MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,

YELLOWSTONE COUNTY

PLANNED PARENTHOOD OF MONTANA and JOEY BANKS, M.D., on behalf of themselves and their patients, Plaintiffs, vs. STATE OF MONTANA, by and through AUSTIN KNUDSEN, in his official capacity as Attorney General, Defendant.	Cause No.: DV 21-00999 Judge Michael G. Moses **ORDER GRANTING PRELIMINARY INJUNCTION**

Plaintiffs moved for a Preliminary Injunction on August 16, 2021. The State of Montana (the State) responded in opposition to the motion for a Preliminary Injunction on September 7, 2021. A Show Cause hearing regarding the Preliminary Injunction was held in front of Judge Todd on September 23, 2021. The issues

concerning the Preliminary Injunction were deemed fully briefed and submitted subject to the State's rights to file rebuttal affidavits. (*See* Show Cause Hr'g Tr. 76:11-82:23, Sept. 23, 2021). The rebuttal affidavits were timely filed. This matter was assigned to this Court, after Judge Todd recused himself, on September 30, 2021. This Court granted Plaintiffs' Temporary Restraining Order on September 30, 2021, temporarily enjoining House Bills 136 (HB 136), 171 (HB 171), and 140 (HB 140) from going into effect on October 1, 2021. The Court has reviewed the transcript from the Show Cause Hearing, the affidavit testimony submitted by the parties, the submitted motions, supporting briefs, and declarations.

The sole issue before the Court is whether to grant Plaintiff's Motion for a Preliminary Injunction prohibiting the State from enforcing HB 136, HB 171, and HB 140 during the pendency of this litigation.

Statement of Facts

On April 26, 2021, Governor Greg Gianforte signed HB 136, HB 171, and HB 140 into law. The effective date of these laws was to be October 1, 2021. The Temporary Restraining Order granted by this Court delayed these laws from becoming effectual for ten days or until this Court issued a decision on the Plaintiff's Motion for a Preliminary Injunction.

Plaintiff Planned Parenthood of Montana, Inc. (PPMT) is a non-profit Montana corporation that operates five health centers in the state of Montana. (Aff. Martha Stahl

¶ 4, Aug. 16, 2021). PPMT is the largest provider of reproductive health care in Montana. (Aff. Stahl ¶ 5). PPMT provides, in addition to other health services, abortions at each of its five facilities either through medication abortion (referred to in HB 171 as a 'chemical abortion') or procedural abortion. (Aff. Joey Banks ¶ 7, Aug. 16, 2021; Aff. Stahl ¶¶ 5-7). PPMT presently provides procedural abortions up to 21.6 weeks from the first day of the woman's last menstrual period (LMP). (Aff. Banks ¶ 8; Aff. Stahl ¶¶ 7-9). Medication (or 'chemical') abortions are provided at PPMT up to eleven weeks from the first day of the woman's last menstrual period. (Aff. Banks ¶ 8; Aff. Stahl ¶¶ 7-9).

PPMT provided 935 medical abortions and 255 procedural abortions between July 1, 2020 and June 30, 2021. (Aff. Stahl ¶ 10). Based on information provided by abortion providers (including All Families Healthcare, Billings Clinic, Blue Mountain Women's Clinic, PPMT, and others) pursuant to MCA § 50-20-110, between January 1, 2016 and August 18, 2021, "there were 8,402 induced abortions." (Decl. in Opp'n Todd Koch ¶ 4, Sept. 7, 2021). 5,754 of those abortions occurred when the gestational age of the fetus was 8 weeks or fewer.[1] (Decl. in Opp'n Koch ¶ 4). 1,966 abortions occurred when the gestational age of the fetus was between 9 to 13 weeks. (Decl. in Opp'n Koch ¶ 4). 276 abortions occurred when the gestational age was 14 to 15 weeks. (Decl. in

[1] The gestational age of the fetus was not reported for 13 of the abortions that occurred during this time. (Decl. in Opp'n Koch ¶ 4).

Opp'n Koch ¶ 4). 177 abortions occurred at 16 to 17 weeks. (Decl. in Opp'n Koch ¶ 4). 166 abortions occurred at 18 to 20 weeks. (Decl. in Opp'n Koch ¶ 4). 50 abortions occurred at 21 weeks or greater. (Decl. in Opp'n Koch ¶ 4).

Plaintiff Dr. Joey Banks is a contract physician and Laboratory Director at PPMT. (Aff. Banks ¶ 1). Dr. Banks currently performs procedural and medication abortions at PPMT. (Aff. Banks ¶ 6). Dr. Banks performs procedural abortions up to 21.6 weeks from the first day of the woman's last menstrual period (LMP). (Aff. Banks ¶ 8).

PPMT currently provides medication (or 'chemical') abortions "through in-person appointments and via telehealth visits." (Aff. Banks ¶ 9). Telehealth visits at PPMT are provided in two ways. (Aff. Banks ¶ 9). One way is direct-to-patient, in which a "patient in Montana consults with a PPMT provider via teleconference from wherever she is located and then receives abortion medication by mail from PPMT to a Montana address." (Aff. Banks ¶ 9). In fiscal year 2021, PPMT provided 140 direct-to-patient medical abortions. (Aff. Stahl ¶ 21). Of those, 56% "were provided to women who would have been forced to drive at least one to two hours each way to reach the nearest [medical abortion] provider." (Aff. Stahl ¶ 21). 18% would have had to drive at least two to five hours each way. (Aff. Stahl ¶ 21). The second way PPMT provides telehealth visits is site-to-site, "where a patient who is physically located at one PPMT

health center meets via teleconference with an abortion provider who is physically located at another PPMT health center." (Aff. Banks ¶ 9).

During these telehealth visits, PPMT providers review the patient's medical history, discuss the patient's available options, and if the patient is determined to be eligible for a medical abortion, the PPMT provider gives the patient directions to follow on how to take the abortion-inducing medication (which consists of mifepristone and misoprostol) and counsels the patient on potential side effects or complications. (Aff. Banks ¶ 9). The patient is then mailed the medication. (Aff. Banks ¶ 9). During this process, the patient electronically signs consent forms and is not required to have an ultrasound or blood work, unless it is determined to be medically necessary. (Aff. Banks ¶ 9).

A. HB 136

HB 136 provides that "[a] person may not perform an abortion of an unborn child capable of feeling pain unless it is necessary to prevent a serious health risk to the unborn child's mother." 2021 Mt. HB 136 § 3(1)(a). "Serious health risk to the unborn child's mother" is defined in the statute as "a condition that so complicates the mother's condition that it necessitates the abortion of the mother's pregnancy to avert the mother's death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions." § 2(9). This condition is to be determined by "reasonable medical

judgment" which is defined in the statute as "a medical judgment that would be made by a reasonably prudent medical practitioner who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved." § 2(8-9). Further, according to the statute, an "unborn child is capable of feeling pain when it has been determined by the medical practitioner performing or attempting the abortion or by another medical practitioner on whose determination the medical practitioner relies that the probable gestational age of the unborn child is 20 or more weeks." § 3(1)(b).

The only exception to the above gestational age of 20 or more weeks rule is when there is a "medical emergency." §3(2). The statute defines "medical emergency" as "a condition that...so complicates the medical condition of a pregnant woman that it necessitates the immediate abortion of the woman's pregnancy without first determining the gestational age in order to avert the woman's death or for which delay necessary to determine gestational age will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions." § 2(4)(a). This exception has a condition placed on it in the statute, specifically, "[w]hen an abortion of an unborn child capable of feeling pain is necessary to prevent a serious health risk to the ... mother, the medical practitioner shall terminate the pregnancy in the manner that... provides the best opportunity for the unborn child to survive unless... termination of the

pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, of the woman than would other available methods." § 3(3).

Additionally, HB 136 provides for criminal penalties when someone "purposely or knowingly performs or attempts to perform an abortion in violation of [section 3]." § 4. Civil remedies, providing for actual and punitive damages, are similarly provided. *See* § 5(1-5).

B. HB 171

HB 171 requires, inter alia, that an "abortion-inducing drug" be provided only by a "qualified medical practitioner." A "qualified medical practitioner" is defined in HB 171 as a:

> [M]edical practitioner who has the ability to:
> (a) identify and document a viable intrauterine pregnancy;
> (b) assess the gestational age of pregnancy and inform the woman of gestational age-specific risks;
> (c) diagnose ectopic pregnancy;
> (d) determine blood type and administer RhoGAM if a woman is Rh negative;
> (e) assess for signs of domestic abuse, reproductive control, human trafficking, and other signals of coerced abortion;
> (f) provide surgical intervention or who has entered into a contract with another qualified medical practitioner to provide surgical intervention; and
> (g) supervise and bear legal responsibility for any agent, employee, or contractor who is participating in any part of a procedure, including but not limited to preprocedure evaluation and care.

2021 Mt. Hb § 171(10)(a-g). Under this law, the qualified medical practitioner (or any other person) "may not provide an abortion-inducing drug via courier, delivery, or mail service." § (4).

Moreover, under HB 171, prior to providing an abortion-inducing drug, the qualified medical practitioner must verify the existence of a pregnancy, determine the woman's blood type for potential administration of RhoGAM during the abortion, "inform the woman that the woman may see the remains of the unborn child in the process of completing the abortion," and "document in the woman's medical chart the gestational age and intrauterine location of the pregnancy and whether the woman received treatment for Rh negativity, as diagnosed by the most accurate standard of medical care." § 5(1)(a-d).

An additional requirement imposed by HB 171 is the qualified medical practitioner (or their agent) must "schedule a follow-up visit for the woman at approximately 7 to 14 days after the administration of the abortion-inducing drug to confirm that the pregnancy is completely terminated and to assess the degree of bleeding." § 5(3). Also, "[t]he qualified medical practitioner shall make all reasonable efforts to ensure that the woman returns for the scheduled appointment." § 5(3). Further, "[a] brief description of the efforts made to comply with this subsection, including the date, time, and identification by name of the person making the efforts, must be included in the woman's medical record." *Id.*

Furthermore, HB 171 requires the qualified medical practitioner to be "credentialed and competent to handle complications management, including emergency transfer, or must have signed a contract with an associated medical practitioner who is credentialed to handle complications and must be able to produce the signed contract on demand by the woman or by the department." § 5(2).

HB 171 also has additions to informed consent. Specifically, it requires that informed consent be obtained "at least 24 hours before the abortion-inducing drug is provided to the pregnant woman." § 7(2). A qualified medical practitioner must use a form drafted by the State to obtain consent. § 7(3). The consent form is only valid if "the woman initials each entry, list, description, or declaration required to be included in the consent form," "the woman signs the consent statement," and "the qualified medical practitioner signs the qualified medical practitioner declaration." § 7(4)(a-c). The consent form must contain:

> (a) the probable gestational age of the unborn child as determined by both patient history and ultrasound results used to confirm gestational age;
> (b) a detailed description of the steps to complete the chemical abortion;
> (c) a detailed list of the risks related to the specific abortion-inducing drug or drugs to be used, including but not limited to hemorrhage, failure to remove all tissue of the unborn child, which may require an additional procedure, sepsis, sterility, and possible continuation of pregnancy;
> (d) information about Rh incompatibility, including that if the pregnant woman has an Rh negative blood type, the woman should receive an injection of Rh immunoglobulin at the time of the abortion to prevent Rh incompatibility in future pregnancies, which can lead to complications and miscarriage in future pregnancies;
> (e) a description of the risks of complications from a chemical abortion, including incomplete abortion, which increase with advancing gestational age;

(f) information about the possibility of reversing the effects of the chemical abortion if the pregnant woman changes the woman's mind and that time is of the essence;

(g) information that the pregnant woman could see the remains of the unborn child in the process of completing the abortion;

(h) information that initial studies suggest that children born after reversing the effects of an abortion-inducing drug have no greater risk of birth defects than the general population and that initial studies suggest that there is no increased risk of maternal mortality after reversing the effects of an abortion-inducing drug;

(i) notice that information on and assistance with reversing the effects of abortion-inducing drugs are available in the state-prepared materials; and

(j) an acknowledgment of risks and consent statement, which must be signed by the woman. The statement must include but is not limited to the following declarations, which must be individually initialed by the woman, that:

(i) the woman understands that the abortion-inducing drug regimen or procedure is intended to end the woman's pregnancy and will result in the death of the unborn child;

(ii) the woman is not being forced to have an abortion, the woman has the choice not to have the abortion, and the woman may withdraw the woman's consent to the abortion-inducing drug regimen even after beginning the abortion-inducing drug regimen;

(iii) the woman understands that the chemical abortion regimen or procedure to be used has specific risks and may result in specific complications;

(iv) the woman has been given the opportunity to ask questions about the woman's pregnancy, the development of the unborn child, alternatives to abortion, the abortion-inducing drug or drugs to be used, and the risks and complications inherent to the abortion-inducing drug or drugs to be used;

(v) the woman was specifically told that "information on the potential ability of qualified medical professionals to reverse the effects of an abortion obtained through the use of abortion-inducing drugs is available at www.abortionpillreversal.com, or you can contact (877) 558-0333 for assistance in locating a medical professional who can aid in the reversal of an abortion";

(vi) the woman has been provided access to state-prepared, printed materials on informed consent for abortion;

(vii) if applicable, the woman has been given the name and phone number of the associated medical practitioner who has agreed to provide

medical care and treatment in the event of complications associated with the abortion-inducing drug regimen or procedure;

(viii) the qualified medical practitioner will schedule an in-person follow-up visit for the woman approximately 7 to 14 days after providing the abortion-inducing drug or drugs to confirm that the pregnancy is completely terminated and to assess the degree of bleeding and other complications;

(ix) the woman has received or been given sufficient information to give the woman's informed consent to the abortion-inducing drug regimen or procedure; and

(x) the woman has a private right of action to sue the qualified medical practitioner under the laws of the state if the woman feels coerced or misled prior to obtaining an abortion and how to access state resources regarding the woman's legal right to obtain relief; and

(k) a qualified medical practitioner declaration that must be signed by the qualified medical practitioner, stating that the qualified medical practitioner has explained the abortion-inducing drug or drugs to be used, has provided all of the information required in this subsection (5), and has answered all of the woman's questions.

§ 7 (5)(a-k).

HB 171 also requires the department to publish "state-prepared, printed materials on informed consent for abortion" that include the statement that "[i]nformation on the potential ability of qualified medical practitioners to reverse the effects of an abortion obtained through the use of abortion-inducing drugs is available at www.abortionpillreversal.com, or you can contact (877) 558-0333 for assistance in locating a medical professional who can aid in the reversal of an abortion." § 8(1). The qualified medical practitioner must "inform the pregnant woman about abortion pill reversal and provide the woman with the state-prepared materials..." § 8(3).

Also under HB 171, significant reporting requirements "must be completed by the facility in which the abortion-inducing drug was provided, signed by the qualified medical practitioner who provided the abortion-inducing drug, and transmitted to the department within 15 days after each reporting month." § 9(1). The report must include a minimum of 12 items of information. § 9(2)(a-l). These 12 items are:

> (a) identification of the qualified medical practitioner who provided the abortion-inducing drug;
> (b) whether the chemical abortion was completed at the facility in which the abortion-inducing drug was provided or at an alternative location;
> (c) the referring medical practitioner, agency, or service, if any;
> (d) the pregnant woman's county, state, and country of residence;
> (e) the pregnant woman's age and race;
> (f) the number of previous pregnancies, number of live births, and number of previous abortions of the pregnant woman;
> (g) the probable gestational age of the unborn child as determined by both patient history and ultrasound results used to confirm the gestational age. The report must include the date of the ultrasound and gestational age determined on that date.
> (h) the abortion-inducing drug or drugs used, the date each was provided to the pregnant woman, and the reason for the abortion, if known;
> (i) preexisting medical conditions of the pregnant woman that would complicate the pregnancy, if any;
> (j) whether the woman returned for a follow-up examination to determine completion of the abortion procedure and to assess bleeding, the date and results of the follow-up examination, and what reasonable efforts were made by the qualified medical practitioner to encourage the woman to return for a follow-up examination if the woman did not;
> (k) whether the woman suffered any complications and, if so, what specific complications arose and what follow-up treatment was needed; and
> (l) the amount billed to cover the treatment for specific complications, including whether the treatment was billed to medicaid, private insurance, private pay, or another method, including charges for any physician, hospital, emergency room, prescription or other drugs, laboratory tests, and other costs for treatment rendered.

§ 9(2)(a-l).

Further, HB 171 adds criminal penalties for "[a] person who purposely or knowingly or negligently violates any provision of [HB 171] is guilty of a felony and upon conviction shall be fined an amount not to exceed $50,000, be imprisoned in a state prison for a term not to exceed 20 years, or both." § 11(1). HB 171 provides for civil remedies and professional sanctions as well. *See* § 12(1-5).

C. HB 140

HB 140 requires, among other things, abortion providers to inform a pregnant woman of the opportunity to "view an active ultrasound of the unborn child," "view an ultrasound image of the unborn child," and "listen to the fetal heart tone of the unborn child, if audible." 2021 Mt. HB 140 § 1(1)(a)(i-iii). This law additionally requires abortion providers to "obtain the woman's signature on a certification form developed by the department." § 1(3). The certification form must contain "an acknowledgement that the woman was informed of the opportunities" to view an ultrasound and listen to the fetal heart tone of the fetus. § 1(3)(a). The form must also "indicate whether the woman viewed the active ultrasound or ultrasound image or listened to the fetal heart tone." § 1(3)(b). The abortion provider must, prior to performing or attempting to perform an abortion, "receive a copy of the signed certification form." § 1(4)(a). Finally, "a copy of this form must be retained in the woman's medical record." § 1(4)(b). Exceptions to this requirement include if a

procedure is performed with the intent to "(a) save the life of the woman; (b) ameliorate a serious risk of causing the woman substantial and irreversible impairment of a bodily function; or (c) remove an ectopic pregnancy." § 1(2)(a-c).

Legal Standard

Under the Montana Code Annotated (MCA), a preliminary injunction may be granted on five enumerated grounds. § 27-19-201(1-5). Only two are relevant for the purposes of this matter. Specifically, an injunction may be granted:

> (1) when it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually; (2) when it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

§ 27-19-201(1-2), MCA. Only one of the five enumerated grounds needs to be met for an injunction to issue because the subsections are disjunctive. *Four Rivers Seed Co. v. Circle K Farms*, 2000 MT 360, ¶ 13, 303 Mont. 342, ¶ 13, 16 P.3d 342, ¶ 13; *Weems v. State*, 2019 MT 98, ¶ 17, 395 Mont. 350, ¶ 17, 440 P.3d 4, ¶ 17. Importantly, "[t]he purpose of a preliminary injunction is to prevent 'further injury or irreparable harm by preserving the status quo of the subject in controversy pending an adjudication on the merits.'" *City of Billings v. Cty. Water Dist.* (1997), 281 Mont. 219, 226, 935 P.2d 246, 250 (quoting *Knudson v. McDunn* (1995), 271 Mont. 61, 894 P.2d 295, 298). The Supreme Court has defined the "status quo" as "'... the last actual, peaceable, noncontested condition which preceded the pending controversy...'" *Porter v. K & S P'ship* (1981),

192 Mont. 175, 181, 627 P.2d 836, 839 (quoting *State v. Sutton* (1946), 2 Wash.2d 523, 98 P.2d 680, 684); *see also Davis v. Westphal*, 2017 MT 276, ¶ 24, 389 Mont. 251, ¶ 24, 405 P.3d 73, ¶ 24 (quoting *Porter v. K & S P'ship* (1981), 192 Mont. 175, 181, 627 P.2d 836, 839).

To make a sufficient showing for a preliminary injunction to issue, applicants need "only establish a prima facie case, not entitlement to final judgment." *Weems*, ¶ 18. "'Prima facie' means literally 'at first sight' or 'on first appearance but subject to further evidence or information.'" *Id.* (quoting *Prima facie, Black's Law Dictionary* (10th ed. 2014)). Additionally, "all requests for preliminary injunctive relief require some demonstration of threatened harm or injury, whether under the 'great or irreparable injury' standard of subsection (2), or the lesser degree of harm implied within the other subsections of § 27-19-201, MCA."[2] *BAM Ventures, Ltd. Liab. Co. v. Schifferman*, 2019 MT 67, ¶ 16, 395 Mont. 160, ¶ 16, 437 P.3d 142, ¶ 16; *see also Weems* ¶ 17. The "loss of a constitutional right constitutes irreparable harm for the purpose of determining

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[2] The State argues that, under § 27-19-201(1), an applicant must show additional elements including a "'likelihood of success on the merits'" (Def's Br. in Opp'n at 3; quoting *M.H. v. Montana High Sch. Ass'n*, 280 Mont. 123, 135, 929 P.2d 239 (1997)). However, the Supreme Court only adopted the use of those elements in narrow circumstances, specifically, the Supreme Court adopted those elements as a test "to determine whether a preliminary injunction should issue **when a party's monetary judgment may be made ineffectual by the actions of the adverse party thereby irreparably injuring the applicant**." *Van Loan v. Van Loan* (1995), 271 Mont. 176, 895 P.2d 614, 617 (emphasis added). Thus, that four-part test as delineated in *Van Loan* (and the individual elements in it) is inapplicable to the case at hand, given monetary judgments are not at issue. *See Van Loan v. Van Loan* (1995), 271 Mont. 176, 895 P.2d 614, 619 ("Our holding, and the above four-part test, apply only in cases where a party seeking money damages alleges that the defendant is hiding or dissipating his/her assets in such a manner that a money judgment will be ineffectual and/or the plaintiff will be irreparably injured.").

whether a preliminary injunction should be issued." *Mont. Cannabis Indus. Ass'n v. State*, 2012 MT 201, ¶ 15, 366 Mont. 224, 229, 296 P.3d 1161, 1165.

Analysis

A. Standing

The State argues Plaintiffs lack standing because their claims are asserted, according to the State, "only on behalf of hypothetical, unidentified women." (Def's Br. in Opp'n at 5). The State seems to concede (at this stage) that "[b]ecause HBs 136 and 171 impose criminal penalties for noncompliance, *Armstrong* appears applicable to Plaintiffs' challenges to those laws." (Def's Br. in Opp'n at 5). However, the State preserved their arguments regarding standing as to HB 136 and HB 171 for appeal. (Def's Br. in Opp'n at 6). Plaintiffs similarly preserved their arguments as to standing for HB 136 and HB 171 for appeal. (Pls.' Reply Br. at 2).

The State did, however, raise the issue of standing as to HB 140. The State argues Plaintiffs "must establish normal third-party standing to sustain their challenge to HB 140." (Def's Br. in Opp'n at 6). The State further argues that noncompliance with HB 140 would result in no criminal penalties, and thus *Armstrong* is not applicable. (Def's Br. in Opp'n at 6). Plaintiffs argue the standing holding in *Armstrong* is not limited to criminal statutes. (Pls.' Reply Br. at 2).

In *Armstrong*, the Supreme Court held that "Plaintiff health care providers have standing to assert on behalf of their women patients the individual privacy rights

under Montana's Constitution of such women to obtain a pre-viability abortion from a health care provider of their choosing." *Armstrong v. State*, 1999 MT 261, ¶ 13, 296 Mont. 361, ¶ 13, 989 P.2d 364, ¶ 13. In *Weems*, the Supreme Court further described that when "'governmental regulation directed at health care providers impacts the constitutional rights of women patients,' the providers had standing to challenge the alleged infringement of such rights." *Weems*, ¶ 12 (quoting *Armstrong*, ¶¶ 8-13). Abortion providers in *Weems* were found to have standing when they were "plainly impacted by the statute." *Weems*, ¶ 14.

Here, HB 140 imposes new requirements on Plaintiffs in their providing of abortions. HB 140, as described above, would require abortion providers to inform a pregnant woman of the opportunity to view an active ultrasound and an ultrasound image of the fetus. 2021 Mt. HB 140 § 1 (a)(i-ii). Additionally, abortion providers would have to inform a pregnant woman of the opportunity to listen to the fetal heart tone of the fetus, if audible. § 1(a)(iii). Abortion providers would also have to "obtain the woman's signature on a certification form developed by the department" and abortion providers would have to retain that form "in the woman's medical record." § 3; § 4(b).

The failure by the abortion provider to comply with any of the requirements in HB 140 could result in "a civil penalty of $1,000." § 1(5). These potential new requirements to the providing of abortions would change Plaintiffs current practices when

providing abortion services. (Verified Compl. ¶ 28). Thus, Plaintiffs have standing to challenge HB 140 given they are plainly impacted by it.

To the extent this Court needs to address standing regarding HB 136 and HB 171, this Court finds that *Armstrong* is directly applicable. HB 136 and HB 171, as discussed above, both effect the right to obtain pre-viability abortions from health care providers. Abortion is legal in Montana until viability. § 50-20-109(1)(b), MCA. When *Armstrong* was decided, viability was determined to be reached at about 26 weeks gestation. *See Armstrong*, ¶ 44. According to Plaintiffs' expert, "it is commonly accepted in the field of OB/GYN that a normally developing fetus will not obtain viability—i.e., will not have a reasonable chance of survival outside the womb with or without artificial assistance—until approximately 24 weeks LMP." (Aff. Colleen McNicholas ¶ 34, September 7, 2021). Plaintiffs' and the State's experts disagree on when viability is reached (but they all agree that viability is not reached by 20 weeks LMP or at any earlier gestational age). HB 136 prohibits abortions after only 20 weeks gestation, which is pre-viability. *See* 2021 Mt. HB 136 § 3(1)(a-b). HB 171 adds voluminous restrictions and regulations to the providing of medication abortions, which, given that medication abortions are only provided up to eleven weeks from the first day of the woman's last menstrual period, are also pre-viability. *See* 2021 Mt. HB 171 §§ 1 *et seq.*; (*see also* Aff. Banks ¶ 8).

Thus, under *Armstrong*, health care providers, like Plaintiffs, "have standing to assert on behalf of their women patients the individual privacy rights under Montana's Constitution." *Armstrong*, ¶ 13. HB 171 and HB 136 both concern Plaintiffs patients' individual privacy rights, so Plaintiffs have established standing.

B. Have Plaintiffs established a prima facie case that they are entitled to the relief requested such that a preliminary injunction should be granted pursuant to § 27-19-201(1)?

Under the first statutory criteria in which a District Court may grant a preliminary injunction, which is "when it appears that the applicant is entitled to the relief demanded and the relief...consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually," this Court considers whether Plaintiffs have established a prima facie case that HB 136, HB 171, and HB 140 are unconstitutional. *See* § 27-19-201(1). This Court "should restrict itself to determining whether the applicant has made a sufficient case to warrant preserving a right in status quo until a trial on the merits can be had." *Weems*, ¶ 18 (quoting *Knudson v. McDunn*, 271 Mont. 61, 65, 894 P.2d 295, 298 (1995)).

This Court addresses each law separately as to whether Plaintiffs have made a prima facie case that the law is unconstitutional and whether that warrants preserving the status quo until a trial on the merits can be had.

1. <u>HB 136</u>

Plaintiffs contend the criminalization of pre-viability abortions in HB 136 is unconstitutional for four separate reasons. First, because it "infringes on the right to

privacy" and does not survive strict scrutiny. (Pls.' Br. at 5). Second, because it is unconstitutionally vague. (Pls.' Br. at 5). Third, it "violates Montanan's right to seek safety, health, and happiness by restricting access to a lawful medical procedure." (Pls.' Br. at 5). Fourth, it violates the equal protection clause of Montana's Constitution. (Pls.' Br. at 5).

As to the infringement of the right of privacy, Plaintiffs contend that HB 136 bans pre-viability abortions which was held to be unconstitutional in *Armstrong*. Plaintiffs and the State provided testimony in the form of affidavits and declarations from experts. As previously described above, Plaintiffs' expert testified the field of OB/GYB commonly accepts that viability is not reached until about 24 weeks LMP. (Aff. McNicholas ¶ 34). Dr. McNicholas also opines that "no fetus is viable at 20 weeks LMP or at any earlier gestational age" and "[e]ven under the best of circumstances, the likelihood of sustained survival outside the womb for a periviable birth before 23 weeks is very low (5-6%), which do not reflect a reasonable likelihood of sustained survival outside the womb." (Aff. McNicholas ¶ 35; Rebuttal Aff. Colleen McNicholas ¶ 35, September 17, 2021). The State's experts disagree as to the viability timeline arguing viability is reached at 21 weeks LMP (Decl. in Opp'n Ingrid Skop ¶ 35, September 7, 2021) and 22-23 weeks LMP (Decl. in Opp'n Robin Pierucci ¶¶ 9-17, September 7, 2021). Even so, HB 136 bans abortions beginning at 20 weeks LMP, and thus pre-viability.

The State argues HB 136 "is a law aimed at protecting women's health and fetal life, both of which the State may vigorously purs[u]e." (Def's Br. in Opp'n at 9). Further, the State argues this law should not be subject to strict scrutiny review because that is the wrong standard for health and safety regulations. (Def's Br. in Opp'n at 11). Thus, the State did not argue why this law would hold up under a strict scrutiny analysis.[3]

In *Armstrong*, the Supreme Court described that the right to privacy, which is "explicit in the Declaration of Rights of Montana's Constitution" is a "fundamental right" and "legislation infringing the exercise of the right of privacy must be reviewed under a strict scrutiny analysis." *Armstrong*, ¶ 34. The Court described the right of privacy's "separate textual protection in our Constitution reflects Montanans' historical abhorrence and distrust of excessive governmental interference in their personal lives." *Armstrong*, ¶ 34 (quoting *Gryczan v. State* (1997), 283 Mont. 433, 455,

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[3] At the Show Cause hearing, the State argued "*Armstrong* doesn't categorically hold that any regulation of abortion automatically triggers strict scrutiny for several reasons." (Show Cause Hr'g Tr. 32:3-7). The State described regulations affecting the fundamental right to keep and bear arms are not subject to strict scrutiny. (Show Cause Hr'g Tr. 32:8-17). No authority was cited. The State also argued that if *Armstrong* is read to require strict scrutiny review of regulations concerning the right of privacy than any regulation that protects the health and safety of women obtaining abortions would not survive. (Show Cause Hr'g Tr. 32:8-17). The State also argues that *Wiser* stands for the proposition that there "is presumptive legislative power to regulate for the health and safety of citizens without navigating strict scrutiny." (Show Cause Hr'g Tr. 33:5-11). Further the State argues "An analysis of these laws shows that they do not inhibit a woman's right to a previability abortion under *Armstrong* at all. They do add some steps to various processes to advance women's care and other important State interests. And they should be reviewed under rational basis." (Show Cause Hr'g Tr. 34:19-24). This Court disagrees with the State's interpretation of *Wiser*. The Court specifically describes strict scrutiny is not utilized when the right affected is not a **fundamental** right. *Wiser v. State*, 2006 MT 20, ¶ 19, 331 Mont. 28, ¶ 19, 129 P.3d 133, ¶ 19. At issue here is a fundamental right which is directly implicated by the laws at issue.

942 P.2d 112, 125). Under a strict scrutiny analysis, lawmaking infringing the exercise of the right of privacy "must be justified by a compelling state interest and must be narrowly tailored to effectuate only that compelling interest." *Armstrong*, ¶ 34.

This Court finds that Plaintiffs have established a prima facie case that HB 136 is unconstitutional. *Armstrong* specifically holds that "Article II, Section 10, protects a woman's right of procreative autonomy--here, the right to seek and to obtain a specific lawful medical procedure, a pre-viability abortion, from a health care provider of her choice." *Armstrong*, ¶ 75. While there is disagreement among the State's and Plaintiffs' experts as to when viability is, there was no disagreement that viability was reached by 20 weeks LMP and viability is generally accepted in the field of OB/GBYN to be reached at 24 weeks LMP. Thus, HB 136—which would ban abortions beginning at 20 weeks (and therefore, pre-viability)—is likely unconstitutional.

Plaintiffs also establish a prima facie case that HB 136 violates the Montana Constitution's guarantee of equal protection and the right of due process. The State does not appear to engage with Plaintiffs' equal protection argument. Plaintiffs assert that statutes that affect or draw distinctions based on the exercise of fundamental rights are subject to strict scrutiny. *See Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶ 17, 325 Mont. 148, 154, 104 P.3d 445, 449–50. Because the right to obtain an abortion before viability (including beginning at 20 weeks LMP) is a fundamental right, strict scrutiny applies.

As to Plaintiffs' due process claims, the State cites inapposite federal law and fails to show that HB 136's exceptions provide the notice constitutionally required of a statute with such severe criminal penalties.

HB 171

Plaintiffs contend they have made a prima facie showing HB 171 is unconstitutional because it imposes significant barriers to medication abortion, which violates the right to privacy. (Pls.' Reply Br. at 11). Specifically, Plaintiffs argue HB 171 effectively bars experienced medication abortion providers, bans telehealth medication abortion, imposes a 24-hour mandatory delay on all medication abortions, compels provider speech, and imposes a reporting regime that makes public information that could be used to identify the women who seek abortions and that identifies the providers who offer (or even refer for) that care.

The State argues "Plaintiffs mischaracterize HB 171's requirements in an effort to make it seem more burdensome, claiming it requires an in-person examination and ultrasound 24 hours prior to the first abortion drug. But HB 171 does not clearly require either of those, and would be permissible even if it did." (Def's Br. in Opp'n at 7).

Plaintiffs argue strict scrutiny should be applied when analyzing this law, since the right of privacy is infringed, and therefore the telehealth abortion ban and other

restrictions in HB 171 must be justified by a compelling state interest. *See Weems*, ¶¶ 19, 23; *Armstrong*, ¶¶ 2, 62.

Here, HB 171 requires "the qualified medical practitioner providing an abortion-inducing drug shall examine the woman **in person.**" 2021 Mt. HB 171 § 5 (1) (emphasis added). HB 171 further requires:

> [T]he qualified medical practitioner...prior to providing an abortion-inducing drug, shall:
>
> (a) independently verify that a pregnancy exists;
>
> (b) determine the woman's blood type, and if the woman is Rh negative, be able to and offer to administer RhoGAM at the time of the abortion;
>
> (c) inform the woman that the woman may see the remains of the unborn child in the process of completing the abortion; and
>
> (d) document in the woman's medical chart the gestational age and intrauterine location of the pregnancy and whether the woman received treatment for Rh negativity, as diagnosed by the most accurate standard of medical care

2021 Mt. HB 171 § 5 (1)(a-d).

Also, HB 171 imposes higher restrictions than § 50-20-109, MCA,[4] on who can perform a medication abortion. Specifically, under HB 171 only a "qualified medical practitioner" can provide abortion-inducing drugs, verify the existence of the pregnancy, and determine the woman's blood type. HB 171 defines a "qualified medical practitioner" as:

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[4] As to who can perform abortions in Montana, the MCA states "an abortion may not be performed within the state of Montana: (a) except by a licensed physician or physician assistant;". Mont. Code Ann. § 50-20-109(1)(a).

> "Qualified medical practitioner" means a medical practitioner [as defined in § 50-20-109, MCA] who has the ability to:
>
> (a) identify and document a viable intrauterine pregnancy;
>
> (b) assess the gestational age of pregnancy and inform the woman of gestational age-specific risks;
>
> (c) diagnose ectopic pregnancy;
>
> (d) determine blood type and administer RhoGAM if a woman is Rh negative;
>
> (e) assess for signs of domestic abuse, reproductive control, human trafficking, and other signals of coerced abortion;
>
> (f) provide surgical intervention or who has entered into a contract with another qualified medical practitioner to provide surgical intervention; and
>
> (g) supervise and bear legal responsibility for any agent, employee, or contractor who is participating in any part of a procedure, including but not limited to preprocedure evaluation and care

2021 Mt. HB 171 § 3 (10)(a-g). HB 171 further requires that a qualified medical practitioner providing an abortion-inducing drug to be "credentialed and competent to handle complications management, including emergency transfer, or must have a signed contract with an associated medical practitioner who is credentialed to handle complications and must be able to produce the signed contract on demand by the woman or by the department." 2021 Mt. HB 171 § 5 (2).

The State's argument for implementing more stringent requirements for medical practitioners providing medication abortions than § 50-20-109, MCA is that these additional qualifications "reasonably require[] chemical abortion providers to 'be credentialed and competent to handle complications management, including emergency transfer, or must have a signed contract with an associated medical practitioner who is.'" (Def's Br. in Opp'n at 18).

Plaintiffs contend that while PPMT providers are trained in the risks associated with medication abortions and can recognize symptoms (in person or via telehealth) that no PPMT provider (and likely no provider anywhere) has the capability to handle all the listed complications in HB 171. Thus, HB 171 "effectively bars providers who are experienced and well-equipped to provide MAB from providing any abortions at all, without any medical justification." (Pls.' Br. at 12). Dr. McNicholas opines that "[t]here is no single person who could be 'credentialed' in handling all of the 'complications' HB 171 identifies" and even if there were the requirement is "medically unnecessary" because "the very rare complications from medication abortion occur long after the patient has left the health center and "if the patient required care that the provider could not provide, the patient would be advised to go to a health care provider near them..." (Aff. McNicholas ¶¶ 68-69.)

As to the telehealth ban in HB 171, a medication abortion is a pre-viability abortion. (Aff. Banks ¶ 8). The State's experts do not dispute that medication abortions are pre-viability. Thus, the ban on using telehealth for medication abortion plainly infringes the right to privacy and must be justified by a compelling state interest. *See Weems*, ¶¶ 19, 23; *Armstrong*, ¶¶ 2, 62.

The State's arguments as to why the in-person requirement is important include that "it allows providers to verify that there is...a pregnancy. It allows providers to

determine a woman's blood type for possible RhoGam treatment." (Show Cause Hr'g Tr. 41:13-23). Additionally, the State argues, the in-person requirement aids in the gestational age determination which is "important because, the later a pregnancy goes, the higher risk that abortion drugs either don't work or they cause more or severe complications." (Show Cause Hr'g Tr. 41:24-42:13).

Plaintiff's expert testified "'the risks of medication abortion are similar in magnitude to the risks of taking commonly prescribed and over-the-counter medications such as antibiotics and NSAIDs' such as ibuprofen." (Rebuttal Aff. McNicholas at ¶ 6). Dr. McNicholas also testified that "multiple studies have demonstrated that medication abortion by...telehealth is just as safe and effective as in person." (Rebuttal Aff. McNicholas ¶ 27). Dr. McNicholas further rebuts the State's reasons for HB 171's requirements, describing ultrasounds are not necessary to screen for ectopic pregnancies and that providers can look to risk factors like symptoms and patient history to detect an ectopic pregnancy. (Rebuttal Aff. McNicholas ¶ 27). Additionally, she opines the "Rh requirement is also medically unnecessary. Research has shown that the risk of Rh sensitization after an early abortion is negligible." (Rebuttal Aff. McNicholas ¶ 27).

Further Plaintiffs described how telehealth enables their providers to provide healthcare for Montanans in remote areas without causing them to have to drive significant distances. Plaintiffs also argue that telemedicine provides patients with the

opportunity to receive care earlier in their pregnancy, which is when the medications are most likely to be effective and least likely to cause complications. (Rebuttal Aff. McNicholas ¶ 30).

As to the mandatory 24-hour delay required by HB 171 ("Informed consent to a chemical abortion must be obtained at least 24 hours before the abortion-inducing drug is provided to the pregnant woman"), Plaintiffs point out that a Montana district court has already held that imposing a 24-hour mandatory delay violates the right to privacy. *See Planned Parenthood of Missoula v. State*, No. BDV 95-722, 1999 Mont. Dist. LEXIS 1117, at *22 (Mont. Dist. Ct. Mar. 12, 1999) (striking down a 24-hour mandatory delay where the initial consultation could be performed by phone). That court reasoned that, "the State, through its 24-hour waiting period, is telling a woman that she cannot exercise a fundamental constitutional right for a 24-hour period." *Id.* at *9.

The State is correct in its argument that another district court's decision is not binding on this Court, however this Court disagrees with the State's argument that this regulation would not be subject to strict scrutiny. (*See* Show Cause Hr'g Tr. 48:8-19). The State argues the above cited district court case is not persuasive because "it applies strict scrutiny" which "after *Wiser*, the Montana Supreme Court made clear that the State may use its police powers to regulate the doctor-patient relationship without triggering strict scrutiny." (Show Cause Hr'g Tr. 48:8-19) This Court, as previously described, disagrees with the State's use of *Wiser*. In *Wiser*, the Supreme

Court describes, "this Court has recognized that the State's exercise of its police powers often implicates individual rights... when the rights affected are not fundamental, we do not utilize strict scrutiny review..." *Wiser v. State*, 2006 MT 20, ¶ 19, 331 Mont. 28, ¶ 19, 129 P.3d 133, ¶ 19. At issue here is a fundamental right, therefore, strict scrutiny would apply.

HB 171 also requires that providers inform patients about "...information on the potential ability of qualified medical professionals to reverse the effects of an abortion obtained through the use of abortion-inducing drugs is available at www.abortionpillreversal.com ..." HB 171 § 7(j)(v).

Plaintiffs' expert describes "medication abortion 'reversal' is an experimental treatment, the safety and efficacy of which has never been demonstrated." (Rebuttal Aff. McNicholas ¶ 38). The State's own expert describes the experimental nature of this "abortion reversal treatment." (Decl. in Opp'n Skop ¶ 63 ("animal studies show that natural progesterone can reverse the effects of mifepristone by outcompeting for the progesterone receptors"); ¶ 68 ("A retrospective study of over 750 women who sought Abortion Pill Reversal has been performed.").

Plaintiffs argue the mandate in HB 171 that providers discuss the above-mentioned abortion-pill reversal, the possible need for Rh immunoglobulin, and breast cancer risk violate their right to free speech. In defending the speech required of health care providers, the State does not engage with the Montana Constitution's

prohibition on compelled speech and content-based regulations. *See Denke v. Shoemaker*, 2008 MT 418, ¶ 47, 347 Mont. 322, 337–38, 198 P.3d 284, 296 ("It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." (quoting *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995))). The State further concedes that HB 171 imposes new, public reporting requirements on Plaintiffs, but does not adequately rebut Plaintiffs showing that this data indicates that certain demographic categories of women obtaining abortions contain very few members, which makes obvious the risk of identification through the additional data the law requires. And the State does not contend with Plaintiffs' argument that HB 171 is unconstitutionally vague. The fact that the State's interpretation of what is required of providers under the law differs so significantly from Plaintiffs' understanding itself bolsters Plaintiffs' prima facie case that HB 171 fails the requirement that "ordinary people can understand what conduct is prohibited," *State v. Samples*, 2008 MT 416, ¶ 16, 347 Mont. 292, 295, 198 P.3d 803, 806.

This Court finds that Plaintiffs have established a prima facie case that HB 171 is unconstitutional.

HB 140

Plaintiffs contend that HB 140 violates providers' free speech rights, their patient's right to privacy, the right to equal protection and individual dignity. The State argues HB 140 does not violate a constitutional abortion right. (Def's Br. in Opp'n

at 13). The State argues "the ultrasound offer empowers woman to more fully understand the nature of the procedure, which will terminate the life of a human person: her own child." (Def's Br. in Opp'n at 13). Plaintiffs argue HB 140 "mandate[s] that providers offer images and sounds to patients that have no medical purpose and would only serve to convey the State's disapproval of abortion." (Pls.' Reply Br. at 17). Further, Plaintiffs contend the right to privacy is specifically violated due to the "stigmatizing effect on patients that results from the combination of receiving the State's set of 'offers,' along with being required to sign a State-created form indicating whether they chose to view or listen to fetal activity." (Pls.' Reply Br. at 17).

In *Armstrong*, the Supreme Court states:

> while it may not be absolute, no final boundaries can be drawn around the personal autonomy component of the right of individual privacy. It is, at one and the same time, as narrow as is necessary to protect against a specific unlawful infringement of individual dignity and personal autonomy by the government--as in *Gryczan*--and as broad as are the State's ever innovative attempts to dictate in matters of conscience, to define individual values, and to condemn those found to be socially repugnant or politically unpopular.
>
> *Armstrong*, ¶ 38.

Plaintiffs have made out a prima facie case that HB 140 violates the right to privacy, insofar as HB 140 serves to stigmatize or discourage women from obtaining an abortion in Montana—a constitutionally protected right. Plaintiffs also make out a prima facie case that HB 140 violates the right to equal protection and individual dignity. The State's response to these constitutional arguments was that HB 140

provides "truthful, non-misleading information relevant to a patient's decision to have an abortion. No free speech rights are implicated." (Show Cause Hr'g Tr. 54:20-25). The state argues that same reason is why the right of privacy the other individual rights are not violated. (Show Cause Hr'g Tr. 55:4-6)

In sum, this Court finds that Plaintiffs have established a prima facie case that HB 136, HB 171, and HB 140 are unconstitutional. Based on the prima facie showing of the unconstitutionality of these laws, the Court further finds that Plaintiffs have also established harm to Plaintiffs and their patients is likely to occur, given that the "loss of a constitutional right constitutes irreparable harm..." *Mont. Cannabis Indus. Ass'n*, ¶ 15, 366 Mont. at 229, 296 P.3d at 1165. Thus, pursuant to § 27-19-201(1) Plaintiffs are entitled to the granting of their Motion for a Preliminary Injunction which would enjoin the implementation and enforcement of HB 136, HB 171, and HB 140 during the pendency of this litigation.

C. *Have plaintiff's shown, pursuant to § 27-19-201(2), MCA, that the commission or continuance of these laws during the litigation would produce a great or irreparable harm to plaintiffs and their patients?*

Montana law is clear that the loss of a constitutional right "constitutes irreparable harm for the purpose of determining whether a preliminary injunction should be issued." *Id.*

Plaintiffs have established that they and their patients will suffer concrete and irreparable harm absent preliminary relief. Specifically, if the challenged laws take

effect, women in Montana will not be able to obtain surgical abortions between 20 weeks LMP and viability; they will not be able to obtain medication abortions via telehealth or without a 24-hour mandatory delay; and they will not be able to obtain either surgical or medication abortions without being subjected to severe restrictions.

Additionally, the challenged laws criminalize—or, in the case of HB 140 penalize—activities that are currently lawful in Montana. There is no dispute that Plaintiffs engage in these activities while caring for their patients. It is plain from the record and the pleadings that if the challenged laws take effect, Plaintiffs must substantially alter their practice (and encounter the attendant medical, emotional, and social harm to themselves and their patients) or be subjected to serious legal repercussions. In other words, "it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant." § 27-19-201(2), MCA.

Plaintiffs have also established that the restrictions and regulations of the challenged laws inflict constitutional injuries on Plaintiffs and their patients. HB 136 bans pre-viability abortions at 20 weeks, in direct contravention of *Armstrong*. HB 171 bans medication abortions provided via telehealth and imposes mandatory delays on women seeking an abortion, significantly reducing their access to that care. HB 140 compels government-approved speech that interferes with the doctor-patient relationship. Plaintiffs have established a prima facie case that each of the challenged

laws are incompatible with the Montana Constitution and give rise to constitutional injuries. These injuries support the issuance of a preliminary injunction to preserve the status quo during the litigation. Notwithstanding the State's arguments to the contrary, such injuries are sufficient without any additional showing of likely success on the merits. *Driscoll*, ¶¶ 13, 17; *Weems*, ¶ 26.[5]

Plaintiffs have established that they and their patients will face "great or irreparable harm" absent a preliminary injunction.

Conclusion

Plaintiffs have established that they meet at least two of the five statutory criteria in which a preliminary injunction may be granted under § 27-19-201(1-5), MCA. The purpose of a preliminary injunction is to prevent "'further injury or irreparable harm by preserving the status quo of the subject in controversy pending an adjudication on the merits.'" *City of Billings v. Cty. Water Dist.* (1997), 281 Mont. 219, 226, 935 P.2d 246, 250 (quoting *Knudson v. McDunn* (1995), 271 Mont. 61, 894 P.2d 295, 298). If HB 136, 171, and 140 become effective during the pendency of this litigation, Plaintiffs and their patients will be irreparably harmed through the loss of their constitutional rights, thus the preservation of the status quo is necessary to prevent that harm.

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[5] The State also argues that a preliminary injunction will not preserve the status quo. Its logic is difficult to follow. A preliminary injunction that prevents these laws from significantly altering Montana's regulation of abortion will preserve the status quo, not disturb it.

The Court has considered all the papers and briefs on file. Being fully informed, the Court orders the following:

IT IS HEREBY ORDERED that Plaintiffs' Motion for Preliminary Injunction is **GRANTED** and Defendant is enjoined from enforcing any aspect of HB 136, HB 171, and HB 140 during the pendency of this action according to the prayer of the Plaintiffs' Motion and Complaint.

DATED this 7th day of October, 2021.

Michael G. Moses
DISTRICT JUDGE

cc: Raphael Graybill (rgraybill@silverstatelaw.net), David Dewhirst (David.Dewhirst@mt.gov), Patrick Risken (PRisken@mt.gov), Brent Mead (Brent.Mead2@mt.gov), Katie Smithgall (Kathleen.Smithgall@mt.gov), Kimberly Parker (kimberly.parker@wilmerhale.com), Hana Bajramovic (hana.bajramovic@ppfa.org), Alice Clapman (alice.clapman@ppfa.org), Gene Jarussi (gene@lawmontana.com), Nicole Rabner (Nicole.Rabner@wilmerhale.com)

CERTIFICATE OF SERVICE
This is to certify that the foregoing was duly served by email upon the parties or their attorneys of record at their last known email addresses this 7 day of October, 2021.

BY Jane Bushman
Judicial Assistant to Hon. Michael G. Moses