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8 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

9 CASEY PERKINS, et al.,
10 Plaintiffs,
11
12 v.
13 STATE OF MONTANA, et al.,
14 Defendants,
15 and
16 KERRI SEEKINS-CROWE,
17 Intervenor-Defendant.

Department No. 1
Cause No. DV 25–282
Judge Leslie Halligan

**BRIEF IN SUPPORT
OF INTERVENOR’S
MONT. R. CIV. P. 56 MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

18
19 **INTRODUCTION**

20 This action challenges Montana House Bill (“HB”) 121 (2025), which
21 requires covered entities—public buildings, public schools, correctional facilities,
22 juvenile detention facilities, and domestic violence programs—to designate multi-
23 occupancy restrooms, changing rooms, and sleeping quarters for the exclusive use
24 of males or females as defined by biological sex, and to require individuals to use
facilities corresponding to their biological sex. HB 121’s stated purposes are to

1 reaffirm the longstanding biological meaning of “sex” in law and to preserve sex-
2 designated intimate spaces where women have historically been afforded privacy
3 and protection from abuse, harassment, and sexual assault.

4 Count I of Plaintiffs’ Amended Complaint asserts that HB 121 violates the
5 equal protection guarantee of Article II, Section 4 of the Montana Constitution on
6 the theory that HB121 discriminates against transgender individuals as a protected
7 class, as well as on the basis of sex. Count IV contends that HB 121 is
8 unconstitutionally vague. Both legal theories fail as a matter of law.

9 Transgender status is not a suspect or quasi-suspect class under Montana law:
10 the Montana Legislature has repeatedly declined to extend protected-class status to
11 transgender individuals; the Montana Supreme Court and the U.S. Supreme Court
12 have never recognized such a classification; and the fundamental doctrine of judicial
13 restraint bars this Court from creating new constitutional categories by judicial fiat.
14 Moreover, HB 121 applies identically to males and females, and therefore does not
15 discriminate on the basis of sex. As such, rational basis review is the plainly
16 applicable standard, and HB 121 easily satisfies it.

17 Additionally, HB 121 is not unconstitutionally vague and does not violate
18 Montanans’ constitutional due process rights on that basis. HB 121 contemplates,
19 and provides for, unique biological and genetic conditions and is not
20 unconstitutionally vague insofar as it pertains to intersex people. HB 121 is also not
21 unconstitutionally vague on its face or as applied to Missoula County because it
22 provides covered entities with sufficient notice of what it requires and prohibits.
23 Therefore, Intervenor-Defendant Representative Kerri Seekins-Crowe
24 (“Intervenor”) respectfully requests that this Court enter partial summary judgment
25 dismissing Counts I and IV of Plaintiffs’ Amended Complaint.

1 disabilities, and family members of opposite-sex minors in school settings. (*Id.* at §
2 3(4)–(6).) And it expressly permits covered entities to establish single-occupancy or
3 family restrooms and to redesignate facilities. (*Id.* at § 3(6)(b)–(c).)

4 John Doe was identified as a male at birth. (Dep. John Doe, 10:2–24 (Feb. 4,
5 2026), relevant excerpts attached as **Exhibit A**; *see also* Decl. John Doe in Support
6 of Plaintiffs’ Mot. for Prelim. Inj. and Temp. Restraining Or., ¶ 4, attached as
7 **Exhibit B**.) John Doe was born with a penis and scrotum but has XX chromosomes.
8 (Ex. A at 9:5–16; Ex B at ¶¶ 4–5.) John Doe has 46 XX SRY-positive also known
9 as de la Chapelle syndrome. (*Id.* at 15:23–16:1; Ex. B ¶¶ 4–5.) John Doe has a penis
10 and testes but lacks the ability to produce sperm. (*Id.* at 15:19–22.) John Doe does
11 not have ambiguous external genitalia and has not been diagnosed with ambiguous
12 internal genitalia. (*Id.* at 9:19–10:1.) John Doe identifies as a demi-male. (*Id.* at
13 23:6–13; Ex. B at ¶ 9.) John Doe has historically used restrooms and changing rooms
14 designated for men. (*Id.* at 33:3–18; Ex. B at ¶¶ 10, 14, 19, 25.)

15 HB 121 requires “covered entities” to “designate each multioccupancy
16 restroom, changing room, or sleeping quarters for the exclusive use of females or
17 males” and “take reasonable steps to provide individuals with privacy from members
18 of the opposite sex in designated restrooms, changing rooms, and sleeping quarters.
19 (Doc. 45 at Ex. A §§ 3(1), 3(3).) HB 121 expressly authorizes covered entities to
20 adopt policies necessary to accommodate individuals protected under the Americans
21 with Disabilities Act of 1990 or young children or elderly persons in need of
22 assistance; establish single-occupancy restrooms, changing rooms, or sleeping
23 quarters or family restrooms, changing rooms, or sleeping quarters; and redesignate
24 multi-occupancy restrooms, changing rooms, or sleeping quarters designated for
25 exclusive use by one sex to a designation for exclusive use by the opposite sex. (*Id.*
at Ex. A § 3(6).)

1 A covered entity under HB 121 is potentially liable via a private cause of
2 action for providing an individual with permission to use a restroom or changing
3 room designated for the opposite sex, failing to take reasonable steps to prohibit the
4 other individual from using the restroom or changing room designated for the
5 opposite sex, or requiring an individual to share sleeping quarters with an individual
6 of the opposite sex. (*Id.* at Ex. A §§ 4(1), 4(2).) Christian Lounsbury is the Chief
7 Administrative Officer for Missoula County. He is an appointed official that serves
8 as the counsel for the Board of County Commissioners to enact policies adopted by
9 the Board of County Commissioners and then provides feedback through
10 administrative departments to the Board of County Commissioners. He also
11 formulates Missoula County’s legislative agenda and policies as well. (Dep.
12 Christian Lounsbury, 10:14–11:23 (Feb. 26, 2026), relevant excerpts attached as
13 **Exhibit C.**) Mr. Lounsbury acknowledges that Missoula County’s potential
14 noncompliance with applicable restroom laws, including HB 121, could potentially
15 be remedied by simply installing a new single-use restroom. (*Id.* at 12:7–14:5.)
16 Indeed, several covered entities in Missoula County already have single-use
17 restrooms. (*Id.* at 42:9–43:7.)

ARGUMENT

17 Summary judgment is proper when “there is an absence of genuine issues of
18 material fact and whether the moving party is entitled to judgment as a matter of
19 law.” *Satterlee v. Lumberman’s Mut. Cas. Co.*, 2009 MT 368, ¶ 9, 353 Mont. 265,
20 222 P.3d 566 (citation omitted); *see also* Mont. R. Civ. P. 56(c)(3). “The
21 constitutionality of a legislative enactment is prima facie presumed, and every
22 intendment in its favor will be presumed, unless its unconstitutionality appears
23 beyond a reasonable doubt. The question of constitutionality is not whether it is
24 possible to condemn, but whether it is possible to uphold the legislative action which
25 will not be declared invalid unless it conflicts with the constitution, in the judgment

1 of the court, beyond a reasonable doubt.” *Id.* at ¶ 10 (quotation omitted). The party
2 challenging the constitutionality of a statute bears the burden of proving the statute
3 unconstitutional beyond a reasonable doubt, and, if any doubt exists, it must be
4 resolved in favor of the statute. *Id.* (citations omitted).

5 **I. SUMMARY JUDGMENT ON COUNT I IS APPROPRIATE BECAUSE**
6 **HB 121 DOES NOT VIOLATE MONTANA’S GUARANTEES OF**
7 **EQUAL PROTECTION.**

8 Article II, Section 4 of the Montana Constitution provides: “The dignity of the
9 human being is inviolable. No person shall be denied the equal protection of the
10 laws.” *See also Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 15, 325 Mont. 148,
11 104 P.3d 445. This provision embodies “a fundamental principle of fairness: that the
12 law must treat similarly-situated individuals in a similar manner.” *Id.* (citing
13 *McDermott v. Mont. Dept. of Corrections*, 2001 MT 134, ¶ 30, 305 Mont. 462, 29
14 P.3d 992. The threshold question is to determine whether the classes involved are
15 similarly situated. *Id.* at ¶ 16. Next, Montana courts determine the appropriate level
16 of scrutiny. *Id.* at ¶ 17. Laws touching suspect classes or fundamental rights receive
17 strict scrutiny; laws touching quasi-suspect classes receive intermediate scrutiny; all
18 other laws receive rational basis review. *Id.* at ¶¶ 17–19. HB 121 does not violate
19 Montana’s equal protection doctrine because transgender status is not a suspect class
20 and because it survives rational basis review.

21 **A. TRANSGENDER STATUS IS NOT A SUSPECT CLASS.**

22 **1. The Montana Legislature and the Montana Supreme Court**
23 **Have Deliberately Declined To Designate Transgender**
24 **Status As A Protected Class.**

25 In Montana, the Legislature has primary responsibility for defining the scope
of anti-discrimination protections. *See Mont. Const. art. V, § 1.* The Montana Human
Rights Act (“MHRA”), Mont. Code Ann. § 49-2-101 *et seq.*, is the comprehensive

1 framework establishing protected categories for purposes of employment, housing,
2 and public accommodations. The MHRA’s enumerated protected classes include
3 race, color, national origin, creed, religion, age, physical or mental disability, marital
4 status, and sex. *Mont. Code Ann.* § 49-2-303(1). The Legislature has historically
5 repeatedly considered—and declined to pass—bills that would have added gender
6 identity or sexual orientation to the MHRA’s protected categories.

7 This pattern of legislative decision-making reflects a considered policy
8 judgment: the Montana Legislature has assessed the question of extending protected-
9 class treatment to transgender individuals and has declined to do so through the
10 democratic process. Courts are not free to override that judgment by constructing
11 new constitutional categories from the bench. *See Mont. Democratic Party v.*
12 *Jacobsen*, 2024 MT 66, ¶ 171, 416 Mont. 44, 545 P.3d 1074 (Sandefur, J.,
13 dissenting) (citing *Cutone v. Anaconda Deer Lodge*, 187 Mont. 515, 524, 610 P.2d
14 691, 697 (1980) (this Court is not “a super-legislature” and thus generally has no
15 authority to overturn non-arbitrary public policy determinations of the Legislature
16 within the bounds of its constitutional power)). The Legislature’s repeated rejection
17 of transgender status as a suspect class is not a constitutional gap to be filled by
18 judicial expansion—it is a deliberate democratic choice entitled to deference.

19 Notably, the Montana Supreme Court has thus far afforded that deference.
20 The Court has decided equal protection cases involving the full spectrum of social
21 and civil rights questions over its history, but it has never held that transgender status
22 constitutes a suspect or quasi-suspect class under Montana’s Constitution. Judicial
23 restraint principles counsel strongly against a state district court unilaterally
24 expanding constitutional protections beyond what Montana’s highest court has
25 endorsed.

1 **2. The U.S. Supreme Court Has Declined To Recognize**
2 **Transgender Status As A Suspect Class, And Its Reasoning**
3 **Is Compelling Here.**

4 In *United States v. Skrametti*, 605 U.S. 495 (2025), the United States Supreme
5 Court considered a constitutional challenge to a Tennessee law that restricted
6 gender-transition medical treatments for minors. The plaintiffs in *Skrametti*, like the
7 Plaintiffs here, argued that the challenged law discriminated based on sex and/or
8 transgender status in violation of the Equal Protection Clause. The *Skrametti* majority
9 rejected both theories and upheld the law under rational basis review. *Id.* at 522–23.
10 The Court held that that law did not discriminate based on sex because the law
11 applied symmetrically to both sexes: neither natal males nor natal females could
12 obtain cross-sex hormones for excluded purposes. *Id.* at 519–22 (“[The law] divides
13 minors into two groups: those who might seek puberty blockers or hormones to treat
14 the excluded diagnoses, and those who might seek puberty blockers or hormones to
15 treat other conditions. Because only transgender individuals seek puberty blockers
16 and hormones for the excluded diagnoses, the first group includes only transgender
17 individuals; the second group, in contrast, encompasses both transgender and non-
18 transgender individuals.”) The Court declined to resolve whether transgender status
19 constitutes a suspect class. *Id.* at 517–19.

20 Justice Barrett, in her concurrence, explained why the creation of new suspect
21 class is extremely rare. *Id.* at 549 (Barrett, J., concurring). After reciting the “strict”
22 legal test, Justice Barrett listed numerous vulnerable groups who have been unable
23 to satisfy it: the mentally disabled, the elderly, the poor. *Id.* (citations omitted). “Our
24 restraint reflects the principle that ‘[w]hen social or economic legislation is at issue,
25 the Equal Protection Clause allows the States wide latitude, and the Constitution
 presumes that even improvident decisions will eventually be rectified by the
 democratic processes.’” *Id.* (citation omitted).

1 “Beyond the treatment of gender dysphoria, transgender status implicates
2 several other areas of legitimate regulatory policy—ranging from access to
3 restrooms to eligibility for boys’ and girls’ sports teams. If laws that classify based
4 on transgender status necessarily trigger heightened scrutiny, then the courts will
5 inevitably be in the business of ‘closely scrutiniz[ing] legislative choices’ in all these
6 domains.” *Id.* at 553 (Barrett, J., concurring) (citation omitted). Legislatures have
7 “many valid reasons to make policy in these areas, and so long as a statute is a
8 rational means of pursuing a legitimate end,” equal protection is satisfied. *Id.*

9 The *Skrmetti* case is particularly instructive for this case. Although applying
10 the federal equal protection doctrine, its rationale supports the same conclusion
11 under Montana’s constitutional equal protection doctrine. Montana’s provision—
12 “No person shall be denied the equal protection of the laws”—does not enumerate
13 specific protected categories. It is therefore within the constitutional prerogative of
14 Montana’s law and policy makers to determine which classes receive heightened
15 protection. Unless an individual law is “inexplicable by anything but animus,” which
16 is not the case with HB 121, it should receive legislative deference if it “is a rational
17 means of pursuing a legitimate end[.]” *See id.* (quotation omitted).

18 **3. Transgender Persons Are Not Similarly Situated To Non- 19 Transgender Persons.**

20 Transgender identity is constitutively defined by a relationship between
21 gender identity and biological sex—a relationship that simply doesn’t exist for non-
22 transgender people in the same way. A non-transgender individual’s gender identity
23 aligns with his or her biological sex; a transgender person’s does not. *See Skrmetti*,
24 605 U.S. at 501–502. The transgender/non-transgender distinction tracks a reported
25 internal psychological state—gender identity—that is a genuinely different
characteristic from natal sex. The two attributes are not the same thing, any more
than national origin and ethnicity are the same thing, even though they often overlap.

1 The groups aren't similarly situated not because of prejudice, but because the
2 defining characteristic of one group is a condition that the other group, by definition,
3 doesn't have. Stated another way, the groups are differently situated not because of
4 arbitrary line-drawing but because the characteristic at issue—gender
5 incongruence—is one that, by definition, only one group has. Plaintiffs' attempt to
6 bundle these two distinct groups together for purposes of equal protection therefore
7 fails because they simply are not similarly situated.

8 **B. HB 121 DOES NOT DISCRIMINATE ON THE BASIS OF SEX.**

9 Mere reference to sex is not sufficient to trigger heightened scrutiny. *Skrmetti*,
10 605 U.S. at 560–61. The *Skrmetti* Court found that the law at issue in that case did
11 not discriminate on the basis of sex because, although the “scheme certainly refers
12 to sex and may be seen as indirectly related to sex,” it was “clearly not the sort of
13 discrimination between males and females that our cases have treated as sex
14 discrimination.” *Id.* at 562–63. “It does not lay down one rule for males and another
15 for females.” *Id.* at 563. The same can be said for HB 121. Neither males nor females
16 can use a private space in a covered facility that does not correspond to their natal
17 sex. The law applies equally to both sexes, just as the law in *Skrmetti* did.

18 Plaintiffs' reliance on *Bostock v. Clayton County*, 590 U.S. 644 (2020) (Doc.
19 45 at ¶ 137), is misplaced. The *Bostock* Court took great care to narrowly limit its
20 holding, explicitly stating:

21 “The employers worry that our decision will sweep beyond Title VII to
22 other federal or state laws that prohibit sex discrimination. And, under
23 Title VII itself, they say sex-segregated bathrooms, locker rooms, and
24 dress codes will prove unsustainable after our decision today. But none
25 of these other laws are before us; we have not had the benefit of
adversarial testing about the meaning of their terms, and we do not
prejudge any such question today. Under Title VII, too, we do not
purport to address bathrooms, locker rooms, or anything else of the
kind.”

1 *Id.* at 681. By its own express language, *Bostock* does not apply to HB 121 or laws
2 like it.

3 HB 121 does not discriminate on the basis of sex because it imposes identical
4 obligations on males and females. It requires every individual—regardless of sex—
5 to use the multi-occupancy restroom, changing room, or sleeping quarters designated
6 for their biological sex. (Doc. 45 at Ex. A, § 3(2).) A biological female is required
7 to use female-designated facilities; a biological male is required to use male-
8 designated facilities. Neither sex is burdened more than the other, neither sex is
9 singled out for restriction, and neither sex receives a benefit denied to the other.

10 Plaintiffs fail the first test of the equal protection doctrine—they cannot show
11 that they are part of a suspect class that is entitled to heightened protection.
12 Transgender status is not a protected class under Montana law. Nor does HB 121
13 discriminate based on sex. The relevant variable in HB 121 is not which sex a person
14 is, but whether a person uses the facility designated for their sex. Because no member
15 of either sex is treated differently from a member of the other sex in the same
16 circumstances, HB 121 is sex-neutral on its face and in its operation, and Plaintiffs’
17 sex-discrimination theory therefore fails as a matter of law. As such, the applicable
18 standard of review is rational basis review.

19 **C. RATIONAL BASIS IS THE APPLICABLE STANDARD OF REVIEW AND
20 HB 121 EASILY SATISFIES IT.**

21 Under rational basis review, a law is constitutional if it is rationally related to
22 a legitimate governmental interest. *Snetsinger*, ¶ 19 (citing *McDermott*, ¶ 32). HB
23 121’s stated purpose is: “to reaffirm the biological meaning of sex in law, and to
24 preserve women’s restrooms, changing rooms, and sleeping quarters in facilities
25 where women have traditionally been afforded privacy and safety from acts of abuse,
harassment, sexual assault, and violence committed by men.” This is precisely the

1 kind of policy decision the Legislature has the constitutional authority to enact.
2 Protection of women is a classic legitimate governmental interest.

3 The State has a legitimate—even compelling—interest in protecting women’s
4 privacy in intimate settings where they are vulnerable—restrooms, locker rooms,
5 changing rooms, and sleeping quarters. Montana’s Constitution expressly protects
6 privacy as a fundamental right. Mont. Const. art. II, § 10. The Montana Supreme
7 Court has recognized that the right to privacy is “significantly broader” under the
8 Montana Constitution than under the federal constitution, protecting Montanans’
9 reasonable expectations of privacy in contexts involving bodily exposure and
10 intimate functions. *Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364.
11 Montana’s privacy protections are strong enough to cover women and girls from
12 exposure to biological males in intimate settings—a practice that human society has
13 normatively practiced for centuries. HB 121 directly advances this privacy interest
14 by ensuring that sex-designated facilities remain exclusive to the designated sex.

15 HB 121’s approach is rationally connected to its stated interests. Indeed, it
16 reinforces societal norms, ensuring that multi-occupancy intimate facilities in
17 covered entities are sex-designated and restricted to the designated sex. As one legal
18 commentator has noted:

19 Indeed, far from being an instance of sex discrimination, preventing
20 males from entering women-only private facilities is usually viewed as
21 being required by equal concern and regard for women. Justice Ruth
22 Bader Ginsburg took this point for granted in her majority opinion in
23 *United States v. Virginia* when she explained that, for the all-male
24 Virginia Military Institute to become coed, it “would undoubtedly
25 require alterations necessary to afford members of each sex privacy
from the other sex in living arrangements.” Moreover, in 1975, when
critics argued that the Equal Rights Amendment would require unisex
intimate facilities, then-Professor Ruth Bader Ginsburg explained that
a ban on sex discrimination would not require such an outcome:
“Separate places to disrobe, sleep, perform personal bodily functions
are permitted, in some situations required, by regard for individual

1 privacy.” An employer who allowed males to enter private women-only
2 facilities could expect a Title VII lawsuit asserting it fostered a hostile
work environment for women by allowing their privacy to be violated.

3 Ryan T. Anderson, *The Supreme Court’s Mistaken and Misguided Sex*
4 *Discrimination Ruling*, Public Discourse, The Journal for the Witherspoon Institute,
5 Jun. 16, 2020, available at <https://www.thepublicdiscourse.com/2020/06/65024/>.

6 HB 121’s definition of sex is precise and biologically grounded, while also
7 allowing for genetic abnormalities. The list of covered entities is not arbitrary—it
8 targets exactly the settings where privacy, safety, and vulnerability concerns are
9 most acute: shelters, schools, detention facilities, and public buildings. The
10 exception provisions ensure that legitimate custodial, medical, and emergency
11 functions are not disrupted. Nor is HB 121 the product of bare animus. HB 121 is
12 not so disconnected from any legitimate purpose that the only plausible explanation
13 is hostility to transgender persons. It is narrowly drawn to address specific, identified
14 settings. It regulates conduct (use of facilities) rather than status (being transgender).
15 It includes detailed exceptions. It is expressly grounded in compelling governmental
16 purposes—privacy, safety, protection of vulnerable populations, and compassion for
those at greatest risk.

17 In short, rational basis review is satisfied. The Montana Legislature rationally
18 selected the covered entities most likely to present concerns, adopted a biologically
19 grounded definition of sex, included appropriate exceptions, and provided private
20 rights of action for enforcement. That legislative scheme reflects careful design, not
21 arbitrary action. Because HB 121 easily passes rational basis review, summary
22 judgment on Count I of Plaintiffs’ Amended Complaint is appropriate.

1 **II. PARTIAL SUMMARY JUDGMENT ON COUNT IV IS PROPER**
2 **BECAUSE HB 121 IS NOT UNCONSTITUTIONALLY VAGUE.**

3 Article II, Section 17 of the Montana Constitution provides that no “person shall
4 be deprived of life, liberty, or property without due process of law.” Mont. Const.
5 art. II, § 17. The Due Process Clause requires that a “statute must be drawn with
6 sufficient clarity and definiteness to inform persons of ordinary intelligence what
7 actions are proscribed.” *City of Whitefish v. O’Shaughnessy*, 216 Mont. 433, 440,
8 704 P.2d 1021, 1025 (1985). Statutes that lack the requisite clarity are void for
9 vagueness. *Id.* at 1025. A void for vagueness challenge to a statute may be raised on
10 two different bases: (1) facial, where the statute is so vague that it is rendered void
11 on its face, or (2) as-applied, where the statute is vague as applied to the facts of a
12 particular situation. *State v. Christensen*, 2020 MT 237, ¶ 131, 401 Mont. 247, 472
13 P.3d 622 (internal citation omitted). HB 121 is not unconstitutionally vague.

14 **A. HB 121 ACCOUNTS FOR GENETIC ABNORMALITIES AND IS NOT**
15 **UNCONSTITUTIONALLY VAGUE INsofar AS IT PERTAINS TO JOHN**
16 **DOE OR SIMILARLY SITUATED PERSONS.**

17 Plaintiffs contend that HB 121 is unconstitutionally vague both on its face and
18 as-applied with respect to intersex people. (Doc. 45 at ¶ 173.) John Doe is the only
19 individual plaintiff in this case representing the interests of intersex people and HB
20 121 is drawn with sufficient clarity and definiteness to inform John Doe what actions
21 are proscribed. HB 121 is not unconstitutionally vague on its face or as-applied
22 insofar as it pertains to intersex people.

23 Notwithstanding Plaintiffs’ contention, the fact that John Doe would
24 otherwise fall within the definition of male as set forth in HB 121 but for John Doe’s
25 biological or genetic condition is beyond reasonable dispute. (*See* Exs. A and B;
Doc. 45 at Ex. A.) John Doe is a member of the human species, has male external
genitalia, was identified as a male at birth, and has a reproductive system oriented

1 around the production of small, mobile gametes. (*Id.*) Importantly, John Doe’s
2 biological composition was apparently unambiguous enough to warrant an
3 identification as male at birth. (Ex. A at 10:2–24; Ex. B at ¶ 4.) No evidence has
4 been presented in this case that could reasonably dispute that classification.
5 Notwithstanding John Doe’s de la Chapelle syndrome, John Doe falls within HB
6 121’s definition of “male,” but for a biological or genetic condition. (*See* Exs. A and
7 B; Doc. 45 at Ex. A.) John Doe presently identifies as a male and uses male
8 restrooms and changing rooms and has not had any problems thus far doing so. (Ex.
9 A at 33:3–18; Ex. B at ¶¶ 10, 14, 19, 25.) John Doe’s claim of ignorance as to what
10 HB 121 requires of John Doe is disingenuous and it cannot support a finding of
11 unconstitutional vagueness. John Doe is the only individual that Plaintiffs have
12 presented with a specific set of facts that could support an as-applied challenge to
13 the constitutionality of HB 121 with respect to intersex individuals.

14 Plaintiffs’ claim that HB 121 is unconstitutionally vague on its face is
15 predicated on the assertion that intersex people are excluded from the definitions of
16 “sex,” “female,” and “male” in HB 121. That claim is false and Plaintiffs’ reliance
17 upon a district court’s commentary to support this claim is inconsequential. (Doc.
18 45 at ¶ 173.) The only logical conclusion to be drawn from HB 121’s express
19 “otherwise...but for a biological or genetic condition” language is that the legislation
20 specifically contemplates individuals like John Doe. (Doc. 45 at Ex. A, §§ 2(4),
21 2(7).) Based on their illogical premise, Plaintiffs contend that intersex individuals
22 are “subject to standardless and arbitrary decision making by whatever entities are
23 enforcing” HB 121 and do not “have fair or actual notice about whether” HB 121
24 “classifies them as male or female.” (*Id.* at ¶ 173.) That categorical statement is
25 certainly not true with respect to John Doe, and the individual whose natural
biological and genetic composition may be so ambiguous as to confound the minds
of competent medical professionals is not before the Court in this case. Plaintiffs

1 have not demonstrated—and cannot demonstrate—that intersex individuals could
2 not reasonably be classified as male or female under HB 121 notwithstanding their
3 biological or genetic condition. HB 121 is not unconstitutionally vague on its face
4 or as-applied insofar as it pertains to intersex individuals.

5 **B. HB 121 IS NOT UNCONSTITUTIONALLY VAGUE IN SO FAR AS IT**
6 **PERTAINS TO MISSOULA COUNTY OR OTHER COVERED ENTITIES.**

7 Plaintiffs contends that HB 121 is “unconstitutionally vague on its face and as
8 applied to Missoula County” because HB 121 “subjects covered entities to litigation
9 and liability for non-compliance but gives them no clarity on what they must do to
10 comply.” (Doc. 45 at ¶ 174.). This claim is based on the premise that HB 121
11 “provides no information regarding what reasonable steps covered entities need to
12 take to prohibit an individual from using the restroom or changing room designated
13 for the opposite sex. (*Id.* at ¶ 176.) Plaintiffs further claim that HB 121 does not
14 “provide any guidance on what it means for a covered entity to provide an individual
15 permission to use a restroom or changing room designated for the opposite sex.” (*Id.*
16 at ¶ 177.) Plaintiffs also fear that Missoula County will somehow be required to
17 request protected genetic and medical information or discriminate based on such
18 information. (*Id.* at ¶ 178.). Plaintiffs conclude that HB 121 “is void for vagueness
19 on its face” because it “fails to give a person of ordinary intelligence fair notice of
20 what conduct exposes a covered entity to liability” and “is void for vagueness as
21 applied to the County” because it “fails to give Missoula County actual notice of
22 how to conform its conduct to the law.” (*Id.* at ¶ 179.). None of these arguments have
23 any merit.

24 HB 121 is clear on what it prohibits and on what covered entities are required
25 to do to comply. HB 121 is not unconstitutionally vague on its face or as applied to
Missoula County. Covered entities have two basic responsibilities under HB 121.
They are to “designate each multioccupancy restroom, changing room, or sleeping

1 quarters for the exclusive use of females or males” and “take reasonable steps to
2 provide individuals with privacy from members of the opposite sex in designated
3 restrooms, changing rooms, and sleeping quarters. (*Id.* at Ex. A §§ 3(1), 3(3).) In
4 fulfilling these responsibilities, they are expressly authorized to adopt policies
5 necessary to accommodate individuals protected under the Americans with
6 Disabilities Act of 1990 or young children or elderly persons in need of assistance;
7 establish single-occupancy restrooms, changing rooms, or sleeping quarters or
8 family restrooms, changing rooms, or sleeping quarters; and redesignate multi-
9 occupancy restrooms, changing rooms, or sleeping quarters designated for exclusive
10 use by one sex to a designation for exclusive use by the opposite sex. (*Id.* at Ex. A §
11 3(6).)

12 Furthermore, the rendering of medical or law enforcement assistance, the
13 performance of custodial services or maintenance, and the provision of services or
14 rendering of aid during a natural disaster or declared emergency or if necessary to
15 prevent a serious threat to good order and safety are all expressly permitted under
16 HB 121. (*Id.* at Ex. A § 3(4).) The only way that a covered entity could be subject to
17 liability via a private cause of action under HB 121 is if the covered entity provides
18 an individual with permission to use a restroom or changing room designated for the
19 opposite sex, fails to take reasonable steps to prohibit the other individual from using
20 the restroom or changing room designated for the opposite sex, or requires an
21 individual to share sleeping quarters with an individual of the opposite sex. (*Id.* at
22 Ex. A §§ 4(1), 4(2).)

23 Agents of covered entities under HB 121 with ordinary intelligence should
24 have no trouble deducing from these straightforward provisions what is required of
25 them. To the extent that they have and maintain multi-occupancy restrooms,
changing rooms, or sleeping quarters, such spaces are to be designated for the
exclusive use of females or males. Considering that this is precisely how society has

1 operated for centuries, discerning HB 121’s requirements to continue this practice
2 requires no special intelligence. Additionally, to avoid liability via a private cause
3 of action, covered entities must not provide an individual with permission to use a
4 restroom or changing room designated for the opposite sex or require an individual
5 to share sleeping quarters with an individual of the opposite sex. (*Id.* at Ex. A §§
6 4(1), 4(2).) These admonitions are as easy to understand as the previous mandate.
7 Nothing in them requires uncommon intelligence or judicial decree to interpret.

8 Finally, covered entities must take reasonable steps to prohibit individuals
9 from using the restroom or changing room designated for the opposite sex. (*Id.* at
10 Ex. A § 4(1).) Plaintiffs’ claim of ignorance as to what this means is disingenuous.
11 Montana law recognizes a variety of legal standards based on an objective,
12 reasonableness. *State v. Birthmark*, 2013 MT 86, ¶ 16, 369 Mont. 413, 300 P.3d
13 1140 (discussing the “reasonable apprehension” portion of the PFMA statute);
14 *Weiner v. St. Peter’s Health*, 2025 MT 28, ¶ 28, 420 Mont. 293, 563 P.3d 744
15 (applying the objective, reasonable-belief standard under 42 U.S.C. § 11112(a)(1));
16 *Jarvenpaa v. Glacier Elec. Coop.*, 271 Mont. 477, 898 P.2d 690, 692 (1995)
17 (applying the “reasonable person” and “reasonable alternative” standard found in
18 Mont. Code Ann. § 39-2-903(1) to a constructive discharge claim).

19 Courts stand ready to adjudicate the reasonableness or propriety of an action
20 in numerous contexts that do not implicate violations of due process rights as
21 Plaintiffs allege here. HB 121 should not be struck down as unconstitutional merely
22 because it references “reasonable steps.” (Doc. 45 at Ex. A §§ 3(3), 4(1).) Missoula
23 County’s Chief Administrative Officer acknowledges that the County’s potential
24 noncompliance with applicable restroom laws, including HB 121, could potentially
25 be remedied by simply installing a new single-use restroom, which several covered
entities in Missoula County already have. (Ex. C at 12:7–14:5, 42:9–43:7.)

1 Missoula County complains that it requires additional guidance on these
2 matters from the Court (*Id.* at 55:9–56:7), but it is not the duty of this Court to render
3 advisory opinions. *Plan Helena, Inc. v. Helena Reg’l Airport Auth. Bd.*, 2010 MT
4 26, ¶¶ 8–11, 355 Mont. 142, 226 P.3d 567. Its attempt to invalidate HB 121 on the
5 grounds of unconstitutional vagueness is equally improper, especially since its
6 representative has already articulated what could be considered a reasonable
7 potential solution to a compliance issue that does not yet exist. HB 121 is drawn with
8 sufficient clarity and definiteness to inform people of ordinary intelligence what it
9 requires and prohibits. It is not unconstitutionally vague.

9 CONCLUSION

10 Plaintiffs’ equal protection challenge under Count I fails as a matter of law.
11 First, transgender status is not a suspect or quasi-suspect class under Montana’s
12 constitution, statutory law, or jurisprudence. Second, HB 121 does not discriminate
13 on the basis of sex. As such, HB 121 is subject to rational basis review, and it easily
14 satisfies that level of scrutiny. HB 121 is rationally tailored to achieve multiple
15 substantial and legitimate governmental interests—privacy, safety, protection of
16 domestic violence survivors, institutional security, and protection of minors.

17 Moreover, Plaintiffs’ due process challenge under Count IV likewise fails as
18 a matter of law. HB 121 contemplates, and provides for, unique biological and
19 genetic conditions and is not unconstitutionally vague insofar as it pertains to
20 intersex people. HB 121 also provides covered entities with sufficient notice of what
21 it requires and prohibits and therefore cannot be considered unconstitutionally vague
22 on its face or as applied to Missoula County. Therefore, for the reasons stated in this
23 Brief, Intervenor Kerri Seekins-Crowe respectfully requests that the Court grant
24 Intervenor’s Motion for Partial Summary Judgment.

1 DATED this 3rd day of April 2026.

2 JONES LAW FIRM, PLLC

3
4 By: 

5 EMILY JONES

6 JUSTIN OLIVEIRA

7 115 N. Broadway, Suite 410

8 Billings, MT 59101

9 ATTORNEYS FOR INTERVENOR

10 KERRI SEEKINS-CROWE

11 **LOCAL RULE 3G DISCLOSURE**

12 Pursuant to L.R. 3G, I certify as follows:

13 1. Generative artificial intelligence (Claude Sonnet 4.6 (Anthropic)) was
14 used in the preparation of this Brief;

15 2. The tool was used to conduct preliminary legal research and to organize
16 and analyze legal arguments developed by counsel. All substantive legal analysis,
17 factual background and assertions, and conclusions were reviewed, verified, and
18 approved by the undersigned;

19 3. The undersigned has independently verified the accuracy of every
20 citation to law and to the record contained in this document.

21
22
23
24
25 By: 

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

CASEY PERKINS, an	)	Dept No. 1
individual; SPENCER	)	Cause No.
McDONALD, an individual;	)	DV-32-2025-282
KASANDRA REDDINGTON, an	)	Hon. Leslie Halligan
individual; JANE DOE, an)	
individual, and JOHN DOE,)	
an individual, and)	
MISSOULA COUNTY,)	
)	
Plaintiffs,)	
)	
-vs-)	
)	
STATE OF MONTANA; GREGORY)	
GIANFORTE, in his)	
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.)	

Taken at 1015 Mount Avenue
Missoula, Montana
Wednesday, February 4, 2026 - 1:02 p.m.

D E P O S I T I O N
O F

Reported by Melody Jeffries Peters, RDR, CRR, CRC,
Jeffries Court Reporting, Inc., 1015 Mount Avenue,
Suite B, Missoula, Montana 59801, (406) 721-1143,
Freelance Court Reporter for the State of Montana,
residing in Missoula, Montana, jcrcourt@montana.com

1 Can you tell me why you're confused?

2 A. Yes. So the definitions within the bill
3 don't fit my particular situation so I don't know
4 how I fit within the bill.

5 Q. Can you describe what you mean by your
6 particular situation?

7 A. Yes. I'm intersexed.

8 Q. How do you define intersexed?

9 A. So chromosomally XX, so I meet the
10 definition there for female, but phenotypically I
11 express as male.

12 Q. What do you mean by, phenotypically, you
13 express as male?

14 A. When I was born, the doctor identified
15 that I have a penis and scrotum and decided that I
16 was a male.

17 Q. Has any medical professional ever
18 diagnosed you with -- I'm sorry, strike that.

19 Has a medical professional ever
20 diagnosed you with ambiguous external genitalia?

21 A. No.

22 Q. Has any medical provider ever diagnosed
23 you with ambiguous internal genitalia?

24 A. Not at this time.

25 Q. What do you mean by "not at this time"?

1 A. We haven't gone around to look.

2 Q. You would agree that the sex on your
3 birth certificate is male; is that right?

4 A. I honestly don't know. I haven't seen
5 my birth certificate in a long time.

6 Q. What is your best recollection?

7 A. My best recollection is I believe it
8 says male, yes.

9 Q. Has anyone ever contested that
10 designation?

11 MS. TURNER: Objection to form.

12 You can answer.

13 A. Can you clarify what you mean?

14 Q. (BY MS. LANSING) Let me rephrase. To
15 your knowledge, has anyone ever challenged your
16 sex designation on your birth certificate, to the
17 best of your recollection, as male?

18 A. I don't believe so, no.

19 Q. Have you ever changed the sex on your
20 birth certificate?

21 A. No.

22 Q. So to the best of your knowledge, your
23 birth certificate says that your sex is male?

24 A. Yeah, I believe so.

25 Q. What is your objective in this lawsuit?

1 chromosomes -- that's true for me, I have XX
2 chromosomes -- produces or would produce
3 relatively large -- relatively immobile gametes --
4 that is false, stop; the rest of the statement is
5 false.

6 So that also means that a human -- that
7 means that I'm not a human being, based on the way
8 that this is written.

9 And then if we look at 7, "Male," "Male"
10 means a member of the human species who, under
11 normal development, has XY chromosomes.

12 False, I don't have XY chromosomes, so
13 I'm not legally defined as male either.

14 Q. Can you tell me a little bit more about
15 your condition -- your medical condition that you
16 shared a bit about earlier as it relates to
17 gametes?

18 A. Sure. I don't produce any.

19 Q. Okay. And you said earlier that you
20 possess male genitalia.

21 A. I have a penis and I do have testes, but
22 they lack the ability to produce sperm.

23 Q. Is there a name for your condition?

24 A. Yes. 46,XX SRY-positive. There's
25 another name for it. And then it's also known as

1 de la Chapelle syndrome.

2 Q. Looking back at paragraph 5 in the
3 Complaint, Exhibit 1 that we looked at before, do
4 you have any facts to support the claim that this
5 law relegates transgender and intersex people to
6 second-class citizenship?

7 MS. TURNER: Objection. Foundation.
8 But you can answer.

9 A. Well, if I'm not human, then there's a
10 whole lot of laws in the state of Montana that
11 wouldn't apply to me, which would, in theory, make
12 me a second-class citizen.

13 Q. (BY MS. LANSING) Are you an attorney?

14 A. No.

15 Q. That sentence also claims that the law
16 exposes transgender and intersex people to
17 heightened risks of harassment and violence.

18 Are you aware of any heightened risks of
19 harassment and violence to transgender and
20 intersex people caused by this law?

21 A. Yes.

22 MS. TURNER: Object.

23 THE WITNESS: Oh, so sorry.

24 MS. TURNER: As to form.

25 A. Yes.

1 A. So sex is oftentimes a label that's put
2 on us based on the appearance of our genitalia and
3 has nothing to do with how we experience the world
4 around us and how we experience our own internal
5 self.

6 Q. How do you want to be perceived when it
7 comes to gender?

8 MS. TURNER: Objection as to form.
9 But you may answer the question.

10 A. I see myself -- I identify myself as
11 demimale.

12 Q. (BY MS. LANSING) What does that mean?

13 A. So not quite male.

14 Q. Can you tell me more about that?

15 A. Yeah. So for me, I've lived my whole
16 live feeling very male, but I experience genital
17 dysphoria; I have since I was very small, and that
18 shapes a part of my internal self and my internal
19 experience in my own life.

20 Q. Looking back at the Complaint which
21 we've been looking at, Exhibit 1, directing your
22 attention to paragraph 81 -- And you can take a
23 moment to read that to yourself.

24 A. (Witness complies.) Okay.

25 Q. What is the factual basis for the

1 being signed in, but my concern was it was
2 approved by the senate.

3 Q. You would agree that historically you've
4 used the men's restroom?

5 A. Yes.

6 Q. And you've never had any problems doing
7 so?

8 A. Correct, but this law also didn't exist
9 either.

10 Q. What do you believe your sex to be?

11 A. Intersex.

12 Q. Do you believe your sex to be male or
13 female?

14 A. No.

15 Q. Directing your attention to paragraph 14
16 in your declaration, historically have you used
17 the men's restroom at the library?

18 A. Yes.

19 Q. Why do you think you're going to have
20 any problems using the men's restroom at the
21 library now?

22 A. Because I don't know if that's the
23 restroom I'm supposed to use under this law.

24 Q. What problems do you think you would
25 have if you continued using the men's restroom as

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**Pro Hac Vice* applications
forthcoming

**MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY**

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

Plaintiffs,

vs.

STATE OF MONTANA;
GREGORY GIANFORTE, in his
official capacity as Governor of
the State of Montana; AUSTIN

Cause No. DV 25-282

Hon. Shane Vannatta

**DECLARATION OF
JOHN DOE
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION AND
TEMPORARY RESTRAINING
ORDER**

KNUDSEN, in his official capacity
as Attorney General,

Defendants.

I, John Doe, declare as follows,

1. I am a Plaintiff in this action. I am over 21 years of age, have personal knowledge of the facts contained in this declaration, and am competent to testify about them.

2. I submit this declaration in support of Plaintiffs' Motion for Preliminary Injunction against the enforcement of Montana House Bill (HB) 121.

3. I have lived in Montana for over 40 years and currently reside in Missoula, Missoula County.

4. I was assigned the sex designation of male at birth, but I am intersex, meaning I meet the criteria for male gender, female gender, and unknown gender in different ways. I have been diagnosed with de la Chapelle syndrome, which is one of many intersex possibilities, and means that I have two X chromosomes and the X chromosome inherited from my father is SRY-positive. The SRY protein is typically located on a Y chromosome and directs the development of sexual characteristics. I have not had my gametes tested, but individuals with de la Chapelle syndrome are typically found to produce no sperm cells.

5. I have both male genitalia and breast tissue. My body is not capable of producing the testosterone level that is typically associated with men and is more in

line with the testosterone level of women. I use hormone replacement therapy to raise my testosterone levels in order to have a normal libido, develop muscle mass, increase focus, and treat depression.

6. As I understand it, HB 121 states that “in human beings, there are exactly two sexes, male and female,” which are “determined by the biological and genetic indication of male or female,” including chromosomes, gonads, and internal and external genitalia.

7. But there are a variety of ways in which physical sex-related traits—including external genitalia, internal reproductive organs, chromosomes, and/or hormone production and response—can differ from the narrow, binary definitions of “male” and “female” in HB 121.

8. For example, I was born with traits that do not fit within either the definition of “male” or the definition of “female” in HB 121. It appears there is no place for me in HB 121’s classification of human beings. I believe HB 121 denies my existence as an intersex citizen of the state.

9. I live as a man and identify as demi-male. My status as an intersex person is a private and personal piece of information and my gender identity is a private and personal decision.

10. Because I identify as male, I typically use restrooms designated for men and have never encountered a problem doing so. Using men's restrooms allows me to attend to my personal needs with dignity and safety.

11. I expect and value my privacy while using restroom facilities in public spaces.

12. I regularly visit the Missoula Public Library for an ongoing gaming group, where I play social deduction and board games with both friends and members of the public. My understanding is that HB 121 applies to public libraries.

13. Our gaming group usually meets on the third or fourth floors of the library. The only restrooms on the fourth floor are multi-stall and designated by gender.

14. At the library, I regularly use the men's restrooms to attend to my basic needs, as that corresponds with my gender identity.

15. Under HB 121, I am not sure if I could continue to use the men's restrooms at the Montana Public Library. In fact, I am not sure if I can use any gender-designated restrooms at all, because I do not conform to the law's definition of either "female" or "male."

16. If I were to continue using the library's men's restroom, under HB 121 I may not be using the correct facilities because I am not "male" under the law's definition, which could subject me to harassment and the library to legal exposure.

17. If I were to use the library's women's restroom, under HB 121 I may not be using the correct facilities because I am also not "female" under the law's definition. And other patrons are likely to perceive me as male, which could subject me to harassment or worse, and the library to legal exposure.

18. I also regularly visit the University of Montana campus to attend events, plays, and movies, and visit the University bookstore. I attend concerts at the Adams Center stadium, which is a University facility. My understanding is that HB 121 applies to University of Montana facilities.

19. While at the University and the Adams Center, I use the multi-stall men's restrooms to attend to my basic needs, as that corresponds with my gender identity.

20. Under HB 121, I am not sure if I could continue to use the men's restrooms at the University of Montana. I do not know if I can use any gender-designated restrooms at all, because I do not conform to the law's definition of either "female" or "male."

21. If I were to continue using the University's men's restrooms, under HB 121 I may not be using the correct facilities because I am not "male" as the law defines it, which could subject me to harassment and the University to legal exposure.

22. If I were to use the University's women's restroom, under HB 121 other patrons are likely to perceive me as male, which could subject me to harassment or worse, and the University to legal exposure.

23. My spouse and I like to unwind at Splash Montana, which is a water park located at Playfair Park and owned by the City of Missoula. My understanding is that HB 121 applies to Splash Montana.

24. We enjoy using the park on recreation nights for adults only. I use the men's changing room at Splash Montana as that corresponds with my gender identity.

25. If I were to continue using Splash Montana's men's changing room, under HB 121 I may not be using the correct facilities, which could subject me to harassment and the City of Missoula to legal exposure.

26. In all public spaces, I seek to live my life in safety and with dignity.

27. I have never encountered any problems when using bathrooms facilities that correspond to the gender I identify with.

28. Because of the threats of harassment and violence against transgender and intersex individuals, I am especially mindful of my privacy when using public facilities. I am also very concerned about making others uncomfortable by using the restroom that corresponds with my gender identity.

29. I do not want to avoid using public spaces or forego using bathroom facilities while in public spaces.

30. My status as an intersex person is something I consider private and that I share only when and where I choose.

31. I want to follow Montana law, but medical science defines me as intersex, and I simply have no idea how I can follow HB 121 when I do not fit into its binary gender definitions.

I, John Doe, declare under penalty of perjury that the foregoing is true to the best of my knowledge and belief.

Dated: February 17, 2025.

/s/ John Doe
John Doe

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

CASEY PERKINS, an individual; SPENCER McDONALD, an individual; KASANDRA REDDINGTON, an individual; JANE DOE, an individual, and JOHN DOE, an individual, and MISSOULA COUNTY,	)	CAUSE NO. DV-32-2025-282
Plaintiffs,	)	Department No. 1
	)	Honorable Leslie Halligan
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,	)	RULE 30(B)(6) DEPOSITION
Defendants.	)	OF
and	)	MISSOULA COUNTY CORPORATE REPRESENTATIVE
KERRI SEEKINS-CROWE,	)	CHRISTIAN LOUNSBURY
Intervenor-Defendant.)	

Taken at 1015 Mount Avenue
Missoula, Montana
Thursday, February 26, 2026 - 9:00 A.M.

Reported by Terra Rohlfs, RPR, Jeffries Court Reporting, Inc., 1015 Mount Avenue, Suite B, Missoula, Montana 59801, (406)721-1143, Freelance Court Reporter and Notary Public for the State of Montana, residing in Hamilton, Montana, jrcrcourt@montana.com

1 A. I requested a copy of the discovery
2 material for me to be able to review, which was
3 provided prior to this, and then I also discussed
4 the kind of nature and format of a 30(b)(6)
5 deposition, as I've never done one before.

6 Q. (BY MR. JOHNSON) And what is your
7 understanding, not from the conversation, what is
8 your understanding of a 30(b)(6) witness?

9 A. My understanding is that my job is to
10 represent, to the best of my ability, the knowledge
11 that I have for County operations, the policies of
12 Missoula County, or facilities, our workforce, and
13 those aspects that are part of my job.

14 Q. And it's my understanding you are the
15 chief administrative officer for Missoula County,
16 how long have you been the chief administrative
17 officer?

18 A. I have been the chief administrative
19 officer for just under six years, it will be six
20 years in May of this year.

21 Q. And what did you do prior to being the
22 chief administrative officer?

23 A. For the five years prior to that I was
24 the chief operating officer for Missoula County.
25 Do you want me to go further back?

1 Q. No, that's good enough for me.

2 What are your duties as chief
3 administrative officer?

4 A. As the chief administrative officer, I
5 serve as the primary kind of, not legal counsel,
6 but counsel for the Board of County Commissioners.
7 It's my job to enact the policies throughout our
8 organization that are adopted by the Board of
9 County Commissioners, and then provide them with
10 feedback through your administrative departments to
11 the Board of County Commissioners, and then I also
12 formulate our legislative agenda and policies as
13 part of that role, as well.

14 Q. Who is your direct supervisor?

15 A. The Board of County Commissioners.

16 Q. Are you kind of a liaison between the
17 county commissioners and the county attorney's
18 office; is that fair to say?

19 A. I am designated as the liaison between
20 all elected officials and the Board of County
21 Commissioners.

22 Q. You're appointed, not elected?

23 A. Correct, I'm an appointed official.

24 Q. And you testified that you provided
25 testimony before the legislature on House Bill 121?

1 A. We provided written testimony during that
2 House Bill 121 and our legislative lobbyist spoke
3 during the bill.

4 Q. Okay. Who's your legislative lobbyist,
5 so that we can go back and look at it?

6 A. Sure. Her name is Jennifer Hensley.

7 Q. And what was the essence of your written
8 testimony?

9 A. Our written testimony addressed concerns
10 related to the County related to our inability to
11 implement the bill, the lack of clarity around --
12 of the provisions of the bill and the impact that
13 it could have to both employees and members of the
14 public accessing our facilities and --

15 Q. So -- Go ahead.

16 A. -- including our detention facility.

17 Q. So you talked about implementation,
18 problems with implementation, what did -- what was
19 the written testimony regarding the problems with
20 the implementation of the bill?

21 A. The problem with -- in our -- Sorry. In
22 our testimony we talk about the fact that it would
23 be difficult to implement House Bill 121 because we
24 use multi-occupancy restrooms and potential
25 implementation could result in us being out of

1 compliance with other requirements in both state
2 and federal law, as well as issues around attempted
3 enforcement of the bill related to single-gender
4 occupancy of a restroom.

5 Q. And with regard to the problems of
6 implementation, was cost a factor?

7 A. Cost is one factor, yes.

8 Q. What were the other factors?

9 A. The other factor would be that piece of
10 being out of compliance with other existing state
11 and federal laws.

12 Q. Okay. But if you -- if you construct a
13 single-use bathroom along with the multi-use, would
14 you be in compliance with federal law under those
15 circumstances?

16 MS. TURNER: Objection to the extent it
17 calls for a legal conclusion. You can answer.

18 A. Sorry, can you restate the question for
19 me?

20 Q. (BY MR. JOHNSON) Yes. If you had -- if
21 the County constructed a single-use bathroom along
22 with its multi-use bathrooms, is your position that
23 you would still be out of compliance with other
24 laws that you testified about?

25 MS. TURNER: Same objection, but you may

1 answer.

2 A. It would depend on the construction,
3 whether it was a conversion of an existing or
4 building of a new. If it was building of a new,
5 potentially not.

6 Q. (BY MR. JOHNSON) Okay. Did you assess
7 the cost of building a new single-use bathroom in
8 the -- for instance, the courthouse?

9 A. We did not.

10 Q. Okay. Now, you talked about other areas
11 of testimony, and besides implementation I think
12 there were three other areas. Can you refresh my
13 recollection on those? I can also ask the kind
14 young lady to bring them up for me.

15 A. I will do my best, but in case I get them
16 wrong...

17 Related to the detention facility, in
18 particular, and then around the impacts potentially
19 to staff and visitors of our facilities.

20 Q. Okay. Let's go to the detention center,
21 what was the testimony with regard to the detention
22 center?

23 A. The testimony related to the detention
24 center largely focused on concerns around inmate
25 placement and the juvenile detention center and

1 experienced any issues there?

2 MS. TURNER: Same objection.

3 A. None that I am aware of.

4 Q. (BY MR. JOHNSON) Does Missoula County,
5 with regard to the covered entities, have any
6 sleeping quarters involved in the list of covered
7 entities?

8 A. No.

9 Q. So the primary issue is restrooms; fair
10 to say?

11 A. I would agree that primarily those
12 entities have restrooms, yes.

13 Q. Yeah. Do any of those covered entities
14 have a single-use restroom?

15 A. Yes.

16 Q. Which ones have a single-use restroom?
17 You never thought in your wildest dreams you'd be
18 sitting here testifying about county restrooms, did
19 you? {Laughter.}

20 A. That's okay.

21 The annex to the Missoula County
22 Courthouse houses the 911 center, the 911 center
23 has a single-occupancy restroom.

24 Q. That's just at the annex?

25 A. Just at the annex side of the conjoined

1 buildings.

2 I believe, although, I would need to
3 confirm, I believe there is a family
4 single-occupancy restroom in the Jerry Marks
5 Building, also known at the Rocky Mountain Garden
6 and Exploration Center. Those are the only two
7 that I'm aware of.

8 Q. And it's my understanding that the
9 County -- because I think you testified to it
10 earlier, it's my understanding that the County has
11 not made a cost assessment of developing a
12 single-use restroom in the other covered entities?

13 A. That's correct, yeah.

14 (Slight interruption, discussion off the
15 record.)

16 Q. (BY MR. JOHNSON) Does Missoula County
17 have a domestic violence shelter?

18 A. Missoula County does not operate a
19 domestic violence shelter.

20 Q. Has Missoula County conducted a risk
21 assessment in compliance with House Bill 121 for
22 restrooms in its covered entities, basically the
23 list that we've talked about?

24 A. There have been conversations around
25 House Bill 121, but not a formal risk assessment.

CERTIFICATE OF SERVICE

I, Emily Jones, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 04-03-2026:

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Electronically signed by Jami Westermeyer on behalf of Emily Jones

Dated: 04-03-2026