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MONTANA EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF CASCADE

ELLIOTT HOBAUGH, EZERAE COATES,)	
ROBERTA ZENKER, MICAH HARTUNG,)	
JANE and JOHN DOE on behalf of their)	Cause No. CDV-17-0673
minor child, J.D., ACTON SIEBEL,)	
SHAWN REAGOR, KASANDRA)	
REDDINGTON, THE CITY OF)	
MISSOULA and the CITY OF BOZEMAN,)	Hon. John A. Kutzman
)	
Plaintiffs,)	
vs.)	
)	
THE STATE OF MONTANA, by and)	FIRST AMENDED COMPLAINT FOR
through Corey Stapleton, in his official)	DECLARATORY AND INJUNCTIVE
capacity as Secretary of State,)	RELIEF
)	
Defendant.)	
)	
)	

Plaintiffs, Elliott Hobaugh, Ezeræ Coates, Roberta Zenker, Micah Hartung, Jane and John Doe, on behalf of their minor child, J.D., Acton Siebel, Shawn Reagor, and Kasandra Reddington (hereinafter, "Individual Plaintiffs"), and the City of Missoula and the City of Bozeman (hereinafter, "City Plaintiffs"), bring this action against Defendant the State of

Montana, by and through Corey Stapleton, in his official capacity as Secretary of State, and allege as follows:

INTRODUCTION

1. The Individual Plaintiffs are all members of Montana's substantial transgender community, or are the parents of a transgender child. They hail from all walks of life, live all across Montana, and include children, students, professionals, and retirees.
2. The City Plaintiffs are cities that have taken a strong stand to prohibit discrimination against individuals who are transgender through the enactment of local non-discrimination ordinances ("NDOs"). They seek to ensure that all of their citizens, including transgender people, enjoy the rights guaranteed by the Montana Constitution.
3. Transgender people live in every corner of this state, come from every racial and ethnic background, and participate in every faith community. At least 1.4 million transgender adults live in the United States.
4. Transgender people are people whose gender identity is different from the gender they were assigned at birth. Gender identity is a deeply-felt, inherent sense of oneself as a particular gender.
5. Men who are transgender were assigned female at birth, but are men, and live as men. Women who are transgender were assigned male at birth, but are women, and live as women. Non-binary people may have been assigned male or female at birth, but are neither men nor women.
6. People with intersex conditions are those born with any of a wide range of natural bodily variations—in external genitals, internal sex organs, chromosomes, and hormones—that do not fit typical conceptions of male or female bodies.

7. During the 2017 Legislative Session, the Montana Family Foundation (“MFF”) lobbied for HB 609, misleadingly entitled the “Montana Locker Room Privacy Act.” The Act would have singled out transgender Montanans for humiliation, shame, and violence by requiring them to use a public facility that corresponds with the sex they were designated at birth, based on anatomy and genetics. Public facilities include locker rooms, restrooms, changing facilities, and other areas located in public schools, libraries, government buildings, interstate rest stops, and state parks. The House Judiciary Committee rejected the measure.
8. Following the resounding legislative defeat, the MFF submitted nearly identical language as a proposed ballot initiative for the November 2018 election to the Montana Attorney General for review. *Text of I-183, Exhibit A, attached.* This proposed ballot initiative is designated as I-183.
9. I-183 will harass, humiliate, and harm transgender Montanans. It codifies discrimination against transgender people, and mirrors anti-transgender legislation pursued in other states that has uniformly led to public outcry, financial calamity, and constitutional challenges.
10. All Plaintiffs will suffer irreparable and imminent injury both during the campaign surrounding the initiative and if the initiative becomes law.
11. All Montanans, including the Plaintiffs, are guaranteed the constitutional protections contained in the Declaration of Rights. I-183 deprives Plaintiffs of equal protection under the law and unconstitutionally burdens the Plaintiffs’ fundamental rights to privacy, dignity, and due process, as well as the right to pursue basic necessities, acquire property, and seek safety, health, and happiness.

12. Plaintiffs seek a declaratory judgment declaring that I-183 is facially unconstitutional as it denies Plaintiffs equal protection under the law and violates their rights to privacy, dignity, the pursuit of life's basic necessities, and due process under the Montana Constitution.
13. Plaintiffs also seek an injunction prohibiting the Secretary of State from placing 1-183 on the ballot for the November, 2018 general election or any other election.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to the Montana Declaratory Judgments Act. Mont. Code Ann. § 27-8-101 *et seq.* and 27-19-101 *et seq.*
15. Where a challenged measure is facially defective, the “courts have a duty to exercise jurisdiction and declare the measure invalid.” *Reichert v. State ex rel. McCulloch*, 2012 MT 111, ¶ 59, 365 Mont. 92, 278 P.3d 455.
16. The Plaintiffs allege present or threatened injury to a civil right; and the injury is distinguishable from the injury to the public generally.
17. Venue in this action is proper in Cascade County pursuant to Mont. Code Ann. § 25-2-126 because one or more Plaintiffs reside in Cascade County (“In an action brought by a resident of the state, the county of the plaintiff's residence is also a proper place of trial.”).

PARTIES

18. Plaintiff Elliott Hobaugh is a nineteen-year-old man who resides in Missoula, Missoula County, Montana. He attends the University of Montana. Elliott is transgender.
19. Plaintiff Ezeræ Coates is a twenty-eight-year-old woman residing in Butte, Silver Bow County, Montana. She is employed as an HIV early intervention specialist for the Butte-Silver Bow Health Department. Ezeræ is transgender.

20. Plaintiff Roberta Zenker is a fifty-nine-year-old woman residing in Helena, Lewis and Clark County, Montana. She is an attorney working for Disability Rights Montana, and spends time in courthouses and other government buildings as a part of her profession. Roberta is transgender.
21. Plaintiff Micah Hartung is a sixty-year-old man who resides in Belt, Cascade County, Montana. He is a retired pastor who regularly attends Class C Athletics events at a public high school. Micah is transgender.
22. Plaintiffs Jane Doe and John Doe sue on behalf of their minor child, J.D. J.D. is a nine-year-old girl who attends public school. She resides with her parents in Montana. J.D. is transgender.
23. Plaintiff Acton Siebel is a thirty-eight-year-old man who resides in Missoula, Missoula County, Montana. He is a small-engine mechanic who enjoys spending time in state and county parks. Acton is transgender.
24. Plaintiff Shawn Reagor is a twenty-seven-year-old man residing in Helena, Lewis and Clark County, Montana. He is a community organizer for the Montana Human Rights network and spends time in the Capital Building, public libraries and other government buildings as part of his professional and personal pursuits. Shawn is transgender.
25. Kasandra Reddington is a twenty-one-year-old woman residing in Helena, Lewis and Clark County, Montana. She is currently employed with a large retailer, and regularly uses public facilities as part of her everyday life. Kasandra is transgender.
26. The City of Missoula is a city-elector, voter-approved, self-government charter form of local government and reserves all powers not prohibited to it by federal or state law. Missoula has passed a non-discrimination ordinance protecting transgender people. I-183 will harm Missoula's proprietary interests, as well as its citizens. Missoula asserts claims

both on its own behalf, and on behalf of its citizens. There are numerous transgender individuals who reside within Missoula city limits.

27. The City of Bozeman is organized as a charter form of government under the state constitution. Bozeman's charter provides that it "shall have all powers possible for a city with self-governing powers to have under the constitution and laws of the State of Montana." Bozeman has passed a non-discrimination ordinance protecting transgender people. I-183 will harm Bozeman's proprietary interests, as well as its citizens. Bozeman asserts claims both on its own behalf, and on behalf of its citizens. There are numerous transgender individuals who reside within Bozeman city limits.
28. Defendant Corey Stapleton is sued in his official capacity as Secretary of State of the State of Montana. The power to certify an issue as qualifying for the ballot, Mont. Code Ann. § 13-27-308, as well as the duty to distribute forms for voting on ballot issues, Mont. Code Ann. § 13-27-501, rests with the Secretary of State.

FACTUAL ALLEGATIONS

I. The Proposed Ballot Initiative, I-183

29. On May 10, 2017, the President of the MFF, Jeff Laszloffy submitted proposed ballot measure I-183, along with a proposed ballot statement, to the Attorney General for review.
30. Laszloffy explained the impetus for I-183 as follows: "[W]e have an issue that's really front burner.... And that issue is what to do with transgender students when it comes to public spaces, that would be restrooms, locker rooms, showers, and even hotel rooms. And with the advent of the Obama transgender mandate that came out last year, we got immersed in this issue." Your Network of Praise podcast,

https://www.podomatic.com/podcasts/ynop/episodes/2017-08-04T08_07_02-07_00,
August 2, 2017.

31. I-183 is riddled with ambiguity, discriminatory intent, and arbitrary classifications.

Among other things, I-183 would:

- a. Require transgender people to use the restroom, locker room, or changing facility in government buildings or under public control (“public facility”) that corresponds with a gender indicated on their original birth certificate based on anatomy and genetics, or no facility at all (emphasis added).
- b. Define “changing facility” as any “facility in which a person may be in a state of undress in the presence of others, including, but not limited to, a locker room, changing room, or shower room” (emphasis added). “State of undress” is not defined. Any number of physical locations or facilities would fall under I-183’s purview, including, but not limited to, government dining areas, school nurse’s offices, classrooms or dormitories.
- c. Define “sex” as “a person’s immutable biological sex as objectively determined by anatomy and genetics existing at the time of birth” (emphasis added).
- d. Require government entities to label all multi-occupancy public facilities as “women’s” or “men’s,” prohibit men who are transgender from using those labeled for men, and prohibit women who are transgender from using those for women.
- e. Create a new private right of action against government entities. The measure creates liability for money damages without cap—specifically, it authorizes damages for emotional and mental distress, reasonable attorney fees and costs, and “other relief.” It would permit people to sue government entities for not sex

segregating all multi-occupancy public facilities, including those in public schools. It would also allow individuals to sue government entities for allowing transgender people to use the public facilities most consistent with their gender identity, privacy, safety, and dignity.

- f. Eviscerate community-based NDOs, undermining local government attempts to secure the rights guaranteed in the Montana Constitution through adding a new restriction on the power of self-governing local government units.
- g. Have significant short and long-term fiscal impacts on the State, including local government. The Montana Office of Budget and Planning predicted \$545,699 in costs from the first four years, which only counts renovation, construction, and signage costs for certain state departments. The Budget Office noted: “inventories and assessments will need to be conducted on all state-owned and K-12 facilities,” stating that “there are over 2,200 buildings in the K-12 system” and “4,250 state-owned facilities.” Without such an inventory, it appears virtually impossible to predict what the total general fund impact will be. The fiscal impact on local governments is similarly difficult to predict: “The fiscal impact to cities and towns cannot be quantified as the resources required to enforce the law and the monetary damages that will be awarded pursuant to the provisions of the initiative are unknown.” The Budget Office estimates “the legal reserve needed to address” claims of discrimination brought pursuant to 42 U.S.C. § 18116 “to be \$200,000 per biennium.” The Budget Office characterizes these fiscal impacts as “an unfunded mandate on local governments.” The Budget Office estimates that the long-term impacts of the initiative could exceed \$1 billion per year. In particular, the initiative would jeopardize federal funding for the Montana

University System. “At a minimum, this amount could exceed \$250 million per year” (emphasis added).

32. On July 20, 2017, Attorney General Fox certified the ballot issue as legally sufficient. However, he determined that the ballot statement did not comply with statutory requirements and drafted a new ballot statement, as well as a fiscal impact statement.
33. On July 31, 2017, the ACLU of Montana challenged the sufficiency of the ballot statement and fiscal impact statement pursuant to Mont. Code Ann. § 13-27-312, alleging that the statements misled voters and created prejudice in favor of the measure.
34. On September 19, 2017, the Supreme Court declared the ballot statement and fiscal impact statement legally insufficient for several reasons, including that the ballot statement “impedes voters from understanding how the initiative may apply to transgender and intersex individuals” and “fails entirely to disclose” the broad application to “various forms of local government and to public institutions of higher education.”
35. On September 25, 2017, the Attorney General issued a new ballot statement and fiscal impact statement pursuant to the order of the Supreme Court.
36. To qualify for the ballot, Montanans for Locker Room Privacy (“MFLRP”) will need to submit 25,000 signatures by June 15, 2018, approximately eight months from the date that this Complaint was filed. On August 28, 2017, counsel for MFLRP represented that MFLRP had already gathered thousands of signatures.
37. Laszloffy has repeatedly stated that I-183 is “going to pass by an overwhelming margin.”
See, <http://www.greatfallsribune.com/story/news/2017/10/17/aclu-files-suit-over-montana-anti-transgender-bathroom-proposal/772743001/>.

38. Upon information and belief, MFLRP anticipates it will surpass the number of needed signatures well in advance of the deadline, even though signatures collected under the previous statement are void. *See* Mont. Code Ann. § 13-27-316(4).

39. I-183, if passed, would take effect only two months after the election, on January 1, 2019.

II. Individual Plaintiffs

Elliott Hobaugh

40. Elliott Hobaugh is a nineteen-year-old man. *Hobaugh Photo, Exhibit B, attached.*

41. Elliott is transgender and was assigned female at birth.

42. Elliott currently attends the University of Montana, where he is pursuing a double major in psychology and women's, gender, and sexuality studies, as well as a minor in nonprofit administration.

43. Elliott has been taking hormones for approximately a year. He has changed his name and gender marker on his driver's license. He plans to update the gender on his birth certificate soon.

44. As a student at the University of Montana, Elliott has no choice but to use the school's restrooms, locker rooms, and changing rooms.

45. Currently, the University of Montana has multi-occupancy unisex facilities that Elliott feels safe using. Compliance with I-183 would force the University of Montana to eliminate those facilities.

46. Compliance with I-183 would force Elliott to use the women's facilities at the University of Montana. Elliott would feel debased and demeaned if he is required to use the women's facilities. He would no longer feel safe at the University of Montana. He worries that he might have no choice but to transfer to a university in another state.

Ezerae Coates

47. Ezeræ Coates is a twenty-eight-year-old woman. *Coates Photo, Exhibit C, attached.*
48. Ezeræ is transgender and her original birth certificate identified her as male. She has not amended her original birth certificate.
49. Ezeræ is currently employed as an HIV early intervention specialist for the Butte-Silver Bow Health Department.
50. Ezeræ started her transition at age thirteen. At age fourteen, she began hormone replacement therapy.
51. Ezeræ works in a government building for the county health department. Ezeræ's colleagues know her as a woman, and there have been no complaints or issues with Ezeræ using the women's facilities at work.
52. As part of her employment, Ezeræ is required to go into public schools with sex educators to give presentations. On those occasions, Ezeræ uses the women's facilities without incident.
53. I-183 would require Ezeræ to use the men's facilities because she was assigned male at birth. Ezeræ fears that this would put her in physical and emotional danger.
54. Ezeræ is a survivor of sexual assault. She fears further assault if she were forced to use public facilities designated for men.

Roberta Zenker

55. Roberta Zenker is a fifty-nine-year-old woman. *Zenker Photo, Exhibit D, attached.*
56. Roberta is transgender, and her original birth certificate identified her as male.
57. Roberta is an attorney currently employed with Disability Rights Montana.
58. Roberta legally changed her name in August, 2006, and changed her name on her social security accounts, credit cards, law school transcript, and other documents which bear her name in the fall of 2006.

59. Roberta completed surgical care for her gender transition on May 1, 2007.
60. Roberta has been embraced by her friends and colleagues as a woman. However, she has also faced discrimination and hostility because she is transgender.
61. As an attorney for a nonprofit organization, Roberta is required to use public facilities. She is required to attend hearings and other proceedings in County and State courthouses, and also regularly frequents the Capitol Building.
62. Roberta also spends time recreating in county and state parks, where she enjoys photographing wildlife. While there, she uses public facilities.
63. Like other women, Roberta cannot imagine being forced to use a men's public facility. She is not perceived as male and does not appear traditionally masculine. Walking into a men's facility would immediately "out" Roberta, and she fears that using such a facility would put her at risk of harassment, assault, or worse. Being required to use a men's facility would be degrading, demeaning, and deeply embarrassing to Roberta.
64. If I-183 became law, it would interfere with Roberta's ability to do her job as an attorney. Every time she entered a court, the Capitol Building, or other government building, she would be forced to choose whether to use a public facility where she would be in danger, or leave to try to find a private facility.

Micah Hartung

65. Micah G. Hartung is a sixty-year-old transgender man. Micah was assigned female at birth. *Hartung Photo, Exhibit E, attached.*
66. Micah is retired. He served as a pastor with the Metropolitan Community Church in Great Falls, Montana, for decades.
67. To align his body with his thought and spirit, Micah began his transition in 2013. Under supervision of his doctor, Micah started by taking testosterone, and in 2014 underwent

surgery to reduce his breasts, sculpt his stomach, and remove his uterus. Between 2014 and 2016, Micah underwent numerous additional gender-affirming procedures. Micah has completed the treatments he needed related to his transition.

68. In 2014, Micah legally changed his name and amended his birth certificate to identify his gender as male. This required him to post his name change in the newspaper for a period of four weeks, and then appear before a Judge in Cascade County. The Judge granted the name and gender change and told Micah that it was an honor. Micah has since updated his driver's license, birth certificate, social security records, and passport to reflect his gender identity.

69. Micah regularly uses public facilities. Micah is an avid fan of Belt's Class C athletics, and regularly attends sporting events at the high school. All those who attend these events must use the high school facilities. I-183 would require Micah, a bearded man, to use the high school restroom or locker room designated for women. Micah also regularly attends rodeos in county fairgrounds, recreates in state and county parks, uses facilities at highway rest areas, and visits the public library, all of which would be subject to the requirements of I-183.

70. I-183, and the campaign surrounding it, will jeopardize Micah's safety. Micah fears being harassed or attacked by individuals who believe he is not using the appropriate facility, regardless of which facility he chooses.

71. Micah fears that I-183, and the campaign surrounding it, will isolate and marginalize the transgender community, and will encourage violence.

Jane and John Doe, on behalf of their minor child, J.D.

72. Jane and John Doe are the parents of a nine-year-old girl, J.D. They reside in Montana.

73. J.D. is transgender.

74. At around the age of 18 months, J.D. (who was assigned male at birth) began demonstrating a preference for things that are typically associated with girls.
75. Between the ages of two and seven, Jane and John Doe struggled with how to raise J.D. J.D. consistently gravitated towards activities typically associated with girls and did not have any interest in things considered to be for boys. She was most happy at home when dressing in dresses, skirts, necklaces, and high heels.
76. In preschool, J.D. began asking to wear dresses to school, and didn't understand why her parents would not permit it.
77. J.D. suffered from high levels of anxiety whenever she had to leave her home, and was shy and withdrawn at school and in public. She also attempted self-harm.
78. When J.D. turned seven years old, her parents began researching gender nonconformity. As their understanding deepened, they agreed to step out of J.D.'s way and allow her to express herself on her own terms.
79. The next time Jane Doe took J.D. and her little brother shopping at Target, J.D. lit up when she was permitted to shop for girls' pajamas.
80. When J.D. was permitted to choose girls' clothing, her behavior immediately changed. The morning after J.D. purchased new clothes, she woke up, got dressed by herself, came downstairs, and without even stopping to eat breakfast, walked right out of the front door of the house. After struggling to leave the house for her entire childhood, J.D. was now proudly, happily, and confidently stepping out into the world.
81. J.D. currently attends public school. After J.D. was allowed to be herself at school, she began excelling academically, participating actively in extracurricular activities, and making friends. Her behavioral issues subsided at home, at school, and during after-school activities.

82. In April of her second-grade year, J.D. and her family attended a camp designed for families who have a gender-variant child. J.D. adopted her new name with associated female pronouns. She has not used her original name since.
83. Today, J.D. is a happy, well-adjusted fourth-grade girl. She has excelled academically, has discovered a talent for sewing and has crafted three large quilts. She loves doing cartwheels and practicing gymnastics skills with her friends.
84. In 2016, J.D. legally changed her name on her birth certificate and social security card. She then received a passport with her new name and her gender being listed as female. She is enrolled in public school under her new name and female gender.
85. J.D. is fortunate to have support from her family, friends, neighbors and school staff and administrators. Her fellow students have embraced her as the girl she is.
86. J.D. now uses the women's restroom in public. For the past year, she has been using the girls' restroom at school.
87. Upon information and belief, J.D.'s School District has developed guidelines to support gender-nonconforming and transgender students and staff.
88. I-183 would force J.D. to use the boys' restroom at her public school. It would also mean that as J.D. moves on to middle school and high school, she would need to change in the boys' locker rooms. Since she attends public school full-time and therefore needs to use the restroom at school daily, this would affect her on a daily basis at least throughout the nine-month school year.
89. J.D. also loves to go to the public library. I-183 would require her to use the men's restroom at the public library as well as in any other government building in the state.
90. J.D. has long hair falling halfway down her back. She often wears dresses or skirts, or bright colored purple/aqua leggings and equally bright-colored shirts. She is typically

perceived, accurately, as a girl. Jane and John Doe are concerned that being forced to use public facilities designated for males would draw attention to J.D. and would jeopardize her safety. They are also concerned that the measure could cause J.D. to regress emotionally.

Acton Siebel

91. Acton Siebel is a thirty-eight-year-old man. *Siebel Photo, Exhibit F, attached.*
92. Acton is transgender. He was born on a military base in Europe, and his original birth certificate identified him as female.
93. Acton is currently employed as a small engine mechanic.
94. Acton began taking testosterone in 2006 and had chest surgery in 2008. During that time, he changed his name and gender markers on his driver's license and birth certificate. Acton's original birth certificate is sealed.
95. Acton uses and has used public facilities at the University, rest stops, state parks, public swimming pools, the public library, and courthouses. At a minimum, Acton uses public facilities at least once a week. He consistently uses men's facilities.

Shawn Reagor

96. Shawn Reagor is a twenty-six-year-old man. *Reagor Photo, Exhibit G, attached.*
97. Shawn is transgender. His original birth certificate designated him as female.
98. Shawn works as a community organizer for the Montana Human Rights Network. At the Human Rights Network, Shawn works to change the culture of misconceptions and misinformation the general public has about what it means to be transgender.
99. Shawn transitioned at a small Catholic college and received strong support from the administration, faculty, staff, and peers.

100. In January, 2013, Shawn legally changed his name and gender marker on his driver's license. Shawn has not changed the gender marker on his birth certificate.
101. Shawn has been subjected to discrimination at various jobs throughout the state.
102. Shawn uses public facilities on a daily basis. He has been using the men's restroom for over five years without incident.
103. As part of his employment, Shawn is required to use public facilities at rallies on public property, in public schools and in the Capitol Building. Shawn also organizes frequent events across the state which are often located on public property. He regularly uses interstate rest stops.
104. Shawn attends Parents and Friends of Lesbians and Gays meetings at the Lewis and Clark Public Library once a month. He attends meetings of the Queer Straight Alliance at Montana State University once a month. He regularly attends meetings at Montana State University Billings. He recreates at state parks approximately two to three times a week during the summer.
105. The proposed special session of the legislature, which will likely occur prior to the 2018 election, will require Shawn to use public facilities at the Capitol. The Capitol currently does not have any public unisex restrooms.
106. During the last election, certain designated voting areas were backed up for several hours. I-183 could prevent Shawn from accessing his polling place, because he would not feel safe using a women's facility while waiting for his opportunity to vote. Shawn has also considered running for public office. I-183 would effectively prevent Shawn from fulfilling his civil duty.

Kasandra Reddington

107. Kasandra Reddington is a twenty-one-year-old woman. *Reddington Photo, Exhibit H, attached.*
108. Kasandra is transgender. Her original birth certificate identifies her as male.
109. Kasandra is currently employed in Human Resources at a major retailer.
110. At nineteen, Kasandra began hormone replacement therapy.
111. Kasandra has legally changed her name and gender on all documents with the exception of her birth certificate.
112. Kasandra has been sexually and physically assaulted, emotionally and verbally abused, and subjected to systemic harassment and discrimination because she is transgender.
113. Kasandra regularly travels throughout the state for work and recreation. She utilizes public facilities at rest stops, state parks, universities, and government buildings. She particularly enjoys spending time appreciating the beauty of Silver Lake State Park, near her Helena home.
114. Kasandra fears humiliation and assault if she is forced to use men's public facilities.

III. Transgender and Intersex Individuals

115. Transgender and intersex refer to two distinct, but overlapping, groups of people. Transgender people are those who have a gender identity different from their assigned sex at birth. Intersex people are those born with conditions such that their bodies do not fit typical conceptions of male or female. Most transgender people are not intersex, and most intersex people are not transgender.
116. A person's gender identity refers to the person's fundamental, internal sense of belonging to a particular gender. There is a medical consensus that gender identity is innate and that efforts to change a person's gender identity are unethical and harmful to a person's health and well-being.

117. Gender identity and sexual orientation are two different things. The former refers to an individual's knowledge and understanding of his or her gender. The latter refers to who an individual is attracted to.
118. According to the American College of Physicians, American Psychiatric Association, and others, every person has a gender identity, which "cannot be altered voluntarily" and "cannot be ascertained immediately after birth. Many children develop stability in their gender identity between ages 3 and 4." Brief of Amici Curiae American Academy of Pediatrics, American Psychiatric Association, American College of Physicians, and 17 Additional Medical and Mental Health Organizations in Support of Respondent, *Gloucester County School Board v. G.G.*, No. 16-27, 2017 WL 1057281 at *3 (U.S.).
119. Neither medical professionals nor parents routinely undertake genetic testing of newborn infants to determine sex at birth. They also do not routinely examine internal reproductive organs or other internal anatomical features.
120. The gender marker designated on a birth certificate at the time of birth is usually based upon the appearance of an infant's external genitalia. However, the medical community acknowledges that a person's sex has many components, such as chromosomes, hormone levels, internal and external reproductive organs, and gender identity.
121. When the components of sex do not align as all typically male or all typically female, a person's gender identity is what determines the gender a person lives as, and how the person should be recognized in all aspects of life.
122. Individuals may realize that they are transgender at any age, or any stage in life. Some come to this realization when they are very young. Others recognize that they are transgender much later in life.

123. Transgender people often risk harassment, harm, and social stigma when they tell others that they are transgender.
124. Gender dysphoria is a condition recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth ed. (2013) (DSM-V), and by the other leading medical and mental health professional groups, including the American Medical Association and the American Psychological Association.
125. Gender dysphoria is the medical diagnosis for individuals who have a gender identity that differs from the sex they were assigned at birth and who experience clinically significant distress as a result.
126. Gender dysphoria is a serious medical condition that, if left untreated, can lead to debilitating depression, and even suicidal thoughts and acts.
127. Treatment for gender dysphoria includes living one's life consistently with one's gender identity, including when one uses single-sex spaces such as restrooms.
128. Forcing transgender individuals to use single-sex spaces that do not match their gender identity, or forcing them into separate facilities that no one else is forced to use, is inconsistent with medical protocols. It can cause anxiety and distress to the transgender person and result in harassment of and violence against them.
129. Gender transition describes the time period during which a transgender person begins to live according to their gender identity. Gender transition can include some, all, or none of the following:
- a. Change in clothing or appearance;
 - b. Change of name;
 - c. Change in pronouns (i.e. "she" "he" or "they");

- d. Change in the gender marker on identifying documents, including driver's license and passport;
- e. Change in using single-sex facilities;
- f. Hormone therapy; and
- g. One or more surgical or other medical procedures.

130. Every major medical organization in the United States has affirmed that transition-related medical care is safe and effective, and that everyone who needs it should be able to access it.

131. Montana law allows for an individual to apply for and receive a new or amended birth certificate upon receipt of "a certified copy of an order from a court with appropriate jurisdiction indicating that the sex of an individual born in Montana has been changed by surgical procedure... If the registrant's name is also to be changed, the court order must indicate the full name of the registrant as it appears on the original birth certificate and the full name to which it is to be altered. If the order from the court directs the issuance of a new certificate that does not show amendments, the new certificate will not indicate on its face that it was altered." ARM 37.8.311(5).

132. The transgender community is more likely to suffer abuse, harassment, discrimination and violence than the population at large. The 2015 U.S. Transgender Survey, in a report authored by Sandy E. James et. al, found the following:

- a. One in ten (10%) of respondents reported that a family member was violent towards them because they were transgender, and 8% were kicked out of the house because they were transgender.
- b. The majority of respondents who were out or perceived as transgender while in school (K–12) experienced some form of mistreatment, including being verbally

harassed (54%), physically attacked (24%), and sexually assaulted (13%) because they were transgender. Seventeen percent experienced such severe mistreatment that they left a school as a result.

- c. In the year prior to completing the survey, 30% of respondents who had a job reported being fired, denied a promotion, or experiencing some other form of mistreatment in the workplace due to their gender identity or expression, such as being verbally harassed or physically or sexually assaulted at work.
- d. Thirty-nine percent of respondents experienced serious psychological distress in the month prior to completing the survey, compared with only 5% of the U.S. population.
- e. Forty percent of respondents have attempted suicide in their lifetime—nearly nine times the attempted suicide rate in the U.S. population (4.6%).
- f. Fifty-nine percent of respondents stated that they had either sometimes (48%) or always (11%) avoided using a public restroom in the last year, and 12% reported that they had been verbally harassed, physically attacked, or sexually assaulted when using a public restroom in the last year. Nearly one third (32%) had avoided drinking or eating to minimize the need to use the restroom, and 8% reported a urinary tract infection or kidney-related problem because of restroom avoidance in the past year.

133. Denial of access to college bathrooms is associated with higher risk of suicidality for transgender adults, even controlling for other forms of interpersonal victimization. Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 *Journal of Homosexuality* 1378 (2016). Calls to a transgender suicide hotline nearly doubled in the month following the passage of a law

similar to I-183 in North Carolina. Samantha Allen, *After North Carolina's Law, Trans Suicide Hotline Calls Double*, Daily Beast (Apr. 20, 2016), <https://www.thedailybeast.com/after-north-carolinas-law-trans-suicide-hotline-calls-double>.

134. Campaigns designed to restrict access to public facilities by transgender individuals have harmed the transgender communities. Even before North Carolina's transgender bathroom bill, HB 2, was signed into law, calls to a suicide hotline for transgender individuals doubled. *See, https://www.thedailybeast.com/after-north-carolinas-law-trans-suicide-hotline-calls-double*. Transgender Montanans will not only be harmed if I-183 becomes law, they also suffer harm as a result of the campaign currently underway in support of I-183. *C.f.* Amy L. Stone, *Rethinking the Tyranny of the Majority: The Extra-Legal Consequences of Anti-Gay Ballot Measures*, 19 *Chap. L. Rev.* 219, 239 (2016) (arguing for more stringent pre-election judicial review of ballot measures affecting civil rights because of the high level of monetary drain, minority stress, and negative psychological impacts of anti-gay ballot campaigns on LGBT people, even where those campaigns do not succeed); Jacquelyn H. Flaskerud, *The Current Socio-Political Climate and Psychological Distress among Transgender People*, *Issues in Mental Health Nursing* (2017), <http://dx.doi.org/10.1080/01612840.2017.1368751> (reviewing literature and commenting on likely link between anti-trans "bathroom bills," social stigma, minority stress, and harm to mental health of transgender people).

IV. Local Non-Discrimination Ordinances

135. Numerous cities in Montana have passed non-discrimination ordinances, including Bozeman, Missoula, Butte, and Helena.

136. In April, 2010, the Missoula City Council voted 10-2 in favor of a measure protecting people from public accommodations, housing and employment discrimination based on “actual or perceived ... sexual orientation, gender identity or expression.”
137. Missoula’s NDO, chapter 9.64.010 of the Municipal Code, provides: “It is the intent of the City of Missoula that no person shall be denied his or her civil rights or be discriminated against based upon his or her actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or expression. The city council declares that such discrimination prohibitions are necessary and desirable.”
138. In its statement of purpose and intent, the City of Missoula stated that: “The city deems it necessary consistent with Montana’s illegal discrimination law to identify, protect and safeguard the right and opportunity of all persons to be free from discrimination as identified in Montana’s illegal discrimination laws as well as to address and make it illegal to discriminate on the basis of sexual orientation, gender identity or expression.... The city finds that existing state and federal laws regarding discrimination do not adequately address all discriminatory acts reported by the city’s diverse residents. The city deems it necessary to adopt local regulations adapted to the needs of its citizens.”
139. In 2014, the Bozeman City Council unanimously passed a nondiscrimination ordinance prohibiting discrimination based on gender identity or expression.
140. Bozeman’s NDO holds: “It is declared to be the policy of the city, in the exercise of its police powers pursuant to its self governing authority for the protection of the public health, safety, and general welfare, and for the maintenance of peace and good government, to assure equal opportunity to all persons, free from restrictions and discrimination because of his or her actual or perceived race, color, national origin,

ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, or gender identity or expression.”

141. The findings accompanying Bozeman’s NDO specifically noted: “Discrimination on the basis of actual or perceived sexual orientation and gender identity or expression impacts many citizens of the city and has an especially harmful impact to young residents and visitors to the city who may be lesbian, gay, bisexual, or trans gender, because it may force them to move from the city, not choose to attend university in the city, may impact their participation in the democratic process, and may impact their ability to fully and freely identify themselves as they seek employment, housing and the services and products provided by public accommodations.”

142. In August, 2016, the Montana Supreme Court unanimously rejected a legal challenge to Bozeman’s NDO.

CLAIMS FOR RELIEF

COUNT I – EQUAL PROTECTION, Mont. Const. art. 11, § 4

143. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

144. The Montana constitution guarantees equality: “No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.” Mont. Const. art. II, § 4.

145. Montana’s equality guarantee is stronger than that provided by the federal constitution. *See Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 15, 325 Mont. 148, 153, 104 P.3d 445, 449.

146. I-183 cannot abrogate the Plaintiffs' constitutional right to equal protection of the laws.
147. I-183 would facially discriminate against Plaintiffs and other transgender Montanans on the basis of sex, gender identity, and transgender status.
148. Discrimination on the basis of sex triggers heightened judicial scrutiny and includes, but is not limited to, discrimination based on gender nonconformity, gender identity, transgender status, and gender transition. Sex stereotyping constitutes a form of sex-based discrimination. "By definition, a transgender individual does not conform to the sex-based stereotypes of the sex that he or she was assigned at birth." *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1048 (7th Cir. 2017).
149. I-183 discriminates on the basis of sex in a way designed to harm transgender Montanans, whose gender identity does not match their assigned sex. I-183 forces the Plaintiffs to use a public facility that does not correspond with their gender identity, discriminating against them on the basis of gender nonconformity, gender identity, transgender status, gender transition, and sex stereotypes. Similarly situated, non-transgender individuals are permitted to use the public facility that corresponds with their gender identity.
150. Transgender Montanans have been historically and purposefully subjected to unequal treatment solely on the basis of being transgender – a characteristic that bears no relation to their ability to perform in or contribute to society – and therefore discrimination on the basis of transgender status is suspect and demands a heightened level of scrutiny.
151. I-183 was proposed for the purpose of disadvantaging transgender people and is based on animus against transgender people.
152. I-183 both creates an explicit classification and is designed to impose different burdens on different classes of persons. It is motivated by an intent to treat transgender people

differently, and worse, than other people, including by (1) stripping them of the benefits of any policies or practices in place at any local government, school board, public university, and other state agency or branch of government that would guarantee them the right to access restrooms or other facilities free from discrimination, and by (2) impermissibly forcing transgender Montanans to use a public facility that does not correspond with their gender identity, or no facility at all. Functionally, it would push many transgender people out of public life.

153. I-183 subjects the Plaintiffs to unequal treatment based solely on each Plaintiff's sex, gender identity, and transgender status.

154. By excluding transgender Montanans from the rights, benefits, duties, responsibilities and obligations that the State offers to similarly-situated non-transgender individuals, I-183 violates equal protection. It is not rationally related to the furtherance of any legitimate state interest, let alone narrowly tailored to further a compelling government interest.

COUNT II – PRIVACY, Mont. Const. art. II, § 10

155. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

156. “The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.” Mont. Const. art. II, § 10. The Montana constitutional right to privacy is broader than the federal constitutional right to privacy. *See State v. Nelson*, 283 Mont. 231, 242, 941 P.2d 441, 448 (1997).

157. The right of individual privacy “is fundamental. It is, perhaps, one of the most important rights guaranteed to the citizens of this State, and its separate textual protection in our

Constitution reflects Montanans' historical abhorrence and distrust of excessive governmental interference in their personal lives. That such interference is because the majority wills it is no less pernicious.” *Gryczan v. State*, 283 Mont. 433, 455, 942 P.2d 112, 125 (1997).

158. I-183 cannot abrogate Plaintiffs’ right to privacy.

159. Each Plaintiff has a reasonable and actual expectation that the State will not burden or interfere with his or her private decision to use a public facility that corresponds with his or her gender identity.

160. I-183 is not narrowly tailored to further a compelling government interest, and thus violates Plaintiffs’ right to privacy as guaranteed by the Montana Constitution.

Autonomy Privacy

161. Montana recognizes a right to autonomy as a part of privacy. “Montana's Constitution...explicitly protects individual or personal-autonomy privacy as a fundamental right.” *Gryczan v. State*, 283 Mont. at 451. This right should “protect ...citizens from ...legislation and government practices that interfere with the autonomy of each individual to make decisions generally considered private.” *Armstrong v. State*, 1999 MT 261, ¶ 33, 296 Mont. 361, 989 P.2d 364.

162. Decisions about when and where to use a bathroom or other public facility are generally considered private.

163. Using the bathroom is something Plaintiffs reasonably expect to be able to do without government interference.

164. I-183 would intrude on this sphere of privacy, interrupting the ability of Plaintiffs and others to use the bathroom without government interference.

165. Medical decisions are generally considered private.

166. Plaintiffs reasonably expect to be able to follow medical recommendations to live in accordance with their gender identity, without government interference.
167. I-183 would intrude on this sphere of privacy, prohibiting Plaintiffs and others from following medical recommendations.
168. Moreover, it is deeply offensive for the government to legislate on an issue as intimate as one's own gender. Plaintiffs reasonably expect that the government will not intrude or gainsay their own knowledge of their own gender.
169. Infringements on autonomy require strict scrutiny analysis. *Armstrong*, 1999 MT at ¶ 34, 296 at 374. Majoritarian moral beliefs alone do not constitute a compelling state interest. *See Gryczan*, 283 Mont. at 452, 942 P.2d at 123. Imposing religious beliefs on others is also not a valid compelling government interest. *Armstrong*, 1999 MT at ¶ 69.
170. I-183's infringements on autonomy are not narrowly tailored to a compelling state interest.

Informational Privacy

171. Plaintiffs have an actual and reasonable expectation of privacy in information about their genetic code, anatomy, medical history, and transgender identity.
172. I-183 would result in government and private inquiry into and disclosure of Plaintiffs' and others' genetic code, anatomy, and medical history.
173. Government entities would need to inquire into this information to comply with the law by either authorizing or prohibiting people from using public facilities based on the criteria in I-183. To defend themselves from the liability created under I-183, government entities would likely need to disclose this information.
174. I-183 would also force Plaintiffs to reveal this private information against their will whenever they sought to use a public facility. A government entity might require them to

disclose this information before letting them use a public facility. Or, to comply with I-183, a transgender person might use a public facility that does not match their gender identity or the way they are perceived, which would reveal their transgender status to anyone else in or around the facility.

175. Two of the Plaintiffs currently attend public school. The City of Missoula is also responsible for numerous public schools within the city limits, and has numerous transgender residents. I-183 violates these Plaintiffs' right to privacy by forcing them to use public facilities that do not correspond with their gender identity. Especially given the high levels of bullying against transgender youth, the public "outing" of these Plaintiffs violates their right to privacy.

176. Several of the Plaintiffs have experienced violence or harassment in the past from people who perceived them to be transgender. Especially given the high rates of violence and discrimination against people perceived to be transgender, the public "outing" of Plaintiffs violates their right to privacy.

177. I-183's infringements on informational privacy are not narrowly tailored to any compelling state interest.

COUNT III – DIGNITY, Mont. Const. art. II, § 4

178. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

179. "The dignity of the human being is inviolable." Mont. Const. art. II, § 4.

180. "The plain meaning of the dignity clause commands that the intrinsic worth and the basic humanity of persons may not be violated." *Walker v. State*, 2003 MT 134, ¶ 82, 316 Mont. 103, 122, 68 P.3d 872, 884.

181. I-183 violates Montanans' right to individual dignity by intruding on the basic worth and humanity of transgender individuals.
182. By denying Plaintiffs the right to use public facilities that correspond with their gender identity, the I-183 delegitimizes their gender and humiliates them.
183. I-183 is premised on the idea that transgender women are not “real” women, but somehow lesser than other women, and that transgender men are not “real” men, but somehow lesser than other men. It stigmatizes transgender people by implying that merely sharing public facilities with them is so terrible that it must be strictly regulated by the government.
184. Moreover, I-183 allows an individual who believes that (s)he has shared such a facility to sue a government entity for emotional distress damages. The suggestion that a non-transgender individual might suffer emotional distress as a result of using a public facility with a transgender individual further demeans and debases the dignity of the transgender community.
185. I-183 does not allow transgender Montanans to answer “to their own consciences and convictions” as to when, where, and to what audience they make their transgender status known. *Armstrong*, ¶ 72. I-183 also violates individual dignity by subjecting transgender Montanans to psychological harm, possible health complications, and increased hostility or even violence from the public.
186. All of the Individual Plaintiffs have undergone their own transitions, an intensely personal process. Forcing a transgender man or woman to use the facility that corresponds with the sex that was originally listed on his or her birth certificate undermines that process, compromising the medical care, health, and well-being of transgender people.

**COUNT IV – RIGHT TO PURSUE LIFE’S BASIC NECESSITIES,
Mont. Const. art. II, § 3**

187. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.
188. “All persons are born free and have certain inalienable rights. They include the right to ...pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways.” Mont. Const. art II, § 3.
189. I-183 would prevent Plaintiffs from pursuing life’s basic necessities, acquiring property, and seeking their safety, health, and happiness in lawful ways.
190. People must use restrooms to meet basic human needs.
191. Living consistent with one’s gender identity is fundamental to one’s health and happiness.
192. Transgender people sometimes experience verbal, physical, or sexual attack when using public restrooms. Not being permitted to use facilities consistent with one’s lived gender aggravates the risk of violence.
193. Urination, bowel movements, and menstrual hygiene are not optional. Because people must use restrooms to meet these needs, people cannot stay for long in spaces where they cannot use restroom. While I-183 might technically still permit Individual Plaintiffs to use some restrooms, they could only do so by sacrificing their right to seek safety, health, and happiness.
194. Additionally, if I-183 were passed and implemented, Ezeræ, Elliott, Roberta, Shawn, and J.D. would lose their opportunity to seek employment and education. They cannot continue in their professions or schools without the ability to satisfy basic needs without

sacrificing their health, safety, happiness, and dignity. Thus, I-183 would also infringe on their rights to acquire property through employment and education.

COUNT V – DUE PROCESS, Mont. Const. art. II, § 17

195. Plaintiffs incorporate herein by reference the allegations made in all preceding Paragraphs set forth above.

196. Montana’s constitution provides that “[n]o person shall be deprived of life, liberty, or property without due process of law.” Mont. Const. art. II, § 17. Due process requires that laws give fair notice of prohibited conduct to people of ordinary intelligence, and that laws not be unreasonable, arbitrary, or capricious.

197. I-183 is arbitrary, and is riddled with ambiguity, vagueness, and internal contradiction, and therefore violates Plaintiffs’ due process rights. In particular, I-183 is unconstitutionally vague insofar as it levels unenforceable demands on the City Plaintiffs.

198. If I-183 became law, City Plaintiffs would be subject to civil liability, yet I-183 does not provide sufficient clarity as to how they can avoid a violation. As the fiscal note accompanying the I-183 states, “[t]his initiative remains vague and ambiguous as to how local governments can comply with the requirements of the proposed law.”

199. Under I-183, City Plaintiffs could be sued for damages if “the governmental entity gave the person of the opposite sex permission to use the protected facility or failed to take reasonable steps to prohibit the member of the opposite sex from using the protected facility.” I-183 defines “sex” as “immutable biological sex as objectively determined by anatomy and genetics existing at the time of birth.” I-183 further states that a government-issued ID may be evidence of “sex,” but only if it “accurately reflects the sex listed on a person’s original birth certificate.”

200. If City Plaintiffs and other government entities demanded the identification of all potential bathroom users prior to permitting an individual from using a public facility, they would have no way of knowing if the ID was consistent with the sex listed on the original birth certificate, as required by I-183.
201. Furthermore, not every person has identification. Minors are not exempted from the provisions of I-183.
202. If City Plaintiffs demanded a birth certificate, it still would not know whether the birth certificate had been amended (and not all people have a birth certificate).
203. Even if it could somehow force the unsealing of any and all original versions of birth certificates that could have been amended, it would have no way of knowing whether the original birth certificate sex determination was based on anatomy and genetics, as required by I-183.
204. Even if City Plaintiffs took all of the aforementioned measures and also insisted on reviewing medical records, conducting a thorough examination of genitalia and reproductive organs, and performing a genetic test on every potential bathroom user, they still would have no certainty about what to do for those intersex people whose genetic and anatomic characteristics were not typical for male or female at the time of birth. It is estimated that as many as two percent of babies are born with intersex traits – similar to the percentage of the population that is born with red hair. City Plaintiffs would also face obvious objection from all persons seeking to use public facilities.
205. The internal contradictions of I-183 create ambiguity, making it impossible for City Plaintiffs to understand how to avoid liability under I-183 at all, much less without running afoul of other laws.


206. The City Plaintiffs have also adopted nondiscrimination ordinances. By effectively voiding these NDOs, I-183 impermissibly deprives the City Plaintiffs of their constitutional right to due process.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for:

- (1) A declaration that I-183, is unconstitutional on its face as it violates Plaintiffs' constitutional rights to equal protection, due process, privacy, dignity, and the right to pursue life's basic necessities, acquire property, and seek safety, health and happiness.
- (2) An order granting a temporary and final injunction enjoining the Defendant from further depriving Plaintiffs of their constitutional rights and ordering the Defendant to cease and desist from certifying I-183 and placing the said initiative on the ballot or, if said initiative is already placed on the ballot, removing it from the ballot.
- (3) An order awarding Plaintiffs their costs and reasonable attorney's fees.
- (4) An order awarding such other and further relief as the Court deems just and proper.

DATED THIS 30 day of October, 2017.



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