

Hon. Jason Marks, District Court Judge
Fourth Judicial District, Dept. No. 4
Missoula County Courthouse
200 West Broadway
Missoula, Montana 59802
(406) 258-4774

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

PHOEBE CROSS, et al.,

Plaintiffs,

v.

STATE OF MONTANA, et al.,

Defendants.

Dept. No. 4

Cause No. DV-23-541

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, & ORDER
AWARDING ATTORNEYS' FEES**

This matter comes before the Court upon Plaintiffs' *Motion for Attorneys' Fees and Costs* ("Motion") (Doc. 285) and *Brief In Support of Plaintiffs' Motion for Attorneys' Fees and Costs* (Doc. 286). The Court issued its *Order Granting Motion for Attorneys' Fees and Costs* (Doc. 322) and set an evidentiary hearing on the reasonableness of the requested fees. The Court has considered: *Plaintiffs' Declarations* (Docs. 287–290), Defendants' *Brief in Opposition* (Doc. 297), and

1 Plaintiffs' *Reply Brief* (Doc. 301), Plaintiffs' *Declarations Itemizing their Claims*
2 (Doc. 324), Defendants' *Objection to Plaintiffs' Claims for Attorneys' Fees* (Doc.
3 328), *Declaration of Brianne C. McClafferty in Support of Motion for Attorneys'*
4 *Fees and Costs* (Doc. 333), and *Declaration of Patrick M. Risken Re: Attorneys'*
5 *Fees and Costs* (Doc. 334).

6 The issue presently before this Court is the reasonableness of the amount of
7 fees requested based on the existing record. Previously, the Court issued an *Order*
8 *Granting Plaintiffs' Motion for Attorneys' Fees and Costs*. (Doc. 322). To the extent
9 that any information in Document 322 is helpful in understanding this Court's
10 reasoning, it is incorporated by reference here.

11 The Court held an evidentiary hearing (hereafter "the Hearing") on June 10,
12 2026, and took testimony and exhibits, including stipulating to entering Doc. 333
13 and 334 as exhibits. Defendants entered Exhibits A, B, and C at the Hearing. The
14 Court is fully informed and prepared to rule. The Court now enters the following:

15 **ORDERS**

- 16 1. The Court hereby GRANTS Plaintiffs' *Motion* for attorneys' fees in the
17 amount of \$1,239,779.00. Plaintiffs are awarded costs in the amount of
18 \$86,523.02.

1 **FINDINGS OF FACT**

2 Based on the evidence and witness testimony presented in this case, the Court finds
3 as follows:

4 1. Plaintiffs submitted itemized billing records for 13 attorneys and 3
5 paralegals. (Doc. 324).

6 2. Plaintiffs seek a total award of \$1,454,829.52, consisting of
7 \$1,368,306.50 in attorneys' fees and \$86,523.02 in associated costs. (Doc. 324 at
8 209). Plaintiffs contend that, under the lodestar method for calculating attorneys'
9 fees, both the hours expended and requested fee award are reasonable. (Doc. 286 at
10 11).

11 3. Plaintiffs filed a *Declaration of Alex Rate In Support of Plaintiffs'*
12 *Motion for Costs and Attorneys' Fees* (Doc. 288) on June 25, 2025 ("Rate
13 Declaration"). The Rate Declaration establishes that Mr. Rate has been a member of
14 the State Bar of Montana since 2009. He has served as the Legal Director of the
15 Montana Office of the American Civil Liberties Union ("ACLU of Montana") since
16 2017. He has practiced law for nearly 17 years. Mr. Rate has experience with
17 numerous cases in state and federal district court, and in matters before the Montana
18 Supreme Court challenging legislative or constitutional initiatives.

19 4. Mr. Rate's current hourly rate is \$350.00, which he has set based on his
20 years of practice in Montana, and fee awards for other nonprofit attorneys in similar
public interest cases. (Doc. 324 at 9, ¶ 18).

1 5. Krystel Pickens of the ACLU of Montana provided paralegal services.
2 For purposes of pursuing attorneys' fees in this matter, Ms. Pickens assessed an
3 hourly rate of \$125 per hour. *Id.*, ¶ 19.

4 6. Plaintiffs submitted *Declaration of Brianne C. McClafferty in Support*
5 *of Motion for Attorneys' Fees and Costs*. (Doc. 333). McClafferty is a licensed
6 Montana attorney in good standing for 11 years, currently Administrative Partner at
7 Holland & Hart. *Id.* at 2, ¶ 3. As firm leadership, she determines rates and is familiar
8 with legal fees throughout Montana. *Id.* She regularly practices in complex
9 litigation, including constitutional matters, and as part of a team. *Id.* at 3, ¶ 7.

10 7. McClafferty declared, "Alex Rate has significant experience litigating
11 Montana constitutional issues and is regarded within the Montana legal community
12 as highly qualified." *Id.* at 5, ¶ 12.

13 8. McClafferty also noted the experience and reputation of ACLU
14 Foundation, Perkins Coie LLP, and Lambda Legal in handling complex,
15 constitutional litigation. *Id.* at 5-6.

16 9. McClafferty specifically addressed the lodestar factors (see
17 Conclusions of Law below):

18 a. *the amount and character of the services rendered*: McClafferty
19 noted the sound billing judgment used by Plaintiffs by eliminating
20 "excess or duplicative entries" as well as not including 1,207 hours,

1 which demonstrated a respectful accounting for the character and
2 amount of services rendered. *Id.* at 8-9, ¶ 22.

- 3 b. *the labor, time and trouble involved*: McClafferty described the
4 labor involved as complicated and sensitive medical information
5 with “extensive discovery, including over 200 interrogatories, 240
6 requests for production, and 221 requests for admission.” *Id.* at 8, ¶
7 b. The litigation also involved extensive depositions and motion
8 practice with appeals occurring alongside rapid litigation, including
9 preparing for trial. *Id.*, ¶ e. “[T]his case involved almost every
10 litigation event possible, short of trial: preliminary injunction
11 briefing and a hearing, appellate briefing, extensive written
12 discovery, numerous depositions, non-dispositive motion practice,
13 dispositive motion briefing, and trial preparation.” *Id.* at 8-9, ¶ 20.
- 14 c. *the character and importance of the litigation in which the services*
15 *were rendered*: McClafferty characterized this as a “high stakes”
16 matter, which required retaining highly effective counsel for
17 superior legal work since the litigation achieved a permanent
18 injunction, ensuring important constitutional rights, including equal
19 protection, privacy, and freedom of speech. *Id.* at 7, ¶ 18.
20

1 d. *the amount of money or the value of the property to be affected:*

2 McClafferty characterized the issues impacted by this litigation as

3 “involv[ing] a challenge to SB 99, which prohibits certain medical

4 treatments for transgender minors, while permitting the same

5 treatments for cisgender minors when medically necessary. It also

6 imposed potential[] disciplinary action by licensing boards on

7 healthcare professionals who provide prohibited gender-affirming

8 care.” *Id.* at 4, ¶ 11.

9 e. *the professional skill and experience called for:* McClafferty found

10 “...this case reflects an efficient allocation of responsibilities across

11 a team of attorneys.” *Id.* at 10, ¶ 23. She described how each attorney

12 contributed to the overall success of the litigation, and that the

13 “...division of labor is consistent with my experience in working on

14 teams in high stakes litigation and is consistent with the various

15 experience levels and expertise of the attorneys on the team.” *Id.*

16 f. *the attorneys’ character and standing in their profession:*

17 McClafferty found the attorneys’ rates to be reasonable. Stating,

18 “the rates sought by the timekeepers in this case (\$350 to \$500) are

1 comfortably within the appropriate hourly rate for the community,
2 particularly for attorneys with similar specialized experience and
3 records of success in complicated, high stakes, constitutional
4 litigation.” *Id.* at 14, ¶ 33.

5 g. *the results secured by the services of the attorneys:* McClafferty
6 noted “Plaintiffs’ victory at the Montana Supreme Court and the
7 victory achieved by Plaintiffs on summary judgment affirms the
8 reasonableness of the time spent litigating this matter by Plaintiffs’
9 counsel.” *Id.* at 9, ¶ 21.

10 10. Defendants submitted “*Declaration of Patrick M. Risken Re: Attorneys’*
11 *Fees and Costs*” (Doc. 334). Risken has over 40 years experience and is a current
12 member of the State Bar of Montana and, until 4 years ago, was practicing law as an
13 Assistant Attorney General for the State of Montana working for the State Solicitor
14 General and his team. For most of his career, Risken practiced law in Eastern
15 Washington and in Northern Idaho. (Doc. 334 at 2-3, 5).

16 11. Risken’s expertise comes from reviewing the bills for out-of-office
17 counsel submitted to the AG’s office. *Id.* at 4, ¶ 8.

18 12. Risken found Plaintiffs’ attorneys’ rates to be arbitrary, the number of
19 lawyers to be excessive, and the work completed to be inefficient. *Id.* at 6.

20 13. Risken opined that the hourly rate for Alex Rate (\$350) was reasonable,
finding Rate “to be very competent, collegial and well prepared at every stage of a
case.” *Id.* at 7, ¶ 12. Risken also described Alex Rate’s “billing demonstrates the

1 competence and efficiency expected of lawyers with expertise in litigating similar
2 constitutional issues. It also demonstrates a culture of value to the client held by the
3 office he runs.” *Id.* at 30, ¶ 60.

4 14. Risken concluded that 22 lawyers participated in Plaintiffs’ case, but
5 only charged for 16 individuals. *Id.* at 8. He found this many lawyers looked “like a
6 classroom rather than counsel table” and that Perkins Coie inserted lawyers
7 unnecessarily as “part of their training.” *Id.* at 24, 32. Risken offered no evidence in
8 support of this conclusion.

9 15. Risken found that “taxpayers have no say in the rates charged” and that
10 the Plaintiffs did not get to negotiate or shop around. *Id.* at 8, ¶ 16. Risken offers no
11 support or evidence for this assertion. *Id.* at 14, ¶ 25.

12 16. Risken found attorneys Rate, Gill, Picasso, Renn, Olson, Pelecanos,
13 Huppert, and Gordon “all have significant expertise in the issues specific to this
14 case.” *Id.* at 18, ¶ 35. Risken noted the other attorneys were “capable lawyers.” *Id.*
15 at 11, ¶ 19.

16 17. Both experts (McClafferty and Risken) agree that the attorneys and
17 paralegals requesting fees possess the standing and character necessary to find fees
18 reasonable. With regard to the “the attorneys’ character and standing in their
19 profession” of the *Gendron* factors, Risken stated, “I do not question any of the
20 attorneys’ character, fitness or standing within their respective legal communities.”
Id. at 19, ¶ 37.

18 18. Risken did not address the “importance of the litigation.” *Id.* at 19, ¶
38. He found “Plaintiffs were successful in this litigation” and “...the attorneys

1 obviously did a good job in presenting expert evidence clearly, supporting Plaintiffs'
2 claims..." as he referenced "the results secured by the services of the attorneys." *Id.*
3 at 19, ¶ 39 and at 32, ¶ 64.

4 19. Risken found that attorney Kayla Lindgren withdrew on January 17,
5 2025 (Doc. 198), yet she continued billing for another five months. (Doc. 290, Ex.
6 B at 38.) *Id.* at 24, ¶ 46.

7 20. Risken believes "allowing unchecked time to morph into a billing
8 summary for payment by the taxpayers of the State of Montana is entirely
9 inappropriate and unfair." *Id.* at 25, ¶ 50.

10 21. Risken found Plaintiffs' legal team claiming 520 hours (\$203,135.00)
11 for strategy meetings to be excessive. *Id.* at 26-27. Risken also found having six
12 attorneys observe depositions to be excessive. *Id.* at 31, ¶ 61.

13 22. Given Risken's lack of experience as to the subject matter in this case,
14 Risken's conclusion that "much of the time claimed by the Plaintiffs was the result
15 of significant inefficiency, overbilling and overstaffing" is not persuasive. *Id.* at 19,
16 ¶ 38. Likewise, Risken's opinions as to how the case might have been handled
17 differently are not persuasive.

18 23. The Court finds McClafferty to be more credible in her review and
19 assessment of attorney fees than Risken. Further, the Court finds McClafferty to
20 have more recent and relevant experience in negotiating attorney fees in Montana,
and therefore, is more familiar with the current rates of attorneys within the state in
the relevant area of practice.

24. The Court notes the requested rates are lower than the hourly rates likely paid by Defendants to defend constitutional claims, when it retains outside counsel, which was likely around “\$650 per hour for associate time and \$700 per hour for partner time.” (Doc. 286 at 11-12).

25. Plaintiffs met their burden of establishing that the requested rates are generally reasonable.

CONCLUSIONS OF LAW

1. To the extent that any findings of fact are more appropriately considered conclusions of law, they are incorporated by reference as conclusions of law. To the extent that any conclusions of law are more appropriately considered findings of fact, they are incorporated by reference as findings of fact.

2. “Where legal authority exists to award attorney fees,” courts have discretion to determine the appropriate amount of fees. *Gendron v. Mont. Univ. Sys.*, 2020 MT 82, ¶ 8, 399 Mont. 470, 461 P.3d 115. (See Doc. 322 for the Court’s analysis of legal authority).

3. The Court concludes awarding reasonable fees based on the lodestar factors is appropriate because there is no recovery at issue, to award a percentage of recovery. *Gendron*, ¶ 12. The Court notes with confusion Defendants’ preference to analyze under the “percentage of recovery” calculation without a full analysis (Doc. 297 at 14). The Court also finds that the billing records were kept contemporaneously. (Doc. 324). *Ihler v. Chisholm*, 2000 MT 37, ¶ 52, 298 Mont. 254, 995 P.2d 439.

1 4. Defendants did not identify which details they contend are
2 unreasonable, other than the general objection that the records were “duplicative.”
3 (Doc. 297 at 14-15; Doc. 328 at 1). Other than the Exhibits provided at the Hearing
4 and attorney Picasso’s time for the Preliminary Injunction Hearing (Doc. 297 at 15),
5 Defendants left it to the Court to parse through and identify any such gaps in the
6 more than two-hundred pages of billing records provided. (Doc. 324).

7 5. Under the lodestar method, the Court determines the number of hours
8 reasonably expended by considering seven factors: (1) the amount and character of
9 the services rendered; (2) the labor, time and trouble involved; (3) the character and
10 importance of the litigation in which the services were rendered; (4) the amount of
11 money or the value of the property to be affected; (5) the professional skill and
12 experience called for; (6) the attorneys’ character and standing in their profession;
13 and (7) the results secured by the services of the attorneys. The lodestar figure is
14 presumed reasonable, but a court may also consider other factors to determine
reasonableness. *Gendron*, ¶ 13.

15 **Analysis of *Gendron* Factors**

16 6. The Court will now consider the seven *lodestar factors*:

17 (1) *The amount and character of the services rendered.* Given the extensive
18 record in this case, the Court finds the time spent litigating is reasonable
19 given the scope and complexity of the issues as well as the breadth of
20 discovery and magnitude of briefing at multiple levels of the Montana
court system, including preparing for trial. (Doc. 286 at 3-4). To present

1 a reasonable request for fees, Plaintiffs' counsel have exercised sound
2 billing judgment and reduced the time for which fees are requested. *Id.* at
3 14.

4 (2) *The labor, time and trouble involved.* Plaintiffs' counsel completed
5 thorough research, obtained a preliminary injunction, defended it on
6 appeal, managed extensive discovery (including responding to 715
7 written discovery requests and producing nearly 1,200 documents), took
8 and defended twenty depositions, briefed and argued multiple motions,
9 prepared for and presented oral argument, filed motions in limine to
10 streamline trial disputes, and began to prepare for a 10-day trial. *Id.* at 8.
11 Additionally, as itemized in Doc. 324, Plaintiffs' counsel dedicated
12 substantial time and effort to litigating the complicated and important
13 constitutional issues this case raised—achieving success at each stage of
14 litigation. Defendants also acknowledged during the Hearing that the
15 briefs in this matter were very detailed. Furthermore, Defendants
16 increased the time and labor involved in this matter through varying
17 unsuccessful pleadings: unsubstantiated or citationless arguments (Doc.
18 297), Rule 60(b) Motion (Doc. 293), and an untimely Motion (Doc. 159),
which only prolonged and increased the burden on Plaintiffs and
increased the cost of litigation.

19 (3) *The character and importance of the litigation in which the services were*
20 *rendered.* This matter was of high importance to transgender youth across
Montana, their families, and impacted providers, who, with enforcement

1 of SB 99, would be denied the right to receive and to provide gender-
2 affirming care in Montana. The right to privacy is fundamental under the
3 Montana Constitution (*Armstrong*, ¶ 34), and SB 99 would have
4 fundamentally undercut the right to privacy—among numerous other
5 constitutional provisions. This litigation not only preserved Plaintiffs’
6 constitutional rights, but it also protected the rights of all Montanans.
7 Plaintiffs sued, and won, to vindicate the important public policy of
8 safeguarding Montanans’ rights to privacy, freedom of speech and
expression, and equal protection under the Montana Constitution.

9 (4) *The amount of money or the value of the property to be affected.* This
10 litigation did not involve monetary interests, but rather, resulted in
11 something far greater—the vindication of fundamental rights. Plaintiffs
12 argued, during the Hearing, that Defendants’ appeal to the Montana
13 Supreme Court lead to a ruling for finding strict scrutiny review on the
14 SB 99 issue. The Court rejects Defendants’ argument that “[t]his litigation
15 does not vindicate an important public policy—impacting, at best, a
16 marginal segment of Montana’s population.” (Doc. 297 at 6). Especially
17 since the Court previously found that SB 99’s true “purpose is to ban an
18 outcome deemed undesirable The legislative record is replete with
19 animus toward transgender persons,” and the “purported purpose given
20 for SB 99 is disingenuous.” (Doc. 131 at 33-34). Here, the Court notes the
pain that is attendant to a violation of the Montana Constitution, even if
the population targeted is “marginal.” *See Burns v. County of Musselshell*,

1 2019 MT 291, ¶ 23, 398 Mont. 140, 454 P.3d 685 (finding vindication for
2 the rights of all Musselshell County voters, even though the total
3 population is small). This litigation restored the rights of *all* minors with
4 gender dysphoria in Montana and their families—regardless of the
5 population. Representative Zoey Zephyr gave voice to the pain caused to
6 the entire transgender population,

7 If you are trans, particularly if you are targeted by legislation like this, I
8 have one request for you. Please stay alive. I know how harmful and
9 painful these bills can be to listen to. How much hurt this debate causes
us...We will win in the courts...courts are finding that [bills like SB 99]
violate the equal protection and due process rights of trans people seeking
lifesaving medication and care...”¹

10 The real value of Plaintiffs’ action lies in the protection of the Montana
11 Constitution, benefiting all Montanans through a vindication of their
12 constitutional interests. *See Forward Montana v. State by & through*
13 *Gianforte*, 2024 MT 75, ¶ 42, 416 Mont. 175, 192, 546 P.3d 778, 789,
14 reh'g granted (Apr. 9, 2024); *Barrett v. State*, 2024 MT 86, ¶ 63, 416
15 Mont. 226, 258, 547 P.3d 630, 654. Furthermore, “it is always in the
16 public interest to prevent the violation of a party’s constitutional rights.”
17 *Planned Parenthood of Montana v. State by & through Knudsen*, 2024
18 MT 227, ¶ 36, 418 Mont. 226, 557 P.3d 471 (citing *Melendres v. Arpaio*,
695 F.3d 990, 1002 (9th Cir. 2012)). Even Defendants concede SB 99

20
¹ See 3/23/23 House Floor Session, 13:40:14, available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/46152?agendaId=263190#agenda>. [accessed June 11-23, 2026].

1 targeted a specific group for differing treatment, which they described as
2 Montana's "most vulnerable citizens." (Doc. 297 at 9).

3 (5) *The professional skill and experience called for.* The requested hourly
4 rates are appropriate given counsel's experience, expertise, and skill sets.
5 Plaintiffs' counsels' experience and qualifications are set forth in more
6 detail in the attached declarations. (See Doc. 324 at Gill Dec. ¶¶ 11-15;
7 Gordon Dec. ¶¶ 5-12; Rate Dec. ¶¶ 5-8; Renn Dec. ¶¶ 14-21). As detailed
8 in submissions, the litigation called for a team of lawyers with the
9 specialized knowledge, experience, and resources appropriate for a
constitutional challenge to the law. (Doc. 333 at 10, ¶ 23).

10 (6) *The attorneys' character and standing in their profession.* Both experts
11 agreed that all attorneys had the character and standing necessary for this
12 factor. Risken noted differing levels of experience, but did not indicate
13 that anyone should be disqualified because of this factor. (Doc. 334 at 18,
14 ¶ 35). The Court previously detailed a description for Alex Rate and
15 Krystal Pickens as examples for all individuals seeking fees. Therefore,
16 the Court takes judicial notice that all 13 attorneys and 3 paralegals are
17 qualified for purposes of this factor, and for efficiency, will not reiterate
their qualifications. (Doc. 324).

18 (7) *The results secured by the services of the attorneys.* Plaintiffs sought and
19 recovered preliminary and permanent relief from an unconstitutional law.
20 Defendants also acknowledged during the Hearing that Plaintiffs' "results

1 were great” and that “they won.” The result here upholds constitutional
2 democracy, ensuring constitutional principles and procedures prevail,

3 [T]he Legislature enacted SB 99, the Governor signed it into law, and the
4 Attorney General defended it in court, making private enforcement the
5 only option for Plaintiffs to protect their rights. Without this lawsuit, SB
6 99 would have remained in effect despite its unconstitutionality.

7 (Doc. 286 at 8). Defendants had two years to establish evidence, which
8 would support their defense, but ultimately, Defendants did not provide
9 any support to enforce SB 99, or to prove that it was tailored to any such
10 interest under the Montana Constitution. (Doc. 279 at 56–58). *Forward*
11 *Montana*, ¶ 18.

12 7. All seven *Gendron* factors weigh in favor of awarding Plaintiffs’
13 reasonable attorneys’ fees. The Court also incorporates lodestar factors detailed by
14 Expert McClafferty in Doc. 333.

15 **Additional Factors on Reasonableness of Award**

16 8. Beyond the seven lodestar factors, a court may also consider other
17 factors to determine reasonableness. *Gendron*, ¶ 13. The Court will next consider
18 other factors it used to determine the award.

19 9. *Arbitrariness of Attorney Rates*. Defendants’ Expert Risken opined the
20 attorney rates were arbitrary. This Court has considered the hourly rates charged by
 each attorney. This Court finds that the rates claimed by Plaintiffs’ attorneys and
 paralegals in this case are in line with reasonable Montana rates for a case of

1 constitutional importance, especially since attorneys with specialized knowledge
2 were limited within the state. (Doc. 286 at 12).

3 10. Risken mentioned a rate of \$420 per hour as a ceiling, but provided no
4 specifics on the case or its recency so this Court cannot determine its applicability
5 to the current issue. (Doc. 334 at 16, ¶ 29). The Court does not find it useful to
6 compare rates between bankruptcy attorneys and constitutional attorneys.

7 11. The Court finds Defendants' citation to a *2010 Hawaiian* district court
8 case neither timely nor relevant to determine current prevailing Montana rates,
9 especially when Defendants are attempting to argue only Montana rates should be
10 considered. (Doc. 297 at 16). Defendants objected to the rates as unreasonable, but
11 did not provide any convincing evidence, in submitted pleadings or the Hearing, on
12 what would be a reasonable rate. (Doc. 297; Doc. 328).

13 12. The Court also finds that Plaintiffs' counsel discounted rates (or
14 eliminated time) to adjust for Montana's market rate. (Doc. 324 at 119, ¶ 14). This
15 reflects the reasonableness of the request and awareness of prevailing rates.

16 13. The Court additionally finds Defendants' argument that the rates are
17 excessive or arbitrary is unconvincing. Although raised in Plaintiffs' pleadings on
18 this issue, Defendants did not dispute that its office may have paid out-of-state
19 counsel more than the \$500 hourly rate, as requested by attorneys in this case. (Doc.
20 286 at 12). Defendants' argument appears not to be "content neutral," but based upon
what Defendants deem worthy—and not upon a standard "community rate." If
Defendants are willing to pay outside counsel a substantial rate for defending issues
it deems worthy, they must apply the same rate analysis for issues with which they

1 disagree, and ultimately lose. What's good for the goose is good for the gander. The
2 Court finds the requested rates to be reasonable given the specific circumstances of
3 this case.

4 14. The market rate for attorneys in this case is not restricted to rates
5 charged by Montana attorneys, but “...the historic rate prevailing in the relevant
6 community for similar work...” *Ihler*, ¶ 40.

7 15. Recent Montana district court decisions also support the reasonableness
8 of the rates requested here as part of the community standard for cases involving
9 similar issues. *Reagor v. State*, No. DV-23-1245 (Mont. 4th Jud. Dist. Ct., Missoula
10 Cnty. July 1, 2025), at 18 (awarding an hourly rate of \$566); *Marquez et al. v. State*
11 *of Montana et al.*, No. DV 21–873, Dkt. 207 (April 10, 2026), ¶19 (awarding an
hourly rate of \$550).

12 16. Ultimately, the Court finds Plaintiffs’ requested rates to be reasonable.

13 17. *The number of lawyers to be excessive.* Defendants object to attorneys’
14 fees because of a plethora of Plaintiffs’ attorneys. (Doc. 328; Doc. 334 at 6, ¶ 11).
15 The Court does not accept the Defendants’ argument that one lawyer would have
16 been sufficient to successfully litigate this complex, novel case of first impression
17 in Montana, especially since Defendants utilized five attorneys for this matter. (Doc.
334 at 15, ¶ 28; Doc. 297 at 15). Generally, this Court notes,

18 [I]t is not the Defendants’ prerogative to challenge the staffing of the
19 Plaintiffs’ legal team through the lens of the rearview mirror. The Plaintiffs
20 created a team with unique and varied experience to achieve their effective
results, and it cannot now be said that the same results would have been
achieved with fewer or different attorneys. *Marquez et al. v. State of Montana*
et al., No. DV 21–873, Dkt. 207 (April 10, 2026), ¶ 28.

1 18. The Court finds that Plaintiffs partially accounted for overstaffing by
2 having 22 individuals assisting with the litigation, but only submitting a
3 reimbursement request for 16 individuals, representing 7 Plaintiffs. (Doc. 334 at 8,
4 ¶ 17; Doc. 286 at 14). The Court also notes that the ACLU of Montana only has two
5 attorneys on staff for all matters. The Court generally finds “this team of public
6 interest and pro bono attorneys brought together deep subject-matter expertise,
7 strategic insight, and a demonstrated commitment to advancing the rights of
8 transgender individuals. Their coordinated efforts ensured comprehensive
9 representation for Plaintiffs at every stage of the litigation.” (Doc. 286 at 5). A
10 substantial team with sufficient resources was also necessary to vindicate a
11 constitutional right, which the State declined to do. *Id.* at 9.

12 19. A court should not award hours that were “excessive, redundant, or
13 unnecessary...Hours that are not properly billed to one's *client* also are not properly
14 billed to one's *adversary*...” *Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S. Ct.
15 1933, 1939–40, 76 L. Ed. 2d 40 (1983), *superseded by statute on other grounds*.

16 20. The Court, exercising conscientious judgment, does find awarding six
17 attorneys time for the deposition of Olson-Kennedy to be excessive, redundant, and
18 unnecessary. (Exhibit A).

19 21. The Court is not convinced six attorneys were necessary to capture the
20 information from the deposition. This likely could have been accomplished by a

1 smaller number of attorneys (or paralegals) with lower rates. In light of this
2 overstaffing, the Court awards the requested fees only for Alex Rate and Matthew
3 Gordon, using the aggregated data presented in Exhibit A, and reduces the award
4 accordingly.

5 22. *Inefficiency of work completed.* Defendants presented Exhibit B to
6 summarize their objection to inefficient work. Litigation that vindicates fundamental
7 constitutional rights requires careful skill and attention, and this Court will not
8 devalue or diminish this by prognosticating on how the same outcome could be
9 achieved with fewer resources.

10 23. The Court finds the fees requested for the pleadings and court
11 proceedings to be reasonable. Thus, the summaries presented in Exhibit B
12 (Complaint, PHV, SJ, PI Prep, Mfl, and Fees Motion) are not persuasive to reduce
13 the award.

14 24. The Court notes Defendants' objection to attorney Picasso's time for
15 the Preliminary Injunction Hearing (Doc. 297 at 15). The Court finds the time
16 entries lacking specificity and detail, but the Court also remembers the skill and
17 advocacy demonstrated by attorney Picasso during the Preliminary Injunction, and
18 in conducting a careful review of the fee issue and based upon its personal
19 observations, the Court is satisfied the hours claimed reflect reasonable attorney
20 fees. *Ihler*, ¶ 52. In this limited situation, poor itemization should not result in

1 penalizing Picasso's skilled advocacy in the Preliminary Injunction Hearing. *Id.*
2 However, the Court cautions Plaintiffs' public service counsel to consider keeping
3 records more akin to private practice for future actions, where they seek an award of
4 fees.

5 25. This matter also involved highly technical issues involving medical and
6 scientific experts on both sides. Because of this, a certain amount of redundancy is
7 acceptable, especially because of the compressed timeline and in anticipation of a
8 trial.

9 26. However, the Court does find nearly 520 hours for team meetings to be
10 excessive, and reduces these hours by fifty percent to account for this, using the
11 aggregate data presented in Exhibit B.

12 27. The Court finds a fifty-percent adjustment to the fee award for team
13 meetings is appropriate. The Court notes time entries from nonprofit lawyers
14 generally lacked the detail and specificity, which was present in the Perkins Coie
15 LLP entries, with regard to time claimed, as well as time descriptions. To account
16 for redundancy and inefficiencies, the Court determines a fifty-percent adjustment
17 for team meetings is appropriate, here, because the time entries for meetings are not
18 sufficiently detailed to demonstrate efficiency and necessity. *Ihler*, ¶ 54.

19 28. The Court also reduces the award for Kayla Lindgren to remove the
20 time she claimed after she submitted her departure from the case. (Exhibit C).
Counsel is cautioned in the future to align affidavits with pleadings.

1 29. “*Montana taxpayers cannot be put on the hook...*” (Doc. 297 at 5).
2 Defendants, during the Hearing, attempted to characterize the fees as unfair to
3 Montana taxpayers. Plaintiffs highlighted that the fees were not an attempt for profit,
4 but to encourage private firms in the future to engage in Pro Bono service to
5 vindicate constitutional rights, especially when it involves medical care for children,
6 as in this case.

7 30. Defendants also raised the issue that Plaintiffs’ counsel was neither
8 efficient nor expedient. However, Plaintiffs argued at the Hearing that the ACLU of
9 Montana attempted to be efficient at the beginning through legislative testimony,
10 highlighting SB 99 as unconstitutional, to prevent litigation, and its attendant
11 expenses entirely.

12 31. Because Plaintiffs raised this issue during the Hearing, the Court
13 reviewed the legislative history for SB 99. During the First Hearing on SB 99,
14 Akilah Deernose, testifying on behalf of the American Civil Liberties Union of
15 Montana, was asked by Senator Andrea Olsen, “Is this bill likely constitutional under
16 the Montana Constitution, and is there any way we can make it constitutional, if it is
17 not?” Attorney Deernose answered,

18 No, it is not constitutional under the Montana State Constitution. It facially
19 discriminates in the title by explicitly singling out transgender individuals
20 because those are the only individuals that have gender dysphoria for
differential treatment. It violates the Equal Protection Clause and there is no
compelling justification. There is not even a rationally related relationship
between what the bill does and what its justification is.”²

² See 1/27/23 Senate Judiciary Session, 12:41:33, available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/45413?agendaId=249212%20-%20info_#handoutFile. [accessed June 11-23, 2026].

1 32. At a subsequent hearing, the Legislature again heard testimony that SB
2 99 was unconstitutional. S.K. Rossi, representing the Human Rights Campaign,
3 explained,

4 Eventually this obsession with trans people and our bodies and forcing us into
5 these rooms to talk about ourselves will do nothing but reveal the cruelty of
6 these bills and this process...It is an unconstitutional bill. We will fight it in
court, and there is no way to fix it because the central tenet of it is unequal
treatment for transgender people.³

7 The attorney fees in this matter are the resulting consequence of vindicating
8 constitutional rights, which the Legislature chose to risk by adopting this legislation,
9 even though it heard testimony about the risks and attendant costs of passing
10 unconstitutional legislation.

11 33. Defendants argue for efficiency and protecting Montana taxpayers. The
12 best way to save Montanans money and to promote efficiency is to not pass laws
13 violating the Montana Constitution in the first place. Here, guiding principles of
good medicine also make good law; an ounce of prevention is worth a pound of cure.

14 34. At a time when civic education and civic engagement in the United
15 States is in decline, the Court notes the time and testimony of “ordinary Montanans,”
16 who vocalized no formal legal training, but demonstrated a strong commitment to
17 civic engagement, upholding the Montana Constitution, and avoiding costly
18 litigation.⁴ While the Legislature chose to accept and risk litigation expenses by

19 ³ See 3/20/23 House Judiciary Session, 9:07:53, available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/47786?agendaId=260808>.
20 [accessed June 11-23, 2026].

⁴ See generally, Robert A. Kelly, “*The State of Civics Education in the General Populace*,” American Bar Association (May 6, 2024), https://www.americanbar.org/groups/public_interest/election_law/american-democracy/our-work/state-civics-education-general-populace/. [accessed June 23, 2026].

1 passing this legislation, these individuals perceptively warned of the costs that would
2 result. The Court notes the testimony presented during Legislative Hearings on SB
3 99:

4 “I oppose SB 99 because it violates the privacy and very personal medical
5 decisions of Montanans and their families...I urge this committee to consider
6 the ramifications of imposing medical restrictions on minority groups in our
7 state...*How much taxpayer money will be lost in the lawsuits that will
8 follow?*” -Sem Jumper⁵ (emphasis added)

9 “As a *Montana taxpayer*, I am concerned with *the financial loss to the state
10 as passage of this bill* will certainly lead to both lawsuits over the Bill being
11 overturned as well as from people being harmed by having best practice
12 medical care withheld by the State.” -Polly Becker⁶ (emphasis added)

13 “To the legislators here today, I urge you to save your limited time in this
14 body by working on legislation that will actually better our state and *save the
15 many taxpayer dollars that will be spent challenging and defeating this
16 unconstitutional and harmful bill in court* and urge a do not pass on SB 99.”
17 -Jana Richter⁷ (emphasis added)

18 “As a *Montana taxpayer*, I worry about the cost of lawsuits over legislation
19 like this, which legal scholars regard as unconstitutional on many grounds.”
20 -Sara Rushing⁸ (emphasis added)

⁵ See 1/27/23 Senate Judiciary Session, 12:11:33, available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/45413?agendaId=249212%20-by%20info%20#handoutFile>. [accessed June 11-23, 2026].

⁶ See 1/27/23 Senate Judiciary Session, 12:23:29, available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/45413?agendaId=249212%20-%20info%20#handoutFile>. [accessed June 11-23, 2026].

⁷ See 3/20/23 House Judiciary Session, 10:02:42, available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/47786?agendaId=260808>. [accessed June 19, 2026].

⁸ See 3/20/23 House Judiciary Session, 10:15:19, available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/47786?agendaId=260808>. [accessed June 19, 2026]. These quotations were transcribed by the Court, reviewing SB 99 testimony from the following dates: January 27, 2023 and March 20, 2023. The Court notes as of July 1, 2026, these links are no longer operational.

1 As these pieces of testimony reflect, Montana Legislators chose to assume the risk
2 of costly litigation, by passing legislation, which it also had notice violated the
3 Montana Constitution. The reasoning in *Forward Montana* supports awarding
4 reasonable fees here,

5 [W]e conclude that attorney fees are proper in this case because of the
6 process through which the unconstitutional sections of this Bill came to
be: an obviously unlawful Bill adopted through willful disregard of
constitutional obligations.

7 ¶ 20.

8 35. Fee-shifting in this case serves its intended purpose. Awarding
9 attorneys' fees does not punish Defendants for losing; it allocates responsibility for
10 the costs of litigation to the party whose conduct made those costs unavoidable. "The
11 permanent injunction Plaintiffs obtained averts unconstitutional government
12 overreach into personal private medical treatment, safeguarding these rights not only
13 for transgender youth, their families, and medical providers, but for every citizen
across Montana." (Doc. 286 at 10).

14 36. The results secured support a substantial fee award. Plaintiffs prevailed
15 on their constitutional claims, obtained injunctive relief, and summary judgment.
16 The degree of success achieved was complete. Plaintiffs prevailed in this litigation.

17 37. The Court finds it appropriate to award requested Plaintiffs' costs in
18 this matter to Plaintiffs as the prevailing party to this litigation. Plaintiffs seek costs
19 in the amount of \$86,523.02. *Id.* at 17. Defendants did not challenge the amount of
20 costs with any specificity. (Doc. 297 and 328).

1 38. Any requested costs, not specifically covered otherwise by Mont. Code
2 Ann. § 25-10-201, fall within the category of "other reasonable and necessary
3 expenses" allowed by Section 25-10-201(9). Costs are awarded in full.

4 39. The fees awarded in this case are not the product of inflated litigation
5 activity by Plaintiffs, but the foreseeable consequence of Defendants' own litigation
6 conduct. The scope, duration, and intensity of this case—and the resulting fees—
7 were fueled by Defendants' repeated Rule 60 Motions and objections. Given that
8 minors were the targets of SB 99, the magnitude of the burden on Plaintiffs for
9 private enforcement to ensure their constitutional rights was significant and further
10 supports an award of reasonable fees. *Forward Montana*, ¶ 15 (internal citation
11 omitted). Plaintiffs had their constitutional rights violated, and the only resolution to
12 restoration was via litigation. Plaintiffs should not bear the expense of vindication.
13 *Montana Env't Info. Ctr. v. Off. of Governor for State*, 2025 MT 112, ¶ 44, 422 Mont.
14 136, 157, 569 P.3d 555, 569 (Shea, concurring); *Sunburst Sch. Dist. No. 2 v. Texaco,*
15 *Inc.*, 2007 MT 183, ¶ 91, 338 Mont. 259, 165 P.3d 1079.

15 **IV. CONCLUSION**

16 1. In taking a careful review of the circumstances and the facts
17 surrounding the fee issue via the lodestar factors, the Court determines a reasonable
18 alignment with Plaintiffs' counsel for work performed, time billed, and rates
19 requested. The Court addressed Defendants' objections to the degree they were
20 raised with specificity and supported via competent evidence and citations, arriving
at a conscientious judgment as detailed below. *Tafelski v. Johnson*, 2024 MT 143, ¶
21, 417 Mont. 160, 169, 552 P.3d 40, 46.

	Original Request*				
	Attorney Name	Rate	Hours	Total Requested	Source/Cite
1	Alex Rate	\$350	158.0	\$55,300.00	Doc 324 at 211; 286 at 11
2	Malita Picasso	\$350	498.1	\$174,331.50	Doc 324 at 211; 286 at 11
3	Elizabeth Gill	\$475	95.8	\$54,481.25	Doc 324 at 211; 286 at 11
4	Peter Renn	\$450	570.7	\$256,815.00	Doc 324 at 213; 286 at 11
5	Kell Olson	\$400	160.9	\$64,360.00	Doc 324 at 213; 286 at 11
6	Pelecanos	\$300	300.7	\$90,210.00	Doc 286 at 11
7	Nora Huppert	\$350	380.4	\$133,140.00	Doc 324 at 213; 286 at 11
8	Matthew Gordon	\$500	171.9	\$85,900.00	Doc 324 at 217; 286 at 11
9	Heather Shook	\$500	62.7	\$31,350.00	Doc 286 at 11
10	Courtney Schirr	\$400	77	\$30,800.00	Doc 286 at 11
11	Sara Cloon	\$400	454	\$181,720.00	Doc 324 at 216; 286 at 11
12	Jonathan Hawley	\$400	78.6	\$31,440.00	Doc 324 at 217; 286 at 11
13	Kayla Lindgren	\$350	292	\$102,077.50	Doc 324 at 218; 286 at 11
			Total	\$1,291,925.25	
	Paralegal Name	Rate	Hours	Total Requested	Source/Cite
14	Krystel Pickens	\$125	28.2	\$ 3,525.00	Doc 286 at 14 & 20
15	Kimball Mullins	\$125	507.9	\$ 63,481.25	Doc 324 at 219; Doc 290 at 73
16	George Auslander	\$125	75.0	\$ 9,375.00	Doc 324 at 215; Doc 290 at 19
			Total	\$76,381.25	
			subtotal	\$1,368,306.50	Doc. 324, at 209, ¶ 9 and Doc. 286 at 18
			Costs	\$86,523.02	Doc 286 at 17
			FINAL TOTAL	\$1,454,829.52	Doc 324 at 209

Calculations for Reductions		
Description	Reductions	Notes
Team Meetings	\$101,567.50	Half of total noted in "Team Meeting" Exhibit B (50% reduction)
Olson-Kennedy Deposition	\$9,915.00	Removing Fees for Gill, Renn, Huppert, and Cloon in "Ols-Ken" Deposition for Exhibit A
Lindgren Departure	\$17,045.00	Removing fees claimed after departing case; Amount from Exhibit C
Subtotal	\$128,527.50	Total reductions

FINAL AWARD ⁹	Amount	Notes
Original Attorneys' Fees Request	\$1,368,306.50	Total claimed Doc. 324, at 209, ¶ 9 (\$39,897.75) and Doc. 286 at 18 (\$1,328,408.75)
Total Attorneys' Fees Awarded	\$1,239,779.00	Original Request subtracting Reductions subtotal
Costs Requested	\$86,523.02	Doc. 286 at 18
Total Original Request	\$1,454,829.52	Total claimed Doc. 324, at 209, ¶ 10
Final Total Awarded (Costs & Attorneys' Fees)	\$1,326,302.02	Total Awarded subtracting relevant reductions

2. Any division or distribution of the fee award among attorneys or firms shall be resolved by Plaintiffs' counsel based upon their own internal agreements and arrangements.

V. ORDER

Based upon the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that:

⁹* In order to promote efficiency, the Court urges future parties to submit requests for fees using a similar chart to summarize their request, and to update the chart as they update their pleadings and request.

1 I. Plaintiffs' requested attorneys' fees and costs is GRANTED. The Court
2 awards attorneys' fees and costs for Plaintiffs and against Defendants in the amount
3 of \$1,326,302.02.

4 II. Judgement should enter accordingly.

5 ELECTRONICALLY SIGNED AND DATED BELOW.

6 DATED this 7th day of July, 2026.

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8 

9
10 _____
Hon. Jason Marks
District Court Judge

11
12 cc: Alexander H. Rate, Esq.
Akilah Maya Deernose, Esq.
13 Thane Johnson, Esq.
Michael Noonan, Esq.
14 Austin Knudsen, Esq.
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17 Nora W. Huppert, Esq.
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19 Heather Shook, Esq.
Sara Cloon, Esq.
20 Elizabeth Gill, Esq.
Ashlee Nichole Rossler, Esq.