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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

<p>SUSAN EDWARDS, et al.,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>THE STATE OF MONTANA, et al.,</p> <p style="text-align: right;">Defendants.</p>	<p style="text-align: center;">Dept. No. 1 Cause No. DV 23–1026 Hon. Leslie Halligan</p> <p style="text-align: center;">COMBINED BRIEF IN OPPOSITION TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT</p>
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INTRODUCTION

Plaintiffs in this matter ask the Court to facially invalidate Senate Bill 458 (2023) (“SB 458”), a duly enacted law passed by Montanans’ democratically elected representatives, all based on hyperbole and demonstrably false assertions of constitutional injury. Plaintiffs essentially argue that no set of circumstances exists under which SB 458’s clear and objective definitions of “sex,” “male,” and “female” could be valid, simply because those definitions allegedly conflict with their own individual circumstances, subjective perceptions, and political beliefs. Notwithstanding the obvious and inherent absurdity of Plaintiffs’ position, the reality is that they have abjectly failed to satisfy their burden to demonstrate an entitlement to summary judgment in their favor on Counts I, II, and III of their First Amended Complaint (Doc. 14). Quite the contrary, the undisputed material facts demonstrate that all of Plaintiffs’ claims fail as a matter of law, entitling Defendants to summary judgment in their favor as set forth further below.

STATEMENT OF FACTS

After Plaintiffs filed their First Amended Complaint (Doc. 14) and their current Motion for Summary Judgment (Doc. 10) and Brief in Support (Doc. 11), Defendants took the depositions of each named Plaintiff in this litigation with the primary focus of probing their alleged injuries that they attribute to SB 458. On March 18, 2024, Defendants deposed Plaintiffs Anna Tellez (“Tellez”), Eden

Atwood (“Atwood”), and Susan Edwards (“Edwards”). On April 19, 2024, Defendants took the depositions of Plaintiffs Kael Fry (“Fry”), Shannon Aloia (“Aloia”), and Montana Two Spirit Society (“Two Spirit Society”) via its Mont. R. Civ. P. 30(b)(6) designee David Herrera (“Herrera”). Not one Plaintiff substantiated the injuries they alleged herein. Instead, Plaintiffs’ testimony clearly demonstrates the absence of any such injury:

Plaintiff Tellez

1. In no way has Tellez been personally implicated by any of the specific statutes included in SB 458’s title. (Tellez Depo., 8:17-20:13 (Mar. 18, 2024), relevant excerpts attached as **Exhibit A**.)
2. Tellez was not denied the ability to change a birth certificate because of SB 458. (*Id.* at 20:14-16.)
3. As of October 31, 2023, Tellez had no interaction with the State resulting in any negative impact (*Id.* at 32:12-17) or experience of harassment. (*Id.* at 36:19-37:4.)
4. Tellez has not been denied any loan, public housing, public accommodation, state benefit or employment because of SB 458. (*Id.* at 40:13-41:1.)
5. Tellez has not experienced any specific instance of discrimination as a result of SB 458. (*Id.* at 38:25-39:15.)

6. Tellez has not been excluded from any social community because of SB 458. (*Id.* at 39:16-24.)
7. Tellez has not been excluded from any political community because of SB 458. (*Id.* at 39:25-40:3.)
8. SB 458 has not specifically degraded Tellez. (*Id.* at 43:9-13.)
9. Tellez has not been denied the ability to freely speak or been compelled to speak because of SB 458. (*Id.* at 51:1-10.)

Plaintiff Atwood

10. In no way has Atwood been personally implicated by any of the specific statutes included in SB 458's title. (Atwood Depo., 15:18-27:23 (Mar. 18, 2024), relevant excerpts attached as **Exhibit B**.)
11. Atwood was not denied the ability to change a birth certificate because of SB 458. (*Id.* at 27:24-28:1.)
12. SB 458 has not caused Atwood any economic loss. (*Id.* at 37:3-24.)
13. Atwood has not been denied public accommodation, employment, state benefit, insurance, housing, health care, or a state law remedy because of SB 458. (*Id.* at 49:2-51:2.)
14. Atwood has not experienced any specific instance of discrimination as a result of SB 458. (*Id.* at 33:25-35:3, 48:23-49:1.)

15. Atwood has not been excluded from any social community because of SB 458. (*Id.* at 35:6-36:8.)
16. Atwood has not been excluded from any political community because of SB 458. (*Id.* at 36:9-37:2.)
17. SB 458 has not specifically degraded Atwood. (*Id.* at 47:5-48:9.)
18. Atwood has not been humiliated by the enactment of SB 458. (*Id.* at 48:16-17.)
19. Atwood has not been denied the ability to freely speak or been compelled to speak because of SB 458. (*Id.* at 56:22-57:13.)

Plaintiff Edwards

20. In no way has Edwards been personally implicated by any of the specific statutes included in SB 458's title. (Edwards Depo., 9:18-20:22 (Mar. 18, 2024), relevant excerpts attached as **Exhibit C**.)
21. Edwards was not denied the ability to change a birth certificate because of SB 458. (*Id.* at 20:23-25.)
22. Edwards has not been denied any public accommodation, employment, state benefit, health care, housing or state law remedy because of SB 458. (*Id.* at 34:20-35:8.)
23. Edwards has not experienced any specific instance of discrimination as a result of SB 458. (*Id.* at 28:22-29:2.)

24. Edwards has not been excluded from any social community because of SB 458. (*Id.* at 30:14-17.)

25. Edwards has not been excluded from any political community because of SB 458. (*Id.* at 30:18-25.)

26. SB 458 has not specifically degraded Edwards. (*Id.* at 32:4-33:6.)

27. Edwards has not been specifically demeaned by anyone as a result of SB 458. (*Id.* at 33:18-34:3.)

28. Edwards has not been humiliated by the enactment of SB 458. (*Id.* at 34:4-8.)

29. Edwards has not been denied the ability to freely speak or been compelled to speak because of SB 458. (*Id.* at 40:25-41:17)

Plaintiff Fry

30. In no way has Fry been personally implicated by any of the specific statutes included in SB 458's title. (Fry Depo., 11:16-24:1 (Apr. 19, 2024), relevant excerpts attached as **Exhibit D.**)

31. Fry was not denied the ability to change a birth certificate because of SB 458. (*Id.* at 31:12-14.)

32. SB 458 has not specifically or directly impacted Kael Fry. (*Id.* at 34:5-11.)

33. Fry has not experienced any specific instance of discrimination as a result of SB 458. (*Id.* at 30:9-32:24.)

34. Fry has not been excluded from any social community because of SB 458. (*Id.* at 32:25-33:13.)

35. SB 458 has not specifically degraded Fry. (*Id.* at 37:6-9.)

36. Fry has not been specifically demeaned by anyone as a result of SB 458. (*Id.* at 37:10-12.)

37. Fry has not been humiliated by the enactment of SB 458. (*Id.* at 37:13-15.)

38. Fry has not been denied the ability to freely speak or been compelled to speak because of SB 458. (*Id.* at 40:2-5.)

Plaintiff Two Spirit Society

39. In no way has the Two Spirit Society, as an entity, been implicated by any of the specific statutes included in SB 458's title. (Herrera Depo., 35:15-52:3 (Apr. 19, 2024), relevant excerpts attached as **Exhibit E.**)

40. Two Spirit Society was not denied the ability to change a birth certificate because of SB 458. (*Id.* at 52:4-15.)

41. Two Spirit Society has not been denied any public accommodations, opportunities, or legal benefits because of SB 458. (*Id.* at 59:7-24.)

42. Two Spirit Society has not experienced any specific instance of discrimination as a result of SB 458. (*Id.* at 30:9-32:24, 52:21-53:7.)

43. Two Spirit Society has not been excluded from any social community because of SB 458. (*Id.* at 53:8-25.)

44. Two Spirit Society has not been excluded from any political community because of SB 458. (*Id.* at 54:1-6.)

45. No specific event reduced Two Spirit Society's value. (*Id.* at 54:7-55:14.)

46. SB 458 has not specifically degraded Two Spirit Society. (*Id.* at 58:5-22.)

47. Two Spirit Society has not been humiliated by the enactment of SB 458. (*Id.* at 58:25-59:6.)

48. Two Spirit Society has not been denied the ability to freely speak or been compelled to speak because of SB 458. (*Id.* at 61:7-20.)

Plaintiff Aloia

49. In no way has Aloia been personally implicated by any of the specific statutes included in SB 458's title. (Aloia Depo., 8:15-16:7 (Apr. 19, 2024), relevant excerpts attached as **Exhibit F.**)

50. Aloia was not denied the ability to change a birth certificate because of SB 458. (*Id.* at 16:5-7.)

51. Aloia has not been deprived of any public accommodations, employment, state benefit, insurance, housing, state law remedies, or any private business right because of SB 458. (*Id.* at 26:15-27:10.)

52. Aloia has not experienced any specific instance of discrimination as a result of SB 458. (*Id.* at 21:6-9.)

53. Aloia has not been excluded from any social community because of SB 458.

(Id. at 21:10-12.)

54. Aloia has not been excluded from any political community because of SB 458.

(Id. at 21:13-15.)

55. No specific event reduced Aloia's value. *(Id. at 23:19- 24:7.)*

56. SB 458 has not specifically degraded Aloia. *(Id. at 24:19-25:12.)*

57. Aloia has not been specifically demeaned by anyone as a result of SB 458.

(Id. at 25:13-21.)

58. Aloia has not been humiliated by the enactment of SB 458. *(Id. at 26:8-14.)*

59. Aloia has not been denied the ability to freely speak or been compelled to speak because of SB 458. *(Id. at 28:16-25.)*

APPLICABLE STANDARDS

Summary judgment is proper where no genuine issues of material fact exist, and the movant is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c)(3). However, summary judgment may be granted only if the pleadings, discovery, and other disclosed material, including affidavits, establish that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c)(3). The party moving for summary judgment bears the burden of initially establishing the absence of a genuine issue of material fact and the entitlement of a judgment as a matter of law. *Gilko v. Permann*, 2006 MT 30, ¶

12, 331 Mont. 112, 130 P.3d 155. When the moving party meets its burden, the burden shifts to the nonmoving party to present substantial evidence of a genuine issue of fact that is a material element of their case. *Fielder v. Bd. of County Comm'rs*, 2007 MT 118, ¶ 12, 337 Mont 256, P12, P.3d 67. When statements in a later deposition contradict a prior statement, the prior statements do not create a genuine issue of material fact. *Meadow Lake Estates Homeowners Ass'n v. Shoemaker*, 2008 MT 41, ¶ 46, 341 Mont. 345, 178 P.3d 81. Further, when a motion for summary judgment is made, a party opposing the motion may not rest upon mere pleading but must set forth specific facts that establish a genuine issue of material fact. Mont. R. Civ. P. 56(e)(2).

Moreover, Plaintiffs must establish injury, causation, and redressability to demonstrate the requisite “case or controversy” standing to maintain their claims herein. *Heffernan v. Missoula City Counsel*, 2011 MT 91, ¶¶ 32–33, 360 Mont. 207, 255 P.3d 80; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992); *Bullock v. Fox*, 2019 MT 50, ¶ 30, 395 Mont. 35, 435 P.3d 1187. “Standing is a threshold requirement of justiciability applicable to all claims for relief as a matter of constitutional law and related prudential policy considerations.” *Larson v. State*, 2019 MT 28, ¶ 45, 394 Mont. 167, 434 P.3d 241 (internal citations omitted). “Standing narrowly focuses on whether, at the time of assertion of a claim, a particular claimant is a proper party to assert the claim regardless of whether the

claim is otherwise cognizable or justiciable.” *Id.* (internal citations omitted). “Though substantively cognizable, a claim for declaratory judgment is nonetheless not justiciable if the plaintiff lacks personal standing to assert the claim.” *Id.* (internal citations omitted).

Montana courts presume that enacted laws are constitutional. *See Powder River Cnty. v. State*, 2002 MT 259, ¶ 73, 312 Mont. 198, 60 P.3d 357. This is not a toothless presumption: “[t]he constitutionality of a legislative enactment is prima facie presumed,” and “[e]very possible presumption must be indulged in favor of the constitutionality of a legislative act.” *Id.* at ¶¶ 73–74. The question for a reviewing court is not whether it is possible to condemn, but whether it is possible to uphold the statutes. *Satterlee v. Lumberman’s Mut. Cas. Co.*, 2009 MT 368, ¶ 10, 353 Mont. 265, 222 P.3d 566. Plaintiffs must prove unconstitutionality beyond a reasonable doubt. *Id.*

“Analysis of a facial challenge to a statute differs from that of an as-applied challenge.” *Mont. Cannabis Indus. Assn.*, 2016 MT 44, ¶ 14, 382 Mont. 256, 368 P.3d 1131. Plaintiffs must demonstrate that “no set of circumstances exists under which the [challenged sections] would be valid.” *Id.* (internal citations and quotations omitted). “The crux of a facial challenge is that the statute is unconstitutional in all its applications.” *Advocates for Sch. Trust Lands v. State*, 2022 MT 46, ¶ 29, 408 Mont. 39, 505 P.3d 825. If Defendants show any constitutional

applications, Plaintiffs’ facial challenge fails. *Id.* In reviewing Plaintiffs’ constitutional challenge, this Court must uphold SB 458 unless it conflicts with the Constitution beyond a reasonable doubt. *Satterlee*, ¶ 10. If any doubt exists, it must be resolved in favor of SB 458. Plaintiffs—as the parties challenging SB 458’s constitutionality—bear the burden of proof. *Mont. Cannabis Indus. Assn.*, ¶ 12. Plaintiffs have failed to meet their burden.

ARGUMENT

The most salient aspect of this case at this juncture is the complete absence of any evidence that Plaintiffs have suffered any injury even remotely traceable to SB 458. Only Plaintiffs’ First Amended Complaint alleges any injury, most notably in Paragraph 10, where they claim to have suffered discrimination and humiliation and have been degraded and demeaned by SB 458. (Doc. 14 at ¶ 10.) However, upon examination at their depositions as outlined above, all of the Plaintiffs expressly contradicted those allegations, asserting no specific facts to support any of their claimed injuries. Plaintiffs’ facial constitutional challenge to SB 458 therefore fails as a matter of law.

I. THE UNDISPUTED FACTS DEMONSTRATE THAT PLAINTIFFS LACK CASE OR CONTROVERSY STANDING.

The Montana Supreme Court has made clear that “the ‘cases at law and in equity’ language of Article VII, Section 4(1) [of the Montana Constitution] *embodies the same limitations* as are imposed on federal courts by the

COMBINED BRIEF IN OPPOSITION TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT | 12

‘case or controversy’ language of Article III [of the U.S. Constitution].” *Plan Helena, Inc. v. Helena Regl. Airport Auth. Bd.*, 2010 MT 26, ¶ 6, 355 Mont. 142, 226 P.3d 567 (emphasis added) (internal citations omitted); *see also Advocates for Sch. Trust Lands*, ¶ 18. Plaintiffs must demonstrate case-or-controversy standing—at every stage of litigation—by distinctly showing “a past, present, or threatened injury” that can be “alleviated by successfully maintaining the action.” *Heffernan*, ¶ 33. To demonstrate standing, Plaintiffs must show that (1) they suffered an injury in fact that is concrete, particularized, and actual or imminent; (2) the injury is fairly traceable to the defendant’s challenged conduct; and (3) the injury is likely to be redressed by a favorable court decision. *Id.* at ¶ 32 (citing *Lujan*, 504 U.S. at 560 (1992)). Plaintiffs must support each element of the standing test “with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan*, 504 U.S. at 561. To survive summary judgment, “the plaintiff can no longer rest on ‘mere allegations,’ but must ‘set forth’ by affidavit or other evidence ‘specific facts’....” *Id.* (quoting Fed. Rule Civ. Proc. 56(e)). *See also* Mont. R. Civ. P. 56(e).

While Plaintiffs’ alleged injuries need not be exclusive to them for standing purposes, the injuries “must be distinguishable from the injury to the public generally[.]” *Mont. Env’tl. Info. Ctr. v. Dept. of Env’tl. Quality*, 1999 MT 248, ¶ 41, 296 Mont. 207, 988 P.2d 1236. *See also Mitchell v. Glacier Cnty.*, 2017 MT 258, ¶ 10, 389 Mont. 122, 406 P.3d 427 (a plaintiff “must show that he has sustained or is

in immediate danger of sustaining some direct injury. . . and not merely that he suffers in some indefinite way in common with people generally”). Allegations of discrimination, economic injury, and psychological injuries, to name a few, which are debunked by deposition testimony, do not suffice to establish the required injury element of constitutional standing at the summary judgment stage.

Here, the depositions established that not a single Plaintiff suffered a specific concrete injury that was remotely traceable to SB 458. In fact, none of the statutes that were expressly modified by SB 458 had anything to do with any of the Plaintiffs. This alone requires the Court to deny Plaintiffs’ Motion and grant Defendants’ Motion, because each one of the statutes listed constitutes a set of circumstances where SB 458 is constitutional. In addition, no Plaintiff could identify any specific instance where SB 458 caused discrimination, humiliation, degradation, or an instance where they were demeaned. The only supposed injury cited was the mere fact that the Legislature passed SB 458. This is nothing more than a political disagreement that hardly amounts to a specific constitutional injury to any Plaintiff sufficient to confer standing. Plaintiffs’ claims therefore fail as a matter of law.

II. PLAINTIFFS HAVE FAILED TO SATISFY THEIR BURDEN TO ESTABLISH FACIAL INVALIDITY

Even assuming, *arguendo*, that Plaintiffs could point to evidence of any injury traceable to SB 458, they still fall far short of showing that SB 458 is unconstitutional on its face. Doing so would require them to prove SB 458’s unconstitutionality in all

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possible applications beyond a reasonable doubt. *Advocates for Sch. Trust Lands*, ¶ 29; *Mont. Cannabis Indus. Assn.*, ¶ 14; *Satterlee*, ¶ 10. That would necessarily entail an analysis of the possible applications of SB 458’s definitions in the context of each of the numerous statutes referencing those defined terms. Plaintiffs fail to even properly acknowledge their burden in their facial challenge, no less attempt to meet that burden, instead resorting to their conclusory declaration that SB 458 is somehow unconstitutional on its face. This simply cannot suffice for the Court to facially invalidate duly enacted legislation pursuant to the applicable authorities.

Moreover, even if Plaintiffs had not contradicted the allegations in their pleadings and those were taken as true, that could only possibly establish that Plaintiffs are the rare few to whom SB 458’s definitions might not squarely apply. In other words, SB 458’s definitions still accurately and validly apply in the overwhelmingly vast majority of their possible applications. This hardly amounts to adequate basis for Plaintiffs to maintain a facial challenge. Plaintiffs’ claims therefore fail as a matter of law and should be dismissed.

CONCLUSION

The simple reality is that Plaintiffs cannot prevail on their Motion, nor can they evade summary judgment in Defendants’ favor without any facts demonstrating any specific injury traceable to SB 458. Case or controversy standing is a fundamental prerequisite for this Court to entertain any constitutional challenge, and

Plaintiffs have utterly failed to establish the same. Plaintiffs likewise make no effort to show, no less elicit proof beyond a reasonable doubt, that SB 458 is unconstitutional in all possible applications as required to sustain their facial challenge. The Court should deny Plaintiffs' Motion and grant summary judgment in favor of Defendants, accordingly.

DATED this 31st day of May, 2024.

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ATTORNEYS FOR DEFENDANTS

Exhibit A

In The Matter Of:
Susan Edwards, et al. vs.
The State of Montana, et al.

Anna Tellez
March 18, 2024

Lesofski Court Reporting, Inc.
7 West Sixth Avenue, Suite 2C
Helena, MT 59601
406-443-2010

1 quantity.

2 Q. How did you become certified to do that
3 task for the EPA purposes?

4 A. I -- through Johnstone Supply you can
5 purchase the materials and take the test through
6 them.

7 Q. And when did you take the test, rough
8 date? You don't have to give me an exact.

9 A. It would be more than seven years ago, I
10 believe.

11 Q. Okay. And no -- outside of taking the
12 test and on-the-job training, no official schooling
13 like at Northern --

14 A. No.

15 Q. I know my son went to MSU Northern and he
16 took a lot of refrigeration courses as well.

17 We're going to cut right to the statutes.
18 And I'm going to go one at a time, and I bring the
19 books out so that way everybody can see the context
20 of the statutes. And I'm showing you section -- and
21 your attorney can help you -- Section 2-18-208.
22 It's the comparable worth state employment statute.

23 Are you employed by the State currently?

24 A. No, I am not.

25 Q. Are you an independent contractor? Is

1 that -- do you own your own business I should ask?

2 A. No, I do not.

3 Q. Who do you work for?

4 A. Extreme Ice of Miles City.

5 Q. And that is a business owned by somebody
6 else?

7 A. Yes, it is.

8 Q. Who is the owner?

9 A. Mark Vilhauer and Clarence Bernard Heiser.
10 I believe that's his name.

11 Q. And do they work for the State?

12 A. No, they do not, as far as I know.

13 Q. As you sit here today, as of October 31st,
14 2023 have you been denied comparable worth as a
15 state employee for purposes of that section?

16 A. To my best understanding, no, I have not.

17 Q. And then let's go to Section 7-15-4207. I
18 hope that I have the statutes that were in effect at
19 that time. Showing you Section 7-15-4207. Have you
20 been involved in an urban renewal program?

21 A. I do not believe I have.

22 Q. In fact, Miles City probably isn't even
23 considered an urban renewal or urban area.

24 A. I have no idea.

25 Q. Okay. Fair enough.

1 7-34-2123. It's probably the other side.
2 There you go. Since October 31st have you been
3 denied admission to a hospital district facility?

4 A. No, I have not.

5 Q. Have you been denied any medical or health
6 care since October 31st, 2023?

7 A. No, I have not.

8 Q. And for purposes of this deposition if I
9 say October 31st, let's assume it's 2023. Okay?
10 Just in case I don't say it specifically.

11 A. Understood.

12 Q. Okay. Let's go to 13-7-408. Since
13 October 31st have you been involved in a ballot
14 issue dispute where you made an argument either for
15 or against the ballot issue?

16 A. No, I have not.

17 Q. Are you involved in politics?

18 A. No, I am not.

19 Q. Okay. Fair enough.

20 13-35-301. Since October 31st have you
21 campaigned for public office where you were required
22 to sign a Code of Fair Campaign Practices form?

23 A. No, I have not.

24 Q. Have you run for any political office
25 since October 31st?

1 A. No.

2 Q. 13-38-201. Since October 31st have you
3 served as a party committee representative for your
4 voting precinct?

5 A. No, I have not.

6 Q. Let's go to 20. Showing you
7 Section 20-7-1306. Since October 31st have you
8 participated in any public school athletic event?

9 A. No, I have not.

10 Q. Have you participated in any athletic
11 event where you competed with public schools?

12 A. No, I have not.

13 Q. Let's go to Section 20-9-327. Since
14 October 31st have you been involved in any manner
15 with the quality educator payment for facilities
16 that serve female youth?

17 A. No, I have not.

18 Q. Let's go to Section 20-25-501. Since
19 October 31st have you -- I assume you're above the
20 age of 18?

21 A. I am.

22 Q. And you were above the age of 18 as of
23 October 31st, 2023?

24 A. Yes.

25 Q. So you've not sought to enroll in college

1 or the university system since October 31st, have
2 you?

3 A. No, I have not.

4 Q. Now we'll go to 20-25-701. It should be
5 just the next -- 20-25-701.

6 MR. TSOLAKIDIS: Or 707 you mean?

7 MR. JOHNSON: It should be 20-25-701.

8 MR. TSOLAKIDIS: Okay. That's not what's
9 bookmarked here.

10 MR. JOHNSON: My bad.

11 Q. (By Mr. Johnson) Since October 31st have
12 you been involved in any work study program at any
13 college or university?

14 A. No, I have not.

15 Q. 22-2-306. Since October 31st have you
16 been involved in any way in the cultural and
17 aesthetic grant program?

18 A. No, I have not.

19 Q. I'm showing you Section 33-1-201. Since
20 October 31st have you had any problems obtaining
21 insurance in any form because of the definition of
22 the word state?

23 A. Not to my knowledge, no.

24 Q. Have you had any problems obtaining
25 insurance since October 31st?

1 A. No, I have not.

2 Q. Let's go to Section 35. Section
3 35-20-209. Since October 31st have you been the
4 secretary of a cemetery association?

5 A. No, I have not.

6 Q. Okay. There is a method to my madness
7 here, so...

8 Section 39-2-912. Since October 31st have
9 you been terminated from your employment where other
10 state, federal, or another administrative body would
11 have had jurisdiction to decide the matter?

12 A. No, I have not.

13 Q. Have you been terminated from your
14 employment since October 31st?

15 A. No, I have not.

16 Q. Okay. And I'm showing you 40-1-107.
17 Since October 31st have you completed a marriage
18 application form?

19 A. No, I have not.

20 Q. Did you get married since October 31st,
21 2023?

22 A. No, only divorced.

23 Q. Okay. 40-5-907. Since October 31st have
24 you been involved in a child support proceeding?

25 A. With that one I'm not sure because I did

1 go through a divorce and that was in some of the
2 paperwork.

3 Q. So do you have children from that prior
4 marriage?

5 A. I do.

6 Q. Okay. And what are their ages?

7 A. 12 and 13.

8 Q. Okay. And as a result of that divorce did
9 you agree upon a child support number or did you go
10 through a state proceeding where it was decided?

11 A. In the paperwork it was decided that
12 neither of us would owe the other anything.

13 Q. Okay. So that was an agreement between
14 you and your prior spouse?

15 A. Yes.

16 Q. Okay. So you did not go through the Child
17 Support Enforcement Division at the State of Montana
18 to determine child support?

19 A. Okay.

20 Q. Agreed?

21 A. Agreed.

22 Q. Okay. 41-5-103. I'll wait until you get
23 there. Since October 31st have any of your children
24 been involved in youth court?

25 A. No, they have not.

1 Q. Okay. 42-2-204. Since October 31st have
2 you been either a putative father or a presumed
3 father of a child that was subject to adoption or
4 where their parental rights were being terminated?

5 A. No, I have not.

6 Q. 45-5-625. Since October 31st have you
7 been accused of sexual abuse of children?

8 A. No, I have not.

9 Q. Okay. 46-19-301. Since October 31st have
10 you been involved in an interstate compact transfer
11 for purposes of penal correction, in other words
12 incarceration?

13 A. No, I have not.

14 Q. How about for probation purposes?

15 A. No, I have not.

16 Q. Okay. 46-19-401. Since October 31st have
17 you been involved in any interstate contract for
18 purposes of penal punishment or punishment?

19 A. I don't believe I have.

20 Q. You aren't on probation, are you, in
21 any --

22 A. No, I am not.

23 Q. -- in any jurisdiction?

24 A. No.

25 Q. 46-32-105. I actually have active cases

1 on that statute.

2 Since October 31st have you sought a
3 certificate of innocence for purposes of a wrongful
4 conviction suit?

5 A. No, I have not.

6 Q. And then we'll go 49-1-102 and 49-2-101.
7 They kind of go together. Since October 31st have
8 you filed a discrimination complaint with the
9 Department of Labor and Industry?

10 A. No, I have not.

11 Q. 49-3-101. It's probably that one. I
12 tried to get organized.

13 Since October 31st have you sought any
14 relief for a violation of the governmental Code of
15 Fair Practices?

16 A. Not to my knowledge, I have not.

17 Q. Okay. You haven't been employed -- you
18 would agree that you haven't been employed by the
19 government, the State of Montana?

20 A. No, I have not.

21 Q. How about any county?

22 A. No.

23 Q. Okay. Let's go 50-5-105. Since
24 October 31st have you in any manner operated a
25 health care facility?

1 A. No, I have not.

2 Q. Go to 50-5-602. Since October 31st have
3 you been involved in a family health care training
4 program?

5 A. No, I have not.

6 Q. You're not trying to be a family practice
7 doctor, are you?

8 A. No. I have no medical training.

9 Q. Nor do I.
10 50-11-101. Since October 31st have you
11 attempted in any manner to perform any reproductive
12 human cloning?

13 A. No, I have not.

14 Q. Nor have I.
15 You haven't been involved in the shipping
16 of materials for reproductive human cloning, have
17 you?

18 A. No, I have not.

19 Q. 50-15-101. Since October 31st have you
20 been employed by the Department of Health and Human
21 Services in the Vital Statistics Department?

22 A. No, I have not.

23 Q. And you have not had to record live births
24 in any manner?

25 A. No, I have not.

1 Q. Okay. 50-19-103. Since October 31st have
2 you been pregnant?

3 A. No, I have not.

4 Q. And you weren't expecting a child since
5 that date or thought you were expecting a child?

6 A. No.

7 Q. Okay. Thank you.

8 50-60-214. Since October 31st have you in
9 any manner performed construction work or engineered
10 construction work to the primary function of a
11 public building?

12 A. No, I have not.

13 Q. Has your company since October 31st --
14 what was the name of the company?

15 A. Extreme Ice. No, we have not.

16 Q. Okay. 53-20-142. Since October 31st have
17 you been a resident of a developmental disability
18 residential facility?

19 A. No, I have not.

20 Q. 53-21-121. Since October 31st have you
21 suffered from a mental illness that required the
22 county attorney to petition for your commitment?

23 A. No, I have not.

24 Q. Then we go to 60-5-513.

25 MR. TSOLAKIDIS: I don't believe it's in

1 this one. 65?

2 MR. JOHNSON: 60-5-513.

3 Q. (By Mr. Johnson) Since October 31st have
4 you operated a business providing gas, food,
5 lodging, or camping to the public and contracted for
6 an information sign with the Department of
7 Transportation?

8 A. No, I have not.

9 Q. You know what I'm talking about, those
10 signs that sit out on the interstate and it says
11 gas, lodging, and it has the signs? You haven't
12 done that, have you?

13 A. No, I have not.

14 Q. 60-5-522. No, wait. We have no questions
15 on that.

16 60-5-107. Since October 31st have you
17 applied for a motorcycle endorsement?

18 A. No, I have not.

19 Q. And the last statute. Since October 31st
20 have you filed any action under the Uniform Probate
21 Code? And I'll help you. Probate means has anybody
22 in your family passed away that you needed to file
23 in district court to probate their estate?

24 A. No, I have not.

25 Q. Okay. And there is a definition of person

1 in there. I think it's on the next page. If you
2 want me to I can get it to you.

3 Do you disagree with the definition of
4 person?

5 A. Are you asking for my legal opinion or my
6 personal opinion?

7 Q. No, just your personal opinion, because
8 we're going to get to that.

9 A. Yes, I would disagree that a corporation
10 is a person.

11 Q. Okay. Why do you disagree with that?

12 A. Because they are not a single-thinking
13 entity.

14 Q. Okay. Since October 31st have you tried
15 to change your birth certificate in any manner?

16 A. No, I have not.

17 Q. Now we'll get the complaint in front of
18 you because I'm interested -- I want to go to the
19 Representative Kmetz. In your complaint you talk
20 about an interaction with Representative Kmetz. Who
21 is Mr. Kmetz?

22 A. He is a legislator that represents either
23 our district or our county.

24 Q. Okay. What happened with this interaction
25 with Mr. Kmetz? I assume it's a -- is he a he?

1 A. No, it has not.

2 Q. And it has not prevented you from changing
3 your name to Anna, has it?

4 A. No, it has not.

5 Q. When did that occur, your name change?

6 A. I believe that was April of 2018.

7 Q. Okay. And it hasn't prevented you from
8 getting hormonal treatment?

9 A. No, it has not.

10 Q. So it's just the new definition, it
11 bothers you; is that fair?

12 A. No. The new definition defines me as male
13 in any way I would have to interact with the State
14 from October 31st moving forward.

15 Q. But you have not interacted with the State
16 where it has impacted you, has it?

17 A. Not as of yet.

18 Q. Okay. Thank you.

19 What is your definition of sex, biological
20 sex?

21 A. That is a much more difficult one to
22 answer. I'm not a biologist. Physical sex is most
23 definitely a spectrum, as male being XY and female
24 being XX is the simply most common but it is not
25 definitive. There is a whole host of possible

1 We're going off the record. The time is 11:01.

2 (Break taken.)

3 VIDEOGRAPHER: This starts Media 2. We're
4 back on the record. The time is 11:23.

5 MR. JOHNSON: Thank you.

6 Q. (By Mr. Johnson) When did -- and this is
7 subject to the confidentiality agreement. When were
8 you diagnosed with depression? Primarily was it
9 before October 31st, 2023?

10 A. Yes, it was.

11 Q. Okay. How long before, roughly? I don't
12 want...

13 A. Eight or nine years.

14 Q. Okay. How about anxiety? When were you
15 diagnosed with that?

16 A. I believe that was 2018.

17 Q. Okay. So safely before October 31st?

18 A. Yes.

19 Q. Okay. And then you noted -- and I'm just
20 going through paragraph 16 of the complaint which
21 talks a lot about you. You note extreme harassment
22 in the community. What harassment has occurred
23 since October 31st, 2023 in the community of Miles
24 City? I assume that's what it is, Miles City?

25 A. (Nods head.)

1 Q. Yes?

2 A. Yes. Since October 31st?

3 Q. Yes.

4 A. None that comes to mind specifically.

5 Q. Okay. And then you note similar incidents
6 because of this and similar incidents you've
7 struggled with your mental health. Are you
8 referring to incidents that occurred prior to
9 October 31st, 2023?

10 A. Yes.

11 Q. Okay. And then I don't want to delve into
12 it too much, but when did the suicide attempt occur?

13 A. I believe that was May of 2018.

14 Q. And thankfully it wasn't successful, so...
15 And then you note inpatient and outpatient
16 treatment. Was that prior to October 31st of 2023?

17 A. Yes, it was.

18 Q. And where did you get the inpatient and
19 outpatient treatment, in Miles City or somewhere
20 else?

21 A. I was transported to Billings Clinic of
22 Billings.

23 Q. Okay. And approximately when was that?

24 A. The first inpatient stay was in May of
25 2018 and I believe the second one was in late June

1 or late July.

2 Q. Of when?

3 A. Of 2018.

4 Q. Okay. Thank you.

5 A. On a side note, I'm not sure with the
6 question right before we broke for a break, of any
7 mental health things I have been diagnosed with, I'm
8 not sure if ADHD is -- I'm not a doctor, I'm not
9 sure if that qualifies as mental health, but I have
10 also been diagnosed with ADHD.

11 Q. When were you diagnosed with ADHD?

12 A. I finally received a diagnosis in November
13 of 2023.

14 Q. Okay. Are you taking any medication for
15 that?

16 A. Yes.

17 Q. What medication are you taking? Again
18 subject to the confidential agreement?

19 A. Sorry. It is a long --
20 dextroamphetamine-amphetamine extended release.

21 Q. Let's let the court reporter just see it.
22 I don't need to see it, but --

23 A. It's abbreviated.

24 Q. Thank you, Anna.

25 Now referring you to paragraph 10, there

1 is lots of allegations in that paragraph. As of
2 October 31st, specifically what discrimination have
3 you endured as a result of Senate Bill 458?

4 A. Well, in my opinion the law being passed
5 in and of itself and the State attempting to define
6 me as male is in itself discrimination.

7 Q. Okay. So just the passage of the act?

8 A. Yes, the defining me as male.

9 Q. You can't cite to any specific instances
10 where you've been discriminated against based upon
11 your gender identity, can you?

12 MR. TSOLAKIDIS: Objection, misstates
13 testimony.

14 Q. (By Mr. Johnson) Go ahead and answer it.

15 A. None have happened since October 31st.

16 Q. Okay. And specifically as of
17 October 31st, what social communities have you been
18 excluded from?

19 A. Please define social communities.

20 Q. Social groups. Let's go like League of
21 Women Voters, any social group that you've tried to
22 become involved in.

23 A. I have never belonged to any and haven't
24 attempted to belong to any, so none.

25 Q. Okay. How about political communities?

1 Since October 31st have you tried to engage yourself
2 in politics?

3 A. No, I haven't.

4 Q. And you allege that your value has been
5 reduced and I want to know as of October 31st
6 specifically what has happened that has reduced your
7 value I guess as a person?

8 A. SB 458 -- and this is to my
9 understanding -- makes it perfectly legal to
10 discriminate against me to fire me, refuse housing,
11 refuse a loan, because I identify differently than
12 the assumed gender binary.

13 Q. Okay. And specifically have you been
14 denied a loan?

15 A. No, I have not.

16 Q. Have you been denied any public housing?

17 A. No, I have not.

18 Q. Have you been denied -- and this is all as
19 of October 31st -- a public accommodation?

20 A. No, I have not.

21 Q. Have you been denied any state benefits?

22 A. No, I have not.

23 Q. And you haven't been denied employment?
24 You've been still working for Ice Extreme I think it
25 is?

1 A. Extreme Ice, yes.

2 Q. Extreme Ice. I'll screw that up every
3 time. I'm sorry.

4 A. That's fine.

5 Q. You allege in paragraph 10 that the
6 legislature acted deliberately to reduce your value.
7 As you sit here today, what evidence do you have
8 that the legislature acted deliberately to reduce
9 your value personally?

10 A. Well, I cannot speak for every legislator,
11 but at least with -- in my interaction with Greg
12 Kmetz I would say my -- the reason I brought up the
13 prior testimony is to show that he had prior bias
14 against people that are transgender and me
15 specifically.

16 Q. But you don't have any specific statement
17 by him at the legislature where he pinpointed you
18 out exclusively, do you?

19 A. No, I do not.

20 Q. Okay. And as of October 31st,
21 specifically what private medical information have
22 you had to disclose as a result of Senate Bill 458,
23 outside of this deposition?

24 A. None as of yet outside of this deposition.

25 Q. Okay. And you chose to be a plaintiff in

1 A. My birth certificate and driver's license
2 both currently state female.

3 Q. So you've been successful in changing
4 those?

5 A. Many years ago, yes.

6 Q. Okay. And you don't intend to change it
7 back, do you?

8 A. In no way.

9 Q. Okay. So specifically can you cite to any
10 incident as of October 31st where you have been
11 degraded as a person as a result of Senate Bill 458,
12 other than the passage? I get that.

13 A. Just its passage and nothing more.

14 MR. TSOLAKIDIS: Asked and answered.

15 Q. (By Mr. Johnson) Okay. Same question
16 with demeaned. Have you been demeaned specifically,
17 you personally since October 31st as a result of
18 Senate Bill 458?

19 A. So far only in that if my boss decides he
20 wants to fire me tomorrow, doing so simply because I
21 am transgender is perfectly legal.

22 Q. And he has not tried to fire you?

23 A. No.

24 Q. And he has employed you for 17 years?

25 A. Yes.

1 Q. As of October 31st have you been compelled
2 to put on any state forms the wrong gender identity,
3 meaning putting -- forcing you to put male as
4 opposed to female?

5 A. Not as of yet, no.

6 Q. Okay. And can you specifically identify
7 any instance where you have been barred from
8 speaking about gender identity issues by the State
9 since October 31st?

10 A. None that I'm aware of.

11 MR. JOHNSON: Let me just take a quick
12 break and we might be done.

13 VIDEOGRAPHER: We're going off the record.
14 The time is 11:47.

15 (Break taken.)

16 VIDEOGRAPHER: We're back on the record.
17 The time is 11:49.

18 Q. (By Mr. Johnson) Anna, unless your
19 counsel asks you some questions, I have no further
20 questions and I thank you for your attentiveness and
21 I thank you for being here.

22 A. Thank you.

23 MR. TSOLAKIDIS: No redirect from me.
24 Thanks.

25 VIDEOGRAPHER: This now ends the

Exhibit B

In The Matter Of:
Susan Edwards, et al. vs.
The State of Montana, et al.

Eden Atwood
March 18, 2024

Lesofski Court Reporting, Inc.
7 West Sixth Avenue, Suite 2C
Helena, MT 59601
406-443-2010

1 Q. Okay.

2 A. As biological sex has many variations, if
3 those variations are -- if we're not writing
4 language that includes everybody, however rare that
5 might be, there is discrimination that will happen.

6 Q. That's not my -- that's really not what
7 I'm asking.

8 A. What are you asking?

9 Q. I'm asking what language specific would
10 you define your condition? That's it. That's all
11 I'm asking.

12 A. A biological human variation.

13 Q. Okay. But that would encompass --

14 A. Which is also male, also female, also
15 intersex with my conditions, with other conditions.

16 Q. All right. Fair enough.

17 A. Thank you.

18 Q. We're going to go through the statutes
19 that have been impacted specifically expressly by
20 Senate Bill 458. Okay? And you can see the
21 statutes. I brought every one of them. Okay?

22 As of October 31st, 2023 were you a State
23 employee for purposes of comparable worth?

24 A. I was not a State employee.

25 Q. So would you agree -- and if you want to

1 see the statute, it's fine. It's Section 2-18-208.

2 So would you agree that Senate Bill 458
3 has not impacted you in any way under the comparable
4 worth in state employment statute?

5 MS. SOMMERS-FLANAGAN: Objection, calls
6 for a legal conclusion.

7 A. I would say that when we are -- the
8 sentence, "The factors for determining worth across
9 occupational groups whenever those groups are
10 dominated by males or females," fails to adequately
11 encompass me.

12 Q. (By Mr. Johnson) But you are not a State
13 employee?

14 A. Correct.

15 Q. So you are not part of the comparable
16 worth provision of --

17 A. I personally am not.

18 Q. Okay. Thank you.

19 Since October 31st of 2023 -- and I just
20 refer to October 31st just for brevity purposes,
21 we're referring to 2023 -- were you involved in any
22 urban renewal program?

23 A. No.

24 Q. Okay. So it would be fair to say that
25 7-15-4207 has not impacted you with regard to the

1 change in Senate Bill 458?

2 A. Can you tell me the number again, please?

3 Q. 7-15-4207.

4 MS. SOMMERS-FLANAGAN: Is it actually on
5 the next page?

6 A. 407, is this what we're looking at?

7 MS. SOMMERS-FLANAGAN: I think it might be
8 the next page.

9 MR. JOHNSON: Yes, they're highlighted.
10 It is.

11 MS. SOMMERS-FLANAGAN: There we go.
12 Objection, calls for a legal conclusion.

13 A. Okay. And the question was?

14 Q. (By Mr. Johnson) You have not been
15 impacted by Senate Bill 458 with regard to
16 Section 7-15-4207?

17 A. I have not.

18 Q. Okay. Thank you.

19 And you might as well keep that book
20 because it's 7-34-2123.

21 A. Uh-huh.

22 Q. Since October 31 have you been denied
23 admission to a hospital district facility?

24 A. No.

25 Q. Okay. Thank you. This will go fast.

1 A. Okay.

2 Q. 13-7-408.

3 A. Okay. New question.

4 Q. Since October 31st have you been involved
5 in a ballot issue dispute where you made an argument
6 either for or against the ballot issue?

7 A. No.

8 Q. 13-35-301.

9 A. Uh-huh.

10 Q. Since October 31 have you campaigned for
11 public office where you were required to sign a Code
12 of Fair Campaign Practices form?

13 A. I have not.

14 Q. 13-38-201. Since October 31st have you
15 served as a party committee representative for your
16 voting precinct?

17 A. I have not.

18 Q. 20-7-1306. Do you see it?

19 A. I do.

20 Q. Since October 31st have you participated
21 in any public school athletic event?

22 A. No.

23 Q. How about an athletic event that competed
24 with public schools?

25 A. No.

1 Q. 20-9-327.

2 A. 20-9?

3 Q. Yeah.

4 A. Oh. 327. Yes.

5 Q. Since October 31st have you been involved
6 in any manner with the quality educator payment for
7 the facility that serves by contract female youth?

8 A. I have not.

9 Q. And 20-25-501. I would assume that since
10 October 31st -- I don't need to know your age --
11 you've been above the age of 18 years?

12 A. So you're not going to card me?

13 Q. No, I'm not going to card you.

14 A. Okay. Fine.

15 Q. Unless you want me to.

16 A. I do get the senior discount at Safeway
17 now.

18 Q. I'm not going to ask what that age is
19 because -- I probably should because that's probably
20 what --

21 A. Fifty-five.

22 Q. I could get it too.

23 A. First Thursday of the month.

24 Q. Thank you for telling me.

25 A. You're welcome.

1 Q. I will use it.

2 20-25-701. See, we can have humor in all
3 of this.

4 A. 701?

5 Q. I did try to make this as organized as
6 possible.

7 A. Oh, it's fine. Okay.

8 Q. So 20-25-701. Since October 31st have you
9 been involved in a work-study program at a Montana
10 college or university?

11 A. I have not.

12 Q. And then 22-2-306.

13 A. Uh-huh.

14 Q. Since October 31st have you been involved
15 in any way in the cultural and aesthetic grant
16 program?

17 A. No.

18 Q. Since October 31st -- and this is
19 33-1-201. Since October 31st have you had any
20 problems obtaining insurance in any form because of
21 the definition of the word state?

22 A. No.

23 Q. And this is 35-20-209. Since October 31st
24 have you been the secretary of a cemetery
25 association?

1 A. I have not.

2 Q. And 39-2-912. Since October 31st have you
3 been terminated from your employment where other
4 state, federal, or another administrative body would
5 have had jurisdiction to decide a contested matter?

6 A. No. Oh, boy.

7 Q. 40-1-107. Since October 31st have you
8 completed a marriage application form?

9 A. Since when?

10 Q. October 31st, 2023.

11 A. No.

12 Q. And it's 40-5-907.

13 MS. SOMMERS-FLANAGAN: I'm sorry. Could
14 you repeat?

15 MR. JOHNSON: Section 40-5-907.

16 A. Uh-huh.

17 Q. (By Mr. Johnson) Since October 31st, 2023
18 have you been involved in a child support
19 proceeding?

20 A. No.

21 Q. 41-5-103. Since October 31st have you had
22 any of your children involved in youth court?

23 A. No.

24 Q. Since October 31st -- this is 42-2-204.
25 Since October 31st have you been either a putative

1 father or presumed father of a child that was
2 subject to adoption or parental rights were being
3 terminated?

4 A. No.

5 Q. 45-5-625. Since October 31st you have not
6 been accused of sexual abuse of children, I would
7 assume?

8 A. No.

9 Q. 46-19-301. Are you there?

10 A. Uh-huh.

11 Q. That's a yes, I assume?

12 A. Yes.

13 Q. That's how the -- yeah.

14 A. Got it.

15 Q. Since October 31st you have not been
16 involved in an interstate compact transfer for
17 purposes of penal correction, have you?

18 A. I have not.

19 Q. 46-19-401, do you see it?

20 A. Uh-huh. Yes.

21 Q. Since October 31st you were not involved
22 in any interstate contract, were you, for penal
23 purposes?

24 A. I was not.

25 Q. And 46-32-105. Since October 31st have

1 you sought a certificate of innocence for purposes
2 of a wrongful conviction suit?

3 A. I have not.

4 Q. And 49-1-102 and 49-2-101, they're kind of
5 going hand in hand and go ahead and look at them
6 both. That's the Human Rights Act.

7 A. Uh-huh. Yes.

8 Q. Since October 31st have you filed a
9 discrimination complaint with the Department of
10 Labor and Industry?

11 A. I have not.

12 Q. 49-3-101. Since October 31st have you
13 sought any relief for a violation of the
14 governmental Code of Fair Practices?

15 A. No.

16 Q. I'm showing you Section 50-5-105. Since
17 October 31st have you in any manner operated a
18 health care facility?

19 A. Say it one more time, please.

20 Q. Since October 31st have you in any manner
21 operated a health care facility?

22 A. Not personally. I operated in.

23 Q. Sure.

24 50-5-602. Since October 31st have you
25 been involved in a family health care training

1 program?

2 A. No. Well...

3 Q. It's defined if you need the definition.
4 It's family practice residency training.

5 A. So, no.

6 Q. And 50-11-101. Since October 31st -- do
7 you see where that is? I don't want to move too
8 fast.

9 A. I need to go back to the previous one.

10 Q. Sure.

11 A. I have been part of the DEIB at St. Pete's
12 where I am an employee drafting and creating health
13 care modules that are designed to educate our
14 employees on how -- the way we treat people that are
15 sexual minorities, people who are ethnic and racial
16 minorities and persons with disabilities.

17 Q. You have not been involved in the family
18 practice residency training that is for doctors?

19 A. As a specific thing, no.

20 Q. Okay.

21 A. Okay.

22 Q. No. I appreciate that.

23 A. Okay.

24 Q. 50-11-101. Since October 31st have you
25 attempted in any manner to perform any reproductive

1 human cloning?

2 A. I have not.

3 Q. And you haven't shipped material for
4 reproductive human cloning, I assume?

5 A. I have not.

6 Q. And let's go to 50-15-101. Since
7 October 31st have you been employed by the
8 Department of Health and Human Services Vital
9 Statistics Department?

10 A. I have not.

11 Q. And so it's safe to say you have not had
12 to record live births in any manner?

13 A. I have not.

14 Q. And then Section 50-19-103. Since
15 October 31st have you -- you have not been pregnant,
16 I assume, since --

17 A. No.

18 Q. -- since October 31st?

19 A. I have not.

20 Q. And you weren't -- you weren't expected --
21 you weren't -- didn't feel that you were expecting,
22 did you, since that date?

23 A. I did not.

24 Q. And I don't mean to be -- it's not to be
25 funny or anything.

1 Section 50-60-214. Since October 31st
2 have you in any manner performed construction work
3 or engineered construction work to the primary
4 function of a public building?

5 A. No.

6 Q. 53-20-142. Since October 31st have you
7 been a resident of a developmental disability
8 residential facility?

9 A. No.

10 Q. 53-21-121. Since October 31st have you
11 suffered from a mental illness that required the
12 county attorney to petition for your commitment?

13 A. No.

14 Q. 53-21-142. I don't have a question on
15 that one.

16 Section 60-5-513. Since October 31st have
17 you operated a business providing gas, food,
18 lodging, or camping to the public and contracted for
19 an information sign with the Department of
20 Transportation?

21 A. I have not.

22 Q. Let's go to Section 60-5-107.

23 A. -107?

24 Q. Yeah. It should be motorcycle
25 endorsement.

1 A. Okay. Your question?

2 Q. Since October 31st have you applied for a
3 motorcycle endorsement?

4 A. I have not.

5 Q. Now we go to 70. Section 72-1-103. Since
6 October 31st have you filed any action under the
7 Uniform Probate Code?

8 A. I have not.

9 Q. There is a definition of person I believe
10 in that section.

11 A. Okay. Under general? Do you know which
12 piece it is?

13 Q. And maybe send it back to me and I'll find
14 it and if not, we'll just scrap that question.
15 Right here. This is the definition.

16 A. Person means an individual, a corporation,
17 an organization, or other legal entity?

18 Q. Yes. Do you disagree with that definition
19 of person?

20 A. Well, yes. I don't think corporations are
21 people, but...

22 Q. Okay. That's the only basis for it?

23 A. Yeah. Yes.

24 Q. Since October 31st have you tried to
25 change your birth certificate in any manner?

1 A. I have not.

2 THE WITNESS: But we should talk about
3 that.

4 Q. (By Mr. Johnson) This is a good time for
5 a break if you want one. If not --

6 A. Sure.

7 Q. -- we can go forward. Yeah, let's take
8 one.

9 A. Thank you.

10 VIDEOGRAPHER: We're going off the record.
11 This ends Media 1. The time is 8:41 a.m.

12 (Break taken.)

13 VIDEOGRAPHER: This starts Media 2. We're
14 back on the record. The time is 8:51. Thank
15 you.

16 Q. (By Mr. Johnson) Thank you. And,
17 Ms. Atwood, what is your definition of gender?

18 A. Broadly speaking.

19 Q. That's fine.

20 A. How a person identifies themselves in
21 their gender understanding and gender expression on
22 a continuum that encompasses anything.

23 Q. So based upon your understanding is it a
24 personal choice?

25 A. It's a personal awareness.

1 Q. I don't know. To make that decision or no
2 decision.

3 A. It should always have been my decision. I
4 should have always been able to. This was a -- not
5 a medically necessary surgery.

6 Q. I mean -- I don't need to go down that
7 road. It's intriguing for other legislation that
8 I'm involved in, your stance.

9 A. I'm sure I will be as well. We may be
10 here again.

11 Q. Now, paragraph 31 indicates that you had
12 an assigned sex at birth.

13 A. Everyone does if you're born in a
14 hospital.

15 Q. And you were assigned female at birth?

16 A. I was.

17 Q. Have you tried to change that in any -- on
18 any document?

19 A. Not yet.

20 Q. Okay. And you qualified "not yet." So
21 you haven't had any difficulty trying to change it
22 on any official document because you haven't tried?

23 A. I have not tried.

24 Q. Fair enough. Paragraph 10. As of
25 October 31st specifically, what discrimination have

1 you endured as a result of Senate Bill 458?

2 A. Well, the writing of it.

3 Q. Okay. How were you discriminated in the
4 writing of it?

5 A. It doesn't include me.

6 Q. What do you --

7 A. It is harmful to me. It's terrifying.

8 Q. We're going to go into each one of those.

9 A. Okay.

10 Q. Did you try to be involved in the drafting
11 of Senate Bill 458?

12 A. I did not try to be involved.

13 Q. Okay. So nobody said you couldn't be
14 involved?

15 A. I beg your pardon. I did write in when
16 this was being drafted.

17 Q. Did you go to a senator and say hey, I
18 want to be involved in drafting Senate Bill 458?

19 A. No. I wrote in my opposition.

20 Q. Okay. You wrote in your opposition --

21 A. Correct.

22 Q. -- but you didn't try to be involved in
23 the drafting of the bill?

24 A. I did not.

25 Q. Okay. So nobody denied you that ability?

1 A. No.

2 Q. And you were able to object to it?

3 A. Uh-huh. Yes.

4 Q. Yes? And we'll have to get that
5 objection.

6 Back to paragraph 10. As of October 31st,
7 2023 -- and, again, we'll assume 2023 so I don't
8 have to regurgitate it -- specifically what social
9 community has excluded you?

10 A. Proponents of this bill.

11 Q. Okay. How have proponents of this bill
12 excluded you from the social community?

13 A. By my -- the erasure that is inherent in
14 the drafting of the bill.

15 Q. So I want to get to specifics. Okay?

16 A. It is very harmful for me --

17 Q. No. We're going to get to specifics.
18 Okay? I'm just defining.

19 A. Okay.

20 Q. Have you been denied access to any social
21 group?

22 A. Not yet.

23 Q. Okay. But as we sit here today you have
24 not been denied access to like the League of Women
25 Voters or anything like that?

1 A. I have not.

2 Q. You haven't been denied access to any
3 social group --

4 MS. SOMMERS-FLANAGAN: Objection --

5 Q. (By Mr. Johnson) -- as of October 31st?

6 MS. SOMMERS-FLANAGAN: -- asked and
7 answered.

8 A. I have not.

9 Q. (By Mr. Johnson) Okay. Same paragraph.
10 As of October 31st, specifically what political
11 community has excluded you?

12 A. Can you define excluded? Because if we go
13 back to specifics, the very bill, the very writing
14 of it, the support of it excludes me.

15 Q. You oppose it, you opposed the bill.
16 There is no question about that. I get it.

17 MS. SOMMERS-FLANAGAN: Objection,
18 mischaracterizes testimony.

19 Q. (By Mr. Johnson) I mean, is it safe to
20 say you oppose the bill?

21 A. I do.

22 Q. Okay. Have you tried to get involved in,
23 say, the -- I'm trying to think of a Republican
24 female group -- and been excluded because of Senate
25 Bill 458?

1 A. I have not tried. I have not been
2 excluded.

3 Q. Okay. And as of October 31st
4 specifically, what has happened that has reduced
5 your value? It's in paragraph 10.

6 A. The writing of the bill is inflammatory
7 and harmful to me.

8 Q. All right. Have your -- have you lost
9 money from your practice as a result of Senate
10 Bill 458?

11 A. I have not lost money --

12 Q. Okay.

13 A. -- that I'm aware of.

14 Q. So your clientele has not decreased as
15 of --

16 A. I work in a hospital clinic setting so I
17 don't have clientele. I have patients.

18 Q. You were -- you have not been denied a pay
19 raise as a result of Senate Bill 458?

20 A. I have not.

21 Q. Okay. Any other economic loss as a result
22 of Senate Bill 458 as of October 31st that you can
23 think of?

24 A. No.

25 Q. Again, back to paragraph 10. What facts

1 Q. All right. Is that a problem?

2 A. Well, if you put a woman in with a man it
3 is.

4 Q. Sure. It is. Yeah, I understand.

5 Back to paragraph 10. Specifically how
6 have you been degraded since October 31st as a
7 result of Senate Bill 458?

8 A. I believe I answered that.

9 Q. Okay. I'm just going through word by word
10 and it's not my words.

11 A. Since the drafting of this legislation,
12 the drafting of it on its face is degrading to me.

13 Q. But specifically you can't indicate one
14 event that you felt was degrading as a result of
15 458?

16 A. Every single time it was written about in
17 the newspaper or put on the news and I came in
18 contact with it, that was degrading to me.

19 Q. But no specific event has impacted you
20 where you felt degraded as a result of 458?

21 MS. SOMMERS-FLANAGAN: Objection --

22 A. But I answered that.

23 MS. SOMMERS-FLANAGAN: Objection, it's
24 asked and answered.

25 Q. (By Mr. Johnson) In general, but just

1 from the drafting of the bill.

2 A. And the reading about it and the discourse
3 around it is degrading to me.

4 Q. But no person has come up to you since
5 October 31st, 2023 and said because of 458 I think
6 you are X, Y, and Z, a degrading name?

7 A. They wouldn't dare.

8 Q. Okay. That hasn't happened?

9 A. No.

10 Q. It's just the process of the legislation
11 and that it was in the paper, correct?

12 A. And in the public discourse and that it
13 even exists, yes.

14 Q. Okay. Thank you.

15 A. Uh-huh.

16 Q. Same question with regard to humiliation.

17 A. Same answer as degration, as degradation.

18 Q. Sounds good.

19 Specifically what discrimination and
20 harassment has occurred since October 31st?

21 A. Specifically meaning one person --

22 Q. Yes.

23 A. -- discriminating against me or degrading
24 me to my face?

25 Q. Yes.

1 A. None.

2 Q. Okay. And have you been denied -- this is
3 paragraph 17 -- a public accommodation as a result
4 of Senate Bill 458 as of October 31st?

5 A. I have not asked for one and I have not
6 had that denied.

7 Q. Okay. How about employment? Have you
8 been denied employment? I think we've kind of gone
9 through this. We're getting through --

10 A. No. I snuck in before this bill was
11 written.

12 Q. Do you believe that Senate Bill 458 would
13 have denied you employment?

14 A. If I had put on the face of it that --
15 like wrote in an extra box and wrote intersex next
16 to it and checked it off (shrugs shoulders).

17 Q. Where would that have -- where do you
18 think that would have denied you employment?

19 A. Well, I just don't know. Any place might
20 be like...

21 Q. But you don't know?

22 A. I don't know.

23 Q. How about a state benefit? Have you been
24 denied a state benefit as of October 31st as a
25 result of Senate Bill 458?

1 A. No.

2 Q. Denied insurance as a result of it?

3 A. No.

4 Q. Housing?

5 A. No.

6 Q. Health care?

7 A. No.

8 Q. As of October 31st -- this is
9 paragraph 17 -- what state law remedy have you been
10 denied specifically as a result of October 31st from
11 Senate Bill 458?

12 A. 17 you said?

13 Q. Yes.

14 A. State law remedy?

15 Q. Yes.

16 A. I was looking for the word and now I'm
17 reading the paragraph.

18 MS. SOMMERS-FLANAGAN: Just so you know,
19 in this version, Mr. Johnson, it doesn't
20 actually refer to Ms. Atwood.

21 MR. JOHNSON: Okay. Sure.

22 MS. SOMMERS-FLANAGAN: In case that wasn't
23 clear.

24 A. And so your question again, please?

25 Q. (By Mr. Johnson) Have you been denied a

1 state law remedy as of October 31st?

2 A. I have not.

3 Q. Okay. And specifically as of
4 October 31st, what has the State done to refuse to
5 recognize you?

6 A. Well, they wrote a bill and passed it that
7 doesn't recognize me.

8 Q. Okay. That's it? Just the bill and the
9 process? And that's --

10 A. So far.

11 Q. Okay. But nothing specifically has
12 occurred with regard to the State where they have
13 refused to recognize you as --

14 A. Since that first offense, no.

15 Q. Okay. Have you been denied any issues
16 with regard to private businesses --

17 A. No.

18 Q. -- because of Senate Bill 458? I should
19 have finished it.

20 A. No.

21 Q. Okay. And again as of October 31st, how
22 has your identity been ignored except -- I'm going
23 to let you get -- I've let you talk about the
24 process and how that's done. Is there anything
25 specific with regard to how your identity has been

1 long way to go.

2 Q. Why do you think it's for the better? And
3 I just want to hear it.

4 A. Because I don't think that anybody else
5 should be deciding what happens to children's bodies
6 or charting their future except for these children
7 themselves to be free from nonconsensual surgeries
8 and discrimination and bias routed in homophobia if
9 you ask me. I don't believe that should happen to
10 children. I think it's -- the damage that has
11 happened to these children is -- would make you
12 weep, any person.

13 Q. Understood.

14 MR. JOHNSON: Let's take a quick break
15 because I'm about done.

16 MS. SOMMERS-FLANAGAN: Okay.

17 VIDEOGRAPHER: We're going off the record.
18 The time is 9:26.

19 (Break taken.)

20 VIDEOGRAPHER: We're now back on the
21 record. The time is 9:33.

22 Q. (By Mr. Johnson) Ms. Atwood, as of
23 October 31st, when has your speech been compelled as
24 a result of Senate Bill 458?

25 A. I don't think I understand that question.

1 Q. So you've asserted a -- one of your counts
2 is that Senate Bill 458 violates your freedom of
3 speech and I'm just trying to touch on that. And as
4 of October 31st, when has your speech been impacted
5 by Senate Bill 458?

6 A. That's about the future, not about what
7 has happened already, so not yet.

8 Q. Okay. It hasn't --

9 A. It hasn't happened yet.

10 Q. You've been free to speak about your
11 disagreement with the legislation. Is that safe to
12 say?

13 A. Yes.

14 Q. In fact, you wrote to the legislature your
15 disagreement with Senate Bill 458?

16 A. Before its passage, yes.

17 Q. And have you been denied the ability to
18 write your disagreement or speak your disagreement
19 as a result of Senate Bill 458 since October 31st?

20 A. I have not.

21 Q. That's all I have.

22 A. Okay.

23 Q. I really appreciate --

24 A. Thank you.

25 Q. -- you. I just appreciate you. That's

Exhibit C

In The Matter Of:
Susan Edwards, et al. vs.
The State of Montana, et al.

Susan Edwards
March 18, 2024

Lesofski Court Reporting, Inc.
7 West Sixth Avenue, Suite 2C
Helena, MT 59601
406-443-2010

1 time.

2 A. Well...

3 Q. Family?

4 A. Yeah. My husband's family was from Miles
5 City and he still had people there. His brother
6 lives in Circle, which is 60 miles away.

7 Q. I've been through Circle too.

8 A. Oh, okay. The round town.

9 And then my family lives in Denver, which
10 is a day's drive. So it was convenient. It was --
11 we wanted to live in a small rural town and Terry
12 kind of fit the bill for everything.

13 Q. Got it. And the reason I've been through
14 Circle and Terry is I went to law school at the
15 University of Minnesota so I would drive through
16 there.

17 A. Oh.

18 Q. Let's go right to the statutes. And there
19 is a method to my madness. I'm just not -- it's not
20 that I like statutes. Frankly, I do. I'm weird.

21 Let's go to 218. I'm going to hand you
22 Montana Code that was in effect when the bill was
23 passed, Senate Bill 458. And I'm going to refer to
24 October 31st, 2023 a lot. So if I refer to
25 October 31st, that's when the bill became effective,

1 Senate Bill 458, which has been challenged in your
2 lawsuit. If I don't refer to 2023 and I just refer
3 to October 31st, I'm referring to October 31st,
4 2023. Fair?

5 A. Uh-huh.

6 Q. Okay. That's a yes?

7 A. Uh-huh. Yes, it is.

8 Q. Showing you Section 2-18-208. Have you --
9 were you employed by the State of Montana -- and I
10 know what the answer is because you retired -- from
11 October 31st, 2023 to the present date?

12 A. No, I was not employed.

13 Q. So you were not making any comparable
14 worth for state employment claims?

15 A. No, I wasn't employed.

16 Q. And I want to take you to 7-15-4207. And
17 the reason I show you the books, that way you can
18 see the context of the statute and I'm not trying to
19 hide anything.

20 Were you --

21 A. Give me a second.

22 Q. Sure.

23 A. Okay.

24 Q. Since October 31st were you involved in
25 any urban renewal program in any capacity?

1 A. No.

2 Q. I'll have you look to -- turn to
3 7-34-2123. And counsel can help you. It's probably
4 on the other page.

5 A. 2131?

6 Q. Section 7-34-2123.

7 A. 2123. Okay.

8 Q. Since October 31st have you been denied
9 admission to a hospital district facility?

10 A. No.

11 Q. Let's go to 13-7-408. Probably the next
12 page. There you go.

13 A. Okay.

14 Q. Since October 31st have you been involved
15 in a ballot issue dispute where you made an argument
16 either for or against the ballot --

17 A. No.

18 Q. -- measure? So no?

19 A. No.

20 Q. Thank you. 13-35-301. Since October 31st
21 have you campaigned for public office where you were
22 required to sign a Code of Fair Campaign Practices
23 form?

24 A. No.

25 Q. 13-38-201. Trust me, there is a method to

1 my madness here.

2 A. Uh-huh.

3 Q. So since October 31st have you served as a
4 party committee representative for your voting
5 precinct?

6 A. No.

7 Q. Are you involved in politics in Terry?

8 A. No.

9 Q. What county is Terry in? Just out of
10 curiosity.

11 A. Prairie.

12 Q. Are you involved in Prairie County
13 politics?

14 A. No.

15 Q. Let's go to 20-7-1306.

16 A. Okay.

17 Q. Since October 31st have you participated
18 in any public school athletic event?

19 A. What do you mean athletic event?

20 Q. So I think it -- I don't know if it's
21 defined, but have you participated in a high school
22 sponsored, junior high sponsored public school
23 athletic event?

24 A. As what?

25 Q. It could be soccer, it could be --

1 A. As a player? As a coach? As -- I'm not
2 sure what you mean by participate.

3 Q. As a player.

4 A. Oh, no.

5 Q. How about as a coach?

6 A. No. Spectator.

7 Q. I go to high school sports all the time.
8 How about an athletic event as a player
9 that competed with public schools?

10 A. No.

11 Q. How about a coach that competed with
12 public schools?

13 A. No.

14 Q. So which sport do you like to be a
15 spectator at in Terry, Montana?

16 A. Basketball, and then they -- they try very
17 hard at baseball.

18 Q. How did Terry do in the basketball year?

19 A. They did okay.

20 Q. Who do you have winning the NCAA
21 tournament then?

22 A. You know, I really don't follow them.

23 Q. Okay. I've got to fill out my bracket so
24 I was trying to get a heads-up on that one.

25 Let's go to 20-9-327.

1 A. All right.

2 Q. Since October 31st have you been involved
3 in any manner with the quality educator payment for
4 the facility that serves by contract female youth?

5 A. No.

6 Q. Let's go to 20-25-501. Since October 31st
7 you've been above the age of 18 years? I don't need
8 to know your age.

9 A. Yes, I have been above the age of 18.

10 Q. And since October 31st you have not sought
11 to enroll in college or the university system of
12 Montana, have you?

13 A. No.

14 Q. Let's go to 20-25-701. Since October 31st
15 you have not been involved in any work-study program
16 at a Montana college or university, have you?

17 A. No.

18 Q. 22-2-306. So the reason for these
19 questions is in Senate Bill 458 it lists all of the
20 statutes that are implicated by Senate Bill 458.

21 A. Yes, I understand that.

22 Q. Okay. Not that I like asking crazy
23 questions but I just have to do my job here.

24 So let's go to 22-2-306. Since
25 October 31st have you been involved in any way in

1 the cultural and aesthetic grant program?

2 A. No.

3 Q. 33-1-201. Since October 31st have you had
4 any problems obtaining insurance in any form?

5 A. No.

6 Q. Frankly, it's the definition I could find
7 in there that related was state anyway, so --

8 A. No. The only property I had was my
9 property insurance because of this last legislature.

10 Q. Did it have anything to do with Senate
11 Bill 458?

12 A. No. No. It just had to do with --
13 anyway.

14 Q. Okay. Looking at 35-20-209. Since
15 October 31st have you been the secretary of a
16 cemetery association?

17 A. No.

18 Q. And then 39-2-912. Since October 31st you
19 have not been terminated from your employment?

20 A. No.

21 Q. Because you've been retired?

22 A. (Nods head.)

23 Q. Let's go to 40-1-107. I think it's a
24 short one. Since October 31st have you completed a
25 marriage application form?

1 A. No. We did that in June.

2 Q. Did you have any issues with it?

3 A. Not in June.

4 Q. Okay. Let's go to 40-5-907. Since
5 October 31st -- I think I know what the answer is --
6 have you been involved in a child support
7 proceeding?

8 A. No.

9 Q. 41-5-103. This is a youth court act. I
10 think it's just the definitions. Since October 31st
11 have you had any of your children involved in the
12 youth court?

13 A. No.

14 Q. Okay. 42-2-204. Since October 31st have
15 you been either a putative father or a presumed
16 father of a child that was subject to adoption or
17 whose parental rights were being terminated?

18 A. No.

19 Q. 45-5-625. Since October 31st have you
20 been accused of sexual abuse of children?

21 A. No.

22 Q. Okay. 46-19-301. Ready?

23 A. Uh-huh.

24 Q. Since October 31st you have not been
25 involved in an interstate compact transfer for

1 purposes of penal corrections?

2 A. No.

3 Q. 46-19-401. Since October 31st you have
4 not been involved in any interstate contract for
5 purposes of the Department of Corrections?

6 A. No.

7 Q. 46-32-105. Since October 31st have you
8 sought a certificate of innocence for purposes of a
9 wrongful conviction suit?

10 A. No.

11 Q. 49-1-102 and 49-2-101, they kind of go
12 hand in hand because it's the human rights
13 complaint. Since October 31st have you filed a
14 discrimination complaint with the Department of
15 Labor & Industry?

16 A. No.

17 Q. Go to 49-3-101. Since October 31st have
18 you sought any relief for a violation of the
19 governmental Code of Fair Practices?

20 A. No.

21 Q. I think it's 50-5-105 is our next one.
22 Since October 31st have you in any manner operated a
23 health care facility?

24 A. No.

25 Q. 50-5-602.

1 A. Oh, there we are.

2 Q. Since October 31st have you been involved
3 in a family health care training program?

4 A. No.

5 Q. 50-11-101. I can't imagine anyone
6 answering yes to this one. Since October 31st have
7 you attempted in any manner to perform any
8 reproductive human cloning?

9 A. No.

10 Q. You haven't -- and I would think you have
11 not tried to ship material for reproductive human
12 cloning?

13 A. No.

14 Q. 50-15-101. Since October 31st you have
15 not been employed by the Department of Health and
16 Human Services?

17 A. No.

18 Q. And you have not had an occasion to meet
19 or record live births in any manner?

20 A. I have -- no.

21 Q. 50-19-103. Since October 31st you have
22 not been pregnant, I assume?

23 A. I have not.

24 Q. And never -- you were not expecting at any
25 time since October 31st, expecting a child?

1 A. No.

2 Q. Okay. 50-60-214.

3 A. 214. Okay.

4 Q. Since October 31st have you in any manner
5 performed construction work or engineered
6 construction work to the primary function of a
7 public building?

8 A. No.

9 Q. 53-20-142.

10 A. 53?

11 Q. Yeah, 53. Probably the one prior to that
12 maybe.

13 A. 53.

14 Q. Since October 31st have you been a
15 resident of a developmental disability residential
16 facility?

17 A. No.

18 Q. 53-21-121. Since October 31st have you
19 suffered from a mental illness that required the
20 county attorney to petition for your commitment?

21 A. No.

22 Q. 60-5-513.

23 A. 513? Oh, there we are.

24 Q. Since October 31st have you operated a
25 business providing gas, food, lodging, or camping to

1 the public and contracted for an information sign
2 with the Department of Transportation?

3 A. No.

4 Q. 60-5-107. And I may be wrong on 107. I
5 think I maybe wrote that down wrong but maybe not.
6 I think I can ask it anyway.

7 A. Okay.

8 Q. Since October 31st have you applied for a
9 motorcycle endorsement?

10 A. No.

11 Q. 72-1-103. I think that's the motorcycle
12 endorsement. I think I have the statute wrong, note
13 to self.

14 Since October 31st have you filed any
15 action under the Uniform Probate Code?

16 A. No.

17 Q. And there is a definition of person. I
18 just like hearing what people have to say about it.
19 Do you disagree with the definition of person as
20 provided in that code section?

21 A. Referring to paragraph 36, no, I don't
22 have any problem with that.

23 Q. Since October 31st have you tried to
24 change your birth certificate in any manner?

25 A. No.

1 learning a ton just from speaking with you at these
2 depositions today.

3 A. Heavens, you'll be voting Democratic in
4 another hour.

5 Q. Ms. Edwards, it says that you have
6 survived discrimination and harassment in your
7 community. What community is that?

8 A. Well, when I transitioned I was living in
9 California at the time. Anyone who transitioned is
10 going to be subject to intense scrutiny and as no
11 surprise to anybody there are people who are
12 threatened by transgender and nonbinary people. So,
13 yeah, I mean, we all get it.

14 Q. When did you transition? And this is
15 subject to the confidential -- we've signed a
16 confidential agreement here. Your medical
17 information is not going anywhere. Okay? It just
18 stays in the court.

19 A. 1989.

20 Q. Okay. And that was in California?

21 A. Yes.

22 Q. So that has no applicability to what
23 happened in California to October 31st, 2023 on?

24 A. No.

25 Q. Okay. Have you faced discrimination and

1 harassment in Terry, Montana?

2 A. No.

3 Q. And it states that you fear that you will
4 not have any recourse for future discrimination.

5 A. True.

6 Q. Have you specifically experienced
7 discrimination since October 31st, 2023?

8 A. No.

9 Q. What is your definition of biological sex?

10 A. Biological sex, we're talking chromosomal?

11 Q. I think that's up to you. Yeah, I mean,
12 that seems to me...

13 A. Yeah, I would say chromosomal.

14 Q. Okay.

15 A. It's by far the simplest. And knowing
16 that there are variations of --

17 Q. Intersex?

18 A. Well, yeah, there is intersex. And I was
19 reading an article actually just this morning that
20 came up in news feed that there are other people who
21 have not just XY, XX, but XXY, and so -- and there
22 is a new theory of -- anyway. But yeah, I mean, for
23 all intents and purposes, biological sex is
24 chromosomally determined.

25 Q. So a female is XX and a male is XY?

1 A. On a biological level, yes.

2 Q. And would you agree that that cannot be
3 changed, the chromosomal makeup of a person?

4 A. Right. Yes.

5 Q. Okay. And you are not intersex, are you?

6 A. No.

7 Q. And you were assigned male at birth,
8 right?

9 A. Yes.

10 Q. I want you to take a look at paragraph 10
11 of the complaint, Exhibit 1. I'll go to the next
12 one. Tell me when you're ready.

13 A. Uh-huh.

14 Q. As of October 31st specifically, what
15 social communities have you been excluded from?

16 A. I haven't been excluded from any social
17 communities.

18 Q. As of October 31st specifically, what
19 political community have you been excluded from?

20 A. I haven't been excluded from any political
21 community.

22 Q. As of October 31st specifically, what has
23 happened to you personally that has reduced your
24 value?

25 A. Nothing.

1 A. Yes.

2 Q. I try to be a kind person.

3 A. That's -- yeah.

4 Q. As of October 31st specifically, how have
5 you been degraded as a person because of Senate
6 Bill 458?

7 A. The State -- looking at 458's definition,
8 the State by that has degraded me by dismissing my
9 humanity. If you go to 458 and look at its
10 definitions, it is so narrow, especially the last
11 part which dismisses everything that I have
12 experienced and I have felt. That was -- that was
13 uncalled for in my opinion.

14 Q. And it's the passage of the bill?

15 A. It's the passage of the bill.

16 Q. Yes. So has anything specifically
17 happened to you by the State that has degraded you?

18 A. The passage of the --

19 MR. PATALANO: Objection, asked and
20 answered.

21 A. Yeah.

22 Q. (By Mr. Johnson) Just the --

23 A. The passage of the bill is degrading is
24 all and I also feel that this is the camel's nose
25 under the tent.

1 Q. Meaning what? I think I know.

2 A. Meaning that it -- the question is what's
3 next.

4 Q. But no person or entity from the State has
5 specifically done any act to degrade you personally?

6 A. Not yet.

7 MR. PATALANO: Objection, asked and
8 answered.

9 MR. JOHNSON: Okay. Well, he hadn't
10 answered it. Now he did.

11 Q. (By Mr. Johnson) Same with demeaned,
12 because I'm just taking the language from your
13 complaint.

14 A. Uh-huh.

15 Q. Has the State done -- outside of passage,
16 I get that.

17 A. Yes.

18 Q. Has any person from the State or agency
19 done anything specifically to you that demeaned you?

20 A. You just misgendered me.

21 Q. What did I do? What did I --

22 A. You called me he.

23 Q. I'm sorry.

24 A. That's all right. I understand and it
25 happens, but...

1 Q. Okay. So has anybody -- any person or
2 entity from the State done any act to demean you?

3 A. Not yet.

4 Q. Okay. Same with the humiliation question,
5 because you have that in your complaint as well.
6 Has any person from the State specifically done any
7 act that humiliated you?

8 A. Not yet.

9 Q. Okay. Why do you qualify yet?

10 A. Because the potential is there.

11 Q. Okay. Is there anything on the horizon
12 that you see that will humiliate, demean, or degrade
13 you?

14 A. I can't speculate about what might happen
15 specifically because of these laws, but these laws
16 do tacitly give permission to discriminate.

17 Q. Okay. So let's go specifically. I think
18 you've already answered discrimination. That's no
19 problem.

20 As of October 31st have you been denied
21 any public accommodation because of Senate Bill 458?

22 A. No.

23 Q. You're retired and you haven't sought
24 employment?

25 A. No.

1 Q. Any state benefit been denied to you?

2 A. No.

3 Q. Any insurance been denied to you?

4 A. No.

5 Q. Any housing been denied to you?

6 A. No.

7 Q. Health care?

8 A. No.

9 Q. Have you been denied any state law remedy
10 as of October 31st because of Senate Bill 458?

11 A. No.

12 Q. Have you filed suit other than this one?

13 A. No.

14 Q. Okay. As of October 31st and specifically
15 to you, how has your identity been ignored?

16 A. Well, the whole law ignores my identity.

17 Q. But you have identified as a female on
18 your state driver's license?

19 A. Uh-huh.

20 Q. Yes?

21 A. Which I got before this law was enacted.

22 Q. I understand. But that's a yes?

23 A. Uh-huh.

24 Q. Yes?

25 A. Yes.

1 A. Uh-huh.

2 Q. And as we sit here today, I have not heard
3 any specific facts of discrimination against you by
4 the State of Montana as of October 31st, 2023.

5 A. And my answer --

6 MR. PATALANO: Objection,
7 mischaracterizes.

8 Q. (By Mr. Johnson) What's that?

9 A. And my answer has always been not yet.

10 Q. Okay. And you don't have any specific
11 thing coming down the pike where you feel you're
12 going to be discriminated against?

13 A. We could all be gone tomorrow.

14 Q. I understand that. But you don't have any
15 specific thing coming down the pike, right?

16 A. Nothing specific, no.

17 Q. I appreciate that. As of October 31st has
18 anything happened to you that impacted your personal
19 autonomy?

20 A. No.

21 Q. And you would agree with me that you have
22 been required to identify your sex on forms in the
23 United States since you were born?

24 A. Yes.

25 Q. Have you been compelled by the State since

1 October 31st, 2023 to write in a form your personal
2 experience of gender in a manager that you disagreed
3 with?

4 A. I'm not really understanding your
5 question.

6 Q. Let's just put it this way. Have you
7 ever -- have you since October 31st, 2023 had to
8 write down that you were a male when you wanted to
9 write down that you were a female?

10 A. No.

11 Q. Has anybody limited your ability to speak
12 against Senate Bill 458?

13 A. No.

14 Q. Has anybody since October 31st, 2023
15 limited your ability to speak for nonbinary,
16 LGBTQ -- and I could screw those up -- issues?

17 A. No.

18 Q. I think that's all I have. Unless counsel
19 has a follow-up, that's all I have.

20 A. Okay.

21 MR. PATALANO: No follow-up.

22 VIDEOGRAPHER: Okay. This now ends the
23 deposition. We're going off the record. The
24 time is 2:05 p.m.

25 (The deposition was concluded at

Exhibit D

MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

SUSAN EDWARDS, et al.,)	
)	
Plaintiffs,)	
)	
-vs-)	CAUSE NO. DV-23-1026
)	
THE STATE OF MONTANA,)	Hon. Leslie Halligan
et al.,)	
)	
Defendants.)	

Taken at 1015 Mount Avenue
Missoula, Montana
Friday, April 19, 2024 - 7:57 A.M.

VIDEOTAPED DEPOSITION

OF

KAEL FRY

CONFIDENTIAL

Reported by Terra Rohlfs, RPR, Jeffries Court Reporting, Inc., 1015 Mount Avenue, Suite B, Missoula, Montana 59801, (406)721-1143, Freelance Court Reporter and Notary Public for the State of Montana, residing in Hamilton, Montana, jrcrcourt@montana.com

1 challenged a lot because I'm tall, I'm a little
2 over 6 feet tall, and I started to develop a lot of
3 anxiety just by existing.

4 And with gender dysphoria, it's --
5 there's a difference between the way you see
6 yourself and the way that people see yourself -- or
7 see me, and that can cause a lot of anxiety and
8 depression. And so it became harder and harder to
9 function. So transitioning allowed me to align my
10 physical body and the way I presented to the world
11 with the way I saw myself. And then as you can
12 see, it turned out very well, and now pretty much
13 anxiety and depression are gone.

14 Q. Did you attempt suicide?

15 A. I did not, no.

16 Q. Okay. I want to jump into the statutes.
17 And when I refer to October 31st, because I'm gonna
18 do it quite a bit because October 31st, 2023 is
19 when this particular bill was enacted --

20 A. Uh-huh.

21 Q. -- and that's the basis for the suit.
22 And that was a yes?

23 A. Yes.

24 Q. Okay. So if I refer to October 31st, is
25 it -- can we make sure that it's understood that

1 it's October 31st, 2023?

2 A. Yes.

3 Q. Thank you.

4 I want to take -- have you look at
5 statute 2-18-208, and this is the comparable worth
6 in state employment statute.

7 A. Uh-huh.

8 Q. Do you see that?

9 A. Yep, yes.

10 Q. Were you a state employee for purposes of
11 the comparable work statute as of October 31st,
12 2023?

13 A. No, I was not.

14 Q. Have you ever been a state employee?

15 A. Not in the state of Montana.

16 Q. Okay. And you have a private practice;
17 is that correct?

18 A. I do.

19 Q. And then let's go to 7-15-4207. Since
20 October 31st, 2023 were you involved in an urban
21 renewal program in any capacity?

22 A. I was not.

23 Q. Okay. And that's what section 7-15-4207
24 involves; correct?

25 A. Correct.

1 Q. Okay. We'll move through this pretty
2 fast.

3 Next statute 7-34-2123; do you see that?

4 A. Yep.

5 Q. Since October 31st have you been denied
6 admission to a hospital district facility?

7 A. I have not.

8 Q. And let's go to 13-27-408.

9 Guess what? I get to take the stickers
10 out of these statute books and put them away again
11 after today. {Laughter.}

12 Other side.

13 A. 13-27-408?

14 Q. Yep.

15 A. Okay.

16 Q. Since October 31st have you been involved
17 in a ballot issue dispute where you made an
18 argument either for or against the ballot
19 initiative?

20 A. I was at the State legislature and I made
21 testimony.

22 Q. But you have not been part of a ballot
23 initiative to --

24 A. Not a ballot initiative, no.

25 Q. Did you testify against this

1 particular --

2 A. I did.

3 Q. -- bill?

4 A. Yes.

5 COURT REPORTER: So just -- hold on. If
6 you could just let him get his question out before
7 you answer, because it's really tough for me to get
8 you both speaking.

9 MR. JOHNSON: Yep, that's the one other
10 rule.

11 THE WITNESS: Understood.

12 Q. (BY MR. JOHNSON) And I will try like
13 crazy not to interrupt you or anything like that,
14 okay?

15 A. Yep.

16 Q. When did you testify with regard to the
17 Senate bill?

18 A. I do not remember the exact day, I went
19 up a couple different times. But I was there
20 during the -- when this bill was being heard,
21 and -- but I don't -- I don't recall exactly.

22 Q. And what was the essence of your
23 testimony? I don't want anything -- just kind of
24 generality.

25 A. Sure. The essence of my testimony was

1 just talking about how if this -- at the time, if
2 this was passed, the ill effects that it would have
3 on the transgender population, whether it's being
4 able to change birth certificates, change legal
5 paperwork, access to housing, that sort of thing.

6 Q. Okay. Have you changed your birth
7 certificate?

8 A. I have not, unfortunately.

9 Q. Okay. Have you tried to?

10 A. I have not.

11 Q. Okay. And let's go to section 13-35-301.
12 Since October 31st have you campaigned for public
13 office where you were required to sign a code of
14 fair campaign practices form?

15 A. I have not.

16 Q. And let's go to 20-7-1306. Since October
17 31st have you participated in any public school
18 athletic event?

19 A. I have not.

20 Q. 20-9-327. Since October 31st have you
21 been involved in any manner with a quality educator
22 payment for a facility that serves by contract
23 female youth?

24 A. I have not.

25 Q. And then 20-25-501. Since October 31st,

1 2023, I assume you've been above the age of 18
2 years?

3 A. Yes.

4 Q. And so you have not sought to enroll in
5 college or a university system since October 31st?

6 A. Correct.

7 Q. Okay. Let's go to section 20-25-701.

8 MR. JOHNSON: And I will give you these
9 statutes, too, by the way.

10 COURT REPORTER: I'd love it.

11 Q. (BY MR. JOHNSON) Since October 31st,
12 2023, have you been involved in any work study
13 program at a Montana college or university?

14 A. I have not.

15 Q. Let's go to section 22-2-306. Since
16 October 31st have you been involved in any way in
17 the Cultural and Aesthetic Grant Program?

18 A. No.

19 MR. JOHNSON: Okay. 33. {Speaking to
20 Mr. Noonan.}

21 Q. (BY MR. JOHNSON) Told you this would go
22 fast.

23 A. I was wondering what the big stack was
24 for.

25 Q. I think it's better if you got the

1 context of it --

2 A. Absolutely.

3 Q. -- because I don't want to hide anything
4 from anybody.

5 A. Absolutely.

6 Q. Since October 31st have you had any
7 problems obtaining insurance in any way because of
8 the definition of the word "state"?

9 A. No.

10 Q. Have you had any problems getting
11 insurance?

12 A. No.

13 Q. 35-20-209, I think it's probably this
14 one. This one is the craziest one.

15 Since October 31st have you been a
16 secretary of a cemetery association?

17 A. I have not.

18 Q. And then Section 39-2-912. Since
19 October 31st have you been terminated from your
20 employment where other state, federal or another
21 administrative body would've had jurisdiction to
22 decide any contested matter?

23 A. No.

24 Q. Have you been -- you haven't been
25 terminated from your employment since that date?

1 A. I'm essentially my boss --

2 Q. You're self- -- you are the boss.

3 A. -- so that would be challenging.

4 Q. Yes. There's times I wanted to fire
5 myself, I can tell you that. {Laughter.}

6 A. I've fired clients and they have fired
7 me, technically, so...

8 Q. I have done both of those, too.

9 A. Yeah.

10 Q. And sometimes I really wanted to fire the
11 client.

12 40-1-107. Since October 31st have you
13 completed a marriage application form?

14 A. I have not.

15 Q. And then 40-5-907. Since October 31st
16 have you been involved -- I'll slow down. I'll
17 start that question again.

18 Since October 31st have you been involved
19 in a child support proceeding?

20 A. No.

21 Q. 41-5-103.

22 A. 103.

23 Q. Since October 31st have you had any of
24 your children involved in youth court?

25 A. No.

1 Q. 42-2-204. Since October 31st have you
2 either -- have you been a putative father or a
3 presumed father of a child that was the subject of
4 adoption or parental rights were being terminated?

5 A. No.

6 Q. And then 45-5-625. Since October 31st
7 have you been accused of sexual abuse of children?

8 A. I have not.

9 Q. 46-19-301. Since October 31st -- I'll
10 slow down.

11 Since October 31st have you been involved
12 in an interstate compact transfer for purposes of
13 penal corrections?

14 A. No.

15 Q. Now 46-19-401. Since October 31st were
16 you involved in any interstate contract for
17 purposes of corrections?

18 A. No.

19 Q. How about an interstate compact?

20 A. No, no.

21 Q. 46-32-105. Since October 31st have you
22 sought a certificate of innocence for purposes of a
23 wrongful conviction suit?

24 A. No.

25 Q. 49-1-102 and 49-2-101. Since

1 October 31st have you filed a discrimination
2 complaint with the Department of Labor & Industry?

3 A. No.

4 Q. Then we go to 49-3-101. Since
5 October 31st have you sought any relief for a
6 violation of the Governmental Code of Fair
7 Practices?

8 A. No.

9 Q. Now we go to 50-5-105.

10 A. Wow, there's a lot in this one.

11 Q. Since October 31st have you in any manner
12 operated a health care facility?

13 A. I mean, I've operated a private practice,
14 which is considered health care.

15 Q. Okay. Let's talk about that. You have
16 not operated a hospital?

17 A. Correct.

18 Q. Have not operated an urgent care?

19 A. Correct.

20 Q. And what we're talking about -- and I
21 understand and I agree that therapy is health care,
22 but what we're talking about is a private
23 counseling practice --

24 A. Correct.

25 Q. -- is that fair?

1 A. Yes.

2 Q. Okay. So if it doesn't fit the
3 definition of health care facility for purposes of
4 this statute, the answer would be no; right?

5 A. No. Understood.

6 Q. Okay. 50-5-105 -- No, I already did
7 that.

8 50-5-602. I've got to stay up with
9 myself. Since October 31st have you been involved
10 in a family health care training program?

11 A. No.

12 Q. And then 50-11-101. Since October 31st
13 have you attempted in any manner to perform any
14 reproductive human cloning?

15 A. I have not.

16 Q. And you haven't shipped any material for
17 reproductive human cloning, either?

18 A. No.

19 Q. 50-15-101. Since October 31st have you
20 been employed by the department -- DPHHS Vital
21 Statistics?

22 A. No.

23 Q. And have you -- you have not had the
24 occasion to have to record live births in any
25 manner?

1 A. No.

2 Q. Okay. Section 50-19-103. Since
3 October 31st you have not been pregnant?

4 A. Correct.

5 Q. And have not -- haven't even been
6 expecting --

7 A. No.

8 Q. -- anything like that? Okay, thank you.
9 50-60-214. Since October 31st have you
10 in any manner performed construction work or
11 engineered construction work to the primary
12 function of a public building?

13 A. No.

14 Q. 53-20-142 {sic}.

15 COURT REPORTER: Could you say that
16 again?

17 MR. JOHNSON: Yep. 50-20-142.

18 Q. (BY MR. JOHNSON) Since October 31st have
19 you been a resident of a developmental disability
20 residential facility?

21 A. I have not.

22 Q. Now we go to 53-21-121. Since
23 October 31st have you suffered from a mental
24 illness that required a county attorney to petition
25 for your commitment?

1 A. No.

2 Q. Now we go to 60-5-513. Since
3 October 31st have you operated a business providing
4 gas, food, lodging or camping to the public and
5 contracted for an information sign with the
6 Department of Transportation?

7 A. No.

8 Q. And then we go to 60-5-107. The sticker
9 might've fallen off. Since October 31st have you
10 applied for a motorcycle endorsement?

11 A. I have not.

12 Q. And now we're at 72-1-103. Since
13 October 31st have you filed any action under the
14 Uniform Probate Code?

15 A. No.

16 Q. And there's a definition of "person"
17 there, go ahead and read it.

18 A. Out loud?

19 Q. No, just --

20 A. To myself?

21 Q. -- to yourself. Tell me when you're
22 done.

23 A. I'm done.

24 Q. Do you disagree with the definition of
25 "person"?

1 A. No.

2 Q. Okay. The books we can get out of your
3 face.

4 What is your definition of "gender"?

5 A. Gender is your perceived -- whether you
6 identify as male or female. And it is different --
7 it can differ from sex. Sex is biological, gender
8 more an identity thing, it's based on cultural
9 cues, and that is -- it can change over time.

10 Q. Is it subjective?

11 A. Yes.

12 Q. And because this is new to me and I'm
13 learning and I want to learn, what are those cues
14 that you talk about that define your gender?

15 A. Sure. Well, we can use dress right now,
16 well, for you, for example, you're wearing a tie,
17 you have short hair, you are wearing a button-down
18 shirt, all of these things in our culture are
19 considered female -- or sorry, male.

20 Q. I was wondering about that.

21 A. Yeah, sorry, I was -- I was ahead of
22 myself.

23 If you were wearing a dress, had longer
24 hair, these would be more considered female cues.
25 So I talked about when I went to college, I had cut

1 substantial majority of individuals there's two
2 biological sexes?

3 A. Correct.

4 Q. In paragraph 10, that's why I pulled this
5 out, this is your original Complaint, and I know
6 there's been an amended Complaint, but it really
7 hasn't changed much -- I'm saving paper, that's why
8 I'm doing the two sides.

9 Specifically, as of October 31st what
10 discrimination have you endured as a result of
11 Senate Bill 458?

12 A. Well, for example, I would really like to
13 be able to change my birth certificate, and I have
14 not been able to do so. This particular bill, I am
15 at a different place in that I am further into my
16 transition, so I've already changed my Social
17 Security card, I've already changed my driver's
18 license, I've already changed my passport, but if I
19 wasn't able to change those documents and they all
20 said female, and I show up looking the way that I
21 do, I would be subject potentially to harassment.

22 Certainly prior to transition, when I was
23 experimenting with my gender expression and
24 expressing myself more and more in a masculine way,
25 people were already saying with my student ID,

1 that's not you, and so they were trying to say that
2 I had somebody else's student ID, and it caused a
3 lot of problems.

4 So potentially, if you're trying to
5 navigate the airport, for example, and your gender
6 presentation doesn't match your documents, then
7 that -- that can subject you to all sorts of
8 discrimination.

9 Q. So they -- well, let's get -- We're gonna
10 get into detail and specifics, okay?

11 A. Sure.

12 Q. So you have not tried at any time to
13 change your birth certificate?

14 A. I have not at this point, no.

15 Q. Okay. And you -- have you traveled since
16 October 31st where -- in an airport where your
17 documentation caused you to be discriminated
18 because of Senate Bill 458?

19 A. No, but only because I've already changed
20 everything except for my birth certificate.

21 Q. Okay. So specifically what -- where have
22 you been discriminated against because of the
23 passage of this bill?

24 A. I have -- so it's indirect because I do
25 want to change my birth certificate, but because of

1 the passage of the bill, I cannot. But all my
2 other documents have already been changed.

3 Q. Are you familiar with the case Marquez?

4 A. Can you give me more information?

5 Q. There was a litigation against the State
6 entitled Marquez vs. State.

7 A. Uh-huh.

8 Q. And are you familiar with that?

9 A. I am not.

10 Q. Okay. And so you don't know what the
11 state of the law is with regard to your birth
12 certificate?

13 A. Well, according to -- from what I'm aware
14 of, based on what is stated in this particular
15 bill, it would affect birth certificates. And if I
16 am incorrect on that, then if you can provide me
17 more information.

18 Q. Okay. So you don't specifically know
19 what the state of the law is as in regards to your
20 birth certificate?

21 MR. GOMEZ PATALANO: Objection, asked and
22 answered.

23 Q. (BY MR. JOHNSON) Fair enough?

24 A. I don't know Marquez, no.

25 Q. Okay. And it also states that the social

1 community has excluded you. And as of
2 October 31st, can you give me specific instances
3 where the social community has included you because
4 of Senate Bill 458.

5 A. So, again, it's because I am further
6 along in my transition, this senate bill has not
7 excluded me because I have already completed
8 everything. But if I were earlier in my
9 transition, if I didn't appear very masculine
10 presenting, then this could absolutely cause me all
11 sorts of problems.

12 Q. But specifically it hasn't?

13 A. Not me, no.

14 Q. Okay. And specifically as of
15 October 31st, what has happened that has reduced
16 your value, I assume, as a person? I'm just taking
17 your Complaint.

18 A. Sure. Well, to me, this bill confuses
19 sex and gender, it makes it -- it clearly states a
20 vast misunderstanding of what it means to be
21 transgender and tries to codify something into law
22 that is not based in biology. And that is, as a
23 transgender person, frustrating. And even if I
24 have already changed my documents and I do pass, it
25 would make it much more challenging for my clients,

1 for friends that I have, and that just because it
2 doesn't directly impact me other than my birth
3 certificate, it doesn't mean that it doesn't impact
4 other people.

5 Q. So it hasn't specifically directly
6 impacted you?

7 A. No, but if I were to go to jail, for
8 example, I don't foresee that happening, but if I
9 were to go to jail, it absolutely would impact me.
10 There are a number of ways that it would in the
11 future.

12 Q. Okay. How would it impact you if you
13 went to jail?

14 A. Okay. So if I went to jail, for example,
15 and it was stating that I had to go to the facility
16 that is marked on my birth certificate, I would go
17 to a female prison, I would stand out like a sore
18 thumb.

19 Q. Do you know how the Department of
20 Corrections decides how to -- what placement you
21 should go to?

22 A. Well, if it is based on legal documents,
23 I am not sure because my birth certificate says
24 female, my driver's license says male.

25 Q. So you don't know how the Department of

1 A. Nothing I can think of.

2 Q. Same with biological information, as of
3 October 31st, what biological information have you
4 had to disclose that you didn't want to?

5 A. I have not had to disclose.

6 Q. And as of October 31st specifically, how
7 have you been degraded as a result of 458, or is it
8 just the passage of the bill and --

9 A. It's the general passage of the bill.

10 Q. Okay. Same with being demeaned, just the
11 general passage of the bill?

12 A. Yes.

13 Q. And same with being humiliated, just the
14 general passage of the bill; is that fair?

15 A. Yes, that's fair.

16 Q. And as of October 31st, this is
17 paragraph 17, what public accommodation have you
18 been denied because of Senate Bill 458?

19 A. I have not been denied public
20 accommodations, nor have I requested them.

21 Q. So you haven't requested them?

22 A. No.

23 Q. Have you sought out a fishing license or
24 a hunting license?

25 A. Not this year.

1 A. Of sex, yes.

2 Q. Okay. Have you, at any time since
3 October 31st, been denied the opportunity to speak
4 publicly with regard to gender issues?

5 A. No.

6 MR. JOHNSON: Let me just take a real
7 quick break because I think we're about done.

8 VIDEOGRAPHER WHITE: Okay. We are going
9 off the record at 9:03 a.m.

10 (Discussion held off the record.)

11 VIDEOGRAPHER WHITE: We're back on the
12 record at 9:04 a.m.

13 Q. (BY MR. JOHNSON) Would you agree that
14 there are legitimate State interests for
15 needing definition of biological sex?

16 A. Yes.

17 Q. And what would those legitimate interests
18 be, like in the prison system?

19 A. Prison system, yes, to protect, I mean,
20 everybody involved, including transgender people.

21 Q. How about like some sports, like girl's
22 wrestling?

23 A. That, yes.

24 Q. Okay. Any other things where you -- I
25 mean, where you think that biological sex serves

Exhibit E

MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

SUSAN EDWARDS, et al.,)	
)	
Plaintiffs,)	
)	
-vs-)	CAUSE NO. DV-23-1026
)	
THE STATE OF MONTANA,)	Hon. Leslie Halligan
et al.,)	
)	
Defendants.)	

Taken at 1015 Mount Avenue
Missoula, Montana
Friday, April 19, 2024 - 9:46 A.M.

VIDEOTAPED 30(B)(6) DEPOSITION

OF

MONTANA TWO SPIRIT SOCIETY
CORPORATE REPRESENTATIVE DAVID HERRERA

CONFIDENTIAL

Reported by Terra Rohlfs, RPR, Jeffries Court Reporting,
Inc., 1015 Mount Avenue, Suite B, Missoula, Montana
59801, (406)721-1143, Freelance Court Reporter and
Notary Public for the State of Montana, residing in
Hamilton, Montana, jrcrcourt@montana.com

1 that we have from our tribes is our oral histories.
2 And certainly that's what I think the -- why
3 language preservation has been -- has become so
4 important to our tribes within the last 20 years,
5 because if you lose that language, then you're
6 going to lose that history. And so -- but it is,
7 in talking to elders and, you know, learning about
8 the language that we know that we hear these like
9 awowakai for the Blackfeet, and that that is a term
10 that was used and --

11 Q. What was that term?

12 A. Awowakai.

13 Q. And could you spell it for the court
14 reporter?

15 A. It should be in the declaration, I think
16 it's in here somewhere, I know it was --

17 MR. TSOLAKIDIS: This is the Complaint.

18 A. Okay. So I'd have to look in my
19 declaration. I know it's in my declaration because
20 we looked it up and spelled it.

21 A-w-o-w-a-k-a-i, it's something close to
22 that. But awowakai was the term, and then like I
23 said --

24 Q. (BY MR. JOHNSON) That's for the Piegans;
25 right?

1 A. Blackfeet, yep.

2 Q. Well, you've got several bands of the
3 Blackfeet.

4 A. Right. So you have bands up in Canada,
5 you have bands here.

6 Q. So the term that you got, the awowakai,
7 is for the Piegans or does that apply to the Bloods
8 as well?

9 A. It was an elder woman in Canada who --
10 where I first heard the term awowakai, and --

11 Q. So it probably wasn't even for the
12 Piegans, then.

13 A. I mean, in talking to the folks living up
14 in Browning and stuff, I haven't heard any of the
15 folks there disagree that that term is not
16 appropriate, so...

17 Q. I mean, so you understand, I know more
18 people in Browning than I know probably on this
19 earth.

20 MR. TSOLAKIDIS: Objection, form.

21 A. Yeah, but --

22 Q. (BY MR. JOHNSON) So you don't know
23 whether it's for the Bloods, the Piegans, Kainai or
24 the Siksikas?

25 A. My understanding is it would be for all

1 of them.

2 Q. Okay. Let's go to other tribes, let's go
3 to the Salish, what's the -- do they have a
4 language that references it?

5 A. They do, but I do not know what that term
6 is.

7 Q. How about the Kootenai?

8 A. Again, yeah, I don't know.

9 Q. How about the Crow? It sounds like that
10 one is, because Osh-Tisch was Crow?

11 A. Yeah, that term would be bade'.

12 Q. Can you spell that?

13 A. B-a-d-e, I think there's an asterisk on
14 the e. Or it's b-a-t-e -- it's either b-a-t-e or
15 b-a-d-e, but yeah.

16 Q. How about the Assiniboine?

17 A. I'm not aware -- yeah, I don't know the
18 term for Assiniboine, so...

19 Q. How about the Sioux?

20 A. The Sioux would be winkte.

21 Q. Spell that for the court reporter.

22 A. W-i-n-k-t-e. But that's a shortened
23 version of that term, to my knowledge. So there's
24 a longer term for that and the shorter version was
25 used more as a derogatory term, it was not -- if

1 constitutions and the tribal codes of all of them,
2 all the reservations?

3 MR. TSOLAKIDIS: Objection, scope.

4 Q. (BY MR. JOHNSON) Of all the tribes?

5 A. No.

6 Q. You're not?

7 A. Huh-uh.

8 Q. Okay. Would it surprise you there is no
9 reference to Two Spirit or -- in any of the
10 constitutions or the codes?

11 MR. TSOLAKIDIS: Same objection.

12 A. Yeah, I mean, no, it would not surprise
13 me, it depends on when they were written and by
14 whom.

15 Q. (BY MR. JOHNSON) Let's go to the
16 specific codes. I want to show you some statutes,
17 we're going to go through this fairly quickly.

18 Showing you section 2-18-208. It's the
19 comparable worth statute for State employees.

20 A. Okay.

21 Q. Does -- has the Two Spirit Society been
22 harmed under the comparable worth statute for State
23 employees?

24 MR. TSOLAKIDIS: Objection, ambiguous.

25 A. I mean, I guess comparable worth for

1 whom? I mean, would be --

2 Q. (BY MR. JOHNSON) It's for men and women
3 to be treated the same for purposes of payment.

4 A. I mean, for men and women is great, but
5 it if it does not include Two Spirit or trans, then
6 I don't know how that would apply, so...

7 Q. Is the Two Spirit a State employee;
8 Montana Two Spirit Society?

9 A. A State employee?

10 Q. Employee.

11 A. I mean, we don't have contracts with the
12 State of Montana, no.

13 Q. Okay. So it doesn't -- if it requires
14 you to be a State employee, it wouldn't apply,
15 would it?

16 A. Right, yeah. I mean, the State's very
17 clear about, you know, what a State employee is
18 versus a contractor, so most of the time they
19 prefer to deal with contractors and not State
20 employees, so...

21 Q. So Two Spirit -- Two Spirit Society has
22 not been harmed by section 2-18-208, comparable
23 worth for State employees?

24 A. I do know of Two Spirit Society
25 individuals that are State employees and --

1 Q. Okay. But I'm talking about -- the
2 plaintiff is the Two Spirit Society, I'm not
3 talking about individuals.

4 MR. TSOLAKIDIS: Objection, form.

5 A. I mean, since none of our staff are
6 considered Montana employees, so yeah, I would say
7 that we're not employees of the State of Montana.

8 Q. (BY MR. JOHNSON) So it doesn't apply?

9 A. It would not apply.

10 MR. TSOLAKIDIS: Objection, form.

11 Q. (BY MR. JOHNSON) Take a look at Section
12 7-15-4207 if you would, please. It's right here.

13 MR. TSOLAKIDIS: Thank you. Could you
14 repeat the statute?

15 MR. JOHNSON: Yeah, 7-15-4207.

16 Q. (BY MR. JOHNSON) Is the Two Spirit
17 Society involved in any urban renewal program in
18 any capacity?

19 A. Not at this time.

20 Q. Okay. Take a look at 7-34-2123.

21 A. The one about hospital district?

22 Q. Yep. Since October 31st, 2023 -- that's
23 the date of enactment, so if I refer to
24 October 31st, can we agree that's October 31st,
25 2023?

1 A. Okay.

2 Q. -- has the Two Spirit Society been denied
3 admission to a hospital district facility?

4 A. Since October?

5 Q. 31st, 2023.

6 A. I don't know if any of our, like,
7 community members have been denied access to the
8 hospital.

9 Q. Two Spirit Society as an --

10 A. As an organization, I mean, it's --

11 Q. The answer is no; right?

12 A. Yeah, because why -- the organization
13 wouldn't be going to the hospital, it would be the
14 individuals representing the organization that
15 would be going to the hospital.

16 Q. But you would agree no individuals of --
17 that are Two Spirit Society officers or directors
18 are plaintiffs in this case, correct; it's just the
19 Two Spirit Society?

20 A. Yes.

21 Q. Okay, thank you.

22 Let's go to 13-27-408. Since
23 October 31st, 2023 has the Two Spirit Society been
24 involved in a ballot issue dispute where you made
25 an argument either for or against the ballot issue?

1 A. The Montana Two Spirit Society has not
2 been involved in a ballot issue.

3 Q. Okay. Let's go to 13-35-301. Since
4 October 31st has the Two Spirit Society campaigned
5 for public office where they were required to sign
6 a code of fair campaign practices form?

7 A. We have not campaigned, we're forbidden
8 as a 501(c)(3) from campaigning or lobbying.

9 Q. So Two Spirit Society hasn't signed a
10 campaign -- code of fair campaign practices form?

11 A. No.

12 Q. Okay. 13-38-201. Since October 31st has
13 the Two Spirit Society served as a party committee
14 representative for a voting precinct?

15 A. No. Again, limitations due to --

16 Q. Sure. These are the statutes that are
17 impacted by Senate Bill 458, okay, that's why I'm
18 going through them.

19 20-7-1306. Since October 31st, nobody --
20 the Two Spirit Society hasn't participated in any
21 public school athletic event, I assume?

22 A. Not as an organization, no.

23 Q. Do you have any persons that are officers
24 or directors that are going to high school or
25 college?

1 A. Yes.

2 Q. Are any of them participating in public
3 sports?

4 A. I don't know.

5 Q. Okay.

6 A. Yeah, I don't know that. They may or
7 they might, they're in Pablo.

8 Q. Okay. Let's go to 20-9-327.

9 A. 20-9, quality educator payment?

10 Q. Yep. Since October 31st has the Two
11 Spirit Society been involved in any manner with the
12 quality educator payment for a facility that serves
13 by contract female youth?

14 A. I mean, we may have had community members
15 that have participated for the --

16 Q. But not the Two Spirit Society?

17 A. -- but not the Two Spirit Society as an
18 organization, no.

19 Q. Okay, thank you.

20 20-25-501, that's just the definition of
21 a minor for resident college student.

22 A. Definitions, okay. I mean, I do know of
23 university students --

24 MR. TSOLAKIDIS: Objection, form.

25 MR. JOHNSON: Well, I haven't asked the

1 question yet.

2 MR. TSOLAKIDIS: That's why, yep.

3 Q. (BY MR. JOHNSON) Okay. Since
4 October 31st, 2023, have any officers or directors
5 been under the age of 18?

6 A. No.

7 Q. Okay. And since October 31st has the Two
8 Spirit Society sought to enroll in college or a
9 university system?

10 A. Currently one of our board members is in
11 a university system.

12 Q. But not the Two Spirit Society?

13 A. Not as an organization, no.

14 Q. Okay. Let's go to 20-25-701, this is the
15 work study.

16 A. So this is anti-discrimination work
17 study --

18 Q. Yeah. So has anybody at the Two Spirit
19 Society, since October 31st, 2023, been involved in
20 a work study program at a Montana college or
21 university?

22 A. Like I said, I believe one of our board
23 members was starting, but that's -- but I'd have to
24 talk to them.

25 Q. But certainly the Two Spirit Society as a

1 whole, the entity --

2 A. Yeah, we don't -- we would make referrals
3 and resources and something to have that
4 information, but not as an organization, we're not
5 enrolled and --

6 Q. Okay. 22-2-306.

7 A. I guess I'll go back, though, to work
8 study would be -- or that would impact us if
9 somebody -- a student wanted to come and work as a
10 work study for the organization, because that
11 happened, students go to nonprofits to do work, and
12 so it could be that we would be asked -- or if we
13 get -- sign up with a university, that we could
14 then be getting work study students.

15 Q. Did you do that from October 31st, 2023
16 to the date of filing the Complaint?

17 A. We have not done that, no --

18 Q. Okay.

19 A. -- at this point, that's something we
20 would look towards, though, in the future; it has
21 come up.

22 Q. Okay. But you haven't tried to do it
23 yet?

24 A. No, not through this organization. I
25 have done it through the Western Montana Gay and

1 Lesbian Community Center several years ago.

2 Q. Okay. Section 22-2-306. Since
3 October 31st, 2023 has this Two Spirit Society been
4 involved in any way in the Cultural and Aesthetic
5 Grant Program?

6 A. Not as an organization, no, but we
7 receive funding from other foundations and stuff
8 that are located here in Montana, and I don't know
9 if they would've received any funding from Montana
10 Cultural -- yeah, so.

11 Q. So the answer is no?

12 A. But the answer would be no, we have not,
13 in Montana, Two Spirit has not yet.

14 Q. Okay. 33-1-201.

15 I get to put these books away after
16 today. {Laughter.}

17 Showing you 33-1-201. This one's pretty
18 easy. Since October 31st has the Two Spirit
19 Society had any problems obtaining insurance in any
20 form because of the definition of the word "state"?

21 A. With regards to insurance?

22 Q. Yep.

23 A. To securing insurance?

24 Q. Yes.

25 A. No. We've had problems and issues, but I

1 don't know that that's related to us being a Two
2 Spirit organization, I don't know yet.

3 Q. Well, and the only affected word is the
4 definition of the word "state" in that. And that
5 wouldn't -- that doesn't impact Two Spirit Society,
6 does it?

7 A. Right, yeah, so I'm not sure how that
8 would. How does that affect SB 458, though?

9 Q. I mean, I mean, just for purposes of that
10 question, it defined several things including the
11 word "state".

12 A. Okay.

13 Q. "Person" is also defined.
14 Section 35-20-209.

15 A. 209?

16 Q. Since October 31st, 2023 has Two Spirit
17 Society been the secretary of a cemetery
18 association?

19 A. No.

20 Q. Okay. 39-2-912. Since October 31st,
21 2023 has the Two Spirit Society been terminated
22 from their employment where other state, federal or
23 other administrative body would've had jurisdiction
24 to decide the contested matter?

25 A. What exactly does that mean?

1 Q. You, Two Spirit Society, hasn't been
2 terminated from any employment, has it?

3 A. No.

4 Q. Okay. That's why you don't need to know
5 what it means.

6 This is 40-1-107. Since October 31st
7 2023 the Two Spirit Society has not completed a
8 marriage application form?

9 A. No.

10 Q. 40-5-907. Since October 31st, 2023 has
11 the Two Spirit Society been involved in a child
12 support proceeding?

13 A. Child support?

14 Q. Two Spirit Society as a group does not
15 have any children, does it?

16 A. No. Our board members have children.

17 Q. Sure.

18 A. But, no, as an organization we received
19 calls from community members asking about child
20 support with regards to their Two Spirit trans
21 child.

22 Q. But as a society you've not been involved
23 in a child support proceeding?

24 A. No.

25 Q. Okay. 41-5-103. Since October 31st,

1 2023, the Two Spirit Society has not had any
2 children involved in youth court?

3 A. Not since October '23, no.

4 Q. Two Spirit Society does not have any
5 children?

6 A. Right.

7 Q. Okay. 42-2-204. Since October 31st,
8 2023, the Two Spirit Society has not been a
9 putative father or presumed father of a child that
10 was subject to adoption or parental rights were
11 being terminated?

12 A. No.

13 Q. Okay. 45-5-625. Since October 31st
14 2023, the Two Spirit Society has not been accused
15 of sexual abuse of children?

16 A. No.

17 Q. 46-19-301. Since October 31st, 2023, the
18 Two Spirit Society has not been involved in an
19 interstate compact for the transfer of -- or
20 interstate compact transfer for purposes of penal
21 correction?

22 A. The 46-19-301, is that the --

23 Q. Yep.

24 A. Okay. We have not been like transferring
25 stuff, we do get calls and stuff from inmates and

1 we provide resources as best we can.

2 Q. But you've not been involved in an
3 interstate compact?

4 A. Yeah.

5 Q. Let's go to 46-19-401. Since
6 October 31st the -- 2023, the Society was not
7 involved in any interstate contract for purposes of
8 an interstate corrections compact?

9 A. Interstate corrections compact, no. Like
10 I said, other than except for having Two Spirit
11 folks contact us from within the correctional
12 system.

13 Q. Okay. 46-32-105. We're getting there,
14 don't worry. Since October 31st, the inter --
15 Society has not sought a certificate of innocence
16 for purposes of a wrongful conviction suit?

17 A. No.

18 Q. 49-1-102 and 49-2-101. Since
19 October 31st the Society has not filed any
20 discrimination complaint with the Department of
21 Labor & Industry?

22 A. No.

23 Q. Okay. 49-3-101.

24 A. 49-3-101?

25 Q. Yep, I think this is the one that maybe

1 I -- since October 31st, 2023 the Society has not
2 sought any relief for a violation of the
3 Governmental Code of Fair Practices?

4 A. No.

5 Q. 55-5-105. We're down to about the last
6 book.

7 Since October 31st, the Society has not
8 been involved in any way of operating a health care
9 facility?

10 A. Not operating health care facility, we
11 collaborate with health organizations.

12 Q. Okay. But not operating one?

13 A. No.

14 Q. 50-5-602.

15 A. 55?

16 Q. It's 50-5-602, my bad. Since
17 October 31st the Society has not been involved in a
18 family health care training program, have they?

19 A. Family practice training, no, we have not
20 done a training for family practice since October
21 of '23.

22 Q. Okay.

23 A. We have done trainings and we're getting
24 more.

25 Q. But not specifically family health care

1 training?

2 A. Not yet.

3 Q. Okay. Section 50-11-101. Since
4 October 31st, 2023, the Society has not attempted
5 in any manner to perform any reproductive human
6 cloning?

7 A. No.

8 Q. Okay. And you have not shipped any
9 material for reproductive human cloning, have you?

10 A. No.

11 Q. 50-15-101. Since October 31st the
12 Society has not been employed by the Department of
13 Public Health & Human Services Vital Statistics?

14 A. For Vital Statistics, let me think.

15 Q. The Society is not employed by Department
16 of Public Health & Human Services, is it?

17 A. No.

18 Q. Okay. You're not recording live births
19 in any manner, are you?

20 A. No, but we do do HIV testing and STI
21 testing in conjunction with Missoula City-County
22 Health Department and Partnership Community Health
23 Center, so the only reporting we're required is if
24 we were to have a positive --

25 Q. That's --

1 A. -- that would report to the local health
2 department and they report to the State.

3 Q. Okay. But that's -- you're not employed
4 by the Department of Public Health & Human
5 Services --

6 A. No.

7 Q. -- recording vital statistics like live
8 births?

9 A. Right, no.

10 Q. Okay. 50-19-103. This one I think you
11 can answer pretty quickly. The Society is not
12 pregnant?

13 A. No.

14 Q. Okay. 50-60-214. Since October 31st has
15 the Society in any manner performed construction
16 work or engineered construction work to the primary
17 function of a public building?

18 A. No.

19 Q. Okay. 53-20-142. 53-20-142, is that the
20 one --

21 A. Treatment? 102 or -- 53-20-142 is --

22 Q. Since October 31st, 2023, the Society has
23 not been a resident of a developmental disability
24 residential facility?

25 A. No.

1 Q. Okay. 53-21-121, this one will be easy.
2 Since October 31st, 2023, the Society has not
3 suffered from a mental illness that required the
4 county attorney to petition for a commitment?

5 A. No.

6 Q. We're almost there.
7 60-5-513. Since October 31st, 2023, the
8 Society has not operated a business providing gas,
9 food, lodging or camping to the public and
10 contracted for an information sign with the
11 Department of Transportation?

12 A. No.

13 Q. Okay. Let's go to 60-5-107. I think
14 this is the one that I maybe missed. 60-5-107.
15 Since October 31st, 2023, the Society has not
16 applied for a motorcycle endorsement?

17 A. What is a motorcycle endorsement?

18 Q. So you can have a license to operate a
19 motorcycle on your driver's license.

20 A. No, we have not --

21 Q. 72-1 --

22 A. -- not yet. We might need some
23 motorcycles if gas keeps going up. {Laughter.}

24 Q. Yeah, that's true.

25 72-1-103. Since October 31st has anybody

1 from the -- has the Society filed an action under
2 the Uniform Probate Code?

3 A. No, not to my knowledge.

4 Q. Okay. Has the Society tried to change
5 their birth certificate in any manner?

6 A. The Society is an organization, so we
7 don't have a birth certificate, but...

8 Q. Okay. Have any of your members or I
9 guess officers or directors tried to change their
10 birth certificate? Not that it really matters,
11 but -- that you know of since October 31st?

12 A. I don't know.

13 Q. Okay.

14 A. Possibly one or two, but I'm not certain
15 of that.

16 Q. Okay. We're getting there.

17 And I'm kind of showing you paragraph 10,
18 take your time and read it, tell me when you're
19 done.

20 A. Okay.

21 Q. As of October 31st, 2023, specifically
22 what discrimination has the Society endured as a
23 result of Senate Bill 458?

24 A. As far as discrimination?

25 Q. Yes, specifically.

1 A. I -- we don't know yet, just because I
2 think there's a lot of uncertainty how, if this law
3 will actually even go into effect, so -- and how it
4 will be implemented.

5 Q. So you can't cite any specific instances
6 of discrimination against the Society?

7 A. Not within the last six or seven months.

8 Q. Okay. Same question as to what social
9 community has excluded you since October 31st, 2023
10 as a result of Senate Bill 458; excluded the
11 Society?

12 A. To my knowledge, I'm not aware of any at
13 this point. Again, just I think it's because this
14 is certainly in litigation, again, we're not sure
15 kind of what is the impact going to be once it --
16 so I mean, I do know that Montana Corrections is
17 admitting transgender individuals and acknowledging
18 transgender individuals, so -- and I don't know how
19 this law will -- how it will impact, will they be
20 not admitted or not recognized or will that
21 identity be stricken from the forms, so...

22 Q. So as you sit here today, you don't have
23 any specific instances of a social community
24 excluding the Society since October 31st?

25 A. Not the Society, no.

1 Q. Same question, as to October 31st,
2 specifically what political community has excluded
3 the Society?

4 A. None to my knowledge, simply because we
5 don't really work with a lot of political
6 committees and so...

7 Q. Okay. As of October 31st, 2023,
8 specifically what has happened that has reduced the
9 value of the Two Spirit Society?

10 A. We've had to be more mindful about the
11 impact that this law will have on our community,
12 particularly our young people that are very
13 concerned about this law and the impact it's gonna
14 have on their lives. And so we've created more
15 safe spaces for our youth. They're meeting on a
16 more regular basis.

17 And since October they've been following
18 events happening not only here in Montana but
19 outside of the state, and so they conducted a vigil
20 for a Native Two Spirit that was killed in
21 Oklahoma, Nex Benedict, so they did hold a vigil.
22 And some of the youth also painted the window for
23 the Jeannette Rankin Peace Center dedicated to
24 murdered missing and indigenous people, with a
25 picture of Nex Benedict as well.

1 So I know that the young people that are
2 involved are very much aware of what's happening
3 and are concerned and fearful for their safety.

4 Q. But I'm talking about a specific event,
5 not just fear, a specific event that has reduced
6 the value of the Two Spirit Society.

7 MR. TSOLAKIDIS: Objection, form.

8 A. Yeah, I mean, specific event that has
9 reduced -- probably not reduced, I think it's
10 caused more people to study the impact and what
11 this is going to mean and to follow the news a lot
12 more.

13 Q. (BY MR. JOHNSON) But no specific event?

14 A. Right.

15 Q. Okay, fair enough.

16 And what facts do you have that anyone in
17 the legislature acted deliberately to reduce the
18 value of the Two Spirit Society?

19 A. Well, I'm aware of rhetoric that was used
20 in some of the instances and -- which was very
21 derogatory and hateful and definitely was --
22 impacted our Two Spirit community and our trans
23 Native community, as well, so yeah, they're very,
24 very much concerned and --

25 Q. So what rhetoric specifically?

1 not even been implemented, so I'd say it's too
2 early to tell what that will be.

3 Q. So no specific event at this point?

4 A. At this point, no.

5 Q. Same as degraded, any specific event, as
6 of October 31st, 2023, that you feel degraded the
7 Society as a result of Senate Bill 458; same
8 answer?

9 A. Yeah, as far as degraded, I mean --

10 Q. Okay. Same answer as far as demeaned?

11 A. I mean, we've received hate mail or
12 emails last fall as a result of -- I think that was
13 in November, after it went into effect -- when it
14 was announced we are a plaintiff. So definitely
15 individuals telling us that we're wrong, that, you
16 know, we don't know science, that we are, you know,
17 mentally ill, that type of stuff, so...

18 Q. That came from citizens, not the State of
19 Montana, didn't it?

20 A. Citizens, yes.

21 Q. Okay.

22 A. And not even citizens of Montana.

23 Q. Oh, okay, okay. Well, I'm sorry that
24 that happened.

25 Same with humiliation, since October

1 31st, 2023, has -- specifically, how has the
2 Society been humiliated as a result of Senate
3 Bill 458?

4 A. I would say, again, it's yet to be
5 decided, we have -- currently we have not been
6 humiliated, not as an organization per se.

7 Q. Okay. Has the Society been denied any
8 public accommodations from October 31st, 2023 to
9 the date of the Complaint?

10 A. No.

11 Q. Has the Society been denied any state law
12 remedies from October 31st to the date of the
13 Complaint as a result of Senate Bill 458?

14 A. State law remedies, no.

15 Q. Okay. Have you been denied the
16 opportunity to conduct business as a result -- from
17 October 31st to the date of the Complaint, as a
18 result of Senate Bill 458?

19 A. No, we have not been denied to do
20 business.

21 Q. Have you been denied any legal benefits
22 as a result, from October 31st to the date of the
23 Complaint, because of Senate Bill 458?

24 A. Not to my knowledge.

25 Q. Are there legitimate State interests

1 specific event?

2 A. Personal autonomy, not at this point.
3 Again like I said, I think there's still confusion
4 as far as people -- I mean, has the law gone into
5 full effect, what's the impact, I don't know that
6 folks know and so...

7 Q. Has the Society been denied the right to
8 speak since October 31st, 2023, as a result of
9 Senate Bill 458?

10 A. No, not the right to speak. But I'm sure
11 there would be some organizations that don't agree
12 with us, if we wanted to go and ask to speak, they
13 might not want us to speak, but...

14 Q. But you haven't been denied --

15 A. We haven't been denied.

16 Q. -- I mean, if the Society has chosen to
17 speak, it's been able to speak?

18 A. Uh-huh.

19 Q. That's a yes?

20 A. Yes.

21 MR. JOHNSON: That's all I have. Thank
22 you.

23 MR. TSOLAKIDIS: No questions from us,
24 thanks.

25 VIDEOGRAPHER WHITE: Okay. This

Exhibit F

MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

SUSAN EDWARDS, et al.,)	
)	
Plaintiffs,)	
)	
-vs-)	CAUSE NO. DV-23-1026
)	
THE STATE OF MONTANA,)	Hon. Leslie Halligan
et al.,)	
)	
Defendants.)	

Taken at 1015 Mount Avenue
Missoula, Montana
Friday, April 19, 2024 - 12:59 P.M.

VIDEOTAPED DEPOSITION
OF
SHANNON ALOIA

CONFIDENTIAL

Reported by Terra Rohlfs, RPR, Jeffries Court Reporting, Inc., 1015 Mount Avenue, Suite B, Missoula, Montana 59801, (406)721-1143, Freelance Court Reporter and Notary Public for the State of Montana, residing in Hamilton, Montana, jrcrcourt@montana.com

1 A. I am currently the lead operator of a cut
2 line.

3 Q. What's that mean?

4 A. I run a chop saw.

5 Q. Oh. Metal work?

6 A. Wood, lumber.

7 Q. Wood, okay.

8 The next question, we are under a
9 confidentiality agreement, so whatever you say
10 stays among us, but have you been diagnosed with
11 any mental health disorders or issues?

12 A. Yes.

13 Q. Could you please elaborate on that.

14 A. I was diagnosed with complex PTSD.

15 Q. Okay. I'm going to go through some
16 statutes. When I refer to October 31st, which I'll
17 consistently do, I will always be referring to
18 October 31st, 2023, does that make sense?

19 A. Yes.

20 Q. Okay. So the first statute I have here
21 is 2-18-208, it's a comparable worth statute, could
22 you please read that.

23 A. 2-18-208, comparable worth --

24 Q. Oh, you don't have to read it out loud,
25 you can read it to yourself.

1 A. Oh. I've read it.

2 Q. As of October 31st were you a State
3 employee for the purposes of comparable worth?

4 A. No.

5 Q. Okay. Have you ever been employed by the
6 State?

7 A. No.

8 Q. Okay. Next statute is 7-15-4207. Since
9 October 31st were you involved in an urban renewal
10 program in any capacity?

11 A. No.

12 Q. Okay. Next statute 7-34-2123.

13 A. Okay.

14 Q. Since October 31st have you been denied
15 admission to a hospital district facility?

16 A. No.

17 Q. Okay. Next statute is 13-7-408 {sic}.

18 A. Okay.

19 Q. Since October 31st have you been involved
20 in a ballot issue dispute where you made an
21 argument either for or against it?

22 A. I don't know. I don't believe so.

23 Q. Have you done anything regarding ballot
24 issues at all?

25 A. No.

1 Q. How about since October 31st?

2 A. No, no. Sorry.

3 Q. No, that's okay.

4 Next statute 13-35-301.

5 A. Okay.

6 Q. Since October 31st have you campaigned
7 for public office where you were required to sign a
8 code of fair campaign practices form?

9 A. No.

10 Q. Okay. Next statute, 13-38-201. Since
11 October 31st have you served as a party committee
12 representative for your voting precinct?

13 A. No, I have not.

14 Q. Next statute, 20-7-1306. Since
15 October 31st have you participated in any public
16 school athletic event?

17 A. No.

18 Q. Okay. Next statute, 20-9-327. Since
19 October 31st have you been involved in a manner
20 with a quality educator payment for the facility
21 that serves by contract female youth?

22 A. No.

23 Q. Okay. Next, 20-25-501. Since
24 October 31st have you been above the age of 18
25 years old?

1 A. Yes.

2 Q. And have you sought to enroll in a
3 college or university system?

4 A. No.

5 Q. Okay. Next statute is 20-25-701. Since
6 October 31st have you been involved in a work study
7 program at a Montana college or university?

8 A. No.

9 Q. Okay. 22-2-306. Since October 31st have
10 you been involved in any way in the Cultural Or
11 Aesthetic Grant Program?

12 A. No.

13 Q. Okay. 33-1-201. Since October 31st have
14 you had any problems obtaining insurance in any
15 form because of the definition of the word "state"?

16 A. No.

17 Q. What about just obtaining insurance?

18 A. No.

19 Q. Okay. 35-20-209. Since October 31st
20 have you been the secretary of a cemetery
21 association?

22 A. No.

23 Q. Since October 31st have you had any
24 involvement in a cemetery association?

25 A. No.

1 Q. Okay. 39-2-912. Since October 31st have
2 you been terminated from your employment where
3 other state, federal or another administrative body
4 would've had jurisdiction to decide any contested
5 matter?

6 A. No.

7 Q. Okay. 40-1-107.

8 COURT REPORTER: As in 41 dash?

9 MR. NOONAN: 40-1, sorry.

10 COURT REPORTER: No, you're fine.

11 Q. (BY MR. NOONAN) Since October 31st have
12 you completed a marriage application form?

13 A. No.

14 Q. Okay. 40-5-907. Since October 31st have
15 you been involved in a child support proceeding?

16 A. No.

17 Q. Okay. 40-5-1031. Since October 31st
18 have you had any of your children involved in youth
19 court?

20 A. No.

21 Q. Okay. 42-2-204. Since October 31st have
22 you been either a putative father or a presumed
23 father of a child that was subject to adoption or
24 parental rights were being terminated?

25 A. No.

1 Q. Okay. 45-5-625. Since October 31st have
2 you been accused of sexual abuse of children?

3 A. No.

4 Q. Okay. 46-19-301. Since October 31st
5 have you been involved in an interstate compact
6 transfer for purposes of penal correction?

7 A. No.

8 Q. Okay. 46-19-401. Since October 31st
9 have you been involved in any interstate contract?

10 A. No.

11 Q. 46-32-105. Since October 31st have you
12 sought a certificate of innocence for purposes of a
13 wrongful conviction suit?

14 A. No.

15 Q. Okay. 49-1-102 and 49-2-101. Since
16 October 31st have you filed a discrimination
17 complaint with the Department of Labor & Industry?

18 A. No.

19 Q. Okay. 49-3-101, please. Since
20 October 31st have you sought any relief for a
21 violation of the Governmental Code of Fair
22 Practices?

23 A. No.

24 Q. Okay. 50-5-105. Since October 31st have
25 you in any manner operated a health care facility?

1 A. No.

2 Q. Okay. 50-5-602. Since October 31st have
3 you been involved with a family health care
4 training program?

5 A. No.

6 Q. Okay. 50-11-101. Since October 31st
7 have you attempted in any manner to perform any
8 reproductive human cloning?

9 A. No.

10 Q. What about shipping any material?

11 A. No.

12 Q. Okay. Didn't think so.

13 50-15-101. Since October 31st have you
14 been employed by DPHHS Vital Statistics?

15 A. No.

16 Q. Have you had to record live births in any
17 manner?

18 A. No.

19 Q. Okay. 50-19-103. Since October 31st
20 have you been pregnant?

21 A. No.

22 Q. What about expecting?

23 A. No.

24 Q. 50-60-214. Since October 31st have you
25 in any manner performed construction work or

1 engineered construction work to the primary
2 function of a building?

3 A. No.

4 Q. Okay. 53-20-142 {sic}. Since
5 October 31st have you been a resident of a
6 developmental disability residential facility?

7 A. No.

8 Q. 53-20-121. Since October 31st have you
9 suffered from a mental illness that required the
10 county attorney to petition for your commitment?

11 A. No.

12 Q. 60-5-513. Since October 31st have you
13 operated a business providing gas, food, lodging or
14 camping to the public and contracted for an
15 information sign from the Department of
16 Transportation?

17 A. No.

18 Q. Okay. 60-5-107. Since October 31st have
19 you applied for a motorcycle endorsement?

20 A. No.

21 Q. When did you get your motorcycle
22 endorsement?

23 A. September of last year.

24 Q. September of last year?

25 A. Yeah.

1 Q. Okay. 72-1-103. Since October 31st have
2 you filed any action under the Uniform Probate
3 Code?

4 A. No.

5 Q. And since October 31st have you tried to
6 change your birth certificate in any manner?

7 A. No.

8 Q. Okay. We're done with books.

9 MR. JOHNSON: Forever. {Laughter.}

10 Q. (BY MR. NOONAN) Okay. So just some more
11 conversation instead of books.

12 What is your definition of gender?

13 A. I believe gender to be a spectrum with a
14 kind of a male, female and the in-between.

15 Q. You're using your fingers to describe
16 like an L, is that how you see it?

17 A. Kind of. I mean, it's difficult to
18 describe --

19 Q. What do you mean by --

20 A. -- verbally.

21 Q. What do you mean by spectrum? Is there
22 more than two?

23 A. Yes.

24 Q. If so, how many?

25 A. A spectrum would indicate that there are

1 paragraph 10 in here, if you want to show.

2 {Speaking to Mr. Gomez Patalano.}

3 Q. (BY MR. NOONAN) So the questions I have
4 are -- I'm going to derive them from that
5 paragraph.

6 As of October 31st, specifically what
7 discrimination have you endured as a result of
8 SB 458?

9 A. None that I'm aware of.

10 Q. Okay. As of October 31st, specifically
11 what social community has excluded you?

12 A. None that I'm aware of.

13 Q. As of October 31st, specifically what
14 political community has excluded you?

15 A. None that times aware of.

16 Q. Okay. As of October 31st, specifically
17 what has happened that has reduced your value?

18 A. The bill itself has reduced my value.

19 Q. How so?

20 A. The bill itself calls into question a lot
21 of -- it provides uncertainty for my future in
22 particular. It is degrading in and of itself.

23 Q. What about the bill? And if I showed it
24 to you, would that help?

25 A. No.

1 A. It was similar.

2 Q. Okay. Where do you take issue with that
3 definition?

4 A. Under normal development.

5 Q. Is it the word "normal"?

6 A. Yes.

7 Q. Okay.

8 A. Is there something abnormal about me?

9 Q. I'm not saying that.

10 A. Or my development where it has to be
11 divided into one of these categories? I have to be
12 placed under an abnormal development?

13 Q. What about at the last line, But for a
14 biological or genetic condition?

15 A. I find that offensive.

16 Q. Okay. Do you have the same feelings for
17 the definition of "female"?

18 A. I do, yes.

19 Q. Okay. Going back to what I asked
20 earlier, from October 31st to the date of filing
21 the Complaint, what specifically happened to reduce
22 your value?

23 A. Could you repeat the question one more
24 time, please?

25 Q. Sure. Since October 31st until the date

1 the Complaint was filed --

2 A. Uh-huh.

3 Q. -- what specifically, what event occurred
4 that reduced your value?

5 A. The bill was passed.

6 Q. Has anything else happened?

7 A. Not that I'm aware of so far.

8 Q. Do you have any facts that anyone in the
9 legislature acted deliberately to reduce your
10 value?

11 A. I heard testimony.

12 Q. Was any of it specifically directed at
13 you?

14 A. Not that I'm aware of.

15 Q. Okay. As of October 31st, specifically
16 what private medical information have you been
17 required to disclose?

18 A. None.

19 Q. Okay. As of October 31st, what --
20 specifically how have you been degraded, aside from
21 the bill?

22 A. I have been humiliated online. I have
23 been insulted, I have been -- I've been called
24 mentally ill. I've been called a pedophile. I
25 have been called a lot of horrible, horrible things

1 from people who think that I'm transgender or think
2 that this is just something that I made up.

3 Q. Did any of -- You said this occurred
4 online?

5 A. Yeah.

6 Q. Did anybody from the State cause that or
7 do that?

8 A. Not that I'm aware of. I don't know
9 where these people work.

10 Q. Where did this occur? Was this social
11 media?

12 A. Yeah.

13 Q. Okay. As of October 31st, specifically
14 how have you been demeaned?

15 A. Like I said, I've been called horrific
16 things. I have been accused of various crimes,
17 including pedophilia, being a pervert, having an
18 agenda.

19 Q. Was that caused by anybody from the
20 State?

21 A. I don't know.

22 MR. GOMEZ PATALANO: I'd request we take
23 a break.

24 MR. NOONAN: That's fine.

25 VIDEOGRAPHER WHITE: We are going off the

1 record at 1:35.

2 (Whereupon, the proceedings were in
3 recess at 1:35 p.m. and subsequently reconvened at
4 1:48 p.m., and the following proceedings were
5 entered of record:)

6 VIDEOGRAPHER WHITE: Back on the record
7 at 1:48 p.m.

8 Q. (BY MR. NOONAN) Last question on this
9 topic and then we'll go to other stuff.

10 As of October 31st, specifically how have
11 you been humiliated?

12 A. I have been humiliated online.

13 Q. Okay. Any of that come from the State?

14 A. Not that I'm aware of.

15 Q. Okay. As of October 31st have you been
16 denied any public accommodations?

17 A. No.

18 Q. Employment?

19 A. No.

20 Q. A state benefit?

21 A. No.

22 Q. Insurance?

23 A. No.

24 Q. Housing?

25 A. No.

1 Q. Health care?

2 A. No.

3 Q. Okay. As of October 31st have you been
4 denied any state law remedies?

5 A. No.

6 Q. As of October 31st, specifically what has
7 the State done to refuse to recognize you as a
8 private business? Do you have -- or you're
9 employed, you don't have a private business; right?

10 A. That's correct.

11 Q. Okay. As of October 31st, specifically
12 how have you had to misidentify yourself?

13 A. I've had to claim that I'm female.

14 Q. Where?

15 A. On documents at work.

16 Q. Any State documents?

17 A. Possibly.

18 Q. Like what?

19 A. For a workmen's compensation claim.

20 Q. Okay. And what is the name of the
21 business you work for?

22 A. United Forestry Products, Edge Division.

23 Q. Okay. When did you file that workmen's
24 compensation claim?

25 A. I'm not certain.

1 Q. Was it -- has it been since October 31st
2 or before that?

3 A. It would've been since then.

4 Q. Since then?

5 A. Yeah.

6 Q. Okay. Were you denied any workmen's
7 compensation?

8 A. No.

9 Q. Okay. Since October 31st have you been
10 degraded based on your chosen gender?

11 A. Yes.

12 Q. Online?

13 A. Yes.

14 Q. Any of it come from the State?

15 A. No.

16 Q. Okay. Since October 31st what legal
17 benefits have been denied to you because of your
18 chosen gender?

19 A. None.

20 Q. Okay. As of October 31st have you
21 been -- has your speech been compelled in any way?

22 A. No.

23 Q. Have you been forced to say anything you
24 didn't agree with?

25 A. No.

CERTIFICATE OF SERVICE

I, Thane P. Johnson, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Brief In Support of Motion to the following on 05-31-2024:

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Dated: 05-31-2024