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Pro hac vice applications forthcoming

**MONTANA FIRST JUDICIAL DISTRICT COURT,
COUNTY OF LEWIS & CLARK**

ALL FAMILIES HEALTHCARE; BLUE)
MOUNTAIN CLINIC; AND HELEN WEEMS)
MSN APRN-FNP, on behalf of themselves and)
their patients)

Plaintiffs,

vs.)

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.)
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Cause No. _____

Judge: _____

**AFFIDAVIT OF HELEN WEEMS,
MSN, APRN-FNP, IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

I, Helen Weems, MSN, APRN-FNP, affirm that:

1. I submit this affidavit in support of Plaintiffs' Application for a Temporary Restraining Order and Preliminary Injunction against the enforcement of HB 937 (the "Act") related to the licensure of clinics that provide abortion services.

Background and Experience

2. I am a nurse practitioner licensed to practice in Montana, and one of the plaintiffs in this case. I own and am the sole clinician at All Families Healthcare ("All Families"), a sexual and reproductive health clinic in Whitefish, Montana, which I opened in 2018. I am also the only clinician providing abortion care in Northwest Montana. Before All Families opened in 2018, the Northwest region had been without an abortion provider since 2014.

3. I have a master's degree of science in nursing, family practice, from Vanderbilt University in Nashville, Tennessee. I am an advanced practice registered nurse ("APRN"), and I have been board certified in family practice since 1999. I also have prescriptive authority from the Board of Nursing, and a U.S. Drug Enforcement Authority ("DEA") license, which permits me to prescribe schedule II through V controlled substances.

4. For more than 20 years, I have provided health care services as a nurse practitioner, including to low-income patients. I have always provided patient-centered care based on trust and respect for my patients' decisions, regardless of their income level or insurance provider, and use that same approach at All Families.

5. In 2022, All Families served approximately 800 patients, with nearly 1,000 patient visits. All Families provides comprehensive sexual and reproductive health care services, including 2S-LGBTQIA+ care and gender-affirming care; gynecological exams; diagnosis and treatment of sexually transmitted infections; same-day access to the full spectrum of contraceptive

options, including insertion of IUDs and Nexplanon implants; early miscarriage management; and abortion services.

6. I reviewed HB 937, which was passed by the Montana legislature this year. I understand the Act provides for “abortion clinic” licensure, requires the Department of Public Health and Human Services (“DPHHS”) to issue regulations setting out licensing requirements, and takes effect on October 1, 2023. To my knowledge, DPHHS has not proposed any regulations for abortion clinic licensure.

7. It is unclear whether HB 937 *requires* All Families to become licensed as an “abortion clinic,” or whether All Families can continue to provide abortion care, like the other care we provide, as a private clinician’s office and subject to the licensure, oversight, and regulation to which we are already subject. If facility licensure is required, DPHHS has not made known the process by which to apply for licensure or the requirements for licensure. The lack of clarity as to whether All Families must become licensed, and if so, how we would do that, leaves All Families, our patients, and me in an impossible and uncertain situation.

8. All Families tried to avoid this emergency situation. I understand that, on July 12, 2023, the ACLU of Montana contacted attorneys for the State, asking whether DPHHS intended to propose regulations before HB 937’s October 1 effective date. They received no response.

9. On August 16, the ACLU of Montana followed up with attorneys for the State, again asking whether DPHHS intended to engage in the rulemaking process in advance of the Act’s effective date and requesting clarification as to whether DPHHS understands HB 937 to require clinics that provide abortion care to become licensed or whether we could continue to operate as regulated under Title 37, without facility licensure. In addition, the ACLU of Montana asked whether the State would consider agreeing not to enforce HB 937 and any regulations until

90 days after final regulations are published. I understand that, on August 17, the ACLU of Montana received a response from an attorney for the State, indicating that the Montana Department of Justice was not involved in DPHHS's rulemaking but that they had passed on the request for information. The attorney for the State otherwise responded that HB 937 will take effect on October 1.

10. On August 8, I contacted DPHHS on behalf of All Families and Blue Mountain Clinic, asking whether DPHHS intended to issue regulations, as well as whether HB 937 requires clinics like ours to become licensed. DPHHS responded on August 18, 2023 that so long as a facility meets the definition in HB 937 Section 1(a) and is not excluded in the criteria listed in HB 937 (1)(b), then the facility will need to be licensed as an abortion clinic. DPHHS also responded that it is engaged in the rulemaking process and that deadlines and variances will be reviewed internally among DPHHS agencies. This response did not remedy the uncertainty or timing concerns that threaten All Families' ability to provide abortion care. I asked that DPHHS let All Families and Blue Mountain know about any further updates.

11. The question whether All Families needs to obtain a facility license or whether we can continue practicing as we have been for 5 years threatens my ability to schedule appointments in the near future. If the Act does require All Families to become licensed as an "abortion clinic," HB 937 threatens to end All Families' abortion practice and force us to close. As a result, HB 937 will have a grave impact on *all* my patients, not only the patients who turn to All Families for abortion care. At a minimum, if HB 937 becomes effective, there will be a lapse in All Families' ability to provide abortion care, which will deny patients access to their chosen provider if that provider is All Families.

All Families and Our Patients

12. At All Families, I provide medication abortion up to 11 weeks as measured from the first day of the person's last menstrual period ("LMP") and aspiration abortions, also known as procedural abortions, up to 12 weeks and 6 days from the LMP. In 2022, I provided approximately 260 abortions. As of July 2023, I have provided over 200 abortions this year.

13. Medication abortion makes up the vast majority of abortion care I provide. I provide medication abortion in person or via telehealth, which lets my patients access care without having to visit All Families in person. For patients accessing abortion via telehealth, I consult with a patient remotely about available options, review prior history, and confirm the patient is eligible for medication abortion. In some cases, patients are not eligible for a medication abortion without first obtaining an ultrasound, which I will refer them for; in most cases, however, the patient and I can date their pregnancy and determine their eligibility for medication abortion based on their LMP, without an ultrasound. Where appropriate, I then write a prescription for medication abortion, and the medications are mailed to the patient in Montana. There are multiple safe and effective medication abortion regimens, including a mifepristone and misoprostol regimen and misoprostol-only regimen.

14. Medication abortion involves no anesthesia. I recommend ibuprofen to my patients for pain management, or may prescribe a narcotic, as well as anti-nausea medication.

15. Of the medication abortion care I provide, more than half of it is provided via telehealth, and this option has been critical to many of my patients. It provides flexibility and discretion, particularly for those who cannot take time off from work or find childcare, or whose privacy and, sometimes, safety would be jeopardized by making an in-person visit, as may be the case with an abusive partner. It also facilitates medical treatment for my many patients who live in the remote, rural regions of the State, which can be hours from All Families or the nearest other

clinic. Some live in the northeastern part of the State, about 9 to 10 hours away, and would otherwise have to travel through treacherous mountain passes and inclement weather to access abortion care. Patients may not have gas money or cars that can reliably and safely make it on these roads.

16. I also provide procedural abortion, which involves dilating the patient's cervix and then evacuating the uterus using suction aspiration. To numb the cervix, I administer a local cervical block with lidocaine. For pain management, I prescribe ibuprofen, and occasionally lorazepam to relax the patient.

17. My patients seek abortion services for a variety of reasons: some lack the financial means to raise a child; others are not ready to become a parent; many have physical and emotional health issues that would be exacerbated by continuing a pregnancy; and some have become pregnant as a result of incest or rape. In every circumstance, forcing such patients to continue their pregnancies would cause needless pain and suffering, and can have long-term consequences for patients and their families.

18. All Families meets the applicable standards of care and existing Montana legal requirements for clinicians' offices. I am a licensed nurse practitioner and subject to oversight by the Board of Nursing. I am registered with the Board of Pharmacy as a medical practitioner dispenser, which permits me to dispense prescription medications from All Families, and I am registered with the U.S. DEA. I am also certified by the American Academy of Nurse Practitioners Certification Board. All Families is also subject to regulation by DPHHS to the extent it administers the Clinic Laboratory Improvement Amendments ("CLIA") and enforces Montana's abortion-reporting laws. Additionally, All Families is certified as in compliance with the clinical

standards of the National Abortion Federation (“NAF”), the professional association of abortion providers, and is inspected by NAF.

The Increasingly Hostile Legal and Policy Environment Regarding Abortion in Montana

19. When my clinic opened, I had to sue the State to block a criminal law that prevented me from providing abortion care because I am a nurse practitioner, rather than a physician or physician assistant. No similar law prevents me from providing the identical care to patients who need that care to manage a miscarriage. The law prevented me from providing abortion care simply because it is abortion care. That law has been blocked since shortly after All Families opened in 2018. But, with each step in the judicial process, I had to wait for a court to decide whether I would be able to continue to provide abortion care that I have been providing safely in Montana for five years.

20. In 2021, during the COVID-19 pandemic—which itself caused health care practices to quickly adjust to new circumstances—I and other Montana abortion providers waited to learn whether a court would block a set of abortion restrictions. One of those laws would have ended All Families’ medication abortion by mail program, which had then become (and remains) critical to reach patients for whom it is challenging to visit an in-person clinic, or who opt to have an abortion in the privacy of their home.

21. Again, this year, the State passed numerous restrictions on abortion, some with immediate or near-immediate effective dates. Individually and together, these policies could—on a moment’s notice—decimate access to abortion care in Montana, which, today is bordered on all sides by states that have banned abortion, or where a court order has enjoined a ban. The instability which HB 937 is causing for my clinic and my patients is no different.

22. Each year, I am forced to confront increasingly hostile policies meant to undermine—not improve—the care I provide my patients. The legal back and forth on the numerous legislative and judicial restrictions on abortion, both on a state and federal level, cause chaos for clinics like All Families. Unlike most other healthcare providers, I have to devote significant time and resources to monitoring rapid legal developments for many cases in which I am not involved.

23. This is not how any other type of health care is practiced. It is not how any other small business is expected to operate. And it is not how any other patients are treated. Patients need to know whether they will be able to have their appointment the next day. I need to know whether I will see a patient the day they are scheduled. Especially as a small, solo practice, I need to know that when I buy medication, I will be able to use it. The instability and disruption my patients and I face simply because I provide, and they seek, abortion care is unrelenting, unjust, and unnecessary. It is also a deliberate effort to eliminate access to safe, compassionate abortion care.

The Impact of HB 937 on All Families and Our Patients

24. All Families now must contend with threats to our ability to provide abortion services due to HB 937. I understand that, for years, DPHHS has provided that health care facility licensure does not include offices of private clinicians regulated under Title 37 of the Montana Code, like All Families. I am uncertain as to whether HB 937 requires All Families to become licensed as an abortion clinic or cease providing abortion services; or whether All Families can continue to operate as it has for years as a private clinician’s office regulated under Title 37.

25. If HB 937 requires All Families to become licensed as an abortion clinic, it sets up an impossible requirement because DPHHS has not even set out what proposed requirements there might be for obtaining an abortion clinic license, or a process by which to apply, let alone a final

set of requirements. All Families cannot comply with unknown requirements or even know whether we can adjust to as-yet unknown requirements.

26. And, like any health care practice, it will take time to revise our practices if we are required to, or to even determine if we are able to make certain changes given our current physical facility and location. The potential revisions to our practice are not instantaneous, and as the face of HB 937 indicates, may be extensive. Even if DPHHS now acted quickly to propose and finalize regulations, there is not enough time before October 1 to assess any possible requirements or changes All Families might need to make, let alone to make those changes (assuming we can implement them), apply for licensure, and receive a response. Even under the most ideal circumstances, because of DPHHS's failure to timely issue even proposed regulations, at this point, there will necessarily be a period of time during which All Families will not be able to provide abortion care.

27. To the extent HB 937 requires abortion clinics to obtain facility licensure, it is also unnecessary, and yet another effort to single out abortion care for extra regulation, and only harms rather than helps patients. As explained above, All Families is already subject to federal, State, and professional oversight and regulation, like other clinicians' offices in the State.

28. It makes no sense to require All Families to obtain facility licensure solely because we offer abortion care. For example, if All Families ceased providing abortion care, but continued to offer the same care (whether by medication or procedure) to manage miscarriage, the requirements of HB 937 would not apply. Additionally, most of the abortion care I provide is medication abortion care. HB 937 sets various requirements for our facility to be licensed, although medication abortion generally involves ingesting one pill in the office and another set of pills at home (which, of course, is subject to no "health care facility" regulations). Moreover, many

medication abortion patients never set foot in All Families because they access medication abortion via telehealth. Yet, HB 937 would require the *facility* to obtain a license. None of that serves any health or safety purpose. Rather, it is another mechanism to further confuse, restrict, and control access to abortion in Montana.

29. Under these circumstances, absent a temporary restraining order or preliminary injunction, All Families may be forced to cease providing abortion care. Suspending All Families' abortion practice, even temporarily, will impact patients across Montana who seek out abortion care from All Families. Those who have the time and means will be forced to seek care elsewhere.

30. Gathering funds for logistical arrangements to travel for abortion care takes time, which will delay access to time-sensitive abortion care and will force patients seeking abortion care to stay pregnant and experience the symptoms and risks that come along with pregnancy. Abortion is safe throughout pregnancy, but the risks increase incrementally as pregnancy progresses, so delay can increase risks. Delay can also mean patients are no longer eligible for medication abortion. For many patients, these increased financial, childcare, or transportation challenges will be insurmountable. Making the logistical arrangements, for childcare, missed work, or for an appointment that can be kept confidential from an abusive family member, brings another set of challenges and stressors.

31. Ultimately, some patients may be unable to access abortion care and may be forced to carry their pregnancies to term against their will. Evidence demonstrates that people denied an abortion they seek are more likely to face health and economic hardship, and that there are long-term economic consequences for their children as well. Imposing that future on any Montanans is unconscionably cruel.

32. HB 937 would also cause a serious threat to All Families. Abortion care makes up most of the care I provide, and with the uncertainty as to how long it would take to obtain a license from the Department, if I am able to obtain one, I likely would not be able to keep All Families open. This would have devastating consequences for both my patients who seek abortion and those for whom I provide birth control, miscarriage care, and gender-affirming care. All Families has become a critical resource for young people and families, where patients know they can get confidential and safe care from a trusted provider. Closing All Families would be a tremendous loss for the community as well as myself.

Requiring Annual Inspections and Additional Investigations upon “Complaints” Will Only Disrupt and Impede Safe Abortion Access


33. HB 937 provides few details on what licensure requires. It does, however, provide that DPHHS must inspect licensed abortion clinics at least once each calendar year. There is no health or safety reason to require inspection of facilities that provide abortion, but not identical or comparable care, including miscarriage care. Further, an annual inspection will disrupt and intimidate patients from receiving not only abortion care, but also the other care that All Families provides.

34. HB 937 also provides that DPHHS may conduct additional investigations if the Department receives a complaint involving an abortion clinic. HB 937 does not limit or specify the degrees or types of complaints that would trigger additional investigation, and I am concerned about the possibility of overreach. All Families, its providers, and patients are already subject to harassment and threats by anti-abortion organizers and protesters. By providing a mechanism for these anti-abortion organizers and protesters to complain to DPHHS and encourage unnecessary and baseless investigations, HB 937 will serve only to further disrupt and restrict All Families’ ability to provide medical services, including abortion care, to its patients.

35. Abortion is essential care that requires no special licensure or oversight by DPHHS. At a time when abortion access is being restricted across the country, Montana should be finding ways to increase abortion access, not restrict or take it away.

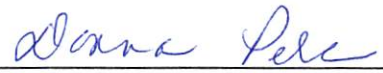
I declare under penalty of perjury that the foregoing is true and correct.

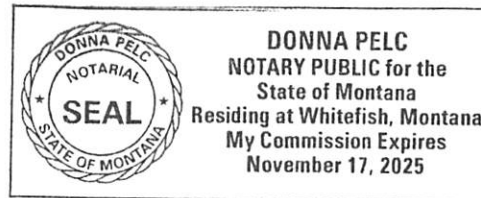
Dated: 8/29/23


Helen Weems MSN, APRN-FNP

State of Montana)
County of Flathead)

Signed and affirmed to me this 29 day of August 2023.


Notary Public



CERTIFICATE OF SERVICE

I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Affidavit - Affidavit in Support to the following on 09-01-2023:

Austin Miles Knudsen (Govt Attorney)

215 N. Sanders

Helena MT 59620

Representing: Charlie Brereton, State of Montana, Department of Public Health and Human Services

Service Method: eService

Electronically signed by Krystel Pickens on behalf of Alexander H. Rate

Dated: 09-01-2023