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IN THE FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

PHOEBE CROSS, a minor by and through his guardians Molly Cross and Paul Cross, et al. **Plaintiffs,** **v.** **STATE OF MONTANA et al.,** **Defendants.**	**Case No. DV-23-541** **Judge: Hon. Jason Marks** **PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' RULE 60(B) MOTION FOR RELIEF FROM JUDGMENT OR ORDER**

INTRODUCTION

Based largely on the U.S. Supreme Court's recent decision *United States v. Skrmetti*, 145 S. Ct. 1816 (2025), and ongoing political attacks by the current federal Administration against transgender people, Defendants claim a "change in decisional law" and "new evidence" to attempt to reopen this case under Rule 60(b). But neither exists.

The interpretation of the federal equal protection clause in *Skrmetti* is not a change in decisional law under the *Montana Constitution*. *Skrmetti* did not consider the Montana Constitution at all, and over many years, the Montana Supreme Court has consistently interpreted the Montana Constitution to be significantly more protective of individual rights than the U.S. Constitution, particularly in its expansive interpretation of Montana's stand-alone privacy clause, which does not have a federal analog.

Nor does the nakedly political targeting of transgender people by the Administration constitute "new evidence." Instead, Defendants merely repackage information that was fully available to them during discovery and that the Court reviewed in reaching its decision on summary judgment and issuing a permanent injunction against SB 99.

Defendants provided no basis—much less extraordinary circumstances—to set aside this Court's final judgment applying clear Montana Supreme Court precedent and carefully evaluating the evidence presented by the parties on their cross-motions for summary judgment. Defendants' belated effort for another bite at the apple is little more than an expression of disagreement with this Court's conclusions—something they may raise on appeal. But that disagreement, and Defendants' political screed, fall far short of establishing grounds for the extraordinary relief they seek. Defendants' motion for relief under Rule 60(b) should therefore be denied.

ARGUMENT

I. Defendants Have Not Established Grounds for Relief Under Rule 60(b)(5).

Defendants argue that "*Skrmetti* reflects a major change in decisional law," and that prospective application of this Court's permanent injunction is therefore no longer equitable under Montana Rule of Civil Procedure 60(b)(5). Defendants' Brief in Support of Rule 60(b)(2), 60(b)(5), and (60)(b)(6) Motion for Relief from Judgment or Order. Doc. 294 at 9-10. But even if *Skrmetti* did represent a change in decisional law—which it does not—Rule 60(b)(5) "does not authorize relief from a judgment on the ground that the law applied by the court in making its adjudication has been subsequently overruled or declared erroneous in another and unrelated proceeding...." *State ex rel. Rhodes v. Dist. Ct.*, 183 Mont. 394, 396, 600 P.2d 182, 183 (1979). *Skrmetti* does not represent a change in *Montana* decisional law, nor is discussion of gender-affirming care for minors in various *Skrmetti* opinions—particularly in Justice Alito's *concurrence*—any basis to challenge the final judgment here.

A. *Skrmetti* does not reflect a change in decisional law in Montana.

Plaintiffs' claims are based on the Montana Constitution, and this Court applied that Constitution in summary judgment in favor of Plaintiffs. The conclusion the U.S. Supreme Court reached in *Skrmetti*—that a Tennessee law prohibiting gender-affirming care for minors did not violate the *federal* equal protection clause—does not reflect a change in decisional law in this case for several reasons.

First, this Court deemed SB 99 to be unconstitutional under provisions of the Montana Constitution other than the equal protection guarantee. Applying *Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364, which articulates a specific standard for the State's interference with an individual's right to obtain

medical care, this Court concluded that SB 99 violated patients' privacy rights under the Montana Constitution. Doc. 279 at 37. The Court also found that SB 99 violated Plaintiffs' free speech rights: Because SB 99 bars "any speech that could viewed as 'promoting' or 'advocating' gender-affirming medical care" made available to individuals or entities whose treatment is state-funded (including transgender minors in Montana), "SB 99 is a content-based regulation and invidiously discriminates on the basis of viewpoint." Doc. 279 at 51-52. Thus, even if *Skrmetti* impacted this Court's equal protection analysis—which it does not—the Court struck down SB 99 on entirely independent grounds, and therefore *Skrmetti* cannot be a basis for Rule 60(b)(5) relief.

Second, *Skrmetti* also does not reflect a change in *Montana's* equal protection decisional law: application of Montana's equal protection clause materially differs from and is more expansive than its federal analog. *Planned Parenthood of Mont. v. State ex rel. Knudsen*, 2025 MT 120, ¶ 73, 422 Mont. 241, 570 P.3d 51 ("Our equal protection clause guarantees more individual protection than does the Fourteenth Amendment of the U.S. Constitution."). And the *Skrmetti* Court relied heavily on *Geduldig v. Aiello*, 417 U.S. 484 (1974), for the proposition that differential treatment based on pregnancy did not constitute sex discrimination under the federal equal protection clause. But the Montana Supreme Court has explicitly rejected *Geduldig*'s rationale. *See Bankers Life & Cas. Co.*, 263 Mont. 156, 161, 866 P.2d 241, 243 (1993) ("[D]ifferential treatment of pregnancy constitutes sex discrimination in Montana.").

Moreover, this Court applied strict scrutiny to SB 99 under Montana's equal protection clause because the law infringes on a fundamental right. Doc. 279 at 40. In several contexts in which the U.S. Supreme Court has rejected constitutional claims, the Montana Supreme Court has nonetheless applied strict scrutiny under Montana's equal protection clause because the challenged law infringes on a

fundamental right. *Planned Parenthood of Montana. v. State ex rel. Knudsen*, 2025 MT 120, ¶ 72, 422 Mont. 241, 570 P.3d 51, 78 (20-week abortion ban "violates the equal protection clause under Article II, Section 4, of the Montana Constitution because 'it wrongly creates legal classifications based on the exercise of a fundamental right.'"). The *Skrmetti* decision in no way impacts this body of case law.

B. Discussion of gender-affirming care for minors in the *Skrmetti* opinions is not a basis for Rule 60(b)(5) relief.

Defendants also argue that *Skrmetti* should somehow impact this Court's factual analysis, relying on various justices' discussions of the body of evidence related to gender-affirming care for minors. Doc. 294 at 10-12. Defendants point to Justice Sotomayor's dissent to assert that the positions of major medical associations "are not dispositive but rather 'simply one piece of factual context relevant to the Court's assessment of whether SB1 is substantially related to the achievement of an important government interest.'" Doc 294 at 16. Defendants' out-of-context quotation of one sentence from a concurrence in another jurisdiction, based on a wholly distinct record, does nothing to influence this Court's analysis of *this* record under *Montana* law. This Court already provided its assessment of the relevant evidence: "The question is whether a medically acknowledged, bona fide health risk exists. Based on the position of the United States' major medical organizations and their endorsement of the Guidelines for treating adolescents with gender dysphoria, there is no genuine dispute that it does not." Doc. 290 at 21.

None of this reflects any change in "decisional law," nor does it establish a basis for Rule 60(b)(5) relief (nor do these discussions establish grounds for Rule 60(b)(2), as discussed below). Indeed, Defendants' arguments related to the discussion of gender-affirming care in *Skrmetti* are overwhelmingly pulled from the *concurrence* of a single Justice, as opposed to the majority ruling.

II. Defendants Have Not Established Grounds for Relief Under Rule 60(b)(2)'s "Newly-Discovered Evidence" Standard.

None of the materials Defendants claim as "newly discovered" is, in fact, new. Much of what they present was available to Defendants during summary judgment briefing; in fact, their primary arguments rely upon evidence already presented to and addressed by this Court. What remains is merely cumulative of undisputed facts already adduced and analyzed by this Court during summary judgment briefing. All of the purportedly "new" factual material fails either: (1) Rule 60(b)(2)'s requirement that the evidence "came to the moving party after trial [and] was not precluded from earlier discovery for want of due diligence;" or (2) its requirement that the evidence be "not merely cumulative." Moreover, even if this were *not* the case, nothing identified by Defendants changes any material fact, and thus the "new" developments fail the Rule's requirement that evidence sufficient to grant relief from judgment be "so great[ly] [material] that it would probably produce a different result." *Moore v. Frost*, 2021 MT 74, ¶ 12, 403 Mont. 483, 483 P.3d 1090.

A. Defendants' purportedly "new" evidence is not new and is cumulative of facts already adduced.

Defendants point to several purportedly "new" factual developments—but at each turn, these are merely cumulative or derivative of evidence that was fully available to Defendants during discovery and that Defendants had a full and fair opportunity to develop through discovery.

HHS Letter. First, Defendants point to continued efforts by the federal government to implement and enforce Executive Order 14168, which the parties briefed and this Court analyzed prior to its summary judgment decision. Those ongoing efforts are derivative of the Executive Order, discussed in the parties'

briefing on cross motions for summary judgment, (*e.g.* Doc. 205 at 3; Doc. 233 at 2 & n.1), and are cumulative of evidence previously considered by this Court.

Defendants primarily rely upon a May 28, 2025, letter from the Secretary of Health and Human Services ("HHS Letter"). Ex. A to Doc. 294. Defendants argue that the HHS Letter—by "officially recogniz[ing]" the contents of the May 1, 2025 HHS Report ("HHS Report")—itself constitutes new evidence that changes the level of scrutiny that should be applied to SB 99. Doc. 294 at 6.

The HHS Letter provides no new evidence at all. It consists completely of references to the HHS Report, followed by one paragraph reminding providers of previous agency actions. Ex. A to Doc. 294 at 1-2. Indeed, Defendants acknowledge that each conclusion they cite in the HHS Letter is simply a quotation of the HHS Report itself. See Doc. 294 at 2. Of course, Defendants had sufficient time to present evidence on the Report's conclusions, and in fact did so before judgment. *E.g.*, Doc. 274 at 5-9; *see State Med. Oxygen and Supply, Inc. v. Am. Med. Oxygen Co.*, 267 Mont. 340, 348, 883 P.2d 1241, 1246 (1994) (where party had time to "review, analyze, and present" evidence before judgment, evidence did not satisfy Rule 60(b)(2)).

Indeed, because Defendants previously raised it in prior briefing, this Court previously addressed the substance of the HHS Report, including the medical and scientific claims referenced in the HHS Letter. This Court acknowledged that, despite claims that the Report "presents new research and evidence," in fact, it "summarizes . . . the *existing literature*," and that the latest-published work considered by the review was "published in the beginning of January 2025—weeks before summary judgment opened in this matter." Doc. 278 at 3-4 (quoting Doc. 274). The HHS Report was then, and is now, "not actually new scientific evidence" but rather "discusses already existing evidence that all parties have had access to during the pendency of this case and prior to . . . briefing." *Id.* at 3, 4.

Although Defendants suggest the HHS Letter is new because it constitutes new "action" taken in response to the HHS Report, Doc. 294 at 9, the letter references no new action. It states that it *may*, in the future, "undertake new policies and oversight actions, consistent with applicable law." Ex. A to Doc. 294 at 2. But it does not make those changes. Instead, as the letter makes clear it its final line, it is urging addressees to "read the Review" and to act accordingly. *Id.* These generalized threats are simply derivative of the Executive Order and its campaign against what it calls the "radical and false claim" that transgender people exist. *Protecting Children From Chemical and Surgical Mutilation*, 90 Fed. Reg. 8771 (Jan. 28, 2025). By re-attaching the entire HHS Report and a new declaration comparing it to other (pre-existing) evidence in the record, Defendants transparently and inappropriately suggest that the Court should re-weigh the existing record under Rule 60(b)(2).

Moreover, as Plaintiffs pointed out in earlier briefing, the HHS Report itself should not receive any weight even if it *were* new evidence. The Report's authors' identities are kept anonymous, although one author—an MIT philosopher who writes polemic essays arguing against "gender ideology"—has revealed his identity. *See* https://www.msnbc.com/opinion/msnbc-opinion/gender-affirming-care-trans-minors-discouraged-hhs-report-trump-rcna205054. Additionally, the Executive Orders initiating the HHS Report "predetermined the report's perspective" by "labelling [gender-affirming] care 'mutilation' and characterizing the evidence relied on to support such treatment as 'junk science,' and ordering HHS to 'publish a review of the existing literature [regarding care for] . . . children who assert gender dysphoria, rapid-onset gender dysphoria, or other identity-based confusion.'" Doc. 275 at 3.

Schwartz Study. Defendants next argue that a study by Lauren Schwartz presenting purported conclusions about mortality risks among adult transgender

women constitutes "new evidence." This is not so: like the HHS Report, this study is not new, and it is entirely cumulative of evidence already adduced.

First, although Defendants conveniently fail to acknowledge it, the Schwartz study (like the HHS Report) is not an original scientific study but rather a paper compiling the results of pre-existing studies. *See* Schwartz, Ex. D to Doc. 294 at 1 ("This paper compiles several emerging and accumulating safety signals in the medical literature"). It is not an observational or experimental study and provides no new analysis of any data. And the most recent work discussed in the paper appears to be from early 2025, before this Court's summary judgment decision. *Id.* at 2 (discussing FN 17 as having become available "as this paper was completing review.").

Crucially, the very conclusion Defendants rely on this study for—that "the overall mortality risk of [adult] transgender women . . . was higher compared to [cisgender] men"—refers not to any analysis of data undertaken in the Schwartz study but *rather to a study published in 2021.* Ex. D to Doc. 294 at 4 (containing the quoted language referring to the conclusions of study referenced at footnote 66); *id.* n. 66 (study published in 2021). Moreover, the substance of the reiterated conclusion is immaterial. The Schwartz paper and the underlying study's conclusion refer to the mortality risk of adult transgender women, without controlling for the presence or absence of gender-affirming medical care. As a result, while it might be informative about the vulnerabilities of adult transgender women, *regardless* of whether they have access to gender-affirming medical care, it has nothing to say about the issues in this case.

Additionally, the conclusions of the study are plainly cumulative. Defendants argued in their summary judgment briefing that the all-cause mortality risk of adult transgender women is higher than for the general population. Doc. 190 at 5. They also appear to have pointed to the very study from which their key conclusion of the

Schwartz study was derived: the 2021 Dutch study referenced at footnote 66. *See id.* (referring to studies in the Netherlands discussed in unattached expert report).

Then, as now, Defendants made no effort to establish *why* increased rates in mortality in adult transgender women (not linked to medical treatment) cast doubt on the benefits of gender-affirming medical care, much less care specifically for minors. This conclusion does not affect any undisputed material fact analyzed by this Court.

Olson-Kennedy Study. Defendants next claim that a recently published study by Dr. Olson-Kennedy finding that puberty blockers resulted in "no significant changes" in some mental health measures for some youth constitutes "new evidence that would probably produce a different result." Doc. 294 at 4, 7.[1] Defendants are wrong, for two reasons.

First, this study is not new. Although Defendants fail to acknowledge it, they extensively questioned Dr. Olson-Kennedy about this very study and its results

[1] Defendants claim that this study was "long withheld" because of fears the result might be "weaponized," relying on a New York Times report based on a media interview by Dr. Olson-Kennedy. Defs. Br. at 4. However, the interview this conclusion appears to be based upon has since been published and does not support the claim that the study's results were "withheld" for this reason. *See Transcript, Episode 5: The Review,* N.Y. Times (Jun. 2, 2025) https://www.nytimes.com/2025/06/02/podcasts/trans-gender-care-protocol.html (agreeing that, because of "the political environment," "manuscripts have to be so airtight" and that she "does not want [the] work to be weaponized [and that it] has to be exactly on point, clear, and concise" but not stating that the timing of publication is attributable to fears of weaponization). In an affidavit already submitted during summary judgment briefing, Dr. Olson-Kennedy stated: "It is false that I, or anyone involved in the NIH-funded study, has withheld publication of data because of politics, as the headline of Ms. Ghorayshi's article falsely states," but rather that "the length of time it has taken to [publish was] attributable to the sheer amount of work and resources required to do so accurately, transparently, and clearly. This goal ha[d] been further impacted by resource limitations, including funding cuts and personnel changes." Doc. 204 at S.A. 068.

during her deposition in this case, and they discussed the study at length during summary judgment briefing. *See* Supplemental Appendix ("SA"). to Doc. 204 at 044-52 (discussing study); *see also* Doc. 190 at n.6 (discussing results of the study). Specifically, Dr. Olson-Kennedy testified in her deposition about the result Defendants now cite as "new" information. *Id. a*t S*ee* SA.048- 049 ("there was no statistically significant change . . . from baseline to 24 months.").

Second, the findings of this study are entirely immaterial to Defendants' defense of SB 99. It was undisputed that the purpose of puberty blockers is to *prevent worsening* mental health, not to produce affirmative improvements. *See* Doc. 204 at 11 ("reducing suicidality is not the . . . primary treatment goal of puberty-suppressing medications; rather, their purpose is primarily to '*stop* further development of physical characteristics inconsistent with the adolescent's identity, [and] they therefore are meant to *prevent* (not improve) the worsening of dysphoria.'" (quoting A.147; SA.030.) Defendants' assertion that the study casts doubt on a "promised benefit" of improved mental health simply attacks a strawman. Doc. 294 at 7. Several other studies available during discovery already demonstrated the same outcome, which is not controversial (or relevant) because mental health improvements are not the purpose of puberty blockers. S.A. 055.

B. None of the evidence cited by Defendants, including alleged recent clinic closures, is material.

As discussed above, much of Defendants' purportedly "new" factual material—the HHS Letter and two studies—is not actually new and/or is cumulative. It is also immaterial because it has no relevance to any undisputed material fact underlying this Court's earlier decision, including that SB 99 is both underinclusive and overinclusive compared to its stated purpose. What remains—Defendants' reliance on politically-inflected attacks on gender-affirming medical care by the

current federal Administration—is not material, much less "so greatly material that it would probably produce a different result" as the Rule requires. *Moore*, 403 Mont. at 488.

Defendants' reliance on politically motivated investigations into, and cessation of care at, some clinics is irrelevant.[2] Doc. 294 at 2-3. Defendants point to the closure of a clinic in California,[3] which released a statement acknowledging that it ceased services because of the impact of politically motivated executive actions—

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[2] Defendants also claim that the FBI has purportedly initiated "investigations" into hospitals "for alleged female genital mutilation of minors," but in support, they offer only a broken link to an apparently non-existent newspaper article, and a DOJ memo charging employees to wage a campaign against the "radical ideological agenda" of "[g]ender ideology," which pushes "transgenderism" and reflects "a coordinated, unchecked ideological attack on America's children." *See* Defs. Br. n. 6 (non-functioning Fox News hyperlink and DOJ memo). The DOJ memo further alleges that the existence of a transgender person in a cabinet-level appointment reflected "fraud and exploitation of parents and children who have fallen prey to radical gender ideology." This memo is more of a political manifesto than "newly-discovered" factual material. What's more, the federal government has acknowledged that the provision of gender-affirming medical care does not violate existing federal laws against female genital mutilation, which prohibits only procedures "performed for non-medical reasons." 18 USC § 116(e); *see* Defs. Opp to Pls. Mot. For Temporary Restraining Order at 25, 26, *Washington v. Trump*, No. 2:25-cv-00244 (W.D. Wash. Feb. 11, 2025) (United States Defendants clarifying their view that female genital mutilation statute would not apply to puberty blockers or hormone therapy and that "[a]s for surgical procedures . . . the statute 'explicitly excludes any 'surgical operation' that is 'necessary to the health of the person.'").

[3] To the extent Defendants imply that cessation of care at CHLA might be a result of the medical malpractice litigation discussed extensively by Defendants during briefing, this would appear to be mistaken—those claims have already been held by the California trial court to be time-barred. Minute Order, Jun. 17, 2025, *Breen v. Olson-Kennedy,* No. 24STCV32096 (Cal. Super. Jun. 17, 2025) ("The Court therefore concludes that, based on the allegations of the complaint, Plaintiff's claim is time-barred.").

not because of any medical judgment by the hospital. *See* Center for Transyouth Health and Development, https://web.archive.org/web/20250722072255/https://www.chla.org/adolescent-and-young-adult-medicine/center-transyouth-health-and-development (attributing cessation of care to "increasingly severe impacts of recent administrative actions and proposed policies" but noting that the hospital is "immensely proud" of the "legacy" of providing "high-quality, evidence-based, medically essential care for transgender and gender-diverse youth.").[4] And nothing about this changes the position of major medical organizations in America, which have all endorsed gender-affirming medical care for adolescents as safe and effective. Doc. 279 at 8.

Defendants also point to cessation of care at some clinics in Montana, but they are forced to acknowledge that this is because of "concerns with Montana Senate Bill 218 and House Bill 682," Doc. 294 at 8, which expand medical malpractice liability for the provision of gender-affirming care, including by increasing the statute of limitations significantly *only* for gender-affirming care. Again, the cessation of care is not material to any aspect of this Court's decision regarding the medical evidence underlying the care or whether SB 99 survives heightened scrutiny, as it does not reflect a medical judgment. Defendants' own cited source states that the cessation of care is due to "legislative and regulatory changes at the state and federal levels." *See* Doc. 294 n. 4; https://www.kpax.com/news/missoula-county/missoulas-community-medical-center-to-end-gender-affirming-care.

[4] Defendants acknowledge this—noting the hospital attributed the cessation to "increasingly severe impacts of recent administrative actions" but then claim that internal emails revealed an ulterior motive that the decision was "in fact driven by 'significant operational, legal, and financial risks stemming from the shifting policy landscape." Doc. 294 at 8. These two statements, of course, say virtually the same thing—the clinic ceased providing care because of risks imposed by the federal government's attacks on gender-affirming care.

Defendants coyly pretend that they can fathom no reason a provider might be concerned about increased liability exposure from medical malpractice statutes if the care does not pose a bona fide health risk, even while they attach documents that threaten frivolous investigations, make vague threats of unspecified future oversight, and encourage complaints against providers. Defendants' suggestion that this Court should interpret these closures as clear evidence of a sudden change in medical judgment that just *coincides* with these external factors (including a dramatic and arbitrary expansion of medical malpractice liability) is transparently insufficient.

If anything, the ongoing political attacks on clinics reflect that the animus proved in this case by Plaintiffs and embodied in SB 99 continues to have a significant impact, including on federal resources that are not relevant to or controlled by the outcome in this case. Ongoing evidence of this political trend is not material to the legal test or issues here.[5]

III. Defendants Have Not Established Any Grounds for Relief Under Rule 60(b)(6).

Relief under Rule 60(b)(6) applies only in "extraordinary circumstances which go beyond those covered by the first five subsections of the rule." *Thomas F. Mietzel, LLC, v. Creative Wealth Acquisitions & Holdings, LLC*, 2023 MT 171N, ¶ 28, 534 P.3d 977 (unpublished) (citation omitted). Here, Defendants seek relief under subsections (2), (5), or (6) in the alternative. Doc. at 9-10, 13-14. In addition to the reasons that Defendants have not established the grounds for relief under

[5] Defendants add one sentence questioning "whether one or more" plaintiffs now lack standing. Doc. 294 at 8. To be clear, notwithstanding cessation of care at any Montana clinics, Plaintiff providers are currently still able to provide gender-affirming medical care to minor patients in Montana, and would therefore still be harmed if SB 99 were to take effect.

subsections (2) and (5), they also have not established that there are "extraordinary circumstances" for the purpose of Rule 60(b)(6) for the following reasons.

A. Defendants have not established any "extraordinary circumstances."

In an effort to establish such "extraordinary circumstances," Defendants first point again to *Skrmetti.* As discussed above, the *Skrmetti* decision does nothing to change the legal analysis that applies in this case. But even if the decision represented a change in decisional law—which it does not—it would not be an "extraordinary circumstance" warranting relief under Rule 60(b)(6). *In re Marriage of Waters*, 1986 MT 187, 223 Mont. 183, 724 P.2d, 726, 729 ("[A] change in the decisional law subsequent to a final judgment does not represent extraordinary circumstances under Rule 60(b) so as to allow reopening of that judgment").

Next, Defendants claim that "this Court's refusal to consider" the HHS Report constitutes extraordinary circumstances. Doc. 294 at 14. As discussed above, the Court *did* consider the HHS Report and rejected it as an irrelevant and politically motivated summary of existing evidence. Defendants' sole basis for their claim that the Court refused to "consider" the report is that there is not a "reference or citation" to the report in the Court's order on summary judgment. Doc. 294 at 14. But the Court's Order affirms its review of the record "in its entirety" in issuing the Order, Doc. 279 at 2, and the Court separately discussed the relevance of the report in its denial of Defendants' Motion to Vacate the Scheduling Order based on the report. Doc. 278 at 2-4. A lack of express citation to every document in the record does not constitute "extraordinary circumstances."

Defendants point to a third category of evidence which this Court's "refusal" to consider purportedly amounts to "extraordinary circumstances"—evidence from other countries. Doc. 294 at 16. But Defendants' claim that this Court did not

consider non-U.S. evidence is also untrue. The Court fully considered non-U.S. treatment of gender-affirming care for minors; in fact, the Court sought clarification on the state of non-U.S. law during oral argument on the summary judgment motions, clarifying that "even the most restrictive European countries allow such [gender-affirming medical] care for minors who are 16 years old or older." Doc. 279 at 24, n3. The Court also addressed non-U.S. practices in its Order, finding that, at most, foreign countries acknowledge the undisputed fact that some medical risk exists in medical procedures. *Id*. at 24. Acknowledgement of "some risk" does not satisfy the *Armstrong* standard, as the Court explained at length in its Order. *Id*. at 22-24. And the Court also appropriately focused its analysis on the position of the major medical associations in America, consistent with the holdings of the Montana Supreme Court in this case and others. *Planned Parenthood of Mont. v. State*, 2024 MT 178, ¶ 38, 417 Mont. 457, 554 P.3d 153; *Cross ex rel. Cross v. State*, 2024 MT 303, ¶ 35, 419 Mont. 290, 560 P.3d 637.

Finally, Defendants attempt to characterize the Court's summary judgment ruling as a demonstration of judicial bias. Doc. 294 at 17. Ruling on a motion for summary judgment, however, is in and of itself an appropriate mechanism for resolving a case and entering judgment. M. R. Civ. P. 56(c)(3) ("Summary judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter of law."). And mere disagreements about the interpretation of a fact or facts does not amount to genuine issues of material fact for summary judgment purposes. *Gliko v. Permann*, 2006 MT 30, ¶ 25, 331 Mont. 112, 130 P.3d 155.

In the absence of fundamental defects in the proceedings, Defendants' allegations of bias boil down to instances where the Court's analysis of the

materiality of facts differed from Defendants'. This is hardly bias, and Defendants are able to raise their arguments about any purported error on appeal.

B. The *Buck v. Davis factors* do not support relief under Rule 60(b)(6).

Defendants also argue that this Court should look to the factors that federal courts apply in determining whether there are "extraordinary circumstances" that warrant relief from a final judgment. Yet these factors—including (1) the risk of injustice to the parties, and (2) the risk of undermining the public's confidence in the judicial process—in no way support *Defendants'* claim to relief. *Buck v. Davis*, 580 U.S. 100, 123 (2017). As Plaintiffs have demonstrated throughout this case, SB 99 imposes significant harm on the Plaintiffs, imposing a *complete ban* on the provision of individualized care of patients even though such care is based on professional medical judgment and informed consent. Doc. 279 at 32, 40. Should SB 99 go into effect, minor Plaintiffs would be stripped of their ability to receive medically necessary care that is critical to their health and well-being. Doc. 56 ¶¶ 15, 20-21. Parent Plaintiffs would need to consider drastic measures to help meet their children's medical care needs, including leaving Montana and displacing their families. Doc. 55 ¶ 18; Doc. 52 ¶¶ 33-34. And provider Plaintiffs would not only be prohibited from providing the appropriate care for their patients in Montana, but they may also become the subject of criminal penalties and harassment. Doc. 51 ¶¶ 16-18; Doc. 54 ¶¶ 12-14.

The State points to the very existence of Plaintiffs' motion for attorneys' fees and costs as illustrative of the "risk of injustice" should their motion for relief fail. Doc. 294 at 18. Defendants' perspective on the "injustice" of the motion, however, turns on their view of the merits of Plaintiffs' case. In Montana, the private attorney general doctrine provides a path for the recovery of attorney fees and costs if constitutional interests are vindicated. *See, e.g.*, *Montanans for Responsible Use of*

Sch. Tr. v. State ex rel. Bd. of Land Comm'rs, 1999 MT 263, ¶ 67, 296 Mont. 402, 989 P.2d 800. Plaintiffs here have vindicated their constitutional rights, and they are therefore entitled to attorneys' fees. Nothing about the standard course of applying Montana law on attorneys' fees constitutes an "extraordinary circumstance" warranting relief from final judgment.

CONCLUSION

For all of the above reasons, the Court should deny Defendants' motion for relief under Rule 60(b).

Dated: August 8, 2025

Respectfully submitted,

By: /s/ Alex Rate

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CERTIFICATE OF SERVICE

I, Krystel Pickens, hereby certify on this date that I have filed a true and accurate copy of the foregoing document with the electronic filing system for Montana courts and a copy was served on the following:

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Electronically signed by Krystel Pickens on behalf of Alex Rate.
Dated this 8th day of August, 2025.

CERTIFICATE OF SERVICE

I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief in Opposition to the following on 08-08-2025:

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