

SYNOPSIS OF THE CASE¹

2026 MT 64, DA 25-0040: ALL FAMILIES HEALTHCARE; BLUE MOUNTAIN CLINIC; and HELEN WEEMS, on behalf of themselves, and their employees, and their patients, Plaintiffs and Appellees, 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.

The Montana Supreme Court has upheld a district court's decision that enjoined enforcement of HB 937 (2023) because it likely violated Plaintiffs' fundamental right to equal protection of the law guaranteed by Montana's Constitution.

HB 937 would require abortion clinics to be licensed and regulated by the Department of Health and Human Services (DPHHS). HB 937 defines "abortion clinic" as a facility that "performs surgical abortion procedures" or "provides an abortion-inducing drug" to at least five patients per year. HB 937 adds "abortion clinics" to the definition of health care facilities subject to more onerous regulations, akin to a hospital. Prior to HB 937, the term "health care facility" excluded miscarriage treatment providers and abortion providers, along with offices of private physicians, dentists, or other physical or mental health care workers. However, HB 397, and the rules adopted by DPHHS to administer it, now treat miscarriage care differently than abortion care, despite there being no difference medically in the type of healthcare provided. The District Court concluded that the single factor differentiating the classes is the purpose for which the treatment is offered—either to treat a miscarriage or induce an abortion. Because the right to an abortion is a protected fundamental right, the State was required to demonstrate a compelling and narrowly tailored reason for signaling out abortion care and subjecting it to more rigorous rules and regulations than miscarriage care. The District Court found the State failed to advance any compelling interest.

The Montana Supreme Court held that HB 937 likely violated Montana's equal protection clause and that Plaintiffs had met each factor required for issuance of a preliminary injunction. The Court concluded the single factor differentiating between miscarriage care and abortion care is the purpose for which the treatment is offered. If a clinic provides the same medications and procedures (mifepristone, misoprostol, dilation, and evacuation) for the purpose of providing an abortion, it falls within HB 937; but if a clinic provides the same medications and treatment for the purpose of providing miscarriage care, it is specifically excepted from the law. Thus, while HB 937 and the DPHHS's rules make substantial changes to the requirements of "abortion clinics," they fail to apply those same changes to providers who offer the same kinds of services for the purpose of managing miscarriages. The Court concluded the State failed to present any argument that it had a compelling interest in promulgating HB 937 and that Plaintiffs have demonstrated they

¹ This synopsis has been prepared for the convenience of the reader. It constitutes no part of the Opinion of the Court and may not be cited as precedent.

may be forced to stop providing abortion care, thus limiting the pool of providers Montanans can access for abortion care. The Court held that Plaintiffs have successfully demonstrated that they are likely to succeed on the merits of their equal protection claim, are likely to suffer irreparable harm in the absence of a preliminary injunction, that the balance of equities tips in Plaintiffs' favor, and that enjoining HB 937 is in the public's interest. Thus, pending a decision on the merits of HB 937, the Court temporarily enjoined its enforcement.

The Dissent maintained HB 937 should receive rational basis review because it imposes the same basic licensure requirements on abortion facilities, such as preventing rodents in an operating room and having sufficient emergency exits, that are applied to other healthcare facilities. The Dissent argued that HB 937 does not violate equal protection principles because an abortion and a miscarriage are not the same procedures. One intentionally ends a human life, which the state has an interest in preserving, while the other provides care after the incidental end of a life. Thus, abortion providers and miscarriage providers are not similarly situated, and the equal protection analysis fails. The Dissent noted that HB 937 applies only to facilities performing more than five abortions per year and the Court's claim that performing abortions is the "single factor" determining whether licensure requirements apply is incorrect. Finally, the Dissent argued that the right to privacy is not implicated because the State may require licensure for the practice of medicine under its police powers, and licensure requirements do not invade a patient's right to privacy.