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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

Hon. Michael G. Moses

**OPPOSITION TO MOTION
TO STAY DISTRICT COURT
PROCEEDINGS OR,
ALTERNATIVELY, FOR AN
EXTENSION OF TIME TO FILE
RESPONSIVE PLEADINGS**

INTRODUCTION

On October 7, 2021, this Court entered an order (the “Order”) granting Plaintiffs’ motion for a preliminary injunction preventing House Bills (“HB”) 136, 140, and 171 from going into effect while this case is pending. The State now seeks to delay resolution of this important matter by requesting a stay of proceedings pending its appeal of the Order to the Montana Supreme Court or, in the alternative, a stay pending the Court’s decision on the State’s motion to stay, followed by an extension of time to file its responsive pleading, which was due October 19, 2021.

The State’s motion for an open-ended stay turns on a faulty premise: that the Supreme Court’s decision on the State’s appeal will “guide and facilitate further proceedings before this Court” and, therefore, “preserve judicial economy.” State’s Brief at 1-2. That is, the State argues that the Supreme Court’s decision on an appeal of a preliminary injunction will somehow guide this Court’s resolution of the ultimate merits of this case. But it is well-established that “[t]he court does not determine the underlying merits of the case in resolving a request for preliminary injunction.” *Weems v. State by & through Fox*, 2019 MT 98, ¶ 18, 395 Mont. 350, 359, 440 P.3d 4, 10 (citing *BAM Ventures, LLC v. Schifferman*, 2019 MT 67, ¶ 7, 395 Mont. 160, 164, 437 P.3d 142, 144). This Court did not decide the merits of the case in its Order, nor will the Supreme Court on appeal. Accordingly, an open-ended stay of proceedings will serve only to delay the vindication

of Plaintiffs' constitutional rights through a final resolution on the merits. The Court should deny the State's motion and allow this case to proceed in the normal course.¹

ARGUMENT

The Montana Rules of Civil Procedure do not provide for a motion to stay proceedings pending an appeal.² Rather, "granting of a stay [of proceedings] rests within the discretion of the court." *Henry v. Dist. Ct.* (1982), 198 Mont. 8, 14, 645 P.2d 1350, 1353. A court may stay proceedings pending an appeal where doing so would "promote judicial economy, avoid undue expense on the part of the[] litigants and avoid duplicative or adverse rulings." *Woodman v. Depositors Ins. Co.*, 2004 ML 858, 3, 2004 Mont. Dist. LEXIS 2923, *2 (Mont. Dist. Ct. 18th Jud. Dist. 2004); *see also Henry*, 198 Mont. at 14 (denying motion for stay of proceedings where movant failed to show that there was a "substantial risk of conflicting decisions," that the movant would face "great hardship" absent a stay, and that judicial economy would be "adversely affected" by refusing the motion for a stay). The Rules of Civil Procedure "should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding." Mont. R. Civ. P. 1.

¹ On October 18, 2021, the State informed Plaintiffs that it intended to file a motion to stay the District Court proceedings pending its appeal of the Order. The State asked if Plaintiffs opposed the motion to stay or, in the alternative, if Plaintiffs would consent to a 21-day extension for the State to file its responsive pleadings. Plaintiffs informed the State that they consented to a 21-day extension, but opposed staying the proceedings. The State then changed its position, and told Plaintiffs that it would request a 21-day extension measured from the date the motion to stay is decided. Plaintiffs opposed this subsequent request, which effectively sought a temporary stay of proceedings. Plaintiffs continue to have no objection to a 21-day extension from the State's original October 19, 2021 deadline.

² The Montana Rules of Appellate Procedure allow a party to "stay a judgment or order of the district court pending appeal," Rule 22(1)(a)(i), and to move a district court for "an order suspending, modifying, restoring, or granting an injunction pending appeal," Rule 22(1)(a)(iii). The State does not seek to stay the preliminary injunction order or modify the injunction pending appeal. Instead, the State is seeking to stay the entirety of the proceedings before this Court.

The State falls far short of meeting this standard. *First*, notwithstanding the State's conclusory assertion to the contrary, *see* State's Brief at 2, a stay of the instant proceedings would not preserve judicial economy since the parties will have to litigate the merits of this matter regardless of whether the Order is affirmed or vacated on appeal. Instead, a complete stay of proceedings would stymie the normal progression of this case toward summary judgment or trial, until the Supreme Court resolves the *separate* legal issues involved in the preliminary injunction—many months from now. *BAM Ventures*, ¶ 7 (“In considering whether to issue a preliminary injunction, neither the District Court nor this Court will determine the underlying merits of the case giving rise to the preliminary injunction, as such an inquiry is reserved for a trial on the merits.” (citing *Caldwell v. Sabo*, 2013 MT 240, ¶ 19, 371 Mont. 328, 333, 308 P.3d 81, 85)). There is no burden or expense that either this Court or the Supreme Court would have to bear that is contingent on the outcome of the State's pending appeal. That is, the burden on the judicial system would not be less if litigation of the merits were stayed.

Second, and for the same reasons, the State will not face any undue expense or burden if this matter were to proceed pending its appeal. The Parties are well-equipped to proceed and should be allowed to do so in the normal course.

Third, a stay of the instant proceedings would not prevent duplicative litigation of “the same matter multiple times in this Court.” State's Brief at 2. The reasoning underpinning the Order will not be dispositive of the proceedings on the merits before this Court, as explained above. A party seeking a preliminary injunction “need only establish a *prima facie* case, not entitlement to final judgment.” *Weems*, ¶ 18. The State's indication (at 1) that it intends to argue on appeal that this Court applied the wrong level of scrutiny should not change this calculus, as the level of scrutiny that governs Plaintiffs' claims is well-settled. *See* Order at 21 n.3, 28-29 (explaining that

strict scrutiny applies where a fundamental right like the right to privacy is implicated). That the State is dissatisfied with settled Montana Supreme Court precedent applying strict scrutiny to restrictions on pre-viability abortions is no reason to stay this case, and the Court should deny the State's apparent effort to overturn that settled precedent improperly through an appeal of a preliminary injunction.

Finally, although the State will not face any hardship (let alone "great hardship") if a stay is denied, Plaintiffs and their patients will be prevented from timely vindicating their constitutional rights if the instant proceedings are stayed. *See* Mont. R. Civ. P. 1 (rules should be interpreted to promote the "speedy ... determination of every action and proceeding"). As this Court recognized in its September 30, 2021 order granting Plaintiffs' application for a Temporary Restraining Order ("TRO Order"), "[t]his is a case of extreme constitutional importance" because it implicates the fundamental right to privacy as defined in *Armstrong v. State*, 1999 MT 261. TRO Order at 2. The fundamental rights of Plaintiffs and their patients are at issue, and the Court should deny the State's efforts to delay Plaintiffs' vindication of those rights.

In summary: The Supreme Court's decision on the State's appeal will not interfere with the Parties' continued litigation—and this Court's resolution—of the merits of this case. A stay will not conserve judicial or party resources, but it will prolong the Court's resolution of matters of extreme constitutional importance. For these reasons, Plaintiffs respectfully request that the Court deny the State's motions.

CONCLUSION

For the reasons stated above, Plaintiffs request that this Court deny Defendant's Motions to Stay District Court Proceedings or, Alternatively, for an Extension of Time to File Responsive Pleadings and instead allow the litigation to proceed in the normal course.

Respectfully submitted this 22nd day of October, 2021.

/s/ Raph GRAYBILL

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