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**Pro Hac Vice applications pending*

**MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY**

<p>CASEY PERKINS, et al.,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>STATE OF MONTANA, et al.,</p> <p>Defendants.</p>	<p>Cause No. DV 25-282</p> <p>Hon. Shane Vannatta</p> <p>PLAINTIFFS' RESPONSE TO REPRESENTATIVE KERRI SEEKINS-CROWE'S MOTION TO INTERVENE AS A DEFENDANT</p>
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INTRODUCTION

Representative Kerri Seekins-Crowe was the primary sponsor of House Bill 121 (“HB 121”), which this Court has determined likely violates the constitutional rights of transgender and intersex Montanans. While Plaintiffs do not dispute that a recent statutory amendment permits the Representative to intervene in this case, *see* § 5-2-107(2), MCA, she identifies no interest in the outcome of this litigation that is different from those of the State Defendants,¹ nor any arguments she intends to assert that are distinct from those the State Defendants will make. She has not, in other words, made the showings required of parties that seek to intervene as of right under Montana Rule of Civil Procedure 24(a)(2) or by permission under Rule 24(b).

Accordingly, Plaintiffs request that the Court take reasonable measures to ensure that Representative Seekins-Crowe’s intervention does not lead to duplicative efforts or other inefficiencies. In particular, the Court should order that the Representative be permitted to serve interrogatories and requests for production in addition to any propounded by the State Defendants only upon a showing of need and proportionality. Such a requirement would facilitate the expeditious resolution of this case, in accord with “the purpose of Rule 24 motions for intervention” to “promote efficiency and avoid delay.” *Cont’l Ins. Co. v. Bottomly* (1988), 233 Mont. 277, 280, 760 P.2d 73, 76.

¹ The State Defendants are the State of Montana, the Governor, and the Attorney General.

ARGUMENT

“The power is inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Weiner v. St. Peter’s Health*, 2024 MT 155, ¶ 8, 417 Mont. 265, 553 P.3d 384 (quoting *State ex rel. Kennedy v. District Court* (1948), 121 Mont. 320, 336, 194 P.2d 256, 264). The Court’s inherent power is particularly broad when it is “applied to further the interest of justice and an expedient determination of the matter.” *Kelker v. Geneva Roth Capital, Inc.*, Cause No. DV 11-1355, 2012 WL 12269159, at *1 (Mont. Thirteenth Jud. Dist. Ct., Yellowstone Cnty., July 16, 2012) (citing Mont. R. Civ. P. 26; *Hi-Line Radio Fellowship v. Dept. of Rev.* (1987), 227 Mont. 150, 737 P.2d 886).

This power extends to the discovery process. *See Henricksen v. State*, 2004 MT 20, ¶ 35, 319 Mont. 307, 84 P.3d 38. Rule 26 authorizes courts to modify discovery presumptions established by rule, for example, to prohibit discovery that is “unreasonably cumulative or duplicative,” entails “burden or expense” that “outweighs its likely benefit,” or is “interposed for any improper purpose, such as to harass.” Mont. R. Civ. P. 26(b)(2)(C), (g)(1)(B); *see* Mont. R. Civ. P. 26(c)(1) (authorizing a court, on a showing of “good cause,” to issue a protective order limiting discovery). Nothing in Rule 24 governing intervention, or in § 5-2-107,

MCA's authorization of legislator intervention, modifies the Court's well-established power in this regard.

To prevent inefficiency, the Court should exercise its authority to ensure that any discovery Representative Seekins-Crowe seeks is not cumulative or duplicative of the State Defendants' requests or otherwise unwarranted. The Representative has not asserted any claims of her own and there is no indication that she will raise different arguments from those of the State Defendants. *Cf.* § 5-2-107(3), MCA (providing that legislator intervention does not “supersede[] the authority of the attorney general to represent the state of Montana.”). Indeed, she asserts only a general interest “in ensuring proper interpretation and administration of the constitution and legislative enactments,” Br. in Supp. of Mot. to Intervene at 3 (quoting § 5-2-107(1)(b), MCA), while repeatedly stating that HB 121's text, the legislative record, and the Montana Constitution each “speaks for itself,” *e.g.*, Intervenor-Defendant's Proposed Answer ¶¶ 96–100, 107–08, 110, 117, 138, 148, 156. And, as a sponsor of HB 121, the Representative has already had the opportunity to develop, if she could, a legislative factual record supporting HB 121. *Cf. United States v. Virginia*, 518 U.S. 515, 533 (1996) (noting that to survive heightened scrutiny, the “justification [for a government classification] must be genuine, not hypothesized or invented post hoc in response to litigation”).

Because there is no apparent distinction between the interests and positions of the State Defendants and Representative Seekins-Crowe, the Court should require that the Representative make a showing of need and proportionality before being permitted to serve any interrogatories and requests for production separate from those propounded by the State Defendants.² This will discourage duplication among the parties and promote the fair and efficient resolution of this case.

CONCLUSION

For the foregoing reasons, the Court should enter an order requiring that Representative Seekins-Crowe make a motion establishing need and proportionality to serve any interrogatories and requests for production separate from those propounded by the State Defendants.

² Notably, the discovery rules already limit the number of depositions that may be taken to ten per side, rather than per party. *See* Mont. R. Civ. P. 30(a)(2)(A)(i); Fed. R. Civ. P. 30(a)(2)(A) advisory committee's note to 1993 amendment (explaining that the identically worded federal rule, on which Montana's Rule 30 is based, requires "judicial review . . . before *any side* will be allowed to take more than ten depositions," including "[i]n multi-party cases" (emphasis added)).

Dated: May 27, 2025

Respectfully submitted,

By: /s/ Alex Rate

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CERTIFICATE OF SERVICE

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Electronically signed by Krystel Pickens on behalf of Alex Rate.
Dated: May 27, 2025

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I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Response Brief to the following on 05-27-2025:

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