

Austin Knudsen

Montana Attorney General

Michael Russell

Thane Johnson

Alwyn Lansing

Michael Noonan

Assistant Attorneys General

MONTANA DEPARTMENT OF JUSTICE

PO Box 201401

Helena, MT 59620-1401

Phone: (406) 444-2026

Fax: (406) 444-3549

michael.russell@mt.gov

thane.johnson@mt.gov

alwyn.lansing@mt.gov

michael.noonan@mt.gov

Attorneys for Defendants

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
JUSTICE; and AUSTIN KNUDSEN, in his
official capacity as Attorney General for the
State of Montana,

Defendants

Cause No. ADV 24-261
Hon. Michael Menahan

**DEFENDANTS' AMENDED ANSWER
TO PLAINTIFFS' AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
DEMAND FOR JURY TRIAL**

For their Amended Answer to Plaintiffs’ Amended Complaint for Declaratory and Injunctive Relief (“Amended 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 (“Defendants”) answer as follows:

1. Defendants deny the allegations of Paragraph 1 of Plaintiffs’ Amended Complaint.
2. The allegations of Paragraph 2 of Plaintiffs’ Amended 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.
3. The allegations of Paragraph 3 of Plaintiffs’ Amended 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’ Amended Complaint are arguments of counsel and purport to characterize SB 458, which speaks

¹ Plaintiffs’ Amended Complaint names “Charles T. Brererton” [sic] in his official capacity as the Director of the Montana Department of Public Health and Human Services. Defendants again 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.

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' Amended Complaint.

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

7. The allegations of Paragraph 7 of Plaintiffs' Amended 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' Amended 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' Amended 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' Amended Complaint.

11. The allegations of Paragraph 11 of Plaintiffs' Amended Complaint are arguments of counsel and purport to characterize certain April 18, 2024, Montana Human Rights Bureau complaints, 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.

12. The allegations of Paragraph 12 of Plaintiffs' Amended Complaint are arguments of counsel and purport to characterize the October 3, 2024 MHRB decision on the complaints, 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.

13. The allegations of Paragraph 13 of Plaintiffs' Amended Complaint are arguments of counsel and legal conclusions; therefore, no response is required. To the extent a response is required, the allegations are denied.

14. The allegations of Paragraph 14 of Plaintiffs' Amended Complaint are arguments of counsel and purport to characterize an October 3, 2024, letter and attachments from the MHRB, 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.

15. The allegations of Paragraph 15 of Plaintiffs' Amended Complaint are arguments of counsel and purport to characterize a Final Investigative Report from the MHRB, 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.

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

17. The allegations of Paragraph 17 of Plaintiffs' Amended Complaint are arguments of counsel and legal conclusions; therefore, no response is required. To the extent a response is required, the allegations are denied.²

² The Court previously denied Plaintiffs' motion for class certification. (Doc. 59).

18. The allegations of Paragraph 18 of Plaintiffs' Amended 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.

19. The allegations of Paragraph 19 of Plaintiffs' Amended Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegations are denied.

20. The allegations of Paragraph 20 of Plaintiffs' Amended Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegations are denied.

21. The allegations of Paragraph 21 of Plaintiffs' Amended Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegations are denied.

22. The allegations of Paragraph 22 of Plaintiffs' Amended Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegations are denied.

23. 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 23 of Plaintiffs' Amended Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegations are denied.

24. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 24 of Plaintiffs' Amended Complaint and therefore deny the same.

25. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 25 of Plaintiffs' Amended Complaint and therefore deny the same.

26. Defendants admit the first sentence of Paragraph 26 of Plaintiffs' Amended Complaint but deny the remainder of the allegations.

27. Defendants admit the allegations of the first and third sentences of Paragraph 27 of Plaintiffs' Amended Complaint but deny the remainder of the allegations.

28. Defendants admit the allegations of Paragraph 28 of Plaintiffs' Amended Complaint.

29. Defendants admit the allegations of the first sentence of Paragraph 29 of Plaintiffs' Amended Complaint; with respect to SB 458, Defendants admit only to the extent that SB 458 relates to statutes implemented by DPHHS. Defendants deny the remainder of the allegations.

30. Defendants admit the allegations of the first sentence of Paragraph 30 of Plaintiffs' Amended Complaint but deny the remainder of the allegations.

31. 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 31 of Plaintiffs' Amended Complaint.

32. Defendants admit the allegations of Paragraph 32 of Plaintiffs' Amended Complaint.

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

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

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

36. The allegations of Paragraph 36 of Plaintiffs' Amended Complaint are arguments of counsel and legal conclusions; therefore, no response is required. To the extent a response is required, the allegations are denied.

37. The allegations of Paragraph 37 of Plaintiffs' Amended Complaint are arguments of counsel and legal conclusions; therefore, no response is required. To the extent a response is required, the allegations are denied.

38. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 38 of Plaintiffs' Amended Complaint and therefore deny the same.

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

40. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 40 of Plaintiffs' Amended Complaint and therefore deny the same.

41. Defendants deny the allegations of Paragraph 41 of Plaintiffs' Amended Complaint.

42. Defendants deny the allegations of Paragraph 42 of Plaintiffs' Amended Complaint.

43. Defendants deny the allegations of Paragraph 43 of Plaintiffs' Amended Complaint.

44. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 44 of Plaintiffs' Amended Complaint and therefore deny the same.

45. Defendants deny the allegations of Paragraph 45 of Plaintiffs' Amended Complaint.

46. Defendants deny the allegations of Paragraph 46 of Plaintiffs' Amended Complaint.

47. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 47 of Plaintiffs' Amended Complaint and therefore deny the same.

48. Defendants deny the allegations of Paragraph 48 of Plaintiffs' Amended Complaint.

49. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 49 of Plaintiffs' Amended Complaint and therefore deny the same.

50. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 50 of Plaintiffs' Amended Complaint and therefore deny the same.

51. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 51 of Plaintiffs' Amended Complaint and therefore deny the same.

52. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 52 of Plaintiffs' Amended Complaint and therefore deny the same.

53. Defendants deny the allegations of Paragraph 53 of Plaintiffs' Amended Complaint.

54. Defendants deny the allegations of Paragraph 54 of Plaintiffs' Amended Complaint.

55. Defendants deny the allegations of Paragraph 55 of Plaintiffs' Amended Complaint.

56. Defendants admit the allegations of Paragraph 56 of Plaintiffs' Amended Complaint as stated.

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

58. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 58 of Plaintiffs' Amended Complaint and therefore deny the same.

59. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 59 of Plaintiffs' Amended Complaint and therefore deny the same.

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

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

62. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 62 of Plaintiffs' Amended Complaint and therefore deny the same.

63. Defendants deny the allegations of Paragraph 63 of Plaintiffs' Amended Complaint.

64. Defendants deny the allegations of Paragraph 64 of Plaintiffs' Amended Complaint.

65. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 65 of Plaintiffs' Amended Complaint and therefore deny the same.

66. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 66 of Plaintiffs' Amended Complaint and therefore deny the same.

67. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 67 of Plaintiffs' Amended Complaint and therefore deny the same.

68. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 68 of Plaintiffs' Amended Complaint and therefore deny the same.

69. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 69 of Plaintiffs' Amended Complaint and therefore deny the same.

70. Defendants restate and incorporate by reference all responses provided in the previous paragraphs. To the extent Paragraph 70 alleges any factual allegations, the same are denied.

71. The allegations of Paragraph 71 of Plaintiffs' Amended Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegation is denied.

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

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

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

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

76. Defendants deny the allegations of Paragraph 76 of Plaintiffs' Amended Complaint.

77. Defendants deny the allegations of Paragraph 77 of Plaintiffs' Amended Complaint.

78. Defendants deny the allegations of Paragraph 78 of Plaintiffs' Amended Complaint.

79. Defendants deny the allegations of Paragraph 79 of Plaintiffs' Amended Complaint.

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

81. Defendants restate and incorporate by reference all responses provided in the previous paragraphs. To the extent Paragraph 81 alleges any factual allegations, the same are denied.

82. The allegations of Paragraph 82 of Plaintiffs' Amended Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegation is denied.

83. The allegations of Paragraph 83 of Plaintiffs' Amended Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegation is denied.

84. Defendants deny the allegations of Paragraph 84 of Plaintiffs' Amended Complaint.

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

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

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

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

92. Defendants deny the allegations of Paragraph 92 of Plaintiffs' Amended Complaint.

93. Defendants restate and incorporate by reference all responses provided in the previous paragraphs. To the extent Paragraph 93 alleges any factual allegations, the same are denied.

94. The allegations of Paragraph 94 of Plaintiffs' Amended Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegation is denied.

95. Defendants deny the allegations of Paragraph 95 of Plaintiffs' Amended Complaint.

96. Defendants deny the allegations of Paragraph 96 of Plaintiffs' Amended Complaint.

97. Defendants restate and incorporate by reference all responses provided in the previous paragraphs. To the extent Paragraph 97 alleges any factual allegations, the same are denied.

98. The allegations of Paragraph 98 of Plaintiffs' Amended Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegation is denied.

99. Defendants deny the allegations of Paragraph 99 of Plaintiffs' Amended Complaint.

100. Defendants deny the allegations of Paragraph 100 of Plaintiffs' Amended Complaint.

101. The allegations of Paragraph 101 of Plaintiffs' Amended Complaint are legal conclusions; therefore, no response is required. To the extent a response is required, any factual allegation is denied.

102. Defendants deny the allegations of Paragraph 102 of Plaintiffs' Amended Complaint.

103. Defendants deny the allegations of Paragraph 103 of Plaintiffs' Amended Complaint.

DEFENSES

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

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

106. Plaintiffs lack standing.

107. Plaintiffs' claims are not justiciable.

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

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

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

111. The State has a compelling interest in acknowledging the existence of objective reality.

112. The State has a compelling interest in promoting the existence of objective reality.

113. The State has a compelling interest in ensuring that its governmental functions are performed in a manner consistent with objective reality.

114. The State has a compelling interest in acknowledging the objective biological reality of sex, including but not limited to its binary and immutable nature, *i.e.* a human's sex is either male or female, is established at conception, and is unchangeable.

115. The State has a compelling interest in ensuring the objective accuracy of its vital records and statistics.

116. The State has a compelling interest in preventing the inclusion of objectively false information in its vital records and statistics.

117. The State has a compelling interest in ensuring that birth certificates issued pursuant to its authority contain only objectively accurate information.

118. The State has a compelling interest in ensuring that drivers licenses issued pursuant to its authority contain only objectively accurate information.

119. The State has a compelling interest in ensuring its compliance with federal law to prevent the loss of federal funding which could damage state entities or citizens.

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

121. Any liability that the State faces is the result of actions or causes by other parties.

122. 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 Amended Complaint;
2. For judgment for Defendants on all counts of Plaintiffs' Amended 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.

JURY DEMAND

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

DATED this 27th day of February, 2025.

Austin Knudsen
MONTANA ATTORNEY GENERAL

/s/Thane Johnson
Thane Johnson
Michael Russell
Alwyn Lansing
Michael Noonan
Assistant Attorneys General
MONTANA DEPARTMENT OF JUSTICE
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I, Thane P. Johnson, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Answer to the following on 02-27-2025:

Michael Noonan (Govt Attorney)
215 N SANDERS ST
HELENA MT 59601-4522

Representing: State of Montana, Austin Knudsen, Charles T Brererton, Montana Department of Public Health and Human Services, City of Helena, Gregory Gianforte
Service Method: eService

Michael D. Russell (Govt Attorney)
215 N Sanders
Helena MT 59620

Representing: State of Montana, Austin Knudsen, Charles T Brererton, Montana Department of Public Health and Human Services, City of Helena, Gregory Gianforte
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620

Representing: State of Montana, Austin Knudsen, Charles T Brererton, Montana Department of Public Health and Human Services, City of Helena, Gregory Gianforte
Service Method: eService

Alwyn T. Lansing (Govt Attorney)
215 N. Sanders St.
Helena MT 59620

Representing: State of Montana, Austin Knudsen, Charles T Brererton, Montana Department of Public Health and Human Services, City of Helena, Gregory Gianforte
Service Method: eService

Marthe Yvonne VanSickle (Attorney)
PO Box 1663
Ennis MT 59729
Representing: Jane Doe, Jessica Kalarchik
Service Method: eService

Alexander H. Rate (Attorney)
713 Loch Leven Drive

Livingston MT 59047
Representing: Jane Doe, Jessica Kalarchik
Service Method: eService

Robert M. Farris-Olsen (Attorney)
401 N. Last Chance Gulch
Helena MT 59601
Representing: World Professional Association For Transgender Health
Service Method: eService

F. Thomas Hecht (Attorney)
70 West Madison, Suite 5200
Chicago MT 60605
Representing: Jessica Kalarchik
Service Method: eService

Seth A. Horvath (Attorney)
70 West Madison Street, Suite 5200
Chicago IL 60602
Representing: Jessica Kalarchik
Service Method: eService

Jon W. Davidson (Attorney)
125 Broad Street, 18th Floor
New York NY 10004
Representing: Jessica Kalarchik
Service Method: eService

Malita Vencienzo Picasso (Attorney)
125 Broad Street, 18th Floor
New York NY 10004
Representing: Jessica Kalarchik
Service Method: eService

Tina B. Solis (Attorney)
70 West Madison Street, Suite 3500
Chicago IA 60601
Representing: Jessica Kalarchik
Service Method: Email

Electronically signed by Deborah Bungay on behalf of Thane P. Johnson
Dated: 02-27-2025