

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 25-0602

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

Plaintiffs and Appellees/Cross-Appellants,

v.

STATE OF MONTANA; MONTANA DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES; and CHARLIE BRERETON, in
his official capacity as Director of the Department of Public Health
and Human Services,

Defendants and Appellants/Cross-Appellees.

APPELLANTS' OPENING BRIEF

On Appeal from the Montana First Judicial District Court
Lewis and Clark County Cause No. ADV-2023-299
The Honorable Mike Menahan, Presiding

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STATEMENT OF THE ISSUES

1. Does the Montana Constitution’s right to privacy confer a funding entitlement because the State participates in a federal medical financial assistance program?

2. Does the Montana Constitution’s right to abortion confer a funding entitlement because the State participates in a federal medical financial assistance program?

3. Can a constitutional entitlement to abortion funding turn on the federal Medicaid program?

STATEMENT OF THE CASE

Planned Parenthood of Montana, All Families Healthcare, Blue Mountain Clinic, Samuel Dickman, M.D., and Helen Weems, APRN-FNP, (collectively, “Abortionists”) challenge two laws and an administrative rule under the theory that those legal provisions violate Medicaid patients’ rights to privacy, equal protection, individual dignity, and seeking health under the Montana Constitution. They also allege the administrative rule violates the Governmental Code of Fair Practices.

House Bill 544 (2023) (“HB 544”), House Bill 862 (2023) (“HB 862”), and the Department of Health and Human Services (“DPHHS”)

administrative rule preserve the integrity of the Montana Medicaid Program by preventing fraud, ensuring compliance with federal and state law, and establishing appropriate clinical health and safety requirements to protect Medicaid beneficiaries. These legal provisions, an exercise of the State’s police power, do not implicate fundamental rights, and certainly do not contravene the Montana Constitution.

Abortionists filed their original Complaint back in spring of 2023, challenging DPHHS’s administrative rule. (Doc. 1.) They simultaneously applied for a Temporary Restraining Order (“TRO”), Preliminary Injunction, and Writ of Prohibition. (Docs. 9.5, 10.) Appellants State of Montana, DPHHS, and Charlie Brereton, in his official capacity as Director of DPHHS (collectively, “the State”) responded with oppositional briefing. (Doc. 13.) The State also moved to substitute the assigned judge. (Doc. 12.) Judge Menahan assumed jurisdiction and granted the TRO the same day. (Docs. 14, 15.) The State later responded in opposition to the Motion for Preliminary Injunction and Writ of Prohibition. (Doc. 23.)

Abortionists next amended their Complaint to include challenges to the recently enacted HB 544 and HB 862. (Doc. 44.) They also filed a new Application for a Preliminary Injunction. (Docs. 45; 46.) The district court

held a combined preliminary injunction hearing on all the challenged legal provisions. Before the hearing, the parties stipulated that each party and the court could rely on testimony presented for either case in the cases' litigation. (Doc. 50.)

At the hearing, the district court heard the statements and arguments of counsel, as well as testimony from six witnesses. Upon conclusion of the four-hour hearing, the district court orally enjoined the legal provisions from the bench. (Doc. 63.) The State appealed the district court's issuance of the preliminary injunction the next day.

The State filed its answer while its preliminary injunction appeal was pending. (Doc. 58.) Soon after, the district court issued its written order on the injunction. (Doc. 62.)

This Court eventually ruled on the State's appeal, affirming the preliminary injunction. *Planned Parenthood of Montana v. State*, 2024 MT 228, ¶ 42, 418 Mont. 253, 557 P.3d 440. Abortionists immediately moved for summary judgment. (Docs. 81; 82.) Under the district court's scheduling order, the State then also moved for summary judgment. (Docs. 91; 92.) The district court denied the State's motion but granted Abortionists' motion, finding the State "failed to meet its burden"

proving the legal provisions survive under strict scrutiny review on both the privacy and equal protection claims. (Doc. 101 at 13; 16.)

The State timely filed its appeal, asking this Court to reverse the district court's summary judgment order and final judgment.

STATEMENT OF FACTS

I. Abortions under Medicaid, generally.

Medicaid is a joint state and federal medical assistance program. 42 U.S.C. § 1396-1. States voluntarily participate in Medicaid. *Bailey v. DPHHS*, 2015 MT 37, ¶ 8, 378 Mont. 162, 343 P.3d 170. The purpose of the Medicaid Program is for the federal government to provide federal financial reimbursement to states that choose to cover certain medical expenses of indigent individuals. 42 U.S.C. § 1396-1. When a state opts into Medicaid, it must comply with federal law under Title XIX.

Under Title XIX, states participating in Medicaid must cover the costs of a plethora of “medical assistance” services and treatments. *See generally* 42 U.S.C. §§ 1396d(a)(1)–(32). Included are “services furnished by a nurse-midwife (as defined in section 1395x(gg) of this title)” and “freestanding birth center services (as defined in subsection (l)(3)(A)).”

42 U.S.C. §§ 1396(a)(17); (28). Abortion is absent from “medical assistance” services and treatments.

Since 1976, the U.S. Congress has annually enacted—through either amendment or joint resolution—the Hyde Amendment. It provides: “None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion.” Further Consolidated Appropriations Act, Pub. L. No. 118-47, § 506, 138 Stat. 662, 703 (2024). That said,

[S]ection [506] shall not apply to an abortion (1) if the pregnancy is the result of an act of rape or incest; or (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

Pub. L. No. 118-47, § 507. States cannot reimburse non-exempted, also called elective, abortions via Medicaid. Congress reinforced the Hyde Amendment this year by also prohibiting Medicaid reimbursements for one year to any nonprofit provider of abortions for reasons other than rape, incest, or threats to the mother’s life that received over \$800,000 in federal funds in 2023. One Big Beautiful Act, Pub. L. No. 119-21, § 71113,

139 Stat. 72, 300 (2025).¹ This prohibition also applies to affiliates and subsidiaries. *Id.*

II. Montana’s law for Medicaid-funded abortions.

DPHHS administers Montana’s Medicaid program. Mont. Code Ann. § 53-6-101(1). Since the *Jeannette R.* decision, Montana has funded abortions that are “medically necessary.” *See Jeanette R. v. Ellery*, No. BDV-94-811, 1995 Mont. Dist. Lexis 795, *4, *29, 1995 WL 17959705 (Mont. Dist. May 19, 1995). But even under *Jeannette R.*, the State does not have to fund elective abortions. *Id.* (“[T]his case has nothing to do with indigent women who may seek an elective abortion”; “Not at issue are nontherapeutic elective abortions. In other words, this case has nothing to do with abortions that are not medically necessary, as that determination is made by a physician”; and “It is clear that the state need not fund nontherapeutic elective abortions.”).

In 2021, the Montana Legislature directed DPHHS to review and report on the history, utilization data, policies, rules, and definitions

¹ The United States Court of Appeals for the First Circuit reversed the lower court’s order enjoining that provision, making it effective again. *See Planned Parenthood Federation of Am., Inc., v. Robert F. Kennedy, Jr.*, No. 25-1698 (1st Cir., Sep. 11, 2025).

applicable to Medicaid-reimbursed abortions. (Doc. 24, ¶ 11.) In its subsequent report, DPHHS discovered the State automatically paid out Medicaid funds for abortions so long as the claim contained a completed MA-37 form. (*Id.* ¶ 13.) The physician providing an abortion must complete a MA-37 form so Medicaid pays for the abortion. (*Id.* ¶¶ 6-7.) The form requires the physician to identify the reason for the abortion. (*Id.*) Through a third-party contractor, DPHHS reviewed all Medicaid-reimbursed abortions from July 2011 through June 2021, where Medicaid reimbursed six abortions, and 10% of state-funded, medically necessary abortions from July 2019 to June 2021, where the State funded 221 abortions. (*Id.* ¶ 15.) For medically necessary abortions, the most common conditions supporting medical necessity were: (1) pain and suffering; (2) complications from unintended pregnancy; (3) emotional stability; and (4) mental and physical health. (*Id.* ¶ 19.) Based on this review, DPHHS concluded the MA-37 forms insufficiently verify medical necessity. (*Id.* ¶ 16.) DPHHS also reasonably concluded Medicaid covered elective, nontherapeutic abortions that, through unspecified supporting MA-37 forms, were considered medically necessary. (*Id.* ¶¶ 21-22.)

III. The Legal Provisions.

Beginning in late 2022, DPHHS proposed a Medicaid coverage rule, which the agency finalized in April 2023. The rule amends provisions of Mont. Admin. R. 37.82.102 and 37.86.104 to: (1) clarify the circumstances under which abortion is medically necessary and therefore eligible for Medicaid coverage; (2) require prior authorization (with certain exceptions for when prior authorization cannot be obtained) for Medicaid-covered abortions; (3) implement documentation requirements supporting medical necessity; and (4) require that Medicaid-covered abortions be performed by a physician. The purposes of these requirements are to ensure that (1) Medicaid only pays for medically necessary (not elective, nontherapeutic) abortions, consistent with Mont. Code Ann. § 53-6-101(9) (services provided under this part may be only those that are medically necessary), and (2) that Medicaid-reimbursed abortions meet appropriate federal law requirements to ensure the health and safety of Medicaid beneficiaries.

During the 2023 session, the Legislature passed, and the Governor signed, two bills pertaining to state Medicaid funding of abortion—HB 544 and HB 862. HB 544 mandates requirements for Medicaid

coverage of abortion services, mirroring the Rule. “Physician” means “a person who holds a degree as a doctor of medicine or doctor of osteopathy and who has a valid license to practice medicine or osteopathic medicine in this state.” Mont. Code Ann. § 37-3-102(12).

HB 862 is the State’s analog to the Hyde Amendment. “Public funds or money may not be expended for an abortion.” HB 862, § 1. This limitation does not apply if the abortion is for cases of rape or incest, or where, as certified by a physician, the life of the mother is endangered without an abortion. HB 862, §§ 1(1)–(2); *see also* Pub. L. No. 118-47, § 507.

STANDARD OF REVIEW

The Court reviews summary judgment orders de novo. *Albert v. City of Billings*, 2012 MT 159, ¶ 15, 365 Mont. 454, 282 P.3d 704. Summary judgment is proper only where “no genuine issue as to any material fact” exists and the movant “is entitled to judgment as a matter of law.” Mont. R. Civ. P. 56(c)(3). “When there are cross-motions for summary judgment, a district court must evaluate each party’s motion on its own merits.” *Kilby Butte Colony, Inc. v. State Farm Mut. Auto. Ins.*, 2017 MT 246, ¶ 7, 389 Mont. 48, 403 P.3d 664. Under de novo review, the Court must

determine whether: (1) the district court’s conclusions of law are correct; and (2) its findings of fact are not clearly erroneous. *Pilgeram v. GreenPoint Mortg. Funding, Inc.*, 2013 MT 354, ¶ 9, 373 Mont. 1, 313 P.3d 839 (internal citations omitted).

The Court “prima facie presume[s]” the constitutionality of legislative enactments. *Powder River Cnty. v. State*, 2002 MT 259, ¶ 73, 312 Mont. 198, 60 P.3d 357. “Statutes are presumed to be constitutional, and it is the duty of this Court to avoid an unconstitutional interpretation if possible.” *Hernandez v. Bd. of Cnty. Comm’rs*, 2008 MT 251, ¶ 15, 345 Mont. 1, 189 P.3d 638. Thus, “[e]very presumption must be indulged in favor of the constitutionality of the legislative act.” *Powder River Cnty.*, ¶ 74. This Court’s inquiry then is not whether it is possible to condemn, but whether it is possible to uphold the law unless it conflicts with the Constitution beyond a reasonable doubt. *Id.* (quoting *State v. Lilburn*, 265 Mont. 258, 262, 875 P.2d 1036, 1039 (1994), *cert. denied*, 513 U.S. 1078 (1995)).

The Court’s “review of constitutional questions is plenary.” *William v. Bd. of Cnty. Comm’rs*, 2013 MT 243, ¶ 23, 371 Mont. 356, 308 P.3d 88 (internal citations omitted). The party challenging a statute thus bears

the burden of proving that it is unconstitutional beyond a reasonable doubt and, if any doubt exists, the Court must uphold the statute. *Grooms v. Ponderosa Inn*, 283 Mont. 459, 467, 942 P.2d 699, 703 (1997); *Heisler v. Hines Motor Co.*, 282 Mont. 270, 279, 937 P.2d 45, 50 (1997).

SUMMARY OF THE ARGUMENT

This case is not about the State creating barriers for a woman to obtain an abortion. It is about the Legislature properly exercising its authority to choose what it will and will not fund. In this context, the legal provisions ensure the State is properly reimbursed by the federal government. To hold that those fiscal decisions violate the right to privacy, abortion, or equal protection would impermissibly transform those rights from negative to positive rights and unconstitutionally encroach on the Legislature's power of the purse.

“The legislature can pass its own Hyde amendment if it wishes.” *Jeannette R.*, 1995 Mont. Dist. LEXIS 795, at *17, 1995 WL 17959705. That is exactly what the Legislature did with the legal provisions challenged here. Yet Abortionists now claim this somehow violates the Montana Constitution.

Montanans recently enshrined in their Constitution the right to abortion. Mont. Const. art. II, § 36(1). “This right shall not be denied or burdened[.]” *Id.* This creates a straightforward command: Montanans are free from burdensome governmental abortion regulation. This is a negative right. The government cannot impermissibly interfere with the same. But absent from this constitutional guarantee is a positive right for abortion funding. “[P]rovisions that directly implicate rights guaranteed to individuals under our Constitution are in a category of their own.” *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 2005 MT 69, ¶ 18, 326 Mont. 304, 109 P.3d 257. There is then no affirmative obligation within the Montana Constitution that Montana must pay for an abortion.

There is no dispute that this case is about funding. As the district court concluded, “There is no greater power than the power of the purse ... Once the state furnishes medical care to poor women in general,” it cannot deny funds for an abortion. (Doc. 101 at 17) (quoting *Committee to Def. Women’s Reprod. Rights v. Myers*, 625 P.2d 779 (Cal. 1981)). The practical effect of the district court’s judgment is the State of Montana

will have to take money out of the hands of some Montanans to pay for abortions for others. That is funding.

The district court thus erred when it concluded that Montana’s right to privacy requires the State fund abortions. The right to privacy prohibits government interference—it does not mandate that the government facilitate the right. The State does not deprive indigent individuals of their rights simply because the State does not proffer funds “necessary to realize all the advantages of that freedom.” *Harris v. McRae*, 448 U.S. 297, 318 (1980).

The district court’s equal protection analysis was also erroneous. The two proffered classes—women seeking an abortion and women seeking to carry their pregnancy to term—are not similarly situated. Each woman is making a different choice that has different consequences, requires different medical treatments, and ultimately imposes different financial costs on the State—one in which the State is required to pay for the procedure and one in which the State is reimbursed by the federal government.

So the legal provisions are subject to rational basis review, which they plainly survive, as they ensure the State’s Medicaid program

maintains financial integrity and follows federal law for reimbursement purposes.

ARGUMENT

I. The Montana Constitution does not create an abortion funding entitlement.

The district court incorrectly concluded that the Montana Constitution requires the State to fund abortions because it participates in Medicaid. This conclusion is not only atextual, but it also strikes at the heart of the constitutional separation of powers. Courts cannot simply conjure constitutional entitlements not included in the text. Yet that is what the district court did here. This Court should correct that erroneous conclusion of law.

The State, Abortionists, and the district court seem to agree on one point: if the State chooses not to participate in Medicaid, then it does not have to pay for any abortion. (Docs. 101 at 6; 92 at 6–7.) The State does not burden a woman’s access to abortion because she cannot afford it. But this reveals the flaw in Abortionists’ and the district court’s conclusion— if the State does not infringe on an indigent woman’s access to abortion by not participating in Medicaid, how does it when the State participates in Medicaid?

The answer is the State cannot infringe on an indigent woman’s access to abortion, whether by not participating in Medicaid or by not otherwise funding that abortion. That is because the legal provisions do not impede or infringe on a woman’s access to abortion. Indeed, regardless of Medicaid eligibility, Montanan women can access abortions all the same. Also, the Montana Constitution does not create an affirmative obligation, under either the right to privacy (Article II, Section 10) or the right to abortion (Article II, Section 36), for the State to pay for abortions. Additionally, because the Abortionists’ two proffered classes—women seeking an abortion and women seeking to carry their pregnancy to term—are not similarly situated, Abortionists’ equal protection claim must also fail. The legal provisions are subject to rational basis review, which they survive.

A. Separation of powers protects the Legislature’s funding decisions.

At the heart of this case is funding. “The State is correct that the Legislature need not subsidize any of the costs associated with childbearing or with health care generally.” (Doc. 101 at 6.) Under its Article V, Section 1 power, the Legislature, however, determined the State will participate in Medicaid. Mont. Code Ann. § 53-6-101(1). For its

participation in Medicaid, the federal government reimburses Montana matching funds for the cost to the State to provide indigent citizens health services. 42 U.S.C. § 1396-1. To receive the federal reimbursement, Montana must enact a state plan that meets certain minimum standards. 42 U.S.C. §§ 1396–1396b. If Montana chooses to provide health services beyond what the federal government reimburses, the State must cover those expenses. *See Harris*, 448 U.S. at 311 n.16. The Hyde Amendment specifically limits federal reimbursement for abortions. Generally, Medicaid does not reimburse “medically necessary” abortions—except those abortions when the pregnancy results from rape or incest or places the woman in danger of death. And Medicaid does not reimburse nontherapeutic, elective abortions. Pub. L. No. 118-47, § 507.

Montana’s decision to participate in Medicaid was a coordinated effort by the legislative and executive branches. No law requires the State to participate. Those policy decisions are protected by the separation of powers. *Kradolfer v. Smith*, 246 Mont. 210, 213, 805 P.2d 1266, 1268 (1990) (“A fundamental principle of our system of government is the separation of powers of the three branches of government. Each branch is independent and co-equal and is immune from the control of the other

two branches of government in the absence of express constitutional authority to the contrary.”) (citing *State ex rel. Morales v. City Comm’n of Helena*, 174 Mont. 237, 240, 570 P.2d 887, 889 (1977)).

According to the district court’s order, Montana courts have the power to police what the Legislature funds and how. That incursion into the legislative power is what the American founders warned of: “The accumulation of all powers, legislative, executive, and judicial, in the same hands ... may justly be pronounced the very definition of tyranny.” Federalist No. 47, at 300 (James Madison) (Clinton Rossiter ed., 1961).

* * * *

The district court erroneously created from whole cloth a concomitant duty for the State to fund an abortion just because an indigent woman seeks an abortion. There is no basis in law for that. Never before has a Montana court recognized that, coupled within the right to receive an abortion, there is also a constitutional obligation for the State to fund that choice.

With Article II, Section 36, Montanan women have the right to obtain an abortion. But neither that provision nor the rights to privacy or equal protection create an affirmative obligation for the State to fund

that choice. The Montana Constitution does not contain an entitlement to funds so a woman can have an abortion. Through the challenged legal provisions, Montana imposed no greater restriction on access to abortions than what existed before. And in not infringing a fundamental right, the district court also incorrectly applied strict scrutiny to the legal provisions.

B. Neither Section 10 nor Section 36 creates an entitlement to abortion funding because the State participates in Medicaid.

“All persons are born free and have certain inalienable rights.” Mont. Const. art. II, § 3. This truth reflects, in part, “the fundamental terms of the social contract and the obligations of government to protect natural rights.”² But there is a difference between the government’s affirmative obligation to protect rights and prohibiting government conduct that infringes or burdens someone’s enjoyment of a right. This is the difference between positive and negative rights.

² Anthony Johnstone, *The Montana Constitution in the State Constitutional Tradition* 388 (2022).

1. Freedom from governmental coercion is not the same as a governmental duty to fund.

Generally, the Montana Constitution creates negative rights, meaning the government cannot infringe, interfere with, or impede someone's enjoyment of a right. *See, e.g.*, Mont. Const. art. II, § 4 (“No person shall be denied ...,”); Mont. Const. art. II, § 9 (“No person shall be deprived...,”); Mont. Const. art. II, § 12 (“... shall not be called in question...,”). Elsewhere, the Montana Constitution creates an affirmative obligation for the government to act—positive rights. *See, e.g.*, Mont. Const. art. X, § 1(3) (“The legislature shall provide a basic system of free quality public elementary and secondary schools.”).

The positive or negative distinction matters. No one disputes that there is a big difference between the government's decision to not do something, like building a hospital, and doing something that directly prohibits, interferes, or restricts a constitutional right, like enacting a regulation to ban religious gatherings of a specific sect. The decision to not fund an abortion is different from a decision for direct governmental action that impinges a constitutional exercise of a right.

And even when the Constitution does oblige the State to expend funds, it is not simply attached to the right. Rather, it is a separate

provision explicitly articulating that obligation. For example, in *Columbia Falls Elementary*, this Court had to read multiple constitutional provisions so to establish the right to funding for public education. *Columbia Falls Elementary Sch. Dist. No. 6*, ¶ 19 (“[T]he requirement that the Legislature shall provide a basic system of free quality public schools, must be read in conjunction with Section 1 of Article X, which guarantees a right to education.”). Ultimately there, this Court did not simply read into the text a funding obligation, nor did it just create one out of thin air. Rather, “Although Article X, Section 1(3), is textually committed to the Legislature,” the Court must ensure the Legislature acted properly under the constitutional right to an education. *Id.* ¶¶ 21; 17. It was not sufficient that there was a right to an education. The Court had to read together multiple provisions so to establish the right to funding.

Reading the privacy right or right to abortion as conferring an entitlement would stand out as an exceptional interpretation that this Court has never endorsed and that finds no support in the text of the Montana Constitution.

2. Article II, Section 36 creates no implicit affirmative obligation for abortion entitlements.

Montanans recently added the right to abortion to the State Constitution. Mont. Const. art. II, § 36(1).³ But that right does not create an affirmative obligation for the government to fund that activity. When the Montana Constitution declares that the right to abortion “shall not be denied or burdened,” Mont. Const. art. II, § 36, that is the only right that is being conferred—a negative right. The government shall not deny or burden a woman’s decision about her pregnancy. But “it simply does not follow that a woman’s freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices.” *Harris*, 448 U.S. at 316. When a term like “access” is used in this context, it means availability, not financial subsidy.

³ Although the people enacted Section 36 after the district court issued its order and judgment, this Court must still consider the text of Section 36 because it is now the effective law. *See Carpenter v. Wabash Ry. Co.*, 309 U.S. 23, 27 (1940); *Day v. State Dep’t of Soc. & Rehab. Servs., Child Support Enft Div.*, 272 Mont. 170, 176, 900 P.2d 296, 300 (1995) (“[A]n appellate court must apply the law in effect at the time it renders its decision.”).

The existence of a woman’s right to have an abortion therefore does not also impose on the State an affirmative funding obligation. If a woman cannot afford her procreative choices, the burdens and limits on that choice flow from her indigency. *See id.* (“The financial constraints that restrict an indigent woman’s ability to enjoy the full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortions, but rather of her indigency.”). And this is not an obstacle the Constitution requires the State remove.

Article II, Section 36 limits the State’s coercive power regarding a woman’s exercise of her procreative choice. But this provision does not also create an affirmative obligation for the State to fund that choice. Indeed, with an indigent woman, her inability to afford an abortion lies not in government conduct, but her own indigency. The State’s participation in Medicaid does not change that constitutional calculus. Nor could it. There is not within the Montana Constitution’s right to abortion an implicit affirmative obligation that, if the State participates in Medicaid, it must fund a woman’s abortion. If Montanans desired such an obligation, they would have imposed that separately. But they did not.

3. *Article II, Section 10 creates no implicit affirmative obligation to subsidize abortion.*

The *Armstrong* Court held that the right to privacy “broadly guarantees each individual the right to make medical judgments affecting her or his bodily integrity and health in partnership with a chosen health care provider free from government interference.” *Armstrong*, ¶ 14. “This right of choice in making personal health care decisions and in exercising personal autonomy is not without limits.” *Armstrong*, ¶ 59.

Abortionists argued that Article II, Section 10 guarantees that, because Montana has elected to participate in a federal medical assistance program, the State must fund abortions. (Doc. 101 at 6). But the right to privacy, like the right to abortion, does not create an affirmative funding obligation for the State of Montana.

“The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.” Mont. Const. art. II, § 10. This provision explicitly prohibits governmental interference with an individual’s enjoyment of his rights. It does not, however, affirmatively oblige the

government to do something. On the contrary, it specifically limits permissible government action.

While “Montana adheres to one of the most stringent protections of its citizens’ right to privacy in the United States,” *Armstrong*, ¶ 34, that protection does not impliedly create a funding entitlement. On the contrary, “The right of privacy ... protect[s] citizens from illegal private action and from legislation and governmental practices that interfere with the autonomy of each individual to make decisions in matters generally considered private.” *Armstrong*, ¶ 33 (citation omitted). Montana’s right to privacy “reflects Montanans’ historical abhorrence and distrust of excessive governmental interference in their personal lives.” *Gryczan v. State*, 283 Mont. 433, 455, 942 P.2d 112, 125 (1997).

The district court posits that “the relevant inquiry is not whether the right of privacy requires the State to fund abortions.” (Doc. 101 at 6.) But on the contrary, the effect of the district court’s order is that, because the district court found (erroneously) that the legal provisions infringe the right to privacy, the State must now fund abortions without exception. This say-so, however, does not rely on the text of the Montana Constitution or this Court’s interpretation of the privacy right—a

guarantee that “each individual [has] the right to make medical judgments affecting her or his bodily integrity and health in partnership with a chosen health care provider free from government interference.” *Armstrong*, ¶ 14.

Taking the district court’s holding to its logical conclusion would necessarily result in the judicially mandated expansion of legislative appropriation. For example, a woman who wishes to have a baby but struggles with infertility is similarly exercising her right to procreative autonomy by undergoing IVF treatments. Yet these treatments are not covered by Montana Medicaid. Similarly, a woman is exercising her choice to procreative autonomy by having a baby via a surrogate. Once again, Montana Medicaid does not cover the bill for such a choice, and no one is claiming this violates the right to privacy. But the court’s holding, taken to its logical conclusion, would require this. Such a holding transforms a negative right into a positive right, violates separation of powers principles, and impermissibly vests the Legislature’s spending power with the judicial branch.

Finding an entitlement to government funding within the right to privacy is anathema to Montanans’ historical animus towards

government involvement in their private lives. To find otherwise “would turn the clause on its head. It would change it from a protection against coercion by state government to a command that the state use its taxing power to coerce some of its citizens to provide services to others.” *Jackson v. City of Joliet*, 715 F.2d 1200, 1203–04 (7th Cir. 1983). The district court, when considering Abortionists’ argument on this point, failed to harmonize Montanans’ historical desire to be left alone by the government, and the position that the right of privacy requires the government to involve itself, for funding purposes, in the private relationship between a pregnant woman and her doctor. It said, “biological reality requires that a woman who cannot afford a medical abortion must carry her pregnancy to term.” ((Doc. 101 at 9) (quoting *State v. Planned Parenthood of the Great Nw.*, 436 P.3d 984, 1003 (Alaska 2019).) If that were true, then under the district court’s reasoning, the Legislature must step in to fund her choice to get an abortion. But this Court has found that, in this context, “the legislature has neither a legitimate presence nor voice in the patient/health care provider relationship.” *Armstrong*, ¶ 59. Yet under the district court’s conclusion,

the State *must* participate in that relationship to pay the bills. That is not what Montana’s right to privacy has ever meant.

The right to privacy simply does not also carry with it a funding entitlement. This is also true for other fundamental rights—the State does not have to pay for an indigent individual’s firearm because he has “the right ... to keep or bear arms in defense of his own home, person, and property.” Mont. Const. art. II, § 12. Does the State infringe his fundamental right by choosing not to fund his ownership of firearms? Of course not. Like with abortion, his “access” is impeded not by coercive government conduct but by his own indigency. *See Harris*, 448 U.S. at 318 (“It cannot be that because government may not prohibit the use of contraceptives, or prevent parents from sending their child to a private school, government, therefore, has an affirmative constitutional obligation to ensure that all persons have the financial resources to obtain contraceptives or send their children to private schools.” (citations omitted)). The State does not deprive indigent individuals of their rights simply because the State does not proffer funds “necessary to realize all the advantages of that freedom.” *Harris*, 448 U.S. at 318. Despite his

fundamental right to bear arms, the Constitution does not afford the man an entitlement to State funds. The same is true for abortion.

Further, the district court's paltry attempt to distinguish and dismiss *Harris v. McRae* strains credulity. The court proffered three reasons for not following *Harris*: (1) *Harris* interpreted a narrower U.S. Constitution provision than what the Montana Constitution contains; (2) the U.S. Supreme Court abandoned relying on the right of privacy for abortion; and (3) other states have disregarded *Harris*. (Doc. 101, at 7–8.) Each reason simply does not justify dismissing *Harris*, though.

First, although the Montana Constitution may offer broader privacy protection than its federal equivalent, *Harris*'s holding does not depend on the scope of the right to privacy. Instead, it hinges on whether a right to abortion also conveys an entitlement for state funding, ultimately asserting that a negative right does not also create a positive right to an entitlement. “Although government may not place obstacles in the path of a woman’s exercise of her freedom of choice, it need not remove those not of its own creation.” *Harris*, 448 U.S. at 316. The State therefore imposes no “obstacle[] in the path of a woman’s” access to abortion through the challenged legal provisions here.

Instead, the legal provisions establish the statutory requirements for when a woman can receive a Medicaid-funded abortion, which will be federally reimbursed. These provisions ensure that the expenditure of legislatively appropriated funds is consistent with the statutory requirements applicable to the federal Medicaid program, saving money for Montana taxpayers and ensuring funding is appropriately allocated throughout Montana’s Medicaid program.

The district court found that “[t]hese are not simply funding decisions.” (Doc. 101 at 8.) That conclusion, however, removes the legal provisions from the Medicaid context. For example, the district court gives special attention to HB 544’s physician-only requirement. (*Id.*) But for Montana to receive Medicaid reimbursement for covered abortions, the Hyde Amendment specifically requires a physician to certify a pregnant woman’s life-threatening condition related to her pregnancy. Pub. L. No. 118-47, § 507. If Montana did not include that provision, then no abortions would be federally reimbursed because they failed to adhere to the federal law’s requirements for such. That is a funding decision.

Nor do these legal provisions erect a barrier between a woman and receiving an abortion—regardless of the State’s participation in

Medicaid, women in Montana can have an abortion. Mont. Const. art. II, § 36. They set parameters on when the State must pay for that abortion. And when a financial barrier already exists (as is the case when a woman lacks funds to receive an abortion), the State is not constitutionally required to remove that barrier. *Harris*, 448 U.S. at 316. Indeed, the State did not erect that barrier.

Second, the U.S. Supreme Court's shift away from finding an abortion right in the right to privacy does not render *Harris* bad law—again, the Court's holding there did not depend on the scope of the right to privacy. If that were the case, the U.S. Supreme Court would have disavowed the *Harris* holding in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), or *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). But it did not. And under the district court's theory here, this Court would have to disavow its previous abortion-from-privacy holdings because Montana now has an explicit right to an abortion elsewhere in the Constitution. *See* Mont. Const. art. II, § 36. While that is now an open question this Court must decide, the district court's lack of analysis does not support disregarding *Harris*.

Finally, a footnote from three decades ago does not undermine *Harris*'s applicability here. In the cited case, the Minnesota Supreme Court observed that state courts were split on the issue. *Women of the State v. Gomez*, 542 N.W.2d 17, n.12 (Minn. 1995) (identifying state jurisdictions that followed or disregarded *Harris*). After *Gomez*, other state courts agreed with and followed *Harris*, too. *See, e.g., Renee B. v. State, Agency for Health Care Admin.*, 756 So. 2d 218, 222 (Fla. Dist. Ct. App. 2000), *approved sub nom. Renee B. v. Fla. Agency for Health Care Admin.*, 790 So. 2d 1036 (Fla. 2001); *Bell v. Low Income Women of Texas*, 95 S.W.3d 253, 265 (Tex. 2002). The district court's conclusion that *Harris* should be dismissed because other states did so rings hollow, especially because the district court failed to even dig into why state courts have reached different conclusions on this issue.

Take for example Florida, where the state constitutional right to privacy, like Montana's, is "more expansive in nature than the protection offered under the United States Constitution." *Renee B.*, 756 So. 2d at 222. Yet even with more expansive privacy protections than the U.S. Constitution, Florida's denial of "Medicaid funding for medically necessary abortions do not violate the right to privacy guaranteed by

Article I, section 23, of the Florida Constitution, or the equal protection of the laws guaranteed by Article I, section 2 of the Florida Constitution.” *Id.* at 219.

The district court’s outright refusal to even consider *Harris* was in error. *Harris*, while not binding on this Court, provides highly persuasive reasoning relevant to the issues here. Ultimately, the *Harris* Court found that the government decision to not fund certain abortions does not interfere with a woman’s reproductive choice because that is “the product not of governmental restrictions on access to abortion, but rather on her indigency.” *Harris*, 448 U.S. at 316–17. The same logic applies here, and this Court should reach the same conclusion.

C. The State’s participation in Medicaid does not create an equal protection funding entitlement for abortion.

Under Section 4, “No person shall be denied the equal protection of the laws.” Mont. Const. art. II, § 4. “Equal protection guarantees that persons similarly situated with respect to a legitimate government purpose of a law receive like treatment.” *A.J.B. v. Mont. Eighteenth Jud. Dist. Ct.*, 2023 MT 7, ¶ 24, 411 Mont. 201, 523 P.3d 519 (citing *Rausch v. State Comp. Ins. Fund*, 2005 MT 140, ¶ 18, 327 Mont. 272, 114 P.3d 192).

Although it tried to shoehorn in a privacy framing, even the district court recognizes the relevant analysis falls under equal protection: “having elected to participate in a medical assistance program, [may] the State [] selectively exclude from such benefits otherwise eligible persons solely because they make constitutionally protected healthcare decisions with which the State disagrees.” (Doc. 101 at 6.) This is an equal protection inquiry—does the State create two classes of individuals and then treat those classes differently?

Even under the correct equal protection framework, the district court’s framing still rests on an incorrect premise. The State’s voluntary participation in Medicaid does not automatically impose on the State a constitutional obligation to fund all medical care. Rather, the federal government limits what states, having opted to participate in Medicaid, can have reimbursed. As the district court acknowledged (but seemed to otherwise disregard) “the Legislature need not subsidize any of the costs associated with childbearing or with health care generally.” (*Id.*) This is correct.

“States are afforded ‘broad discretion’ in determining the scope of medical assistance to be provided.” *Bailey*, ¶ 9 (quoting *Beal v. Doe*, 432

U.S. 438, 444 (1977)). “[I]t is well within a state’s discretion to exclude ‘unnecessary—though perhaps desirable—medical services.’” *Id.* ¶ 9 (quoting *Beal*, 432 U.S. at 445); *see also* Mont. Const. art. V, §§ 3–5; Federalist No. 78, at 465 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (“The legislature not only commands the purse, but prescribes the rule by which the duties and rights of every citizen are to be regulated.”). “Having elected to participate in the Medicaid program, Montana is required to comply with the objectives of Title XIX [of the Social Security Act].” *Id.* ¶ 23 (citing *Wilder v. Va. Hosp. Ass’n*, 496 U.S. 498, 502 (1990)). “Within that broad requirement, however, a state may ‘place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.’” *Id.* (quoting 42 C.F.R. § 440.230).

Abortionists argue the legal provisions violate equal protection because they “apply solely to patients who choose to terminate their pregnancies, and not to those who chose to carry their pregnancies to term.” (Doc. 101 at 13.) The district court agreed and devised the classes based on the woman’s intent to have an abortion or not. (*Id.* at 14.) The district court then asserted the purpose of the legal provisions “is to differentiate between women who seek abortions and women who choose

to carry their pregnancy to term.” (*Id.*) The court relied on several reasons to support this conclusion: that the restrictions apply solely to abortion seekers; that APCs can give care other than abortion; that other reproductive health care services do not require prior authorization or a waiting period; and that the medical necessity definition applies only to abortion. (*Id.* at 14–15.) The district court thus concluded the legal provisions “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.” (*Id.* at 15.)

But these two classes cannot be viewed as similarly situated because they are making fundamentally different choices that have different consequences, require different medical treatments, and ultimately impose different financial costs on the State. One scenario requires the State to pay for the procedure and one allows the State to be reimbursed by the federal government.

While it may be true that, if a woman cannot afford an abortion, her indigency hinders her exercise of that fundamental right, this does

not mean the State has an affirmative duty to remove that barrier. The U.S. Supreme Court has twice found, in *Maier v. Roe*, 432 U.S. 464, 471–74 (1977), and then again in *Harris*, that a state which participated in Medicaid could refuse to pay for an elective abortion because “an indigent woman [has] the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if [the State] had chosen to subsidize no health care costs at all.” *Harris*, 448 U.S. at 317. An indigent woman’s access to abortion then is not based on the State’s decision to join Medicaid—just as an indigent woman’s access to IVF treatment is not. Had the State not joined Medicaid, her indigency would still burden her exercise of her fundamental right.

This severely undermines the district court’s equal protection analysis. Pregnant women seeking abortions have the same reproductive choices as pregnant women who desire to have a child. Of course, each choice has associated costs and benefits. But at the core, those different choices distinguish those women. A woman who wants to have a baby has different needs and is subject to a different medical treatment regime than a woman who wants to abort her baby. Similarly, a woman who wants to have a baby and can conceive naturally has different needs and

is subject to a different medical treatment regime than a woman who requires medical intervention to conceive. These women simply are not similarly situated. So the district court’s devised classes—Medicaid participants patients seeking an abortion and Medicaid participants seeking to have a child—neither reflects the reality of choice nor the fact these women are not similarly situated. *See also Maher*, 432 U.S. at 474 (recognizing the difference between having an abortion and having a child). The challenged legal provisions reflect and account for that difference in choice.

II. The district court erroneously applied strict scrutiny.

Before ever analyzing which right the legal provisions infringed, the district court determined strict scrutiny was the proper level of review. (Doc. 101 at 9.) This was incorrect. The district court—before even considering the legal provisions at issue—applied strict scrutiny because the State “selectively den[ies] a benefit to those who exercise a constitutional right, effectively deter[ing] the exercise of that right.” (*Id.*) (quoting *State v. Planned Parenthood of Alaska*, 28 P.3d 904, 909 (Alaska 2001)). Which right did the district court believe the State was deterring someone from exercising there? The district court never says. That is

because the district court improperly determined the level of scrutiny to apply before even analyzing the legal provisions and the Montana Constitution.

Not only did the district court put the cart before the horse, it also skirted its obligation to presume the legal provisions to be constitutional and place the burden on the party challenging the constitutionality to prove the statute unconstitutional. *Planned Parenthood of Montana v. State*, 2024 MT 228, ¶ 21, 418 Mont. 253, 557 P.3d 440. The district court inverted the standard, presuming the laws' unconstitutionality to then immediately determine it should apply strict scrutiny. It also made no effort to avoid an unconstitutional construction of the laws. *State v. Martel*, 273 Mont. 143, 148, 902 P.2d 14, 17 (1995) (“Whenever possible, the Court will adopt statutory construction which renders challenged statutes constitutional rather than a construction which renders them invalid.”).

In *Lewis*, this Court definitively held, “the Montana Constitution does not establish a fundamental right to welfare for the aged, infirm or misfortunate.” *Butte Cmty. Union v. Lewis*, 219 Mont. 426, 429, 712 P.2d

1309, 1311 (1986). That list of beneficiaries includes indigent pregnant women seeking an abortion.

Lewis shows how the Constitution’s language matters for determining proper scrutiny. There, the plaintiffs complained that House Bill 843 violated Article XII, Section 3(3), which then read, “The legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.” *Id.* At the preliminary injunction stage, the district court held Article XII, Section 3(3) created a fundamental right to welfare, and House Bill 843 violated that constitutional provision. *Id.* The district court also raised concern about a potential equal protection violation. *Id.*

The Montana Supreme Court, despite the Constitution’s command that “The legislature shall,” held that there is no fundamental right to welfare. *Id.*, 219 Mont. at 431, 712 P.2d at 1312. Nor did the Court find welfare was “a right upon which constitutionally guaranteed rights depend.” *Id.* Finding no fundamental right, the Court proceeded with the first-of-its-kind middle-tier equal protection analysis. *Id.*, 219 Mont. at 432–34, 712 P.2d at 1312–14.

Zempel v. Uninsured Employers' Fund built on the *Lewis* holding. The *Zempel* Court acknowledged that the people of Montana amended Article XII, Section 3(3) so it read “The legislature may provide” *Zempel v. Uninsured Employers' Fund*, 282 Mont. 424, 429, 938 P.2d 658, 662 (1997). This Court gave effect to that language, finding “the amended version does not contain a directive that the legislature shall provide welfare benefits. Thus, the constitutional underpinning for our application of heightened scrutiny to a statute abridging welfare benefits in *Lewis* no longer existed [here].” *Id.* at 430. The Court therefore concluded that rational basis applies because the Constitution’s text changed since *Lewis*, further weakening the nexus between welfare and a constitutional right. *Id.*

This saga illustrates that, absent a specific constitutional directive, there is not sufficient nexus between a government funding decision and constitutional rights. When the people changed “shall” to “may,” they eliminated any basis for heightened scrutiny. This Court should apply the same reasoning here—because the people have never said the State must fund abortions, there is not sufficient constitutional language to support applying heightened scrutiny.

Because the challenged legal provisions do not infringe a fundamental right, the district court erred in applying strict scrutiny. Strict scrutiny applies “when a law affects a suspect class or threatens a fundamental right.” *Jaksha v. Butte-Silver Bow Cnty.*, 2009 MT 263, ¶ 17, 352 Mont. 46, 214 P.3d 1248 (citation and quotations omitted). Middle-tier scrutiny applies “when the law affects a right conferred by the Montana Constitution but is not found in the Constitution’s Declaration of Rights.” *Jaksha*, ¶ 17. Rational basis review applies “when neither strict nor middle-tier scrutiny applies.” *Jaksha*, ¶ 17. Because the challenged provisions do not implicate access to abortion but solely address when Medicaid will cover abortion services, they do not implicate the right to privacy or equal protection. Accordingly, rational basis review is the only appropriate level of scrutiny here. *See also Harris*, 448 U.S. at 324–25.

The legal provisions do not “restrict[] abortion services” or infringe the right to an abortion. *Cf. Planned Parenthood of Montana v. State by & through Knudsen*, 2022 MT 157, ¶ 20, 409 Mont. 378, 515 P.3d 301. Instead, they ensure the State’s Medicaid program maintains financial integrity and follows federal law for reimbursement purposes. This

ensures Montana can continue helping indigent Montanans while respecting the State’s taxpayers. None of this violates the Montana Constitution, which provides that the Legislature is the sole authority to appropriate funds. It does not require the State to proffer abortion funds just because it participates in Medicaid—just as it does not require the State proffer IVF funds just because it participates in Medicaid.

Such legislative action need only be “rationally related to a legitimate governmental interest.” *Harris*, 448 U.S. at 326. The Legislature has exercised its policymaking power to determine the balance of competing interests. “[W]hen an issue involves policy choices as sensitive as those implicated [here] ..., the appropriate forum for their resolution in a democracy is the legislature.” *Id.* (quoting *Maher*, 432 U.S. at 479).

III. Recent changes in federal law raise factual questions as about Abortionists’ standing.

Section 71113 of the One Big Beautiful Bill Act generally prohibits providers who perform elective abortions from receiving *any* Medicaid funding, subject to requirements. Pub. L. No. 119-21, § 71113. Because of this law, Planned Parenthood of Montana and Samuel Dickman, M.D.,

no longer accept Medicaid participants at their clinics.⁴ This precludes the standing of Planned Parenthood of Montana and Dr. Dickman because there is no longer a case or controversy; they lack a cognizable harm; and redressability of their claims is impossible. *See Greater Missoula Area Fed'n of Early Childhood Educators v. Child Start, Inc.*, 2009 MT 362, ¶ 22, 353 Mont. 201, 219 P.3d 881; *see also* U.S. Const. art. II, § 2, cl. 1; Mont. Const. art. VII, § 4(1). Indeed, because of the new federal law, their claims are now moot. “A matter is moot when, due to an event or happening, the issue has ceased to exist and no longer presents an actual controversy ... A question is moot when the court cannot grant effective relief.” *Shamrock Motors, Inc. v. Ford Motor Co.*, 1999 MT 21, ¶ 19, 293 Mont. 188, 974 P.2d (citations omitted); *see also Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd.*, 2010 MT 26, ¶ 10, 355 Mont. 142, 145, 226 P.3d 567 (“Under [mootness], the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)”).

⁴ As that State presented in its Second Motion for Extension of Time, Dr. Dickman and PPMT admitted they no longer receive Medicaid patients. *See Appellants' Aff. in support of Second Mot. for Extension of Time*, Exhibit C.

Although this Court seldom considers arguments raised for this first time on appeal, “this Court conducts de novo review of a party’s standing on appeal, regardless of whether or not the issue of standing has even been raised by the parties (either below or on appeal).” *Barrett v. State*, 2024 MT 86, ¶ 18, 416 Mont. 226, 547 P.3d 630. “The determination of a party’s standing to maintain an action is a question of law subject to contest at any time by a party or sua sponte.” *Bullock v. Fox*, 2019 MT 50, ¶ 32, 395 Mont. 35, 435 P.3d 1187. The recent developments related to Planned Parenthood of Montana and Dr. Dickman warrant remand to the district court to determine the significant factual questions necessary to ascertain whether Abortionists have standing here.

CONCLUSION

No Montanan has a fundamental right to Medicaid. *Timm v. Mont. Dep’t of Pub. Health & Hum. Servs.*, 2008 MT 126, ¶ 34, 343 Mont. 11, 184 P.3d 994. The District Court erred in granting summary judgment for Abortionists on the faulty premise that, because the State participates in Medicaid, the Montana Constitution requires the State fund abortions. This conclusion is atextual and antithetical to Montanans’ animus

towards government overinvolvement. “[E]ach individual [has] the right to make medical judgments affecting her or his bodily integrity and health in partnership with a chosen health care provider free from government interference.” *Armstrong*, ¶ 14. But that right is not sweeping enough to guarantee government funding for abortion. In matters of funding, the Legislature has sole power over the purse. This Court should reverse.

DATED this 24th day of November 2025.

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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 8,748 words, excluding certificate of service and certificate of compliance.

/s/ George Carlo L. Clark
George Carlo L. Clark

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 25-0602

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

Plaintiffs and Appellees/Cross-Appellants,

v.

STATE OF MONTANA; MONTANA DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES; and CHARLIE BRERETON, in
his official capacity as Director of the Department of Public Health
and Human Services,

Defendants and Appellants/Cross-Appellees.

APPENDIX

March 11, 2025 Order – Cross Motions for Summary Judgment (Doc. 101)	App’x A
June 25, 2025 Order – Plaintiffs’ Motion for Attorney Fees and Costs (Doc. 114)	App’x B

CERTIFICATE OF SERVICE

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