

Plaintiffs Amelia Marquez (“Ms. Marquez”) and John Doe (“Mr. Doe”) (together, “Plaintiffs”) move this Court, pursuant to Rule 15(a) of the Montana Rules of Civil Procedure, for leave to amend their complaint against the State of Montana; its governor, Gregory Gianforte; the Montana Department of Health and Human Services (“DPHHS”); and DPHHS’s director, Adam Meier (collectively, “Defendants”).

INTRODUCTION

On July 16, 2021, Plaintiffs filed a complaint before this Court challenging the constitutionality of Senate Bill 280’s (the “Act”) restrictions on transgender Montanans’ ability to change the sex designation on their Montana birth certificates. Plaintiffs contemporaneously filed complaints before the Montana Human Rights Bureau (“MHRB”), which have since been dismissed on the basis that the MHRB had no authority to decide the constitutional questions raised by the complaints. Plaintiffs seek leave to amend their complaint before this Court to (1) acknowledge the determinations of the MHRB and (2) allege a statutory claim for violations of the Montana Human Rights Act (“MHRA”). Defendants do not oppose Plaintiffs’ motion.

BACKGROUND

On July 16, 2021, Plaintiffs filed a complaint against Defendants before this Court alleging that the Act is unconstitutional. Contemporaneously with the filing of that complaint, Plaintiffs filed complaints before the MHRB alleging, in relevant part, violations of the MHRA on the basis that the Act discriminates against them on the basis of sex.

On November 3, 2021, the MHRB “dismissed [the complaints] from th[e] administrative process.” *See* Ex. A, Proposed Am. Compl., Exs. 1 & 2. The MHRB concluded that the “gravamen” of the complaints was a challenge to the constitutionality of the Act and that the MHRB lacked authority to decide constitutional questions. *Id.* The MHRB noted that “[i]t is well

settled that [c]onstitutional questions are properly decided by a judicial body, not an administrative official, under the principle of separation of powers.” *Id.* In addition, the MHRB authorized Plaintiffs to prosecute their challenges to the Act before this Court, concluding that “the charging part[ies] may pursue the complaint[s] in district court.” *Id.*

LEGAL STANDARDS

Under Rule 15(a)(2) of the Montana Rules of Civil Procedure, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Mont. R. Civ. P. 15(a)(2). Rule 15 memorializes a general policy favoring the amendment of pleadings. In *Hobble–Diamond Cattle Co. v. Triangle Irrigation Co.*, 249 Mont. 322, 325, 815 P.2d 1153, 1155 (1991), the Montana Supreme Court held that it has “interpreted . . . Rule [15] liberally, allowing amendment of pleadings as the general rule and denying leave to amend as the exception.”

ARGUMENT

Plaintiffs’ proposed amended complaint sets forth allegations regarding the administrative exhaustion of Plaintiffs’ remedies before the MHRB and Plaintiffs’ statutory claim under the MHRA. Ex. A, Proposed Am. Compl., ¶¶ 13–17, ¶¶ 96–102. Plaintiffs could not have asserted the allegations in the proposed amended complaint at the time the original complaint was filed since those allegations relate to the MHRB’s disposition of the complaints filed before it, which the MHRB did not rule upon until after the original complaint was filed before this Court. Defendants have consented to the filing of Plaintiffs’ proposed amended complaint.

Additionally, Plaintiffs have corrected a typographical error at Paragraph 70. Proposed Am. Compl., ¶ 70.

CONCLUSION

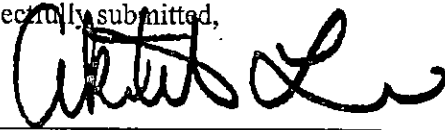
FOR THESE REASONS, Plaintiffs Amelia Marquez and John Doe respectfully request the entry of an order:

- (a) granting them leave to file the proposed Amended Complaint attached to this brief as Exhibit A; and
- (b) granting any other relief the Court deems just.

Dated: December 3, 2021

Respectfully submitted,

By:



Akilah Lane

Akilah Lane
Alex Rate
ACLU of Montana
P.O. Box 1968
Missoula, MT 59806
406-203-3375
ratea@aclumontana.org
lanea@aclumontana.org

John Knight, pro hac vice forthcoming
ACLU Foundation
LGBTQ & HIV Project
150 North Michigan Avenue, Suite 600
Chicago, IL 60601
Telephone: 312-201-9740
Facsimile: 312-288-5225
jknight@aclu-il.org

F. Thomas Hecht, pro hac vice forthcoming
Tina B. Solis, pro hac vice forthcoming
Seth A. Horvath, pro hac vice forthcoming
Nixon Peabody LLP
70 West Madison Street, Suite 3500
Chicago, IL 60601
Telephone: 312-977-4443
Facsimile: 312-977-4405
fthecht@nixonpeabody.com
tbsolis@nixonpeabody.com
sahorvath@nixonpeabody.com

Elizabeth Halverson PC

1302 24th Street West #393
Billings, MT 59102
406-698-9929
ehalverson@halversonlaw.net

CERTIFICATE OF SERVICE

I, Krystal Pickens, hereby certify on this date I emailed a true and accurate copy of the foregoing document to:

DAVID M.S. DEWHIRST

Solicitor General

KATHLEEN L. SMITHGALL

Assistant Solicitor General

PATRICK M. RISKEN

Assistant Attorney General

JEREMIAH LANGSTON

Assistant Attorney General

Office of the Attorney General, State of Montana

P.O. Box 201401

Helena, MT 59620-1401

DATED: December 3, 2021.



Krystal Pickens

EXHIBIT A