**MONTANA FIRST JUDICIAL DISTRICT COURT**
**LEWIS AND CLARK COUNTY**

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| 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,<br><br>Plaintiffs,<br><br>v.<br><br>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,<br><br>Defendants. | Cause No.: ADV-2023-299<br><br>**ORDER – CROSS MOTIONS FOR SUMMARY JUDGMENT** |

Before the Court are the parties' competing motions for summary judgment. Raph Graybill, Tanis M. Holm, Peter Im, and Dylan Cowit represent

Plaintiffs Planned Parenthood of Montana (PPMT), and Samuel Dickman, M.D. Erin M. Erickson, Alexander Rate, Hillary Schneller, Nicolas Kabat, and Alexandra Willingham represent Plaintiffs All Families Healthcare (All Families), Blue Mountain Clinic (Blue Mountain), and Helen Weems, APRN-FNP. Melissa Cohen also represents Plaintiff Samuel Dickman, M.D. (hereafter collectively "Plaintiffs"). Montana Attorney General Austin Knudsen, Thane Johnson, Michael Russell, Michael Noonan, and Alwyn Lansing represent Defendants State of Montana (State), the Montana Department of Public Health & Human Services (DPHHS), and Charlie Brereton, in his official capacity as Director of DPHHS (hereafter collectively "State").

**THE CHALLENGED LEGISLATION**

Providers brought this lawsuit on behalf of themselves and their patients to challenge the constitutionality of House Bill 544 (HB 544), House Bill 862 (HB 862), and a DPHHS rule amending Montana Administrative Rules 37.82.102 and 37.86.104 (the Rule). Both bills and the Rule relate to the Medicaid funding of abortions in Montana. Plaintiffs allege HB 544, HB 862 and the Rule each have the purpose and effect of preventing low-income Montanans from accessing abortions.

The Rule amended the Administrative Rules governing Medicaid funded abortions. It bars abortion coverage unless the abortion is performed by a physician, thereby excluding advanced practice clinicians (APCs). It requires pre-authorization approval, a physical examination, and the submission of extensive supporting documentation. It also provides an abortion-specific definition of what is "medically necessary."

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HB 544 was signed into law on May 15, 2023. HB 544 in conjunction with the Rule restricts Medicaid patients' access to abortions by: (1) limiting patients' choice of providers to physicians only, thereby excluding APCs; (2) requiring patients to get prior authorization from the State before having an abortion, which includes an in-person physical examination even if their provider determines one is not medically necessary; and (3) creating narrow definitions of "medically necessary service" that apply solely to abortions. HB 544 allows coverage under Medicaid only when a physician certifies a patient "suffers from: (a) a physical condition that would be significantly aggravated by the pregnancy; or (b) a severe mental illness or intellectual disability that would be significantly aggravated by the pregnancy."

HB 862 was signed into law on May 16, 2023. HB 862 prohibits the use of public funds for any abortion services unless the pregnancy is "the result of an act of rape or incest" or would place the patient "in danger of death."

**STATEMENT OF FACTS**

PPMT is the largest provider of reproductive health care services in Montana. Samuel Dickman, M.D., is PPMT's chief medical officer. Martha Fuller is the president and chief executive officer of PPMT. Helen Weems is a nurse practitioner and the sole clinician at All Families Healthcare. Nicole Smith is the executive director of Blue Mountain Clinic.

Title XIX of the Social Security Act provides grants to states for medical assistance programs known as Medicaid. The purpose of Medicaid is to enable states to furnish "medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services."

42 U.S.C. § 1396-1. State participation in the Medicaid program is voluntary. *Bailey v. Montana Dept. of Pub. Health and Hum. Servs.,* 2015 MT 37, ¶ 8, 378 Mont. 162, 343 P.3d 170. Montana participates in the federal Medicaid program.

The Montana Medicaid program is administered by the Department of Public Health and Human Services. Charlie Brereton is the Director of DPHHS. Montana Medicaid is a comprehensive health coverage scheme for Montana's low-income residents. For nearly twenty years, DPHHS has included medically necessary abortion services among the covered services. Providers argue the challenged restrictions impose significant barriers for Montana Medicaid patients seeking abortions by forcing them to undergo financial hardship to pay for an abortion out of pocket, delay care, or forgo care altogether.

Plaintiffs initially sought a preliminary injunction. On May 23, 2023, following a hearing on the matter, this Court orally granted Plaintiffs' request for a preliminary injunction as to both challenged laws. On July 11, 2023, this Court issued a written order memorializing the grant of the preliminary injunction. The State appealed the preliminary injunction to the Montana Supreme Court. On October 9, 2024, the Montana Supreme Court affirmed the preliminary injunction.

On October 16, 2024, Plaintiffs moved for summary judgment requesting the Court permanently enjoin both laws. Plaintiffs contend that HB 544, HB 862 and the Rule violate the Montana Constitution's right to privacy, Article II, Section 10; and equal protection, Article II, Section 4 because they infringe Medicaid patients' fundamental right to abortion. As such, Plaintiffs

argue they are subject to strict scrutiny review, which they cannot survive.

In its cross-motion for summary judgment, the State argues this case concerns the separation of powers—not abortion; that HB 544, HB 862 and the Rule are presumed to be constitutional; the proper analysis is rational basis review; and the laws at issue meet rational basis review.

**PRINCIPLES OF LAW**

Summary judgment is warranted when no genuine issues of material fact exist, and the moving party is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c)(3). Summary judgment is appropriate when "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Mont. R. Civ. P. 56(c)(3). The party moving for summary judgment must establish the absence of any genuine issue of material fact and that the party is entitled to judgment as a matter of law. *Tin Cup County Water &/or Sewer Dist. V. Garden City Plumbing*, 2008 MT 434, ¶ 22, 347 Mont. 468, 200 P.3d 60.

Once the moving party has met its burden, the party opposing summary judgment must present affidavits or other testimony containing material facts which raise a genuine issue as to one or more elements of its case. *Id.*, ¶ 54 (citing *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262, 1266 (1997)). To avoid summary judgment, the opposing party's evidence "must be substantial, 'not mere denial, speculation, or conclusory statements.'" *Hadford v. Credit Bureau, Inc.*, 1998 MT 179, ¶ 14, 962 P.2d 1198, 1201 (quoting *Klock* at 174).

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## ANALYSIS

Statutes are presumed to be constitutional and the party challenging the constitutionality generally bears the burden of proving the statute unconstitutional. *Molnar v. Fox,* 2013 MT 132, ¶ 49, 370 Mont. 238, 301 P.3d 824. While the analysis of a statute pertaining to fundamental rights will generally require a strict scrutiny review that ultimately shifts the burden, the initial review begins with the same presumption of constitutionality. *Weems v. State,* 2023 MT 82, ¶ 34, 412 Mont. 132, 529 P.3d 798.

The State asserts the issue in this case does not implicate Montana's right to privacy, which the Supreme Court has long held protects a woman's right of procreative autonomy, including the right to seek and obtain a lawful medical procedure, including a pre-viability abortion, from a health care provider of her choice. *Armstrong v. State,* 1999 MT 261, ¶ 75, 296 Mont. 361, 989 P.2d 364. Rather, the State maintains the issue in this case is simply a funding issue, i.e. whether the Legislature should "be able to decide for itself which health care costs to subsidize." *Defendants' Combined Brief in Support of Cross-Motion for Summary Judgment, p. 4.*

The State is correct that the Legislature need not subsidize any of the costs associated with childbearing or with health care generally. However, the relevant inquiry is not whether the right of privacy requires the State to fund abortions, but whether, having elected to participate in a medical assistance program, the State may selectively exclude from such benefits otherwise eligible persons solely because they make constitutionally protected healthcare decisions with which the State disagrees.

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> "[O]nce it chooses to enter the constitutionally protected area of choice, it must do so with genuine indifference. It may not weight the options open to the pregnant woman by its allocation of public funds; in this area, government is not free to 'achieve with carrots what [it] is forbidden to achieve with sticks.'"

*Moe v. Sec'y of Admin. & Fin.,* 382 Mass. 629, 654-5, 417 N.E.2d 387, 402 (Mass. 1981) (citations omitted).

The State places significant reliance on the United States Supreme Court's decision in *Harris v. McRae,* 448 U.S. 297 (1980). In *Harris*, the Supreme Court reviewed the Hyde Amendment restricting federal funding of abortion to determine whether it violated any substantive rights secured by the United States Constitution. The Court found that the funding ban did not constitute an impermissible infringement on an indigent woman's freedom of choice because it was "the product not of governmental restrictions on access to abortion, but rather on her indigency." *Id.* at 316-17.

The State's reliance on *Harris* is misplaced for a number of reasons. First, "independently of the federal constitution, where the right of individual privacy is implicated, Montana's Constitution affords significantly broader protection than does the federal constitution." *Armstrong* at ¶ 41. Second, since *Harris* was decided, the U.S. Supreme Court abandoned any reliance on a right of privacy and instead grounded the abortion right entirely on the Fourteenth Amendment's Due Process Clause. *Planned Parenthood v. Casey,* 505 U.S. 833, 846 (1992).[1] Third, while not dispositive, a substantial

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[1] The Supreme Court subsequently concluded that there was not right to obtain an abortion contained in the federal constitution. *Dobbs v. Jackson Women's Health Org.,* 597 U.S. 215 (2022).

number of state courts have addressed this issue and most have departed from *Harris*. See *e.g. Women of the State v. Gomez,* 542 N.W.2d 17, fn. 12 (Minn. 1995).

Contrary to the State's assertion, the actual provisions of HB 544, HB 862 and the Rule implicate more than just healthcare funding. HB 544 and the Rule bar Medicaid from covering abortion services obtained from a healthcare provider other than a physician; require abortion services to undergo a prior authorization process which would both impose a delay in the time-sensitive procedure and require a patient to make an in-person visit to a medical center; and provide an abortion-specific definition of when an abortion is "medically necessary" and in conflict with the definition applicable to all other medical services provided under Medicaid. HB 862 eliminates funding for any abortion which is not a result of rape or incest unless the pregnant woman seeking a medically necessary abortion is in danger of death. These are not simply funding decisions. They impose requirements on the provision of medical care and they implicate the constitutional rights of Medicaid-eligible Montanans.

HB 544's physician-only requirement implicates a Medicaid patients fundamental right of privacy because it removes qualified, non-physician health care providers from the pool of healthcare providers from which women may choose to obtain lawful medical procedures. As such, it is subject to strict-scrutiny review. *Weems v. State,* 2023 MT 82, ¶ 43, 412 Mont. 132, 529 P.3d 798. HB 544's prior authorization process requiring an unnecessary in-person visit for a medication abortion which has been safely done via telehealth for years likewise is subject to strict scrutiny review. *Planned Parenthood of*

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*Montana v. State ("PPMT IV"),* 2024 MT 228, ¶ 24, 418 Mont. 226, 557 P.3d 471. The State's argument that HB 544 is merely funding legislation is belied by the laundry list of private health information the State requires for pre-authorization review, including Medicaid patients' allergies, number of pregnancies, surgeries, behavioral health issues and substance abuse. "While the State retains wide latitude to decide the manner in which it will allocate benefits, it may not use criteria which discriminatorily burden the exercise of a fundamental right." *Moe v. Sec'y of Admin. & Fin., 417 N.E.2d 387, 401 (Mass. 1981).* Strict scrutiny is appropriate "where the government, by selectively denying a benefit to those who exercise a constitutional right, effectively deters the exercise of that right." *State v. Planned Parenthood of Alaska,* 28 P.3d 904, 909 (Alaska 2001).

> "Disparate restrictions on government funding for women based on their choice of either abortion or childbirth deter the exercise of a fundamental right because pregnant women in that position are locked in a binary dilemma: the rejection of one option inevitably entails the embrace of the other . . . biological reality requires that a woman who cannot afford a medical abortion must carry her pregnancy to term." *State v, Planned Parenthood of the Great Nw.,* 436 P.3d 984, 1003 (Alaska 2019).

*PPMT IV,* 2024 MT 228, ¶ 24, 418 Mont. 253, 557 P.3d 440.

In accordance with these principles, HB 544, HB 862 and the Rule are subject to strict scrutiny review.

**Right of Privacy**

The right to privacy in the Montana Constitution is "one of the most stringent protections of its citizens' right to privacy in the United States," and protects a patient's right to "obtain[] a . . . pre-viability abortion . . . from a

health care provider of her choosing." *Armstrong v. State,* 1999 MT 261, ¶¶ 2, 34, 296 Mont. 361, 989 P.3d 364. It encompasses "a woman's moral right and moral responsibility to decide, up to the point of fetal viability, what her pregnancy demands of her in the context of her individual values, her beliefs as to the sanctity of life, and her personal situation." *Id*. at ¶ 49. "[L]egislation infringing the exercise of the right of privacy must be reviewed under a strict-scrutiny analysis." *Id.* at ¶ 34.

Under a strict scrutiny analysis of a provision alleged to violate the right to privacy infringing on a woman's fundamental right to abortion care, the State bears the burden "to demonstrate the legislation is justified by a compelling state interest and is narrowly tailored to effectuate only that compelling interest." *Weems v. State,* 2023 MT 82, ¶ 34, 412 Mont. 132, 529 P.3d 798. "[E]xcept in the face of a medically-acknowledged, *bona fide* health risk, clearly and convincingly demonstrated, the legislature has no interest, much less a compelling one, to justify its interference with an individual's fundamental privacy right to obtain a particular lawful medical procedure from a health care provider that has been determined by the medical community to be competent to provide that service and who has been licensed to do so." *Armstrong* at ¶ 62.

With respect to the physician-only requirement in HB 544 and the Rule, the undisputed facts establish that abortion is safe and effective, that APCs provide medication abortions and aspiration abortions with the same safety and efficacy as their physician counterparts, and that an overwhelming consensus in the medical community supports APCs as abortion providers. *Statement of Undisputed Material Facts in Supp. of Pls.' Mot. for Summ.* J. ¶ 14. Further, the State has no evidence that abortions provided by APCs are any less safe or

effective than abortions provided by physicians, or that prohibiting APCs from providing abortions covered by Medicaid improves patient health and safety. *Id.* ¶ 16.

The undisputed facts likewise establish that the prior authorization requirements in the rule and HB 544 do not address a medically acknowledged, *bona fide* health risk. The unrebutted testimony establishes that the requirements would require patients to make an extra in-person visit to a health care provider for a physical examination. *Id.* ¶ 22. The physical examination would result in delays that harm patient health; *Id.* ¶¶ 32, 36-41; and would in practice ban direct-to-patient medication abortions which have been safely done via telehealth for years without the need for any in-person visit. *Id.* ¶ 27. The State admits it has no evidence that medication abortions provided via telehealth are any less safe or effective than abortions provided in-person. *Id.* ¶ 28.

Further, the State has failed to demonstrate that the requirements for prior authorization are narrowly tailored to effectuate any state interest. HB 544 requires the submission to the State of the woman's medical history, including:

(i) age, current medications, medical conditions, and allergies;

(ii) number of pregnancies and number of live births;

(iii) last menstrual period and the status and results of any pregnancy test;

(iv) chronic illnesses and surgeries;

(v) behavioral health issues;

(vi) smoking and substance abuse; and

(vii) obstetric history.

Defendants have failed to articulate any reason why it is necessary for the State to know a Medicaid patient's allergies, number of pregnancies, surgeries, or behavioral health issues in order to determine whether to fund an abortion. Rather, the requested information appears designed to invade, rather than respect, a woman's privacy.

Turning to the narrowed definition of medical necessity in HB 544 and the Rule, the State has offered no medically acknowledged, *bona fide* health risk addressed by the new definition, nor has it offered any reason to implement a definition of medical necessity unique to abortion. Rather, the definitions serve to limit access to abortion otherwise required to be covered by *Jeannette R. v. Ellery,* Mont. First Jud. Dist. Ct., Cause No. BDV-94-811, 1995 WL 17959705 (May 22, 1995). At their core, these definitions attempt to supplant the clinical judgment of the medical providers as to what constitutes medical necessity.

With respect to HB 862, which bars Medicaid coverage for abortions except in cases where the patient is at risk of death or the pregnancy results from rape or incest, *Jeannette R.* declared unconstitutional a regulation that did the very same thing. The State has not established any medically acknowledged *bona fide* health risk that HB 862 addresses, and the Court has no reason before it to disturb the holding of that case. Under the principals articulated in *Jeannette R.* and *Armstrong*, HB 862 fails strict scrutiny.

The State argues that HB 544, HB 862 and the Rule survive rational basis review but does not attempt to argue or demonstrate they are justified by a compelling state interest, are narrowly tailored to effectuate that compelling interest, or that they survive strict scrutiny review. A failure of proof of an essential element of a claim makes judgment appropriate as a matter of law. Pursuant to *Monroe v.*

*Cogswell Agency,* 2010 MT 134, ¶ 34, 356 Mont. 417, 234 P.3d 79; *accord Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986), Federal Rule of Civil Procedure 56(c) mandates summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." The State has wholly failed to meet its burden to demonstrate HB 544, HB 862 and the Rule are justified by a compelling interest and are narrowly tailored to effectuate that interest. Consequently, Plaintiffs are entitled to summary judgment on their Article II, Section 10 claim they violate the Montana Constitution's right to privacy.

**Equal Protection**

Plaintiffs further argue HB 544, HB 862 and the Rule violate the Montana Constitution's guarantee of equal protection because they apply solely to patients who choose to terminate their pregnancies, and not to those who choose to carry their pregnancies to term. Article II, Section 4 of the Montana Constitution provides that "No person shall be denied the equal protection of the laws." Equal protection guarantees that persons similarly situated with respect to a legitimate government purpose of a law receive like treatment. *Hensly v. Montana State Fund,* 2020 MT 317, ¶ 18, 402 Mont. 277, 477 P.3d 1065. Potential equal protection violations are evaluated under a three-step process: first, identify the classes involved and determine if they are similarly situated; second, determine the appropriate level of scrutiny to apply to the challenged statute; and third, apply the appropriate level of scrutiny to the statute. *Id.* "A law or policy that contains an apparently neutral classification may violate equal protection if 'in reality [it] constitutes a device designed to impose different

burdens on different classes of persons.'" *Snetsinger v. Mont. Univ. Sys.,* 2004 MT 390, ¶ 16, 325 Mont. 148, 104 P.3d 445 (quoting *State v. Spina,* 1999 MT 113, ¶ 85, 294 Mont. 367, 982 P.2d 421).

Plaintiffs argue the two classes involved are Medicaid patients who choose to terminate their pregnancies and Medicaid patients who choose to carry their pregnancies to term. The State disagrees. According to the State, the two classes involved are indigent pregnant women and non-indigent pregnant women.

The purpose of HB 544, HB 862 and the Rule is not to differentiate between indigent and non-indigent women. Rather, their purpose is to differentiate between women who seek abortions and women who choose to carry their pregnancy to term. "The proper comparison classes are Medicaid-eligible women who seek funding for abortion and Medicaid-eligible women who seek funding for natal and prenatal care." *PPMT IV,* 2024 MT 228, ¶ 31, 418 Mont. 253, 557 P.3d 440 (see also *Planned Parenthood of the Great Nw.,* 436 P.3d 984, 1001 (Alaska 2019); *Planned Parenthood of Montana v. State,* 2024 MT 178, ¶ 28, 417 Mont. 457, 554 P.3d 153).

The State does not dispute the restrictions apply solely to Medicaid patients seeking abortions, and not to Medicaid patients seeking care related to continuing a pregnancy. Montana Medicaid covers reproductive health care provided by APCs if the care falls within their scope of practice but does not cover abortions provided by APCs. *Statement of Undisputed Material Facts in Supp. of Pls.' Mot. for Summ.* J. ¶ 19. Montana Medicaid does not require prior authorization or a waiting period for other reproductive health care services such as contraception, ultrasounds, or other gynecological services. *Id.* ¶ 33. Pregnant women who seek to terminate their pregnancy are subject to one definition of

medical necessity while pregnant women who seek to carry their pregnancy to term are subject to another definition of medical necessity. HB 544, HB 862 and the Rule treat similarly situated classes differently by imposing restrictions that prevent pregnant Medicaid patients from accessing medically necessary abortions without imposing similar restrictions on medically necessary care for Medicaid patients who choose to carry their pregnancy to term. The State has improperly "taken the class of indigent pregnant Medicaid eligible women and divided them. One class, who needs medically necessary treatment (an abortion) are not entitled to help from the state. However, another class (those women for whom childbirth is a medically necessary treatment) are entitled to state financial help." *PPMT IV,* ¶ 31 (quoting *Jeannette R.,* 1995 WL 17959705, at *22).

If a classification affects a suspect class or threatens a fundamental right, a court must apply strict scrutiny. A law may be upheld under strict scrutiny review only if it is "narrowly tailored to serve a compelling State interest." *McDermott v. Mont. Dept. of Corrs.,* 2001 MT 134, ¶ 31, 305 Mont. 462, 29 P.3d 992. The right to personal and procreative autonomy, and, in the broader sense, to individual privacy, is a fundamental right. *Armstrong v. State,* 1999 MT 261, ¶ 68, 296 Mont. 361, 989 P.3d 364. Therefore, the Court must apply strict scrutiny. HB 544, HB 862 and the Rule can survive strict scrutiny only if they are narrowly tailored to address a medically acknowledged, *bona fide* health risk. *Armstrong* at ¶ 59.

Once again, the State only asserts the challenged legislation survives rational basis review. The State does not contend, and has offered no proof, that HB 544, HB 862 and the Rule are "narrowly tailored to effectuate a compelling interest – 'a medically acknowledged, [*bona fide*] health risk, clearly

and convincingly demonstrated.'" *PPMT* IV, ¶ 31 (quoting *Planned Parenthood of Mont.,* 2022 MT 157, ¶ 20, 409 Mont. 378, 515 P.3d 301. The State has failed to carry its burden of proof that HB 544, HB 862 and the Rule survive strict scrutiny review.

Plaintiffs have established that HB 544, HB 862 and the Rule are not narrowly tailored to address a medically acknowledged, *bona fide* health risk. Plaintiffs have established that APCs can safely and effectively provide abortions. APCs provide medication abortions and aspiration abortions with the same safety and efficacy as their physician counterparts. An overwhelming consensus in the medical community supports APCs as abortion providers. SUMF ¶ 14. The Supreme Court has already directly addressed this issue and concluded that, "[T]he State has failed to meet its burden of demonstrating that APRN-FNPs and APRN-CNMs providing abortion care present a medically acknowledged, *bona fide* health risk." *Weems II,* at ¶ 51. Providers have also established that rather than addressing a *bona fide* health risk, the pre-authorization requirements would cause delays and denials of care, *increasing* risks to patient health. *Statement of Undisputed Material Facts in Supp. of Pls.' Mot. for Summ.* J. ¶¶ 11-12, 21, 32, 36-41, 52, 54. "The scarcity of providers in Montana increases the likelihood patients will experience delays accessing care, forcing them to remain pregnant until they can seek a later-term abortion, which can result in comparatively higher risk, greater expenses, and even ineligibility for medication abortion as pregnancy advances." *Weems* at ¶ 50.

Plaintiffs have established that HB 544, HB 862 and the Rule violate the equal protection clause, Article II, Section 4 of the Montana Constitution. Consequently, they are entitled to summary judgment.

## CONCLUSION

> [T]he decision of whether to bear a child or have an abortion is so private and intimate that each woman in the state - rich or poor – is guaranteed the right to make that decision as an *individual*, uncoerced by governmental intrusion. . .There is no greater power than the power of the purse. If the government can use it to nullify constitutional rights, by conditioning benefits only upon the sacrifice of such rights, the Bill of Rights could become a yellowing scrap of paper. Once the state furnishes medical care to poor women in general, it cannot withdraw part of that care solely because a woman exercises her constitutional right to choose to have an abortion.

*Committee to Defend Women's Reproductive Rights v. Myers,* 29 Cal.3d 252, 284, 625 P.2d 779, 798, 172 Cal.Rptr. 866, 885 (1981). "There is no question but that the State's interest in potential human life is legitimate. However, to say that it always outweighs the mother's interest in her own health is not acceptable. The funding restriction imposed by the State of Montana gives the State's interest priority at the expense of the mother's health." *Jeannette R. v. Ellery,* Mont. First Jud. Dist. Ct., Cause No. BDV-94-811, 1995 WL 17959705 (May 22, 1995). A woman's right to choose to protect her health by terminating her pregnancy prior to fetal viability outweighs the State's interest in protecting a potential life at the expense of her health.

Accordingly,

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## ORDER

**IT IS HEREBY ORDERED** Plaintiffs' motion for summary judgment is **GRANTED.**

**IT IS HEREBY FURTHER ORDERED** Defendants' motion for summary judgment is **DENIED.**

//s/ Mike Menahan
MIKE MENAHAN
District Court Judge

cc: Raph Graybill,
Tanis M. Holm,
Peter Im,
Dylan Cowit
Erin M. Erickson,
Alexander Rate,
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Electronically Signed By:
Hon. Judge Mike Menahan
Tue, Mar 11 2025 09:40:23 AM