Akilah Deernose (Bar No. 60742990)
Alex Rate (Bar No. 11226)
ACLU of Montana Foundation, Inc.
P.O. Box 1968
Missoula, MT 59806
Telephone: 406-203-3375
deernosea@aclumontana.org
ratea@aclumontana.org

Malita Picasso*
Jon W. Davidson*
(admitted only in California)
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004
Telephone: 212-549-2561
Facsimile: 212-549-2650
mpicasso@aclu.org
jondavidson@aclu.org

F. Thomas Hecht*
Tina B. Solis*
Seth A. Horvath*
Nixon Peabody LLP
70 West Madison Street, Suite 3500
Chicago, IL 60601
Telephone: 312-977-4443
Facsimile: 312-977-4405
fthecht@nixonpeabody.com
tbsolis@nixonpeabody.com
sahorvath@nixonpeabody.com

Elizabeth Halverson PC
1302 24th Street West #393
Billings, MT 59102
Telephone: 406-698-9929
ehalverson@halversonlaw.net

* Admitted *pro hac vice*

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 CHARLES T. BRERERTON, 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' REPLY BRIEF IN SUPPORT OF MOTION FOR CLASS CERTIFICATION**

The matter before this Court is straightforward, notwithstanding Defendants' overwrought efforts to complicate the issues. Plaintiffs seek to ensure that they and other transgender individuals born in Montana are able to obtain a birth certificate that accurately reflects their identity. They do this so that they and other transgender individuals do not experience the invasions of privacy or discrimination and violence that can occur when presenting a birth certificate that is inconsistent with how they identify and present themselves to others.

Despite the straightforward relief requested by Plaintiffs, Defendants continue efforts to prevent transgender people born in Montana from amending the sex marker on their birth certificates. Defendants first attempted to do so by enacting and enforcing SB 280 and the twin regulation whose adoption SB 280 mandated. That regulation, the 2021 Rule, required applicants seeking sex marker amendments to obtain a court order ruling that that their sex had been changed—impossibly—by a surgical procedure. In granting Plaintiffs' motion for a preliminary injunction, this Court concluded that Plaintiffs established a prima facie case that SB 280 violated Plaintiffs' constitutional rights to due process based on the vagueness of the language contained in both SB 280 and the 2021 Rule. Dkt. 61, ¶¶ 147-153, 168-170, 183.

Next, Defendants enacted a Temporary Emergency Rule, and then a Permanent Rule, absolutely prohibiting the amendment of the sex marker on any birth certificate "based on gender transition, gender identity, or change of gender." Dkt. 71, Exhibits D. This Court, however, recognized that these later-enacted rules conflicted with the Court's preliminary injunction order, which required Defendants to return to the status quo existing prior to the enactment of SB 280. Dkt. 77, ¶ 22.

Defendants now continue their course. They oppose Plaintiffs' motion for class certification by essentially reasserting standing arguments that were rejected at the motion to dismiss stage. They also renew their arguments that the original complaint in this action did not challenge the 2021 Rule, even though those arguments were rejected in the Court's ruling on Plaintiffs' motion to clarify.

Defendants also incorrectly assert that "Plaintiffs are seeking to amend their Amended Complaint to add new claims and fundamentally alter this litigation, to the prejudice of the State." Dkt. 92, at 2. The Second Amended Complaint, however, alleges no new causes of action. It only updates pre-existing causes of action to address Defendants' blatant disregard of the preliminary injunction, their enactment of the Temporary Emergency Rule and Permanent Rule after this litigation was filed, and their failure to preserve the status quo as ordered by the Court. In addition, Defendants fail to point to any way in which they, who have conducted no discovery in this action, would be prejudiced by including well-grounded class allegations in the Second Amended Complaint.

For the following reasons, this Court should grant Plaintiffs' Motion for Class Certification and certify Plaintiffs' proposed class of all transgender people born in Montana who currently want, or who in the future will want, to amend the sex designation on their Montana birth certificate.

I. PLAINTIFFS PROPERLY DEFINED THE PROPOSED CLASS.

Plaintiffs define the proposed class as "all transgender people born in Montana who currently want, or who in the future will want, to amend the sex designation on their Montana birth certificate." Dkt. 85, at 2; Dkt. 86, at 2, 6, and 18; Dkt. 83, at 5-6; Dkt. 84, at 33. This is an entirely proper class definition. Nonetheless, Defendants mischaracterize Plaintiffs' class

definition,[1] and then claim that it "fails," Dkt. 92, at 3. Defendants argue that being born in Montana is *inconsistent* or *in conflict* with residing in Montana and the class definition, therefore, cannot survive. This is frivolous. Plaintiffs' definition of the proposed class, as noted above, does not rely on residence in Montana but instead on birth in Montana and a desire to amend birth certificates either currently or in the future irrespective of residence. Dkt. 92, at 3-4. Defendants simply ignore the specific language of the proposed class definition. Further, providing shared characteristics of a defined class does not create a conflicting class description.

Defendants also wrongly rely on the false assertion that returning to the 2017 Rule would not permit every class member to amend their birth certificate. Dkt. 92, at 4. This too, is frivolous. The certainty of recovery for each member of the class is not the standard for class certification. What this Court and the law of Montana have made clear is that the *procedures* of the 2017 Rule provide the basis for processing applications. Entitlement is not the issue; the procedures are. And the procedures of the 2017 Rule are simple, efficient, and non-discriminatory. The 2017 Rule permits such an amendment simply by an individual submitting a self-attestation of their sex. This is entirely consistent with the proposed class definition and the relief the proposed class seeks.

II. JOINDER OF ALL PROPOSED CLASS MEMBERS INTO A SINGLE SUIT IS IMPRACTICABLE.

"While Rule 23(a)(1) is often referred to as the 'Numerosity' requirement, at its heart is that joinder is impracticable." *Roose v. Lincoln County Employee Group Health Plan*, 2015 MT 324, ¶ 18, 381 Mont. 409, ¶ 18, 362 P.3d 40, ¶ 18. Numerousness of the proposed class

[1] Defendants claim that "Plaintiffs define their class as 'all transgender people born in Montana.'" Dkt. 92, at 3, 13, 15. Although Defendants initially provide the full definition, they consistently fail to recite or consider the entirety of the proposed class definition during the course of their argument.

"provides an obvious" means of establishing impracticability of joinder. *Id*. However, "the class action proponent need not prove [numerosity] with absolute certainty." *Id.* At 14.

A. Plaintiffs' Proposed Class Is Sufficiently Numerous to Make Joinder of All Class Members Impracticable.

In support of their motion for class certification, Plaintiffs rely on the limited data available about the transgender population in order to make estimates about the size of the proposed class. At no point do Plaintiffs assert that the proposed class consists of all transgender people born in Montana or all transgender people currently residing in Montana. Instead, Plaintiffs make clear that the proposed class consists of "all transgender people born in Montana *who currently want*, *or who in the future will want*, to amend the sex designation on their Montana birth certificate." Dkt. 85, at 2 (emphasis added). As noted above, Defendants ignore this definition of the proposed class.

Defendants unconvincingly attempt to subvert Plaintiffs' evidence in support of the numerosity requirement, based on Defendants' inaccurate representation of Plaintiffs' proposed class. Defendants' claim that Plaintiffs "overstate the number of individuals in their proposed class," because one survey relied upon by Plaintiffs estimates that 30 percent of transgender people who have not amended the sex marker on their birth certificate "are not ready to change their birth certificate." Dkt. 92, at 6. Yet, by its very terms, that group would not be included in Plaintiffs' proposed class unless members of this group at some future point in time do wish to amend their birth certificate. Contrary to Defendants' assertions, Plaintiffs' proposed class clearly defines who should be certified within the class. *See* Dkt. 92, at 4.

Defendants' own evidence demonstrates that, based on numerosity alone, the impracticability requirement is satisfied. According to Defendants' factual assertions, the Office of Vital Records has received over 40 applications to amend an individual's sex designation on

their birth certificate every year since 2019. Dkt. 92, Exhibit A, Ferlicka Declaration ¶¶ 6–9.[2] The Department has in fact received a total of 235 applications to amend a person's sex designation on their birth certificate over the last five years. Dkt. 92, at 7.

Plaintiffs recognize that it is possible that a small number of these applications may not have been submitted by transgender people seeking to conform their birth certificate to their sex as determined by their gender identity but instead to correct scriveners' errors on their birth certificates. These figures illuminate the "surrounding circumstances" that this Court has the wide discretion to consider. *Morrow v. Monfric., Inc.*, 2015 MT 194, ¶ 9, 380 Mont. ¶58, ¶ 9, 354 P.3d 558, ¶ 9. But while "[t]here is no bright-line number of class members that will establish numerosity[,] more than 40 is likely to be sufficient." *Id.* at ¶¶ 9, 19. Plaintiffs proposed class easily exceeds this standard.

B. Other Nonnumerical Factors Weigh in Favor of Finding Joinder of All Proposed Class Members Impracticable.

Defendants do not dispute that courts may consider nonnumerical factors when ascertaining the impracticability of joinder under Rule 23(a)(1). Dkt. 92, at 8. According to the Montana Supreme Court, these factors include "judicial economy arising from the avoidance of a multiplicity of actions, geographic dispersion of class members, financial resources of class members, the ability of claimants to institute individual suits, and requests for prospective injunctive relief which would involve future class members." *Morrow*, ¶ 10 (internal citations and quotation marks omitted). These are described at length in Plaintiffs' initial brief in support of class certification, including but not limited to geographic dispersion and the financial

[2] Defendants' figures, of course, do not reflect the members of the proposed class who, consistent with the proposed class definition, decide that they wish to and will attempt to amend the gender marker on their birth certificate in the future.

inability of individual potential class members to initiate and prosecute individual actions. Dkt. 86, at 7-10.

Beginning with the geographical dispersion factor, Defendants concede that Plaintiffs' proposed class members are in fact geographically dispersed both within and beyond the four corners of Montana. Dkt. 92, at 8-9. Contrary to Defendants' argument, this fact bolsters, rather than undermines, Plaintiffs' assertion that the geographic dispersion of the proposed class supports a finding of the impracticability of joinder. Defendants' reliance on out-of-circuit federal case law to assert that geographic dispersion cannot be a basis for class certification where all class members reside in the same state both misses the mark and conflicts with existing Montana case law. The Montana Supreme Court, has stated, "[w]here a class is small in number, other considerations become more significant in determining whether joinder is impracticable [, including] geographic dispersion of class members [.]" *Morrow*, ¶ 10. To borrow a term found throughout Defendants' brief, their assertion is *inconsistent* with the position of the highest court in Montana. Unlike the proposed class in *Morrow*, which the district court found consisted of members all residing in the same city within Montana, Plaintiffs' proposed class is geographically dispersed across and beyond the State of Montana. *Id.*, ¶ 13.

Defendants misconstrue Plaintiffs' assertions with respect to another nonnumerical factor identified by the Montana Supreme Court in *Roose*, namely the inability of class members to initiate individual lawsuits. Plaintiffs correctly highlight the high rates of poverty and homelessness among transgender individuals as evidence of a major obstacle that proposed class members face, which correlates with a higher likelihood that they would be unable to initiate individual lawsuits seeking to vindicate the same rights that Plaintiffs assert. Defendants have no argument that refutes these facts.

III. THE QUESTIONS OF LAW AT ISSUE ARE COMMON TO ALL MEMBERS OF THE PROPOSED CLASS.

Foremost, Defendants do not and cannot refute the shared common contentions of law identified by Plaintiffs in their brief in support of the motion for class certification, which, when established on summary judgment or at trial, will resolve the issues central to each of the individual class member's claims. These shared common questions of law include, in whole or in part:

(1) Whether SB 280 and the 2021 Rule, the 2022 Temporary Rule, and the 2022 Permanent Rule (collectively, the "Rules") deny class members equal protection of the law by discriminating against transgender people on the basis of sex and gender identity;

(2) Whether SB 280 violates class members' right to privacy by forcing them to disclose protected and private information in order to obtain an accurate birth certificate;

(3) Whether SB 280 and the 2021 Rule infringe on class members' right to individual autonomy in making medical decisions without government intrusion, including the right to refuse unwanted or unnecessary medical treatment;

(4) Whether SB 280 and the 2021 Rule are unconstitutionally vague and therefore facially void;

(5) Whether SB 280 and the Rules are subject to and can survive heightened constitutional review; and

(6) Whether Defendants' enforcement of SB 280 and the Rules constitute performance of government services in a manner that discriminates on the basis of sex in violation of the GCFP.

The Montana Supreme Court has reviewed at least one case involving class certification in which the plaintiffs, a group of individuals incarcerated in prison, sought class certification

and raised claims under the Montana Human Rights Act ("MHRA"). *Quigg v. South*, 243 Mont. 218 (June 7, 1990). Although the Court ultimately found that the plaintiffs were statutorily barred from obtaining the relief they sought, the Court did not find that class certification on behalf of plaintiffs raising MHRA claims is unavailable, or even inappropriate, as Defendants mistakenly suggest. Accordingly, claims arising under the Government Code of Fair Practices ("GCFP") are likewise available, as the GCFP is a subpart of the MHRA.

Federal courts have recognized the propriety of class certification in cases raising federal anti-discrimination claims, which require the same level of fact-specific inquiry as Montana equal protection and GCFP claims. *See e.g., A.B. v. Hawaii State Dep't of Educ.*, 30 F.4th 828 (9th Cir. 2022) (reversing a district court's denial of plaintiffs' motion for class certification in a Title IX action); *Gay v. Waiters' & Dairy Lunchmen's Union*, 549 F.2d 1330 (9th Cir. 1977) (reversing a district court's denial of plaintiffs' motion for class certification in a Title VII action in light of the broad remedial purposes of Title VII in eradicating class-based discrimination).

Defendants' suggestion that Plaintiffs do not satisfy the commonality requirement of Rule 23(b)(1) "is premised on [their] misunderstanding of the class definition." *Rogers v. Lewis & Clark Cnty.*, 2022 MT 144, ¶ 26, 409 Mont. 267, ¶ 26, 513 P.3d 1256, ¶ 26. Even accepting Defendants' unsupported claim that "most transgender individuals have opted not to amend their birth certificates for reasons not relevant to this litigation[,]" Dkt. 92, at 10, Plaintiffs' proposed class, by definition, is limited to those transgender people born in Montana who currently want, or in the future will want, to amend the sex designation on their Montana birth certificates. Therefore, it is irrelevant that some transgender individuals born in Montana may not have yet sought to amend their birth certificates for reasons "unrelated" to SB 280 or the Rules, as Defendants assert. The fact remains that the 2022 Rule absolutely prevents *any* transgender

people from amending the sex marker on their birth certificate in the future, and SB 280 and the 2021 Rule impose an unconstitutionally vague surgical requirement on *all* transgender people born in Montana who would seek such an amendment now or in the future.

If a public school maintained an enrollment policy that explicitly denied admission to Asian children, the fact that the families of some Asian children choose to send their children to a different school at present because it has a higher number of extracurricular activities does not preclude those children from joining a class of families of Asian children who now or in the future will want to enroll their children in the public school that currently excludes them, in a challenge to the public school's discriminatory enrollment policy. All Asian children who at any point want to be enrolled in public school are injured by the enrollment policy in the same manner because they are all denied the opportunity to be enrolled in the school. And, absent a request for monetary damages, a class action is a much more efficient means of resolving the matter, rather than individual lawsuits brought by each family of an Asian child seeking a declaration that the policy is discriminatory and an injunction against its enforcement at the time they decide to enroll their child in the school.

Under the 2022 Rule, Defendants categorically deny transgender people born in Montana the opportunity to amend the sex marker on their birth certificate if it is "based on gender transition, gender identity, or change of gender." Plaintiffs seek a declaration that such a categorical ban violates the laws and Constitution of Montana. Examining all of Plaintiffs' proposed class members would yield the same common answer for why they *cannot* amend their birth certificates.

Similarly, SB 280 and the 2021 Rule, make it nearly impossible for transgender individuals born in Montana to update the sex marker on their birth certificate by making such a

change contingent on an unconstitutionally vague surgery requirement. Thus, Plaintiffs also seek a declaration that SB 280 and the 2021 Rule are unconstitutional and a permanent injunction against their enforcement so that proposed class members, as defined, may all access amended birth certificates when they want to do so.

IV. PLAINTIFFS' CLAIMS ARE TYPICAL OF THOSE SHARED BY PROPOSED CLASS MEMBERS.

Defendants and Plaintiffs agree that Rule 23(a)(3) requires that plaintiffs' claims be typical of the claims of the proposed class members, in that they arise from "the same event, practice, or course of conduct that forms the basis of the class claims and [are] based upon the same legal or remedial theory." *In re Blue Cross & Blue Shield of Mont., Inc.*, 2016 MT 121, ¶ 22, 383 Mont. 404, ¶ 22, 372 P.3d 457, ¶ 22 (internal citations and quotation marks omitted).

The typicality requirement is satisfied when plaintiffs challenge a uniform policy that injures proposed class members in the same manner and based on the same legal theories. *See e.g.*, *Chipman v. Nw. Healthcare Corp.*, 2012 MT 242, ¶¶ 53-56, 366 Mont. 450, ¶¶ 53-56, 288 P.3d 193, ¶¶ 53-56 (holding that the typicality requirement was satisfied because plaintiffs and class members' claims all arose from the same policy). "A single class trial for injunctive relief that determines the legality of a commonly applied procedure or policy is not only economical and attractive, but, in the alternative, '[t]here isn't any feasible method ... for withholding injunctive relief until a series of separate injunctive actions has yielded a consensus for or against the plaintiffs.'" *Jacobsen v. Allstate Ins. Co.*, 2013 MT 244, at ¶ 42, 371 Mont. 393, ¶ 42, 310 P.3d 452, ¶ 42 (quoting *McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 672 F.3d 482, 491 (7th Cir. 2012)).

Plaintiffs and the proposed class members are all subject to the same state policies and procedures and all seek the same remedy—*i.e.*, the invalidation of SB 280 and the challenged

Rules. Plaintiffs and the proposed class members all assert the same legal theories—detailed in Counts I through IV and VI of Plaintiffs' Second Amended Complaint—which this Court has found sufficient to withstand Defendants' motion to dismiss and supportive of the Court's order granting Plaintiffs' motion for preliminary injunction. Plaintiffs and the proposed class members similarly seek to reinstitute the 2017 Rule, a process by which transgender people born in Montana can efficiently seek and obtain birth certificates consistent with their sex, as determined by their gender identity. In addition, Plaintiffs and the proposed class members have all had equivalent dealings with Defendants in this matter: as people born in Montana, they were issued birth certificates by DPHHS and are subject to the same restrictions on the process for amending birth certificate sex markers that are imposed by SB 280 and the Rules promulgated by Defendants.

The claims asserted by Ms. Marquez and Mr. Doe are typical of those of the proposed class. Plaintiffs and proposed class members will suffer the same injury if Defendants are permitted to enforce SB 280 or the challenged Rules—namely, the denial of an accurate birth certificate consistent with their sex, as determined by their gender identity, and the resulting harms. Defendants' argument that the proposed class definition is somehow at odds with the relief sought has no merit.

For these reasons, Plaintiffs' claims are typical of, if not indistinguishable from, those of the proposed class members, which means that the vigorous pursuit of Plaintiffs' own interests "will necessarily advance the interests of the class." *Chipman*, ¶ 53.

V. THE ADEQUACY OF REPRESENTATION REQUIREMENT IS MET.

For the purposes of Rule 23(a)(4), adequacy requires "that the named representatives' attorney be qualified, competent, and capable of conducting litigation, and that the named

representatives' interests not be antagonistic to the interests of the class." *Mattson v. Montana Power Co.*, 2012 MT 318, ¶ 22, 368 Mont. 1, ¶ 22, 291 P.3d 1209, ¶ 22 (internal citations omitted). This does not require "perfect symmetry of interests" of Plaintiffs and proposed class members. *Jacobsen*, ¶ 59 (internal citations and quotation marks omitted). "[N]ot every discrepancy among the interests of class members renders a putative class action untenable." *Id*. "Only conflicts that are fundamental to the suit and that go to the heart of the litigation prevent a plaintiff from meeting the Rule 23(a)(4) adequacy requirement." *Id*.

Defendants point to no evidence that would support a finding that Plaintiffs' interests in litigating this matter are "so substantial as to overbalance the common interests of the class members as a whole." *Id*. And none exist. Instead, Defendants' sole argument as to the adequacy requirement is that Plaintiffs' attorneys are incompetent or unqualified to represent the interests of the class.

In support of this assertion, Defendants lament having had to participate in this litigation for a year and a half, while failing to acknowledge that Defendants, not Plaintiffs, continue to change the scope of this lawsuit by taking actions and promulgating rules in direct violation of this Court's orders. This Court has already found that Plaintiffs' pleadings are sufficient to survive a motion to dismiss on all but one count, that they support the issuance of a preliminary injunction, and that they support an order clarifying the scope of the issued preliminary injunction. Plaintiffs' success in litigating the motion to dismiss, the motion for preliminary injunction, and the motion to clarify refute Defendants' disingenuous attack on counsels' competence.

VI. CLASS CERTIFICATION IS APPROPRIATE UNDER RULE 23(B)(2).

Defendants do not contest that class certification under Rule 23(b)(2) is warranted where "the party opposing the class has acted or refused to act on the grounds that apply generally to the class," and "final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *Knudsen v. University of Montana*, 2019 MT 175, ¶ 13, 396 Mont. 443, ¶ 13, 445 P.3d 834, ¶ 13 (internal citations omitted). Defendants' argument as to the requirements of Rule 23(b)(2) instead, once again, rests entirely on their inaccurate characterization of Plaintiffs' proposed class definition. Dkt. 92, at 14-16.

Given the ban that Defendants have imposed on all transgender applicants for amendments to their birth certificates, Plaintiffs have shown that resolving the purely legal questions at issue in this case does not require individualized findings of facts unique to Plaintiffs or the proposed class members. Defendants' suggestions to the contrary are incorrect. Plaintiffs defined their proposed class as "all transgender people born in Montana *who currently want, or who in the future will want, to amend the sex designation on their Montana birth certificate*." Dkt. 85, at 2 (emphasis added). Defendants' discussion of transgender people who do not want to amend their birth certificates is, therefore, immaterial and simply a distraction. The "relief awarded to a Rule 23(b)(2) class applies to all class members regardless of whether they are knowledgeable of the litigation and regardless of whether all have suffered the precise injury that was suffered by the representative party." *Roose*, ¶ 17 (internal citations omitted).

CONCLUSION

For the foregoing reasons and those provided in Plaintiffs' initial Brief in Support of Motion for Class Certification, Plaintiffs meet all the requirements for class certification under Rules 23(a) and 23(b)(2), and the Court should grant Plaintiffs' Motion for Class Certification.

Dated: January 9, 2023

Respectfully submitted,

By: */s/Akilah Deernose*
Akilah Deernose

Akilah Deernose (Bar No. 60742990)
Alex Rate (Bar No. 11226)
ACLU Montana Foundation, Inc.
P.O. Box 1968
Missoula, MT 59806
Telephone: 406-203-3375
deernosea@aclumontana.org
ratea@aclumontana.org

Malita Picasso*
Jon W. Davidson*
(admitted only in California)
American Civil Liberties Union Foundation
125 Broad Street,
New York, NY 10004.
Telephone: 212-549-2561
mpicasso@aclu.org
jondavidson@aclu.org

F. Thomas Hecht*
Tina B. Solis*
Seth A. Horvath*
Nixon Peabody LLP
70 West Madison Street, Suite 3500
Chicago, IL 60601
Telephone: 312-977-4443
Facsimile: 312-977-4405
fthecht@nixonpeabody.com
tbsolis@nixonpeabody.com
sahorvath@nixonpeabody.com

Elizabeth Halverson PC
1302 24th Street West #393
Billings, MT 59102
406-698-9929
ehalverson@halversonlaw.net

* Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I certify that Plaintiffs' **Reply Brief In Support of Motion For Class Certification** was served by eService on counsel for Defendants:

AUSTIN KNUDSEN
Montana Attorney General
KATHLEEN L. SMITHGALL
Assistant Solicitor General
P.O. Box 201401
Helena, MT 59620-1401
Telephone: 406-444-2026
Facsimile: 406-444-3549
david.dewhirst@mt.gov
kathleen.smithgall@mt.gov

EMILY JONES
Special Assistant Attorney General
Jones Law Firm, PLLC
115 N. Broadway, Suite 410
Billings, MT 59101
Telephone: 406-384-7990
emily@joneslawmt.com

Electronically signed by Krystel Pickens on behalf of Akilah Deernose on January 9, 2023.

CERTIFICATE OF SERVICE

I, Akilah Maya Deernose, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Reply Brief to the following on 01-09-2023:

Kathleen Lynn Smithgall (Govt Attorney)
215 N. Sanders St.
Helena MT 59601
Representing: Montana Department of Health and Human Services, Gianforte, Gregory As Governor Of State Of Montana, Meier, Adam, As Director Of Dphhs
Service Method: eService

Alexander H. Rate (Attorney)
713 Loch Leven Drive
Livingston MT 59047
Representing: Amelia Marquez
Service Method: eService

Elizabeth A. Halverson (Attorney)
1302 24th Street West #393
Billings MT 59102
Representing: Amelia Marquez
Service Method: eService

Emily Jones (Attorney)
115 North Broadway
Suite 410
Billings MT 59101
Representing: Gianforte, Gregory As Governor Of State Of Montana
Service Method: eService

State of Montana (Minor)
Use this one
Service Method: Other Means by Consent

John Doe I (Plaintiff)
Service Method: Email

Kristin N. Hansen (Attorney)
P.O. Box 1288
Bozeman 59771

Representing: Montana Department of Health and Human Services, Gianforte, Gregory As Governor Of State Of Montana, Meier, Adam, As Director Of Dphhs
Service Method: Other Means by Consent

Austin Miles Knudsen (Attorney)
P.O. Box 624
Culbertson 59218
Representing: Montana Department of Health and Human Services, Gianforte, Gregory As Governor Of State Of Montana, Meier, Adam, As Director Of Dphhs
Service Method: Other Means by Consent

Jon W. Davidson (Attorney)
125 Broad Street
New York
Representing: Amelia Marquez
Service Method: Email

Malita Picasso (Attorney)
125 Broad Street
New York 10004
Representing: Amelia Marquez
Service Method: Email

John Knight (Attorney)
150 North Micigan Avenue Suite 600
Chicago 60601
Representing: Amelia Marquez
Service Method: Email

F. Thomas Hecht (Attorney)
70 West Madison Street, Suite 3500
Chicago 60601
Representing: Amelia Marquez
Service Method: Email

Tina B Solis (Attorney)
70 West Madison Street Suite 3500
Chicago 60601
Representing: Amelia Marquez
Service Method: Email

Seth A Horvath (Attorney)
70 West Madison Street Suite 3500
Chicago 60601
Representing: Amelia Marquez
Service Method: Email

Electronically signed by Krystel Pickens on behalf of Akilah Maya Deernose
Dated: 01-09-2023