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**MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY**

SUSAN EDWARDS; MONTANA TWO SPIRIT SOCIETY; KAEL FRY; ANNA TELLEZ; EDEN ATWOOD; SHANNON ALOIA, *Plaintiffs*, vs. THE STATE OF MONTANA; GREG GIANFORTE, in his official capacity as GOVERNOR OF MONTANA; AUSTIN KNUDSEN, in his official capacity as ATTORNEY GENERAL OF MONTANA, *Defendants*.	Cause No. DV 23-1026 Hon. Leslie Halligan **Combined Response Brief in Opposition to Defendants' Motion for Summary Judgment and Reply Brief in Support of Plaintiffs' Motion for Summary Judgment**

INTRODUCTION

By defining sex as binary and invalidating protections against gender discrimination, the Montana Legislature fires a salvo at minority communities. Senate Bill 458's ("SB 458") definitions inflict immediate harm. In the span of a few unscientific, inaccurate sentences, the bill dispossesses transgender, intersex, and Two Spirit Montanans of a broad swath of legal protections and decades' worth of hard-won recognition.

SB 458 cannot be justified under any level of judicial scrutiny because it directly contravenes Plaintiffs' fundamental constitutional rights. It perpetrates and encourages discrimination against them on the basis of sex and gender. It infringes on their privacy and personal autonomy. And it demeans their humanity. The Court should hear Plaintiffs' challenge, declare SB 458 unconstitutional, and enjoin its enforcement.

ARGUMENT

Tasked with defending a plainly unconstitutional law, the State attempts to dodge the merits and instead claims that the individuals targeted by SB 458 have no right to challenge it in court. Dkt. 29, State's Combined Br. Opp. Pls.' Mot. Summ. J. & Supp. Defs.' Mot. Summ. J.

(May 31, 2024) ("State's Combined Br."). The State argues that neither the legalization of discrimination against Plaintiffs, the stripping of their legal remedies, nor the infringement of their fundamental rights constitutes an injury. But the Montana Supreme Court disagrees. *See Barrett v. State*, 2024 MT 86, ¶ 33, __ Mont. __, 547 P.3d 630 (holding that state laws eliminating anti-discrimination protections inflict a concrete and particularized injury). *See also Romer v. Evans*, 517 U.S. 620, 625, 635 (1996) (same).

First, Plaintiffs Susan Edwards, Kael Fry, Anna Tellez, Eden Atwood, and Shannon Aloia ("Individual Plaintiffs") have standing because SB 458 (a) directly sanctions discrimination against them and deprives them of legal remedies, (b) tramples their personal autonomy, and (c) causes them immediate dignitary harm. Second, the Montana Two Spirit Society has direct organizational standing because SB 458 frustrates its mission and forces it to divert resources. And third, on the merits, no material facts are genuinely in dispute: SB 458 violates Plaintiffs' rights to equal protection, privacy, and dignity, and the State does not even suggest that it survives any level of constitutional scrutiny. Plaintiffs are entitled to summary judgment on Counts I, II, and III.

I. Individual Plaintiffs have standing.

"Standing is a threshold requirement . . . [that] asks whether the plaintiff asserting a complaint is the proper party to bring that matter to court for adjudication." *350 Mont. v. State*, 2023 MT 87, ¶ 14, 412 Mont. 273, 529 P.3d 847. Standing has two components: constitutional case-or-controversy, and judicially self-imposed prudential limitations. *Heffernan v. Missoula City Council*, 2011 MT 91, ¶ 31, 360 Mont. 207, 255 P.3d 80. The State does not challenge prudential standing. *See* State's Combined Br. 12–14. For good reason: prudential standing is easily met because Individual Plaintiffs assert their own rights in response to constitutional injuries they personally suffer, and they raise questions of public importance across Montana. *See 350 Mont.*, ¶ 16.

Case-or-controversy standing requires "a concrete harm that is actual or imminent," "a fairly traceable connection between the injury and the conduct complained of," and "a likelihood that the requested relief will address the alleged injury." *Barrett*, ¶ 30 (citing *Heffernan*, ¶ 32) (emphasis added). The injury element is satisfied by a "past, present, or threatened injury to a . . . civil right." *350 Mont.*, ¶ 15 (emphasis added). In a multi-plaintiff case, "the standing of any one

plaintiff is sufficient for a claim to proceed, and, upon finding that one plaintiff has standing, 'the standing of the other parties [does] not merit further inquiry.'" *Barrett*, ¶ 19 (quoting *Aspen Trails Ranch, LLC v. Simmons*, 2010 MT 79, ¶ 45, 356 Mont. 41, 230 P.3d 808).

The undisputed facts establish that Individual Plaintiffs have case-or-controversy standing because SB 458 strips them of public accommodations protections, interferes with their autonomy, and dehumanizes them.

A. Individual Plaintiffs have standing because SB 458 subjects them to discrimination and deprives them of legal remedies.

The threat of discrimination, coupled with the loss of legal protections, constitutes a concrete and particularized injury. In *Barrett*, the Montana Supreme Court held that University students had standing to challenge a law that stripped them of protection from on-campus discrimination. *Barrett*, ¶ 33. The challenged law in *Barrett* "promote[d] and excuse[d] some kinds of student-on-student discrimination by preventing universities from responding to or disciplining discriminatory and harassing speech." *Id.* ¶ 32. On appeal, the Court rejected the same standing arguments the State raises here. *See* Appellant's Opening Br. 16, *Barrett*, No. DA 22-0586 (Feb. 8, 2023). Although there was no

evidence that any student-plaintiff had yet been discriminated against, the Court concluded that the students had a "credible injury-in-fact":

> Plaintiffs allege and support a credible threat of ongoing and future injury due to actual discrimination and lack of recourse. HB 349 may have the effect of excusing discriminatory conduct or of depriving students directly of protections the education system had developed and implemented. Therefore, their injury is not abstract or hypothetical and they have alleged a personal stake in the outcome of the controversy sufficient to support the injury prong of constitutional standing.

Barrett, ¶ 33 (citations omitted).

Similarly, in *Romer*, gay and lesbian plaintiffs challenged a Colorado constitutional amendment eliminating protection from discrimination based on sexual orientation, alleging that it subjected them to "immediate and substantial risk of discrimination." 517 U.S. at 625 (emphasis added); *see Evans v. Romer*, No. 92-cv-7223, 1993 WL 19678 (Col. Dist. Ct., Denver Cty. Jan. 15, 1993) ("plaintiffs argue that they will be denied the right to vote and the right to petition the government for redress") (emphasis added). The plaintiffs in *Romer* had standing to sue for redress of threatened discrimination, and the United States Supreme Court held that the amendment violated their right to equal protection. *Romer*, 517 U.S. at 635.

> [The amendment] identifies persons by a single trait and then denies them protection across the board. The resulting disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence. . . . It is not within our constitutional tradition to enact laws of this sort.

Id. at 633.

Individual Plaintiffs' injury is indistinguishable from that of the gay and lesbian plaintiffs in *Romer* and the students in *Barrett*. They reasonably fear imminent discrimination as a result of SB 458, and their legal protections have been nullified. SB 458 legalizes discrimination against Individual Plaintiffs on the basis of sex where public accommodations laws apply, including, *inter alia*, the Montana Human Rights Act ("MHRA"), Montana's "exclusive remedy" for acts of unlawful discrimination, §§ 49-1-101 et seq., MCA; healthcare services, § 50-5-105, MCA; the Montana Insurance Code, §§ 33-1-101 et seq., MCA; and district hospital admissions, § 7-34-2123, MCA. *See generally* S. 458, Mont. 68th Leg., Reg. Sess. (2023). As amended by SB 458, these anti-discrimination protections now exclude the "psychological, behavioral, social, chosen, or subjective experience of gender." *Id.* § 1(f).

It is undisputed that Individual Plaintiffs' gender identities differ from their assigned sexes. Dkt. 11, Ex. 5 to Pls.' Br. Supp. Summ. J.

("Pls.' Br."), Decl. of K. Fry ¶¶ 2–5 (Feb. 3, 2024); Ex. 6 to Pls.' Br., Decl. of S. Edwards ¶¶ 2–5 (Feb. 3, 2024); Ex. 7 to Pls.' Br., Decl. of A. Tellez ¶¶ 2–5 (Feb. 6, 2024). When Individual Plaintiffs are discriminated against, SB 458 ensures they no longer have a legal remedy. Individual Plaintiffs also clearly identified this constitutional injury in their depositions. *See, e.g.*, Ex. 1, Dep. Tr. Excerpts: E. Atwood Dep. 59:12–15, 61:1–5 (Mar. 18, 2024) (answering "[a]bsolutely" to the question, "[D]o you anticipate that you will be discriminated on the basis of gender because of SB 458 in the future?"); S. Edwards Dep. 29:9–11, 34:20–22 (Mar. 18, 2024) (stating that she fears future discrimination and that SB 458 "tacitly give[s] permission to discriminate"); A. Tellez Dep. 41:1–5 (Mar. 18, 2024) (stating "SB 458 . . . makes it perfectly legal to discriminate against me, to fire me, refuse housing, refuse a loan"). The State advances no evidence to dispute Plaintiffs' declarations or their reasonable fear of substantial and imminent sex discrimination. *See Young v. ERA Advantage*, 2022 MT 138, ¶ 22, 409 Mont. 234, 513 P.3d 505 ("An absence of evidence simply cannot . . . establish the existence of a genuine dispute of material fact.").

Individual Plaintiffs need not wait to challenge SB 458 until they

are denied healthcare or fired from a job based on their gender nonconformity. By inviting discrimination and eliminating legal recourse when it occurs, SB 458 causes Individual Plaintiffs both a present and a threatened harm. *See Mont. Immigrant Justice All. v. Bullock*, 2016 MT 104, ¶ 26, 383 Mont. 318, 371 P.3d 430 (granting pre-enforcement standing to challenge the constitutionality of a law creating a definition of "illegal alien" because, if enforced, it would deprive immigrants of state rights, benefits, and services).

B. Individual Plaintiffs have standing because SB 458 actively impedes their autonomy to express their gender identities.

The infringement of a fundamental constitutional right is a concrete, redressable injury. *Gryczan v. State*, 283 Mont. 433, 446, 942 P.2d 112, 120 (1997) (citizens had standing to challenge a ban on same-gender sexual conduct, despite 24-year absence of state enforcement); *see Brown v. Gianforte*, 2021 MT 149, ¶ 19, 404 Mont. 269, 488 P.3d 548 (citizens suffered injury-in-fact when method of selecting judges was changed).

SB 458 infringes Plaintiffs' autonomy and freedom to make intimate and personal choices regarding their gender identities. *See* Mont. Const. art. II, § 10; *Armstrong v. State*, 1999 MT 261, ¶¶ 33, 35,

37, 296 Mont. 361, 989 P.2d 364. Fry testified that he wants to update the sex on his birth certificate, Ex. 1, K. Fry Dep. 30:9–21 (Apr. 19, 2024); however, pursuant to SB 458, the State is refusing to amend sex markers on birth certificates for transgender persons.[1] Fry and Aloia wish to marry their respective long-time partners but would be forced to identify in accordance with SB 458's inaccurate definitions on their marriage applications. Ex. 1, K. Fry Dep. 18:12–14; S. Aloia Dep. 12:11–13 (Apr. 19, 2024) (testifying that they have not completed a marriage application since October 2023); *see* Pls.' First Am. Compl. ¶¶ 18, 24; § 40-1-107, MCA. The State does not dispute these facts. By defining them according to sex chromosomes and reproductive capacity, SB 458 restricts Individual Plaintiffs' ability to self-identify their gender and therefore inflicts immediate constitutional injury.

C. Individual Plaintiffs have standing because SB 458 infringes their constitutional right to dignity.

SB 458 inflicts immediate dignitary harm on Individual Plaintiffs

[1] *DPHHS Announcement Re: Birth Certificates*, dphhs.mt.gov (Feb. 20, 2024), https://dphhs.mt.gov/News/2024/February/DPHHSOfficialsState2022AdministrativeRuleGovernsSexMarkerBirthCertificateChangeRequests#:~:text=The%202022%20final%20rule%20states,misidentified%20on%20the%20original%20certificate. The Court may take judicial notice of regulations and other agency action. *N. Mont. Mustard Growers Coop. v. Britton*, 128 Mont. 553, 567, 280 P.2d 1078, 1085 (1955).

by writing them out of existence. *See Walker v. State*, 2003 MT 134, ¶ 81, 316 Mont. 103, 68 P.3d 872 ("treatment which degrades or demeans persons, that is, treatment which deliberately reduces the value of persons . . . directly violates their dignity.") (cleaned up). The State claims that "no Plaintiff could identify any specific instance where SB 458 caused . . . humiliation, degradation or an instance where they were demeaned." State's Combined Br. 14. But the right to dignity is not so narrow. SB 458 degrades and demeans Individual Plaintiffs by specifically rejecting their "psychological, behavioral, social, chosen, or subjective experience of gender." SB 458 § 1(f).

Contrary to the State's assertion, Individual Plaintiffs clearly articulated this injury in their depositions. Ex. 1, E. Atwood Dep. 41:1–3 ("It is degrading to know that the State that I live in would draft legislation such as this. It's degrading every day."); S. Edwards Dep. 32:13–19 ("[L]ooking at 458's definition, the State . . . has degraded me by dismissing my humanity."); S. Aloia Dep. 21:16–22 ("The bill itself has reduced my value."). By rejecting their identities and denying them recognition under the law, SB 458 perpetrates a constitutional injury on Individual Plaintiffs. Mont. Const. art. II, § 4; *see State v. Wellknown*,

2022 MT 95, ¶ 43, 408 Mont. 411, 510 P.3d 84 (Baker, J., concurring) ("Discrimination . . . constitutes a dignitary harm."); *Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 79, 325 Mont. 148, 104 P.3d 445 (Nelson, J., concurring) ("Laws and policies which single out, degrade and demonize persons based on their gender or sexual orientation—*i.e.*, for simply being who they are—cast a shadow on the individual dignity of such persons and devalue those persons' basic humanity and the intrinsic worth that all people possess."). Individual Plaintiffs therefore satisfy the injury and causation prongs of standing. *See Heffernan*, ¶ 32. Because the harm will cease if SB 458 is declared unconstitutional and enjoined, the redressability element is also satisfied. *See id.*

II. The Two Spirit Society has standing.

Organizations can assert standing in two ways. First, an association can bring suit on behalf of its members. *Heffernan*, ¶ 43. Second, "an organization has direct standing to sue where it establishes that the defendant's behavior has frustrated its mission and caused it to divert resources in response to that frustration of purpose." *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021); *see Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982); *Nat'l Council*

of La Raza v. Cegavske, 800 F.3d 1032, 1040 (9th Cir. 2015); *Macintyre v. Devoe*, No. 81532, 1997 Mont. Dist. LEXIS 885, at *14–16 (Mont. 4th Judicial Dist. Ct. 1997) (fair housing nonprofit had standing to sue landlord when it diverted resources toward remedying the effects of his discriminatory practices). An organization's change in behavior in response to an alleged constitutional violation is a concrete and particular injury. *Havens Realty Corp.*, 455 U.S. at 379; *Nat'l Council*, 800 F.3d at 1040.

The Two Spirit Society has standing because SB 458 frustrates its mission and forces it to divert resources. "Two Spirit" refers to unique gender identities and concepts that exist in Native American and Indigenous cultures. Ex. 8 to Pls.' Br., Decl. of D. Herrera ¶¶ 3–4 (Feb. 21, 2024). After repression due to colonization and assimilation, Two Spirit culture experienced a resurgence alongside the inclusivity of the gay rights movement. *Id.* ¶ 7. The Two Spirit Society is an organization that works to foster increased cultural understanding of Two Spirit traditions. *Id.* ¶ 2.

SB 458 forced the Two Spirit Society to divert resources and change its behavior. Since the bill's passage, the Two Spirit Society has had to

invest more time and resources in educating the community about the law and the resulting repercussions of being forced to assimilate as either male or female. *Id.* ¶ 10. The Two Spirit Society youth group has had to meet more regularly, the organization has reallocated resources to field inquiries about SB 458, and it has consequently been less able to carry out its mission of teaching Two Spirit traditions. *Id.* ¶¶ 10–11.

The State argues that the Two Spirit Society lacks standing because it has not, for example, been denied public accommodations or the ability to change a birth certificate. State's Combined Br. 7; *see also, e.g.*, Ex. 1, D. Herrera Dep. 38:2–15 (Apr. 19. 2024) ("has the Two Spirit Society been denied admission to a hospital?"), 44:20–25 ("has the Two Spirit Society been terminated from . . . employment?"). But this misses the thrust of organizational standing. The evidence in Herrera's declaration—undisputed by the State—establishes that the Two Spirit Society has standing due to its diversion-of-resources injury.

III. As a matter of law, SB 458 is facially unconstitutional.

SB 458 has no constitutional applications. The core of the law is its inaccurate, exclusionary, and inherently discriminatory classifications of sex. The State first mischaracterizes Plaintiffs' claim, arguing that

Plaintiffs must undertake a separate analysis of each of the 41 sections of the MCA that SB 458 modifies.[2] State's Combined Br. 15. But each of those modifications is exactly the same: the law is amended to incorporate SB 458's unconstitutional definition of sex. Plaintiffs challenge SB 458's definitions, and, on its face, SB 458 impermissibly classifies on the basis of sex and culture. Axiomatically, because those definitions violate Plaintiffs' rights to equal protection, privacy, and dignity, none of the modifications to those 41 sections can be constitutionally applied.

The State tries a second absurdity, arguing that because most Montanans are not impacted by SB 458's definitions, the law cannot be facially discriminatory. State's Combined Br. 15 ("Plaintiffs are the rare few to whom SB 458's definitions might not squarely apply."). But the fact that SB 458 targets minority populations is the essence of Plaintiffs'

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[2] The State misunderstands the requirements for a facial challenge. The idea that a facial challenge must establish that the law is unconstitutional in all possible applications stems from *United States v. Salerno*, 481 U.S. 739, 745 (1987). However, the doctrine has never been applied so strictly. *See City of Chi. v. Morales*, 527 U.S. 41, 55 n.22 (1999) (The "assumption that state courts must apply the restrictive *Salerno* test is incorrect as a matter of law; moreover it contradicts 'essential principles of federalism.'"); *Washington v. Glucksberg*, 521 U.S. 702, 740 (1997) (Stevens, J., concurring) ("I do not believe the Court has ever actually applied such a strict standard, even in *Salerno* itself."); Michael C. Dorf, *Facial Challenges to State and Federal Statutes*, 46 Stan. L. Rev. 235, 236 (1994) (cited in five United States Supreme Court cases).

challenge. *See Gryczan*, 283 Mont. at 454 (the Montana Constitution protects the basic freedoms and rights of majorities and minorities alike); *see also The Federalist, No. 51*, at 351 (James Madison) (Jacob E. Cooke ed., 1961) (emphasizing the role of government in protecting against the tyranny of the majority). By definition, a statute that contains a discriminatory classification harms some and not others; this does not prevent it from being facially unconstitutional. *See, e.g.*, *Rolando v. Fox*, 23 F. Supp. 3d 1227, 1235 (D. Mont. 2014) (sustaining facial challenge to a ban on same-sex marriage). SB 458 is just such a statute.

SB 458 is facially invalid because it violates Plaintiffs' rights to equal protection, privacy, and dignity. The State bears the burden of proving that the law survives strict scrutiny. It cannot—nor does it attempt to—meet this burden because SB 458 was not justified by a single compelling state interest, it causes harm far beyond the scope of its purported intent, and it was motivated by animus against gender minorities.

A. SB 458 violates Plaintiffs' right to equal protection.

The Montana Constitution's Equal Protection Clause protects Montanans from arbitrary and discriminatory state action. *Mont.*

Cannabis Indus. Ass'n v. State, 2016 MT 44, ¶ 15, 382 Mont. 256, 368 P.3d 1131. SB 458 treats similarly situated classes differently because it denies transgender, intersex, and Two Spirit persons the protections of Montana's public accommodations laws. *Romer*, 517 U.S. at 633–34. Because these classifications are drawn on the basis of sex and culture, SB 458 is subject to—and fails—strict scrutiny. *See* Mont. Const. art. II, § 4; *Goble v. Mont. State Fund*, 2014 MT 99, ¶ 35, 374 Mont. 453, 325 P.3d 1211 (holding that statutes that "infringe upon the rights of a suspect class . . . trigger a strict scrutiny analysis."); *see also Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011) ("[D]iscrimination against a transgender individual because of her gender-nonconformity is sex discrimination.").

B. SB 458 violates Plaintiffs' right to privacy.

The Montana Constitution guarantees a fundamental right to privacy, including protection of "personal autonomy." Mont. Const. art. II, § 10; *Gryczan*, 283 Mont. at 455. Through expressing their gender identities, Plaintiffs wish to make "intimate and personal choices . . . defin[ing] [their] own concept of existence." *See Armstrong*, ¶ 37; Ex. 1, Fry Dep. 30:9–21. SB 458 is an unwelcome, unconstitutional intrusion

into this private realm. It denies Plaintiffs the right to keep sensitive information private and to define themselves. It makes the benefits and protections of Montana law contingent on gender misidentification. And it commands Plaintiffs to misgender themselves on marriage applications, birth certificates, and driver's licenses. SB 458 infringes Plaintiffs' right to privacy and is thus subject to strict scrutiny, which it fails. *See Gryczan*, 283 Mont. at 448; *State v. Nelson*, 283 Mont. 231, 242, 941 P.2d 441, 447 (1997); *Love v. Johnson*, 146 F. Supp. 3d 848, 857 (E.D. Mich. 2015); *K.L. v. Alaska*, 2012 WL 2685183, at *8 (Sup. Ct. Alaska 2012).

C. SB 458 violates Plaintiffs' right to dignity.

The Montana Constitution enshrines the "inviolable" dignity of the human being. Mont. Const. art. II, § 4. The right to dignity protects Montanans from demeaning and degrading treatment, *Walker*, ¶ 81, and demands "recognition by others in the political and social community." *Wellknown*, ¶ 42 (Baker, J., concurring). The Montana Supreme Court has observed the connection between gender bias and dignity. *See Albinger v. Harris*, 2002 MT 118, ¶ 35, 310 Mont. 27, 48 P.3d 711 ("This Court and the Montana State Bar have recognized the harm caused by

gender bias and sexual stereotyping in the jurisprudence and courtroom of this state."). SB 458 contravenes both aspects of the right to dignity: it directly degrades and demeans Plaintiffs by dismissing their humanity, Ex. 1, Edwards Dep. 32:13–19; Atwood Dep. 41:1–3; Aloia Dep. 21:16–22, and it refuses them basic recognition of their identities, instead writing them out of existence under Montana law.

D. SB 458 survives no tier of constitutional scrutiny.

Because SB 458 infringes Plaintiffs' fundamental rights, the State bears the burden of demonstrating "by clear and convincing evidence" that the law is "justified by a compelling state interest and . . . narrowly tailored to effectuate only that interest." *Armstrong*, ¶¶ 34, 59. It does not even try. *See generally* State's Combined Br. The State fails to argue that SB 458 survives any level of constitutional review, and it is estopped from doing so in its reply brief. The State's opportunity to defend SB 458's tailoring was its brief in opposition to Plaintiffs' motion for summary judgment; it cannot introduce new arguments in its reply in support of summary judgment. *See Kulstad v. Maniaci*, 2010 MT 248, ¶ 22, 358 Mont. 230, 244 P.3d 722.

The purported basis for passing SB 458 was to correct confusion between sex and gender. Pls.' Br. 4–6. Clarifying confusing terminology is not a compelling state interest, particularly in the absence of any indication that the purported confusion causes any harm. *See United States v. Hardman*, 297 F.3d 1116, 1127 (10th Cir. 2002) (collecting examples of compelling governmental interests, such as protecting children and maintaining the tax system). *Compare Gryczan*, 283 Mont. at 453, 456 (protecting public morals is not a compelling state interest) *with Stand Up Mont. v. Missoula Cty. Pub. Sch.*, 2022 MT 153, ¶ 30, 409 Mont. 330, 514 P.3d 1062 ("[S]temming the spread of COVID-19 is unquestionably a compelling interest.").

Even supposing SB 458 actually corrected any confusion—which instead it only creates—it is not "narrowly tailored to effectuate only that interest." *Malcomson v. Northwest*, 2014 MT 242, ¶ 14, 376 Mont. 306, 339 P.3d 1235. The law also legalizes discrimination, erases rights, and invalidates Montanans' very identities. Such seismic legal shifts are far outside the scope of terminological clarification. SB 458 serves no compelling state interest, is not narrowly tailored, and fails under strict scrutiny. *See* Pls.' Br. 19.

These justifications for the law collapse so easily because they are fictitious. The Legislature's true motivation was animus against gender minorities. Ex. 2 to Pls.' Br., Exs. B–C to Decl. of D. Tsolakidis (Feb. 22, 2023). Accordingly, SB 458's definitions are unconstitutional even under rational basis review. *See USDA v. Moreno*, 413 U.S. 528, 534 (1973) ("[A] bare congressional desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest.") (emphasis in original). SB 458 violates Plaintiffs' fundamental constitutional rights to equal protection, privacy, and dignity and withstands no level of judicial scrutiny.

CONCLUSION

Plaintiffs ask the Court to grant their motion for summary judgment and deny the State's cross-motion for summary judgment.

Respectfully submitted this 14th day of June, 2024.

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