

Montana permanently blocks transgender people from changing their birth certificates

Sep 9, 2022 7:31 PM EDT

BILLINGS, Mont. (AP) — Montana health officials on Friday made permanent a rule that blocks transgender people from changing their birth certificates even if they undergo gender-confirmation surgery.

The move by Republican Gov. Greg Gianforte's administration comes just days before a court will hear arguments over the legality of a similar rule that's been in effect on an emergency basis since May. The ACLU of Montana has asked state Judge Michael Moses to strike down the emergency rule.

Moses in April had temporarily blocked a 2021 Montana law that made it difficult for transgender people to change their birth certificate.

The law said people had to have a "surgical procedure" before they could change the sex listed on their birth certificate. Gianforte's administration then went further and blocked changes to birth certificates even after surgery.

Over the last several years, conservative legislators in numerous states have sought to limit the rights of transgender people.

Only Tennessee, [Oklahoma](#) and West Virginia have similar sweeping prohibitions against birth certificate changes, advocates for transgender rights say. Bans in Idaho and Ohio were struck down in 2020.

Transgender plaintiffs represented by the ACLU of Montana have said a birth certificate that doesn't match their gender identity puts them at risk of embarrassment, discrimination, harassment or violence if they are asked to provide their birth certificate.

ACLU attorney Akilah Lane said Friday's rule was "further evidence of the state's non-compliance" with Moses' April order. The judge will hear the matter during a Thursday hearing in Billings.

Prior to the new law, transgender people seeking to change their birth certificate in Montana needed only to provide an affidavit to the state health department.

Under the new rule, the state Department of Public Health and Human Services said it would no longer record the category of "gender" on people's birth certificates, replacing that category with a listing for "sex" — either male or female — that can be changed only in rare circumstances.

Sex is "immutable," according to the rule, which described gender as a "social construct" that can change over time.

Moses said the law passed by the 2021 Legislature was unconstitutionally vague because it did not specify what surgical procedures were required.

State health officials said weeks later that the court decision put them in "an ambiguous and uncertain situation" and it adopted the rule changes to clarify when a sex designation could be changed on a birth certificate.

The new rule states that people's sex on their birth certificates can be changed only if someone's sex is misidentified when they're born or if the sex was wrongly recorded as a result of "a scrivener's error."

Democratic state lawmakers said the administration's attempt to circumvent Moses' order was a "blatant abuse of power" and accused it of trying to undermine the courts.