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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,
YELLOWSTONE COUNTY

PLANNED PARENTHOOD OF MONTANA and)
JOEY BANKS, M.D., on behalf of themselves)
and their patients,)
Plaintiffs,)

vs.)

STATE OF MONTANA, by and through Austin)
Knudsen, in his official capacity as Attorney)
General,)
Defendant.)

Cause No. DV-21-00999

Judge: Michael G. Moses

**PLAINTIFFS' BRIEF IN SUPPORT
OF MOTION FOR A
PRELIMINARY
INJUNCTION OR, IN THE
ALTERNATIVE, A TEMPORARY
RESTRAINING ORDER**

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Plaintiffs Planned Parenthood of Montana and Joey Banks, M.D., file this brief in support of their Motion for a Preliminary Injunction or, in the alternative, a Temporary Restraining Order (“TRO”). The three laws Plaintiffs challenge—House Bills 136 (“HB 136”), 171 (“HB 171”), and 140 (“HB 140”)—are set to take effect tonight at midnight. They will immediately infringe on the fundamental rights of Montanans seeking abortion care and subject Plaintiffs to substantial criminal penalties for providing that constitutionally protected care. To preserve the status quo, the Court should preliminarily enjoin HB 136, HB 171, and HB 140 until Plaintiffs’ claims can be resolved on the merits. In the alternative, the Court should temporarily restrain the challenged laws until Plaintiffs’ motion for preliminary relief can be resolved.

By way of background, Plaintiffs’ request for preliminary relief was fully briefed and argued in front of the Hon. Gregory R. Todd. *See* Michelle Nicole Diamond Decl. Appendix A (transcript). At oral argument on September 23, 2021, Judge Todd announced that he would rule on Plaintiffs’ motion for a preliminary injunction on or before September 30. Late in the afternoon on September 29, the State moved to disqualify Judge Todd, which by statute prevented him from taking further action in this case. On September 30, at approximately 1:00 PM, Judge Todd voluntarily disqualified himself from this case. The case was then reassigned to Hon. Michael G. Moses.

The briefs and affidavits already filed demonstrate that Plaintiffs are entitled to preliminary relief on two independent and sufficient grounds. First, Plaintiffs have established a *prima facie* case that they and their patients will suffer great or irreparable harm absent

immediate relief—both through the deprivation of the constitutional rights described above and in tangible, practical ways, such as the State’s threat to imprison health care providers for providing the health care their patients need and for engaging in constitutionally protected conduct that is lawful today, but that will be unlawful tomorrow if the laws take effect, as well as the immediate infringement on women’s reproductive autonomy. Second, Plaintiffs have made out a prima facie case that the three laws challenged here violate the Montana Constitution’s rights to privacy, free speech, due process, equal protection, individual dignity, and health, safety and happiness by (1) banning certain pre-viability abortions; (2) eliminating the ability to provide medication abortions through telemedicine; (3) imposing a mandatory 24-hour delay and two-trip requirement on women seeking medication abortions; and (4) requiring providers to make false, misleading and stigmatizing statements to their patients. For these reasons, the Court should issue a preliminary injunction enjoining these laws until resolution of the underlying merits.

In the alternative, the Court should grant a TRO enjoining these laws to preserve the status quo until the Court can issue a decision on Plaintiffs’ preliminary injunction. *See Boyer v. Karagacin* (1978), 178 Mont. 26, 528 P.2d 1173 (“The purpose of a TRO is to preserve the status quo until a hearing and decision on application for the preliminary injunction.”), *overruled on other grounds by Shammelv. Canyon Resources Corp*, 2003 MT 372, 319 Mont. 132, 82 P.3d 912; *see also Montana Tavern Ass’n v. State* (1986), 224 Mont. 258, 729 P.2d 1310, 1315. The Court can issue a TRO pending decision on an injunction “[w]here an application for an

injunction is made upon notice or an order to show cause, either before or after answer, the court or judge may enjoin the adverse party, until the hearing and decision of the application, by an order which is called a temporary restraining order.” Section 27-19-314, MCA. To obtain a TRO, it is sufficient for an applicant to present a prima facie case with a “probable right” and a “probable danger that such right will be defeated without the special interposition of the court.” *Boyer*, 178 Mont. at 33. The applicant need not present a case which would entitle the applicant to certain relief on the merits of the cause of action. For the reasons explained above and in the briefing and affidavits already submitted, Plaintiffs have made that showing.

CONCLUSION

Plaintiffs request that this Court grant a preliminary injunction enjoining Defendant, its agents, employees, appointees, or successors from enforcing, threatening to enforce, or otherwise applying the challenged provisions of HB 136, HB 171, and HB 140, or, in the alternative, a TRO pending the Court’s ruling on Plaintiffs’ request for a preliminary injunction.

Respectfully submitted this 30th day of September, 2021.

/s/ Raphael Graybill

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above was duly served upon the following individuals on the 30th day of September, 2021, via e-mail to:

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