner have "specially set up or claimed under the Constitution . . . of . . . the United States" that right which she now seeks to have this Court enforce. 28 U.S.C. § 1257 (3). Similarly, our Rule 21.1(h) requires the petitioner to

"specify the stage in the proceedings, both in the court of the first instance and in the appellate court, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by the court."

This Court has frequently stated that, when

"the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." [citations

omitted]

Opinions Below

The Order, denying the appeal, with prejudice, by the Ninth Circuit Court of Appeals, was filed May 29, 2026, and is attached at Appendix ("App.") A, at pages 1-2.

The district court Order, was filed, on November 12, 2024, and is attached as App. B, pages 1-6.

Constitutional Provisions Involved

United States Constitution, Amendment V:

* * * nor be deprived of life, liberty, or property,
without due process of law;

United States Constitution, Amendment VII:

* * * the right of trial by jury shall be preserved, and no
fact tried by a jury, shall be otherwise re-examined in any
Court of the United States, than according to the rules of
the common law.

United States Constitution, Amendment XIV:

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. 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.

Montana Constitution Article II, § 17 Due process of law:

No person shall be deprived of life, liberty, or property without due process of law.

Montana Constitution Article II, § 26. Trial by jury:

The right of trial by jury is secured to all and shall remain inviolate.

Montana Constitution Article III, § 1 Separation of Powers.

The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

STATEMENT OF THE CASE

This is a case of exposing "the king has no clothes." The judicial errors, of the appellate court, are straight forward, and easily addressed. The real issue, before the Court, is whether the system of jurisprudence, in Montana and the Ninth Circuit, will be the wall of protection, against the abuse, of the constitutional principles, and guaranteed rights, of the citizens, by the political members, of the legislative and executive branches, or simply be "black robed politicians."

This case deals with the Montana statutes, governing the Workers' Compensation Act (WCA), after the Legislature, in a piecemeal fashion, converted the original 1915 act, (a) from voluntary to involuntary participation by employers

and employees; (b) actual (real time) auditing, where each profession's workers' account, administered by the state, was audited and the surplus of premiums paid over injured worker claims paid, was returned to the employer, at the end of each calendar year, to accrual accounting, with Montana State Fund (State Fund) retaining the excess monies, as its sole and separate property (§ 39-71-2320 MCA, enacted 1989); (c) setting premiums and returning premiums, at State Fund's sole discretion; (d) adjudication of workers' injury claims, from elected state officials to the workers' compensation judge, in 1975, and to the designation, Workers' Compensation Court (WCC), by judicial fiat, in 1976, and amendment of § 39-71-2901 MCA, in 1987, by adding in subsection (2) the phrase, "workers' compensation court," (with no enabling act) with enumerated authority, and finally, in 2025, moving the Workers' Compensation Court (WCC), from the Department of Labor to supervision of the Judiciary (Montana Supreme Court); and (e) the processing of workers' injury claims, was like processing an insurance claim, and outside of WCA, and did not require specialized knowledge (*Birkenbuel, infra*); (f) the introduction, in the 1980's of three plans of workers' insurance, for employers to choose from, Plan 1, self-insured, Plan 2, commercial insurance, and Plan 3, State Fund.

The major changes to WCA, from the workers' point of view, from 1990 until today, occurred through judicial fiat, in Supreme Court decisions, such as,

recognizing the tort, of bad faith for workers' compensation insurance, in *Birkenbuel v. Montana State Compensation Insurance Fund*, 212 Mont. 139, 687 P.2 698 (1984). The Montana Supreme Court recognized the accompanying punitive damages for Plans 1 & 2, but granted immunity to State Fund, providing State Fund with a decisive competitive economic advantage. The protection, of the Montana Supreme Court, has extended to this day, as is evidenced by Allum's documented experience, herein. The ambiguity and judicial shadows, in which WCA and the workers' compensation judge (WCC) operate, was demonstrated in *Allum II*, in which Judge Brian Morris, District Judge (and former Justice of the Montana Supreme Court, 2005-2013), in his Order filed October 27, 2020 (Doc. # 81) states, "The Court **CERTIFIES** to the Ninth Circuit that Allum's appeal in not taken in good faith." The Second Amended Complaint, Claim for Relief I, containing the constitutional challenges, is included, as Attachment "C," to demonstrate the unconstitutionality of the statutory laws, since Judge Morris granted the defendants, both sovereign and qualified immunity, to dismiss the case, without addressing the constitutional challenges.

The petition, before the Court, has a seven (7) year history, in the inferior courts, and three (3) filings of a petition, before this Court. The petitioner (Allum) takes full responsibility for each of the petitions not being granted. Allum's lack of experience and training was, and still is, evident. The inferior courts have never

reached the merits, of any case, but instead, manufactured, through omission and misstating the facts of the case, sufficiently, to justify their preconceived decisions.

This petition will either reaffirm the judicial "wild west" practices of the arbitrary, capricious, and ambiguous Montana statutes, and self-serving court proceedings, in Montana and the Ninth Circuit; or re-establish the rule of law, through the supremacy of the provisions and guarantees of the U.S. and Montana Constitutions.

The following facts demonstrate the importance of this petition:

1. The body politic of Montana, including the Governor and 2025 Legislature, illustrated their total contempt, of the constitutional principle of "separation of powers" (Montana Constitution Article III, § 1 Separation of Powers), by (a) wholesale amending and renumbering the statutes, governing the workers' compensation judge/WCC, from Title 39 **Labor**, Chapter 71 Workers' Compensation, Part 29 Workers' Compensation Judge, to Title 3 **Judiciary, Courts**, Chapter 9 Workers' Compensation Court, Part 1 Workers' Compensation Judge; (b) adding a new statute MCA 2025 ¶ 3-9-102 Supervision and administration by supreme court:

- (1) The Montana **supreme court shall supervise the activities of the workers' compensation court**, the workers' compensation judge, and associated personnel in implementing 3-9-105 and this section (emphasis added).

and (c) amending and renumbering the statute MCA 2023 ¶ 39-71-2901 to MCA 2025 ¶ 3-9-103:

Workers' compensation judge -- appointment -- term -- qualifications -- salary. (1) **There is a workers' compensation court. The workers' compensation court is presided over by a workers' compensation judge.**

(2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same manner provided by Title 3, chapter 1, part 9, for the appointment of supreme court justices or district court judges. **A vacancy must be filled in the same manner as the original appointment.**

* * *

(4) If the office of the workers' compensation judge becomes vacant and before the vacancy is permanently filled pursuant to Title 3, chapter 1, part 9, the **chief justice of the Montana supreme court shall appoint a substitute judge** within 30 days of receipt of the notice of vacancy. The **chief justice shall select a substitute judge** from the list provided for in subsection (7) or from the pool of retired state district court judges. The **chief justice may appoint a substitute judge for a part of the vacancy or for the entire duration of the vacancy, and more than one substitute judge may be appointed to fill a vacancy** (emphasis added).

The 2025 Legislature, in their effort to violate the principle of "separation of powers," wrote conflicting procedures, for filling a vacancy, in the office of workers' compensation judge. MCA 2025 ¶ 3-9-103(2) requires "a vacancy" to be "filled" by the governor ("governor shall appoint"); compared to MCA 2025 ¶ 3-9-

103(4), which gives the "chief justice" the power to fill a vacancy.

2. The Legislature, in 2017, held a "Special Session," to pass temporary legislation " *Moody's Market, Inc., et al v. Montana State Fund, et al.*, 2020 MT 217 ¶¶ 3-4:

¶ 3 On November 6, 2017, the Montana Legislature met in special session to address budgetary issues regarding the State's General Fund shortage. The General Fund shortage was caused by various factors, including an unpredictably expensive forest fire season. The Governor of Montana's Proclamation calling the special session announced the session's scope, including "Legislation authorizing a **management fee on excess investment holdings of the [] State Fund** to offset state fire costs."

¶ 4 During the special session, the Legislature passed Senate Bill No. 4 (SB 4), which enacted § 17-1-512, MCA(2017), and amended § 39-71-2320, MCA, authorizing the imposition of a three-percent "management rate" on certain BOI [Board of Investments] portfolios, including the State Fund, and required the funds be transferred to the State's fire suppression account by April 1, 2018, and April 1, 2019." (emphasis added)

The legislation passed, and was codified, in MCA 2017 ¶ 17-1-512

(Temporary) Management rate transfer -- exceptions.

(1) Subject to any limitations in the Montana constitution, for each calendar year, the board of investments shall transfer to the fire suppression account provided for in 76-13-150 a 3% management rate on **any board of investments' investment portfolio:**

(a) that has an **average asset balance greater than \$1 billion;** and

(b) **whose average asset balance contains sufficient**

funds to offset all liabilities as determined by the most recent actuarial study, including the independent actuarial report submitted to the legislature under 39-71-2363(3).

(2) The 3% management rate applies to the average asset balance in excess of \$1 billion. The board of investments shall transfer the 3% management rate to the fire suppression account provided for in 76-13-150 on or before April 1 of the immediately following calendar year.

(3) The state fund may not raise rates or reduce dividends to offset real or estimated losses associated with the 3% management rate transfer (emphasis added). (Terminates June 30, 2019--sec. 6, Ch. 4, Sp. L. November 2017.)

History: En. Sec. 1, Ch. 4, Sp. L. November 2017.

The legislation cost State Fund approximately Twenty-eight Million Dollars (\$28,000,000), with the fee ending in 2019. This legislation demonstrates that State Fund "is not an insurer of last resort," but a "for profit insurance company," with an extra \$28 million dollars, obtained from minimizing claim costs against employer premiums collected, to fund the State's fire suppression account. Montana State Fund, 2025 Annual Report, Independent Auditor's Report, Note 1 states:

MSF functions as an autonomous insurance entity supported solely from its own revenues. All assets, debts, and obligations of MSF are separate and distinct from assets, debts, and obligations of the State of Montana. State law requires MSF to set premiums at a level sufficient to ensure adequate funding of the insurance program during the period the rates will be in effect. MSF governs, operates, and completes its financial reporting as an insurance company domiciled in the State of Montana and is required to file its annual statement and audited financial report with the Insurance

Department (MDOI) of the Montana State Auditor's Office (SAO).

MCA ¶ 39-71-2314 was repealed in 2015.

MCA ¶ 39-71-2313(1), enacted in 1989 states:

There is a state compensation insurance fund known as the state fund that is a **nonprofit, independent public corporation** * * * (emphasis added)

The "executive director, CEO" of State Fund receives between \$368,730 to \$465,000 remuneration a year, while the Governor receives \$141,517. The employees of State Fund receive considerably more in salary, than similarly situated state employee, doing comparable work.

Thus, a "nonprofit, independent public corporation" has demonstrated the ability to pay \$28 million out of "excess funds" and pay their "executive director, CEO," almost triple amount of the salary, of the governor, and currently has \$866,749,469 in loss and loss adjustment expense (LAE) reserves, per the 2025 Montana State Fund Annual Report.

3. There are over 574,400 total people (working or looking for work) in Montana, subject to WCA.

4. There are over 22,000 work injury claims, in a calendar year.

5. There were 3743 adjudicated decisions, by the workers' compensation judge (WCC), between 2014 and 2023.

6. There was over Fifty-one million dollars (\$51,000,000) paid to

lawyers, pursuant to contingency agreements, from injured workers' benefits, in violation of MCA 2014-2019 ¶ 37-61-420. The Montana Supreme Court, through judicial fiat, in *Kelleher Law Office v. State Comp. Ins. Fund*, 213 Mont. 412, 691 P.2d 823 (1984) sanctioned said violation of law, which no lawyer has challenged, for obvious reasons. The state legislature amended ¶ 37-61-420 MCA, in 2021, making the previous illegal contingency agreements legal; after Allum included the violations, in his pleadings and requested Governor Gianforte and Attorney General Knudsen to seek redress, for all of the "stolen" monies, from the injured Montana workers. Governor Gianforte and Attorney General Knudsen have never acted, and now the statute of limitations is in effect. Allum did not qualify for any of said monies, because he has never employed a lawyer.

7. Every inferior court/judge, who has dismissed Allum's complaints and petitions, never reach the merits of said filings, but "found" technicalities, in said filings, as the basis for dismissing said filings, even if subsequent decisions, by the same court, contradict each other. This will be address further, herein.

8. The current statutes, policies, and practices, in the state of Montana, concerning WCA, is that all insurers, offering workers' compensation insurance, are (a) governed by the same statutes, with State Fund receiving special immunities by the courts, from their tort actions, (b) there is 1 (one) person authorized to adjudicate all workers' disputes, with NO statutory basis for their

removal from office, (c) appeals, of the decisions of the workers' compensation judge, are directly to the Montana Supreme Court (§ 39-71-2904 MCA) and (d) all employees, of State Fund (§ 39-71-2318 MCA), have total immunity for the financial decisions of State Fund. The perfect climate exists, for maximizing State Fund's profits (for increased remuneration to all individuals working at State Fund), with ambiguous statutes, one inferior judge, with no statutory threat for removal from office, with appeal to seven appellate justices, with no interference from juries, protecting the entire operation.

THE FOLLOWING ILLUSTRATES HOW THE INSTANT PETITION MEETS THE REQUIREMENTS OF *WEBB*.

The "office of workers' compensation judge" was created, in 1975, in Chapter 537 Montana Sessions Laws; H.B. 100 of the 44th Legislature.

The new legislation, § 39-71-2904 MCA changed the requirement for appeals from the "workers' compensation judge," to be directly filed with the Montana Supreme Court. The first case, to invoke said requirement, was *Skrukrud v. Gallatin Laundry Co.*, Docket Number: 13359; Decision Date: December 14, 1976, at page 4:

A determination of issues one through four requires this Court to review the record, findings and conclusions of the **workers' court. This is the first appeal from the workers' compensation court to be reviewed by the Supreme Court** (emphasis added).

and at page 5:

Under the law as it now exists, this Court directly reviews the decision of the workers' court, section 92-852(2), R.C.M. 1947. **The workers' court proceedings are administrative in nature and quasi-judicial,** sections 92-852(1) and 82A-1016, R.C.M. 1947. The appropriate scope of this Court's review should be no different than it was under former law as expressed in above cited cases; that is, **worker's court decisions** will not be overturned if there is substantial evidence to support its findings and conclusions (emphasis added).

The Montana Supreme Court Justices continued, *sua sponte*, renaming "workers' compensation judge," as "workers' compensation court" in all 47 of their decisions, between 1976 and 1980, and have continued since.

The Montana Supreme Court, to protect their creation, "WCC," has made inconsistent, even contradictory decisions, to reach decisions, favorable to the continued existence of WCC, as the case at bar illustrates.

The following two decisions, by the Montana Supreme Court, demonstrate the court's plenary and self-serving decisions, concerning WCC, to avoid addressing questions, concerning the constitutional creation, powers, and judicial nature of WCC; but instead, relying upon inapplicable court rules, and mandating Allum perform the unconstitutional act, of filing a notice of constitutional challenge (M.R.Civ.P. 5.1), in WCC, an executive branch administrative tribunal, without jurisdiction, thus, rendering said requirement *ultra vires*.

The decision in *Allum I*, is precedent setting, for the lack of adjudication, of the constitutionality, of WCC/workers' compensation judge. But as *Allum V* points

out, in footnote 1, *Allum I* has been utilized by the courts, since *Allum I*, to invoke *res judicata*, as an excuse, not to adjudicate the constitutionality, of WCC/workers' compensation judge.

The Montana Supreme Court stated in *Allum v. Montana State Fund*, 2020 MT 159N (*Allum I*):

¶ 1 Pursuant to Section I, paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and **shall not be cited and does not serve as precedent** (emphasis added).

¶ 2. * * * Allum asserts the WCC violates Montana's Constitution.

¶3 Allum was advised numerous times by the WCC on the process for bringing a constitutional challenge. Allum refused to file a notice of constitutional challenge, and failed to set forth any statutes he asserts were unconstitutional. Allum also filed two writs of supervisory control to this Court and was similarly advised of the process for bringing a constitutional challenge. Allum never raised a constitutional challenge in the WCC. He now argues that this Court and the WCC lack subject matter jurisdiction because the WCC is unconstitutional.

¶4 This Court has consistently held that it will not consider issues raised for the first time on appeal. "In order to preserve a claim or objection for appeal, an appellant must first raise that specific claim or objection in the [trial] court." *In re T.E.*, 2002 MT 195, ¶¶ 20, 311 Mont. 148, 54 P.3d 38. Broad, general objections do not suffice; the objecting party has an obligation to clearly articulate the grounds for the objection so the trial court may address the issue first. "As a general rule, we do not consider an issue presented for the first time on appeal because it is fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider." *In re D.H.*, 2001 MT 200, ¶

41, 306 Mont. 278, 33 P.3d 616. By failing to first raise the issue in the WCC, Allum has waived any consideration of the issue on appeal. We decline to address the constitutionality of the WCC under the guise of subject matter jurisdiction.

The judgment of the WCC is affirmed.

¶5 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. Affirmed.

The duplicity, of Montana Supreme Court, in avoiding the adjudication of the constitutional issues, is amply demonstrated by comparing *Allum I*, above, with *Allum V*, below.

The Montana Supreme Court admits, in *Allum v. Montana State Fund and State of Montana*, 2023 MT 121 (*Allum V*),

WCC is a court of limited jurisdiction—"an administrative tribunal governed by MAPA [Montana Administrative Procedures Act] * * *. As such, it has only the power conferred to it by statute.

The Montana Supreme Court, then tries to expand the subject matter jurisdiction of WCC, in violation of established jurisprudence, concerning the jurisdiction of administrative judges, to adjudicate the structural constitutional challenges, to the tribunal's very existence, in *Allum V*:

Pursuant to statute, the WCC has "exclusive jurisdiction to make determinations concerning disputes under [the

WCA, Title 39, chapter 71, MCA]." Section 39-71-2905(1), MCA. As such, the WCC has the authority to issue rulings regarding constitutional challenges to the WCA or WCC "only in the context of a dispute concerning benefits under the Workers' Compensation Act and only as to the applicability of any statutory provision, rule, or order of the agency to that dispute (emphasis added)."

The Montana Supreme Court, additionally, deprived Allum of his right of appeal, to seven (7) separate motions for summary judgment, filed in WCC, based upon the unconstitutionality of seven (7) separate individual statutes. WCC, before granting the motion to dismiss Allum's petition, denied each constitutional motion for summary judgment. If the Montana Supreme Court's adjudication and logic is followed, WCC had/has the plenary jurisdiction to adjudicate constitutional challenges, but after ruling on such motion, WCC can lose said jurisdiction.

The Montana Supreme Court stated in *Allum V*, 2023 MT 121, n. 1:

State Fund asserted Allum's constitutional challenges to be precluded by res judicata, as he had brought the same constitutional claims in three prior WCC proceedings, and were also precluded by Allum's failure to file notice of his constitutional challenges as required by M. R. Civ. P. 5.1(a). As we determine the issue on other grounds, it is not necessary to address these arguments

¶2 We address the following restated issue on appeal: *Whether the WCC erred in dismissing Allum's constitutional claims based on lack of jurisdiction as once Allum's benefits-related claims were resolved and dismissed, his constitutional claims became stand-alone claims not in the context of a dispute concerning benefits under the Workers' Compensation Act or related to the*

applicability of any statutory provision, rule, or order of the agency to that dispute.

¶3 We affirm.

¶4 * * * The WCC noted the settlement resolved all disputes involving workers' compensation benefits but did not resolve Allum's constitutional claims which "remain[ed] open to the extent permitted by law." The WCC then concluded, pursuant to § 39-71-2905(1), MCA, that Allum's constitutional claims were not open as the WCC, as a limited jurisdiction court, lacked jurisdiction to address Allum's now stand-alone constitutional challenges outside the context of a dispute over benefits. Allum appeals.

¶7 We have previously determined the WCC is a court of limited jurisdiction—"an administrative tribunal governed by MAPA and allocated to the Department of Labor and Industry for administrative purposes." *Thompson*, ¶ 24. As such, it has only the power conferred to it by statute. *Thompson*, ¶ 24

¶8 While Allum's constitutional claims were not brought in a separate declaratory judgment petition as they were in *Thompson*, once his benefits-related claims were dismissed, like the declaratory judgment claims in *Thompson*, all that remained were stand-alone constitutional claims. Pursuant to statute, the WCC has "exclusive jurisdiction to make determinations concerning disputes under [the WCA, Title 39, chapter 71, MCA]." Section 39-71-2905(1), MCA. As such, the **WCC has the authority to issue rulings regarding constitutional challenges to the WCA or WCC "only in the context of a dispute concerning benefits under the Workers' Compensation Act and only as to the applicability of any statutory provision, rule, or order of the agency to that dispute (emphasis added)."** *Thompson*, ¶ 25

The selective editing of *Thompson*, by the Justices, in *Allum V*, above, demonstrates Montana Supreme Court's judicial approach to rendering decisions.

The complete text of *Thompson v. State*, 2007 MT 185:

¶24 We agree with the State that the WCC did not have jurisdiction to issue a declaratory judgment holding §§ 39-71-604(3) and 50-16-527(5), MCA, unconstitutional in the particular context of this case. Unlike the general jurisdiction granted to district courts over “all cases in law and in equity,” § 3-5-302(1), MCA, **the WCC is a court of limited jurisdiction**, *Oberson v. Federated Mut. Ins. Co.*, 2005 MT 329, ¶ 11, 330 Mont. 1, ¶ 11, 126 P.3d 459, ¶ 11. In particular, **the WCC is an administrative tribunal governed by MAPA** and allocated to the Department of Labor and Industry for administrative purposes. See *Kloepfer v. Lumbermens Mut. Cas. Co.*, 272 Mont. 78, 81, 899 P.2d 1081, 1083 (1995) (“**The statutes governing workers’ compensation claims direct the Workers’ Compensation Court to be bound by ‘the Montana Administrative Procedure Act.’**” (quoting § 39-71-2903, MCA)); *Wheeler v. Carlson Transport*, 217 Mont. 254, 263, 704 P.2d 49, 55 (1985) (stating that the WCC is an administrative tribunal); *Hert v. J. J. Newberry Co.*, 179 Mont. 160, 161, 587 P.2d 11, 12 (1978) (“**[H]earings before the Workers’ Compensation Court are considered to be administrative proceedings.**”); § 2-15-1707(1), MCA (“The office [of workers’ compensation judge] is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.”). **Courts of limited jurisdiction have only such power as is expressly conferred by statute.** See *Jenkins v. Carroll*, 42 Mont. 302, 312, 112 P. 1064, 1069 (1910) (emphasis added).

Footnote 4:

The WCC apparently proceeded on the premise that it had jurisdiction to issue a declaratory ruling in this case unless that jurisdiction was withdrawn by a provision of law. This premise was incorrect. **Because courts of limited jurisdiction have only such power as is expressly conferred by statute, the correct starting premise is that the WCC—or any other court of limited jurisdiction, for that matter—does not have the jurisdiction in question unless that jurisdiction is conferred by a specific provision of law** (emphasis added).

¶28 We reject this argument outright [the contend[ion] that Appellants are estopped from challenging the jurisdiction of the WCC to issue a declaratory judgment concerning the constitutionality of §§ 39-71-604(3) and 50-16-527(5), MCA..] **“Jurisdiction involves the fundamental power and authority of a court to determine and hear an issue.”** *Stanley*, ¶ 30 (citing *State v. Diesen*, 1998 MT 163, ¶ 5, 290 Mont. 55, ¶ 5, 964 P.2d 712, ¶ 5). Accordingly, **subject-matter jurisdiction can never be forfeited or waived.** *Stanley*, ¶ 32 (citing *Arbaugh v. Y & H Corp.*, 546 U.S. 500, ___, 126 S. Ct. 1235, 1244). Additionally, **subject-matter jurisdiction cannot be conferred by the consent of a party.** *In re Marriage of Miller*, 259 Mont. 424, 427, 856 P.2d 1378, 1380 (1993). Therefore, **“ ‘[t]he issue of subject matter jurisdiction may be raised by a party, or by the court itself, at any stage of a judicial proceeding.’ ”** *Noonkester*, ¶ 29 (citing *State v. Tweedy*, 277 Mont. 313, 315, 922 P.2d 1134, 1135 (1996)). Consequently, Appellants’ admissions in their responses to the Workers’ Petition cannot confer jurisdiction that otherwise does not exist (emphasis added).

The Montana Supreme Court, reversed its previous acceptance of the established jurisprudence, “[t]he issue of subject matter jurisdiction may be raised by a party, or by the court itself, at any stage of a judicial proceeding[],” to avoid

adjudicating the constitutionality of WCC. *Thompson*, if the full paragraphs are read, supports Allum's position that WCC is unconstitutional, and the Montana Supreme Court lacked subject matter jurisdiction, as did WCC.

The Montana Supreme Court provided the wording of the question, in *Allum V.* The Montana Supreme Court's adjudication of the jurisdiction, of WCC/workers' compensation judge, to adjudicate constitutional challenges, is plenary, at best, and ambiguous, at worst, where litigants, in Montana, do not know what rules will apply to the WCC/workers' compensation judge, until post decision, depending on the Montana Supreme Court.

The following filings demonstrate, the Montana Supreme Court's error, in claiming Allum failed to present the constitutionality and subject matter jurisdiction issues, before WCC/workers' compensation judge. Allum presented his constitutional rights violations, and that WCC lacks both, statutory or subject matter jurisdiction, from the filing of his first petition until appeal.

1. Petition For Hearing (injury), Demand For Jury Trial, WCC No. 2019-4705, filed July 10, 2019:

WHEREFORE, Petitioner, respectfully, prays that this petition be set for hearing and that the following relief be granted:

1. Jury trial, guaranteed by the Montana Constitution, Article II, Section 26, to adjudicate the taking of Petitioner's WCA benefits.

2. Order Directing Petitioner to File a Notice of Constitutional Challenge,
filed August 7, 2019, in WCC:

¶1 * * * Allum has demanded a jury trial, asserting he has a right to a jury trial under Article II, Section 26 of the Montana Constitution.

¶2 * * * Montana State Fund asserts that jury trials are not available in [WCC].

¶3 To the extent Allum is challenging the constitutionality of any state statute, it is ordered that he shall file a Notice of Constitutional Challenge setting forth the statute(s) he is challenging and serve the notice on the Montana Attorney, pursuant to M.R.Civ.P. 5.1(a). It is ordered that Allum shall file his Notice of Constitutional challenge on or before **Friday, September 6, 2019** (emphasis in original).

3. Motion For Reconsideration of the Order filed August 7, 2019, filed August 21, 2019, in WCC:

* * * Court to reconsider its Order entered August 7, 2019 (Doc. 4), as follows:

1. The Court erred in assigning the burden of proof, on the issue of jury trials in WCC, to the Petitioner, instead of State Fund.

2. The Court lacks jurisdiction to resolve constitutional issues.

3. The issue of jury trials in worker's compensation cases, is included, and currently being adjudicated, by the Federal District Court, in formerly, Case Number CV 19-12-BU-BMM-JCL, and now CV 19-12-BU-BMM-KLD.

4. Montana State Attorney General's Office has been served with the Complaints, containing the Constitutional Challenges, in the Federal Case identified.

4. Brief in Support of Motion for Reconsideration of the Order filed August

7, 2019, in WCC, on August 21, 2019:

1. The Court erred in assigning the burden of proof, on the issue of the availability of jury trials, in WCC, to the Petitioner, instead of State Fund.

Petitioner, in the title of the document, Petition for Hearing (Injury) Demands a Jury Trial, and in Prayer 1 Requests:

Jury trial, guaranteed by the Montana Constitution, Article II, Section 26, to adjudicate the taking of Petitioner's WCA benefits.

Thus, Petitioner did not ask for any relief, from the judge, which the Montana State Constitution does not guarantee as "inviolable".

State Fund, in Contention 23, asserts:

Jury trials are not available in the Worker's Compensation Court.

State Fund makes this assertion, without the support of any statute, rule, or case law. Thus, State Fund bears the burden of proof to establish the foregoing, unsupported assertion.

2. The Court lacks jurisdiction to resolve constitutional issues.

This Court acknowledged the Montana Supreme Court's *dicta*, that this Court lacks jurisdiction to determine Constitutional issues in *Malcomson v. Liberty Northwest*, 2014 MT 242, WCC No. 2008-2103, 2013 MTWCC 21:

¶17 ". . . On October 18, 2005, the WCC ruled in a declaratory judgment action that § 39-71-604(3), MCA (2003), was unconstitutional because it violated the

petitioner's constitutional right to due process. *Thompson v. State*, 2005 MTWCC 53. While this decision remained in effect, ex parte communications between insurers and a claimant's healthcare providers were not permitted. Subsequently, on September 7, 2007, the Supreme Court reversed the decision of the WCC on procedural grounds, concluding that the **WCC did not have jurisdiction to issue a declaratory judgment** (emphasis added).

Additionally, the Montana Supreme Court, explained the rationale, for denying the jurisdiction of WCC over Constitutional and tort claims, in the *dicta* of *Birkenbuel v State Compensation Ins.*, Docket Number 83-525, August 28, 1984, at pages xx:

Our statutory system of workers' compensation does not provide workers with benefits for injury sustained from settlement negotiations with an insurance carrier. As such, the exclusivity provisions of the Workers ' Compensation Act do not bar independent actions for tortious conduct arising from such interactions. Any contrary interpretation would result in the inequity whereby workers surrendered more protection than they received when our statutory system of compensation was adopted.

Thus, the Order, herein, is beyond the jurisdiction of the Court.

5. Allum represented the foregoing arguments in Petitioner's Reply in Support of Motion for Reconsideration of the Order filed August 7, 2019.

6. Order on Motion for Clarification of Pretrial Procedures, filed in WCC September 9, 2019:

¶ 5. * * * this Court has ordered Allum to notify the Montana Attorney General of his constitutional challenge(s) on or before **Friday, September 20, 2019**,

and to file a brief setting forth the law and analysis under which he claims a right to a jury trial in a case before the Workers' Compensation Court on or before **Friday, October 4, 2019**. If Allum does not comply with this Court's Orders, he will waive his claim for a jury trial and any right he may have to a jury trial and this Court will proceed to a bench trial * * * (bold in original).

7. Order Denying Motion for Consideration, filed in WCC September 9, 2019.

¶ 1 In his Petition for Hearing, Petitioner Robert L. Allum has demanded a jury trial, asserting he has a right to a jury trial under Article II, Section 26 of the Montana Constitution. To the extent Allum is challenging the constitutionality of any state statute, this Court ordered him to file a Notice of Constitutional Challenge setting forth the statutes he is challenging and serve notice on the Montana Attorney General, pursuant to M.R.Civ.P. 5.1(a).

¶ 3 Allum did not comply with this Court's Order. * * * Allum also asserts this Court does not have jurisdiction to determine constitutional issues. * * *

¶ 4 Allum's arguments are without merit for four reasons.

¶ 5 First Allum has the burden of proving the unconstitutionality of the statutes under which the judge of the Workers' Compensation Court **has exclusive jurisdiction to decide disputes over benefits**. * * * The burden is squarely on Allum to prove that the statutes are unconstitutional (emphasis added).

¶ 6 Second, this Court has jurisdiction to decide constitutional challenges to statutes in the Workers' Compensation Act. [citations omitted]

* * *

¶ 8 Fourth this Court's Order does not violate Allum's constitutional rights to due process. * * * It is obviously

not a violation of due process to require the party challenging the constitutionality of statutes to identify the statutes and to provide notice of the challenge.

The foregoing, is ample evidence, that the lower judge, was aware of Allum's arguments, and even specifically rejected said arguments in, Order Denying Motion for Consideration, filed in WCC September 9, 2019, ¶ 4

Allum's arguments are without merit for four reasons.

and ¶ 6:

Second, this Court has jurisdiction to decide constitutional challenges too statutes in the Workers' Compensation Act. [citations omitted]

Thus the Montana Supreme Court manufactured, an erroneous finding of fact, to avoid adjudicating the constitutionality of WCC, which subsequent courts/judges cited, as a basis for the affirmative defense of estoppel.

I. Did the appellate court, err in issuing, a cryptic Memorandum, dismissing the entire complaint, based upon the Eleventh Amendment (sovereign immunity) defense, without addressing, the applicability to all of the defendants and claims for relief?

The simple answer is yes. Even *arguendo*, that State of Montana has Eleventh Amendment (sovereign immunity), that immunity would not apply to the Claim for Relief VII, Montana State Constitutional Challenges, because State Fund is a named defendant; or the complaint could be amended and the name of the governor, attorney general, or any employee of State Fund, added, as a DOE 1-100. *Smyth v. Ames*, 169 U.S. 466, 518-19 (1898):

But, to prevent misapprehension, we add that within the meaning of the Eleventh Amendment of the Constitution, the suits are not against the state, but against certain individuals charged with the administration of a state enactment, which, it is alleged, cannot be enforced without violating the constitutional rights of the plaintiffs. It is the settled doctrine of this Court that a suit against individuals for the purpose of preventing them as officers of a state from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the state within the meaning of that amendment. *Pennoyer v. McConnaughy*, 140 U. S. 1, 140 U. S. 10; *In re Tyler*, 149 U. S. 164, 149 U. S. 190; *Scott v. Donald*, 165 U. S. 58, 165 U. S. 68; *Tindal v. Wesley*, 167 U. S. 204, 167 U. S. 220.

Ex parte Young, 209 U.S. 123, 150-152 (1908)

Davis v. Gray, 16 Wall. 203, 83 U. S. 220, reiterates the rule of *Osborn v. United States Bank* so far as concerns the right to enjoin a state officer from executing a state law in conflict with the Constitution or a statute of the United States when such execution will violate the rights of the complainant.

* * *

Osborn v. United States Bank [(1824) 9 Wheat. 738, 22 U. S. 846], *supra*, was cited, and it was stated:

"But the general doctrine of *Osborn v. United States Bank*, that the Circuit Courts of the United States will restrain a state officer from executing an unconstitutional statute of the State when to execute it would violate rights and privileges of the complainant which had been guaranteed by the Constitution and would work irreparable damage and injury to him, has never been departed from."

The same principle is decided in *Scott v. Donald*, 165 U.

S. 58, 165 U. S. 67. *And see Missouri &c. v. Missouri Railroad Commissioners*, 183 U. S. 53.

The granting of sovereign, or qualified immunity, to State Fund, would not apply to the Sixth Claim for Relief, Bad Faith Insurance. This tort action is authorized, by the Montana Supreme Court, in *Birkenbuel v. Montana State Compensation Insurance Fund*, 212 Mont. 139, 687 P.2 698 (1984):

Our decisions in *Hayes*, *Vigue* and *Lipinski* apply just as vigorously to the State Fund as they do Plan I self-insurers and Plan II private insurers.

Holding that Birkenbuel is entitled to pursue his cause of actions based in tort we must decide whether punitive damages are recoverable against the State Fund.

Thus, the appellate court erred in dismissing the complaint.

II. Are the decisions, of successive state and federal courts, citing, and relying upon a state court of last resort's decision, which specifically refused to adjudicate the subject matter jurisdiction, of both, the state appellate and inferior administrative judge, render all successive court decisions, relying on said decision, void?

The question is susceptible of three different questions:

1. Is the question a case of first impression.
2. Does every court, entertaining an affirmative estoppel defense (*res judicata* or issue preclusion), have an affirmative duty, to require the party, advancing the defense, to prove the court, whose decision is cited, had subject matter jurisdiction, as part of analyzing requirements of the affirmative defense?
3. Do the judges citing *Allum I*, have ulterior motives, for allowing

affirmative defenses, to base their decisions on *Allum I*.

Question 1 will be addressed, as the answer to question 2, is already found in case law, *Montana v. United States*, 440 U.S. 147, 153-154 (1979):

A fundamental precept of common law adjudication, embodied in the related doctrines of collateral estoppel and *res judicata*, is that a

"right, question or fact distinctly put in issue and directly determined by **a court of competent jurisdiction** . . . cannot be disputed in a subsequent suit between the same parties or their privies. . . ."

Southern Pacific R. Co. v. United States, 168 U. S. 1, 168 U. S. 48-49 (1897). Under *res judicata*, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action. *Cromwell v. County of Sac*, 94 U. S. 351, 94 U. S. 352 (1877); *Lawlor v. National Screen Service Corp.*, 349 U. S. 322, 349 U. S. 326 (1955); 1B J. Moore, Federal Practice ♦ 0.405[1], pp. 621-624 (2d ed.1974) (hereinafter 1B Moore); Restatement (Second) of Judgments § 47 (Tent. Draft No. 1, Mar. 28, 1973) (merger); *id.* § 48 (bar). Under collateral estoppel, once an issue is actually and necessarily determined by **a court of competent jurisdiction**, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. *Parklane Hosiery Co. v. Shore*, 439 U. S. 322, 439 U. S. 326 n. 5 (1979); Scott, Collateral Estoppel by Judgment, 56 Harv.L.Rev. 1, 2-3 (1942); Restatement (Second) of Judgments § 68 (Tent.Draft No. 4, Apr. 15, 1977) (issue preclusion). Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions. *Southern Pacific R. Co.*, *supra* at 168 U. S. 49; *Hart Steel Co. v. Railroad Supply Co.*, 244 U. S. 294, 244 U. S. 299 (1917). To preclude parties from contesting matters that

they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions (emphasis added).

The third question goes to the motive, of the individual judges, rendering the decisions, in which said judges, made the conscience decision, not to follow established jurisprudence or case law. This subject is not answerable, with the judicial resources available, as a matter of law.

Question 1 brings the case at bar, full circle and very relevant. The presumed finality of court decisions, even wrong decisions, is the basis of the principle of estoppel. The noted exception, and one not envisioned, or addressed, by the Court, is what happens if the multiple successive courts, do not ensure, the cited court had "competent jurisdiction," including subject matter jurisdiction. The stated conclusion of the courts, and established case law, was presented in *Williamson v. Berry*, 49 U.S. 495, (8 How.) 495 (1850), on pages 540-543:

But it is an equally well settled rule in jurisprudence, that the jurisdiction of any court exercising authority over a subject may be inquired into in every other court, when the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceedings. ***

This Court applied it as early as the year 1794, in the case of *Glass v. Sloop Betsey*, 3 Dall. 7. Again, in 1808, in the case of *Rose v. Himely*, 4 Cranch 241. Afterwards, in 1828, in *Elliott v. Piersol*, a case of ejectment, 1 Pet. 328, 26 U. S. 340. This is the language of the court in that case -- not stronger though, than it was in the preceding

cases:

* * * "It is argued that the circuit court of the United States had no authority to question the jurisdiction of the county court of Woodford County, and that its proceedings were conclusive upon the matter, whether erroneous or not. **We agree, if the county court had jurisdiction,** its decision would be conclusive. * * * Where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. **But if it act without authority, its judgments and orders are nullities; they are not voidable, but simply void,** and form no bar to a recovery sought, even prior to a reversal, in opposition to them; they constitute no justification, and all persons concerned in executing such judgments, or sentences, are considered in law as trespassers (emphasis added)."

In *Latham v. Edgerton*, 9 Cow. 227, it is said

"The principle that a record cannot be impeached by pleading is not applicable when there is a **want of jurisdiction**. The want of it **makes a record utterly void and unavailable for any purpose**. The want of jurisdiction is a matter that may always be set up against a judgment when it is to be enforced, or when any benefit is claimed under it (emphasis added)."

See also, to the same point, *Fenton v. Garlick*, 8 Johns. 194; *Kilbourne v. Woodworth*, 5 *id.* 37; 19 *id.* 39; 6 Wend. 446. And in the case of *Rogers v. Diel*, 6 Hill 415 -- a case of ejectment -- the Chief Justice ruled that the

power of a court of chancery to order the real estate of an infant is derived entirely from the statute. Thus sustaining an objection collaterally to proceedings and a decree in chancery which were regular in form, but void in fact, on account of the chancellor's not having jurisdiction or authority to make such a decree.

The foregoing, established jurisprudence principles, have remained consistent.

The Supreme Court, in *Ex Parte Terry*, 128 U.S. 289, 305 (1888):

A judgment which lies without the jurisdiction of a court, even one of superior jurisdiction and general authority, is, upon reason and authority, a nullity.

and in *V. L. v. E. L.*, 577 U.S. 464, ___, (2016)

A State is not required, however, to afford full faith and credit to a judgment rendered by a court that “did not have jurisdiction over the subject matter or the relevant parties.” *Underwriters Nat. Assurance Co. v. North Carolina Life & Accident & Health Ins. Guaranty Assn.*, 455 U.S. 691, 705 (1982). “Consequently, before a court is bound by [a] judgment rendered in another State, **it may inquire into the jurisdictional basis of the foreign court’s decree.”** *Ibid.* That jurisdictional inquiry, however, is a limited one. “[I]f the judgment on its face appears to be a ‘record of a court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence, or by the record itself (emphasis added).’” *Milliken* [*v. Meyer*, 311 U.S. 457 (1940)], at 462 (quoting *Adam v. Saenger*, 303 U.S. 59, 62 (1938)).

Thus, the Montana Supreme Court, in the first instance, declined to establish their jurisdiction, of the appeal, or WCC's jurisdiction, to adjudicate constitutional

challenges; and each of the subsequent courts, even when Allum raised the issue, of WCC's lack of jurisdiction, declined to follow established jurisprudence, and dismissed Allum's cases. This has caused the issue of the subject matter jurisdiction of WCC, and the Montana Supreme Court's refusal to address subject matter jurisdiction, to violate established jurisprudence principles, governing subject matter jurisdiction, and establishes the need for this Court's attention.

The solution to question 1, is for the Court to grant this Petition, address the issue, reverse the decision of the Ninth Circuit, and instruct the district court to provide "a full and fair opportunity," during the processing of the underlying complaint.

REASONS FOR GRANTING THE PETITION

The reasons for granting the writ of certiorari:

1. Only this Court, can clarify, and correct, the misuse, of the affirmative defense, of estoppel, in federal and state cases, involving constitutional challenges.

2. Only this Court, can reverse the decision of the Ninth Circuit, and instruct district court of Montana to proceed in processing the underlying

////

////

////

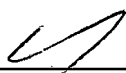
complaint.

CONCLUSION

The petition for a writ of certiorari should be granted.

DATED this 26th day of August, 2026.

Respectfully submitted,



Robert L. Allum
Pro Se
132 West Magnolia Drive
Belgrade, Montana 59714
Tel.: (406) 580-3912