

No. DA 25-0397

IN THE SUPREME COURT OF MONTANA

CASEY PERKINS, an individual; SPENCER MCDONALD, an individual; KASANDRA REDDINGTON, an individual; JANE DOE, an individual; and JOHN DOE, an individual,
Plaintiffs-Appellees,

v.

STATE OF MONTANA; GREGORY GIANFORTE, in his official capacity as Governor of the State of Montana; and AUSTIN KNUDSEN, in his official capacity as Attorney General of the State of Montana,
Defendants-Appellants.

On Appeal from the Fourth Judicial District Court, Missoula County

**BRIEF OF *AMICI CURIAE* ANTI-DOMESTIC VIOLENCE,
SEXUAL ASSAULT, AND GENDER-BASED VIOLENCE
ORGANIZATIONS IN SUPPORT OF PLAINTIFFS-APPELLEES
AND IN FAVOR OF AFFIRMANCE**

Emily Lucas
RIES LAW GROUP, P.C.
P.O. Box 8364
Missoula, MT 59807
Tel.: (406) 541-4141
emily@rieslawgrouppc.com

Brian Dittmeier*
NATIONAL WOMEN'S LAW CENTER
1350 I Street NW, Suite 700
Washington, DC 20005
Tel.: (202) 588-5180
bdittmeier@nwlc.org

Counsel for Amici Curiae
* *Pro Hac Vice* application
forthcoming

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INTEREST OF *AMICI CURIAE*

Amici curiae are seventeen Montana-based and national organizations working to support, empower, and advocate for survivors of domestic violence, sexual assault, and other gender-based violence.¹ *Amici* are organizations that understand that services for survivors of violence—whether direct service, research, advocacy, or all three—must be inclusive of *all* survivors, including those who are transgender, intersex, or gender-nonconforming.

Amici include the National Women’s Law Center, Montana Coalition Against Domestic and Sexual Violence, Sanders County Coalition for Families, American Sexual Health Association, Coalition of Labor Union Women AFL-CIO, Feminist Majority Foundation, FORGE, Inc., Freedom Network USA, Just Solutions, National Association of Women Lawyers, National LGBTQ Institute on Intimate Partner Violence, National Network to End Domestic Violence, National Organization for Women Foundation, National Women’s Shelter Network, Inc., Nurses for Sexual and Reproductive Health, Public

¹ No party’s counsel authored this brief in whole or in part, nor did a party, its counsel, or any other person contribute money to fund preparing or submitting this brief.

Counsel, and Women’s Law Project. Statements of interest for all *amici* are attached in the Appendix.

The policy at issue here bars transgender and gender-nonconforming survivors from accessing Montana services and facilities, including domestic violence shelters and safe homes, in a manner consistent with their gender identity. *Amici* submit this brief because this policy is rooted in harmful stereotypes and misconceptions that instead exacerbate the risk of violence against all people, especially transgender and gender-nonconforming people. Accordingly, *amici*’s perspective and experience in addressing such issues may assist the Court in its resolution of this case.

INTRODUCTION

On March 27, 2025, Montana enacted H.B. 121, a law that would impose sweeping restrictions on transgender and gender-nonconforming individuals from accessing sex-segregated facilities consistent with their gender identity in public schools, public buildings, and domestic violence shelters and safe houses. The law also creates a private right of action for individuals to sue covered entities—including non-profit organizations providing services for survivors of domestic violence—should they

encounter a transgender person in a sex-segregated facility consistent with their gender identity. H.B. 121, 69th Leg., Reg. Sess., § 4 (Mont. 2025).

H.B. 121 cloaks itself in supposed concern for the well-being of cisgender women, but this law will not mitigate sexual or gender-based violence. The law's proponents rely on harmful misconceptions to wrongfully equate discomfort with a transgender person's presence with the threat of physical or sexual violence. Far from reducing the risk of unlawful behavior or violence, H.B. 121 will impose unlawful restrictions on the operations of domestic violence shelters and safe houses, jeopardizing access to services that are essential for *both* cisgender women and transgender people.

The State's asserted safety and privacy arguments are mere pretext for excluding transgender people from public life and denying critical, life-saving services to marginalized people seeking support when in crisis and facing gender-based violence. Such specious arguments are particularly egregious given that transgender people face significantly higher rates of domestic and sexual violence compared to cisgender people. This Court should reject the State's asserted justifications by

affirming the lower court’s findings that H.B. 121 is likely to offend the Montana Constitution’s equal protection and privacy guarantees. *See* Mont. Const. art. II, §§ 4, 10.

ARGUMENT

I. H.B. 121’s exclusion of transgender people from sex-segregated spaces would not make women safer or meaningfully address gender-based violence.

Transgender people existing and accessing facilities consistent with their gender identity is not a new phenomenon. Jurisdictions with transgender-inclusive policies have years of experience and data reflecting that cisgender women and girls have been no less safe in the presence of transgender people than they would have been otherwise. Increased policing of sex-segregated spaces to exclude transgender people—as H.B. 121 seeks to do—will only serve to reinforce harmful gender-based stereotypes that will leave *all* women, cisgender and transgender alike, at greater risk of violence.

A. Transgender-inclusive policies do not create safety risks for cisgender women.

Numerous jurisdictions have prohibited discrimination in public accommodations on the basis of gender identity without any measurable

harm. Their lived experience demonstrates the falsity of the State's asserted concern that transgender-inclusive policies will infringe on cisgender women's safety and privacy. Twenty-one states and the District of Columbia have passed such laws, with the earliest adopted more than three decades ago. See Movement Advancement Project, *State Nondiscrimination Laws: Public Accommodations*, <https://www.lgbtmap.org/img/maps/citations-nondisc-public-accom.pdf> (noting Minnesota's law was enacted in 1993).

Multiple reports have found that criminal incidents in public accommodations, such as public restrooms, are “exceedingly rare” and that “fears of increased safety and privacy violations as a result of nondiscrimination laws” protecting transgender people's access to sex-segregated facilities “are not empirically grounded.” Amira Hasenbush et al., *Gender Identity Nondiscrimination Laws in Public Accommodations: A Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms*, 16 *Sexuality Rsch. & Soc. Pol'y* 70, 79–81 (2019); see also Jody L. Herman, Andrew R. Flores & Elana Redfield, Williams Inst., *Safety and Privacy in Public Restrooms and Other Gendered Facilities* 2–3 (2025), <https://williamsinstitute.law.ucla>.

edu/wp-content/uploads/Trans-Bathroom-Access-Feb-2025.pdf; Ryan Thoreson, Hum. Rts. Watch, *Shut Out: Restrictions on Bathroom and Locker Room Access for Transgender Youth in US Schools* (2016). Local officials similarly report that implementation of transgender-inclusive policies does not result in increased public safety risks or criminal incidents. Rachel Percelay, Media Matters for America, *17 School Districts Debunk Right-Wing Lies About Protections for Transgender Students* (June 3, 2015), <https://www.mediamatters.org/sexual-harassment-sexual-assault/17-school-districts-debunk-right-wing-lies-about-protections> (school official in Minnesota noting that, in the nearly 25 years since the Minnesota Human Rights Act was amended to protect transgender individuals, there was “no correlation between the Act and incidences of bullying and harassment”); Lou Chibbaro Jr., *Predictions of Trans Bathroom Harassment Unfounded*, Washington Blade (Mar. 31, 2016), <https://www.washingtonblade.com/2016/03/31/predictions-of-trans-bathroom-harassment-unfounded> (Law enforcement officials in four major-population jurisdictions “could not identify a single case in which a transgender person ha[d] been charged with assaulting or harassing women in a public bathroom.”).

Accordingly, courts across the country have been skeptical of unsupported safety- and privacy-based arguments for excluding transgender people in the absence of concrete harm. The Ninth Circuit found that there was “no . . . privacy right to avoid all risk of intimate exposure to or by a transgender person who was assigned the opposite biological sex at birth.” *Parents for Privacy v. Barr*, 949 F.3d 1210, 1217 (9th Cir. 2020); *see also Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1052 (7th Cir. 2017) (“A transgender student’s presence in the restroom provides no more of a risk to other students’ privacy rights than the presence of an overly curious student of the same biological sex”). As early as 2002, the Eighth Circuit rejected a Title VII workplace harassment claim when the plaintiff “[did] not assert [that a transgender colleague] engaged in any inappropriate conduct other than merely being present in the women’s faculty restroom.” *Cruzan v. Special Sch. Dist., No. 1*, 294 F.3d 981, 984 (8th Cir. 2002); *see also Barr*, 949 F.3d at 1228–29 (“The use of facilities for their intended purpose, without more, does not constitute an act of harassment simply because a person is transgender.”); *Hobby Lobby Stores, Inc. v. Sommerville*, 186 N.E.3d 67, 84 (Ill. App. Ct. 2021) (“There is simply no

evidence that [a transgender employee’s] use of the women’s bathroom would pose a safety risk to other women.”).

Courts have similarly rejected the false claim that transgender-inclusive policies will enable predators in sex-segregated spaces, characterizing such myths as “no less odious, no less unfounded, and no less harmful than . . . race-based or sexual-orientation-based scare tactics.” *Grimm v. Gloucester Cnty. Sch. Dist.*, 972 F.3d 586, 626 (4th Cir. 2020). The Third Circuit noted a stark contrast between the routine use of facilities and legitimate safety threats:

A case involving transgender students using facilities aligned with their gender identities after seeking and receiving approval from trained school counselors and administrators implicates different privacy concerns than, for example, a case involving an adult stranger sneaking into a locker room to watch a fourteen[-]year-old girl shower. The latter scenario . . . is simply not analogous to the circumstances here.

Doe ex rel. Doe v. Boyertown Area Sch. Dist., 897 F.3d 518, 533 (3d Cir. 2018). As the district court noted here, laws “criminalizing the behavior about which the State expresses concern already exist” to address hypotheticals like the adult stranger mentioned above, including criminal laws proscribing sexual assault, indecent exposure,

surreptitious visual observation, and predatory loitering. *Perkins v. Montana*, No. DV-2025-282, at 50 (Mont. 4th Dist. Ct., May 16, 2025).

Many of the *amici* work directly with survivors in Montana, and transgender-inclusive policies have not been demonstrated to put cisgender survivors at increased risk when staying at domestic violence shelters or safe houses. Consistent trends demonstrate that the vast majority of perpetrators of sexual crimes are individuals already known to the victim, instead of strangers that may be encountered at a shelter or safe house. Data from the 2016/2017 National Intimate Partner and Sexual Violence Survey found that women who were victims of rape were more than four and a half times as likely to identify their rapist as an acquaintance rather than a stranger and more than three times as likely to identify their rapist as an intimate partner rather than a stranger. See Kathleen Basile et al., Ctrs. For Disease Control & Prev., *The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Sexual Violence* (2022), <https://stacks.cdc.gov/view/cdc/124625>. Absent evidence of concrete harm alleged in individualized circumstances, mere discomfort with sharing space with a transgender person is not sufficient to exclude survivors from services or housing. This is why the federal

Violence Against Women Act (VAWA) was reauthorized in 2013 to require recipients of federal grants to adopt nondiscrimination policies based on gender identity. Pub. L. No. 113-4 § 3(b)(4), 127 Stat. 53, 61 (2013) (42 U.S.C. § 13925(b)(13)(A)); *see also* S. Rep. No. 112-153, at 7 n.15 (2012) (“Ensuring that services be provided regardless of sexual orientation or gender identity is necessary because of the difficulties in accessing services”). This statutory requirement has been in effect for some time and the State can point to no major incident in the provision of services to Montanan survivors since its inception.

Contrary to the State’s asserted justifications, recent experience shows that the harm is in the inverse—the recent proliferation of exclusionary policies like H.B. 121 instead results in cisgender women also being scrutinized and violently confronted in public based on their appearance and conformity to gendered expectations. When the public is primed to monitor and police access to sex-segregated spaces, as H.B. 121 encourages with the private causes of action outlined in § 4, the State invites intrusive questioning of all who do not readily conform to any member of the public’s gender expectations, especially those rooted in outdated stereotypes, on a whim. For example, in Florida, a 6’4”

cisgender woman was reportedly trapped in a bathroom stall as a man followed her into the bathroom and shouted anti-transgender slurs at her. Daniel Wu, *Walmart fires woman who reported anti-trans threats from man in bathroom*, The Washington Post (Mar. 27, 2025), <https://www.washingtonpost.com/nation/2025/03/27/walmart-fires-woman-trans-hate-bathroom/>. In Minnesota, an 18-year-old biracial high school student—also a cisgender girl—was reportedly forced to unzip her sweatshirt and show a restaurant server her clothed breasts to end a restroom confrontation. Ryan Adamczeski, *Lesbian teen cornered by server in bathroom and forced to prove gender files charges*, Advocate (Aug. 13, 2025), <https://www.advocate.com/news/minnesota-cisgender-girl-restaurant-bathroom>.

Similarly, in February 2025, a Black cisgender woman was reportedly accosted by two male police officers at an Arizona store bathroom. Christopher Wiggins, *Cis woman confronted by police officers in Arizona Walmart restroom for looking too masculine speaks out*, Advocate (Feb. 28, 2025), <https://www.advocate.com/news/lesbian-mistaken-transgender-arizona-walmart>. She later shared: “They came in here in the girls’ restroom, because I’m a girl and they didn’t think I was

a girl, so they tried to come take me away. The only men in the women's restroom were the cops." *Id.* In Boston, a cisgender woman with short hair was confronted by a hotel security guard and then escorted out of the bathroom in front of other patrons, who then verbally harassed and misgendered her. Brandon Truitt, *Woman says security guard at Liberty Hotel in Boston confronted her in bathroom, asked to prove gender*, CBS News (May 7, 2025), <https://www.cbsnews.com/boston/news/women-boston-liberty-hotel-bathroom-gender>.

The State's purported concern for safety and privacy is not rooted in actual data. Instead, it channels prejudicial misconceptions about transgender people to justify their exclusion from public spaces. As a result, the State is fostering a more dangerous environment for all who do not conform to specific gendered expectations, increasing the risk of harassment and violence for transgender people and cisgender women alike.

B. Transgender people are at disproportionate risk of facing domestic violence, sexual assault, and other violent crimes.

The State's efforts to impose exclusionary policies on domestic-violence programs are even more harmful given the disproportionate risk

of violence transgender and gender-nonconforming individuals face. H.B. 121 both discriminates directly against transgender individuals and also chills access to life-saving interventions that could mitigate violence in transgender people's lives.

Overall, transgender people face higher rates of violence compared to cisgender people. The federal Department of Justice estimates that transgender people faced two and a half times the rate of violent victimizations that cisgender people do. Jennifer L. Truman & Rachel E. Morgan, U.S. Dep't of Just., *Violent Victimization by Sexual Orientation and Gender Identity, 2017-2020* (June 2022), <https://bjs.ojp.gov/document/vvsogi1720.pdf>.

Over the past ten years, violence against transgender people has seen sharp increases. Between 2017 and 2021, the homicide rate of transgender people increased by ninety-seven percent. Everytown for Gun Safety Support Fund, *How Guns Fuel Violence Against Transgender People in America* (2024), <https://everytownresearch.org/report/how-guns-fuel-violence-against-transgender-people-in-america/>. Data from the Federal Bureau of Investigation (FBI) also indicates that anti-transgender hate crimes have more than doubled in the past five years

compared to the five years prior. See FBI Crime Data Explorer, *Hate Crime in the United States Incident Analysis*, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/hate-crime> (comparing 748 anti-transgender incidents between Sept. 2015 and Sept. 2020 with 1,716 incidents between Sept. 2020 and Sept. 2025).

Exclusionary policies like H.B. 121 may be a factor in the increase in recorded violence against transgender people. FBI data likewise indicates that hate crimes targeting LGBTQ+ youth at schools have more than quadrupled in states that have adopted anti-LGBTQ+ policies. Laura Meckler, Hannah Natanson & John D. Harden, *In states with laws targeting LGBTQ issues, school hate crimes quadrupled*, The Washington Post (Mar. 13, 2024), <https://www.washingtonpost.com/education/2024/03/12/school-lgbtq-hate-crimes-incidents/>.

Exclusionary restroom policies like H.B. 121 are associated with increased safety risks for transgender people. Recent data shows that transgender people are *more* likely to be verbally harassed in or excluded from a restroom if they are forced to use a facility that does not align with their gender identity. Herman et al., *supra*, at 4. Alarming, exclusionary restroom policies also significantly increase the risk of

sexual assault for transgender youth. Gabriel R. Murchison et al., *School Restroom and Locker Room Restrictions and Sexual Assault Risk Among Transgender Youth*, 143 *Pediatrics* 1, 5 (June 2019). In the absence of such policies, 26% of transgender and nonbinary adolescents experience sexual assault in the United States—higher than the 15% of cisgender high school girls and 4% of cisgender boys. *Id.* But where exclusionary restroom policies are in place, transgender and nonbinary youth experienced an even higher prevalence of sexual assault: 36%. *Id.*

Adding to these factors, transgender people are also in greater need of domestic-violence programs' interventions because of their disproportionate risk of intimate-partner violence. The Williams Institute estimates that between 31% and 50% of all transgender people will experience some form of intimate-partner violence throughout their lives. Taylor N.T. Brown & Jody L. Herman, Williams Inst., *Intimate Partner Violence and Sexual Abuse Among LGBT People* 14 (2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/IPV-Sexual-Abuse-Among-LGBT-Nov-2015.pdf>. Indeed, as compared to cisgender people, transgender people are 2.2 times as likely to experience physical intimate-partner violence and 2.5 times as likely to experience sexual

intimate-partner violence. Sarah M. Peitzmeier et al., *Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-analysis of Prevalence and Correlates*, 110 Am. J. of Pub. Health e1, e1 (Sept. 2020).

This violence contributes to the staggering disparities in homelessness, with 40% of all homeless youth or youth at risk of becoming homeless being LGBTQ+. Mikel L. Walters, Jieru Chen & Matthew J. Breiding, Ctrs. for Disease Control & Prev., *The National Intimate Partner and Sexual Violence Survey: 2010 Findings on Victimization by Sexual Orientation* (2013), <https://stacks.cdc.gov/view/cdc/12362>. Transgender people are more than three times as likely as cisgender and queer sexual minorities (and nearly six times as likely as cisgender straight people) to have recent experiences with homelessness. See Bianca D.M. Wilson et al., Williams Inst., *Homelessness Among LGBT Adults in the US* (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Homelessness-May-2020.pdf>. It is therefore likely that transgender people constitute an overwhelmingly disproportionate percentage of those who are homeless. *Id.*

Transgender people, and particularly transgender youth, face high rates of violence, family rejection, and societal stigma—all of which likely fuel the aforementioned disparities. This is why it is so vital that shelters, safe houses, and other transitional housing be inclusive and available to transgender and gender-diverse populations.

II. H.B. 121’s requirements will burden local domestic-violence shelters and safe houses, impeding services for both cisgender and transgender survivors.

Local domestic-violence programs work with limited resources to support survivors and their families, including by providing transitional or long-term housing options. H.B. 121’s requirements mandating how they label and use bathrooms, changing rooms, and sleeping quarters will reduce programmatic flexibility to respond to the emergent needs of survivors and their families.

H.B. 121’s requirements are at odds with domestic-violence shelters and safe houses’ transitional nature. The Centers for Disease Control and Prevention estimate that 44% of women in Montana experience intimate partner violence over their lifetime and 55% of women in Montana experience unwanted sexual contact over their lifetime. Sharon Smith et al., Ctrs. for Disease Control & Prev., *The National Intimate Partner and*

Sexual Violence Survey: 2016/2017 State Report, 32, 84 (Dec. 2023), <https://www.cdc.gov/nisvs/documentation/NISVS-2016-2017-State-Report-508.pdf>. However, Montana shelters have limited capacity to serve survivors of domestic violence or sexual assault. *Compare* Aspen, *Support & Advocacy*, <https://www.aspenmt.org/supportandadvocacy> (last visited Oct. 7, 2025) (a facility in Livingston “can accommodate up to 12 individuals at one time”), *with* Haven, *New Shelter and Expanded Services*, <https://havenmt.org/havens-future> (last visited Oct. 7, 2025) (noting expansion of a facility in Bozeman “from around 12 beds . . . to eventually 40”). H.B. 121 would require that any multi-occupancy restrooms, changing rooms, or sleeping quarters be designated for the exclusive use of one sex. § 3(1). While H.B. 121 does allow for designation of family facilities, *see* § 3(6)(b), to ensure that survivors can lodge with their opposite-sex children, the law’s rigid requirements undermine the flexibility to designate shared sleeping quarters and multi-user restrooms at domestic-violence shelters and safe houses for use among families or survivors. Given the limited space and resources available to domestic violence agencies, this narrow rule will make it more difficult for shelters and safe houses to meet changing occupancy needs that are

responsive to survivors. As a result of these restrictions, structural changes to domestic-violence programs required by H.B. 121 could lead to fewer beds being available to serve survivors and their families—when capacity is already insufficient to meet Montana’s need.

H.B. 121 also creates two new forms of legal liability for domestic violence programs by creating a private right of action when a person merely “encounters another individual of the opposite sex in [a] restroom or changing room” and also when an “individual . . . is required by a covered entity to share sleeping quarters with an individual of the opposite sex.” § 4. Notably, the law allows individuals to bring civil actions for up to two years after the alleged encounter takes place. § 4(3)(a). As discussed above, *see supra* Part I.A, this overbroad enforcement mechanism will encourage gender policing and could result in litigation against domestic-violence providers based on mistaken assumptions about another individual’s sex assigned at birth. Especially given the transience of residents at a shelter or safe house, service providers will be assuming significant new legal liability that will chill access to services, undermine public trust in domestic violence agencies, and divert resources from addressing survivors’ needs.

Finally, domestic-violence programs that receive federal funds under VAWA grant programs are bound by VAWA's nondiscrimination mandate, which has been inclusive of gender identity since 2013. 42 U.S.C. § 13925(b)(13)(A) ("No person in the United States shall, on the basis of actual or perceived . . . gender identity . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity in whole or in part with funds made available under [VAWA] . . ."). Exclusionary restrictions can impact whether domestic-violence programs offer the "same quality of services" for transgender survivors; the resulting potential noncompliance with federal grant requirements "could result in the disruption of important and, in some cases, life-saving services to victims of sexual assault and domestic violence." *See R.I. Coal. Against Domestic Violence v. Bondi*, ___ F. Supp. 3d ___, 2025 WL 2271867, at *9-10 (D.R.I. Aug. 8, 2025).

While *amici* would welcome policies that reduce sexual assault and gender-based violence, H.B. 121's stringent requirements for facilities and discriminatory impact on transgender survivors create more burdens for domestic-violence programs and is contrary to VAWA's non-

discrimination mandate. Inclusive policies best situate domestic-violence programs, like those among *amici* here, to effectuate their missions and serve all survivors.

CONCLUSION

For these reasons, the district court's order granting Plaintiffs' motion for a preliminary injunction should be affirmed.

Respectfully submitted this 15th date of October, 2025.

/s/ Emily A. Lucas
Emily A. Lucas
RIES LAW GROUP, P.C.
P.O. Box 8364
Missoula, MT 59807
Tel.: (406) 541-4141
emily@rieslawgrouppc.com

Brian Dittmeier*
NATIONAL WOMEN'S LAW CENTER
1350 I Street NW, Suite 700
Washington, DC 20005
Tel.: (202) 588-5180
bdittmeier@nwlc.org

Counsel for Amici Curiae
* *Pro Hac Vice* application
forthcoming

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Mont. R. App. P. 11 because it contains 3,627 words, excluding the parts of the brief exempted by Mont. R. App. P. 11(4)(d).

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DATED this 15th day of October, 2025.

/s/ Emily A. Lucas
Emily A. Lucas
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I, Emily Ann Lucas, hereby certify that I have served true and accurate copies of the foregoing Brief - Amicus to the following on 10-15-2025:

Alexander H. Rate (Attorney)
713 Loch Leven Drive
Livingston MT 59047
Representing: Jane Doe, John Doe, Spencer McDonald, Casey Perkins, Kasandra Reddington
Service Method: eService

Robin Michelle Turner (Attorney)
Legal Voice
PO Box 582
MISSOULA MT 59806-0938
Representing: Jane Doe, John Doe, Spencer McDonald, Casey Perkins, Kasandra Reddington
Service Method: eService

Michael D. Russell (Govt Attorney)
215 N Sanders
Helena MT 59620
Representing: Greg Gianforte, Austin Miles Knudsen, State of Montana
Service Method: eService

Alwyn T. Lansing (Govt Attorney)
215 N. Sanders St.
Helena MT 59620
Representing: Greg Gianforte, Austin Miles Knudsen, State of Montana
Service Method: eService

Thane P. Johnson (Govt Attorney)
215 N SANDERS ST
P.O. Box 201401
HELENA MT 59620-1401
Representing: Greg Gianforte, Austin Miles Knudsen, State of Montana
Service Method: eService

Michael Noonan (Govt Attorney)
215 N SANDERS ST
HELENA MT 59601-4522
Representing: Greg Gianforte, Austin Miles Knudsen, State of Montana

Service Method: eService

Emily Jones (Attorney)
115 North Broadway
Suite 410
Billings MT 59101
Representing: Kerri Seekins-Crowe
Service Method: eService

Murry Warhank (Attorney)
203 North Ewing Street
Helena MT 59601
Representing: Montana League of Cities and Towns
Service Method: eService

Erin Michelle Lyndes (Attorney)
203 North Ewing Street
Helena MT 59601
Representing: Montana League of Cities and Towns
Service Method: eService

Electronically Signed By: Emily Ann Lucas
Dated: 10-15-2025