

ACLU of Montana Challenges SB 458, Bill Defining Sex, As Both “Foolish and Discriminatory”

FOR IMMEDIATE RELEASE

Tuesday, December 19, 2023

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MISSOULA, MT. — Yesterday, the ACLU of Montana –representing Montanans from across the State–filed a Complaint challenging a new law that seeks to erase 2S-LGBTQIA+ Montanans from dozens of sections of the Montana Code. The suit alleges that this new law violates multiple provisions of the Montana Constitution. Along with the Complaint, the Plaintiffs also filed a motion for summary judgment[1] asking a court to declare SB 458, which claims that all Montanans can and must be classified by “exactly two sexes, male and female,” as unconstitutional and therefore void. Montana Governor Greg Gianforte signed SB 458—which was [drafted in part](#) by the conservative Montana Family Foundation—into law in March of this year.

“SB 458 is ridiculous. I live my life as the man that I am, and that’s how people see me when I’m out in the world, but SB 458 attempts to erase that simple truth,” **said Shawn Reagor, a transgender man, resident of Lewis and Clark County, and plaintiff in the case.** “As a man who happens to be transgender, SB 458 could force me into women’s restrooms and locker rooms, the very thing this type of legislation claims to want to protect against.”

“For thousands of years, Indigenous communities have known what Western science has finally recognized: that the complex diversity of human experience includes many people who, like me, are neither male nor female” **said Dandilion Cloverdale, a Two-Spirit individual, resident of Missoula County, and**

plaintiff in the case. “SB 458 is bad science and bad policy; the whole thing is just creepy.”

“It is invasive and inappropriate for the government to identify and define me by my reproductive capacity,” **said Jamie Doe, a nonbinary person, resident of Lewis and Clark County, and plaintiff in the case.** “As a public health professional, I know that effective public health relies on information accuracy. Far from increasing accuracy, SB 458 would force me to commit fraud and provide inaccurate information by misidentifying myself and other nonbinary people attempting to access health services.”

“I, like all humans with ovaries, was born with all the eggs I would ever have,” **said Linda Troyer, a resident of Big Horn County and plaintiff in the case.** “But SB 458 defines female humans, in part, as having bodies that ‘produce’ eggs during their life cycles, which, as a matter of medical science, something human females simply do not do. SB 458 also defines human females as having endocrine systems ‘oriented around’ reproduction, but I’m post-menopausal and scientifically, none of this applies to me now. According to SB 458, I’m no longer a female despite having birthed two children, which is absurd, aggravating and insulting. How am I to apply to renew my fishing license, let alone my drivers license? I’m required on the renewal form to swear, under penalty of criminal prosecution, that I’m female or male and Montana law now says I’m neither.”

“From the beginning, it was obvious that the legislature did not understand what it means to be intersex,” **said Jane Doe, a resident of Montana and plaintiff to the case.** “First we were left out of SB 458, then we were dismissed as anomalies. But I’m not an anomaly, I’m a human being and an intersex Montanan. This policy puts me in an absurd position: according to SB 458’s scientifically imprecise, over-simplified and erroneous definitions, I apparently cannot declare myself as either male or female. And it’s all thanks to elected officials who would rather prioritize partisan politics and polarizing debates over the constituents they’re supposed to represent.”

“The policymakers pushing SB 458 have given up on common sense, and seem to think they can simply legislate away the diversity of Montana’s residents,” **said Akilah Deernose, Executive Director at the ACLU of MT.** “By forcing Montanans into two specific boxes, Montana’s conservative movement is pushing a law that is both foolish and discriminatory. As if that weren’t enough, the bill falls

short of numerous Montana legislative requirements, including accurate bill titles, specificity of legislative focus, and violation of due process. The whole thing should be thrown out.”

In this lawsuit, the Plaintiffs assert that SB 458 violates the Montana Constitution’s requirement that each bill enacted by the legislature must contain “only one subject, clearly expressed in its title.” SB 458 violates this “single subject” requirement by amending 41 sections in 20 different titles in the Montana Code Annotated. SB 458 also violates the Montana Constitution’s separation of powers provision, which provides that the Courts - not the Legislature - are singularly empowered to interpret the provisions of Montana’s Constitution.

Counsel for Plaintiffs are: Alex Rate and Marthe Y. VanSickle of ACLU of Montana and Kyle Gray, Brianne McClafferty, Katy Brautigam and Bailey Nickoloff from Holland & Hart, L

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