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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA  
COUNTY

MOLLY CROSS, et al.,  
Plaintiffs,  
v.  
STATE OF MONTANA, et al.,  
Defendants.

Dept. No. 4  
DV-32-2023-541  
Hon. Jason Marks

**DEFENDANTS' REPLY IN SUPPORT  
OF RULE 60(b)(2) MOTION FOR  
RELIEF FROM JUDGMENT OR  
ORDER**

**INTRODUCTION**

Defendants' second Rule 60(b)(2) motion (Doc. 311) relies on the U.S. Department of Health and Human Services' ("HHS") *Supplement to Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices. Peer Reviews and Replies*, ("the Supplement"), as newly

discovered evidence that contradicts the Summary Judgment Order’s findings on consensus and the safety and efficacy of medicalized gender transition (“MGT”) for minors. The Supplement’s peer reviews and replies also bolster the HHS Review’s<sup>1</sup> conclusions on risks and low-quality evidence, making it material and non-cumulative.

The Supplement is not a rehash of the earlier HHS Review; it is a separate, peer-validated analysis that directly rebuts the purported medical “consensus” on which the Court relied. Through detailed peer critiques, the Supplement demonstrates that influential guidelines from WPATH and the Endocrine Society are methodologically weak, conflict-laden, and grounded in low-quality observational studies that fail to establish the safety or efficacy of MGT for minors. This new evidence confirms substantial risks and exposes genuine disputes of material fact that were improperly resolved at summary judgment.

Because the Supplement necessarily alters the evidentiary landscape, it is neither cumulative nor immaterial and would probably

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<sup>1</sup> Released contemporaneously with the Supplement, HHS also published its final version of its report entitled “Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices” (“HHS Review”), (November 19, 2025), **attached as Exhibit A**). This report updated and superseded its preliminary version released on May 1, 2025, (Doc. 274, Ex. A), and included disclosure of the names of its authors, as well as minor revisions and corrections. Its core findings remain consistent.

produce a different result. Rather than weighing competing expert opinions, the case should proceed to trial where credibility and disputed scientific questions can be tested through the adversarial process. Vacating summary judgment is necessary to ensure that these outcome-determinative issues are resolved on a full and fair record.

### ARGUMENT

Relief under Mont. R. Civ. P. 60(b)(2) requires showing the evidence (1) came to light after judgment; (2) could not have been discovered earlier with reasonable diligence; (3) is so material it would probably produce a different result; and (4) is non-cumulative and not merely impeaching. *In re B.B.*, 2001 MT 285, ¶ 40, 307 Mont. 379, 37 P.3d 715. As demonstrated in Defendant’s motion, (Doc. 311), and hereinafter, Plaintiffs claim that “Defendants fail to establish any of these factors” is an incorrect claim without any basis. (Doc. 317 at 2.)

#### **I. The Supplement meets the first two factors.**

The Supplement is dated November 19, 2025. This was six months after the May 13, 2025, summary judgment order and over a month after the October 2, 2025, denial of the State’s first motion under Rule 60(b). (Doc. 308). Defendants could not have had access to the Supplement prior to this Court’s decision. Plainly, the timeline also supports that the

Supplement could not have been provided to the Court earlier with any level of diligence.

Plaintiffs attempt to conflate the HHS Review with the Supplement as if they are the same thing “already considered” by this Court when Defendants sought to vacate the scheduling order. (Doc. 317 at 2.) They’re not. The HHS Review is a comprehensive report reviewing the evidence and best practices for MGT. (Ex. A.) The Supplement is a standalone document with peer reviews and formal replies of the HHS Review. (Doc. 312, Ex. A.) It disputes the narrative of consensus by agreement that the WPATH and Endocrine Society guidelines are methodologically weak and conflict-laden. It also disputes claims that MGT is safe and effective by emphasizing that its supporting studies are predominantly low-quality, observational, high-bias, and insufficient to demonstrate clear benefit or adequately identify the harms. The Supplement is not “immaterial.” (*Id.* at 3.)

Plaintiffs argue that “Defendants could have discovered the identities of the additional contributors from their own experts.” (Doc. 317 at 3.) The identities of the contributors have nothing to do with the Supplement. Is it significant that Defendants’ experts contributed to the

HHS Review? Absolutely, considering this Court made a credibility determination of Defendants’ experts at summary judgment by labeling them as “not representative of the opinion of the medical community writ large” and “some medical professionals [who] disagree with the medical consensus[.]” (Doc. 279 at 24); *Larson Lumber Co. v. Bilt Rite Const. & Landscaping LLC*, 2014 MT 61, ¶ 32, 374 Mont. 167, 320 P.3d 471 (It’s an abuse of discretion to assess witness credibility at the summary judgment stage); *State v. Santoro*, 2024 MT 136, ¶ 24, 417 Mont. 92, 551 P.3d 822 (district court improperly “put its thumb on the scale” rather than admit relevant expert testimony and allow traditional attacks on its weight). The fact that Defendants’ experts were found credible enough to contribute to the federal government’s major review of MGT (with conclusions supported by peer reviews) appears to demonstrate that their opinions *are* representative of the medical community and not merely “some” medical professionals expressing disagreement.

Plaintiffs argue that both the HHS Review and Supplement “fail to identify any specific health risks that this Court has already not considered.” (Doc. 317 at 3.) The HHS Review provides a thorough accounting of the inherent risks associated with MGT, (Ex. A at 116–

133), best summarized as “infertility/sterility, sexual dysfunction, impaired bone density accrual, adverse cognitive impacts, cardiovascular disease and metabolic disorders, psychiatric disorders, surgical complications, and regret.” (*Id.* at 14.) The peer reviews within the Supplement confirm the HHS Reviews findings, with one review stating that “[t]he Review identifies a set of harms that are likely to occur *with great certainty*[.]” (Doc. 312, Ex. A at 15); (see also *id.* at 11–12 17, 18, 31–32, 65, 83, 100.) Risks, and the probability of them occurring, have been clearly identified. But the issue here isn’t whether risks were “identif[ied],” because they were repeatedly, it’s that risks were “considered” at summary judgment and found to amount only to “some risk” and “insufficient.” (Doc. 317 at 3; 279 at 22.); *Larson Lumber Co.*, ¶ 32 (weighing conflicting evidence or choosing between competing versions of material facts is improper at summary judgment). Regardless of how Plaintiffs attempt to frame the Supplement, the HHS Review and Supplement underscore that a genuine issue of material fact exists, and summary judgment should have been denied. (Doc. 317 at 4) (quibbling about whether the Supplement is a true peer review because of when it was published.)

Lastly, Plaintiffs raise two more points to undermine that the Supplement is new evidence. First, Plaintiffs argue that because two of Defendants’ experts were contributors to the HHS Review, somehow we (or maybe they) could have “pull[ed] back the veil on the process they used for producing the [HHS Report]” prior to summary judgment. (Doc. 317 at 5–6) (quoting Doc. 311 at 10.) It is unclear how Defendants’ experts could have done this because they did not author the Supplement. Second, Plaintiffs found that it was an “inconvenient truth” that the American Psychological Association (“APA”) “criticized the HHS Report for relying so heavily on the Cass Review yet omitting the conclusion that “for some [minors with gender dysphoria], the best outcome will be transition.” (*Id.* at 6) (quoting Doc. 312, Ex. A at 64-66.) There’s context missing here:

Any reasonable interpretation of the Cass Review’s statement that ‘for some, the best outcome will be transition,’ must grapple with its findings about lack of evidence for benefit and deep uncertainties about diagnosis. Unfortunately, the APA fails to do so. Even granting for the sake of argument that ‘for some the best outcome will be transition’ it would not follow that prescribing [MGT] interventions in clinical settings is ethically permissible because, as the Cass Review acknowledges, there is no way for clinicians to distinguish between patients whose gender dysphoria will persist into adulthood and those who will come to terms with their bodies. As we say in our response to Dr. Jilles Smids, ‘As with studies

of any clinical intervention, the fact that studies to date do not find strong evidence that [MGT] improves health outcomes does not, in principle, rule out the possibility that some subpopulation of subjects benefits from the interventions while others are harmed by them. However, to date no subpopulation has been shown to benefit.’ Given the unfavorable risk/benefit profile and the inherent difficulties in diagnosis, ethical considerations support prioritizing less aggressive therapeutic alternatives.

Moreover, the APA’s reading of this sentence from the Cass Review is not supported by subsequent administrative decisions in the U.K., where [MGT] interventions are now restricted to research settings. The U.K.’s National Health Service (NHS) has accepted all of the Cass Review’s recommendations for implementation. Puberty blockers for pediatric GD have been permanently banned in the U.K., while prescribing of cross-sex hormones for youth under 18 has been sharply curtailed. According to media reports, no new cases of cross-sex hormones for youth under 18 have been initiated through the NHS (Spencer, 2025).

(Doc. 312, Ex. A at 65.) Now *that* is an inconvenient truth. And it highlights the genuine issues of material fact that permeated this case.

Plaintiffs may lean heavily on the APA’s comment that the HHS Review’s “claims fall short of the standard of methodological rigor that should be considered a prerequisite for policy guidance in clinical care,” but, unfortunately for them, they are increasingly relegated to being “some medical professionals [who] disagree with the [growing] medical consensus[.]” (Docs. 317 at 5; 279 at 24.)

## **II. The HHS Supplement is material, not cumulative evidence, and would probably produce a different result.**

The Supplement is material because it directly targets and undermines the evidentiary foundation of the Court’s summary judgment order, which deferred to a purported medical consensus—primarily from organizations like WPATH and the Endocrine Society—on the safety and efficacy of MGT interventions for minors, including puberty blockers, cross-sex hormones, and surgeries. (Doc. 279.) Through its peer reviews and replies, the Supplement exposes this consensus as fundamentally flawed, revealing biases in guideline development, low-quality evidence for benefits, and inadequately assessed risks that outweigh potential harms. This federal peer-validated analysis provides a fresh, authoritative perspective that was absent from the record at summary judgment, offering critical support for the State’s legislative rationale in protecting minors from treatments lacking robust scientific backing.

Specifically, and among other points raised, peer reviewers’ critique WPATH and Endocrine Society guidelines for “panel stacking” with advocates who hold intellectual conflicts of interest, leading to recommendations that prioritize ideological commitments over impartial evidence appraisal. (Doc. 312, Ex. A at 28-29, 75-84.) As one peer notes,

“stacking” is defined as “inappropriately restricting guideline development group membership to those with a particular point of view,” resulting in intellectual conflicts of interests where “a person whose work or professional group fundamentally is jeopardized, or enhanced, by a guideline is said to have an intellectual [conflict of interest].” (*Id.* at 28.) This bias is evident in the Endocrine Society guidelines’ heavy influence from the Dutch Protocol’s founders, who recommended MGT without conducting systematic reviews of benefits and risks—a “strong departure from norms governing how [clinical practice guidelines] should be drafted.” (*Id.* at 76). This directly challenges the Court’s reliance on these organizations as objective authorities, showing how their intellectual commitments inverted basic medical ethics by placing a “high value” on cosmetic outcomes and a “lower value on avoiding potential harm from early pubertal suppression.” (*Id.* at 76–77.)

This peer content is non-cumulative, as it responds to post-Review methodological critiques and provides iterative, federal-level validation unavailable in prior evidence. Unlike the HHS Review, the Supplement’s dialogues refine conclusions, distinguishing it from cumulative summaries. It strengthens Defendants’ expert declarations by

corroborating concerns about low evidence quality and biases, while weakening Plaintiffs' reliance on medical professional organizations. Plaintiffs' claim that "none of [the changes] would have changed the outcome" (Doc. 317 at 1) overlooks this direct, peer-backed rebuttal of the Court's consensus reliance, ignoring how the Supplement reframes the evidentiary landscape in favor of the State's protective interests and underscores how its consideration would *probably* produce a different result should summary judgment be reconsidered. Probably is a very low standard.

Finally, Plaintiffs misunderstand the relief Defendants seek. (*Id.* at 7) (pointing out that even with the newly discovered evidence, SB99 still could not survive strict scrutiny.) Defendants want a trial. Disputed material facts remain. And had *all* the evidence been considered in light most favorable to Defendants, summary judgment never would have been granted. "It is settled law that it is improper for a district court to resolve factual disputes in a summary judgment proceeding." *Boulder Monitor v. Jefferson High Sch. Dist. No. 1*, 2014 MT 5, ¶ 16, 373 Mont. 212, 316 P.3d 848. "A fact is material if it is outcome-determinative." *Planned Parenthood of Montana v. State by & through Knudsen*, 2025

MT 120, ¶ 70, 422 Mont. 241, 570 P.3d 51. Across all three constitutional counts, this Court resolved disputed medical and scientific facts that were outcome-determinative by weighing competing evidence and choosing between competing versions of material facts. *Larson Lumber Co.*, ¶ 32. This Court’s order on summary judgment should be voided, and this case set for trial to resolve the questions of material fact that have been disputed from the beginning *before* any level of scrutiny is applied. *Cross by & through Cross v. State*, 2024 MT 303, ¶ 57, 419 Mont. 290, 560 P.3d 637 (stating conclusively that this case will proceed to trial to “finally resolve the disputed facts.”)

### CONCLUSION

For the foregoing reasons, Defendants’ Motion should be granted.

DATED this 9th day of February 2026.

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I, Michael Noonan, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Reply Brief to the following on 02-09-2026:

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