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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;
JOHN DOE, an individual; and
MISSOULA COUNTY,

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 25-282

Hon. Leslie Halligan

**STATEMENT OF
UNDISPUTED FACTS IN
SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

(Continued from previous page)

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EXHIBIT LIST

Exhibit	Document	Abbreviation
1	House Bill 121 (2025)	HB 121
2	Declaration of Casey Perkins in Support of Plaintiffs' Motion for Summary Judgment	Perkins Decl.
3	Declaration of John Doe in Support of Plaintiffs' Motion for Summary Judgment	John Doe Decl.
4	Declaration of Jane Doe in Support of Plaintiffs' Motion for Summary Judgment	Jane Doe Decl.
5	Declaration of Kasandra Reddington in Support of Plaintiffs' Motion for Summary Judgment	Reddington Decl.
6	Declaration of Spencer McDonald in Support of Plaintiffs' Motion for Summary Judgment	McDonald Decl.
7	Declaration of Christian Lounsbury, Missoula County, in Support of Plaintiffs' Motion for Summary Judgment	Missoula County Decl.
8	Declaration of Dr. Randi Ettner in Support of Plaintiffs' Motion for Summary Judgment	Ettner Decl.
9	Declaration of Dr. Cynthia Calkins in Support of Plaintiffs' Motion for Summary Judgment	Calkins Decl.
10	Deposition Transcript of Casey Perkins	Perkins Dep. Tr.
11	Deposition Transcript of John Doe	John Doe Dep. Tr.
12	Document Production of John Doe	-
13	Deposition Transcript of Jane Doe	Jane Doe Dep. Tr.
14	Deposition Transcript of Kasandra Reddington	Reddington Dep. Tr.
15	Deposition Transcript of Spencer McDonald	McDonald Dep. Tr.
16	Deposition Transcript of Christian Lounsbury, Missoula County 30(b)(6) Designee	Missoula County Dep. Tr.
17	Deposition Transcript of Ian Gutierrez, State of Montana 30(b)(6) Designee	State 30(b)(6) Dep. Tr.

18	Deposition Transcript of Kerri Seekins-Crowe	Seekins-Crowe Dep. Tr.
19	Deposition of Kerri Seekins-Crowe, Exhibit 110	-
20	Deposition of Kerri Seekins-Crowe, Exhibit 102	-
21	Deposition Transcript of Dr. Randi Ettner	Ettner Dep. Tr.
22	Deposition Transcript of Dr. Cynthia Calkins	Calkins Dep. Tr.
23	Deposition Transcript of Colin Wright	Wright Dep. Tr.
24	Deposition Transcript of Dr. Geeta Nangia	Nangia Dep. Tr.
25	Deposition Transcript of Amie Ichikawa	Ichikawa Dep. Tr.
26	State of Montana's Responses to Plaintiffs' First Requests for Admission	State RFA
27	State of Montana's Responses to Plaintiffs' Second Requests for Admission	State 2nd RFA
28	State of Montana's Responses to Plaintiffs' First Combined Discovery Requests	State Resp.
29	Plaintiffs' Responses to Intervenor-Defendant's First Combined Discovery Requests	Pls.' Resp.
30	Kerri Seekins-Crowe's Responses to Plaintiffs' First Combined Discovery Requests and Requests for Admission	Seekins-Crowe Resp.
31	State of Montana's Responses to Plaintiffs' Second Combined Discovery Requests and Third Requests for Admission	State 3rd RFA
32	Appellant State of Montana's Opening Brief, <i>Perkins v. State</i> , DA 25-0397 (Mont. S. Ct. Aug. 13, 2025)	-

STATEMENT OF UNDISPUTED FACTS

In support of their motion for summary judgment, brought pursuant to Mont. R. Civ. Pr. 56, Plaintiffs hereby submit this statement of undisputed facts:

I. Gender Identity, Gender Dysphoria, and Intersex Identity

1. Gender identity is a person's inner sense of belonging to a particular sex, such as male or female. Every person possesses a gender identity, which may or may not align with the sex assigned to the person at birth. Gender identity is a deeply felt and core component of human identity, and is typically detectible by self-disclosure in adolescents and adults. Ex. 8, Decl. of Dr. Randi Ettner¹ ("Ettner Decl.") ¶ 21.
2. Transgender people have a gender identity that does not correspond to their birth-assigned sex, and cisgender people have a gender identity that aligns with their birth-assigned sex. Ex. 8 (Ettner Decl.) ¶¶ 22, 24.
3. When there is divergence between a person's birth-assigned sex and gender identity, their gender identity is paramount and the primary determinant of their sex designation. Developmentally, identity is the overarching determinant of the self-system, influencing personality, a sense of mastery, relatedness, and emotional reactivity, across the life span. It is also the foremost predictor of satisfaction and quality of life. Ex. 8 (Ettner Decl.) ¶ 23.
4. Gender dysphoria is the clinically significant distress or impairment of functioning that can result from the incongruence between a person's gender identity and birth-assigned sex. Gender dysphoria is a serious medical condition associated with severe and unremitting emotional pain. It is codified in the *International Classification of Diseases* (10th revision: World Health Organization), the diagnostic and coding compendia for mental health and medical professionals, and the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* Fifth Edition (DSM-5). Ex. 8 (Ettner Decl.) ¶ 25.
5. Once a diagnosis of gender dysphoria is established, individualized treatment should be initiated. Without treatment, individuals with gender dysphoria experience anxiety, depression, suicidality and other

¹ Dr. Randi Ettner is an expert witness for Plaintiffs.

mental health issues and are often unable to adequately function in occupational, social, or other areas of life. Ex. 8 (Ettner Decl.) ¶ 26.

6. The recommended treatment for gender dysphoria involves interventions to bring an individual's body and gender expression into alignment with their gender identity to eliminate their distress. Ex. 8 (Ettner Decl.) ¶ 27.
7. Social transition is the process through which a person brings their outer appearance and lived experience into alignment with their gender identity. Social transition is the most important, and sometimes the only, aspect of transition that transgender people undertake. Changes often associated with a social transition include changes in clothing, name, pronouns, hairstyle as well as beginning to use sex-separated facilities consistent with their gender identity. Treatment promotes congruence between identity and physical appearance, thereby alleviating dysphoria, and enabling a person to be recognized by others in accordance with their gender. Ex. 8 (Ettner Decl.) ¶¶ 28, 30.
8. Social transition has an enormous impact on the treatment of gender dysphoria. A seminal study showed that individuals with gender dysphoria who had socially transitioned showed “a notable absence of psychopathology” compared to those who were still living in their birth-assigned sex. Ex. 8 (Ettner Decl.) ¶ 29.
9. Intersex people are born with reproductive anatomy or other sex traits that do not uniformly correspond with the traits typically relied upon to deem an individual “female” or “male.” Ex. 8 (Ettner Decl.) ¶ 33.
10. Being intersex is a naturally occurring variation in humans and typically does not require any medical treatment or care. Ex. 8 (Ettner Decl.) ¶ 36.
11. Although doctors may assign intersex babies a legal sex of “female” or “male,” that individual's gender identity may not align with their birth-assigned sex. InterACT, *Intersex Variations Glossary*, <https://interactadvocates.org/intersex-definitions/> (last visited Apr. 2, 2026).
12. Some individuals do not fit either the definition of “male” or “female” in HB 121 because, among other reasons, their chromosomal patterns, gonadal structures, hormonal profiles, or external anatomy do not align

in a manner consistent with the statute’s categorical framework. This includes individuals with differences of sex development (DSDs), such as androgen insensitivity syndrome, congenital adrenal hyperplasia, or 5-alpha reductase deficiency; individuals with atypical chromosomal patterns such as XXY, XO, or mosaicism; and individuals whose physiology has been altered through medical or surgical treatment, including hormone therapy or the removal of reproductive organs. As a result, HB 121’s definitions do not account for the full range of naturally occurring human biological variation. Ex. 8 (Ettner Decl.) ¶ 35.

II. HB 121

A. HB 121’s Definitions

13. HB 121 classifies individuals based on sex. Ex. 32, Appellant’s Opening Br., Mont. S. Ct. DA 25-0397 (Aug. 13, 2025), at 20 (State of Montana acknowledging: “[T]he Act clearly states it applies on the basis of an individual’s sex as either male or female at birth.”), 24 (“[W]hile the Act classifies on the basis of ‘sex’ (male or female), it treats these two classes the same”); *see* Ex. 1 (HB 121) §§ 2(4), (7), (12), 3 (conditioning access to covered facilities based on “sex”).
14. HB 121 recognizes “exactly two human sexes, male and female.” Ex. 1 (HB 121) § 2(12); Ex. 26, State of Montana First Resp. to Req. for Adm. (“State RFA”) No. 5; Ex. 30, Seekins-Crowe Resp. to Pls.’ First Combined Disc. Reqs. (“Seekins-Crowe Resp.”), RFA No. 5.
15. HB 121 asserts that “male” and “female” are “determined by the biological and genetic indication of male or female, including sex chromosomes, naturally occurring sex chromosomes, gonads, and nonambiguous internal and external genitalia present at birth.” Ex. 1 (HB 121) § 2(12); Ex. 26 (State RFA) No. 7.
16. HB 121 defines a “female” as “a member of the human species who, under normal development, has XX chromosomes and produces or would produce relatively large, relatively immobile gametes, or eggs, during her life cycle and has a reproductive and endocrine system oriented around the production of those gametes. An individual who would otherwise fall within this definition, but for a biological or

genetic condition, is female.” Ex. 1 (HB 121) § 2(4); Ex. 30 (Seekins-Crowe Resp.) Interrog. No. 22.

17. HB 121 defines a “male” as “a member of the human species 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. An individual who would otherwise fall within this definition, but for a biological or genetic condition, is male.” Ex. 1 (HB 121) § 2(7); Ex. 30 (Seekins-Crowe Resp.) Interrog. No. 23.
18. HB 121 defines “sex” as “the organization of the body parts and gametes for reproduction in human beings and other organisms. In human beings, there are exactly two sexes, male and female, with two corresponding types of gametes. The sexes are determined by the biological and genetic indication of male or female, including sex chromosomes, naturally occurring sex chromosomes, gonads, and nonambiguous internal and external genitalia present at birth, without regard to an individual’s psychological, behavioral, social, chosen, or subjective experience of gender.” Ex. 1 (HB 121) § 2(12); Ex. 30 (Seekins-Crowe Resp.) Interrog. No. 24.
19. HB 121 does not define the term “biological or genetic condition” as used in the law. Ex. 26 (State RFA) No. 39; *see* Ex. 1 (HB 121) § 2(4), (7).

B. HB 121’s Restrictions on Transgender and Intersex People

20. HB 121 requires transgender men to use covered facilities² designated for women. Ex. 27, State of Montana Second Resp. to Req. for Adm. (“State 2nd RFA”) No. 42.
21. HB 121 prohibits transgender men from using covered facilities designated for men. Ex. 27 (State 2nd RFA) No. 43.
22. HB 121 requires transgender women to use covered facilities designated for men. Ex. 27 (State 2nd RFA) No. 44.

² “Covered facility” means any restroom, changing room, or sleeping quarters in a covered entity, as those terms are defined and used in HB 121.

23. HB 121 prohibits transgender women from using covered facilities designated for women. Ex. 27 (State 2nd RFA) No. 45.
24. HB121 does not prevent a cisgender man from using covered facilities designated for men. Ex. 27 (State 2nd RFA) No. 56.
25. HB121 does not prevent a cisgender woman from using covered facilities designated for women. Ex. 27 (State 2nd RFA) No. 57.
26. HB 121 requires a person born with male sex chromosomes to use covered facilities designated for men. Ex. 27 (State 2nd RFA) No. 46.
27. HB 121 prohibits a person born with male sex chromosomes from using covered facilities designated for women. Ex. 27 (State 2nd RFA) No. 47.
28. HB 121 requires a person born with female sex chromosomes to use covered facilities designated for women. Ex. 27 (State 2nd RFA) No. 48.
29. HB 121 prohibits a person born with female sex chromosomes from using covered facilities designated for men. Ex. 27 (State 2nd RFA) No. 49.
30. HB 121 requires a person born with male gonads to use covered facilities designated for men. Ex. 27 (State 2nd RFA) No. 50.
31. HB 121 forbids a person born with male gonads from using covered facilities designated for women. Ex. 27 (State 2nd RFA) No. 51.
32. HB121 requires a person born with male nonambiguous internal genitalia to use covered facilities designated for men. Ex. 27 (State 2nd RFA) No. 52.
33. HB121 forbids a person born with male nonambiguous internal genitalia from using covered facilities designated for women. Ex. 27 (State 2nd RFA) No. 53.
34. HB121 requires a person born with male nonambiguous external genitalia to use covered facilities designated for men. Ex. 27 (State 2nd RFA) No. 54.

35. HB121 forbids a person born with male nonambiguous external genitalia from using covered facilities designated for women. Ex. 27 (State 2nd RFA) No. 55.
36. The State did not research alternative methods to HB 121 to protect women in covered facilities. Ex. 17 (State 30(b)(6) Dep. Tr.) at 123:6–9 (Q: “So did the State perform any research into alternative methods to protect women in covered facilities?” A: “The State did not.”).

C. The Animus Motivating HB 121

37. Representative Kerri Seekins-Crowe, the primary sponsor of HB 121, characterized transgender women as perverts in public communications regarding the bill. Ex. 19 (Seekins-Crowe Dep. Ex. 110) (social media post by Seekins-Crowe describing HB 121 as “Bill to Protect Montana’s Women from Perverted Men who want to Invade Women’s Private Spaces!”); Ex. 18 (Seekins-Crowe Dep. Tr.) at 200:18–201:18.
38. In carrying HB 121, Representative Seekins-Crowe relied upon a book titled “EXPOSING THE GENDER LIE: How to Protect Children and Teens from the Transgender Industry’s False Ideology.” Ex. 20 (Seekins-Crowe Dep. Ex. 102); Ex. 18 (Seekins-Crowe Dep. Tr.) at 86:24–88:8. The book characterizes acceptance of transgender identities as “gender ideology” and “brainwash[ing] . . . in which the denial of objective reality is seen as a commendable social good.” Ex. 20 (Seekins-Crowe Dep. Ex. 102) at 6. The book describes a person identifying as transgender as “the patient’s delusions.” *Id.* It also states that “transgenderism is a medical (and social) scandal” and describes it as an “ideology [that] twists language and reality.” *Id.* at 8.
39. Representative Seekins-Crowe testified that “the transgender industry” consists of “social,” “political and medical institutions that are pushing the transgender ideology,” including “Montana public schools,” “the Montana Democratic Party,” and “the Montana courts.” Ex. 18 (Seekins-Crowe Dep. Tr.) at 94:2–98:9.
40. Montana Lieutenant Governor Kristen Juras testified in a legislative hearing on HB 121 that “[a]cknowledging biological realities should not be complicated or controversial, and neither should this bill.” *Hearing on HB 121 Before the H. Judiciary Comm.*, 69th Leg., Reg. Sess. (Jan. 10, 2025), audio at 08:07:30–08:07:39, available at

<https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250110/-1/54913>.

41. Montana Senator John Fuller, the Senate floor sponsor of HB 121, stated during the Senate vote on the bill that its “clear definition of biological sex” is about “recognizing reality,” and that “reality does not pay any attention to wishes and likes or dislikes.” *Floor Debate on HB 121 Before the MT Senate*, 69th Leg., Reg. Sess. (Feb. 10, 2025), audio at 13:52:27–13:52:40, available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250210/-1/51617#agenda>.
42. HB 121 is only one of many recent laws and rules enacted by the Montana Legislature and Governor targeting the transgender community. Montana courts have found each of these laws and rules to be unconstitutional or likely unconstitutional. For example:
 - a) 2023’s Senate Bill 99, which banned gender-affirming health care for transgender youth, *see Cross v. State*, Cause No. DV-23-541, 2023 WL 6392607, Order Granting Plaintiffs’ Motion for Preliminary Injunction (Mont. Fourth Jud. Dist. Ct., Missoula Cnty., Sept. 27, 2023);
 - b) 2023’s Senate Bill 458, which required Montanans to be classified by “exactly two sexes, male and female,” as defined by their reproductive capabilities, and contained definitions of “sex,” “male,” and “female” identical to those in HB 121, *see Edwards v. State*, Cause No. DV-23-1026, Order on Cross Motions for Summary Judgment (Mont. Dist. Ct. Feb. 18, 2025);
 - c) 2021’s House Bill 112, which restricted transgender women athletes from competing in women’s sports, *see Barrett v. State*, 2024 MT 86, 416 Mont. 226, 547 P.3d 630; and
 - d) A Montana Administrative Rule preventing the Department of Public Health and Human Services from amending birth certificates to reflect gender transitions, as well as a Motor Vehicle Division policy permitting amendment of driver’s licenses to reflect the holder’s gender identity only if the holder provides an amended birth certificate, *see Kalarchik v. State*, Cause No. ADV-2024-261, Order

Granting Plaintiffs’ Motion for Preliminary Injunction (Mont. First Jud. Dist. Ct., Lewis and Clark Cnty., Dec. 16, 2024).

43. Lieutenant General Juras explicitly tied HB 121 to the above laws, describing HB 121 as part of the Legislature and the Governor’s “shared record of defending Montanans from the far left’s ideological crusade. . .” *Hearing on HB 121 Before the H. Judiciary Comm.*, 69th Leg., Reg. Sess. (Jan. 10, 2025), audio at 08:07:41–08:08:15, available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250110/-1/54913>.

D. Impacts of HB 121

44. “[T]ransgender persons represent a small and discrete group of people within Montana.” Ex. 26 (State RFA) No. 36.
45. “[I]ntersex persons represent a small and discrete group of people within Montana.” Ex. 26 (State RFA) No. 37.
46. HB121 requires covered entities to take “reasonable steps” to ensure that only individuals whose “sex” (as defined by HB 121) corresponds to the sex designation of a covered facility are permitted to use that facility. Ex. 1 (HB 121) §§ 3(2)–(3), 4(1).
47. HB 121 gives individuals “a private cause of action” to sue covered entities and recover attorney’s fees and nominal damages if the covered entity failed to take “reasonable steps” to ensure that only individuals whose “sex” corresponds to the sex designation of a covered facility are permitted to use that facility. Ex. 1 (HB 121) § 4.
48. HB 121 gives individuals “a private cause of action” to sue covered entities and recover attorney’s fees and nominal damages if the covered entity “provided . . . permission” to another individual to use a covered facility designated for a sex that does not correspond to the “sex” of the individual. Ex. 1 (HB 121) § 4.
49. Covered entities may understand HB 121 to require them to inquire into individuals’ transgender or intersex status whenever they seek to use a covered facility. Ex. 17 (State 30(b)(6) Dep. Tr.) at 165:16–166:09 (testifying that the State did not know how covered entities would enforce the law and that it would be “up to the covered entity” to decide how to do so).

50. HB 121 would “out” transgender individuals as transgender because it requires them to use covered facilities inconsistent with their gender identity, revealing that their birth-assigned sex differs from their gender identity. Ex. 1 (HB 121) § 3(2).
- a) Ex. 8 (Ettner Decl.) ¶¶ 31–32 (“Many individuals with gender dysphoria take significant steps to align their physical characteristics, voice, mannerisms and overall appearance with their gender identity . . . Requiring these individuals to use bathrooms, changing rooms or sleeping quarters based on their sex assigned at birth effectively discloses their transgender status . . .”).
 - b) Ex. 6, Decl. of Spencer McDonald in Supp. of Pls.’ Mot. Summ. J. (“McDonald Decl.”), ¶ 15 (“using the women’s bathroom would out me as transgender”); Ex. 15 (McDonald Dep. Tr.) at 17:10–25 (stating that patrons of a woman’s bathroom would perceive him as a man).
 - c) Ex. 2, Decl. of Casey Perkins in Supp. of Pls.’ Mot. Summ. J. (“Perkins Decl.”), ¶ 8 (“I would not feel safe using the men’s restroom. It . . . would out me as a transgender woman”); Ex. 10 (Perkins Dep. Tr.) at 6:19–7:20 (explaining that HB 121 would require transgender individuals to “out” themselves because it “would require [transgender individuals] to use accommodations that do not align with our identities and who we are.”).
 - d) Ex. 5, Decl. of Kasandra Reddington in Supp. of Pls. Mot. Summ. J. (“Reddington Decl.”), ¶ 23 (“I am also concerned that I would be outed as a transgender woman and experience violence”); Ex. 14 (Reddington Dep. Tr.) at 16:16–21 (“To use a men’s restroom would out me to people that I don’t know as a trans woman, and could put my safety . . . at risk.”), 29:25–30:24 (explaining that presenting as a woman in the men’s restroom would out that person as not being a cisgender man).
 - e) Ex. 13 (Jane Doe Dep. Tr.) at 7:8–12 (“[B]y being forced to use the men’s restroom, people would immediately know something was up.”), 8:5–12 (“[W]hen I use the women’s bathroom, no one notices I’m in there . . . And therefore, forcing me to use a different restroom, it’s essentially . . . outing me.”).

51. “[A]ccess to restroom facilities is a basic necessity for all human beings.” Ex. 26 (State RFA) No. 40.
52. Not being able to use the restroom that corresponds to their gender identity could cause physical health problems for Plaintiffs.
 - a) Ex. 21 (Ettner Dep. Tr.) at 24:13–25:2 (“I’ve had patients over the years who have been denied access to restrooms who have developed urinary tract infections, particularly young people, holding their urine because they’re afraid to go into a restroom.”), 25:09–27:08 (detailing studies showing harms suffered by transgender people from being denied access to restrooms), 27:11–17 (“My own research with colleagues published in the *International Journal of Family Medicine* demonstrated that when people fear exposure by having to use a restroom that matches their sex at birth, therefore outing them and invading their privacy, that fear of exposure resulted in 100% increase in the prevalence of hypertension.”), 29:6–30:2 (“[W]hen people are excluded from a restroom or one of these other sex-segregated places, they feel humiliated. It causes them anxiety. If they try to use a bathroom that’s associated with their birth-assigned sex, they’re often refused entry or assaulted or harassed. And there is literature . . . documenting that these kinds of encounters can cause post-traumatic stress disorder.”).
 - b) Ex. 5 (Reddington Decl.) ¶ 33 (“It is not realistic for me to be in public places, including my office and recreational areas, for a full working day and recreating for several hours without access to bathroom facilities. It would be painful and could lead to infections and other physical harm.”); Ex. 14 (Reddington Dep. Tr.) at 8:8–18 (“The bathrooms that I would have to use at Helena College now are . . . significantly farther . . . [a]nd because of a medical condition, sometimes I have to get to the bathroom very quickly. And so I [] worry about my general privacy, health, and safety, especially when I have to use a bathroom that is designated [] gender-neutral or would have to use the men’s restroom in an emergency because of this bill, which could put my safety at risk.”).
53. Not being able to use the restroom that corresponds to their gender identity would make it difficult, if not impossible, for Plaintiffs to maintain their employment or education.

- a) Ex. 21 (Ettner Dep. Tr.) at 24:21–25:2 (“I’ve had people who have been fearful of going to public places because they might have to use a restroom and they fear that they’ll be harassed or they’ll be denied access or assaulted. And . . . I’ve had patients who don’t eat or drink to avoid having to use a restroom.”), 24:9–26:22 (detailing studies showing individuals will avoid situations where bathroom use is required if not allowed to use the bathroom that matches their gender identity), 31:4–32:18 (detailing incidents where a transgender individual and their spouse were harassed to the point where they had to quit their jobs and another where a transgender individual had to quit their job because there was no available restroom).
 - b) Ex. 5 (Reddington Decl.) ¶ 33 (“It is not realistic for me to be in public places, including my office and recreational areas, for a full working day and recreating for several hours without access to bathroom facilities. It would be painful and could lead to infections and other physical harm.”); Ex. 14 (Reddington Dep. Tr.) at 7:20–25 (“I work at a state institution full-time. . . [I]t previously has and would affect where I am and am not allowed to go to the bathroom . . . it affects my very day-to-day of the work life.”).
 - c) Ex. 10 (Perkins Dep. Tr.) at 14:21–15:2 (discussing being harassed when using the restroom while at work in a state office).
 - d) Ex. 4 (Jane Doe Decl.) ¶ 24 (“If I were to continue using the women’s restroom, not only would I be violating HB 121, but I would put my job at risk.”).
54. It is not possible to determine every individual’s “sex” as defined by HB 121 based on their appearance. Ex. 23 (Wright³ Dep. Tr.) at 62:9–19 (Q: “So there’s no way to look at someone and determine with absolute certainty if, for example, they produce sperm. Is that correct?” A: “I would say just by” – MS. LANSING: “Objection to the extent it misstates the testimony. You can answer.” A: “I would say merely glancing at a person, especially if they’re fully clothed, you would not know with absolute certainty the type of gamete that they have the function to produce.”); Ex. 8 (Ettner Decl.) ¶ 31 (“As a result, it is often

³ Colin Wright is a witness for Defendants.

not possible to determine their sex assigned at birth based on appearance alone.”).

55. Defendants are not aware of any medical or scientific bases to support the definition of “female” in HB 121 § 2(4). Ex. 17 (State 30(b)(6) Dep. Tr.) at 178:4–7 (Q: “I’m asking is the State [] aware of the factual basis for the legislature defining female that way?” A: “No.”); Ex. 28, State of Montana Resp. to Pls.’ First Combined Disc. Reqs. (“State Resp.”), Interrog. No. 24; Ex. 30 (Seekins-Crowe Resp.) Interrog. No. 22 (identifying no medical or scientific basis for definition and asserting only that the definition “reaffirms the longstanding common-sense meaning”).
56. The State is not aware of any medical or scientific bases to support the definition of “male” in HB 121 § 2(7). Ex. 17 (State 30(b)(6) Dep. Tr.) at 178:18–21 (Q: “Okay. And is the State aware of any factual basis for the legislature to define [male] that way?” A: “No.”); Ex. 28 (State Resp.) Interrog. No. 25; Ex. 30 (Seekins-Crowe Resp.) Interrog. No. 23 (identifying no medical or scientific basis for definition and asserting only that the definition “reaffirms the longstanding common-sense meaning”).
57. The State is not aware of any medical or scientific bases to support the definition of “sex” in HB 121, § 2(12). Ex. 28 (State Resp.) Interrog. No. 26; Ex. 30 (Seekins-Crowe Resp.) Interrog. No. 24 (identifying no medical or scientific basis for definition and asserting only that the definition “reaffirms the longstanding common-sense meaning”).
58. When transgender people are required to use covered facilities that do not correspond to their gender identity, they fear for their safety.
 - a) Ex. 21 (Ettner Dep. Tr.) at 24:13–24 (“I’ve had [transgender] people who have been fearful of going to public places because they might have to use a restroom and they fear that they’ll be harassed or they’ll be denied access or assaulted . . . ”), 25:3–8 (Q: “And in your understanding, if you know, why would these people avoid using a restroom . . . ” A: “Because they’ve had negative experiences in the past; they’ve been harassed, they’ve been told not to enter, they’ve been denied access to restrooms.”), 25:17–26:22 (“That same study found that 55 percent of people avoided going out, more than 50 percent avoided using a restroom even when they needed to.”).

- b) Ex. 2 (Perkins Decl.) ¶ 8 (“HB 121 would not even give me the option of using the restroom corresponding to my gender identity. I would not feel safe using the men’s restroom. It would be demeaning and uncomfortable, and it would out me as a transgender woman. I’m scared that I would face harassment and maybe even violence.”); Ex. 10 (Perkins Dep. Tr.) at 26:24–27:6 (explaining that she is scared to use the men’s restroom because she is consistently harassed by men).
 - c) Ex. 6 (McDonald Decl.) ¶ 15 (“I would be concerned about my safety and peace if I had to [use the women’s restroom]. I present as a man and if I were to use the women’s restroom, it would cause disruption and expose me to harassment and discrimination.”); Ex. 15 (McDonald Dep. Tr.) at 32:16–17 (“Because women could encounter me and feel startled and could react poorly”), 33:4–23 (describing incident where he was asked to leave a women’s restroom when he was transitioning).
 - d) Ex. 5 (Reddington Decl.) ¶ 23 (“If I were forced to use the men’s multi-stall bathroom, which does not align with my gender identity, I fear that I would have to face the intrusive questions and harassment I received early in my transition. I am also concerned that I would be outed as a transgender woman and experience violence.”), ¶ 32 (“Under HB 121, even if I don’t face formal punishments or consequences for using bathrooms aligned with my gender identity, I fear that doing so will lead to invasive questioning, harassment, and unwanted attention because HB 121 tells the public that I don’t belong there.”); Ex. 14 (Reddington Dep. Tr.) at 17:2–15, 27:8–28:11 (describing being physically threatened and pushed out of the men’s restroom at MSU-Billings).
 - e) Ex. 4 (Jane Doe Decl.) ¶ 23 (“If I were to use the men’s bathroom, as HB 121 requires me to do, it would not only be humiliating, but also dramatically increase the risk that I will face harassment and violence, because I do not live or present as a man.”); Ex. 13 (Jane Doe Dep. Tr.) at 7:15–21, 8:16–20 (describing being disowned by her own family and explaining her fear that harm from strangers would be worse.).
59. Outing a person as transgender increases the risk that they will suffer harm, including harassment, abuse, and physical violence.

- a) Ex. 22, Dep. Tr. of Dr. Cynthia Calkins⁴ (“Calkins Dep. Tr.”) at 66:7–18 (“[M]y read of current research and scholarly conversations and material in the field from everything I’ve read or understand, transgender and intersex individuals are at increased risk of victimization, of psychological victimization, or physical victimization, of sexual assault. And so putting them in a situation where they might be outed or exposed would likely increase that victimization.”).
 - b) Ex. 21 (Ettner Dep. Tr.) at 31:4–32:18 (detailing incident where outing of transgender individual led to harassment of the individual and her husband); Ex. 8 (Ettner Decl.) ¶ 32 (“The involuntary disclosure of an individual’s transgender status also places the individual at greater risk of harassment or abuse.”).
 - c) Ex. 29, Pls.’ Resp. to Intervenor-Def.’s First Combined Disc. Reqs. (“Pls.’ Resp.”), Interrog. No. 10 (In 2016, Reddington was physically threatened in the student union building’s main floor men’s restroom at MSU-Billings, at a time when she was early in her transition and thought it would be less disruptive to use the men’s restroom. An individual in the restroom told her: “Get the fuck out of here. I better never catch you in this bathroom again, or I’m going to beat the shit out of you.” In addition, since sharing her transgender identity publicly, Ms. Reddington regularly receives messages stating, “If I ever catch you using the restroom, I will shoot and kill you” and “I will beat you to death.”).
60. Requiring transgender and intersex individuals to use bathrooms and other covered facilities corresponding to their birth-assigned sex may harm them by making them vulnerable to harassment or violence. Ex. 9, Decl. of Dr. Cynthia Calkins (“Calkins Decl.”), ¶ 34.
61. Transgender and intersex individuals are already at increased risk of physical and sexual victimization compared to cisgender individuals. Ex. 9 (Calkins Decl.) ¶ 31.

⁴ Dr. Cynthia Calkins is a witness for Plaintiffs.

III. Plaintiffs

62. Plaintiffs Casey Perkins, Spencer McDonald, Kasandra Reddington, and Jane Doe are transgender. Ex. 10 (Perkins Dep. Tr.) at 7:21–22; Ex. 15 (McDonald Dep. Tr.) at 28:25–29:3; Ex. 14 (Reddington Dep. Tr.) at 10:1; Ex.13 (Jane Doe Dep. Tr.) at 7:15–16.
63. Plaintiff John Doe is intersex. Ex. 11 (John Doe Dep. Tr.) at 9:5–7.
64. Plaintiff Missoula County operates 115 buildings that are “covered entities” regulated by HB 121. Ex. 7, Decl. of Christian Lounsbury⁵ (“Missoula County Decl.”), ¶ 4.
65. The individual Plaintiffs (Perkins, McDonald, Reddington, Jane Doe, and John Doe) rely on spaces regulated by HB 121 for work, education, recreation, and other activities. Ex. 2 (Perkins Decl.) ¶¶ 3, 9, 11; Ex. 4 (Jane Doe Decl.) ¶¶ 8, 14–16; Ex. 6 (McDonald Decl.) ¶¶ 7–8, 18–19; Ex. 5 (Reddington Decl.) ¶¶ 6–7, 17; Ex. 11 (John Doe Dep. Tr.) at 7:18-21, 8:5–13.
66. The individual Plaintiffs would suffer significant harms if HB 121 were enforced.
 - a) HB 121 would “out” the transgender Plaintiffs as transgender when they enter a covered facility. For example, HB 121 requires Plaintiff McDonald, a transgender man, to use women’s restrooms, even though others are likely to perceive him as a man. Ex. 6 (McDonald Decl.) ¶ 15. Similarly, HB 121 requires Plaintiff Perkins, a transgender woman, to use men’s restrooms, even though others are likely to perceive her as a woman. Ex. 2 (Perkins Decl.) ¶ 8.
 - b) Being outed will expose individual Plaintiffs to harassment, abuse, and violence. Ex. 22 (Calkins Dep. Tr.) at 66:7–15 (“[M]y read of current research and scholarly conversations and material in the field from everything I’ve read or understand, transgender and intersex individuals are at increased risk of victimization, of psychological victimization, of physical victimization, of sexual assault. And so putting them in a situation where they might be outed or exposed would likely increase that victimization.”); Ex. 9 (Calkins Decl.)

⁵ Christian Lounsbury is the Chief Administrative Officer of Missoula County and submitted his declaration as a representative of the County.

¶ 34; Ex. 29 (Pls.’ Resp.) Interrog. No. 10 (listing past instances of Plaintiffs being threatened and harassed in restrooms).

c) Plaintiff John Doe, who is intersex, does not know whether he can use any covered facilities at all because he is neither “male” nor “female” under HB 121’s definitions. Ex. 3 (John Doe Decl.) ¶ 31 (“I want to follow Montana law, but medical science defines me as intersex, and I simply have no idea how I can follow HB 121 when I do not fit into its binary gender definitions.”); Ex. 11 (John Doe Dep. Tr.) at 14:24–15:13 (explaining why he does not fit into HB 121’s definitions of “female” or “male”).

67. Because it is uncomfortable, humiliating, and potentially dangerous for Plaintiffs to use covered facilities inconsistent with their gender identity, they will avoid spending time in public spaces to avoid being forced to use such facilities. *E.g.*, Ex. 2 (Perkins Decl.) ¶¶ 12–13; Ex. 6 (McDonald Decl.) ¶¶ 17–19; Ex. 5 (Reddington Decl.) ¶¶ 28–30; Ex. 4 (Jane Doe Decl.) ¶¶ 25–26.

IV. Discrimination Against Transgender People

68. Transgender people in the United States experience “[p]ervasive” discrimination, “mistreatment, harassment, and violence in every aspect of life.” S.E. James, et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality, 4 (2016), available at <https://perma.cc/7CTQ-GV8Z> (“Transgender Survey”) (extensive survey of 27,715 transgender people throughout the country).

69. Transgender people face “disturbing patterns of mistreatment and discrimination and startling disparities” compared to the rest of the population “when it comes to the most basic elements of life, such as finding a job, having a place to live, accessing medical care, and enjoying the support of family and community.” *Transgender Survey* at 4. For example, within the year prior to the survey, transgender people experienced discrimination or mistreatment because of their gender identity at disproportionately high rates in schools (77%), places of public accommodation (31%), medical settings (33%), the workplace (23%), and housing (23%). *Id.* at 10–16.

70. Transgender people are also victims of harassment as well as outright physical assault and violence at disproportionate rates. For example,

within the year prior to the survey, almost half (46%) of transgender people were verbally harassed, nearly one in ten (9%) were physically attacked, and one in ten (10%) were sexually assaulted. Transgender Survey at 15.

71. Restrooms are a particularly fraught setting for transgender people. 12% of transgender people were verbally harassed, 1% were physically attacked, and 1% were sexually assaulted when accessing or using a restroom in the past year; 59% had avoided using a public restroom within the past year for fear of being targeted; 32% limited the amount they ate or drank to avoid having to use the restroom; and 8% had a urinary tract infection or kidney-related problem as a result of avoiding restroom use. Transgender Survey at 16–17.
72. Transgender people face barriers to political representation. *See* Philip E. Jones, et al., *Explaining Public Opinion Toward Transgender People, Rights, and Candidates*, 82 Pub. Opinion Q., May 2018, at 252, 265, <https://academic.oup.com/poq/article/82/2/252/4996117> (in randomized experiment, nominating a transgender candidate reduced proportion of respondents who would vote for their own party’s candidate from 68 percent to 37 percent).
73. In the rare instances when transgender politicians are elected, they encounter harassment and discrimination, as the experience of Representative Zooey Zephyr, the first transgender woman to hold public office in Montana, illustrates. *See, e.g.*, H.R.J. Res. 1, 2025 Leg., 69th Sess. (Mont. 2025) 10–75, *available at* <https://perma.cc/4LXK-JUBG> (resolution introduced shortly after Zephyr’s election seeking to bar transgender legislators from using legislative restrooms consistent with their gender identity).
74. The poverty rate among transgender people (29%) is more than double that of the general U.S. population (12%), the unemployment rate among transgender people (15%) is three times higher than the general rate (5%), and 30% of transgender people have experienced homelessness. Transgender Survey at 12–13.
75. The federal executive branch has taken many actions targeting transgender people.

- a) For example, the federal administration took dozens of executive actions against transgender people between 2017 and 2020. *See The Discrimination Administration: Trump’s Onslaught Against LGBTQ Rights and the Safety of the Trans Community*, National Center for Transgender Equality, <https://transequality.org/the-discrimination-administration> (last visited March 31, 2026) (cataloging executive actions).
- b) More recently, within the first ten days of his second presidency, Donald Trump issued a series of executive orders (1) prohibiting the federal government from supporting gender-affirming medical treatment for transgender youth and describing such care as “a stain on our Nation’s history,” Exec. Order No. 14187, 90 Fed. Reg. 8771, § 1 (Jan. 28, 2025), *available at* <https://perma.cc/JC9V-5TM2>; (2) banning transgender people from serving in the military, Exec. Order No. 14183, 90 Fed. Reg. 8757, § 1 (Jan. 27, 2025), *available at* <https://perma.cc/ADZ4-XX2P>; and (3) restricting purported “indoctrination” concerning “gender ideology” in schools and describing the recognition of transgender identities as “anti-American, subversive, harmful, and false,” Exec. Order No. 14190, 90 Fed. Reg. 8853, §§ 1–3 (Jan. 29, 2025), *available at* <https://perma.cc/6PP4-3GLH>.

V. HB 121’s Invasion of Plaintiffs’ Privacy Rights

76. Plaintiffs have an actual, subjective expectation that they will be allowed to use covered facilities that align with their gender identity without state interference. *E.g.*, Ex. 5 (Reddington Decl.) ¶ 11 (“I use the women’s restroom, which aligns with my gender identity. Doing so allows me to attend to my personal with privacy and dignity.”), ¶ 19 (“I expect and value my privacy while using restroom facilities in public spaces.”); Ex. 14 (Reddington Dep. Tr.) at 5:24–6:1 (“I believe that everybody deserves their personal freedom and privacy to use the restroom that best fits their . . . expression and identity.”); Ex. 6 (McDonald Decl.) ¶13 (“I use the multi-stall restrooms designated for men [in a previous workplace], because they align with my gender identity.”); Ex. 3 (John Doe Decl.) ¶ 11 (“I expect and value my privacy while using restroom facilities in public spaces.”); Ex. 4 (Jane Doe Decl.) ¶ 11 (“I use the women’s bathroom because it aligns with my gender identity and doing so protects my privacy and dignity.”).

77. Plaintiffs have an actual, subjective expectation that their transgender or intersex status will remain private and not be disclosed without their consent. *E.g.*, Ex. 8 (Ettner Decl.) ¶ 32 (stating that outing an individual’s transgender status “constitutes a significant invasion of privacy and may implicitly reveal sensitive medical information about the individual.”); Ex. 21 (Ettner Dep. Tr.) at 33:2–9 (“[T]he impact of a person who lives in one gender having to use the restroom of another gender immediately reveals that they’re transgender, and that’s an invasion of privacy . . . That’s giving information that a person hasn’t voluntarily disclosed. They no longer have stewardship over that private information.”); Ex. 6 (McDonald Decl.) ¶ 6 (“My status as a transgender man is something that I consider private.”); Ex. 4 (Jane Doe Decl.) ¶ 19 (“My transgender identity is private and personal to me.”); Ex. 3 (John Doe Decl.) ¶ 9 (“My status as an intersex person is a private and personal piece of information and my gender identity is a private and personal decision.”).
78. Any lawsuit filed under HB 121 § 4(1) and (2) will necessarily involve public court proceedings to determine an individual’s “sex.” Ex. 18 (Seekins-Crowe Dep. Tr.) at 228:7–14 (Q: “The court would also need to determine the actual sex of the person who was using the bathroom. Correct?” [] A: “Yes.”); *see* Op. and Ord. Granting Pls.’ Mot. For Prelim. Inj., Doc. 25 (“PI Op.”) at 42 (“Assuming a trans woman uses a female bathroom and an offended individual files suit, a key fact in the lawsuit will be the sex (at birth) of the trans woman.”).
79. Determining an individual’s “sex” as defined by HB 121 would be part of any lawsuits under HB 121, § 4(1) and (2) and would require invasive testing, such as biopsies, ultrasounds, and blood testing.
- a) Ex. 23 (Wright Dep. Tr.) at 110:17–111:7 (Q: “And how would you determine what type of gonads they have?” A: “Ultimately, you could do a certain biopsy, you could do an ultrasound, potentially, to find out what gametes they have.”).
- b) Ex. 18 (Seekins-Crowe Dep. Tr.) at 223:2–8 (Q: “And how would you verify in a lawsuit that that is a person who is assigned male at birth or . . . how would you verify the gender identity of that individual?” A: “Well, these days they can verify gender identity by a blood test.”).

VI. HB 121's Vagueness

A. HB 121's Lack of Guidance to Regulated Entities

80. HB 121 requires covered entities to take “reasonable steps” to ensure that only individuals whose “sex” corresponds to the sex designation of a covered facility are permitted to use that facility. Ex. 1 (HB 121) §§ 3(2)–(3), 4(1); Ex. 17 (State 30(b)(6) Dep. Tr.) at 165:11–165:15.
81. HB 121 does not define or explain what constitutes “reasonable steps” for compliance. *See generally* Ex. 1 (HB 121).
82. HB 121 allows individuals to sue a covered entity if it “provided . . . permission” to another individual to use a covered facility designated for a sex that does not correspond to that individual’s “sex.” Ex. 1 (HB 121) § 4.
83. HB 121 does not explain what it means for a covered entity to provide an individual “permission” to use a covered facility. *See generally* Ex. 1 (HB 121).
84. The State testified that it is “up to the covered entity” to determine how to enforce HB 121 and that the State “is not aware” of what a covered entity would need to do to comply with HB 121. Ex. 17 (State 30(b)(6) Dep. Tr.) at 165:16–166:9 (Q: “How would a covered entity ensure that someone is not entering a restroom designated for someone of the opposite sex?” A: “That’s really up to the covered entity. They’d have to decide how to enforce it.” Q: “So does the State have any knowledge of how a covered entity would be required to enforce it?” A: “I’m not aware.” Q: “You’re not aware, but is the—is the State aware of what covered entities would need to do?” A: “The State is not aware.”).
85. The State has provided no guidance or other information to covered entities regarding how to comply with HB 121 or how the State will enforce the law. Ex. 17 (State 30(b)(6) Dep. Tr.) at 47:15–25 (stating that there were no communications in which the State has shared information concerning the enforcement of HB 121), 54:18–21 (testifying that the deponent was not aware of any explanatory documents regarding HB 121); Ex. 26 (State RFA) No. 35; Ex. 28 (State Resp.) RFP Nos. 12, 13 (no communications or documents between the State and covered entities regarding HB 121 exist).

86. The State has not exchanged any communications, information, or data with any person regarding how HB 121 will be enforced against covered entities. Ex. 28 (State Resp.) Interrog. Nos. 16, 17.
87. Representative Seekins-Crowe, the primary sponsor of HB 121, cannot explain what “reasonable steps” means in the law and would “leave it to the court to determine” that meaning. Ex. 18 (Seekins-Crowe Dep. Tr.) at 228:3–6.
88. During legislative hearings on HB 121, regulated entities, including Plaintiff Missoula County, testified regarding the bill’s lack of clarity on what regulated entities must do to comply with its requirements.
- a) Ex. 16, Deposition of Missoula County Representative (Missoula County 30(b)(6) Dep. Tr.) at 12:9–14 (“[Missoula County’s] written testimony addressed concerns related to the County related to our inability to implement the bill, the lack of clarity around—of the provisions of the bill and the impact that it could have to both employees and members of the public accessing our facilities . . .”).
- b) Jen Hensley, a representative of Missoula County, testified: “We are concerned because HB 121 creates a new cause of action against both public and private entities based on perception rather than facts, evidence, or other objective criteria. The use of perception as a basis for a cause of action leaves both private and public entities at serious risk of frivolous lawsuits aimed at advancing a social or political agenda . . . we’re concerned about the cost of this.” *Hearing on HB 121 Before the H. Judiciary Comm.*, 2025 Leg., 69th Sess. (Mont. 2025), 09:25:21–09:25:44; 09:25:59–09:26:06, available at <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250110/-1/54913>.
- c) Jennifer Olson, a representative of the Montana League of Cities and Towns, testified: “[I]n this bill, the lack of clear definition regarding [] that reasonableness and reasonable steps is unclear as to how our cities and the staff that would be responsible for maintaining those facilities and operating and running those facilities would have to comply and comport with these requirements” *Id.* at 10:55:21–10:44:49. Ms. Olson also testified: “The onus is on the public agency to take reasonable steps to provide privacy for members of the opposite sex in restrooms, changing rooms, or sleeping rooms. . .

“There is no language to further explain or define the term[] ‘reasonable steps’ or what ‘reasonable steps’ could or should be taken to meet this term listed under Section 3, Subsection 3. . “The liability for the public agency is broad.” *Id.* at 09:12:04–09:13:38.

89. Missoula County is responsible for 115 “covered entities” regulated by HB 121. Approximately half of these covered entities have multi-occupancy restrooms, including the buildings that are most used by the public. Ex. 7 (Missoula County Decl.) ¶ 4.
90. Missoula County does not know how to comply with HB 121 and is unable to properly assess the risk that it will be deemed to be non-compliant. Ex. 7 (Missoula County Decl.) ¶ 7.
91. Missoula County is concerned that following HB 121 will put the County out of compliance with other laws and regulations, including the Prison Rape Elimination Act and the Americans with Disabilities Act. Ex. 7 (Missoula County Decl.) ¶¶ 8–11.
92. Missoula County faces potentially significant litigation and liability—including the risk of damages and the certainty of increased legal fees—under HB 121 § 4 for alleged non-compliance. Ex. 7 (Missoula County Decl.) ¶¶ 12–13.
93. Missoula County employs transgender individuals. Ex. 7 (Missoula County Decl.) ¶ 15.
94. Missoula County is concerned that compliance with HB 121 will inflict harm on the County’s transgender employees, including increased risks of harassment, abuse, and physical violence. These harms not only undermine the employees’ dignity and wellbeing but will also make it more difficult for Missoula County to retain, support, and hire transgender individuals. Ex. 7 (Missoula County Decl.) ¶ 15.

B. HB 121’s Failure to Account for Intersex People

95. Some intersex people cannot be categorized as “male” or “female” under HB 121’s definition of those terms. Ex. 23 (Wright Dep. Tr.) at 63:16–18 (“[I]t is possible for an individual to not have the function to produce a gamete.”), 65:17 (“[S]ome people may not have a sex.”), 114:4–5 (“Some people are—are perhaps not male or female.”), 115:21–24 (Q: “And those individuals can’t be, according to your

definition of sex, identified as male or female. Correct?” A: “Correct.”); Ex. 8 Ettner Decl. ¶¶ 34–35 (“I have reviewed HB 121’s definition of ‘male’ and ‘female’ Some individuals would fall under neither definition.”).

96. The State does not know which covered facilities intersex individuals must use under HB 121. Ex. 17 (State 30(b)(6) Dep. Tr.) at 186:24–187:1 (“I’m not a biologist. I don’t know about intersex people or what bathroom they would use.”).
97. Intersex individuals cannot determine which bathroom they must use under HB 121. Ex. 3 (John Doe Decl.) ¶ 15 (“Under HB 121, I am not sure if I could continue to use the men’s restrooms at the Montana Public Library. In fact, I am not sure if I can use any gender-designated restrooms at all, because I do not conform to the law’s definition of either ‘female’ or ‘male.’”), ¶ 31 (“I want to follow Montana law, but medical science defines me as intersex, and I simply have no idea how I can follow HB 121 when I do not fit into its binary gender definitions.”).
98. John Doe has de La Chapelle syndrome, also known as 44,XX SRY-positive. This means he has XX chromosomes but phenotypically expresses as male. Ex. 11 (John Doe Dep. Tr.) at 9:9–11, 15:24–16:1.
99. John Doe was born with both male genitalia and breast tissue; he produces no gametes and lacks the ability to produce sperm. Ex. 11 (John Doe Dep. Tr.) at 15:14–22; Ex. 3 (John Doe Decl.) ¶ 5.
100. John Doe does not know which covered facilities he is permitted to use under HB 121. *E.g.* Ex. 11 (John Doe. Dep. Tr.) at 14:24–15:13 (explaining why he does not fit into HB 121’s definitions of “female” or “male”), 27:6–16 (“Well, the problem is, is that I don’t know if I’m supposed to be in the men’s room. As this law is written, I’m not supposed to be there, but I’m also not supposed to be in the women’s restroom, so I don’t know where I’m supposed to go”), 28:17–22 (“I don’t know which restroom I’m supposed to use, so if I go off of my chromosomes, I’m going to be in the women’s restroom, and I can definitely anticipate being harassed and potentially physically interacted with in a way that would make me fear for my safety.”).

VII. The State’s Justifications for HB 121

A. The State’s Purported Interests in HB 121

101. The only interests that HB 121 purports to serve are (1) protecting women’s safety and privacy in covered facilities; and (2) reaffirming “the longstanding meanings” of “sex,” “male,” and “female.” Ex. 30 (Seekins-Crowe Resp.) Interrog. No. 25; Ex. 17 (State 30(b)(6) Tr.) at 57:19–58:5 (stating that the State’s interests are what is listed in the purpose section of HB 121).
102. Representative Seekins-Crowe’s interests in HB 121 do not differ from the State’s purported interests. Ex. 18 (Seekins-Crowe Dep. Tr.) at 14:9–16.

B. Defendants’ Lack of Evidence that HB 121 Advances Its Purported Interests

103. Being transgender does not make a person more dangerous. Ex. 25, Dep. Tr. of Amie Ichikawa⁶ (“Ichikawa Dep. Tr.”), at 54:18–24 (stating that being transgender does not in and of itself make a person more dangerous than a cisgender woman).
104. There were no reported instances of a transgender or intersex person abusing, harassing, sexually assaulting or perpetrating violence in a covered facility in Montana prior to the enactment of HB 121. Ex. 26 (State RFA) Nos. 27–28; Ex. 31 (State 3rd RFA) Nos. 70–71; Ex. 28 (State Resp.) Interrog. No. 11; Ex. 30 (Seekins-Crowe Resp.) Interrog. No. 12 (“Seekins-Crowe is not aware of any such instances occurring in a facility in Montana . . .”), RFA Nos. 28–29 (admitting same).
105. In enacting HB 121, “the Legislature provided no evidence of privacy or safety offenses in covered facilities in Montana” or evidence that “transgender or intersex people have a predisposition toward’ privacy or safety offenses.” Defs.’ Opp. to Pls.’ Mot. for Prelim. Inj., Doc. 16 at 36–37.
106. There are no peer-reviewed studies or scientific data to support the Defendants’ contention that HB121 will protect women’s privacy and safety. Ex. 28 (State Resp.) Interrog. No. 14; Ex. 17 (State 30(b)(6)

⁶ Amie Ichikawa is a witness for Defendants.

Dep. Tr.) at 76:17–77:15 (stating that the State is not aware of any evidence or research that HB 121 reduces the number of criminal offenses occurring in covered facilities), 98:6–98:9 (Q: “Is the State aware of any research or data that supports that HB 121 is more effective at protecting women’s privacy than existing law?” A: “The State is not aware.”); Ex. 9 (Calkins Decl.) ¶ 29 (“There is no evidentiary support that imposing restrictions on bathroom access for transgender people . . . will reduce the incidence of sexual offenses.”); *see also* Ex. 17 (State 30(b)(6) Dep. Tr.) at 57:9–15 (The State did not rely upon any research, statistics, or data of any kind when evaluating HB 121.).

107. To the contrary, the empirical evidence shows that allowing transgender people to use restrooms corresponding to their gender identity does not undermine safety. *See* Susan Hazeldean, *Privacy As Pretext*, 104 Cornell L. Rev. 1719, 1731–32 (2019) (“Twenty-one states, the District of Columbia, and more than 200 cities and counties have adopted nondiscrimination laws allowing transgender people to access sex-segregated facilities that accord with their gender identity,” and “there have not been reports of sexual assaults in bathrooms as a result.”); Amira Hasenbush, Andrew R. Flores & Jody L. Herman, *Gender Identity Nondiscrimination Laws in Public Accommodations: A Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms*, 16 Sexuality Rsch. & Soc. Pol’y 70, 80 (2019) (empirical survey “found no evidence that privacy and safety in public restrooms changed as a result of the passage” of “gender identity nondiscrimination ordinances for public accommodations.”).
108. The State has no data to indicate that transgender or intersex people pose a safety risk in covered facilities in Montana. Ex. 28 (State Resp.) Interrog. Nos. 11–12, RFP No. 15 (representing that the State has no data or research that indicates cisgender people face greater safety risks in restrooms as a result of transgender and intersex persons using the restrooms that correspond with their gender identity).
109. The only information the State has provided that could relate to the rates at which transgender individuals pose a safety risk comes from anonymous authors or unknown sources. *See* Ex. 28 (State Resp.) Interrog. No. 12 (citing a Substack article from an anonymous author that claims to analyze the rate at which transgender women are sex offenders); Ex. 25 (Ichikawa Dep. Tr.) at 135:18–137:15 (discussing an

unknown woman's FOIA request to the California Department of Corrections allegedly regarding the number of trans women transferring to women's prisons in California who are sex offenders) (Q: "Okay. Who was the woman who sent in that request?" A: "Not me."), 137:12–15 (Q: "But you don't know who submitted that FOIA request; is that correct?" A: "I just know what website it's on."), 147:10–13 ("So the data you're relying upon was from a FOIA request submitted by somebody else?" A: "Yes.").

- a) The State admits it does not know if the cited information is accurate. Ex. 25 (Ichikawa Dep. Tr.) at 138:18–21 ("Have I been able to personally attain the exact same information that was attained in that first initial FOIA request that was submitted by somebody else, no."), 139:18–20 (Q: "Do you know if the information that was on that link had been altered from the result of the FOIA request that was submitted?" A: "I – I don't."), 148:7–11 (Q: "And have you been able to personally verify that the information in the FOIA request is accurate?" A: "No, but I have no reason to believe that it's not.").
- b) Furthermore, the State's purported evidence does not relate to violent acts in covered facilities and may not relate to violent acts at all. Ex. 25 (Ichikawa Dep. Tr.) at 141:5–145:7 (Ichikawa testifying that she does not know what percentage of the inmates who are alleged sex offenders are housed in a woman's prison), 146:12–14 (Q: "Do you know what percentage of those individuals committed any particular crime?" A: "No.").

110. There is no evidence that transgender people commit sex crimes at higher rates than cisgender people.

- a) Ex. 9 (Calkins Decl.) ¶ 29 ("There are no empirical data to suggest that transgender people commit sex crimes at a rate higher than that of cisgender people. Thus, there is no evidentiary support for the claim that imposing restrictions on bathroom access for transgender people that do not apply to cisgender people will reduce the incidence of sexual offenses.").
- b) The FBI statistics that Defendants cite regarding the rates at which men and women commit violent crimes and "criminal sexual conduct" do not provide any evidence relating to the rates at which

transgender people commit crimes. *See* Defs.’ Opp. to Pls.’ Mot. Prelim. Inj., Doc. 16 at 31–32 (citing statistics); PI Op., Doc. 25 at 34 (finding that “these statistics do not distinguish between cis male and transgender female offenders”).

- c) The State provided no evidence that transgender women commit violent offenses at higher rates than cisgender people. Ex. 17 (State 30(b)(6) Dep. Tr.) at 82:6–11 (stating that any such evidence “wouldn’t be relevant” given the State’s contention that “this bill has nothing to do with trans people”); *see also id.* at 57:9–15 (The State did not rely upon any research, statistics, or data of any kind when evaluating HB 121.); *see also* PI Op., Doc. 25 at 34 (“The State does not provide evidence of trans[gender] females committing these offenses.”).
- d) The State is unaware of any literature that indicates transgender women are committing sexual offenses. Ex. 24, Dep. Tr. of Dr. Geeta Nangia (“Nangia Dep. Tr.”)⁷ at 105:4–8.
- e) The State is unaware of any statistics regarding the sexual assault of women and girls by transgender women. Ex. 24 (Nangia Dep. Tr.) at 105:4–7, 105:14–17.

111. The State has no evidence that men feign being transgender women in order to victimize women in public restrooms. Ex. 24 (Nangia Dep. Tr.) at 80:19–81:2, 81:3–11; Ex. 28 (State Resp.) RFP No. 9 (representing that the State has no documents concerning cisgender people committing offenses in covered facilities); *see also* Ex. 17 (State 30(b)(6) Dep. Tr.) at 57:9–15 (The State did not rely upon any research, statistics, or data of any kind when evaluating HB 121.).

112. The State has no data or statistics regarding how often transgender women commit offenses when housed in women’s prisons. Ex. 25 (Ichikawa Dep. Tr.) at 150:3–6 (Q: “Have you seen any data or reports on the offense rates of these individuals after they transfer?” A: “They don’t exist.”), 149:14–150:2 (testifying that the only basis for her belief that transgender men commit violence at higher rates than “the general women’s prison population” is that men in general commit violent acts at a higher rate); Ex. 17 (State 30(b)(6) Dep. Tr.) at 100:24–101:7

⁷ Geeta Nangia is a witness for the Defendants.

(stating that the Department of Corrections has no “information regarding how many offenses were committed by transgender individuals”).

113. The State has no statistics regarding the offense rate of transgender prisoners in Montana. Ex. 17 (State 30(b)(6) Dep. Tr.) at 100:24–101:7 (Q: “What was your response regarding to whether or not the State was aware of acts of violence – or violence, abuse, sexual harassment, et cetera, that were – occurred in correctional facility?” A: “So the Department of Corrections doesn’t categorize its inmates based off of transgender status. It bases their inmates based off of their biological sex. So there is no data that’s tracked.”), 101:14–17 (Q: “So they don’t have information regarding how many offenses were committed by transgender individuals?” A: “They don’t have statistics on it.”).
114. The State has no data showing that men have lied about their gender identity to enter women’s prisons. Ex. 25 (Ichikawa Dep. Tr.) at 158:9–12 (Q: “And have you seen any data or research on this point about the genuineness of people’s transgender identity?” A: “There is no such thing.”).
115. Transgender women can safely be housed with cisgender women in correctional facilities. Ex. 25 (Ichikawa Dep. Tr.) at 37:10–16 (Q: “And so if there’s a transgender woman who has completed sexual reassignment surgery and they have no criminal history of violence, you would think it is safe for women to be in—women do not need a separate space from that individual, is that correct, in your opinion?” A: “For the most part, yes. Yes.”).
116. The admission of transgender women into women’s prisons can be based on a case-by-case evaluation of an individual’s criminal history, behavior in prison and stage of transition. Ex. 25 (Ichikawa Dep. Tr.) at 37:3–23 (“That’s why things really have to be evaluated on a case-by-case basis”), 40:23–41:1(Q: “Do you support using a case-by-case analysis for transgender placement?” A: “I do.”).
117. Defendants’ only witness to opine about transgender women in prisons has no opinion as to whether the Montana Department of Correction’s current policy of making offender housing decisions on a case-by-case basis is sufficient to protect women in Montana’s prisons. Ex. 25 (Ichikawa Dep. Tr.) at 149:21–151:5.

118. HB 121 has not changed how the State houses inmates in covered correctional facilities. Ex. 17 (State 30(b)(6) Dep. Tr.) at 169:17–22 (Q: “And the State is not aware of how it itself would comply with House Bill 121 with regard to covered entities?” A: “I mean, the correctional facilities are already designating people based off of biological sex. I—I don’t think anything is really changing.”).
119. The State has no evidence that a transgender woman has ever been housed in a Montana state prison. Ex. 25 (Ichikawa Dep. Tr.) at 154:24–155:3 (Q: “Do you know if there’s ever been an individual who was identified as male at birth who has been placed in a women’s prison in Montana?” A: “I do not know, so . . .”).

C. Existing Montana Laws Criminalize the Misconduct HB 121 Purports to Address

120. Prior to HB 121’s enactment, it was already unlawful for any person to harass another person in a covered facility under Montana law. Ex. 17 (State 30(b)(6) Dep. Tr.) at 64:20–22.
121. Prior to HB 121’s enactment, it was already unlawful for any person to sexually assault another person in a covered facility under Montana law. Ex. 26 (State RFA) No. 25; Ex. 17 (State 30(b)(6) Dep. Tr.) at 66:12–15.
122. Prior to HB 121’s enactment, it was already unlawful for any person to abuse another person in a covered facility under Montana law. Ex. 17 (State 30(b)(6) Dep. Tr.) at 63:15–17.

D. Defendants’ Failure to Consider the Harms HB 121 Would Inflict on Transgender and Intersex People

123. The State did not evaluate the potential impact of HB121 on the safety, privacy, and wellbeing of transgender individuals. Ex. 28 (State Resp.) RFP No. 6 (State has no documents relating to the potential impact of HB 121 on the safety, privacy, and well-being of transgender people).
124. The State did not evaluate the potential impact of HB121 on the safety, privacy, and wellbeing of intersex individuals. Ex. 28 (State Resp.) RFP No. 7 (State has no documents relating to the potential impact of HB 121 on the safety, privacy, and well-being of intersex people).

125. Other than the statements of bill opponents or proponents at the legislative hearings on HB 121, the Legislature did not review or rely upon any research, data, reports, publications, testimony, legislative testimony, or committee comment in determining the impact of HB121 on the safety, privacy, and wellbeing of transgender and intersex people. Ex. 30 (Seekins-Crowe Resp.) Interrog. No. 14 (admitting that “Seekins-Crowe is presently unaware of any [such] research, data, reports, publications, testimony, legislative testimony, committee comment, or other documents”); Ex. 28 (State Resp.) Interrog. No. 13 (State has no information regarding any discussion of or research regarding the potential impact of HB 121 on the safety, privacy, and well-being of transgender and intersex people).
126. In evaluating the impact of HB121, the State did not investigate, consider, or evaluate the public health consequences of denying transgender individuals access to facilities that correspond with their gender identity. Ex. 28 (State Resp.) RFP No. 4; Ex. 17 (State 30(b)(6) Dep. Tr.) at 140:2–140:5 (Q: “So your testimony is the State has not done any research on to the impact of HB 121 on transgender individuals?” A: “That is correct.”), 140:12–14 (Q: “Is the State aware of any information on the impact of the bill on transgender individuals?” A: “No, it is not.”), 141:22–142:1 (testifying that the State was not aware of any investigation into the impact of HB 121 on transgender individuals).
127. In evaluating the impact of HB 121, the State did not investigate, consider, or evaluate the public health consequences of denying intersex individuals access to facilities that correspond with their gender identity. Ex. 28 (State Resp.) RFP No. 5; Ex. 17 (State 30(b)(6) Dep. Tr.) at 140:15–19 (Q: “Is the State aware of any data regarding the impact of this bill on intersex individuals?” A: “Again, intersex is not listed in the bill. The State is not aware of any.”), 141:3–10 (testifying that the State is not aware of any meetings regarding the potential impacts of HB 121 on safety, privacy and well-being of intersex individuals).
128. Representative Seekins-Crowe did not evaluate the public health consequences of denying transgender and intersex persons access to facilities that correspond with their gender identity. Ex. 30 (Seekins-Crowe Resp.) RFP Nos. 4, 8, 9 (Seekins-Crowe had no responsive documents on this topic).

129. Representative Seekins-Crowe did not evaluate the potential impact of HB121 on the safety, privacy, and well-being of transgender and intersex persons. Ex. 30 (Seekins-Crowe Resp.) RFP Nos. 5, 16 (Seekins-Crowe had no responsive documents on this topic).

CERTIFICATE OF SERVICE

I, Robin Michelle Turner, hereby certify that I have served true and accurate copies of the foregoing Report to the Court - Report to the Court to the following on 04-03-2026:

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Dated: 04-03-2026