

FILED

MAY 01 2023

By ANKIE SPARKS, Clerk of District Court
Deputy Clerk

MONTANA FIRST JUDICIAL DISTRICT COURT,
COUNTY OF LEWIS AND CLARK

PLANNED PARENTHOOD OF MONTANA;)
ALL FAMILIES HEALTHCARE; BLUE)
MOUNTAIN CLINIC; SAMUEL DICKMAN,)
M.D.; and HELEN WEEMS, APRN-FNP, on)
behalf of themselves 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.

ADV 2023-299

Cause No.: ~~CDV-23-299~~

Judge: ~~Seely~~ MIKE MENAHAN

TEMPORARY
RESTRAINING ORDER AND
ORDER SETTING HEARING

Plaintiffs Planned Parenthood of Montana; All Families Healthcare; Blue Mountain Clinic; Samuel Dickman, M.D.; and Helen Weems, APRN-FNP (collectively, "Plaintiffs") move for a temporary restraining order to enjoin Defendants the State of Montana, the Montana Department of Public Health and Human Services ("DPHHS"), and DPHHS Director Charlie Brereton (collectively, "Defendants") from enforcing the administrative rule amending Mont.

Admin. R. 37.82.102 and 37.86.104, which DPHHS initially proposed at Montana Administrative Register (“MAR”) Notice 37-1024 and adopted as proposed in a Notice of Adoption published in the April 28, 2023, edition of the MAR (“the Rule”). Plaintiffs allege the Rule would unlawfully infringe access to abortion. They seek a temporary restraining order until such time as the Court conducts a hearing and rules on the merits of Plaintiffs’ concurrently filed application for a preliminary injunction and writ of prohibition. For the reasons set forth in Plaintiffs’ brief in support, verified complaint, and supporting affidavits, the Court concludes a temporary restraining order should issue and sets a hearing on Plaintiffs’ motion for a preliminary injunction and request for a writ of prohibition.

On their affidavits and verified complaint, Plaintiffs have made the requisite showing that they are likely to succeed on the merits of their claims that the Rule violates the Montana Constitution’s guarantees of privacy and equal protection, as detailed in the Montana Supreme Court’s decisions in *Armstrong v. State*, 1999 MT 261, ¶ 48, 296 Mont. 361, 989 P.2d 364 (recognizing right to abortion from a provider of the patient’s choosing under constitutional privacy guarantee and holding unconstitutional statute that restricted provision of abortion to physicians only), and *Weems v. State*, 2019 MT 98, 395 Mont. 350, 440 P.3d 4 (affirming preliminary injunction against statute that restricted provision of abortion to physicians and physician assistants only), and this Court’s decisions in *Weems v. State*, No. ADV-2018-73 (Mont. Dist. Ct. Feb. 25, 2022) (granting summary judgment and entering permanent injunction), *appeal pending* No. DA 22-0207, and *Jeannette R. v. Ellery*, No. BDV-94-811, 1995 WL 17959705 (1st Jud. Dist. Ct., May 22, 1995) (requiring DPHHS to cover medically necessary abortions through Medicaid).

Plaintiffs have also established by affidavit and their verified complaint that the absence of a temporary restraining order would cause immediate and irreparable injury. It is well-settled in Montana that, “[f]or the purposes of a preliminary injunction, the loss of a constitutional right constitutes an irreparable injury.” *Planned Parenthood of Montana v. State by & through Knudsen*, 2022 MT 157, ¶ 6, 409 Mont. 378, 515 P.3d 301 (citation omitted). Plaintiffs have established that absent immediate injunctive relief, enforcement of the Rule will result in immediate, grave health consequences for Medicaid-eligible Montanans seeking abortion care from Plaintiffs.

The remaining factors—the balance of the equities and the public interest—“merge into one inquiry when the government opposes a preliminary injunction” or temporary restraining order. *Porretti v. Dzurenda*, 11 F.4th 1037, 1050 (9th Cir. 2021). Plaintiffs and their patients face immediate irreparable harm absent preliminary relief, whereas the State will not be harmed by the issuance of an injunction that preserves the status quo. Defendants have no legitimate interest in enforcing an unconstitutional law. *See Doe v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017) (“The government suffers no harm from an injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented.” (citation and internal quotation marks omitted)). Further, the public interest in preserving the status quo and in ensuring access to safe, constitutionally protected health care services pending adjudication of a preliminary injunction is strong. “It is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotation marks and citation omitted). Here, granting a temporary restraining order will serve the public interest by ensuring that Medicaid-eligible Montanans continue to have access to

constitutionally protected abortions and safe, effective medical care until such time as the Court can rule on the application for a preliminary injunction and writ of prohibition.

Based on the foregoing and for the reasons set forth in Plaintiffs' brief in support, verified complaint, and accompanying affidavits, the Court issues the following temporary restraining order. Defendants are ENJOINED from enforcing the rule amending Mont. Admin. R. 37.82.102 and 37.86.104 initially proposed at MAR Notice 37-1024 and adopted in the April 28, 2023, edition of the MAR with respect to any abortions provided during the pendency of this order until such time as the Court rules on Plaintiffs' application for preliminary injunction. The Court will hold a hearing on Plaintiffs' preliminary injunction motion and request for a writ of prohibition on the 1st day of May, 2023.

Date:

Time: 3:15 pm.

Whit W. W. W.

District Court Judge