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**IN THE FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY**

**JESSICA KALARCHIK, an individual,)
and JANE DOE, an individual, on)
behalf of themselves and all others)
similarly situated,)**

Plaintiffs,)

v.)

**STATE OF MONTANA; GREGORY)
GIANFORTE, in his official capacity as)
the Governor of the State of Montana;)
the MONTANA DEPARTMENT OF)
PUBLIC HEALTH AND HUMAN)
SERVICES; CHARLES T.)
BRERERTON, in his official capacity)
as the Director of the Montana)
Department of Public Health and)
Human Services; the MONTANA)
DEPARTMENT OF JUSTICE; and)
AUSTIN KNUDSEN, in his official)**

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

capacity as Attorney General of the)
State of Montana,)
)
Defendants.)

Plaintiffs Jessica Kalarchik (“Ms. Kalarchik”) and Jane Doe (“Ms. Doe”) (together, “Plaintiffs”), through their undersigned attorneys, and as representatives of the class described below, bring this complaint against the State of Montana; its governor, Gregory Gianforte, in his official capacity (“Governor Gianforte”); the Montana Department of Public Health and Human Services (“DPHHS”); DPHHS’s director, Charles T. Brererton, in his official capacity (“Director Brererton”); the Montana Department of Justice (“DOJ”); and Montana Attorney General Austin Knudsen (“Attorney General Knudsen”), in his official capacity (collectively, “Defendants”).

INTRODUCTION

1. This is an action for declaratory and injunctive relief against Defendants arising out of policies and practices that make it impossible for transgender people born in Montana to obtain birth certificates, or for transgender people in Montana to obtain driver’s licenses, that accurately reflect their sex. Defendants’ policies and practices are part of an effort to deny transgender people rights that are widely available to other Montanans. Defendants’ conduct reflects a broad and abiding intent to discriminate against transgender people throughout Montana.

2. Consistent with this intent to discriminate, on February 20, 2024, based on a regulation codified as Montana Administrative Rule 37.8.311(5) that originally went into effect on September 10, 2022 (the “2022 Rule”), DPHHS announced that, effective immediately, the agency (a) would process applications for amending the sex designations on birth certificates *only* if the sex identified on the applicant’s birth certificate was the result of a scriveners’ error or incorrect data entry or if the sex of the individual was misidentified on the original certificate and (b) would not amend a birth certificate based on “gender transition, gender identity, or change of gender.”

See Mont. Admin. Reg. Notice 37–1002, No. 11 (June 10, 2022). The effect of the 2022 Rule is to categorically ban transgender applicants from obtaining birth-certificate amendments to reflect the sex they know themselves to be.

3. The same February 2024 DPHHS announcement indicated that, going forward, the amendment process would be subject to the restrictive provisions of Senate Bill 458 (“SB 458”).

4. SB 458 was adopted by the Montana Legislature on April 27, 2023, and signed into law by Governor Gianforte on May 19, 2023. In an assault on transgender Montanans, SB 458 declared that: “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 and female without regard to an individuals’ psychological, behavioral, social, or chosen or subjective experience of gender.”

5. SB 458 is scientifically incorrect and improperly seeks to limit the meaning of sex without legal, medical, or scientific justification.

6. Sex cannot be reduced to a simple “exactly-two-sexes” binary system. Instead, sex exists on a spectrum. The oversimplification on which SB 458 relies ignores, among other things, the existence of multiple genes involved in sex differentiation; the breadth of the endocrine system, which has multiple organs with multiple functions; and growing research documenting that gender identity is biologically based. Sex consists of a complex set of biological, psychological, and social factors, including but not limited to the behavioral or subjective experience of sex. SB 458 wrongfully excludes most of those factors from the definition of sex.

7. The February 2024 DPHHS announcement also declared that implementing the 2022 Rule “aligns” with the requirements of SB 458. The phrase “aligns with” is not defined in the statute or in any of DPHHS’s statements. The February 2024 announcement, however, asserted

that enacting SB 458 *requires* implementing the 2022 Rule, thereby linking the 2022 Rule and SB 458. Thus, under the guise of “clarifying” a distinction between sex and gender, these two interwoven provisions have incorporated discriminatory definitional principles into Montana law.

8. Montana has a history of discriminatory animus against transgender people. A previous statute, Senate Bill 280 (“SB 280”), required applicants seeking to amend the sex designation on their birth certificates to obtain a court order based on an attestation proving that the applicant’s sex had “been changed by surgical procedure.”

9. On April 21, 2022, the Montana 13th Judicial District Court entered a preliminary injunction enjoining enforcement of SB 280 and its 2021 implementing regulation. The Court declared SB 280 void for vagueness and ordered the State of Montana, Governor Gianforte, DPHHS, and Director Brererton to reinstate the less restrictive procedures established in 2017 for processing applications to change sex designations on Montanans’ birth certificates. DPHHS openly defied the district court’s preliminary-injunction order and sought to circumvent the injunction by promulgating the 2022 Rule, which completely prohibited transgender people from changing the sex designations on their birth certificates. On June 26, 2023, the district court permanently enjoined the enforcement of SB 280 and its 2021 implementing regulation and entered a finding of contempt against DPHHS for defying the court’s preliminary-injunction order.

10. In addition, at some point in 2024, the Montana Department of Justice ended the Montana Motor Vehicle Division’s (“MVD”) prior practice of permitting changes to the sex designation on Montana driver’s licenses based on a letter from a doctor stating that the person seeking the change was in, or had completed, the process of changing their sex. Instead, without following any notice-and-comment procedures, DOJ and Attorney General Knudsen, on information and belief, adopted a new policy and practice that the MVD would only issue an

amended driver's license with a sex designation consistent with an individual's gender identity, rather than their sex assigned at birth, if the individual provided an amended birth certificate, which the 2022 Rule prohibits transgender individuals from obtaining (the "new MVD policy and practice"). On information and belief, this new MVD policy and practice was also based on the application of SB 458.

11. The 2022 Rule on its face and as applied to issuing amended birth certificates, and SB 458 as applied to issuing amended birth certificates, continue the State of Montana's efforts to limit transgender people's ability to amend their birth certificates. In addition, as applied to issuing amended driver's licenses, the new MVD policy and practice and SB 458 extend the State of Montana's discriminatory efforts regarding birth-certificate amendments to driver's-license amendments. The 2022 Rule on its face and as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended driver's licenses, and SB 458 as applied to issuing amended birth certificates and amended driver's licenses violate the Montana Constitution's equal-protection guarantee, its privacy protections, and its prohibition against compelled speech, as well as the provisions of section 2-4-506 of the Montana Administrative Procedure Act (the "MAPA"), § 2-4-506, MCA.

12. Plaintiffs and the class members are entitled to (a) a declaratory judgment that the 2022 Rule on its face and as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended driver's licenses, and SB 458 as applied to issuing amended birth certificates and amended driver's licenses are invalid, illegal, and unconstitutional and (b) a preliminary and permanent injunction prohibiting Defendants from directly or indirectly enforcing the 2022 Rule on its face or as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended driver's licenses, and SB 458 as applied

to issuing amended birth certificates and amended driver’s licenses, including but not limited to by prohibiting Defendants from denying applications to amend sex designations on birth certificates or driver’s licenses based on the 2022 Rule, the new MVD policy and practice, SB 458, or any further administrative rulemaking directed toward the subject matter of the 2022 Rule, the new MVD policy and practice, or SB 458.

13. Plaintiffs bring their request for declaratory and injunctive relief regarding the 2022 Rule, the new MVD policy and practice, and SB 458 based on, among other provisions of law, § 2–4–506, MCA (MAPA). § 2–4–506 authorizes declaratory-judgment actions seeking to have a rule declared invalid “if it is found that the rule or its application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff,” as is the case with respect to the 2022 Rule on its face and as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended driver’s licenses, and SB 458 as applied to issuing amended birth certificates and amended driver’s licenses.

JURISDICTION AND VENUE

14. This Court has original jurisdiction over this case under Article VII, Section 4, of the Montana Constitution and § 3–5–302, MCA.

15. This Court has jurisdiction to grant declaratory relief under the Montana Uniform Declaratory Judgments Act. § 27–8–201, MCA (“Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”); § 27–8–202, MCA (“Any person . . . whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . .”).

16. This Court also has jurisdiction to grant declaratory relief under the MAPA. § 2–4–506, MCA (“A Rule may be declared invalid . . . in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff.”).

17. This Court has jurisdiction to grant injunctive relief under § 27–19–101 *et seq.*, MCA.

18. Under § 25–2–126, MCA, venue is proper in Lewis and Clark County because this is an action against the State of Montana; its governor; DPHHS, an agency of the State of Montana; the director of DPHHS; DOJ, an agency of the State of Montana; and the Montana Attorney General.

PARTIES

Plaintiffs

19. Ms. Kalarchik is a woman who was born and raised in Montana, but she now lives in Alaska. Ms. Kalarchik is transgender and wishes to correct her Montana birth certificate, which incorrectly indicates that she is male. Ms. Kalarchik has long known that she is different from other people but kept her gender identity hidden for many years. She began to publicly present as female in 2020. Ms. Kalarchik seeks to amend her birth certificate to accurately reflect that she is female but has been denied the opportunity to obtain an accurate amended birth certificate.

20. Jane Doe is a woman who was born in Montana and is a longtime resident of Montana. Ms. Doe is transgender and wishes to correct her Montana birth certificate and driver’s license, which incorrectly indicate that she is male. Ms. Doe has known that she was female since she was a youth and has lived publicly as female for approximately two years. Ms. Doe seeks to

amend her birth certificate and driver's license to accurately reflect that she is female but has been denied the opportunity to obtain an accurate amended birth certificate or driver's license.

Defendants

21. The State of Montana is a government entity subject to and bound by the laws of the State of Montana and its constitution. Under Article II, Section 18, of the Montana Constitution, the state is not entitled to immunity from suit in this case.

22. DPHHS is an agency of the State of Montana that is subject to and bound by the laws of the State of Montana and its constitution. As a state agency, DPHHS is not entitled to immunity from suit under Article II, Section 18, of the Montana Constitution. DPHHS has supervisory authority over the processes for amending birth certificates in the state of Montana.

23. Governor Gianforte is the elected governor of the State of Montana. He is the state's principal executive officer and is responsible for administering Montana's laws.

24. Director Brererton is the Director of DPHHS. He is the head of the agency and is responsible for administering and enforcing the 2022 Rule and SB 458.

25. DOJ is an agency of the State of Montana that is subject to and bound by the laws of the State of Montana and its constitution. As a state agency, DOJ is not entitled to immunity from suit under Article II, Section 18, of the Montana Constitution. DOJ has been involved in enforcing the new MVD policy and practice and SB 458.

26. Attorney General Knudsen is the Montana Attorney General. He is the head of DOJ and has been involved in enforcing the new MVD policy and practice and SB 458.

27. Governor Gianforte, Director Brererton, and Attorney General Knudsen each have taken a sworn oath to uphold and enforce the Montana Constitution.

CLASS ALLEGATIONS

28. Plaintiffs bring this action under Rules 23(a) and (b)(2) of the Montana Rules of Civil Procedure on behalf of themselves and all others similarly situated.

29. Plaintiffs seek to represent a class defined as (a) all transgender people born in Montana who currently want, or who in the future will want, to have the sex designation on their Montana birth certificate changed to match what they know their sex to be, as determined by their gender identity, and (b) all transgender people who currently want, or who in the future will want, to have the sex designation on their Montana driver's license changed to match what they know their sex to be, as determined by their gender identity.

30. In accordance with Rule 23(a)(1), joining all members of the class is impracticable. There are at least 3,400 transgender individuals above the age of 13 born or living in Montana. *See* Jody L. Herman, Andrew R. Flores, and Kathryn K. O'Neil, *How Many Adults and Youth Identify as Transgender*, Williams Institute (June 2022), at 13. Even if only a modest number of these individuals were born in Montana and seek to amend their birth certificates or live in Montana and seek to amend their driver's licenses, this class membership is well within the parameters accepted by the Montana Supreme Court for class certification.

31. Moreover, although the numerosity requirement is often cast in purely numerical terms, its core component is that joinder is impracticable, whatever the cause. Having many class members is not the only way to satisfy Rule 23's requirements. *See* Newberg on Class Actions, § 3:11 (5th ed.). Other factors include (a) the financial resources available to class members to finance their own lawsuit, (b) the ability of class members to institute individual lawsuits in light of threats of harassment and potential violence, (c) the geographic dispersion of the class, and (d) the plaintiffs' request for prospective relief involving future class members.

32. Each of these factors renders joinder impracticable. Transgender people face high rates of poverty and homelessness.¹ In Montana, for example, rates of poverty among transgender people are at least double the rate among cisgender people.² Nearly one-third of this population falls below the poverty line. In addition, nearly one-third has experienced homelessness. S.E. James, et al., *The Report of the 2015 U.S. Transgender Survey*, Nat'l Ctr. for Transgender Equality (Dec. 2016). These considerations make financing an independent lawsuit difficult, if not impossible.

33. Transgender people continue to face discrimination and harassment, including threats of violence, when their status is made public without their consent and in circumstances outside of their control. *Id.* Acts of discrimination and threats of violence suppress transgender people's willingness to step forward to protect their rights.

34. Further, the class is geographically dispersed in a large and thinly populated state. Organizing and coordinating joinder under these circumstances would be extremely difficult.

35. Finally, because the class includes future applicants for birth-certificate or driver's-license amendments, it is not possible to identify with any precision the class's current membership. "Future claimants generally meet the numerosity requirement due to the impracticality of counting such class members much less joining them." *J.D. v. Azar*, 925 F.3d 1291, 1322 (D.C. Cir. 2019).

36. In accordance with Rule 23(a)(2), there are questions of law or fact common to the class. Each member of the class shares an interest in determining the constitutionality of the 2022

¹ Bianca D.M. Wilson, et al., *LGBT Poverty in the United States: Trends at the Onset of COVID-19*, Williams Institute, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Poverty-COVID-Feb-2023.pdf>.

² Soon Kyu Choi, et al., *State Profiles of LGBT Poverty in the United States*, Williams Institute, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/State-LGBT-Poverty-Dec-2019.pdf>

Rule on its face and as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended driver's licenses, and SB 458 as applied to issuing amended birth certificates and amended driver's licenses, including the Montana Constitution's equal-protection guarantee, its protection of informational privacy, and its protection against compelled speech. In addition, each class member shares an interest in determining the validity under § 2–4–506 of the MAPA of the 2022 Rule on its face and as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended driver's licenses, and SB 458 as applied to issuing amended birth certificates and amended driver's licenses. Further, each class member shares with the named Plaintiffs the burdens of proving and demonstrating the legal sufficiency of the claims set forth in this complaint.

37. In accordance with Rule 23(a)(3), the class representatives' claims are typical of the class's claims. Indeed, the class representatives' claims are identical to the class's claims.

38. In accordance with Rule 23(a)(4), Plaintiffs, as class representatives, will fairly and adequately protect the class's interests. Plaintiffs' interests are not antagonistic to the class's interests. Plaintiffs and the class members suffer from the same harms inflicted by the 2022 Rule on its face and as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended driver's licenses, and SB 458 as applied to issuing amended birth certificates and amended driver's licenses, and Plaintiffs and the class members seek the same litigation outcomes in the form of declaratory and injunctive relief. Neither of the named Plaintiffs seek monetary relief, so no financial conflict will arise between the named Plaintiffs' claims and the class members' claims. Plaintiffs' declarations in support of their motion for class certification will demonstrate their ability and intent to act as faithful and diligent class stewards.

39. Plaintiffs' counsel are competent to represent the class and are prepared to defend vigorously the interests of the class as a whole. Plaintiffs are represented by experienced counsel from the ACLU Montana Foundation, Inc., the American Civil Liberties Union Foundation, and the law firm of Nixon Peabody LLP. The lawyers affiliated with the above law firms and organizations, and who are appearing in this matter, have extensive experience in complex constitutional litigation, as well as class-action litigation, in Montana and throughout the United States. They also have extensive experience representing transgender litigants. The credentials of the proposed class counsel are described in greater detail in Plaintiffs' forthcoming motion for class certification. Indeed, the successful prosecution of the SB 280 litigation, in which the district court permanently enjoined SB 280 and its 2021 implementing regulation as unconstitutional and awarded the plaintiffs their attorney's fees, is evidence that Plaintiffs' counsel is competent and committed to the class's interests.

40. Plaintiffs seek certification of a class under Rule 23(b)(2). As set forth in this complaint, Defendants have acted on grounds that apply generally to the class so that final injunctive relief, or corresponding declaratory relief, is appropriate for the class as a whole. A declaration recognizing the unconstitutional nature of the 2022 Rule, the new MVD policy and practice, and SB 458, and a permanent injunction against enforcing any aspect of the 2022 Rule, the new MVD policy and practice, or SB 458 as applied to the 2022 Rule or the new MVD policy and practice, would provide relief to every class member. This is precisely the relief Plaintiffs seek.

41. For the reasons set forth above, and as will be further demonstrated in Plaintiffs' forthcoming motion for class certification, all the requirements of Rule 23 have been met.

ALLEGATIONS COMMON TO ALL COUNTS

Gender Dysphoria and Its Treatment

42. Transgender people have a gender identity that differs from their assigned sex at birth.

43. Gender identity refers to a person's fundamental internal sense of being a particular sex. The medical consensus in the United States is that gender identity is innate and that forced efforts to change a person's gender identity not only are harmful to a person's health and well-being, but also are unethical.

44. According to the American College of Physicians, the American Psychiatric Association, and other major medical organizations, every person has a gender identity that cannot be altered voluntarily and cannot be ascertained immediately after birth.

45. Gender dysphoria is a diagnosable medical condition defined by the clinically significant distress caused by the marked incongruence between a person's gender identity and the sex they were assigned at birth. It is a serious medical condition that some, but not all, transgender people experience.

46. Treatment of gender dysphoria is guided by the standards of care set forth by the World Professional Association for Transgender Health, which were originally published in 1979 and are now in their eighth edition. These guidelines reflect the professional consensus about the psychological, psychiatric, hormonal, and surgical management of gender dysphoria.

47. The accepted standard of care is to address gender dysphoria with treatments designed to bring a person's body and gender expression into line with their gender identity. This course of treatment has different components depending on the medical and psychological needs of each transgender person. As with other forms of healthcare, a patient considers the available

treatment options and makes treatment decisions in consultation with their family and healthcare provider.

48. Treatment for gender dysphoria also includes living one's life consistently with one's gender identity. This includes having identity documents that accurately reflect one's sex, as determined by one's gender identity. Forcing transgender people to use identity documents that do not match their gender identity or forcing them to go without identity documents—the ultimate results of the 2022 Rule, the new MVD policy and practice, and Defendants' interpretation of SB 458 with respect to issuing amended birth certificates and amended driver's licenses—is inconsistent with medical protocols and can result in elevated levels of anxiety, depression, and suicidality.

49. Being forced to hold and present documents that do not match a person's sex as determined by their gender identity can also result in discrimination, harassment, and violence when transgender people are called upon to present identification that contains a sex designation inconsistent with their gender expression. This is the essential danger of the 2022 Rule, the new MVD policy and practice, and Defendants' interpretation of SB 458 with respect to issuing amended birth certificates and amended driver's licenses: they compel transgender people, under obligation of law, to carry identity documents that are contrary to the sex they know themselves to be and present as to others, thereby increasing the risk that they will be discriminated against, harassed, or subjected to violence.

50. Recognizing the importance of identification documents, the American Medical Association (“AMA”) has adopted a policy urging states to ease the path to amending those documents so that psychological stress, depression, suicidality, invasions of privacy, and harassment, including potential violence against transgender people, are avoided. The total ban on

amending identification documents contemplated by the 2022 Rule, the new MVD policy and practice, and Defendants' application of SB 458 with respect to issuing amended birth certificates and amended driver's licenses directly contradicts the AMA's policy.

**The Need for Birth Certificates and Driver's Licenses
Matching One's Sex, as Determined by One's Gender Identity**

51. Birth certificates and driver's licenses are essential government-issued documents that individuals use for various important purposes throughout their lifetime. They are used in a wide variety of contexts, such as determining eligibility for, among other things, employment, providing identification for travel, proving age, enrolling in government programs, and engaging in a wide range of financial transactions.

52. A mismatch between someone's gender identity and the sex designation on their birth certificate or driver's license discloses that person's transgender identity, a profoundly private piece of information in which transgender people have a reasonable expectation of privacy. People who are denied accurate birth certificates and driver's licenses are deprived of significant control over where, when, how, and to whom they disclose their transgender identity.

53. A mismatch between a transgender person's gender identity and the information on their birth certificate or driver's license subjects them to discrimination and harassment in a variety of settings, including employment, healthcare, travel, a wide range of financial transactions, and interactions with government employees and officials, including but not limited to law-enforcement personnel.

Plaintiffs' Personal Histories

54. Plaintiff Jessica Kalarchik is a 49-year-old woman who was born and raised in Butte, Montana, and currently resides in Anchorage, Alaska. Ms. Kalarchik is currently employed

as a forensic nurse examiner at her local hospital in Alaska. She is a veteran and served for 31 years in the armed forces, including eight years in the JAG Corps. She is married to her wife Renee.

55. Ms. Kalarchik is transgender. She was assigned the male sex at birth. Her birth certificate still includes a male sex designation, even though she has known that she is female for many years.

56. Ms. Kalarchik has been living publicly as female for the past year. She presents as female in all circumstances of her daily life. She has taken multiple steps to bring her body and gender expression into alignment with her female gender identity. Ms. Kalarchik was diagnosed with gender dysphoria and began receiving gender-affirming hormone therapy in May 2022. She continues to meet with her treating healthcare professional regularly. She and her doctor have determined that gender-affirming surgery such as face surgery or orchiectomy are appropriate and necessary to treat her gender dysphoria, but she is financially unable to pursue this care at this time. Additionally, Ms. Kalarchik has legally changed her name to align with her female gender identity and has changed her name and sex marker on both her Alaska driver's license and her social security card.

57. Ms. Kalarchik has been happier and healthier after starting her transition and hormone therapy. Living as her authentic self has significantly reduced her stress and anxiety, which in turn has improved her overall health and eliminated her life-long struggles with acid reflux and high blood pressure.

58. Ms. Kalarchik needs to change the sex designation on her birth certificate to match her female sex, as determined by her gender identity, but is unable to do so because of the 2022 Rule on its face and as applied to issuing amended birth certificates and SB 458 as applied to issuing amended birth certificates. Ms. Kalarchik's inability to obtain a birth certificate that

accurately reflects her female sex is a painful and stigmatizing reminder of the State of Montana's refusal to recognize her as a woman.

59. Further, denying Ms. Kalarchik an accurate birth certificate places her at risk of violence, harassment, and discrimination every time she presents a birth certificate that incorrectly identifies her as male.

60. Ms. Kalarchik has had first-hand experience with incidents of harassment and discrimination in both her personal and professional life.

61. Ms. Kalarchik lives in fear of having to present her birth certificate to someone who may respond negatively or even violently. Ms. Kalarchik is typically perceived as female, so anytime she is forced to present an identity document that incorrectly identifies her as male, she is forced to "out" herself as transgender.

62. Plaintiff Jane Doe began living fully and openly as female approximately two years ago. She has taken various steps to bring her body and the other ways she expresses her identity into line with her female gender identity. For the last two years, Ms. Doe has taken hormone replacement therapy with the aid and support of her treating healthcare professional. Ms. Doe is a graphic designer. Ms. Doe needs to change the sex designation on her birth certificate to match her female gender identity but is unable to do so because of the 2022 Rule. Ms. Doe needs to change the sex designation on her driver's license to match her female gender identity but is unable to do so because of the new MVD policy and practice. Both the 2022 Rule and the new MVD policy and procedure preventing her from amending her identity documents stem from the government's application of SB 458. Her inability to obtain accurate identity documents places her at risk of violence, harassment, and discrimination every time she presents an identity document that incorrectly identifies her as male.

63. Ms. Doe does everything in her power to avoid violence, discrimination, and harassment because she knows that transgender people across the state and country are at increased risk of this mistreatment. She takes extra precautions, including avoiding the use of public restrooms and changing rooms. Ms. Doe has faced discrimination within her own close circle after coming out. In light of the mistreatment she experienced from people with whom she had a close relationship, Ms. Doe is particularly afraid that strangers who learn that she is transgender will target her for mistreatment, discrimination, and violence.

64. Ms. Doe is concerned about presenting her identity documents to people who may respond negatively. Ms. Doe is typically perceived as female, so anytime she is forced to present an identity document that incorrectly identifies her as male, she is forced to “out” herself as transgender. As Ms. Doe’s appearance has shifted, her driver’s license no longer matches her appearance, and she has experienced increasing issues with this disparity.

CLAIMS FOR RELIEF

COUNT I **(Equal Protection of the Laws)**

65. Plaintiffs incorporate all other paragraphs of this complaint as if fully set forth in this count.

66. Article II, Section 4, of the Montana Constitution states that “[t]he dignity of the human being is inviolable. No person shall be denied the equal protection of the laws.”

67. The 2022 Rule on its face and as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended driver’s licenses, and SB 458 as applied to issuing amended birth certificates and amended driver’s licenses deny Plaintiffs and the class members equal protection of the laws based on sex and gender identity. Under Montana law, discrimination based on gender identity is a form of discrimination based on sex. *Maloney v.*

Yellowstone County, et al., Cause No. 1570–2019 & 1572–2019 (Department of Labor and Industry, August 14, 2020); *Scarlet van Garderen, et al., v. State of Montana, et al.*, Cause No. DV-23-541, Order Granting Plaintiffs’ Motion for Preliminary Injunction (Fourth Judicial District Court, Missoula County, Sept. 27, 2023). Both are forbidden by the equal-protection clause of Article II, Section 4, of the Montana Constitution.

68. The 2022 Rule on its face and as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended birth certificates, and SB 458 as applied to issuing amended birth certificates and amended driver’s licenses discriminate against transgender people by prohibiting amendments to birth-certificate and driver’s-license sex designations arising from gender transition, gender identity, or change of gender.

69. This prohibition serves no legitimate nondiscriminatory purpose. In fact, with respect to amending sex designations on birth certificates, it is a major step backward from the procedures established in Montana in December 2017, under which amendments to birth-certificate sex designations were allowed without substantive legal objection and required only a supporting affidavit from the applicant.

70. Similarly situated people whose gender identity matches their sex assigned at birth, and who seek to amend portions of their birth certificates or driver’s licenses unrelated to sex designation or gender identity, may do so without the same burdens and prohibitions imposed on transgender people.

71. Discrimination based on sex is subject to strict scrutiny because the Montana Constitution’s equal protection guarantee is more stringent and “provides for even more individual protection” than the federal constitution. *Scarlet van Garderen, et al., v. State of Montana, et al.*, Cause No. DV-23-541, Order Granting Plaintiffs’ Motion for Preliminary Injunction (Fourth

Judicial District Court, Missoula County, Sept. 27, 2023) (quoting Justice Nelson’s concurring opinion in *Snetsinger v. Montana University System*, 2004 MT 390, ¶ 58). Applying anything less than strict-scrutiny review to policies that discriminate on the basis of sex would be inconsistent with the intentionally broad protections afforded by the Montana Constitution’s equal-protection guarantee.

72. Discrimination based on transgender status is subject to heightened scrutiny because (a) transgender people have suffered a long history of discrimination, which continues to this day; (b) transgender people are a discrete and insular group that lacks the political power to protect their rights effectively; (c) a person’s gender identity or status bears no relation to the person’s ability to contribute to society; and (d) gender identity is a core defining trait, fundamental to a person’s identity, that, as a condition of equal treatment, a person cannot be required to abandon.

73. The 2022 Rule on its face and as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended driver’s licenses, and SB 458 as applied to issuing amended birth certificates and amended driver’s licenses also violate the individual dignity, diminish the intrinsic worth, and compromise the inalienable rights of Plaintiffs and other members of the class in violation of Article II, Section 3, of the Montana Constitution.

74. The 2022 Rule on its face and as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended driver’s licenses, and SB 458 as applied to issuing amended birth certificates and amended driver’s licenses are not narrowly tailored to further a compelling state interest, nor are they substantially related to an important government interest.

75. For these reasons, Plaintiffs and the class members are entitled to the declaratory and injunctive relief requested below with respect to the 2022 Rule, the new MVD policy and practice, and SB 458.

COUNT II
(Right to Privacy)

76. Plaintiffs incorporate all other paragraphs of this complaint as if fully set forth in this count.

77. Article II, Section 10, of the Montana Constitution provides that the right of individual privacy is essential to a free society and “shall not be infringed without a showing of compelling state interest.” This fundamental right to privacy encompasses confidential informational privacy and guarantees the right “to control circulation of personal information.” *State v. Nelson* (1997), 283 Mont. 231, 941 P.2d 441.

78. In addition, the substantive protections of the due-process clause of Article II, Section 17, of the Montana Constitution include the right to privacy. “Informational privacy is a core value furthered by the state constitutional guarantees.” *See State v. Nelson* (1997), 283 Mont. 231, 941 P.2d 441.

79. Based on Montana’s constitutional guarantees and its common law, Plaintiffs and the class members have a reasonable expectation of privacy regarding their transgender status.

80. The 2022 Rule on its face and as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended driver’s licenses, and SB 458 as applied to issuing amended birth certificates and amended driver’s licenses severely burden Plaintiffs’ and the class members’ right of privacy by eliminating the ability of transgender people to amend the sex designation on their birth certificates and driver’s licenses, thereby forcing them

to disclose their transgender status whenever they must present a birth certificate or driver's license that discloses their sex assigned at birth rather than their sex as determined by their gender identity.

81. Because the 2022 Rule on its face and as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended driver's licenses, and SB 458 as applied to issuing amended birth certificates and amended driver's licenses infringe on the right to privacy, they are subject to strict scrutiny. No compelling state interest justifies violating Article II, Sections 10 and 17, of the Montana Constitution by issuing amended birth certificates and amended driver's licenses subject to the restrictions imposed by the 2022 Rule, the new MVD policy and practice, and SB 458. Nor are these violations related to a substantial or important government interest. Under principles of substantive due process, Plaintiffs' and the class members' privacy interests outweigh any purported justification Defendants could assert for violating those interests.

82. For these reasons, Plaintiffs and the class members are entitled to the declaratory and injunctive relief requested below with respect to the 2022 Rule, the new MVD policy and practice, and SB 458.

COUNT III
(Compelled Speech)

83. Plaintiffs incorporate all other paragraphs of this complaint as if fully set forth in this count.

84. The Montana Constitution states, "No law shall be passed impairing the freedom of speech or expression." Mont. Const, Art. II, §7. Under the Montana Constitution, a law regulating expressive content is presumptively invalid. *State v. Lamoureux* 2021 MT 94 ¶ 21, 404 Mont. 61, 485 P.3d 192. One component of the constitutional protection of the right to speak is

that speech or expression cannot be compelled. Speech protections shield more than the written or spoken word. *Wooley v Maynard*, 430 U.S. 705, 715 (1977).

85. The 2022 Rule on its face and as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended driver's licenses, and SB 458 as applied to issuing amended birth certificates and amended driver's licenses compel Plaintiffs and the class members to misidentify themselves by a sex designation that does not accurately state their sex. They also force Plaintiffs and the class members to comply with a binary definition of sex that requires them to (a) forego having accurate identification documents, including but not limited to birth certificates and driver's licenses, and (b) incur the risks of discrimination, harassment, and violence associated with having inaccurate identification documents.

86. This compelled speech is subject to strict scrutiny, and no government interest in compelling Plaintiffs and the class members to misidentify themselves with an inaccurate sex designation outweighs their interest in accurately designating their sex on their birth certificates and driver's licenses.

87. For these reasons, Plaintiffs and the class members are entitled to the declaratory and injunctive relief requested below with respect to the 2022 Rule, the new MVD policy and practice, and SB 458.

COUNT IV
(Montana Administrative Procedure Act)

88. Plaintiffs incorporate all other paragraphs of this complaint as if fully set forth in this count.

89. § 2-4-506, MCA, authorizes declaratory-judgment actions seeking to have a rule declared invalid "if it is found that the rule or its application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff."

90. The 2022 Rule on its face and as applied to issuing amended birth certificates and amended driver's licenses, the new MVD policy and practice as applied to issuing amended driver's licenses, and SB 458 as applied to issuing amended birth certificates and amended driver's licenses interfere with and impair, and threaten to interfere with and impair, the legal rights or privileges of Plaintiffs and the class members, including their rights and privileges under the Montana Constitution to equal protection, to privacy, and to be free from compelled speech.

91. For these reasons, Plaintiffs and the class members are entitled to the declaratory and injunctive relief requested below with respect to the 2022 Rule, the new MVD policy and practice, and SB 458.

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that (i) the 2022 Rule is unconstitutional on its face and as applied to issuing amended birth certificates, (ii) the new MVD policy and practice is unconstitutional as applied to issuing amended driver's licenses, and (iii) SB 458 is unconstitutional as applied to issuing amended birth certificates and amended driver's licenses;
- B. Declare that (i) the 2022 Rule is invalid under § 2-4-506, MCA on its face and as applied to issuing amended birth certificates, (ii) the new MVD policy and practice is invalid under § 2-4-506, MCA as applied to issuing amended driver's licenses, and (iii) SB 458 is invalid under § 2-4-506, MCA as applied to issuing amended birth certificates and amended driver's licenses;
- C. Preliminarily and permanently enjoin Defendants, as well as their agents, employees, representatives, and successors, from directly or indirectly enforcing the 2022 Rule on its face or as applied to issuing amended birth certificates, the new MVD policy and practice as applied to issuing amended driver's licenses, and SB 458 as applied to issuing amended birth certificates and amended driver's licenses, including but not limited to by prohibiting Defendants from denying applications to amend sex designations on birth certificates or driver's licenses based on the 2022 Rule, the new MVD policy and practice, SB 458, or any further administrative rulemaking directed toward the subject matter of the 2022 Rule, the new MVD policy and practice, or SB 458;

- D. Certify a class, in accordance with Rule 23 of the Montana Rules of Civil Procedure, of (i) all transgender people born in Montana who currently want, or who in the future will want, to have the sex designation on their Montana birth certificate changed to match what they know their sex to be, as determined by their gender identity, and (ii) all transgender people who currently want, or who in the future will want, to have the sex designation on their Montana driver's license changed to match what they know their sex to be, as determined by their gender identity;
- E. Certify the named Plaintiffs as representatives of the class and their counsel as class counsel; and
- F. Award Plaintiffs the reasonable attorney's fees and costs incurred in bringing this action.
- G. Award any other relief this Court deems just and proper.

DATED this 18th day of April, 2024.

Respectfully submitted,

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** Pro hac vice applications forthcoming*