

IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. DA 25-0139

---

JESSICA KALARCHIK, an individual, and JANE DOE, an individual,  
on behalf of themselves and all others similarly situated,

*Plaintiffs and Appellees,*

v.

STATE OF MONTANA; GREGORY GIANFORTE, in his official  
capacity as Governor of the State of Montana; MONTANA  
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES;  
CHARLIE BRERETON, in his official capacity as Director of the  
Department of Public Health and Human Services; MONTANA  
DEPARTMENT OF JUSTICE; and AUSTIN KNUDSEN, in his official  
capacity as Attorney General of the State of Montana,

*Defendants and Appellants.*

---

**APPELLANTS' NOTICE OF SUPPLEMENTAL AUTHORITY**

---

On Appeal from the Montana First Judicial District Court  
Lewis and Clark County Cause No. ADV-2024-261  
The Honorable Mike Menahan, Presiding

---

Appearances on next page

APPEARANCES:

Austin Knudsen

*Montana Attorney General*

Michael D. Russell

Thane Johnson

Alwyn Lansing

Michael Noonan

*Assistant Attorneys General*

MONTANA DEPARTMENT OF JUSTICE

PO Box 201401

Helena, MT 59620-1401

Phone: 406-444-2026

Fax: 406-444-3549

michael.russell@mt.gov

thane.johnson@mt.gov

alwyn.lansing@mt.gov

michael.noonan@mt.gov

*Attorneys for Defendants-Appellants*

Alex Rate

ACLU Montana Foundation, Inc.

PO Box 1968

Missoula, MT 59806

Phone: 406-204-0287

ratea@aclumontana.org

Tina B. Solis\*

Seth A. Horvath\*

Nixon Peabody LLP

70 West Madison Street, Suite

5200 Chicago, IL 60601

Phone: 312-977-4443

tbsolis@nixonpeabody.com

sahorvath@nixonpeabody.com

Malita Picasso\*

Jon W. Davidson\*

(admitted in California)

American Civil Liberties Union

Foundation LGBTQ & HIV

Project 125 Broad Street

New York, NY 10004

Phone: 212-549-2561

mpicasso@aclu.org

jondavidson@aclu.org

*\*Admitted pro hac vice*

*Attorneys for Plaintiffs-Appellees*

Appellants hereby notify the Court of supplemental authority pursuant to Montana Rule of Appellate Procedure 12(6). Subsequent to the filing of the Appellants' Reply Brief in this matter, the United States Supreme Court granted the United States' application for a stay in *Trump v. Orr*, No. 25A319, 2025 WL 3097824 (U.S. Nov. 6, 2025). The Court stayed the District of Massachusetts' order preliminarily enjoining the United States from enforcing a policy which requires all new passports to display an individual's biological sex at birth. *Id.* at \*1. The Court held that “[d]isplaying passport holders’ sex at birth no more offends equal protection principles than displaying their country of birth—in both cases, the Government is merely attesting to a historical fact without subjecting anyone to differential treatment.” *Id.*

Appellants argued on pages 21–28 of their opening brief that Montana's similar policy does not discriminate on the basis of sex or transgender status but simply records a “historical fact.” *Orr* proves “pertinent and significant” to these points Appellants raised in briefing. Mont. R. App. P. 12(6).

DATED this 7th day of November 2025.

Austin Knudsen  
*Montana Attorney General*

*/s/ Michael D. Russell*

Michael D. Russell

Thane Johnson

Alwyn Lansing

Michael Noonan

*Assistant Attorneys General*

MONTANA DEPARTMENT OF JUSTICE

*Attorneys for Defendants-Appellants*

## CERTIFICATE OF SERVICE

I, Michael D. Russell, hereby certify that I have served true and accurate copies of the foregoing Notice - Supplemental Authority to the following on 11-07-2025:

Thane P. Johnson (Govt Attorney)

215 N SANDERS ST

P.O. Box 201401

HELENA MT 59620-1401

Representing: Charles T. Brererton, Greg Gianforte, Austin Miles Knudsen, MT Department of Public Health and Human Service, MT Dept of Justice, State of Montana

Service Method: eService

Michael Noonan (Govt Attorney)

215 N SANDERS ST

HELENA MT 59601-4522

Representing: Charles T. Brererton, Greg Gianforte, Austin Miles Knudsen, MT Department of Public Health and Human Service, MT Dept of Justice, State of Montana

Service Method: eService

Alexander H. Rate (Attorney)

713 Loch Leven Drive

Livingston MT 59047

Representing: Jane Doe, Jessica Kalarchik

Service Method: eService

Electronically signed by Deborah Bungay on behalf of Michael D. Russell

Dated: 11-07-2025