

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 25-0165

Lauren DiFolco and Sherry Spear,

Petitioners/Appellees,

v.

Montana State Hospital – Department of Public Health and Human Services,

Respondent/Appellant

**APPELLANT’S RESPONSE IN OPPOSITION TO PETITION FOR
REHEARING**

On Appeal from the Second Judicial District Court, Butte-Silver Bow County
Cause No.: DV-24-17
The Honorable Kurt Krueger, Presiding

Appearances:

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INTRODUCTION

The Montana Supreme Court (“Court”) issued a well-reasoned and unanimous panel decision in this matter on February 17, 2026. On March 3, 2026, Lauren DiFolco (“DiFolco”) and Sherry Spear (“Spear”) submitted an Appellees’ Petition for Rehearing. Under M. R. App. P. 20(1)(a), this Court “will consider a petition for rehearing presented only upon the following grounds: (i) [t]hat it overlooked some fact material to the decision; (ii) [t]hat it overlooked some question presented by counsel that would have proven decisive to the case; or (iii) [t]hat its decision conflicts with a statute or controlling decision not addressed by the supreme court.” “A petition for rehearing is not a forum in which to rehash arguments made in the briefs and considered by the Court.” *State ex rel. Bullock v. Phillip Morris, Inc.*, 217 P.3d 475, 486, 2009 Mont. LEXIS 443. “[T]his Court seldom grants petitions for rehearing and will do so only upon grounds set forth in M. R. App. P. 20(1).” *Peters v. Cascade County Justice Court*, 565 P.3d 1183, 2025 Mont. LEXIS 135, *1. None of these grounds exist here, therefore, the Court should deny the Petition for Rehearing filed by DiFolco and Spear.

ARGUMENT

I. The Court's decision to reverse the District Court's Order did not overlook some material fact or question presented that would have proven decisive to the case.

Spear and DiFolco argue in their Petition for Rehearing that disparate impact was a theory of the case advanced by them as a separate theory of discrimination and because the hearing officer failed to make findings, the District Court could instead make findings. They then go on to argue that this Court's decision contains no analysis and overlooked the issue of disparate impact.

This Court did not overlook some fact material to the decision or some question presented by counsel that would have proven decisive to the case, like disparate impact, as alleged by Spear and DiFolco. The Court appropriately reviewed the material facts and arguments of the parties and reached a well-reasoned decision, just like the hearing officer in this matter. The Petition for Rehearing rehashes the arguments that Spear and DiFolco previously unsuccessfully made in their Response Brief on pages 29-31.

This Court reviewed the administrative record and determined that it contains substantial evidence to support the hearing officer's findings and that those findings were sufficient. The Court did not determine that the hearing officer failed to make any required or essential findings, as the hearing officer made all

required findings in this matter. The Court determined that the District Court well exceeded its authority under the Montana Administrative Procedure Act (“MAPA”) and overturned findings that were supported by substantial evidence.

As the Court explained, the administrative record contains substantial evidence to support the hearing officer’s findings and that those findings were sufficient. That was the dispositive issue in this case and no other issues were necessary to analyze to reach a decision in this matter. The Court also reviewed the District Court’s record and rightly determined that the District Court exceeded its authority under MAPA when it reversed the comprehensive determination of the hearing officer and Human Rights Commission (“HRC”). Therefore, this Court did not overlook some material fact or question presented that would have proven decisive to this case and neither of the first two criteria for a Petition for Rehearing are satisfied.

II. The Court’s decision is well-reasoned and does not conflict with a statute or controlling decision.

Spear and DiFolco argue in their Petition for Rehearing that the Court’s decision meets all three criteria for granting rehearing including “[t]hat its decision conflicts with a statute or controlling decision not addressed by the supreme court.” Pet. for Rehearing, p. 2. They argue that “[t]his case presents all three because the

Supreme Court failed to address the District Court’s holding with respect to disparate impact, which is an entirely separate issue from the five findings of fact relied upon by the Supreme Court when ruling in favor of Appellant.” *Id.*

However, throughout the Petition for Rehearing, no specific statutes or controlling case law are cited to support the argument that this Court was required to also analyze disparate impact as part of this Court’s decision overturning the District Court and upholding the HRC. The Court identified the dispositive issue on appeal which is “whether the District Court exceeded its authority under the Montana Administrative Procedure Act when it reversed the HRC’s decision.” MSC Opinion ¶ 1. The Court determined that the “administrative record contains substantial evidence to support the Hearing Officer’s findings, we conclude that the District Court exceeded its authority under MAPA when it reversed the HRC.” *Id at* ¶ 48. Spear and DiFolco have not shown that the Court’s identification and analysis of the dispositive issue on appeal conflicts with statute or a controlling decision in any manner. Therefore, this criteria for the Court to rehear the matter has not been met and the Petition should be denied.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Rehearing as the request does not satisfy any of the criteria for granting rehearing. The Court’s decision did not overlook facts material to the decision, did not overlook

some question that would have proven decisive to the case, nor does the decision conflict with statute or controlling decision. Therefore, the Court’s well-reasoned decision should not be disturbed.

Respectfully submitted this 18th day of March 2026.

/s/ Justin Kraske

JUSTIN KRASKE
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Services*

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 20(3) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; does not exceed ten pages; and the word count calculated by Microsoft Word for Windows is less than 2500 words, excluding Certificate of Service and Certificate of Compliance.

/s/ Justin Kraske

JUSTIN KRASKE
DPHHS Staff Attorney

CERTIFICATE OF SERVICE

I, Justin Wade Kraske, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Objection to Petition for Rehearing to the following on 03-18-2026:

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Electronically signed by Christie Ann Pierce on behalf of Justin Wade Kraske
Dated: 03-18-2026