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MONTANA THIRTEENTH JUDICIAL DISTRICT, YELLOWSTONE COUNTY

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| **Planned Parenthood of Montana** and **Samuel Dickman, M.D.,**<br>on behalf of themselves and their patients,<br>Plaintiffs,<br>v.<br>**State of Montana,**<br>by and through Austin Knudsen, in his official capacity as Attorney General,<br>Defendant. | Cause No. DV-21-999<br><br>**ORDER GRANTING SUMMARY JUDGMENT** |

This matter comes before the Court on cross-motions for summary judgment. The motions were fully briefed, and a hearing was held on December 18, 2023. For the reasons discussed below, the Court finds that the Plaintiffs are entitled to summary judgment.

## PROCEDURAL HISTORY

On August 16, 2021, Plaintiffs ("PPMT") filed a *Complaint* in Yellowstone County seeking declaratory and injunctive relief challenging four abortion laws passed by the Montana Legislature in the 2021 session. PPMT filed a *Motion for Preliminary Injunction* the same day seeking stay of enforcement of three of the four laws—H.B. 136, H.B. 171, and H.B. 140. After briefing and a hearing, Judge Moses, who at that time presided over the case, granted the preliminary injunction on October 7, 2021. That order was appealed to the Montana Supreme Court, where it was affirmed on August 9, 2022. The parties stipulated to partial dismissal of claims related to the fourth law, H.B. 229.

On April 21, 2023, PPMT filed a *Rule 56 Motion for Summary Judgment* asking the Court to permanently enjoin enforcement of the three remaining laws and declare them unconstitutional. In its briefing, PPMT argues that H.B. 136 violates Montana's constitutional rights to privacy and Equal Protection and is unconstitutionally vague. It claims that H.B. 171 and H.B. 140 both violate the rights to privacy and free speech, and that H.B. 171 is also unconstitutionally vague. The State filed a *Response in Opposition* on May 12, 2023. The State also submitted a *Cross Motion for Summary Judgment* seeking summary judgment only on H.B. 136, asking the Court to declare the legislation

constitutional and to rule that there is no explicit right to abortion in the Montana Constitution which demands strict scrutiny. PPMT filed a *Reply Brief* on May 26, 2023, and Defendant filed a *Reply in Support* of its cross-motion on June 9, 2023. The undersigned Judge assumed jurisdiction in October, 2023.

## SUMMARY JUDGMENT STANDARD

Summary judgment is proper when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c)(3). It is the "put up or shut up moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of the events." *Springer v. Durflinger*, 518 F.3d 479, 484 (7th Cir. 2008).

The moving party has the initial burden to show there is no genuine dispute of material fact and it should be entitled to judgment as a matter of law, based on the Rule 56 record. *Weber v. Interbel Tel. Coop.*, 2003 MT 320, ¶ 5, 318 Mont. 295, 80 P.3d 88. The Rule 56 record includes the pleadings, depositions, discovery, disclosure materials on file, and any supporting affidavits submitted. Mont. R. Civ. P. 56(c)(3); *Hajenga v. Schwein*, 2007 MT 80, ¶ 12, 336 Mont. 507, 155 P.3d 1241. The burden then shifts to the opposing party to show either a genuine issue of material fact, or that the moving party should not be entitled to judgment as a matter of law regardless of disputes of fact. *Osterman v. Sears, Roebuck & Co.*, 2003 MT 327, ¶ 17, 318 Mont. 342, 80 P.3d 435. The opposing party must do so by setting out specific facts beyond mere denial, speculation, or allegations in the pleadings. Mont. R. Civ. P. 56(e)(2).

On cross-motions, as is the case here, courts evaluate each party's motion on its own merits, drawing all reasonable inferences against the party whose motion is under consideration. *Putnam v. Central Mont. Medical Center*, 2020 MT 65, ¶ 12, 460 P.3d 419, 399 Mont. 241; *Hajenga*, ¶ 18. The court has no duty, however, to anticipate or speculate regarding contrary material facts. *Gamble*, 212 Mont. at 312, 688 P.2d at 287.

## THE CHALLENGED LAWS

1. H.B. 136 bans abortions beginning at twenty weeks from the patient's last menstrual period, with limited exceptions, based on the legislative conclusion that a fetus is able to experience pain at that point in gestation. The law places criminal penalties on providers found in violation.
2. H.B. 171 implements a panoply of restrictions on medication abortions and similarly imposes criminal penalties on providers found in violation. Its requirements include:
    (a) Eliminating tele-health services for medication abortions, substituting a series of required in-person visits.
    (b) Imposing a 24-hour waiting period between informed consent by the patient and treatment.
    (c) Requiring use of a form produced by the Department of Health and Human Services that

patients must line-item initial and sign before receiving treatment. The form must meet 20+ criteria and include detailed information about abortion, potential risks as assessed by the Department, "initial studies" on the possibility of abortion reversal, contact information for a specific advocacy group offering information on reversal, and acknowledgments of the patient's consent and non-coercion.

(d) Requiring providers to obtain a broad set of credentialing.

(e) Mandating reporting requirements for providers.

3. H.B. 140 requires providers to offer patients the opportunity to view two forms of ultrasound and to listen to a fetal heart tone and imposes civil penalties on providers found in violation.

## THE RIGHT TO ABORTION IN MONTANA

The bedrock of Montana's independent constitutional right to abortion is *Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364. That case recognized that the right to a pre-viability abortion is contained within the Montana Constitution's Article II, Section 10 privacy protections—one of the most stringent rights to privacy in the United States. *Id.* ¶ 34. In *Gryczan v. State*, the Montana Supreme Court first recognized that privacy includes personal autonomy: "Montana's constitutional right of privacy—this right of personal autonomy and right to be let alone—includes the right of consenting adults, regardless of gender, to engage in non-commercial, private, sexual relations free of governmental interference, intrusion and condemnation." 283 Mont. 433, 456, 942 P.2d 112, 126 (1997). In *Armstrong*, it more fully defined that term:

> While it may not be absolute, no final boundaries can be drawn around the personal autonomy component of the right...it is, at one and the same time, as narrow as is necessary to protect against a specific unlawful infringement of individual dignity and personal autonomy...and as broad as are the State's ever innovative attempts to dictate in matters of conscience, to define individual values, and to condemn those found to be socially repugnant or politically unpopular. ¶ 38.

### A. Scope of the right

Personal autonomy, *Armstrong* determined, includes the right "of each individual to make medical judgments affecting her or his bodily integrity and health in partnership with a chosen health care provider," *id.* ¶ 39, and more specifically the "right to seek and obtain pre-viability abortion services." *Id.* ¶¶ 53, 56 (citing *Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891)). Such decisions "must often and necessarily be made in partnership with a health care provider," so providers can be protected by implication, as they in fact were in *Armstrong*. *Id.* ¶ 66; *Baxter v. State*, 2009 MT 449, ¶ 65, 354 Mont. 234, 224 P.3d 1211 (Nelson, J., specially concurring) (joining majority decision to protect physicians who render aid-in-dying to patients in part because such acts implicate the right to privacy recognized in *Armstrong*).

Notably, *Armstrong* rejected the State's attempts to regulate abortion, not on the basis that

the procedure should be protected *per se*, but because a woman's right "to decide, up to the point of fetal viability, what her pregnancy demands" implicates her right to "procreative autonomy." ¶ 49. If the State can infringe on that autonomy "in favor of birth, then, necessarily it also has the power to *require* abortion," neither of which would be acceptable. *Id.*

Since *Armstrong,* only one other case, *Weems v. State*, 2023 MT 82, 412 Mont. 132, 529 P.3d 798, has dealt with restrictions on the right to abortion directly. There, the Court struck down a law limiting providers of early abortion to licensed physicians and physician assistants, holding that Advanced Practitioner Nurses were amply qualified to perform the procedure and finding that abortion care was "one of the safest procedures in this country and the world." *Id.* ¶ 48.

**B. Limits and justifiable state intrusions**

Still, the right protected in *Armstrong* is not boundless: the State possesses a general police power to regulate the healthcare profession to "protect the health of its citizens." *Id.* ¶ 38 (citing *Wiser v. State,* 2006 MT 20, ¶ 19, 331 Mont. 28, 129 P.3d 133). In *Wiser*, the Montana Supreme Court clarified the limits of *Armstrong*, holding that the right to personal autonomy does not include the right to choose a healthcare provider who is unqualified by the medical community to provide a service. ¶ 16 (citing *Armstrong*, ¶ 62) (upholding regulation requiring dentist referrals before denturists could perform partial denture work). The Court noted that "it does not necessarily follow from the existence of the right to privacy that every restriction on medical care impermissibly infringes that right." *Id.* ¶ 15.

Other decisions have applied the principles from *Armstrong* outside the abortion context in ways that further suggest its outer limits. *Stand Up Montana v. Missoula County Public Schools* held that a public-school policy requiring students to wear masks to prevent spread of infectious disease did not violate the right to make private healthcare decisions because the mask amounted to public health intervention, not treatment. 2022 MT 153, ¶¶ 14–16, 409 Mont. 330, 514 P.3d 1062 (mask policy "was no more a medical treatment for virulent disease than a motorcycle helmet...is a treatment for head injury"). *Montana Cannabis Industry Assoc. v. State* upheld restrictions on access to medical marijuana, stating that the right to privacy does not encompass "an affirmative right to access a particular drug or treatment." 2012 MT 201, ¶ 28, 366 Mont. 224, 286 P.3d 1161.

However, it remains true that where state interests intersect with the right to procreative autonomy, the State has the burden of "clearly and convincingly" demonstrating a "medically-acknowledged, *bona fide* health risk." *Armstrong*, ¶ 62. Otherwise, the state has "no interest, much less a compelling one." *Id.* Courts are particularly wary of ideological or sectarian legislation presented as healthcare interests. Legal limits, imposed under the "guise of protecting the patient's health" but actually driven by "unrelenting pressure from individuals and organizations promoting their own beliefs" are impermissible and "morally indefensible." *Id.* ¶ 60.

## DISCUSSION

### A. Level of scrutiny

As a preliminary matter, the State argues strenuously in its briefs that *Armstrong* was wrongly decided, and abortion is not a fundamental right. (Def.'s Resp. in Opp'n to Pls.' Mot. for Summ. J. 3–4; Br. in Supp. of Def.'s Mont. R. Civ. P. 56 Cross-Mot. for Summ. J. 13–14 [hereinafter "Def.'s Cross-Mot."]). It is not explicitly enumerated in Article II of the Montana Constitution, so cannot be subject to strict scrutiny, nor is it "necessary to enjoy" an enumerated right, which would demand middle-tier scrutiny. Therefore, only rational basis review should apply to PPMT's privacy claims. (Def.'s Resp. 4).

The State also argues that PPMT's Equal Protection claims should be subject to rational basis review. Since abortion is not a fundamental right, Equal Protection claims based on classifications related to abortion demand only the lowest tier of scrutiny. (Def.'s Resp. 4 (citing *Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, ¶¶ 15–19, 325 Mont. 148, 104 P.3d 445)).

The State's position on the validity of *Armstrong*—and attendant level of scrutiny—necessarily fails. The District Court must adhere to precedent, and *Armstrong* is unequivocal that the right to a pre-viability abortion is included in the right to privacy as a component of procreative autonomy. ¶ 75. *Armstrong's* characterization of the compelling interest necessary to limit the right suggests an especially stringent form of strict scrutiny. *Id.* ¶ 62 (compelling interest must be convincing and grounded in "methods and procedures of science" and "collective professional judgment"). The Montana Supreme Court has shown strong suspicion of attempts to regulate abortion, dismissing anything less than a "clearly and convincingly demonstrated" compelling interest as simply "no interest" at all. *Id.*

Accordingly, this Court will also consider, for Equal Protection purposes, laws which treat patients differently based on their exercise of procreative autonomy, as implicating strict scrutiny. *Armstrong*, ¶ 49 (The "State has no more compelling interest or constitutional justification for interfering with the exercise of [the] right if the woman chooses to terminate her pre-viability pregnancy than it would if she chose to carry the fetus to term"); *Snetsinger*, ¶ 17.

### B. H.B. 136—the 20-week ban

PPMT claims that H.B. 136: (a) violates the right to privacy as applied in *Armstrong*; (b) violates the Montana Constitution's Equal Protection provision found in Article II, Section 4; and (c) is void for vagueness. Because the bill regulates elective abortion without a basis in recognized medical risks, arbitrarily discriminates between patients who choose abortion and those who choose pregnancy to term, and imposes criminal penalties without reliable standards, it is unconstitutional in its entirely.

*1. Whether the law violates the right to privacy.*

To survive strict scrutiny, laws which infringe on the right to privacy by limiting access to pre-

viability abortions must demonstrate a "medically acknowledged, *bona fide* health risk" to a particular class of patients. *Armstrong*, 1999 MT 261, ¶¶ 49, 59. PPMT asserts that H.B. 136 significantly limits access to abortion at 20 weeks gestational age, when no fetus is viable, without any *bona fide* health risk justifying the regulation. (Br. in Supp. of Pls.' R. 56 Mot. for Summ. J. 11–12 [hereinafter "Pls.' Mot."]). The State, for its part, argues that the restrictions in H.B. 136 represent lawful regulation of procedures and providers. (Def.'s Resp. 11 (quoting *Armstrong,* ¶ 62)). Specifically, H.B. 136 embodies compelling interests in (a) preventing "unnecessary loss of fetal life," (b) protecting the fetus from pain, and (c) protecting the mother from increased risk of complications as the pregnancy term progresses. (Def.'s Resp. 11–14; Def.'s Mot. 9–13; Def.' Reply in Supp. of Cross-Mot. for Summ. J. 3–5).

On the subject of loss of fetal life, much of the State's argument, on this issue and throughout its briefs, rests on a critique of viability. (Def.'s Resp. 12-13; Def.'s Cross-Mot. 13). The State cites to *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2284 (2022), for its assertion that it has a compelling interest in "respecting and preserving human life, including prenatal life at all stages of development," regardless of determinations of viability. But *Dobbs* does not control here. Federal precedent is not binding on questions of state constitutional law. *Riley v. Kennedy*, 553 U.S. 406, 425 (2008) ("a State's highest court is unquestionably the ultimate expositor of state law"). Under the Montana Constitution, contrary to *Dobbs,* citizens retain their right to procreative autonomy up through the point of viability. The scope of any asserted State interest in protecting fetal life, therefore, depends on determinations of viability. Otherwise, the subset of the privacy right recognized by *Armstrong* would be illusory.

Notably, just as the Framers of Montana's Constitution avoided deciding "when a person becomes a person," Mont. Const. Convention, Verbatim Tr., March 7, 1972, at 1640, *Armstrong* declined to define the point of viability. *Armstrong*, ¶¶ 45–48. Viability is a complex concept, applicable on a case-by-case basis, that requires medical judgment and may involve some margin for error. It is not reduceable to gestational age. (Def.'s Cross-Mot., Ex. B, Depo. of Colleen P. McNicholas, D.O., MSCI, FACOG 20:17-21:13, 22:16-23:23, 94:16-97:3; Dec. of Raph Graybill in Supp. of Pls.' R. 56 Mot. for Summ. J., Ex. 34 at 15). In this case, the law largely bans abortions at 20 weeks. It is undisputed that no fetus is presently viable at that point. (Dec. of Graybill, Ex. 30, Depo. of Ingrid Skop, M.D., Vol. 1 35:11-36:10; Dec. of Graybill, Ex. 17, Dep. of George Mulcaire-Jones 98:13-100:1; Dec. of Graybill, Ex. 18, Depo. of Robin Pierucci 82:22-83:6, 84:10-12; Dec. of Graybill, Ex. 19, Def.'s Resp. to Pls.' First Disc. Req. 33; Dec. of Graybill, Ex. 33, Depo. of Steven J. Ralston, M.D. 116:11-12). In fact, no fetus born in Montana on record has survived at 22 weeks or earlier. (Dec. of Graybill, Ex. 20, Births with Gestational Age <= 22 Weeks; Dec. of Graybill, Ex. 21, Fetal Deaths with Gestational Age <= 22 Weeks; Dec. of Graybill, Ex. 22, Dep. of Todd Harwell 105:18-22).

While the State argues that margins-of-error of up to two weeks in gestational dating could

lead to abortion of viable fetuses, (Def.'s Resp. 6), the opposite is also true: a bright-line ban approaching the point of viability would likely infringe the rights of some patients whose gestational length has been overestimated. The natural conclusion, consistent with *Armstrong*, is that any attempts by the State to regulate abortion by defining viability in terms of gestational age alone should be constitutionally suspect. Given the undisputed facts surrounding current medical science and the inherently case-by-case nature of viability, H.B. 136's 20-week limit on abortion infringes the right to privacy found in Article II of the Montana Constitution, as would any law that sets out to define viability in that way.

As for its second asserted interest, the State argues that fetuses can feel pain at or before 20 weeks. (Def.'s Resp. 14). But the evidence offered amounts to a bare assertion without support from specific facts. (Dep. Pierucci 135). It remains undisputed that there is *no medical consensus* that fetuses can feel pain prior to 20-24 weeks gestational age. (Def.'s Mot., Ex. A, Dep. of Samuel Dickman, M.D. 178:5–25; Dep. McNicholas 89:1–10; Dep. Pierucci 135:15–137:15; Dep. Mulcaire-Jones 104:2–21; Def.'s Cross-Mot., Ex. F, Dep. of Ingrid Skop, M.D., Vol. 2 43:6–15; Dep. Ralston 36:22–37:7; 40:5–20.) Key connections to the brain do not develop before that time, and a fetus likely never experiences true wakefulness in utero. (Dep. McNicholas 89:1-16; Dep. Ralston 83:6-23). The State has simply not presented sufficient evidence to establish with clear and convincing proof a *bona fide* health risk as determined by the medical community. *See Armstrong*, ¶ 62.

Even taking the State's argument at face value and construing the facts in its favor, the possibility of fetal pain, without more, does not create a health risk sufficient to justify intrusions on a patient's right to privacy. If that were the case, the State might well be justified in banning pregnancy altogether for fear that the mother (or the baby) could experience pain in childbirth. The State seems interested in pregnancy-related pain only where a patient exercises their right to pre-viability abortion. Indeed, there is no evidence of any other pregnancy-related procedure that the State regulates based on when or whether a fetus can experience pain. (Dep. Harwell 17:25-18:13; Dep. Mulcaire-Jones 102:12-24). The restriction found in this law smacks of the ideologically motivated legislation condemned by the Court in *Armstrong* and fails to show the "collective professional judgment, knowledge and experience of the medical community" necessary to demonstrate a compelling regulatory interest. *Armstrong*, ¶ 62.

Finally, the State posits that the provisions in H.B. 136 protect mothers from the "barbaric" and "gruesome" procedures associated with abortion. (Def.'s Resp. 13). Specifically, for later-term abortions requiring surgical procedures, abortion becomes more "difficult, risky, and physically traumatic" for the patient. (*Id.*; Dep. Skop 70–71, 137–39). Yet between 2010 and 2020, there were zero deaths caused by abortion in Montana, (Dec. of Graybill, Ex. 14, Mont. Vital Statistics Table D-7), and only 25 of 8,402 reported abortions in Montana from 2016 to 2021 resulted in complications (a rate of 0.3%). (Dec. of Graybill, Ex. 15, Frequency of Complications of Induced Abortions).

The State offers scant evidence of specific health risks that the law's restrictions mitigate in a narrowly tailored manner. It offers expert deposition testimony that describes dilation and evacuation procedures (a form of surgical abortion) and labels them "dangerous" but does not state which *bona fide* health risks are present. (Dep. Skop, Vol. 1 137–39). The State also offers evidence that some studies show statistical increases in mental illness in the year following abortion. (*Id.* 192:9-193:22). Yet it is not clear how a 20-week ban, with few narrow exceptions, furthers that interest through the least restrictive alternative. There are myriad other avenues by which the State could improve mental health outcomes without altogether foreclosing a patient's access to abortion past a certain gestational age.

Again, the law appears intended to invade the relationship between a patient and her licensed provider, substituting the State's judgment for that of the medical community and the patient themselves. Such intrusion is a violation of the constitutional right to privacy.

2. *Whether the law violates Equal Protection*

PPMT's contention on this claim is that H.B. 136 separately violates the right to Equal Protection guaranteed by Article II, Section 4 of the Montana Constitution, because it wrongly creates legal classifications based on the exercise of a fundamental right. *See Snetsinger,* ¶ 15. In its view, this is because the law regulates healthcare on the basis of fetal pain only when the patient exercises their right to abortion, but not if they choose to carry a pregnancy to term. (Pls.' Mot. 12–13).

The State offers no legal argument to support its position on this claim, but regardless, the Court finds PPMT's reasoning persuasive. As noted above, there is no evidence of *any* medical procedure in Montana which is otherwise regulated on the basis of the potential for fetal pain. (Dep. Harwell.17:25-18:13; Dep. Mulcaire-Jones 102:12-24). The law discriminates between pregnant patients choosing abortion and those choosing birth without any rational basis for doing so. Neither the text of the statute nor the State's argument explains why or how fetuses are particularly susceptible to pain approaching viability, as compared to any other time throughout pregnancy. The bill does not pass strict scrutiny under Montana's Equal Protection provisions and would not pass rational basis review even if that were the standard.

3. *Whether the law is unconstitutionally vague.*

PPMT argues that H.B. 136 is void for vagueness, and therefore violates due process, to the extent that it criminalizes failure by a medical provider to exercise "reasonable medical judgment" when performing abortions before obtaining a gestational age, or to avoid death or serious risk of harm to the patient. (Pl.'s Mot. 13). *See* H.B. 136, § 3(2)–(3), 67th Leg., Reg. Sess., (2021). The State counters that the law imposes a reasonableness standard in many contexts, and that numerous federal courts have upheld such standards under a vagueness rule which Montana courts have adopted. (Def.'s Cross-Mot. 15; Def.'s Reply 6).

While reasonableness standards no doubt appear frequently in the law, the Montana Supreme Court has specifically struck down such standards where criminal penalties apply. *State v. Stanko*, 1998 MT 321, 292 Mont. 192, 974 P.2d 1132. Constitutional guardrails around vagueness are designed to ensure that laws do not "trap the innocent" through "arbitrary and discriminatory" enforcement due to lack of explicit standards. *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972). Statutes must provide a person of "ordinary intelligence" enough fair notice that their conduct would be forbidden, *State v. Woods*, 221 Mont. 17, 22, 716 P.2d 624, 627 (1986), so that no one is left to "speculate as to whether [their] contemplated course of action may be subject to criminal penalties." *State v. Conrad*, 197 Mont. 406, 412, 643 P.2d 239, 243 (1982).

In *Stanko*, the Montana Supreme Court deemed the state's "reasonable and proper" highway speed limit facially void for vagueness, holding that the law allowed too much enforcement discretion to individual officers, and motorists had no means of knowing whether they were breaking the law. ¶¶ 25–28. The Court there noted that, while the statute provided a variety of factors which law enforcement and motorists should consider, there were no internal law enforcement guidelines for evaluating at which exact point a person would be breaking the law. *Id.* ¶ 27. Nor could motorists evaluate the statutory variables in real time in any consistent way sufficient to avoid criminal liability. *Id.* ¶ 29.

In this case, both problems are magnified tremendously. The statute requires practitioners to determine gestational age using procedures that a "reasonably prudent practitioner who is knowledgeable about the case and the medical conditions involved" would make. H.B. 136, § 3(2). It further requires exercises of "reasonable medical judgment" in performing abortions to protect the mother from serious harm. *Id.* § 3(3). Unlike in *Stanko,* these standards provide essentially no statutory guidance. And regardless of standards, law enforcement personnel are not qualified to make medical judgments and enforce the law on that basis.

The statute further fails to provide fair notice to medical professionals. The discovery submitted in this case shows that reasonable variation in medical judgment routinely occurs, such that "reasonably prudent" judgment would be an impossible standard to predict with certainty. (Dec. Graybill, Ex. 23, David Ortley DOJ 30(b)(6) Depo. Tr. 37:17-38:23). H.B. 136 is facially void for vagueness to the extent that it relies on the above reasonableness standards for imposition of criminal penalties.

### C. H.B. 171—tele-health and medication abortions

H.B. 171 is unconstitutional. It violates the right to privacy by imposing numerous and severe burdens on patients and providers, which lack a basis in demonstrable medical science and do not apply to any other medical treatment. These restrictions effectively ban an entire method of treatment which otherwise serves a critical gap in care, under the guise of protecting the very patients whose

rights they undermine. The law violates the right to free speech by engaging in content- and viewpoint-discrimination and compelling speech. Finally, the law is unconstitutionally vague to the extent that it sets criminal penalties based on overly subjective reasonableness standards and broad, inscrutable definitions.

*1. Whether the law violates the right to privacy.*

According to PPMT, H.B. 171 violates the right to privacy by impermissibly limiting access to abortion short of an outright ban. (Pl.'s Mot. 14 (quoting *Armstrong*, ¶ 58 [State interferes when "dictat[ing] how and by whom a specific medical procedure is to be performed"])). It claims H.B. 171 interferes with the right in at least five ways, by:

(1) Banning telehealth abortions, thereby limiting "how and by whom" patients receive care;
(2) Requiring multiple in-person visits, including an ultrasound, and imposing a 24-hour waiting period between informed consent at the first visit and receipt of treatment at the second, which in practice can amount to a weeks-long delay;
(3) Mandating that providers tell patients pharmaceutical abortion is reversible and discuss specific complications, both of which PPMT says are false and contradict current medical consensus;
(4) Requiring physicians have a range of credentials that are practically impossible;
(5) Setting reporting requirements that would expose patient and provider information to the public.
(6) Requiring government-created patient consent forms that are stigmatizing and do nothing to further informed consent (Pl.'s Mot. 14–16).

The State responds that that H.B. 171 protects maternal health and permissibly regulates the medical profession by imposing necessary standards. (Defs.' Resp. 15). It cites hemorrhage, infection, and the potential need for uterine aspiration to remove remaining fetal tissue as medical risks justifying the regulation. (*Id.* 15–16). Moreover, the State argues that the FDA has never approved use of mifepristone (the abortion medication) for use as late-term as PPMT provides, and approval of the drug overall is subject to pending federal litigation. (*Id.* 16). As for reversal, the State claims that PPMT "minimizes peer-reviewed research" showing "the promise" of reversal via administration of progesterone. (*Id.* 17).

The government has the burden to show that there are health risks present prior to enactment of the law which are eliminated or reduced under the law's additional regulations. *See Weems*, 2023 MT 82 ¶ 45 ("we analyze the record and consider whether the State provided a meritorious argument that when APRNS perform abortions, there are exacerbated health risks not present when physicians or PAs perform abortions").

The law itself makes legislative findings regarding the "significant medical risks" of

mifepristone and potential need for post-treatment surgical procedures. H.B. 171, 67th Mont. Leg., Reg. Sess. Preamble ¶ 3 (2021). It cites the need to reduce the "devastating psychological consequences" of a woman later regretting her abortion because her decision was not fully informed. *Id.* § 2(4). And it states the need to add "to the sum of medical and public health knowledge" data on chemical abortion through reporting. *Id.* § 2(6). However, construing the facts in the State's favor, the State does not convincingly connect the law's restrictions with its stated interests, nor clearly demonstrate that those interests are compelling.

*First*, the State fails to establish the medical rationale for removing tele-health entirely as an option for abortion services, especially given the substantial burdens the regulation places on patients. The State produced no discovery showing the risks of tele-health administered medication abortion vs. in-person. (Def.'s Resp. to Pls.' First Disc. Req. 47–48). DPHHS, in its role as state health agency, is not aware of any evidence that use of telehealth medication abortions results in complications. (Dec. Graybill, Ex. 24, Dep. of Darci Wiebe 24:10–24). Nor does the Attorney General's Office have any evidence of issues with the standard of care for abortion in Montana. (Dep. Ortley 66:17–24).

Moreover, the State admits that Montana law does not expressly authorize or prohibit tele-health for any other medical procedure (Def.'s Resp. to Pls.' First Disc. Req. 43–44). And the State could not point specifically to any law that requires in-person visits for specific procedures, as required by H.B. 171. (Def.'s Resp. to Pls.' First Disc. Req. 43; Dep. Wiebe 25:5-22). Whatever legislative assertions may be made in the statute, they do not hold up under the undisputed evidence.

*Second*, the burdens introduced by the mandatory in-person visits and 24-hour waiting period infringe the right by impermissibly reducing patients' access to care. The State argued at hearing that these restrictions are reasonable limits to protect a patient from outside undue influence (such as from a partner or family member who wishes them to terminate the pregnancy). (Oral Arg. Hr'g, 22:10–21, 26:20–27:6, Dec. 18, 2023). But the State has not established that patients in Montana are at genuine risk of undue influence. There is no evidence of any other medical procedure in Montana which requires a patient by law to wait 24 hours prior to receiving treatment. (Dep. Harwell 36:18-21). Nor does Montana law require for any other procedure that a provider make "all reasonable efforts" to ensure that a patient returns for a follow-up appointment. (Def.'s Resp. to Pls.' First Disc. Req. 49).

The burdens on care, though, are real. Montana has only seven facilities that provide abortions. (Dep. McNicholas 108:10-109:12). The Court takes judicial notice that the state covers 147,040 square miles. Each facility must therefore cover an average of 21,006 square miles, or an area 145 miles on each side. These facilities are not evenly located, however. Instead, they are concentrated in urban areas, such that many patients must travel several hours for care. (Dep. Dickman 144:14-22, 176:5-16, 188:2-189:12). Those with disabilities or added personal responsibilities face additional burdens. (*Id.*) Delays caused either by in-person visit requirements or mandatory waiting periods, or both, could result in a patient missing the window for medication abortion, thus requiring a procedural abortion,

which typically costs more and requires more time off. (*Id.* 188:2-189:12). These are serious impairments on the right to abortion without clear justification.

*Third*, there is scant evidence that abortion reversal is even possible, and no evidence of a legitimate, recognized health risk which "the promise" of reversibility purports to solve, apart from bare assertions that it furthers informed consent. (Def.'s Resp. 17). The evidence on reversibility is limited to a halted trial, an article that the State's expert cites but did not read, and a non-randomized case series. (Dep. Skop Dep. Vol. 2, 28:16-31:18). 29. The Abortion Pill Rescue Network, whose information must be provided to patients under the law, refers to success statistics that at best represent reversal "starts" as counted by a single case series study conducted by the organization's then-Director. (Dec. Graybill, Ex. 27, Danielle White Heartbeat Int'l 30(b)(6) Depo. Tr.167:8–169:9). Actually completed reversals are not confirmed or counted in the organization's statistics. (*Id.* 205:14-209:16). As for the specific information that must be provided to patients, DPHHS did not consult with any medical providers in developing the information (Dep. Harwell 242:21-25). Construing this evidence in the light most favorable to the State, it is clear that no medical consensus exists to justify invading the patient-provider relationship in this way with forced, unsubstantiated medical advice. *See Armstrong,* ¶ 39.

And even if reversibility were accepted in the medical community, the law lacks basis for infringing the right to abortion grounded in genuine health risks. The State has provided no evidence, and DPHHS's witness confirmed that it has none, that patients seeking medication abortions are unable to provide informed consent. (Dep. Harwell 79:15–18). The only logical explanation for this requirement is that it acts to guilt patients and deter them from making medical decisions which "individuals and organizations promoting their own beliefs" via legislation reject, under the "guise of protecting the patient's health." *Armstrong,* ¶ 60.

*Fourth,* the law wrongly burdens providers, and thus patients, by requiring such extensive credentialling that one major form of abortion would be abolished by impracticality. *Weems v. State* is directly on point. 2023 MT 82, 412 Mont. 132, 529 P.3d 798. In that case, the Montana Supreme Court decided that Advanced Practitioner Nurses were qualified to perform abortions and that a statute preventing them from doing so was unconstitutional. *Id.* ¶ 51. Here, the law takes a different tack—rather than limiting abortion provision to a class of providers, it imposes stringent credentialling requirements that would prevent both APNs and MD's from performing abortions.

While providers must already be credentialled to handle surgical interventions or necessary referral to a provider who can, (Dep. Dickman 173:7-12), H.B. 171 requires credentials which cover such a variety of medical complications unrelated to abortion that it would be impossible for a single physician to obtain. (Dep. Mulcaire-Jones 179:14–23). Providers must be credentialled to handle *any* "adverse physical or psychological condition arising from the performance of an abortion. H.B. 171 § 3(5). The law lists 29 such conditions, including renal failure, pelvic inflammatory disease, metabolic

disorder, shock, subsequent development of breast cancer, *any* psychological condition, coma, and death. *Id.* The Court claims no special medical expertise, but surely a doctor with credentials in all these areas would be among the world's renowned medical experts. This provision of H.B. 171 violates the right to privacy as applied by *Weems.*

*Fifth,* the law imposes provider reporting requirements which appear to serve no government purpose and do not mitigate a *bona fide* health risk. The State has argued that the reporting requirements hold up under the reasoning in *Stand Up Montana.* 2022 MT 153, 409 Mont. 330, 514 P.3d 1062. There, the Montana Supreme Court held that masking requirements imposed on students by public school policy did not violate the right to privacy because they were a form of public health intervention, not forced medical treatment. *Id.* ¶ 15. Here, however, DPHHS has no evidence that the additional reporting requirements would promote public safety and health knowledge. (Dep. Harwell 80:4–8).

More likely, the requirements will harm patient safety and public health. As this Court concluded and the Montana Supreme Court affirmed in the State's appeal of the preliminary injunction, it is very possible that individual patients could be personally identified by the reporting information collected by DPHHS. *Planned Parenthood of Mont. v. State,* 2022 MT 157, ¶ 50, 409 Mont. 378, 515 P.3d 301. Even though the law prohibits publication of patients' names and Social Security numbers, it requires enough demographic information which remains public, that patients in rural areas could be identified by association. *Id.*; Dep. Harwell Dep. 21:15–25, 63:1–64:19. This makes them a potential target for harassment and violates their right to privacy without any medical justification.

*Sixth,* H.B. 171 forces patients to sign an onerous consent form which does not address established health risks and instead harms patients in multiple ways. Again, the State offered no evidence in discovery that abortion patients in Montana lack informed consent in the first place. (Dep. Ortley 92:4-7; Dep. Harwell 79:15–18). Meanwhile, the information required to be present on the form misleads and stigmatizes patients. It suggests that medication abortion is reversible and makes medical claims about reversal, H.B. 171 § 7(f),(h),(i), none of which have been established by medical science, as discussed above. Worse, the form may lead a patient to believe its content has been authored or approved by their medical provider with whom they have a relationship, when in fact the form has not been vetted by any medical provider. (Dep. Harwell 41:18–42:1, 44:19–47:5).

The statute requires that the form must inform the patient that their decision will "result in the death of an unborn child," H.B. 171 § 7(5)(i), a statement that is legally incorrect. *Armstrong* recognizes the right to an abortion pre-viability, and Plaintiffs only perform abortions prior to that point. (Dep. Dickman 117:2–7; Dec. Graybill, Ex. 6, Dep. of Martha Fuller 23:24–24:22). *Ipso facto,* a patient exercising their protected right does so in relation to a fetus which is not viable and cannot be legally considered an "unborn child." Moreover, the implication would suggest to the average lay

patient that they are ending a life tantamount to a criminal act.[1] Such language is, at best, wrong and misleading.

The form further alienates the patient by introducing unfounded suspicion between them and their provider and encouraging the patient to second-guess their own medical decisions. The form must include statements initialed by the patient that they are not being forced to have the abortion, have the choice to continue the pregnancy, and may withdraw consent after beginning treatment. H.B. 171, § 7(5)(j)(ii). It further requires a statement that the patient has a private right of action against the provider if they feel coerced or misled during treatment. *Id.* § 7(5)(j)(x). These statements force a patient to consider their own desired healthcare decision in a negative light before they are allowed to receive treatment and suggest mistrust between the patient and provider without a basis for it.

2. *Whether the law violates Montana's constitutional speech protections.*

Both the Montana Constitution and the U.S. Constitution protect freedom of expression as a fundamental right. U.S. Const., First Amend.; Mont. Const. art. II, § 7. In its free speech jurisprudence, the Montana Supreme Court has adopted the federal principle that it is "axiomatic that the government may not regulate speech based on its substantive content or the message it conveys." *Denke v. Shoemaker*, 2008 MT 418, ¶ 47, 347 Mont. 322,198 P.3d 284 (citing *Rosenberger v. Rector and Visitors of the Univ. of Virg.*, 515 U.S. 819, 828 (1995)). Discrimination based on viewpoint, which occurs when "specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction," is especially egregious. *Id.*; *Griffith v. Butte Sch. Dist. No. 1*, 2010 MT 246, ¶ 46, 358 Mont. 193, 244 P.3d 321.

The provisions of H.B. 171 which require providers to give patients specific information about reversibility and contact information for a third-party advocacy group violate constitutional free speech protections by compelling providers to proffer specific content and endorse a viewpoint. By requiring providers to furnish medical statements which are tenuous and experimental at best, the law creates the appearance that a provider condones medical conclusions which the provider may believe contradict good medical judgment. This undermines the patient-provider relationship and may confuse patients.

Additionally, the requirement appears motivated by a particular perspective—the viewpoint that abortion is wrong. The statute is conspicuously absent of any requirement that providers discuss the potential risks of carrying a pregnancy to term. If the patient's well-being and autonomy were truly the underlying motivations behind the law, why not require providers to discuss all aspects of the decision regarding one's pregnancy, regardless of which decision a patient prefers? Yet the State offers

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[1] Defendant argues that Montana law already recognizes harm to fetuses prior to birth in both its civil and criminal laws. (Def.'s Cross-Mot. 10–11 (citing deliberate homicide code and right of parents to bind unborn children for estate purposes). This argument ignores the fact that the protections afforded under these laws work to safeguard the autonomy of the parent—or compensate for loss of that autonomy—which includes the right to become a parent and to make decisions determining the outcome of a pregnancy.

no evidence that such informed consent discussion is not *already* happening. Dep. Harwell 79:15–18. *Compare* Dec. Graybill, Ex. 5, Pls.' Resp. to Def.'s First Disc. Req 18-19, 38-39 (plaintiffs already engage in informed consent through forms, counseling, questioning, and risk assessment). Instead, the law substitutes its own judgment and viewpoint for that of medical providers, a violation of the Montana Constitution.

*3. Whether the law is unconstitutionally vague.*

As noted above, statutes must provide a person of "ordinary intelligence" enough fair notice that their conduct would be forbidden, *State v. Woods*, 221 Mont. 17, 22, 716 P.2d 624, 627 (1986), so that one is not left to "speculate as to whether [their] contemplated course of action may be subject to criminal penalties." *State v. Conrad*, 197 Mont. 406, 412, 643 P.2d 239, 243 (1982). The Montana Supreme Court has held that reasonableness standards in criminal statutes are unconstitutionally vague. *State v. Stanko*, 1998 MT 321, 292 Mont. 192, 974 P.2d 1132.

H.B. 171 imposes harsh criminal penalties on any person, excepting the patient themselves, who knowingly or negligently violates any provision of the law. § 11. In relevant part, it requires providers to make "all reasonable efforts" to ensure patients return for their follow-up appointment. *Id.* § 5(3). It also defines "complications" for purposes of its provider credentialling requirements to broadly include "any adverse psychological or psychical condition arising from performance of an abortion." *Id.* § 3(5).

Both of these requirements violate the void for vagueness standards and cannot have criminal liability attached. It is impossible for a provider to know with any certainty what would constitute reasonable efforts in ensuring a patient returns for follow up. The law offers no guidance on this point and the evidence points to no known standards which physicians would apply to themselves (if indeed standards for such a bizarre requirement would ever exist). It is equally impossible for a provider to guess with any certainty as to which universe of complication credentialing they must possess, since the law's definition points to nearly every malady under the sun. Nor can a provider anticipate whether future medical symptoms will have arisen from the abortion with sufficient notice to determine criminal liability.

**D. H.B. 140—ultrasounds and fetal heart tone listening**

H.B. 140 violates two fundamental rights. It infringes the right to privacy by requiring providers to offer medical interventions which may violate their own best judgment, without basis in generally-accepted medical consensus, and potentially stigmatizes patients in the process. Moreover, because it compels providers to make certain offers in treatment, it violates their rights to freedom of expression.

*1. Whether the law violates the right to privacy.*

PPMT claims that H.B. 140 violates the right protected by *Armstrong* by requiring providers

to offer an active (or "live") ultrasound, an image-captured ultrasound, and the opportunity to listen to the "fetal heart tone." (Pls.' Mot. 19). According to PPMT, the State has offered no safety justification for these requirements, and their mandatory imposition would contradict a provider's best judgment in certain cases (like rape or incest). (*Id.*). Additionally, PPMT argues that the mandatory waiver form, which patients must sign in order to decline the offers, violates the right to privacy because it serves no medical interest and is not even collected by the State. (*Id.*).

In opposition, the State claims that the mandatory offers contribute to "voluntary informed consent" which is "vital to any non-medical procedure to avoid a battery." (Def.'s Resp. 14). It also avers that Plaintiffs already offer ultrasounds and would offer a patient the opportunity to hear the fetal heart sound if requested. (Depo. Dickman, 122:8–15).

Based on the uncontested facts, H.B. 140 does not withstand scrutiny. The State makes bare assertions about informed consent, but points to no specific facts to support that claim, nor any evidence that patients in Montana lack informed consent in abortion treatment. (Def.' Resp. 14; Dep. Ortley 65:6–14). *And see* Mont. R. Civ. P. 56(e)(2) (on summary judgment, parties must set out specific facts beyond mere denial, speculation, or allegations in the pleadings). There is no medical consensus that fetal heart tone listening is a medically necessary component of clinical decision-making related to abortion. (Dep. Dickman 122:13–19, 128:4–7). To the extent that an ultrasound is necessary, as the State contends, it appears that Plaintiffs already utilize ultrasounds. (*Id.* 121:15-122:19, 125:6-21, 180:11-20**) That decision, however, is best left to a patient and provider, relying on the provider's best medical judgment, not to a rigid statutory requirement.

It is undisputed that the State does not actually collect the forms required by H.B. 140; they are only to be kept in the patient's file. (Dep. Harwell 63:25-64:19). The purpose of that requirement, therefore, seems to be focused on making the patient second-guess their decision to decline. Montana law does not require that patients who wish to see their pregnancy to term, by comparison, be offered the opportunity for either an ultrasound or fetal heart tone listening. (*Id.* 86:20-23). Because the ultrasound and fetal heart tone requirements do not correspond to *bona fide* health risks and only apply if a patient decides to terminate a pregnancy, the Court is left with the strong impression that the law aims to advance the ulterior motive of discouraging abortion. That is unacceptable under the law. *See Armstrong*, ¶ 60.

2. *Whether the law violates Montana's constitutional speech protections.*

The State does not dispute PPMT's claim that H.B. 140 violates constitutional speech protections, particularly those against compelled speech, nor does it dispute any of the material facts necessary to PPMT's claim. Accordingly, the Court finds that H.B. 140 violates Article II, Section 7 of the Montana Constitution and the First Amendment of the U.S. Constitution by mandating providers to make offers of specific medical procedures to patients, thus compelling them to "change the content of [their] speech or even say something where [they] would otherwise be silent." *Stuart v. Camnitz*,

774 F.3d 238, 246 (4th Cir. 2014) (citing *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988)).

**E. Severability**

Given the above, the final task for this Court is to determine whether any provisions contained in the three laws at issue can be severed from the unconstitutional provisions and remain in force. As a general rule, courts attempt to construe statutes in a manner that avoids unconstitutional interpretation whenever possible. *State v. Samples*, 2008 MT 416, ¶ 14, 347 Mont. 292, 198 P.3d 803. If a law contains both constitutional and unconstitutional provisions, courts examine the legislation to determine if there is a severability clause. *Williams v. Bd. of Cnty. Comm'rs of Missoula Cnty.*, 2013 MT 243, ¶ 64, 371 Mont. 356, 376, 308 P.3d 88, 101. Inclusion of such a clause indicates that the legislative drafters desired courts to apply a policy of judicial severability to the legislation. *Sheehy v. Public Employees Retirement Div.*, 262 Mont. 129, 141, 864 P.2d 762, 770 (1993). Absent a severability clause, the court determines whether "the unconstitutional provisions are necessary for the integrity of the law or were an inducement for its enactment." *Finke v. State ex rel. McGrath*, 2003 MT 48, ¶ 25, 314 Mont. 314, 65 P.3d 576.

If a court finds an invalid part of a statute is severable from the rest, "the portion which is constitutional may stand while that which is unconstitutional is stricken out and rejected." *Mont. Auto. Ass'n v. Greely*, 193 Mont. 378, 399, 632 P.2d 300, 311 (1981). However, the remainder must be complete in itself and executable in accordance with the apparent legislative intent, such that "removing the offending provisions will not frustrate the purpose or disrupt the integrity of the law." *Williams*, ¶ 64.

H.B. 136 does not contain a severability clause. The bill's core purpose is to limit abortion from the time it declares a fetus can feel pain, which it defines as 20 weeks probable gestational age. H.B. 136, Preamble, ¶ 7 ("the state asserts a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain"). It imposes civil and criminal penalties on those in violation. Since the Court finds that both the law's limit on abortion and its purported justification are unconstitutional, the entirety of the statute is void.

H.B. 171 does contain a severability clause, in Section 16. The intent of the bill is to limit medication-assisted abortion to in-person treatment and place a series of regulatory requirements on both patients and providers, designed to define informed consent for patients, inform them about experimental reversibility procedures, and collect detailed data on abortion in Montana. H.B. 171 § 2. The Court finds all the major requirements of the law unconstitutional. Specifically, portions of Section 3 and all of Sections 5, 7, 8, 9, and 10 are void. Section 11 is void to the extent applicable to vague

criminal standards. Because the remaining provisions are minor, would not be executable standing on their own, and destroy the integrity of the bill, the entirety of the statute is void.

H.B. 140 does not contain a severability clause. Because the Court finds no medical basis for any of its requirements and that each improperly invades the right to privacy, the entirety of the statute is void.

## CONCLUSION AND ORDER

Montana courts have consistently recognized that the Montana Constitution codifies a dearly and long-held belief in the right to manage and care for one's own affairs, including and especially one's body. *Gryczan v. State*, 283 Mont. 433, 448, 942 P.2d 112, 121 (1997). Despite Defendant's assertions at bar that application of the privacy right to abortion is "unenumerated" and "judicially-invented," (Def.'s Cross-Mot. 12–13), the right remains "deeply rooted" in our state's governing tradition—and indeed the whole of Western governance. *See* Mont. Const. Convention, Verbatim Tr., Vol. 5 1681–82 (1972) (statement by Deleg. Dahood) (describing privacy as "the most important right of them all...amply defined in case after case...thought it has not been expressly stated in the [1889] Montana Constitution"); Larry M. Elison & Dennis Nettik Simmons, *Right of Privacy*, 48 Mont. L. Rev. 1, 1 (1987) ("from caves to castles, from phone booths to prison cells, the urge to be 'let alone' is evident"); *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting) ("the makers of our Constitution...conferred, as against the government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men"); John Locke, *Second Treatise of Gov.'t*, ch. 5, § 27 (1690) ("though the earth, and all inferior creatures, be common to all men, yet every man has a property in his own person: this no body has any right to but himself" [*sic*]).

Of course the right to privacy is not an iron wall. Mont. Const. Convention, Verbatim Tr., Vol. 5 1681 (statement of Deleg. Campbell) (describing "semipermeable...separation between individual and state"). Compelling interests, grounded in genuine medical risks and narrowly tailored, may be grounds for the state to lawfully infringe that right. *Weems v. State*, 2023 MT 82, ¶¶ 43–44, 412 Mont. 132, 529 P.3d 798. But such regulation must arise from the professional judgment of the medical community. It is not up to legislators to substitute their "personal values and beliefs" for the "collective professional judgment and expertise" of properly-licensed medical providers. *Armstrong v. State*, 1999 MT 261, ¶ 15, 296 Mont. 361, 989 P.2d 364.

Yet the three laws at issue here attempt to do just that. Under the guise of concern for the patient, they invade the private "treatment room," imposing severe burdens on both without clear justification supported by credible evidence. *Id.* ¶ 61. In so doing, they exert a form of "unrelenting pressure" on providers which *Armstrong* found "intellectually and morally indefensible." *Id.* ¶ 60. Worse, the laws have the practical effect of inhibiting—or outright preventing—access to care for some of the most "intimate and personal" choices, *id.* ¶ 47, rendering moral judgment on patients by subtly

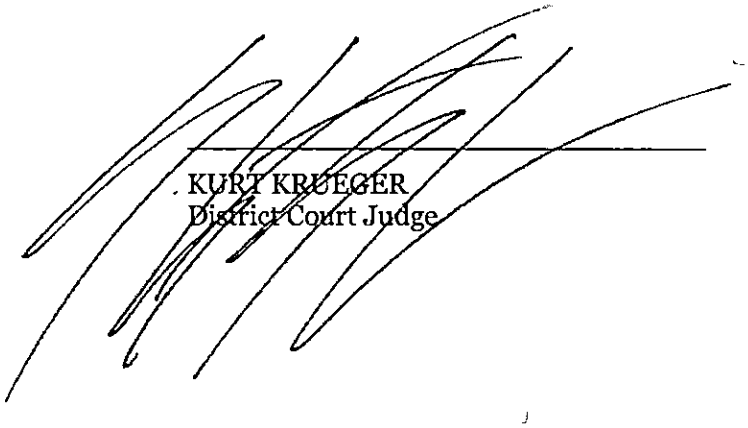
stigmatizing already-difficult decisions. The Court finds all three laws incompatible with the text of the Montana Constitution and values it recognizes, and therefore deems them void and unenforceable.

Based on the foregoing, it is hereby:

**ORDERED** that Plaintiffs' *Motion for Summary Judgment* is **GRANTED** and Defendants' *Cross-Motion* is **DENIED.**

**ORDERED** that H.B. 136, H.B. 140, and H.B. 171 are void in their entirety and enforcement is **PERMANENTLY ENJOINED.**

DATED this 29th day of February, 2024.



KURT KRUEGER
District Court Judge