Alex Rate
ACLU of Montana
P.O. Box 1968
Missoula, MT 59806-1968
(406) 224-1447
ratea@aclumontana.org

Wendy Heipt*
Legal Voice
907 Pine Street, Suite 500
Seattle, WA 98101
(206) 682-9552
wheipt@legalvoice.org

Robin Turner
Legal Voice
P.O. Box 582
Missoula, MT 59806
(206) 682-9552 x 110
rturner@legalvoice.org

Terry Ding*
ACLU Foundation
125 Broad Street, 17th Floor
New York, NY 10004
(212) 549-2500
ttding@aclu.org

Julie A. Murray*
ACLU Foundation
915 15th Street, NW
Washington, DC 20005
(202) 675-2326
jmurray@aclu.org

**Pro Hac Vice* applications pending

MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY

CASEY PERKINS, an individual; SPENCER MCDONALD, an individual; KASANDRA REDDINGTON, an individual; JANE DOE, an individual; and JOHN DOE, an individual, Plaintiffs, vs. STATE OF MONTANA; GREGORY GIANFORTE, in his official capacity as Governor of the State of Montana; and	Cause No. DV 25-282 Hon. Shane Vannatta **REPLY BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

AUSTIN KNUDSEN, in his official capacity as Attorney General of the State of Montana, Defendants.	

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INTRODUCTION

The State would have this Court believe that HB 121 "serves as an equalizer" for all Montanans. In the State's telling, the Act—which prohibits transgender people from using restrooms and other sex-separated facilities that correspond to their gender identity—does not directly affect transgender people, does not classify based on transgender status, and makes transgender people safer. To describe these arguments is to refute them. They give this Court no reason to depart from its prior conclusion that Plaintiffs have established all four prerequisites for securing preliminary injunctive relief.

First, Plaintiffs are likely to succeed on their claims. The Act on its face restricts Plaintiffs' access to sex-separated facilities and requires covered entities to enforce those restrictions against Plaintiffs, causing concrete harms that make this case justiciable. On the merits, the State does not even try to confront the uniform Montana case law applying strict scrutiny to laws targeting transgender people, nor to defend the Act under strict scrutiny. Instead, the State clings to the fiction that the Act classifies based only on sex, not on transgender status. Even accepting that fiction as true, the Act would be subject to, and fail, strict scrutiny. Indeed, because it is motivated by animus and does not advance the pretextual interest asserted by the State, the Act would not survive any level of scrutiny.

Second, the Plaintiffs will suffer irreparable harm absent a preliminary

injunction. The Act forces transgender people to use covered facilities that do not align with their gender identity, exposing them to harassment and violence, and gives intersex people no notice of whether they can use covered facilities at all. The State does not rebut Plaintiffs' record evidence of these harms or dispute that these harms are irreparable. Indeed, the State offers no declarations in support of its position. That Plaintiffs do not recount their use of every conceivable covered entity does not in any way negate the harms they face.

Third, the equities tip heavily in Plaintiffs' favor because enforcing the Act would inflict severe harms on them while enjoining the Act would simply restore the status quo of a few weeks ago and cause no harm to the State.

Fourth, issuing an injunction is in the public interest because it would prevent the enforcement of an unconstitutional law and forestall harm from the Act to all transgender and intersex Montanans.

This Court should therefore grant a preliminary injunction.

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits of Their Claims.

The Legislature recently amended § 27-19-201(4)(b), MCA, to require that courts find a likelihood of success on the merits before entering a preliminary injunction and precluded reliance on the existence of "serious questions" to warrant an injunction. To secure a preliminary injunction, Plaintiffs need only

show a likelihood of success on one of their claims. *See Cross by & through Cross v. State*, 2024 MT 303, ¶ 56, 419 Mont. 290, 560 P.3d 637. And because Plaintiffs have "show[n] an infringement on a fundamental right, a presumption of constitutionality" does not attach to the Act.[1] *Montana Democratic Party v. Jacobsen*, 2024 MT 66, ¶ 11, 416 Mont. 44, 545 P.3d 1074. In issuing the temporary restraining order ("TRO") here, this Court determined that "Plaintiffs have made the requisite showing that they are likely to succeed on . . . the merits" of all their claims. TRO at 2. None of the State's arguments change that conclusion.

A. Plaintiffs' claims are justiciable.

1. Plaintiffs' claims are ripe.

The State contends that this case is not ripe because Plaintiffs "are not directly regulated by the Act" and the Act's impact on them is "speculative." State Br. 8–11, 25. This is simply wrong.[2]

Plaintiffs need not be directly regulated by a law for it to harm them and confer standing. *See Comm. for an Effective Judiciary v. State* (1984), 209 Mont. 105, 108–13, 679 P.2d 1223, 1225–27. In any event, the Act *does* directly regulate Plaintiffs and other transgender and intersex Montanans. It expressly commands

[1] In any event, the "presumption of a statute's constitutionality does not alter the movant's burden to present a prima facie case at the preliminary injunction stage." *Cross*, ¶ 33 (cleaned up).

[2] The State's argument that intersex people are not excluded by the Act's definitions of "sex," State Br. 11–12, pertains to the merits of Plaintiffs' vagueness claim, not ripeness, and is discussed below at Argument I.B.2.d, *infra*.

that "an individual may not enter a restroom, changing room, or sleeping quarters that is designated for females or males unless the individual is a member of the designated sex." HB 121 § 3(2).

Moreover, the Act's effects are not speculative. It began harming Plaintiffs the moment it took effect upon signing. That day, covered entities across Montana had to—and did—begin restricting transgender and intersex people's access to sex-separated facilities. *See, e.g.*, Andy Tallman, *UM rushed to comply with bathroom bill the day it was signed. It was blocked a week later.*, Missoulian (Apr. 2, 2025), https://perma.cc/6MRD-5TFF (reporting on university's immediate action to enforce HB 121). An "actual, concrete conflict[]" thus arose between the parties. *Reichert v. State ex rel. McCulloch*, 2012 MT 111, ¶¶ 54, 58, 365 Mont. 92, 278 P.3d 455 (holding challenge to proposed ballot referendum ripe because "statutory changes" would be "effective immediately" upon referendum's adoption).

2. Plaintiffs have standing to bring their claims.

The State admits that its standing arguments are "similar" to its ripeness arguments. State Br. 12. They fail for similar reasons.

The State asserts that "Plaintiffs have not shown a concrete injury that is actual or imminent" because the Act regulates only "third parties and has not impacted them in any concrete way." State Br. 12–13. As explained above, this is wrong. The Act directly bars Plaintiffs from using facilities that correspond to their

gender identity and requires covered entities to enforce those restrictions against Plaintiffs. *See* Argument I.A.1, *supra*. In doing so, the Act violates Plaintiffs' constitutional rights in multiple ways. *See* Argument I.B.2, *infra*.

Under Montana law, this is more than enough to establish injury for standing purposes. In *Barrett v. State*, for example, the Montana Supreme Court ruled that plaintiffs challenging a law banning transgender athletes from participating in women's sports established a cognizable "injury due to actual exclusion from participation," notwithstanding the State's argument that the Board of Regents was the proper party to bring suit. 2024 MT 86, ¶ 35, 416 Mont. 226, 547 P.3d 360; *see also Held v. State*, 2024 MT 312, ¶ 32, 419 Mont. 403, 560 P.3d 1235 (holding that standing can be based on an alleged wrong "that has caused, or is likely to cause, . . . a past, present, or threatened injury to person, property, *or* exercise of civil or constitutional right"). Likewise here, the Act excludes transgender people from covered facilities that align with their gender identity and intersex people entirely. Plaintiffs thus have a personal stake in the outcome of the case.

The State also contends that Plaintiffs have not demonstrated a likelihood of standing because they "have not shown enforcement authority by Defendants." State Br. 14. This argument fails twice over.

First, Montana's standing doctrine does not require Plaintiffs to show that Defendants are responsible for enforcing the Act. *See, e.g.*, *Comm. for an Effective*

Judiciary, 209 Mont. at 110–11, 679 P.2d at 1226 (recognizing public interest standing). Even if the doctrine were as limited as the State suggests, standing exists where a plaintiff's injury is in any way "fairly traceable" to the defendant's conduct and "would be alleviated by successfully maintaining the action." *Heffernan v. Missoula City Council*, 2011 MT 91, ¶¶ 32–33, 360 Mont. 207, 255 P.3d 80. It is indisputable that HB 121 is now a state law and is causing Plaintiffs' injuries. And those injuries would be redressed, for example, by a declaration that the Act is unconstitutional, thus rendering the law null and void. *See Barrett*, ¶ 33. This case is, therefore, unlike those cited by the State, State Br. 14, each of which arose in federal court, where plaintiffs were barred by sovereign immunity from bringing claims against a state as a whole. *Compare Hans v. Louisiana*, 134 U.S. 1, 14–15 (1890), *with* Mont. Const. art. II, § 18 (permitting suits against the State).

Second, the State, Governor, and Attorney General *do* maintain authority to implement and enforce the Act. The Governor "has full powers of supervision, approval, [and] direction" over state departments, § 2-15-103, MCA, which are themselves covered entities responsible for implementing the statute, HB 121 § 2(3), (9); *see* Perkins Decl. ¶¶ 3, 6–8 (describing employment at one such agency). And although the Act creates a private right of action, it does not displace the Attorney General's parallel authority to enforce the public health laws where HB 121 will be codified. *See* § 50-1-103, MCA; HB 121 § 5.

B. Plaintiffs are likely to succeed in showing that HB 121 is unconstitutional.

1. The Act is subject to strict scrutiny because it discriminates against suspect classes and infringes on fundamental rights.

Every Montana court to have considered the question has applied strict scrutiny to laws targeting transgender people and found them to be facially unconstitutional or likely unconstitutional. *See Cross*, ¶ 37; *Edwards v. State*, Cause No. DV-23-1026, Or. Cross Mots. Summary Judgm. at 20–21 (Mont. Fourth Jud. Dist. Ct., Missoula Cnty., Feb. 18, 2025); *Cross v. State*, Cause No. DV-23-541, 2023 WL 6392607, Or. Pls.' Mot. for Prelim. Inj. at *10 (Mont. Fourth Jud. Dist. Ct., Missoula Cnty., Sept. 27, 2023); *Kalarchik v. State*, Cause No. ADV-2024-261, Or. Pls.' Mot. Prelim. Inj. at 10–11 (Mont. First Jud. Dist. Ct., Lewis and Clark Cnty., Dec. 16, 2024). The State makes no attempt to distinguish these cases, whose reasoning is sound and should be adopted here. Strict scrutiny would, in any event, be appropriate on numerous other grounds because the Act discriminates based on sex through a classification the State concedes, State Br. 14, 19, and "infringes upon [numerous] fundamental right[s]," *Powell v. State Comp. Ins. Fund*, 2000 MT 321, ¶ 17, 302 Mont. 518, 15 P.3d 877.

First, strict scrutiny applies because the Act discriminates based on transgender status, and "transgender status is a suspect classification." TRO at 2. The State's only argument against that conclusion is that the Montana Supreme

Court has not yet definitively resolved the question. State Br. 18–19. But both Supreme Court concurrences the State cites *agree* that transgender status is a suspect classification. *See Cross*, ¶ 65 (McKinnon, J., concurring); *Snetsinger v. Mont. Univ. Sys*., 2004 MT 390, ¶ 109, 325 Mont. 148, 104 P.3d 445 (Nelson, J., concurring). And the State offers no response to—and no evidence to refute—Plaintiffs' abundant evidence showing that transgender people are "subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness" as to warrant heightened protection as a suspect class. *In re S.L.M.*, 287 Mont. 23, 33, 951 P.2d 1365, 1371 (1997); *see* Pls.' Br. 28–32.

Second, strict scrutiny applies because, as the State agrees, "[t]he Act makes a . . . classification of people based on sex." State Br. 14. Sex-based discrimination triggers strict scrutiny under the Montana Constitution for two reasons: It infringes on a fundamental right and sex is a suspect classification. *See* Pls.' Br. 33–35.

Third, strict scrutiny applies because the Act violates Plaintiffs' fundamental constitutional rights to equal protection, privacy, and to pursue life's basic necessities. *See* Argument I.B.2, *infra*.

In short, there is no question that the Act is subject to strict scrutiny.

2. The Act violates Plaintiffs' constitutional rights, whatever level of scrutiny is applied.

The State does not even try to argue that the Act survives strict scrutiny. *See* State Br. 27–39. Nor can it, because the Act is not "the least onerous path to a

compelling government interest." *Jacobsen*, ¶ 75. To the contrary, the evidence shows that forcing transgender people to use facilities inconsistent with their gender identity exposes them to heightened risks of harassment and violence without advancing women's safety. *See* Pls.' Br. 38–43.

Even if the Court decides strict scrutiny is not appropriate here, the Act is subject to at least middle-tier scrutiny given the State's concession that it is a sex-based classification. *See* State Br. 14, 19. To satisfy middle-tier scrutiny, the State must show that "the classification is reasonable (*i.e.*, not arbitrary and justified by relevant and legislative state interests)," *Jacobsen*, ¶ 40, that it is "substantially related to the achievement of those" interests, *Arneson v. State* (1993), 262 Mont. 269, 273, 864 P.2d 1245, 1247, and that "the need for the resulting classification outweighs the value of the right to an individual," *Snetsinger*, ¶ 18.

The Act does not survive middle-tier (or any level of) scrutiny. As detailed below, each of the State's arguments to the contrary is meritless.[3]

a. The Act violates equal protection by discriminating based on transgender and intersex status.

The State's insistence that the Act does not discriminate based on transgender or intersex status flies in the face of reason. State Br. 14–18. Under the Act, cisgender people can use facilities that correspond to their gender identity

[3] As Plaintiffs have explained, the Act would also fail rational-basis review because it is motivated by animus and the record evidence directly undermines the State's contention that the Act advances any legitimate interest in privacy or safety. *See* Pls.' Br. at 36–43.

while transgender people cannot, and intersex people cannot access these facilities at all. *See* TRO at 2 ("The Act discriminates on the basis of transgender status, intersex status, and sex."). That is discrimination, plain and simple.

Equal protection analysis focuses on whether a challenged law "treat[s] . . . two groups differently." *Snetsinger*, ¶ 27. A law may do so expressly, but even a "law or policy that contains an apparently neutral classification may violate equal protection if in reality it constitutes a device designed to impose different burdens on different classes of persons." *Id.* ¶ 16 (cleaned up). In *Snetsinger*, for example, the Montana Supreme Court held that a university policy discriminated based on sexual orientation because "unmarried opposite-sex couples [were] able to avail themselves of health benefits under the . . . policy while unmarried same-sex couples" were not. *Id.* ¶ 27. It was of no moment that the policy spoke of "marital status" rather than sexual orientation. *Id.* ¶¶ 20–27.[4]

The same analysis makes clear that the Act discriminates based on transgender and intersex status. The Act conditions access to facilities using definitions of "sex," "female," and "male" that are based on sex traits and

[4] *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993), on which the State relies, State Br. 16, did not involve a constitutional equal protection claim at all; it addressed the statutory interpretation question of what constituted "class-based" animus for purposes of 42 U.S.C. § 1985(3). *See* 506 U.S. at 266. The State's reliance on *Campbell v. Garden City Plumbing & Heating, Inc.*, 2004 MT 231, 322 Mont. 434, 97 P.3d 546, and *Montana State University-Northern v. Bachmeier*, 2021 MT 26, 403 Mont. 136, 480 P.3d 233, is similarly misplaced, as those cases concerned statutory claims and made no suggestion that it is permissible to discriminate against transgender people. *See Campbell*, ¶ 13; *Bachmeier*, ¶ 27.

reproductive anatomy "at birth." HB 121 §§ 2(4), 2(7), 2(12), 3(2). It singles out people whose gender identity does not align with their birth-assigned sex—transgender people—by commanding disregard of "psychological, behavioral, social, chosen, or subjective experience of gender." *Id.* § 2(12). Because the Act permits cisgender people to use covered facilities that correspond to their gender identity but bars transgender people from doing the same, it "impos[es] different burdens" on these two classes of people. *Snetsinger*, ¶ 16; *see* Pls.' Br. 21–25.

Meanwhile, the Act excludes intersex people from its definitions of "female" and "male" altogether. As a result, people who fit those definitions can access covered facilities, whereas intersex people cannot. *See* Pls.' Br. 23–24.

Montana case law uniformly supports Plaintiffs' position. Most notably, the district court in *Edwards* recognized that SB 458, which imposed definitions of "sex," "male," and "female" identical to those in the Act, "treats cisgender individuals . . . different[ly] from transgender[and] intersex" individuals. Cause No. DV-23-1026, at 27–28; *see also* Pls.' Br. 23–24 (discussing other cases). The State makes no attempt to distinguish these holdings.

The State speculates that some transgender people may wish to use restrooms *inconsistent* with their gender identity, State Br. 17, but this speculation does not change the nature of the Act's discriminatory scheme. Consider a hypothetical: A government program distributes vaccines but expressly disqualifies

transgender people from receiving them. Some transgender people may not want a vaccine, but the policy unquestionably discriminates based on transgender status.

Finally, the State attempts to obfuscate the Act's effect by noting that its "definitions apply to *every* person" regardless of transgender status. State Br. 16. This is akin to arguing that a law barring interracial marriage warrants no scrutiny because it applies to all races—a notion that "has no place in our modern equal protection jurisprudence." *Flowers v. Mississippi*, 588 U.S. 284, 300 (2019) (citation omitted). It is axiomatic that invidious "classifications do not become legitimate on the assumption that all persons suffer them in equal degree." *Id.*

b. The Act violates the fundamental right of privacy.

The State's privacy argument fundamentally misconstrues the privacy interests at stake. Plaintiffs do not contend that "walking into a shared sleeping quarters" or restroom is a private activity. State Br. 21. Rather, a "person's transgender identity" is "a profoundly private piece of information in which a transgender person has a reasonable expectation of privacy." *Marquez v. State*, Cause No. DV 21-873, 2022 WL 4486283, at *5 (Mont. Dist. Ct. Apr. 21, 2022). Every person also has a reasonable expectation of privacy in their anatomy, genetics, and medical history. *See State v. Nelson* (1997), 283 Mont. 231, 241, 941 P.2d 441, 448. By forcing trans men to use women's facilities and trans women to use men's facilities, the Act violates their privacy by outing them as transgender.

The State also contends that a transgender person's anatomy and history of surgery or hormone therapy are not necessarily disclosed by complying with the Act. State Br. 22–23. Again, the Act forces transgender people to involuntarily disclose their transgender status. That alone is a privacy intrusion. Moreover, by authorizing individuals to sue whenever a transgender person allegedly uses a covered facility they are not permitted to, HB 121 § 4, the Act makes that person's gender identity, anatomy, genetic information, and medical history central issues in the ensuing lawsuit. Not to mention that the Act requires covered entities "to prohibit [an] individual from using [facilities] designated for the opposite sex," *id.* § 4(1), thus putting pressure on them to verify each person's "biological and genetic indication of male or female," *id.* § 2(12); *see* Pls.' Br. 47–49.

c. The Act violates the fundamental right to pursue life's basic necessities.

In contending that the Act does not burden Plaintiffs' right to pursue life's basic necessities, the State insists that "the Act serves as an equalizer" as to restroom access. State Br. 23. As Plaintiffs have explained, this is a fiction. The Act allows cisgender people to use covered facilities corresponding to their gender identity but denies that right to transgender people while excluding intersex people altogether. *See* Argument I.A.1, *supra*. Indeed, when the State speaks of the Act allowing everyone a "choice," what it means is that transgender people can either be forced to use the restroom inconsistent with their gender identity or not use the

restroom at all. State Br. 25 ("Individuals are still free to make their choice to use a restroom or not.").

This Court's TRO recognized that "[a]ccess to restrooms and other sex-separated facilities consistent with a person's gender identity is a basic necessity." TRO at 3. Plaintiffs' declarations attest to this, detailing the ways in the Act curtails their ability to use restrooms in safety and dignity, and in turn their ability to pursue employment, education, and recreation. *See* Pls.' Br. 50–52; *e.g.*, Perkins Decl. ¶¶ 12–13; McDonald Decl. ¶¶ 17, 19; Reddington Decl. ¶¶ 28–30; Jane Doe Decl. ¶¶ 25–26. The State does not controvert this evidence, but instead seeks to trivialize Plaintiffs' harms as "idiosyncratic concerns." State Br. 24 (comparing Plaintiffs' harms to "inconvenient public parking choices").

d. The Act violates Plaintiffs' due process rights.

In arguing that the Act is not unconstitutionally vague as to intersex people, the State ignores its prior admission that SB 458's definitions of "sex," "female," and "male"—which are identical to those in the Act—"might not squarely apply" to intersex people. *Edwards*, Cause No. DV-23-1026, at 3–5. Instead, the State tries to overcome the statute's vagueness by rewriting it.

As the court explained in *Edwards*, "[b]y declaring as a matter of law that human beings can only be 'exactly' one of the two sexes," the Act "explicitly excludes" intersex people. *Id.* at 11; *see* HB 121 § 2(12). Intersex people are born

with sex traits and reproductive anatomy that are neither only male nor only female, so the Act "do[es] not accurately define their . . . sex." *Edwards*, Cause No. DV-23-1026, at 20–21; *see* John Doe Decl. ¶¶ 4–8.

The State nevertheless contends the Act is clear because it provides that "[a]n individual who would otherwise fall within [its definitions of female or male], but for a biological or genetic condition, is [female or male]." State Br. 26 (quoting HB 121 § 2(4), (7)). But this provision is itself vague, as it does not explain what it means by "biological or genetic condition."

And even assuming an intersex person can discern whether they have a qualifying "condition," the Act does not explain how they are supposed to determine whether they would "fall within" the definition of "female" or "male" "but for" that condition. The State's attempt to use John Doe to clarify this point achieves just the opposite. According to the State, John "'would otherwise fall into' the definition of Male" because he "possesses the sex-determining portion of the Y chromosome." State Br. 27. This explanation is wholly unmoored from the Act, which makes no mention of "the sex-determining portion of [a] chromosome" as the basis for any classification. To the contrary, the Act lists a number of traits that apparently define a person's "sex" without specifying that any one trait is determinative. *See* HB 121 § 2(4), (7), (12). Notwithstanding the State's attempt to revise it, the Act is not "drawn with sufficient clarity and definiteness to inform

persons of ordinary intelligence what actions are proscribed." *City of Whitefish v. O'Shaughnessy* (1985), 216 Mont. 433, 440, 704 P.2d 1021, 1025.

e. The Act is rooted in bare animus and the evidence belies the State's assertion that the Act advances its purported goals.

The Act fails any level of scrutiny because it is motivated by anti-trans animus, which is not a permissible state interest. *See U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973). Plaintiffs identified statements by the Act's proponents betraying animus and describing the law as of a piece with other legislation found to be "replete with animus toward transgender persons." *Cross*, Cause No. DV-23-541, 2023 WL 6392607, at *14; *see* Pls.' Br. 7–9. The State asserts that "[n]one of these statements are inconsistent with the Purpose" of the Act. State Br. 31. That is precisely the point: The purpose of the Act is to effectuate the animus underlying it. The State also defends the statements on the grounds that they do not explicitly "mention 'trans' individuals." *Id.* at 29. Again, that is the point: The speakers' references to "biological realities" of "men" and "women" reflect their refusal to recognize transgender people's gender identities and dignity.

Even setting aside this animus, the Act's drastic restrictions are not substantially related to any legitimate interests the Legislature might have in promoting privacy and safety. Here, the State makes two significant concessions: "the Legislature provided no evidence of privacy or safety offenses in covered facilities in Montana," nor evidence that "'transgender or intersex people have a

predisposition toward' privacy or safety offenses." State Br. 36–37. Put differently, there was no basis for the Legislature to think that barring transgender people from facilities that correspond to their gender identity would reduce the incidence of privacy or safety offenses at all, much less that doing so was necessary for anyone's privacy and safety.

The State recites statistics purporting to show that men commit violent crimes at higher rates than women and asserts that these generalized figures support "recognizing a difference between the sexes when it comes to safety." State Br. 31–32. "While such a disparity [may not be] trivial in a statistical sense, it hardly can form the basis for employment of a gender line as a classifying device." *Craig v. Boren*, 429 U.S. 190, 201 (1976). As the U.S. Supreme Court cautioned, "the principles embodied in the [federal] Equal Protection Clause are not to be rendered inapplicable by statistically measured but loose-fitting generalities." *Id.* at 208–09. Far more probative as to the issue in this case is the empirical evidence that widespread passage of "gender identity nondiscrimination ordinances for public accommodations" have not affected "privacy and safety in public restrooms." *See* Pls.' Br. 41–42.

Finally, "the need for" the Act's discriminatory classification is far outweighed by "the value of" the individual rights the law undermines. *Snetsinger*, ¶ 18. The Act violates a panoply of fundamental rights at the heart of the Montana

Constitution's promise of "quality of life, equality of opportunity and . . . blessings of liberty" to all Montanans. Mont. Const. pmbl. The value of these fundamental rights to Plaintiffs is significantly greater than the government's interest in obstructing transgender Montanans' participation in public life. *See Cross*, No. DV-23-541, 2023 WL 6392607, at *14 (ruling that transgender youth's "interest in their fundamental rights is greater than Defendants' interest in [SB 99's] classification [based on transgender status and sex]").

Two facts support this conclusion. The first is that the evidence shows it is transgender people who are most vulnerable to harassment and violence in sex-separated spaces. *See* Pls.' Br. 42–43. The second is that the Legislature can take measures to improve privacy and safety in sex-separated facilities—such as installing enclosed stalls and dividers—that do not ostracize Montana's entire transgender and intersex community.

The State's claim, unsupported by any evidence, that the Act will make transgender people safer is exactly backwards. *See* State Br. 23. Plaintiffs have explained that they have not had issues using restrooms consistent with their gender identity. But now, because of the Act, they fear harassment and abuse from being forced to use restrooms *inconsistent* with their gender identity. *See* Perkins Decl. ¶ 12; McDonald Decl. ¶¶ 13–15; Reddington Decl. ¶¶ 11, 17, 23; Jane Doe Decl. ¶¶ 12, 17, 23; John Doe Decl. ¶¶ 27–28. For example, Spencer McDonald is

a transgender man who lives and presents as a man. McDonald Decl. ¶¶ 5, 15. The Act requires him to use women's restrooms where he will be perceived as a man, likely exposing him to harassment and abuse. *Id.* ¶¶ 15–16. Spencer would neither be safer nor "feel belonging" in the women's restroom. State Br. 23.

In sum, the Act fails every level of scrutiny.

II. Plaintiffs Will Suffer Irreparable Harm Absent Preliminary Relief.

Plaintiffs have established irreparable harm as a matter of law because "the loss of a constitutional right constitutes an irreparable injury." TRO at 4 (quoting *Planned Parenthood of Montana v. State*, 2022 MT 157, ¶ 6, 409 Mont. 378, 515 P.3d 301); *see* Argument I.B.2, *supra* (detailing loss of constitutional rights).

Plaintiffs have also attested to the concrete harms the Act inflicts on them by forcing transgender people to use covered facilities that do not align with their gender identity and giving intersex people no notice of whether they can use covered facilities at all.[5] *See* Pls.' Br. 55–56. The State has submitted no contrary evidence and does not dispute that these harms would be irreparable. It argues only that the Act does not impact Plaintiffs directly, which, as Plaintiffs have explained, is belied by the facts and the statute's plain text. *See* Argument I.A.1, *supra*.

[5] Contrary to the State's assertion that Plaintiffs have made no allegations regarding sleeping quarters, Kasandra Reddington goes on overnight work trips that require her employer to determine whether to room her with colleagues. Reddington Supp. Decl. ¶¶ 5–7.

III. The Balance of Equities and the Public Interest Each Weighs Decisively in Favor of an Injunction.

The balance of equities and the public interest each weighs decisively in Plaintiffs' favor. *See* TRO at 4. Plaintiffs have set forth the real and profound harms they—and all transgender and intersex Montanans—suffer from the Act. *See* Pls.' Br. 55–57. By contrast, an injunction would simply restore the status quo prior to the Act's passage less than a month ago, causing no harm to the State. Although the State theorizes that the pre-Act status quo "could" lead to men entering women's restrooms to harm women, State Br. 43, it concedes there is no evidence indicating that this has ever been a problem, *see* Argument I.B.2.e, *supra*. Laws criminalizing the behavior about which the State expresses concern already exist, Pls.' Br. 40–41, and granting a preliminary injunction here would not prevent the government or covered entities from taking sensible measures to assuage privacy concerns short of ostracizing transgender and intersex people wholesale.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter a preliminary injunction enjoining Defendants, as well as their agents, employees, representatives, and successors, from enforcing the Act, directly or indirectly; and granting any other relief the Court deems just.

Dated: April 19, 2025

Respectfully submitted,

By: /s/ *Alex Rate*
Alex Rate
ACLU of Montana
P.O. Box 1968
Missoula, MT 59806-1968
(406) 224-1447
ratea@aclumontana.org

Terry Ding*
ACLU Foundation
125 Broad Street, 17th Floor
New York, NY 10004
(212) 549-2500
ttding@aclu.org

Julie A. Murray*
ACLU Foundation
915 15th Street, NW
Washington, DC 20005
(202) 675-2326
jmurray@aclu.org

Wendy Heipt*
Legal Voice
907 Pine Street, Suite 500
Seattle, WA 98101
(206) 682-9552
wheipt@legalvoice.org

Robin Turner
Legal Voice
P.O. Box 582
Missoula, MT 59806
(206) 682-9552
rturner@legalvoice.org

**Pro Hac Vice* applications pending

CERTIFICATE OF SERVICE

I, Alex Rate, hereby certify on this date I filed a true and accurate copy of the foregoing document with the electronic filing system for Montana courts and electronic service was sent to:

Austin Knudsen
Montana Attorney General
Thane Johnson
Michael Russell
Alwyn Lansing
Michael Noonan
Assistant Attorneys General
MONTANA DEPARTMENT OF JUSTICE
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
thane.johnson@mt.gov
michael.russell@mt.gov
alwyn.lansing@mt.gov
michael.noonan@mt.gov

Attorneys for Defendants

Electronically signed by Alex Rate

Dated April 19, 2025

Alex Rate
ACLU of Montana
P.O. Box 1968
Missoula, MT 59806-1968
(406) 224-1447
ratea@aclumontana.org

Wendy Heipt*
Legal Voice
907 Pine St Ste 500
Seattle WA 98101
(206) 682-9552
wheipt@legalvoice.org

Robin Turner
Legal Voice
P.O. Box 582
Missoula, MT 59806
(206) 682-9552
rturner@legalvoice.org

Terry Ding*
ACLU Foundation
125 Broad Street, 17th Floor
New York, NY 10004
(212) 549-2500
ttding@aclu.org

Julie Murray*
ACLU Foundation
915 15th Street, NW
Washington, DC 20005
(202) 675-2326
jmurray@aclu.org

**Pro Hac Vice* applications pending

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

CASEY PERKINS, an individual; SPENCER MCDONALD, an individual; KASANDRA REDDINGTON, an individual; JANE DOE, an individual; and JOHN DOE, an individual, Plaintiffs, vs. STATE OF MONTANA; GREGORY GIANFORTE, in his official capacity as Governor of the State of Montana; AUSTIN	Cause No. DV 25-282 Hon. Shane Vannatta **SUPPLEMENTAL DECLARATION OF KASANDRA REDDINGTON IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

KNUDSEN, in his official capacity as Attorney General, Defendants.	

I, Kasandra Reddington, declare as follows,

1. I am a Plaintiff in this action. I am over 21 years of age. I have personal knowledge of the facts contained in this declaration, and I am competent to testify about them.

2. I submit this supplemental declaration in support of Plaintiffs' Motion for Preliminary Injunction to prevent the enforcement of Montana House Bill (HB) 121.

3. I was assigned a sex designation of male when I was born, but I identify as agender and transfeminine, which means I identify as more feminine than masculine, but not as a specific gender.

4. I am a full-time state employee working at Helena College, a two-year public educational institution within the Montana University System.

5. Sometimes, my employment requires work trips involving overnight lodging. These trips often occur on other public campuses like the University of Montana in Missoula and Montana State University in Bozeman. For example, last June, I traveled to Montana State University-Bozeman for a conference. We had the

conference on campus, and I stayed in a dormitory on campus. I requested and received a single room assignment.

6. Typically, I have requested single rooms on these work trips and my requests have been granted in the past. But I do not know how my employer will arrange overnight lodging on future work trips, especially if HB 121 is in effect.

7. If my request for a single room is not granted, I will be required to share a room with another co-worker. I would be more comfortable sharing a sleeping room with another woman. But under HB 121, that would not be possible—I would be required to share a room with a man.

I, Kasandra Reddington, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Signed on April 18, 2025, in Helena, Lewis & Clark County.

/s/ Kasandra Reddington
Kasandra Reddington

CERTIFICATE OF SERVICE

I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Reply Brief to the following on 04-19-2025:

Thane P. Johnson (Govt Attorney)
215 N SANDERS ST
P.O. Box 201401
HELENA MT 59620-1401
Representing: State of Montana, Austin Knudsen, Gregory Gianforte
Service Method: eService

Michael D. Russell (Govt Attorney)
215 N Sanders
Helena MT 59620
Representing: State of Montana, Austin Knudsen, Gregory Gianforte
Service Method: eService

Alwyn T. Lansing (Govt Attorney)
215 N. Sanders St.
Helena MT 59620
Representing: State of Montana, Austin Knudsen, Gregory Gianforte
Service Method: eService

Michael Noonan (Govt Attorney)
215 N SANDERS ST
HELENA MT 59601-4522
Representing: State of Montana, Austin Knudsen, Gregory Gianforte
Service Method: eService

Robin Michelle Turner (Attorney)
Legal Voice
PO Box 582
MISSOULA MT 59806-0938
Representing: Spencer McDonald, Casey Perkins, Jane Doe, Kasandra Reddington, John Doe
Service Method: eService

Electronically Signed By: Alexander H. Rate

Dated: 04-19-2025