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Attorneys for Plaintiffs

MONTANA FIRST JUDICIAL DISTRICT COURT
COUNTY OF LEWIS AND CLARK

HELEN WEEMS and JANE DOE, Plaintiffs, vs. THE STATE OF MONTANA, by and through Timothy C. Fox, in his official capacity as Attorney General, and ED CORRIGAN, in his official capacity as the County Attorney for Flathead County, Defendants.	Cause No. _____ Hon. _____ **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

COME NOW Plaintiffs Helen Weems and Jane Doe, on behalf of themselves and their patients, and bring this Complaint against the above-named Defendants, their employees, agents, and successors in office, and respectfully state the following:

INTRODUCTION

1. This action challenges the constitutionality of Montana law restricting the provision of abortion care to physicians and physician assistants. Mont. Code Ann. § 50-20-109(1)(a) ("the APRN Restriction" or "the Restriction"). Advanced practice registered nurses ("APRNs") are prohibited from providing abortion care under threat of felony criminal prosecution, despite the demonstrated safety of abortion and the proven ability of APRNs to provide early abortion with the same safety and efficacy as physicians and physician assistants.

2. APRNs are registered professional nurses with advanced education and training, including certified nurse practitioners ("CNPs"), such as Plaintiff Helen Weems, and certified nurse midwives ("CNMs"), such as Plaintiff Jane Doe, to whom the State gives broad authority to practice independently within their scope of practice. APRNs, including Ms. Weems and Ms. Doe, consistently engage in patient care that is comparable to, or more complex and carries more risk than, abortion in the first and early second trimester. Nonetheless, the APRN Restriction prohibits them from providing these early abortion services simply because they are APRNs.

3. Barring APRNs from providing abortion care within their scope of practice is inconsistent with Montana Supreme Court precedent. Nearly two decades ago, the Montana Supreme Court held that Montana's Declaration of Rights' encompasses the right to obtain a pre-viability abortion from a qualified health care provider of one's choosing, and struck down the State's attempt to bar physician assistants from performing abortions. Prohibiting APRNs from performing abortions suffers from the same flaws as the law barring physician assistants from

doing so.

4. Barring APRNs from providing abortion care also contributes to and exacerbates limited access in the State. Montana is a geographically large state with great distances separating its four abortion clinics. As a result, vast expanses of the state lack adequate access to abortion services. Accordingly, pregnant people seeking abortions must travel significant distances to find their nearest provider, face delays as a result of inaccessibility, or carry a pregnancy to term.

5. Because the APRN Restriction prevents people from obtaining abortion care from APRNs and is justified by no adequate state interest, it infringes on Plaintiffs' patients' fundamental rights to privacy and dignity. The APRN Restriction further violates the equal protection rights of Plaintiffs and their patients by singling out APRNs who seek to provide abortion and their patients seeking that care for disfavored treatment.

6. Because the APRN Restriction violates the rights of Plaintiffs, APRNs who wish to provide abortions in Montana, and their patients, and imposes additional irreparable harm, Plaintiffs seek a declaratory judgment declaring it unconstitutional and permanent injunctive relief barring its enforcement. To prevent ongoing and immediate irreparable harms, Plaintiffs also seek preliminary injunctive relief.

JURISDICTION AND VENUE

7. Original jurisdiction is conferred on this court through Article VII, section 4 of the Montana Constitution and Mont. Code Ann. § 3-5-302.

8. Plaintiffs' claims for declaratory and injunctive relief are authorized by Mont. Code Ann. §§ 27-8-101 *et seq.*, 27-19-101 *et seq.*, as well as the general equitable powers of this court.

9. Venue is appropriate pursuant to Mont. Code Ann. §§ 25-2-126(1), 25-2-117 because the State of Montana is named as a defendant and this action is filed in Lewis and Clark County.

PARTIES

A. Plaintiffs

10. Helen Weems is a certified nurse practitioner, licensed to practice in Montana, with over 15 years of clinical experience. She co-owns All Families Healthcare ("All Families"), a primary care clinic, in Whitefish. Flathead and the surrounding counties have been without access to abortion since Susan Cahill, a physician assistant ("PA"), was forced to close her practice—also called All Families Healthcare—in 2014 after vandalism destroyed the clinic. All Families is set to re-open in February 2018, with Ms. Weems and Ms. Cahill as its primary health care providers. All Families will offer comprehensive sexual and reproductive health care, including LGBTQ care and gender-affirming care for transgender people, gynecological exams, diagnosis and treatment of sexually transmitted infections, contraception, and abortion services. Ms. Weems will provide a wide range of health services, including procedures comparable to early abortion in complexity and risk. But for the APRN Restriction, Ms. Weems would provide abortion services. Ms. Weems sues on her own behalf and on behalf of her patients.

11. Jane Doe is a certified nurse midwife practicing in Montana. Ms. Doe has filed a concurrent motion to proceed under pseudonym in this case. Ms. Doe currently provides the full range of reproductive health care to patients, except abortion. Ms. Doe provides procedures identical to early abortion in terms of skill, and procedures comparable to and more complex and risky than early abortion. The APRN Restriction, however, prohibits Ms. Doe from providing abortion services. Ms. Doe sues on her own behalf and on behalf of her patients.

B. Defendants

12. The State of Montana is a governmental entity subject to suit for injuries to persons. Mont. Const. art. II, § 18.

13. Timothy C. Fox is the Montana Attorney General. The Attorney General holds supervisory powers over county attorneys, including the power to order and direct those attorneys to initiate prosecutions. Mont. Code Ann. § 2-15-501(5). The Attorney General is also legal counsel for the Board of Nursing. Mont. Code Ann. § 37-8-201(3). He is sued in his official capacity.

14. Ed Corrigan is the County Attorney for Flathead County, which includes Whitefish. He is required to enforce the laws of the State of Montana in his capacity as public prosecutor. Mont. Code Ann. § 7-4-2712; *see also id.* § 7-4-2716. He is sued in his official capacity.

FACTUAL STATEMENT

A. Background and the Challenged Restriction

15. Currently, only physicians and physician assistants may legally provide abortions in Montana. APRNs are prohibited from providing abortion under threat of criminal prosecution. Mont. Code Ann. §§ 50-20-109(1)(a), (6).

16. As defined by the Montana Abortion Control Act, "'abortion' means the use or prescription of any instrument, medicine, drug, or other substance or device to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus." Mont. Code Ann. § 50-20-104(1).

17. Prior to 1995, physicians and one physician assistant provided abortion services in

Montana. In 1995, the Montana legislature passed a law restricting the provision of abortions to physicians ("physician-only law"). The law specifically targeted Susan Cahill, a physician assistant, who prior to that time had safely provided abortions in the state for over a decade.

18. In 1999, the Montana Supreme Court struck down the physician-only law as unconstitutional, holding that preventing a person from obtaining lawful medical care, and in particular abortion, from a qualified health care provider infringed on an individual's fundamental rights to privacy and procreative autonomy. *Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364. The Court held that the state Constitution "broadly guarantees each individual the right to make medical judgments affecting her or his bodily integrity and health in partnership with a chosen health care provider free from government interference." *Id*., ¶ 14. "More narrowly," the Constitution "protects a woman's right of procreative autonomy—i.e., here, the right to seek and to obtain a specific lawful medical procedure, a pre-viability abortion, from health care provider of her choice." *Id*.

19. In *Armstrong*, the Court used the "generic term 'health care provider' to refer to any physician, physician assistant-certified, nurse, nurse-practitioner, or other professional who has been determined by the appropriate medical examining and licensing authority to be competent by reason of education, training or experience, to perform the particular medical procedure or category of procedures at issue or to provide the particular medical service or category of services which the patient seeks from the health care provider." *Id*., ¶ 2 n.1.

20. In 2005, the Montana legislature amended the Control of Practice of Abortion statute to provide that physicians and physician assistants may lawfully provide abortions. Mont. Code Ann. § 50-20-109(1)(a). In defiance of the holding in *Armstrong*, Montana law therefore continues to prohibit, on threat of criminal prosecution, other qualified health care providers,

including APRNs, from providing abortion.

21. Other state law provisions related to abortion presume physician or physician assistant involvement.[1] These include recordkeeping and parental involvement requirements, the violation of which carries criminal penalties. Mont. Code Ann. § 50-20-110; Montana Parental Notification Measure, LR-120 (to be codified at Mont. Code Ann. § 50-20-221 *et seq*.); Mont. Code Ann. § 50-20-501 *et seq*. The State's parental notification law, which is currently subject to a constitutional challenge but is in effect, requires parental notice before a minor under age 16 may obtain an abortion. *See* Mont. Code Ann. §§ 50-20-221 *et seq*. Only the *physician* who is to perform the abortion or a referring physician may give actual notice. *See id.* §§ 50-20-223, -224. The State's parental consent law, which is currently enjoined, prevents a *physician or physician assistant* from performing an abortion for a minor under age 18 without first obtaining the notarized, written consent of the minor's parent or legal guardian. *Id.* § 50-20-504(1). To the extent these provisions presume physician or physician assistant involvement, they, like the APRN Restriction itself, limit APRNs' ability to provide abortion care.

B. Abortion is a Common and Safe Procedure

22. Roughly one in four American women will have an abortion by the time she reaches age 45.

23. Abortion is safer than carrying a pregnancy to term. Abortion carries a low risk of complications, with major complications occurring less than a quarter of a percent of the time.

24. The risk of death associated with childbirth is approximately 14 times higher than that associated with abortion. Additionally, all pregnancy-related complications are more common among people having live births than among those having abortions.

[1] Read in conjunction with *Armstrong*, these provisions do not limit the provision of abortion by physician assistants.

25. Abortion is safe throughout pregnancy, although the risks associated with abortion increase as pregnancy advances.

26. Prior to an abortion, a clinician examines the patient, typically using ultrasound, to determine the length of the pregnancy.

27. For an early abortion, medication and vacuum aspiration ("aspiration") abortion are two of the most common techniques. Both are safe and effective.

28. Medication abortion is available method up through 10 weeks, as measured from the first day of the person's last menstrual period ("LMP"). Typically, in a medication abortion, a patient takes the first medication, mifepristone, at the health facility, and then a second medication, misoprostol, up to 72 hours later at a location of their choosing, where they pass the pregnancy in a process similar to a miscarriage.

29. In 2015, nearly half of Montana residents who had abortions in the state obtained a medication abortion.

30. Aspiration abortion is an in-clinic procedure used throughout the first trimester, and early into the second trimester, in an outpatient setting. While aspiration abortion is sometimes referred to as "surgical" abortion, no incision is made. In an aspiration procedure, the clinician dilates the patient's cervix and inserts a thin tube through the cervix into the uterus. Gentle suction is used to evacuate the uterine contents. The procedure usually takes between two to ten minutes to complete.

C. Advanced Practice Clinicians in Montana

31. Advanced practice clinicians are a category of health care providers with advanced education and training that includes physician assistants, certified nurse midwives, and certified nurse practitioners. Advanced practice registered nurses ("APRNs") are a category of

advanced practice clinicians that include certified nurse practitioners and certified nurse midwives. Mont. Code Ann. § 37-8-202; Mont. Admin. R. 24.159.301(2).

32. Physician assistants practice pursuant to authority delegated to them by a physician. Mont. Code Ann. § 37-20-401(3). The scope of a physician assistant's authority is outlined in a supervision agreement with a physician, and supervision may be direct, onsite, or general. Mont. Code Ann. § 37-20-403; Mont. Admin. R. 24.156.1622(1). As with other medical care physician assistants provide in Montana, physician assistants may provide abortion services in Montana pursuant to a supervision agreement with a physician. Mont. Code Ann. § 50-20-109(1)(a).

33. The Montana Board of Nursing ("the Board") licenses APRNs. APRNs have broad authority to practice independently within their scope of practice. APRNs are not required to practice pursuant to a supervision agreement with a physician.

34. In general, an APRN must complete educational requirements specific to their practice role, beyond basic nursing education. Mont. Code Ann. § 37-8-102(1). An APRN licensed in Montana may "establish[] medical and nursing diagnoses, treat[], and manag[e] patients with acute and chronic illnesses and diseases," and "provid[e] initial, ongoing, and comprehensive care, including: (i) physical examinations, health assessments, and/or other screening activities;. . . (iii) ordering durable medical equipment, diagnostic treatments and therapeutic modalities, laboratory imaging and diagnostic tests, and supportive services, including, but not limited to, home healthcare, hospice, and physical and occupational therapy; (iv) receiving and interpreting results of laboratory, imaging, and/or diagnostic studies; [and] (v) working with clients to promote their understanding of and compliance with therapeutic regimens." Mont. Admin. R. 24.159.1406(1).

35. APRNs may be granted prescriptive authority by documenting for the Board that they have met certain educational requirements. Mont. Code Ann. § 37-8-202(1)(h); Mont. Admin. R. 24.159.1463(2)-(3).

36. An APRN with prescriptive authority from another state may apply for prescriptive authority by submitting evidence of a license with prescriptive authority in another jurisdiction. Mont. Admin. R. 24.159.1463(4).

37. APRNs with prescriptive authority "may prescribe, procure, administer, and dispense legend and controlled substances pursuant to state and federal laws and within the APRN's role and population focus." Mont. Admin. R. 24.159.1461(1).

38. Thus, in addition to United States Food and Drug Administration ("FDA")-approved medications, APRNs in Montana are authorized to prescribe potentially dangerous and addictive controlled substances. To do so they, like other health care providers, must comply with federal U.S. Drug Enforcement Agency ("DEA") requirements for controlled substances. Mont. Admin. R. 24.159.1464(4).

39. Certified nurse practitioners like Ms. Weems are independent providers certified in acute or primary care, who specialize in specific populations such as family practice or women's health. Mont. Admin. R. 24.159.1470(1). Their training enables them to work autonomously and in coordination with other health care providers.

40. Certified nurse midwives like Ms. Doe focus on a wide range of women's health care, including pregnancy, childbirth, family planning, and other gynecological care. Their training likewise enables them to work autonomously and in coordination with other health care providers.

41. The Board of Nursing does not identify specific procedures APRNs may or may

not provide. The Board has stated that APRNs have full practice authority. It charges APRN licensees to know their own role and population focus using the standards of their professional organization, as this is how scope of practice for APRNs is defined in the State.

42. The Board publishes a variety of guidelines that assist APRNs in determining whether they are competent to perform a particular task or procedure, including by reference to national professional organizations. National professional organizations recognized by the Board do not bar APRNs from providing abortion care within their scope of practice.

43. Competence is a baseline for safe, independent practice. Competence is not necessarily tied to a clinician's educational credentials. Instead, it is based on clinical knowledge, hands-on training, and physical and counseling skills.

44. Among others, the Board recognizes the National Association of Nurse Practitioners in Women's Health, as guiding the scope and standard of practice for nurse practitioners who focus on women's health, and the American College of Nurse Midwives as doing so for certified nurse midwives.

45. The National Association of Nurse Practitioners in Women's Health has stated that, with appropriate training, nurse practitioners are qualified to perform abortions.

46. The American College of Nurse Midwives states that certified nurse midwives can provide medication and aspiration abortion consistent with the scope of practice regulations of their state.

47. Montana law does not single out any health service as beyond an APRN's scope of practice, except abortion.

48. APRNs in Montana may legally provide a variety of health services that are comparable in risk and skill to, and indeed carry more risk than, early abortion.

49. APRNs insert and remove IUDs and other contraceptive implants.

50. APRNs perform endometrial biopsies, a procedure that involves inserting a thin tube through a patient's cervix into the uterus and suctioning a small piece of tissue from the uterine lining.

51. APRNs perform colposcopies, in which instruments are used to magnify the cervix and, when appropriate, to remove tissue for biopsy.

52. APRNs provide care for people experiencing miscarriage, care that is nearly identical to early abortion. Like abortion care, management of miscarriage may be by medication or by clinical (or "surgical") procedure. APRNs may manage miscarriage by performing an aspiration procedure, in which the cervix is dilated and a curette is used to remove the uterine contents through suction—essentially the same procedures as an early abortion. APRNs may also provide miscarriage care by administering misoprostol with or without mifepristone, the medications used in a medication abortion.

53. Additionally, APRNs such as certified nurse midwives in Montana may assist in cesarean sections and deliver babies—both of which carry greater risk to the patient than early abortion.

D. APRNs Can Safely Provide Abortion Care

54. APRNs are legally permitted to provide medication and aspiration abortion in several other states.

55. Research and experience uniformly establishes that APRNs can safely provide early abortions. Complications from both medication and aspiration abortion are rare—regardless of whether the clinician is a physician, physician assistant, or an APRN—and are comparable among these clinicians.

56. Consistent with the findings from this research, a broad array of leading medical and public health authorities support the provision of early abortion by APRNs, including the American College of Obstetricians and Gynecologists, the American Association of Reproductive Health Professionals, the American Public Health Association, and the World Health Organization.

57. The FDA recognizes that qualified health care providers acting within their scope of practice may provide medication abortion as allowed under state law. In 2016, the FDA amended the label for Mifeprex (the first drug in the medication abortion regimen) to make clear that health care providers other than physicians can safely prescribe this medication.

58. Like other APRNs in Montana, Ms. Weems and Ms. Doe are authorized to independently provide a range of health services and have broad prescriptive authority. Ms. Weems and Ms. Doe also have experience in providing health services comparable to—and riskier than—medication and aspiration abortion.

59. As a nurse practitioner in Washington State, Ms. Weems provided medication abortion. Ms. Doe regularly prescribes misoprostol for miscarriage management and to manage postpartum hemorrhage.

60. Ms. Weems and Ms. Doe dispense medications that carry more risk than the medications used in a medication abortion.

61. Ms. Weems and Ms. Doe routinely perform procedures or have skills similar to or identical to some of the steps clinicians take in an aspiration procedure.

62. For example, Ms. Weems and Ms. Doe perform IUD insertions, which involve the insertion of a small device into the uterus. Ms. Weems has also trained hundreds of physicians and advanced practice clinicians to place IUDs.

63. In conjunction with procedures they provide, Ms. Weems and Ms. Doe assess uterine size; administer cervical blocks (injections along the cervix prior to an IUD insertion); dilate the cervix (to gently open the cervix prior to an IUD placement or an endometrial biopsy); and are trained to manage complications such as uterine perforation and hemorrhage. These skills are comparable to or the same skills necessary for an aspiration abortion.

64. Ms. Doe also surgically manages miscarriage for patients with a procedure that is essentially the same as an aspiration.

65. Additionally, Ms. Doe assists in cesarean sections and labor and delivery, which carries more risk than abortion.

E. The Impact of the APRN Restriction

66. Abortion access in Montana is limited, and pregnant people face considerable obstacles when seeking abortion care.

67. Ninety-three percent of the counties in Montana do not have an abortion provider, and 55% of Montana women live in those counties.

68. Many pregnant people seeking abortion care must make the arrangements for, and absorb the cost of, not only the procedure itself, but also missed work, child care (if they have children), transportation to and from the clinic, and any needed lodging if their trip requires an overnight stay. These burdens fall particularly heavily on low-income people seeking abortion services. People living in rural areas or on reservations face similar obstacles accessing abortion.

69. Nationally, three-quarters of women who obtained abortions in 2014 were low-income. Similarly, many Montanans seeking abortion are low-income.

70. Pregnant people seeking abortion care may delay the procedure while making the necessary financial, logistical, and transportation arrangements. Delay itself can create additional

obstacles, as the cost and comparative risks of abortion increase as pregnancy advances. The majority of people seeking abortions would have preferred to obtain their abortion earlier. One of the most frequently cited reasons for delay is raising money for the procedure.

71. Other than financial obstacles, one of the primary barriers to abortion access in Montana is the shortage of providers and provider unavailability. The shortage of providers compounds other burdens pregnant people face accessing abortion services in the state.

72. Abortion services are available at four clinics concentrated in four cities: Missoula, Billings, Helena, and Great Falls. As a result of provider unavailability, however, access may not be available in each location on a consistent, fixed schedule. Instead, the availability of abortion may vary from week to week or month to month.

73. The availability or unavailability of one provider can have a significant impact on abortion access in the state.

74. Since 2013, Montana lost two abortion providers: Dr. Susan Wicklund closed her Livingston family practice clinic in 2013 and Ms. Cahill was forced to close her Kalispell family practice clinic in 2014 after vandalism destroyed the clinic. Northwest Montana has been without an abortion provider since Ms. Cahill was forced to close her clinic.

75. Whitefish, just north of Kalispell, is approximately 130 miles and at least two and a half hours from the nearest abortion provider in Missoula. The five-county catchment area surrounding Whitefish has a population of nearly 170,000 and includes the Blackfeet and Flathead Reservations.

76. With few clinics in the state, Montanans may be forced to travel hundreds of miles and many hours to their nearest abortion provider.

77. Between 2011 and 2014, the median distance an individual seeking abortion care

in Montana traveled increased by nearly 50 miles. Additionally, Montana is one of a minority of states where a person seeking abortion services may have to travel more than 180 miles to the closest provider.

78. Even individuals who live in a city with a clinic that offers abortion services may need to travel hours to a clinic in another city, as the nearest clinic may be without a provider or unable to see the patient without delay.

79. A pregnant person considering an hours-long trip to an abortion provider may decide to make the trip in one day, or stay overnight. Both alternatives carry costs, including the cost of travel and transportation, missed work or school, and childcare. Staying overnight may carry additional expense, including the cost of more missed work, additional childcare, and lodging.

80. Abortion providers in Montana also vary in terms of when in pregnancy they provide abortions, with fewer providers offering abortion services beyond the first trimester. Thus, in addition to the shortage of providers, delay can further decrease the number of locations at which an individual can access abortion.

81. Without justification, the APRN Restriction artificially constricts the pool of abortion providers in Montana. The Restriction prevents APRNs who are willing to provide abortion from contributing their skills to patient care and improving access to abortion, keeping access limited and subjecting patients to burdens that could be ameliorated.

82. Enabling APRNs to provide abortions would reduce the considerable burdens Montanans endure to obtain an abortion. With additional abortion providers, including Plaintiffs, and therefore more consistent access across the state, some pregnant people seeking abortion services would not travel as far to their nearest abortion provider. Additionally, for some, the

cost of transportation would decrease, and the need to stay overnight and pay for lodging would diminish. Shorter travel distances would mean having to spend as less time out of work or school, and/or fewer hours of child care to access abortion.

83. Additional providers would also mean clinics would be less reliant on the availability of the few health professionals who currently provide abortion in the state, making abortion services available on a more consistent basis. Delays associated with provider unavailability would likewise decrease, and patients would have better access to earlier abortions, which can be less expensive.

84. Adding even one additional provider would have a significant impact on access. For example, when All Families opens, Ms. Cahill will provide abortion services two days per week; once trained, Ms. Weems would provide abortion services during the four days All Families will be open each week—tripling the number of appointments for abortion patients All Families could offer.

85. Based on her experience providing procedures comparable to aspiration abortion, Ms. Weems already has a strong foundation for becoming a competent, independent abortion provider. The APRN Restriction bars Ms. Weems from completing a necessary step in her training: completing aspiration procedures alongside an experienced abortion provider.

86. Each day the APRN Restriction is in place prevents Ms. Weems from advancing in her training, thereby impeding her progress toward becoming a competent, independent abortion provider and providing care to patients that, with the APRN Restriction in effect, is difficult or impossible for pregnant people in Montana to access.

87. But for the APRN Restriction, Ms. Doe would also provide abortions in Montana, further expanding access in a state with a dearth of providers.

88. Barring APRNs from providing abortions keeps the pool of potential abortion providers small, unnecessarily restricts the availability of abortion, and increases the burdens individuals face accessing abortion care.

CLAIMS FOR RELIEF

COUNT I – RIGHT TO PRIVACY
(Article II, section 10 of the Montana Constitution)

89. Plaintiffs hereby reaffirm and reallege every allegation made in ¶¶ 1-88 above as if set forth fully herein.

90. The APRN Restriction violates the right to privacy of Plaintiffs' patients seeking abortion in violation of Article II, section 10 of the Montana Constitution. By prohibiting an individual from seeking a lawful medical procedure from the provider of her choice, the restriction infringes on individuals' fundamental rights to privacy, and personal and procreative autonomy. The restriction interferes with this individual right to make medical judgments affecting their bodily integrity—and specifically, to obtain a pre-viability abortion.

COUNT II – EQUAL PROTECTION
(Article II, section 4 of the Montana Constitution)

91. Plaintiffs hereby reaffirm and reallege every allegation made in ¶¶ 1-90 above as if set forth fully herein.

92. The APRN Restriction violates the rights of Plaintiffs and their patients to the equal protection of the laws under Article II, section 4 of the Montana Constitution by:

a. Singling out abortion as the only type of lawful medical care that the State bars Plaintiffs' patients from accessing from a qualified health care provider of their choice, without adequate justification;

b. Discriminating against, without adequate justification, APRNs who seek

to provide abortion services but permitting APRNs who seek to provide comparable health services to do so without restriction; and

c. Discriminating against Plaintiffs' patients who decide to terminate a pregnancy by prohibiting them from accessing care from a qualified health care provider of their choice, but permitting individuals accessing other medical care, including other reproductive health and pregnancy-related care, from those same health care providers, without adequate justification.

COUNT III – RIGHT TO DIGNITY
(Article II, section 4 of the Montana Constitution)

93. Plaintiffs hereby reaffirm and reallege every allegation made in ¶¶ 1-92 above as if set forth fully herein.

94. The APRN Restriction violates the rights of Plaintiffs and their patients to dignity under Article II, section 4 of the Montana Constitution. By singling out abortion care as the only health service a person cannot seek from a qualified provider of her choice, the APRN Restriction demeans the "worth and [] basic humanity" of people who seek abortion simply because they seek abortion care. *See Walker v. State*, 2003 MT 134, 316 Mont. 103, 122, 68 P.3d 872, 884. Moreover, the APRN Restriction prevents Plaintiffs' patients from "answering to their own consciences and convictions." *Armstrong*, ¶ 72.

INJUNCTIVE RELIEF

95. The APRN Restriction subjects Plaintiffs patients' to irreparable harm and threatens Plaintiffs with substantial penalties for providing constitutionally-protected abortion care. *See* Mont. Code Ann. § 27-19-201.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court issue:

1. A declaration that the APRN Restriction is unconstitutional as it violates Plaintiffs' patients' constitutional rights to privacy, equal protection, and dignity, and Plaintiffs' equal protection rights; and that Mont. Code Ann. § 50-20-110; the Montana Parental Notification Measure, LR-120 (to be codified at Mont. Code Ann. § 50-20-221 *et seq*.); Mont. Code Ann. § 50-20-501 *et seq*.; and any other statute or regulation are unconstitutional to the extent they impermissibly restrict APRNs' ability to provide abortion care;
2. A preliminary injunction, without bond, prohibiting Defendants, their agents, employees, appointees or successors from enforcing, threatening to enforce, or otherwise applying the APRN Restriction pending final judgment; as well as Mont. Code Ann. § 50-20-110; the Montana Parental Notification Measure, LR-120 (to be codified at Mont. Code Ann. § 50-20-221 *et seq*.); Mont. Code Ann. § 50-20-501 *et seq*.; and any other statute or regulation to the extent they impermissibly restrict APRNs' ability to provide abortion care, pending final judgment;
3. A permanent injunction prohibiting Defendants, their agents, employees, appointees, or successors from enforcing, threatening to enforce, or otherwise applying the APRN Restriction, as well as Mont. Code Ann. § 50-20-110; the Montana Parental Notification Measure, LR-120 (to be codified at Mont. Code Ann. § 50-20-221 *et seq*.); Mont. Code Ann. § 50-20-501 *et seq*.; and any other statute or regulation to the extent they impermissibly restrict APRNs' ability to provide abortion care;
4. An order awarding Plaintiffs their costs and reasonable attorney's fees; and
5. Such further relief as may be just and proper.

Respectfully submitted this 30th day of January, 2018.

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