

IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. DA 23-0572

---

SCARLET VAN GARDEREN, et al.,

*Plaintiffs and Appellees,*

v.

STATE OF MONTANA, et al.,

*Defendants and Appellants.*

---

**APPELLANTS' REPLY BRIEF**

---

On appeal from the Montana Fourth Judicial District Court, Missoula County  
Cause No. DV 2023-541, the Honorable Jason Marks, Presiding

---

APPEARANCES:

Austin Knudsen

*Montana Attorney General*

Michael D. Russell

Michael Noonan

Thane Johnson

Alwyn Lansing

*Assistant Attorneys General*

MONTANA DEPARTMENT OF JUSTICE

PO Box 201401

Helena, MT 59620-1401

Phone: 406-444-2026

*michael.russell@mt.gov*

*michael.noonan@mt.gov*

*thane.johnson@mt.gov*

*alwyn.lansing@mt.gov*

Emily Jones

*Special Assistant Attorney  
General*

JONES LAW FIRM, PLLC

115 N. Broadway, Suite 410

Billings, MT 59101

Phone: 406-384-7990

*emily@joneslawmt.com*

*Attorneys for Defendants/Appellants*

Akilah Deernose  
Alex Rate  
ACLU OF MONTANA  
PO Box 1968  
Missoula, MT 59806  
Phone: 406-203-3375  
*deernosea@aclumontana.org*  
*ratea@aclumontana.org*

Malita Picasso\*  
Arijeet Sensharma\*  
ACLU FOUNDATION  
125 Broadway Street  
New York, NY 10004  
Phone: 212-549-2561  
*mpicasso@aclu.org*  
*asensharma@aclu.org*

Elizabeth O. Gill\*  
ACLU FOUNDATION  
39 Drumm Street  
San Francisco, CA 94109  
Phone: 415-343-1237  
*egill@aclunc.org*

Matthew P. Gordon  
Heather Shook\*  
Courtney Schirr\*  
Sara Cloon\*  
Kayla Lindgren\*  
PERKINS COIE, LLP  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101  
Phone: 206-359-8000  
*mgordon@perkinscoie.com*

Peter C. Renn\*  
Kell Olson\*  
LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND  
800 S. Figueroa Street, Suite 1260  
Los Angeles, CA 90017  
Phone: 213-382-7600  
*prenn@lambdalegal.org*  
*kolson@lambdalegal.org*

Nora Huppert\*  
LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND  
65 E. Wacker Place, Suite 2000  
Chicago, IL 60601  
Phone: 312-663-4413  
*nhuppert@lambdalegal.org*  
\* admitted pro hac vice

*Attorneys for Plaintiffs/Appellees*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

INTRODUCTION ..... 1

ARGUMENT ..... 3

    I. THE DISTRICT COURT FAILED TO ENGAGE IN THE PROPER  
       CONSTITUTIONAL ANALYSIS ..... 3

        A. THE DISTRICT COURT ERRONEOUSLY DISREGARDED MONTANA’S  
           CLEAR AND COMPELLING INTERESTS UNDERLYING SB99..... 4

        B. THE DISTRICT COURT FAILED TO ACKNOWLEDGE THE SIGNIFICANT  
           MEDICAL AND SCIENTIFIC UNCERTAINTY PLAGUING THE TREATMENTS  
           AT ISSUE..... 12

    II. ALTERNATIVELY, THE DISTRICT COURT’S PRELIMINARY  
        INJUNCTION IS IMPERMISSIBLY BROAD. .... 18

CONCLUSION.....20

CERTIFICATE OF COMPLIANCE.....22

## TABLE OF AUTHORITIES

### Cases

<i>Abbott v. Perez</i> , 138 S. Ct. 2305 (2018) .....	3
<i>Barrett v. State</i> , 2024 MT 86, n.4 .....	3
<i>Califano v. Yamasaki</i> , 442 U.S. 682 (1979) .....	19
<i>Collins v. Texas</i> , 223 U.S. 288, 297-298, 32 S. Ct. 286, 56 L. Ed. 439 (1912) .....	12
<i>Frontiero v. Richardson</i> , 411 U.S. 677 (1973) .....	10
<i>Gill v. Whitford</i> , 585 U.S. 48 (2018) .....	19
<i>Gonzales v. Carhart</i> , 550 U.S. 124 (2007) .....	12, 17
<i>Jacobson v. Massachusetts</i> , 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905) .....	12
<i>Jones v. United States</i> , 463 U.S. 354, 364-365, n. 13, 370, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983) .	12
<i>Kansas v. Hendricks</i> , 521 U.S. 346, 360, n. 3, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997) .....	12
<i>Labrador v. Poe</i> , 601 U.S. ____ (2024) .....	18, 19
<i>Lambert v. Yellowley</i> , 272 U.S. 581, 47 S. Ct. 210, 71 L. Ed. 422, 5 Ohio Law Abs. 88 (1926) .....	12
<i>Marshall v. United States</i> , 414 U.S. 417, 94 S. Ct. 700, 38 L. Ed. 2d 618 (1974) .....	12, 13, 14, 15

<i>Maryland v. King</i> , 567 U.S. 1301 (2012) .....	20
<i>McDonald v. Jacobsen</i> , 2022 MT 160, 409 Mont. 405, 515 P.3d 777 .....	11-12
<i>Mont. Auto. Ass'n v. Greely</i> , 193 Mont. 378, 632 P.2d 300 (1981) .....	11
<i>Mont. Democratic Party v. Jacobsen</i> , 2024 MT 66, 416 Mont. 44, 545 P.3d 1074) .....	10, 11
<i>Powder River Cnty. v. State</i> , 2002 MT 259, 312 Mont. 198, 60 P.3d 357 .....	3
<i>Satterlee v. Lumberman's Mut. Cas. Co.</i> , 2009 MT 368, 353 Mont. 265, 222 P.3d 566 .....	3
<i>State v. Ferguson</i> , 2005 MT 343, 330 Mont. 103, 126 P.3d 463 .....	3
<i>United States Dep't of Labor v. Triplett</i> , 494 U.S. 715 (1990) .....	3, 5, 8
<i>W. Tradition P'ship, Inc. v. State</i> , 2011 MT 328, 363 Mont. 220, 271 P.3d 1 .....	11

**Other Authority**

Mont. Const. art. II, § 15 .....	10
Section 2 of SB99 .....	10

## INTRODUCTION

“The glory which is built upon a lie soon becomes a most unpleasant incumbrance....How easy it is to make people believe a lie, and how hard it is to undo that work again!”<sup>1</sup> This is not mere generalized wisdom from an insightful nineteenth-century author; it is a thoroughly befitting characterization of the struggle at the heart of this case. Indeed, the glory built upon the lie that so-called “gender-affirming care” is safe, effective, and medically necessary or appropriate is a mask of empathy and sophistication that conceals the true cost of the lie—the mutilation of children by unevidenced, unjustified, and unconscionable medical experimentation.

As we witness the tragic consequences of this lie, the eagerness with which it was accepted—and the fury with which it is still repeated—is all the more alarming. All it took was the establishment of an organization of radical ideologues masquerading as an association of trustworthy medical professionals (*i.e.*, the World Professional Association for Transgender Health (“WPATH”)), the promulgation of its “standards of care” for the treatment of children with gender dysphoria, and those “standards” being endorsed by “leading medical organizations.” With that last step, the tortured metaphysical belief that a child can be born into the wrong body was cloaked with a veil of scientific legitimacy and laundered into the idea that a child’s

---

<sup>1</sup> *Autobiography of Mark Twain, Volume 2* (University of California Press, 2013).

subjective gender identity, as fleeting as it may be, can warrant drastic and irreversible medical intervention. Those whose common sense and better judgment led them to disagree or simply question this conclusion along the way were assailed with emotional abuse and accusations of bigotry until they were silenced, sidelined, or otherwise compelled to acquiesce.

Fortunately, those with the courage, integrity, and *true* compassion for the children in the crosshairs of radical gender ideology nonetheless continued the hard work of undoing the lie at the core of this controversy. That hard work has exposed “gender-affirming care” for what it is—pseudoscientific experimentation that threatens an entire generation of vulnerable children. Yet, many remain insistent on the virtue of this “treatment” and persist in their fanaticism. Regardless of whether those activists are driven by pride, ignorance, ideology, greed, denial, or some combination thereof, it should be abundantly clear that they cannot be allowed to circumvent or obstruct Montana’s imminently reasonable efforts to protect its children from this clear and present danger.

Against this backdrop, and in light of the facts in the record, the manifest abuse of discretion and legal error are painfully evident in the District Court’s decision to facially enjoin SB99. None of the distortion, deflection, projection, or sanctimony that pervades Plaintiffs’ Response Brief alters this reality. This Court

should acknowledge as much by reversing the District Court and vacating its preliminary injunction.

## ARGUMENT<sup>2</sup>

### **I. THE DISTRICT COURT FAILED TO ENGAGE IN THE PROPER CONSTITUTIONAL ANALYSIS.**

Perhaps the most salient of the District Court's many errors was its inversion of this Court's guiding principles when analyzing SB99's constitutionality. Namely, the District Court focused its efforts on finding reasons to *condemn* rather than *uphold* SB99, refusing to afford SB99 the significant presumptions of constitutionality and good faith to which it is entitled and which Plaintiffs failed to overcome. *See Satterlee v. Lumberman's Mut. Cas. Co.*, 2009 MT 368, ¶ 10, 353 Mont. 265, 222 P.3d 566; *Powder River Cnty. v. State*, 2002 MT 259, ¶ 73, 312 Mont. 198, 60 P.3d 357; *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018); *United States Dep't of Labor v. Triplett*, 494 U.S. 715, 721 (1990). The District Court simply accepted Plaintiffs' baseless accusations of prejudice as true and dogmatically

---

<sup>2</sup> Plaintiffs assert that the Court may also consider their additional claims that did not form the basis of the District Court's preliminary injunction, citing their briefing below. Resp.Br. at n.5. However, as the Court reminded the State in a recent opinion, "[t]he mere reference to arguments and authorities presented in district court proceedings is no substitute for developing and presenting appellate arguments." *Barrett v. State*, 2024 MT 86, n.4, (citing *State v. Ferguson*, 2005 MT 343, ¶ 41, 330 Mont. 103, 126 P.3d 463). Plaintiffs would benefit from a similar reminder, but if the Court were inclined to make an exception for Plaintiffs in this case, it should order supplemental briefing on those additional claims.



acceded to their preferred outcome, to the wholesale exclusion of the State's mountain of conflicting evidence. This was manifest abuse of discretion.

**A. THE DISTRICT COURT ERRONEOUSLY DISREGARDED MONTANA'S CLEAR AND COMPELLING INTERESTS UNDERLYING SB99.**

After acknowledging the State's undeniably compelling interest in protecting the physical and psychological well-being of its children, the District Court undermined the clear link between SB99's prohibitions and the protection of minors.

The result included the District Court's demonstrably false conclusions that:

A review of the legislative record does not support a factual finding that minors in Montana are being faced with pressure related to receiving harmful medical care. Furthermore, the legislative record does not support a finding that SB 99 protects minors.

(Doc. 131 at 30.)<sup>3</sup> Indeed, one need look no further than the very first Senate Judiciary Committee hearing on January 27, 2023,<sup>4</sup> which featured live testimony from more than forty individuals in support of SB99. Among those proponents were several individuals who specifically testified to the pressure to receive harmful "gender-affirming care" that minors are faced with, including in Montana. (*See, e.g.*, 1/27/23 Hearing at approx. 08:34:00 (Jared Evans, a Montana father, assuring this is happening in this state based on his personal experience with his daughter transitioning and becoming estranged from her family following meetings with a

---

<sup>3</sup> Plaintiffs also repeatedly rely on these findings. (*See, e.g.*, Resp.Br. at 4-5, 12, 36.)

<sup>4</sup> 1/27/23 Hearing video available at <https://tinyurl.com/33nr5fs5>.

school counselor who told her never to speak to her parents about these issues); *id.* at approx. 08:22:00 (Michael Wells referencing misguided decisions of parents or teachers that cause kids to be trapped in disformed bodies); *id.* at approx. 08:25:55 (Jay Richards, a researcher on gender ideology and its infiltration in education and culture, speaking to the misleading information minors and their parents often receive about the risks and benefits of this treatment); *id.* at approx. 08:36:45 (Butch Barton speaking to the gender ideology being forced onto Montana’s children.) Numerous other individuals also testified to the harms they had *personally* suffered as a result of the treatments prohibited by SB99, and several health care providers further confirmed the need to protect minors from those treatments. (*See, e.g., id.* at approx. 08:09:30 (detransitioner Walt Heyer); *id.* at approx. 08:14:00 (detransitioner Camille Kiefel); *id.* at approx. 08:16:40 (detransitioner Erin Brewer); *id.* at approx. 09:27:25 (detransitioner Laura Smith, representing thousands who have contacted her about transition regret); *id.* at approx. 08:19:00 (Dr. Sandra Marston); *id.* at approx. 08:26:30 (Dr. Jennifer Bauwens); *id.* at approx. 08:39:20 (Dr. Al Olszewski); *id.* at approx. 08:41:30 (Dr. Marsha Magnus); *id.* at approx. 09:14:40 (Dr. Shawn Gillis); *id.* at approx. 09:16:20 (RN Jessie Browning); *id.* at approx. 09:20:20 (Dr. Miriam Grossman); *id.* at approx. 09:22:25 (Dr. Daniel Weiss).)

It remains unclear how the District Court could have reviewed the legislative record and concluded that it does not support the factual findings that the above

testimony so clearly and directly supports. At best, the District Court may have simply been unaware of the above testimony or could not find or access it for whatever reason. At worst, the District Court was well aware of that testimony and consciously chose to ignore it or categorically label it, without further detail or explanation, as the “animus toward transgender persons [or] mischaracterizations of the treatments proscribed by SB99” upon which it relied to outright dismiss the obvious link between the State’s compelling interests and SB99. Either possibility amounts to reversible error, but the latter would denote the much more insidious problem of the District Court siding with Plaintiffs based on its own policy preference.

Further raising the specter of the latter possibility is the District Court’s singling out of two legislators who supported SB99 for reasons it deemed improper with nothing more than near verbatim recitations of Plaintiffs’ characterizations of those legislators’ statements as alleged in Plaintiffs’ First Amended Complaint. (*See* Doc. 131 at 34.) If the legislative record were so “replete” with the animus and mischaracterizations such that the District Court was “forced to conclude that the purported purpose given for SB99 is disingenuous” and instead is more likely “to ban an outcome deemed undesirable by the Montana Legislature veiled as protection for minors[,]” (Doc. 131 at 33-34), one would reasonably expect actual evidence of the same rather than the vague and conclusory statement provided.

Moreover, the District Court’s blithe treatment of the State’s extensive evidence from scientific and medical experts as mere “competing evidence” that is “unpersuasive when measured against Plaintiffs’ evidence[.]” further demonstrates its refusal to meaningfully address the glaring problems with Plaintiffs’ factual assertions. (Doc. 131 at 45.) The State’s evidence was not simply “competing,” it severely undermined Plaintiffs’ claims via thorough declarations from numerous highly qualified experts: two board-certified endocrinologists (Docs. 78, 92, 127, 130); a sexual behavior scientist with special expertise in the development of human sexualities (Docs. 79 and 126); a board-certified child, adolescent, and adult psychiatrist in the United States (Docs. 87 and 128); a child and adolescent clinical psychiatrist in Sweden (Docs. 88 and 129); and a former case manager at a transgender clinic (Doc. 104).

These declarations provided ample basis to support factual findings that vulnerable minors and their families are subject to pressure to receive “gender-affirming care” and that SB99 protects minors from the same. *See, e.g.*, Doc. 77 at 99 (“To understand medicalized transition of gender and its known and unknown consequences is one of the most complicated questions that a young person today could face, and a prepubescent brain is not equipped to process that information rationally, objectively, and with a whole lifetime rather than immediate desires and social pressures in mind.”); Doc. 87 at 17-18 (“[H]eightened prevalence of gender

dysphoria may be attributed to a ‘bandwagon effect’ or, as others call it, ‘contagion.’ In my experience, adolescents presenting with gender dysphoria have often described being influenced by peers and social media to consider that they may be the opposite gender. Similar types of influence have been reported in the past with other mental health conditions in psychiatry. For example, a study showed self-harming behaviors were socially contagious in adolescents, and studies on eating disorders have shown similar patterns.”); *Id.* at 37 (“[A]dolescence is often marked by risky behaviors, sensation seeking, and high prioritization of peer influences when making decisions.”); Doc. 128 at 10-11 (emphasizing influence of social media on children); *Id.* at 12 (noting that adolescents’ “exposure to peer groups and/or social media that influenced their self-concept and feeling of gender incongruence”); Doc. 92 at 11 (“Minors who develop ‘gender dysphoria’ during or shortly after adolescence are susceptible to psychosocial factors including pressure from peers and social media.”); Doc. 130 at 11 (Rapid onset gender dysphoria “results in part from social media and social contagion.”); Doc. 104 at 9 (stating that parents who brought their children to her gender clinic “routinely said they felt they were pressured to consent.”); *Id.* at 11 (explaining that children had come to her gender clinic “under clear pressure by a parent to identify in a way inconsistent with the child’s actual identity.”). These are only a few of the many such examples.

The District Court gave similar treatment to the powerful declarations of those who regret undergoing “gender-affirming care” based on the lie of its safety and efficacy and the resulting harm that they suffered, concluding that “those filings do not make it less likely that at least the specific Youth Plaintiffs in this matter will suffer irreparable injury...” (Doc. 131 at 43.) Plaintiffs likewise dismiss those as “[a] handful of declarations about individuals outside Montana [that] are not evidence of widespread regret.” (Resp.Br. at 55.) However, neither Plaintiffs nor the District Court make any effort to explain how the opposite is not true, *i.e.* how the declarations of only *two* Youth Plaintiffs are evidence of widespread *benefit* or make it any less likely that the countless number of other vulnerable children will suffer irreparable harm from the universal injunction of SB99. This reflects their obvious aversion to confronting the inconvenient truth that minors’ subjective identities can and will easily change with time, and children should not be deprived of their future

autonomy and ability to make life-altering decisions when they attain a greater level of maturity.<sup>5 6</sup>

The District Court’s error in refusing an evidentiary hearing only becomes more stark in this context, as the presentation of live testimony would have allowed for a proper weighing of the veracity of the parties’ witnesses, all of whom would be subject to cross-examination. This crucial process—one developed over centuries in our common law tradition—is ultimately aimed at determining the truth. The District Court’s repeated assurances that this process would ultimately occur at trial (*see* Doc. 131 at 47; nn.8, 14), do not change the fact that vulnerable children (and the State’s interest in protecting them) will continue to be irreparably harmed until trial commences over a year from now. This is hardly the proper weighing of the balance of equities and public interest that the law demands before granting the

---

<sup>5</sup> This also emphasizes the lack of merit underlying their legal claims. Their equal protection claim requires a showing that transgenderism is “an immutable characteristic determined solely by accident of birth[,]” *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973), and their right to privacy claim is specifically precluded by the fact that SB99 enhances their protection as minors. Mont. Const. art. II, § 15.

<sup>6</sup> Furthermore, Plaintiffs are incorrect to the extent they argue the State is limited to the purpose expressly stated in Section 2 of SB99. “A compelling government interest may be manifestly implied, moreover, from the language and effect of an enactment...or judicial notice of a related manifest government interest in...furthering the protection or exercise of individual rights.” *Mont. Democratic Party v. Jacobsen*, 2024 MT 66, ¶ 161, 416 Mont. 44, 545 P.3d 1074 (Sanderfur, J., dissenting). (*See also* 9/18/23 Hr.Tr. at 35:21—36:1; 41:11-16) (asserting the State’s interest in preserving the right of minors to future autonomy).

extraordinary relief of universally enjoining a duly enacted law. Cold comfort, indeed.

This is all notwithstanding the fact that, even if strict scrutiny were applicable here,<sup>7</sup> it does not appear that the State ever necessarily had the burden “to make an *evidentiary showing* of a compelling state interest or that the subject statute is narrowly tailored to further that interest.” *Mont. Democratic Party v. Jacobsen*, 2024 MT 66, ¶ 161, 416 Mont. 44, 545 P.3d 1074 (Sandefur, J., dissenting) (emphasis in original) (citing *Mont. Auto. Ass'n v. Greely*, 193 Mont. 378, 383-84, 632 P.2d 300, 303-04 (1981)). *See also id.* (“As a threshold matter, the questions of whether an asserted government interest is constitutionally compelling and whether a challenged statute is narrowly tailored to further that interest are questions of law.”) (citing *W. Tradition P'ship, Inc. v. State*, 2011 MT 328, ¶ 35, 363 Mont. 220, 271 P.3d 1). The State nevertheless has handily satisfied that burden as established above.

Ultimately, it appears that the District Court’s preliminary injunction was the result of its own policy judgment ostensibly based on Plaintiffs’ self-serving caricature of SB99’s proponents as bigots or luddites who are to be disparaged and dismissed. This not only amounts to the District Court improperly serving the “faction or constituency” for whom Plaintiffs advocate, *McDonald v. Jacobsen*,

---

<sup>7</sup> Rational basis review is the proper level of scrutiny here. (*See Op.Br.* at 41-50.)



2022 MT 160, ¶ 55, 409 Mont. 405, 515 P.3d 777 (citation omitted), but also “a serious affront to the delicate balance of constitutional separation of powers upon which our precious form of distributed-powers government so critically depends.” *Mont. Democratic Party*, ¶ 162 (Sandefur, J., dissenting). The District Court therefore manifestly abused its discretion in preliminarily enjoining SB99, and this Court should reverse accordingly.

**B. THE DISTRICT COURT FAILED TO ACKNOWLEDGE THE SIGNIFICANT MEDICAL AND SCIENTIFIC UNCERTAINTY PLAGUING THE TREATMENTS AT ISSUE.**

Neither the District Court nor Plaintiffs bothered to even acknowledge, no less meaningfully address, the United States Supreme Court’s clear precedent giving “state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty.” *Gonzales v. Carhart*, 550 U.S. 124, 163 (2007) (citing *Kansas v. Hendricks*, 521 U.S. 346, 360, n. 3, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997); *Jones v. United States*, 463 U.S. 354, 364-365, n. 13, 370, 103 S. Ct. 3043, 77 L. Ed. 2d 694 (1983); *Lambert v. Yellowley*, 272 U.S. 581, 597, 47 S. Ct. 210, 71 L. Ed. 422, 5 Ohio Law Abs. 88 (1926); *Collins v. Texas*, 223 U.S. 288, 297-298, 32 S. Ct. 286, 56 L. Ed. 439 (1912); *Jacobson v. Massachusetts*, 197 U.S. 11, 30-31, 25 S. Ct. 358, 49 L. Ed. 643 (1905)). *See also Marshall v. United States*, 414 U.S. 417, 427, 94 S. Ct. 700, 38 L. Ed. 2d 618 (1974) (“When Congress undertakes to act in areas fraught with medical and scientific uncertainties,

legislative options must be especially broad’’)). The District Court presumably concluded, based on its refusal to meaningfully consider the substantial evidence undermining Plaintiffs’ experts and WPATH’s “standards of care” and its faulty determination of improper motive, that no scientific or medical uncertainty existed such that deference to the Montana Legislature was warranted. But as the State pointed out both below and on appeal (*see* Doc. 77 at 48; Op.Br. at 44-47), the evidence undermining the purported credibility of WPATH’s “standards of care” to which the District Court deferred only continues to grow. Indeed, during just the period of time since the State filed its Opening Brief herein, the evidence of “gender-affirming care’s” dubiousness has amassed with an increasing pace.

The scandal exposed by the publishing of “The WPATH Files, Pseudoscientific Surgical and Hormonal Experiments on Children, Adolescents, and Vulnerable Adults,”<sup>8</sup> may be the most striking of these developments. This nearly 250-page report details newly released files from WPATH’s internal messaging forum and a leaked internal panel discussion, demonstrating “that the world-leading transgender healthcare group is neither scientific nor advocating for ethical medical care.”<sup>9</sup> “These internal communications reveal that WPATH advocates for many

---

<sup>8</sup> Mia Hughes, *The WPATH Files: Pseudoscientific Surgical and Hormonal Experiments on Children, Adolescents, and Vulnerable Adults*, *Environmental Progress* (March 2024) (available at <https://tinyurl.com/a9whx98c>).

<sup>9</sup> *Id.* at 3.

arbitrary medical practices, including hormonal and surgical experimentation on minors[.]”<sup>10</sup> “Its approach to medicine is consumer-driven and pseudoscientific, and its members appear to be engaged in political activism, not science.”<sup>11</sup> Many other examples of willful deceit and malfeasance abound.<sup>12</sup>

Great Britain’s recent acknowledgement of the grave medical risk and uncertainty of “gender-affirming care” and its rejection of activists’ rote insistence of “safe and effective” is likewise compelling. Just last month, Dr. Hillary Cass submitted her final report and recommendations as commissioned by England’s National Health Service (“NHS”) for the purpose of improving the gender identity

---

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *See, e.g., id.* at 10 (“But while WPATH publicly supports minors and their families consenting to these hormonal and surgical treatments based on a nebulous inner sense of self, privately, some members admit that consent is not possible. Behind closed doors, WPATH-affiliated healthcare professionals confess that their practices are based on improvisation, that children cannot comprehend them, and that the consent process is not ethical.”); *id.* (“[I]n video footage obtained by Environmental Progress of an internal WPATH panel titled Identity Evolution Workshop held on May 6, 2022, panel members admit to the impossibility of getting proper informed consent for hormonal interventions from their young patients.”); *id.* (“During the panel, Dr. Daniel Metzger, a Canadian endocrinologist, discussed the challenges faced when attempting to obtain consent from adolescents seeking this medical treatment. Metzger reminded those assembled that gender doctors are ‘often explaining these sorts of things to people who haven’t even had biology in high school yet,’ adding that even adult patients often have very little medical understanding of the effects of these interventions.”); *id., generally.*

services it offers to children and young people.<sup>13</sup> Dr. Cass’s extensive findings are entirely consistent with the revelations of “The WPATH Files.” These include, among many others, the findings that: WPATH “has been highly influential in directing international practice, although its guidelines were found by the University of York appraisal process to lack developmental rigour[;]”<sup>14</sup> “given that the vast majority of young people started on puberty blockers proceed from puberty blockers to masculinising/feminising hormones, there is no evidence that puberty blockers buy time to think, and some concern that they may change the trajectory of psychosexual and gender identity development[;]”<sup>15</sup> and “[i]t has been suggested that hormone treatment reduces the elevated risk of death by suicide in this population, but the evidence found did not support this conclusion.”<sup>16</sup> Suffice to say that Dr. Cass’s work has contributed greatly to the ongoing endeavor to expose the rot at the core of “gender-affirming care” and its motivating ideology, notwithstanding activists’ frenzied efforts to silence and intimidate any opposition.<sup>17</sup>

---

<sup>13</sup> See *Independent Review of Gender Identity Services for Children and Young People*, The Cass Review (April 2024) (available at <https://cass.independent-review.uk/home/publications/final-report/>).

<sup>14</sup> *Id.* at 28.

<sup>15</sup> *Id.* at 32.

<sup>16</sup> *Id.* at 33.

<sup>17</sup> See James Beal, *Hillary Cass: I Can’t Travel on Public Transport after Gender Report*, The Times (April 19, 2024) (available at <https://www.thetimes.co.uk/article/hilary-cass-i-cant-travel-on-public-transport-any-more-35pt0mvnh>) (detailing the spread of false information about The Cass Review and the abuse she has received in its wake).

These and numerous other recent developments<sup>18</sup> clearly underscore the naivete of the Plaintiffs’ and District Court’s dogmatic reliance on WPATH’s “well-

---

<sup>18</sup> See, e.g., Brierley, Joe, et al., *European Academy of Paediatrics Statement on the Clinical Management of Children and Adolescents With Gender Dysphoria*, 12 *Frontiers in Pediatrics* (2024) (available at <https://doi.org/10.3389/fped.2024.1298884>) (The fundamental question of whether biomedical treatments (including hormone therapy) for gender dysphoria are effective remains contested); Leor Sapir, *What Happened at MultiCare?*, *City Journal* (Feb. 16, 2024) (available at <https://tinyurl.com/mr2s686y>) (reporting therapist Tamara Pietzke’s disturbing allegations against her former employer, the MultiCare health system, and its pediatric hospital, Mary Bridge, in Washington State. Pietzke described an environment in which kids with severe mental-health problems and histories of sexual trauma and abuse were being put on a fast track to “gender-affirming” hormonal interventions. Clinicians with doubts that body-modifying hormones were the best way to help these children were silenced and asked to “examine [their] biases.”); Rawee, P., Rosmalen, J.G.M., Kalverdijk, L. et al., *Development of Gender Non-Contentedness During Adolescence and Early Adulthood*. *Arch. Sex Behav.* (2024) (available at <https://doi.org/10.1007/s10508-024-02817-5>) (concluding that “[t]he results of the current study might help adolescents to realize that it is normal to have some doubts about one’s identity and one’s gender identity during this age period and that this is also relatively common.”); *Children to no longer be prescribed puberty blockers, NHS England confirms*, *Sky News* (Mar. 12, 2024) (available at <https://news.sky.com/story/children-to-no-longer-be-prescribed-puberty-blockers-nhs-england-confirms-13093251>) (reporting that children will no longer be prescribed puberty blockers at NHS gender identity clinics); FLC Admin, *French report says sex reassignment in minors may be medical history’s ‘greatest ethical scandal’*, (Apr. 2, 2024) (available at <https://feministlegal.org/french-report-says-sex-reassignment-in-minors-may-be-medical-historys-greatest-ethical-scandal/>) (reporting the French Senate’s findings); Hillary Cass, *Gender medicine for children and young people is built on shaky foundations. Here is how we strengthen services*, *The BMJ* (Apr. 9, 2024) (available at <https://www.bmj.com/content/385/bmj.q814>) (“Improving the evidence base for young people is an essential next step[.]”); *England Limits Youth Gender Medications, Part of Big Shift in Europe*, *Irish Chronicle* (Apr. 9, 2024) (available at <https://tinyurl.com/35bsxpmr>) (“The National Health Service in England began proscribing gender remedies for kids this month, making it the fifth European nation to restrict the drugs due to an absence of proof

established standards of care,” as well as the seemingly blind adoption of them by “leading medical institutions.” The fact that Plaintiffs make no explicit reference to WPATH or its “standards” in their Response Brief (submitted after the publishing of “The WPATH Files”) signals their awareness (and likely state of denial) that their trust in WPATH was woefully misplaced. All this to say that the District Court clearly erred in its undue deference to WPATH and the “leading medical organizations” that adopted its dubious “standards,” and the District Court should have deferred to the Legislature’s sound judgment in this regard. *Gonzales*, 550 U.S. at 163.

---

of their advantages and concern about long-term harms.”); *The Observer view on the Cass review: children were catastrophically failed by the medical profession*, The Guardian (Apr. 14, 2024) (available at <https://www.theguardian.com/commentisfree/2024/apr/14/cass-review-gender-identity-services-children-young-people>) (“Disproportionately made up of girls and same-sex attracted children, many were put on an irreversible medical pathway without diagnostic criteria”); Mary McCool, *Scotland's under-18s gender clinic pauses puberty blockers*, (Apr. 18, 2024) (available at <https://www.bbc.com/news/uk-scotland-68844119>) (“Scotland's NHS has paused prescribing puberty blockers to children referred by its specialist gender clinic”); Letters, *We are ashamed of the role psychology played in gender care*, The Guardian (Apr. 21, 2024) (available at <https://www.theguardian.com/theobserver/commentisfree/2024/apr/21/we-are-ashamed-of-role-psychology-played-gender-care-observer-letters>) (“We write as clinical psychologists with longstanding concerns about the scandal unfolding at Gender Identity Development Service clinics...it was clinical psychologists who promoted an ideology that was almost impossible to challenge; who, as the Cass report found, largely failed to carry out proper assessments of troubled young people, and thus put many on an ‘irreversible medical pathway’ that in most cases was inappropriate; and who failed in their most basic duty to keep proper records.”)

## II. ALTERNATIVELY, THE DISTRICT COURT'S PRELIMINARY INJUNCTION IS IMPERMISSIBLY BROAD.

Lastly, even if this Court were inclined to endorse the District Court's flawed legal and factual basis of its facial preliminary injunction, it should still correct the error resulting from its overbreadth and limit the injunction only to the specific treatments sought by the Youth Plaintiffs. The United States Supreme Court's recent decision in *Labrador v. Poe*, 601 U.S. \_\_\_\_ (2024), compels this result. Indeed, the *Labrador* Court squarely addressed the problem of such overbroad preliminary injunctions under facts and circumstances remarkably similar to those present in this case.

There, the United States District Court for the District of Idaho had facially enjoined Idaho's Vulnerable Child Protection Act ("VCPA") passed in 2023 and set to take effect at the beginning of 2024. The VCPA "sought to regulate a number of practices upon a child for the purpose of attempting to alter the . . . child's sex." *Id.* at 2 (quotations and citation omitted). "Idaho claimed that its law aimed to protect children from treatments that can cause 'lasting harm and irreversible damage.'" *Id.* Two children and their parents sued, alleging that, "without access to puberty blockers and estrogen, the two minor plaintiffs would likely suffer serious mental health problems." *Id.* The plaintiffs also sought a preliminary injunction, which the district court granted, "[b]ut instead of enjoining state officials from enforcing the law with respect to the plaintiffs and the drug treatments they sought, the district

court entered a universal injunction.” *Id.* “Among other things, this meant Idaho could not enforce its prohibition against surgeries to remove or alter children’s genitals, even though no party before the court had sought access to those surgeries or demonstrated that Idaho’s prohibition of them offended federal law.” *Id.* “The court’s order promised to suspend Idaho’s law indefinitely, too, as [that] litigation (like many today) may take years to reach final judgment.” *Id.* at 2-3.

The *Labrador* Court reiterated that “a federal court may not issue an equitable remedy ‘more burdensome to the defendant than necessary to [redress]’ the plaintiff’s injuries.” *Id.* at 4-5 (brackets in original) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979); *Gill v. Whitford*, 585 U.S. 48, 68 (2018)(“[A] ‘remedy must be limited to the inadequacy that produced the injury in fact that the plaintiff has established’”). “The district court’s universal injunction defied these foundational principles.” *Id.* at 5. “It did not just vindicate the plaintiffs’ access to the drug treatments they sought. It purported to bar the enforcement of ‘any provision’ of the law against anyone.” *Id.* “In choosing such an extraordinary remedy, the district court clearly strayed from equity’s traditional bounds.” *Id.* “The remaining stay factors—the relative harms to the parties and the public interest—point to the same conclusion.” *Id.* The Supreme Court has “long held that, ‘[a]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.’” *Id.* (quoting



*Maryland v. King*, 567 U.S. 1301, 1301 (2012) (Roberts, C.J., in chambers)) (brackets in original).

Applying *Labrador’s* reasoning and holding here, the District Court clearly “strayed from equity’s traditional bounds” by facially enjoining SB99. This resulted in ongoing irreparable harm to the State by preventing it from effectuating SB99, a law duly enacted by Montanans’ elected representatives. If it does not reverse the District Court entirely, this Court should therefore narrow the preliminary injunction to apply only to those harms specifically alleged by the two Youth Plaintiffs.

### **CONCLUSION**

By enacting SB99, the Montana Legislature acted well within its rightful police power and as a matter of necessity to mitigate the shocking harm that “gender affirming care” inflicts upon minors. This harm continues with each passing day that such sound legislation is delayed or obstructed in the face of the overt scandal that continues to unfold before our eyes. The well-being of Montana’s children must never be sacrificed at the altar of radical gender ideology. This Court should not be swayed by activists with snake oil to sell or the serpentine sleights of tongue that have lured so many into the depths of this madness. This Court must reverse the District Court’s preliminary injunction and allow SB99 to serve its intended purpose of protecting Montana’s children.

DATED this 7th day of May, 2024.

Austin Knudsen  
MONTANA ATTORNEY GENERAL

*/s/ Michael Russell*

---

Michael Russell  
Michael Noonan  
Thane Johnson  
Alwyn Lansing

*Assistant Attorneys General*  
MONTANA DEPARTMENT OF JUSTICE  
PO Box 201401  
Helena, MT 59620-1401

Emily Jones  
*Special Assistant Attorney General*  
JONES LAW FIRM, PLLC  
115 N. Broadway, Suite 410  
Billings, MT 59101

ATTORNEYS FOR APPELLANTS

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 4,970 words, excluding certificate of service and certificate of compliance.

*/s/Michael Russell*  
Michael Russell

## CERTIFICATE OF SERVICE

I, Michael D. Russell, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 05-07-2024:

Alwyn T. Lansing (Govt Attorney)  
215 N. Sanders St.  
Helena MT 59620

Representing: Charlie Brereton, Greg Gianforte, Austin Miles Knudsen, Montana Board of Medical Examiners, Montana Board of Nursing, MT Dept of Public Health & Human Services, State of Montana

Service Method: eService

Thane P. Johnson (Govt Attorney)  
215 N SANDERS ST  
P.O. Box 201401  
HELENA MT 59620-1401

Representing: Charlie Brereton, Greg Gianforte, Austin Miles Knudsen, Montana Board of Medical Examiners, Montana Board of Nursing, MT Dept of Public Health & Human Services, State of Montana

Service Method: eService

Emily Jones (Attorney)  
115 North Broadway  
Suite 410  
Billings MT 59101

Representing: Charlie Brereton, Greg Gianforte, Austin Miles Knudsen, Montana Board of Medical Examiners, Montana Board of Nursing, MT Dept of Public Health & Human Services, State of Montana

Service Method: eService

Michael Noonan (Govt Attorney)  
215 N SANDERS ST  
HELENA MT 59601-4522

Representing: Charlie Brereton, Greg Gianforte, Austin Miles Knudsen, Montana Board of Medical Examiners, Montana Board of Nursing, MT Dept of Public Health & Human Services, State of Montana

Service Method: eService

Matthew Prairie Gordon (Attorney)  
1201 Third Ave

Seattle WA 98101

Representing: Molly Cross, Paul Cross, Phoebe Cross, Juanita Hodax, Katherine Mistretta, Ewoyt Van Garderen, Jessica Van Garderen, Scarlet Van Garderen

Service Method: eService

Akilah Maya Deernose (Attorney)

1121 Knight St.

Helena MT 59601

Representing: Molly Cross, Paul Cross, Phoebe Cross, Juanita Hodax, Katherine Mistretta, Ewoyt Van Garderen, Jessica Van Garderen, Scarlet Van Garderen

Service Method: eService

Alexander H. Rate (Attorney)

713 Loch Leven Drive

Livingston MT 59047

Representing: Molly Cross, Paul Cross, Phoebe Cross, Juanita Hodax, Katherine Mistretta, Ewoyt Van Garderen, Jessica Van Garderen, Scarlet Van Garderen

Service Method: eService

Kell Olson (Attorney)

3849 E. Broadway Blvd. #136

Tucson AZ 85716

Representing: Molly Cross, Paul Cross, Phoebe Cross, Juanita Hodax, Katherine Mistretta, Ewoyt Van Garderen, Jessica Van Garderen, Scarlet Van Garderen

Service Method: eService

Peter C. Renn (Attorney)

800 South Figueroa St., Suite 1260

Los Angeles CA 90017

Representing: Molly Cross, Paul Cross, Phoebe Cross, Juanita Hodax, Katherine Mistretta, Ewoyt Van Garderen, Jessica Van Garderen, Scarlet Van Garderen

Service Method: eService

Malita Vencienzo Picasso (Attorney)

125 Broad Street, 18th Floor

New York NY 10004

Representing: Molly Cross, Paul Cross, Phoebe Cross, Juanita Hodax, Katherine Mistretta, Ewoyt Van Garderen, Jessica Van Garderen, Scarlet Van Garderen

Service Method: eService

Michelle Tafoya Weinberg (Attorney)

PO Box 652

Whitefish MT 59937

Representing: Biomedical Ethics and Public Health Scholars

Service Method: eService

Derek Joseph Oestreicher (Attorney)

974 Guthrie Road

Helena MT 59602

Representing: Montana Family Foundation  
Service Method: eService

Colin Michael Gerstner (Attorney)  
2828 1st Ave. S.  
Billings MT 59101  
Representing: Elliot Page, Nichole Maines  
Service Method: eService

Robert M. Farris-Olsen (Attorney)  
401 N. Last Chance Gulch  
Helena MT 59601  
Representing: GLBTQ Legal Advocates & Defenders, The National Center for Lesbian Rights  
Service Method: eService

Jon Mark Moyers (Attorney)  
3936 Avenue B, Suite D  
Billings MT 59102  
Representing: American Academy of Pediatrics and Additional National and State Medical and Mental Health Organizations  
Service Method: eService

Peter M. Meloy (Attorney)  
2601 E. Broadway  
2601 E. Broadway, P.O. Box 1241  
Helena MT 59624  
Representing: Compassion & Choices  
Service Method: eService

Nora W. Huppert (Attorney)  
65 E. Wacker Pl., Suite 2000  
Chicago IL 60601  
Representing: Molly Cross, Paul Cross, Phoebe Cross, Juanita Hodax, Katherine Mistretta, Ewoyt Van Garderen, Jessica Van Garderen, Scarlet Van Garderen  
Service Method: eService

Katelyn Kang (Attorney)  
55 Hudson Yards  
New York NY 10001  
Representing: Biomedical Ethics and Public Health Scholars  
Service Method: E-mail Delivery

Valeria M. Pelet del Toro (Attorney)  
55 Hudson Yards  
New York NY 10001  
Representing: Biomedical Ethics and Public Health Scholars  
Service Method: E-mail Delivery

Jordan D Hershman (Attorney)

One Federal Street  
Boston MA 02110  
Representing: GLBTQ Legal Advocates & Defenders  
Service Method: E-mail Delivery

William R Isasi (Attorney)  
850 Tenth St., NW  
Washington DC 20001  
Representing: American Academy of Pediatrics and Additional National and State Medical and Mental Health Organizations  
Service Method: E-mail Delivery

D. Jean Veta (Attorney)  
850 Tenth St., NW  
Washington DC 20001  
Representing: American Academy of Pediatrics and Additional National and State Medical and Mental Health Organizations  
Service Method: E-mail Delivery

Heather Shook (Attorney)  
1201 Third Avenue, Ste 4900  
Seattle WA 98101  
Representing: Molly Cross, Paul Cross, Phoebe Cross, Juanita Hodax, Katherine Mistretta, Ewoyt Van Garderen, Jessica Van Garderen, Scarlet Van Garderen  
Service Method: E-mail Delivery

Courtney Jo Schirr (Attorney)  
1201 Third Avenue, Ste 4900  
Seattle WA 98101  
Representing: Molly Cross, Paul Cross, Phoebe Cross, Juanita Hodax, Katherine Mistretta, Ewoyt Van Garderen, Jessica Van Garderen, Scarlet Van Garderen  
Service Method: E-mail Delivery

Sara Cloon (Attorney)  
1201 Third Avenue, Ste 4900  
Seattle WA 98101  
Representing: Molly Cross, Paul Cross, Phoebe Cross, Juanita Hodax, Katherine Mistretta, Ewoyt Van Garderen, Jessica Van Garderen, Scarlet Van Garderen  
Service Method: E-mail Delivery

Kayla L. Lindgren (Attorney)  
1201 Third Avenue, Ste 4900  
Seattle WA 98101  
Representing: Molly Cross, Paul Cross, Phoebe Cross, Juanita Hodax, Katherine Mistretta, Ewoyt Van Garderen, Jessica Van Garderen, Scarlet Van Garderen  
Service Method: E-mail Delivery

Arijeet Sensharma (Attorney)  
125 Broad Street, 18th Floor

New York NY 10004

Representing: Molly Cross, Paul Cross, Phoebe Cross, Juanita Hodax, Katherine Mistretta, Ewoyt Van Garderen, Jessica Van Garderen, Scarlet Van Garderen

Service Method: E-mail Delivery

Elizabeth O. Gill (Attorney)

LGBT & AIDS Project

American Civil Liberties Union Foundation

39 Drumm Street

San Francisco CA 94111

Representing: Molly Cross, Paul Cross, Phoebe Cross, Juanita Hodax, Katherine Mistretta, Ewoyt Van Garderen, Jessica Van Garderen, Scarlet Van Garderen

Service Method: E-mail Delivery

Electronically signed by Deborah Bungay on behalf of Michael D. Russell

Dated: 05-07-2024