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**IN THE FIRST JUDICIAL DISTRICT COURT
LEWIS and CLARK COUNTY**

**EMPOWER MT; THE MONTANA
SCHOOL COUNSELORS
ASSOCIATION; THE MONTANA
ASSOCIATION OF SCHOOL
PSYCHOLOGISTS; DANIEL
JOHNSON; LIBBY THREADGOODE;
and STUDENT PLAINTIFFS EVA
STAHL and R.S.;**

Plaintiffs,

v.

Case No. D DV-25-2024-0000230-CR

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Presiding Judge: Hon. Chris Abbott

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 PUBLIC EDUCATION;)
)
Defendants.)

Plaintiffs Empower MT, the Montana School Counselors Association, the Montana School Association of School Psychologists, Daniel Johnson, Libby Threadgoode, and Student Plaintiffs Eva Stahl and R.S. (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, Elsie Arntzen, in her official capacity (“SPI”); the Montana Board of Public Education (“MBPE”); (collectively, “Defendants”), as set forth below.

INTRODUCTION

1. This is an action for declaratory and injunctive relief against Defendants arising out of a law that is intended to remove and/or chill mention or discussion of human sexuality, sexual orientation, and gender identity from public school classrooms across the State.

2. § 20-17-120, MCA (Senate Bill 99 (2021), hereinafter “SB 99”), has already been weaponized to discipline educators and counselors who seek to introduce holistic, inclusive, and compassionate concepts into the classroom setting about human sexuality, sexual orientation, and gender identity. Absent an injunction, SB 99 will remove and/or chill such discussions and

curricula, to the detriment of the general student population but particularly to the detriment of 2S-LGBTQIA+¹ students who already face stigma, bullying and marginalization.

3. SB 99 requires public school educators, including teachers, students, librarians, counselors, and school psychologists, to provide parental notification prior to providing any instruction, class work, impromptu or informal classroom discussion, presentation, assembly, guest speaker, counseling, books, magazines, journals, or periodicals which reference or are related in any way to human sexuality, sexual orientation, or gender identity. The SB 99 notification requirement is mandatory but without any evidence-based need in the educational context.

4. This broad and over-expansive notification requirement, in practice, has a deeply chilling effect on any inclusive and compassionate discussion or instruction on 2S-LGBTQIA+ identities and issues in Montana public schools.

5. SB 99 is part of a concerted effort by the Legislature and the Defendants to erase 2S-LGBTQIA+ histories, viewpoints, and curricula from public instruction. It is also part of a coordinated effort to create a climate of hostility towards 2S-LGBTQIA+ individuals. In short, SB 99 marginalizes the history, concerns, experiences, and aspirations of the 2S-LGBTQIA+ community.

6. “Human sexuality instruction,” as defined by the Montana Legislature and incorporated into SB 99, is flagrantly over-broad. It includes teaching or “*otherwise providing information*” about sexual orientation, gender identity, intimate relationships, human sexual anatomy, sexual reproduction, sexual acts, sexually transmitted infections, abstinence, contraception, and reproductive rights and responsibilities. This necessarily includes information about human variations in gender diversity, such as life-saving information concerning gender

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

transition, medical care for gender dysphoria, and the existence of intersex people. This also includes any discussion of any intimate partner relationship (such as that presented, for example, in *Romeo and Juliet*); or a discussion of a book that was written by an 2S-LGBTQIA+ author; or a discussion in biology class 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 government class about Supreme Court decisions touching on gender, sexual orientation, sexual reproduction; or education to prevent anti-2S-LGBTQIA+ bullying. SB 99 is so broad and so elastic that teachers, counselors, school psychologists and students cannot determine with any certainty when or where or on what topics parental notification is required.

7. If educators guess wrong, and are deemed to have violated SB 99, they are subject to discipline, including termination of their employment contracts and suspension of their teaching certificates. If librarians guess wrong, not only are they subject to professional discipline, but they also face the potential removal from library shelves of important works of literature, history, and art as well as materials that are supportive of 2S-LGBTQIA+ students.

8. Since its enactment in 2021, teachers, students, librarians, school psychologists and counselors have received little or no guidance as to type of conduct or what subjects or issues fall within the reach of SB 99. Nor has SB 99 been narrowly tailored to identify any compelling state interest in the restrictions and limitations imposed by SB 99 on K-12 educators and students.

9. Given the difficulty that educators have in determining what conduct runs afoul of SB 99, coupled with the risk of termination or other professional discipline, educators, counselors, and school psychologists avoid any topics that touch upon human sexuality and/or 2S-LGBTQIA+ rights, or inclusion. This results in the erasure of 2S-LGBTQIA+ history, literature, art, and

politics, from public schools. SB 99 gives rise to 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.)

ALLEGATIONS COMMON TO ALL COUNTS

The Importance of Inclusive Sex Education Curricula in Public Schools

10. 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 put into practice in the classroom. SB 99, however, impairs and inhibits sex education in Montana public schools. The parental notification requirements and the pre-textual use of SB 99 to suppress discussions of transgender issues, reproductive rights, and responsible sexual behavior defeat productive and necessary sex education in Montana public schools.

11. 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.”

12. 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).

13. Montana’s Office of Public Instruction has additional requirements around sexuality 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 be provided 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.”

14. 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.”

15. SB 99 and its supporters ignore the needs of students when it comes to sex education. This is a serious shortcoming as Montana students are at significant risk for behaviors that prudent sex education can limit.

16. Every two years, Montana conducts the Montana Youth Risk Behavior Survey (“YRBS”), which summarizes students’ responses about, *inter alia*, sexual behaviors.²

17. The 2021 YRBS shows that youth in Montana 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.

18. 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

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

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.

19. Comprehensive human sexuality education has been shown to reduce sexual activity, to reduce risky sexual behaviors, and to 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>.

20. Proponents of SB 99 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 have no need to discuss or teach such matters. This is not only demonstrably false but contrary to the recommendations of every reputable educational and medical association in the United States.

Harassment of 2S-LGBTQIA+ students in public schools

21. As a result of SB 99 and the Defendants' efforts to marginalize 2S-LGBTQIA+ students, a hostile environment has been created in Montana public schools that threatens 2S-LGBTQIA+ students. The requirement that all teaching or presentations that reference gender related issues and human sexuality first be reviewed by parents along with the related prohibition on teaching these topics in the absence of parental notice, does a serious disservice to all Montana students. In particular, it isolates 2S-LGBTQIA+ students and characterizes them as outsiders. Such characterizations inflict psychological harm on 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.

22. As a result, 2S-LGBTQIA+ students face substantial educational obstacles. They are also disproportionately subjected to bullying. *See LGBTQ Youth in Montana Report November 2017*, page 6 (finding 2S-LGBTQIA+ students were three times more likely than other students to have missed school due to safety concerns.)

23. Bullying leads to increased absenteeism and lower 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 GPA's than their counterparts.)

24. As a result of their 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>.

25. 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>.

26. 2S-LGBTQIA+ youth that live in communities that are accepting of 2S-LGBTQIA+ people are less likely to attempt suicide.

27. 2S-LGBTQIA+ youth that attend gender-affirming schools are less likely to attempt suicide.

28. It is essential that 2S-LGBTQIA+ students be provided with 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 be provided with a robust education that recognizes the contributions of the 2S-LGBTQIA+ community to American history, politics, and the arts. It is essential that 2S-LGBTQIA+ students be provided with a robust education that gives them an opportunity to understand and validate their gender and sexual orientation.

The Terms and Intent of Senate Bill 99

29. SB 99 requires school districts, teachers, librarians, and counselors to provide no less than two days advance notice to parents and guardians when “implementing or maintain(ing) a curriculum, providing materials, or holding an event or assembly” where a teacher, administrator, guest, or official, reference or discuss human sexuality or where other gender related topics will be held, taught, or presented.

30. SB 99 also provides that a school district shall make all curriculum materials used in any human sexuality instruction available for public inspection prior to the use of such materials. These disclosures and notice provisions apply not only to teaching and counseling but also to school assemblies, guest speakers, school library collections, and other organized school functions whether on or off the school campus.

31. The operative terms of SB 99 are astonishingly vague and of doubtful use. Some examples:

- a. “Human sexuality instruction,” as defined by SB 99 includes “providing information” 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. “Providing information” can include anything from explicit texts to physical appearance, to personal associations and club memberships, to political buttons, to stickers on a notebook, to fashionable clothing.

- b. “Gender Identity” refers to one’s innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. One’s gender identity can be the same or different from their sex assigned at birth. As defined, gender identity could refer to a cisgender person – that is, someone whose gender identity corresponds with their sex assigned at birth; a transgender person – that is, someone whose gender identity does not correspond with their sex assigned at birth; or another identity along the gender continuum. Thus, SB 99 could require that notice of curriculum involving cisgender individuals (for example, *Pride and Prejudice*) be provided to parents in advance of being taught.
- c. “Sexual orientation” refers to an inherent or immutable enduring emotional, romantic, or sexual attraction to other people. Sexual orientation refers to any sort of relationship or type of love, from heterosexual relationships to queer relationships. Thus, SB 99 would require that notice of curriculum involving heterosexual relationships (for example, *Romeo and Juliet*) be provided to parents in advance of being taught. There are very few works of English literature that do not implicate or reference sexual orientation in some form.

32. SB 99 does not describe what vague terms like “providing information” or “maintaining a curriculum” might mean. And although offered the opportunity to refine the definition of key terms used and limit the reach of SB 99, the Legislature steadfastly refused to do so in the 2023 legislative session.

33. Since its enactment, members of the Montana Legislature have declared that the intent in passing SB 99 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.

34. SB 99 is part of an effort to enforce a set of principles on public schools including Montana educators, counselors, school psychologists, and students that actively denies the legitimacy of discussions of gender identity, gender transition, reproductive rights, human sexuality, and public health in public schools.

35. 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 described feeling concerned 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>.

36. Other proponents expressed concern that public schools may be offering instruction that does not align with the proponent’s personal religious values. *Id.* 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 is contrary to Art. X, § 7 of the Montana Constitution which prohibits religious advocacy or sectarianism in Montana public schools.

37. The imposition of “Christian values” as a curriculum guide to middle and high school education is contrary to long standing Montana Establishment Clause precedent that limits the reach of religion in public schools.

38. Nonetheless and despite its many constitutional shortcomings, SB 99 was signed into law by Governor Gianforte on April 30, 2021, and is now codified at § 20-7-120, MCA.

SB 99's Impacts

39. Since its enactment in 2021, SB 99 has resulted in numerous negative impacts and widespread confusion in classrooms across the State.

40. 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.

41. School counselors and school psychologists 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 and school psychologists 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 -- irrespective of whether students or counselors or school psychologists consent to such disclosures.

42. SB 99 has also been weaponized against educators. One school librarian in central Montana was the subject of 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.

43. SB 99 gives anti-2S-LGBTQIA+ parents a potent cudgel against any teacher, counselor, school psychologist, or librarian who is dedicated to tolerance, inclusivity, and compassion in the classroom and school.

44. As a result, teachers, counselors, and school psychologists are likely to continue to steer clear of any instruction or counseling that might put them in the crosshairs of SB 99 and its proponents, to the detriment of public-school students across the State.

JURISDICTION AND VENUE

45. Original jurisdiction is conferred on this Court through Mont. Const. Art. VII, Section 4 of the Montana Constitution and § 3-5-302, MCA.

46. This Court has jurisdiction to grant declaratory relief under the Montana Uniform Declaratory Judgments Act. §§ 27-8-201, 202, MCA; M. R. Civ. P. 57.

47. This Court has jurisdiction to grant injunctive relief pursuant to § 27-19-101 *et seq.*, MCA.

48. Venue in this action is proper in Lewis and Clark County given that the state of Montana and its agencies and employees are Defendants. § 25-2-126, MCA,

49. 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.

50. Each of the Defendants named in this action are bound by the provisions of the Montana Constitution. The Montana Constitution obligates each of the Defendants to swear an oath that they will enforce and uphold the provisions of the Montana constitution.

PARTIES

Plaintiffs

51. Plaintiff Daniel Johnson is a high school English teacher (grades 10 and 12) employed by the Billings School District. Mr. Johnson has been teaching in the Billings School District for five years. Prior to enactment of SB 99, 2S-LGBTQIA+ topics came up frequently in Mr. Johnson’s classroom, and he regularly engaged in conversations with his students about 2S-LGBTQIA+ related issues. For example, if a student had a question about gender identity, Mr. Johnson would engage in dialogue about those issues in the moment. 2S-LGBTQIA+ issues also arose in the context of texts that Mr. Johnson taught. For example, prior to SB 99’s enactment, Mr. Johnson taught *The 57 Bus* by Dashka Slater. This nonfiction book includes an agender protagonist and focuses on the intersection between the justice system and marginalized identities. It is a fixture in his classroom as an excellent example to his students of an unreliable narrator. Mr. Johnson also included this book to provide positive representations of 2S-LGBTQIA+ characters and writers for all students in order to counter deficit-based narratives.

52. It's important to include 2S-LGBTQIA+ issues in classroom curricula, particularly for 2S-LGBTQIA+ students. There is a large body of scholarship suggesting that students retain more information when they are reading texts authored by members of their own communities. Inclusive curriculum and classroom practices translates to better academic outcomes, such as higher academic achievement and critical thinking skills. Research also suggests that students should be receiving information from a broad array of perspectives to develop a better understanding of bias, critical thinking skills, empathy, and civic engagement in an increasingly global world. Mr. Johnson believes strongly that diverse perspectives should be incorporated into his English curriculum. This type of instruction also promotes social and emotional belonging and translates into students' increased investment in the public education system.

53. Mr. Johnson was born and raised in Billings. His approach to inclusive teaching has been informed by his own learning experiences in Montana public schools. As a gay man, he never saw himself reflected in his own high school educational curriculum. When students do not see themselves reflected in school curricula, school staff, or policies, 2S-LGBTQIA+ students can feel ostracized by the erasure of their 2S-LGBTQIA+ presence.

54. After SB 99 was enacted, Mr. Johnson raised concerns about the enactment of the law with the administration at Billings Public Schools. Mr. Johnson was concerned that the new law would marginalize 2S-LGBTQIA+ students. Initially, the Administration did not provide any guidance or response. Eventually, the Administration advised generally that "if you believe there would be a complaint from a parent, provide notice to the parents." This provided little direction to Mr. Johnson or his fellow teachers on how to avoid violating SB 99 while at the same time preserving a quality educational experience for his students.

55. In addition, the Administration provided conflicting guidance for in-class spontaneous conversations. Mr. Johnson was instructed by one administrator that if spontaneous conversation about 2S-LGBTQIA+ issues occur, he is to pause the conversation immediately and provide 48 hours of notice to parents before resuming the conversation. On the other hand, he was told by another administrator that if the conversation is not initiated by the teacher, no notice was required. Notwithstanding conflicting instructions, the school district has been unable or unwilling to provide Mr. Johnson with written guidance or clarification. The conflicting guidance from Billings administrators is symptomatic of the lack of specificity and clarity to guide educators about the enforcement of SB 99. This underscores SB 99's due process deficiencies.

56. In the 2021-2022 school year Mr. Johnson was instructed to supply one alternative to a text for opt-out purposes. In 2022-2023, a student opted out of reading *The 57 Bus*. That student was provided with an alternative, but his parents responded that they didn't want their student to read anything related to sexual orientation or gender identity and they believed the alternative text might not fulfill that intent. The parents requested that the student instead read *1984*. Curriculum directors then requested to review Mr. Johnson's syllabus. Ultimately, no alternative was ever provided by the school Administration – the student was barred from reading either the original text or the suggested alternative text. Instead, the student spent 2-3 weeks in the library without any English instruction, and ultimately failed the course.

57. As a result of SB 99, parents are empowered to dictate the curricula for each individual student according to their own whims and political preferences rather than the professional educators' learning objectives or state academic standards. This is unworkable for both teachers and students and, as *The 57 Bus* situation illustrates, adversely impacts student

performance. As Mr. Johnson's experience demonstrates, SB 99 and the climate of hostility it has encouraged has created a chaotic academic environment for Montana public school students.

58. At the start of summer in 2023, Mr. Johnson prepared his classroom syllabus. Mr. Johnson includes his 1,300 page classroom textbook, *Advanced Language and Literature* (BFW), on the syllabus. However, the textbook contains numerous sources that are not individually cited on the syllabus. This textbook is a tool that enables Mr. Johnson's students to meet numerous state language and literature standards. Because of demands on his time, Mr. Johnson simply cannot list the 200+ references contained in *Advanced Language and Literature* on his syllabus. *Advanced Language and Literature* contains works by 2S-LGBTQIA+ authors and touches on issues related to sexual orientation and gender identity (i.e. Ursula le Guin, *The Ones Who Walk Away from Omelas*; JB Sanford, *Against Senate Constitution Amendment No. 8*; Carrie Chapman Catt, *Women's Suffrage is Inevitable*; Faith Erin Hicks, *Friends with Boys*; Maya Angelou, *I Know Why The Caged Bird Sings*; Malala Yousafzai, *Speech to the United Nations*; Jane Shore, *Happy Family*). Mr. Johnson does not know whether his current practice of posting his syllabus alone satisfies the requirements of SB 99 or whether he is now at risk of violating SB 99 and the loss of his teaching certificate. He has been unable to obtain further guidance from the school district.

59. Plaintiff Libby Threadgoode is a teacher-librarian at Billings West High School. She has held this position for four academic years at Billings West. She has been in the Billings public school district for over ten years. Ms. Threadgoode has a Master's degree in curriculum and instruction.

60. 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 learning goals.

61. In her capacity as a teacher, she encountered students who expressed their sexual orientation and gender identity. Discussions regarding gender and sexuality frequently take place in classrooms, as part of informal conversations, and when students seek support from trusted adults in schools. SB 99 suppresses such open encounters.

62. After SB 99 was passed, Ms. Threadgoode met with her Administration to discuss how the new law was to be implemented in libraries. Ms. Threadgoode was assured that legal advice was forthcoming, but to date she has not received any guidance. She was, however, told to provide notice if any issues of gender or sexuality were going to be discussed or addressed in the library. That is an unduly burdensome standard. Many books in the library 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. Ms. Threadgoode was also instructed that if a student's parents opted that student out of a specific book or library resource, Ms. Threadgoode was required to respect that choice irrespective of any educational consequences and deny that student access to those materials.

63. 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.

64. As a librarian, Ms. Threadgoode has a heightened level of fear of performing the essential functions of her job because of SB 99. She believes that SB 99 compels 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 will suppress-spontaneous conversations with students about 2S-LGBTQIA+ issues.

65. Ms. Threadgoode is also the faculty advisor for Billings West's Genders and Sexuality Alliance ("GSA"). The GSA is a student club that works to promote a positive and inclusive school environment for students, to facilitate community and school belonging for 2S-LGBTQIA+ individuals and their allies, and to provide advocacy for those students. Ms. Threadgoode has been the faculty advisor for the GSA at Billings West for four years. The GSA meets weekly.

66. 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. That space is specifically designed for all students to share their experiences and ask questions in a safe environment. GSA is an important part of a student's school experience whatever their sex or gender preference.

67. 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 are required to 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.

68. As the GSA advisor, Ms. Threadgoode previously had spoken in classrooms about 2S-LGBTQIA+ issues. As a result of SB 99, Ms. Threadgoode is no longer invited to speak in those classrooms.

69. Ms. Threadgoode has observed that SB 99 has negatively impacted 2S-LGBTQIA+ students. 2S-LGBTQIA+ students know that they are being singled out and targeted by SB 99. Those 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.

70. Ms. Threadgoode is herself a member of the 2S-LGBTQIA+ community and has a child in Montana public schools. She is fearful that her child's descriptions or discussion of their family will be subject to SB 99 notice and the school climate created by SB 99 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). She is also fearful that her child will not have the benefit of seeing their family reflected in school assigned literature as children from cisgender families might. Prior to SB 99's enactment, teachers and librarians would endeavor to offer inclusive curricula. Now, however, her 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.

71. Student Plaintiff Eva Stahl is a member of the 2S-LGBTQIA+ community. She previously regularly participated in her local Gender Sexuality Alliance (GSA) and Rainbow Coffee House which is an allied after school activity.

72. As a result of SB 99's impact and the Defendants' continuing public efforts to marginalize the 2S-LGBTQIA+ community, Eva and her 2S-LGBTQIA+ classmates have been discriminated against because of their 2S-LGBTQIA+ status in violation of Montana law.

73. Eva and her classmates have had to assess where and with whom they may safely discuss gender issues and sexual orientation without SB 99 notification repercussions and censorship. Over time, Eva has learned to interpret whether teachers are creating a safe space for discussion, and which subjects are acceptable to discuss. When Eva was in middle school, prior to the enactment of SB 99, she felt safe speaking her mind and asking questions. For example, Eva previously initiated a discussion about Alexander Hamilton and his male companion John Lawrence. The class had an open discussion about that relationship and how historical information is sourced. As a result of SB 99, Eva cannot initiate a discussion like that, nor could a class have an open discussion about gay politicians and gay historical figures without parental notification. This prevents open and informative conversation which is essential to students' intellectual and social growth. Many 2S-LGBTQIA+ students at Eva's school adjust how they act, speak and dress to protect themselves from the hostile environment that SB 99 has created.

74. In early 2021, prior to the enactment of SB 99, one of Eva's teachers maintained a small library of free choice books, which students could access at their leisure. Students were not required to get permission to access the books. As a result of SB 99, this open access changed. The teacher now feels compelled to list all of the books in her collection to notify parents. Those that mention gender or sexuality are marked physically with red stickers. In order to borrow one of the books that mentions gender or sexuality, students are first required to request the book and then the teacher sends a parental notification that the student requested the book and allows parents 48 hours to respond. Students have no say in the matter; the disclosure is mandatory and

not dependent on student consent. As a result, students avoid asking for books knowing that their parents will be notified of their reading choices with or without their consent.

75. In Eva's government class, students were assigned to each write a bill that would have a positive impact on communities. Each student was required to advocate for their bill and provide supporting information as to why the bill should be adopted by the student congress. In response to a student's proposed bill that would require more inclusive representation of 2S-LGBTQIA+ community members in sex education in Montana schools, the teacher in the class advised the students that although he wanted to bring the bill to the student congressional floor, he would not do so because he was afraid that if he did, he could face administrative discipline because of SB 99.

76. As a result of SB 99, Eva's teachers sent her parents a standardized email which in part reads as follows: "Required instruction (including but not limited to lessons, readings, texts, discussions, etc.) is part of our district curriculum, Billings Public Schools continues to follow Senate Bill 99 as well as Board Policy 2310 procedure 2 which states that when selecting materials, teachers, and administrators must review their content and consider the issues of violence, profanity, prurient subject matter, cultural concerns, and historical accuracy in the selection process." Eva is unaware of any effort by school administrators, or the Defendants or any Montana legislator to provide operative definitions for any of the terms of Board Policy 2310 or the provisions of SB 99 to any student or faculty.

77. Absent an injunction against the enforcement of SB 99, it is highly likely that Eva will be denied access to supportive 2S-LGBTQIA+ literature, art, guest lectures, assemblies, and other presentations in the school library or classrooms. It is also likely that she will be denied constructive and informative science education that explores in-depth human sexuality, gender

identity, and gender transition issues -- issues that are essential to Eva and her classmates' health and safety.

78. Student Plaintiff R.S. has volunteered for BridgerCare for four years as a peer educator on sexual health and relationships education. The role of a peer educator is to facilitate honest and empowering conversations among students about sexual health and relationships to help them to make informed decisions. It is an important component of public school education.

79. Prior to the enactment of SB 99, R.S. could engage students as a peer educator with flexibility in timing, location, and content. This flexibility is essential to R.S.'s work as a peer educator and unstructured accessibility to comprehensive sexual education is critical for students' health and well-being. Prior to SB 99, sexual education was widely attended which provided students with essential information. R.S. had many opportunities throughout her day to engage in meaningful conversations with her fellow students about these important topics.

80. As a result of SB 99 the amount and quality of the information that R.S. is allowed to provide as a peer educator has significantly diminished, as have the sizes of classes that R.S. teaches. She and her colleagues are no longer allowed to teach in public schools.

81. R.S. has also experienced changes to the sexual education curriculum. As a result of SB 99, issues of gender and sexuality are limited in content and sparsely addressed. R.S. reports that her work as a peer educator has decreased significantly since SB 99 was enacted which has resulted in considerably less education around human sexuality and information about 2S-LGBTQIA+ identities.

82. R.S. self-censors what she teaches and discusses with other students because of SB 99. She fears running afoul of SB 99. R.S. and her peers, have observed changes in how schools operate due to fears generated by SB 99. R.S. notes that even her Spanish class has been impacted

by SB 99 with students having the option to opt-out of a Spanish language film that contained a modest and harmless level of romance.

83. R.S. has also noticed that teachers have not spoken as often about 2S-LGBTQIA+ people and issues as a result of the enactment of SB 99. In R.S.'s government class, they discussed U.S. Supreme Court cases, and a student brought up *Roe v. Wade*. Students were told by their instructor to use the word "apples" instead of abortion when talking about the case. SB 99 has become something akin to a 'don't say gay' bill. It seeks to suppress discussion in schools about anything related to the 2S-LGBTQIA+ community.

84. Every student has a right to access information about human sexuality without censorship from their teachers and without fear they are running afoul of SB 99. As a result of the hostile climate SB 99 has created, R.S. and her peers will go out into the world as adults without the quality education to which they are entitled under the Montana Constitution.

85. Absent an injunction against the enforcement of SB 99, it is likely that R.S. will be denied access to supportive 2S-LGBTQIA+ literature, art, guest lectures, assemblies, and other presentations in the school library or classrooms. It is also likely that she will be denied constructive and informative science education that explores in-depth human sexuality, gender identity, and gender transition issues - issues that are essential to R.S. and her classmates' health and safety.

86. Plaintiff Empower MT is a § 501(c)(3) nonprofit membership organization ("Empower MT") that provides training to thousands of students and educators across Montana and empowers them to create safer, more inclusive school communities. According to the health and education literature, educators report they need training in 2S-LGBTQIA+ inclusivity (McQuillan & Leininger, 2020) and inclusivity training can contribute to lower disciplinary rates

for all students in schools receiving trainings (McQuillan et al, 2023). Yet, only 34% of educators report having in-service training, such as the training Empower MT provides, and most educators report they are not confident in their ability to effectively include 2S-LGBTQIA+ inclusive curriculum (Clark & Kosciw, 2022).

87. Empower MT historically has provided in-school training, workshops and group discussions for both teachers and students that focus on building a school culture that supports the academic, social, and emotional success of all students. Topics include building self-esteem, reducing prejudice, anti-bullying, suicide prevention, violence prevention, and communication and conflict solution skill-building. Empower MT’s youth and adult leadership programs and comprehensive curricula have been an essential adjunct to Montana’s elementary, middle, and high schools for twenty-five years.

88. Empower MT’s training sessions include discussions on issues surrounding gender, gender transition, and sexual orientation. Educators report being especially ill-prepared to discuss issues surrounding gender-diversity with their students, peers, and parents (McQuillan & Leininger, 2020; Clark & Kosciw, 2022).

89. Empower MT also coordinates Genders and Sexualities Alliances (“GSAs”) in various schools. 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. Empower MT has coordinated the Montana GSA Network since 2010. Previously, Empower MT coordinated the Montana Safe Schools Coalition. GSAs have been an important source of social support for 2S-LGBTQIA+ students; they decrease bullying, decrease mental health risks, and encourage greater civic participation, school belonging, and school safety – not only for 2S-LGBTQIA+ students, but for all students (NASEM, 2020).

90. As a result of SB 99, Empower MT has been excluded from providing its services in Montana public schools. Following the passage of SB 99, Empower MT only worked with five school districts -- a significant decline from the eleven districts it served prior to the effective date of SB 99. As a result, Empower MT has suffered significant funding losses and a decline in student participation. Empower MT has been unable to meet its funding goals because of the limited access to youth and schools. As a result, Empower MT's mission has been compromised.

91. School administrators have told Empower MT that they will no longer seek Empower MT's services because of the conflicts and adverse conditions created by SB 99.

92. SB 99 also adversely impacts Empower MT's coordination of GSA activities and events since any discussion of sexual orientation and/or gender identity requires advance parental notification.

93. Empower MT brings this action on its own behalf and on behalf of its members and student representatives who have been adversely affected by SB 99 and for whom Empower MT advocates.

94. Plaintiff Montana School Counselors Association ("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.

95. MSCA is dedicated to promoting professionalism and ethical practices while empowering and advocating for all school counselors.

96. 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.

97. 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 confidentiality of communications. SB 99 places 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.

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

99. The Plaintiff Montana Association of School Psychologists (“MASP”) is a § 501 (c)(3) non-profit membership organization that advocates on behalf of its members and seeks to maintain safe and inclusive learning environments for all students and faculty including those who are members of the 2S-LGBTQIA+ community. MASP and its 100 school psychologist members seek to promote the educational and mental health of Montana school age children including protecting their rights to an inclusive and bias free education.

100. School psychologists are unique and critical members of school teams that support students' ability to learn and teachers' ability to teach. Their expertise of childhood learning, behavior, and mental health helps youth succeed academically, socially, behaviorally, and emotionally. School psychologists partner with all relevant stakeholders (i.e., teachers, administrators, families, and other professionals) to create supportive learning environments and strong connections between home, school, and the community.

101. The professional responsibilities of a school psychologist require psychologists to build trust with the students that they serve and maintain confidentiality as it relates to certain conversations. School psychologists inform students that certain conversations are confidential so that students can be open to sharing their thoughts and feelings without reservation. Open communication from students is critical to school psychologists effectively performing their job functions and ensuring that students are receiving appropriate care.

102. Prior to the enactment of SB 99, school psychologists would have both open and confidential discussions with students concerning issues of human sexuality, including intimate relationships and consequences of the same, sexual orientation, gender identity, abstinence, contraception, and reproductive rights and responsibilities. These evidence-based professional practices have been supported in several statements by the National Association of School Psychologists, the world's largest association of school psychologists.

103. Like MSCA, after the enactment of SB 99, MASP members cannot comply with the parental notification provisions of SB 99 without violating their professional duties of confidentiality. MASP members therefore are subject to investigation and discipline if – as their training and education at times requires – they provide information related to intimate

relationships, gender identity, or sexual orientation to inquiring students without parental notification.

104. After the enactment of SB 99, if a student begins discussing an issue that relates to human sexuality, as defined by SB 99, school psychologists are legally required to inform students that they are not permitted to engage in such conversations without first providing the student's parents with notice of what issues are being discussed and providing the student's parents with the opportunity to remove the student from such discussions. Such notice has a chilling effect upon the psychologist-student relationship as students often do not want their parents made aware of such issues, and subsequently are likely to stop seeking psychologist services. SB 99 directly conflicts with the professional guidance provided by the most well-respected medical organizations, such as MASP and the American Psychological Association.

105. School psychologists are often called upon to perform suicide risk assessments and threat risk assessment of students. Those assessments require school psychologists to have flexible conversations with students, depending upon the topics raised by the students, so that the school psychologist can maintain conversation with students while also completing their assessment protocols.

106. As a result of SB 99, various school districts have requested school psychologists to modify suicide risk assessment procedures and threat assessment procedures due to concerns with the requirements of SB 99. School psychologists have been asked to create policies and procedures that deviate from the standard professional training and practice and to implement a SB 99 notification process that stalls the suicide risk assessment procedures and threat assessments procedures. Such modifications prevent school psychologists from providing timely services to students consistent with their professional training.

107. School psychologists are commonly called upon to assist with individualized education plans for students with cognitive disabilities. School psychologists assist with the instruction of students who, for example, may exhibit inappropriate sexualized behavior.

108. SB 99 has interfered with school psychologists' ability to provide educational services to students with cognitive disabilities who are on individualized education plans. Students with cognitive disabilities, such as autism, are often put on individualized education plans that deviate from typical school curricula and focus more heavily upon developing social skills. Students on individualized education plans often go through periods where they exhibit inappropriate sexualized behavior such as inappropriate touching. The best opportunity for school psychologists to correct such inappropriate behavior is in the moment when the student is still aware of their conduct. SB 99 prevents school psychologists from timely performing such instruction, as SB 99 requires the school psychologist to first provide notice to the parents regarding such issues, then wait 48-hours, and then only providing appropriate instruction if the parent does not object. This is not functional or effective for students.

109. MASP brings this action on its own behalf and on behalf of its school psychologist and student members who are adversely affected by SB 99.

Defendants

110. 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 the state.

111. 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 SB 99 into law on April 30, 2021. Governor Gianforte additionally serves as the President of the State Board of Education § 20-2-101(2), MCA.

112. The Defendant Montana Board of Public Education (“MBPE”) exercises general supervision over Montana’s public school system, which includes the establishment of 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 additionally 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 via the internet, <https://bpe.mt.gov/Home/Board-Members/2021-BPE-New-Member-Handbook.pdf>.

113. 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.

114. The Defendant Montana Office of Public Instruction (“OPI”) is an agency within the executive branch of the Montana government and is 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.

115. 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. Elsie Arntzen 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)

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

117. 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, school psychologists 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.

118. 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.

119. 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 SB 99 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 *Board of Ed. Island Trees Free Sch. Dist. v. Pico* 457 U.S. 853, 102 S.Ct. 2799, 73 L.Ed. 2d 435 (1982); *Tinker v. Des Moines School Dist.* 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed 2d 731 (1969); *Bostock v. Clayton County* 590 U.S. 644, 140 S.Ct 218, 207 L.Ed. 2d 218, (2020).

120. In addition to its overbreadth, SB 99 denies 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 Mont. Const. Art. II § 7. See also *Board of Ed. Island Trees Union Free School Dist. 26 v. Pico et al.* 457 U.S. 853, 867, 102 S. Ct. 2799, 73 L.Ed 2d 435 (1982) (“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.”)

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

122. There is no compelling state interest or important government purpose served by SB 99 and its breach of free speech protections.

123. SB 99, on its face and as applied, violates Plaintiffs’ constitutional rights under Mont. Const. Art. II § 7 and warrants injunctive and declaratory relief in favor of the Plaintiffs.

COUNT II
MONTANA CONSTITUTION ARTICLE II, §10
(PRIVACY)
(JOHNSON, THREADGOODE, R.S., STAHL, MASP AND MSCA)

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

125. 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.

126. 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.

127. SB 99 infringes upon the privacy rights of students, teachers, counselors, and school psychologists. Specifically, a student cannot receive confidential counseling services initiated by a teacher or school counselor or school psychologist if such counseling involves discussions of “human sexuality,” as such term is broadly defined by SB 99, 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 must be provided notwithstanding requests that such communications remain confidential.

128. Although the involuntary disclosure of confidential information to parents and or guardians is compelled by SB 99, the statute has no mechanism with which to protect such

confidential information from broader dissemination. This leaves students, counselors, and school psychologists vulnerable to further unconsented breach of their rights to privacy.

129. There is no compelling state interest or important government interest served by SB 99 and its breach of the Plaintiffs' privacy rights as set forth in Mont. Const. Art. II, §10.

130. SB 99 on its face and as applied violates Plaintiffs' constitutional rights to privacy under Mont. Const. Art II § 10 and warrants injunctive and declaratory relief in favor of Plaintiffs.

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

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

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

133. 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. Brunell*, 2017 MT 77N, ¶ 7, 388 Mont. 553, 392 P.3d 570 (citing *State v. Dixon*, 2000 MT 82, ¶ 27, 299 Mont. 165, 998 P.2d 544).

134. SB 99 fails to do so. It requires teachers, counselors and school psychologists to provide parental notice of any teaching or counseling or discussion of “human sexuality” without adequate definition. Human sexuality instruction is defined as “teaching or *otherwise providing information to students*” on a list of open ended topics including “intimate relationships”, sexual orientation, and gender identity and gender transition.

135. “Otherwise providing information” can mean anything from assigning Shakespeare or Toni Morrison to wearing unisex clothing to wearing a gay pride lapel pin to discussing recent

Supreme Court jurisprudence to hosting same sex married couples at parent and student back to school events. It is useless as a set of instructions as to what SB 99 actually requires.

136. SB 99 does not clarify whether “otherwise providing information” regarding sexual orientation or gender identity or human anatomy requires parental notice for each and every reference to reproductive organs in a biology or anatomy textbook. SB 99 does not clarify whether the teaching of the structure of DNA and its role in human development including (as it must) reference to sexual reproduction requires parental notice and approval. SB 99 does not clarify whether the teaching of evolution without parental notice is prohibited notwithstanding the United States Supreme Court decision in *Epperson et al. v. Arkansas*, 393 U.S. 97, 89 S. Ct. 266, 21 L.Ed 2d 228 (1968).

137. The reference to “intimate relationships” is equally vague. SB 99 does not clarify whether “intimate relationships” refers to opposite sex or same sex relationships. Nor does it clarify whether “intimate relationships” refers to simple friendship or is a coded reference to sexual intimacy. Without more clear-headed definitions, it is not possible to ascertain what discussions, teachings, or readings about “intimate relationships” SB 99 and the Defendants intend to control.

138. In the absence of clear definitions and descriptions, a person of ordinary intelligence would not foresee that SB 99’s limitations on “human sexuality instruction,” would reach the broad range of loosely defined and ambiguous topics targeted by SB 99. The due process clause of the Montana Constitution forbids such vagueness in the face of potential punishment for violations of SB 99.

139. Compounding these constitutional deficiencies, SB 99 also fails to include any due process review for those teachers, counselors, and school psychologists who have been accused of violating the provisions of SB 99. Efforts to provide a due process structure prior to the imposition

of discipline or termination were rejected by the Legislature. As a result, teachers, school psychologists and counselors are at risk for probation, suspension, or termination for alleged violations of a very poorly defined and vague statute without recourse to a proper and fair due process review.

140. There is no compelling state interest or important government purpose served by SB 99 and its substantive and procedural due process deficiencies.

141. The due process deficiencies of SB 99 warrant injunctive and declaratory relief in favor of the Plaintiffs.

COUNT IV
MONTANA CONSTITUTION ARTICLE X, §1
(EDUCATIONAL OPPORTUNITY)
(STAHL, R.S.)

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 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 deny the right of students – and particularly 2S-LGBTQIA+ students - to access a “quality” public education.

146. The parental notice provisions of SB 99 coupled with the threat of discipline for non-compliance with SB 99 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 prohibits 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 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 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 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.

COUNT V
MONTANA CONSTITUTION ARTICLE II, §4
(DIGNITY, EQUAL PROTECTION)
(STAHL)

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

153. Mont. Const. Art. II, § 4 provides, “The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws.”

154. 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 equal protection guarantees of Art. II to the Student Plaintiffs and their representatives in this action.

155. The basic principle of equal protection “is that persons similarly situated with respect government policies, benefits, burdens or responsibilities must receive like treatment.” *Oberson v. U.S. Dep’t of Agric., Forest Serv.*, 2007 MT 293, ¶ 19. Moreover, a law or policy that contains an apparently neutral classification may violate equal protection if it constitutes a device designed to impose different burdens on different classes of persons. *Snetsinger v. Montana Univ.*

System et al. 2004, MT 449, ¶16, 325 Mont. 148, 104 P. 3d 445, 2004 MT 390; *State v. Spina* 199 MT 113, ¶85, 294 Mont. 367, 982 P.2d 421.

156. Montana’s constitutional guarantee of human dignity “demands that people have for themselves the moral right and moral responsibility to confront the most fundamental questions about the meaning of their own lives and the intrinsic value of life in general, answering to their own consciences and convictions.” *Armstrong v. State*, 1999 MT 261, ¶ 72, 296 Mont. 361, 389, 989 P.2d 364, 383.

157. SB 99 and related efforts by the Defendants disproportionately focus on restricting the teaching and presentation of 2S-LGBTQIA+ issues and concerns including sexual orientation and gender identity. It is part of an intentional effort to marginalize 2S-LGBTQIA+ students and their history and experiences.

158. SB 99 is an intentional effort to erase these issues and discussions from the public square including Montana public schools.

159. Cisgender and heterosexual students are not subject to such differential marginalization and exclusion.

160. The equal protection clause of the Montana Constitution forbids such discrimination. There is no compelling state interest or important government purpose served by the provisions of SB 99 and its denial of equal protection of the laws to 2S-LGBTQIA+ students.

161. SB 99 also violates the constitutional dignity guarantee. 2S-LGBTQIA+ students need factually accurate, age-appropriate information about important issues related to sexual orientation and gender identity. Denying or abridging the right to access this information degrades human dignity and singles out 2S-LGBTQIA+ students for harassment, bullying and

discrimination, a connection that has been well-established in academic health and education literature.

162. The intentional educational marginalization of the 2S-LGBTQIA+ students violates the dignity and equal protection guarantees of the Montana Constitution and the Nondiscrimination in Education provisions of the Montana Constitution. Mont. Const. Art. X, §7. The denial of equal protection of the laws to 2S-LGBTQIA+ students warrants injunctive and declaratory relief in favor of the Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for an Order:

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

DATED this 9th day of April, 2024.

/s/ Alex Rate
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