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IN THE THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF YELLOWSTONE

AMELIA MARQUEZ, an individual;)
and JOHN DOE, an individual;)
)
Plaintiffs,)

v.)

STATE OF MONTANA; GREGORY)
GIANFORTE, in his official capacity as)
the Governor of the State of Montana;)
the MONTANA DEPARTMENT OF)
PUBLIC HEALTH AND HUMAN)
SERVICES; and ADAM MEIER, in his)
official capacity as the Director of the)
Montana Department of Public Health)
and Human Services,)

Defendants.)
)
)
)

Case No. DV 21-00873

Hon. Michael G. Moses

PLAINTIFFS' BRIEF IN SUPPORT OF
UNOPPOSED MOTION FOR LEAVE TO
AMEND COMPLAINT

42

DEPUTY

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IN THE 13TH JUDICIAL DISTRICT COURT
COUNTY OF YELLOWSTONE

AMELIA MARQUEZ, an individual;)
and JOHN DOE, an individual,)
)
Plaintiffs,)

v.)

STATE OF MONTANA; GREGORY)
GIANFORTE, in his official capacity as)
the Governor of the State of Montana;)
the MONTANA DEPARTMENT OF)
PUBLIC HEALTH AND HUMAN)
SERVICES; and ADAM MEIER, in his)
official capacity as the Director of the)
Montana Department of Public Health)
and Human Services,)
Defendants.)

Case No. DV 21-00873

Hon. Michael G. Moses

AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

Plaintiffs Amelia Marquez (“Ms. Marquez”) and John Doe (“Mr. Doe”) (together, “Plaintiffs”), through their undersigned attorneys, complain against the State of Montana; its governor, Gregory Gianforte, in his official capacity (“Governor Gianforte”); the Montana Department of Health and Human Services (“DPHHS”); and DPHHS’s director, Adam Meier, in his official capacity (“Director Meier”) (collectively, “Defendants”), as set forth below.

INTRODUCTION

1. This is an action for declaratory and injunctive relief against Defendants arising out of a law that makes it difficult, if not impossible, for transgender Montanans to correct the sex designation on their birth certificates to conform to their gender. Senate Bill 280 (the “Act”) was one of three bills targeting this vulnerable group that was put forward during the 67th regular Montana legislative session, and one of two that passed. Without any justification, much less a compelling or important state interest, the Montana State Legislature (the “Legislature”) adopted the Act, and Governor Gianforte signed it into law.

2. The Act is administered by Director Meier and DPHHS and restricts the ability of transgender people to change the sex designation on their birth certificates by requiring any transgender person who seeks to amend their sex designation to undergo gender-affirming surgery and initiate a legal proceeding to prove that they have completed the surgery.

3. The Act does not describe what evidence is sufficient to satisfy its requirements. Nor does it describe the nature of the surgery required to comply with the Act.

4. The Act invades the privacy of transgender Montanans. An individual’s gender identity and medical treatment are intensely personal and private. The Act requires public review of a person’s gender identity and medical treatment in order to amend an important government

document. The Act would require Plaintiffs to submit private information, including medical records, to a judge in order to obtain a court order in accordance with the Act.

5. Once a court order is entered, a transgender applicant must submit an application to the appropriate authorities at DPHHS in order to amend the sex designation on their birth certificate.

6. Only transgender applicants who seek to conform the sex designation on their birth certificates to their gender identity are subject to the medical-intervention and court-order requirements of the Act. There are no medical, economic, or other exceptions to the Act's requirements.

7. Not all transgender people are able to undergo the gender-affirming surgery the Act compels. For some, the surgery is not medically necessary, while for others it is medically contraindicated. Others do not have health-insurance coverage for, or cannot otherwise afford the cost of the surgery. Others cannot take off time from work for the surgery.

8. The Act was created to marginalize transgender people. It was one of several 2021 legislative efforts that actively aimed to discriminate against transgender people. It is unconstitutional.

JURISDICTION AND VENUE

9. Original jurisdiction is conferred on this Court through Article VII, Section 4, of the Montana Constitution and § 3-5-302, MCA.

10. This Court has jurisdiction to grant declaratory relief under the Montana Uniform Declaratory Judgments Act. §§ 27-8-201, -202, MCA; M. R. Civ. P. 57.

11. This Court has jurisdiction to grant injunctive relief under § 27-19-101 *et seq.*, MCA.

12. Pursuant to § 25-2-126, MCA, venue is proper in Yellowstone County because suit may be brought in the county where any one of the individual plaintiffs resides. Plaintiff Amelia Marquez is a resident of Yellowstone County.

13. On July 22, 2021, Plaintiffs filed complaints with the Montana Human Rights Bureau (“MHRB”) challenging the Act on the grounds that it violates Article II, Paragraphs 3, 4, 10, and 17 of the Montana Constitution, as well as the Montana Human Rights Act (“MHRA”), the Governmental Code of Fair Practices (the “Code”), and the Fourteenth Amendment to the United States Constitution.

14. On November 3, 2021, the MHRB “dismissed [the complaints] from th[e] administrative process.” The MHRB concluded that the “gravamen” of the complaints was a challenge to the constitutionality of Act and that the MHRB lacked authority to decide constitutional questions. The MHRB noted that “[i]t is well settled that [c]onstitutional questions are properly decided by a judicial body, not an administrative official, under the principle of separation of powers.”

15. The MHRB authorized Plaintiffs to prosecute their challenges to the Act before the district court, concluding that “the charging part[ies] may pursue the complaint[s] in district court.”

16. A true and correct copy of the November 3, 2021, letter and attachments from the MHRB addressing Ms. Marquez’s complaint is attached as Exhibit 1.

17. A true and correct copy of the November 3, 2021, letter and attachments from the MHRB addressing Mr. Doe’s complaint is attached as Exhibit 2.

18. Exhibit 1 and Exhibit 2 each incorporates by reference a Final Investigative Report that sets forth the bases for the MHRB’s conclusions with respect to Ms. Marquez and Mr. Doe.

PARTIES

Plaintiffs

19. Ms. Marquez is a woman who was born in Montana and currently resides in Billings, Montana. Ms. Marquez is transgender and wishes to correct her Montana birth certificate, which incorrectly indicates that she is male. She has lived and worked in Montana her entire adult life. For most of her adult life, Ms. Marquez has lived and identified as female. Although she has undertaken hormone therapy and counseling, Ms. Marquez cannot afford the surgery required by the Act, because she does not have the financial means to pay the required out-of-pocket costs. Ms. Marquez also cannot take off time from work for the surgery and post-operative recovery. Nor does she wish to undergo this surgery at this time.

20. Mr. Doe is a man who was born in Montana and currently resides out of state. He is transgender and wishes to correct his Montana birth certificate, which incorrectly identifies him as female. Since adolescence, Mr. Doe has expressed his gender in a traditionally male manner and has lived and identified fully as male for the last year and a half. Mr. Doe has taken hormone therapy for two years and completed masculinizing chest reconstruction surgery (“top surgery”). He does not wish to undergo additional surgery at this time.

Defendants

21. The State of Montana is a government entity subject to and bound by the laws of the State of Montana and its constitution. Under Article II, Section 18, of the Montana Constitution, the state is not entitled to immunity from suit absent certain conditions not present in this case.

22. DPHHS is an agency of the State of Montana that is subject to and bound by the laws of the State of Montana and its constitution. As a state agency, DPHHS is not entitled to

immunity from suit under Article II, Section 18, of the Montana Constitution. DPHHS has supervisory authority over the process for amending birth certificates. DPHHS has been charged under the Act with amending the state's administrative regulations to make them consistent with the Act.

23. Governor Gianforte is the recently elected governor of the State of Montana. He is the state's principal executive officer and is responsible for administering Montana's laws, including the Act.

24. Director Meier is the Director of DPHHS. He is the agency's chief executive officer and is responsible for administering the Act.

ALLEGATIONS COMMON TO ALL COUNTS

Gender Dysphoria and Its Treatment

25. Transgender people have a gender identity that differs from their assigned sex at birth.

26. Gender identity refers to a person's fundamental internal sense of belonging to a particular gender. The medical consensus in the United States is that gender identity is innate and that forced efforts to change a person's gender identity not only are harmful to a person's health and well-being, but also are unethical.

27. According to the American College of Physicians, the American Psychiatric Association, and other major medical organizations, every person has a gender identity that cannot be altered voluntarily and cannot be ascertained immediately after birth. There are many factors that determine gender identity, including genetic characteristics. Gender identity is not simply a function of the appearance of an infant's external genitalia at birth, which is typically the limited basis for the sex designation on a person's birth certificate.

28. Gender dysphoria is a medically recognized condition defined by a marked incongruence between a person's gender identity and the sex they were assigned at birth. It is a serious medical condition. Some, but not all, transgender people have gender dysphoria.

29. Treatment of gender dysphoria is guided by the standards of care set forth by the World Professional Association for Transgender Health, which were originally published in 1979 and are now in their seventh edition. These guidelines reflect the professional consensus about the psychological, psychiatric, hormonal, and surgical management of gender dysphoria.

30. It is the recognized standard of care to address gender dysphoria with treatments designed to bring a person's body and gender expression into line with their gender identity. This course of treatment has different components depending on the medical needs of each transgender person. As with other forms of healthcare, a patient considers the available treatment options and makes treatment decisions in consultation with their healthcare provider. Forcing a particular course of treatment, such as the gender-affirming surgery the Act requires, without reference to the particular needs and circumstances of an individual patient is medically irresponsible. In some circumstances, it may constitute medical malpractice.

31. Gender-affirming surgery is not medically necessary or medically desirable for all transgender people. Even for those who need it, the specific surgery that a transgender person needs varies based on a person's individual needs. For some, surgery is medically contraindicated, while for others it is cost-prohibitive. Like other major healthcare decisions, decisions about gender-affirming surgery are profoundly personal, require confidential medical evaluations and often involve intimate conversations with family members. In a free society, the state has no role to play in these deliberations.

32. Treatment for gender dysphoria also includes living one's life consistently with one's gender identity. This includes using identity documents that accurately reflect one's gender identity. Forcing transgender people to use identity documents that do not match their gender identity, or forcing them to go without identity documents, is inconsistent with medical protocols and can result in anxiety and depression.

33. Being forced to hold and present documents that do not match a person's gender can also result in discrimination and violence when transgender people are called upon to present identification that identifies a sex designation inconsistent with how a transgender person publicly presents himself or herself.

34. Recognizing the importance of identification documents, the American Medical Association ("AMA") has adopted a policy urging states to eliminate any requirement that transgender people have gender-affirming surgery to amend their birth certificates.¹ The rationale for the AMA's policy is to ease the path to identification documents so that psychological stress, depression, invasions of privacy, and harassment, including potential violence against transgender people, are avoided. Additionally, the United States Department of State has proposed changes to the passport and Consular Reports of Birth Abroad application process to allow applicants to self-select their gender, without requiring medical certification.²

¹ See *AMA announced policies adopted on final day of Special Meeting* (June 16, 2021), available at <https://www.ama-assn.org/press-center/press-releases/ama-announced-policies-adopted-final-day-special-meeting>.

² See *Proposing Changes to the Department's Policies on Gender on U.S. Passports and Consular Reports of Birth Abroad -United States Department of State* (June 30, 2021), available at <https://www.state.gov/proposing-changes-to-the-departments-policies-on-gender-on-u-s-passports-and-consular-reports-of-birth-abroad/>.

35. A person's sex designation is determined by their gender identity, not their sex assigned at birth or their anatomy. Gender-affirming surgery, even for those transgender people who have a medical need for it, does not "change" their sex, but rather affirms it.

36. By embracing the Act, the State of Montana has imposed a draconian medical requirement on transgender people that has no medical or other rational justification. It reinstates an archaic understanding of transgender people and ignores modern medical treatment guidelines.

The Act and Its Effects

37. On April 12, 2021, the Legislature passed the Act and sent it to Governor Gianforte for signature. On April 30, 2021, Governor Gianforte signed the Act, which became immediately effective upon his signature.

38. The Act states, in relevant part that: "The sex of a person designated on a birth certificate may be amended only if the [DPHHS] receives a certified copy of an order from a court with appropriate jurisdiction indicating that the sex of the person born in Montana has been changed by surgical procedure."

39. The Act was created with the specific intent to reverse regulations previously promulgated by DPHHS in December, 2017 that had functioned well for years without incident. These procedures permitted a transgender person to amend his or her original birth certificate by submitting to DPHHS a completed gender-designation form attesting to gender transition *or* providing government-issued identification displaying the correct sex designation *or* providing a certified court order indicating a gender change. The 2017 procedures did not require surgery or court proceedings.

40. The Act's sole purpose is to intentionally burden a transgender person's ability to correct their birth-certificate sex designation to conform with their gender.

41. The Act provides that an original sex designation on a birth certificate may be amended *only* if DPHHS receives a certified copy of an order from a court with appropriate jurisdiction indicating that the sex of the applicant has been “changed” by surgical procedure. The order must contain sufficient information for DPHHS to locate the original birth certificate. DPHHS’s inability to locate the original birth certificate does not excuse an applicant’s obligation to comply with the Act.

42. The Act requires individuals, including Plaintiffs, to spend a significant amount of money to retain an attorney and attend court proceedings. The Act also unnecessarily delays the amendment process by requiring court proceedings that are subject to continuance or other postponement. The Act also requires an individual to reveal confidential medical information and information about someone’s status as transgender in a public proceeding, or incur the expense of moving to proceed under a pseudonym.

43. The Act contains no exceptions for medical contraindications, or the inability to pay the cost of the mandated procedures.

44. The Act directs DPHHS to issue implementing regulations in conformity with the Act.

45. The legislature failed to offer any legitimate public purpose for the Act, and none exists. The Act was passed to express antipathy toward and to harm transgender people.

The Need for Birth Certificates Matching One’s Gender Identity

46. A birth certificate is an essential government-issued document that individuals use for various important purposes throughout their lifetime. Birth certificates are used in a wide variety of contexts, such as determining eligibility for employment, providing identification for travel, proving age, and enrolling in government programs.

47. Defendants' refusal to acknowledge a transgender person's gender by providing them a birth certificate matching their gender identity, unless they undergo a significant surgical procedure and disclose private information in a public court proceeding, deprives that person of their rights to equality and privacy in violation of the Montana Constitution.

48. A mismatch between someone's gender identity and the sex designation on their birth certificate discloses that person's transgender identity, a profoundly private piece of information in which a transgender person has a reasonable expectation of privacy. Transgender people who are denied accurate birth certificates are deprived of significant control over where, when, how, and to whom they disclose their transgender identity.

49. A mismatch between someone's gender identity and the information on their birth certificate subjects transgender people to discrimination and harassment in a variety of settings, including employment, healthcare, and interactions with government employees and officials. The Montana Constitution protects against these adverse outcomes.

Plaintiffs' Personal Histories

50. Plaintiff Amelia Marquez is a 27-year-old woman who was born in Yellowstone County, Montana, and currently resides in Billings, Montana. For the last three years, Ms. Marquez has been employed by Yellowstone Boys and Girls Ranch.

51. Ms. Marquez is transgender. She was assigned the male sex at birth. Her birth certificate still includes a male sex designation, even though she has known that she is female for approximately five years.

52. Ms. Marquez began living fully and openly as female approximately five years ago. She has taken various steps to bring her body and the other ways she expresses her gender into line with her female gender identity. For the last two years, Ms. Marquez has taken hormone-

replacement therapy with the aid and support of her treating healthcare professional. Additionally, Ms. Marquez has legally changed her name to a traditionally feminine one and has changed her name and sex designation on her Montana driver's license.

53. Ms. Marquez would like to change the sex designation on her birth certificate to match her female gender identity but is unable to do so because of the Act. Her inability to obtain a birth certificate that accurately reflects her female gender identity is a painful and stigmatizing reminder of the State of Montana's refusal to recognize her as a woman.

54. Further, denying Ms. Marquez an accurate birth certificate places her at risk of violence, harassment, and discrimination every time she presents an identity document that incorrectly identifies her as male.

55. Ms. Marquez has had personal experience with the high incidence of violence, harassment, and discrimination experienced by transgender people, because she has been the target of this mistreatment in both her personal and professional life. Due to these experiences, she has learned that she must take extra precautions for her personal safety.

56. Ms. Marquez lives in fear of having to present her birth certificate to someone who may respond negatively or even violently. Ms. Marquez is typically perceived as female, so anytime she is forced to present an identity document that incorrectly identifies her as male, she is forced to "out" herself as transgender.

57. Mr. Doe is a 22-year-old man who was born in Bozeman, Montana, and who currently resides outside of Montana. Mr. Doe currently works two part-time jobs and will return to college in the fall.

58. Mr. Doe would like to correct the sex designation on his birth certificate to accurately reflect his male gender identity but does not wish to be forced to publicly share in court

private information and records regarding his transgender status, medical treatment and his anatomy.

59. Since adolescence, Mr. Doe has expressed his gender in a traditionally male manner and has lived and identified fully as male for the last year and a half. Mr. Doe, with the support and assistance of his treating health professionals, has taken certain steps to bring his body into conformity with his male gender identity. He has taken hormone therapy for approximately two years. In spring 2021, Mr. Doe underwent masculinizing chest reconstruction surgery, commonly known as “top surgery.”

60. Mr. Doe does not wish to undergo additional gender-affirming surgery at this time. Due to the vagueness of the Act’s surgery requirement, Mr. Doe does not know whether his top surgery would be sufficient to satisfy the Act. Furthermore, even if Mr. Doe’s top surgery were deemed sufficient for purposes of obtaining a court order, the idea of having to share private medical records related to his transition with a judge, in a public court proceeding, to determine whether he is the man he knows himself to be is demeaning to Mr. Doe and causes him a great deal of emotional distress due to his fear of exposure and humiliation at having his transgender status revealed.

61. The surgery Mr. Doe has had to date is not what made him male, and he would like to retain the freedom to choose when, and under what circumstances, he shares the deeply personal medical information regarding his transition, his body, and his transgender status.

62. In addition to his fear of having to expose his personal medical information and out himself as transgender in a public forum, the Act would require Mr. Doe to undertake the financial costs and other burdens of coming to Montana to seek a court order, since Mr. Doe currently resides outside of Montana. Among other things, Mr. Doe would need to pay for transportation to

Montana, request time off of work (and risk losing his job because of the nature of his work), and retain an attorney to represent him in a court hearing to complete the process.

CLAIMS FOR RELIEF

COUNT I **(Equal Protection of the Laws)**

63. Plaintiffs hereby incorporate all other paragraphs of this complaint as if fully set forth in this claim.

64. Article II, Section 4, of the Montana Constitution states that “No person shall be denied the equal protection of the laws.”

65. The Act, on its face and as applied, denies Plaintiffs equal protection of the laws on the basis of their gender identity and sex. It discriminates on the basis of gender identity, which is also a form of discrimination on the basis of sex. *Maloney v. Yellowstone County et al.*, Cause No. 1570–2019 & 1572–2019 (Department of Labor and Industry, August 14, 2020). Both forms of discrimination are forbidden by the equal-protection clause of Article II, Section 4.

66. As described above, the Act targets transgender people, and only transgender people, by burdening their ability to change the sex designation on their birth certificates and requiring that applicants initiate a court proceeding to obtain an order affirming that they have had gender-affirming surgery. Only after undergoing surgery, presenting the confidential and intimate details of that surgery to a court, and obtaining a court order may a transgender person submit his or her application to DPHHS to amend a birth certificate to reflect his or her gender accurately.

67. These burdensome procedures, to which only transgender people are subject, serve no legitimate purpose. They constitute a major step back from the procedures in place since December 2017, under which no order or surgery or intimate disclosure were required. The effort

to revoke the December 2017 procedures, standing alone, evidences an intent to discriminate against transgender people.

68. Similarly situated cisgender people—i.e., people whose gender identity matches their sex assigned at birth—who seek to amend portions of their birth certificates, or seek to make changes to other state-identification forms, are not subjected to the same invasive requirements as transgender people who seek to amend the sex designation on their birth certificates.

69. Discrimination on the basis of transgender status or on the basis of sex is subject to heightened scrutiny because (a) transgender people have suffered a long history of discrimination, which continues to this day; (b) transgender people are a discrete and insular group that lacks the political power to protect their rights effectively; (c) a person's gender identity or transgender status bears no relation to his or her ability to contribute to society; and (d) gender identity is a core defining trait, fundamental to a person's identity, that, as a condition of equal treatment, a person cannot be required to abandon.

70. Moreover, the Act, on its face and as applied, diminishes the intrinsic worth and compromises the inalienable rights of Plaintiffs and other transgender individuals, in violation of Article II, Section 3.

71. The Act is not narrowly tailored to further a compelling state interest or substantially related to an important government interest.

72. For these reasons, Plaintiffs are entitled to a declaratory judgment finding the Act unconstitutional and an injunction prohibiting the Act's enforcement.

COUNT II
(Plaintiffs' Right to Privacy)

73. Plaintiffs hereby incorporate all other paragraphs of this complaint as if fully set forth in this claim.

74. Article II, Section 10, of the Montana Constitution provides that the right of individual privacy is essential to a free society and “shall not be infringed without a showing of compelling state interest.”

75. In addition, the substantive protections of the due-process clause of Article II, Section 17, of the Montana Constitution include the right to privacy. “Informational privacy is a core value furthered by the state constitutional guarantees.” *See State v. Nelson*, 283 Mont. 231, 941 P.2d 441 (1997).

76. Pursuant to Montana’s constitutional guarantees and its common law, Plaintiffs have a reasonable expectation of privacy regarding their transgender status and their medical treatment.

77. The Act, on its face and as applied, violates Plaintiffs’ right to privacy by forcing Plaintiffs to disclose protected and private information. As a condition of amending their birth certificates, they are required to (a) submit to surgery, (b) disclose the specifics of their transgender status and their medical condition, (c) submit this sensitive and confidential information to a court, (d) obtain a court order under circumstances that have yet to be defined by DPHHS, and (e) submit the court order and other materials to DPHHS for approval. Only transgender people are subjected to these infringements on their right to privacy.

78. If transgender people refuse to relinquish their right to privacy, they are consigned to carrying a basic identity document—their birth certificate—with a sex designation that is inconsistent with their gender. In effect, transgender people who seek to perform the simple act of amending the sex designation on their birth certificates are compelled to choose between surgery and public disclosure of their medical condition and treatment, on the one hand, and living with the dissonance between their gender and their identification documents, on the other. That

mismatch increases their chance of discrimination, harassment, and potential violence from the disclosure of their transgender status.

79. The Act and its infringements on the right of privacy are subject to strict scrutiny. There is no compelling state interest that justifies this breach of Article II, Sections 10 and 17, of the Montana Constitution. Nor are the infringements authorized by the Act related to a substantial or important government interest. As a matter of substantive due process, Plaintiffs' privacy interests outweigh any purported interest Defendants could assert.

80. For these reasons, Plaintiffs are entitled to a declaratory judgment finding the Act unconstitutional and an injunction prohibiting the Act's enforcement.

Count III
(State Interference with Medical Decisions)

81. Plaintiffs hereby incorporate all other paragraphs of this complaint as if fully set forth in this claim.

82. Montana's Constitution protects individual autonomy in the making of medical decisions as part of a fundamental right to privacy. *See Gryczan v. State*, 283 Mont. 433, 942 P.2d 112 (1997); *see also* Mont. Const., art. II, §§ 10, 17. Infringements on individual autonomy are subject to strict scrutiny.

83. The right to make certain medical decisions without government intrusion includes the right to refuse unwanted or unnecessary medical treatment.

84. The Act, on its face and as applied, violates Plaintiffs' right to autonomy by forcing them to undergo gender-affirming surgery to secure a correct birth certificate, on the one hand, or endanger their health and safety with an incorrect birth certificate, on the other. In effect, the Act holds transgender people hostage. If a transgender person chooses to exercise his or her

constitutional right to be free from state interference with his or her medical decisions, then the state will deny the right to amend a birth certificate.

85. There is no compelling state interest or important government interest that justifies the Act's interference with Plaintiffs' constitutional right to refuse treatment. There is no justification for the State of Montana to deny to Plaintiffs their right to make medical decisions without state compulsion.

86. For these reasons, Plaintiffs are entitled to a declaratory judgment finding the Act unconstitutional and an injunction prohibiting the Act's enforcement.

COUNT IV
(Substantive Due Process: Vagueness)

87. Plaintiffs hereby incorporate all other paragraphs of this complaint as if fully set forth in this claim.

88. The due-process clause of Article II, Section 17, of the Montana Constitution provides that no person shall be deprived of life, liberty, or property without due process of law.

89. In violation of the Due Process Clause, the Act is impermissibly vague.

90. A statute is unconstitutionally vague and void on its face if it fails to give a person of ordinary intelligence a reasonable opportunity to know what must be done to comply with a legislative directive.

91. It is a basic principle of due process that an enactment is void for vagueness if its prohibitions or requirements are not clearly defined.

92. The Act requires that, as a condition of amending the sex designation on a transgender person's birth certificate, a transgender person must undergo a "surgical procedure" but does not define what the surgery should be or identify who—DPHHS, the court, or the applicant's physician—decides what type of surgery is sufficient to comply with the Act.

93. There is no compelling state interest or important government purpose in the provisions of the Act that justifies the Act's due-process clause violations.

94. For these reasons, Plaintiffs are entitled to a declaratory judgment finding the Act unconstitutional and an injunction prohibiting the Act's enforcement.

95. The Act is not narrowly tailored to further a compelling state interest or substantially related to an important government interest.

96. For these reasons, Plaintiffs are entitled to a declaratory judgment finding the Act unconstitutional and an injunction prohibiting the Act's enforcement.

COUNT V
(Montana Human Rights Act)

97. Plaintiffs hereby incorporate all other paragraphs of this complaint as if fully set forth in this claim.

98. The MHRA prohibits discrimination on the basis of sex and recognizes freedom from discrimination on the basis of sex as a basic right. § 49-1-102, MCA. The MHRA also expressly prohibits any state entity or political subdivision from discriminating on the basis of sex in providing any advantages or privileges or withholding any advantages or privileges. § 49-2-308 MCA. It is unlawful for any persons or government agency to aid or abet any act of discrimination forbidden by the MHRA. § 49-2-302, MCA.

99. Based on the conduct alleged in Count I, Defendants, through the Act, have violated the provisions of the MHRA, and Plaintiffs have been injured by Defendants' conduct.

100. As set forth in Count I, Defendants have discriminated against Plaintiffs, who are transgender, on the basis of their gender identity by restricting the ability of transgender people to change the sex designation on their birth certificates by requiring any transgender person who

seeks to amend their sex designation to undergo gender-affirming surgery and initiate a legal proceeding to prove that their sex “has been changed by surgical procedure.”

101. Discrimination on the basis of gender identity constitutes discrimination on the basis of sex, as the MHRB concluded in *Maloney v. Yellowstone County et al.*, Cause No. 1570–2019 & 1572–2019 (Department of Labor and Industry, August 14, 2020), and the United States Supreme Court acknowledged in *Bostock v. Clayton County*, 140 S. Ct. 1731, 1741–43 (2020).

102. There is no nondiscriminatory justification for limiting transgender people’s ability to change the sex designation on their birth certificates in the manner required by the Act.

103. For these reasons, Plaintiffs are entitled to a declaratory judgment that the Act violates the MHRA and an injunction prohibiting the Act’s enforcement.

COUNT VI
(Montana Governmental Code of Fair Practices)

104. Plaintiffs hereby incorporate all other paragraphs of this complaint as if fully set forth in this claim.

105. The Montana Governmental Code of Fair Practices (the “Code”) requires that government services, such as the amendment of birth certificates, be made available or performed without discrimination on the basis of sex. § 49–3–205, MCA. No state entity, local governmental agency, or state or local official may become a party to any agreement, arrangement, or plan that has the effect of sanctioning discriminatory practices such as discriminating on the basis of sex. § 49–3–205, MCA.

106. Based on the conduct alleged in Count I, Defendants, through the Act, have violated the provisions of the Code, and Plaintiffs have been injured by Defendants’ conduct.

107. As set forth in Count I, Defendants have discriminated against Plaintiffs, who are transgender, on the basis of their gender identity by restricting the ability of transgender people to

change the sex designation on their birth certificates by requiring any transgender person who seeks to amend their sex designation to undergo gender-affirming surgery and initiate a legal proceeding to prove that their sex “has been changed by surgical procedure.”

108. Discrimination on the basis of gender identity constitutes discrimination on the basis of sex, as the MHRB concluded in *Maloney v. Yellowstone County et al.*, Cause No. 1570–2019 & 1572–2019 (Department of Labor and Industry, August 14, 2020), and the United States Supreme Court acknowledged in *Bostock v. Clayton County*, 140 S. Ct. 1731, 1741–43 (2020).

109. There is no nondiscriminatory justification for limiting transgender people’s ability to change the sex designation on their birth certificates in the manner required by the Act.

110. For these reasons, Plaintiffs are entitled to a declaratory judgment that the Act violates the Code and an injunction prohibiting the Act’s enforcement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare the Act unconstitutional on its face and as applied for the reasons set forth above;
- B. Declare the Act illegal under the MHRA;
- C. Declare the Act illegal under the Code;
- D. Preliminarily and permanently enjoin Defendants, as well as their agents, employees, representatives, and successors, from enforcing the Act, directly or indirectly;
- E. Award Plaintiffs’ the reasonable attorney’s fees and costs incurred in bringing this action; and
- F. Grant any other relief the Court deems just.

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Respectfully submitted,

By: 

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