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CLERK OF THE
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2021 OCT 19 P 4: 37

FILED

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**Admitted Pro Hac Vice*

***Application for Admission Pro Hac Vice
Forthcoming*

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.

DV-21-00999

Hon. Michael G. Moses

**STATE OF MONTANA'S BRIEF
SUPPORTING MOTIONS TO STAY
DISTRICT COURT PROCEEDINGS
OR, ALTERNATIVELY, FOR AN
EXTENSION OF TIME TO FILE
RESPONSIVE PLEADINGS**

The State, through its respective counsel, moves the Court for an Order staying proceedings in this matter pending an appeal to the Montana Supreme Court. Alternatively, the State moves the Court for a 21-day extension of time after the motion to stay is decided in which to file its responsive pleadings.

Plaintiffs' counsel opposes both the State's motion to stay proceedings and the State's alternative motion for a 21-day extension of time after the motion to stay is decided. Plaintiffs' counsel did not state any reasons for their opposition. Accordingly, assuming they file a brief in opposition, the State respectfully requests the opportunity to reply.

I. Motion to Stay Proceedings

On October 7, 2021, this Court entered a preliminary injunction prohibiting the State from enforcing HB 136, HB 140, and HB 171 during the pendency of this matter. On October 19, 2021, the State filed a notice of appeal of that order to the Montana Supreme Court. The preliminary injunction will remain in effect during the appeal.

The State's appeal will argue that this Court misapplied the preliminary injunction standard, reviewed the three laws under the incorrect tier(s) of scrutiny, declined to treat with the ample evidence presented to it by the State, and failed to honor the presumption of constitutionality all three laws enjoy. The decision on appeal will guide and facilitate further proceedings before this Court, ensuring that this Court applies the appropriate standard(s) of review and adequately considers the

evidence before it. The motion to stay should be granted to preserve judicial economy and prevent relitigating the same matter multiple times in this Court. *See Atl. Richfield Co. v. Mont. Second Judicial Dist. Court*, 386 Mont. 392, 386 P.3d 543, 2016 Mont. LEXIS 1126 (Staying proceedings at the district court pending resolution of issue at the Montana Supreme Court to preserve judicial economy and avoid procedural entanglements); *accord Woodman v. Depositors Insurance Company*, 2004 ML 858 (Mont. Dist. Ct. 18th Jud. Dist. 2004); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants”). Expert discovery will be necessary in this case and will cost the parties time and resources. A stay is necessary to avoid duplicating these costs while the Supreme Court addresses questions that will guide the future of this litigation. *See Mont. R. Civ. P. 1* (“These rules ... should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.”).

Because this Court has preliminarily enjoined these challenged laws, the plaintiffs will not be prejudiced by a stay of proceedings.

II. Alternative Motion for 21-Day Extension of Time

If this Court denies the motion to stay proceedings, the State alternatively requests a 21-day extension after the motion to stay is decided in which to file its responsive pleadings.

The State's responsive pleading is currently due on October 19, 2021. Given the pending motion to stay, the State respectfully requests a 21-day extension of that deadline after the motion to stay is decided. If the Court grants the motion to stay, it will be unnecessary to file a responsive pleading until the stay is lifted. And if it denies that motion, it will do so after the October 19 deadline. This is the State's first request for an extension of time.

DATED the 19th day of October, 2021.

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CERTIFICATE OF SERVICE

I certify a true and correct copy of the foregoing was delivered by email to the following:

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