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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

<p>SCARLET VAN GARDEREN, et al.</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>STATE OF MONTANA, ET AL.,</p> <p style="text-align: right;">Defendants.</p>	<p>Cause No. DV 2023–0541 Hon. Jason Marks</p> <p style="text-align: center;"><b>DEFENDANTS’ ANSWER TO PLAINTIFFS’ FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL</b></p>
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For their Answer to Plaintiffs’ Complaint for Declaratory and Injunctive Relief, Defendants State of Montana (“the State”), Gregory Gianforte in his official capacity as governor of the State of Montana (“Governor Gianforte”), Austin Knudsen in his official capacity as Attorney General (“Attorney General Knudsen”), the Montana Board of Medical Examiners (the “Medical Board”), the Montana Board of Nursing (the “Nursing Board”), the Montana Department of Public Health and Human Services (“DPHHS”), Charlie Brereton, in his official capacity as the Director of DPHHS (“Director Brereton”), (collectively, “Defendants”) state as follows:

### **INTRODUCTION**

1. The allegations of Paragraph 1 of Plaintiffs’ First Amended Complaint are arguments of counsel and therefore require no response. To the extent a response is required, the allegations are denied.

2. Regarding the allegations of Paragraph 2 of Plaintiffs’ First amended Complaint, Defendants admit the 2023 Montana State Legislature passed Senate Bill (“SB”) 99 and Governor Gianforte signed it into law. The remaining allegations of Paragraph 2 of Plaintiffs’ Complaint are arguments of counsel and therefore require no response. To the extent a response is required, the allegations are denied.

3. The allegations of Paragraph 3 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore, no response is required.

4. Defendants deny the allegations of the first sentence of Paragraph 4 of Plaintiffs' First Amended Complaint as stated. The remaining allegations of Paragraph 4 are arguments of counsel and therefore require no response.

5. The allegations of Paragraph 5 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response. To the extent a response is required, Defendants deny the allegations of Paragraph 5.

6. The allegations of Paragraph 6 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response. To the extent a response is required, Defendants deny the allegations of Paragraph 6.

7. The allegations of Paragraph 7 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response. To the extent a response is required, Defendants deny the allegations of Paragraph 7.

8. Defendants deny the allegations of Paragraph 8 of Plaintiffs' First Amended Complaint.

### **JURISDICTION AND VENUE**

9. Defendants admit the allegations of Paragraph 9 of Plaintiffs' First Amended Complaint.

10. Defendants admit the allegations of Paragraph 10 of Plaintiffs' First Amended Complaint.

11. Defendants admit the allegations of Paragraph 11 of Plaintiffs' First Amended Complaint.

12. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 12 of Plaintiffs' First Amended Complaint.

### **PARTIES**

13. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 13 of Plaintiffs' First Amended Complaint.

14. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 14 of Plaintiffs' First Amended Complaint.

15. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 15 of Plaintiffs' First Amended Complaint.

16. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 16 of Plaintiffs' First Amended Complaint.

17. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 17 of Plaintiffs' First Amended Complaint.

18. Regarding the allegations of Paragraph 18 of Plaintiffs' First Amended Complaint, Defendants admit the State of Montana is a government entity subject to

suit. The remaining allegations of Paragraph 18 are arguments of counsel and therefore require no response.

19. Regarding the allegations of Paragraph 19 of Plaintiffs' First Amended Complaint, Defendants admit Governor Gianforte is the governor of the State of Montana and its principal executive officer. The remaining allegations of Paragraph 19 are arguments of counsel and therefore require no response.

20. Regarding the allegations of Paragraph 20 of Plaintiffs' First Amended Complaint, Defendants admit that Attorney General Knudsen is the attorney general of the State of Montana and is its principal law enforcement officer. The remaining allegations of Paragraph 20 are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

21. Defendants admit the allegations of the first sentence of Paragraph 21 of Plaintiffs' First Amended Complaint. The remaining allegations of Paragraph 21 are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

22. Defendants admit the allegations of the first sentence of Paragraph 22 of Plaintiffs' First Amended Complaint. The remaining allegations of Paragraph 22 are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

23. Regarding the allegations of Paragraph 23 of Plaintiffs' First Amended Complaint, Defendants admit that DPHHS is responsible for administering the Montana Medicaid Program and the Healthy Montana Kids Children's Health Insurance Plan. The remaining allegations of Paragraph 23 are arguments of counsel and purport to characterize SB 99 and Article II, section 18 of the Montana Constitution, which speak for themselves and are the best evidence of their contents, and therefore require no response.

24. Regarding the allegations of Paragraph 24 of Plaintiffs' First Amended Complaint, Defendants admit that the Defendant named as Charlie Brereton, whose legal name is Charles T. Brereton, and that he is the Director of DPHHS. The remaining allegations of Paragraph 24 are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

#### **ALLEGATIONS COMMON TO ALL COUNTS**

25. The allegations of the first sentence of Paragraph 25 of Plaintiffs' First Amended Complaint are arguments of counsel and call for a legal determination and therefore require no response. Defendants deny the remaining allegations of Paragraph 25 of Plaintiffs' Complaint as stated.

26. The allegations of the first sentence of Paragraph 26 of Plaintiffs' First Amended Complaint are arguments of counsel and call for a legal determination and

therefore require no response. Defendants deny the remaining allegations of Paragraph 26 of Plaintiffs' Complaint as stated.

27. The allegations of Paragraph 27 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response.

28. Defendants admit the allegations of the first sentence of Paragraph 28 of Plaintiffs' First Amended Complaint. The remaining allegations of Paragraph 28 are arguments of counsel and therefore require no response.

29. The allegations of Paragraph 29 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response.

30. The allegations of Paragraph 29 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response. To the extent a response is required, Defendants deny the allegations of Paragraph 30 of Plaintiffs' First Amended Complaint as stated.

31. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 31 of Plaintiff's First Amended Complaint.

32. The allegations of Paragraph 32 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-V), which speaks for itself and is the best evidence of its contents, and therefore require no response.

33. Defendants deny the allegations of Paragraph 33 of Plaintiffs' First Amended Complaint as stated. Further, the allegations of Paragraph 32 of Plaintiffs' First Amended Complaint are arguments of counsel purport to characterize statements by the American Psychiatric Association, which speak for themselves and are the best evidence of their contents, and therefore require no response.

34. The allegations of Paragraph 34 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response.

35. The allegations of Paragraph 35 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize research studies, which speak for themselves and are the best evidence of their contents, and therefore require no response.

36. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 36 of Plaintiffs' First Amended Complaint.

37. The allegations of Paragraph 37 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize the WPATH Standards of Care Version 8 and Endocrine Society standards of care, which speak for themselves and are the best evidence of their contents, and therefore require no response. Additionally, Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 37 of Plaintiffs' Complaint.



38. The allegations of Paragraph 38 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize the WPATH Standards of Care Version 8, which speaks for itself and is the best evidence of its contents, and therefore require no response. Defendants deny that the WPATH clinical practice guidelines are widely accepted as best practice guidelines.

39. The allegations of Paragraph 39 of Plaintiffs' First Amended Complaint are arguments of counsel, call for a legal determination by the Court, and purport to characterize the WPATH Standards of Care Version 8 and American Medical Association documents, which speak for themselves and are the best evidence of their contents, and therefore require no response. Defendants deny that the referenced definition is the definition of medical necessity applicable to the Montana Medicaid and Healthy Montana Kids programs.

40. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 40 of Plaintiffs' First Amended Complaint.

41. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 41 of Plaintiffs' First Amended Complaint.

42. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 42 of Plaintiffs' First Amended Complaint.

43. The allegations of Paragraph 43 of Plaintiffs' Complaint purport to characterize the WPATH Standards of Care Version 8 and Endocrine Society

Clinical Guidelines, which speak for themselves and are the best evidence of their contents, and therefore require no response. To the extent a response is required, Defendants deny the allegations of Paragraph 43 of Plaintiffs' First Amended Complaint as stated.

44. Defendants deny the allegations of Paragraph 44 of Plaintiffs' First Amended Complaint as stated.

45. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 45 of Plaintiffs' First Amended Complaint.

46. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 46 of Plaintiffs' Complaint.

47. Defendants deny the allegations of Paragraph 47 of Plaintiffs' Complaint as stated.

48. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 48 of Plaintiffs' First Amended Complaint.

49. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 49 of Plaintiffs' First Amended Complaint.

50. Defendants deny the allegations of Paragraph 50 of Plaintiffs' First Amended Complaint as stated.

51. Defendants deny the allegations of Paragraph 51 of Plaintiffs' First Amended Complaint as stated.

52. Defendants deny the allegations of Paragraph 52 of Plaintiffs' First Amended Complaint as stated.

53. The allegations in Paragraph 53 of Plaintiffs' First Amended Complaint purport to characterize the Endocrine Society Clinical Guidelines, which speak for themselves and are the best evidence of their contents, and therefore require no response. To the extent a response is required, Defendants deny the allegations of Paragraph 53 as stated.

54. Defendants deny the allegations of Paragraph 54 of Plaintiffs' First Amended Complaint as stated.

55. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 55 of Plaintiffs' First Amended Complaint.

56. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 56 of Plaintiffs' First Amended Complaint.

57. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 57 of Plaintiffs' First Amended Complaint.

58. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 58 of Plaintiffs' First Amended Complaint.

59. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 59 of Plaintiffs' First Amended Complaint.

60. Defendants deny the allegations of Paragraph 60 of Plaintiffs' First Amended Complaint as stated.

61. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 61 of Plaintiffs' First Amended Complaint.

62. Defendants admit the allegations of Paragraph 62 of Plaintiffs' Complaint.

63. Regarding the allegations of Paragraph 63 of Plaintiffs' First Amended Complaint, Defendants admit Governor Gianforte issue an amendatory veto on April 17, 2023 and the Legislature approved the proposed amendments on April 21, 2023 and sent the Act back to the Governor for signature. The remaining allegations of Paragraph 63 are arguments of counsel and purport to characterize the amendatory veto, which speaks for itself and is the best evidence of its contents, and therefore require no response.

64. Defendants admit the allegations of Paragraph 64 of Plaintiffs' First Amended Complaint.

65. The allegations of Paragraph 65 of Plaintiff's First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

66. Defendants deny the allegations of Paragraph 66 of Plaintiffs' First Amended Complaint as stated and affirmatively aver that the legislative record speaks for itself and is the best evidence of its contents.

67. Defendants deny the allegations of Paragraph 67 of Plaintiffs' First Amended Complaint as stated and affirmatively aver that the legislative record speaks for itself and is the best evidence of its contents.

68. Defendants deny the allegations of Paragraph 68 of Plaintiffs' First Amended Complaint as stated and affirmatively aver that the legislative record speaks for itself and is the best evidence of its contents.

69. Defendants deny the allegations of Paragraph 69 of Plaintiffs' First Amended Complaint as stated and affirmatively aver that the legislative record speaks for itself and is the best evidence of its contents.

70. Defendants deny the allegations of Paragraph 70 of Plaintiffs' First Amended Complaint as stated and affirmatively aver that the legislative record speaks for itself and is the best evidence of its contents.

71. The allegations of Paragraph 71 of Plaintiffs' First Amended are arguments of counsel and purport to characterize the legislative record, which speaks for itself and is the best evidence of its contents.

72. Defendants deny the allegations of Paragraph 72 of Plaintiffs' First Amended Complaint as stated and affirmatively aver that the legislative record speaks for itself and is the best evidence of its contents.

73. Defendants deny the allegations of Paragraph 73 of Plaintiffs' First Amended Complaint.

74. Defendants deny the allegations of Paragraph 74 of Plaintiffs' First Amended Complaint.

75. The allegations of Paragraph 75 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

76. The allegations of Paragraph 76 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

77. Defendants deny the allegations of Paragraph 77 of Plaintiffs' First Amended Complaint as stated.

78. Defendants deny the allegations of Paragraph 78 of Plaintiffs' First Amended Complaint as stated.

79. The allegations of Paragraph 79 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response. To the extent a response is required, Defendants deny the allegations of Paragraph 79 as stated.

80. Defendants deny the allegations of Paragraph 80 of Plaintiffs' First Amended Complaint as stated.

81. Defendants deny the allegations of Paragraph 81 of Plaintiffs' First Amended Complaint as stated.

82. Defendants lack sufficient knowledge or information to admit or deny the allegations of the first sentence of Paragraph 82 of Plaintiffs' First Amended Complaint. The remaining allegations of Paragraph 82 are arguments of counsel and therefore require no response. To the extent a response is required, Defendants deny the remaining allegations of Paragraph 82 as stated.

83. The allegations of Paragraph 83 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response.

84. The allegations of Paragraph 84 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response.

85. Defendants lack sufficient knowledge to admit or deny the allegations of Paragraph 85 Plaintiffs' First Amended Complaint.

86. Defendants deny the allegations of Paragraph 86 of Plaintiffs' First Amended Complaint as stated. Further, the allegations of Paragraph 86 are arguments of counsel and purport to characterize research studies and the 2022 National Survey on LGBTQ Youth Mental Health, which speak for themselves and are the best evidence of their contents, and therefore require no response.

87. Defendants deny the allegations of the first sentence of Paragraph 87 of Plaintiffs' First Amended Complaint as stated. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 86.

88. Defendants deny the allegations of Paragraph 88 of Plaintiffs' First Amended Complaint as stated.

89. The allegations of Paragraph 89 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response. To the extent a response is required, Defendants deny the allegations of Paragraph 89 of Plaintiffs' First Amended Complaint as stated.

90. The allegations of Paragraph 90 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response. To the extent a response is required, Defendants deny the allegations of Paragraph 90 of Plaintiffs' First Amended Complaint as stated.

91. Defendants lack sufficient knowledge to admit or deny the allegations of the first sentence of Paragraph 91 of Plaintiffs' First Amended Complaint. The remaining allegations of Paragraph 91 are arguments of counsel and purport to



characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

92. The allegations of the first and last sentences of Paragraph 92 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response. Defendants lack sufficient knowledge to admit or deny certain allegations in the balance of Paragraph 92 of Plaintiffs' First Amended Complaint. To the extent a response is required, Defendants deny the allegations of Paragraph 92 as stated.

93. The allegations in the first, fifth, and sixth sentences of Paragraph 93 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response. Defendants lack sufficient knowledge to admit or deny certain allegations in the balance of Paragraph 93 of Plaintiffs' First Amended Complaint. To the extent a response is required, Defendants deny the allegations of Paragraph 93 as stated.

94. Regarding the allegations of Paragraph 94 of Plaintiffs' First Amended Complaint, Defendants lack sufficient knowledge to admit or deny whether some families have moved out of Montana because of SB 99. Defendants deny the allegations of Paragraph 94 as stated.

95. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 95 of Plaintiffs' First Amended Complaint.

96. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 96 of Plaintiffs' First Amended Complaint.

97. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 97 of Plaintiffs' First Amended Complaint.

98. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 98 of Plaintiffs' First Amended Complaint.

99. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 99 of Plaintiffs' First Amended Complaint.

100. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 100 of Plaintiffs' First Amended Complaint.

101. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 101 of Plaintiffs' First Amended Complaint.

102. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 102 of Plaintiffs' First Amended Complaint.

103. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 103 of Plaintiffs' First Amended Complaint.

104. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 104 of Plaintiffs' First Amended Complaint.

105. Defendants lack sufficient knowledge or information to admit or deny the allegations in Paragraph 105 of Plaintiffs' First Amended Complaint.

106. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 106 of Plaintiffs' First Amended Complaint.

107. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 107 of Plaintiffs' First Amended Complaint.

108. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 108 of Plaintiffs' First Amended Complaint.

109. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 109 of Plaintiffs' First Amended Complaint.

110. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 110 of Plaintiffs' First Amended Complaint.

111. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 111 of Plaintiffs' First Amended Complaint.

112. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 112 of Plaintiffs' First Amended Complaint.

113. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 113 of Plaintiffs' First Amended Complaint.

114. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 114 of Plaintiffs' First Amended Complaint.

115. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 115 of Plaintiffs' First Amended Complaint.

116. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 116 of Plaintiffs' First Amended Complaint.

117. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 117 of Plaintiffs' First Amended Complaint.

118. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 118 of Plaintiffs' First Amended Complaint.

119. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 119 of Plaintiffs' First Amended Complaint.

120. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 120 of Plaintiffs' First Amended Complaint.

121. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 121 of Plaintiffs' First Amended Complaint.

122. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 122 of Plaintiffs' First Amended Complaint.

123. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 123 of Plaintiffs' First Amended Complaint.

124. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 124 of Plaintiffs' First Amended Complaint.

125. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 125 of Plaintiffs' First Amended Complaint.

126. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 126 of Plaintiffs' Complaint.

127. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 127 of Plaintiffs' First Amended Complaint.

128. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 128 of Plaintiffs' First Amended Complaint.

129. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 129 of Plaintiffs' First Amended Complaint.

130. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 130 of Plaintiffs' First Amended Complaint.

131. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 131 of Plaintiffs' First Amended Complaint.

132. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 132 of Plaintiffs' First Amended Complaint.

133. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 133 of Plaintiffs' First Amended Complaint.

134. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 134 of Plaintiffs' First Amended Complaint.

135. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 135 of Plaintiffs' First Amended Complaint.

136. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 136 of Plaintiffs' First Amended Complaint.

137. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 137 of Plaintiffs' First Amended Complaint.

138. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 138 of Plaintiffs' First Amended Complaint. Additionally, The allegations of Paragraph 138 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

139. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 139 of Plaintiffs' First Amended Complaint.

140. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 140 of Plaintiffs' First Amended Complaint.

141. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 141 of Plaintiffs' First Amended Complaint.

142. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 142 of Plaintiffs' First Amended Complaint, except that

Defendants admit that Juanita Hodax is a provider enrolled in the Montana Medicaid program.

143. The allegations of Paragraph 143 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response.

144. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 144 of Plaintiffs' First Amended Complaint.

145. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 145 of Plaintiffs' First Amended Complaint.

146. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 146 of Plaintiffs' First Amended Complaint.

147. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 147 of Plaintiffs' First Amended Complaint.

148. The allegations in Paragraph 148 of Plaintiff's First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

149. The allegations of Paragraph 149 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

150. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 150 of Plaintiffs' First Amended Complaint.

Additionally, the allegations of Paragraph 150 of Plaintiffs' Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

151. The allegations of the first sentence of Paragraph 151 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 151.

152. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 152 of Plaintiffs' First Amended Complaint.

153. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 153 of Plaintiffs' First Amended Complaint. Additionally, the allegations of Paragraph 153 are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

154. The allegations of Paragraphs 154 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response.

155. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 155 of Plaintiffs' First Amended Complaint, except that Defendants admit that Katherine Mistretta is a provider enrolled in the Montana Medicaid program.



156. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 156 of Plaintiffs' First Amended Complaint.

157. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 157 of Plaintiffs' First Amended Complaint.

158. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 158 of Plaintiffs' First Amended Complaint.

159. The allegations of Paragraph 159 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

160. The allegations of Paragraph 160 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

161. The allegations of the second and third sentences of Paragraph 161 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 161.

162. The allegations of the first sentence of Paragraph 162 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require

no response. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 162.

163. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 163 of Plaintiffs' First Amended Complaint.

164. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 164 of Plaintiffs' First Amended Complaint.

### **CLAIMS FOR RELIEF**

165. The allegations of Paragraph 165 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize Article II, Section 15 of the Montana Constitution, which speaks for itself and is the best evidence of its contents, and therefore require no response.

### **COUNT I – EQUAL PROTECTION**

166. Defendants restate their responses to Paragraphs 1–165 of Plaintiffs' First Amended Complaint.

167. The allegations of Paragraph 167 of Plaintiff's First Amended Complaint are arguments of counsel and purport to characterize Article II, Section 4 of the Montana Constitution, which speaks for itself and is the best evidence of its contents, and therefore require no response.

168. Defendants deny the allegations of Paragraph 168 of Plaintiffs' First Amended Complaint.

169. Defendants deny the allegations of Paragraph 169 of Plaintiffs' First Amended Complaint.

170. Defendants deny the allegations of Paragraph 170 of Plaintiffs' First Amended Complaint.

171. The allegations of Paragraph 171 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

172. The allegations of Paragraph 172 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

173. Defendants deny the allegations of Paragraph 173 of Plaintiffs' First Amended Complaint.

174. Defendants deny the allegations of Paragraph 174 of Plaintiffs' First Amended Complaint.

175. Defendants deny the allegations of Paragraph 175 of Plaintiffs' First Amended Complaint.

176. Defendants deny the allegations in Paragraph 176 of Plaintiffs' First Amended Complaint.

177. Defendants deny the allegations of Paragraph 177 of Plaintiffs' First Amended Complaint.

178. Defendants deny the allegations of Paragraph 178 of Plaintiffs' First Amended Complaint.

179. Defendants deny the allegations of Paragraph 179 of Plaintiffs' First Amended Complaint.

180. Defendants deny the allegations of Paragraph 174 of Plaintiffs' First Amended Complaint.

## **COUNT II – FUNDAMENTAL PARENTAL RIGHTS**

181. Defendants restate their responses to Paragraphs 1–180 of Plaintiffs' First Amended Complaint.

182. The allegations of Paragraph 182 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize Article II, Section 17 of the Montana Constitution, which speaks for itself and is the best evidence of its contents, and therefore require no response.

183. The allegations of Paragraph 183 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize Mont. Code Ann. § 40-6-701 and the referenced caselaw, which speak for themselves and are the best evidence of their contents, and therefore require no response.

184. The allegations of Paragraph 184 of Plaintiffs' First Amended Complaint are arguments of counsel, purport to characterize Mont. Code Ann. § 40-

6-701(3), which speaks for itself and is the best evidence of its contents, and call for a legal determination by the Court, and therefore require no response.

185. The allegations of Paragraph 185 of Plaintiffs' First Amended Complaint are arguments of counsel and call for a legal determination by the Court, and therefore require no response.

186. The allegations of Paragraph 186 of Plaintiffs' First Amended Complaint are arguments of counsel, and therefore require no response. To the extent a response is required, Defendants deny the allegations of Paragraph 186 as stated.

187. Defendants deny the allegations of Paragraph 187 of Plaintiffs' First Amended Complaint.

188. Defendants deny the allegations of Paragraph 188 of Plaintiffs' First Amended Complaint.

189. Defendants deny the allegations of Paragraph 189 of Plaintiffs' First Amended Complaint.

190. Defendants deny the allegations of Paragraph 190 of Plaintiffs' First Amended Complaint.

191. Defendants deny the allegations of Paragraph 191 of Plaintiffs' First Amended Complaint.

### **COUNT III – RIGHT TO PRIVACY**

192. Defendants restate their responses to Paragraphs 1–191 of Plaintiffs’ First Amended Complaint.

193. The allegations of Paragraph 193 of Plaintiffs’ First Amended Complaint are arguments of counsel and purport to characterize Article II, Section 10 of the Montana Constitution, which speaks for itself and is the best evidence of its contents, and therefore, no response is required.

194. The allegations of Paragraph 194 of Plaintiffs’ First Amended Complaint are arguments of counsel and purport to characterize the referenced case, which speaks for itself and is the best evidence of its contents, and therefore require no response.

195. Defendants deny the allegations of Paragraph 195 of Plaintiffs’ First Amended Complaint.

196. Defendants deny the allegations of Paragraph 196 of Plaintiffs’ First Amended Complaint.

197. Defendants deny the allegations of Paragraph 197 of Plaintiffs’ First Amended Complaint.

198. Defendants deny the allegations of Paragraph 198 of Plaintiffs’ First Amended Complaint.

199. Defendants deny the allegations of Paragraph 199 of Plaintiffs' First Amended Complaint.

200. Defendants deny the allegations of Paragraph 200 of Plaintiffs' First Amended Complaint.

#### **COUNT IV – RIGHT TO SEEK HEALTH**

201. Defendants restate their responses to Paragraphs 1–200 of Plaintiffs' First Amended Complaint.

202. The allegations of Paragraph 201 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize Article II, Section 3 of the Montana Constitution and the referenced case, which speak for themselves and are the best evidence of their contents, and therefore require no response.

203. The allegations of Paragraph 202 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize the referenced case, which speaks for itself and is the best evidence of its contents, and therefore require no response.

204. Defendants deny the allegations of Paragraph 204 of Plaintiffs' First Amended Complaint.

205. Defendants deny the allegations of Paragraph 205 of Plaintiffs' First Amended Complaint.

206. Defendants deny the allegations of Paragraph 206 of Plaintiffs' First Amended Complaint.

207. Defendants deny the allegations of Paragraph 207 of Plaintiffs' First Amended Complaint.

208. Defendants deny the allegations of Paragraph 208 of Plaintiffs' First Amended Complaint.

209. Defendants deny the allegations of Paragraph 209 of Plaintiffs' First Amended Complaint.

210. Defendants deny the allegations of Paragraph 210 of Plaintiffs' First Amended Complaint.

211. Defendants deny the allegations of Paragraph 211 of Plaintiffs' First Amended Complaint.

212. Defendants deny the allegations of Paragraph 212 of Plaintiffs' First Amended Complaint.

### **COUNT V – RIGHT TO DIGNITY**

213. Defendants restate their responses to Paragraphs 1–212 of Plaintiffs' First Amended Complaint.

214. The allegations of Paragraph 214 of Plaintiffs' Complaint are arguments of counsel and purport to characterize Article II, Section 4 of the Montana



Constitution, which speaks for itself and is the best evidence of its contents, and therefore require no response.

215. The allegations of Paragraph 215 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize the referenced case, which speaks for itself and is the best evidence of its contents, and therefore require no response.

216. The allegations of Paragraph 216 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response.

217. The allegations of Paragraph 217 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize the referenced case, which speaks for itself and is the best evidence of its contents, and therefore requires no response.

218. Defendants deny the allegations of Paragraph 218 of Plaintiffs' First Amended Complaint.

219. Defendants deny the allegations of Paragraph 219 of Plaintiffs' First Amended Complaint.

220. Defendants deny the allegations of Paragraph 220 of Plaintiffs' First Amended Complaint.

221. Defendants deny the allegations of Paragraph 221 of Plaintiffs' First Amended Complaint.

222. The allegations of Paragraph 222 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response.

223. The allegations of Paragraph 223 of Plaintiffs' First Amended Complaint are arguments of counsel and therefore require no response.

224. Defendants deny the allegations of Paragraph 224 of Plaintiffs' First Amended Complaint.

225. Defendants deny the allegations of Paragraph 225 of Plaintiffs' First Amended Complaint.

226. Defendants deny the allegations of Paragraph 226 of Plaintiffs' First Amended Complaint.

#### **COUNT VI – FREEDOM OF SPEECH & EXPRESSION**

227. Defendants restate their responses to Paragraphs 1–226 of Plaintiffs' Complaint.

228. The allegations of Paragraph 228 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize Article II, Section 7 of the Montana Constitution, which speaks for itself and is the best evidence of its contents, and therefore require no response.

229. The allegations of Paragraph 229 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize the referenced case, and therefore require no response.

230. The allegations in Paragraph 230 of Plaintiffs' First Amended Complaint are arguments of counsel and purport to characterize SB 99, which speaks for itself and is the best evidence of its contents, and therefore require no response.

231. Defendants deny the allegations of Paragraph 231 of Plaintiffs' First Amended Complaint.

232. Defendants deny the allegations of Paragraph 232 of Plaintiffs' First Amended Complaint.

233. Defendants deny the allegations of Paragraph 233 of Plaintiffs' First Amended Complaint.

234. Defendants deny the allegations of Paragraph 234 of Plaintiffs' First Amended Complaint.

235. Defendants deny the allegations of Paragraph 235 of Plaintiffs' First Amended Complaint.

236. Defendants deny the allegations of Paragraph 236 of Plaintiffs' First Amended Complaint.

237. Defendants deny the allegations of Paragraph 237 of Plaintiffs' First Amended Complaint.

238. Defendants deny the allegations of Paragraph 238 of Plaintiffs' First Amended Complaint.

## DEFENSES

239. Defendants deny each and every allegation of Plaintiffs' First Amended Complaint not specifically admitted.

240. Plaintiffs' First Amended Complaint fails to state a claim upon which relief can be granted.

241. Plaintiff medical providers lack standing.

242. Plaintiffs' claims are not justiciable.

243. SB 99 does not violate the United States Constitution, the Constitution of the State of Montana, or Montana State law.

244. SB 99 serves and is supported by rational, legitimate, and compelling state interests, including but not limited to preventing irreversible physical, emotional, and mental harm to Montana children.

245. Defendants raise the above defenses so that they will not be waived and reserve the right to add defenses that may become apparent during the discovery or to dismiss those which may later show not to apply.

WHEREFORE, Defendants respectfully pray for the following relief:

1. That Plaintiffs take nothing by their Complaint;
2. For judgment for Defendants on all counts of Plaintiffs' Complaint;
3. For costs of suit and attorneys' fees as allowed by law; and
4. For all other relief the Court deems just and proper.

**JURY DEMAND**

DEFENDANTS DEMAND A TRIAL BY JURY ON ALL FACT ISSUES.

DATED this 31st day of July, 2023.

Austin Knudsen  
MONTANA ATTORNEY GENERAL



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