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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT  
YELLOWSTONE COUNTY

AMELIA MARQUEZ, AN INDIVIDUAL;  
AND JOHN DOE, AN INDIVIDUAL,

PLAINTIFFS,

v.

STATE OF MONTANA, ET AL.,

DEFENDANTS.

DV-21-00873

Hon. Michael G. Moses

**DEFENDANT'S ANSWER  
TO PLAINTIFF'S AMENDED  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

For their Answer to Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief, Defendants State of Montana ("the State"), Gregory Gianforte in his official capacity as the Governor of the State of Montana ("Governor Gianforte"),

the Montana Department of Public Health and Human Services (“DPHHS”), and Adam Meier in his official capacity as the Director of the Montana Department of Public Health and Human Services (“Director Meier”) (collectively, “Defendants”) state as follows:

### INTRODUCTION

1. Regarding the allegations of Paragraph 1 of Plaintiffs’ Amended Complaint, Defendants admit Governor Gianforte signed Senate Bill 280 (“SB 280”) into law. The remaining allegations of Paragraph 1 of Plaintiffs’ Amended Complaint are arguments of counsel and purport to characterize SB 280, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

2. Regarding the allegations of Paragraph 2 of Plaintiffs’ Amended Complaint, Defendants admit SB 280 is administered by Director Meier and DPHHS. The remaining allegations of Paragraph 2 of Plaintiffs’ Amended Complaint are arguments of counsel and purport to characterize SB 280, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

3. The allegations of Paragraph 3 of Plaintiffs’ Amended Complaint are arguments of counsel and purport to characterize SB 280, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

4. The allegations of Paragraph 4 of Plaintiffs’ Amended Complaint are arguments of counsel and purport to characterize SB 280, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

5. The allegations of Paragraph 5 of Plaintiffs' Amended Complaint are arguments of counsel and purport to characterize SB 280, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

6. The allegations of Paragraph 6 of Plaintiffs' Amended Complaint are arguments of counsel and purport to characterize SB 280, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

7. The allegations of Paragraph 7 of Plaintiffs' Amended Complaint are arguments of counsel and purport to characterize SB 280, which speaks for itself and is the best evidence of its contents; therefore, no response is required. Additionally, Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 7 of Plaintiffs' Amended Complaint.

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

#### **JURISDICTION AND VENUE**

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

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

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

12. Regarding the allegations of Paragraph 12 of Plaintiffs' Amended Complaint, Defendants lack sufficient knowledge or information to admit or deny where Plaintiff Amelia Marquez resides, but do not contest venue in this matter.

13. Regarding the allegations of Paragraph 13 of Plaintiffs' Amended Complaint, Defendants admit Plaintiffs filed complaints with the Montana Human Rights Bureau ("HRB") challenging SB 280. The remaining allegations of Paragraph 13 of Plaintiffs' Amended Complaint are arguments of counsel, which require no response.

14. Regarding the allegations of Paragraph 14 of Plaintiffs' Amended Complaint, Defendants admit that the HRB dismissed Plaintiffs' administrative complaints. The remaining allegations of Paragraph 14 of Plaintiffs' Amended Complaint are arguments of counsel and purport to characterize the HRB's administrative decision, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

15. Defendants admit the allegations of Paragraph 15 of Plaintiffs' Amended Complaint.

16. Defendants admit the allegations of Paragraph 16 of Plaintiffs' Amended Complaint.

17. Defendants admit the allegations of Paragraph 17 of Plaintiffs' Amended Complaint.

18. Defendants admit the allegations of Paragraph 18 of Plaintiffs' Amended Complaint.

## **PARTIES**

### **PLAINTIFFS**

19. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 19 of Plaintiffs' Amended Complaint and therefore deny them.

20. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 20 of Plaintiffs' Amended Complaint and therefore deny them.

### **DEFENDANTS**

21. Defendants admit the allegations of Paragraph 21 of Plaintiffs' Amended Complaint.

22. Defendants admit the allegations of Paragraph 22 of Plaintiffs' Amended Complaint.

23. Regarding the allegations in Paragraph 23 of Plaintiffs' Amended Complaint, Defendant Governor Gianforte admits that he is the Governor of the State of Montana. Defendants deny the remaining allegations of Paragraph 23 of Plaintiff's Amended Complaint as stated.

24. Regarding the allegations in Paragraph 24 of Plaintiffs' Amended Complaint, Defendant Adam Meier admits that he is the Director of DPHHS and its chief executive officer. Defendants deny the remaining allegations of Paragraph 24 of Plaintiff's Amended Complaint as stated.

## ALLEGATIONS COMMON TO ALL COUNTS

25. Defendants deny the allegations of Paragraph 25 of Plaintiffs' Amended Complaint as stated.

26. The allegations of the first sentence of Paragraph 26 of Plaintiffs' Amended Complaint are arguments of counsel, which require no response. Defendants deny the remaining allegations of Paragraph 26 of Plaintiffs' Amended Complaint.

27. Defendants lack sufficient knowledge or information to admit or deny the allegations of the first sentence of Paragraph 27 of Plaintiffs' Amended Complaint. Defendants deny the remaining allegations of Paragraph 27 of Plaintiffs' Amended Complaint as stated.

28. Defendants admit that gender dysphoria is a medically recognized condition and is defined in the DSM-5 but deny the remaining allegations of Paragraph 28 of Plaintiffs' Amended Complaint as stated.

29. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 29 of Plaintiffs' Amended Complaint.

30. Defendants deny the allegations of the first sentence of Paragraph 30 of Plaintiffs' Amended Complaint. The remaining allegations of Paragraph 30 of Plaintiffs' Amended Complaint are arguments of counsel which require no response. Additionally, Defendants lack sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 30 of Plaintiffs' Amended Complaint.

31. The allegations of Paragraph 31 of Plaintiffs' Amended Complaint are arguments of counsel which require no response. Defendants deny the allegations of the last sentence of Paragraph 31 of Plaintiffs' Amended Complaint.

32. Defendants deny the allegations of Paragraph 32 of Plaintiffs' Amended Complaint as stated.

33. Defendants deny the allegations of Paragraph 33 of Plaintiffs' Amended Complaint as stated.

34. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 34 of Plaintiffs' Amended Complaint. The allegations in Paragraph 34 reference documents from the American Medical Association and the United States Department of State, which speak for themselves and are the best evidence of their contents.

35. Defendants deny the allegations of Paragraph 35 of Plaintiffs' Amended Complaint.

36. Defendants deny the allegations of Paragraph 36 of Plaintiffs' Amended Complaint.

37. Defendants admit the allegations of Paragraph 37 of Plaintiffs' Amended Complaint.

38. Defendants admit the allegations of Paragraph 38 of Plaintiffs' Amended Complaint.

39. Defendants deny the allegations of the first sentence of Paragraph 39 of Plaintiffs' Amended Complaint. The remaining allegations of Paragraph 39 of

Plaintiffs' Amended Complaint are arguments of counsel and purport to characterize the referenced 2017 regulations, which speak for themselves and are the best evidence of their contents; therefore, no response is required.

40. Defendants deny the allegations of Paragraph 40 of Plaintiffs' Amended Complaint.

41. The allegations of Paragraph 41 of Plaintiffs' Amended Complaint are arguments of counsel and purport to characterize SB 280, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

42. Defendants deny the allegations of Paragraph 42 of Plaintiffs' Amended Complaint.

43. Defendants admit the allegations of Paragraph 43 of Plaintiffs' Amended Complaint.

44. Defendants admit the allegations of Paragraph 44 of Plaintiffs' Amended Complaint.

45. Defendants deny the allegations of Paragraph 45 of Plaintiffs' Amended Complaint.

46. Defendants admit the allegations of Paragraph 46 of Plaintiffs' Amended Complaint.

47. Defendants deny the allegations of Paragraph 47 of Plaintiffs' Amended Complaint.

48. Defendants deny the allegations of Paragraph 48 of Plaintiffs' Amended Complaint.



49. Defendants deny the allegations of Paragraph 49 of Plaintiffs' Amended Complaint.

50. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 50 of Plaintiffs' Amended Complaint.

51. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 51 of Plaintiffs' Amended Complaint.

52. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 52 of Plaintiffs' Amended Complaint.

53. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 53 of Plaintiffs' Amended Complaint, but affirmatively allege that Plaintiff Marquez has never applied to change the sex designation on Marquez's birth certificate through DPHHS.

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

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

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

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

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

alleges that Doe has never applied to change the sex designation on Doe's birth certificate through DPHHS.

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

60. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 60 of Plaintiffs' Amended Complaint.

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

62. Defendants lack sufficient knowledge or information to admit or deny the allegations of Paragraph 62 of Plaintiffs' Amended Complaint.

## **CLAIMS FOR RELIEF**

### **COUNT I**

63. Defendants restate their responses to Paragraphs 1–62 of Plaintiffs' Amended Complaint.

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

65. Defendants deny the allegations of Paragraph 65 of Plaintiffs' Amended Complaint.

66. Defendants deny the allegations of Paragraph 66 of Plaintiffs' Amended Complaint.

67. Defendants deny the allegations of Paragraph 67 of Plaintiffs' Amended Complaint.

68. Defendants deny the allegations of Paragraph 68 of Plaintiffs' Amended Complaint as stated.

69. Defendants deny the allegations of Paragraph 69 of Plaintiffs' Amended Complaint.

70. Defendants deny the allegations of Paragraph 70 of Plaintiffs' Amended Complaint.

71. Defendants deny the allegations of Paragraph 71 of Plaintiffs' Amended Complaint.

72. Defendants deny the allegations of Paragraph 72 of Plaintiffs' Amended Complaint.

## **COUNT II**

73. Defendants restate their responses to Paragraphs 1–72 of Plaintiffs' Amended Complaint.

74. Defendants admit the allegations of Paragraph 74 of Plaintiffs' Amended Complaint.

75. The allegations of Paragraph 75 of Plaintiffs' Amended Complaint are arguments of counsel and call for a legal determination by the Court; therefore, no response is required.

76. Defendants deny the allegations of Paragraph 76 of Plaintiffs' Amended Complaint.

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

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

79. Defendants deny the allegations of Paragraph 79 of Plaintiffs' Amended Complaint.

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

### **COUNT III**

81. Defendants restate their responses to Paragraphs 1–80 of Plaintiffs' Amended Complaint.

82. The allegations of Paragraph 82 of Plaintiffs' Amended Complaint are arguments of counsel and call for a legal determination by the Court; therefore, no response is required.

83. The allegations of Paragraph 83 of Plaintiffs' Amended Complaint are arguments of counsel and call for a legal determination by the Court; therefore, no response is required.

84. Defendants deny the allegations of Paragraph 84 of Plaintiffs' Amended Complaint.

85. Defendants deny the allegations of Paragraph 85 of Plaintiffs' Amended Complaint as stated.

86. Defendants deny the allegations of Paragraph 86 of Plaintiffs' Amended Complaint.

#### COUNT IV

87. Defendants restate their responses to Paragraphs 1–87 of Plaintiffs’ Amended Complaint.

88. Defendants admit the allegations of Paragraph 88 of Plaintiffs’ Amended Complaint.

89. Defendants deny the allegations of Paragraph 89 of Plaintiffs’ Amended Complaint.

90. The allegations of Paragraph 90 of Plaintiffs’ Amended Complaint are arguments of counsel and call for a legal determination by the Court; therefore, no response is required.

91. The allegations of Paragraph 91 of Plaintiffs’ Amended Complaint are arguments of counsel and call for a legal determination by the Court; therefore, no response is required.

92. The allegations of Paragraph 92 of Plaintiffs’ Amended Complaint are arguments of counsel and purport to characterize SB 280, which speaks for itself and is the best evidence of its contents; therefore, no response is required.

93. Defendants deny the allegations of Paragraph 93 of Plaintiffs’ Amended Complaint as stated.

94. Defendants deny the allegations of Paragraph 94 of Plaintiffs’ Amended Complaint as stated.

95. Defendants deny the allegations of Paragraph 95 of Plaintiffs’ Amended Complaint as stated.

96. Defendants deny the allegations of Paragraph 96 of Plaintiffs' Amended Complaint.

#### **COUNT V**

97. Defendants restate their responses to Paragraphs 1–96 of Plaintiffs' Amended Complaint.

98. The district court dismissed Count V of Plaintiffs' Amended Complaint; therefore, no response is required.

99. The district court dismissed Count V of Plaintiffs' Amended Complaint; therefore, no response is required.

100. The district court dismissed Count V of Plaintiffs' Amended Complaint; therefore, no response is required.

101. The district court dismissed Count V of Plaintiffs' Amended Complaint; therefore, no response is required.

102. The district court dismissed Count V of Plaintiffs' Amended Complaint; therefore, no response is required.

103. The district court dismissed Count V of Plaintiffs' Amended Complaint; therefore, no response is required.

#### **COUNT VI**

104. Defendants restate their responses to Paragraphs 1–103 of Plaintiffs' Amended Complaint.

105. The allegations of Paragraph 105 of Plaintiffs' Amended Complaint are arguments of counsel and purport to characterize the referenced statute, which speaks for itself; therefore, no response is required.

106. Defendants deny the allegations of Paragraph 106 of Plaintiffs' Amended Complaint.

107. Defendants deny the allegations of Paragraph 107 of Plaintiffs' Amended Complaint.

108. Defendants deny the allegations of Paragraph 108 of Plaintiffs' Amended Complaint as stated.

109. Defendants deny the allegations of Paragraph 109 of Plaintiffs' Amended Complaint.

110. Defendants deny the allegations of Paragraph 110 of Plaintiffs' Amended Complaint.

#### **DEFENSES**

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

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

113. Plaintiffs' Amended Complaint fails to state sufficient facts showing that Plaintiffs are entitled to the requested relief.

114. Plaintiffs lack standing.

115. Neither Plaintiff has ever applied to change the sex designation on their respective birth certificate through DPHHS.

116. A birth certificate is only one of a number of government-issued documents that can be used for the purposes identified in Plaintiffs' Amended Complaint.

117. Plaintiffs' claims are not justiciable.

118. SB 280 does not violate the United States Constitution, the Constitution of the State of Montana, or Montana state law.

119. SB 280 serves and is supported by rational, legitimate, and compelling state interests, including maintaining accurate vital records and preventing fraud.

120. The Montana Governmental Code of Fair Practices is a subdivision within the Montana Human Rights Act and does not create a standalone cause of action; therefore, dismissal of Count V required dismissal of Count VI.

121. Defendants raise the above defenses so that they will not be waived and reserve the right to add defenses that may become apparent during 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 Amended Complaint;
2. For judgment for Defendants on all counts of Plaintiffs' Amended Complaint;
3. For costs of suit and attorneys' fees as allowed by law; and
4. For any other relief the Court deems just and proper.



DATED this 9th day of May, 2022.

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## CERTIFICATE OF SERVICE

I, Kathleen Lynn Smithgall, hereby certify that I have served true and accurate copies of the foregoing Answer/Brief - Answer to the following on 05-09-2022:

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Electronically signed by Dia Lang on behalf of Kathleen Lynn Smithgall  
Dated: 05-09-2022