

1 Hon. Jason Marks, District Court Judge
2 Fourth Judicial District, Dept. No. 4
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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

<p>PHOEBE CROSS, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>STATE OF MONTANA, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">Dept. No. 4 Cause No. DV-23-541</p> <p style="text-align: center;">ORDER DENYING DEFENDANTS’ RULE 60(b) MOTION FOR RELIEF FROM JUDGMENT OR ORDER</p>
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15 This matter comes before the Court on Defendants’ *Rule 60(b)(2) Motion for*
16 *Relief from Judgment or Order* (“*Motion*”) (Doc. 310). The Court has considered
17 Defendants’ *Motion*, the corresponding Brief in Support (Doc. 311), Plaintiffs’ Brief
18 in Opposition (Doc. 317), and Defendants’ Reply Brief (Doc. 319). The Court has
19 also considered all exhibits (Docs. 312, 318). The Court is fully informed and
20 prepared to rule.

1 Defendants again seek relief from this Court’s Order Re: Cross-Motions for
2 Summary Judgment (“Order”) (Doc. 279). They argue that since their last request
3 for relief, the U.S. Department of Health and Human Services (“DHHS”) released a
4 “Supplement to Treatment for Pediatric Gender Dysphoria: Review of Evidence and
5 Best Practices. Peer Reviews and Replies.” *See* Defs.’ Ex. A (Doc. 312). They argue
6 this is newly discovered evidence that directly contradicts both the Court’s findings
7 in the Order and in its order denying Defendants’ first motion seeking Rule 60 relief
8 (“First Rule 60 Order”) (Doc. 308).

9 This Court considered the underlying HHS Report in deciding Defendants’
10 motion to vacate the scheduling order (Doc. 278) prior to issuing the Order. The
11 Court again considered the HHS Report in its First Rule 60 Order. Now, Defendants
12 ask the Court to reconsider based exclusively on a supplement to the HHS Report
13 that they argue constitutes new evidence. They say, “[t]he most important new
14 information from the [HHS] Supplement is the identity of each contributor,” which
15 includes two of Defendants’ own experts, Michael K. Laidlaw, MD, and Farr Curlin,
16 MD. Defs. Br. in Supp., at 6.

17 Regardless, assuming *arguendo* that the supplement constitutes newly
18 discovered evidence, the dispositive factor here is whether the materiality of the
19 evidence is so great it would probably produce a different result. *See In re B.B.*, 2001
20 MT 285, ¶ 40, 307 Mont. 379, 37 P.3d 715; *Fjelstad v. State ex rel. Dep’t of*

1 Highways, 267 Mont. 211, 220–21, 883 P.2d 106, 111–12 (1994). It is not. While it
2 may indicate that some medical professionals disagree with the medical consensus,
3 it does not show the medical consensus that the Court relied on in its Order has
4 materially changed. Moreover, nothing in Defendants’ present *Motion* nor in the
5 supplement addresses this Court’s finding that Defendants failed to establish that SB
6 99 passed strict scrutiny review. The Court also notes that, in addition to ruling in
7 favor of Plaintiffs on their medical privacy claim, its Order was also based on the
8 independent claims under Montana’s constitutional equal protection guarantee and
9 the right to freedom of speech and expression. None of these claims would be
10 disturbed by the supplement.

11 In conclusion, “[o]nly in an extraordinary case should Rule 60(b) be granted.”
12 *State ex rel. Rhodes v. District Court*, 183 Mont. 394, 396, 600 P.2d 182, 183 (1979).
13 The Court incorporates its Order and its First Rule 60 Order. For all of the reasons
14 contained therein and herein, Defendants have not met their burden of showing that
15 this is one of those rare, extraordinary cases meriting Rule 60(b) relief. Therefore,
16 Defendants’ *Motion* is hereby DENIED.

17 It is clear Defendants are aggrieved by the Court’s Order. Indeed, Defendants
18 maintain that Plaintiffs are not the prevailing party based on their belief that “the
19 Montana Supreme Court will likely reverse and remand” the Order. Defs. Br. in
20 Resp. to Pls.’ Mot. for Atty. Fees, at 3 (Doc. 297). They view this Court’s Order as

1 “a piece of paper vindicating nothing.” *Id.* Indeed, Defendants have previously made
2 clear that they plan to appeal the Order “pending resolution of its [first] Rule 60
3 argument[.]” *Id.* However, after the Court issued its First Rule 60 Order on October
4 10, 2025, Defendants did not appeal. Instead, they waited over two months and filed
5 the present *Motion* again asking the Court for Rule 60 relief. Defendants continue to
6 delay finality and to collaterally attack a decision made over nine months ago.

7 In this vein, and in the hopes of heading off a third Rule 60(b) motion, the
8 Court has seen that The American Society of Plastic Surgeons recently issued a
9 statement recommending that doctors delay gender-related surgery until a patient is
10 at least 19 years old. The Court has reviewed this statement and, again, does not find
11 it merits Rule 60(b) relief. *See Position Statement on Gender Surgery for Children*
12 *and Adolescents*, American Society of Plastic Surgeons (Feb. 3, 2026),
13 [https://www.plasticsurgery.org/documents/health-policy/positions/2026-gender-](https://www.plasticsurgery.org/documents/health-policy/positions/2026-gender-surgery-children-adolescents.pdf)
14 [surgery-children-adolescents.pdf](https://www.plasticsurgery.org/documents/health-policy/positions/2026-gender-surgery-children-adolescents.pdf) (last visited Feb. 11, 2026). The evidence before
15 the Court on summary judgment was that surgery for individuals under 18 was rare.
16 However, were SB 99 narrowly tailored to address gender affirming surgery related
17 to minors, it would have been much better positioned to withstand a strict scrutiny
18 analysis. *See Order* at 10–11.

19 Having yet again denied Rule 60(b) relief, the Court hopes that Defendants
20 will finally either concede the issues in this case or address their grievances to the

1 Montana Supreme Court as they indicated they intended to do after the Court's First
2 Rule 60 Order.

3 DATED this 12th day of February, 2026.

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7 Hon. Jason Marks
8 District Court Judge

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