

EXHIBIT 1

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

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

Plaintiffs,

v.

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

Defendants.

Case No. DV-25-2024-261-CR

Hon. Judge Mike Menahan

**DECLARATION OF JESSICA
KUSNER-KALARCHIK IN SUPPORT
OF PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

I, Jessica Kusner-Kalarchik, declare as follows,

1. I am a transgender woman who has not changed the sex designation on her birth certificate and one of the Plaintiffs in this case. I submit this declaration in support of Plaintiffs' Motion for Preliminary Injunction against the enforcement of Montana Administrative Rule 37.8.311(5) and Senate Bill 458 as applied to amending birth certificates.

2. I am a 49-year-old woman who was born and raised in Montana and who currently resides in Anchorage, Alaska.

3. I am currently working as a forensic nurse examiner at a hospital in Alaska. Previously I assisted counsel in the prosecution of Courts Martial as a military JAG NCO in the JAG Corps for eight years. I am a veteran of the army where I served for 31 years.

4. I am a transgender woman. At birth I was assigned the sex designation of male, so the sex designation on my birth certificate also incorrectly identified me as male. I have known I am a woman since junior high school.

5. I began living and presenting as the woman I know myself to be approximately two years ago. I have worked with medical and mental health providers to assist me in bringing my physical appearance and presentation into alignment with the sex I know myself to be.

6. I was diagnosed with gender dysphoria and have been using hormone treatment to further align my body with my sex for the last two years. I socially transitioned in 2022, the year before I retired from the armed forces in July 2023. I legally changed my

name to one that is traditionally female. Additionally, I have changed my Alaska nursing license, driver's license, and federal social security card to accurately reflect who I am.

7. I would like to change the sex designation on my birth certificate to accurately match the sex I know myself to be but have been unable to do so due to the state's policies. Before the Department of Health and Human Services ("DPHHS") announced they would be permanently adopting the 2022 Rule, I attempted to change my birth certificate and was told any changes to sex designations had been put on hold because they were in the process of changing the rules governing amendments. I informed the DPHHS official that the policy in place at that time allowed me to change the sex designation on my birth certificate, but the official did not allow me to proceed. Moreover, the official would not allow me to amend the name on my birth certificate, despite the fact that I had an Alaska court order changing my legal name. My inability to obtain a birth certificate that accurately reflects my sex is stigmatizing, humiliating, and opens me up to discrimination.

8. Denying me an accurate birth certificate places me at risk of embarrassment and even violence every time I am required to present my birth certificate because it incorrectly identifies me as male. This is not only a violation of my privacy but also denies me the ability to correctly use an essential government document necessary for employment and identification purposes in many other contexts.

9. I am two years into my social transition and typically I am referred to as "ma'am." As my transition continues and I continue to be perceived more female, any time I am forced to present a birth certificate that incorrectly identifies me as male, I am outed as transgender. Being outed to a stranger causes me anxiety because I do not know if the

stranger is biased or hostile to people who are transgender. I am well aware of the kind of discrimination and humiliation that transgender people commonly face.

10. I have faced discrimination because I am transgender in both my personal and professional life. For example, I applied to a job where the company refused to use my female-identified name and stated my previous male-identified name (“dead name”) would be used on my nametag instead. This experience was humiliating, and had I continued in that position using the wrong name tag while working it would have resulted in further incidents of harassment because my physical appearance and sex did not match my nametag.

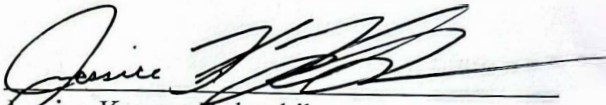
11. I have experienced other incidents that put me in danger and made me fear for my safety because of my transgender status. For instance, I have been tracked and followed by cars on the highway multiple times where I need to make evasive maneuvers to escape. I feared for my life in that moment because I know about the violence that transgender people face when others learn they are transgender. I have learned to take extra precautions for my personal safety and have continued concerns about being outed in places where I do not know others or trust that they are supportive of transgender people.

12. In October 2023, another hostile incident occurred while I was volunteering at a youth and adult Halloween event hosted by Identity Clinic in Alaska. There was a photographer harassing attendees and taking pictures of them, their vehicles and license plates to publicly out them as LGBTQ+ and shame them on the internet.

13. Because of these hostile incidents, I do not feel safe when leaving my home as a transgender woman. As such, I am extremely cautious about the places I am willing to go and must often assess the safety of each location before I arrive.

I, Jessica Kusner-Kalarchik, declare under penalty of perjury that the foregoing is true to the best of my knowledge and belief.

Dated: May 16, 2024.


Jessica Kusner-Kalarchik