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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

CASEY PERKINS, an individual; SPENCER McDONALD, an individual; KASANDRA REDDINGTON, an individual; JANE DOE, and individual; and JOHN DOE, an individual, Plaintiffs, v. STATE OF MONTANA; GREGORY GIANFORTE, in his official capacity as Governor of the State of Montana; and AUSTIN KNUDSEN, in his official capacity as Attorney General of the State of Montana, Defendants.	Cause No. DV 25–282 Judge Shane Vannatta **REPLY BRIEF IN SUPPORT OF REPRESENTATIVE KERRI SEEKINS-CROWE'S MONT. R. CIV. P. 24 MOTION TO INTERVENE AS A DEFENDANT**

INTRODUCTION

Plaintiffs concede that Representative Seekins-Crowe is entitled to intervene as a matter of right, and they therefore have no legal basis for objecting to her intervention. Curiously, though, they request (without a motion) that the Court

implement special discovery procedures in this case to ostensibly curtail potentially duplicative efforts by the State Defendants and Representative Seekins-Crowe. Such special discovery procedures are redundant, as the Montana Rules of Civil Procedure already address the scope of discovery and provide for the appropriate process and remedy to address discovery served for an improper purpose. Additional motions practice before this Court is therefore entirely unnecessary. Plaintiffs' improper request should be denied, and Representative Seekins-Crowe's Motion to Intervene should be granted.

ARGUMENT

I. REPRESENTATIVE SEEKINS-CROWE HAS UNIQUE STATUTORY INTERESTS NOT REPRESENTED BY THE DEFENDANTS.

Plaintiffs concede that "a recent statutory amendment permits the Representative to intervene in this case." (Doc. 27 at 1.) They then erroneously state that "she identifies no interest in the outcome of this litigation that is different from those of the Sate Defendants," or any arguments she intends to assert separately from the State Defendants and therefore has not made the showing required by Mont. R. Civ. P. 24(a)(2) or (b). This is patently wrong. On page 3 of Representative Seekins-Crowe's Brief in Support of her Motion to Intervene (Doc. 21), she identified the statutorily enumerated interest she has in intervention that is unique to her:

> [A]n individual legislator in the legislator's capacity as the primary sponsor of legislation at issue who voted for passage and approval of the legislation has a plain, direct, and adequate interest in maintaining

> the effectiveness of the legislator's vote and has a personal stake in ensuring proper interpretation and administration of the constitution and legislative enactments and referendums that is distinguishable from that of the public generally[.]

See Mont. Code Ann. § 5-2-107(1)(b). It is also an interest that is distinguishable from any interest of the State Defendants because, as the statute plainly states, it is personal to Representative Seekins-Crowe. *Id.* Plaintiffs' statement that Representative Seekins-Crowe stated no interest in this case separate from the State Defendants is a blatant misrepresentation, both of her brief and of the statute.

Moreover, Plaintiffs misrepresent the law applicable to intervention under the circumstances of this case. Representative Seekins-Crowe is plainly not seeking intervention under Rule 24(a)(2) or (b). Again, as her brief expressly states, she is seeking intervention under Rule 24(a)(1). (Doc. 21 at 2.) Plaintiffs' citations to the requirements of Rules 24(a)(2) and (b) are therefore inapposite. Mont. R. Civ. P. 24(a)(1) states: "On timely motion, the court must permit anyone to intervene who is given an unconditional right to intervene by statute." (Emphasis supplied). Plaintiffs do not dispute that Representative Seekins-Crowe has an unconditional statutory right of intervention, and her motion must therefore be granted.

II. PLAINTIFFS' REQUESTED SPECIAL DISCOVERY PROCEDURES ARE UNNECESSARY AND RISK INCREASED LITIGATION BURDENS ON THE COURT AND THE PARTIES.

Built on the shaky foundation that Representative Seekins-Crowe has no unique interests in intervention into this case—a fabrication already debunked

above—Plaintiffs assert she should be limited in her participation in discovery. They cite no legal authority for hindering her discovery efforts, other than the Court's inherent powers to control dockets and authority over the discovery process generally. They then request that the Court "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" by "requir[ing] 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." (Doc. 27 at 3.) This request—made without a motion or before any discovery has been served by any party—should be denied.

It is exceedingly common in litigation to have multiple defendants, cross-claimants, and counterclaimants. While intervention is probably less common, it affects the discovery process no differently than multi-party litigation. In nearly two decades of litigation experience, this counsel has never seen a court limit a party's ability to conduct discovery merely because of the presence of multiple parties. This is likely because the Montana Rules of Civil Procedure set forth in a clear fashion the scope of discovery and the tools available to parties and courts to regulate discovery when necessary.

"The rules of civil procedure are premised upon a policy of liberal and broad discovery." *Patterson v. State*, 2002 MT 97, ¶ 15, 309 Mont. 381, 46 P.3d 642 (citing

Burlington N. v. Dist. Ct., 239 Mont. 207, 216, 779 P.2d 885, 891 (1989)). "The purpose of discovery is to promote the ascertainment of truth and the ultimate disposition of the lawsuit in accordance therewith." *Henderson v. Mont. Third Jud. Dist. Ct.*, 2022 Mont. LEXIS 148, *5, 408 Mont. 540, 507 P.3d 140 (2022) (citing *Massaro v. Dunham*, 184 Mont. 400, 405, 603 P.2d 249, 252 (1979); *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)). "Discovery fulfills this purpose by assuring the mutual knowledge of all relevant facts gathered by both parties which are essential to proper litigation." *Id.* (citing *Massaro* 184 Mont. at 405, 603 P.2d at 252; *Hickman*, 329 U.S. at 507). Discovery rules are to be "liberally construed to make all relevant facts available to parties in advance of trial and to reduce the possibilities of surprise and unfair advantage." *Id.* (citing *Cox v. Magers*, 2018 MT 21, ¶ 15, 390 Mont. 224,411 P.3d 1271 (quoting *Richardson v. State*, 2006 MT 43, ¶ 24, 331 Mont. 231, 130 P.3d 634) (emphasis in original)).

Unless otherwise limited by court order, parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense. Mont. R. Civ. P. 26(b)(1). The information sought need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. *Id.* All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

Plaintiffs' unprecedented request does not comport with Montana's policy of liberal and broad discovery. Plaintiffs seek to limit Representative Seekins-Crowe's

ability to serve any discovery without first making a showing—by motion—that it is not duplicative of the State Defendants' discovery. It is unclear from Plaintiffs' request whether this limitation would apply even if the State Defendants serve no discovery. In any event, the Court should deny Plaintiffs' request because it is wholly unnecessary, and the Rules of Civil Procedure already contain adequate protections against duplicative discovery or discovery served for any improper purpose.

For example, Mont. R. Civ. P. 26(g) requires that every discovery request must be signed by at least one attorney of record in the attorney's own name. By signing, an attorney or party certifies that "to the best of the person's knowledge, information, and belief formed after a reasonable inquiry, the discovery is consistent with the rules of civil procedure and warranted by existing law or by a good faith argument for extending, modifying, or reversing existing law; not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action." Mont. R. Civ. P. 26(g)(1). This rule already serves as the gatekeeper Plaintiffs seek.

If Plaintiffs believe they need additional protections, the burden of proof is on them to demonstrate a violation of the rules or need for a protective order. Of course,

they cannot do that before any discovery is even served. The rules do allow courts to limit "the frequency or extent of discovery" but only after a determination (with evidence), that: "(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." Mont. R. Civ. P. 26(b)(2)(C). Again, no such determination has been made in this case or can be made until the discovery process begins. Plaintiffs additionally have the right to seek a protective order when appropriate (Mont. R. Civ. P. 26(c)) as well as various other sanctions provided for in the rules of civil procedure.

Representative Seekins-Crowe has not even been granted intervention yet, and no party has served discovery to her knowledge. Plaintiffs have offered no reason why her ability to fully participate in discovery should be hindered. As an officer of the Court, the Representative's counsel affirms that she has no intention of using discovery for any improper purpose and intends to comply with all requirements of the Montana Rules of Civil Procedure. Mindful of most courts' disdain for discovery disputes, counsel for Representative Seekins-Crowe makes it

her standard practice to avoid them whenever possible, and to reasonably work them out with counsel when they arise to avoid bringing such disputes before the Court. Counsel sees no reason why this case would be any different, and Plaintiffs have offered none. Their improper request should be denied.

CONCLUSION

For the reasons stated in this Reply Brief, Representative Kerri Seekins-Crowe respectfully requests that her Motion to Intervene be granted and that she be allowed to intervene as a Defendant in this matter. Plaintiffs' request for special discovery procedures should be denied.

DATED this 29th day of May 2025.

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By: _____

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CERTIFICATE OF SERVICE

I, Emily Jones, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Reply Brief to the following on 05-29-2025:

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Electronically signed by Jami Westermeyer on behalf of Emily Jones
Dated: 05-29-2025