

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

CASEY PERKINS, an individual;
SPENCER MCDONALD, an
individual; KASANDRA
REDDINGTON, an individual; JANE
DOE, an individual; and JOHN DOE,
an individual,

Plaintiffs,

vs.

STATE OF MONTANA;
GREGORY GIANFORTE, in his
official capacity as Governor of
the State of Montana; and AUSTIN
KNUDSEN, in his official capacity
as Attorney General of the State of
Montana,

Defendants.

Cause No. DV 25-282

Hon. Shane Vannatta

**[PROPOSED] ORDER
GRANTING A TEMPORARY
RESTRAINING ORDER AND
SETTING PRELIMINARY
INJUNCTION HEARING**

Plaintiffs Casey Perkins, Spencer McDonald, Kasandra Reddington, Jane Doe, and John Doe (collectively, “Plaintiffs”) move for a temporary restraining order to enjoin Defendants the State of Montana, Governor Gregory Gianforte, and Attorney General Austin Knudsen (collectively, “Defendants”) from enforcing House Bill 121 (the “Act”), adopted on March 27, 2025. Plaintiffs allege that the Act violates their rights under the Montana Constitution, including the rights to equal protection, privacy, to pursue life’s basic necessities, and due process. Plaintiffs seek a temporary restraining order until such time as the Court conducts a

hearing and rules on Plaintiffs' concurrently filed motion for a preliminary injunction. For the reasons set forth in Plaintiffs' brief in support, verified complaint, and supporting declarations, the Court concludes a temporary restraining order should issue and sets a hearing on Plaintiffs' motion for a preliminary injunction.

In their motion and supporting papers, Plaintiffs have made the requisite showing that they are likely to succeed on, or have at least shown serious questions going to, the merits of their claims that the Act violates the Montana Constitution. *See* § 27-19-201(1), MCA; *Stensvad v. Newman Ayers Ranch, Inc.*, 2024 MT 246, ¶ 23, 418 Mont. 378, 557 P.3d 1240.

First, Plaintiffs have shown at least serious questions going to the merits of their equal protection claim. *See* Mont. Const. art. II, § 4. The Act discriminates on the basis of transgender status, intersex status, and sex. *See Cross v. State*, Cause No. DV-23-541, 2023 WL 6392607, Order Granting Plaintiffs' Motion for Preliminary Injunction at *8–9 (Mont. Fourth Jud. Dist. Ct., Missoula Cnty., Sept. 27, 2023), *aff'd*, *Cross by & through Cross v. State*, 2024 MT 303, 560 P.3d 637. Because transgender status is a suspect classification and because equal treatment on the basis of sex is a fundamental right, the Act is subject to strict scrutiny. *See id.* at *9–11 & n.7. The Act fails strict scrutiny because it is motivated by animus and supported by no evidence that its restrictions advance its purported purpose to

protect women's safety and privacy. *See Powell v. State Comp. Ins. Fund*, 2000 MT 321, ¶ 17, 302 Mont. 518, 15 P.3d 877.

Second, Plaintiffs have shown at least serious questions going to the merits of their claim that the Act violates their constitutional right to privacy. *See Mont. Const. art. II, § 10*. Decisions about how to express a person's gender identity are personal and private, as is information about a person's transgender or intersex status, anatomy, genetics, and medical history. *See State v. Nelson* (1997), 283 Mont. 231, 239–41, 941 P.2d 441, 446–48. The Act infringes on these personal and private decisions and information.

Third, Plaintiffs have shown at least serious questions going to the merits of their claim that the Act burdens their right to pursue life's basic necessities. *See Mont. Const. art. II, § 3*. Access to restrooms and other sex-separated facilities consistent with a person's gender identity is a basic necessity. *See Wadsworth v. State* (1996), 275 Mont. 287, 299, 911 P.2d 1165, 1172. Under the Act, however, transgender people cannot use sex-separated facilities that correspond with their gender identity and intersex people cannot use sex-separated facilities at all.

Fourth, Plaintiffs have at least shown serious questions going to the merits of their claim that the Act violates due process by giving intersex people no notice of how they can comply with the law. *See City of Whitefish v. O'Shaughnessy* (1985), 216 Mont. 433, 440, 704 P.2d 1021, 1025. Intersex people do not fit in the

Act’s restrictive definitions of “female” or “male.” As a result, they do not know whether they are permitted to use any sex-separated facilities at all. *See State v. Dugan*, 2013 MT 38, ¶¶ 66–67, 369 Mont. 39, 303 P.3d 755; *Edwards v. State of Montana*, Cause No. DV-23-1026, Order on Cross Motions for Summary Judgment (Mont. Fourth Jud. Dist. Ct., Missoula Cnty., Feb. 18, 2025).

Plaintiffs have also established that the absence of a temporary restraining order would cause immediate and irreparable injury. It is well settled in Montana that, “[f]or the purposes of a preliminary injunction, the loss of a constitutional right constitutes an irreparable injury.” *Planned Parenthood of Montana v. State by & through Knudsen*, 2022 MT 157, ¶ 6, 409 Mont. 378, 515 P.3d 301 (citation omitted). Moreover, Plaintiffs have established that they are concretely harmed by the Act because it denies them access to restrooms, changing rooms, and sleeping quarters that align with their gender identity.

The remaining factors—the balance of the equities and the public interest—merge into one inquiry when the government opposes a temporary restraining order or preliminary injunction. *Planned Parenthood of Mont. v. State*, 2024 MT 228, ¶ 39, 418 Mont. 253, 557 P.3d 440. The balance of equities tips in Plaintiffs’ favor “because ‘the government suffers no harm from an injunction that merely ends unconstitutional practices.’” *Id.* (quoting *Doe v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017)). And “it is always in the public interest to prevent the violation of a

party's constitutional rights." *Id.* (citations and internal quotation marks omitted). Here, granting a temporary restraining order will serve the public interest by preserving the status quo until such time as the Court can rule on the application for a preliminary injunction.

Based on the foregoing and for the reasons set forth in Plaintiffs' brief in support, verified complaint, and accompanying declarations, the Court issues the following temporary restraining order.

Defendants and their agents, employees, representatives, and successors are **ENJOINED** from enforcing the Act, directly or indirectly, until such time as the Court rules on Plaintiffs' motion for preliminary injunction. The Court will hold a hearing on Plaintiffs' preliminary injunction motion on the ____ day of _____, 2025 at _____ a.m./p.m.

Date:

Time:

District Court Judge