IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 23-287

PLANNED PARENTHOOD OF MONTANA; ALL FAMILIES HEALTHCARE; BLUE MOUNTAIN CLINIC; SAMUEL DICKMAN, M.D.; and HELEN WEEMS, APRN-FNP, on behalf of themselves and their patients,

Plaintiffs and Appellees,

v.

STATE OF MONTANA; MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; and CHARLIE BRERETON, in his official capacity as Director of the Department of Public Health and Human Services,

Defendants and Appellants.

On appeal from the Montana First Judicial district court, Lewis and Clark County
Cause No. ADV 23–299, the Honorable Mike Menahan, Presiding

APPELLEES' ANSWER BRIEF

Raph Graybill[†]
Graybill Law Firm, PC
300 4th Street North
PO Box 3586
Great Falls, MT 59403
(406) 452-8566
rgraybill@silverstatelaw.net

Peter Im*
Planned Parenthood Federation of America, Inc.
1110 Vermont Ave., N.W., Suite 300
Washington, D.C. 20005
(202) 803-4096
peter.im@ppfa.org

[†] *Appearances continued on next page*

Tanis M. Holm
Edmiston & Colton Law Firm
310 Grand Ave.
Billings, Montana 59101
(406) 259-9986
tholm@yellowstonelaw.com

Dylan Cowit*
Planned Parenthood Federation of America, Inc.
123 William St., 9th Floor
New York, NY 10038
(212) 541-7800
dylan.cowit@ppfa.org

Attorneys for Plaintiffs and Appellees Planned Parenthood of Montana and Samuel Dickman, M.D.

Erin M. Erickson
Bohyer, Erickson, Beaudette, and Tranel P.C.
283 West Front St., Suite 201
Missoula, MT 59802
(406) 532-7800
erickson@bebtlaw.com

Hillary Schneller*
Jen Samantha D. Rasay*
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038
(917) 637-3777
hschneller@reprorights.org
jrasay@reprorights.org

Alex Rate
ACLU of Montana
PO Box 1986
Missoula, MT 59806
(406) 203-3375
ratea@aclumontana.org

Attorneys for Plaintiffs and Appellees All Families Healthcare; Blue Mountain Clinic; and Helen Weems, APRN-FNP

** Admitted pro hac vice in First Judicial District, Case No. ADV 2023–299*

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTRODUCTION 1

STATEMENT OF THE ISSUES 3

STATEMENT OF THE CASE 3

STATEMENT OF FACTS 7

I. Plaintiffs-Appellees' Provision of Abortions to Medicaid Patients 7

II. The Abortion Restrictions 10

A. The Rule 10

B. HB 544 12

C. HB 862 12

STANDARD OF REVIEW 13

SUMMARY OF THE ARGUMENT 14

ARGUMENT 15

I. The district court did not manifestly abuse its discretion in holding that Providers are likely to succeed on the merits. 15

A. The district court correctly held that Providers have third-party standing to sue on behalf of their patients. 15

B. The district court correctly applied strict scrutiny to Providers' privacy and equal protection claims. 18

C. The district court correctly held that the Abortion Restrictions likely violate Providers' patients' right to privacy. 23

D. The district court correctly held that the Abortion Restrictions likely violate Providers' patients' right to equal protection. 28

II. The district court did not manifestly abuse its discretion in concluding that the other preliminary injunction factors weigh in favor of granting relief. 33

A. The district court correctly held that Providers have demonstrated irreparable harm. 33

B. The district court correctly held that the public interest and the balance of the equities weigh in favor of granting relief. 38

III. The State's arguments concerning the form of the district court's order are irrelevant and meritless. 40

A. The district court applied the correct legal standard in its now-superseded oral preliminary injunction ruling. 41

B. The district court did not manifestly abuse its discretion in adopting Providers' proposed order. 43

CONCLUSION 44

TABLE OF AUTHORITIES

Cases — Page(s)

Armstrong v. State,
1999 MT 261, 296 Mont. 361, 989 P.2d 364 ..... *passim*

Baird v. Bonta,
81 F.4th 1036 (9th Cir. 2023) 38, 39

Davis v. Westphal,
2017 MT 276, 389 Mont. 251, 405 P.3d 73 41

Dick Anderson Constr., Inc. v. Monroe Constr. Co.,
2009 MT 416, 353 Mont. 534, 221 P.3d 675 30

Dobbs v. Jackson Women's Health Org.,
597 U.S. 215 (2022) 17

Doe #1 v. Trump,
957 F.3d 1050 (9th Cir. 2020) 13

Doe v. Kelly,
878 F.3d 710 (9th Cir. 2017) 39

Driscoll v. Stapleton,
2020 MT 247, 401 Mont. 405, 473 P.3d 386 33

Ellison v. Shell Oil Co.,
882 F.2d 349 (9th Cir. 1989) 42

Flynt Distrib. Co., Inc. v. Harvey,
734 F.2d 1389 (9th Cir. 1984) 37

Harris v. McRae,
448 U.S. 297 (1980) 32, 33

Henry v. State Compensation Ins. Fund,
1999 MT 126, 294 Mont. 449, 982 P.2d 456 29

Herb Reed Enters., LLC v. Fla. Ent. Mgmt., Inc.,
736 F.3d 1239 (9th Cir. 2013) 37

In re G.M.N.,
2019 MT 18, 394 Mont. 112, 433 P.3d 715 37

In re Marriage of Boyer,
261 Mont. 179, 862 P.2d 384 (1993).....43

In re Marriage of George & Frank,
2022 MT 179, 410 Mont. 73, 517 P.3d 188 43

J.L.G. v. M.F.D.,
2014 MT 114, 375 Mont. 16, 324 P.3d 355 30

Jeannette R. v. Ellery,
No. BDV-94-811, 1995 WL 17959705 (1st Jud. Dist., May 22, 1995)..... *passim*

June Med. Servs. L.L.C. v. Russo,
140 S. Ct. 2103 (2020).....17

Maher v. Roe,
432 U.S. 464 (1977).....32

Marriage of Williams,
2018 MT 221, 392 Mont. 484, 425 P.3d 1277 44

McClanahan v. Salmonsen,
No. CV 22-20-H-BMM, 2023 WL 4409150 (D. Mont. July 7, 2023).....42

McDermott v. Mont. Dep't of Corrs.,
2001 MT 134, 305 Mont. 462, 29 P.3d 992 29

Melendres v. Arpaio,
695 F.3d 990 (9th Cir. 2012) 33

Mont. Cannabis Indus. Ass'n v. State,
2012 MT 201, 366 Mont. 224, 286 P.3d 1161 33

Mont. Wildlife Fed'n v. Mont. Bd. of Oil & Gas Conservation,
2012 MT 128, 365 Mont. 232, 280 P.3d 877 35

Olsen v. McQueary,
212 Mont. 173, 687 P.2d 712 (1984).....43

Planned Parenthood Great Nw. v. State,
522 P.3d 1132 (Idaho 2023) 17

Planned Parenthood of Mont. v. State by & through Knudsen ("*PPMT v. State*"),
2022 MT 157, 409 Mont. 378, 515 P.3d 301 4

Planned Parenthood of Wis., Inc. v. Van Hollen,
No. 13-CV-465-WMC, 2013 WL 3989238 (W.D. Wis. Aug. 2, 2013).....25

Playmakers LLC v. ESPN, Inc.,
376 F.3d 894 (9th Cir. 2004) 42

Porretti v. Dzurenda,
11 F.4th 1037 (9th Cir. 2021) 38

U.S. v. Robinson,
20 F.3d 1030 (9th Cir. 1994). 43

Sandrock v. DeTienne,
2010 MT 237, 358 Mont. 175, 243 P.2d 1123 24

Satanic Temple, Inc. v. Rokita,
No. 1:22-CV-01859-JMS-MG, 2023 WL 7016211 (S.D. Ind. Oct. 25, 2023) 17

Singleton v. Wulff,
428 U.S. 106 (1976).....18

State v. Reynolds,
2017 MT 25, 386 Mont. 267, 389 P.3d 243 14

U.S. Philips Corp. v. KBC Bank N.V.,
590 F.3d 1091 (9th Cir. 2010) 41

United States v. Moroyoqui-Gutierrez,
602 F. App'x 378 (9th Cir. 2015) 42

Univ. of Tex. v. Camenisch,
451 U.S. 390 (1981)..... 13, 41

Weems v. State ("*Weems I*"),
2019 MT 98, 395 Mont. 350, 440 P.3d 4 4

Weems v. State ("*Weems II*"),
2023 MT 82, 412 Mont. 132, 529 P.3d 798 4

Wurl v. Polson Sch. Dist. No. 23,
2006 MT 8, 330 Mont. 282, 127 P.3d 436 43

Statutes, Rules, and Regulations

Mont. Admin. Register Notice 37-1024…..……..……1, 3

HB 544, 2023 Leg., 68th Reg. Sess. (Mont. 2023).....1, 12

HB 862, 2023 Leg., 68th Reg. Sess. (Mont. 2023).....1

SB 191, 2023 Leg., 68th Reg. Sess. (Mont. 2023) 13, 14, 41, 42

Mont. Const. Art. II, § 4.....29

Mont. R. Evid. 201.....35

Mont. Admin. R. 37.82.102(18)(a).....10

Other Authorities

ACOG, Practice Bulletin No. 225.....9

Ushma D. Upadhyay, et al., *Safety and Efficacy of Telehealth Medication Abortions in the U.S. During the Covid-19 Pandemic*, JAMA Network Open (2021), https://jamanetwork.com/journals/ jamanetworkopen/fullarticle/2783451……...9

INTRODUCTION

After a full evidentiary hearing, the district court properly applied the new test from 2023 Senate Bill 191 ("SB 191") to preliminarily enjoin (1) the rule adopted by Defendant-Appellant Montana Department of Public Health and Human Services ("DPHHS") at Montana Administrative Register Notice 37-1024 amending Mont. Admin. R. 37.82.102 and 37.86.104 ("the Rule"), (2) 2023 House Bill 544 ("HB 544"), and (3) 2023 House Bill 862 ("HB 862") (collectively, the "Abortion Restrictions"). The district court concluded, based on a robust evidentiary record including affidavits the parties submitted and live testimony from five witnesses, that Plaintiffs-Appellees Planned Parenthood of Montana ("PPMT"), All Families Healthcare, Blue Mountain Clinic, Dr. Samuel Dickman, and Helen Weems (collectively, "Providers") are likely to succeed on the merits of their claims that the Abortion Restrictions unconstitutionally infringe on the ability of Montanans eligible for Medicaid to access abortion. Specifically, the Rule and HB 544 (1) ban Medicaid coverage of abortions provided by advanced practice clinicians ("APCs"), including physician assistants ("PAs") and advanced practice registered nurses ("APRNs"); (2) impose an arbitrary, onerous, and invasive prior authorization process that mandates an unnecessary in-person visit to a health center and eliminates the option for providing medication abortion through direct-to-patient telehealth; and (3) restrict the definition of "medically necessary service" for the

purpose of determining eligibility for Medicaid coverage only for abortions. HB 862 goes further, banning Medicaid coverage for almost all abortions in Montana. The district court also concluded that the Abortion Restrictions would cause irreparable harm and that the public interest and the balance of the equities weighed in favor of granting preliminary injunctive relief.

Defendants-Appellants (collectively, the "State") ask this Court to reweigh the evidence—including credibility determinations the district court made based on live testimony—and overturn the district court's order. Nothing about SB 191, the district court's order, or this Court's well-established standards of review of preliminary injunctive relief supports the State's extraordinary request. The district court properly assessed the evidence presented and correctly applied this Court's well-settled precedents to conclude that Providers have standing, that the Abortion Restrictions would infringe on their patients' fundamental right to abortion, and that the State failed to demonstrate a "medically-acknowledged, bona fide health risk" to justify them, *Armstrong v. State*, 1999 MT 261, ¶ 62, 296 Mont. 361, 989 P.2d 364. Because the district court did not manifestly abuse its discretion, this Court should affirm and preserve the status quo until the district court can make a final determination on the merits.

STATEMENT OF THE ISSUES

1. Whether the district court manifestly abused its discretion by preliminarily enjoining two statutes and a regulation after concluding, following a lengthy evidentiary hearing, that they would likely infringe on Medicaid-eligible Montanans' access to pre-viability abortions without addressing a medically acknowledged, bona fide health risk, in violation of the Montana Constitution.
2. Whether, on appeal from a preliminary injunction, this Court should overrule decades of precedent correctly holding that abortion providers have standing to sue on behalf of their patients.
3. Whether the district court properly considered the State's evidence when making credibility determinations and weighing the record, first from the bench following a hearing involving six witnesses, and then in the written order now on appeal.

STATEMENT OF THE CASE

DPHHS adopted the Rule on April 28, 2023, and it was scheduled to take effect on May 1, the next business day. App.D17.[1] The day the Rule was adopted, Providers filed suit seeking a temporary restraining order and preliminary injunction, arguing that the Rule denies abortion access to Medicaid-eligible Montanans, in

[1] The proposed version was published at MAR Notice No. 37-1024 on December 23, 2022, App.C, and adopted as proposed on April 28, 2023, App.D01.

contravention of this Court's holdings in *Armstrong*; *Planned Parenthood of Montana v. State by & through Knudsen* ("*PPMT v. State*"), 2022 MT 157, 409 Mont. 378, 515 P.3d 301; *Weems v. State* ("*Weems I*"), 2019 MT 98, 395 Mont. 350, 440 P.3d 4; and *Weems v. State* ("*Weems II*"), 2023 MT 82, 412 Mont. 132, 529 P.3d 798, and the First Judicial District Court's holding in *Jeannette R. v. Ellery*, No. BDV-94-811, 1995 WL 17959705 (1st Jud. Dist., May 22, 1995). Providers submitted affidavits from Dr. Dickman, the Chief Medical Officer of PPMT; Martha Fuller, President and Chief Executive Officer of PPMT; Ms. Weems, a nurse practitioner and the sole clinician at All Families Healthcare; and Nicole Smith, the Executive Director of Blue Mountain Clinic. On May 1, Judge Menahan granted Providers' request for a temporary restraining order.

On May 15 and 16, 2023, Governor Greg Gianforte signed HB 544 and HB 862, respectively. Both were set to take effect on July 1. On May 18, Providers amended their complaint and sought a preliminary injunction enjoining both laws.

On May 23, the district court held a hearing on Providers' preliminary injunction requests with respect to the Rule, HB 544, and HB 862. It heard testimony from Dr. Dickman; Ms. Weems; Ms. Smith; Michael Randol, the Medicaid and Health Services Director at DPHHS; and the State's expert witness Dr. George Mulcaire-Jones. On the same day, the court held an evidentiary hearing on PPMT

and Dr. Dickman's request for a preliminary injunction enjoining 2023 HB 575 and HB 721 in Case No. ADV-2023-231, in which it took additional witness testimony.

Because the State stipulated to extending the temporary restraining order only until the conclusion of the hearing, Providers requested that the court issue a ruling from the bench to keep the unlawful restrictions from taking effect immediately at the close of the hearing. After receiving hours of live testimony, and taking into consideration the extensive briefing and affidavits submitted by the parties in advance, Judge Menahan granted Providers' request and issued a preliminary injunction from the bench, promising a written order to follow.

On July 11, 2023, the district court issued its written ruling, in which it adopted the findings of fact and conclusions of law proposed by Providers on June 15. Citing the evidence, the Court found that "when Medicaid does not cover an abortion sought by a Medicaid patient, the patient's ability to access the abortion is severely impeded." Order Granting Pls.' Mot. for Prelim. Inj. ("Order") at 2 (App.B02). It found the physician-only requirement would "dramatically reduce the availability of abortions for Medicaid patients." Order at 2–3. The court found the prior authorization requirement would "force Medicaid patients to make an unnecessary in-person trip to a provider and delay their care." Order at 3 (emphasis omitted). It also found the requirement would "eliminate Plaintiffs' provision of medication abortion to Medicaid patients via direct-to-patient telehealth," a form of

care that the court found, based on testimony at the hearing on HB 575 and HB 721,[2] was "safe and conforms with the standard of care." Order at 3, 5. As to the restrictive definition of "medically necessary," the court found that "there is no health-based justification for the narrow definitions of medical necessity in the Rule and HB 544, . . . [and] that Dr. Dickman and Ms. Weems exercise their clinical judgment to make an individualized determination of medical necessity with respect to each of their abortion patients who are Medicaid recipients." Order at 5. The court found "the State ha[d] introduced no evidence that abortion providers in Montana do not make individualized determinations of medical necessity for each Medicaid patient, that they are untruthful in completing the MA-037 forms on which they document medical necessity, or that they engage in Medicaid fraud." Order at 5–6. Instead, it "credit[ed] the testimony of Dr. Dickman and Ms. Weems that they complete the MA-037 forms truthfully and accurately." Order at 5. As to HB 862, the district court found that during a ten-year period, DPHHS reported only six abortions in the two categories that would be covered if the law were to take effect, so the statute would effectively ban Medicaid coverage for almost all abortions. Order at 6.

Based on these extensive factual findings, the district court applied straightforward principles of Montana law and granted Providers' request for a

[2] The parties stipulated that the court could rely on testimony taken in either hearing in both cases. Supp.App.F03.

preliminary injunction. It concluded, as this Court has in prior abortion cases, that Providers have third-party standing. The court concluded that Providers are likely to succeed on their claims that the Abortion Restrictions violate the privacy and equal protection clauses of the Montana Constitution. The court specifically rejected the State's contention that the Abortion Restrictions do not impact Medicaid-eligible Montanans' access to abortion because they ostensibly only bar reimbursement. It held instead, based in part on evidence at the hearing, that barring Medicaid coverage would prevent Medicaid-eligible Montanans from accessing abortion. It therefore applied strict scrutiny and concluded that the State had failed to demonstrate a "medically-acknowledged, *bona fide* health risk," *Armstrong*, ¶ 62, justifying the restrictions. Finally, the court considered Providers' evidence of the devastating health consequences that the Abortion Restrictions would have on their Medicaid patients and concluded that the remaining preliminary injunction factors weigh in favor of preserving the status quo until a final determination on the merits.

The State appeals.

STATEMENT OF FACTS

I. Plaintiffs-Appellees' Provision of Abortions to Medicaid Patients

Access to safe, legal, and timely abortion is an important component of health care. Abortion is very common, extremely safe, and much safer than carrying a pregnancy to term. Supp.App.A07. Providers operate the only clinics that provide

abortions in Montana. In 2022, Medicaid patients made up 45% of PPMT's abortion patients, over 50% of All Families' abortion patients, and 40% of Blue Mountain's abortion patients. Supp.App.B05, C05, D15.

Evidence and experience, including in Montana, demonstrate that APCs provide medication and aspiration abortions with the same safety and efficacy as their physician counterparts. Supp.App.A08–09, C06; *see also Weems II*, ¶¶ 46–48. APCs also provide miscarriage care, which is identical to abortion care. Supp.App.A08, C06–07. Accordingly, an overwhelming consensus in the medical community supports and relies on APCs as abortion providers. Supp.App.A09, C06. Ms. Weems, a nurse practitioner, is the sole clinician at All Families, and the sole abortion provider in the Flathead Valley. Supp.App.C07. PPMT and Blue Mountain also rely heavily on APCs to provide abortions. Supp.App.B05 (in 2022, APCs provided 85% of abortions for Medicaid patients at PPMT), D08 (APCs provide about 24% of abortions and 42% of medication abortions for Medicaid patients at Blue Mountain). All told, APCs currently provide a majority of abortions in Montana. Their role is particularly crucial given that in the entire state, there are only a few physicians who provide abortions, and they provide abortions only in Helena and Missoula. Supp.App.B05–06 (at PPMT, one full-time and one contract physician, who provide only in Helena and Missoula); D03, 08 (at Blue Mountain, one full-time and one contract physician in Missoula).

The evidence also shows that direct-to-patient telehealth medication abortion, which allows patients to access medication abortion via a telehealth appointment from a location of their choice, is safe and effective. Supp.App.A12, B03–04, C10, D10.[3] Direct-to-patient telehealth abortion improves access for rural patients, patients with disabilities, and patients with limited access to transportation. Supp.App.A12–13; B04, 06–07; C10; D10. Access to telehealth furthers public health because it improves access to medication abortion for underserved communities and in underserved areas and allows Providers to see patients sooner than they otherwise might be able to. Supp.App.A12–13, C10, D10. This is particularly critical for Montanans on Medicaid. Supp.App.A13.

Montana Medicaid, which provides medical assistance to low-income residents, covers medically necessary abortions. In 1995, the First Judicial District Court held that failure to provide such coverage for only one kind of medically necessary care—abortion—violates the Montana Constitution's guarantees of privacy and equal protection: such a policy unfairly targets lower-income Montanans

[3] The American College of Obstetricians and Gynecologists ("ACOG") has recognized that telehealth abortion is as safe and effective as in-person abortion. Supp.App.A12 (citing ACOG, Practice Bulletin No. 225, *Medication Abortion Up to 70 Days of Gestation*, 136 Obstetrics & Gynecology 1, 5 (2020); *see also* Supp.App.C10 n.2 (citing Ushma D. Upadhyay, et al., *Safety and Efficacy of Telehealth Medication Abortions in the U.S. During the Covid-19 Pandemic*, JAMA Network Open (2021), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2783451.

who require access to abortion, while providing access to virtually all other medically necessary care. *Jeannette R.*, 19–22. Since *Jeannette R.*, DPHHS has reimbursed for all medically necessary abortions. DPHHS regulations contain the following definition of "medically necessary service," which applies generally to all medical care:

> [A] service or item reimbursable under the Montana Medicaid program, as provided in these rules . . . [w]hich is reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent the worsening of conditions in a patient which:
> (i) endanger life;
> (ii) cause suffering or pain;
> (iii) result in illness or infirmity;
> (iv) threaten to cause or aggravate a handicap; or
> (v) cause physical deformity or malfunction.

Mont. Admin. R. 37.82.102(18)(a).

II. The Abortion Restrictions

A. The Rule

The Rule denies abortion access to most Montanans on Medicaid in three ways. First, it categorically bars Medicaid coverage for abortions provided by APCs, eliminating Medicaid-eligible Montanans' access to most abortion providers in Montana. Second, it mandates an arbitrary, onerous, and invasive prior authorization process that requires a medically unnecessary additional in-person visit to a health center, thereby eliminating the option for providing medication abortion through direct-to-patient telehealth. The prior authorization requirement builds in delay—

even though abortion is a time-sensitive health service—by requiring extensive supplemental documentation. Further, it does not prescribe a period of time during which DPHHS must decide whether to approve or deny coverage for the abortion. The proposed authorization process would cost Medicaid more than double the actual cost of the underlying medical care provided. Tr. at 48:24–49:16, *see also* Stipulation (Oct. 10, 2023). Medicaid does not currently require prior authorization or a waiting period for abortion, contraception, ultrasound, or any other gynecological service. Supp.App.D12.

Finally, the Rule narrows the definition of "medically necessary" solely for abortions, allowing coverage only when:

> (a) a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed; or
> (b) although it does not place the woman in danger of death unless an abortion is performed, a woman suffers from:
>
> (i) a physical condition that would, as certified by a physician, be significantly aggravated by the pregnancy; or
> (ii) a psychological condition that would, as certified by a physician, be significantly aggravated by the pregnancy.

App.C02. This impermissibly singles out abortion among all other care covered by Medicaid and will result in patients being denied or having to delay care, even if

they are able to navigate through the Rule's myriad other restrictions. Supp.App.C08–09.

B. HB 544

Like the Rule, HB 544 categorically bars Medicaid coverage for abortions provided by APCs; imposes an arbitrary, onerous, and invasive prior authorization process; and narrows the definition of "medically necessary" solely for abortions. The statute's definition of "medically necessary" is even narrower than the definition in the Rule, allowing coverage only when a physician certifies that the pregnant person "suffers from: (a) a physical condition that would be significantly aggravated by the pregnancy; or (b) a severe mental illness or intellectual disability that would be significantly aggravated by the pregnancy." App.E01.

C. HB 862

HB 862 goes further still, doing away entirely with any pretense of covering abortions for low-income Montanans. HB 862 flat-out prohibits using public funds for abortions except if the pregnancy is the result of rape or incest or puts the pregnant person in danger of death. It is extraordinarily rare for abortions covered by Medicaid to fall into these categories: during the ten-year period from July 2011 to June 2021, only six abortions were reported as falling into these categories. Supp.App.E04–05.

STANDARD OF REVIEW

This Court reviews the grant of a preliminary injunction for "manifest abuse of discretion." *Weems I*, ¶ 7. An abuse of discretion is "manifest" when it is "obvious, evident, or unmistakable." *Id.* Whether to grant injunctive relief "is a matter within the broad discretion of the district court based on applicable findings of fact and conclusions of law." *Id.*

Under the federal preliminary injunction standard, which SB 191 adopted, "[t]he purpose of a preliminary injunction is always to prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits." *Doe #1 v. Trump*, 957 F.3d 1050, 1068 (9th Cir. 2020) (internal citation omitted). A preliminary injunction is also appropriate where the purpose is to preserve the status quo. *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) ("The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held."). In granting a preliminary injunction, a district court must find that "the applicant establishes that: (a) the applicant is likely to succeed on the merits; (b) the applicant is likely to suffer irreparable harm in the absence of preliminary relief; (c) the balance of equities tips in the applicant's favor; and (d) the order is in the public interest." *See* SB 191, 2023 Leg., 68th Reg. Sess. (Mont. 2023) (amending Mont. Code Ann. § 27-19-201). In doing so, a district court makes factual findings that are reviewed for clear error and should only be

overturned "if they are not supported by substantial credible evidence, if the court misapprehended the effect of the evidence, or if a review of the record leaves this Court with the definite and firm conviction that a mistake has been made." *State v. Reynolds*, 2017 MT 25, ¶ 13, 386 Mont. 267, 389 P.3d 243. To the extent the ruling is based on legal conclusions, this Court "determine[s] whether the interpretation of the law is correct." *Weems*, ¶ 7.

SUMMARY OF THE ARGUMENT

Since deciding *Armstrong v. State*, this Court has consistently recognized that the Montana Constitution broadly guarantees Montanans the right to make decisions "affecting one's own health and bodily integrity without government interference." *Armstrong*, ¶ 72. The district court faithfully applied that holding in preliminarily enjoining the Rule, HB 544, and HB 862, each of which it found would likely infringe on Medicaid-eligible Montanans' access to abortions without addressing a medically acknowledged, bona fide health risk. The district court did not manifestly abuse its discretion in doing so. Following a thorough evidentiary hearing, the district court properly found that Providers were likely to succeed on the merits of their privacy and equal protection claims, that their patients would face "devastating health consequences" without a preliminary injunction, and that the equities and public interest weighed in favor of preserving the status quo. Order at 15; *see also* SB 191 § 1(1).

Faced with this Court's precedents applying strict scrutiny to restrictions on pre-viability abortions, the State seeks to reframe this case as about financial reimbursement instead of abortion access. But as the district court found, the Abortion Restrictions impede the ability of some of the most vulnerable Montanans to access care by drastically limiting the pool of abortion providers, requiring an extra in-person visit and imposing a waiting period, banning them from accessing medication abortion through a safe and effective form of telehealth, and narrowing the scope of abortions covered by Medicaid. These restrictions would force many Medicaid-eligible Montanans "to forgo medically necessary care altogether." Order at 15. The Rule, HB 544, and HB 862 thus squarely implicate the fundamental rights guaranteed by the Montana Constitution.

ARGUMENT

I. The district court did not manifestly abuse its discretion in holding that Providers are likely to succeed on the merits.

A. The district court correctly held that Providers have third-party standing to sue on behalf of their patients.

Unable to meet the demanding standard for overturning the district court's findings of fact and application of *Armstrong*, the State seeks to overturn a different line of precedent by challenging Providers' right to sue on behalf of their patients. But as the State concedes, this Court has held for decades that abortion providers have standing to assert claims on behalf of their patients when laws infringe on those

patients' constitutional right to obtain an abortion. *See* Appellants' Br. at 25. In *Armstrong*, this Court held that "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*, ¶ 13. This Court reaffirmed that holding in *Weems I*, explaining that "when 'governmental regulation directed at health care providers impacts the constitutional rights of women patients,' the providers have standing to challenge the alleged infringement of such rights." *Weems I*, ¶ 12 (quoting *Armstrong*, ¶¶ 8–13).

Because the Abortion Restrictions "impact the constitutional rights of women patients" and are "directed at health care providers," Providers have standing. *Weems I*, ¶ 12. As set forth in detail below, the Abortion Restrictions infringe on the right of Providers' Medicaid patients to access abortion; according to evidence Providers presented below, the Restrictions would deny abortion access to most Medicaid-eligible Montanans. *See infra* Pt. I(B). The Abortion Restrictions fit well within the standing framework established in *Armstrong* and *Weems I*, and the district court properly held that Providers have standing to challenge them.

With no argument under the Montana law governing this appeal, the State claims that recent federal decisions regarding the right to abortion mean that this Court should require Providers to demonstrate anew the existence of a "close

relationship" to their patients and some "hindrance to these women's ability to bring suit." Appellants' Br. at 25–26. But as the State's reliance on a footnote in an unpublished Fifth Circuit order and series of dissenting opinions suggests, *id.* at 24, federal law on provider standing has not changed. The U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), itself involved a challenge by abortion providers on behalf of their patients, and did not purport to overrule any decisions regarding standing.[4] After *Dobbs*, federal and state courts alike have continued to recognize that abortion providers have standing to vindicate the constitutional rights of their patients. *See, e.g.*, *Satanic Temple, Inc. v. Rokita*, No. 1:22-CV-01859-JMS-MG, 2023 WL 7016211, at *7 (S.D. Ind. Oct. 25, 2023) ("[S]tanding is permissible for 'abortion providers to invoke the rights of their actual or potential patients in challenges to abortion-related regulations.'" (quoting *June Med. Servs. L.L.C. v. Russo*, 140 S. Ct. 2103, 2118 (2020))); *Planned Parenthood Great Nw. v. State*, 522 P.3d 1132, 1160 (Idaho 2023) ("The *Dobbs* decision did not, however, abrogate the basic third-party standing principle that '[a]side from the woman herself . . . the physician is uniquely qualified to litigate the

[4] In fact, in *Dobbs*, the U.S. Supreme Court specifically denied certiorari on the question of whether to overturn these precedents. *See* Pet. for Writ of Cert. at i, *Dobbs*, 597 U.S. 215 (No. 19-1392) (asking the Court to consider "[w]hether abortion providers have third-party standing" to sue on behalf of their patients); *Dobbs*, 141 S. Ct. 2619 (2021) (granting petition for writ of certiorari solely on the merits question).

constitutionality of the State's interference with, or discrimination against, that decision [to get an abortion].'" (quoting *Singleton v. Wulff*, 428 U.S. 106, 117 (1976))). And regardless, the State has offered no justification for overturning *this* Court's longstanding precedent on the basis of federal decisions involving different constitutional protections and justiciability requirements, especially in the context of an appeal from a preliminary injunction. *See PPMT v. State*, ¶ 20 (declining to overturn precedent in an appeal from a preliminary injunction).

B. The district court correctly applied strict scrutiny to Providers' privacy and equal protection claims.

Relying on *Armstrong* and its progeny, the district court properly held that the Rule, HB 544, and HB 862 implicate Providers' patients' right to access abortions and thus applied strict scrutiny to Providers' claims. In an attempt to avoid this stringent standard of review, the State attempts to reframe this case as about money instead of abortion access, arguing that strict scrutiny does not apply because *Armstrong* did not recognize a fundamental right for Medicaid to cover abortions. Appellant's Br. at 19–22. But the State misunderstands *Armstrong* and its progeny, which hold that strict scrutiny applies when a law infringes on Montanans' fundamental right to abortion or otherwise penalizes Montanans for having an abortion; the district court held that the Abortion Restrictions do both.

This Court held in *Armstrong* that "legislation infringing the exercise of the right of privacy must be reviewed under a strict-scrutiny analysis," which requires

that a law "must be justified by a compelling state interest and must be narrowly tailored to effectuate only that compelling interest." *Armstrong*, ¶ 34. After recognizing that the right to privacy includes the right to abortion, this Court held that abortion restrictions must be narrowly tailored to "preserve the safety, health and welfare of a particular class of patients or the general public from a medically-acknowledged, bona fide health risk." *Id.* ¶ 59. Since *Armstrong*, this Court has repeatedly reapplied that standard to each law infringing on abortion access that has come before it. *See Weems II*, ¶ 43; *PPMT v. State*, ¶ 20; *Weems I*, ¶ 19.

Armstrong and its progeny make clear that strict scrutiny applies when a law implicates Montanans' fundamental right to abortion, not solely when it bans abortions outright. For instance, *Armstrong* itself dealt not with an abortion ban but rather with a statute prohibiting physician assistants from providing abortions; this Court held it should be reviewed under strict scrutiny. *See Armstrong*, ¶¶ 1, 34; *see also Weems II*, ¶¶ 1, 43. Similarly, in *PPMT v. State*, this Court held that the district court correctly applied strict scrutiny not only to a twenty-week abortion ban and a ban on telehealth medication abortions but also to informed consent requirements, a reporting requirement, and a mandate that providers offer patients the opportunity to view an ultrasound and listen to cardiac activity. *PPMT v. State*, ¶¶ 3–4, 20.

Relying on these precedents, the district court correctly held that the Abortion Restrictions should be reviewed under strict scrutiny because they would infringe on

Medicaid-eligible Montanans' fundamental right to abortion. The district court recognized that the laws each interfere with the patient-provider relationship, singling out abortion for differential treatment. *See* Order at 9, 13.

Were that not enough, the district court also made factual findings that the laws would not only prevent Medicaid from covering certain abortions but would also prevent many Montanans from accessing abortions altogether. For instance, the district court found that the Rule and HB 544's physician-only requirement would not only "bar reimbursement" for abortions provided by APCs but also "significantly reduce the availability of abortions" in Montana, thereby "imped[ing] abortion access for Montanans on Medicaid." Order at 10, 15. It similarly found that the Rule and HB 544's narrowing of the definition of "medical necessity" would not only limit Providers' reimbursement for care but also force some of the most vulnerable Montanans to "draw on their limited financial resources to pay for an abortion or to forgo medically necessary care" altogether. *Id.* at 15. Just as the statute in *Armstrong* made it "as difficult, as inconvenient and as costly as possible" for Montanans to seek an abortion, *Armstrong*, ¶ 65, the district court found that the Rule, HB 544, and HB 862 would have "devastating health consequences for Plaintiffs' Medicaid patients," forcing "Montanans on Medicaid to delay their abortions, needlessly subjecting them to increased medical risk, or to carry a pregnancy to term against their will." Order at 15–16.

The State lodges grievances with the district court's weighing of assorted pieces of testimony (emphatically the province of the district court), but it fails to establish that the district court manifestly abused its discretion in finding that the Abortion Restrictions impede abortion access. For instance, the State argues that the Rule and HB 544's prior authorization requirements do not interfere with abortion access because Montanans can obtain the required physical examination, laboratory tests, and ultrasound at another provider prior to their appointment at one of Providers' health centers. *See* Appellants' Br. at 28–29. But the district court did not ignore this evidence—in fact, it specifically referred to the testimony of the State's expert witness in noting that Montanans could fulfill those requirements at a health center other than Providers'. *See* Order at 3. It then noted, however, that the prior authorization "requirement would still force Medicaid patients to make an unnecessary in-person trip to a provider and delay their care for a period of time that the Rule and HB 544 do not limit," which "would especially burden those who have limited access to transportation, inflexible work schedules, caretaking responsibilities, or are victims of intimate partner violence." *Id.* The State also insists that the Rule and HB 544 do not infringe on abortion access because Providers can request post-service, prepayment review if prior authorization is not obtained before a patient receives care. Appellants' Br. at 29 n.1. But post-service review would leave Medicaid-eligible Montanans unsure whether they would have to pay out of

pocket before they receive care, which could force them to forgo medically necessary care altogether.

Armstrong and its progeny also make clear that a law triggers strict scrutiny when it penalizes Montanans for choosing to have an abortion instead of carrying their pregnancy to term. As this Court explained in *Armstrong*, "the State has no more compelling interest or constitutional justification for interfering with the exercise of this right if the woman chooses to terminate her pre-viability pregnancy than it would if she chose to carry the fetus to term." *Armstrong*, ¶ 49. The State thus may not "demoniz[e] . . . women who choose to terminate their pregnancies at a time the law allows." *Id.* ¶ 73. Drawing on this same principle in evaluating plaintiffs' equal protection claim, *Jeannette R.* held that "although the state is under no obligation to fund an individual's choice to a right of privacy, once it has entered an area that is covered by the zone of privacy, the state must be neutral" and may not exclude patients "from benefits to which they are otherwise entitled solely because they seek to exercise a constitutional right." *Jeannette R.*, 19–20, 21. This Court has reiterated this holding, concluding in *PPMT v. State* that a district court did not abuse its discretion in preliminarily enjoining laws that "stigmatize and deter patients from seeking out abortion services," including an informed consent requirement that "functions merely to discourage patients from obtaining abortions." *PPMT v. State*, ¶¶ 54–56. This Court has continued to apply this principle, including in holding that

the State cannot treat abortion differently than miscarriage care without a bona fide health justification. *See Weems II*, ¶ 47 ("[T]he same risk of complications [for abortions] exists in miscarriage care, which the State has not argued presents a threat to public health and safety when performed by APRNs.").

The State protests that Montanans have no fundamental right to have their abortions covered by Medicaid, Appellants' Br. at 20–21, but this argument is a straw man. Once the State has established a Medicaid program that covers medically necessary health care, the decision to deny such coverage only to those who choose to have an abortion triggers strict scrutiny. As in *Jeannette R.*, the Abortion Restrictions penalize Montanans for choosing to have an abortion instead of carrying their pregnancies to term, thus triggering strict scrutiny. As the district court found, the Abortion Restrictions "will prevent pregnant Medicaid patients who decide to terminate their pregnancies from accessing those medically necessary abortions without imposing similar restrictions on medically necessary care for Medicaid patients who choose to continue their pregnancies." Order at 13–14 (citation omitted).

C. The district court correctly held that the Abortion Restrictions likely violate Providers' patients' right to privacy.

Applying strict scrutiny, the district court correctly held that the Abortion Restrictions likely violate Providers' patients' right to privacy because they would infringe the right to access abortion without addressing a medically acknowledged,

bona fide health risk. It based its findings on fact and expert testimony presented by both Providers and the State. These findings are owed "great deference" on appeal. *Sandrock v. DeTienne*, 2010 MT 237, ¶ 19, 358 Mont. 175, 243 P.2d 1123 (internal citation omitted). None of the State's arguments to the contrary establish that the district court manifestly abused its discretion.

The State's response largely mirrors the arguments it makes in attempting to evade strict scrutiny—that the Abortion Restrictions merely prevent Medicaid from financially reimbursing Providers for certain abortions and do not infringe on Providers' patients' rights. *See, e.g.*, Appellants' Br. at 38. But as the district court found, the Abortion Restrictions not only limit what abortions Medicaid can cover but also directly infringe on Montanans' ability to access care altogether. *See supra* Section I.B. The question under strict scrutiny is not whether a right is totally extinguished, but rather whether the government's *infringement* on a fundamental right is justified. The district court correctly concluded that, within the strict scrutiny framework, Providers are likely to succeed on the merits of their claims that the infringements in the Abortion Restrictions are not justified.

The district court correctly held that the Abortion Restrictions likely are not narrowly tailored to address a compelling interest. As this Court has consistently held since *Armstrong*, the State must show "a medically-acknowledged, bona fide health risk, clearly and convincingly demonstrated" to justify infringing on

Montanans' access to abortion. *Armstrong*, ¶ 62. Ignoring this line of precedent, the State instead asserts that the Abortion Restrictions are justified by an interest in preventing fraud in the implementation of the Medicaid program. *See, e.g.*, Appellants' Br. at 27, 35. But the State did not present a scintilla of evidence that abortion providers in Montana have engaged in fraud. *See* Order at 5. The State cannot use a hypothetical interest to justify an abortion restriction. *See Planned Parenthood of Wis., Inc. v. Van Hollen*, No. 13-CV-465-WMC, 2013 WL 3989238, at *14 (W.D. Wis. Aug. 2, 2013), *aff'd*, 738 F.3d 786 (7th Cir. 2013) (holding that because state defendants "failed to present any evidence" that its stated interest is "even a legitimate concern," the challenged abortion restriction "remains a solution in search of a problem").

The State first asserts that providers who submitted Medicaid claims for abortions did not always provide additional documents to support their claims, implying that providers must therefore be lying when they certify that abortions are medically necessary. *See* Appellants' Br. at 36. But as the State itself has conceded, providers are not required to provide any such additional documents to DPHHS. *See* App.G02 ("MA-37 Form") (noting that providers may "[a]ttach additional documents *as needed*." (emphasis added)).[5] And as the State Medicaid Director

[5] *See also* Defendant's Answer to Plaintiffs' Verified Amended Complaint and Demand for Jury Trial ¶ 52 (filed after the preliminary injunction hearing).

admitted in his testimony at the hearing, the Department did not find a *single instance* in which a provider filled out the State's form incorrectly. *See* Tr. at 47:10–12. The State now seeks to use the asserted failure to comply with a nonexistent documentation requirement to second-guess the medical judgment of health care providers—laying bare the pretextual nature of the restrictions. *See* Appellants' Br. at 36. But determinations about whether patients' care is medically necessary are precisely the types of decisions that this Court has long recognized must be left not to the State but to "the collective professional judgment, knowledge and experience of the medical community." *Armstrong*, ¶ 62.[6]

Second, the State makes the lurid assertion that Ms. Weems, like other APCs, has engaged in fraud by submitting claims for Medicaid reimbursement as an APRN. Appellants' Br. at 36–37. It lodges this attack because the MA-37 form has a place for a "physician" signature, *id.*, as it no doubt has through the decades during which APCs, including PAs and APRNs, have provided abortions and sought Medicaid reimbursement for them. This Court held in *Weems II* that based on the "overwhelming evidence" in the record, the State may not prohibit qualified APRNs

[6] The State similarly argues that the Rule and HB 544's narrowed definition of "medical necessity" is necessary to avoid an "unwieldy situation" in which providers disagree about whether an abortion is medically necessary. Appellants' Br. at 38–39; *see also id.* at 29–30. But providers have long relied on the definition of "medically necessary" in Mont. Admin. R. 37.82.102(18), which applies equally to all medical care reimbursed by Medicaid and provides sufficient guidance to allow providers to exercise their professional judgment.

from providing abortions in Montana. *Weems II*, ¶¶ 46–48. As a qualified APRN who provides abortions, Ms. Weems must comply with all requirements that the State sets out for abortion providers, including submitting the MA-37 Form. This Court should reject the State's attempt to fault APCs for its own failure to update the language on its form, which, since *Armstrong* and *Weems I*, should have reflected that providers other than physicians provide abortions in Montana. Further, the State has long known that Ms. Weems is an APRN who provides abortions—including through the litigation she filed that has twice made its way to this Court, *see Weems I; Weems II*—and has always accepted her MA-37 forms.[7]

The State also asserts an "interest in ensuring that professionals performing abortions for its beneficiaries have the skills necessary to provide a high level of care

[7] Seemingly in support of its fraud argument, the State also argues that the Abortion Restrictions will help the State comply with federal and state law. *See* Appellants' Br. at 13, 27–28. The State nowhere specifies, however, how the Abortion Restrictions would accomplish that goal. Elsewhere in its brief, the State argues that it fears a federal or state audit of Medicaid reimbursements for abortion. *Id.* at 8. But bare speculation about a government audit is not sufficiently compelling to restrict abortion access. And in any event, the Medicaid program relies on state and federal funds to reimburse claims for many types of health care. The State cannot rely on speculation about audits to single out abortions for differential treatment, especially when the State has failed to point to any evidence that abortion providers have engaged in fraud. Moreover, any hypothetical federal audit would only cover abortions for which federal reimbursement is permitted under the Hyde Amendment—those for which an abortion is necessary to save the pregnant person's life or to terminate a pregnancy that resulted from rape or incest. During the ten-year period from July 2011 to June 2021, only six abortions in Montana were reported as falling into these categories. Supp.App.E04–05.

. . . to protect the health and safety of Medicaid beneficiaries." Appellants' Br. at 27–28, 40–41. It asserts this interest only in support of the physician-only requirement, not any of the other numerous restrictions at issue. *See id.* This Court has three times rejected the argument that the State can restrict patients' access to abortion by barring APCs from providing that care. *Armstrong*; *Weems I*; *Weems II*. The State presented no evidence to the district court that APCs are not qualified to provide abortions.

Finally, even if the State had demonstrated a medically acknowledged, bona fide health risk, it has not even attempted to argue that the Abortion Restrictions are narrowly tailored to address such a risk. Nor could it. The Abortion Restrictions harshly curtail the ability of some of the most vulnerable Montanans to access abortions. The district court did not manifestly abuse its discretion in concluding that the Abortion Restrictions likely violate Providers' patients' right to privacy.[8]

D. The district court correctly held that the Abortion Restrictions likely violate Providers' patients' right to equal protection.

The district court also held that the Abortion Restrictions likely violate Providers' patients' right to equal protection on two independent bases, one of which

[8] Nor does the State argue that the Abortion Restrictions are narrowly tailored to support its supposed interest in preventing fraud. Far from narrowly tailored, the Restrictions do not merely ensure that a provider has truthfully completed a State-mandated form, but rather limit the type and scope of health care that providers can offer to Medicaid-eligible Montanans.

applies to all three Abortion Restrictions and the other of which applies to the Rule and HB 544. The State appeals solely the former. The district court held that the Abortion Restrictions create classifications that impair the fundamental right to abortion and do not address a medically acknowledged, bona fide health risk. In concluding that the State failed to present evidence of a medically acknowledged, bona fide health risk, the district court made factual findings that are owed "great deference" on appeal, *Sandrock*, ¶ 19, and it did not manifestly abuse its discretion in making them.

Article II, Section 4 of the Montana Constitution mandates that "[n]o person shall be denied the equal protection of the laws." Mont. Const. Art. II, § 4. When addressing an equal protection claim, this Court "first identif[ies] the classes involved and determine[s] whether they are similarly situated." *Henry v. State Compensation Ins. Fund*, 1999 MT 126, ¶ 27, 294 Mont. 449, 982 P.2d 456. If the law creates a classification that "affects a suspect class or threatens a fundamental right," courts must apply strict scrutiny, under which a law or regulation may be upheld only if it is "narrowly tailored to serve a compelling State interest." *McDermott v. Mont. Dep't of Corrs.*, 2001 MT 134, ¶ 31, 305 Mont. 462, 29 P.3d 992. When a classification affects the fundamental right to abortion, the court must determine whether the State has demonstrated a "medically-acknowledged, bona fide health risk" that justifies such classification. *Armstrong*, ¶ 59.

First, the district court held that the Rule and HB 544 violate equal protection by discriminating against Medicaid-eligible Montanans who seek an abortion from an APC as opposed to those who seek an abortion from a physician. The State did not appeal this holding in its opening brief and so has waived any such challenges to the holding on appeal. *See* Appellants' Br. at 26–31; *Dick Anderson Constr., Inc. v. Monroe Constr. Co.*, 2009 MT 416, ¶ 28 n.1, 353 Mont. 534, 221 P.3d 675 (noting that a party waives an argument on appeal "by failing to assign error to [it] in its opening brief"). This holding provides an independent basis to affirm the preliminary injunction against the Rule and HB 544. *See J.L.G. v. M.F.D.*, 2014 MT 114, ¶ 27, 375 Mont. 16, 324 P.3d 355 (affirming a district court's decision in part because a separate legal doctrine "provide[d] an independent basis for the court's order").

Second, the district court held that the Rule, HB 544, and HB 862 violate equal protection by treating Medicaid-eligible Montanans who choose to have an abortion differently from the similarly situated class of those who choose to continue their pregnancies. The Abortion Restrictions "prevent pregnant Medicaid patients who decide to terminate their pregnancies from accessing . . . medically necessary abortions without imposing similar restrictions on medically necessary care for Medicaid patients who choose to continue their pregnancies." Order at 14 (citation omitted). Under *Jeannette R.*, the State may not "take[] the class of indigent pregnant

Medicaid eligible women and divide[] them" such that "[o]ne class, who needs medically necessary treatment (an abortion) are not entitled to help from the state" and "another class (those women for whom child birth is a medically necessary treatment) are entitled to state financial help." *Jeannette R.*, 22. The State responds that abortion is different from medical care for patients who continue their pregnancies because pre-viability abortion "ends a human life." Appellants' Br. at 30. But if the State could rely on such an argument to differentiate between abortion and miscarriage management, nothing would stop it from imposing any number of clearly impermissible restrictions on abortion, including banning all abortions outright. *Armstrong* and its progeny foreclose the State's argument. The State fails to explain why a state health department can penalize those who choose to have an abortion when such health care is legal. In fact, there is no health-based justification for treating abortions differently from other medical care needed for pregnant patients. As this Court held last year in *Weems II*, "the protocol, procedures, and risk of harm from complications for miscarriage management are identical to early abortion care," *Weems II*, ¶ 30—nonetheless, none of the Abortion Restrictions apply to miscarriage.

Because this classification infringes on the fundamental right to abortion, the district court correctly held that the State must show that it is narrowly tailored to address a medically acknowledged, bona fide health risk. The State does not even

attempt to assert that such a risk exists, and it did not present evidence of such a risk to the district court. In fact, the State's expert witness testified that abortions and miscarriage management are "essentially the same procedure[]." Tr. at 54:10–13. The State instead repeats its claims that the Abortion Restrictions ensure that it is reimbursing medically necessary abortions and adds that they "ensure program integrity[] and meet appropriate clinical requirements to ensure the health and safety of Medicaid beneficiaries." Appellants' Br. at 30. The State does not argue that these asserted interests satisfy strict scrutiny—it argues only that these interests are "rationally related" to "important" interests, not that they are *narrowly tailored* to address a *compelling* interest. *Id.* Nor could it. None of the State's asserted interests addresses a medically acknowledged, bona fide health risk to the pregnant patient.

Without reference to the governing standard, the State also asserts that HB 862 passes muster because it is a "counterpart of the federal Hyde Amendment," which the U.S. Supreme Court upheld in *Harris v. McRae*, 448 U.S. 297 (1980). Appellants' Br. at 30–31. But in *McRae*, the U.S. Supreme Court applied *Roe v. Wade* and its progeny, which held merely that the government could not place "unduly burdensome" obstacles in the path of abortion access. 448 U.S. at 314 (quoting *Maher v. Roe*, 432 U.S. 464, 473–74 (1977)). In contrast, this Court has consistently recognized that because the Montana Constitution includes "one of the most stringent protections of its citizens' privacy in the United States—exceeding

even that provided by the federal constitution," it reviews abortion restrictions under strict scrutiny. *Armstrong*, ¶ 34. Thus, unlike in *McRae*, where the U.S. Supreme Court held that the government could "favor[] childbirth over abortion by means of subsidization of one and not the other," 448 U.S. at 315, this Court has made clear that the State may not "infringe the right of procreative autonomy in favor of birth." *Armstrong*, ¶ 49.

II. The district court did not manifestly abuse its discretion in concluding that the other preliminary injunction factors weigh in favor of granting relief.

A. The district court correctly held that Providers have demonstrated irreparable harm.

This Court has long held that "the loss of a constitutional right constitutes irreparable harm." *PPMT v. State*, ¶ 6 (citing *Driscoll v. Stapleton*, 2020 MT 247, ¶ 15, 401 Mont. 405, 473 P.3d 386); *see also Mont. Cannabis Indus. Ass'n v. State*, 2012 MT 201, ¶ 15, 366 Mont. 224, 286 P.3d 1161; *accord Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Accordingly, the district court correctly held that, because the Abortion Restrictions likely violate Providers' Medicaid patients' privacy and equal protection rights under the Montana Constitution, the challenged regulation and statutes would cause irreparable harm. The district court also relied on the extensive evidence Providers submitted and the testimony at the hearing to conclude that the Abortion Restrictions would have "devastating health consequences for Plaintiffs' Medicaid patients." Order at 15.

The district court concluded that the physician-only requirement in the Rule and HB 544 would "significantly reduce the availability of abortions and impede abortion access for Montanans on Medicaid" because of the low number of physicians providing abortions in Montana. *Id*. This is consistent with evidence Providers presented that few physicians provide abortions in the state, at few locations, separated by great distances, and that Providers rely heavily on APCs to provide abortion to their patients, a significant fraction of whom are on Medicaid. Supp.App.B04–06; C05, 07; D06–07. In fact, because there is no physician at All Families, the loss of Medicaid coverage for abortions may force it to close completely, thereby harming its entire patient population. Supp.App.C04, 09.

With respect to the prior authorization requirement in the Rule and HB 544, the district court held that it "would require an additional visit to a health care provider, impose a waiting period, and eliminate direct-to-patient medication abortion, irreparably harming rural Medicaid patients, Medicaid patients with disabilities, Medicaid patients with limited access to transportation, and Medicaid patients suffering from intimate partner violence." Order at 15. Any delay is harmful to patients because, although abortion remains safe throughout pregnancy and is far safer than pregnancy and childbirth, the risks associated with abortion increase incrementally as pregnancy progresses. Supp.App.A07–08, C08–09. Further, the

Rule and HB 544 do not limit the time DPHHS has to complete the prior authorization.

DPHHS states that its contract with its Medicaid utilization review contractor requires completion of the prior authorization review "within three working days," App.D04, but the Rule and statute themselves contain no such requirement. Further, three working days could stretch to five or more calendar days when there is an intervening weekend or long weekend; because abortion is time-sensitive, this is a significant delay. Supp.App.A14. And if DPHHS denies a patient's prior authorization request, the appeal process would further exacerbate the delay.[9]

The district court also held that the narrow definitions of medical necessity in the Rule and HB 544 would force Montanans "whose abortions would be covered

[9] According to an announcement DPHHS posted online in November, it is facing "claims processing delays due to staffing shortages." DPHHS, Montana Healthcare Programs Provider Website, https://medicaidprovider.mt.gov/ (last visited Jan. 23, 2024) (archived at https://archive.ph/bFjet). In fact, the federal Centers for Medicare and Medicaid Services sent DPHHS a letter raising concerns about long wait times for Montana Medicaid call centers, the high abandonment rate for call center calls, the high rate of terminations from Medicaid due to procedural reasons, and delays in processing Modified Adjusted Gross Income applications. Letter from Anne Marie Costello, Deputy Director, Center for Medicaid and CHIP Services, to Mike Randol, State Medicaid Director, MT DPHHS, https://www.medicaid.gov/sites/default/files/2023-08/Montana-may-2023-unwinding-data-ltr.pdf (Aug. 9, 2023). This information—of which this Court may take judicial notice under Mont. R. Evid. 201, *see Mont. Wildlife Fed'n v. Mont. Bd. of Oil & Gas Conservation*, 2012 MT 128, ¶ 7, 365 Mont. 232, 280 P.3d 877, (taking judicial notice of government agency announcement)—raises concerns about DPHHS's ability to process prior authorization requests for abortions in a timely manner.

under the definition of medical necessity applicable to almost all other medical care—and whose health care providers have deemed their abortions to be medically necessary—. . . either to draw on their limited financial resources to pay for an abortion or to forgo medically necessary care." Order at 15. And with respect to HB 862, the district court held that the statute would make it "impossible for almost all Medicaid patients to obtain coverage for their abortions." Order at 15–16.

The State argues that Providers cannot establish irreparable harm, contending that the Rule and the statutes address only when Medicaid will pay for abortions and that monetary harm does not constitute irreparable harm. Appellants' Br. at 31–32. They misapprehend the nature of Providers' constitutional claims, which are not based on a right to remuneration. Rather, Providers assert that because the State's Medicaid reimbursement policies implicate patients' fundamental right to abortion, this Court applies the standard it elucidated in *Armstrong*. The district court found that Medicaid's refusal to cover an abortion "severely impede[s]" the patient's ability to access abortion, specifically crediting the testimony of Dr. Dickman and Ms. Weems on that topic and noting that the State offered no evidence on that topic. Order at 2. The district court based these findings relating to irreparable harm on the evidence submitted, and it did not abuse its discretion in making them.[10]

[10] The State argues that the district court should not have cited particular statements in certain affidavits because they "sustained objections and were excluded at the hearing." Appellants' Br. at 19. The district court had ample evidence on which to

The Abortion Restrictions would deny coverage to Medicaid-eligible patients seeking abortions whose health care providers have determined that an abortion would be medically necessary, thereby forcing these low-income pregnant Montanans to draw on limited financial resources to pay for an abortion. Those unable to take on the additional burdens would be forced to carry a pregnancy to term against their will. Contrary to the State's arguments, this infringement cannot be cured by monetary damages: abortion is time-sensitive care, and impairing or

---

base its findings—Providers presented the testimony of two live witnesses and multiple affidavits that addressed the consequences of denying abortion access to Medicaid patients. This Court should decline the State's invitation to "reweigh conflicting evidence or substitute its judgment regarding the strength of the evidence for that of the district court," particularly at the preliminary injunction stage. *In re G.M.N.*, 2019 MT 18, ¶ 11, 394 Mont. 112, 433 P.3d 715; *cf. Herb Reed Enters., LLC v. Fla. Ent. Mgmt., Inc.*, 736 F.3d 1239, 1250 n.5 (9th Cir. 2013) ("Due to the urgency of obtaining a preliminary injunction at a point when there has been limited factual development, the rules of evidence do not apply strictly to preliminary injunction proceedings."); *Flynt Distrib. Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984) ("The trial court may give even inadmissible evidence some weight, when to do so serves the purpose of preventing irreparable harm before trial.").

Moreover, objections were not sustained to Dr. Dickman's testimony at the hearing about the cost of abortions absent Medicaid coverage, that he discusses his Medicaid patients' life circumstances with them, and that he conducted research in Texas into the effect of lack of Medicaid coverage on lower-income patients that showed that more than 60 percent had "major financial hardship." Tr. at 18:1–3, 15–20, 20:3–15. He also testified about a specific experience treating a low-income patient forced to delay an abortion for financial reasons. Tr. at 20:22–21:12. Ms. Weems also testified about the effects of denying care to a Medicaid patient who may struggle with substance use, who is trying to leave her abusive partner, and who has a history of high-risk pregnancies. Tr. at 35:21–36:13. And Providers presented evidence in their affidavits about the effect of restricting abortion access on Medicaid patients. Supp.App.A12–13, 20–21; C08–10; D10, 13–15.

denying a Medicaid patient the right to access care itself constitutes irreparable harm. And as the district court found, these harms will be felt most acutely by the most vulnerable Medicaid patients: patients who live in rural areas, patients with disabilities, patients with limited access to transportation, and patients suffering from intimate partner violence.

B. The district court correctly held that the public interest and the balance of the equities weigh in favor of granting relief.

As to the remaining preliminary injunction factors, the balance of the equities and the public interest, these "merge into one inquiry when the government opposes a preliminary injunction." *Porretti v. Dzurenda*, 11 F.4th 1037, 1050 (9th Cir. 2021). As the Ninth Circuit recently explained,

> A plaintiff's likelihood of success on the merits of a constitutional claim also tips the merged third and fourth factors decisively in his favor. Because public interest concerns are implicated when a constitutional right has been violated, all citizens have a stake in upholding the Constitution, meaning it is always in the public interest to prevent the violation of a party's constitutional rights.

Baird v. Bonta, 81 F.4th 1036, 1042 (9th Cir. 2023) (internal quotation marks, citations, and alteration omitted). The district court properly concluded that these factors "weigh in favor of protecting Plaintiffs' patients' constitutional rights by preserving the status quo, . . . [and] ensur[ing] that Montanans on Medicaid continue to have access to constitutionally protected abortions and safe, effective medical care." Order at 16.

The State contends that these factors weigh in favor of denying relief because it "has the constitutional concern that the laws be faithfully executed." Appellants' Br. at 34. But the State has no legitimate interest in enforcing unconstitutional regulations and laws. *See Doe v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017). Once a plaintiff establishes a likelihood of success on the merits of a constitutional claim, the State cannot hide behind a generalized presumption that laws should not be enjoined. In fact, under the federal preliminary injunction standard the State embraces in its briefing, courts "*presume* that a constitutional violation causes a preliminary injunction movant irreparable harm and that preventing a constitutional violation is in the public interest." *Baird*, 81 F.4th at 1046 (emphasis in original). The State also raises interests that the district court rejected on the merits—its interest in protecting health, safety, and well-being; its interest in ensuring Medicaid program integrity; and its interest in preventing fraud and abuse—but the district court found no evidence to support these claims. Once a plaintiff establishes that the State's proffered interests do not pass constitutional muster, it would defy logic to allow the State to use those same interests to justify denying injunctive relief.

The State repeats its argument that Providers' only interest at stake is pecuniary. Not so. As already explained, Providers have an interest in ensuring that their Medicaid patients' fundamental constitutional rights are not infringed. *See supra* Pt I(B). Finally, the State asserts Montana taxpayers' interest in having their

tax dollars not be spent on abortion "in light of the highly charged nature of abortion [and] the fact that abortion results in the taking of the life of a human being." Appellants' Br. at 35. But the fact that some people have "highly charged" views of abortion makes upholding the right to abortion that much more critical—it does not suggest that the State has more latitude to impose abortion restrictions. *See Armstrong*, ¶ 38 (holding that the right of individual privacy is as broad as "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"). This Court already balanced the interests at stake when it held that the State cannot infringe the fundamental right to abortion absent a "medically-acknowledged, bona fide health risk, clearly and convincingly demonstrated." *Armstrong*, ¶ 62. The balance of the equities and the public interest weigh in favor of upholding this constitutional principle.

III. The State's arguments concerning the form of the district court's order are irrelevant and meritless.

Beyond contesting settled authority and asking this Court to reweigh the evidence, the State challenges the means by which the district court preliminarily enjoined the Abortion Restrictions. None of these arguments affects whether the laws violate the Montana Constitution, and the district court's preliminary injunction is well-supported by precedent and the record. Regardless, each of the State's objections is meritless.

A. The district court applied the correct legal standard in its now-superseded oral preliminary injunction ruling.

The State argues that the district court's initial oral ruling from the bench applied the incorrect preliminary junction standard. Appellants' Br. at 15–16. That is both wrong on the facts and legally irrelevant.

As an initial matter, the district court applied the correct standard when issuing the preliminary injunction from the bench. The court explained that the Montana Legislature, "with its recent enactment to mirror . . . federal law," now "requires [the court] to issue an order making a finding, essentially a legal conclusion on the law and the evidence of the case" and "has the Court consider" the merits of the case. Tr. at 169:1–8. The district court's subsequent reference to preservation of the status quo as "the purpose of an injunction," Tr. at 169:9–10, did not purport to change or renounce that standard. This Court has stated that "the limited purpose of preliminary injunctions [is] to preserve the status quo and minimize the harm to all parties pending final resolution on the merits." *Davis v. Westphal*, 2017 MT 276, ¶ 24, 389 Mont. 251, 405 P.3d 73. This remains unchanged after SB 191: federal courts applying the standard set in SB 191 recognize preservation of the status quo and prevention of irreparable harm as the purposes of a preliminary injunction. *See, e.g.*, *Camenisch*, 451 U.S. at 395 ("The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held."); *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010);

McClanahan v. Salmonsen, No. CV 22-20-H-BMM, 2023 WL 4409150, at *6 (D. Mont. July 7, 2023) (Morris, J.) ("[A preliminary injunction is] a tool to preserve the status quo and prevent irreparable loss of rights before judgment.").[11] Nor does the district court's acknowledgement of recent changes to the preliminary injunction standard show that "it expressly declined to" consider the other factors, as the State contends. Appellants' Br. at 16. To the contrary, the district court acknowledged that it was bound to consider those factors, in particular Providers' ultimate likelihood of success on the merits. Tr. at 169:6–8.

In any event, the district court's subsequent written decision controls. *See United States v. Moroyoqui-Gutierrez*, 602 F. App'x 378, 379 (9th Cir. 2015) (holding that although "the district court orally stated an incorrect legal standard on the record during [a] hearing . . . the district court issued a written order applying the correct [] standard" and "the district court's written order is the operative decision"); *Playmakers LLC v. ESPN, Inc.*, 376 F.3d 894, 896 (9th Cir. 2004) ("Where the record includes both oral and written rulings on the same matter, '[w]e review the written opinion and not the oral statements.'" (internal citation omitted)); *Ellison v. Shell Oil Co.*, 882 F.2d 349, 352 (9th Cir. 1989) ("We are aware of no case directing

[11] An unpublished opinion of this Court after SB 191 similarly states that a preliminary injunction "merely prevents further injury or irreparable harm by preserving the status quo of the subject in controversy pending an adjudication on its merits." *Benesh v. Hebert*, 2023 MT 123N, ¶ 7, 530 P.3d 1293 (unpublished) (internal citations and quotation marks omitted).

us to review the oral judgment rather than the written judgment."). As a result, this Court should "review the written opinion and not the oral statements." *U.S. v. Robinson*, 20 F.3d 1030, 1033 (9th Cir. 1994). And here, that written opinion indisputably applied the correct standard. Order at 6.

B. The district court did not manifestly abuse its discretion in adopting Providers' proposed order.

Nor did the district court abuse its discretion or fail to exercise independent judgment in adopting Plaintiffs' proposed findings of fact and conclusions of law, which were comprehensive and supported by the evidence. *See* Appellants' Br. at 17–19. This Court has repeatedly "approved the verbatim adoption of findings and conclusions where they are comprehensive and detailed and supported by the evidence." *In re Marriage of George & Frank*, 2022 MT 179, ¶ 84, 410 Mont. 73, 517 P.3d 188; *see also Wurl v. Polson Sch. Dist. No. 23*, 2006 MT 8, ¶ 29, 330 Mont. 282, 127 P.3d 436 ("A district court may adopt a party's proposed order where it is sufficiently comprehensive and pertinent to the issues to provide a basis for the decision."); *In re Marriage of Boyer*, 261 Mont. 179, 185, 862 P.2d 384, 387 (1993) ("A court's verbatim adoption of the prevailing party's proposed findings, conclusions, and judgment is not prohibited."); *Olsen v. McQueary*, 212 Mont. 173, 179, 687 P.2d 712, 716 (1984) (approving verbatim adoption of proposed orders where "the findings and conclusions of the District Court [are] supported by substantial credible evidence").

That is the case here: Rather than "[l]argely ignoring" the State's submissions, Appellants' Br. at 19, the district court's order appropriately considered the comprehensive factual record and credited Providers' evidence over the State's. *See supra* at 5–6. When issuing its oral order enjoining the Abortion Restrictions, the court then explicitly said that it was doing so "[u]pon considering the testimony, the evidence presented [at the hearing] and the arguments of counsel." Tr. at 168:13–14. In its written order, the court discussed the testimony of both parties' experts on a range of issues. *See generally* Order at 2–6.

These considered findings are emphatically not a manifest abuse of discretion, Appellants' Br. at 19, and the district court's crediting Providers' experts and evidence rather than the State's reveals defects in the State's case, not the district court's judgment. To the extent the State disagrees with the district court's weighing of the evidence, "it raises only a factual dispute to be resolved by the trier of fact on the ultimate merits of the case and thus is not proper for resolution on preliminary injunction." *PPMT v. State*, ¶ 49. "It is not this Court's function to reweigh conflicting evidence or substitute its judgment regarding the strength of the evidence for that of the district court." *Id.*, ¶ 41 (quoting *In re Marriage of Williams*, 2018 MT 221, ¶ 23, 392 Mont. 484, 425 P.3d 1277).

CONCLUSION

For the foregoing reasons, the district court's order should be affirmed.

Respectfully submitted this 29th day of January, 2024.

Raph Graybill
Graybill Law Firm, PC
300 4th Street North
PO Box 3586
Great Falls, MT 59403
(406) 452-8566
rgraybill@silverstatelaw.net

Tanis M. Holm
Edmiston & Colton Law Firm
310 Grand Ave.
Billings, Montana 59101
(406) 259-9986
tholm@yellowstonelaw.com

Peter Im*
Planned Parenthood Federation of America, Inc.
1110 Vermont Ave., N.W., Suite 300
Washington, D.C. 20005
(202) 803-4096
peter.im@ppfa.org

Dylan Cowit*
Planned Parenthood Federation of America, Inc.
123 William St., 9th Floor
New York, NY 10038
(212) 541-7800
dylan.cowit@ppfa.org

Attorneys for Plaintiffs and Appellees Planned Parenthood of Montana and Samuel Dickman, M.D.

Alex Rate
ACLU of Montana
PO Box 1986
Missoula, MT 59806
(406) 203-3375
ratea@aclumontana.org

Erin M. Erickson
Bohyer, Erickson, Beaudette, and Tranel P.C.
283 West Front St., Suite 201
Missoula, MT 59802
(406) 532-7800
erickson@bebtlaw.com

Hillary Schneller*
Jen Samantha D. Rasay*
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038
(917) 637-3777
hschneller@reprorights.org
jrasay@reprorights.org

Attorneys for Plaintiffs and Appellees All Families Healthcare; Blue Mountain Clinic; and Helen Weems, APRN-FNP

**Admitted pro hac vice in First Judicial District, Case No. ADV 2023–299*

CERTIFICATE OF COMPLIANCE

The undersigned, Raph Graybill, certifies that the foregoing brief complies with the requirements of Rule 11, M. R. App. P., is double spaced, except for footnotes, quoted, and indented material, and it is proportionally spaced utilizing a 14-point Times New Roman typeface. The total word count for this document is 10,999 words, as calculated by the undersigned's word processing program.

Raph Graybill
Attorney for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I, Raphael Jeffrey Carlisle Graybill, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 01-29-2024:

Dylan Cowit (Attorney)
123 William St.
9th Floor
New York NY 10038
Representing: All Families Healthcare, Blue Mountain Clinic, Samuel Dickman, M.D., Planned Parenthood of Montana, Helen Weems
Service Method: eService

Peter Im (Attorney)
1110 Vermont Avenue, NW, Suite 300
WASHINGTON DC 20005
Representing: All Families Healthcare, Blue Mountain Clinic, Samuel Dickman, M.D., Planned Parenthood of Montana, Helen Weems
Service Method: eService

Hillary Anne Schneller (Attorney)
Center for Reproductive Rights
199 Water Street
22nd Floor
New York NY 10038
Representing: All Families Healthcare, Blue Mountain Clinic, Samuel Dickman, M.D., Planned Parenthood of Montana, Helen Weems
Service Method: eService

Jen Samantha D. Rasay (Attorney)
1634 I Street, NW
Washington DC 20006
Representing: All Families Healthcare, Blue Mountain Clinic, Samuel Dickman, M.D., Planned Parenthood of Montana, Helen Weems
Service Method: eService

Akilah Maya Deernose (Attorney)
1121 Knight St.
Helena MT 59601
Representing: All Families Healthcare, Blue Mountain Clinic, Samuel Dickman, M.D., Planned Parenthood of Montana, Helen Weems

Service Method: eService

Alexander H. Rate (Attorney)
713 Loch Leven Drive
Livingston MT 59047
Representing: All Families Healthcare, Blue Mountain Clinic, Samuel Dickman, M.D., Planned Parenthood of Montana, Helen Weems
Service Method: eService

Erin M. Erickson (Attorney)
283 W. Front St. Suite 201
PO Box 7729
Missoula MT 59807
Representing: All Families Healthcare, Blue Mountain Clinic, Samuel Dickman, M.D., Planned Parenthood of Montana, Helen Weems
Service Method: eService

Tanis M. Holm (Attorney)
310 Grand Ave.
Billings MT 59101
Representing: All Families Healthcare, Blue Mountain Clinic, Samuel Dickman, M.D., Planned Parenthood of Montana, Helen Weems
Service Method: eService

Alwyn T. Lansing (Govt Attorney)
215 N. Sanders St.
Helena MT 59620
Representing: Charles Brereton, Montana Department of Public Health and Human Services, State of Montana
Service Method: eService

Michael D. Russell (Govt Attorney)
215 N Sanders
Helena MT 59620
Representing: Charles Brereton, Montana Department of Public Health and Human Services, State of Montana
Service Method: eService

Thane P. Johnson (Govt Attorney)
215 N SANDERS ST
P.O. Box 201401
HELENA MT 59620-1401
Representing: Charles Brereton, Montana Department of Public Health and Human Services, State of Montana
Service Method: eService

Emily Jones (Attorney)
115 North Broadway
Suite 410

Billings MT 59101
Representing: Charles Brereton, Montana Department of Public Health and Human Services, State of Montana
Service Method: eService

Lindsay Beck (Attorney)
2000 S. 3rd Ave., Unit A
Bozeman MT 59715
Representing: National Association of Nurse Practitioners in Women's Health, American College of Nurse-Midwives, American Academy of Physician Associates, Association of Physician Associates in Obstetrics and Gynecology
Service Method: eService

Michael Noonan (Attorney)
215 N Sanders St
P.O. Box 201401
Helena MT 59620-1401
Representing: Charles Brereton, Montana Department of Public Health and Human Services, State of Montana
Service Method: E-mail Delivery

Electronically signed by Emma Edwards on behalf of Raphael Jeffrey Carlisle Graybill
Dated: 01-29-2024