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MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY

CASEY PERKINS, an individual; SPENCER MCDONALD, an individual; KASANDRA REDDINGTON, an individual; JANE DOE, an individual; JOHN DOE, an individual; and MISSOULA COUNTY, Plaintiffs, vs. 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, and KERRI SEEKINS-CROWE, Intervenor-Defendant.	Cause No. DV 25-282 Hon. Leslie Halligan **BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

(Continued from previous page)

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INTRODUCTION

House Bill 121 ("HB 121" or "the Act") is the latest iteration of the State's relentless assault on transgender and intersex Montanans. It denies transgender people what other Montanans take for granted: the right to use restrooms, changing rooms, and sleeping quarters in public spaces that align with their gender identity. And its restrictive definitions of "sex" make it unclear whether intersex people can use these essential facilities at all.

This Court correctly concluded at the preliminary injunction stage that the Montana Constitution does not countenance this discrimination. Based on a full evidentiary record, it should now grant summary judgment to Plaintiffs—five transgender and intersex Montanans targeted by HB 121 ("individual Plaintiffs") and Missoula County, which operates many facilities impacted by the Act.

First, HB 121 violates the individual Plaintiffs' fundamental right to equal protection. It discriminates based on transgender and intersex status (and, by extension, sex) because it singles out transgender and intersex people for disfavored treatment. Transgender status and sex are suspect classifications triggering heightened scrutiny, which HB 121 cannot survive.

Second, HB 121 violates the individual Plaintiffs' fundamental right to privacy. Because it forces transgender men to use women's facilities and transgender women to use men's facilities, HB 121 will out some Plaintiffs as transgender or

intersex every time they enter a restroom, exposing them to harassment, abuse, and violence. Further, by conditioning access to covered facilities on a person's "gonads" and "genitalia" and authorizing private lawsuits whenever a person is perceived to be using the "wrong" facility, HB 121 makes that person's anatomy, genetics, and medical history a central issue in ensuing court proceedings. Those proceedings, by Defendants' own description, would be profoundly invasive: to determine a person's "sex," Defendants prescribe biopsies, ultrasounds, and blood tests "to find out what gametes they have."

Third, HB 121 violates the individual Plaintiffs' fundamental right to pursue life's basic necessities. Access to restrooms and other sex-separated facilities corresponding to one's gender identity is a necessity, as is the opportunity to pursue employment and education. But HB 121 denies that access to transgender and intersex Montanans, making it difficult, if not impossible, for them to work in public buildings, attend public schools, and otherwise engage in public life.

Fourth, HB 121 violates due process. It is unconstitutionally vague as to regulated entities like Plaintiff Missoula County because it gives them no notice of how to comply with the law while subjecting them to onerous private lawsuits for alleged non-compliance. The Act is also unconstitutionally vague as to intersex people like Plaintiff John Doe because its definitions of "female" and "male"

exclude intersex people entirely, leaving them unable to discern whether they can use any covered facilities.

Discovery has now confirmed that HB 121 is unconstitutional in all these respects. The undisputed facts establish that HB 121 denies transgender and intersex Montanans equal access to essential facilities and compels the disclosure of their deeply private information—without any evidence to suggest that allowing them to use facilities corresponding with their gender identity causes harm. The State also admits that it does not know what regulated entities or intersex people must do to comply with HB 121. And the evidence is unambiguous that instead of advancing women's safety and privacy, HB 121 will only make all Montanans less safe.

Accordingly, Plaintiffs are entitled to summary judgment on all their claims.

BACKGROUND

I. Undisputed Material Facts

A. Gender Identity, Gender Dysphoria, and Intersex Identity

A person's gender identity is their deeply felt, internal sense of belonging to a particular gender, which can differ from the sex they were assigned at birth. *Cross by & through Cross v. State*, 2024 MT 303, ¶ 5, 419 Mont. 290, 560 P.3d 637; Pls.' Statement of Undisputed Facts ("SUF") ¶ 1. Transgender people have a gender identity that does not correspond to their birth-assigned sex, and cisgender people have a gender identity that aligns with their birth-assigned sex. SUF ¶ 2.

The incongruence between a person's gender identity and their birth-assigned sex can cause clinically significant distress or impairment of functioning known as gender dysphoria. *Cross*, ¶ 5; SUF ¶ 4. Gender dysphoria is a serious medical condition that is associated with intense and persistent pain and discomfort from the incongruity between a person's gender identity and their assigned sex. SUF ¶ 4. "[U]ntreated gender dysphoria can lead to significant lifelong distress," including "clinically significant anxiety and depression" and "an increased risk of suicidality." *Cross*, ¶ 7; SUF ¶ 5. Treating gender dysphoria involves bringing a patient's body and gender expression into alignment with their gender identity. SUF ¶ 6. A key aspect of this treatment is "social transition," a process through which transgender people live and become socially recognized in accordance with their gender identity. SUF ¶¶ 7–8. Social transition includes dressing and using names, restrooms, and other sex-separated facilities consistent with a person's gender identity. SUF ¶ 7.

Intersex people are born with reproductive anatomy or other sex traits that do not uniformly correspond with the traits typically relied upon to deem an individual "female" or "male." SUF ¶ 9. Being intersex is a naturally occurring variation in humans and usually does not require any medical treatment. SUF ¶ 10. Although doctors may assign intersex babies a legal sex of "female" or "male," that individual's gender identity may not align with their birth-assigned sex. SUF ¶ 11.

B. House Bill 121

Governor Gianforte signed HB 121 into law on March 27, 2025. HB 121, 2025 Leg., 69th Sess. (Mont. 2025). HB 121 bans transgender and intersex people from using restrooms and other sex-separated facilities corresponding to their gender identity in public spaces across Montana. It requires "covered entities" to "designate each multi-occupancy restroom, changing room, or sleeping quarters for the exclusive use of females or males." HB 121, § 3(1). Those facilities "may be used only by members of that sex." *Id.* § 3(2). "Female" and "male" are defined based on sex traits "present at birth," and are proclaimed to be the only two sexes. *Id.* §§ 2(12), 3(2). These definitions expressly disregard "an individual's psychological, behavioral, social, chosen, or subjective experience of gender." *Id.* § 2(12). They also exclude intersex people, who are born with sex traits that are not uniformly "female" or "male." SUF ¶¶ 9, 12.

The Act's restrictions apply to a sweeping range of public spaces, including schools, offices, libraries, courthouses, state parks, correctional facilities, and private nonprofit domestic violence shelters. HB 121, § 2(3), (9), (10).

For regulated entities, the consequences of alleged non-compliance with HB 121 are drastic. The Act creates a "private cause of action" against a covered entity for any "individual who, while accessing a restroom or changing room designated for use by the individual's sex, encounters another individual of the opposite sex,"

or "who is required by a covered entity to share sleeping quarters with an individual of the opposite sex." *Id.* § 4(1)–(2). Thus, a regulated entity could be sued anytime a person sees someone they perceive to be the "wrong sex" in a restroom, changing room, or sleeping quarters operated by the entity.

The Legislature claims the Act protects women "from acts of abuse, harassment, sexual assault, and violence committed by men." *Id*. § 1(2). But after full discovery, Defendants have produced *no* evidence that denying transgender and intersex people equal access to covered facilities will do anything to protect women: no evidence that safety- or privacy-related offenses have been a problem in Montana facilities, no evidence that transgender or intersex people have ever committed such offenses in Montana, and no evidence that the Act's restrictions will protect women from such offenses. SUF ¶¶ 104–14.

Instead, the undisputed evidence shows that HB 121 was motivated by bare animus against transgender people. Representative Kerri Seekins-Crowe, the bill's primary sponsor, described HB 121 as a "Bill to Protect Montana's Women from Perverted Men who want to Invade Women's Private Spaces," SUF ¶ 37, casting transgender women as "perverts." Representative Seekins-Crowe admits that HB 121 was crafted to target the transgender community. In carrying the bill, she relied upon a book titled "EXPOSING THE GENDER LIE: How to Protect Children and Teens from the Transgender Industry's False Ideology." SUF ¶ 38. What the book

calls "False Ideology" and "the denial of objective reality" is simply the acceptance of transgender identities. SUF ¶ 38. And Representative Seekins-Crowe decried the "social," "political and medical institutions that are pushing the transgender ideology," which, she believes, include "the Montana courts." SUF ¶ 39.

A floor sponsor of HB 121, Senator John Fuller, insinuated that transgender identities are delusions. He said the Act's "definition of biological sex" is about "recognizing reality" and "reality does not pay any attention to wishes and likes and dislikes." SUF ¶ 41. Lieutenant Governor Kristen Juras similarly asserted in a House Judiciary committee hearing that "[a]cknowledging biological realities should not be complicated or controversial," touting HB 121 as part of the Legislature and Governor's "shared record of defending Montanans from the far left's ideological crusade." SUF ¶¶ 40, 43.

Notably, Lieutenant Governor Juras explicitly tied HB 121 to other bills targeting the transgender community that the Gianforte administration had supported in previous sessions, each of which has been found by Montana courts to be unconstitutional or likely unconstitutional. SUF ¶¶ 42–43; *see, e.g.*, *Edwards v. State*, Cause No. DV-23-1026, Ord. on Cross Mots. for Summ. J., Doc. 54 at 2 (Mont. Dist. Ct. Feb. 18, 2025) (law imposing restrictive definitions of "sex," "male," and "female"); *Barrett v. State*, 2024 MT 86, ¶ 50, 416 Mont. 226, 547 P.3d

630 (law restricting transgender women from competing in women's sports); *Cross*, ¶ 57 (law banning gender-affirming care for transgender youth).[1]

C. Plaintiffs

The individual Plaintiffs are five Montanans: Casey Perkins, Spencer McDonald, Kasandra Reddington, and Jane Doe are transgender, and John Doe is intersex. SUF ¶¶ 62–63. Like other Montanans, the individual Plaintiffs rely on spaces regulated by HB 121 for work, education, recreation, and myriad other activities. SUF ¶ 65. They have testified in detail about the significant harms they would suffer if the Act were enforced. *See, e.g.*, SUF ¶¶ 66–67.

For the individual Plaintiffs, the Act would make activities as routine as using the restroom fraught and humiliating. It would "out" the transgender Plaintiffs as transgender every time they use a covered restroom: the Act requires Mr. McDonald, like other transgender men, to use women's restrooms, even though other people are likely to perceive him as a man; and it requires Ms. Perkins, like other transgender women, to use men's restrooms, even though other people are likely to perceive her as a woman. SUF ¶ 66. Being outed, in turn, would expose Plaintiffs to harassment, abuse, and violence. SUF ¶ 66. And Mr. Doe, who was born with "female" XX

[1] Just last week, the State enacted SB 437, which re-imposed substantially the same definitions that this Court held unconstitutional in *Edwards*. SB 437 continues to proclaim that "every individual is either male or female" and "in no case is an individual's sex determined by . . . self-identification." SB 437, 2025 Leg., 69th Sess. (Mont. 2025).

chromosomes but phenotypically expresses as male, does not even know whether he can use *any* covered facilities because the Act's definitions exclude intersex people altogether. SUF ¶¶ 66, 98–100. In short, the Act would make it difficult, dangerous, and humiliating for the individual Plaintiffs to simply exist in public.

The other Plaintiff is Missoula County, which operates 115 public buildings that are "covered entities" regulated by HB 121. SUF ¶ 64. The County can be sued under HB 121, § 4 whenever a person believes someone is using the "wrong" restroom in one of these 115 buildings. The Act thus imposes on the County significant compliance and litigation costs, as well as potentially onerous liability for perceived non-compliance. SUF ¶¶ 89–92.

II. Procedural Background

The individual Plaintiffs filed this lawsuit on March 27, 2025, alleging that HB 121 violates their rights under the Montana Constitution to equal protection, privacy, life's basic necessities, and due process. Compl. for Declaratory and Inj. Relief, Doc. 1. At the same time, they moved for emergency injunctive relief. Pls.' Mot. for TRO and Prelim. Inj., Doc. 7.

Judge Vannatta, to whom this case was originally assigned, issued a temporary restraining order on April 2, 2025, Doc. 11, followed by a preliminary injunction on May 16, Op. and Ord. Granting Pls.' Mot. for Prelim. Inj., Doc. 25 ("PI Op."). In a detailed decision, the Court concluded that Plaintiffs were likely to succeed on the

merits of at least their equal protection and privacy claims. PI Op. at 17–46. The State appealed the preliminary injunction order. Not. of App., Doc. 34. That appeal is pending.

On June 3, 2025, the Court granted Representative Seekins-Crowe's motion to intervene as a Defendant pursuant to § 5-2-107, MCA. Doc. 31. Representative Seekins-Crowe has testified that her interests in this litigation do not differ from the State's interests. SUF ¶ 102.

On July 31, 2025, Plaintiffs filed an amended complaint adding Missoula County as a Plaintiff. Doc. 45. The State and Representative Seekins-Crowe each filed answers to the amended complaint. Docs. 46, 49.

On August 29, 2025, Defendants moved to disqualify Judge Vannatta from this case for cause. Doc. 50. Judge Vannatta concluded that "[t]he 'facts' alleged by the State attempting to show [his] personal bias or prejudice are exceedingly thin." Doc. 58 at 7. But he nevertheless opted to recuse, "[w]ith great reluctance and concern for the future misuse of the disqualification statute," to "preserv[e] the public's confidence in the impartiality of the judiciary." *Id.* at 2, 10. Following Judge Vannatta's recusal, this case was reassigned to this Department. Doc. 63.

The parties subsequently engaged in discovery, which concluded last month. Pending this Court's decision on summary judgment, trial in this matter is scheduled to begin on October 19, 2026. Doc. 97.10.

LEGAL STANDARD

Summary judgment should be granted when there are no "genuine issue[s] as to any material fact" and "the movant is entitled to judgment as a matter of law." Mont. R. Civ. P. 56(c)(3). Once the moving party "demonstrate[s] that no genuine issues of material fact exist," "the burden then shifts to the non-moving party to prove, by more than mere denial and speculation, that a genuine issue does exist." *Gryczan v. State* (1997), 283 Mont. 433, 440, 942 P.2d 112, 116–17 (citation omitted). The non-moving party must "set out specific facts showing a genuine issue for trial." Mont. R. Civ. P. 56(e)(2). "Conclusory statements are insufficient to raise a genuine issue of material fact." *Styren Farms, Inc. v. Roos*, 2011 MT 299, ¶ 10, 363 Mont. 41, 265 P.3d 1230 (citations omitted).

ARGUMENT

No material facts are in dispute. As a matter of law, HB 121 violates the individual Plaintiffs' fundamental rights to equal protection, privacy, and the pursuit of life's basic necessities. HB 121 also violates Missoula County's and John Doe's right to due process. Plaintiffs are therefore entitled to summary judgment on all counts.

I. HB 121 violates Plaintiffs' right to equal protection.

HB 121 targets transgender and intersex people for disfavored treatment without justification and therefore violates the individual Plaintiffs' right to equal protection. The Montana Constitution guarantees that "[n]o person shall be denied

the equal protection of the laws" and that "[t]he dignity of the human being is inviolable." Mont. Const. art. II, § 4. Article II, Section 4 "provides even more individual protection than does the Fourteenth Amendment," *Planned Parenthood of Montana v. State*, 2024 MT 228, ¶ 29, 418 Mont. 253, 557 P.3d 440 ("*Planned Parenthood II*") (citation omitted), especially given that it expressly recognizes the right to individual dignity in a way that "[t]he federal constitution does not," *Walker v. State*, 2003 MT 134, ¶ 73, 316 Mont. 103, 68 P.3d 872.

Montana courts evaluate equal protection claims under "a three-step process: (1) identify the classes involved and determine if they are similarly situated; (2) determine the appropriate level of scrutiny to apply to the challenged legislation; and (3) apply the appropriate level of scrutiny." *Planned Parenthood of Montana v. State*, 2024 MT 178, ¶ 26, 417 Mont. 457, 554 P.3d 153 ("*Planned Parenthood I*") (citation omitted).

At the first step, "[t]he goal of identifying a similarly situated class is to isolate the factor allegedly subject to impermissible discrimination." *Goble v. Mont. State Fund*, 2014 MT 99, ¶ 29, 374 Mont. 453, 325 P.3d 1211. This inquiry focuses on whether a challenged law "treat[s] . . . two groups differently." *Snetsinger v. Mont. Univ. Sys*., 2004 MT 390, ¶ 27, 325 Mont. 148, 104 P.3d 445. Even "an apparently neutral classification may violate equal protection if in reality" it "impose[s] different burdens on different classes of persons." *Id.* ¶ 16 (cleaned up).

At the second step, strict scrutiny applies where the law "infringes upon a fundamental right or discriminates against a suspect class." *Powell v. State Comp. Ins. Fund*, 2000 MT 321, ¶ 17, 302 Mont. 518, 15 P.3d 877. Middle-tier scrutiny applies if the law does not burden a suspect class but affects a non-fundamental constitutional right. *Snetsinger*, ¶ 18. And "where the right at issue is neither fundamental nor warrants middle-tier scrutiny," rational-basis review applies. *Powell*, ¶ 19.

A. The Act discriminates based on transgender status, intersex status, and sex.

The Act requires covered entities to "designate each [covered facility] for the exclusive use of females or males," HB 121, § 3(1), where "female" and "male" are "determined by the biological and genetic indication of male or female," including "genitalia present at birth," *id.* § 2(12). Covered facilities "may be used only by members of" the defined "female" and "male" categories. *Id.* § 3(2). These provisions create three distinct classifications based on transgender status, intersex status, and sex. *See* PI Op. 22 ("[T]he Act adopts a classification which . . . impos[es] restrictions on transgender and intersex people that do not apply to cisgender people.").

1. Transgender status

The first classification analyzes the Act's impact on cisgender people versus transgender people. It is undisputed that, under the Act, cisgender people can use

covered facilities consistent with their gender identity, but transgender people cannot. SUF ¶¶ 20–25; *see* PI Op. 22 ("[C]is . . . individuals are allowed to use [covered facilities] that correspond to their gender identity and transgender/intersex . . . individuals are not.").

Every Montana court to have examined similar laws has agreed that they classify based on transgender status because they impose greater burdens on transgender people. *See, e.g.*, *Edwards*, Cause No. DV-23-1026, at 27–28; *Cross v. State*, Cause No. DV-23-541, 2023 WL 6392607, at *8 (Mont. Dist. Ct. Sept. 27, 2023), *aff'd*, *Cross*, ¶ 57; *Kalarchik v. State*, Cause No. ADV-2024-261, Ord. on Mot. for Prelim. Inj., Doc. 61 at 7–8 (Mont. Dist. Ct. Dec. 16, 2024).

2. Intersex status

The second classification analyzes the Act's impact on intersex people versus non-intersex people. "By declaring as a matter of law that human beings can only be 'exactly' one of the two sexes," HB 121 "explicitly excludes [intersex people] from the definition of human beings." *Edwards*, Cause No. DV-23-1026, at 11. People who fit the Act's definitions of "female" and "male" can access sex-separated facilities without violating the Act. *See* HB 121, § 3(1)–(3). But intersex people, who do not fit those definitions, cannot.

Defendants admit that people born with both male and female sex traits or reproductive anatomy cannot use covered facilities designated for either men or

women. SUF ¶¶ 27, 29, 31, 33, 35; *see* PI Op. 22 (finding the same). For example, "HB 121 prohibits a person born with male sex chromosomes from using covered facilities designated for women," SUF ¶ 27, and a person "born with female sex chromosomes from using" men's facilities, SUF ¶ 29. That means an intersex person with a combination of chromosomes, such as XXY, cannot use any covered facilities. SUF ¶¶ 12, 97–100. The Act therefore discriminates based on intersex status.

3. Sex

Because the Act discriminates based on transgender and intersex status, it also necessarily discriminates based on sex. "[I]t is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 660 (2020); *see Cross*, ¶ 63 (McKinnon, J., concurring) ("[T]ransgender discrimination is, by nature, sex discrimination."). An example makes this clear: A transgender woman born with the characteristics the Act categorizes as "male" cannot use the women's restroom, but a cisgender woman born with "female" characteristics can. SUF ¶¶ 23, 25.

Discrimination based on intersex status is likewise sex discrimination. An intersex person who does not fit into the Act's categories of "male" or "female" cannot access any sex-designated restroom, but a person who fits into those categories can. SUF ¶¶ 24–25, 95–97, 100.

The State acknowledges "the Act classifies on the basis of sex." Appellants' Opening Br. 24 (Mont. S. Ct. Aug. 13, 2025); SUF ¶ 13. It claims, however, that the classification is permissible because "it treats the[] two classes the same." Appellants' Opening Br. 24. That claim is incorrect because the Act "penalizes a person identified as male at birth for traits or actions that it tolerates in an [individual] identified as female at birth." *Bostock*, 590 U.S. at 660; *see* SUF ¶¶ 20–25.

B. The Act's targeting of suspect classes and infringement on fundamental rights independently require application of strict scrutiny.

As this Court has already determined, "[s]trict scrutiny is the appropriate level of scrutiny to apply to HB 121" for two independent reasons. PI Op. 31. First, HB 121 discriminates based on transgender status and sex, which are both suspect classifications. Second, the Act infringes on Plaintiffs' fundamental rights to equal protection, privacy, and basic necessities. *See Montana Env't Info. Ctr. v. Dep't of Env't Quality*, 1999 MT 248, ¶ 63, 296 Mont. 207, 988 P.2d 1236 (a right is "fundamental" if "it is guaranteed by the Declaration of Rights found at Article II" of the Montana Constitution).

1. Transgender status is a suspect classification.

The undisputed facts show that transgender status is a suspect classification. "A suspect class is 'one saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political

powerlessness as to command extraordinary protection" from the law. *In re S.L.M.* (1997), 287 Mont. 23, 33, 951 P.2d 1365, 1371 (citation omitted), *abrogated on other grounds by Planned Parenthood I*, ¶ 21. This Court concluded in granting a preliminary injunction that "[t]ransgender Montanans . . . constitute a suspect class" under this definition. PI Op. 24–27. An even more robust evidentiary record now supports this conclusion, and Defendants have presented no evidence to refute it.

First, transgender people—in Montana and across the country—have suffered a history of purposeful unequal treatment. They have long faced mistreatment, harassment, and violence "when it comes to the most basic elements of life, such as finding a job, having a place to live, accessing medical care, and enjoying the support of family and community." SUF ¶¶ 68–74 (extensive survey finding that transgender people in the United States experience "[p]ervasive" discrimination, "mistreatment, harassment, and violence in every aspect of life"). The individual Plaintiffs in this case are no exception. *See, e.g.*, SUF ¶¶ 58–59.

That discrimination continues today. In Montana, the Legislature and executive branch have repeatedly enacted laws targeting transgender people. SUF ¶ 42 (cataloging laws, including 2023's Senate Bill 99, which banned gender-affirming health care for transgender youth, and Senate Bill 458, which required Montanans to be classified by "exactly two sexes, male and female," as defined by their reproductive capabilities, and imposed definitions of "sex," "male," and

"female" identical to those in HB 121). Each of these laws has been found by courts to be unconstitutional or likely unconstitutional. SUF ¶ 42. For example, this Court found in striking down SB 458 that "the Legislature s[ought] to permit discrimination against a person whose [birth-assigned] sex does not align with their gender identity." *Edwards*, Cause No. DV-23-1026, at 28–29. And a court preliminarily enjoined SB 99 after determining that its "purported purpose" was "disingenuous" and "[t]he legislative record [wa]s replete with animus toward transgender persons." *Cross*, Cause No. DV-23-541, 2023 WL 6392607, at *14, *18–19 (internal quotation marks omitted). The federal government also has a long track record of discriminating against transgender people—an assault that has escalated under the current administration. *See* SUF ¶ 75 (cataloguing slew of executive orders attacking transgender people).

Second, the transgender community suffers a level of political powerlessness that warrants extraordinary legal protection because of its small population and the enduring societal prejudices it faces. *See* SUF ¶ 44 (State admitting that "transgender persons represent a small and discrete group of people within Montana"). "[O]ne would be hard-pressed to identify a class of people more discriminated against historically or otherwise more deserving of the application of heightened scrutiny . . . than transgender people." *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 610–11 (4th Cir. 2020), *as amended* (Aug. 28, 2020) (citation omitted).

Transgender people suffer from disproportionately high rates of poverty, homelessness, and employment discrimination. SUF ¶ 74. Moreover, they are frequently the victims of harassment, outright "physical assault," and "particularly violent" crimes. *Grimm*, 972 F.3d at 612; SUF ¶ 70 (survey finding that in one-year period, 46% of transgender people were verbally harassed, 9% were physically attacked, and 10% were sexually assaulted). They also face barriers to political representation. SUF ¶¶ 72–73.

Accordingly, "transgender status is a suspect class." *Cross*, ¶ 65 (McKinnon, J., concurring); PI Op. 24–27.

2. The Act burdens the fundamental right to equal treatment based on sex, and sex is a suspect classification.

The Act is also subject to strict scrutiny because the right not to be discriminated against based on sex is fundamental and sex is a suspect classification. PI Op. 27–28. Montana's Declaration of Rights expressly provides that the State shall not "discriminate against any person in the exercise of his civil or political rights on account of . . . sex." Mont. Const. art. II, § 4. That means "the right to be free from discrimination based on sex" is a fundamental right. *Cross*, ¶¶ 62–63 (McKinnon, J., concurring); *see Kalarchik*, Cause No. ADV-2024-261, at 10–11 (same); *Cross*, Cause No. DV-23-541, 2023 WL 6392607, at *11 (same).

Moreover, sex is a suspect classification. There is no dispute that "our Nation has had a long and unfortunate history of sex discrimination" stemming from

"archaic and overbroad generalizations about gender" as well as "outmoded notions of the relative capabilities of men and women." *J.E.B. v. Alabama*, 511 U.S. 127, 135–36 (1994) (cleaned up); *see State v. Miller*, 2022 MT 92, ¶ 54, 408 Mont. 316, 510 P.3d 17 (McKinnon, J., concurring) (explaining that discrimination "based on gender stereotypes" has "wreaked injustice in so many spheres of our country's public life" (citation omitted)).

3. The Act burdens the fundamental rights to privacy and to pursue life's basic necessities.

Finally, as explained below, the Act is subject to strict scrutiny for the independent reason that it burdens the right to privacy and the right to pursue life's basic necessities.[2] *See infra* Argument Parts II–III. Both those rights are fundamental. *Gryczan*, 283 Mont. at 449, 942 P.2d at 122 (privacy); *Wadsworth v. State* (1996), 275 Mont. 287, 299, 911 P.2d 1165, 1171–72 (basic necessities).

C. The Act does not survive any level of scrutiny.

To survive strict scrutiny, Defendants must establish that the Act is "narrowly tailored to serve a compelling government interest and only that interest." *Cross*,

[2] Although HB 121 outright violates these fundamental rights, for strict scrutiny to apply, it is enough that the Act merely imposes some burden on the exercise of those rights. *See, e.g.*, *Cross*, ¶ 22 ("We apply strict scrutiny when a fundamental right, such as the right to privacy, is *affected*." (emphasis added)); *Gryczan*, 283 Mont. at 449, 942 P.2d at 122 ("[A]ny legislation *regulating* the exercise of a fundamental right must be reviewed under a strict-scrutiny analysis." (emphasis added)).

¶ 22. This requires showing that the Act "is the least onerous path" to achieve its asserted interest. *Montana Democratic Party v. Jacobsen*, 2024 MT 66, ¶ 75, 416 Mont. 44, 545 P.3d 1074. As this Court held, however, HB 121 cannot survive even rational-basis review because it is not "rationally related to a legitimate government interest." PI Op. 38–40; *see Snetsinger*, ¶ 19. Because the Act cannot satisfy this lesser burden, it necessarily cannot survive the strict scrutiny that applies.

To begin, there is no legitimate state interest justifying the Act, and certainly no compelling interest, because it is rooted in bare animus against transgender people. *See U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973) ("[A] bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest."); *e.g.*, *State v. Noling*, 149 Ohio St. 3d 327, 330, at ¶ 13 (2016) (same); *State v. Limon*, 280 Kan. 275, 290–91 (2005) (same). That is apparent on the face of the Act, which denies recognition of transgender identities by commanding covered entities to disregard "an individual's psychological, behavioral, social, chosen, or subjective experience of gender." HB 121, § 2(12). And statements by HB 121's proponents confirm that the Act is driven by antipathy towards people who do not conform to its restrictive definitions of "sex," *see supra* Background I.B. (Representative Seekins-Crowe describing transgender women as "perverted" and Senator Fuller stating that "reality" does not recognize transgender

identities)—so much so that the Act allows cisgender people to sue for merely having to "encounter[]" transgender people in public spaces, HB 121, § 4.

Defendants' claim that the Act serves to reaffirm "the longstanding meanings" of "sex," "male," and "female," SUF ¶ 101, only underscores the flimsiness of the State's purported interests. Defendants cannot identify any medical or scientific basis for HB 121's restrictive definitions of "sex," "male," and "female." SUF ¶¶ 55–57. Even the State's expert admits that the Act's premise—"there are exactly two sexes, male and female," HB 121, § 2(12)—is wrong, given that "some people may not have a sex" under the Act's definitions. SUF ¶ 95 (Q: "And those individuals can't be, according to your definition of sex, identified as male or female. Correct?" A: "Correct."). The State has no legitimate interest in codifying inaccurate classifications of human beings that "explicitly exclude[]" many Montanans. *Edwards*, Cause No. DV-23-1026, at 11.

Even assuming HB 121 is motivated by a legitimate or compelling interest in protecting women's safety and privacy, it is not narrowly tailored to advance that interest, and in fact does the opposite.

There is no evidence that excluding transgender and intersex people from covered facilities will advance women's safety and privacy at all. As Defendants concede, in passing HB 121, "the Legislature provided no evidence of privacy or safety offenses in covered facilities in Montana," nor evidence that "'transgender or

intersex people have a predisposition toward' privacy or safety offenses." SUF ¶ 105 (quoting State's brief). Indeed, there has *never* been a reported instance of a transgender or intersex person committing a safety or privacy offense in a covered facility in Montana. SUF ¶¶ 104, 108. That is unsurprising. Courts have found that claims that transgender people pose a threat to others simply by using facilities corresponding to their gender identity are "based upon sheer conjecture" and "marked by misconception and prejudice." *Grimm*, 972 F.3d at 614–15 (citation omitted); *Whitaker v. Kenosha Unified Sch. Dist.*, 858 F.3d 1034, 1052 (7th Cir. 2017) (same), *abrogated on other grounds by Kluge v. Brownsburg Comm. Sch. Corp.*, 150 F.4th 792, 810–11 (7th Cir. 2025). And the empirical evidence is overwhelming that ordinances across the country prohibiting discrimination based on gender identity have not affected privacy and safety in public restrooms. SUF ¶ 107 (citing studies).

The purported evidence that the State *does* muster is inapposite. In discovery, when asked for any materials concerning the safety risk posed by transgender people, all Defendants could point to were one blog post by an anonymous author and a California public records request submitted by an unknown person. SUF ¶ 109. Defendants admit that they do not know whether these materials are accurate. SUF ¶ 109. These unverified materials from unidentified sources "are insufficient to raise a genuine issue of material fact." *Styren Farms*, ¶ 10. Ultimately, the State

acknowledges that it "is not aware" of any evidence that HB 121 would be more effective at protecting women than laws that already exist. SUF ¶ 106.

Far from justifying HB 121, the evidence shows that it undermines safety and privacy for all Montanans. The Act requires transgender men who are likely to be perceived as men to use women's restrooms and changing rooms. SUF ¶ 66. This makes using restrooms and changing rooms more fraught for transgender and cisgender people alike. *See, e.g.*, SUF ¶ 58 (Plaintiff McDonald explaining: "I present as a man and if I were to use the women's restroom, it would cause disruption and expose me to harassment and discrimination."). The Act particularly endangers transgender people, who are already disproportionately victimized by harassment and violence in sex-separated spaces. SUF ¶¶ 60–61, 71 (within one-year period, 12% of transgender people were verbally harassed, 1% was physically attacked, and 1% was sexually assaulted when accessing a restroom). Yet HB 121 forcibly outs them every time they use a covered restroom or changing room, effectively painting target signs on their backs. SUF ¶¶ 50, 59. The Legislature gave no consideration to these well-documented harms that the Act would inflict on transgender Montanans. SUF ¶¶ 123, 125–126, 128–129.

Because the Act harms everyone and benefits no one, it is fundamentally illogical and therefore fails rational-basis review.[3] *See Snetsinger*, ¶ 27 (striking down irrational classification on rational-basis review).

As it cannot survive rational-basis review, the Act necessarily fails strict scrutiny and any standard of scrutiny in between. Given the dearth of any evidence that transgender and intersex people have caused harm in covered facilities, Defendants have not met their burden "to *demonstrate* a compelling interest" justifying the Act "by competent evidence." *Wadsworth*, 275 Mont. at 303–04, 911 P.2d at 1174–75 (emphasis in original) (rule failed strict scrutiny where there was no evidence of the problems the rule purported to solve); *Jacobsen*, ¶¶ 102–06 (same). Nor have Defendants established that HB 121 is "the least onerous path that can be taken to achieve the state objective." *Montana Env't Info. Ctr.*, ¶ 61 (citing *Wadsworth*, 275 Mont. at 302, 911 P.2d at 1174). The Legislature did not consider simple, less exclusionary measures for addressing its concerns about privacy and safety, such as installing enclosed restroom stalls. SUF ¶ 36. Moreover, "Montana

[3] Although HB 121 fails even the most deferential version of rational-basis review, lower-tier scrutiny under the Montana Constitution should be more stringent than the federal rational-basis standard given that Article II, Section 4 is more protective than the Fourteenth Amendment and expressly safeguards individual dignity. *See Planned Parenthood II*, ¶ 29; *Walker*, ¶ 73; *e.g.*, *Rodriguez v. Brand W. Dairy*, 2016-NMSC-029, ¶¶ 25, 27 (adopting a heightened rational-basis standard under the state constitution); *Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 7–8 (Iowa 2004) (same); *Baker v. State*, 170 Vt. 194, 203 (1999) (same).

law already criminalizes th[e] behavior" the Act claims to address. *Jacobsen*, ¶ 105; SUF ¶¶ 120–22.

II. HB 121 violates Plaintiffs' right to privacy.

The undisputed facts establish that HB 121 infringes the individual Plaintiffs' right to privacy. "[U]nder Montana's Constitution, the right of individual privacy . . . is fundamental." *Planned Parenthood I*, ¶ 22 (citation omitted). That privacy right is "significantly broader" than under the U.S. Constitution. *Armstrong v. State*, 1999 MT 261, ¶¶ 34, 41, 296 Mont. 361, 989 P.2d 364. "It is, perhaps, one of the most important rights guaranteed to the citizens of this State, and its separate textual protection in our Constitution reflects Montanans' historical abhorrence and distrust of excessive governmental interference in their personal lives." *Planned Parenthood I*, ¶ 22 (citation omitted).

Montana courts analyze privacy claims using a two-part test that asks: "(1) [w]hether the person had a subjective or actual expectation of privacy; and, (2) [w]hether society is willing to recognize that expectation as reasonable." *State v. Nelson* (1997), 283 Mont. 231, 239, 941 P.2d 441, 447. Under this test, HB 121 infringes on Plaintiffs' "autonomy privacy" in "making intimate personal decisions or conducting personal activities" without "intrusion," as well as their "informational privacy," which protects them from "dissemination . . . of [their] sensitive information." *Id.* at 241, 941 P.2d at 448 (citation omitted).

A. The Act violates Plaintiffs' autonomy privacy right to use facilities aligned with their gender identity and to make personal decisions.

It is undisputed that individual Plaintiffs have a subjective expectation of autonomy privacy in their decision to use covered facilities that correspond to their gender identity without intrusion. SUF ¶ 76. And society "recognize[s]" that expectation "as reasonable." PI Op. 45; *see Edwards*, Cause No. DV-23-1026, at 20 (recognizing privacy right in "an individual's ability to self-define and make personal choices concerning their identity"); *Marquez v. State*, Cause No. DV 21-873, 2022 WL 4486283, at *8 (Mont. Dist. Ct. Apr. 21, 2022) (holding that a law likely violates the right to privacy when it "compels Plaintiffs to undergo [gender] surgery they may not want or need").[4]

Furthermore, for Plaintiffs, being able to live in alignment with their gender identity is vital to their wellbeing and a core part of many transgender people's medical treatment for gender dysphoria. SUF ¶¶ 5–8 (Plaintiffs' expert explaining the dangers of leaving gender dysphoria untreated). HB 121 therefore also undermines Plaintiffs' autonomy privacy right to "make medical judgments affecting [their] bodily integrity and health." *Armstrong*, ¶ 39.

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[4] *See also*, *e.g.*, *Hill v. Nat'l Collegiate Athletic Assn.*, 7 Cal. 4th 1, 35 (1994) (right to privacy under state constitution protects "interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference"); *Allegheny Reprod. Health Ctr. v. Pennsylvania Dep't of Hum. Servs.*, 309 A.3d 808, 901 (Pa. 2024) (similar); *Doe v. Dep't of Pub. Safety*, 444 P.3d 116, 127 (Alaska 2019) (similar).

B. The Act violates Plaintiffs' informational privacy right in their transgender and intersex identities and medical information.

Plaintiffs also have a subjective expectation of informational privacy as to their transgender and intersex identities, which implicate their sensitive medical information. SUF ¶ 77. Montana courts have recognized that a "person's transgender identity" is "a profoundly private piece of information in which a transgender person has a reasonable expectation of privacy." *Marquez v. State*, Cause No. DV 21-873, at *5; *see also In re M.T.*, 106 Cal. App. 5th 322, 339–41 (2024) (holding that "[a] transgender person . . . has a privacy interest in concealing their transgender identity" and citing supporting case law from several states). And every person has a reasonable expectation of privacy in their anatomy, genetics, and medical history. *See Nelson*, 283 Mont. at 241, 941 P.2d at 448.

The undisputed evidence shows that HB 121 violates the individual Plaintiffs' right to informational privacy in two principal ways. First, HB 121 compels the disclosure of Plaintiffs' transgender or intersex status. The Act requires transgender men who are likely to be perceived as men to use women's facilities and transgender women who are likely to be perceived as women to use men's facilities. HB 121, § 3(2); *see* SUF ¶ 66. In doing so, the Act "outs" transgender people, stripping them of any meaningful choice about disclosing their transgender status or the intimate details of their gender-affirming medical care. SUF ¶ 50. The same is true for intersex people, whose perceived gender may not align with their birth-assigned sex.

Second, the Act will publicly "out" transgender and intersex people through the enforcement lawsuits it authorizes. Under HB 121, whenever one person sees someone in a restroom or changing room whom they perceive to be the "wrong sex," they can sue. *See* HB 121, § 4. The Act thus effectively invites the public to question individuals' gender identity and sexual anatomy in court filings for all to see. Because the sex of the person alleged to be using the "wrong" facility would be a central issue in the ensuing lawsuit, their anatomy, genetics, and medical history would "necessarily be subject to inquiry." PI Op. 42–43; SUF ¶ 78. Worse still, as described by Defendants, the methods used to determine the person's sex would be deeply invasive—including biopsies and ultrasounds "to find out what gametes they have." SUF ¶ 79.

Since the Act violates Plaintiffs' fundamental right to privacy, it must survive strict scrutiny to comply with the Montana Constitution. For the reasons discussed above, it cannot. *See supra* Argument Part I.C.

III. HB 121 violates Plaintiffs' right to pursue life's basic necessities.

The undisputed facts show that the Act burdens individual Plaintiffs' "inalienable rights … of pursuing life's basic necessities." Mont. Const. art. II, § 3. The Act not only denies Plaintiffs necessary access to restrooms consistent with their gender identity, it also prevents many of them from pursuing employment and education, thus impeding their ability to secure basic necessities.

Access to restrooms and other sex-separated facilities consistent with one's gender identity for purposes of bowel movements, urination, and menstruation care is required to maintain one's health and well-being. It is therefore a basic necessity. *See Grimm*, 972 F.3d at 625 (Wynn, J., concurring) (noting that bathrooms are "basic necessities"); *Whitnack v. Douglas Cnty.*, 16 F.3d 954, 958 (8th Cir. 1994) ("[R]easonably adequate sanitation and the ability to eliminate and dispose of one's bodily wastes . . . are basic identifiable human needs."). The State admits that "access to restroom facilities is a basic necessity for all human beings." SUF ¶ 51.

HB 121 denies this basic necessity by barring Plaintiffs from restrooms that align with their gender identity. SUF ¶¶ 20–23. As a result, Plaintiffs face serious threats to their safety and dignity when seeking to use restrooms. SUF ¶¶ 50, 58–60. The threat to Plaintiff Reddington's health is particularly acute due to a medical condition that sometimes requires her to hastily access a restroom. SUF ¶ 52. For Plaintiffs, being forced to use restrooms inconsistent with their gender identity is so uncomfortable and humiliating that they will forgo spending time in public spaces to avoid it. SUF ¶¶ 53, 67.

Because the Act makes using covered facilities untenable for transgender and intersex people, many of them who work in public buildings would not be able to maintain their jobs and many who attend public schools or universities would not be able to continue their education. *See, e.g.*, SUF ¶ 53. The Act thus further violates

Plaintiffs' constitutional right to secure, through employment and education, "the most basic of life's necessities, such as food, clothing, and shelter," and "other essentials," "including health and medical insurance." *Wadsworth*, 275 Mont. at 299, 911 P.2d at 1172 (recognizing that "the opportunity to pursue employment is . . . necessary to enjoy the right to pursue life's basic necessities").

IV. HB 121 violates Plaintiffs' due process rights.

The undisputed facts demonstrate that HB 121 is unconstitutionally vague as to regulated entities like Missoula County and intersex Montanans like Plaintiff John Doe. Montana's Due Process Clause requires that "[a] statute must be drawn with sufficient clarity and definiteness to inform persons of ordinary intelligence what actions are proscribed." *City of Whitefish v. O'Shaughnessy* (1985), 216 Mont. 433, 440, 704 P.2d 1021, 1025; *see* Mont. Const. art. II, § 17. "A statute is void on its face if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden," and vague as applied if it fails to "provide[] a person with actual notice" or "minimal guidelines to law enforcement" regarding what conduct is forbidden. *State v. Dugan*, 2013 MT 38, ¶ 67, 369 Mont. 39, 303 P.3d 755 (citation and internal quotation marks omitted).

A. HB 121 is unconstitutionally vague because it does not give regulated entities notice of how to comply with the law.

HB 121 is unconstitutionally vague on its face and as applied to Missoula County because it exposes regulated entities to onerous litigation and liability for non-compliance while offering no notice of how to comply.

Under the Act, a regulated entity can be sued every time an individual, "while accessing a restroom or changing room designated for use by the individual's sex, encounters another individual of the opposite sex," where the entity: "(a) provided the other individual permission to use" the facility, or "(b) failed to take reasonable steps to prohibit the other individual from using" the facility. HB 121, § 4(1). But the Act says nothing about what "reasonable steps" regulated entities must take or what it means for them to provide "permission to use" a facility. SUF ¶¶ 80–83. The Act does not specify, for example, whether or how Missoula County must verify the birth-assigned sex of every individual before allowing access to its restrooms.

Regulated entities, including Missoula County, testified that they did not know how to comply with HB 121 when the Legislature was considering the bill. SUF ¶ 88. Missoula County is particularly concerned about the Act's lack of clarity because it may put the County in conflict with federal law, such as the Americans with Disabilities Act, SUF ¶ 91, and other legal obligations, such as the obligation to respect Montanans' right to privacy, *see supra* Argument Part II. Yet the State has

not supplied regulated entities with any guidance on how to comply with HB 121 or how the State intends to enforce it. SUF ¶¶ 85–86.

Even the State and the Act's sponsor admit that they do not know what the "reasonable steps" mandate requires. The State testified it "is not aware" of how a regulated entity should comply with HB 121. SUF ¶ 84 (Q: "How would a covered entity ensure that someone is not entering a restroom designated for someone of the opposite sex?" A: "That's really up to the covered entity. They'd have to decide how to enforce it." . . . Q: "[I]s the State aware of what covered entities would need to do?" A: "The State is not aware."). Representative Seekins-Crowe also cannot define "reasonable steps," and instead "leave[s] it to the court[s] to determine" what "reasonable steps" are required. SUF ¶ 87.

These admissions confirm that the Act "fails to give a person of ordinary intelligence" either "fair notice" or "actual notice" of what "conduct is forbidden." *Dugan* at ¶ 67 (citation and internal quotation marks omitted).

B. HB 121 is unconstitutionally vague because its definitions do not account for intersex people.

HB 121 is also unconstitutionally vague on its face and as applied to John Doe and other intersex Montanans because its definitions of "female" and "male" exclude intersex people entirely, making it unclear whether they can use *any* covered facilities. The Act recognizes "exactly two sexes, male and female," which, supposedly, are unambiguously "determined by . . . biological and genetic

indication[s]." HB 121, § 2(12). But intersex people are born with sex traits or reproductive anatomy that are neither only "male" nor only "female." SUF ¶¶ 9, 12. So the Act "do[es] not accurately define [intersex people's] . . . sex." *Edwards*, Cause No. DV-23-1026, at 20–21 (addressing identical definitions in 2023's SB 458); *see* SUF ¶ 12 (Plaintiffs' expert explaining that "HB 121's definitions do not account for the full range of naturally occurring human biological variation").

As a result, intersex Montanans like John Doe do not know whether HB 121 requires them to use covered facilities designated for men or women—or whether they are allowed to use covered facilities at all. Mr. Doe was born with both male and female sex traits. SUF ¶ 99. The Act requires people with male sex traits to use men's facilities and people with female sex traits to use women's facilities. SUF ¶¶ 26–35. That leaves Mr. Doe in limbo: "As this law is written, I'm not supposed to be [in the men's restroom], but I'm also not supposed to be in the women's restroom, so I don't know where I'm supposed to go." SUF ¶ 100.

The State asserts that the Act's application to intersex people is clear because it provides that "[a]n individual who would otherwise fall within [its definitions of female or male], but for a biological or genetic condition, is [female or male]." HB 121, § 2(4), (7). Appellants' Opening Br. 14. But this provision is itself vague because it neither explains what "biological or genetic condition" means nor how intersex people can determine whether they would be "female" or "male" "but for"

that condition. SUF ¶¶ 16–17, 19. Defendants' own expert testified that some intersex people cannot be categorized as "male" or "female" under HB 121's definitions. SUF ¶ 95; *see Edwards*, Cause No. DV-23-1026, at 5 (State admitting that definitions identical to HB 121's "might not squarely apply" to intersex people.).

The State's concessions are dispositive. Its Rule 30(b)(6) representative stated, "I don't know about intersex people or what bathroom they would use [under HB 121]." SUF ¶ 96. That the State cannot even say how the Act applies to intersex people reflects that it gives ordinary Montanans no "fair" or "actual notice" of how to comply before subjecting them to arbitrary enforcement and covered entities to potentially ruinous liability. *Dugan*, ¶ 67.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant summary judgment for Plaintiffs on all counts; declare HB 121 unconstitutional; and permanently enjoin Defendants, as well as their agents, employees, representatives, and successors, from enforcing HB 121, directly or indirectly.

Dated: April 3, 2026

Respectfully submitted,

By: /s/ *Robin Turner*

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CERTIFICATE OF COMPLIANCE

Pursuant to the Court's order of March 26, 2026, *see* Doc. 107, the undersigned certifies that this brief was prepared using a proportionally spaced typeface of 14 points and does not exceed 35 pages in length, excluding the brief's title page, table of contents, and certificate of compliance.

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Appearances continued on next page

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

CASEY PERKINS, an individual; SPENCER MCDONALD, an individual; KASANDRA REDDINGTON, an individual; JANE DOE, an individual; JOHN DOE, an individual; and MISSOULA COUNTY, Plaintiffs, vs. 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, and KERRI SEEKINS-CROWE, Intervenor-Defendant.	Dept. No. 1 Hon. Leslie Halligan DV-32-2025-282 **DECLARATION OF ROBIN TURNER**

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DECLARATION

I, Robin Turner, submit the following Declaration:

1. I submit this declaration in support of Plaintiffs' Motion for Summary Judgment.
2. I am over eighteen years of age and am competent to make this Declaration.
3. I am Montana Staff Attorney at Legal Voice, and counsel to the Plaintiffs in the above-captioned case.
4. Attached to this filing are Exhibits 1-32.
    a. Attached as Exhibit 12 is a true and correct copy of discovery documents produced by Plaintiff John Doe.
    b. Attached as Exhibit 19 is a true and correct copy of discovery documents produced by Intervenor-Defendant Kerri Seekins-Crowe.
    c. Attached as Exhibit 20 is a true and correct copy of discovery documents produced by Intervenor-Defendant Kerri Seekins-Crowe.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 3rd day of April, 2026, in Missoula, Montana.

/s/ Robin Turner
Robin Turner
Counsel for Plaintiffs

EXHIBIT 1

AN ACT PROVIDING FOR PRIVACY IN CERTAIN RESTROOMS, CHANGING ROOMS, AND SLEEPING QUARTERS; REQUIRING THAT COVERED ENTITIES DESIGNATE MULTI-OCCUPANCY RESTROOMS, CHANGING ROOMS, AND SLEEPING QUARTERS FOR THE EXCLUSIVE USE OF MALES OR FEMALES; REQUIRING THAT INDIVIDUALS USE RESTROOMS, CHANGING ROOMS, AND SLEEPING QUARTERS DESIGNATED FOR THEIR SEX; PROVIDING DEFINITIONS; PROVIDING EXCEPTIONS; PROVIDING REMEDIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Purpose. The purposes of [sections 1 through 4] are to:

(1) reaffirm the longstanding meanings of the terms "sex", "male", and "female" in law; and

(2) preserve women's restrooms, changing rooms, and sleeping quarters for women in facilities where women have traditionally been afforded privacy and safety from acts of abuse, harassment, sexual assault, and violence committed by men.

Section 2. Definitions. For the purposes of [sections 1 through 4], the following definitions apply:

(1) "Changing room" means a room or area in which an individual may be in a state of undress in the presence of others, including a locker room or shower room.

(2) "Correctional center" means a facility that houses individuals charged with or convicted of a criminal offense and that is designed, constructed, or operated by the department of corrections.

(3) "Covered entity" means a correctional center, a juvenile detention facility, a local domestic violence program, a public building, or a public school.

(4) "Female" means a member of the human species who, under normal development, has XX chromosomes and produces or would produce relatively large, relatively immobile gametes, or eggs, during her

life cycle and has a reproductive and endocrine system oriented around the production of those gametes. An individual who would otherwise fall within this definition, but for a biological or genetic condition, is female.

(5) "Juvenile detention facility" means a short-term detention center, a youth detention facility, including a regional detention facility, or a secure detention facility that is under contract with the state or a subdivision of the state.

(6) "Local domestic violence program" means a shelter or safe home for victims of domestic violence that is funded by the Family Violence Prevention and Services Act grant program established in 44-7-401.

(7) "Male" means a member of the human species who, under normal development, has XY chromosomes and produces or would produce small, mobile gametes, or sperm, during his life cycle and has a reproductive and endocrine system oriented around the production of those gametes. An individual who would otherwise fall within this definition, but for a biological or genetic condition, is male.

(8) "Multi-occupancy" means a space that is designed for use by multiple individuals simultaneously.

(9) "Public building" means a building that is owned or leased by a public agency as defined in 18-1-101 and that is open to the public, including but not limited to:

(a) a building that is used for educational, office, or institutional purposes; or

(b) a library, museum, school, hospital, auditorium, dormitory, or university building.

(10) "Public school" means a noncharter public school or a public charter school as those terms are defined in 20-6-803.

(11) "Restroom" means a room that includes one or more toilets or urinals.

(12) "Sex" means the organization of the body parts and gametes for reproduction in human beings and other organisms. In human beings, there are exactly two sexes, male and female, with two corresponding types of gametes. The sexes are determined by the biological and genetic indication of male or female, including sex chromosomes, naturally occurring sex chromosomes, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an individual's psychological, behavioral, social, chosen, or subjective experience of gender.

(13) "Sleeping quarters" means a room with one or more beds and in which more than one

individual is housed overnight.

Section 3. Safety and privacy in covered entities. (1) A covered entity shall designate each multi-occupancy restroom, changing room, or sleeping quarters for the exclusive use of females or males.

(2) A restroom, changing room, or sleeping quarters within a covered entity that is designated for females or males may be used only by members of that sex. Except as provided in subsection (4), an individual may not enter a restroom, changing room, or sleeping quarters that is designated for females or males unless the individual is a member of the designated sex.

(3) A covered entity shall take reasonable steps to provide individuals with privacy from members of the opposite sex in designated restrooms, changing rooms, and sleeping quarters.

(4) This section does not apply to an individual who enters a restroom, changing room, or sleeping quarters designated for the opposite sex:

(a) to perform custodial services or maintenance;

(b) to render medical assistance;

(c) to render law enforcement assistance; or

(d) to provide services or render aid during a natural disaster or declared emergency or if necessary to prevent a serious threat to good order and safety.

(5) (a) For any activity or event authorized by a public school during which students share sleeping quarters, a student may not be required to share sleeping quarters with a member of the opposite sex unless the other individual is a member of the student's family, such as a parent, guardian, sibling, or grandparent.

(b) In any other facility or setting in a public school where an individual may be in a state of undress in the presence of others, school personnel shall provide separate, private areas designated for use by individuals based on their sex. Except as provided in subsection (4), an individual may not enter a private area unless the individual is a member of the designated sex.

(6) This section may not be construed to prohibit a covered entity from:

(a) adopting policies necessary to accommodate individuals protected under the Americans with Disabilities Act of 1990 or young children or elderly persons in need of assistance;

(b) establishing single-occupancy restrooms, changing rooms, or sleeping quarters or family

restrooms, changing rooms, or sleeping quarters; or

(c) redesignating a multi-occupancy restroom, changing room, or sleeping quarters designated for exclusive use by one sex to a designation for exclusive use by the opposite sex.

Section 4. Remedies. (1) An individual who, while accessing a restroom or changing room designated for use by the individual's sex, encounters another individual of the opposite sex in the restroom or changing room has a private cause of action for declaratory and injunctive relief, nominal damages, and any other appropriate relief against the covered entity that:

(a) provided the other individual permission to use a restroom or changing room designated for the opposite sex; or

(b) failed to take reasonable steps to prohibit the other individual from using the restroom or changing room designated for the opposite sex.

(2) An individual who is required by a covered entity to share sleeping quarters with an individual of the opposite sex has a private cause of action for declaratory and injunctive relief, nominal damages, and any other appropriate relief against the covered entity.

(3) (a) All civil actions brought pursuant to this section must be initiated within 2 years after the violation occurred.

(b) An individual aggrieved under this section who prevails in court may recover reasonable attorney fees and costs from the offending covered entity.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as a new part in Title 50, chapter 4, and the provisions of Title 50, chapter 4, apply to [sections 1 through 4].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,

HB 121, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____day

of_____, 2025.

_____

President of the Senate

Signed this _____day

of_____, 2025.

HOUSE BILL NO. 121

INTRODUCED BY K. SEEKINS-CROWE, E. BYRNE, L. DEMING, N. DURAM, S. FITZPATRICK, J. FULLER, J. GILLETTE, S. GIST, G. HERTZ, S. KELLY, S. KLAKKEN, G. KMETZ, B. LER, K. LOVE, S. MANESS, R. MARSHALL, T. MCGILLVRAY, B. MITCHELL, F. NAVE, G. OBLANDER, G. OVERSTREET, A. REGIER, M. REGIER, V. RICCI, J. SCHILLINGER, C. SCHOMER, L. SCHUBERT, T. TEZAK, M. THIEL, Z. WIRTH, C. GLIMM, D. LENZ, M. NOLAND, B. USHER, J. HINKLE

AN ACT PROVIDING FOR PRIVACY IN CERTAIN RESTROOMS, CHANGING ROOMS, AND SLEEPING QUARTERS; REQUIRING THAT COVERED ENTITIES DESIGNATE MULTI-OCCUPANCY RESTROOMS, CHANGING ROOMS, AND SLEEPING QUARTERS FOR THE EXCLUSIVE USE OF MALES OR FEMALES; REQUIRING THAT INDIVIDUALS USE RESTROOMS, CHANGING ROOMS, AND SLEEPING QUARTERS DESIGNATED FOR THEIR SEX; PROVIDING DEFINITIONS; PROVIDING EXCEPTIONS; PROVIDING REMEDIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."