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*\*Application for admission pro hac vice  
forthcoming*

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

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ALL FAMILIES HEALTHCARE; BLUE )  
MOUNTAIN CLINIC; AND HELEN WEEMS, )  
MSN, APRN-FNP on behalf of themselves, )  
their employees, 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. DV-23-592

Judge: Christopher Abbott

**PLAINTIFFS' APPLICATION FOR  
A TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION**

Plaintiffs All Families Healthcare (“All Families”), Blue Mountain Clinic (“Blue Mountain”); and Helen Weems APRN-FNP (collectively “Plaintiffs), on behalf of themselves, their staff and clinicians, and their patients, seek a temporary restraining order and preliminary injunction to prevent enforcement of HB 937, An Act Providing for the Licensure and Regulation of Abortion Clinics; Providing Definitions; Providing for Annual Licensure Fees; Providing Rulemaking Authority; and Amending Section 50-5-101, MCA (“HB 937” or “the Act”). HB 937 takes effect October 1, 2023.

The Act directs the Department of Public Health and Human Services (“DPHHS”) to license and regulate “abortion clinics” and to promulgate regulations for “abortion clinic” licensure. DPHHS has yet to even propose regulations. It is also unclear whether the Act *requires* clinics that provide abortion care be licensed by DPHHS as “abortion clinics”, or whether they may continue to provide abortion care as clinicians’ offices, as they have for years, and as other clinics may continue to do.

Compliance with the Act by October 1 is thus impossible: Plaintiffs have no way to know whether licensure is mandatory, and, if it is, what is required to become licensed by October 1. Accordingly, in the face of no threat to patient health and safety, HB 937, if enforced, threatens to disrupt, suspend, or end Plaintiffs’ provision of abortion care and their patients’ access to that time-sensitive care.

All Families has been providing abortion care since it opened in 2018. Blue Mountain was the first abortion clinic in Montana when it opened in 1977 and has been providing abortion care for 46 years. Like other clinics, Plaintiffs are already subject to government licensure, oversight, and regulation. Montana does not mandate facility licensure for clinics that offer care that is identical or comparable to abortion, including miscarriage care. Indeed, Montana does not mandate

facility licensure for the other care that Plaintiffs themselves provide—including identical miscarriage care and comparable gynecological care. Nor does Montana mandate facility licensure settings, such as private homes or birth centers, where people may labor and give birth, although labor and delivery carry greater risk than abortion care.

Absent HB 937, Montanans' access to abortion care will continue to be regulated just as the state regulates identical or comparable care. As mainstream medical authorities have repeatedly concluded, there is no valid reason to single out abortion care for unique and additional regulation, and certainly no health and safety reason to impose extra regulation simply because Plaintiffs provide abortion care.

Plaintiffs are likely to succeed on the merits of their case. HB 937 violates Plaintiffs' patients' rights to abortion and equal protection, as well as Plaintiffs' own equal protection rights. It directly contravenes controlling, on-point decisions by this Court and the Montana Supreme Court, which have repeatedly blocked efforts to restrict Montanans' right to access abortion from their chosen provider. *See, e.g., Weems v. State*, 2023 MT 82, 412 Mont. 132, 529 P.3d 798 (2023) (affirming permanent injunction and holding unconstitutional law restricting provision of abortion to physicians and physician assistants only); *Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364 (1999) (holding restrictions on abortion trigger strict scrutiny and ban on physician assistants providing abortions does not withstand strict scrutiny); *Planned Parenthood of Mont. v. State*, No. DV-21-0999, 2021 WL 9038524 (13th Jud. Dist., Oct. 7, 2021) (preliminarily enjoining 20-week abortion ban, restrictions on medication abortion, and ban on telehealth for medication abortion), *aff'd*, 2022 MT 157, 409 Mont. 378, 515 P.3d 301 (“*PPMT I*”). Just this year, this Court has enjoined multiple other abortion restrictions from taking effect because they threaten similar irreparable harm. *See, e.g., Planned Parenthood of Mont. v. State*, No. ADV-2023-299 (1st Jud.

Dist., Jul. 11, 2023) (“*PPMT II*”) (entering preliminary injunction against DPHHS regulations and HB 544 and HB 862 which restricted Medicaid coverage of abortion); *Planned Parenthood of Mont. v. State*, No. ADV-2023-231 (1st Jud. Dist., Jul. 11, 2023) (“*PPMT III*”) (entering preliminary injunction against HB 721, a ban on telehealth abortion and HB 575, a ban on a common method of second-trimester abortion).

HB 937 is additionally unconstitutional vague. As detailed in the concurrently filed Memorandum of Law in Support, it is unclear whether HB 937 *requires* Plaintiffs to become licensed and it is riddled with vague terms and conditions. No regulations can cure these defects. Further, if licensure is required, DPHHS has provided no process or requirements for licensure, and insufficient time to become licensed by October 1.

Plaintiffs and undersigned have made multiple requests asking whether HB 937 requires abortion clinics to obtain licensure; whether DPHHS intends to engage in the rulemaking process before HB 937’s effective date; and whether the State would consider delaying the effective date of the Act to 90 days after final regulations are published. Attorneys for the State did not reply to the undersigned’s first request. In response to the second request, an attorney for the State indicated that HB 937 would go into effect October 1. *See* Exhibit 1 (ACLU Montana and State Correspondence).<sup>1</sup> DPHHS responded to Plaintiff Weems’ request for additional information and

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<sup>1</sup> Attached as Exhibit 1 is email correspondence between Plaintiff Weems and Tara Wooten, Healthcare Facility Program Manager of the Licensure Bureau of DPHHS regarding whether DPHHS intends to engage in the rulemaking process in advance of HB 937’s effective date and whether DPHHS understands HB 937 to require licensure for abortion clinics.

Attached as Exhibit 2 is email correspondence between Alex Rate, counsel for Plaintiffs, and attorneys for the State regarding whether DPHHS intended to engage in the rulemaking process in advance of HB 937’s effective date; whether the State would consider delaying the effective date of HB 937 until after final regulations are published; and whether the State understands HB 937 to require licensure for abortion clinics.

confirmed that DPHHS is currently “engaged in the rulemaking processes for licensure of abortion clinics” as of August 18, 2023, but provided no further information about forthcoming requirements or timing. *See* Exhibit 2 (Plaintiff Weems and DPHHS Correspondence).

In support of this motion, Plaintiffs submit a brief in support and the affidavits of Helen Weems, MSN, APRN-FNP; Nicole K. Smith, PhD, MPH; Joey Banks, MD; and Jennifer Mayo, MD. Plaintiffs also submit a proposed order granting the requested relief.

As set out in the accompanying brief, Plaintiffs have demonstrated their entitlement to a temporary restraining order and preliminary injunction. Plaintiffs have shown a likelihood of success on the merits of their claims that the Act violates their patients’ rights to abortion and to equal protection; violates Plaintiffs’ own rights to equal protection; and the Act is unconstitutionally vague. Plaintiffs and their patients are likely to suffer irreparable harm in the absence of preliminary relief through the deprivation of their constitutional rights and delayed or denied access to abortion care. Both the balance of equities tips and public interest favor an injunction, which maintains the status quo and vindicates Plaintiffs and their patients’ constitutional rights.

Plaintiffs respectfully request that the Court issue a temporary restraining order and a preliminary injunction directing the State, DPHHS, and its agents, employees, appointees, and successors not to enforce, threaten to enforce, or otherwise apply the Act during the pendency of the temporary restraining order and preliminary injunction.

Respectfully submitted this 1st day of September, 2023.

*/s/ Jacqueline Harrington*

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*/s/ Alex Rate*

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing document was served via the electronic filing system on:

Office of the Attorney General  
Justice Building, Third Floor  
215 North Sanders Street  
PO Box 201401  
Helena, MT 59620-1401

Department of Public Health & Human Services  
111 North Sanders Street  
PO Box 4210  
Helena MT 59604-4210

Electronically signed by Krystel Pickens on behalf of Alex Rate  
Dated: September 1, 2023

## **CERTIFICATE OF SERVICE**

I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Motion - Motion 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