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MONTANA FIRST JUDICIAL DISTRICT, LEWIS AND 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. BRERETON, in his official
capacity as the Director of the Montana
Department of Public Health and Human
Services; the MONTANA DEPARTMENT OF

Cause No. ADV 24-261
Hon. Michael Menahan

**DEFENDANTS' ANSWER, THIRD-
PARTY COMPLAINT, AND DEMAND
FOR JURY TRIAL**

<p>JUSTICE; and AUSTIN KNUDSEN, in his official capacity as Attorney General for the State of Montana,</p> <p style="text-align: center;">Defendants,</p> <p style="text-align: center;">v.</p> <p>WORLD PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH,</p> <p style="text-align: center;">Third-Party Defendant.</p>	
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For their Answer to Plaintiffs’ Complaint for Declaratory and Injunctive Relief (“Complaint”), Defendants State of Montana, Gregory Gianforte in his official capacity as Governor of the State of Montana, the Montana Department of Public Health and Human Services, Charles T. Brereton¹ 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 for the State of Montana (hereinafter, “Defendants”) answer as follows:

1. Defendants deny the allegations of Paragraph 1 of Plaintiffs’ Complaint.
2. The allegations of Paragraph 2 of Plaintiffs’ Complaint are arguments of counsel and purport to characterize a February 20, 2024 statement issued by the Department of Public Health and Human Services (“DPHHS”), ARM 37.8.311(5), and MAR Notice 37-1002 (No. 11, June 10, 2022), which speak for themselves and are the best evidence of their contents; therefore, no response is required. To the extent a response is required, the allegations are denied.

¹ Plaintiffs’ Complaint names “Charles T. Brererton” [sic] in his official capacity as the Director of the Montana Department of Public Health and Human Services. Defendants presume for purposes of this Answer that Plaintiffs are referring to Charles T. *Brereton*, in his official capacity as the Director of the Montana Department of Public Health and Human Services.

3. The allegations of Paragraph 3 of Plaintiffs' Complaint purports to characterize the February 20, 2024 DPHHS statement, which speaks for itself and is the best evidence of its contents; therefore, no response is required. To the extent a response is required, the allegations are denied.

4. Defendants admit that SB 458 was adopted by the Montana Legislature in 2023 and signed into law by Governor Gianforte. The remaining allegations of Paragraph 4 of Plaintiffs' Complaint are arguments of counsel and purport to characterize SB 458, which speaks for itself and is the best evidence of its contents; therefore, no response is required. To the extent a response is required, the allegations are denied.

5. Defendants deny the allegations of Paragraph 5 of Plaintiffs' Complaint.

6. Defendants deny the allegations of Paragraph 6 of Plaintiffs' Complaint.

7. The allegations of Paragraph 7 of Plaintiffs' Complaint are arguments of counsel and purport to characterize the February 20, 2024 DPHHS statement, which speaks for itself and is the best evidence of its contents; therefore, no response is required. To the extent a response is required, the allegations are denied.

8. The allegations of Paragraph 8 of Plaintiffs' Complaint are arguments of counsel and purport to characterize SB 280, which speaks for itself and is the best evidence of its contents; therefore, no response is required. To the extent a response is required, the allegations are denied.

9. The allegations of Paragraph 9 of Plaintiffs' Complaint are arguments of counsel and purport to characterize referenced court decisions, which speak for themselves and are the best evidence of their contents; therefore, no response is required. To the extent a response is required, the allegations are denied.

10. Defendants deny the allegations of Paragraph 10 of Plaintiffs' Complaint.

11. The allegations of Paragraph 11 of Plaintiffs' Complaint are arguments of counsel and legal conclusions; therefore, no response is required. To the extent a response is required, the allegations are denied.

12. The allegations of Paragraph 12 of Plaintiffs' Complaint are arguments of counsel and legal conclusions; therefore, no response is required. To the extent a response is required, the allegations are denied.

13. The allegations of Paragraph 13 of Plaintiffs' Complaint are arguments of counsel and legal conclusions; therefore, no response is required. To the extent a response is required, Defendants lack sufficient knowledge to admit or deny those allegations and therefore deny the same.

14. The allegations of Paragraph 14 of Plaintiffs' Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegations are denied.

15. The allegations of Paragraph 15 of Plaintiffs' Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegations are denied.

16. The allegations of Paragraph 16 of Plaintiffs' Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegations are denied.

17. The allegations of Paragraph 17 of Plaintiffs' Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegations are denied.

18. Defendants admit that Plaintiffs purport to bring this action against the State of Montana, the Governor of Montana, DPHHS, the Director of DPHHS, DOJ, and the Attorney General. The remaining allegations of Paragraph 18 of Plaintiffs' Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegations are denied.

19. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 19 of Plaintiffs' Complaint and therefore deny the same.

20. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 20 of Plaintiffs' Complaint and therefore deny the same.

21. Defendants admit the allegations of Paragraph 21 of Plaintiffs' Complaint.

22. Defendants admit the allegations of the first and third sentences of Paragraph 22 of Plaintiffs' Complaint but deny the remainder of the allegations.

23. Defendants admit the allegations of Paragraph 23 of Plaintiffs' Complaint.

24. Defendants admit the allegations of the first sentence of Paragraph 24 of Plaintiffs' Complaint; with respect to SB 458, Defendants admit only to the extent that SB 458 relates to statutes implemented by DPHHS.

25. Defendants admit the allegations of the first sentence of Paragraph 25 of Plaintiffs' Complaint but deny the remainder of the allegations.

26. Defendants admit that Attorney General Knudsen is the Montana Attorney General and the head of DOJ, but deny the remainder of the allegations of Paragraph 26 of Plaintiffs' Complaint.

27. Defendants admit the allegations of Paragraph 27 of Plaintiffs' Complaint.

28. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 28 of Plaintiffs' Complaint and therefore deny the same.

29. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 29 of Plaintiffs' Complaint and therefore deny the same.

30. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 30 of Plaintiffs' Complaint and therefore deny the same.

31. The allegations of Paragraph 31 of Plaintiffs' Complaint are arguments of counsel and legal conclusions; therefore, no response is required. To the extent a response is required, the allegations are denied.

32. The allegations of Paragraph 32 of Plaintiffs' Complaint are arguments of counsel and legal conclusions; therefore, no response is required. To the extent a response is required, the allegations are denied.

33. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 33 of Plaintiffs' Complaint and therefore deny the same.

34. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 34 of Plaintiffs' Complaint and therefore deny the same.

35. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 35 of Plaintiffs' Complaint and therefore deny the same.

36. Defendants deny the allegations of Paragraph 36 of Plaintiffs' Complaint.

37. Defendants deny the allegations of Paragraph 37 of Plaintiffs' Complaint.

38. Defendants deny the allegations of Paragraph 38 of Plaintiffs' Complaint.

39. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 39 of Plaintiffs' Complaint and therefore deny the same.

40. Defendants deny the allegations of Paragraph 40 of Plaintiffs' Complaint.
41. Defendants deny the allegations of Paragraph 41 of Plaintiffs' Complaint.
42. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 42 of Plaintiffs' Complaint and therefore deny the same.
43. Defendants deny the allegations of Paragraph 43 of Plaintiffs' Complaint.
44. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 44 of Plaintiffs' Complaint and therefore deny the same.
45. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 45 of Plaintiffs' Complaint and therefore deny the same.
46. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 46 of Plaintiffs' Complaint and therefore deny the same.
47. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 47 of Plaintiffs' Complaint and therefore deny the same.
48. Defendants deny the allegations of Paragraph 48 of Plaintiffs' Complaint.
49. Defendants deny the allegations of Paragraph 49 of Plaintiffs' Complaint.
50. Defendants deny the allegations of Paragraph 50 of Plaintiffs' Complaint.
51. Defendants deny the allegations of Paragraph 51 of Plaintiffs' Complaint as stated.
52. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 52 of Plaintiffs' Complaint and therefore deny the same.
53. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 53 of Plaintiffs' Complaint and therefore deny the same.
54. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 54 of Plaintiffs' Complaint and therefore deny the same.

55. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 55 of Plaintiffs' Complaint and therefore deny the same.

56. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 56 of Plaintiffs' Complaint and therefore deny the same.

57. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 57 of Plaintiffs' Complaint and therefore deny the same.

58. Defendants deny the allegations of Paragraph 58 of Plaintiffs' Complaint.

59. Defendants deny the allegations of Paragraph 59 of Plaintiffs' Complaint.

60. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 60 of Plaintiffs' Complaint and therefore deny the same.

61. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 61 of Plaintiffs' Complaint and therefore deny the same.

62. Defendants deny the allegations of Paragraph 62 of Plaintiffs' Complaint.

63. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 63 of Plaintiffs' Complaint and therefore deny the same.

64. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 64 of Plaintiffs' Complaint and therefore deny the same.

65. Defendants restate and incorporate by reference all responses provided in the previous paragraphs. To the extent Paragraph 65 alleges any factual allegations, the same are denied.

66. The allegations of Paragraph 66 of Plaintiffs' Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegation is denied.

67. Defendants deny the allegations of Paragraph 67 of Plaintiffs' Complaint.

68. Defendants deny the allegations of Paragraph 68 of Plaintiffs' Complaint.

69. Defendants deny the allegations of Paragraph 69 of Plaintiffs' Complaint.

70. Defendants deny the allegations of Paragraph 70 of Plaintiffs' Complaint.

71. Defendants deny the allegations of Paragraph 71 of Plaintiffs' Complaint.

72. Defendants deny the allegations of Paragraph 72 of Plaintiffs' Complaint.

73. Defendants deny the allegations of Paragraph 73 of Plaintiffs' Complaint.

74. Defendants deny the allegations of Paragraph 74 of Plaintiffs' Complaint.

75. Defendants deny the allegations of Paragraph 75 of Plaintiffs' Complaint.

76. Defendants restate and incorporate by reference all responses provided in the previous paragraphs. To the extent Paragraph 76 alleges any factual allegations, the same are denied.

77. The allegations of Paragraph 77 of Plaintiffs' Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegation is denied.

78. The allegations of Paragraph 78 of Plaintiffs' Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegation is denied.

79. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 79 of Plaintiffs' Complaint and therefore deny the same.

80. Defendants deny the allegations of Paragraph 80 of Plaintiffs' Complaint.

81. Defendants deny the allegations of Paragraph 81 of Plaintiffs' Complaint.

82. Defendants deny the allegations of Paragraph 82 of Plaintiffs' Complaint.

83. Defendants restate and incorporate by reference all responses provided in the previous paragraphs. To the extent Paragraph 83 alleges any factual allegations, the same are denied.

84. The allegations of Paragraph 84 of Plaintiffs' Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegation is denied.

85. Defendants deny the allegations of Paragraph 85 of Plaintiffs' Complaint.

86. Defendants deny the allegations of Paragraph 86 of Plaintiffs' Complaint.

87. Defendants deny the allegations of Paragraph 87 of Plaintiffs' Complaint.

88. Defendants restate and incorporate by reference all responses provided in the previous paragraphs. To the extent Paragraph 88 alleges any factual allegations, the same are denied.

89. The allegations of Paragraph 89 of Plaintiffs' Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegation is denied.

90. Defendants deny the allegations of Paragraph 90 of Plaintiffs' Complaint.

91. Defendants deny the allegations of Paragraph 91 of Plaintiffs' Complaint.

DEFENSES

92. Defendants deny each and every allegation of Plaintiffs' Complaint not specifically admitted.

93. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

94. Plaintiffs lack standing.

95. Plaintiffs' claims are not justiciable.

96. Plaintiffs' claims present non-justiciable political questions.

97. SB 458 and the 2022 Rule do not violate the United States Constitution, the Constitution of the State of Montana, or Montana State law.

98. SB 458 and the 2022 Rule serve and are supported by rational, legitimate, and compelling state interests.

99. Plaintiff Kalarchik is not a citizen of the State of Montana and thus is not legally entitled to the claimed documents.

100. Defendants raise the above defenses so that they will not be waived and reserve the right to add defenses that may become apparent during the discovery or to dismiss those which may later show not to apply.

WHEREFORE, Defendants respectfully pray for the following relief:

1. That Plaintiffs take nothing by their Complaint;
2. For judgment for Defendants on all counts of Plaintiffs' Complaint;
3. For costs of suit and attorneys' fees as allowed by law; and
4. For all other relief the Court deems just and proper.

THIRD-PARTY COMPLAINT

COME NOW the State of Montana, Governor Gianforte, DPHHS, Director Brereton, DOJ and Attorney General Knudsen, by and through counsel, and respectfully submit their Third-Party Complaint against Third-Party Defendant, World Professional Association for Transgender Health (“WPATH”), and complain as follows:

I. PARTIES

1. Third-Party Plaintiffs are State of Montana (“the State”), Greg Gianforte in his official capacity as governor of the State of Montana (“Governor Gianforte”), the Montana Department of Public Health and Human Services (“DPHHS”), Charles T. Brereton in his official capacity as the Director of the Montana Department of Public Health and Human Services (“Director Brereton”), the Montana Department of Justice (“DOJ”), and Austin Knudsen in his official capacity as Attorney General (“Attorney General Knudsen”), (collectively, “Third-Party Plaintiffs”).

2. Third-Party Defendant is WPATH, a medical association incorporated in the State of Texas and doing business in every State and Territory in the United States including the State of Montana.

II. PERSONAL JURISDICTION

3. Third-Party Plaintiffs restate and incorporate by reference Paragraphs 1 through 2 stated above.

4. WPATH transacts business in Montana in that it solicits members in Montana. These members, by information and belief, donate annually to WPATH. Currently, there exist thirteen members of WPATH who are medical providers within Montana including Katherine Mistretta, DNP.

5. WPATH also transacts business in Montana by actively soliciting Montana Health Care Providers for certification as WPATH providers. By information and belief, Katherine Mistretta is obtaining, or has obtained a WPATH certification.

6. WPATH also contracts with Montanans to provide services and materials to Montana residents in the form of “gender affirming care” and the standard of care for “gender affirming care.” By information and belief, WPATH provides these services and materials through its Montana members and through its certified providers.

7. WPATH has also committed torts in Montana including but not limited to conspiring to commit misrepresentation and/or negligent misrepresentation with its Montana members and certified providers.

III. FACTS COMMON TO THE THIRD-PARTY COMPLAINT

8. Third-Party Plaintiffs restate and incorporate by reference Paragraphs 1 through 7 stated above.

9. WPATH was founded by endocrinologist and sexologist Harry Benjamin in 1979 with the goal of creating an international community of professionals treating gender variance.

10. WPATH develops and publishes the standards of care for “gender affirming care” and by information and belief, implements this standard of care through member medical professionals and certified medical professionals including Montana medical providers.

11. WPATH first developed the standards of care for “gender affirming care,” publishing the first version in 1979. Version 7 was published in 2011, and Version 8 was published in 2022. These standards of care are utilized by Montana medical professionals for Montana children to administer “gender affirming care” to these children including administering puberty blockers, hormone therapy and surgical procedures.

12. By information and belief, WPATH transacts business in Montana by soliciting members who pay annually to fund WPATH. Currently, WPATH has 13 members who are Montana medical providers. WPATH distributes its standard of care through these members.

13. By information and belief, WPATH also transacts business in Montana by soliciting and training certified medical providers in Montana. Katherine Mistretta is actively taking courses or has taken courses to become WPATH certified.

14. By information and belief, WPATH contracts through its agents, its members and certified providers to provide materials and services to Montana patients.

15. WPATH has made misrepresentations to Montana medical providers, Montana patients, and parents of Montana patients through the medical providers.

- a. These misrepresentations include that: children under the age of 18 years can provide informed consent to gender dysphoria treatment; gender dysphoria treatment is not a symptom of other mental health conditions; and gender dysphoria treatment is life-saving treatment for minor/children patients.
- b. They relied upon these misrepresentations.
- c. They were reasonably justified in their reliance under the circumstances.
- d. WPATH intended to induce Montana medical providers and their patients and/or parents to rely on these misrepresentations.
- e. WPATH acted intentionally and/or negligently as to the truth of the representations.
- f. Montana medical providers and their patients and/or parents have suffered injuries as a result of these misrepresentations.

16. WPATH has also violated the Montana Consumer Protection Act by deceptively providing services to consumers of Montana through their Montana members and their certified medical providers.

17. Third-Party Plaintiffs face potential liability in the form of reimbursing Plaintiffs for their attorneys' fees and costs under the private attorney general doctrine as interpreted in *Forward Montana v. State*, 2024 MT 75, ___ Mont., ___, ___ P.3d ___, and *Barrett v. State*, 2024 MT 86, ___ Mont. ___, ___ P.3d ___. In addition, Third-Party Plaintiffs also face potential liability under the Montana Declaratory Judgment Act.

VI. COUNT ONE - COMMON LAW INDEMNITY

18. Third-Party Plaintiffs restate and incorporate by reference Paragraphs 1 through 17 stated above.

19. Third-Party Plaintiffs have a statutory duty to defend any suit filed against the State.

20. Because of this duty, Third-Party Plaintiffs face potential liability to First-Party Plaintiffs in the form of reimbursement of their attorneys' fees and costs. This potential liability is the result of wholly no fault of Third-Party Plaintiffs.

21. WPATH has created the factual basis for the suit against Third-Party Plaintiffs by First-Party Plaintiffs and are thus at fault in this litigation.

22. Third-Party Plaintiffs are potentially vicariously, constructively, derivatively, or technically liable to First-Party Plaintiffs for their alleged injury.

WHEREFORE, Third-Party Plaintiffs pray for the following relief against WPATH:

1. For a judgment for all attorneys' fees and costs, if any, awarded to First-Party Plaintiffs as against WPATH;

2. For an award of Third-Party Plaintiffs' attorneys' fees if permitted by law; and

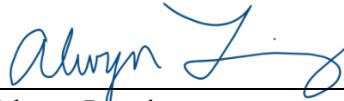
3. For such other and further relief as the Court deems just and proper in the premises.

JURY DEMAND

DEFENDANTS DEMAND A TRIAL BY JURY ON ALL FACT ISSUES AND ANY OTHER ISSUES SO TRIABLE.

DATED this 12th day of June, 2024.

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MONTANA ATTORNEY GENERAL



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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I, Alwyn T. Lansing, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Answer First Appearance to the following on 06-12-2024:

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Service Method: eService

Electronically signed by Deborah Bungay on behalf of Alwyn T. Lansing
Dated: 06-12-2024