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Lisa Kallio

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Lewis & Clark County District Court
STATE OF MONTANA

By: Julian Boughton

Case No. 25-2024-0000230-DK

Abbott, Christopher David

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Ashlee Rossler
 Alex Rate (Bar No. 11226)
ACLU of Montana
 P.O. Box 1968
 Missoula, MT 59806
 406-204-0287
 rosslera@aclumontana.org
 ratea@aclumontana.org

Lilia N. Tyrrell (Bar No. 12395)
 Jordan P. Helvie (Bar No. 52038910)
Kasting, Kauffman & Mersen, P.C.
 716 South 20th Avenue, Suite 101
 Bozeman, MT 59718
 406-586-4383
 ltyrrell@kkmlaw.net
 jhelvie@kkmlaw.net

Attorneys for Plaintiffs

Matthew W. Costello, admitted *pro hac vice*
Nixon Peabody LLP
 53 State Street, Exchange Place
 Boston, MA 02109
 Telephone: 617-345-1024
 Facsimile: 617-345-1300
 mcostello@nixonpeabody.com

Scott M. Dinner, admitted *pro hac vice*
Nixon Peabody LLP
 799 9th Street NW, Suite 500
 Washington, DC 20001
 Telephone: 202-585-8505
 Facsimile: 844-996-1233
 sdinner@nixonpeabody.com

MONTANA FIRST JUDICIAL DISTRICT COURT,
 LEWIS AND CLARK COUNTY

THE MONTANA)
 SCHOOL COUNSELORS)
 ASSOCIATION;)
 BRETT THACKERAY; SARAH SMITH,)
 on behalf of her minor child,)
 IZZY SMITH; and)
 LIBBY THREADGOODE,)

Plaintiffs,)

vs.)

STATE OF MONTANA, GREGORY)
 GIANFORTE, in his official capacity as)
 the Governor of the State of Montana,)
 the MONTANA OFFICE OF PUBLIC)
 INSTRUCTION, ELSIE ARNTZEN, in her)
 official capacity as Superintendent of Public)
 Instruction, MONTANA BOARD OF)
 EDUCATION)

Defendants.)

Case No. DV 2024-230

**PLAINTIFFS' SECOND AMENDED
 COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF**

Plaintiffs the Montana School Counselors Association, Brett Thackeray, Sarah Smith, on behalf of her minor child, Izzy Smith, and Libby Threadgoode (collectively, “Plaintiffs”), through their undersigned attorneys, complain against the State of Montana and its Governor, Gregory Gianforte, in his official capacity (“Governor Gianforte”); the Montana Office of Public Instruction (“OPI”); the Superintendent of Public Instruction, Susie Hedalen, in her official capacity (“SPI”); and the Montana Board of Public Education (“MBPE”); (collectively, “Defendants”), as set forth below.

ALLEGATIONS COMMON TO ALL COUNTS

Senate Bill 99 and House Bill 471

1. This is an action for declaratory and injunctive relief against Defendants arising out of Montana Senate Bill 99 (2021) (hereinafter “SB 99”) and its superseding House Bill 471 (2025) (“HB 471”) which, together, are intended to restrict (if not entirely remove) discussion of human sexuality, sexual orientation, and gender identity from public school classrooms across the State of Montana. HB 471, now the operative law, continues and expands upon the harms initiated by SB 99 and represents another step in the Legislature’s intent to silence discussions on gender identity and human sexuality in Montana’s K-12 schools.
2. SB 99 was effectively superseded by HB 471 by the 69th Legislature. SB 99 was utilized to discipline educators and counselors who introduced holistic, inclusive, and compassionate concepts into the classroom setting about human sexuality, sexual orientation, and gender identity. SB 99 removed and/or chilled such discussions and curricula, harming the general student population but particularly harming 2S-LGBTQIA+¹ students who already face stigma, bullying,

¹ 2S-LGBTQIA+ is an umbrella term meant to refer to individuals who identify as Two-Spirit, lesbian, gay, bi-sexual, transgender, queer, intersex, asexual, and other gender-expansive identities.

and marginalization. HB 471's amendments aim to further inhibit the discussion and curricula pertaining to sexual orientation, gender identity, and human sexuality.

3. HB 471 maintains SB 99's opt-out approach to human sexuality instruction (hereinafter "HSI") and establishes a new type of instruction: identity instruction. HB 471 defines identity instruction as "instruction that has the goal or purpose of studying, exploring, or informing students about gender identity or gender expression, or sexual orientation."
4. Unlike accessing HSI under HB 471, children can only receive identity instruction if their parent/guardian provides written permission to the child's school. Schools and staff members must also follow the new notification requirements. The creation of the identity instruction category and the opt-in scheme to implement identity instruction chill speech related to gender identity and sexual orientation.
5. The HSI opt-out mechanism allows parents to control a child's attendance and withdraw their children from instruction. The opt-in scheme amended through HB 471 goes beyond facilitating parental control; it outright discriminates against 2S-LGBTQIA+ students and inhibits schools from offering identity instruction. The sole purpose of the opt-out and opt-in processes is the discriminatory prevention of schools from offering identity instruction and HSI to students.
6. In fact, the Legislature's true purpose in imposing such burdensome requirements and restrictions on schools is to outright prevent identity instruction and HSI statewide. The bill sponsor, Republican Majority Whip Jedediah Hinkle stated:

"But one thing I do want to point out here first is that the schools or the opponents' whole argument against this bill is that they believe that they should be teaching gender expression, sex orientation, and gender identity in schools. *My belief is that these three things should not be taught in schools, and certainly should not be slipped in under the rug.*"

House Judiciary Hrg. Video on HB 471 at 9:08:30 (Feb. 18, 2025) available at: <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250218/-1/51955> (emphasis added).

Rep. Hinkle reiterated this belief in the press, stating “This bill aims to accomplish transparency and to make sure that parents know exactly what their children are taught in the school system. I do not believe that sexual orientation, gender expression and gender identity should really be brought and taught in the schools.” *Zach Volheim, Montana Representative*

Proposes Parental Opt-In for Sex Ed on Sexuality and Gender Identity, KPAX,

<https://www.kpax.com/news/montana-legislature/montana-representative-proposes-parental-opt-in-for-sex-ed-on-sexuality-and-gender-identity>, dated February 18, 2025.

7. HB 471 further complicates the implementation of HSI and identity instruction with a new and arbitrary notification scheme.
8. SB 99 required public school educators to notify parents before providing any instruction related in any way to human sexuality, sexual orientation, or gender identity. Similarly, HB 471 requires notification prior to providing instruction that has the goal or purpose of studying, exploring, or informing students about HSI and identity instruction. Like SB 99’s mandatory notification requirement, HB 471’s notification requirement is also mandatory but lacks any evidence-based need in the educational context.
9. If anything, there is ample contrary evidence.
10. This broad and arbitrary notification requirement, in practice, deeply chills any inclusive and compassionate discussion or instruction on 2S-LGBTQIA+ identities and issues in Montana public schools.
11. School counselors and teachers report that the opt-in requirement for identity instruction is so burdensome and unrealistic that it effectively prevents them from implementing any curriculum or

content around these areas. Obtaining parent signatures for opt-in purposes is a huge deterrent and, in practice, effectively prohibits identity instruction. The administrative burden and risk of parental complaints have led many educators to conclude that it is not worth attempting to provide these lessons, depriving students of important educational opportunities.

12. School districts and parents/guardians could reasonably misinterpret the opt-out and opt-in instructions for HSI and identity instruction, respectively, as having the same notification scheme. A failure to notice the different schemes could result in a child missing crucial instruction or a school and its staff being held in violation of the law's notification requirements.
13. The notification and opt-in requirements force disclosure of sensitive student information to parents, even when students seek confidential support. There are no safeguards to prevent further dissemination of this information, and the law fails to balance parental rights with students' constitutional right to privacy under Montana law.
14. SB 99 and HB 471 are part of a concerted effort by the Legislature and the Defendants to erase 2S-LGBTQIA+ histories, viewpoints, and curricula from public instruction. They are also part of a coordinated effort to create a hostile climate towards 2S-LGBTQIA+ individuals. In short, SB 99 and the superseding HB 471 marginalize the history, concerns, experiences, and aspirations of the 2S-LGBTQIA+ community.
15. Despite HB 471's attempt at narrower definitions, the law remains unconstitutionally vague in several respects. For example, it is unclear whether confidential counseling constitutes 'instruction' subject to notification and opt-in requirements, whether parents may opt-in to identity instruction outside the annual or semester window, and what constitutes an 'unexpected' inquiry under the teacher exception. The rigid 5-to-14-day notification window creates a trap for inadvertent violations and could result in school and staff being disciplined for technical noncompliance.

16. “Human sexuality instruction,” as defined by the Montana Legislature and incorporated into HB 471 is broadly defined as “instruction that has the goal or purpose of studying, exploring, or informing students about any of the following human sexuality topics: intimate relationships, sexual anatomy, sexual reproduction, sexually transmitted infections, sexual acts, abstinence, contraception, or reproductive rights and responsibilities.” This necessarily includes information about human variations in gender diversity, such as life-saving information concerning gender transition, medical care for gender dysphoria, and the existence of intersex people. This also includes any discussion that has the goal or purpose of studying, exploring, or informing students of any intimate partner relationship (such as that presented, for example, in *Romeo and Juliet*); or a discussion of a book written by an 2S-LGBTQIA+ author; or a biology class discussion about DNA and its role in reproduction; or a discussion in history class about the Nazis’ oppression of gay and lesbian people in Germany; or discussions about non-binary parents and family relationships; or discussions in a government class about Supreme Court decisions touching on gender, sexual orientation, sexual reproduction; or education to prevent anti-2S-LGBTQIA+ bullying. HB 471 is so broad and so elastic that teachers, counselors, and students cannot determine with any certainty when, where, or on what topics parental notification is required.
17. The definition of identity instruction, meanwhile, necessarily includes information about human variations in gender diversity, such as life-saving information concerning gender transition, medical care for gender dysphoria, and the existence of intersex people.
18. If educators are deemed to have violated HB 471 because they guess wrong about whether a lesson or interaction constitutes identity instruction, they are subject to discipline, including termination of their employment contracts and suspension of their teaching certificates. If librarians guess wrong about whether including a book in their school’s library constitutes identity instruction, they

will face professional discipline and have no recourse when the school removes various materials (literature, art, history artifacts, etc.) from library shelves that are supportive of 2S-LGBTQIA+ students and allies.

19. HB 471 also provides that a school district shall make all curriculum materials used in any HSI or identity instruction available for public inspection prior to the use of such materials. These disclosures and notice provisions apply whenever the school has the goal or purpose to study, explore, or inform students of HSI or identity instruction.

20. HB 471's operative defined terms are astonishingly vague and of doubtful use, as demonstrated by the following examples:

- a. "Human sexuality instruction," includes "instruction that has the goal or purpose of studying, exploring, or informing students about" gender identity, gender transition, sexual orientation, "intimate relationships," human sexual anatomy, sexual reproduction, sexual acts, sexually transmitted infections, abstinence, contraception, reproductive rights, and responsibilities.
- b. "Instruction," is "the conduct of organized learning activities, including the provision of materials."
- c. "Identity instruction," includes "instruction that has the goal or purpose of studying, exploring, or informing students about gender identity and sexual orientation."

21. In its plain usage form, the term "gender identity" refers to a person's innermost concept of self as male, female, a blend of both or neither—how individuals perceive themselves and what they call themselves. A person's gender identity can be the same or different from their sex assigned at birth. Gender identity could refer to a cisgender person—someone whose gender identity corresponds with their sex assigned at birth; a transgender person—someone whose gender identity does not correspond with their sex assigned at birth; or another identity along the gender

continuum. Thus, HB 471 could require written parental consent for curriculum that has the goal or purpose of exploring cisgender individuals (for example, *Pride and Prejudice*).

22. In its plain usage form, the term “sexual orientation” refers to an inherent or immutable enduring emotional, romantic, or sexual attraction to other people. Any sort of relationship configuration (heterosexual relationships, queer relationships, etc.) expose a person’s sexual orientation to some extent. Thus, HB 471 would require providing parental notice of any curriculum that has the purpose or goal of studying heterosexual relationships (for example, *Romeo and Juliet*) before being taught. There are very few works of English literature that do not implicate or reference sexual orientation in some form.

23. Since its enactment, members of the Montana Legislature have openly declared that the intent in passing SB 99 and HB 471 was less about parental notification than about controlling speech in schools and limiting exposure to materials discussing 2S-LGBTQIA+ issues, reproductive rights, sex education, and gender-related issues.

24. SB 99 and HB 471 do not seek to provide choice. Rather, SB 99 and HB 471 intend to (1) limit conversations about HSI and identity instruction, and (2) deny the legitimacy of gender- and human sexuality-related discussions in public schools.

25. SB 99’s sponsor, Senator Cary Smith, explained that the purpose of SB 99 is to reinforce “Christian values” in Montana public education. When presenting the bill to the Senate Education and Cultural Resources Committee on February 3, 2021, Senator Smith expressed concern that “[a] lot more attention is given to things like feelings, attitudes, relationships, and as society continues to change we find out that norms that deal with sex have changed also. We have some families that are very traditional in their Christian beliefs, and sex should be something that occurs just between husband and wife.” Senate Educ. & Cultural Resources Hrg. Video on

SB 99, at 14:58:43 (Feb. 3, 2021), <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20210203/-1/41300>.

26. Other proponents complained that public schools may offer instruction that does not align with their personal religious values. Senate Educ. & Cultural Resources Hrg. Video on SB 99, at 14:58:43 (Feb. 3, 2021), <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20210203/-1/41300> at 15:12:45 (Kathy Carlson) (“We need to know the instruction of materials are consistent with our personal or religious views.”); *id.* at 15:27:15 (Garret Bacon) (paraphrasing Proverbs 22:6); *id.* at 15:29:30 (Matt Brower) (“God entrusts children to parents.”). The legislative intent to reinforce “Christian values” in public schools as described by Senator Smith and others in the Montana legislature flies in the face of Art. X, § 7 of the Montana Constitution, which prohibits religious advocacy or sectarianism in Montana public schools.
27. Imposing “Christian values” as a curriculum guide to middle and high school education flouts longstanding Montana Establishment Clause precedent that limits the reach of religion in public schools.
28. The ostensible state interest in enacting HB 471 is parental control over childrens’ education; the interest, however, purportedly justifying HB 471 is not compelling, nor is it narrowly tailored in its restrictions and limitations on K-12 educators and students.
29. Given the difficulty that educators face in determining what conduct violates HB 471, coupled with the risk of termination or other professional discipline, educators and counselors avoid any topics that touch upon human sexuality and/or 2S-LGBTQIA+ rights or inclusion. This erases 2S-LGBTQIA+ history, literature, art, and politics from public schools. HB 471 fosters damaging

self-censorship in Montana schools and causes direct harm to students (as noted in recent reports on the rise of hate crimes in states with similar laws).

30. The risk of disciplinary action is particularly high under the bills' regime. If a student tells their parent that a teacher or counselor discussed a prohibited topic, that teacher could be disciplined, regardless of whether the student or educator initiated the discussion. Parents are increasingly likely to believe their child's account of in-school discussions and escalate complaints, effectively placing school teachers and staff at risk for alleged violations based on subjective or inaccurate student reports. This dynamic has created a climate of fear and mistrust, further discouraging educators from engaging in or permitting any identity- or relationship-related discussions.
31. On February 12, 2025, Representative Jedidiah Hinkle introduced HB 471 in the Montana Legislature. On April 22, 2025, HB 471 was transmitted to Governor Gianforte. On May 1, 2025, Governor Gianforte signed HB 471 into law. The law took effect on July 1, 2025.
32. As previously described, HSI could be understood as traditional sex education under SB 99. Both SB 99 and HB 471 include the same opt-out scheme for HSI: Parents "may refuse to allow the child to attend or withdraw the child . . ." (of the "opt-out" provision) from certain lesson plans and teaching materials related to "human sexuality instruction." § 20-7-120, MCA.
33. Under HB 471's new category of identity instruction, on the other hand, children can only receive identity instruction if the child's parent/guardian affirmatively opts the child in. The opt-in process requires written permission from the child's parent/guardian to permit such instruction.
34. In addition to requiring parents to opt-in to the identity instruction, HB 471's parental notification requirement mandates schools and schools' staff members to notify parents of planned identity instruction "no fewer than 5 school days or more than 14 school days prior to" such instruction. § 20-7-120, MCA.

35. HB 471's 5-to-14-day rule imposes a more rigorous requirement than SB 99's more flexible requirement of notifying parents/guardians no less than 48 hours in advance of HSI.

The Importance of Inclusive Sex Education Curricula in Public Schools

36. Sex education standards have evolved over time to incorporate new understandings of what constitutes age-appropriate instruction. These standards seek to translate an emerging body of research related to school-based sex education so that it can be implemented in the classroom. HB 471, however, impairs and inhibits sex education and identity instruction in Montana public schools. The parental notification requirements and the pretextual use of HB 471 to suppress discussions of transgender issues, reproductive rights, and responsible sexual behavior defeat productive and necessary sex education in Montana public schools.

37. According to the *National Sex Education Standards, Core Content and Skills, K-12* (Second Edition) ("the Standards"), "[t]he goal of sex education is to help young people navigate sexual development and grow into sexually healthy adults."

38. The Standards further provide that: "To be effective, sex education must include medically accurate information about a broad range of topics such as consent and healthy relationships; puberty and adolescent development; sexual and reproductive anatomy and physiology; *gender identity and expression; sexual identity and orientation*; interpersonal and sexual violence; contraception, pregnancy, and reproduction; and HIV and other STDs/STIs." (emphasis added).

39. Montana's OPI has additional requirements around sex education which include teaching all students (including 2S-LGBTQIA+ students) by Grade 8 knowledge of the "relationship between positive behaviors and the prevention of disease" and explaining "personal health enhancing strategies that encompass sexual activity and disease prevention." By Grade 12, students must receive instruction on "how attitudes and behaviors can impact health and disease prevention" and

how to “develop personal health enhancing strategies that encompass sexual activity and disease prevention.”

40. Comprehensive sex education that includes instruction related to gender identity and sexual orientation is essential to Montana public school education. The Standards provide that these programs “increase acceptance of students who identify as lesbian, gay, bisexual, transgender, queer or questioning (LGBTQ), many of whom are at disproportionate risk for school absenteeism, dropping out, bullying, and detrimental sexual health outcomes such as the human immunodeficiency virus (HIV), other STDs/STIs, and unintended pregnancy.”
41. 2S-LGBTQIA+ students’ wellbeing hinges on including 2S-LGBTQIA+ lessons in classroom curricula. According to an extensive body of scholarship, students retain more information when they are reading texts authored by members of their own communities. Inclusive curriculum and classroom practices result in better academic outcomes, such as higher academic achievement and critical thinking skills. Research also suggests that students should receive information from a broad array of perspectives to develop a better understanding of bias, critical thinking, empathy, and civic engagement in an increasingly global world. This type of instruction also promotes social and emotional belonging and translates into students’ increased investment in the public education system.
42. HB 471 and its supporters seriously fall short by ignoring students’ sex education. Because of HB 471, Montana students significantly risk engaging in behaviors that prudent sex education would limit.
43. Every two years, Montana conducts the Montana Youth Risk Behavior Survey (“YRBS”), which summarizes students’ responses about, *inter alia*, sexual behaviors.²

² Montana Office of Public Instruction, *Youth Risk Behavior Study*, Home Page, <https://opi.mt.gov/Leadership/Data-Reporting/Youth-Risk-Behavior-Survey>.

44. The 2021 YRBS shows that Montana youth need access to accurate, age-appropriate information about human sexuality to mitigate risks associated with their sexual behaviors and to assist them in preventing and reporting sexual abuse and violence.
45. Montana youth have sex, and they engage in risky sexual behaviors. 30.1% of all high school students—and 44.3% of 12th graders—report having had sex within the three months prior to the survey. Page 61*. Nearly 60% of Montana youth have had sexual intercourse by 12th grade. Roughly half of those students did not use a condom during their most recent sexual intercourse. Roughly half did not use any other form of birth control. And over 10% of all high school students—over 20% of 12th graders—reported having had intercourse with four or more persons.
46. Comprehensive human sexuality education has been shown to reduce sexual activity, reduce risky sexual behaviors, and reduce sexually transmitted infections as well as adolescent pregnancy. Am. College of Obstetricians & Gynecologists, Comm. on Adolescent Health Care, Opinion No. 678 (2020), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2016/11/comprehensive-sexuality-education>.
47. Proponents of SB 99 and HB 471 have testified that school children can learn all they need to know about sex education from observing cats, dogs, chickens, and other farm animals and, therefore, public schools need not discuss or teach such matters. This argument is not only demonstrably false; it contradicts the recommendations of every reputable educational and medical association in the United States.

Harassment of 2S-LGBTQIA+ students in public schools

48. As a result of HB 471, SB 99, and the Defendants' efforts to marginalize 2S-LGBTQIA+ students, a hostile environment that threatens 2S-LGBTQIA+ students permeates Montana's public schools. Furthermore, Montana students are disadvantaged as a result of: (1) the requirement that all

gender- and human sexuality-related lessons only be taught after parental review, and (2) the prohibition on teaching these topics in the absence of parental notice and consent with respect to identity instruction. In particular, HB 471 isolates 2S-LGBTQIA+ students and casts them as outsiders. Such characterizations psychologically harm middle and high school students. The Defendants, as public officials, have an affirmative duty to create a positive and supportive public school environment for all Montana students, including 2S-LGBTQIA+ students. The Defendants have failed to do so.

49. As a result, 2S-LGBTQIA+ students face substantial educational obstacles and are disproportionately bullied. *See LGBTQ Youth in Montana Report November 2017*, page 6 (finding 2S-LGBTQIA+ students three times more likely than other students to have missed school due to safety concerns).
50. Bullying increases absenteeism and lowers academic achievement. *See The 2021 National School Climate Survey*, page 90 (finding 45.4% of surveyed transgender students reported missing school in the last month compared to 23.5% of cisgendered students); *see also LGBTQ Youth in Montana Report November 2017*, page 6-7 (finding 2S-LGBTQIA+ students in Montana experiencing high levels of in-school victimization had lower GPAs than their counterparts).
51. As a result of this isolation and targeted bullying, transgender and nonbinary youth are more likely to experience depression than their cisgender peers. *See 2022 National Survey on LGBTQ Youth Mental Health*, <https://www.thetrevorproject.org/survey-2022/#suicide-by-gender>.
52. As a result of bullying, isolation, and depression, transgender and nonbinary youth are more likely to consider and commit suicide than their cisgendered peers. *See 2022 National Survey on LGBTQ Youth Mental Health*, <https://www.thetrevorproject.org/survey-2022/#suicide-by-gender>.

53. 2S-LGBTQIA+ youth who live in communities that are accepting of 2S-LGBTQIA+ people are less likely to attempt suicide.
54. 2S-LGBTQIA+ youth who attend gender-affirming schools are less likely to attempt suicide.
55. It is essential that 2S-LGBTQIA+ students receive a robust education that includes the history of their own community and its struggle for recognition and acceptance. It is essential that 2S-LGBTQIA+ students receive a comprehensive education that recognizes the contributions of the 2S-LGBTQIA+ community to American history, politics, and the arts. It is also essential that 2S-LGBTQIA+ students receive a robust education that gives them an opportunity to understand and validate their gender and sexual orientation.

SB 99 and HB 471's Impacts

56. Since its enactment in 2021, SB 99 has caused numerous negative impacts and widespread confusion in classrooms and lesson planning across Montana.
57. Teachers and counselors report avoiding or shutting down conversations about gender identity or sexual orientation altogether to avoid running afoul of SB 99 and risking professional discipline including probation, termination, and the possible loss of teaching certificates.
58. Despite the changes imposed by SB 99 and HB 471, many educators remain unaware of the laws' requirements unless specifically informed by their administrators' interpretations and anticipated changes. There is a widespread lack of clear guidance or training on how to comply with the law, further increasing the risk of inadvertent violations and inconsistent, unequal application across Montana's schools.
59. Even before enactment of HB 471, school counselors report that they are routinely required to choose between violating SB 99 or breaching their ethical obligations, which require them to maintain confidentiality with students. School counselors routinely meet with students to discuss

or confer on issues related to gender identity or sexual orientation. Many students do not feel safe sharing that same confidential information with their parents, yet this is what SB 99 requires, regardless of whether students or counselors consent to such disclosures.

60. Defendants have also weaponized SB 99 against educators. One school librarian in central Montana was subject to a formal complaint to the school board after she taught her students the history and meaning of “Pride Month” along with other monthly topical subjects so that her students might better understand the world around them. “Pride Month” is a month— typically June—dedicated to widespread recognition of lesbian, gay, bisexual, transgender and queer pride. After multiple contentious board meetings where she was accused of “grooming” and being a sexual predator, the librarian was placed on a draconian performance improvement plan. She eventually resigned.
61. School teachers and counselors emphasize that administrator and school board directives play a decisive role in how SB 99 and HB 471 are implemented. For fear of running afoul of SB 99 and HB 471, many school boards and administrators are overly cautious and direct staff to entirely avoid any potentially covered topics. Counselors and teachers have little choice but to either 1) follow administrator directives, 2) seek employment elsewhere, or 3) face discipline for violation of HB 471.
62. SB 99 and HB 471 give anti-2S-LGBTQIA+ parents a potent cudgel against any teacher, counselor, or librarian who is dedicated to tolerance, inclusivity, and compassion in school settings.
63. It is unclear if counseling constitutes “instruction” under HB 471’s new definition of the word. As a result, teachers and counselors are likely to continue to steer clear of any instruction or counseling that might put them in the crosshairs of HB 471 and its proponents, which severely harms public school students across the State.

JURISDICTION AND VENUE

64. Original jurisdiction is conferred on this Court through Mont. Const. Art. VII, Section 4 of the Montana Constitution and § 3-5-302, MCA.
65. This Court has jurisdiction to grant declaratory relief under the Montana Uniform Declaratory Judgments Act. §§ 27-8-201, 202, MCA; Mont. R. Civ. P. 57.
66. This Court has jurisdiction to grant injunctive relief pursuant to § 27-19-101 *et seq.*, MCA.
67. Venue in this action is proper in Lewis and Clark County because that the State of Montana and its agencies and employees are Defendants. § 25-2-126, MCA. Article II § 18 of the Montana Constitution provides that the state of Montana and its agencies are not immune from suit. In addition, the agencies and officials named as Defendants are being sued for “administrative actions undertaken in execution of a law or public policy,” § 2-9-111, MCA. Sovereign immunity, therefore, does not bar the relief sought in this action.
68. Each Defendant named in this action is bound by the provisions of the Montana Constitution. The Montana Constitution obligates each Defendant to swear an oath that they will enforce and uphold the provisions of the Montana Constitution.

PARTIES

Plaintiffs

Plaintiff Libby Threadgoode

69. Plaintiff Libby Threadgoode is a teacher-librarian at Billings West High School. She has held this position for nearly six academic years at Billings West. She has been in the Billings public school district for nearly 14 years. Ms. Threadgoode has a Master’s degree in curriculum and instruction.
70. As a teacher-librarian, Ms. Threadgoode provides guidance for school library standards. She also maintains, develops, and circulates the library collection and develops media resources with other

teachers while she designs lessons and co-teaches. On any given day, Ms. Threadgoode regularly interacts with students in the library who seek help or guidance on research projects. In addition, classes visit the library regularly to obtain support for their course-related learning goals.

71. In her capacity as a teacher, Ms. Threadgoode encounters students who express their sexual orientation and gender identity. Discussions regarding gender and sexuality frequently arise during informal classroom conversations. Such conversations also arise when students seek support from trusted adults in schools. HB 471 and SB 99 suppress teachers' and students' inclination to engage in such encounters.
72. After SB 99 was passed, Ms. Threadgoode met with her Administration to discuss how the new law was to be implemented in libraries. Despite being assured that legal advice was forthcoming, Ms. Threadgoode has received no guidance to date. She was, however, told to provide notice if she intended to discuss or address any issues of gender or sexuality in the library, which is an unduly burdensome standard. Many school library books have characters that are described by their gender identity (cisgender woman, cisgender man, nonbinary, trans woman, etc.) or are in romantic relationships, which pertains to sexuality.
73. Ms. Threadgoode was also instructed that if a student's parents opted that student out of a specific book or library resource, Ms. Threadgoode must respect that choice irrespective of any educational consequences and deny that student access to those materials.
74. In addition, to avoid disputes over the applicability of SB 99, many teachers who had personal libraries in their classrooms opted to remove those classroom libraries from the school. As a result, students lost access to valuable classroom libraries and important sources of intellectual growth.
75. Following HB 471's enactment, Ms. Threadgoode's School District has, once again, been forced to change its policies to fulfill the requirements of a bill fueled by animus. For example, Ms.

Threadgoode is on a committee focused on adopting literature for high school curriculum. As part of the literature adoption process, the committee creates a form, and the committee is now in the process of amending that form as a result of HB 471's enactment.

76. As a librarian, Ms. Threadgoode has a heightened level of fear of performing the essential functions of her job because of SB 99 and HB 471. She believes that both bills compel over-broad parental notice that serves to chill intellectual curiosity and treats 2S-LGBTQIA+ students differently than cisgender, straight students. She also fears that SB 99 and HB 471 will suppress spontaneous conversations with students about 2S-LGBTQIA+ issues.

77. Ms. Threadgoode is also the faculty advisor for Billings West's Genders and Sexualities Alliances student club ("GSA"). GSAs are student-run organizations that unite 2S-LGBTQIA+ and allied youth to build community and organize around issues impacting them in their schools and communities. GSA promotes positivity, inclusivity, and advocacy in school environments. Ms. Threadgoode has been the faculty advisor for the GSA at Billings West for four years. The GSA meets weekly.

78. At GSA meetings, students' identities and experiences related to gender and sexuality are frequently discussed, including the experiences of straight, cisgender allies in the group. The space is specifically designed for all students to share their experiences and ask questions in a safe, protected environment. GSA is an important part of a student's school experience regardless of their gender identity and sexual preferences.

79. After SB 99 was enacted, the GSA was required to post agendas 48 hours in advance of meetings. Rather than allowing the group to be student-centered and responsive to recent school experiences, SB 99 discourages such spontaneity. Conversations that spontaneously arise involving human sexuality and/or gender identity must be placed on hold to provide notice to parents. This

restrictive implementation of SB 99 serves to suppress the free and open exchange of ideas and concerns.

80. As the GSA advisor, Ms. Threadgoode previously spoke in classrooms about 2S-LGBTQIA+ issues. As a result of SB 99, Ms. Threadgoode is no longer invited to speak in those classrooms. Given HB 471's even stricter parental notification requirements, Ms. Threadgoode is less likely to give such presentations than ever before.

81. Prior to the enactment of SB 99 and HB 471, she spoke to history classes about WWII artifacts related to queer history. Ms. Threadgoode also spoke to health classes about human sexuality, but has not been asked to do so since the SB 99 and HB 471 were enacted.

82. Ms. Threadgoode has observed the negative impact that SB 99 has on 2S-LGBTQIA+ students. 2S-LGBTQIA+ students know that they are being singled out and targeted by SB 99. These students fear that SB 99 will ultimately erase their 2S-LGBTQIA+ identities from public schools. This erasure and targeting of 2S-LGBTQIA+ people in schools has substantial academic, physical, and emotional costs.

83. Notably, Ms. Threadgoode is a member of the 2S-LGBTQIA+ community and has a child in Montana public schools. She fears that her child's descriptions or discussion of their family will be subject to the bills' notice requirements, and that the school climate created by the bills will encourage hostile comment or reaction (while children with cisgender or heterosexual parents would likely be permitted to share about their experiences without providing notice and without hostile reaction).

84. Ms. Threadgoode also fears that her child will not have the benefit of seeing their family reflected in school-assigned literature in the same way that children from cisgender families might. Prior to SB 99 and HB 471's enactment, teachers and librarians would endeavor to offer inclusive

curricula. Now, however, Ms. Threadgoode’s child’s classmates can opt out of hearing about their family if offended by the family’s inclusive character. This has a corrosive effect on both students and teachers as well as the classroom environment generally.

85. The law’s broad and vague definitions of “identity instruction” and “human sexuality instruction” significantly impact classroom lessons and group activities. School counselors and teachers must now carefully scrutinize any lesson or discussion that might touch on identity development, relationships, or gender expression, for fear of triggering the notification and opt-in requirements. This has reduced classroom-based mental health and relationship education, causing many educators to avoid these topics entirely. The burden of providing prior notice for any discussion of intimate relationships is particularly acute, as such topics are pervasive in both academic content and student life.

86. There is even a possibility that school districts would interpret HB 471 and SB 99 to restrict teachers’ ability to access professional development sessions focused on the 2S-LGBTQIA+ community, which could have a deeply detrimental impact on students’ wellbeing. Such training also helps shift educator beliefs, equips them to interrupt gender-based bullying, and builds confidence to implement inclusive practices. If HB 471 discourages schools from offering this 2S-LGBTQIA+ inclusivity professional development because if it is interpreted as falling under the law’s broad definition of “identity instruction” the existing evidence indicates that this will contribute to harmful school climate and undermine the very student support systems that contribute to improved academic outcomes.

87. HB 471 and SB 99 contribute to a pervasive sense among teachers and counselors that they are under a microscope and that the public lacks trust in their professional judgment. This atmosphere

of suspicion and surveillance chills speech and discourages educators from engaging fully with students on important topics related to identity, relationships, and mental health.

88. This is especially true under HB 471's changes, as Ms. Threadgoode questions whether teaching about the book entitled *Marrow Thieves*, which includes a gay character, would constitute instruction that has the goal or purpose of informing students of sexual orientations.

89. Ms. Threadgoode is particularly concerned about SB 99 and HB 471's impacts on the quality of students' education. Under HB 471, parents must opt their child into instruction related to gender identity. Otherwise, the student may not participate in the lesson. In that case, to Ms. Threadgoode's concern, students would be placed in a separate classroom and would lose the opportunity to engage in meaningful thought-provoking discussion with fellow students and an instructor.

90. Furthermore, HB 471's opt-in mandate and amended notification window impose even greater obstacles for teachers to navigate than SB 99. Now, it will be even more challenging for Ms. Threadgoode to lesson plan because the new 5-to 14-day parental notification requirement is far less flexible than the already burdensome 48-hour notification window. As Ms. Threadgoode aptly described, these bills create a moving target for teachers to hit.

Plaintiff Brett Thackeray

91. Plaintiff Brett Thackeray is a Spanish teacher (grades 8-12) at Fergus High School and Lewistown Junior High School. Mr. Thackeray has been employed by the Lewistown Public School District for two academic years. Prior to SB 99 and HB 471's enactment, Mr. Thackeray relied on booklets with high-frequency words in his classroom to support students' language learning process. The booklets included stories exploring various relationship types and the significance of reaching the

age of 15 for girls in certain cultures. SB 99 and HB 471 strip Mr. Thackeray of his ability to assign such booklets, as they include topics related to human sexuality and gender identity.

92. During some of his interactions with students, Mr. Thackeray is asked to share stories related to his marriage and relationship with his wife. Under the unclear demands of SB 99 and HB 471, he reasonably fears he would be violating these laws just by answering the question “how did you meet your wife?”—an innocuous, standard question a student recently asked Mr. Thackeray.

93. Mr. Thackeray also fears the severe academic impacts of these bills’ enactment. He occasionally assigns group activities to his students, which would be difficult to plan under the parental notification measures imposed on classroom teachers by SB 99 and HB 471. Furthermore, students who are absent from those lessons will not reap the benefits of learning from the variety of perspectives and critical thinking opportunities presented by their classmates. Absent students will also be required to complete make-up assignments that will not be able to meet the same rigorous, engaging standards offered by Mr. Thackeray’s live, in-classroom lessons.

94. Mr. Thackeray also has serious concerns about the bills’ impacts on students’ mental health. Some teachers are the only trusted adults in a student’s life, and this bill will reduce opportunities for students to establish those connections. For example, if a student is experiencing bullying related to their 2S-LGBTQIA+ identity, the student may seek out a teacher from that community to process such experiences with. Under the bills’ requirements, the student nor teacher may feel at liberty to establish such a connection because doing so would require an acknowledgment of sexual orientation.

95. Lastly, Mr. Thackeray is concerned about the bills’ vagueness. Mr. Thackeray serves as the supervisor for the Spanish Club and Ski Club. He also co-coaches golf. In his roles as an educator and leader in several extracurricular activities, his goal is to educate students on our inherent equity

as human beings and the important role compassion plays in our treatment of each other. SB 99 and HB 471's lack of clarity cause Mr. Thackeray to fear the consequences of acknowledging marginalized communities during those conversations on equity, as he could be inadvertently violating the law depending on whether that acknowledgment would be considered instructing students with the goal or purpose of teaching about gender identity and human sexuality. Without further guidance and clarity, he does not know what he is permitted to discuss (proactively or responsively) with students. He has not received any guidance from Lewistown School District regarding the implementation of the bills.

Plaintiff Sarah Smith on behalf of Izzy Smith

96. Plaintiff Sarah Smith asserts claims on behalf of her minor daughter, Izzy Smith. Izzy Smith is currently a 12th grade student at Fergus High School.
97. Izzy participates in several school-sponsored extracurricular activities, including serving as a mentor through the school's mentorship program and a team manager for two sports teams.
98. As a student who serves as an ally to her 2S-LGBTQIA+ classmates, Izzy is concerned about the bills' serious impacts on her classmates' mental health. Izzy anticipates the bills will result in 2S-LGBTQIA+ students feeling alienated and unsafe going to trusted adults regarding feelings of depression and anxiety. Furthermore, Izzy is concerned SB 99 and HB 471's requirements are likely to embolden student-on-student bullying of 2S-LGBTQIA+ individuals.
99. Lastly, in addition to Izzy's concerns related to her classmates' socio-emotional needs and wellbeing, she is also concerned about the quality of her education under these bills. Izzy is concerned her teachers will begin to self-censor during their lessons, which impedes her ability to learn about varying perspectives and engage in stimulating discussions about marginalized communities.

Plaintiff Montana School Counselors Association (“MSCA”)

100. Plaintiff MSCA is a § 501(c)(3) non-profit, dues-paying membership organization that advocates on behalf of school counselors and seeks to protect school counselors’ interests. MSCA has roughly 500 members and is governed by a member-elected board of directors and staff. MSCA also maintains by-laws and a committee structure that facilitates MSCA advocacy including legislative advocacy on behalf of its members.
101. MSCA is dedicated to promoting professionalism and ethical practices while empowering and advocating for all school counselors.
102. MSCA’s principles and beliefs include:
- a. A standards-based comprehensive school counseling program for all students in every school enhances student academic, career, and social/emotional success;
 - b. All students have dignity, worth, unique characteristics and potential;
 - c. School counselors are bound to adhere to the ASCA Ethical Standards for school counselors;
and
 - d. School counselors are expected to work collaboratively with school and community stakeholders.
103. MSCA members provide dedicated support to 2S-LGBTQIA+ students in nearly every public school in Montana. Conversations between school counselors and students are necessary, sensitive, and confidential. School counselors are bound by ethical rules governing the confidentiality of communications. SB 99 and HB 471 place school counselors between the proverbial rock and a hard place—they cannot comply with the parental notification of the law without violating their professional obligations to maintain confidentiality. This prevents MSCA members from performing their professional responsibilities.

104. MSCA brings this action on its own behalf and on behalf of its school counselor members who are adversely affected by SB 99 and HB 471.

Defendants

105. The Defendant State of Montana exercises sovereignty and jurisdiction within its boundaries excepting such places under the exclusive jurisdiction of the federal government. § 2-1-102, MCA. By and through its agents and employees, the State of Montana has the power to control the institutions of public education in this State.

106. Defendant Governor Greg Gianforte is vested with executive power of the State of Montana. Governor Gianforte holds the right to sign, not sign, or veto bills passed by the legislature. Mont. Const. art. VI, § 10(1). Governor Gianforte signed both SB 99 and HB 471 into law. Governor Gianforte additionally serves as the President of the State Board of Education § 20-2-101(2), MCA.

107. The Defendant Montana Board of Public Education (“MBPE”) exercises general supervision over Montana’s public school system, which includes establishing policies for the accreditation of schools, teacher certification, distribution of state equalization aid, and special education. § 20-2-121; MCA; Mont. Admin. R. 10.51.103, 104; 10.55.601. The MBPE also considers the suspension or revocation of teacher certificates and the approval or disapproval of educational media. §§ 20-2-121(2), (7), MCA. The MBPE maintains an office in Helena, Montana, and an internet website, <https://bpe.mt.gov/Home/About-Us>. The MBPE’s New Member Orientation Manual is available online, <https://bpe.mt.gov/Home/Board-Members/2021-BPE-New-Member-Handbook.pdf>.

108. Along with the Montana Board of Regents, the MBPE is responsible for “long range planning and for coordinating and evaluating policies and programs for the public educational systems of the state.” § 20-2-101(1), MCA.
109. The Defendant Montana Office of Public Instruction (“OPI”) is an agency within the executive branch of the Montana government located in Helena, Montana. State of Montana Directory, <https://directory.mt.gov/govt/state-dir/agency/opi>; *see also* Mont. Const. art. VI, §1(1) (stating that executive branch officers include the superintendent of public instruction). OPI is responsible for supervising the Superintendent of Public Instruction. Mont. Admin. R. 10.1.101.
110. OPI is headed by the Superintendent of Public Instruction (“SPI”). Montana Office of Public Instruction – Office of the Superintendent, <https://opi.mt.gov/Leadership/Management-Operations/Office-of-the-Superintendent/Executive-Staff>. Susie Hedalen is the current SPI. *Id.* The SPI is responsible for the general supervision of the Montana public schools and school districts. Mont. Const. art. X, § 9(3)(b); § 20-3-106, MCA. The SPI is responsible for accrediting Montana public schools. § 20-7-102(1), MCA. The SPI must review the operating conditions for each school district and school to determine compliance with accreditation standards. § 20-7-102(1), MCA. The SPI has the duty to “faithfully work in all practical and possible ways for the welfare of the public schools of the state.” § 20-3-105(10), MCA.

CLAIMS FOR RELIEF

COUNT I

MONTANA CONSTITUTION ARTICLE II, §7 (SPEECH, EXPRESSION) (ALL PLAINTIFFS)

111. Plaintiffs hereby incorporate all other paragraphs of this complaint as if fully set forth in this claim.

112. Mont. Const. Art. II, § 7 provides: “No law shall be passed impairing the freedom of speech or expression.” This protects not only the right of students, teachers, librarians, and counselors to speak and converse freely without undue interference by the state, but also protects the right to receive speech and written materials—even controversial materials—without undue state interference. The Montana Constitution prohibits religious sectarianism or advocacy in any institution of public education in Montana. Mont. Const. Art X, § 7.
113. Mont. Const. Art. II § 15 provides: “[t]he rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of Article II unless specifically precluded by laws which enhance the protection of such persons.” This extends the rights protected by Art. II §7 to Montana public high school and middle school students, including the Plaintiffs and their representatives in this action.
114. Under Montana law, a statute is unconstitutionally overbroad in violation of Montana’s equivalent of the First Amendment to the United States Constitution, Mont. Const. Art. II, § 7, if the statute restricts or burdens speech that is otherwise constitutionally protected. The speech HB 471 seeks to limit or regulate is clearly constitutionally protected. Parental notification requirements, the chilling of speech and controversies over sexual orientation, gender identity and related social issues are at the heart of contemporary political and social discussions in the United States. *See Bd. of Ed. Island Trees Free Sch. Dist. v. Pico*, 457 U.S. 853 (1982); *Tinker v. Des Moines School Dist.* 393 U.S. 503 (1969); *Bostock v. Clayton Cty.*, 590 U.S. 644 (2020).
115. HB 471’s opt-in scheme for identity instruction and notification requirements chill speech and restrict access to information. The ‘unexpected student-initiated inquiry’ exception is insufficient to protect free speech, as it does not allow for planned, comprehensive, or meaningful instruction on identity or sexuality topics. Teachers and students are left to guess what is

permissible, leading to self-censorship and effectively silencing 2S-LGBTQIA+ topics. The ambiguity surrounding what constitutes ‘unexpected’ or ‘to the extent necessary to resolve the inquiry’ further chills discussion and impairs the right to receive information guaranteed by Mont. Const. Art. II, § 7.

116. In addition to its overbreadth, SB 99 and HB 471 deny students and teachers their right to receive and share important aspects of 2S-LGBTQIA+ history, literature, art, and contemporary politics without state or parental interference, all in violation of the Montana Const. Art. II § 7. *See also Pico*, 457 U.S. at 867 (“we have held in a variety of contexts [that] the Constitution protects the right to receive information and ideas . . . This right is an inherent corollary of the rights of free speech and press that are explicitly guaranteed by the Constitution.”).

117. The parental notification required by SB 99 and HB 471 without consent and under the threat of punishment is compelled speech forbidden by the Montana Constitution.

118. There is no compelling state interest or important government purpose served by SB 99 and HB 471 and their breach of free speech protections.

119. SB 99 and HB 471, on their face and as applied, violate Plaintiffs’ constitutional rights under Mont. Const. Art. II § 7 and warrant injunctive and declaratory relief in favor of the Plaintiffs.

COUNT II
MONTANA CONSTITUTION ARTICLE II, §10
(PRIVACY)
(ALL PLAINTIFFS)

120. Plaintiffs hereby incorporate all other paragraphs of this complaint as if fully set forth in this claim.

121. Mont. Const. Art. II, § 10 provides, “[t]he 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.” This is a fundamental right in Montana and burdens upon its exercise are subject to strict scrutiny.

122. Mont. Const. Art. II § 15 provides: “[t]he rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.” This extends the protections of Mont. Const. Art. II, § 10 to Montana middle and high school students, including the Plaintiffs in this action.

123. SB 99 and HB 471’s notification and opt-in requirements compel the disclosure of sensitive student information to parents, even when students seek confidential counseling or support. The laws provide no mechanism to protect such confidential information from further dissemination, leaving students and counselors vulnerable to additional breaches of privacy. The State’s asserted interest in parental control is neither compelling nor narrowly tailored, especially given the harm to student privacy and well-being, as required by Montana’s strong constitutional privacy protections.

124. SB 99 and HB 471 infringe upon the privacy rights of students, teachers, and counselors. Specifically, a student cannot receive confidential counseling services initiated by a teacher or school counselor if such counseling has the goal or purpose of exploring or informing students and educators’ discussions of “identity instruction,” as broadly defined by HB 471, or references gender identity or sexual orientation, without first providing the student’s parents or guardians with notice. Such notice does not require consent of the student, teacher, or counselor. Indeed, SB 99 requires that notice be provided notwithstanding requests that such communications remain confidential. Furthermore, parents control the counseling process by granting or restricting permission.

125. The best practices for teachers, counselors, and school psychologists call for creating safe and affirming environments for all students, including 2S-LGBTQIA+ students. Suggested steps to provide such an environment include sharing visible and public signs of support. Something as simple as posting a Pride flag, safe space sticker, sharing personal pronouns in email signatures, agreeing to advise a student Gender & Sexuality Alliance (GSA), providing a number to a hotline serving 2S-LGBTQIA+ youth, or sharing flyer for a local 2S-LGBTQIA+ support group could be seen as violating the language of SB 99 and HB 471. These are the kinds of actions called for by scholars in these fields as well as professional organizations including the National Association of School Psychologists, National Education Association, and the American School Counselor Association.
126. Although HB 471 compels the involuntary disclosure of confidential information to parents and/or guardians, the statute has no mechanism with which to protect such confidential information from broader dissemination. This leaves students and counselors vulnerable to further unconsented breaches of their rights to privacy.
127. The State's asserted interest in limiting instruction related to 2S-LGBTQIA+ issues is not compelling nor narrowly tailored and breaches Plaintiffs' privacy rights as set forth in Mont. Const. Art. II, §10.
128. SB 99 and HB 471, on their face and as applied, violate Plaintiffs' constitutional rights to privacy under Mont. Const. Art II § 10 and warrant injunctive and declaratory relief in favor of Plaintiffs.

COUNT III
MONTANA CONSTITUTION ARTICLE II, §17
(DUE PROCESS)
(ALL PLAINTIFFS)

129. Plaintiffs hereby incorporate all other paragraphs of this complaint as if fully set forth in this claim.

130. Mont. Const. Art. II, § 17 provides, “[n]o person shall be deprived of life, liberty, or property without due process of law.”

131. A statute is unconstitutionally vague if it fails to provide a person of ordinary intelligence a reasonable opportunity to know what must be done to comply with the law’s directive. *State v. Dugan*, 2013 MT 38, ¶ 67, 369 Mont. 39, 303 P.3d 755.

132. Although HB 471 purports to provide narrower definitions of “human sexuality instruction,” “identity instruction,” and “instruction,” the law remains unconstitutionally vague. Among other things, it is unclear whether confidential counseling constitutes “instruction,” whether parents may provide opt-in consent for identity instruction outside the annual or semester window, and what constitutes an “unexpected” inquiry.

133. The rigid 5-to-14-day notification window risks inadvertent violations and arbitrary enforcement. These ambiguities force educators and staff to self-censor and avoid topics, chilling constitutionally protected speech and educational content.

134. Additionally, HB 471’s definitions of “human sexuality instruction” and “identity instruction” remain unconstitutionally vague, thus implicating due process rights.

135. HSI is defined as, in part, “instruction that has the goal or purpose of studying, exploring, or informing students about . . . intimate relationships, sexual anatomy, sexual reproduction”

136. Identity instruction is defined as “instruction that has the goal or purpose of studying, exploring, or informing students about gender identity or gender expression, or sexual orientation.”

137. Instruction is defined in part as, “the conduct of organized learning activities, including the provision of materials, for students in a public school, whether conducted by a teacher or other school staff or guests invited at the request of the school”
138. “Instruction that has the goal or purpose of exploring sexual orientation” and “organized learning activities” could reasonably be interpreted to include anything from assigning works by Shakespeare or Toni Morrison, to wearing unisex clothing, to wearing Pride-related merchandise, to discussing recent Supreme Court jurisprudence, to hosting same sex married couples at school-sponsored events.
139. Thus, HB 471’s definitions are equally as useless as SB 99’s when assessing what the bills actually require of teachers and parents.
140. Notwithstanding the United States Supreme Court decision in *Epperson v. Arkansas*, 393 U.S. 97 (1968), HB 471 does not clarify whether the following would be considered prohibited instruction related to human sexuality or gender identity: reference to reproductive organs in a biology or anatomy textbook or teaching the structure of DNA and its role in human development including (as it must if taught accurately) reference to sexual reproduction. Accordingly, HB 471’s definitions of HSI and identity instruction remain unconstitutionally vague.
141. HB 471 and SB 99’s reference to “intimate relationships” is equally vague and remains undefined. Neither bill clarifies whether “intimate relationships” refers to opposite sex relationships, same-sex relationships, platonic friendships, all of the above, or something else. Without clearer definitions, it is impossible to determine what discussions, teachings, or readings about “intimate relationships” HB 471, SB 99, and the Defendants intend to control. The Due Process Clause of the Montana Constitution forbids such vagueness in the face of potential punishment for violations of HB 471 and SB 99.

142. Furthermore, the approaches to instructing students on HSI and identity instruction are inexplicably different and leave room for unintentional violation.
143. The HSI scheme operates under an “opt-out” system, which grants parents the right to withdraw their child from HSI.
144. The identity instruction scheme operates under an “opt-in” system, which requires parents or guardians to submit written permission to allow their child to attend identity instruction.
145. Without further explanation and instruction as to why the schemes so drastically differ and how school personnel should navigate enacting both systems in practice, school instructors and administrators could reasonably misinterpret the instructions, fail to notice the difference in the two schemes, and/or fail to adhere to the scheme of one category while complying with the other due to overlap in the substance of HSI and identity instruction lessons and discussions.
146. As a result of the due process deficiencies in HB 471 and SB 99, teachers and counselors risk punishment for alleged violations of a poorly defined and vague statute without recourse to a proper and fair due process review.
147. Like educators in states with similarly restrictive laws, educators who are trying to stay within the bounds of the law may struggle to understand how to implement it.
148. There is no compelling state interest or important government purpose served by SB 99 nor HB 471 and their substantive and procedural due process deficiencies.
149. The due process deficiencies of SB 99 and HB 471 warrant injunctive and declaratory relief in favor of the Plaintiffs.

COUNT IV
MONTANA CONSTITUTION ARTICLE X, § 1
(EDUCATIONAL OPPORTUNITY)
(SMITH)

142. Plaintiffs hereby incorporate all other paragraphs of this complaint as if fully set forth in this claim.

143. Mont. Const. Art. X, § 1 provides that: “It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.” Art. X, § 1(3) also requires the “legislature [to] provide a basic system of free quality public elementary and secondary schools.” (emphasis added).

144. The right to receive equal educational opportunity is a fundamental right established to provide Montanans with the opportunity to develop to their full educational potential. *State, ex rel., Bartmess v. Bd. of Trustees of Sch. Dist. No. 1*, 223 Mont. 269, 274, 726 P.2d 801, 804 (1986). The limitations or burdens on this right are subject to strict scrutiny.

145. The restrictions and burdens imposed by SB 99 and HB 471 disproportionately focus on the teaching, counseling, and discussion of issues that impact 2S-LGBTQIA+ students. 2S-LGBTQIA+ students are more likely than cisgender students to be adversely affected by limitations or restrictions on teaching or counseling and notice obligations that accompany the teaching of sexual orientation and gender identity. This reflects the anti-transgender bias of the Defendants and their extensive efforts to remove issues of gender and sexual orientation from discussions in Montana public schools. Moreover, the restrictions imposed by SB 99 and HB 471 deny the right of students – and particularly 2S-LGBTQIA+ students - to access a “quality” public education.

146. The parental notice provisions of SB 99 and HB 471 coupled with the threat of discipline for non-compliance with SB 99 and HB 471 frequently leads to self-censorship by administrators, teachers, counselors and school psychologists. This robs 2S-LGBTQIA+ students of their history and identity. It also violates the guarantees of equal educational opportunity set forth in Mont. Const. Art. X, §1.

147. Montana's public school system provides school counselors to assist students with their social and emotional needs so that they can be prepared for academic rigor. This is a particularly important service for middle and high school students and members of the 2S-LGBTQIA+ student community.

148. SB 99 and HB 471 prohibit school counselors and psychologists from assisting students with their social or emotional needs without first notifying parents or guardians if such assistance includes "providing information" about sexual orientation or gender identity or gender transition. The danger of SB 99 and HB 471 is that students will choose to forego needed counseling regarding sexual orientation or gender identity and transition rather than have their parents notified of the conversation or counseling session. The notification requirements of SB 99 and HB 471 ultimately impair the ability of school counselors and psychologists to practice their professions.

149. As a result, students seeking counseling regarding issues they face concerning sexual orientation or gender identity and transition will not receive the equal educational opportunity and counseling to which they are entitled. There is no compelling interest or important government purpose served by denying students the benefits of Mont. Const. Art. X § 1.

150. Cisgender and heterosexual students are not subject to the equivalent burdens and deprivations that SB 99 and HB 471 and the Defendants have imposed on the 2S-LGBTQIA+ students and their community.

151. Therefore, injunctive and declaratory relief in favor of the Plaintiffs is appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for an Order:

- (1) Entering a Declaratory Judgment finding SB 99 and HB 471 unconstitutional both on their face and as applied and permanently enjoining Defendants and any of their agents and employees from enforcing any aspect of the laws;
- (2) Awarding Plaintiffs their reasonable attorneys' fees and costs;
- (3) Retaining jurisdiction over this matter until such time as the Court has determined Defendants have, in fact, fully and properly fulfilled its Orders; and
- (4) Awarding such other and further relief as the Court deems just and proper.

DATED this 28th day of October, 2025.

/s/ Alex Rate

Alex Rate (Bar No. 11226)

ACLU of Montana

P.O. Box 1968

Missoula, MT 59806

406-204-0287

CERTIFICATE OF SERVICE

I certify a true and correct copy of the foregoing was delivered via electronic filing to the following:

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena, MT 59620

Michael Noonan (Govt Attorney)
215 N SANDERS ST
Helena, MT 59601-4522

Michael D. Russell (Govt Attorney)
215 N Sanders
Helena, MT 59620

Alwyn T. Lansing (Govt Attorney)
215 N. Sanders St.
Helena, MT 59620

Dated: October 28, 2025

/s/ Alex Rate

Alex Rate

CERTIFICATE OF SERVICE

I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Complaint - Amended Complaint to the following on 10-28-2025:

Lilia Norma Tyrrell (Attorney)
716 South 20th Avenue
Suite 100
Bozeman MT 59718

Representing: Daniel Johnson, Empower MT, Libby Threadgoode, Eva Stahl, R. S., The Montana Association of School Psychologists, The Montana School Counselors Association
Service Method: eService

Jordan P. Helvie (Attorney)
716 S. 20th Ave. Suite 101
Bozeman MT 59718

Representing: Daniel Johnson, Empower MT, Libby Threadgoode, Eva Stahl, R. S., The Montana Association of School Psychologists, The Montana School Counselors Association
Service Method: eService

Alwyn T. Lansing (Govt Attorney)
215 N. Sanders St.
Helena MT 59620

Representing: Elsie Arntzen, Montana Office of Public Instruction, Montana Board of Public Education, State of Montana, Gregory Gianforte
Service Method: eService

Michael Noonan (Govt Attorney)
215 N SANDERS ST
HELENA MT 59601-4522

Representing: Elsie Arntzen, Montana Office of Public Instruction, Montana Board of Public Education, State of Montana, Gregory Gianforte
Service Method: eService

Thane P. Johnson (Govt Attorney)
215 N SANDERS ST
P.O. Box 201401
HELENA MT 59620-1401

Representing: Elsie Arntzen, Montana Office of Public Instruction, Montana Board of Public Education, State of Montana, Gregory Gianforte
Service Method: eService

Michael D. Russell (Govt Attorney)

215 N Sanders

Helena MT 59620

Representing: Elsie Arntzen, Montana Office of Public Instruction, Montana Board of Public Education, State of Montana, Gregory Gianforte

Service Method: eService

Austin Miles Knudsen (Govt Attorney)

215 N. Sanders

Helena MT 59620

Representing: Elsie Arntzen, Montana Office of Public Instruction, Montana Board of Public Education, State of Montana, Gregory Gianforte

Service Method: eService

Scott Michael Dinner (Attorney)

799 9th St. NW., Ste, 500

Washington DC 20001

Representing: Daniel Johnson, Empower MT, Libby Threadgoode, Eva Stahl, R. S., The Montana Association of School Psychologists, The Montana School Counselors Association

Service Method: Email

Matthew W. Costello (Attorney)

53 State Street, Exchange Place

Boston MT 02109

Representing: Daniel Johnson, Empower MT, Libby Threadgoode, Eva Stahl, R. S., The Montana Association of School Psychologists, The Montana School Counselors Association

Service Method: Email

Electronically Signed By: Alexander H. Rate

Dated: 10-28-2025