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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.

Cause No. ADV-2024-261

**ORDER – MOTION
FOR CLASS CERTIFICATION**

Before the Court is Plaintiffs Jessica Kalarchik (Kalarchik) and Jane Doe’s (Doe) motion for Rule 23 class certification, appointment of class representatives, and appointment of class counsel. Alex Rate, Marthe Y. VanSickle, Malita Picasso, Jon W. Davidson, F. Thomas Hecht, Tina B. Solis, and Seth A. Horvath represent the Plaintiffs. Austin Knudsen, Michael Russell, Thane Johnson, Alwyn Lansing, Michael Noonan, and Emily Jones represent Defendants State of Montana, Gregory Gianforte, in his official capacity as the Governor of the State of Montana (Gianforte), the Montana Department of Public

1 Health and Human Services (DPHHS), Charles T. Brereton, in his official
2 capacity as the Director of the Montana Department of Public Health and Human
3 Services (Brereton), the Montana Department of Justice (DOJ), and Austin
4 Knudsen, in his official capacity as Attorney General of the State of Montana
5 (Knudsen) (collectively “State”).

6 **STATEMENT OF FACTS**

7 On April 18, 2024, Plaintiffs filed a complaint seeking declaratory
8 and injunctive relief challenging Senate Bill 458 (SB 458), Montana
9 Administrative Rule 37.8.311(5) (the 2022 Rule), and a Montana Department of
10 Justice, Motor Vehicle Division 2024 policy to only issue an amended driver’s
11 license with a sex designation reflecting a person’s gender identity if the person
12 provided an amended birth certificate (MVD policy). Plaintiffs allege
13 Defendants’ policies and practices are part of an effort to deny transgender
14 people rights which are widely available to other Montanans and reflect an intent
15 to discriminate against transgender people throughout Montana.

16 On May 17, 2024, Plaintiffs filed the present motion requesting the
17 Court certify this matter as a class action. Specifically, Plaintiffs ask the Court to
18 certify a class of (a) all transgender people born in Montana who currently want,
19 or who in the future will want, to have the sex designation on their Montana birth
20 certificate changed to be consistent with what they know their sex to be, as
21 determined by their gender identity; and (b) all transgender people who currently
22 want, or who in the future will want, to have the sex designation on their
23 Montana driver’s license changed to match what they know their sex to be, as
24 determined by their gender identity. Plaintiffs also move the Court to appoint
25 Plaintiffs as class representatives and the ACLU Montana Foundation, Inc., the

1 American Civil Liberties Union Foundation, and Nixon Peabody, L.L.P., as class
2 counsel. Defendants object to class certification.

3 The parties appeared for oral argument on the motion on
4 November 14, 2024. The matter is now ripe for decision.

5 PRINCIPLES OF LAW

6 Rule 23 of the Montana Rules of Civil Procedure provides a two-
7 part analysis for class certification. First, a proponent must demonstrate the
8 proposed class meets the four prerequisite elements of Rule 23(a): numerosity,
9 commonality, typicality, and adequacy. *See, Cook v. Buscher Constr. & Dev.,*
10 *Inc.*, 2024 MT 137, ¶ 10, 417 Mont. 111, ¶ 10, 551 P.3d 811, ¶ 10. Following a
11 determination the proposed class satisfies all Rule 23(a) prerequisites, the Court
12 may certify the class if the proponent demonstrates the class satisfies at least one
13 provision of Rule 23(b). *Id.* at ¶ 29. Here, Plaintiffs move to certify the
14 proposed class on the basis it satisfies the provisions of Rule 23(b)(2): “the party
15 opposing the class has acted or refused to act on grounds that apply generally to
16 the class, so that final injunctive relief or corresponding declaratory relief is
17 appropriate respecting the class as a whole.”

18 ANALYSIS

19 The Montana Supreme Court has consistently held, “[t]rial courts
20 have the broadest discretion when deciding whether to certify a class... because
21 [they are] in the best position to consider the most fair and efficient procedure for
22 conducting any given litigation.” *See, e.g., Sieglock v. Burlington N. & Santa Fe*
23 *Ry. Co.*, 2003 MT 355, ¶ 8, 319 Mont. 8, ¶ 8, 81 P.3d 495, ¶ 8 (citing *McDonald*
24 *v. Washington* (1993), 261 Mont. 392, 862 P.2d 1150). Here, the Court finds

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1 class certification would not provide an efficient procedure for conducting the
2 present litigation.

3 The underlying matter before the Court is Plaintiffs’ constitutional
4 challenge to the 2022 Rule, MVD policy and practice as applied to issuing
5 amended driver’s licenses, and SB 458 as applied to issuing amended birth
6 certificates and amended driver’s licenses. In the event individual settlements or
7 court relief for the named Plaintiffs do not extend to all members of the class,
8 Plaintiffs argue class certification is warranted in that it would prevent the case
9 from being dismissed as moot. Moreover, Plaintiffs argue class certification
10 would prevent Defendants from limiting the scope of any injunctive or
11 declaratory relief to the location of the issuing court which otherwise would
12 require duplicative and wasteful suits in each county in which any of the class
13 members reside. Notwithstanding Plaintiffs’ argument, however, the
14 hypothetical situations which they claim class certification would prevent cannot
15 occur in this litigation.

16 The ultimate issue before the Court is the constitutionality of a
17 challenged statute, rule, and policy. The outcome of the litigation necessarily
18 affects all members of Plaintiffs’ proposed class regardless of whether the
19 litigation is conducted as a class action or not. As District Court Judge Moses
20 reasoned when denying a similar motion to certify a class action, “[i]f the Act is
21 constitutional and lawful, it is constitutional and lawful to all. If it is
22 unconstitutional or unlawful, it is unconstitutional or unlawful to all.” *Marquez*
23 *v. State of Montana*, Mont. Thirteenth Dist. Ct. Yellowstone County, Cause No.
24 DV 21-873. Therefore, conducting this litigation as a class action would
25 complicate procedure without affecting the result.

1 **ORDER**

2 **IT IS HEREBY ORDERED** Plaintiffs’ motion for Rule 23 class
3 certification, appointment of class representatives, and appointment of class
4 counsel is **DENIED**.

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7
8 /s/ Mike Menahan
9 MIKE MENAHAN
District Court Judge

10
11 cc: All via email:
12 John Davidson
13 Alwyn Lansing
14 Seth A. Horvath
15 Robert Farris-Olsen
16 Marthe Y. Vansickle
17 Michael Russell
18 Alex Rate
19 Malita Picasso
20 F. Thomas Hecht
21 Thane P. Johnson
22 Emily Jones
23 Michael Noonan
24 Tina B. Solis
25 Austin M. Knudsen

MM/sm/ADV-2024-157