

CLERK OF THE
DISTRICT COURT
TERRY HALPIN

2021 NOV 23 P 3:49

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BY 62
DEPUTY

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

<p>PLANNED PARENTHOOD OF MONTANA and JOEY BANKS, M.D., on behalf of themselves and their patients,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>THE STATE OF MONTANA, by and through AUSTIN KNUDSEN, in his official capacity as Attorney General,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">Case No.: DV 21-0999</p> <p style="text-align: center;">Judge Michael G. Moses</p> <p style="text-align: center;">ORDER DENYING THE STATE'S MOTION TO STAY DISTRICT COURT PROCEEDINGS</p>
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On October 19, 2021, the State of Montana (the State) filed a motion to Stay District Court Proceedings pending the State's appeal of the Order Granting Preliminary Injunction. Planned Parenthood of Montana and Joey Banks (Plaintiffs) filed a response opposing the motion on October 22, 2021. The State filed a Reply in

Support of its Motion to Stay on November 8, 2021. Neither party requested oral argument.

I. Legal Standard

There is no statutory authority regarding staying district court proceedings pending review of a preliminary injunction by the Montana Supreme Court.¹ Instead, “[a] court has inherent power to stay proceedings in control of its docket -- after balancing the competing interests.” *Henry v. Dist. Court* (1982), 198 Mont. 8, 13, 645 P.2d 1350, 1353 (quoting *Dellinger v. Mitchell* (1971), 143 U.S. App. D.C. 60, 442 F.2d 782, 786); *Landis v. N. Am. Co.* (1936), 299 U.S. 248, 254, 57 S. Ct. 163, 166.

In *Henry*, the Montana Supreme Court discussed considerations “initially brought out in *Landis*, to follow when determining whether a stay in the proceedings should be utilized.” *Henry*, 198 Mont. at 13, 645 P.2d at 1353 (citing *Landis*, 299 U.S. 248, 57 S.Ct. 163, 81 L.Ed. 153). These considerations include that the competing interests must be balanced. *Id.*; *Landis*, 299 U.S. at 255, 57 S. Ct. at 166. Additionally, in the request for a stay, the applicant “must make out a clear case of hardship or inequity in being required to go forward[.]” *Flying T Ranch, LLC v. Catlin Ranch, LP*, 2020 MT 99, ¶ 16, 400 Mont. 1, ¶ 16, 462 P.3d 218, ¶ 16 (quoting *Henry*, 198 Mont. at 13, 645 P.2d at 1353)(quotations omitted). Lastly, the court considers “whether the public welfare or convenience will be benefitted by a stay.” *State v. Mont. First Judicial Dist. Court* (2011),

¹ Mont. Code Ann. Rule 25-21-22 applies to motions to stay judgments and orders, not proceedings.

361 Mont. 536, 264 P.3d 518 (citing *Henry*, 198 Mont. at 13, 645 P.2d at 1353); *see also Woodman v. Depositors Ins. Co.*, 2004 ML 858, 3, 2004 Mont. Dist. LEXIS 2923 (Mont. Dist. Ct. Jud. 18th Dist. 2004) (the district court considered whether granting a stay would “promote judicial economy, avoid undue expense on the part of [the] litigants and avoid duplicative or adverse rulings...”).

II. Discussion

The State submits three primary reasons in support of staying the proceedings in this matter. First, the State submits waiting for the Montana Supreme Court’s decision on the Order Granting Preliminary Injunction will ensure this Court applies the correct level of scrutiny and adequately considers the evidence before it. Second, the State suggests that judicial economy will be preserved by avoiding relitigating matters multiple times and by avoiding duplicative costs relating to expert discovery. Third, the State argues Plaintiffs will not be prejudiced by a stay since the challenged laws have been preliminarily enjoined.

The gist of the State’s argument in favor of a stay is due to its theory that the Montana Supreme Court will decide what level of scrutiny should be applied when determining the constitutionality of HB 136, 140 and 171 and thus will provide guidance to this Court. However, there is no guarantee the Supreme Court will determine that issue. For instance, in *Driscoll v Stapleton*, the Court described – when reviewing a preliminary injunction – that “[a]t this stage of the proceedings, we find it

unnecessary to set forth a new level of scrutiny. The case is not before us on a full evidentiary record for evaluation of the ultimate merits. We conclude that, **for purposes of resolving the instant preliminary injunction dispute, the level of scrutiny is not dispositive to the issues presented on appeal.**" 2020 MT 247, ¶ 20, 401 Mont. 405, ¶ 20, 473 P.3d 386, ¶ 20 (emphasis added); *see also Weems v. State*, 2019 MT 98, ¶ 18, 395 Mont. 350, ¶ 18, 440 P.3d 4, ¶ 18. Consequently, this argument is not persuasive.

Concerning judicial economy, the merits of this matter will have to be litigated whether the Order Granting Preliminary Injunction is overturned or affirmed. Staying proceedings in this matter in the State's hope that the Supreme Court clarifies the correct level of scrutiny—which may or may not happen—would not efficiently use judicial resources and would therefore not promote judicial economy.

Moreover, a stay of the proceedings would not avoid undue expense and duplicative rulings. Expert discovery would have to occur regardless of what the Supreme Court determines regarding the preliminary injunction. Duplicative rulings are unlikely to happen given this Court did not decide the merits of this case when it granted the preliminary injunction motion. Thus, neither party will suffer additional burden or expense in continuing litigation in the normal course.

The State does not appear to make an argument concerning hardship apart from expert discovery costs but contends that Plaintiffs will not be prejudiced by a stay since the laws at issue have been enjoined and the stay would be for a limited time. Plaintiffs


assert that their rights and the rights of their patients will be denied a timely determination of their rights if the stay is granted. The State has not adequately made out a clear case of hardship or inequity in being required to go forward, so this consideration weighs in favor of denying the motion to stay proceedings.

In sum, a stay would not promote judicial economy, avoid undue costs, or avoid duplicative rulings. In considering the competing interests, the State requests the stay to have the level of scrutiny clarified and Plaintiffs oppose the stay for a timely determination of their rights. There does not appear to be hardship for the State in moving forward. Lastly, a determination of the constitutionality of these laws would benefit the public.

The Court, being fully informed, having considered all briefs and papers on file, makes the following decision:

IT IS HEREBY ORDERED the State's Motion to Stay District Court Proceedings is **DENIED**. The Court previously granted the State's Alternative Motion for an Extension of Time to File Responsive Pleadings on October 27, 2021, thus the State has 21 days from the filing of this order to file its responsive pleadings.

DATED this 17th day of November, 2021


DISTRICT JUDGE

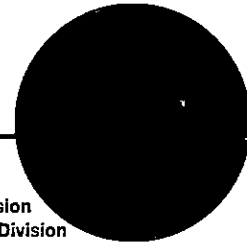
cc: Austin Knudsen
Kristin Hansen
David M. Dewhurst ✓
Kathleen Smithgall ✓
Brent Mead
Patrick M. Risken ✓
Kevin H. Theriot ✓
Denise M. Harle ✓
Raphael Graybill
Kimberly Parker ✓
Hana Bajramovic ✓
Alice Clapman ✓
Gene Jarussi
Nicole Rabner ✓

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served by email/mail/hand upon the parties or their attorneys of record at their last known addresses this 22 day of November, 2021.

BY *Hannah Osburn*
Judicial Assistant to Hon. Michael G. Moses ;

County of Yellowstone



TERRY HALPIN
CLERK OF THE DISTRICT COURT

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BILLINGS, MT 59107-5030

November 29, 2021

Bowen Greenwood
Clerk of Supreme Court
215 N. Sanders Justice Bldg
Helena, MT 59620-3003

Re: DV 21-999 / DA 21-521

Planned Parenthood of Montana and Joey Banks
Plaintiff and Appellee

V.

State of Montana, by and through Austin Knudsen as Attorney General
Defendant and Appellant

Dear Mr. Greenwood,

Pursuant to the request of attorney for the Appellant herein, we are this day forwarding to you via State of Montana File Transfer Service the scanned images of the original court documents filed in the above-entitled cause, which includes a copy of the case register report, which lists by number each document filed.

Sincerely,

Cynthia Swenson
Deputy Clerk- Yellowstone County 13th Judicial District Court

CC: Austin Knudsen – Via Email
Kevin Theriot- Via Email

BY _____
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