20220260
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STATE OF NORTH DAKOTA

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Drew H. Wrigley, in his official capacity as Attorney General for the State of North Dakota, Petitioner, v. The Honorable Bruce Romanick, District Court Judge, South Central Judicial District, Access Independent Health Services, Inc., d/b/a Red River Women's Clinic, on behalf of itself and its patients, and Kathryn L. Eggleston, M.D., on behalf of herself and her patients, Respondents.	**Supreme Ct. No. 20220260** **District Ct. No. 08-2022-CV-01608**

PETITION FROM THE DISTRICT COURT
ORDER DATED AUGUST 25, 2022
BURLEIGH COUNTY, NORTH DAKOTA
SOUTH CENTRAL JUDICIAL DISTRICT

HONORABLE BRUCE ROMANICK

PETITIONER DREW H. WRIGLEY'S BRIEF IN SUPPORT OF PETITION FOR SUPERVISORY WRIT

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RELIEF SOUGHT

[¶1] Drew H. Wrigley ("Wrigley"), in his capacity as the North Dakota Attorney General, requests that this Court assert its original supervisory jurisdiction and vacate Judge Romanick's (the "district court") injunction of N.D.C.C. § 12.1-32-12. (E1). Wrigley additionally requests that the Court stay the district court's injunction, consistent with the Motion to Stay previously filed with this Court. *Access Indep. Health Servs., Inc., et al. v. Drew H. Wrigley, et al.*, Supreme Court. No. 20220260, Burleigh Co. Court No. 2022-CV-01608, Seq. # 21.

JURISDICTIONAL STATEMENT

[¶2] This Court has authority under N.D. Const. art. VI, § 2 and N.D.C.C. § 27-02-04, to issue a supervisory writ directing the district court to vacate the Order enjoining section 12.1-32-12. The Court recently analyzed its supervisory jurisdiction in *Sauvageau v. Bailey*:

> Under N.D. Const. art. VI, § 2, and N.D.C.C. § 27-02-04, this Court may examine a district court decision by invoking our supervisory authority. We exercise our authority to issue supervisory writs rarely and cautiously, and only to rectify errors and prevent injustice in extraordinary cases when no adequate alternative remedy exists. Our authority to issue a supervisory writ is 'purely discretionary,' and we determine whether to exercise supervisory jurisdiction on a case-by-case basis, considering the unique circumstances of each case. Exercise of supervisory jurisdiction may be warranted when issues of vital concern regarding matters of important public interest are presented.

2022 ND 86, ¶ 7, 973 N.W.2d 207 (citation omitted). This Court should exercise its supervisory jurisdiction in this case because no adequate alternative remedy exists, the case concerns issues of vital concern regarding matters of important public interest, and the district court's abuse of discretion should be rectified.

[¶3] Wrigley does not have an adequate alternative remedy to address the district court's

injunction of Section 12.1-31-12, because this Court determined the district court's Order enjoining Section 12.1-31-12 is not an appealable order, *see Access Indep. Health Servs., Inc., et al.*, Supreme Court. No. 20220260, Burleigh Co. Court No. 2022-CV-01608, Seq. # 22, ¶ 2, and the remedy of an appeal following a trial or dispositive motions is not adequate.[1] Delaying judicial review of a court order that enjoins state law, when the district court acknowledged there is no legal support in the State Constitution for Access Independent Health Services, Inc. d/b/a Red River Women's Clinic's ("RRWC") allegations and arguments, (E1:4:¶10), is not an adequate alternative.

[¶4] The district court's injunction of Section 12.1-31-12 presents a significant issue of vital concern to the public because the injunction impacts the North Dakota Legislature's ability to regulate abortion and the voice of the people of North Dakota. North Dakotans, through laws passed by their elected representatives in the Legislature, have expressed a profound respect for human life, an interest in protecting fetal life, and a preference for normal childbirth. *See e.g.* N.D.C.C. § 14-02.3-01(1); *see also Black Gold OilField Servs.,*

[1] Separate pursuit of certification under N.D.R.Civ.P. 54(b) should not be construed as an adequate alternative remedy because this Court has determined the district court's order enjoining Section 12.1-31-12 is not an appealable order. *Access Indep. Health Servs., Inc., et al.,* Supreme Court. No. 20220260, Burleigh Co. Court No. 2022-CV-01608, Seq. # 22, ¶ 2; *c.f.* N.D.C.C. § 28-27-02(3) (an order granting an injunction may be carried to the Supreme Court). Wrigley previously argued the Court should hear Wrigley's appeal of the district court's order based upon N.D.C.C. § 28-27-02(3), and that compliance with Rule 54(b) was unnecessary because the features of the appealed order served an active rather than incidental purpose. *Access Indep. Health Servs., Inc., et al.,* Supreme Court. No. 20220260, Burleigh Co. Court No. 2022-CV-01608, Seq. # 8, ¶ 2 (citing *Fargo Women's Health Org., Inc. v. Lambs of Christ*, 488 N.W.2d 401, 405-06 (N.D. 1992)); *see also Eberts v. Billings Cnty. Bd. of Comm'rs*, 2005 ND 85, ¶ 5, 695 N.W.2d 691 (conducting a review of a temporary injunction without a Rule 54(b) certification because the quick take condemnation procedure enjoined by the court had significant constitutional underpinnings for governmental entities); *Mann v. N.D. Tax Commissioner*, 2005 ND 36, ¶ 8, 692 N.W.2d 490.

LLC v. City of Williston, 2016 ND 30, ¶ 10, 875 N.W.2d 515 (exercising supervisory jurisdiction when interim relief affects fundamental interests of the litigants) (citing *Vorachek v. Citizens State Bank*, 461 N.W.2d 580, 584 (N.D. 1990)).

[¶5] The district court's injunction of Section 12.1-31-12 clearly and fundamentally affects the interests of North Dakotans and challenges the separation of powers between the three coequal branches of government in North Dakota. Wrigley respectfully requests that the Court exercise its supervisory jurisdiction and vacate the district court's injunction of Section 12.1-31-12.

STATEMENT OF ISSUES

[¶6] Whether the district court abused its discretion by enjoining Section 12.1-32-12 without evaluating whether RRWC has a substantial probability of succeeding on the merits of its case against Wrigley, which is one of four factors courts must consider before granting a preliminary injunction.

[¶7] Whether the district court abused its discretion by enjoining Section 12.1-31-12 because the injunction is not supported by the law or the State Constitution.

STATEMENT OF CASE

[¶8] On June 24, 2022, the United States Supreme Court issued its decision in *Dobbs v. Jackson Women's Health Organization* holding that the federal constitution does not protect a woman's right to abortion. ___ U.S. ____, 142 S. Ct. 2228 (2022). The Supreme Court explicitly overruled *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), and expressly restored to the states the authority to prohibit abortion. *Dobbs*, 142 S. Ct. at 2279. The Supreme Court reasoned "[i]t is time to heed the Constitution and return the issue of abortion to the

people's elected representatives." *Id*. at 2243. And, "[t]he permissibility of abortion, and the limitations, upon it, are to be resolved like most important questions in our democracy: by citizens trying to persuade one another and then voting." *Id.* (quoting *Casey*, 505 U.S. at 979 (Scalia, J., concurring in judgment in part and dissenting in part)).

[¶9] After the Supreme Court issued its judgment in the *Dobbs* decision, Wrigley certified to the North Dakota legislative council (the "First Certification"), that the United States Supreme Court issued a judgment in a decision that restored to the states the authority to prohibit abortion. (R59:1); (R60:1). Wrigley's First Certification triggered the effective date in Section 12.1-31-12, making the law effective on July 28, 2022. (R60:2).

[¶10] On July 7, 2022, RRWC filed a summons and complaint and a motion for temporary restraining order and preliminary injunction. (R:1-10). RRWC alleges in its complaint that Wrigley's First Certification was untimely because it was issued before the U.S. Supreme Court issued its judgment and mandate, and that Section 12.1-31-12 is unconstitutional because the State Constitution allegedly makes abortion a fundamental right. (R2:15-16:¶¶54-61). RRWC's motion to temporarily enjoin Section 12.1-31-12 was based solely on Wrigley's First Certification. (R6).

[¶11] The district court subsequently issued a temporary Order On Plaintiff's Motion For Temporary Restraining Order And Preliminary Injunction ("Temporary Order") prohibiting Section 12.1-31-12 from taking effect until Wrigley followed the provisions outlined in the triggering language for the law, or until a future order of the Court. (R73:5). Wrigley complied with the Temporary Order by issuing a Second Certification, (R78), and moved to dissolve the Temporary Order. (R74-78).

[¶12] On August 25, 2022, the district court issued an Order On Plaintiff's Motion For Preliminary Injunction enjoining Section 12.1-31-12. (E1:7). The district court enjoined Section 12.1-31-12 without expressly evaluating the merits factor—the first of four factors courts must consider to evaluate motions for preliminary injunctions. (E1:3-4:¶7). The district court declined to analyze the merits factor because it reasoned this "would essentially have the Court determine the final validity of the parties' claims." *Id.* The district court did not cite any authority to support its determination that it was not required to examine the merits factor when doing so would address the merits. *Id.* Regardless, the district court later concluded that neither the North Dakota Supreme Court nor the district court has declared a right to abortion under the State Constitution. (E1:4:¶10).

[¶13] Wrigley filed a Notice of Appeal, (R100), and moved the district court to stay the court's order granting a preliminary injunction (R97-98). The district court denied the motion to stay, reasoning in part that the "Court is not convinced by the State's argument that it was required to fully flesh out whether either party had a 'substantial probability of succeeding on the merits' when it granted RRWC's motion for a preliminary injunction." (R104:2:¶3). This Court, after asking Wrigley to address the Court's jurisdiction over the district court's order enjoining Section 12.1-31-12, determined the district court's Order granting Plaintiffs' Motion for Preliminary Injunction was not appealable. *Access Indep. Health Servs., Inc. et al.*, Supreme Court. No. 20220260, Burleigh Co. Court No. 2022-CV-01608, Seq. # 22, ¶ 2. The Court also informed Wrigley he could request the Court to exercise its supervisory jurisdiction by October 10, 2022. *Id.* at ¶ 3.

STATEMENT OF FACTS

[¶14] Section 12.1-31-12, which was enacted in 2007, makes the performance of an

abortion by anyone other than the pregnant female upon whom the abortion is performed, a class C felony. The law provides three affirmative defenses to prosecution:

> a. That the abortion was necessary in professional judgment and was intended to prevent the death of the pregnant female.
>
> b. That the abortion was to terminate a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20.
>
> c. That the individual was acting within the scope of that individual's regulated profession and under the direction of or at the direction of a physician.

2007 N.D. Sess. Laws ch. 132, § 1. The law included the following effective date commonly referred to as the "trigger language":

> This Act becomes effective on the date the legislative council approves by motion the recommendation of the attorney general to the legislative council that it is reasonably probable that this Act would be upheld as constitutional.

Id. In 2019, the Legislature amended the applicable trigger language to read as follows:

> [T]his Act becomes effective on the thirtieth day after:
>
> 1. The adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion; or
>
> 2. The attorney general certifies to the legislative council the issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion.

2019 N.D. Sess. Laws ch. 126, § 2.

ARGUMENT

[¶15] In *Black Gold OilField Servs., LLC*, the Court explained the framework and factors courts must use to evaluate a motion for preliminary injunction:

> "Generally, 'a preliminary injunction is an extraordinary and drastic remedy and should not be granted unless the movant, by a clear showing, carries the

> burden of persuasion.'" *Vorachek,* 461 N.W.2d at 585 (quoting 11 C. Wright & A. Miller, *Federal Practice & Procedure,* § 2948, at 428 (1973)). A district court's discretion to grant or deny a preliminary injunction is based on the following factors: (1) substantial probability of succeeding on the merits [merits factor]; (2) irreparable injury; (3) harm to other interested parties; and (4) effect on the public interest. *Eberts v. Billings Cty. Bd. of Comm'rs,* 2005 ND 85, ¶ 8, 695 N.W.2d 691; *Nodak Mut. Ins. Co. v. Ward County Farm Bureau,* 2004 ND 60, ¶ 24, 676 N.W.2d 752; *Vorachek,* at 585. The decision to grant or deny a preliminary injunction is within a district court's discretion, and its determination will not be disturbed absent an abuse of discretion. *Eberts,* at ¶ 8; *Nodak Mut.,* at ¶ 24; *Vorachek,* at 585. A district court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner, its decision is not the product of a rational mental process leading to a reasoned determination, or it misinterprets or misapplies the law. *Eberts,* at ¶ 8.

Black Gold OilField Servs., LLC, 2016 ND 30, ¶ 12, 875 N.W.2d 515. This Court's standards for addressing constitutional challenges creates an even higher bar for RRWC and makes the merits factor significantly more important.

[¶16] The Court must uphold Section 12.1-31-12 unless RRWC clearly demonstrates the law is unconstitutional. *See State v. Burr*, 1999 ND 143, ¶ 9, 598 N.W.2d 147. "All regularly enacted statutes carry a strong presumption of constitutionality, which is conclusive unless the party challenging the statute clearly demonstrates it contravenes the state or federal constitution[, beyond a reasonable doubt]." *MKB Mgmt. Corp. v. Burdick*, 2014 ND 197, ¶ 45, 855 N.W.2d 31 (citation omitted). "Any doubt about a statute's constitutionality must, when possible, be resolved in favor of its validity[,]" and a declaration that a law is unconstitutional "must be exercised with great restraint." *Id.* (citation omitted).

[¶17] The burden of proving a statute's constitutional infirmity lies solely with the challenger. *Simons v. State Dept of Human Servs.*, 2011 ND 190, ¶ 23, 803 N.W.2d 587. The stringent burden for establishing unconstitutionality is mandated by the various roles

the State Constitution assigns to the three branches of our government. *See Verry v. Trenbeath*, 148 N.W.2d 567, 570 (N.D. 1967). The power to declare legislative acts unconstitutional is "one of the highest functions of" and "one of the greatest responsibilities of the courts," and "should be exercised with great restraint, caution, and even with reluctance." *Montana-Dakota Utils. Co. v. Johanneson*, 153 N.W.2d 414, 420 (N.D. 1967). Upholding the constitutionality of a statute is so compelling that the agreement of four Supreme Court Justices is required to find a statute is unconstitutional. N.D. Const. art. VI, § 4.

[¶18] The district court abused its discretion because it did not hold RRWC to the rigorous standard for obtaining a preliminary injunction and asserting a constitutional challenge.

I. The district court abused its discretion by enjoining Section 12.1-31-12 without considering the merits factor.

[¶19] The district court declined to analyze the merits factor because the analysis could determine the validity, or *address the merits*, of the parties' claims. (E1:4-5:¶7). The district court's intentional disregard of the merits factor is plainly contrary to this court's precedent for evaluating motions for preliminary injunction. *Black Gold OilField Servs., LLC*, 2016 ND 30, ¶ 12, 875 N.W.2d 515. The district court's disregard of the merits factor constitutes an abuse of discretion. Juxtaposing this case with the Court's decision in *Black Gold OilField Servs., LLC*, substantively illustrates why the district court abused its discretion.

[¶20] In *Black Gold OilField Servs., LLC* the Court determined a district court did not abuse its discretion where it denied a motion for preliminary injunction because the movant could not satisfy the merits factor. 2016 ND 30, ¶ 12, 875 N.W.2d 515. The movant could not satisfy the merits factor because the relief sought by the movant was contrary to

significant authority. *Id.* at ¶¶ 13-27. In the instant case, the district court did not consider the merits factor because the court determined its analysis of the factor could be dispositive of RRWC's entire case, (E1:4-5:¶7), and the court separately determined there was an absence of authority supporting RRWC's motion. (E1:4:¶10).

[¶21] If courts are given broad discretion to disregard the merits factor because the court's analysis and resulting decision bears on the merits, and a party's motion for a preliminary injunction is not supported by any authority, courts will have discretion to disregard the merits factor even if the merits of the motion are *contrary* to relevant authority. The district court in *Black Gold OilField Servs., LLC* could have simply disregarded the merits factor even though movants' claim was contradicted by relevant authority. A district court's discretion should not go so far.

[¶22] The district court's disregard for the merits factor, especially when the court acknowledged RRWC's argument is not supported by the State Constitution, is an abuse of discretion because it is arbitrary, erroneous as a matter of law, and is not the product of a rational mental process leading to a reasoned determination. RRWC cannot *clearly* meet its burden of persuasion if its argument lacks legal support. If a district court's discretion extends to picking and choosing preliminary injunction factors, and a court may refuse to consider the merits of a motion, the Court's longstanding and universally recognized factors for addressing preliminary injunctions will become mere formulistic waypoints and injunctions will become routine remedies.

[¶23] Recent decisions from the Eighth Circuit Court of Appeals emphasize that the merits factor is the most important factor for a court to consider when a statute is challenged. Although not controlling, this Court has relied upon federal precedent to

establish its framework for evaluating motions for preliminary injunction and should consider federal precedent evaluating motions for preliminary injunction as persuasive. *See Vorachek* 461 N.W.2d at 585 (relying upon *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109 (8th Cir. 1981)).[2]

[¶24] In *Libertarian Party of Arkansas v. Thurston*, the Court of Appeals reasoned, in the context of the four factors for an injunction recognized by the Court in *Dataphase*, that "parties seeking to preliminarily enjoin the 'implementation of a state statute' must demonstrate that they are 'likely to prevail on the merits.'" 962 F.3d 390, 399 (8th Cir. 2020) (quoting *Rodgers v. Bryant*, 942 F.3d 451, 455 (8th Cir. 2019)). "This heightened standard 'reflects the idea that governmental policies implemented through legislation . . . [and] developed through presumptively reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly.'" *Id.* at 455 (alteration in original) (quoting *Rodgers*, 942 F.3d at 455-56). This is a heightened standard when compared to the "fair-chance [of success] standard." *See Sleep No. Corp. v. Young*, 33 F.4th 1012, 1016 (8th Cir. 2022). "If the party with the burden of proof makes a threshold showing that it is likely to prevail on the merits, the district court should then proceed to weigh the other *Dataphase* factors." *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 732 (8th Cir. 2008). Conversely, if the party does not satisfy the merits factor, consideration of the additional factors is unnecessary. *See also Memphis Ctr. for Reprod. Health v. Slatery*, 14 F.4th 409, 423 (6th Cir. 2021) (relying upon likelihood of

[2] "When a state rule is derived from a corresponding federal rule, the federal courts' interpretation of the federal rule may be persuasive authority when interpreting our rule." *Johnson v. Menard, Inc.*, 2021 ND 19, ¶ 10, 955 N.W.2d 27 (quoting *White v. T.P. Motel, L.L.C.,* 2015 ND 118, ¶ 20, 863 N.W.2d 915).

success on the merits as the determinative factor for evaluating a potential constitutional violation) *vacated* after rehearing in banc (*Memphis Ctr. For Reprod. Health v. Slatery,* 18 F.4th 550 (6th Cir. 2021).

[¶25] The district court failed to follow this Court's precedent for evaluating motions for preliminary injunction when consideration of the merits factor should have been determinative. The district court abused its discretion. Permitting a district court to enjoin a properly enacted statute without ever examining whether a plaintiff is likely to succeed on the merits simply cannot be reconciled with this Court's precedent recognizing the extraordinary and drastic nature of injunctive relief, and the movant's requirement to carry the burden of persuasion by a clear showing. *Black Gold OilField Servs., LLC*, 2016 ND 30, ¶ 12, 875 N.W.2d 515.

II. RRWC does not satisfy the merits factor because abortion is not a fundamental right protected by the State Constitution.

[¶26] In conjunction with its analysis of the district court's disregard of the merits factor, the Court should conduct a de novo review of the district court's decision and determine the State Constitution does not provide a fundamental right to abortion, and vacate the district court's injunction in its entirety.

[¶27] In support of its motion to preliminarily enjoin Section 12.1-31-12, RRWC argued the State Constitution includes a fundamental right to terminate a pregnancy under N.D. Const. art. I, § 1. (R6:9-11:26-29). RRWC argued that because the right to life, liberty, safety, and happiness includes the right to make decisions about familial relationships and to refuse unwanted medical treatment, terminating a pregnancy falls in line with the rights protected by N.D. Const. art. I, § 1. *Id.* RRWC relies upon an opinion from a North Dakota district court to support its argument, *id*. at ¶¶ 30, 32, 33, which was ultimately reversed by

the North Dakota Supreme Court. *Compare MKB Mgmt. Corp. v. Burdick*, No. 092011CV02205, 2013 WL 9903823 (N.D. E. Cent. Jud. Dist. Ct. July 31, 2013) *with MKB Mgmt. Corp.*, 2014 ND 197, 855 N.W.2d 31.

[¶28] The district court disagreed with RRWC albeit not in the context of evaluating the merits factor, (E1:4:¶10), and so should this Court. N.D. Const. art. I, § 1 has never, and does not, expressly recognize a fundamental right to an abortion. RRWC cannot satisfy the merits factor concerning its claim that Section 12.1-31-12 is unconstitutional.

A. Section 12.1-31-12 is constitutional because there is no fundamental right to abortion in the State Constitution.

[¶29] RRWC argued the court should enjoin Section 12.1-31-12 because the law implicates fundamental rights under the State Constitution. (R6:9:26). The provisions of the State Constitution RRWC relied upon are as follows:

> *Section 1.* All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.
> ....
> *Section 12.* In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

N.D. Const. art. I, §§ 1, 12. The North Dakota Supreme Court relies upon the following test for interpreting constitutional provisions:

> In interpreting constitutional provisions, we apply general principles of statutory construction. *Thompson v. Jaeger,* 2010 ND 174, ¶ 7, 788 N.W.2d 586. Our overriding objective is to give effect to the intent and purpose of

> the people adopting the constitutional provision. *City of Bismarck v. Fettig,* 1999 ND 193, ¶ 8, 601 N.W.2d 247. The intent and purpose of constitutional provisions are to be determined, if possible, from the language itself. *Thompson,* at ¶ 7. In construing constitutional provisions, we ascribe to the words the meaning the framers understood the provisions to have when adopted. *Kadrmas v. Dickinson Pub. Schs.,* 402 N.W.2d 897, 899 (N.D. 1987). We may consider contemporary legal practices and laws in effect when the people adopted the constitutional provisions. *See State v. Orr,* 375 N.W.2d 171, 177–78 (N.D. 1985) (interpreting right to counsel provision of state constitution in view of statutes in effect when constitution adopted); *City of Bismarck v. Altevogt,* 353 N.W.2d 760, 764–65 (N.D. 1984) (interpreting right to jury trial under state constitution in view of territorial statutes defining right to jury trial).

MKB Mgmt. Corp., 2014 ND 197, ¶ 25, 855 N.W.2d 31. "[T]he North Dakota Constitution must be read in the light of history." *State v. Allesi*, 216 N.W.2d 805, 817 (N.D. 1974). When interpreting the State Constitution, a court's first step is to determine whether a right itself is incorporated into the state constitution. Only after a court determines a right is incorporated into the state constitution may the court determine the scope of the state constitution's protection of that right. *See* Earl M. Maltz, *False Prophet-Justice Brenan and the Theory of State Constitutional Law*, 15 Hastings Const. L.Q. 429, 444 (1988).

[¶30] RRWC did not argue that the State Constitution expressly or impliedly references abortion, or the right to obtain an abortion.

B. Sections 1 and 12 of Article 1 of the State Constitution should not be interpreted as creating a fundamental right to an abortion.

[¶31] In *MKB Management Corp.* this Court considered whether the State Constitution contains a fundamental right to an abortion. 2014 ND 197, 855 N.W.2d 31.[3] At the time this Court decided *MKB Management Corp.*, *Roe,*, 410 U.S. 113, and *Casey*, 505 U.S. 833, controlled. *MKB Management Corp.*, 2014 ND 197, ¶¶ 15-18, 855 N.W.2d 31. This Court

[3] RRWC and Kathryn L. Eggleston, M.D., who are Plaintiffs in this case, were also the plaintiffs in *MKB Management Corp.*

in *MKB Management Corp.* evaluated whether H.B. 1297, which was passed by the legislative assembly in 2011, was unconstitutional pursuant to N.D. Const. art. §§ 1 and 12, with "the background of federal precedent describing a woman's fundamental right to an abortion before viability under the federal constitution." *Id*. at ¶ 22. In *MKB Management Corp.*, as it has done here in support of its position that H.B. 1297 was unconstitutional, RRWC advanced the proposition that "a woman's right to terminate a pregnancy is an inalienable and fundamental liberty right protected by the State Constitution, which protects individual liberties to the same or greater extent than the federal constitution and must be interpreted in light of changed circumstances." *Id*. at ¶ 24.

[¶32] This Court in *MKB Management Corp.* issued a per curium opinion concluding there was not a sufficient majority as to whether H.B. 1297, was unconstitutional under the State Constitution. *Id.* at ¶ 1. H.B. 1297 restricted medication abortions. *Id.* at ¶ 7. The Court's short per curium opinion provides as follows:

> Article VI, § 4 of the North Dakota Constitution requires the agreement of at least four members of this Court to declare a statute unconstitutional. Justice Kapsner and Surrogate Judge Maring have concluded that H.B. 1297 is unconstitutional under the North Dakota Constitution [¶¶ 97, 156], Chief Justice VandeWalle and Justice Sandstrom have concluded that H.B. 1297 is constitutional under the state constitution [¶¶ 38, 170], and Justice Crothers has concluded that the state constitutional issue need not be decided. [¶ 157] Justices Kapsner and Crothers and Surrogate Judge Maring have concluded that H.B. 1297 is unconstitutional under the federal constitution, Chief Justice VandeWalle has concluded that H.B. 1297 is constitutional under the federal constitution, and Justice Sandstrom has concluded the federal constitutional issue is not properly before this Court. Justice Kapsner and Surrogate Judge Maring have concluded that H.B. 1297 has been declared unconstitutional under the federal constitution by a sufficient majority. Chief Justice VandeWalle and Justices Sandstrom and Crothers, however, have concluded that H.B. 1297 has not been declared unconstitutional under the federal constitution by a sufficient majority. The effect of the separate opinions in this case is that H.B. 1297 is not declared unconstitutional by a sufficient majority and that the district court judgment permanently enjoining the State from enforcing H.B. 1297 is reversed.

Id. at ¶ 1.

[¶33] Wrigley respectfully requests this Court construe then Chief Justice VandeWalle's and Justice Sandstrom's concurring opinions (the "VandeWalle Concurrence") in *MKB Management Corp.*, which analyze whether the State Constitution expressly or impliedly contains a fundamental right to abortion, as persuasive and determine that N.D. Const. art. I, §§ 1 and 12 do not create a fundamental right to an abortion.

[¶34] The VandeWalle Concurrence surveyed the inherent rights secured under N.D. Const. art. I, §§ 1 and 12 pursuant to its prior caselaw, considered the historical backdrop of abortion-related laws and regulations in North Dakota prior to statehood leading up to *Roe*, and legislatively enacted provisions regarding abortion post-*Roe*. The VandeWalle Concurrence concluded, based on this analysis, and in consideration of the plaintiffs' assertion that the State Constitution may be interpreted in-light-of changed circumstances, that the State Constitution did *not* create a fundamental liberty right to abortion. The VandeWalle Concurrence is persuasive and the Court should decline "to hold the people of North Dakota intended to create a liberty right to abortion under the state constitution." *Id*. at ¶ 38.

[¶35] The portion of the VandeWalle Concurrence relevant to this case begins with an analysis of *State v. Cromwell*. In that case the Court described the "inherent rights" protected by the language in N.D. Const. art. I, §§ 1 and 12, in the context of addressing a challenge to statutes prohibiting the practice of professional photography without a license. *State v. Cromwell*, 72 N.D. 565, 9 N.W.2d 914 (N.D. 1943). The VandeWalle Concurrence, relying upon *Cromwell*, explained:

> N.D. Const. art. 1, § 1, embodies the essence of "self-evident truths," and the term "liberty" includes "in general, the opportunity to do those things which are ordinarily done by free men." This Court explained the pursuit of happiness was not capable of specific definitions or limitation but was the aggregate of many rights included in the guaranty of liberty. This Court recognized, however, a state's police power authorized a state to impose restrictions on private rights as practically necessary for the general public welfare and health and comfort of all.

MKB Mgmt. Corp., 2014 ND 197, ¶ 27, 855 N.W.2d 31 (internal citations omitted). "[T]he drafters of our constitution are presumed to know the existing laws and to have drafted the state constitution accordingly." *Id*. at ¶ 37. RRWC also embraced the Court's analysis in *Cromwell* to support its argument, but RRWC failed to recognize the Court's opinions following *Cromwell* recognized limitations to the State Constitution. (R6:9:26).

[¶36] The VandeWalle Concurrence recognized that in *Johnson v. Elkin*, 263 N.W.2d 123, 128-29 (N.D. 1978), which analyzed regulations governing house movers, the Court described the *Cromwell* Court's analysis of N.D. Const. art. I, § 1 as an "expansive" reading of the provision. The expansive rights in that provision were modified and limited by the police power "to impose such restrictions upon private rights as are practically necessary for the general welfare of all." *Johnson*, 263 N.W.2d at 129 (citation omitted). "The only question[,]" the *Johnson* Court reasoned, "is whether the regulation . . . is reasonable and, within constitutional limits, promotes the order, safety health, morals and general welfare of society." *Id.* at 130.

[¶37] The VandeWalle Concurrence additionally evaluated the Court's decision in *Hoff v. Berg*, 1999 ND 115, ¶¶ 8-18, 595 N.W.2d 285, and the different levels of scrutiny applicable to liberty claims under the due process clause. *MKB Mgmt. Corp.*, 2014 ND 197, ¶ 29, 855 N.W.2d 31. The Court in *Hoff* held that N.D. Const. art. I, §§ 1 and 12 recognize that parents have a fundamental right to parent their children. *Hoff*, 199 ND 115,

¶ 10, 595 N.W.2d 285. That right, unlike a right to have an abortion, has longstanding traditional roots in American culture. The Court in *Hoff* cites *Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972), amongst other U.S. Supreme Court precedent, for the proposition that "[t]he history and culture of Western civilization reflect a strong tradition of parental concern for the nature and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Hoff*, 199 ND 115, ¶ 8, 595 N.W.2d 285. The constitutionally protected liberty interest to refuse unwanted medical treatment was also found in *State ex rel. Schuetzle v. Vogel*, 537 N.W.2d 358, 360 (N.D. 1995). Like the right to parent one's child, the right to refuse unwanted medical treatment has "well-established legal and philosophical underpinnings." *Id*.

[¶38] The ostensible purpose of the VandeWalle Concurrence's evaluation of *Hoff*, however, was to explain the different levels of scrutiny applicable to fundamental rights versus lesser interests. *MKB Mgmt. Corp.*, 2014 ND 197, ¶¶ 30-31, 855 N.W.2d 31. "A common thread in this Court's precedent construing the language in N.D. Const. art. I, §§ 1 and 12 in the context of individual liberty and the state's countervailing interests recognizes application of the state's police power, which is not always compatible with applying strict scrutiny to challenged regulations." *Id.* at ¶ 31 (VandeWalle Concurrence) (citing *Casey*, 505 U.S. at 852, 871-72, recognizing that "abortion is a unique act" that includes considering the state's important and legitimate interests in a woman's health and potential life). RRWC wholly failed to address the application of the state's police power to abortion regulations.

[¶39] Importantly, the VandeWalle Concurrence explained that "[b]ecause of the

difficulty in applying strict scrutiny to the competing state and individual interests involved with abortion regulations . . . some state courts have recognized their state constitutions do not guarantee a right to abortion separate and distinct from the federal constitution." *MKB Mgmt. Corp.*, 2014 ND 197, ¶ 33, 855 N.W.2d 31. The VandeWalle Concurrence additionally cited and relied upon *Mahaffey v. Attorney General*, 564 N.W.2d 104, 111 (Mich. Ct. App. 1997), and *Preterm Cleveland* v. *Voinovich*, 627 N.E.2d 570, 584 (Ohio Ct. App. 1993), to support its reasoning.

[¶40] It is significant the VandeWalle Concurrence recognized North Dakota's long history of prohibiting abortions:

> Before the United States Supreme Court decided *Roe* in 1973, North Dakota had a long history of prohibiting abortions except to preserve a woman's life. *See* Penal Code, Dakota Territory §§ 337, 338 (1877); Compiled Laws of the Territory of Dakota §§ 6538, 6539 (1887); N.D.R.C. §§ 7177, 7178 (1895); N.D.R.C. §§ 8912, 8913 (1905); N.D. Compiled Laws §§ 9604, 9605 (1913); N.D.R.C. ch. 12–25 (1943); N.D.C.C. ch. 12–25 (1960). After *Roe* was decided, the 1973 legislature enacted provisions continuing to prohibit abortions as part of a comprehensive enactment of the criminal code in N.D.C.C. tit. 12.1. *See* 1973 N.D. Sess. Laws § 19 (enacting N.D.C.C. ch. 12.1–19) and § 41 (repealing N.D.C.C. ch. 12–25). The provisions in N.D.C.C. ch. 12.1–19 were repealed by the adoption of the Abortion Control Act in 1975. *See* 1975 N.D. Sess. Laws ch. 124 (adopting N.D.C.C. ch. 14–02.1).
>
> The provisions prohibiting abortions were continuously in effect before statehood, at statehood, and after statehood, and I have found no contrary reference to abortions in the North Dakota Constitution, nor in the 1889 debates of the North Dakota Constitutional Convention. *See* Official Report of the Proceedings and Debates of the First State Constitutional Convention of North Dakota (1889). Our state constitution is silent about creating a state constitutional right to abortion, and the prevailing practice in the Dakota Territory and when the relevant constitutional provisions were adopted prohibited abortions except to preserve a woman's life. The laws of the Dakota Territory and this State thus provide no long-standing tradition recognizing a separate state right to an abortion, and the drafters of our constitution are presumed to know the existing laws and to have drafted the state constitution accordingly. *See Orr,* 375 N.W.2d 171 at 177–78; *Altevogt,* 353 N.W.2d at 764–65 ; *Mahaffey*, 564 N.W.2d at 109-10 .

MKB Mgmt. Corp., 2014 ND 197, ¶¶ 36-37, 855 N.W.2d 31. The State's prohibition of abortion, from territorial days until *Roe* was decided in 1973, unequivocally demonstrates the drafters and ratifiers of the State Constitution did not intend the State Constitution to confer a right to abortion. *See also Dobbs*, 142 S. Ct. at 2241 ("At the time of *Roe*, 30 States still prohibited abortion at all stages.")

[¶41] This Court's prior decisions also demonstrate a right to abortion was not intended under the State Constitution. In multiple cases the Court affirmed convictions for performing or procuring abortions. *See State v. Dimmick*, 70 N.D. 463, 296 N.W. 146 (1941); *State v. Shortridge*, 54 N.D. 779, 211 N.W. 336 (1926); *State v. Longstreth*, 19 N.D. 268, 121 N.W. 1114 (1909). The "status quo" in North Dakota is a long history of prohibiting abortions.

[¶42] Finally, the VandeWalle Concurrence acknowledged the Court has recognized the State Constitution may be interpreted "in light of changed circumstances," but declined to interpret the Constitution to create a liberty right to abortion. *MKB Mgmt. Corp.*, 2014 ND 197, ¶ 38, 855 N.W.2d 31 (citation omitted). "In view of the laws affirmatively prohibiting abortion in the Dakota Territory and North Dakota when the relevant constitutional provisions were adopted and the absence of a reference to abortion during proceedings leading up to adoption of the state constitution . . . I decline to hold the people of North Dakota intended to create a liberty right to abortion under the state constitution." *Id.* The State Constitution was "not intended to encompass a fundamental right to abortion . . . ." *Id.*

[¶43] RRWC failed to acknowledge North Dakota's long-standing history of prohibiting abortions that had continuously been in effect "before statehood, at statehood, and after

statehood." Instead, RRWC asked, and the district court agreed, at least for the purposes of the preliminary injunction, to ignore that long-standing precedent and history. But there is no fundamental right to abortion in the text or history of the State Constitution, and this Court should not now craft such a right or allow the district court's injunction to continue as if there was such a right. The State Constitution does not provide a fundamental right to abortion under N.D. Const. art. I, §§ 1 and 12.

[¶44] In summary, RRWC cannot satisfy the merits factor, it failed to meet its burden of persuasion, and further failed to meet the heightened standards applicable to constitutional challenges. The district court abused its discretion by disregarding the merits factor.

CONCLUSION

[¶45] Wrigley respectfully requests that the Court exercise its supervisory jurisdiction and vacate the district court's Order enjoining Section 12.1-31-12.

Dated this 10th day of October, 2022.

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STATE OF NORTH DAKOTA

COUNTY OF BURLEIGH

IN DISTRICT COURT

SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 08-2022-CV-1608

Access Independent Health Services, Inc., d/b/a Red River Women's Clinic, on behalf of itself and its patients, and Kathryn L. Eggleston, M.D., on behalf of herself and her patients,

Plaintiffs,

vs.

Drew H. Wrigley, in his official capacity as Attorney General for the State of North Dakota, Birch P. Burdick, in his official capacity as the State Attorney for Cass County,

Defendants.

ORDER ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

[¶1] The Plaintiffs, Access Independent Health Services, Inc., d/b/a Red River Women's Clinic and Kathryn L. Eggleston, M.D., ("RRWC" or "Plaintiffs"), filed a motion for a temporary restraining order and preliminary injunction in the above matter to stop the enforcement of North Dakota Century Code § 12.1-31-12, currently set to take effect on July 28, 2022. *Docket No. 5.* The Defendants, Drew Wrigley and Birch Burdick, ("Wrigley" or "the State"), filed a response opposing RRWC's motion. *Docket No. 63.* RRWC filed a reply brief countering Wrigley's arguments on July 22, 2022. *Docket No. 65.* On July 27, 2022, the Court granted RRWC's motion for a temporary restraining order. A motion hearing for the preliminary junction was held on August 19, 2022.

BACKGROUND

[¶2] RRWC filed the above suit to prevent Wrigley from enforcing North Dakota Century Code § 12.1-31-12, ("the statute"). The statute defines the crime, and affirmative defenses, of abortion.

EXHIBIT 1

This statute was enacted by the Legislature in 2007, while *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), were still in effect. Because § 12.1-31-12 would have been unconstitutional under these cases at the time it was enacted, the Legislature placed a triggering provision into the statute to allow it to take affect should the conditions outlined be met. The United States Supreme Court in *Dobbs v. Jackson Women's Health Organization*, overruled *Roe* and *Casey*, and restored to the states authority to prohibit abortion. 142 S.Ct. 2228 (2022).

[¶3] Previously, the Court addressed whether a temporary restraining order was appropriate in the above case. Under the circumstances as they existed at the time, the Court granted RRWC's request for a temporary restraining order, halting the enforcement of the statute. The current issue before the Court is whether to extend the temporary restraining order into a formal preliminary injunction.

LEGAL ANALYSIS

[¶4] North Dakota Century Code section 32-06-02 outlines the situations where the Court can issue an injunction, including: "When, during the litigation, it shall appear that the defendant is doing or threatening, or is about to do, or is procuring or suffering, some act to be done in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual[.]" Before deciding whether to grant a preliminary injunction, a trial court must consider four factors: "(1) substantial probability of succeeding on the merits; (2) irreparable injury; (3) harm to other interested parties; and (4) effect on the public interest." *Nodak Mut. Ins. Co. v. Ward County Farm Bureau*, 2004 ND 60, ¶ 24, 676 N.W.2d 752.

[¶5] The party seeking the preliminary injunction has the burden of establishing the necessity of the injunction. *Vorachek v. Citizens State Bank of Lankin*, 461 N.W.2d 580, 585 (N.D. 1990).

"The most important prerequisite for the issuance of a preliminary injunction is a demonstration that, if the preliminary injunction is not granted, the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered." *Id.* Additionally, "the purpose of a temporary or preliminary injunction 'is to maintain the cause in status quo until a trial on the merits.'" *State v. Holecek*, 545 N.W.2d 800, 804 (N.D. 1996) (quoting *Gunsch v. Gunsch*, 69 N.W.2d 739, 7456 (N.D. 1954)). The ultimate "decision to grant or deny a preliminary injunction is within the discretion of the trial court[.]" *Fargo Women's Health Organization, Inc. v. Lambs of Christ*, 488 N.W.2d 401, 406 (N.D. 1992).

[¶6] In assessing whether to grant RRWC's motion for a preliminary injunction, the Court will consider each of the four factors, outlined in *Nodak Mut. Ins. Co.*, individually and then weigh them collectively. The Court will note, that at the hearing held on August 19, 2022, to address whether the Court should grant RRWC's motion for preliminary injunction, neither party provided any evidence to the Court; rather, all parties relied solely on arguments. Because the Court did not receive any evidence at the hearing, the Court is left with the two declarations, ("the declarations"), filed by RRWC in support of its motion in which to base any of its factual findings. *Docket Nos. 7, 8.* The declarations were submitted by Tammi Kromenaker, the Director of the Red River Women's Clinic, and Dr. Mark Nichols. *Id.* The Court would also note that in addition to not submitting any affidavits or providing any evidence, the State failed to counter or object to any factual statements made by RRWC through its declarations.

1. Substantial Probability of Succeeding on the Merits

[¶7] The central question in the above case is one of a purely legal matter, that is, the constitutionality of § 12.1-31-12. Although both parties spend substantial time arguing the first

prong, the underlying issue before the Court has no questions of facts; the determination of the substantial probability of succeeding on the merits would essentially have the Court determine the final validity of the parties' claims. As such, the Court makes no findings towards the substantial probability of succeeding on the merits prong and instead, reserves such analysis for the proper time, on a motion for summary judgment or trial.

2. Irreparable Injury

[¶8] RRWC argues in support of a preliminary injunction that if § 12.1-31-12 takes effect, the Clinic will have to close, women will be denied access to abortions in North Dakota, patients will suffer because they may face irreversible and potentially devastating health consequences, and patients may suffer economic consequences. In support of its arguments, RRWC cites to Dr. Nichols Declaration.

[¶9] RRWC also argues:

> The availability of abortion care in neighboring states does not relieve North Dakota of its obligations to safeguard its citizens' constitutional rights. Indeed, in other cases involving abortion restrictions, courts have held that "the proper formulation of the undue burden analysis focuses solely on the effects *within the regulating state*" because "a state cannot lean on its sovereign neighbors to provide protection of its citizens' federal constitutional rights." *Jackson Women's Health Org. v. Currier,* 760 F.3d 448, 457 (5th Circ. 2014) (emphasis added).

[¶10] However, the Court is not persuaded by this argument. At this time, this Court, nor the North Dakota Supreme Court, has not declared a right to abortion under the North Dakota Constitution. Additionally, as outlined by RRWC's own quoting of *Jackson Women's Health Org.*, states cannot rely on other states to protect *federal* constitutional rights. After *Dobbs*, and the overturning of *Roe* and *Casey*, the United States Supreme Court made it clear that United States Constitution does not include a right to an abortion.

[¶11] The State argues it will suffer irreparable injury if the Court grants RRWC's motion for a preliminary injunction because when the State is prohibited from enacting statutes enacted by the people, irreparable injury occurs. The State also argues that it has a legitimate interest in human life at all stages of development, and that if the statute is not enacted, it will result in irreversible loss of unborn children.

[¶12] As stated above, the State provided no evidence to the Court, through testimony or sworn statements, of any impact a preliminary injunction would have on the State or its citizens. At this time, all that is before the Court is conclusory statements by the State and RRWC's two declarations. Dr. Nichols's declaration outlines the various risks which can occur during pregnancies, specifically, high risk pregnancies. He lays out the heightened chances of complications and necessary medical intervention when a pregnancy progresses rather than terminated through an abortion. Additionally, although the Court recognizes that the State, and its citizens, have an interest in having statutes and legislature enacted, the Court would be remiss if it did not acknowledge the fact that the statute was enacted in 2007. The citizens have waited 15 years to have the statute enacted, in light of this length of time, any additional delay in the enactment of the statute would be minimal. Therefore, any interest the State may have in effectuating the statute, at this time, is less than the injuries caused to RRWC.

3. Harm to Other Interested Parties

[¶13] RRWC argues that the harm of the statue taking effect would be significant, reiterating its arguments above, and that the defendants would not be injured because a preliminary injunction merely preserves the status quo. For the third and fourth factor, Wrigley combines his arguments into one. He argues that the people of North Dakota have made it clear, through the legislative

process, that they support and believe that the provisions in § 12.1-31-12 are appropriate.

[¶14] The Court finds RRWC's arguments more persuasive. Once again, the State fails to provide any evidence of any harm to other interested parties. Rather, the State rests on the argument that the harm comes from simply not allowing the statute to be enacted. However, as stated above, the statute has been lying dormant for approximately 15 years before it was allowed to take affect with the repeal of *Roe* and *Casey*. The State has offered no evidence on how delaying the enactment of the statute during the pendency of this litigation implicates any additional harm than has already been in place for the last 15 years. Whereas, RRWC outlines real and tangible harm to others if the statute goes into effect during this litigation.

4. Effect on the Public Interest

[¶15] In arguing that the public has an interest in granting the preliminary injunction RRWC states that the public always has an interest in protecting constitutional rights. Although the Court agree with the public having an interest in protecting the constitutional rights of citizens, at this time, the determination of whether the North Dakota Constitution includes a right to abortion has yet to be made. RRWC also argues that without a preliminary injunction, patients who are denied the ability to have an abortion will cause poverty and financial distress to patients and the public has an interest in preventing this. Lastly, RRWC argues that the statute will undermine the public's trust in law enforcement; that is, law enforcement will be called to deprive the citizens of North Dakota a fundamental right before the courts decide the constitutionality of the statute.

[¶16] As stated above, Wrigley combined his arguments for the last two prongs and stands on the argument that the people have made it clear of their intent to prohibit abortion, except in a very limited number of circumstances, throughout the history of North Dakota.

[¶17] Essentially, for this last prong, both parties argue the longstanding tradition of either permitting or penalizing abortions in North Dakota. RRWC argues that there has been a longstanding tradition of allowing abortions because for the last 50 years, *Roe* and *Casey* have controlled and allowed for women's rights to choose whether to seek abortions. Whereas Wrigley argues that the longstanding tradition should not be limited to the last 50 years, but rather, should be analyzed from the perspective of North Dakota from its statehood. The Court can see the validity of both parties' arguments. However, as stated above, the purpose of preliminary injunctions is to maintain the status quo during the pendency of the litigation and prevent harm. At this time, the status quo in North Dakota is not to restrict or limit abortions as outlined in § 12.1-31-12.

[¶18] Lastly, although not necessarily a part of any of the four factors under the Court's consideration, the Court will address the fact that RRWC has relocated into Minnesota. RRWC was the only abortion clinic operating in the state of North Dakota. Although the enactment of the statute would have impacted RRWC and its operation greatly, RRWC is not the only entity or individual which would be affected. The statute would implicate others, including physicians at regional hospitals if it were to go into effect. Therefore, even without RRWC's operation in North Dakota, the Court's determination of a preliminary injunction is still pertinent and appropriate.

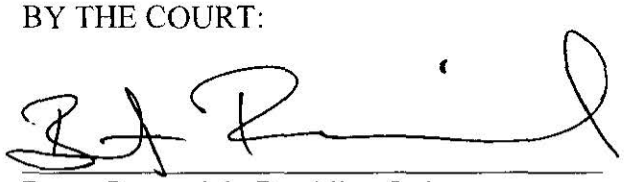
CONCLUSION

[¶19] For the foregoing reasons:

[¶20] RRWC's *Motion for Preliminary Injunction* is GRANTED. The enactment and enforcement of N.D.C.C. § 12.1-31-12 shall be suspended until final disposition of the above case or further order of the Court.

Dated this 25 day of August, 2022.

BY THE COURT:



Bruce Romanick, Presiding Judge
South Central Judicial District

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Drew H. Wrigley, in his official capacity as Attorney General for the State of North Dakota, Petitioner, v. The Honorable Bruce Romanick, District Court Judge, South Central Judicial District, Access Independent Health Services, Inc., d/b/a Red River Women's Clinic, on behalf of itself and its patients, and Kathryn L. Eggleston, M.D., on behalf of herself and her patients, Respondents.	**CERTIFICATE OF COMPLIANCE** **Supreme Ct. No. 20220260** **District Ct. No. 08-2022-CV-01608**

[¶1] The undersigned certifies pursuant to N.D.R.App.P. 32(a)(8)(A), that the **PETITIONER DREW H. WRIGLEY'S BRIEF IN SUPPORT OF PETITION FOR SUPERVISORY WRIT** contains 26 pages.

[¶2] This brief has been prepared in a proportionally spaced typeface using Microsoft Office 365 word processing software in Times New Roman 12 point font.

Dated this 10th day of October, 2022.

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IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Drew H. Wrigley, in his official capacity as Attorney General for the State of North Dakota, Petitioner, v. The Honorable Bruce Romanick, District Court Judge, South Central Judicial District, Access Independent Health Services, Inc., d/b/a Red River Women's Clinic, on behalf of itself and its patients, and Kathryn L. Eggleston, M.D., on behalf of herself and her patients, Respondents.	**CERTIFICATE OF SERVICE** **Supreme Ct. No. 20220260** **District Ct. No. 08-2022-CV-01608**

[¶1] I hereby certify that on October 10, 2022, the following documents: **PETITION FOR SUPERVISORY WRIT, PETITIONER DREW H. WRIGLEY'S BRIEF IN SUPPORT OF PETITION FOR SUPERVISORY WRIT, and CERTIFICATE OF COMPLIANCE** were filed electronically with the Supreme Court through the E-Filing Portal and served on the following:

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Dated this 10th day of October, 2022.

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