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MONTANA FIRST JUDICIAL DISTRICT COURT, 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, et al.,

Defendants.

ADV-25-2024-261

Hon. Michael Menahan

**DEFENDANTS' RESPONSE IN
OPPOSITION TO PLAINTIFFS'
MOTION FOR LEAVE TO FILE SECOND
AMENDED COMPLAINT**

COME NOW Defendants the 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 ("DPHHS"); Charles T. Brereton, in his official capacity as the Director of DPHHS; the Montana Department of Justice; and Austin Knudsen, in his official capacity as Attorney General of the State of Montana (collectively the "State" or "Montana" or "Defendants"), and hereby submit their response brief in opposition to Plaintiffs' Opposed Motion for Leave to File Second Amended Complaint (Doc. 110) and Brief in Support (Doc. 111).

INTRODUCTION

Ten weeks ago, Plaintiffs Jessica Kalarchik and Jane Doe (together, “Plaintiffs”) stipulated to a scheduling order that omits any reference to a deadline for potentially amending or supplementing the pleadings. (Doc. 106.) Plaintiffs now seek to file a third complaint in this matter, asserting a new claim based on a new Montana statute. (Docs. 110-111.) This request comes nearly 85 weeks after Plaintiffs successfully obtained a preliminary injunction and exactly 120 weeks after this lawsuit began. Plaintiffs are free to challenge this new law but should not get a third bite at the apple in this case, where substantive deadlines have already begun to close.

No legitimate reason recognized by Rule 15 exists to grant Plaintiffs’ motion. The sole justification offered by Plaintiffs for this amendment appears to be that the new law was not in effect until March 24, 2026, so an amendment is warranted. To allow Plaintiffs the opportunity to file a third, new complaint, which purports to challenge new law, would be futile, cause undue delay, and result in prejudice to the parties. Further, granting Plaintiffs’ request threatens principles of judicial economy and finality—endorsing the strategy that whenever a new law is passed, litigants can simply amend pleadings in already-existing lawsuits instead of commencing a new action. The Court should reject any such effort to effectively create a perpetual docket where one judge continues to preside over one issue via amended pleadings every time the Legislature enacts a new law addressing that issue.

BACKGROUND

I. Procedural history

Plaintiffs filed a Complaint for Declaratory and Injunctive Relief on April 18, 2024 (Doc. 1), challenging Senate Bill 458 (“SB 458”), Mont. Admin. R. 37.8.311(5)¹

¹ The 2022 Rule is a Montana regulation outlining when and under what circumstances DPHHS may replace birth certificates. Only subsection (5) is challenged, which provides, “[f]or any period in which [DPHHS] is subject to an injunction against enforcement of S.B. 280, codified at 50-15-224, MCA, or S.B. 280 is held invalid, (5)(b) applies. Otherwise, (5)(a) applies.”

(a) The sex of a registrant as cited on a certificate may be amended only if the department receives a certified copy of an order from a court with appropriate jurisdiction indicating that the sex of an individual born in Montana has been changed by surgical procedure. The order must contain sufficient information for the department to locate the original record. If the registrant's name is also to be changed, the order must indicate the full name of the registrant as it appears on the original birth certificate and the full name to which it is to be amended. If the order directs the issuance of a new certificate that does not show amendments, the new certificate will not indicate on its face that it was amended. If the sex of an individual was listed incorrectly on the original certificate, refer to ARM 37.8.108.

(b) The sex of a registrant as cited on a certificate may be corrected only if:

- (i) the sex of an individual was listed incorrectly on the original certificate as a result of a scrivener's error or a data entry error, and the department receives a correction affidavit and supporting documents, consistent with ARM 37.8.108(4), (5), and (6), including a copy of the records of the health care facility or attending health care professional, contemporaneous to the birth, that identify the sex of the individual, with an affidavit from the health care facility or professional attesting to the date and accuracy of the records; or
- (ii) the sex of the individual was misidentified on the original certificate and the department receives a correction affidavit and supporting documents, consistent with ARM 37.8.108(4) and (5), including a copy of the results of chromosomal, molecular, karyotypic, DNA, or genetic testing that identify the sex of the individual, together with an affidavit from the health care facility,

(the “2022 Rule”), and what they characterize as a Montana Motor Vehicle Division (“MVD”) policy or practice, allegedly implemented in response to SB 458, whereby MVD does not process requests to change the sex designation on a Montana driver’s license when that request is supported by a letter from a medical provider that the licensee is seeking change in sex (the “MVD Policy”).

Plaintiffs moved for a preliminary injunction a month later. (Doc. 11). Defendants filed their combined Answer, Third-Party Complaint,² and Demand for Jury Trial on June 12, 2024 (Doc. 18), and brief opposing the preliminary injunction on June 20, 2024 (Doc. 28). On December 9, 2024, this Court denied Plaintiffs’ motion for class certification (Doc. 59) and granted the motion for preliminary injunction on December 16, 2024. (Doc. 61).

On January 16, 2025—thirty-nine weeks after the initial complaint was filed—Plaintiffs sought leave to file a first amended complaint (the “FAC”). (Doc. 68.) Plaintiffs’ FAC has the same basis as the April 2024 complaint and includes only additional allegations based on Plaintiffs’ exhaustion of administrative remedies before the Montana Human Rights Bureau (the “MHRB”). (Doc. 68 at 4.) Although the MHRB had dismissed Plaintiffs’ complaints on October 3, 2024, Plaintiffs waited fifteen weeks to amend. Over Defendants’ objections, the FAC was accepted and

health care professional, or laboratory testing facility that conducted the test and/or analyzed the test results, attesting to the test results and their accuracy.

² Defendants’ third-party complaint against the World Professional Association for Transgender Health was dismissed on October 30, 2024. (Doc. 57.)

became the operative complaint in this matter on January 22, 2025 (Doc. 70). Defendants answered the FAC on February 6, 2025 (Doc. 78) and amended their answer within the applicable time limit on February 27, 2025 (Doc. 85).

On February 18, 2025 (Docs. 81-82), Defendants appealed the preliminary injunction order (Doc. 61) to the Montana Supreme Court. On March 6, 2025, this Court denied (Doc. 95) Defendants' motion to stay enforcement of the preliminary injunction pending appeal (Doc. 63) and granted a stay of further proceedings pending appeal on March 25, 2025 (Doc. 98). On April 14, 2026, the Montana Supreme Court issued an opinion upholding the preliminary injunction (Doc. 104), and a Stipulated Scheduling Order was entered on May 29, 2026 (Doc. 106).

Approximately ten weeks later, Plaintiffs moved this Court for leave to file a second amended complaint (the "SAC"). (Docs. 110-111.) The request to file a third complaint in this matter comes nearly 85 weeks after the preliminary injunction was obtained and exactly 120 weeks after this lawsuit initially commenced.

II. Relevant legislative history

SB 458 is "An Act Generally Revising the Laws to Provide a Common Definition For the Word Sex When Referring to a Human", and amends certain sections of the code as appropriate, most notably Mont. Code Ann. § 1-1-201, "Terms of wide applicability". SB 458 was passed by the Montana Legislature on May 19, 2023, and became effective immediately.

Plaintiffs' initial complaint and the FAC challenge SB 458, the 2022 Rule and the MVD Policy. The December 16, 2024 Order granting preliminary injunction (Doc.

61), and the April 14, 2026 Montana Supreme Court opinion upholding the same (Doc. 104), relate only to SB 458, the 2022 Rule and the MVD Policy.

Senate Bill 437 (“SB 437”) was introduced during the Montana Legislature’s 2025 Regular Session on February 24, 2025, passed into law on April 11, 2025, and became effective on March 24, 2026.³ SB 437 is “An Act for the Codification and General Revision of the Laws Relating to the Definition for the Words of Sex, Female, and Male, Man, Woman, Father, and Mother When Referring to a Human...”. *Id.*

While SB 458 was limited to defining the word “sex”, SB 437 includes definitions for many terms of wide applicability, including but not limited to “sex”. SB 437 expressly repeals the language of SB 458 challenged by Plaintiffs’ FAC and enjoined by this Court.

LEGAL STANDARD

Because Plaintiffs are well past the 21-day deadline for amending “as a matter of course,” the operative complaint may only be amended with Defendants’ written consent or this Court’s leave. Mont. R. Civ. P. 15(a)(2). Montana Rule of Civil Procedure 15(a) “provides for liberal amendment of pleadings but does not require

³ BillTrack50 (2025). SB 437, Montana Legislature 2025 Session, “An Act For The Codification And General Revision Of The Laws Relating To The Definition For The Words Sex, Female, And Male, Man, Woman, Father, And Mother When Referring To A Human; Providing That The Definition Of Sex Refers To Biological Sex And Not Ger Identity Or Sexual Intercourse; Providing That The Definition Of Sex Is Limited To Two Types Of Sexes Which Are Referred To As Male And Female; Providing That The Definitions Of Male, And Female, Man, Woman, Father, And Mother Refer To Biological Sex And Not Subjective Ger Identity; Clarifying The Meaning Of The Term "Ger"; ... REPEALING SECTION 1-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.” <https://www.billtrack50.com/billdetail/1762944>.

amendments to be allowed in all instances.” *Lindey’s v. Prof’l Consultants, Inc.*, 244 Mont. 238, 242, 797 P.2d 920, 923 (1990). This Court is justified in denying a motion for leave to amend “for an apparent reason such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, futility of the amendment, etc.” *Lindey’s*, 244 Mont. at 242, 797 P.2d at 923.

ARGUMENT

Instead of filing a separate new lawsuit challenging SB 437, Plaintiffs seek to reset the clock in this Court. Plaintiffs had an opportunity from March 24, 2026 to May 29, 2026 to raise the SAC’s proposed amendment. Three months passed from the time SB 437 became effective to when the parties submitted the Stipulated Scheduling Order, which was accepted and entered by this Court. (Doc. 106.) Plaintiffs now seek leave to file the SAC challenging a newly enacted Montana statute despite the fact this matter has been pending for 120 weeks, 85 of which the State has been enjoined from enforcing the language complained of in the FAC. Plaintiffs’ Motion is futile, dilatory, and unduly prejudicial to the State.

I. The SAC asserts futile claims.

The SAC still seeks declaratory and injunctive relief against SB 458. The Legislature repealed that statute effective March 24, 2026. Prospective relief against a repealed statute is both logically and legally defective.

The SAC also asks for more than a substitute definitional statute. The prayer would have this Court declare invalid, and permanently enjoin, not only the 2022 Rule, the MVD practice, and SB 458, but SB 437 and “any further administrative

rulemaking directed toward the subject matter of the 2022 Rule, the new MVD policy and practice, SB 458, or SB 437.” (Doc. 111, Ex. A at 31.) That is not leave to challenge a subsequent enactment. It is an injunction against rules DPHHS and MVD have not adopted. SB 437 does not compel a new ARM 37.8.311 or a new MVD practice. Until the agencies act, the administrative targets in this case remain the 2022 Rule and the alleged MVD policy. A proposed pleading that would not entitle the movant to the relief it seeks may be denied as futile. *Advocs. for Sch. Tr. Lands v. State*, 2022 MT 46, ¶ 36, 408 Mont. 39, 505 P.3d 825.

This case was brought as a challenge to the 2022 Rule, the MVD practice, and SB 458. The SAC would turn it into a different case after the appeal.

II. The SAC would cause undue prejudice, for which Plaintiffs have offered no justification.

The Court balances prejudice against the movant’s justification for delay. *Ally Fin., Inc. v. Stevenson*, 2018 MT 278, ¶ 14, 393 Mont. 332, 337, 430 P.3d 522, 526 (citing *Rolan v. New W. Health Servs.*, 2017 MT 270, ¶ 16, 389 Mont. 228, 405 P.3d 65). Relevant factors include the length of delay, the stage of the proceedings, notice in anticipation of trial, whether a dispositive motion has been filed, and whether the amendment states a new legal theory. *Id.* ¶ 15.

Plaintiffs’ justification is that SB 437 did not take effect until March 24, 2026. That explains why they could not plead it in 2024. It does not explain why this case must absorb a new statute, and an injunction against unadopted rules, after the preliminary injunction has been issued and affirmed.

Plaintiffs fail to establish why they even need to challenge SB 437 in this case at all. The DPHHS rule and the alleged MVD policy predate and are independent of SB 437 (and SB 458), and the existing injunction still requires the State to allow amendments to the “sex” markers on birth certificates and driver’s licenses based on a person’s subjective identification rather than any factor rooted in objective biological reality. Moreover, the term “sex” has always meant the same thing according to its plain dictionary meaning, regardless of SB 437 or SB 458.⁴ SB 437’s definition of “sex” simply codifies that status quo, and enjoining its application to birth certificates and driver’s licenses wouldn’t change the meaning of “sex” as that term was already used in the DPHHS rule and the MVD policy. In other words, adding a challenge to SB 437 here would be duplicative and unnecessary.

The stage of the proceedings also weighs against leave here. This Court enjoined the 2022 Rule, the MVD practice, and SB 458 on December 16, 2024. The Montana Supreme Court affirmed that injunction nearly sixteen months later on April 14, 2026. The parties then stipulated to a schedule on May 29, 2026. Lay witness lists were due August 21. Plaintiffs moved on August 6. The Court had not ruled by

⁴ See, e.g., *Sex*, BLACK’S LAW DICTIONARY (12th ed. 2024) (“The sum of the peculiarities of structure and function that distinguish a male from a female organism; gender.”); *Sex*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“The sum of the peculiarities of structure and function that distinguish a male from a female organism; gender.”); *Sex*, BLACK’S LAW DICTIONARY (7th ed. 1999) (“The sum of the peculiarities of structure and function that distinguish a male from a female organism.”).

August 21, so that exchange closed on the operative complaint. The SAC would require a new statutory record⁵ and a new witness list after that date.

The amendment also states a new theory. The case that was enjoined and affirmed was the 2022 Rule, the MVD practice, and SB 458. The SAC would add SB 437 and a prayer enjoining “any further administrative rulemaking” on that subject. Defendants have already spent a preliminary-injunction proceeding and an appeal on a different statute. Substantial effort is wasted when the movant is allowed to proceed on a new legal theory. *Farmers Co-op. Ass’n v. Amsden, LLC*, 2007 MT 286, ¶ 14, 339 Mont. 445, 448, 171 P.3d 690, 692.

The Court should deny Plaintiffs’ Motion.

III. Plaintiffs failed to preserve any amendment to the pleadings in the Stipulated Scheduling Order.

SB 437 became effective March 24, 2026. Three months later, this Court accepted and entered the Stipulated Scheduling Order submitted by the parties after negotiation. (Doc. 106.) Despite having knowledge that SB 437 was effective, Plaintiffs did not raise this issue in the process of negotiating the Stipulated

⁵ “Statutory record” means proof required to adjudicate SB 437: the enrolled bill, its legislative history, agency interpretation, and discovery into how, if at all, DPHHS and MVD apply the definition to birth certificates and driver’s licenses. That proof was not developed in the preliminary injunction proceeding here, which was limited to the 2022 Rule, MVD practice, and SB 458. Forcing that work into this matter after the appeal is unnecessary. A challenge to SB 437 is already pending in *Edwards v. Montana*, No. DV 23-1026 (Mont. 4th Jud. Dist. Ct., Missoula Cty.) There is no reason to litigate the same statute in two courts at once when the 2022 Rule and the MVD practice already supply the claims that address Plaintiffs’ alleged injury in this case, and neither the Rule nor the practice were based upon SB 437. Indeed, they predate it by several years.

Scheduling Order. Plaintiffs have therefore failed to preserve the possibility of filing a third new complaint. The SAC must be rejected.

In *Lindey's, Inc.*, the Montana Supreme Court affirmed that justice did not require the lower court to grant Lindey's second and third motions for leave to amend the pleadings. Lindey's sought leave to file second and third amended complaints on August 22 and August 29, 1989, respectfully. *Lindey's*, 244 Mont at 241, 797 P.2d at 922. Since the Stipulated Scheduling Order directed all amendments to pleadings must be filed by July 1, 1989, the defendants in that case opposed both motions to amend as untimely and one defendant moved for summary judgment on September 29, 1989. *Id.* The district court granted summary judgment and denied Lindey's motions to amend the complaint and modify the scheduling order:

Had the trial court granted Lindey's motion, all defendants would have been substantially prejudiced and trial unduly delayed. Granting the amendments would have required additional discovery and time to determine the sufficiency of the claims alleged in the amended complaints, all costing the defendants additional time, energy, and money to resolve the case.

Id., 244 Mont at 243, 797 P.2d at 923.

On May 29, 2026, all parties to this action stipulated and agreed to deadlines for various activities pursuant to Mont. R. Civ. P. 16(b). (Doc. 106.1.) Based on the parties' representations and agreement, this Court accepted and ordered that the stipulation would govern these proceedings. (Doc. 106.) Under the Stipulated Scheduling Order, the deadline for parties to supplement and exchange their lay witness lists, August 21, 2026, passed while Plaintiffs' motion has been pending. (Doc. 106.) Other substantive deadlines are set and approaching. What the Stipulated

Scheduling Order does not include, however, is a date for the pleadings to be amended again, even though Plaintiffs could have reasonably anticipated that they would request to amend the FAC, because SB 437 became effective three months before the Stipulated Scheduling Order was entered.

Amending the FAC, as opposed to challenging the specific mechanics of the new law in a new lawsuit, implicates the concerns outlined by the Court in *Lindey's Inc.* Where *Lindey's* failed to seek leave to amend within the time they stipulated to in the scheduling order, Plaintiffs here failed to even preserve the possibility of filing a third new complaint when they agreed to the Stipulated Scheduling Order entered and accepted by this Court on May 29, 2026 (Doc. 106). Plaintiffs now seek to file the SAC and include allegations regarding a law that became **effective** approximately 101 weeks after they commenced this lawsuit against Defendants. *Lindey's*, 244 Mont at 243, 797 P.2d at 923 (denying plaintiff's motions to file second and third amended complaints where the stipulated scheduling order deadline had passed and because granting those requests "would have required additional discovery and time to determine the sufficiency of the claims alleged in the amended complaints, all costing the defendants additional time, energy, and money to resolve the case.").

This Court should deny Plaintiffs' motion as a dilatory tactic that is not in the interest of judicial economy as the parties have already negotiated the stipulated scheduling order.

IV. The proposed SB 458 claims are futile because they are moot, and no exceptions apply.

Plaintiffs' SAC is futile because this case, as it relates to SB 458, is and became moot, when SB 458 was repealed effective March 24, 2026.

An issue is moot when it no longer presents a justiciable controversy, due to the occurrence of a given event or the passage of time. *Montana Tavern Association v. State ex rel. Department of Revenue*, 224 Mont. 258, 262, 729 P.2d 1310, 1313–14 (1986) (citations omitted). However, an issue will not be considered moot if it is “capable of repetition, yet evading review.” *Sch. Dist. v. Bd. of Pers. Appeals*, 214 Mont. 361, 364, 692 P.2d 1261, 1263 (1985) (holding that negotiation of new collective bargaining agreement, with retroactive pay provision, rendered declaratory judgment action moot). In order to prove that a given situation is capable of repetition, yet evading review, a party must show: (1) the challenged action was in its duration too short to be fully litigated prior to the cessation or expiration of the action; **and** (2) there was a reasonable expectation the same complaining party would be subjected to the same action again. *Sch. Dist.*, 214 Mont. at 364, 692 P.2d at 1263 (citing *Sosna v. Iowa*, 419 U.S. 393, 95 S. Ct. 553, 42 L.Ed.2d 532 (1975)).

Here, SB 458 has been repealed. The occurrence of this event renders any case-or-controversy presented by Plaintiffs' SB 458 claims moot. *See e.g., Skinner Enters., Inc. v. Lewis & Clark City-Cnty. Health Dep't.*, 1999 MT 106, ¶ 16, 294 Mont. 310, 294, 980 P.2d 1049, 1052 (When a statute is repealed, amended, or superseded while litigation is pending, the claims against the statute may become moot, and the court may be stripped of subject matter jurisdiction). *See also Held v. State*, 2024 MT 312,

¶ 10, 419 Mont. 403, 415, 560 P.3d 1235, 1244 (recognizing the dismissal of a claim when the statute at issue was repealed during litigation). Despite this, the SAC still seeks declaratory and injunctive relief against SB 458.

The “capable of repetition, yet evading review” exception does not apply. First, the challenged action—SB 458—was not too short “to be fully litigated prior to the cessation or expiration of the action.” Plaintiffs commenced this lawsuit on April 18, 2024, and have had ample time to litigate the merits of SB 458, including obtaining a preliminary injunction to prevent its enforcement (Doc. 61), appearing before the MHRB (Doc. 68), and filing the FAC (Doc. 68). Second, there is no reasonable expectation that Plaintiffs will be subjected to SB 458 again because it has been repealed.

The fact that SB 458 and SB 437 are pieces of legislation on similar topics is not enough for the latter to breathe life into claims regarding the former. *Yakima Valley Mem’l Hosp. v. Wash. State Dep’t of Health*, 654 F.3d 919, 934 (9th Cir. 2011) (“For more than a century, the general rule ... [has been] that when an act of the legislature is repealed, it must be considered, except as to transactions past and closed, as if it never existed...Even in a pending action, no judgment could be rendered...after the repeal of the act under which it was brought and prosecuted”).

Even if this Court disagrees, analyzing the merits of the SAC demonstrate the claims still fail and the amendment remains futile. *Hobble-Diamond Cattle Co. v. Triangle Irrigation Co.*, 249 Mont. 322, 325, 815 P.2d 1153, 1155-56 (1991) (Courts

properly deny leave to amend for futility or legal insufficiency to support the requested relief).

SB 437, which repealed SB 458, includes a new definition for “sex” as a “term of wide applicability” within the Montana Code. Part of this new definition states that the term “gender” “must not be considered a synonym for sex.” Through its new definition, the Montana Legislature has made clear what the Supreme Court of the United States concluded on June 30, 2026: that a classification based on biological “sex” is not the same as a classification based on gender identity or transgender status. *West Virginia v. B.P.J.*, 609 U.S. ___, 146 S. Ct. 2356, 2378 (2026) (dismissing equal protection claim and concluding that states may determine eligibility for women’s and girls’ sports based on biological sex). Therefore, the SAC’s challenge to SB 458 is meritless and may be rejected. *Hobble-Diamond Cattle Co.*, 249 Mont. at 325, 815 P.2d at 1155 (merits of proposed claim may not be considered where the claim is frivolous, meritless, or futile).

Thus, Defendants request this Court deny Plaintiffs’ request because the issues presented herein are moot, thereby rendering the SAC’s claims against SB 458 as futile.

V. Plaintiffs’ proposed amendment is procedurally deficient.

Plaintiffs’ SAC poses further technical problems. The proposed amendment cannot relate back to the date of the original pleading because the amendment is based on a law that was not in effect at the time this lawsuit was initially filed, and no component of Rule 15(c) is met.

Rule 15(c) allows a proposed amendment to relate back to the date of the original pleading when:

- A. The law that provides the applicable statute of limitations allows relation back; or
- B. The amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out -- or attempted to be set out -- in the original pleading; or
- C. The amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(t) for serving the summons and complaint, the party to be brought in by amendment:
 - i. Received such notice of the action that it will not be prejudiced in defending on the merits; and
 - ii. Knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

In this case, (A) and (C) of Rule 15(c) do not apply; subparagraph (B) provides the only possible pathway for the SAC to relate back, and it cannot be satisfied.

A complaint can be amended to include a new theory of recovery where the basis for the new claim is the same occurrence involved in the old claims. *Flanigan v. Prudential Federal Sav. & Loan Ass'n*, 221 Mont. 419, 429, 720 P.2d 257, 262-63 (1986) (Montana Supreme Court held claims for negligence and breach of the implied covenant of good faith and fair dealing arise out of the same occurrence, include the same facts, and only involve different legal theories). In *Willems v. State*, the Montana Supreme Court held the claim that one-on-one discussions amongst the Montana Districting and Apportionment Commission violated public's right to know was timely and related back because the one-on-one discussions were held just before

the Commission’s final meeting, which was the subject of plaintiffs’ initial claims. *Willems v. State*, 2014 MT 82, ¶ 22, 374 Mont. 343, 349, 325 P.3d 1204, 1208.

Here, the SAC reasserts the FAC claims regarding SB 458, the 2022 Rule, and the MVD Policy and includes a similar constitutional challenge to the newly enacted SB 437. This is not like *Willems*, where the new constitutional claim was based on conduct that occurred in tandem with the occurrence subject to the original challenges. Plaintiffs’ SAC includes a new challenge to a new law that became **effective** approximately 101 weeks after they commenced this lawsuit against Defendants. This is not a claim that arises “out of the conduct, transaction, or occurrence” set out in the FAC. The SAC arises out of a separate subsequent occurrence, transaction, or course of conduct: SB 437 was passed by the Montana Legislature and became effective on March 24, 2026.⁶

While the theories of liability between the FAC and SAC may share similarities, that is not enough to allow the new claims in the SAC to be asserted in this lawsuit and relate back to April 18, 2024. SB 437 was not even effective until March 24, 2026. *See* Mont. Code Ann. § 1-2-109 (“No law contained in any of the statutes of Montana is retroactive unless expressly so declared.”). Because SB 437 cannot be applied retroactively and does not arise out of the same conduct, transaction, or occurrence as the operative pleading, the SAC must be rejected.

⁶ Mont. R. Civ. P. 15(d) contemplates supplemental pleadings addressing such subsequent events, but supplemental pleadings significantly differ from amended pleadings in purpose, procedural requirements, effect on the original pleading, and the doctrine of relation back, and this is not the relief Plaintiffs seek here in any event.

CONCLUSION

This Court should deny Plaintiffs' motion. First, the vehicle Plaintiffs chose is incorrect because it would replace the complaint already reviewed on appeal with a pleading that still challenges a repealed statute—so leave fails whether the motion is styled as an amendment or as a supplement. Next, the SAC would cause undue prejudice to Defendants because Plaintiffs have not met their burden of establishing leave is warranted pursuant to Rule 15. No justification exists for why Plaintiffs must amend the pleadings in this case, as opposed to filing a new lawsuit to challenge the new law. Moreover, SB 437 became effective at the end of March 2026, giving Plaintiffs enough time to include a new deadline to amend the pleadings in the Stipulated Scheduling Order, which was accepted and entered at the end of May; Plaintiffs neglected to raise this issue at that time. Next, the claims related to SB 458's claims are moot. Finally, the proposed amendment suffers from fatal procedural defects.

Granting Plaintiffs the opportunity to file a third complaint in this matter is contrary to the spirit of Rule 15. The SAC is futile and would cause undue delay and prejudice. In the interest of the parties, judicial economy, and finality, this Court should deny Plaintiffs' Motion.

DATED this 3rd day of September 2026.

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CERTIFICATE OF SERVICE

I, Michael Noonan, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Response Brief to the following on 09-03-2026:

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Dated: 09-03-2026