

1 Emily Jones  
 2 Justin Oliveira  
 3 JONES LAW FIRM, PLLC  
 4 115 N. Broadway, Suite 410  
 5 Billings, MT 59101  
 6 Phone: (406) 384-7990  
 7 *emily@joneslawmt.com*  
 8 *justin@joneslawmt.com*  
 9 Attorneys for Intervenor-Defendant  
 10 Kerri Seekins-Crowe

8 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

9 CASEY PERKINS, et al.,  
 10  
 11 Plaintiffs,  
 12  
 13 v.  
 14 STATE OF MONTANA, et al.,  
 15  
 16 Defendants,  
 17  
 18 and  
 19 KERRI SEEKINS-CROWE,  
 20  
 21 Intervenor-Defendant.

Department No. 1  
 Cause No. DV 25–282  
 Judge Leslie Halligan

**BRIEF IN SUPPORT  
 OF INTERVENOR’S  
 MONT. R. CIV. P. 56 MOTION  
 FOR PARTIAL SUMMARY  
 JUDGMENT**

**INTRODUCTION**

22 This action challenges Montana House Bill (“HB”) 121 (2025), which  
 23 requires covered entities—public buildings, public schools, correctional facilities,  
 24 juvenile detention facilities, and domestic violence programs—to designate multi-  
 25 occupancy restrooms, changing rooms, and sleeping quarters for the exclusive use  
 of males or females as defined by biological sex, and to require individuals to use  
 facilities corresponding to their biological sex. HB 121’s stated purposes are to

1 reaffirm the longstanding biological meaning of “sex” in law and to preserve sex-  
2 designated intimate spaces where women have historically been afforded privacy  
3 and protection from abuse, harassment, and sexual assault.

4 Count I of Plaintiffs’ Amended Complaint asserts that HB 121 violates the  
5 equal protection guarantee of Article II, Section 4 of the Montana Constitution on  
6 the theory that HB121 discriminates against transgender individuals as a protected  
7 class, as well as on the basis of sex. Count IV contends that HB 121 is  
8 unconstitutionally vague. Both legal theories fail as a matter of law.

9 Transgender status is not a suspect or quasi-suspect class under Montana law:  
10 the Montana Legislature has repeatedly declined to extend protected-class status to  
11 transgender individuals; the Montana Supreme Court and the U.S. Supreme Court  
12 have never recognized such a classification; and the fundamental doctrine of judicial  
13 restraint bars this Court from creating new constitutional categories by judicial fiat.  
14 Moreover, HB 121 applies identically to males and females, and therefore does not  
15 discriminate on the basis of sex. As such, rational basis review is the plainly  
16 applicable standard, and HB 121 easily satisfies it.

17 Additionally, HB 121 is not unconstitutionally vague and does not violate  
18 Montanans’ constitutional due process rights on that basis. HB 121 contemplates,  
19 and provides for, unique biological and genetic conditions and is not  
20 unconstitutionally vague insofar as it pertains to intersex people. HB 121 is also not  
21 unconstitutionally vague on its face or as applied to Missoula County because it  
22 provides covered entities with sufficient notice of what it requires and prohibits.  
23 Therefore, Intervenor-Defendant Representative Kerri Seekins-Crowe  
24 (“Intervenor”) respectfully requests that this Court enter partial summary judgment  
25 dismissing Counts I and IV of Plaintiffs’ Amended Complaint.

1 **ARGUMENT**

2 Summary judgment is proper when “there is an absence of genuine issues of  
3 material fact and whether the moving party is entitled to judgment as a matter of  
4 law.” *Satterlee v. Lumberman’s Mut. Cas. Co.*, 2009 MT 368, ¶ 9, 353 Mont. 265,  
5 222 P.3d 566 (citation omitted); *see also* Mont. R. Civ. P. 56(c)(3). “The  
6 constitutionality of a legislative enactment is prima facie presumed, and every  
7 intendment in its favor will be presumed, unless its unconstitutionality appears  
8 beyond a reasonable doubt. The question of constitutionality is not whether it is  
9 possible to condemn, but whether it is possible to uphold the legislative action which  
10 will not be declared invalid unless it conflicts with the constitution, in the judgment  
11 of the court, beyond a reasonable doubt.” *Id.* at ¶ 10 (quotation omitted). The party  
12 challenging the constitutionality of a statute bears the burden of proving the statute  
13 unconstitutional beyond a reasonable doubt, and, if any doubt exists, it must be  
14 resolved in favor of the statute. *Id.* (citations omitted).

15 **I. SUMMARY JUDGMENT ON COUNT I IS APPROPRIATE BECAUSE  
16 HB 121 DOES NOT VIOLATE MONTANA’S GUARANTEES OF  
17 EQUAL PROTECTION.**

18 Article II, Section 4 of the Montana Constitution provides: “The dignity of the  
19 human being is inviolable. No person shall be denied the equal protection of the  
20 laws.” *See also Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 15, 325 Mont. 148,  
21 104 P.3d 445. This provision embodies “a fundamental principle of fairness: that the  
22 law must treat similarly-situated individuals in a similar manner.” *Id.* (citing  
23 *McDermott v. Mont. Dept. of Corrections*, 2001 MT 134, ¶ 30, 305 Mont. 462, 29  
24 P.3d 992. The threshold question is to determine whether the classes involved are  
25 similarly situated. *Id.* at ¶ 16. Next, Montana courts determine the appropriate level  
of scrutiny. *Id.* at ¶ 17. Laws touching suspect classes or fundamental rights receive  
strict scrutiny; laws touching quasi-suspect classes receive intermediate scrutiny; all

1 other laws receive rational basis review. *Id.* at ¶¶ 17–19. HB 121 does not violate  
2 Montana’s equal protection doctrine because transgender status is not a suspect class  
3 and because it survives rational basis review.

4 **A. TRANSGENDER STATUS IS NOT A SUSPECT CLASS.**

5 **1. The Montana Legislature and the Montana Supreme Court**  
6 **Have Deliberately Declined To Designate Transgender**  
7 **Status As A Protected Class.**

8 In Montana, the Legislature has primary responsibility for defining the scope  
9 of anti-discrimination protections. *See* Mont. Const. art. V, § 1. The Montana Human  
10 Rights Act (“MHRA”), Mont. Code Ann. § 49-2-101 *et seq.*, is the comprehensive  
11 framework establishing protected categories for purposes of employment, housing,  
12 and public accommodations. The MHRA’s enumerated protected classes include  
13 race, color, national origin, creed, religion, age, physical or mental disability, marital  
14 status, and sex. *Mont. Code Ann.* § 49-2-303(1). The Legislature has historically  
15 repeatedly considered—and declined to pass—bills that would have added gender  
16 identity or sexual orientation to the MHRA’s protected categories.

17 This pattern of legislative decision-making reflects a considered policy  
18 judgment: the Montana Legislature has assessed the question of extending protected-  
19 class treatment to transgender individuals and has declined to do so through the  
20 democratic process. Courts are not free to override that judgment by constructing  
21 new constitutional categories from the bench. *See Mont. Democratic Party v.*  
22 *Jacobsen*, 2024 MT 66, ¶ 171, 416 Mont. 44, 545 P.3d 1074 (Sandefur, J.,  
23 dissenting) (citing *Cutone v. Anaconda Deer Lodge*, 187 Mont. 515, 524, 610 P.2d  
24 691, 697 (1980) (this Court is not “a super-legislature” and thus generally has no  
25 authority to overturn non-arbitrary public policy determinations of the Legislature  
within the bounds of its constitutional power)). The Legislature’s repeated rejection

1 of transgender status as a suspect class is not a constitutional gap to be filled by  
2 judicial expansion—it is a deliberate democratic choice entitled to deference.

3 Notably, the Montana Supreme Court has thus far afforded that deference.  
4 The Court has decided equal protection cases involving the full spectrum of social  
5 and civil rights questions over its history, but it has never held that transgender status  
6 constitutes a suspect or quasi-suspect class under Montana’s Constitution. Judicial  
7 restraint principles counsel strongly against a state district court unilaterally  
8 expanding constitutional protections beyond what Montana’s highest court has  
9 endorsed.

9 **2. The U.S. Supreme Court Has Declined To Recognize**  
10 **Transgender Status As A Suspect Class, And Its Reasoning**  
11 **Is Compelling Here.**

11 In *United States v. Skrametti*, 605 U.S. 495 (2025), the United States Supreme  
12 Court considered a constitutional challenge to a Tennessee law that restricted  
13 gender-transition medical treatments for minors. The plaintiffs in *Skrametti*, like the  
14 Plaintiffs here, argued that the challenged law discriminated based on sex and/or  
15 transgender status in violation of the Equal Protection Clause. The *Skrametti* majority  
16 rejected both theories and upheld the law under rational basis review. *Id.* at 522–23.  
17 The Court held that that law did not discriminate based on sex because the law  
18 applied symmetrically to both sexes: neither natal males nor natal females could  
19 obtain cross-sex hormones for excluded purposes. *Id.* at 519–22 (“[The law] divides  
20 minors into two groups: those who might seek puberty blockers or hormones to treat  
21 the excluded diagnoses, and those who might seek puberty blockers or hormones to  
22 treat other conditions. Because only transgender individuals seek puberty blockers  
23 and hormones for the excluded diagnoses, the first group includes only transgender  
24 individuals; the second group, in contrast, encompasses both transgender and non-

1 transgender individuals.”) The Court declined to resolve whether transgender status  
2 constitutes a suspect class. *Id.* at 517–19.

3 Justice Barrett, in her concurrence, explained why the creation of new suspect  
4 class is extremely rare. *Id.* at 549 (Barrett, J., concurring). After reciting the “strict”  
5 legal test, Justice Barrett listed numerous vulnerable groups who have been unable  
6 to satisfy it: the mentally disabled, the elderly, the poor. *Id.* (citations omitted). “Our  
7 restraint reflects the principle that ‘[w]hen social or economic legislation is at issue,  
8 the Equal Protection Clause allows the States wide latitude, and the Constitution  
9 presumes that even improvident decisions will eventually be rectified by the  
10 democratic processes.’” *Id.* (citation omitted).

11 “Beyond the treatment of gender dysphoria, transgender status implicates  
12 several other areas of legitimate regulatory policy—ranging from access to  
13 restrooms to eligibility for boys’ and girls’ sports teams. If laws that classify based  
14 on transgender status necessarily trigger heightened scrutiny, then the courts will  
15 inevitably be in the business of ‘closely scrutiniz[ing] legislative choices’ in all these  
16 domains.” *Id.* at 553 (Barrett, J., concurring) (citation omitted). Legislatures have  
17 “many valid reasons to make policy in these areas, and so long as a statute is a  
18 rational means of pursuing a legitimate end,” equal protection is satisfied. *Id.*

19 The *Skrmetti* case is particularly instructive for this case. Although applying  
20 the federal equal protection doctrine, its rationale supports the same conclusion  
21 under Montana’s constitutional equal protection doctrine. Montana’s provision—  
22 “No person shall be denied the equal protection of the laws”—does not enumerate  
23 specific protected categories. It is therefore within the constitutional prerogative of  
24 Montana’s law and policy makers to determine which classes receive heightened  
25 protection. Unless an individual law is “inexplicable by anything but animus,” which  
is not the case with HB 121, it should receive legislative deference if it “is a rational  
means of pursuing a legitimate end[.]” *See id.* (quotation omitted).

1                   **3. Transgender Persons Are Not Similarly Situated To Non-**  
2                   **Transgender Persons.**

3                   Transgender identity is constitutively defined by a relationship between  
4                   gender identity and biological sex—a relationship that simply doesn’t exist for non-  
5                   transgender people in the same way. A non-transgender individual’s gender identity  
6                   aligns with his or her biological sex; a transgender person’s does not. *See Skrametti*,  
7                   605 U.S. at 501–502. The transgender/non-transgender distinction tracks a reported  
8                   internal psychological state—gender identity—that is a genuinely different  
9                   characteristic from natal sex. The two attributes are not the same thing, any more  
10                  than national origin and ethnicity are the same thing, even though they often overlap.

11                  The groups aren’t similarly situated not because of prejudice, but because the  
12                  defining characteristic of one group is a condition that the other group, by definition,  
13                  doesn’t have. Stated another way, the groups are differently situated not because of  
14                  arbitrary line-drawing but because the characteristic at issue—gender  
15                  incongruence—is one that, by definition, only one group has. Plaintiffs’ attempt to  
16                  bundle these two distinct groups together for purposes of equal protection therefore  
17                  fails because they simply are not similarly situated.

18                  **B. HB 121 DOES NOT DISCRIMINATE ON THE BASIS OF SEX.**

19                  Mere reference to sex is not sufficient to trigger heightened scrutiny. *Skrametti*,  
20                  605 U.S. at 560–61. The *Skrametti* Court found that the law at issue in that case did  
21                  not discriminate on the basis of sex because, although the “scheme certainly refers  
22                  to sex and may be seen as indirectly related to sex,” it was “clearly not the sort of  
23                  discrimination between males and females that our cases have treated as sex  
24                  discrimination.” *Id.* at 562–63. “It does not lay down one rule for males and another  
25                  for females.” *Id.* at 563. The same can be said for HB 121. Neither males nor females  
                    can use a private space in a covered facility that does not correspond to their natal  
                    sex. The law applies equally to both sexes, just as the law in *Skrametti* did.

1 Plaintiffs’ reliance on *Bostock v. Clayton County*, 590 U.S. 644 (2020) (Doc.  
2 45 at ¶ 137), is misplaced. The *Bostock* Court took great care to narrowly limit its  
3 holding, explicitly stating:

4 “The employers worry that our decision will sweep beyond Title VII to  
5 other federal or state laws that prohibit sex discrimination. And, under  
6 Title VII itself, they say sex-segregated bathrooms, locker rooms, and  
7 dress codes will prove unsustainable after our decision today. But none  
8 of these other laws are before us; we have not had the benefit of  
9 adversarial testing about the meaning of their terms, and we do not  
10 preclude any such question today. Under Title VII, too, we do not  
11 purport to address bathrooms, locker rooms, or anything else of the  
12 kind.”

13 *Id.* at 681. By its own express language, *Bostock* does not apply to HB 121 or laws  
14 like it.

15 HB 121 does not discriminate on the basis of sex because it imposes identical  
16 obligations on males and females. It requires every individual—regardless of sex—  
17 to use the multi-occupancy restroom, changing room, or sleeping quarters designated  
18 for their biological sex. (Doc. 45 at Ex. A, § 3(2).) A biological female is required  
19 to use female-designated facilities; a biological male is required to use male-  
20 designated facilities. Neither sex is burdened more than the other, neither sex is  
21 singled out for restriction, and neither sex receives a benefit denied to the other.

22 Plaintiffs fail the first test of the equal protection doctrine—they cannot show  
23 that they are part of a suspect class that is entitled to heightened protection.  
24 Transgender status is not a protected class under Montana law. Nor does HB 121  
25 discriminate based on sex. The relevant variable in HB 121 is not which sex a person  
is, but whether a person uses the facility designated for their sex. Because no member  
of either sex is treated differently from a member of the other sex in the same  
circumstances, HB 121 is sex-neutral on its face and in its operation, and Plaintiffs’

1 sex-discrimination theory therefore fails as a matter of law. As such, the applicable  
2 standard of review is rational basis review.

3 **C. RATIONAL BASIS IS THE APPLICABLE STANDARD OF REVIEW AND**  
4 **HB 121 EASILY SATISFIES IT.**

5 Under rational basis review, a law is constitutional if it is rationally related to  
6 a legitimate governmental interest. *Snetsinger*, ¶ 19 (citing *McDermott*, ¶ 32). HB  
7 121’s stated purpose is: “to reaffirm the biological meaning of sex in law, and to  
8 preserve women’s restrooms, changing rooms, and sleeping quarters in facilities  
9 where women have traditionally been afforded privacy and safety from acts of abuse,  
10 harassment, sexual assault, and violence committed by men.” This is precisely the  
11 kind of policy decision the Legislature has the constitutional authority to enact.  
12 Protection of women is a classic legitimate governmental interest.

13 The State has a legitimate—even compelling—interest in protecting women’s  
14 privacy in intimate settings where they are vulnerable—restrooms, locker rooms,  
15 changing rooms, and sleeping quarters. Montana’s Constitution expressly protects  
16 privacy as a fundamental right. Mont. Const. art. II, § 10. The Montana Supreme  
17 Court has recognized that the right to privacy is “significantly broader” under the  
18 Montana Constitution than under the federal constitution, protecting Montanans’  
19 reasonable expectations of privacy in contexts involving bodily exposure and  
20 intimate functions. *Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364.  
21 Montana’s privacy protections are strong enough to cover women and girls from  
22 exposure to biological males in intimate settings—a practice that human society has  
23 normatively practiced for centuries. HB 121 directly advances this privacy interest  
24 by ensuring that sex-designated facilities remain exclusive to the designated sex.

25 HB 121’s approach is rationally connected to its stated interests. Indeed, it  
reinforces societal norms, ensuring that multi-occupancy intimate facilities in

1 covered entities are sex-designated and restricted to the designated sex. As one legal  
2 commentator has noted:

3 Indeed, far from being an instance of sex discrimination, preventing  
4 males from entering women-only private facilities is usually viewed as  
5 being required by equal concern and regard for women. Justice Ruth  
6 Bader Ginsburg took this point for granted in her majority opinion in  
7 *United States v. Virginia* when she explained that, for the all-male  
8 Virginia Military Institute to become coed, it “would undoubtedly  
9 require alterations necessary to afford members of each sex privacy  
10 from the other sex in living arrangements.” Moreover, in 1975, when  
11 critics argued that the Equal Rights Amendment would require unisex  
12 intimate facilities, then-Professor Ruth Bader Ginsburg explained that  
13 a ban on sex discrimination would not require such an outcome:  
14 “Separate places to disrobe, sleep, perform personal bodily functions  
15 are permitted, in some situations required, by regard for individual  
16 privacy.” An employer who allowed males to enter private women-only  
17 facilities could expect a Title VII lawsuit asserting it fostered a hostile  
18 work environment for women by allowing their privacy to be violated.

19 Ryan T. Anderson, *The Supreme Court’s Mistaken and Misguided Sex*  
20 *Discrimination Ruling*, Public Discourse, The Journal for the Witherspoon Institute,  
21 Jun. 16, 2020, available at <https://www.thepublicdiscourse.com/2020/06/65024/>.

22 HB 121’s definition of sex is precise and biologically grounded, while also  
23 allowing for genetic abnormalities. The list of covered entities is not arbitrary—it  
24 targets exactly the settings where privacy, safety, and vulnerability concerns are  
25 most acute: shelters, schools, detention facilities, and public buildings. The  
exception provisions ensure that legitimate custodial, medical, and emergency  
functions are not disrupted. Nor is HB 121 the product of bare animus. HB 121 is  
not so disconnected from any legitimate purpose that the only plausible explanation  
is hostility to transgender persons. It is narrowly drawn to address specific, identified  
settings. It regulates conduct (use of facilities) rather than status (being transgender).  
It includes detailed exceptions. It is expressly grounded in compelling governmental

1 purposes—privacy, safety, protection of vulnerable populations, and compassion for  
2 those at greatest risk.

3 In short, rational basis review is satisfied. The Montana Legislature rationally  
4 selected the covered entities most likely to present concerns, adopted a biologically  
5 grounded definition of sex, included appropriate exceptions, and provided private  
6 rights of action for enforcement. That legislative scheme reflects careful design, not  
7 arbitrary action. Because HB 121 easily passes rational basis review, summary  
8 judgment on Count I of Plaintiffs’ Amended Complaint is appropriate.

9 **II. PARTIAL SUMMARY JUDGMENT ON COUNT IV IS PROPER  
10 BECAUSE HB 121 IS NOT UNCONSTITUTIONALLY VAGUE.**

11 Article II, Section 17 of the Montana Constitution provides that no “person shall  
12 be deprived of life, liberty, or property without due process of law.” Mont. Const.  
13 art. II, § 17. The Due Process Clause requires that a “statute must be drawn with  
14 sufficient clarity and definiteness to inform persons of ordinary intelligence what  
15 actions are proscribed.” *City of Whitefish v. O’Shaughnessy*, 216 Mont. 433, 440,  
16 704 P.2d 1021, 1025 (1985). Statutes that lack the requisite clarity are void for  
17 vagueness. *Id.* at 1025. A void for vagueness challenge to a statute may be raised on  
18 two different bases: (1) facial, where the statute is so vague that it is rendered void  
19 on its face, or (2) as-applied, where the statute is vague as applied to the facts of a  
20 particular situation. *State v. Christensen*, 2020 MT 237, ¶ 131, 401 Mont. 247, 472  
21 P.3d 622 (internal citation omitted). HB 121 is not unconstitutionally vague.

22 **A. HB 121 ACCOUNTS FOR GENETIC ABNORMALITIES AND IS NOT  
23 UNCONSTITUTIONALLY VAGUE INsofar AS IT PERTAINS TO JOHN  
24 DOE OR SIMILARLY SITUATED PERSONS.**

25 Plaintiffs contend that HB 121 is unconstitutionally vague both on its face and  
as-applied with respect to intersex people. (Doc. 45 at ¶ 173.) John Doe is the only  
individual plaintiff in this case representing the interests of intersex people and HB

1 121 is drawn with sufficient clarity and definiteness to inform John Doe what actions  
2 are proscribed. HB 121 is not unconstitutionally vague on its face or as-applied  
3 insofar as it pertains to intersex people.

4 Notwithstanding Plaintiffs’ contention, the fact that John Doe would  
5 otherwise fall within the definition of male as set forth in HB 121 but for John Doe’s  
6 biological or genetic condition is beyond reasonable dispute. (*See* Exs. A and B;  
7 Doc. 45 at Ex. A.) John Doe is a member of the human species, has male external  
8 genitalia, was identified as a male at birth, and has a reproductive system oriented  
9 around the production of small, mobile gametes. (*Id.*) Importantly, John Doe’s  
10 biological composition was apparently unambiguous enough to warrant an  
11 identification as male at birth. (Ex. A at 10:2–24; Ex. B at ¶ 4.) No evidence has  
12 been presented in this case that could reasonably dispute that classification.  
13 Notwithstanding John Doe’s de la Chapelle syndrome, John Doe falls within HB  
14 121’s definition of “male,” but for a biological or genetic condition. (*See* Exs. A and  
15 B; Doc. 45 at Ex. A.) John Doe presently identifies as a male and uses male  
16 restrooms and changing rooms and has not had any problems thus far doing so. (Ex.  
17 A at 33:3–18; Ex. B at ¶¶ 10, 14, 19, 25.) John Doe’s claim of ignorance as to what  
18 HB 121 requires of John Doe is disingenuous and it cannot support a finding of  
19 unconstitutional vagueness. John Doe is the only individual that Plaintiffs have  
20 presented with a specific set of facts that could support an as-applied challenge to  
21 the constitutionality of HB 121 with respect to intersex individuals.

22 Plaintiffs’ claim that HB 121 is unconstitutionally vague on its face is  
23 predicated on the assertion that intersex people are excluded from the definitions of  
24 “sex,” “female,” and “male” in HB 121. That claim is false and Plaintiffs’ reliance  
25 upon a district court’s commentary to support this claim is inconsequential. (Doc.  
45 at ¶ 173.) The only logical conclusion to be drawn from HB 121’s express  
“otherwise...but for a biological or genetic condition” language is that the legislation

1 specifically contemplates individuals like John Doe. (Doc. 45 at Ex. A, §§ 2(4),  
2 2(7).) Based on their illogical premise, Plaintiffs contend that intersex individuals  
3 are “subject to standardless and arbitrary decision making by whatever entities are  
4 enforcing” HB 121 and do not “have fair or actual notice about whether” HB 121  
5 “classifies them as male or female.” (*Id.* at ¶ 173.) That categorical statement is  
6 certainly not true with respect to John Doe, and the individual whose natural  
7 biological and genetic composition may be so ambiguous as to confound the minds  
8 of competent medical professionals is not before the Court in this case. Plaintiffs  
9 have not demonstrated—and cannot demonstrate—that intersex individuals could  
10 not reasonably be classified as male or female under HB 121 notwithstanding their  
11 biological or genetic condition. HB 121 is not unconstitutionally vague on its face  
12 or as-applied insofar as it pertains to intersex individuals.

12 **B. HB 121 IS NOT UNCONSTITUTIONALLY VAGUE IN SO FAR AS IT**  
13 **PERTAINS TO MISSOULA COUNTY OR OTHER COVERED ENTITIES.**

14 Plaintiffs contends that HB 121 is “unconstitutionally vague on its face and as  
15 applied to Missoula County” because HB 121 “subjects covered entities to litigation  
16 and liability for non-compliance but gives them no clarity on what they must do to  
17 comply.” (Doc. 45 at ¶ 174.). This claim is based on the premise that HB 121  
18 “provides no information regarding what reasonable steps covered entities need to  
19 take to prohibit an individual from using the restroom or changing room designated  
20 for the opposite sex. (*Id.* at ¶ 176.) Plaintiffs further claim that HB 121 does not  
21 “provide any guidance on what it means for a covered entity to provide an individual  
22 permission to use a restroom or changing room designated for the opposite sex.” (*Id.*  
23 at ¶ 177.) Plaintiffs also fear that Missoula County will somehow be required to  
24 request protected genetic and medical information or discriminate based on such  
25 information. (*Id.* at ¶ 178.). Plaintiffs conclude that HB 121 “is void for vagueness  
on its face” because it “fails to give a person of ordinary intelligence fair notice of

1 what conduct exposes a covered entity to liability” and “is void for vagueness as  
2 applied to the County” because it “fails to give Missoula County actual notice of  
3 how to conform its conduct to the law.” (*Id.* at ¶ 179.). None of these arguments have  
4 any merit.

5 HB 121 is clear on what it prohibits and on what covered entities are required  
6 to do to comply. HB 121 is not unconstitutionally vague on its face or as applied to  
7 Missoula County. Covered entities have two basic responsibilities under HB 121.  
8 They are to “designate each multioccupancy restroom, changing room, or sleeping  
9 quarters for the exclusive use of females or males” and “take reasonable steps to  
10 provide individuals with privacy from members of the opposite sex in designated  
11 restrooms, changing rooms, and sleeping quarters. (*Id.* at Ex. A §§ 3(1), 3(3).) In  
12 fulfilling these responsibilities, they are expressly authorized to adopt policies  
13 necessary to accommodate individuals protected under the Americans with  
14 Disabilities Act of 1990 or young children or elderly persons in need of assistance;  
15 establish single-occupancy restrooms, changing rooms, or sleeping quarters or  
16 family restrooms, changing rooms, or sleeping quarters; and redesignate multi-  
17 occupancy restrooms, changing rooms, or sleeping quarters designated for exclusive  
18 use by one sex to a designation for exclusive use by the opposite sex. (*Id.* at Ex. A §  
19 3(6).)

20 Furthermore, the rendering of medical or law enforcement assistance, the  
21 performance of custodial services or maintenance, and the provision of services or  
22 rendering of aid during a natural disaster or declared emergency or if necessary to  
23 prevent a serious threat to good order and safety are all expressly permitted under  
24 HB 121. (*Id.* at Ex. A § 3(4).) The only way that a covered entity could be subject to  
25 liability via a private cause of action under HB 121 is if the covered entity provides  
an individual with permission to use a restroom or changing room designated for the  
opposite sex, fails to take reasonable steps to prohibit the other individual from using

1 the restroom or changing room designated for the opposite sex, or requires an  
2 individual to share sleeping quarters with an individual of the opposite sex. (*Id.* at  
3 Ex. A §§ 4(1), 4(2).)

4 Agents of covered entities under HB 121 with ordinary intelligence should  
5 have no trouble deducing from these straightforward provisions what is required of  
6 them. To the extent that they have and maintain multi-occupancy restrooms,  
7 changing rooms, or sleeping quarters, such spaces are to be designated for the  
8 exclusive use of females or males. Considering that this is precisely how society has  
9 operated for centuries, discerning HB 121’s requirements to continue this practice  
10 requires no special intelligence. Additionally, to avoid liability via a private cause  
11 of action, covered entities must not provide an individual with permission to use a  
12 restroom or changing room designated for the opposite sex or require an individual  
13 to share sleeping quarters with an individual of the opposite sex. (*Id.* at Ex. A §§  
14 4(1), 4(2).) These admonitions are as easy to understand as the previous mandate.  
15 Nothing in them requires uncommon intelligence or judicial decree to interpret.

16 Finally, covered entities must take reasonable steps to prohibit individuals  
17 from using the restroom or changing room designated for the opposite sex. (*Id.* at  
18 Ex. A § 4(1).) Plaintiffs’ claim of ignorance as to what this means is disingenuous.  
19 Montana law recognizes a variety of legal standards based on an objective,  
20 reasonableness. *State v. Birthmark*, 2013 MT 86, ¶ 16, 369 Mont. 413, 300 P.3d  
21 1140 (discussing the “reasonable apprehension” portion of the PFMA statute);  
22 *Weiner v. St. Peter’s Health*, 2025 MT 28, ¶ 28, 420 Mont. 293, 563 P.3d 744  
23 (applying the objective, reasonable-belief standard under 42 U.S.C. § 11112(a)(1));  
24 *Jarvenpaa v. Glacier Elec. Coop.*, 271 Mont. 477, 898 P.2d 690, 692 (1995)  
25 (applying the “reasonable person” and “reasonable alternative” standard found in  
Mont. Code Ann. § 39-2-903(1) to a constructive discharge claim).

1 Courts stand ready to adjudicate the reasonableness or propriety of an action  
2 in numerous contexts that do not implicate violations of due process rights as  
3 Plaintiffs allege here. HB 121 should not be struck down as unconstitutional merely  
4 because it references “reasonable steps.” (Doc. 45 at Ex. A §§ 3(3), 4(1).) Missoula  
5 County’s Chief Administrative Officer acknowledges that the County’s potential  
6 noncompliance with applicable restroom laws, including HB 121, could potentially  
7 be remedied by simply installing a new single-use restroom, which several covered  
8 entities in Missoula County already have. (Ex. C at 12:7–14:5, 42:9–43:7.)

9 Missoula County complains that it requires additional guidance on these  
10 matters from the Court (*Id.* at 55:9–56:7), but it is not the duty of this Court to render  
11 advisory opinions. *Plan Helena, Inc. v. Helena Reg’l Airport Auth. Bd.*, 2010 MT  
12 26, ¶¶ 8–11, 355 Mont. 142, 226 P.3d 567. Its attempt to invalidate HB 121 on the  
13 grounds of unconstitutional vagueness is equally improper, especially since its  
14 representative has already articulated what could be considered a reasonable  
15 potential solution to a compliance issue that does not yet exist. HB 121 is drawn with  
16 sufficient clarity and definiteness to inform people of ordinary intelligence what it  
17 requires and prohibits. It is not unconstitutionally vague.

### 18 CONCLUSION

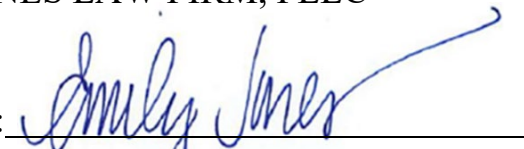
19 Plaintiffs’ equal protection challenge under Count I fails as a matter of law.  
20 First, transgender status is not a suspect or quasi-suspect class under Montana’s  
21 constitution, statutory law, or jurisprudence. Second, HB 121 does not discriminate  
22 on the basis of sex. As such, HB 121 is subject to rational basis review, and it easily  
23 satisfies that level of scrutiny. HB 121 is rationally tailored to achieve multiple  
24 substantial and legitimate governmental interests—privacy, safety, protection of  
25 domestic violence survivors, institutional security, and protection of minors.

Moreover, Plaintiffs’ due process challenge under Count IV likewise fails as  
a matter of law. HB 121 contemplates, and provides for, unique biological and

1 genetic conditions and is not unconstitutionally vague insofar as it pertains to  
2 intersex people. HB 121 also provides covered entities with sufficient notice of what  
3 it requires and prohibits and therefore cannot be considered unconstitutionally vague  
4 on its face or as applied to Missoula County. Therefore, for the reasons stated in this  
5 Brief, Intervenor Kerri Seekins-Crowe respectfully requests that the Court grant  
6 Intervenor’s Motion for Partial Summary Judgment.

7 DATED this 3rd day of April 2026.

8 JONES LAW FIRM, PLLC

9 By:   
10 EMILY JONES  
11 JUSTIN OLIVEIRA  
12 115 N. Broadway, Suite 410  
13 Billings, MT 59101

14 ATTORNEYS FOR INTERVENOR  
15 KERRI SEEKINS-CROWE  
16  
17  
18  
19  
20  
21  
22  
23  
24



## CERTIFICATE OF SERVICE

I, Emily Jones, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 04-03-2026:

Ashlee Nichole Rossler (Attorney)

P.O. Box 1968

Missoula MT 59806

Representing: Casey Perkins, Jane Doe, Spencer McDonald, Kasandra Reddington, John Doe, Missoula County

Service Method: eService

Terry Ding (Attorney)

125 Broad Street, 17th Floor

New York NY 10004

Representing: Casey Perkins, Jane Doe, Spencer McDonald, Kasandra Reddington, John Doe

Service Method: eService

Robin Michelle Turner (Attorney)

Legal Voice

PO Box 582

MISSOULA MT 59806-0938

Representing: Casey Perkins, Jane Doe, Spencer McDonald, Kasandra Reddington, John Doe

Service Method: eService

Alexander H. Rate (Attorney)

P.O. Box 1968

Missoula MT 59806

Representing: Casey Perkins, Jane Doe, Spencer McDonald, Kasandra Reddington, John Doe, Missoula County

Service Method: eService

Justin Oliveira (Attorney)

115 N. Broadway, Suite 410

Billings MT 59101

Representing: Kerri Seekins-Crowe

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

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

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

Julie Murray (Attorney)

Pro Hac Vice, DV-25-282 Doc 19

Representing: Casey Perkins, Jane Doe, Spencer McDonald, Kasandra Reddington, John Doe

Service Method: Email

Joseph Daniel Vandegriff (Attorney)

Pro Hac Vice DV-25-282

Representing: Casey Perkins, Jane Doe, Spencer McDonald, Kasandra Reddington, John Doe,  
Missoula County

Service Method: Email

Eva Dorrough (Attorney)

Pro Hac Vice DV-25-282

Representing: Casey Perkins, Jane Doe, Spencer McDonald, Kasandra Reddington, John Doe,  
Missoula County

Service Method: Email

Billie Townsend Heath Mandelbaum (Attorney)

Pro Hac Vice DV-25-282

Representing: Casey Perkins, Jane Doe, Spencer McDonald, Kasandra Reddington, John Doe,  
Missoula County

Service Method: Email

Matthew J. Schlesinger (Attorney)

Pro Hac Vice DV-25-282

Representing: Casey Perkins, Jane Doe, Spencer McDonald, Kasandra Reddington, John Doe,  
Missoula County

Service Method: Email

Max Larson (Attorney)

Pro Hac Vice DV-25-282

Representing: Casey Perkins, Jane Doe, Spencer McDonald, Kasandra Reddington, John Doe,  
Missoula County

Service Method: Email

Electronically signed by Jami Westermeyer on behalf of Emily Jones

Dated: 04-03-2026