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**UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA
BUTTE DIVISION**

THE IMPERIAL SOVEREIGN COURT
OF THE STATE OF MONTANA; ADRIA
JAWORT; RACHEL CORCORAN;
MONTANA BOOK COMPANY; IMAGINE
BREWING COMPANY, LLC d/b/a
IMAGINE NATION BREWING
COMPANY; BUMBLEBEE AERIAL
FITNESS; THE WESTERN MONTANA
COMMUNITY CENTER; MONTANA
PRIDE; THE GREAT FALLS LGBTQ+
COMMUNITY CENTER; THE ROXY
THEATER; and THE MYRNA LOY,

Plaintiffs,

vs.

AUSTIN KNUDSEN; ELSIE ARNTZEN;
J.P. GALLAGHER; and THE CITY OF
HELENA,

Defendants.

Cause No.
CV-23-50-BU-BMM

**Brief in Support of
Plaintiffs' Motion for a
Temporary Restraining
Order and Preliminary
Injunction**

Emergency Relief Requested

Table of Contents

Table of Contents..... ii

Table of Authorities..... iv

Exhibit List vi

INTRODUCTION..... 1

LEGAL BACKGROUND..... 2

 I. HB 359 2

 A. Drag Story Hours 2

 B. Sexually Oriented Performances..... 4

 II. Preexisting Montana law governing obscenity and minors..... 7

FACTS..... 8

LEGAL STANDARD 11

ARGUMENT..... 12

 I. Plaintiffs are likely to succeed on the merits of Counts III and IV because HB 359 violates the First Amendment, satisfying the first *Winter* requirement..... 12

 A. HB 359 regulates protected speech..... 13

 B. HB 359 is subject to strict scrutiny..... 18

 C. HB 359 does not survive strict scrutiny..... 24

II. Plaintiffs are likely to prevail on the merits of Count V because HB 359 is void for vagueness, again satisfying the first *Winter* prong. 31

III. Plaintiffs are suffering and will continue to suffer irreparable harm if HB 359 is not enjoined, satisfying the second *Winter* prong. 32

IV. Defendants face no hardship, and the public interest favors Plaintiffs, satisfying the third and fourth *Winter* prongs..... 34

CONCLUSION 35

CERTIFICATE OF COMPLIANCE 36

Table of Authorities

Cases

All. for the Wild Rockies v. Cottrell, 632 F.3d 1127 (9th Cir. 2011) 11

Ashcroft v. ACLU, 542 U.S. 656 (2004) 1

Boos v. Barry, 485 U.S. 312 (1988) 19

Broadrick v. Oklahoma, 413 U.S. 601 (1973) 24

Brown v. Ent. Merchs. Ass’n, 564 U.S. 786 (2011) *passim*

City of Austin v. Reagan Nat’l Advert. of Austin, LLC.,
142 S. Ct. 1464 (2022) 18, 21

City of Ladue v. Gilleo, 512 U.S. 43 (1994) 29

Conally v. Gen. Const. Co., 269 U.S. 385 (1926) 30

Erznoznik v. Jacksonville, 422 U.S. 205 (1975) 16

F.C.C. v. Pacifica Found., 438 U.S. 726 (1978) 20

First Nat. Bank of Boston v. Bellotti, 435 U.S. 765 (1978) 29

Friends of George’s, Inc. v. Tennessee, No. 2:23-CV-2163-TLP-TMP,
2023 WL 2755238 (W.D. Tenn. Mar. 31, 2023) 12, 19, 34

Friends of George’s, Inc. v. Tennessee, No. 2:23-CV-2163-TLP-TMP,
2023 WL 3790583 (W.D. Tenn. June 2, 2023) 12

Grayned v. City of Rockford, 408 U.S. 104 (1972) 30, 31

HM Fla.-ORL, LLC v. Griffin, No. 6:23-CV-950-GAP-LHP, 2023 WL
4157542 (M.D. Fla. June 23, 2023) 12, 34

Jacobellis v. Ohio, 378 U.S. 184 (1964) 16

Kois v. Wisconsin, 408 U.S. 229 (1972) 14

<i>Miller v. California</i> , 413 U.S. 15 (1973)	13, 14, 15, 25
<i>Nken v. Holder</i> , 556 U.S. 418 (2009)	33
<i>R.A.V. v. City of St. Paul</i> , 505 U.S. 377 (1992)	19, 23
<i>Reed v. Town of Gilbert</i> , 576 U.S. 155 (2015)	passim
<i>Reno v. ACLU</i> , 521 U.S. 844 (1997).....	24, 30
<i>Roman Catholic Diocese v. Cuomo</i> , 141 S. Ct. 63 (2020).....	32
<i>Sable Commc'ns of California, Inc. v. F.C.C.</i> , 492 U.S. 115 (1989).....	24
<i>Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.</i> , 502 U.S. 105 (1991)	19
<i>Stuhlberg Int'l Sales Co. v. John D. Brush & Co.</i> , 240 F.3d 832 (9th Cir. 2001).....	11
<i>United States v. Playboy</i> , 529 U.S. 803 (2000)	18, 19, 23, 25
<i>Virginia v. American Bookseller's Ass'n Inc.</i> , 484 U.S. 383 (1988).....	33
<i>Ward v. Rock Against Racism</i> , 491 U.S. 781 (1989)	21
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	11

Statutes and Regulations

House Bill 359, 2023 Mont. Leg., 67th Sess.....	<i>passim</i>
Mont. Code Ann. § 45-8-201.....	7

Other Sources

Wright & Miller, Fed. Practice & Proc. § 2951	11
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Exhibits

House Bill 359..... Ex. 1

Declaration of Adria Jawort..... Ex. 2
 Email from S. Curtis to A. Jawort..... Ex. 2-A
 Butte-Silver Bow Facebook Message..... Ex. 2-B

Declaration of Annatheia Smith Ex. 3

Declaration of Sabrina Malecek,
 owner of BumbleBee Aerial Fitness Ex. 4

Declaration of Mike Steinberg,
 Executive Director of The Roxy Theater Ex. 5

Declaration of Krys Holmes,
 Executive Director of The Myrna Loy Ex. 6

Declaration of Chelsia Rice,
 Co-owner of the Montana Book Company Ex. 7

Declaration of Lauren Halverson,
 Representative for OUTLaws at the
 Alexander Blewett III School of Law Ex. 8

Declaration of Kevin Hamm Ex. 9
 Front Street Permit Application..... Ex. 9-A
 Last Chance Gulch Permit Application..... Ex. 9-B

Declaration of Rachel Corcoran, Billings Public Schoolteacher Ex. 10

INTRODUCTION

“Content-based prohibitions [on speech], enforced by severe criminal penalties, have the constant potential to be a repressive force in the lives and thoughts of a free people.” *Ashcroft v. ACLU*, 542 U.S. 656, 660 (2004). Passed during the 2023 Montana legislative session, House Bill 359 (“HB 359”) has more than the “potential” to suppress speech. It *is* suppressing protected speech. On July 13, 2023, Plaintiff Montana Pride was denied permits for its thirtieth annual Pride celebration, scheduled to begin July 30, 2023. In the absence of immediate judicial relief, thousands of Montanans will be unable to assemble peaceably to celebrate the diversity of human gender and sexuality.

HB 359—a breathtakingly ambiguous and overbroad bill motivated by anti-LGBTQ+ animus—is an unconstitutional content- and viewpoint-based restriction on free speech. The bill purports to restrict “drag story hours,” and “sexually oriented performances.” But neither term is carefully defined, and neither term is limited to speech that the government lawfully may circumscribe. Already, HB 359 has restricted lawful political and artistic speech. And it will continue to do so unless and until the Court acts to enjoin further implementation.

Plaintiffs request that the Court issue a temporary restraining order and preliminary injunction against Defendants Austin Knudsen and Elsie Arntzen (collectively, the “State”) and the City of Helena. Plaintiffs seek relief by July 30 so that Montana Pride can go forward as planned.

LEGAL BACKGROUND

I. HB 359

HB 359 restricts two broad categories of speech and expressive activity. First, the bill bans “drag story hours” in schools and libraries. Second, it prohibits or restricts “sexually oriented performances” in various places. Both categories sweep in far more speech than the quoted terms suggest.

A. Drag Story Hours

HB 359 bans “drag story hours” in schools and libraries that receive any state funds. A “[d]rag story hour” is “an event hosted by a drag queen or drag king who reads children’s books and engages in other learning activities with minor children present.” HB 359, § 1(3). And, for their part, “drag king” and “drag queen” are defined as “a male or female performer who adopts a flamboyant or parodic [male or female]

persona with glamorous or exaggerated costumes and makeup.” HB 359, § 1(1), (2). In other words, a “drag story hour” occurs whenever a person dresses in a gendered costume and has an educational interaction with children in a school or library that receives public funds—even if the school or library is not a public entity.

A person who “allow[s]” a “drag story hour” faces criminal penalties. HB 359, § 5(2) (codifying restrictions on “drag story hours” in Mont. Code Ann. title 20); Mont. Code Ann. § 20-1-207 (providing that violations of title 20 constitute misdemeanor criminal offenses). Upon conviction, “[a] library, a school, or library or school personnel, [or] a public employee” “shall be fined \$5,000.” HB 359, § 3(1), (2), (4). Further, teachers and other school personnel will see their certificates suspended (upon the first conviction) and permanently revoked (upon a second or subsequent conviction). HB 359, § 3(4).

Any person involved in a drag story hour is also subject to civil liability. HB 359, § 4(1). A minor who attends a drag story hour—even if the minor’s guardian consents—may sue any “person who knowingly promotes, conducts, or participates as a performer in the performance” within ten years of the date of the drag story hour. HB 359, § 4(1), (3).

The plaintiff is guaranteed statutory damages in the amount of \$5,000; attorney’s fees and costs; and “actual damages, including damages for psychological, emotional, economic, and physical harm.” HB 359, § 4(2).

B. Sexually Oriented Performances

HB 359 also prohibits “sexually oriented performances” “on public property in any location where the performance is in the presence of an individual under the age of 18” and “in a location owned by an entity that receives any form of funding from the state”—even if the audience consists only of adults. HB 359, § 3(3). A “sexually oriented performance” is “a performance that, regardless of whether performed for consideration, is intended to appeal to a prurient interest in sex and features:”

(a) the purposeful exposure, whether complete or partial, of:

A. a human genital, the pubic region, the human buttocks, or a female breast, if the breast is exposed below a point immediately above the top of the areola;
or

B. prosthetic genitalia, breasts, or buttocks;

(b) stripping; or

(c) sexual conduct.

HB 359, § 1(10).

The definition of “sexually oriented performances” includes some anomalies. It is not limited to live events; there is no clear limitation on the meaning of “sexual conduct”; and “stripping” is defined as the “removal or simulated removal of clothing in a sexual manner for the entertainment of one or more individuals,” regardless of whether nudity results. HB 359, § 1(11). What is more, HB 359 includes a definition of “sexually oriented” that is even broader than “sexually oriented performances”—extending to “salacious dancing” and “any lewd and lascivious depiction or description of human genitals or of sexual conduct.” HB 359, § 1(8).¹

“Sexually oriented performances” are prohibited outright in schools and libraries that receive any state funding, HB 359, § 3(1), (2); “on public property in any location where the performance is in the presence of an individual under the age of 18,” HB 359, § 3(3)(a); and “in a location owned by an entity that receives any form of funding from the state,” even if minors are not present, HB 359, § 3(3)(b).

¹ Confusingly, HB 359 defines “sexual conduct” by cross-reference in the definition for “sexually oriented” but not in the definition for “sexually oriented performance.” HB 359, § 1(8), (10).

“Sexually oriented performances” are restricted in so-called and circuitously defined “sexually oriented businesses”—“nightclub[s], bar[s], restaurant[s], or similar commercial enterprise[s] that” (a) allow on-site alcohol consumption and (b) put on live nude shows or “sexually oriented performances” as defined by HB 359. HB 359, § 1(9).

Violators of the rules governing “sexually oriented performances” face overlapping penalties. “Sexually oriented businesses” and their agents and employees are subject to delicensure and mandatory criminal fines ranging from \$1,000 to \$10,000. HB 359, § 2(2); *see also id.* § 5(1) (codifying restrictions within Mont. Code Ann. title 45, the criminal code). Libraries, schools, entities that receives state funds, and their agents and employees “shall be fined \$5,000” if they “allow” a sexually oriented performance on-premises. HB 359, § 3(4).

Additionally, any person involved in a “sexually oriented performance”—“a person who knowingly promotes, conducts, or participates as a performer”—is subject to the same citizen suit provision governing “drag story hours.” HB 359, § 4(1).

II. Preexisting Montana law governing obscenity and minors

Montana law already protects youth from exposure to obscene material to the full extent allowable under the First Amendment. Montana’s obscenity statute criminalizes, *inter alia*, purposely or knowingly providing obscene material, obscenely exposing one’s body, and giving obscene performances to minors. Mont. Code Ann. § 45-8-201.

A person cannot be convicted under § 45-8-201 unless the alleged obscenity comports with constitutional standards. *See infra* pp. 13–18.

The obscenity must:

- involve the perverted or patently offensive representation or depiction of “ultimate sexual acts,” masturbation, excretion, or “lewd exhibition of the genitals”;
- as a whole, and “applying contemporary community standards,” “appeal[] to the prurient interest in sex”;
- as a whole, be “patently offensive”; and
- as a whole, “lack[] serious literary, artistic, political, or scientific values.”

Mont. Code Ann. § 45-8-201(2); *see also id.* § 45-8-201(3) (providing right to provide contrary evidence). A person convicted of the preexisting crime of obscenity faces a maximum penalty of \$1,000. *Id.* § 45-8-201(4).

FACTS

HB 359 went into effect on May 22, 2023. HB 359, § 7. Already, HB 359 has had widespread effects across Montana—event cancellations, chilled speech, and fear of criminal and civil liability. The harm is serious, concrete, and ongoing.

HB 359 mutated frequently during the legislative session—morphing from (1) a ban on “exhibit[ing] a gender identity that is different from a performer’s gender assigned at birth” in businesses, schools, and libraries² to (2) a ban on “male or female impersonators” in businesses and any public space where minors may be present³ to (3) a ban that incorporated Montana’s existing law on obscenity⁴ to (4) a relatively anodyne (if unnecessary) restriction on adult-oriented performances⁵ to (5) the law now in effect. Not surprisingly, particularly

² Available at https://leg.mt.gov/bills/2023/HB0399//HB0359_1.pdf

³ Available at https://leg.mt.gov/bills/2023/HB0399//HB0359_2.pdf

⁴ Available at https://leg.mt.gov/bills/2023/HB0399//HB0359_3.pdf

⁵ Available at https://leg.mt.gov/bills/2023/HB0399//HB0359_4.pdf

because of the bill's vague language and confusing penalty schemes, it took some time for HB 359's breadth to be realized. There is no mistaking it now.

The first blow was struck on June 1, 2023, when Plaintiff Adria Jawort was disinvited from a scheduled appearance at the Butte Silver-Bow Public Library. Ms. Jawort, a transgender and Northern Cheyenne woman, is a recognized expert on LGBTQ+ and Two-Spirit issues in Montana. Defendant Gallagher canceled Ms. Jawort's event because "it is too much of a legal risk to have a trans-person in the library" based on his belief that the lecture would violate HB 359. Ex. 2-A, Email from S. Curtis to A. Jawort (June 1, 2023), attached to Ex. 2, Decl. of Adria Jawort ("Jawort Decl."). The City and County of Butte-Silver Bow later confirmed via Facebook post that HB 359 forced the cancellation: "[i]n accordance with Governor Gianforte signing HB359 into law, our county cannot allow an event where a drag king or queen reads children's books and engages in other learning activities with minor children present. Due to this law, we have had to cancel the speaker at the Butte-Silver Bow Library." Ex. 2-B, Butte-Silver Bow Facebook Post, attached to Ex. 2, Jawort Decl.

The hits keep coming. Plaintiffs the Imperial Sovereign Court of the State of Montana (“Imperial Court”) and Aerial BumbleBee have seen events canceled and modified. Ex. 3, Decl. of Annatheia Smith ¶¶ 18–26 (“Smith Decl.”); Ex. 4, Decl. of Sabrina Malecek, owner of BumbleBee Aerial Fitness ¶¶ 21, 22 (“Malecek Decl.”). Other plaintiffs and declarants fear that future events are prohibited under the law—even those events with years of precedent behind them. Ex. 5, Decl. of Mike Steinberg, Exec. Dir. of The Roxy Theater ¶¶ 13–43 (“Steinberg Decl.”); Ex. 6, Decl. of Krys Holmes, Exec. Dir. of The Myrna Loy ¶¶ 7–18 (“Holmes Decl.”); Ex. 7, Decl. of Chelsia Rice, co-owner of the Montana Book Company ¶¶ 8–12, 14 (“Rice Decl.”); Ex. 8, Decl. of Lauren Halverson, member of OUTLaws at the Alexander Blewett III School of Law ¶¶ 8–18 (“Halverson Decl.”).

And these fears are warranted. Underlying the present request for emergency injunctive relief, the City of Helena is refusing to issue permits for Montana Pride events. Ex. 9, Decl. of Kevin Hamm ¶ 14 (“Hamm Decl.”). With Pride scheduled to begin on July 30, 2023, thousands of people face certain suppression of their First Amendment rights absent judicial relief. Hamm Decl. ¶¶ 10–14.

Moreover, due to HB 359’s extraordinary vagueness and breadth, Montanans are unable to determine whether they must stifle their speech to avoid severe state-sanctioned penalties. Examples abound. Plaintiff Rachel Corcoran, a public school teacher, faces decertification and criminal and civil liability for wearing costumes to engage her students in school. Ex. 10, Decl. of Rachel Corcoran ¶¶ 5–11 (“Corcoran Decl.”). Plaintiffs The Roxy Theater and The Myrna Loy appear to be prohibited from showing films to audiences consistent with industry standard Motion Picture Association ratings. Steinberg Decl. ¶¶ 13–43; Holmes Decl. ¶¶ 7–18. And businesses, such as Plaintiff Montana Book Company, face criminal and civil penalties and delicensure simply for holding events featuring drag. Rice Decl. ¶¶ 8–12.

LEGAL STANDARD

A preliminary injunction should issue when the movant establishes (1) that it will likely succeed on the merits, (2) that it will suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its favor, and (4) that an injunction will serve the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Courts in the Ninth Circuit apply a sliding scale approach to preliminary

relief. *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). The reviewing court must balance the elements “so that a stronger showing of one element may offset a weaker showing of another.” *Id.*

A temporary restraining order operates to prevent irreparable injury “before the hearing for a preliminary injunction required by Rule 65(a) can be held.” Wright & Miller, Fed. Practice & Proc. § 2951. Where “the opposing party actually receives notice of the application for a restraining order, the procedure that is followed does not differ functionally from that on an application for a preliminary injunction and the proceeding is not subject to any special requirements.” *Id.* The standard for a temporary restraining order is the same as for a preliminary injunction. *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

ARGUMENT

- I. **Plaintiffs are likely to succeed on the merits of Counts III and IV because HB 359 violates the First Amendment, satisfying the first *Winter* requirement.**

HB 359 is no mere restriction on obscene speech. On its face, HB 359 is a content-based restriction on protected speech and expression.

HB 359 also discriminates on the basis of viewpoint: it defines the prohibited conduct based on the speaker's identity and the message conveyed. Alternatively, HB 359 was adopted because of its proponent legislators' animus toward the message that HB 359 restricts—specifically, drag. Regardless, the law is “presumptively unconstitutional” and subject to strict scrutiny. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

HB 359 cannot survive strict scrutiny. Thus, both district courts addressing challenges to statewide drag-ban bills have granted injunctions. *See Friends of George's, Inc. v. Tennessee*, No. 2:23-CV-2163-TLP-TMP, 2023 WL 3790583 (W.D. Tenn. June 2, 2023) (permanent injunction); *HM Fla.-ORL, LLC v. Griffin*, No. 6:23-CV-950-GAP-LHP, 2023 WL 4157542 (M.D. Fla. June 23, 2023) (preliminary injunction); *Friends of George's, Inc. v. Tennessee*, No. 2:23-CV-2163-TLP-TMP, 2023 WL 2755238 (W.D. Tenn. Mar. 31, 2023) (preliminary injunction).

A. HB 359 regulates protected speech.

While obscenity is not constitutionally protected, HB 359 does not regulate only obscenity. As the bill's sponsor, Representative Braxton

Mitchell, said in his introduction of HB 359 to the Senate Judiciary Committee, “We already prohibit children from . . . viewing obscene material, viewing pornography, going to strip clubs. . . . This is not any type of First Amendment violation, and it’s time we add drag shows to that list.”⁶ The intent was never to restrict obscenity.

The boundaries of obscenity are firmly established and much narrower than the restrictions within HB 359. Under *Miller v. California*, laws proscribing obscenity “must be specifically defined.” 413 U.S. 15, 24 (1973). HB 359 is not. *See infra* pp. 31–32. Moreover, restrictions on obscenity must meet a three-prong test. Obscenity is only speech that (1) “taken as a whole, appeal[s] to the prurient interest in sex; (2) “portray[s] sexual conduct in a patently offensive way; and (3) “taken as a whole, do[es] not have serious literary, artistic, political, or scientific value.” *Id.*

⁶ Mont. Leg., Sen. Jud, Comm. Hrg. at 8:55:17 (Feb. 2, 2023), *available at* <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/47759?agendaId=251847>

HB 359 does not satisfy even one of the *Miller* requirements. First, although HB 359 nods to the “prurient interest in sex” requirement, it fails to require that, “taken as a whole,” the regulated conduct does in fact “appeal[] to the prurient interest,” “applying contemporary community standards.” *Id.* (quoting *Kois v. Wisconsin*, 408 U.S. 229, 230 (1972)). This question must be decided by a jury, to ensure that “it will be judged by its impact on an average person, rather than a particularly susceptible or sensitive person.” *Id.* at 33. But no jury could determine that “contemporary community standards” allow HB 359’s blanket proscription of drag and so-defined “sexually oriented performances.” Gender-bending performances and flamboyant costumes pervade our culture, from Shakespeare to Bugs Bunny. And one need travel no farther than the nearest public beach to see “any portion of the breast below the top of the areola” or “any portion of . . . the buttocks.” HB 359, § 1(4) (defining “nude”).

Second, HB 359 extends far beyond the “patently offensive.” Setting aside that HB 359 does not even give lip service to this requirement, “patently offensive” is synonymous with “hard core”

pornographic materials, *Miller*, 413 U.S. at 27, such as “[p]atently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated,” “masturbation,” and “excretory functions” and “lewd exhibition of the genitals, *id.* at 25. “Drag story hours” are not of a kind with the examples given in *Miller*; nor is removing outer layers of clothing “in a sexual manner”; nor is the partial exposure of natural or prosthetic body parts.

Third, HB 359 includes no carveout for works and performances with “serious literary, artistic, political, or scientific value.” *Id.* at 24. This is by design. In Representative Mitchell’s words, “The reason we have to specifically . . . say that we’re prohibiting story hours is because all they do is call it art. That’s how they get around it.”⁷ And HB 359 does, in fact, appear to regulate artistic performances even outside of

⁷ Mont. Leg., Free Conference Comm. Hrg. at 12:29:10 (Apr. 26, 2023), *available at* https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20230426/-1/49764#handoutFile_; *see also* Mont. Leg., Sen. Floor Sess. at 18:12:40, *available at* <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/46256?agendaId=273842> (April 17, 2023) (speaking against proposed amendment because it “allows all these under ‘art,’ and so it completely guts the bill”) (Sen. Karl Glimm).

drag. For example, many films shown by Plaintiffs The Roxy Theater and The Myrna Loy fall within the definition of “sexually oriented performances.” Steinberg Decl., ¶¶ 8–9, 15, 20, 28, 34, 36; Holmes Decl., ¶¶ 7–16. But “material dealing with sex in a manner that advocates ideas, or that has literary or scientific or artistic value or any other form of social importance, may not be branded as obscenity and denied . . . constitutional protection.” *Jacobellis v. Ohio*, 378 U.S. 184, 191 (1964) (internal citation removed).

Nor can HB 359 be saved because it purports to protect children. First Amendment rights do not suddenly manifest when a person reaches the age of 18. Accordingly, state governments do not possess “the free-floating power to restrict the ideas to which children may be exposed.” *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 794 (2011) (citations and internal quotations omitted); *Erznoznik v. Jacksonville*, 422 U.S. 205, 212–13 (1975) (“[M]inors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them.”).

In *Brown v. Entertainment Merchants Association*, California imposed sales restrictions and labeling requirements on “violent video games,” limiting minors’ (but not adults’) access. 564 U.S. at 789. The Supreme Court struck the law, emphatically rejecting a “wholly new category of content-based regulation that is permissible only for speech directed at children.” *Id.* at 794. “Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.” *Id.* at 795.

Moreover, HB 359 is not even limited to minors. When an entity receives state funds in “any form,” it may never display “sexually oriented performances,” even to an age-restricted audience. HB 359 § 3(3)(b). The First Amendment protects “drag story hours” and “sexually oriented performances.”

B. HB 359 is subject to strict scrutiny.

1. HB 359 is facially content- and viewpoint-based.

“A regulation of speech is facially content-based under the First Amendment if it ‘targets speech based on its communicative content’—

that is, if it ‘applies to particular speech because of the topic discussed or the idea or message expressed.’” *City of Austin v. Reagan Nat’l Advert. of Austin, LLC.*, 142 S. Ct. 1464, 1471 (2022) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)) (brackets removed). Content-based restrictions are “presumptively unconstitutional” and “can stand only if they survive strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” *Reed*, 576 U.S. at 163.

HB 359 targets speech based on its communicative content—specifically drag and certain expression relating to human sexuality—all because of a purported “concern for the effect of the subject matter on young viewers.” *United States v. Playboy*, 529 U.S. 803, 811 (2000) (emphasis added) (striking federal law targeting sexually explicit cable channels). The purported concern is illegitimate, and the law restricts far more than sexually explicit speech. *See infra* pp. 23–31. But even if the law was limited to sexually explicit expression, because it “focuses only on the content of the speech and the direct impact that speech has

on its [audience],” it is content-based and subject to strict scrutiny. *Id.* at 811–12 (quoting *Boos v. Barry*, 485 U.S. 312, 321 (1988)).

The State of Montana may not target specific types of sexual expression without engaging in content-based regulation. *See Friends of George’s*, 2023 WL 2755238, at *4 (regulation that prohibits speech “performed by entertainers like topless dancers, strippers, male or female impersonators but not others” warrants strict scrutiny). HB 359 does not restrict attendance from all live performances, only those engaged in the portrayal of a specific, enumerated subset of content—namely “drag story hours” and “sexually oriented performances” (as defined by HB 359).

Worse still, HB 359 discriminates on the basis of viewpoint, “rais[ing] the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 387 (1992) (quoting *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 116 (1991)); *see also Reed*, 576 U.S. at 168 (“Government discrimination among viewpoints—or the regulation of speech based on the ‘specific motivating ideology or the opinion or perspective of the speaker’—is a ‘more blatant’ and ‘egregious form’ of content discrimination.”).

HB 359 restricts “drag story hour[s]”—“read[ing] children’s books and engaging in other learning activities with minor children present” whenever the person in charge “adopts a flamboyant or parodic [male or female] persona with glamorous or exaggerated costumes and makeup.” HB 359, § 1(1)–(3). The restricted speech is defined in part by the identity of the messenger—“the specific motivating ideology . . . or perspective of the speaker.” *Reed*, 576 U.S. at 168. HB 359 allows reading children’s books and engaging in other learning activities with minor children present, as long as the performer is not a drag queen or king—that is, dressed in a gendered costume. Thus, the line dividing the lawful from the unlawful depends on the identity—and the viewpoint—of the speaker.

“[I]t is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas.” *F.C.C. v. Pacifica Found.*, 438 U.S. 726, 745–46 (1978). HB 359 fails the test. HB 359 is subject to strict scrutiny. *Reed*, 576 U.S. at 164–65 (findings regarding legislative intent are unnecessary when a law is facially content- and viewpoint-based).

2. Alternatively, the State enacted HB 359 with the intent to target speech for its content.

Even if HB 359 was facially content- and viewpoint-neutral (and it is not), the bill’s legislative history proves that the “the purpose and justification for the law are content-based.” *Reed*, 576 U.S. at 167; *see also Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (content-neutral laws subject to strict scrutiny when they cannot be “justified without reference to the content of the regulated speech” or were adopted “because of disagreement with the message” conveyed). If “an impermissible purpose or justification” underpins a restriction on speech, the law is still subject to strict scrutiny. *City of Austin*, 142 S. Ct. 1464, 1475 (2022).

HB 359 was “adopted by the government because of disagreement with the message the speech conveys.” *Ward*, 491 U.S. at 791. HB 359 was introduced as a ban on “drag performance” “in which a performer exhibits a gender identity that is different than the performer’s gender assigned at birth using clothing, makeup, or other physical markers.”⁸ As Representative Mitchell said in his introduction of HB 359, he wanted

⁸ *Available at* https://leg.mt.gov/bills/2023/HB0399//HB0359_1.pdf

to “add drag shows to th[e] list” of expression outside the scope of the First Amendment.⁹

In closing, Mitchell made his intent plain:

Due to the mature themes surrounding drag shows and the exposure to inappropriate activities, children may adopt and accept certain stereotypes or attitudes that could lead to social, psychological, linguistic difficulties. Children may also create an inadequate understanding of gender roles and experiences, which is damaging to their long-term social and emotional development.¹⁰

In other words, the bill sponsor took issue with ideas expressed through drag—that gender is performed and that gender norms are deserving of satire—and, rather than confront the ideas within the marketplace, he used his position within the government to shut them down.

Even if HB 359 were content-neutral, it would be subject to strict scrutiny.

⁹ Mont. Leg., Sen. Jud, Comm. Hrg. at 8:55:17 (Feb. 2, 2023), *available at* <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/47759?agendaId=251847>

¹⁰ Mont. Leg., Sen. Jud, Comm. Hrg. at 11:10:03 (Feb. 2, 2023), *available at* <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20170221/-1/47987?agendaId=269135>

C. HB 359 does not survive strict scrutiny.

There is only one possibility: HB 359 is “presumptively unconstitutional” and subject to strict scrutiny. *Reed*, 576 U.S. at 163. The burden is therefore on Defendant to prove that HB 359 is “narrowly tailored to serve compelling state interests.” *Id.* (quoting *R.A. V.*, 505 U.S. at 395); see also *Ashcroft*, 542 U.S. at 665 (“When plaintiffs challenge a content-based speech restriction, the burden is on the Government to prove that the proposed alternatives will not be as effective as the challenged statute.”). “The State must specifically identify an ‘actual problem’ in need of solving, and the curtailment of free speech must be actually necessary to the solution. That is a demanding standard.” *Brown*, 564 U.S. at 799 (2011). HB 359 is not the “rare” example of a constitutionally permissible restriction on speech; it cannot survive strict scrutiny. *Playboy*, 529 U.S. at 818.

1. HB 359 does not further a compelling state interest.

The State has no “compelling” state interest, as required to survive strict scrutiny, in restricting “drag story hours” or “sexually oriented performances,” as defined in HB 359. The bill purportedly protects children from certain categories of speech. But, where the government

restricts speech on this basis, it must “show a direct causal link between [the restricted content] and harm to minors”; “ambiguous proof will not suffice.” *Brown*, 564 U.S. at 800.

It is not enough for some legislators to believe that drag harms children. When no evidence supports a restriction on free speech, the government cannot meet its burden of identifying a compelling state interest, and the restriction cannot stand. *See Sable Commc'ns of California, Inc. v. F.C.C.*, 492 U.S. 115, 129–30 (1989) (“[A]side from conclusory statements during the debates by proponents of the bill, . . . the congressional record presented to us contains no evidence as to how effective or ineffective the . . . regulations were or might prove to be” (footnote omitted)); *Reno v. ACLU*, 521 U.S. 844, 858 n. 24, 875–876 n.41 (1997) (same); *Playboy*, 529 U.S. at 822 (same).

2. Even if HB 359 did further a compelling government interest, it is not narrowly tailored to that interest.

HB 359 is staggeringly overbroad and thus is not narrowly tailored to the State’s (non-compelling) interest in protecting minors from drag performance. *Reed*, 576 U.S. at 163. Overbreadth is of particular concern because it can chill speech and create opportunities for selective enforcement. *Broadrick v. Oklahoma*, 413 U.S. 601 (1973). These

concerns already are apparent; Plaintiffs’ speech has been chilled, and HB 359 has been used to exclusively target the LGBTQ+ community. *See* Jawort Decl., ¶¶ 6–11; Hamm Decl., ¶ 14.

As a threshold matter, HB 359 cannot stand because existing law restricts obscenity to the full measure allowed under the Constitution. “When a plausible, less restrictive alternative is offered to a content-based speech restriction, it is the Government’s obligation to prove that the alternative will be ineffective to achieve its goals.” *Playboy*, 529 U.S. at 816. The State already maintains an adequately tailored law to prohibit and criminalize obscene material—Montana Code Annotated § 45-8-201, which incorporates the *Miller* test. 413 U.S. at 23–24. *See supra* pp. 7–8, 13–18. Indeed, a prior version of the bill used the term “obscene” to define the proscribed conduct according to *Miller*, and the Legislature amended the bill to remove “obscene” as a modifier.

As a result, whether due to carelessness or animus, HB 359 creeps into a broad array of protected speech that does not even involve drag.

a. HB 359 is not narrowly tailored because it is overbroad.

HB 359 criminalizes showing movies appropriate for minor audiences at some of Montana’s longest-running theaters, even when the

audience is in fact exclusively eighteen years of age or older. And—this is unclear, which is itself a problem—it may prohibit the public performance of dances that could be described as “salacious,” and the sale or public readings of many books that include “lewd or lascivious depiction[s] or description[s] of human genitals or sexual conduct.” HB 359, § 8.

HB 359 further prohibits any performances that involve “stripping”—defined as removing or pretending to remove clothing “in a sexual manner”—even if nudity does not result. “Sexual manner” is not defined. HB 359 thus encompasses many non-obscene theatrical, film, and drag performances—even a performance that includes a costume change or the playful removal of a scarf. HB 359 prohibits these performances in businesses that serve alcohol when minors are present, HB 359, §§ 1(9), 2; “on public property in any location where the performance is in the presence of an individual under the age of 18,” HB 359, § 3(a); and “in a location owned by an entity that receives any form of funding from the state,” even if the audience is restricted to adults, HB 359, § 3(b).

For example, theaters such as Plaintiffs The Myrna Loy and The Roxy are showing the new-release film *Asteroid City*—a film about children scientists forced to quarantine during a stargazer convention. In this PG-13 film, the actress Scarlett Johansson disrobes and steps into a bathtub. This scene presumably meets HB 359’s definition of “stripping,” and because they receive state funding, The Myrna Loy and The Roxy face criminal liability for showing the film.

Similarly, the restriction on “drag story hours” encompasses far more than drag performances in any conventional understanding of the term “drag.” The terms “drag king” and “drag queen” are defined as “a male or female performer who adopts a flamboyant or parodic [male or female] persona with glamorous or exaggerated costumes and makeup.” HB 359, § 1(1), (2). As commenters on HB 359 noted, the definitions extend to a female performer dressed as a male clown;¹¹ transgender library employees;¹² a recent performance of *Twelfth Night* at Carroll

¹¹ Mont. Leg., Free Conference Comm. Hrg. at 12:12:30 (Apr. 26, 2023), available at https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20230426/-1/49764#handoutFile_. (SK Rossi, Human Rights Campaign).

¹² *Id.* at 12:14:15 (Sam Forstag, Montana Library Association).

College;¹³ Disney princesses;¹⁴ and students costumed as past presidents. A drag performer need not even be costumed in a manner incongruent with their sex or gender.

Moreover, the law’s criminal and civil penalties incorporate no carveout for parental consent. *See Brown*, 564 U.S. at 802–804 (striking ban on sale of violent video games to minors where industry ratings system “does much to ensure that minors cannot purchase seriously violent games on their own, and that parents who care about the matter can readily evaluate the games their children bring home”).

Because HB 359 extends to speech far beyond expression that may actually cause harm to minors—and even beyond the expression legislators intended to curtail—it is not narrowly tailored to a compelling state interest. HB 359 fails strict scrutiny.

b. HB 359 is not narrowly tailored because it is also underinclusive.

And, although overbreadth is enough, it is not all. The law is also underinclusive. *See Brown*, 564 U.S. at 802 (“Underinclusiveness raises serious doubts about whether the government is in fact pursuing the

¹³ *Id.* at 12:14:30.

¹⁴ *Id.* at 12:15:45 (Shawn Reagor, Montana Human Rights Network).

interest it invokes, rather than disfavoring a particular speaker or viewpoint.”). “While surprising at first glance, the notion that a regulation of speech may be impermissibly underinclusive is firmly grounded in basic First Amendment principles.” *City of Ladue v. Gilleo*, 512 U.S. 43, 51 (1994). Even within an otherwise permissible regulation of speech, underinclusiveness “suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people.” *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 785–86 (1978).

HB 359 says nothing about many sources of sexual expression that children are exposed to on a daily basis—through television, the internet, and other media. Rather, it targets drag, and it restricts only certain sexual expression and only in certain locations. What HB 359 leaves out reinforces the only conclusion to draw from what it does in fact restrict: the State is suppressing speech based on the speaker’s identity and the ideas conveyed. Because HB 359 is underinclusive, it is not narrowly tailored and fails strict scrutiny.

In sum, HB 359 regulates protected speech, discriminates on the basis of content and viewpoint, and fails strict scrutiny. Plaintiffs are likely to succeed on the merits of Counts III and IV.

II. Plaintiffs are likely to prevail on the merits of Count V because HB 359 is void for vagueness, again satisfying the first *Winter* prong.

A law is unconstitutionally vague if individuals of “common intelligence must necessarily guess at its meaning and differ as to its application.” *Conally v. Gen. Const. Co.*, 269 U.S. 385, 391 (1926). Vagueness is of special concern where a law imposes criminal sanctions, as “[t]he severity of criminal sanctions may well cause speakers to remain silent rather than communicate even arguably unlawful words, ideas, and images.” *Reno*, 521 U.S. 844, 872.

Overly vague restrictions on speech are unconstitutional for three reasons. First, due process requires that a law provide “persons of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). Second, laws must provide “explicit standards” to law enforcement officials, judges, and juries so as to avoid “arbitrary and discriminatory application.” *Id.* Third, a vague statute

can “inhibit the exercise” of First Amendment freedoms and may cause speakers to “steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked.” *Id.* HB 359 triggers all three concerns.

First, it is seemingly impossible to determine what HB 359 does and does not proscribe. Does it extend to “salacious dancing” and literary “depiction[s] or description[s] of human genitals or of sexual conduct”? Perhaps. *See* HB 359, § 1(8). Second, HB 359 already has been applied in an arbitrary and discriminatory manner: Plaintiff Jawort’s educational lecture was canceled, and Montana Pride’s permits denied. And third, Plaintiffs and all Montanans will be required to “steer far wider [than] the unlawful zone.” *See Grayned*, 408 U.S. at 109.

HB 359 is void for vagueness, and Plaintiffs are likely to succeed on the merits of Count V.

III. Plaintiffs are suffering and will continue to suffer irreparable harm if HB 359 is not enjoined, satisfying the second *Winter* prong.

Plaintiffs will suffer irreparable harm in the absence of preliminary relief. Already, they must choose between silence and punishment. Thus, there can be no question that HB 359 will cause irreparable harm.

“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Catholic Diocese v. Cuomo*, 141 S. Ct. 63, 67 (2020).

Plaintiffs have suffered harm due to the enforcement of HB 359: Adria Jawort, the Imperial Court, and BumbleBee Aerial Fitness have had events canceled. Jawort Decl. ¶¶ 6–8; Smith Decl. ¶¶ 18–20; Malecek Decl. ¶¶ 21, 22. And, on the thirtieth anniversary of Pride events in Montana, Montana Pride is on hold—and will remain on hold absent judicial relief. Hamm Decl. ¶¶ 5, 14.

Further, Plaintiffs presently must withhold speech, which constitutes harm cognizable for a preliminary injunction. The law threatens to force theater troupes into adult-only nightclubs, shut down local theaters that show films consistent with industry standards, and curtail creative teaching methods. With HB 359 in effect, Plaintiffs’ only options are (1) to self-censor or (2) to face criminal charges, civil penalties, and the loss of professional livelihood. Censorship proves “a harm that can be realized even without an actual prosecution.” *Virginia v. American Bookseller’s Ass’n Inc.*, 484 U.S. 383, 393 (1988).

IV. Defendants face no hardship, and the public interest favors Plaintiffs, satisfying the third and fourth *Winter* prongs.

When the government opposes the issuance of a preliminary injunction, the final two factors—the balance of the equities and the public interest—merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

Plaintiffs' freedom of speech endangers no one; they have exercised their rights for decades without incident—proof enough that granting the injunction would do no harm to the State. Existing law allows for the continued prosecution of those who actually subject minors to obscenity. And granting injunctive relief will cause no harm other than potential dissatisfaction to those who have no right to silence others and are under no obligation to attend events with drag or sexual content.

Further, the public interest is served by enjoining a facially unconstitutional law—a law that would inhibit Montanans' First Amendment rights. Any interest in suppressing or chilling speech is illegitimate. *See HM Fla.-ORL, LLC*, 2023 WL 4157542, at *9; *Friends of George's, Inc.*, 2023 WL 2755238, at *7. The third and fourth *Winter* prongs counsel in favor of injunctive relief.

CONCLUSION

Plaintiffs ask the Court to issue a temporary restraining order and preliminary injunction against the State and the City of Helena.

DATED this 17th day of July, 2023.

/s/Constance Van Kley
Constance Van Kley
Rylee Sommers-Flanagan
Niki Zupanic
UPPER SEVEN LAW

Attorneys for Plaintiffs

CERTIFICATE OF COMPLIANCE

Per Local Rule 7.1(d)(2)(E), I certify that this brief in support of Plaintiffs' motion for a temporary restraining order and preliminary injunction includes 6,403 words, excluding caption, certificate of compliance, table of contents and authorities, exhibit list, and certificate of service, as counted by Microsoft Word's word count feature.

/s/Constance Van Kley
UPPER SEVEN LAW

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that this document was served upon the following on July 17, 2023, by delivery to a process server:

Austin Knudsen, Office of the Attorney General
Justice Building, Third Floor
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

Elsie Arntzen, Montana Superintendent of Public Instruction
1227 11th Ave
P.O. Box 202501
Helena, MT 59601

J.P. Gallagher, Chief Executive
155 W Granite Street
Butte, MT 59701

City of Helena
City County Building
316 N. Park Ave.,
Helena, MT 59601

I further certify that courtesy copies were provided via email to legal counsel for the parties above.

/s/Constance Van Kley
Constance Van Kley

Attorney for Plaintiffs

Exhibit 1

House Bill 359



AN ACT PROHIBITING MINORS FROM ATTENDING SEXUALLY ORIENTED SHOWS; PROHIBITING DRAG STORY HOUR IN SCHOOLS AND LIBRARIES THAT RECEIVE PUBLIC FUNDING; PROHIBITING MINORS FROM ATTENDING SEXUALLY ORIENTED OR OBSCENE PERFORMANCES ON PUBLIC PROPERTY; PROHIBITING SEXUALLY ORIENTED PERFORMANCES IN LIBRARIES OR SCHOOLS THAT RECEIVE STATE FUNDING; PROHIBITING SEXUALLY ORIENTED PERFORMANCES ON PUBLIC PROPERTY WHERE CHILDREN ARE PRESENT; PROVIDING DEFINITIONS; PROVIDING PENALTIES; ESTABLISHING A PRIVATE RIGHT OF ACTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 and 2], the following definitions apply:

- (1) "Drag king" means a male or female performer who adopts a flamboyant or parodic male persona with glamorous or exaggerated costumes and makeup.
- (2) "Drag queen" means a male or female performer who adopts a flamboyant or parodic feminine persona with glamorous or exaggerated costumes and makeup.
- (3) "Drag story hour" means an event hosted by a drag queen or drag king who reads children's books and engages in other learning activities with minor children present.
- (4) "Nude" means:
 - (a) entirely unclothed; or
 - (b) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breast below the top of the areola of the breasts if the person is female or any portion of the genitals or buttocks.
- (5) "Prurient interest in sex" has the same meaning as provided in 45-8-205.
- (6) "Public property" means any real property owned or leased, in whole or part, by the state or a

political subdivision, as defined in 2-9-101, or held in the name of a political subdivision by a department, board, or authority of the state or a political subdivision.

(7) "Obscene" has the same meaning as provided in 45-8-201.

(8) "Sexually oriented" means any simulation of sexual activity, stripping, salacious dancing, any lewd or lascivious depiction or description of human genitals or of sexual conduct as defined in 45-5-625.

(9) "Sexually oriented business" means a nightclub, bar, restaurant, or similar commercial enterprise that:

(a) provides for an audience of two or more individuals:

(i) live nude entertainment or live nude performances; or

(ii) a sexually oriented performance; and

(b) authorizes on-premises consumption of alcoholic beverages.

(10) "Sexually oriented performance" means a performance that, regardless of whether performed for consideration, is intended to appeal to a prurient interest in sex and features:

(a) the purposeful exposure, whether complete or partial, of:

(i) a human genital, the pubic region, the human buttocks, or a female breast, if the breast is exposed below a point immediately above the top of the areola; or

(ii) prosthetic genitalia, breasts, or buttocks;

(b) stripping; or

(c) sexual conduct.

(11) "Stripping" means removal or simulated removal of clothing in a sexual manner for the entertainment of one or more individuals.

Section 2. Restrictions on sexually oriented businesses -- penalty. (1) A sexually oriented business may not allow a person under 18 years of age to enter the premises of the business during a sexually oriented performance.

(2) The owner, operator, manager, or employee of a sexually oriented business who is convicted of violating this section shall be fined not less than \$1,000 or more than \$5,000 for the first offense, not less than \$2,500 or more than \$5,000 for the second offense, and for third and subsequent offenses be fined

\$10,000 and, if applicable, the county or municipality shall revoke the business license held by the offender.

(3) [Sections 1 through 4] are applicable and uniform throughout the state and any political subdivisions.

Section 3. Where sexually oriented performances are prohibited. (1) A library that receives any form of funding from the state may not allow a sexually oriented performance as defined in [section 1] on its premises.

(2) A school or library that receives any form of funding from the state may not allow a sexually oriented performance or drag story hour, as defined in [section 1], on its premises during regular operating hours or at any school-sanctioned extracurricular activity.

(3) A sexually oriented performance is prohibited:

(a) on public property in any location where the performance is in the presence of an individual under the age of 18; and

(b) in a location owned by an entity that receives any form of funding from the state.

(4) A library, a school, or library or school personnel, a public employee, or an entity described in subsection (3)(b) or an employee of the entity convicted of violating the prohibition under this section shall be fined \$5,000 and, if applicable, proceedings must be initiated to suspend the teacher, administrator, or specialist certificate of the offender under 20-4-110 for 1 year. If an offender's certificate has previously been suspended pursuant to this subsection (4), proceedings must be initiated to permanently revoke the teacher, administrator, or specialist certificate of the offender under 20-4-110 on a subsequent violation of this section.

Section 4. Private right of action. (1) A minor who attends a performance in violation of [section 2] or [section 3] may bring an action against a person who knowingly promotes, conducts, or participates as a performer in the performance. The minor's parent or legal guardian may bring an action in the name of the minor for an action commenced under this section.

(2) If a person prevails in an action brought under this section, the court shall award:

(a) actual damages, including damages for psychological, emotional, economic, and physical harm;

- (b) reasonable attorney fees and costs incurred in bringing the action; and
- (c) statutory damages of \$5,000.
- (3) A person may bring an action under this section not later than 10 years from the date the cause of action accrues.

Section 5. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 45, chapter 8, and the provisions of Title 45, chapter 8, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified as an integral part of Title 20, chapter 7, part 1, and the provisions of Title 20, chapter 7, part 1, apply to [section 3].

(3) [Section 4] is intended to be codified as an integral part of Title 27, chapter 1, and the provisions of Title 27, chapter 1, apply to [section 4].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 359, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2023.

President of the Senate

Signed this _____ day
of _____, 2023.

HOUSE BILL NO. 359

INTRODUCED BY B. MITCHELL, E. BUTTREY, M. CUFFE, D. SALOMON, J. READ, T. MCGILLVRAY, K. REGIER, L. JONES, E. BUTCHER, B. KEENAN, C. GLIMM, G. HERTZ, M. LANG, D. LENZ, J. HINKLE, F. MANDEVILLE, T. MANZELLA, W. MCKAMEY, M. NOLAND, S. HINEBAUCH, S. GUNDERSON, M. REGIER, D. LOGE, R. FITZGERALD, F. ANDERSON, L. SHELDON-GALLOWAY, J. TREBAS, D. BARTEL, C. KNUDSEN, B. USHER, S. VINTON, B. BEARD, M. HOPKINS, N. DURAM, J. FULLER, R. KNUDSEN, K. BOGNER, B. GILLESPIE, J. KASSMIER, B. MERCER, T. MOORE, B. LER, B. PHALEN, F. NAVE, J. CARLSON, L. BREWSTER, K. ZOLNIKOV, A. REGIER, L. REKSTEN, P. FIELDER, S. KERNS, S. GALLOWAY, S. GIST, J. SCHILLINGER, K. SEEKINS-CROWE, M. MALONE, J. GILLETTE, C. HINKLE, M. BERTOGLIO, R. MARSHALL, C. FRIEDEL, S. ESSMANN, M. YAKAWICH, T. BROCKMAN, T. SMITH, R. MINER, G. PARRY, G. OBLANDER, N. NICOL, L. DEMING, D. EMRICH, S. VANCE, T. VERMEIRE, C. SPRUNGER, T. FALK, J. BERGSTROM, G. KMETZ, P. GREEN, J. ETCHART, B. BARKER, L. HELLEGAARD, Z. WIRTH, N. HASTINGS

AN ACT PROHIBITING MINORS FROM ATTENDING SEXUALLY ORIENTED SHOWS; PROHIBITING DRAG STORY HOUR IN SCHOOLS AND LIBRARIES THAT RECEIVE PUBLIC FUNDING; PROHIBITING MINORS FROM ATTENDING SEXUALLY ORIENTED OR OBSCENE PERFORMANCES ON PUBLIC PROPERTY; PROHIBITING SEXUALLY ORIENTED PERFORMANCES IN LIBRARIES OR SCHOOLS THAT RECEIVE STATE FUNDING; PROHIBITING SEXUALLY ORIENTED PERFORMANCES ON PUBLIC PROPERTY WHERE CHILDREN ARE PRESENT; PROVIDING DEFINITIONS; PROVIDING PENALTIES; ESTABLISHING A PRIVATE RIGHT OF ACTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Exhibit 2

Declaration of Adria Jawort

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA
BUTTE DIVISION**

THE IMPERIAL SOVEREIGN COURT
OF THE STATE OF MONTANA; ADRIA
JAWORT; RACHEL CORCORAN; THE
MONTANA BOOK COMPANY; IMAGINE
BREWING COMPANY, LLC d/b/a
IMAGINE NATION BREWING
COMPANY; BUMBLEBEE AERIAL
FITNESS; MONTANA PRIDE; THE
WESTERN MONTANA COMMUNITY
CENTER; THE GREAT FALLS LGBTQ+
CENTER; THE ROXY THEATER; and
THE MYRNA LOY,

Plaintiffs,

vs.

AUSTIN KNUDSEN; ELSIE ARNTZEN;
J.P. GALLAGHER; and THE CITY OF
HELENA,

Defendants.

Cause No.
CV- 23-50-BU-BMM

Declaration of Adria Jawort

I, Adria Jawort, declare as follows:

1. I am a resident of Billings, Montana and over the age of 18.
2. I am a transgender woman.
3. I am a member of the Northern Cheyenne Tribe and part of the Two-spirit community. Two-spirit is a term used within some Indigenous communities to refer to tribal members who have both male and female traits. The term reflects traditional Indigenous acceptance of trans and non-binary definitions of gender.
4. I am a journalist and published author, and I speak regularly to libraries and other organizations for educational purposes.
5. I provide education topics including education on Indigenous and transgender history.
6. On June 2nd, 2023, I was scheduled to give a lecture on Indigenous and transgender history in Montana at the Butte Public Library.
7. The day before the lecture, a Butte Public Library librarian notified me that my lecture had been cancelled because Chief Executive J.P. Gallagher determined “it is too much of a legal risk to have a transgendered person in the library.” A true and

Declaration of Adria Jawort

accurate copy of the email is attached to this declaration as Exhibit A.

8. After the event was cancelled, I reviewed the City and County of Butte-Silver Bow's Facebook page. I saw the following message relating to the cancellation:

PSA

In accordance with Governor Gianforte signing HB359 into law, our county cannot allow an event where a drag king or queen reads children's books and engages in other learning activities with minor children present. Due to this law, we have had to cancel the speaker at the Butte-Silver Bow Library that was scheduled for Friday.

A true and accurate copy of the Facebook message that I reviewed is attached to this email as Exhibit B.


9. Had I been able to provide the scheduled lecture, I would have discussed the history of transgender and Two-spirit people in Montana. I have provided the scheduled lecture many times, including to organizations, government entities, and public libraries.
10. I do not dress in "drag" nor do I identify as a "drag queen" or "drag king" when providing public lectures. When giving talks to

libraries and other institutions about LGBTQ+ and Two-Spirit history in Montana, I appear as myself.

11. I believe my lecture was canceled because I am transgender and/or because I intended to speak about LGBTQ+ issues.
12. The content of my lecture lacks anything resembling “prurient interest.”
13. HB 359 already has denied me my constitutionally protected First Amendment rights of freedom of speech and expression.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 17th day of July, 2023.

DocuSigned by:

49B5EAB3E12E4F1...

Adria Jawort

Declaration of Adria Jawort

Exhibit A

----- Forwarded message -----

From: **Shari Curtis Butte -Silver Bow Public Library** <programming.bsbsp@gmail.com>
Date: Thu, Jun 1, 2023, 11:22 AM
Subject: Re: First Fridays: Adria Jawort
To: Jessica Ryder <the gravelroadmt@gmail.com>, Julie Bushmaker <juliebushmaker@gmail.com>, graham <je2gragham@gmail.com>, Alan Kesselheim <alandmp@aol.com>, <willoughbysa@gmail.com>, Karen Myers <mysully2@yahoo.com>, Luanne Harbert <luanne.harbert@gmail.com>, Melody Rice <arttherapyinmt@q.com>, Marian Jensen <cyberisak@gmail.com>, CLAUDE H ORVIS <claudeorvis2@msn.com>, Mccrea, Donna <Donna.Mccrea@mso.umt.edu>, Marlene Holayter <holayter@aol.com>, Andrew Zemljak <zemmic46@hotmail.com>, Joe McCarthy <joe_mccarthy@bresnan.net>, Dianna Porter <porterdianna@hotmail.com>, Bishop, Debbie <dbishop14@bresnsn.net>, Gene Davenport <gene_d55@hotmail.com>, Rich Day <richday@bresnan.net>, David Braaten <david.braaten@smsu.edu>, Margaret Winninghoff <mprwinninghoff@icloud.com>, Kristi O'Leary <kindlycatwoman@gmail.com>, Henrietta Shirk <henrietta.shirk@gmail.com>, Adrian Jawort <adrianjawort@gmail.com>

It is with much regret that I must inform you that we have to cancel tomorrow's talk. JP Gallagher, Chief Executive, and Eileen Joyce, County Attorney, have decided it is too much of a risk to have a trans-person in the library.

Please let me know if I can answer any questions

Shari

Shari Curtis

Adult Services Librarian & Carle Gallery Manager
Butte-Silver Bow Public Library
programming.bsbsp@gmail.com
(406) 723-3361 x 6302

On Fri, May 26, 2023 at 8:00AM Shari Curtis Butte -Silver Bow Public Library <programming.bsbsp@gmail.com> wrote:
Below is the link for First Fridays this week. I will be in the library with the speaker, but if you'd like to join us virtually.

Butte-Silver Bow Public Library is inviting you to a scheduled Zoom meeting.

Topic: First Fridays: Adria Jawort
Time: Jun 2, 2023 11:00 AM Mountain Time (US and Canada)

Join Zoom Meeting

<https://uso2web.zoom.us/j/81366311486?pwd=b3RWYnpSaGM3SVRybWJZUFdmOVZZZz09>

Meeting ID: 813 6631 1486

Passcode: 093763

One tap mobile

+16699009128,,81366311486#,,,*,093763# US (San Jose)

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Dial by your location

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+1 346 248 7799 US (Houston)

+1 669 444 9171 US

+1 309 205 3325 US

+1 312 626 6799 US (Chicago)

+1 360 209 5623 US

+1 386 347 5053 US

+1 507 473 4847 US

+1 564 217 2000 US

+1 646 558 8656 US (New York)

+1 646 931 3860 US

+1 689 278 1000 US

+1 301 715 8592 US (Washington DC)

+1 305 224 1968 US

Meeting ID: 813 6631 1486

Passcode: 093763

Find your local number: <https://uso2web.zoom.us/j/81366311486?pwd=b3RWYnpSaGM3SVRybWJZUFdmOVZZZz09>

Shari Curtis

Stuart Curtis

Adult Services Librarian & Carle Gallery Manager
Butte-Silver Bow Public Library
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(406) 723-3361 x 6302

Exhibit B



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4h · 🌐

PSA

In accordance with Governor Gianforte signing HB359 into law, our county cannot allow an event where a drag king or queen reads children's books and engages in other learning activities with minor children present. Due to this law, we have had to cancel the speaker at the Butte-Silver Bow Library that was scheduled for Friday.

🙄👍❤️ 13

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Butte-Silver Bow



6h · 🌐

Start of Pride month with these great human beings.



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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA
BUTTE DIVISION**

THE IMPERIAL SOVEREIGN COURT
OF THE STATE OF MONTANA; ADRIA
JAWORT; RACHEL CORCORAN; THE
MONTANA BOOK COMPANY; IMAGINE
BREWING COMPANY, LLC d/b/a
IMAGINE NATION BREWING
COMPANY; BUMBLEBEE AERIAL
FITNESS; MONTANA PRIDE; THE
WESTERN MONTANA COMMUNITY
CENTER; THE GREAT FALLS LGBTQ+
CENTER; THE ROXY THEATER; and
THE MYRNA LOY,

Plaintiffs,

vs.

AUSTIN KNUDSEN; ELSIE ARNTZEN;
J.P. GALLAGHER; and the CITY OF
HELENA,

Defendants.

Cause No. CV 22-50-BU-
BMM

**Declaration of
Annatheia Smith**

I, Annatheia Smith, declare as follows:

1. I am over the age of eighteen years, am competent to testify as to the matters set forth herein, and I make this declaration based upon my personal knowledge and belief.
2. I am a resident of Missoula, Montana.
3. I am the president of The Imperial Sovereign Court of the State of Montana (“the Imperial Court”), a domestic nonprofit corporation founded in 1993 and headquartered in Missoula, Montana.
4. The Imperial Court is a membership organization. Individuals must be 18 years old to become a member.
5. I am a member of the Imperial Court, performing as a drag queen under the name “Diana Bourgeois.” I was named Empress 24 of the State of Montana in 2019.
6. I am a cisgender female, a mother, grandmother, and a disabled veteran who was honorably discharged.
7. The mission of the Imperial Court is to educate and advocate for LGBTQ+ individuals and allies through the production of community-based drag performances that explore multiple gender

expressions in an entertaining and educational atmosphere and create a safe and welcoming environment.

8. The Imperial Court is a prolific fundraiser, directing all net proceeds from its events to enriching the community. The Imperial Court has donated to the Bozeman Symphony, SAGA schools, and other Montana nonprofit organizations.
9. Imperial Court events also raise funds for homeless shelters and other community needs and the Imperial Court provides numerous scholarships to LGBTQ+ and allied individuals across the state.
10. Additionally, the Imperial Court supports the community by being a safe space for conversation and gatherings. For example, after a Neo-Nazi group attacked Bozeman Pride, causing injuries and emotional trauma, we opened our doors, held debrief sessions, and compiled a resource list for the community.
11. Imperial Court members are impactful educators, hosting conversations and seminars on many important topics, including consent, sober driving, gender identity, sexual orientation, and acceptance. As with all the Imperial Court's activities, these

educational events are carefully curated to be age-appropriate for each audience.

12. The Imperial Court's drag performances are strictly tailored based on age group, with some performances for adults-only and other performances for all-ages. We take steps to ensure that minors do not attend shows intended for our adult-only audiences.
13. The all-ages drag performances we put on are appropriate for anybody. We do not perform burlesque-style drag or striptease. Our performances are strictly power-lip syncing to uplifting songs.
14. The costumes for these all-ages performances are also age-appropriate, with exhaustive guidelines outlining what is and is not appropriate costuming for an all-ages show. Simply stated, if a performer could not wear it into a kindergarten class, they cannot wear it to an all-ages show.
15. Our drag performances necessarily include drag and flamboyant costuming and may also include sexual content as defined by HB 359. For example, under HB 359, the use of prosthetic cleavage at these events could be considered a "sexually oriented performance."

16. The Imperial Court produces drag shows at small business and public spaces across the state. Venues include public libraries, bookstores, bars, public parks, museums, churches, comedy clubs, schools, and even the Montana State Capitol building.
17. Many of these locations appear to be subject to the restrictions imposed by HB 359, severely curtailing our ability to perform and diminishing our reach.
18. Since HB 359 went into effect, we have had shows across the state canceled, modified, and placed in limbo.
19. While we were able to perform at Bozeman Pride on May 19 to 21, 2023, before HB 359 became effective, a show at the Museum of the Rockies originally scheduled for August 26, 2023, has been repeatedly rescheduled, with no clear sign that it will be allowed to happen at all.
20. A drag story hour event at Zoo Montana in Billings scheduled for June 22, 2023, has been postponed indefinitely due to HB 359. We successfully put on the same event at Zoo Montana just last year.

21. At Red Lodge Pride on June 2 and 3, 2023, we had to increase the restrictions for our all-ages performances and modify costuming due to concerns about HB 359's penalties. We also hired police officers for our performers' safety.
22. At Missoula Pride on June 17, 2023, event organizers modified our scheduled slate of events due to HB 359—and did not advertise the drag story hour event at all. As we did for Red Lodge Pride, we modified elements of the all-ages show in response to concerns about HB 359.
23. At Billings Pride on June 22 to 24, 2023, the drag story hour was again not advertised by event organizers and we were unable to perform any drag on public property.
24. At Anaconda Pride on June 30, 2023, in response to fears about HB 359's penalties, we changed our 16+ show to be adults-only. Unfortunately, this limited the reach of our performance and did not exercise the full community-building capacity our performance could have had.

25. At Butte Pride on July 1, 2023, we opted out of advertising our all-ages drag show and followed our new restrictions on costuming and performances due to HB 359.
26. At Libby Pride on July 8, 2023, we again did not advertise and were forced to modify the performance due to fear of HB 359's penalties.
27. Our performances planned for Montana Pride in Helena, from July 30 to August 6, 2023, are still uncertain. While we hope we can participate in uplifting and building community in downtown Helena, we anticipate that we will again follow our new, self-imposed restrictions and may not advertise our events out of fear of HB 359.
28. Across the state, our performers have been incredibly fearful of legal action being taken against them under HB 359.
29. As President of the Imperial Court, I am unable to determine how we can come into compliance with HB 359 while still serving our mission, our members, and our audience.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 17th day of July, 2023, in Missoula, Montana.

Declaration of Annatheia Smith

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read "Annatheia Smith". Above the signature, the text "Digitally signed by:" is visible, and below it, "Annatheia Smith" is printed. The box has a blue border.

Annatheia Smith

Exhibit 4

Declaration of Sabrina Malecek,
Owner of BumbleBee Aerial Fitness

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Rylee Sommers-Flanagan
Niki Zupanic
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA
BUTTE DIVISION**

THE IMPERIAL SOVEREIGN COURT
OF THE STATE OF MONTANA; ADRIA
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IMAGINE NATION BREWING
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FITNESS; MONTANA PRIDE; THE
WESTERN MONTANA COMMUNITY
CENTER; THE GREAT FALLS LGBTQ+
CENTER; THE ROXY THEATER; and
THE MYRNA LOY,

Plaintiffs,

vs.

AUSTIN KNUDSEN; ELSIE ARNTZEN;
J.P. GALLAGHER; and the CITY OF
HELENA,

Defendants.

Cause No. CV 23-50-BU-
BMM

**Declaration of Sabrina
Malecek, owner of
Bumblebee Aerial Fitness**

I, Sabrina Malecek, declare as follows:

1. I am a resident of Helena, Montana.
2. I own Bumblebee Aerial Fitness, a fitness studio for all community members over the age of 14. We offer over a dozen different classes specific to skill level and age group.
3. I operate Bumblebee Aerial Fitness under my maiden name, Sabrina Harding.
4. Bumblebee Aerial Fitness is Helena's only circus studio, with a focus on pole fitness, silks hammock, and aerial hoop (lyra).
5. I am a licensed XPERT-certified instructor and I previously trained at Polecats Aerial Fitness in Las Vegas, Nevada; The Dollhouse Fitness, in San Diego, California; and at Club B-FIT in Des Moines, Iowa.
6. My instructors and I are the only XPERT Certified Instructors in the state of Montana.
7. Bumblebee Aerial Fitness is a safe space for all individuals and identities.


8. Bumblebee Aerial Fitness is active and beloved within the community. Bumblebee Aerial Fitness typically teaches 26 classes per week and sees anywhere from 20–40 clients per week.
9. Bumblebee Aerial Fitness and I regularly assist with other artistic and theatrical performances in the Helena community.
10. In April, 2023, Bumblebee Aerial Fitness provided the performers and equipment for the aerial performance during “Charlotte’s Web” at Carroll College.
11. This past spring, Bumblebee Aerial Fitness provided performers, equipment, and training to bring the magic of “Matilda” to life at the Grandstreet Theatre,
12. Bumblebee Aerial Fitness regularly provides models for figure drawing classes at the Holter Museum of Art, and performs for the public at Lewis & Clark Brewery.
13. Bumblebee Aerial Fitness emphasizes the benefits of art in building, cultivating, and creating safe spaces within our community.
14. Bumblebee Aerial Fitness has been invited to perform at Montana Pride.

15. For the safety of our performers, we must wear costumes that are skin-tight in some areas of the body and provide some skin exposure in others; regardless, we wear more clothing than the U.S. Olympic Beach volleyball team.
16. We teach mediums of fitness that are designed to instill and inspire confidence in the dancer. There is nothing inherently sexual about aerial fitness.
17. HB 359 has opened the door for rampant discrimination against non-traditional fitness based on outdated and untrue stereotypes.
18. While there is nothing inherently sexual about our performances, clients of Bumblebee Aerial Fitness are concerned they could be arrested or fined based on obscene interpretations of their skillset and hard work because of HB 359.
19. In 5 years of operation before the passage of HB 359, Bumblebee Aerial Fitness had never had a performance canceled or indefinitely postponed.
20. However, in the wake of HB 359, a climate of fear created has diminished our ability to operate and perform.

21. Bumblebee Aerial Fitness was previously invited to model on our poles for a drawing class at Ascension Brewery in Helena, MT. That event was canceled because of HB 359.
22. Bumblebee Aerial Fitness was previously invited to perform at the Rodney Street Block party in Helena, MT, but after the passage of HB 359, the Rodney Street Block organizers backed out.
23. As a small, locally owned business, cancellations of our performances have an incredibly detrimental effect on both our profitability and reputation.
24. Beginner-level performance opportunities, typically modeling classes, have disappeared as organizations have reacted to the potential repercussions of HB 359.
25. The absence of these beginner-level performances is detrimental to both our business and our athletes because it restricts our ability to exhibit our work and impinges on our freedom of expression.
26. We rely on performances to bring in new clientele. As performances decrease, we could see our clientele stop growing and possibly diminish.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 17th day of July, 2023.

DocuSigned by:

29EFBE7BF2C24F2...

Sabrina Malecek

Exhibit 5

Declaration of Mike Steinberg,
Executive Director of the Roxy Theater

Constance Van Kley
Rylee Sommers-Flanagan
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT, DISTRICT OF
MONTANA
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FITNESS; MONTANA PRIDE; THE
WESTERN MONTANA COMMUNITY
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THE MYRNA LOY,

Plaintiffs,

vs.

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J.P. GALLAGHER; and the CITY OF
HELENA,

Defendants.

Cause No. CV 23-50-BU-
BMM

**Declaration of Mike
Steinberg, Executive
Director of the Roxy
Theater**

I, Mike Steinberg, declare as follows:

1. I serve as the Executive Director of the Roxy Theater, 718 South Higgins Ave., Missoula, Montana 59801.
2. The Roxy Theater is a nonprofit, community owned theater located in downtown Missoula, Montana.
3. The Roxy Theater receives funding from the Montana Arts Council, a state agency funded by the State of Montana.
4. The Roxy Theater hosts screenings and events seven days a week including new releases nightly and a monthly calendar of independent, foreign and classic films, theater, and community events.
5. The Roxy Theater's mission is to make the world a better place through the power of cinema, education, and community.
6. In 2022, the Roxy Theater was named the Downtown Business of the Year by the Missoula Downtown Business Association for its "extreme creativity in programming through the pandemic as well as its powerful return to in-person movies."
7. In 2022, the Roxy Theater screened 454 unique titles and had 51,911 people attend its films and special events.

8. The Roxy Theater has historically displayed films and events that appear to be “sexually oriented performances” under HB 359.
9. The Roxy Theater continues to display films and events that appear to be “sexually oriented performances” under HB 359.
10. HB 359 appears to prohibit sexually oriented performances at the Roxy Theater because the Roxy Theater is “owned by an entity that receives any form of funding from the state.”
11. The Roxy Theater authorizes on-premises consumption of alcoholic beverages. Specifically, the Roxy Theater sells beer and wine to attendees over the age of 21.
12. Because the Roxy Theater shows “sexually oriented performances” to crowds of larger than two people and authorizes the consumption of alcohol, the Roxy Theater appears to be a “sexually oriented business” under HB 359, despite the plain meaning of those words being unrelated to the purpose of our organization.
13. This upcoming week, the Roxy Theater will show the film *Asteroid City*.
14. *Asteroid City* is a Motion Picture Association rated PG-13 film.

15. *Asteroid City* is about children scientists forced to quarantine during a stargazer convention. In one scene Actress Scarlett Johansson disrobes and steps into a bathtub. This scene appears to meet HB 359’s definition of “stripping” and thus “sexually oriented performance.”
16. In accordance with Motion Picture Association ratings requirements, the Roxy Theater will show *Asteroid City* to a general audience with no age restrictions.
17. Showing *Asteroid City* to a general audience with no age restrictions appears to violate HB 359, given that the film is a sexually oriented performance and the Roxy Theater receives state funds and/or is a sexually oriented business.
18. This upcoming week, the Roxy Theater will show the film *No Hard Feelings*.
19. *No Hard Feelings* is a Motion Picture Association rated R film.
20. *No Hard Feelings* depicts a coming-of-age comedy featuring Academy Award-winning actress Jennifer Lawrence. In one scene Jennifer Lawrence’s “buttocks” and “female breast” are purposefully exposed, including “below a point immediately above

the top of the areola.” This scene appears to meet HB 359’s definition of “sexually oriented performance.”

21. In accordance with Motion Picture Association ratings requirements, the Roxy Theater will show *No Hard Feelings* to attendees 17 years old or older, and/or attendees under 17 accompanied by a parent or guardian of 21 years old or over.
22. Showing *No Hard Feelings* to attendees 17 years old or older, and/or attendees under 17 accompanied by a parent or guardian of 21 years old or over appears to violate HB 359, given that the film is a sexually oriented performance and the Roxy Theater receives state funds and/or is a sexually oriented business.
23. In June of 2023, the Roxy Theater hosted Montana’s first LGBTQ+ film festival, titled “Queerwest Film Fest.”
24. The Roxy Theater’s goal in hosting Queerwest Film Fest is to illuminate the lives, adventures, and pain of LGBTQ+ people living under the majesty, power, and complicated history of the American West.

25. Queerwest was a three-day event featuring live events, a block of shorts from filmmakers around the world, and several feature films, including the made-in-Montana *Please Baby Please*.
26. As part of Queerwest, the Roxy Theater hosted a drag show which included ten performers, both drag queens and drag kings.
27. The Queerwest drag show was presented to a packed house—selling out a theater of 66 attendees with no age limit.
28. The drag performers demonstrated their art form through both dance and comedy routines, some of which included the stripping of outer layers of clothing and the use of prosthetic breasts. There was no nudity by conventional definition at the event, nor was there exposure of prosthetic nipples.
29. The Roxy Theater intends to host Queerwest again in the future, but HB 359 appears to prohibit many of the films and events that are integral to Queerwest, including the drag show.
30. The Roxy Theater also hosts and employs transgender persons and drag queens and drag kings that perform educational events through the theater.

31. The Roxy Theater hosts a monthly series entitled “Out at the Roxy,” where LGBTQ+ pride is celebrated. This series has led “legislative talk backs” and Q&A sessions with drag queens, and it critically evaluates and appreciates media that portrays LGBTQ+ persons and events.
32. The Roxy Theater intends to continue to host “Out at the Roxy” monthly, and the next series installment is scheduled for July 24th, with a showing of the 1953 film *Glen or Glenda?* which will be open to a general audience.
33. Though it was developed as an exploitation film, Out at the Roxy intends to display Ed Wood’s *Glen or Glenda?* because it is, for its time, an astonishingly sympathetic portrayal of cross-dressing and gender nonconformity. Nominally resembling an educational reel, the film relates the stories of Glen, who struggles to tell his fiancée that he covets her angora sweaters, and a GI who undergoes reassignment surgery, but Wood conveys this narrative in a style bizarre beyond measure.
34. *Glen or Glenda?* includes a scene involving what would appear to be “stripping” under HB 359.

35. The Roxy also hosts a series entitled “Trash Vault,” where the Roxy displays a variety of movies that generally fall within the genre of cult-horror films from 1980’s and 90’s and science fiction-horror.
36. Many of the films portrayed in Trash Vault are rated R, and so are age-restricted by the Roxy, but HB 359 appears to ban those films outright.
37. Trash Vault is hosted by Roxy Employee Charlotte Macorn, who is a transgender woman, and live accompaniments of the films sometimes include drag.
38. The Roxy Theater intends to continue to the Trash Vault series.
39. I have had conversations with Board members and employees about HB 359. Through these conversations, my Board and I have become aware that the threat of criminal and civil liability concerns Board members and employees.
40. I am uncertain whether the State of Montana will enforce HB 359 to criminally charge or penalize the Roxy Theater or its employees.

41. I am uncertain whether the State of Montana will enforce HB 359 to force the withdrawal of the Roxy Theater's operating license.
42. I am uncertain whether the Roxy Theater or its employees are potentially liable to civil suit by any minor that has attended previously or will attend a showing at the Roxy Theater constituting a "sexually oriented performance."
43. The Roxy Theater and its employees are not reassessing programming in light of HB 359, because we are unsure how we can possibly comply. The law seemingly forces us to do everything about our business differently.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 17th day of July, 2023.


/s/ _____
Mike Steinberg
for The Roxy Theater

Exhibit 6

Declaration of Krys Holmes,
Executive Director of the Myrna Loy

Constance Van Kley
Rylee Sommers-Flanagan
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA
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THE IMPERIAL SOVEREIGN COURT
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WESTERN MONTANA COMMUNITY
CENTER; THE GREAT FALLS LGBTQ+
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AUSTIN KNUDSEN; ELSIE ARNTZEN;
J.P. GALLAGHER; and the CITY OF
HELENA,

Defendants.

Cause No.
CV 23-50-BU-BMM

**Declaration of Kryss Holmes,
Executive Director of the
Myrna Loy**

I, Krys Holmes, declare as follows:

1. I serve as the Executive Director of the Myrna Loy, 15 North Ewing Street, Helena, MT 59601
2. The Myrna Loy is a nonprofit, community owned theater located in the Rodney Street district of downtown Helena, Montana.
3. The Myrna Loy receives grant funding through the Montana Cultural Trust and the Montana Arts council, and has received grant funds through the Department of Commerce's Tourism Grant Program.
4. The Myrna Loy hosts film screenings, live music, and theater events seven days a week.
5. The Myrna Loy's mission is to inspire the creative spirits of people in and around Helena by presenting high quality, cultural significant films and performing arts, by supporting local and regional artists in their work, and by nurturing a lifelong love of the arts through education and residencies.
6. The Myrna Loy extends its reach beyond the building by conducting arts education programs across Helena, including in schools and

mental health care facilities, at hospitals and elderhomes, and through the “Rodney Street is...” art installations.

7. The Myrna Loy historically has displayed films and authorized events that include drag, flamboyant costuming, sexual content, and partial or complete nudity as defined by HB 359. All such films and events have artistic, scientific, literary, and/or cultural value.
8. HB 359 appears to prohibit such performances at The Myrna Loy because The Myrna Loy operates in a location owned by Lewis and Clark County.
9. The Myrna Loy follows the Motion Picture Association’s ratings requirements. Audience members of all ages may attend G, PG, and PG-13 films. Audience members under the age of 17 may only view R-rated films with a parent or guardian over the age of 21.
10. The Myrna Loy authorizes on-premises consumption of alcoholic beverages—beer and wine—and houses a pub.
11. Because of the facts above, it appears that The Myrna Loy would bizarrely be considered a “sexually oriented business” under HB 359.
12. The Myrna Loy recently displayed the film *Asteroid City*.

13. *Asteroid City* is a Motion Picture Association rated PG-13 film.
14. *Asteroid City* is about children scientists forced to quarantine during a stargazer convention. In one scene Actress Scarlett Johansson disrobes and steps into a bathtub. This scene appears to meet HB 359's definition of "stripping" and thus "sexually oriented performance."
15. In accordance with Motion Picture Association ratings requirements, The Myrna Loy showed *Asteroid City* to a general audience with no age restrictions.
16. It appears that The Myrna Loy could lose its operating license and the staff and Board of Directors could face criminal and civil liability for showing this PG-13 film because of HB 359.
17. I have no way of knowing whether the State of Montana will enforce HB 359 to criminally charge or penalize The Myrna Loy or its employees.
18. The Myrna Loy, its employees, and I fear that we face criminal and civil penalties for showing artistically meritorious films in compliance with industry standards.

19. HB 359 treats The Myrna Loy and other nonprofit arts centers differently than for-profit theaters, which are less likely to receive state funds.
20. Nonprofit arts centers like The Myrna Loy bring significant benefits to their communities but face steep financial challenges. Nationwide, 34% of arts centers have shut down since the Covid-19 pandemic began.
21. HB 359 creates the risk of unlimited financial liability for The Myrna Loy. I cannot predict or budget for the costs that The Myrna Loy may ultimately incur as a result of HB 359, particularly when individuals may sue the theater for ten years after an event.
22. I am unable to determine how The Myrna Loy can come into compliance with HB 359 while still serving its mission, its members, and its audience.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 16th day of July, 2023.

/s/ 
Krys Holmes

Exhibit 7

Declaration of Chelsia Rice,
Co-Owner of Montana Book Company

Constance Van Kley
Rylee Sommers-Flanagan
Niki Zupanic
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Attorneys for Plaintiffs

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FITNESS; MONTANA PRIDE; THE
WESTERN MONTANA COMMUNITY
CENTER; THE GREAT FALLS LGBTQ+
CENTER; THE ROXY THEATER; and
THE MYRNA LOY,

Plaintiffs,

vs.

AUSTIN KNUDSEN; ELSIE ARNTZEN;
J.P. GALLAGHER; and the CITY OF
HELENA,

Defendants.

Cause No. CV 23-50-BU-
BMM

Declaration of Chelsia Rice

I, Chelsia Rice, declare as follows:

1. I am over the age of eighteen years, am competent to testify as to the matters set forth herein, and I make this declaration based upon my personal knowledge and belief.
2. I am a resident of Helena, Montana.
3. I am the co-owner of the Montana Book Company, a bookstore located in the heart of downtown Helena. Montana Book Company has operated in Helena for over 45 years. My partner Charlie Crawford and I have owned it for five years.
4. Montana Book Company carries a variety of genres of new books for both adults and youth with a focus on minority voices and issues.
5. Montana Book Company also serves as an inclusive community-building place. We offer author readings, workshops, social gatherings, and regularly occurring book clubs for all ages and interests.
6. House Bill 359 (“HB 359”) appears to prohibit any private entity that receives state funding from holding a “sexually oriented performance.”

7. Montana Book Company has received state funding in the form of COVID relief, and I anticipate it may receive state funding in the future through business development grants, tax rebates, and arts and humanities grants.
8. The Montana Book Company offers books and hosts book readings that include depictions of sexual content as defined by HB 359.
9. For example, on Wednesday, June 21, 2023, Montana Book Company hosted “An Evening with Debra Magpie Earling,” in which the Montana-Native American novelist spoke about her books *Perma Red* and *The Lost Journals of Sacajawea*.
10. During the event, Ms. Magpie Earling read a chapter from her book that included descriptions of genitalia within the context of the time and culture of Sacajawea’s life. Under HB 359, the reading of this section could be considered a “sexually oriented performance.”
11. Similarly, on April 29, 2023, Montana Book Company hosted an event with Montana author Maxim Loskutoff, during which Mr. Loskutoff read from his award-winning book *Ruthie Fear* and discussed another of his stories that included a depiction of

bestiality. Under HB 359, Mr. Loskutoff's discussion could have been considered a "sexually oriented performance."

12. In order to engage the community and provide a safe space for fellow LGBTQ+ Montanans, Montana Book Company has also hosted drag story hour events during Montana Pride, at which drag performers read children's books to families. Under HB 359, the use of prosthetic cleavage at these events could be considered a "sexually oriented performance."

13. Despite threats of violence and protests, last year's event was incredibly popular with community members of all ages, drawing a crowd of over a hundred and fostering an inclusive and welcoming environment for all attendees.

14. I fear that Montana Book Company, its employees, and I could face criminal and civil penalties for offering books, author readings, and other events like those described above.

15. I have no way of knowing whether the State of Montana will enforce HB 359 to criminally charge or penalize me, Montana Book Company, or our employees.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 17th day of July, 2023, in Cutbank, Montana.

DocuSigned by:
Chelsia Rice
ACAE85981EAB459...

Chelsia Rice

Exhibit 8

Declaration of Lauren Halverson,
Representative of OUTlaws Student Organization

Constance Van Kley
Rylee Sommers-Flanagan
Niki Zupanic
Upper Seven Law
P.O. Box 31
Helena, MT 59624
(406) 306-0330
constance@uppersevenlaw.com
rylee@uppersevenlaw.com
niki@uppersevenlaw.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA
BUTTE DIVISION**

THE IMPERIAL SOVEREIGN COURT
OF THE STATE OF MONTANA; ADRIA
JAWORT; RACHEL CORCORAN; THE
MONTANA BOOK COMPANY; IMAGINE
BREWING COMPANY, LLC d/b/a
IMAGINE NATION BREWING
COMPANY; BUMBLEBEE AERIAL
FITNESS; MONTANA PRIDE; THE
WESTERN MONTANA COMMUNITY
CENTER; THE GREAT FALLS LGBTQ+
CENTER; THE ROXY THEATER; and
THE MYRNA LOY,

Plaintiffs,

vs.

AUSTIN KNUDSEN; ELSIE ARNTZEN;
J.P. GALLAGHER; and the CITY OF
HELENA,

Defendants.

Cause No. CV 23-50-BU-
BMM

**Declaration of Lauren
Halverson, Member of
OUTlaws at the Alexander
Blewett III School of Law**

I, Lauren Halverson, declare as follows:

1. I am a law student at the Alexander Blewett III School of Law at the University of Montana.
2. I will begin my 2L year this upcoming fall.
3. I hope to work as a public interest attorney in housing law after receiving my Juris Doctor Degree.
4. I am a member, and nominee for vice-president, of OUTlaws—a student organization at the Alexander Blewett III School of Law.
5. OUTlaws is committed to advancing the legal rights of the LGBTQ+ community.
6. OUTlaws receives funding from the law school to carry out its programming.
7. During the fall semester, OUTlaws hosts an annual “Drag Karaoke Gong Show” to help raise funds for other Montana organizations that support LGBTQ+ issues.
8. The Drag Karaoke Gong Show is open to all persons at the Alexander Blewett III School of Law and their families.
9. OUTlaws hires drag performers to judge and perform at the Drag Karaoke Gong Show.

10. The Drag Karaoke Gong Show consists of performances by students, drag performers, and one professor selected by the student body.
11. The performances typically involve karaoke and dancing, and performers have and will, at times, simulate or actually remove outer layers of clothing.
12. Some performers have and will, at times, create the appearance of breasts using artificial material.
13. It appears that the Drag Karaoke Gong Show would be considered a “sexually oriented performance” under HB 359.
14. In 2022, the Drag Karaoke Gong Show was performed at the Ole Beck VFW Post 209.
15. The Ole Beck VFW Post 209 has received state funds through the Paycheck Protection Program and apparently is prohibited from hosting the Drag Karaoke Gong Show under HB 359.
16. HB 359 also appears to classify the Ole Beck VFW Post 209 as a sexually oriented business if it hosts the Drag Karaoke Gong Show, given that it is a bar which serves alcohol.

17. It is unclear whether HB 359 applies retroactively to businesses that have hosted the Drag Karaoke Gong Show in the past.
18. OUTlaws is uncertain where to schedule the Drag Karaoke Gong Show in 2023, as it appears that any business or on-campus location may violate HB 359 by hosting it.
19. OUTlaws is concerned about HB 359's effect on education in Montana, given that the law appears intent on keeping queer people out of education and the lives of children.
20. OUTlaws is concerned for the many transgender and non-binary people subject to the sweeping definitions in HB 359.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 17th day of July, 2023.

DocuSigned by:

/s/ 754C7992844849C...
Lauren Halverson

Exhibit 9

Declaration of Kevin Hamm,
Founder and President of Happiness & Joy
Foundation

Constance Van Kley
Rylee Sommers-Flanagan
Niki Zupanic
Upper Seven Law
P.O. Box 31
Helena, MT 59624
(406) 306-0330
constance@uppersevenlaw.com
rylee@uppersevenlaw.com
niki@uppersevenlaw.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA
BUTTE DIVISION**

THE IMPERIAL SOVEREIGN COURT
OF THE STATE OF MONTANA; ADRIA
JAWORT; RACHEL CORCORAN;
MONTANA BOOK COMPANY; IMAGINE
BREWING COMPANY, LLC d/b/a
IMAGINE NATION BREWING
COMPANY; BUMBLEBEE AERIAL
FITNESS; MONTANA PRIDE; THE
WESTERN MONTANA COMMUNITY
CENTER; THE GREAT FALLS LGBTQ+
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Plaintiffs,

vs.

AUSTIN KNUDSEN; ELSIE ARNTZEN;
J.P. GALLAGHER; and THE CITY OF
HELENA,

Defendants.

Cause No. CV 23-50-BU-
BMM

Declaration of Kevin Hamm

I, Kevin Hamm, declare as follows:

1. I am over the age of eighteen years, am competent to testify as to the matters set forth herein, and I make this declaration based upon my personal knowledge and belief.
2. I am a resident of East Helena, Montana.
3. I am the founder and president of the board of directors of the Happiness & Joy Foundation, a domestic nonprofit corporation created in 2014 and headquartered in Helena, Montana.
4. The Happiness & Joy Foundation organizes Montana Pride, Montana's annual statewide Pride celebration. I have been the chief organizer of Montana Pride since 2014.
5. Montana Pride is commemorating 30 years of Pride celebrations in Montana this year.
6. Montana Pride celebrates LGBTQ+ pride, acceptance, rights, and achievements. Montana Pride is intended to be a safe space for all individuals, especially those of the LGBTQ+ community.
7. Montana Pride is an all-ages celebration, with events designed to be accessible for anyone who wishes to attend. Events are age-

appropriate, and hosts are deliberate in ensuring the safety of all individuals participating or attending.

8. Montana Pride showcases several forms of entertainment and community-centered events, including drag shows, a parade, artisan markets, local business booths, a rally, and educational events.
9. Educational events that will be featured this year include an Intersex Q&A, a Death Doula event, and Queer Collaging.
10. With more than 15,000 attendees from across the state and country, Montana Pride is the largest Pride event in Montana, a significant tourist attraction, and an economic boon for the Helena region.
11. Montana Pride events are held at a variety of small businesses, in public parks, on public streets, and at other venues throughout Helena, over the course of several days.
12. This year's Montana Pride events are scheduled to begin on July 30, 2023, and end on August 6, 2023.
13. On June 30, 2023, I applied to the City of Helena for the permits necessary for several Montana Pride events to be held on city

property. I resubmitted these applications on July 13, 2023. A true and accurate copy of the applications are attached as Exhibits A and B to this declaration.

14. On July 13, 2023, I met with the City Manager, City Attorney, and other staff of the City of Helena. I was informed that the City of Helena would not issue the requested permits while HB 359 remained in effect and enforceable.
15. The Last Chance Gulch event permits I applied for this year are functionally identical to the permits the City of Helena approved last year.
16. HB 359 appears to prohibit even the partial exposure of prosthetic or natural breasts and buttocks on public property. People regularly expose these portions of the body in many public places, such as public swimming areas.
17. Montana Pride participants regularly wear costumes to celebrate and, because Montana Pride is held in the summertime, many attendees regularly wear clothing that partially exposes breasts and buttocks.

18. As the chief organizer of the Montana Pride events, I am concerned personally about civil and criminal liability under HB 359 and do not know how to limit such liability effectively. I cannot force thousands of attendees to comply with a state-sanctioned dress code.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 17th day of July, 2023, in Helena, Montana.



Kevin Hamm

Exhibit A



City of Helena Special Events Permit Form

The City's online Special Events Permit Application does not have the ability to be saved. Once you start the application, you must complete the form or your work will be lost. Before starting the application please be sure you have:

- Proof of Insurance
- Traffic Control Plan (If your event will be closing a street)
- Emergency Evacuation Plan (If your event's attendees exceeds 250 people)

City code requires all special events, including block parties, acquire special event insurance. The Montana Municipal Interlocal Authority (MMIA) has resources to help residents find insurance providers for their event. More information can be found at the [MMIA Special Events Coverage Page](#).

Acknowledge

Event Coordinator: 225 N Cruse Avenue, Suite B, Helena, MT 59601

Phone: (406) 447-8422

Email: specialevents@helenamt.gov

Deadlines

Requirement	Time Before Event Begin Date (Days)
Special Event Permit Application	30 Days
Alcohol Permit	30 Days
Traffic Control Requests	14 Days

▼ Event

Event Information

Event Name

Montana Pride Banned Brunch

Application Date

7/13/2023

Event Type

Estimated Number of Attendees

Other

Drag Show and Street Brunch

A Noise Ordinance Permit is required for an event of this size. The Noise Ordinance Permit is appended to the bottom of this form.

Due to the size of your event a member of the Helena Police Department will be in contact regarding event security details.

Due to the size of your event an Emergency Evacuation Plan is required.

Event Coordinator Information (Person in Charge of the Event)

Name Email

Cell Phone Work Phone

Address Address 2

Date / Time Information

Does the Event Span Multiple Days?

No Yes

Event Date Start Time End Time

Event Start Date Event End Date Start Time End Time

Section 46

Event Date Start Time End Time

Other Event Information

Proof of Insurance

Insurance Placeholder for permit app.pdf

Insurance requirements can be found in the City Code [§7-9-5](#)

Will your event contain alcohol?

Yes No

An alcohol permit is required with this application (alcohol permit is included on this form).

Will your event take place on the walking mall?

Yes No

Barricades are required for parades on the walking mall.

Will your event take place on a public park?

Yes No

Events taking place on a public park require a different application process. Please contact Heather Kahler at (406) 447-8463

Though not required, the City of Helena encourages recycling when possible. Will recycling be provided at this event?

Yes No

Event Security Information

Are you seeking police presence for your event?

Yes No

City of Helena Police Agreement

Location / Traffic Control Information

Traffic control plans should adhere to the following:

- 20 ft. of unobstructed width must remain clear at all times for emergency traffic.
- All signage shall comply with the Manual on Uniform Traffic Control Devices (MUTCD) and any City, County, or State requirements.
- Traffic control plans should contain a vicinity map which denotes the entire area impacted by the event.
- Traffic control plans should include details for event wayfinding. Using these principles will help create good wayfinding.

- Create an identity at each location.
- Use landmarks to provide orientation clues.
- Create well-structured paths.
- Create regions of differing visual character.
- Don't give the user too many navigational choices.
- Traffic control plans should show traffic flow by arrows indicating direction and any deviations.
- Traffic control plans should show event access, staging areas, and parking accommodations.
- Traffic control plans should show pedestrian access plans including disabled accessibility.
- Traffic control plans should show emergency access points.
- Traffic control plans should denote the roadways or pedestrian facilities to be closed and where they will be closed.
- Traffic control plans should denote where road closed barricades will be, and the location of advanced warning signs and any other required signs.

Will the event require street closures?

- Yes No

Location of Event

Banned Brunch at Front Street

Street Requiring Closure

Front Street between 13th & 14th

[Interactive Map](#)

Area Map

x____xpigIY1ZmA...
0a2e-11ee-a27d-
0a747911150b.pdf

Traffic Control Plan

x____xpigIY1ZmA...
0a2e-11ee-a27d-
0a747911150b.pdf

Emergency Evacuation Plan

x____xpigIY1ZmA...
0a2e-11ee-a27d-
0a747911150b.pdf

▼ Alcohol Permit

Alcohol Permit

General Questions

- Are you a licensed establishment permitted to sell alcohol?
- Are you allowing consumption of alcohol as the "host"?

What is your plan for clearly designating areas where alcohol consumption is permitted? Please detail all containment and signs you plan to use?

The street ends will have road signs blocking, with signage on the inside notifying people of the open container space. The bars will be provided by downtown establishments using their catering licenses to sell into the area.

General Guidelines

When approved, this portion of the document will be your permit. Keep this document available to present if needed.

Event Sponsors must ensure that participants are checked for legal age if served alcohol.

Insurance Requirements

The permit holder must indemnify, defend, and hold the City and its employees and agents harmless against all claims, liability, loss, damage, or expense incurred by the City due to any injury to or death of any person or any damage to property caused by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform the conditions of the permit, prior to the permit being issued, applicant must provide proof of applicant's liability insurance issued by a reliable company or companies for personal injury and property damage, and which includes alcohol liability coverage, in an amount not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate per year for bodily injury, personal injury, and property damage, with the City named as an additional insured. (Ord. 3252, §5-20-2019).

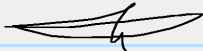

Acknowledgements

I have read & understand [Helena City Code Title 7, Chapter 14](#) and conditions regarding the consumption of alcohol on public right of way.

I have read & understand Helena City Code [§5-7-3](#) regarding the limitation of noise in City limits. If noise is expected to exceed allowable limits, I understand a Noise Permit is required.

I have read & understand [Helena City Code §7-14](#) regarding Insurance and Indemnification requirements: The permit holder must indemnify, defend, and hold the City and its employees and agents harmless against all claims, liability, loss, damage, or expense incurred by the City due to any injury to or death of any person or any damage to property caused by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform the conditions of the permit, prior to the permit being issued, applicant must provide proof of applicant's liability insurance issued by a reliable company or companies for personal injury and property damage, and which includes alcohol liability coverage, in an amount not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate per year for bodily injury, personal injury, and property damage, with the City named as an additional insured.

I have received, read and agree to the alcohol requirements set forth by the City of Helena and applicable state requirements.

▼ Noise Permit

Noise Permit

Noise permits are required for any project, special event, parade or party with noise that exceeds sound limits stated in the ordinance below. This includes parties on private or public property with or without amplified music that exceeds dB limits.


District / Zones	Limitations: 6:00AM - 11:00PM	Limitations: 11:00PM - 6:00AM
Residential	55 dB (A)	50 db (A)
Commercial	60 dB (A)	55 dB (A)
Industrial	80 dB (A)	75 dB (A)

Does your event contain any of the following

- Horns, Signaling Devices
- Sound Amplifying Equipment
- Loud Speakers, Amplifiers for Commercial Purposes
- Yelling or Shouting
- Animals
- Exhausts
- Defect in Vehicle
- Loading, Unloading, Opening Containers
- Construction Projects or Repair of Buildings
- Fireworks & Explosives

I have read & understand Helena City Code [§5-7-2](#) and [§5-7-3](#) regarding the limitation of noise in City limits. If noise is expected to exceed allowable limits, I understand a Noise Permit is required.

Noise Ordinance Permit Signature



▼ System Use [Please Do Not Alter Anything In This Section]

Event Start Date Variable Field

7/30/2023

▼ Contact Information


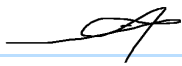
Contact Information

Department	Phone Number	Contact Reason
Police Department	(406) 447-8479	Event Security Detail
Transportation Systems	(406) 447-1566	Traffic Control Plan & Area Map
Fire Department	(406) 447-8472	EMS Services, Fire Code Information
Parking Division	(406) 447-8420	Parking Permits, Parking Logistics

▼ Acknowledgement

I acknowledge that I have received, read, and agree to follow above City of Helena Special Event Policies when holding the requested event. My signature below indicates my knowledge of the rules contained in the City of Helena Special Event Guidelines and Policies, that I have authority to legally bind any organization I represent with regard to this application, and that I /my organization agree(s) to comply with said rules.

Application Signature

▼ Director Approval Step

Comments

Insurance to come.

Digitally Signed (email verified)

 Kammi McClain

Jul 13, 2023

_bJlXYCGQe686LI1wMKlvG

Exhibit B



City of Helena Special Events Permit Form

The City's online Special Events Permit Application does not have the ability to be saved. Once you start the application, you must complete the form or your work will be lost. Before starting the application please be sure you have:

- Proof of Insurance
- Traffic Control Plan (If your event will be closing a street)
- Emergency Evacuation Plan (If your event's attendees exceeds 250 people)

City code requires all special events, including block parties, acquire special event insurance. The Montana Municipal Interlocal Authority (MMIA) has resources to help residents find insurance providers for their event. More information can be found at the [MMIA Special Events Coverage Page](#).

Acknowledge

Event Coordinator: 225 N Cruse Avenue, Suite B, Helena, MT 59601

Phone: (406) 447-8422

Email: specialevents@helenamt.gov

Deadlines	
Requirement	Time Before Event Begin Date (Days)
Special Event Permit Application	30 Days
Alcohol Permit	30 Days
Traffic Control Requests	14 Days

▼ Event

Event Information

Event Name

Montana Pride

Application Date

7/13/2023

Event Type

Estimated Number of Attendees

BlockParty

5000

A Noise Ordinance Permit is required for an event of this size. The Noise Ordinance Permit is appended to the bottom of this form.

Due to the size of your event a member of the Helena Police Department will be in contact regarding event security details.

Due to the size of your event an Emergency Evacuation Plan is required.

Event Coordinator Information (Person in Charge of the Event)

Name	Kevin Hamm	Email	k@montanapride.org
Cell Phone	4064170070	Work Phone	
Address	7 W 6th Ave, Ste 3d	Address 2	Helena, MT 59601

Date / Time Information

Does the Event Span Multiple Days?

No Yes

Event Date	Start Time	End Time	
Event Start Date	Event End Date	Start Time	End Time
7/30/2023	8/5/2023	8:00 AM	11:59 PM

SECTION 45

Event Date	Start Time	End Time
7/30/20203	8:00 AM	4:00 PM

SECTION 46

Event Date

8/5/2023

Start Time

8:00 AM

End Time

2:00 AM

Other Event Information

Proof of Insurance

event descriptions for permits signed copy.pdf

Insurance requirements can be found in the City Code [§7-9-5](#)

Will your event contain alcohol?

Yes No

An alcohol permit is required with this application (alcohol permit is included on this form).

Will your event take place on the walking mall?

Yes No

Barricades are required for parades on the walking mall.

Will your event take place on a public park?

Yes No

Events taking place on a public park require a different application process. Please contact Heather Kahler at (406) 447-8463

Though not required, the City of Helena encourages recycling when possible. Will recycling be provided at this event?

Yes No

Event Security Information

Are you seeking police presence for your event?

Yes No

City of Helena Police Agreement event descriptions for permits signed copy.pdf

Location / Traffic Control Information

Traffic control plans should adhere to the following:

- 20 ft. of unobstructed width must remain clear at all times for emergency traffic.

- All signage shall comply with the Manual on Uniform Traffic Control Devices (MUTCD) and any City, County, or State requirements.
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 - Create regions of differing visual character.
 - Don't give the user too many navigational choices.
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- Traffic control plans should show emergency access points.
- Traffic control plans should denote the roadways or pedestrian facilities to be closed and where they will be closed.
- Traffic control plans should denote where road closed barricades will be, and the location of advanced warning signs and any other required signs.

Will the event require street closures?

- Yes No

Location of Event

Last Chance Gulch

Street Requiring Closure

Last Chance Gulch & 6th Ave

[Interactive Map](#)

Area Map

event descriptions for
permits signed
copy.pdf

Traffic Control Plan

event descriptions for
permits signed
copy.pdf

Emergency Evacuation Plan

event descriptions for
permits signed
copy.pdf

▼ Alcohol Permit

Alcohol Permit

General Questions

- Are you a licensed establishment permitted to sell alcohol?

Are you allowing consumption of alcohol as the "host"?

What is your plan for clearly designating areas where alcohol consumption is permitted? Please detail all containment and signs you plan to use?

for the drag brunch it's the street signs, for the weekend of the parade, we're asking for the downtown to be declared for the weekend per our pdf.

General Guidelines

When approved, this portion of the document will be your permit. Keep this document available to present if needed.

Event Sponsors must ensure that participants are checked for legal age if served alcohol.

Insurance Requirements

The permit holder must indemnify, defend, and hold the City and its employees and agents harmless against all claims, liability, loss, damage, or expense incurred by the City due to any injury to or death of any person or any damage to property caused by or resulting from the activities for which the permit is granted. As evidence of the applicant's ability to perform the conditions of the permit, prior to the permit being issued, applicant must provide proof of applicant's liability insurance issued by a reliable company or companies for personal injury and property damage, and which includes alcohol liability coverage, in an amount not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate per year for bodily injury, personal injury, and property damage, with the City named as an additional insured. (Ord. 3252, §5-20-2019).



Acknowledgements

I have read & understand [Helena City Code Title 7, Chapter 14](#) and conditions regarding the consumption of alcohol on public right of way.

I have read & understand Helena City Code [§5-7-3](#) regarding the limitation of noise in City limits. If noise is expected to exceed allowable limits, I understand a Noise Permit is required.

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I have received, read and agree to the alcohol requirements set forth by the City of Helena and applicable state requirements.

 ▼ Noise Permit
Noise Permit

Noise permits are required for any project, special event, parade or party with noise that exceeds sound limits stated in the ordinance below. This includes parties on private or public property with or without amplified music that exceeds dB limits.

District / Zones	Limitations: 6:00AM - 11:00PM	Limitations: 11:00PM - 6:00AM
Residential	55 dB (A)	50 db (A)
Commercial	60 dB (A)	55 dB (A)
Industrial	80 dB (A)	75 dB (A)

Does your event contain any of the following

- Horns, Signaling Devices
- Sound Amplifying Equipment
- Loud Speakers, Amplifiers for Commercial Purposes
- Yelling or Shouting
- Animals
- Exhausts
- Defect in Vehicle
- Loading, Unloading, Opening Containers
- Construction Projects or Repair of Buildings
- Fireworks & Explosives

I have read & understand Helena City Code [§5-7-2](#) and [§5-7-3](#) regarding the limitation of noise in City limits. If noise is expected to exceed allowable limits, I understand a Noise Permit is required.

Noise Ordinance Permit Signature



▼ System Use [Please Do Not Alter Anything In This Section]

Event Start Date Variable Field

7/30/2023

▼ Contact Information

Contact Information		
Department	Phone Number	Contact Reason
Police Department	(406) 447-8479	Event Security Detail
Transportation Systems	(406) 447-1566	Traffic Control Plan & Area Map
Fire Department	(406) 447-8472	EMS Services, Fire Code Information
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▼ Acknowledgement

I acknowledge that I have received, read, and agree to follow above City of Helena Special Event Policies when holding the requested event. My signature below indicates my knowledge of the rules contained in the City of Helena Special Event Guidelines and Policies, that I have authority to legally bind any organization I represent with regard to this application, and that I /my organization agree(s) to comply with said rules.

Application Signature



▼ Director Approval Step

Comments

Insurance to come.

Digitally Signed (email verified)

 Kammi McClain

Jul 13, 2023

_VZ4CkCGQEe686LI1wMKlv

Exhibit 10

Declaration of Rachel Corcoran,
Billings Public Schoolteacher

Constance Van Kley
Rylee Sommers-Flanagan
Niki Zupanic
Upper Seven Law
P.O. Box 31
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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA
BUTTE DIVISION**

THE IMPERIAL SOVEREIGN COURT
OF THE STATE OF MONTANA; ADRIA
JAWORT; RACHEL CORCORAN;
MONTANA BOOK COMPANY; IMAGINE
BREWING COMPANY, LLC d/b/a
IMAGINE NATION BREWING
COMPANY; BUMBLEBEE AERIAL
FITNESS; MONTANA PRIDE; THE
WESTERN MONTANA COMMUNITY
CENTER; THE GREAT FALLS LGBTQ+
CENTER; THE ROXY THEATER; and
THE MYRNA LOY,

Plaintiffs,

vs.

AUSTIN KNUDSEN; ELSIE ARNTZEN;
J.P. GALLAGHER; and THE CITY OF
HELENA,

Defendants.

Cause No. CV 23-50-BU-
BMM

**Declaration of
Rachel Corcoran**

I, Rachel Corcoran, declare as follows:


1. I am over the age of eighteen years, am competent to testify as to the matters set forth herein, and I make this declaration based upon my personal knowledge and belief.
2. I am a resident of Billings, Montana.
3. I have been a licensed teacher in Montana since 2010. I taught in Billings Public Schools for over a decade and am currently an English Language Learners Instructional Coach for Billings Public Schools.
4. Prior to becoming an instructional coach, I regularly taught Special Education classes, specifically helping highschoolers learn to love reading.
5. I frequently used costumes and props in my classroom lessons, including dressing up as fictional characters from books to further engage my students in learning. My students also dressed up as fictional characters to help them engage with the books they read.
6. I continue to dress up to celebrate Red Ribbon Week, homecoming, and other schoolwide events. When I dress up along with my students, I am showing them that we are unified, and it builds a

relationship of respect and shared excitement for learning and reading.

7. I find this teaching strategy helpful for engaging with my students and fostering a successful and welcoming learning environment.
8. I dress up as fictional and historical characters without regard for the gender or sex of the person being portrayed.
9. House Bill 359 (“HB 359”) appears to ban teachers from reading to or engaging in learning activities with students while dressed in a gendered costume at school.
10. If I read to or engage in other learning activities with students while dressed up in a gendered costume, it appears that I could face criminal, civil, and occupational penalties.
11. Though I am fearful of HB 359’s penalties, I still plan to dress up to celebrate the success of my students, cultivate a sense of community, and further encourage learning in the classroom.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 17th day of July, 2023, in Billings, Montana.

DocuSigned by:

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Rachel Corcoran