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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, an individual, and JOHN DOE, an individual, and MISSOULA COUNTY,

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,

and

KERRI SEEKINS-CROWE,

Intervenor-Defendant.

Dept. 1

DV-32-2025-282
Hon. Leslie Halligan

DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

SUMMARY OF THE ARGUMENT

Plaintiffs' shotgun approach to invalidating HB 121 (2025) only shows their Amended Complaint is a hodgepodge of baseless allegations. Plaintiffs challenge HB 121 as facially unconstitutional because it violates equal protection and due process. Am. Complaint (Doc. 45), ¶¶ 34, 173, 174. They also bring as-applied challenges against HB 121 for violating equal protection, privacy, pursuit of life's basic necessities, and due process. Yet beneath their meandering pleadings are empty allegations of harm.

Both of their facial challenges fail because they do not carry their burden under Montana precedent. Indeed, they cannot show that in every circumstance HB 121 is vague on its face nor violates equal protection. Their as-applied challenges likewise fail because they challenge provisions of HB 121 that do not even apply to every Plaintiff: correctional centers, juvenile detention facilities, local domestic violence programs, and public schools. Through each Plaintiffs' own admissions, those provisions do not apply to them. They therefore have no basis to challenge those provisions.

Because Plaintiffs fail to carry their burden, summary judgment for the State on Plaintiffs' facial challenges and certain as-applied challenges is proper.

APPLICABLE STANDARDS

Summary judgment is proper where no genuine issues of material fact exist, and the movant is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c)(3). A party may move for summary judgment "on all or part of the claim." Mont. R. Civ. P. 56(a).

Montana courts presume that enacted laws are constitutional. *See Powder River Cnty. v. State*, 2002 MT 259, ¶ 73, 312 Mont. 198, 60 P.3d 357. This is not a meaningless presumption: "[t]he constitutionality of a legislative enactment is prima facie presumed," and "[e]very possible presumption must be indulged in favor of the constitutionality of a legislative act." *Id.* ¶¶ 73–74. The question for a reviewing court is not whether it is possible to condemn, but whether it is possible to uphold the statutes. *Satterlee v. Lumberman's Mut. Cas. Co.*, 2009 MT 368, ¶ 10, 353 Mont. 265, 222 P.3d 566. Plaintiffs must prove unconstitutionality beyond a reasonable doubt. *Id.*

Moreover, "[t]o prevail on a facial challenge, the plaintiff bears 'the heavy burden to show' that 'no set of circumstances exists under which the challenged sections would be valid, *i.e.*, that the law is unconstitutional in all of its applications[.]" *Montanans Against Irresponsible Densification, LLC v. State*, 2026 MT 53, ¶ 11, __ Mont. __, __ P.3d __ ("*MAID*").

ARGUMENT

I. This Court should grant the State partial summary judgment against Plaintiffs' facial challenges.

This Court should grant the State partial summary judgment because Plaintiffs' facial challenges fail. Plaintiffs challenge HB 121 as facially unconstitutional for supposedly violating equal protection and due process. Doc. 45, ¶¶ 134, 173, 174. But Plaintiffs fall far short in carrying their burden on their facial claims.

"Analysis of a facial challenge to a statute differs from that of an as-applied challenge." *Mont. Cannabis Indus. Ass'n*, 2016 MT 44, ¶ 14,

382 Mont. 256, 368 P.3d 1131 ("*MCIA*"). "To obtain the remedy of striking an entire statute as facially unconstitutional, [a] challenger [must] demonstrate that no set of circumstances exists under which the challenged sections would be valid." *Noland v. State*, 2025 MT 294, ¶ 27, 425 Mont. 328, 581 P.3d 47 (cleaned up). "The crux of a facial challenge is that the statute is unconstitutional in all its applications." *Advocates for Sch. Tr. Lands v. State*, 2022 MT 46, ¶ 29, 408 Mont. 39, 505 P.3d 825.

If Defendants show *any* constitutional applications, Plaintiffs' facial challenge fails. *Id.* ¶ 29. In reviewing Plaintiffs' constitutional challenges to HB 121, this Court must uphold the statute unless it conflicts with the Constitution beyond a reasonable doubt. *Satterlee*, ¶ 10. If any doubt exists, it must be resolved for upholding the statute. Plaintiffs—as the parties challenging the constitutionality of the statute—bear the burden of proof. *MCIA*, ¶ 12.

Plaintiffs cannot show that "no set of circumstances exists under which the statute would be valid or that the statute lacks any plainly legitimate sweep." *State v. Sedler*, 2020 MT 248, ¶ 17, 401 Mont. 437, 473 P.3d 406 (internal quotation omitted). "[A] facial challenge to a legislative act is of course the most difficult challenge to mount successfully, since the challenger must establish that no circumstances exist under which the act would be valid." *MCIA*, ¶ 14 (quoting *In re Marriage of K.E.V.*, 267 Mont. 323, 336, 883 P.2d 1246 (1994)).

Under this demanding standard, Plaintiffs must show HB 121 is invalid in every conceivable application because "[f]acial challenges do not depend on the facts of a particular case." *Citizens for a Better Flathead v. Bd. of Cnty. Comm'rs*, 2016 MT 325, ¶ 45, 385 Mont. 505,

386 P.3d 567. So for individual Plaintiffs to prevail on their facial challenges, they must show that no application of HB 121 comports with the Montana Constitution's due process or equal protection provisions. Plaintiffs do not make this showing. This Court should accordingly grant summary judgment for the State on Plaintiffs' facial challenges to HB 121.

A. Individual Plaintiffs cannot show HB 121 violates equal protection in every application.

Individual Plaintiffs fail to show that, in *every* circumstance, HB 121 violates Montana's equal protection clause. Because they cannot establish that HB 121 treats similarly situated classes differently in every circumstance, their facial challenge fails.

Courts evaluate equal protection claims under a three-step analysis. First, the court identifies the classes involved and determines if they are similarly situated. *Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 16, 325 Mont. 148, 104 P.3d 445. The court identifies similarly situated classes by isolating the factor allegedly subject to impermissible discrimination; if two groups are identical in all other respects, they are similarly situated. *Hensley v. Mont. State Fund*, 2020 MT 317, ¶ 19, 402 Mont. 277, 477 P.3d 1065 (internal citations omitted). Once the relevant classifications have been identified, the court then determines the appropriate level of scrutiny to apply: strict scrutiny, middle-tier scrutiny, or rational basis scrutiny. *Snetsinger*, ¶ 17. Finally, the court applies the appropriate level of scrutiny to the statute. *Id.*

Showing "that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner" is a

prerequisite to pleading a cognizable equal protection violation. *See Vision Net, Inc. v. State*, 2019 MT 205, ¶ 16, 397 Mont. 118, 447 P.3d 1034. "[T]wo groups are similarly situated if they are equivalent in all relevant respects other than the factor constituting the alleged discrimination." *Id.* "If the classes are not similarly situated, then it is not necessary for [the Court] to analyze the challenge further." *Id.* (cleaned up). Only if a plaintiff survives step one do courts proceed to determining the appropriate level of scrutiny. *See Gazelka v. St. Peter's Hosp.*, 2018 MT 152, ¶ 15, 392 Mont. 1, 420 P.3d 528.

i. Individual Plaintiffs incorrectly assert that "transgender" status is a protected class.

To advance their facial challenge, Plaintiffs assert that "transgender status is a suspect classification." (Doc. 43, ¶ 138.) They then extend this to "intersex" status, arguing "[i]t is likewise impossible to discriminate against a person for being intersex without discriminating against them based on sex." (*Id.* ¶ 137.) But both propositions are legally incorrect.

Montana law recognizes just two sexes: male and female. *See Campbell v. Garden City Plumbing & Heating, Inc.*, 2004 MT 231, ¶ 16, 322 Mont. 434, 97 P.3d 546, *Mont. State Univ.-Northern v. Bachmeier*, 2021 MT 26, ¶ 28, 403 Mont. 136, 480 P.3d 233. Sex does not include or rely on subjective gender identity, nor is subjective gender identity a protected class under Montana law. *See* Mont. Const. art. II, § 4 ("The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the

exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.")

Although Plaintiffs disagree with this law and precedent, they cite no binding precedent to support their contention that "transgender status is a suspect classification." (Doc. 43, ¶ 138.) Nor do they even try to support the same for "intersex" status. (*Id.* ¶ 137.) Indeed, a majority of the Montana Supreme Court *declined*[1] to find that "transgender" status is a suspect class—despite the opportunity to do so. *See Cross v. State*, 2024 MT 303, 419 Mont. 290, 560 P.3d 637.[2] Much to Plaintiffs' chagrin, the majority's silence *still controls*: "transgender" status is not a suspect class. So their facial equal protection challenge fails under this reasoning.

ii. Individual Plaintiffs fail to identify similarly situated classes subject to different treatment in every circumstance.

Plaintiffs also contend HB 121 "facially discriminates against the Individual Plaintiffs and other transgender and intersex Montanans on the basis of both transgender status and sex." (Doc. 43, ¶ 134.) Plaintiffs

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[1] In *United States v. Skrmetti*, the U.S. Supreme Court similarly declined to find that "transgender" status is a suspect class. *See* 605 U.S. 495 (2025). In that same decision, the U.S. Supreme Court also expressly limited *Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020), to just Title VII, declining to extend to the equal protection context. *Id.* at 520. Plaintiffs' reliance on *Bostock* is therefore misplaced.

[2] Just two justices, in a concurrence, agreed that "discrimination on the basis of transgender status is sex discrimination, sex discrimination receives strict scrutiny, and that transgender persons comprise a suspect class also triggering strict scrutiny." *Cross*, ¶ 67 (McKinnon, J., concurring). That concurrence does not bind this Court.

appear to proffer two sets of classes: "transgender" and "cisgender" individuals; and "intersex" and "cisgender" individuals. (*Id.* ¶¶ 135–36.)[3] But beyond Individual Plaintiffs' allegations, they fail to demonstrate that in every circumstance HB 121 creates classifications then subjects members of those classes to different treatment. This destroys a facial challenge.

Plaintiffs' terminology, "transgender," "cisgender," and "intersex" are not in HB 121. On the contrary, HB 121 defines just "male" and "female." HB 121, § 2(4); (7). But even taking Plaintiffs' definitions at face value, they do not sufficiently present classifications subject to different treatment.

Montana courts agree similarly situated means alike in all ways except for the factor that is the basis of the alleged discrimination. *See Planned Parenthood v. State*, 2024 MT 178, ¶ 27, 417 Mont. 457, 554 P.3d 153. In that case, the Montana Supreme Court found the similarly situated individuals were "pregnant minors who want to obtain an abortion" and "pregnant minors who do not want an abortion" because they were alike in all respects except their choice to receive an abortion—that is, the regulations affected only pregnant minors seeking an abortion. *Id.* ¶ 28. Beyond those intents,[4] they were the same. In another

[3] According to Plaintiffs, HB 121 "permits cisgender people to use covered facilities that correspond to their gender identity while barring transgender people from doing the same" and HB 121 "permits people who fit [HB 121's] definitions of 'female' and 'male' to use covered facilities while barring intersex people from doing the same."

[4] The statute at issue there required the minor seeking an abortion to receive parental consent. The intent of the pregnant minor therefore determined whether the parental consent requirement applied.

case, *Henry v. State Compensation Insurance Fund*, the court classified workers who were injured once and workers who were injured more than once while working. 1999 MT 126, ¶ 27, 294 Mont. 449, 982 P.2d 456. The court determined that, based on their classification, those similarly situated workers received different treatment. *Id.* ¶ 28. The key in both cases is the individuals are the same before the regulations. Once passed, the regulations treat them differently. That is not the case here. The purported classes are not the same before the regulations.

Plaintiffs' two sets of classes are not similarly situated. A "transgender" individual is treated equally under the law as a "cisgender" individual. And the same remains true for an "intersex" individual. For example, under HB 121, an individual "who, under normal development, has XY chromosomes and produces or would produce small, mobile gametes, or sperm, during his life cycle and has a reproductive and endocrine system oriented around the production of those gametes" is a male regardless of that individual's "gender identity." At any rate, if that individual's subjective gender identity differs from his or her sex observed at birth, HB 121 requires covered entities to prevent that individual from being placed into the female prison. And this is necessary because, in a place like prison, an individual may lie about his "deeply felt, internal sense of belonging to a particular gender,"[5] (Doc. 43, ¶ 3),

[5] Defendants strongly dispute that under the law, logic, and common sense, an individual's assertion of his or her subjective gender identity at any point in time can amount to an immutable characteristic that may render him or her a member of a protected class. *See*, *e.g.*, *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (acknowledging "sex" as an "immutable characteristic determined solely by the accident of birth.").

because "it's prison … it's ripe with very opportunistic individuals that are clearly going to take advantage of a situation like this[.]" SUF, ¶ 49.

So HB 121 takes two individuals—both determined male because of "nonambiguous internal and external genitalia present at birth"—and treats them identically, regardless of subjective gender identity. That is hardly an equal protection violation.

And to this point, sex discrimination claims do not turn on subjective "gender identity." Rather, a review of sex discrimination jurisprudence reveals that the Montana Supreme Court recognizes and applies the male-female sex binary in such cases. *See Mtn. States Tel. & Tel. Co. v. Comm'r of Labor & Indus.*, 187 Mont. 22, 38-39, 608 P.2d 1047, 1056 (1979) (Pregnancy is a condition unique to women, and the ability to become pregnant is a primary characteristic of the female sex. Thus, classification based on pregnancy is a sex-based distinction); *Campbell v. Garden City Plumbing & Heating, Inc.*, 2004 MT 231, ¶ 16, 322 Mont. 434, 97 P.3d 546 ("First, the plaintiff must be a member of a protected class. In a sexual harassment scenario, only two classes are possible, male and female."); *Bachmeier*, ¶ 28 (a claimant first must establish membership in a protected class, either male or female) (citing *Campbell*, ¶ 16). "As has already been pointed out, neither federal jurisprudence nor this Court's case law recognizes gender or sexual orientation as an arbitrary classification or 'suspect class' for equal protection purposes." *Snetsinger v. Mont. Univ. Sys.,* 2004 MT 390, ¶ 82, 325 Mont. 148, 104 P.3d 445 (Nelson, J., concurring). Indeed, in *Marquez v. State,* another case involving transgender-identifying plaintiffs seeking to amend their birth certificates to change the sex to reflect their subjective

gender identity, the district court found that "[t]he parties agree … that no surgical procedure can change an individual's sex." *Marquez v. State*, Cause No. DV 21-873, Order at 11 (13th Jud. Dist. Ct. June 26, 2023).

HB 121 thus does not "discriminate[] by impermissibly classifying persons and treating them differently on the basis of that classification." *See State v. Spina*, 1999 MT 113, ¶ 85, 294 Mont. 327, 982 P.2d 421. "To prevail on an equal protection challenge, the injured party must demonstrate that the law at issue discriminates by impermissibly classifying individuals or entities and treating them differently on the basis of that classification." *Town & Country Foods, Inc. v. City of Bozeman*, 2009 MT 72, ¶ 19, 349 Mont. 453, 203 P.3d 1283 (internal citations omitted). Plaintiffs do not shoulder their burden on this claim. They do not show beyond a reasonable doubt that, in every circumstance, HB 121 impermissibly treats similarly situated individuals differently. Importantly, "[e]very possible presumption must be indulged in favor of the constitutionality of a legislative act." *Powell*, ¶ 13. This Court should accordingly grant the State summary judgment on Plaintiffs' facial equal protection claims.

B. Plaintiffs John Doe and Missoula County cannot show HB 121 violates due process in every application.

Just Plaintiffs John Doe and Missoula County raise a facial challenge against HB 121 under the Montana Constitution's due process provision. (Doc. 43, ¶¶ 170–79). The Montana Constitution's Article II, Section 17 provides: "No person shall be deprived of life, liberty, or

property without due process of law." Mont. Const. art. II, § 17; *see also* U.S. Const. amend. XIV.

"[W]e insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Whitefish v. O'Shaughnessy*, 216 Mont. 433, 440, 704 P.2d 1021, 1026 (1985). And "to prevent arbitrary and discriminatory enforcement, laws must provide explicit standards for those who apply them because a vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *State v. Trombley*, 2026 MT 59, ¶ 9, __ Mont. __, __ P.3d __. But "[t]he fact that a statute is difficult to apply to some situations does not render it unconstitutionally vague." *State v. Martel*, 273 Mont. 143, 151, 902 P.2d 14, 19 (1995) (quoting *Monroe v. State*, 265 Mont. 1, 3, 873 P.2d 230, 231 (1994)).

Courts "apply a two-part test when examining whether a statute is void for vagueness: (1) whether the statute provides fair notice of what conduct is prohibited and (2) whether the statute provides minimal guidelines sufficient to govern enforcement." *Trombley*, ¶ 8. A statute is unconstitutionally vague on its face when "it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute." *Monroe*, 265 Mont. at 3, 873 P.2d at 231 (quoting *City of Choteau v. Joslyn*, 208 Mont. 499, 505, 678 P.2d 665, 668 (1984)).

"When the constitutionality of a statute is challenged, the party making the challenge bears the burden of proving, beyond a reasonable doubt, that the statute is unconstitutional, and any doubt is to be

resolved in favor of the statute." *State v. Stanko*, 1998 MT 321, ¶ 16, 292 Mont. 192, 974 P.2d 1132. "The strong presumptive validity [of a law means] that statutes are not automatically invalidated as vague simply because difficulty is found in determining whether certain marginal offenses fall within their language." *Monroe*, 265 Mont. at 3, 873 P.2d at 231 (quoting *United States v. Nat'l Dairy Corp.*, 372 U.S. 29, 32 (1963)). "Where a challenged statute is 'reasonably clear in its application to the conduct of the person bringing the challenge, it cannot be stricken for vagueness.'" *Trombley*, ¶ 10 (quoting *State v. Dugan*, 2013 MT 38, ¶ 20, 369 Mont. 39, 303 P.3d 755).

Plaintiffs fail to show HB 121 is unconstitutionally vague on its face in defiance of the Montana Constitution's due process provision. In their Amended Complaint, they alleged HB 121 is unconstitutionally vague because "with respect to intersex people … it excludes intersex people in its scientifically inaccurate definitions of 'sex,' 'female,' and 'male.'" (Doc. 43, ¶ 173.) And they allege it "subjects covered entities to litigation and liability for non-compliance but gives them no clarity on what they must do to comply." (Doc. 43, ¶ 174.) Yet they adduce *zero* evidence to prove that is the case in every circumstance.

i. A policy disagreement with a definition does not render the statute unconstitutionally vague.

HB 121 contains three definitions Plaintiffs identify as objectionable: "sex," "female," and "male." (Doc. 43, ¶ 173.) Because of their apparent ideological or policy disagreement with these definitions, Plaintiffs contend that HB 121 is unconstitutionally vague on its face

because "intersex" people "do not have fair or actual notice about whether the Act classifies them as male or female, and do not know which sex-separated facilities (if any) they are permitted to use." (Doc. 43, ¶ 173.) But there are at least two problems with this.

First, "Facial challenges do not depend on the facts of a particular case." *City of Missoula v. Mt. Water Co.*, 2018 MT 139, ¶ 21, 391 Mont. 422, 419 P.3d 685 (collecting cases). So it is immaterial whether it is "intersex"[6] people or anyone else bringing the challenge. What matters is if Plaintiffs can accomplish the "difficult task" of demonstrating "the law is unconstitutional in all of its applications." *Id.* They do not.

Second, Plaintiffs present no evidence that HB 121 is unconstitutionally vague in every application. Their burden under Montana Supreme Court precedent is to prove "beyond a reasonable doubt, that the statute is unconstitutional[.]" *Stanko*, ¶ 16. "[A]nd any doubt is to be resolved in favor of the statute." *Id.* ¶ 16. But they have not carried their burden to show that "no set of circumstances exists under which the statute would be valid." *Sedler*, ¶ 17

Their testimony in fact proves the opposite. For example, counsel for the State asked John Doe, "What is your understanding of [HB 121],"

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[6] Plaintiffs' use of the term "intersex" is a conflation of any number of disorders of sexual development ("DSDs"), the physical manifestations of which vary significantly. Wright Dep., **excerpts attached here as Exhibit I**, Ex. I at 107:17–25; 108:1–13. Defendants' unrebutted expert testimony proves that the occurrence of DSDs does not establish a third sex or otherwise alter the binary nature of sex—male *or* female. Ex. I at 111:8–17. Plaintiffs cannot simply conjure a new biological category by fiat, nor can they contradict objective scientific reality via linguistic manipulation.

and John Doe responded, "My understanding of the law is it provides for individual Montanans to sue the covered entity for allowing a person to use the restroom that is not corresponding with the sex as defined here." (SUF Ex. E at 11:21–25; 12:1.) Plainly, John Doe understands the meaning of HB 121. This cuts directly against Plaintiffs' argument that HB 121 is vague in every application—John Doe understands what HB 121 says. Doe may disagree with the statute's language—but that is a policy dispute, not a constitutional violation.

But beyond this deficiency in their facial argument against HB 121, this Court can easily conceive of circumstances where HB 121's definitions are not vague.

For example, sex-segregated correctional centers and juvenile detention facilities are the norm. Missoula County segregates by sex in its correctional center. SUF, ¶¶ 36–37. But to do so, it is necessary to establish a definition of "sex" based in objectively verifiable characteristics, and there must be some basic definitional difference between sexes (male or female)—otherwise such a placement would be completely arbitrary. Further, the State's unrebutted expert testimony proves circumstances exist where separation based on sex is necessary to protect individuals in prisons. SUF, ¶ 39. And the only way to protect those individuals is to define the sexes.

"Many women have suffered sexual violence on account of having to serve with males in women's correctional facilities. This violence includes rape, physical assault, and even unwanted pregnancies." Ichikawa Declaration (Decl.), ¶ 6, **attached here as Exhibit H**. "Many men claim to be transgender women for deceptive purposes to engage in

their predatory activities." Ichikawa Decl., ¶ 7. HB 121's definitions of "sex," "female," and "male" are necessary to adequately protect women from having to serve with males. And these definitions clearly define male and female based on objectively demonstrable and observable characteristics.

Plaintiffs thus fail on their facial challenge. They adduce no evidence that HB 121 "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute." *Monroe*, 265 Mont. at 3, 873 P.2d at 231.

ii. "Reasonable steps" is an objective standard that does not render a statute unconstitutionally vague.

Missoula County contends that it and other covered entities lack "actual notice of how to conform its conduct to the law." (Doc. 43, ¶ 179.) Specifically, it alleges HB 121's "reasonable steps" is unclear. (*Id.* ¶¶ 175–76). During its deposition, Missoula County's 30(b)(6) deponent asserted the problem was a "lack of definition around 'reasonable measures.'" (SUF Ex. F, 53:19–23.) But the reasonable person standard is an objective standard that Montana courts consistently apply and uphold in statutes. *See State v. Thirteenth Jud. Dist. Ct.*, 2009 MT 163, ¶29, 350 Mont. 465, 208 P.3d 408 ("This Court has recognized that the reasonable person standard is an objective standard, and we have refused to hold statutes unconstitutionally vague simply because they rely on the reasonable person standard."); *see also Martel*, 273 Mont. at 150, 902 P.2d at 19; *State v. Campbell*, 219 Mont. 194, 203, 711 P.2d 1357 (1985).

There, a criminal defendant asserted Section 61-7-103, MCA, was unconstitutionally vague on its face because the statute's "reasonable assistance" language. *Thirteenth Jud. Dist. Ct.*, ¶¶ 6–11. The district court agreed, concluding that Section 61-7-103, MCA, was facially vague because of the reasonableness determination by a fact-finder. *Id.* ¶ 21. The Montana Supreme Court reversed, finding the statute "is not unconstitutionally vague on its face because it does provide persons of ordinary intelligence fair notice of the conduct it prohibits." *Id.* ¶ 27. The Court continued, "a criminal statute is not rendered unconstitutionally vague solely because a jury determines the reasonableness of the defendant's actions. Criminal culpability often hinges on whether a jury later determines that a person acted reasonably." *Id.* ¶ 28. The Montana Supreme Court ultimately chastised the district court for not "indulging every possible presumption in an effort to uphold the statute as constitutional" and for "speculat[ing] about hypothetical situations that could potentially render the statute void." *Id.* ¶ 30.

Plaintiffs here fail to overcome the presumption of constitutionality and to defeat "every possible presumption" of constitutionality. Instead, they merely rest on unsubstantiated allegations of confusion and lack of guidance. But that is not the test. As in *Thirteenth Judicial District Court*, just because HB 121 contains the "reasonable steps" language does not render it unconstitutionally vague. Indeed, should an action against any county arise under HB 121, a factfinder would determine the reasonableness of that county's step no differently than it would determine reasonableness in a tort or criminal action.

* * * *

Ultimately, "[t]he words of a statute are not impermissibly vague simply because they can be 'dissected or subject to different interpretations,' and the constitutionality will be upheld if the Court can do so under a 'reasonable construction of the statute.'" *DeVoe v. City of Missoula*, 2012 MT 72, ¶ 17, 364 Mont. 375, 274 P.2d 752 (quoting *Mont. Media v. Flathead Ctny.*, 2003 MT 23, ¶ 58, 314 Mont. 121, 63 P.3d 1129). "The Legislature need not define every term it employs when constructing a statute. If a term is one of common usage and is readily understood, it is presumed that a reasonable person of average intelligence can comprehend it." *State v. Nye*, 283 Mont. 505, 513, 943 P.2d 96, 101 (1997).

For a law to be void for vagueness, it must fail to convey to a person of ordinary intelligence a reasonable opportunity to know what conduct is permitted or not permitted. *Dugan*, ¶ 67. Plaintiffs John Doe and Missoula County produce no evidence to prove as much in every circumstance. This Court must reject Plaintiffs' attempt to contort individual clauses to invalidate the whole statute. The reasonable construction of HB 121 proves it is nowhere near unconstitutionally vague. This Court should accordingly grant the State summary judgment on these claims.

II. This Court should grant the State summary judgment against Plaintiffs' as-applied challenges to HB 121's provisions related to correctional centers, juvenile detention facilities, local domestic violence programs, and public schools.

Plaintiffs here challenge the entirety of HB 121. But this broad stroke attack belies their as-applied challenges. This is for one simple

reason: not every provision of HB 121 applies to Plaintiffs. "An as-applied challenge alleges that a particular application of a statute is unconstitutional and depends on the facts of a particular case." *City of Missoula*, ¶ 25. If parts of the statute do not even apply to the Plaintiffs, then there are no relevant facts to assess. Without actual application, Plaintiffs' as-applied challenge fails.

Individual Plaintiffs have no basis to challenge HB 121's provisions related to correctional centers, juvenile detention facilities, local domestic violence programs, and public schools. And Missoula County cannot claim a basis to challenge local domestic violence programs nor public schools. Because they have no basis for their challenge against these provisions, summary judgment for the State on those claims is proper.

All individual Plaintiffs admit they have not, are not, and will not be in a correctional center, juvenile detention facility, or local domestic violence program. SUF, ¶¶ 2–4; 10–13; 16–17; 21–22; 27–28. Further, they all admit being at least 18 years old, meaning they have aged out of public schools. SUF, ¶¶ 5; 9; 18; 23; 29.

Missoula County also lacks any basis to challenge HB 121's provisions related to public schools and local domestic violence programs. First, Missoula County does not operate a domestic violence program. SUF, ¶ 32. Second, HB 121 defines "public school" as "a noncharter public school or public charter school as those terms are defined in 20-6-803." HB 121, § 2(10). Under Sections 20-6-803(7)–(9), MCA, a "nonpublic charter school" "is under the supervision and control of a local school board or the state" and a "public charter school" "is governed by a local

school board" or "by the governing board of the public charter school district[.]"

Under those provisions, Plaintiffs have no basis to assert an as-applied challenge because those provisions of HB 121 simply do not apply to them. Individual Plaintiffs disclaim any nexus to correctional centers, juvenile detention facilities, local domestic violence programs, and public schools because they are not, nor have they shown any reasonable likelihood that they will be, in those circumstances. These facts defeat their as-applied challenges. They baselessly allege these provisions of HB 121 violate their rights, yet they admit the provisions do not even apply to them. Their as-applied challenges must fail.

These undisputed facts thus preclude the individual Plaintiffs' legal basis to challenge those provisions of HB 121 that relate to correctional centers, juvenile detention facilities, local domestic violence programs, and schools. "Thus, there are simply no facts within this record on which to adjudicate an as-applied constitutional challenge to the statute. Consequently, the declaratory request is speculative, and would require issuance of an advisory opinion." *Noland*, ¶ 16 (quoting *Broad Reach Power, LLC v. PSC*, 2022 MT 227, ¶ 13, 410 Mont. 450, 520 P.3d 301. Summary judgment for the State on these provisions is therefore proper.

CONCLUSION

Plaintiffs John Doe and Missoula County failed to carry their burden for a facial due process violation. This Court should dismiss those claims. The individual Plaintiffs likewise failed to show in every circumstance HB 121 violates equal protection. This Court should also dismiss those claims. Finally, because HB 121's provisions related to

correctional centers, juvenile detention facilities, local domestic violence programs, and public schools do not apply to any Plaintiff, the Court can dismiss those claims. This Court should accordingly grant the State summary judgment on the above claims.

DATED this 3rd day of April 2026.

Austin Knudsen
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/s/ *George Carlo L. Clark*
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ARTIFICIAL INTELLIGENCE CERTIFICATION

Pursuant to Local Court Rule 3(G), I certify that I used WestLaw Advantage for preliminary legal research and analysis of some legal arguments. No part of the State's argument was drafted or developed by WestLaw Advantage. I further certify that I have checked the accuracy of all factual and procedural backgrounds, citations, and legal authority.

/s/ *George Carlo L. Clark*
George Carlo L. Clark

Exhibit H

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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, an individual, and JOHN DOE, and individual, and MISSOULA COUNTY,

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,

and

KERRI SEEKINS-CROWE,

Intervenor-Defendant.

Dept. 1

DV-32-2025-282
Hon. Leslie Halligan

DECLARATION OF AMIE ICHIKAWA

I, Amie Ichikawa, declare as follows:

1. Declarant is a resident of Los Angeles, California.

2. Declarant served five years in a California women's correctional facility.

3. During that time, Declarant served with a person claiming to be a transgender woman with a history of sexual violence. This fact caused severe mental distress with the women in the correctional facility.

4. After serving Declarant's time in the correctional facility, Declarant has maintained communication with women inmates and has developed relationships not only in California, but in the states of Indiana, Washington, and New York.

5. Based upon those relationships, Declarant has developed an expertise about living conditions in women's facilities, especially including inmates claiming to be transgender women.

6. Many women have suffered sexual violence on account of having to serve with males in women's correctional facilities. This violence includes rape, physical assault, and even unwanted pregnancies.

7. Many men claim to be transgender women for deceptive purposes to engage in their predatory activities.

8. The fact is that serving with a person who claims to be a transgender woman but remains a male causes substantial distress in the women's population.

9. Based upon Declarant's experience and relationships with inmates, it is Declarant's opinion that women demand safe places from men in women's correctional facilities.

I declare under penalty of perjury under the laws of the State of Montana that the foregoing is true and correct.

Dated this 30th of March 2026, in Los Angeles, California.

Amie Ichikawa

Exhibit I

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

Defendants,

and

KERRI SEEKINS-CROWE,

Intervenor-Defendant.

Cause No. DV-32-2025-282

VIDEOCONFERENCE/ZOOM-RECORDED DEPOSITION
UPON ORAL EXAMINATION OF
COLIN WRIGHT

BE IT REMEMBERED, that the videoconference/Zoom-recorded deposition upon oral examination of Colin Wright, appearing at the instance of the Plaintiffs, was taken remotely from Mount Juliet, Tennessee on Monday, January 23, 2026, beginning at the hour of 9:04 a.m., pursuant to the Montana Rules of Civil Procedure, before Mary R. Sullivan, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public.

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Addie Stanger
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Rochell Standish
Bellemy Morgan

a mismatch between their -- their -- their chromosomes and their outward appearance. I think that's probably a good clinical definition. I think that's probably a good way to go.

MS. LANSING: We've been going for about another hour. I just want to check in with Dr. Wright to see if you need a break, potentially a lunch break. You're ahead of the rest of us in your time zone. How are you doing?

THE DEPONENT: I'm doing well. I can keep going --

MS. LANSING: 'Kay.

THE DEPONENT: -- if you -- you guys are fine.

MS. LANSING: Okay.

BY MS. MANDELBAUM:

Q. And Dr. Wright, what do you mean by "certain developmental conditions"?

A. There's a broader category of what I would call developmental conditions. People might refer to them as DSDs, and these are just conditions where the outcomes of sexual development are just, any degree, atypical.

You can have a condition too where you might have a nonstandard set of chromosomes, for

example, Klinefelter syndrome, individuals are XXY. These result in, you know, slightly different suites of secondary sex characteristics. They tend to have more breast development in people who are XXY, XXY males.

I think these are -- can be broadly construed as developmental conditions and DSDs, but I would -- don't know if I would call them intersex conditions 'cause I think that implies that these individuals are sexually ambiguous, when the overwhelming vast majority of developmental conditions do not result in any sort of sex ambiguity.

Q. But some developmental conditions do result in sexual ambiguity?

A. I think that a very rare few might, yeah.

Q. And what's your estimate of the percentage, so to speak -- the approximate percentage of individuals who cannot be categorized as male or female?

MS. LANSING: Objection. Beyond the scope of his expert opinion.

But if you know, you can answer.

A. I don't know the exact number. So in Leonard Sax, his estimate of -- based on sort of

would know that you have this condition based on the fact that you have XY chromosomes which could be identified even before birth, but you would, nevertheless, appear outwardly as female but you would still have internal testes that would make you biologically male, even if you don't appear that way on the outside.

Q. And Dr. Wright, what is the basis for your opinion that the term "intersex" is an umbrella term for certain developmental conditions but is not a third sex?

A. Well, there's all the literature on anisogamy, the evolution of two sexes based on gametes. The only way you could logically have a third sex is to have a certain third or intermediate type of gamete. Absent a third type of gamete, you -- you cannot have a third sex.

Q. You mentioned the literature on anisogamy.

Is there any literature that you're -- on anisogamy that you're relying on that we haven't already discussed today?

A. No.

Q. And other than that literature on anisogamy that we discussed today, is there

C E R T I F I C A T E

STATE OF MONTANA)
: ss
COUNTY OF MISSOULA)

I, Mary R. Sullivan, Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter and Notary Public for the State of Montana, residing in Missoula, do hereby certify:

That I was duly authorized to and did swear in the witness and report the deposition of COLIN WRIGHT in the above-entitled cause; that the foregoing pages of this deposition constitute a true and accurate transcription of my stenotype notes of the testimony of said witness, all done to the best of my skill and ability; that the reading and signing of the deposition by the witness have been expressly reserved.

I further certify that I am not an attorney nor counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on March 7, 2026.

Mary Sullivan

MARY SULLIVAN
NOTARY PUBLIC for the
State of Montana
Residing at
Missoula, Montana
My Commission Expires
April 06, 2026

MARY SULLIVAN NOTARIAL SEAL STATE OF MONTANA

CERTIFICATE OF SERVICE

I, George Carlo Lempke Clark, 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:

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Electronically signed by Rochell Standish on behalf of George Carlo Lempke Clark
Dated: 04-03-2026