IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 18-0308

STATE OF MONTANA, by and through Timothy C. Fox, in his official capacity as Attorney General; and ED CORRIGAN, in his official capacity as the County Attorney for Flathead County,

Defendants and Appellants,

v.

HELEN WEEMS and JANE DOE,

Plaintiffs and Appellees.

BRIEF OF APPELLANTS

On Appeal from the Montana First Judicial District Court, Lewis and Clark County, The Honorable Mike Menahan, Presiding

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STATEMENT OF THE ISSUES

1. Whether the district court's issuance of a preliminary injunction constituted an impermissible advisory opinion on a non-justiciable issue on which the court lacked jurisdiction.

2. Whether the district court erred in granting a preliminary injunction that neither prevented irreparable harm nor preserved the status quo.

STATEMENT OF THE CASE

Two Advanced Practice Registered Nurses ("APRNs") Helen Weems and Jane Doe filed suit in the Montana First Judicial District Court challenging the constitutionality of Mont. Code Ann. § 50-20-109(1)(a), which provides that abortions can be provided only by licensed physicians and physician assistants. Compl. for Decl. & Inj. Relief ("Compl.") at 2 (Jan. 31, 2018). Weems also moved for a preliminary injunction, requesting the court to enjoin the State from enforcing the challenged statute against APRNs pending final disposition. Pls.' Mot. for Prelim. Inj. at 2 (Jan. 30, 2018).

The district court heard oral argument on the Motion for Preliminary Injunction on March 9, 2018. The hearing was limited to

arguments of counsel. Neither party offered testimony or documentary evidence at the hearing.

On April 4, 2018, the district court issued its Order on Motion for Preliminary Injunction (App. Doc. 1) granting the injunction, based on two assumptions: 1) that "the Board of Nursing will conclude Weems and other APRNs may provide abortion care as within their scope of practice;" and 2) that at some point, the APRNs will receive training sufficient to render them competent to perform abortions.

This appeal followed.

STATEMENT OF THE FACTS

Appellees Helen Weems and Jane Doe are APRNs. Compl. at 2. APRNs are registered professional nurses who have completed educational requirements related to the nurses' specific practice role, in addition to basic nursing education, as specified by the Montana Board of Nursing. Mont. Code Ann. § 37-8-102(1). Montana recognizes four APRN areas of specialization: (a) Certified Nurse Practitioner (CNP); (b) Certified Nurse Midwife (CNM); (c) Certified Registered Nurse

Anesthetist (CRNA); and (d) Clinical Nurse Specialist (CNS). Mont. Admin. R. 24.159.301(2). Weems is a CPN; Doe is a CNM.

Weems co-owns a clinic in Whitefish that provides abortions. Weems and Physician Assistant Cahill are the clinic's health care providers. Aff. of Helen Weems at 3 (Jan. 24, 2018).

Weems acknowledges she lacks the requisite training necessary to become an "abortion provider." *Id.* at 6.

Doe is a midwife who wishes to perform abortions. Decl. of Jane Doe at 2 (Jan. 24, 2018). However, she has declared that "[t]he health care system in which I currently practice does not permit abortions to be performed." *Id.* at 3.

I. APRN General Scope of Practice

The Montana Board of Nursing has promulgated Mont. Admin. R. 24.159.1406, which establishes the scope of APRN practice generally, as follows:

> (1) The APRN licensed in Montana may only practice in the role and population focus in which the APRN has current national certification. APRN practice is an independent and/or collaborative practice and may include:
>
> (a) establishing medical and nursing diagnoses, treating, and managing patients with acute and chronic illnesses and diseases; and

(b) providing initial, ongoing, and comprehensive care, including:

(i) physical examinations, health assessments, and/or other screening activities;

(ii) prescribing legend and controlled substances when prescriptive authority is successfully applied for and obtained;

(iii) ordering durable medical equipment, diagnostic treatments and therapeutic modalities, laboratory imaging and diagnostic tests, and supportive services, including, but not limited to, home healthcare, hospice, and physical and occupational therapy;

(iv) receiving and interpreting results of laboratory, imaging, and/or diagnostic studies;

(v) working with clients to promote their understanding of and compliance with therapeutic regimens;

(vi) providing instruction and counseling to individuals, families, and groups in the areas of health promotion, disease prevention, and maintenance, including involving such persons in planning for their health care; and

(vii) working in collaboration with other health care providers and agencies to provide and, where appropriate, coordinate services to individuals and families.

The foregoing general Scope of Practice of APRNs does not include abortions or any abortion-related services.

II. APRN-Certified Nurse Practitioners' scope of practice

In addition to the above general scope of practice established for all APRNs by the Montana Board of Nursing, Mont. Admin.

R. 24.159.1406 also provides that APRNs licensed in Montana "may only practice in the role and population focus in which the APRN has current national certification."

Helen Weems is a Certified Nurse Practitioner whose scope of practice is more specifically defined by the American Association of Nurse Practitioners ("AANP"), a professional organization recognized by the Montana Board of Nursing as providing the "scope and standards of practice" for Certified Nurse Practitioners. Supp. Aff. of Helen Weems at 2 (Mar. 5, 2018); Decl. of Patrick Risken, Ex. A (Feb. 23, 2018). The AANP document titled "Scope of Practice for Nurse Practitioners" describes the professional role of a Certified Nurse Practitioner as follows:

> Nurse Practitioners (NPs) are licensed, independent practitioners who practice in ambulatory, acute and long-term care as primary and/or specialty care providers. Nurse practitioners assess, diagnose, treat, and manage acute episodic and chronic illnesses. NPs are experts in health promotion and disease prevention. They order, conduct, supervise, and interpret diagnostic and laboratory tests, prescribe pharmacological agents and non-pharmacologic therapies, as well as teach and counsel patients, among other services.
>
> As licensed, independent clinicians, NPs practice autonomously and in coordination with health care professionals and other individuals. They may serve as

> health care researchers, interdisciplinary consultants, and patient advocates. NPs provide a wide-range of health care services to individuals, families, groups, and communities.

Decl. of Patrick Risken, Ex. B (included as App. Doc. 2 for convenience of the Court and counsel).

The foregoing Scope of Practice of APRN-Certified Nurse Practitioners, such as Helen Weems, does not authorize Nurse Practitioners to provide abortions or any abortion-related services of any kind.

III. APRN-Certified Nurse-Midwives' scope of practice

Appellee Jane Doe is an APRN-Certified Nurse Midwife. The Montana Board of Nursing recognizes the American College of Nurse Midwives ("ACNM") as the professional organization establishing the scope of practice of Certified Nurse Midwives. Decl. of Patrick Risken, Ex. A. (App. Doc. 2). The ACNM document titled "Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives," attached to App. Doc. 2, provides in relevant part:

> Midwifery as practiced by certified nurse-midwives (CNMs®) and certified midwives (CMs®) encompasses a full range of primary health care services for women from adolescence beyond menopause. These services include primary care, gynecologic and family planning services, preconception

> care, care during pregnancy, childbirth and the postpartum period, care of the normal newborn during the first 28 days of life, and treatment of male partners for sexually transmitted infections. Midwives provide initial and ongoing comprehensive assessment, diagnosis and treatment. They conduct physical examinations; prescribe medications including controlled substances and contraceptive methods; admit, manage and discharge patients; order and interpret laboratory and diagnostic tests and order the use of medical devices. Midwifery care also includes health promotion, disease prevention, and individualized wellness education and counseling. These services are provided in partnership with women and families in diverse settings such as ambulatory care clinics, private offices, community and public health systems, homes, hospitals and birth centers.

Id.

The foregoing Scope of Practice of APRN-Certified Nurse Midwives, such as Jane Doe, does not include the provision of abortions or any abortion-related services of any kind.

STANDARDS OF REVIEW

I. The rational basis test applies to Weems and Doe's claims because abortion is outside the scope of Weems and Doe's practice.

Patients of Weems and Doe have a fundamental right to obtain medical care from a health care provider who has been determined by the appropriate medical examining and licensing authority to be

competent to provide such care. *See Armstrong v. State*, 1999 MT 261, ¶ 75, 296 Mont. 361, 989 P.2d 364. Any governmental infringement on this right would indeed be subject to strict scrutiny. Those patients do not, however, have a fundamental right to obtain a medical procedure outside the scope of practice of their chosen health care provider who is not competent to perform the procedure. *Wiser v. State*, 2006 MT 20, ¶ 16, 331 Mont. 28, 129 P.3d 133. Therefore, governmental infringement on a patient's right in such circumstances is permissible if it is rationally related to a legitimate state interest.

The Montana Supreme Court recognized this vitally important distinction in *Wiser*. There, denture patients and denturists brought suit challenging an administrative rule, the so-called Partial Denture Rule, which required denturists to refer partial denture patients to dentists. *Id.*, ¶¶ 9-12. Relying on *Armstrong*, the denturist patients asserted that the Partial Denture Rule violated their fundamental right of privacy by restricting their choice of provider. *Id.*, ¶ 14. Denturists, however, were not licensed to independently provide partial denture services. Consequently, the Court in *Wiser* rejected the denturist patients' argument and explained that *Armstrong* held the right to

choose one's health care provider is limited to "a chosen health care provider who has been determined 'competent' by the medical community and 'licensed' to perform the procedure desired." *Id.*, ¶ 16.

In the present case, neither Weems nor Doe has been licensed to perform abortions. (Indeed, the district court expressly recognized Weems is not currently competent. *See* App. Doc. 1 at 3. Thus, under *Armstrong* and *Wiser*, the patients of Weems and Doe do not have a fundamental right to choose Weems or Doe to perform their abortions. Because fundamental rights are not implicated, it necessarily follows that the rational basis test—not strict scrutiny—applies to the claims in this case.

II. Issues of justiciability are subject to a *de novo* standard of review.

Issues of justiciability—such as standing, mootness, ripeness, and political question—are questions of law, for which the Court's review is *de novo*. *Reichert v. State*, 2012 MT 111, ¶¶ 19-20, 365 Mont. 92, 278 P.3d 455 (citing *Northfield Ins. v. Mont. Ass'n. of Counties*, 2000 MT 256, ¶ 8, 301 Mont. 472, 10 P.3d 813 ("District court's ruling on whether a justiciable controversy exists is a conclusion of law."); *Columbia Falls*

Elementary Sch. Dist. No. 6 v. State, 2005 MT 69, ¶ 12, 326 Mont. 304, 109 P.3d 257 ("Whether an issue presents a non-justiciable political question is a legal conclusion that this Court reviews de novo."); *Montana State Fund v. Simms*, 2012 MT 22, ¶ 14, 364 Mont. 14, 270 P.3d 64 ("A district court's determination regarding standing presents a question of law which we review de novo for correctness.").

III. A grant of a preliminary injunction is reviewed for manifest abuse of discretion.

The Montana Supreme Court generally reviews a district court's decision to grant a preliminary injunction for a manifest abuse of discretion, one that is obvious, evident, or unmistakable. *Citizens for Balanced Use v. Maurier*, 2013 MT 166, ¶ 9, 370 Mont. 410, 303 P.3d 794 (citations and quotations omitted). To the extent that a preliminary injunction is based upon an interpretation of law, the district court's conclusions of law are reviewed to determine whether they are correct. *Id.*

SUMMARY OF THE ARGUMENT

The right of "procreative autonomy" does not include the right to obtain an abortion from a nurse who acknowledges she lacks the training necessary to be competent to perform the procedure; and is not licensed to perform it. Nor does the right of procreative autonomy encompass the right to obtain a procedure outside the nurse's expressly defined Scope of Practice. Indeed, Weems and Doe lack standing to bring such non-justiciable claims which are on their face, not ripe for review. Yet such purported right to procreative autonomy was the basis for the district court's erroneous finding the requisite irreparable harm necessitating injunctive relief.

Moreover, even assuming Weems and Doe had standing, the advisory preliminary injunction issued by the district court fails to prevent any irreparable harm and fails to preserve the status quo.

ARGUMENT

The district court committed reversible error in granting its "advisory preliminary injunction" based on the court's speculation that currently unqualified Advanced Practice Registered Nurses (APRNs) may, in the future, become adequately trained to perform abortions,

and further speculation that the Montana Board of Nursing may, in the future, add abortion to the Scope of Practice of APRNs. Consequently, Weems and Doe lack standing to seek—and the district court lacked jurisdiction to grant—preliminary injunctive relief. Moreover, they fail to present a justiciable controversy because (1) by their own admission, they lack sufficient training necessary to perform abortions; and (2) abortion is not within their scope of practice.

I. The district court lacked jurisdiction to issue the preliminary injunction because the court's ruling is an impermissible advisory opinion on a non-justiciable issue.

The judicial power of Montana's courts is limited to justiciable controversies. *Arnone v. City of Bozeman*, 2016 MT 184, ¶ 7, 384 Mont. 250, 376 P.3d 786. Consequently, the Montana Supreme Court has consistently refused to render advisory opinions. *Id.* Furthermore, Montana courts lack adjudicatory power to render an opinion advising what the law would be upon a hypothetical state of facts, or upon an abstract proposition. *Id.* Yet such an advisory opinion is precisely what Weems and Doe sought, and the district court below delivered.

The district court observed, hypothetically, "***[f]or the purposes of argument***, and for clarity, the remainder of this Order assumes the Board of Nursing will conclude Weems and other APRNs may provide abortion care as within their scope of practice." App. Doc. 1 at 3-4 (emphasis added). This statement reveals the hypothetical nature of the advisory injunction, insofar as it reflects the district court's recognition that the Montana Board of Nursing has not formally included abortion within the scope of Weems or other APRNs' practice. Consequently, the lower court ruling was improperly predicated on a speculative hypothetical considered merely for the sake of argument.

Weems might indeed complete her abortion training. Or she might not. Doe might commence working in a health care system that permits abortions. Or she might not. Similarly, the Board of Nursing might, in the future, attempt to add abortion to the APRN general scope of practice regulation: Mont. Admin. R. 24.159.1406. Or the Board might not. Or perhaps the approved national professional organizations for APRNs might expressly add abortion to their Scope of Practice documents. Or they might not. Nonetheless, the district court issued its advisory preliminary injunction based on these speculative assumptions

and hypotheticals which might or might not occur in the indeterminate future.

The test of whether a justiciable controversy exists contains three elements:

> First, a justiciable controversy requires that parties have existing and genuine, as distinguished from theoretical, rights or interest. Second, the controversy must be one upon which the judgment of the court may effectively operate, as distinguished from a debate or argument invoking a purely political, administrative, philosophical or academic conclusion. Third, it must be a controversy the judicial determination of which will have the effect of a final judgment in law or decree in equity upon the rights, status or legal relationships of one or more of the real parties in interest, or lacking these qualities be of such overriding public moment as to constitute the legal equivalent of all of them.

Northfield Ins. v. Montana Ass'n of Counties, 2000 MT 256, ¶ 12, 301 Mont. 472, 10 P.3d 813 (citations omitted).

As to the first element, women seeking abortions do not have a currently existing right to have their abortions performed by Weems or Doe. *See Wiser,* ¶ 16 (recognizing that patients have no right to obtain a medical procedure outside the scope of practice of their chosen health care provider, where the provider is not licensed or competent to perform the procedure).

This ends the inquiry. No justiciable controversy exists. As for the second and third elements, the advisory injunction of the district court did not "effectively operate;" *i.e.*, it did not have any practical effect on a woman's purported right to an abortion performed by an APRN, or resolve the rights of the parties, because the court below recognized that would require additional action by the Montana Board of Nursing.

A. Neither Weems nor Doe has standing to challenge Mont. Code Ann. § 50-20-109(1)(a) because abortion is outside their scope of practice.

The question of standing "addresses whether a litigant is entitled to have the court decide the merits of a particular dispute." *Enz v. Raelund*, 2018 MT 134, ¶ 50, 391 Mont. 406, 419 P.3d 674. Standing involves the issue of whether the litigant is a proper party to seek adjudication of a particular issue. *Id.* More specifically,

> [i]n federal jurisprudence, the irreducible constitutional minimum of standing has three elements: injury in fact (a concrete harm that is actual or imminent, not conjectural or hypothetical), causation (a fairly traceable connection between the injury and the conduct complained of), and redressability (a likelihood that the requested relief will redress the alleged injury).

Heffernan v. Missoula City Council, 2011 MT 91, ¶ 32, 360 Mont. 207, 255 P.3d 80 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61

(1992); and *Steel Co. v. Citizens for a Better Env.*, 523 U.S. 83, 103 (1998) (quotations omitted).

Here, at least two of the requirements essential for standing are absent: injury in fact and redressability. The claimed "injury in fact" or "concrete harm" is an alleged infringement on the right of procreative autonomy arising from the statute prohibiting Weems and Doe from performing abortions. As of the issuance of the advisory preliminary injunction, such harm was indeed conjectural and hypothetical because neither Weems nor Doe were competent or authorized by their scope of practice to perform abortions, ***irrespective of the statute.***

Standing is also lacking because the requested relief does not redress the alleged injury. As applied to the present case, the grant of the injunction did not permit the APRNs to commence performing abortions. The injunction did not cure their acknowledged lack of competence to perform abortions; nor did it interject abortion into the APRNs' clearly defined Scope of Practice. Those two impediments remain, notwithstanding the injunction. Therefore, the injunction did not redress the claimed injury.

The consequence of Weems and Doe's lack of standing is to effectively divest the district court of jurisdiction, or power, to resolve their issue.[1] *See Ballas v. Missoula City Bd. of Adjustment*, 2007 MT 299, ¶ 16, 340 Mont. 56, 172 P.3d 1232. As the Court stated in *In re Parenting of D.A.H,* a court "that would otherwise have jurisdiction to hear and decide a matter will not have jurisdiction if a person without standing attempts to bring the action." 2005 MT 68, ¶ 8, 326 Mont. 296, 109 P.3d 247; *see also Edwards v. Burke*, 2004 MT 350, ¶ 22, 324 Mont. 358, 102 P.3d 1271 (case dismissed for lack of jurisdiction based on party's lack of standing).

B. Weems and Doe's request for a preliminary injunction were not ripe for adjudication.

Furthermore, for the reasons addressed above, the APRNs' claims are simply not ripe for adjudication at this juncture. As the Court recognized in *Qwest v. PSC*, "[t]he ripeness doctrine is a principle of law, grounded in the federal constitution as well as in judicial prudence,

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[1] It should be noted that this is *not* a *subject matter* jurisdiction issue. Rather, the district court lacked the power to resolve the case because parties lacking standing, such as the APRNs here, can present no actual case or controversy, not because the court has been divested of its subject matter jurisdiction.

that requires an actual, present controversy, and therefore a court will not act when the legal issue raised is only hypothetical or the existence of a controversy merely speculative." *Qwest Corp. v. Montana Dep't of Pub. Serv. Regulation*, 2007 MT 350, ¶ 19, 340 Mont. 309, 174 P.3d 496 (citations and quotations omitted). Moreover, "[t]he ripeness requirement is designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Id.*

As described more fully above, the advisory injunction in the present case does not involve a "present controversy" because the APRNs lack the competence and the Board of Nursing has not affirmatively included abortion within the scope of APRN practice. The district court speculated the Board will, but the Board has not. Thus, the district court entangled itself in an abstract disagreement over a hypothetical administrative policy, which is precisely what the ripeness doctrine forbids.

II. Even if Weems and Doe had raised a justiciable controversy, they were not entitled to injunctive relief because the advisory injunction did not prevent irreparable harm; nor did it preserve the status quo.

A. The advisory injunction prevented no irreparable harm.

The district court's advisory preliminary injunction order enjoins the State "from enforcing Montana Code Annotated § 50-20-109(1)(a) against Helen Weems and Jane Doe, pending a final disposition in this litigation." Order on Mot. for Prelim. Inj. at 7 (Apr. 4, 2018) (App. Doc. 1). However, the district court also expressly recognized that "Weems has not completed her training in abortion care," ***and is not, at this juncture, competent to provide abortion services***. *Id.* at 3 (emphasis added). Similarly, Doe has stated that "[t]he health care system in which I currently practice does not permit abortions to be performed." Decl. of Jane Doe at 3. Even if she obtains adequate training, and even if the Board of Nursing ultimately includes abortion within her scope of practice, Doe cannot perform abortions in the health care system where she currently practices. Thus, the court's advisory injunction provided no relief or remedy to any perceived harm—irreparable or otherwise—of Weems and Doe, or their patients.

The district court erroneously found irreparable harm arising from the "loss" of a constitutional right. Order at 4 (App. Doc. 1). The right theoretically lost is presumably Weems' patients' right of "procreative autonomy" found within the right of privacy set forth in Article II, section 10 of the Montana Constitution; *i.e.*, a woman's right to obtain a medical procedure from the qualified health care provider of her choice. *See Armstrong v. State*, 1999 MT 261, ¶ 75, 296 Mont. 361, 989 P.2d 364. The flaw in the district court's reasoning arises from its misreading of the scope of such procreative autonomy in *Armstrong*. There, the Court took care to define "health care provider" as follows:

> In the context of this opinion, we use the generic term "health care provider" to refer to any physician, physician assistant-certified, nurse, nurse-practitioner or other professional who has been determined by the appropriate medical examining and licensing authority to be competent by reason of education, training or experience, to perform the particular medical procedure or category of procedures at issue or to provide the particular medical service or category of services which the patient seeks from the health care provider.

Armstrong, ¶ 2, n.1. In *Armstrong*, the Board of Medical Examiners had previously expressly determined that Physician Assistant Cahill was competent to perform abortions (*i.e.*, that abortion was properly within Cahill's scope of practice). In contrast to Cahill in the *Armstrong* case, a

patient of Helen Weems has no more right to have Ms. Weems perform her abortion than a chiropractic patient has a right to have her chiropractor perform her abortion.

B. The advisory injunction upended the status quo.

The Montana Supreme Court recently stated in *Davis v. Westphal*, "[i]n considering whether to issue a preliminary injunction on any of the grounds enumerated in Mont. Code Ann. § 27-19-201, the court must exercise its discretion only in furtherance of the limited purpose of preliminary injunctions ***to preserve the status quo*** and minimize the harm to all parties pending final resolution on the merits." 2017 MT 276, ¶ 24, 389 Mont. 251, 405 P.3d 73 (*citing Porter v. K & S Partnership*, 192 Mont. 175, 183, 627 P.2d 836, 840 (1981) (emphasis added)); *see also Yockey v. Kearns Props.*, 2005 MT 27, ¶ 18, 326 Mont. 28, 106 P.3d 1185 ("The limited function of a preliminary injunction is to preserve the status quo and to minimize the harm to all parties pending full trial."). The court's function at this state of the proceedings is "to decide whether a sufficient case had been presented so as to justify preserving the status quo until trial, and nothing more." *Yockey*, ¶ 20.

The "status quo" is "the last actual, peaceable, [un]contested condition" preceding the controversy at issue. *Davis*, ¶ 24 (citing *Porter*, 192 Mont. at 181, 627 P.2d at 8390. The district court's advisory preliminary injunction in the present case turned this principle on its head. As applied to the present case, the status quo preceding the controversy at issue here is that only licensed physicians or physician assistants can lawfully perform abortions in Montana. *See* Mont. Code Ann. § 50-20-109(1)(a).

Again, *Armstrong v. State* is instructive on the status quo issue. There, a Physician Assistant (PA) had legally performed approximately 3,000 abortions under the supervision of a licensed physician since 1983, with the prior express authorization of the PA's licensing authority; *i.e.*, the Montana Board of Medical Examiners. *Armstrong,* ¶ 64. Then the 1995 Montana Legislature subsequently passed HB 442, prohibiting all non-physicians, including PAs, from performing abortions. *Id.,* ¶ 25. The PA filed suit challenging the HB 442, and requested a preliminary injunction against enforcement pending final disposition. *See Armstrong v. State*, 1997 Mont. Dist. LEXIS 810 (Nov. 25, 1997).

First Judicial District Court Judge Sherlock granted the preliminary injunction, reasoning that "[t]his injunction merely maintains a status quo that has existed for 20 years. . . [and] [a]ll this Court is saying is that the status quo should be maintained as it relates to Plaintiffs Cahill and Armstrong." *Id.* at *17-18. There, the "status quo" was the PA's ability and long-standing practice of providing abortions as previously expressly authorized by the Montana Board of Medical Examiners. Here, the "status quo" is precisely the opposite: APRNs generally, and Weems and Doe in particular, have not been expressly authorized by their licensing authority to perform abortions. And unlike the PA in *Armstrong*, neither Weems nor Doe has been engaged in the practice of providing abortions.

Had the district court below applied Judge Sherlock's status quo reasoning, as well as the Montana Supreme Court's consistent analysis, the district court in the present case would have rendered the correct decision and denied the injunction.

CONCLUSION

For the foregoing reasons, Defendants and Appellants, the State of Montana, by and through Timothy C. Fox, in his official capacity as Attorney General; and Ed Corrigan, in his official capacity as the County Attorney for Flathead County, respectfully request the Court to reverse the injunction decision of the district court, and remand with instructions that the Order on Motion for Preliminary Injunction (April 4, 2018), be vacated in its entirety.

Respectfully submitted September 17, 2018.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 4,478 words, excluding certificate of service and certificate of compliance.

/s/ Rob Cameron
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CERTIFICATE OF SERVICE

I, Robert Cameron, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 09-17-2018:

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