IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 23-0287

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,

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.

BRIEF OF NATIONAL ASSOCIATION OF NURSE PRACTITIONERS IN WOMEN'S HEALTH, AMERICAN COLLEGE OF NURSE-MIDWIVES, AMERICAN ACADEMY OF PHYSICIAN ASSOCIATES, AND ASSOCIATION OF PHYSICIAN ASSOCIATES IN OBSTETRICS AND GYNECOLOGY AS *AMICI CURIAE*

On Appeal from the Montana First Judicial District Court, Lewis and Clark County, Cause No. ADV 23-299, the Honorable Mike Menahan, Presiding

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I. INTEREST OF THE *AMICI*

Amicus curiae National Association of Nurse Practitioners in Women's Health ("NPWH") is the national professional community for women's health nurse practitioners and advanced practice registered nurses ("APRNs") who provide women's and gender-related healthcare. NPWH sets a standard of excellence by translating and promoting the latest women's healthcare research and evidence-based clinical guidance, providing high quality continuing education, and advocating for patients, providers, and the women's health nurse practitioner profession. NPWH's mission includes protecting and promoting women's and all individuals' rights to make their own choices regarding their health and well-being within the context of their lived experience and their personal, religious, cultural, and family beliefs.

Amicus curiae American College of Nurse-Midwives ("ACNM") is the professional association that represents certified nurse-midwives ("CNM") and certified midwives ("CM") in the U.S. ACNM sets the standard for excellence in midwifery education and practice in the U.S. and strengthens the capacity of midwives in developing countries. Members of ACNM are primary care providers for women throughout their lifespans, with a special emphasis on pregnancy, childbirth, and gynecologic and reproductive health. ACNM's mission is to support midwives, advance the practice of midwifery, and achieve optimal, equitable health

outcomes for the people and communities midwives serve through inclusion, advocacy, education, leadership development, and research.

Amicus curiae American Academy of Physician Associates ("AAPA") is the national professional association for physician associates (physician assistants in Montana) ("PAs"). AAPA advocates and educates on behalf of the profession and the patients and communities PAs serve. Its mission includes enhancing PAs' ability to improve the quality, accessibility, and cost-effectiveness of patient-centered healthcare, as well as ensuring the professional growth, personal excellence, and recognition of PAs.

Amicus curiae Association of Physician Associates in Obstetrics and Gynecology ("APAOG") is the professional association representing Obstetrics and Gynecologic Physician Associates in the U.S. APAOG supports PAs practicing obstetrics, gynecology, and all of its subspecialties by advancing the role of PAs to serve patients throughout their lifespan. APAOG's mission is to promote equitable patient care through education, research, advocacy, inclusivity, and leadership.

Amici are interested in this matter because the resolution of the issue before the Court impacts the health and well-being of women in Montana as well as the ability of Montana's healthcare providers to provide essential healthcare services to their patients. Specifically, limiting Medicaid funding to only those abortions *provided by a physician* restricts Montanans' access to abortion care and infringes

upon Montanans' fundamental right to choose the qualified abortion care provider of their choice. Safety concerns do not warrant such restrictions.

II. SUMMARY OF ARGUMENT

The rule adopted by Defendant-Appellant Montana Department of Public Health and Human Services at Montana Administrative Register Notice 37-1024 amending Mont. Admin. R. 37.82.102 and 37.86.104 and 2023 House Bill 544 (together, the "APC Restrictions") prohibits Medicaid coverage for abortions that are not provided by physicians. Under these restrictions, abortions provided by advanced practice clinicians ("APCs")—healthcare professionals with advanced education and training, including Nurse Practitioners ("NPs"), CNMs and PAs—would no longer be eligible for coverage.[1]

Amici file this brief in support of Appellees' position that the APC Restrictions deprive Montanans of their fundamental right to seek abortion services from a qualified healthcare provider of their choice, despite overwhelming evidence that APCs provide abortion care safely and effectively.

Abortion is an extremely safe form of healthcare that falls well within APCs' broad scopes of practice. Indeed, abortion is safer and less complicated than many

[1] To avoid any ambiguity, although *Amici* do not discuss 2023 House Bill 862 herein because it is not specific to APCs, they submit that the District Court's enjoining of House Bill 862 was appropriate.

other types of care that APCs routinely provide in Montana. APCs provide abortion care at least as safely and effectively as physicians. Accordingly, leading health and medical organizations strongly support the provision of abortion care by APCs.

Restricting Medicaid coverage to abortions provided only by physicians serves no legitimate purpose. Indeed, the APC Restrictions *compromise*, rather than further, women's health and safety. There is no evidence that abortions provided by PAs pose more risk than those provided by physicians. *See Armstrong v. State*, 1999 MT 261, ¶ 66, 296 Mont. 361, ¶ 66, 989 P.2d 364, ¶ 66 (concluding there was "simply no evidence . . . that laws requiring [that] pre-viability abortions be performed only by a physician" rather than by a PA "are necessary to protect the life, health or safety of women in" Montana, and that "[i]ndeed, there is overwhelming evidence to the contrary . . . ."). This Court also recently and correctly concluded that the State "failed to present any evidence that demonstrates abortions performed by APRNs [Advanced Practice Registered Nurses] include more risk than those provided by physicians or PAs." *Weems v. State*, 2023 MT 82, ¶ 51, 412 Mont. 132, ¶ 51, 529 P.3d 798, ¶ 51. Preventing APCs from providing abortions to patients relying on Medicaid advances no health or safety interest. Rather, the APC Restrictions inflict harm upon those patients, whose *only* access to abortion care may be through an APC.

The Court should rule in favor of Appellees and affirm the District Court's preliminary injunction.

III. ARGUMENT

A. Abortion Is An Extremely Safe Form Of Healthcare

Medication and aspiration abortions are among the safest healthcare for women in the U.S. *See* Ushma D. Upadhyay, Safety of Abortion in the United States 2, Advancing New Stand. Reprod. Health (2014), https://www.ansirh.org/sites/default/files/publications/files/safetybrief12-14.pdf; Tracy A. Weitz et al., *Safety of Aspiration Abortion Performed by Nurse Practitioners, Certified Nurse Midwives, and Physician Assistants Under a California Legal Waiver*, 103 Am. J. Pub. Health 454, 456–57 (2013).

Medication abortion typically involves a two-part course of medication taken over one to two days, after which the patient passes the pregnancy in a process similar to a miscarriage. World Health Org., Safe Abortion: Technical and Policy Guidance for Health Systems 3–4 (2d ed. 2012). Patients can take the pharmaceuticals used for medication abortion "safely and effectively at home," just as with over-the-counter medications like Tylenol. *See* ACOG, Practice Bulletin 225, *Medication Abortion Up to 70 Days of Gestation*, 136 Obstet. & Gynecol. e31, e32 (2020). Aspiration abortion, which can be performed on an outpatient basis,

utilizes suction to remove the uterine contents and usually takes three to ten minutes to complete. World Health Org., Safe Abortion 40–41.

Complications from either type of abortion are rare: only 2.1% of patients experience any complication whatsoever. Upadhyay, Safety of Abortion 1; *see also* Nat'l Acad. Sci., Eng. & Med., The Safety and Quality of Abortion Care in the United States 10 (2018) ("The clinical evidence clearly shows that legal abortions in the United States . . . are safe and effective."). Abortion complication rates, at only 0.23% for major complications and 1.88% for minor complications, are similar to or lower than those associated with many other outpatient procedures. *See* Kari White et al., *Complications from First-Trimester Aspiration Abortion*, 92 Contraception 422, 434 (2015); Ushma D. Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 Obstetrics & Gynecology 175, 179, 181 (2015). When abortion-related complications do occur, they are typically minor and easily treatable, and can be safely managed by the patient at home or by clinicians in an outpatient setting. *See id.* at 175, 181.

Continuing with a pregnancy poses a greater risk to patients' physical health than obtaining an abortion. ACOG, Practice Bulletin 183, *Postpartum Hemorrhage*, 130 Obstet. & Gynecol. e168, e168 (2017) (postpartum hemorrhage may lead to adult respiratory distress syndrome, shock, abnormal blood clotting, acute renal failure, loss of fertility, and death). The risk of maternal death associated with

childbirth is about fourteen times higher than that associated with abortion. ACOG, Committee Opinion 815, *Increasing Access to Abortion*, 136 Obstet. & Gynecol. e107, e108 (2020); *see also* Nat'l Acad. Sci., Eng., & Med. 74 (mortality rate of abortion is "a small fraction of that for childbirth"); ACOG, Practice Bulletin 222, *Gestational Hypertension and Preeclampsia*, 135 Obstet. & Gynecol. e237, e237 (2020) (hypertensive disorders of pregnancy are a leading cause of maternal mortality worldwide); Ann Evensen et al., *Postpartum Hemorrhage: Prevention and Treatment*, 95 Am. Fam. Phys. 442, 442 (2017) (about 3-5% of obstetric patients will experience postpartum hemorrhage, the cause of 12% of U.S. maternal deaths).

The APC Restrictions ignore that abortion is an exceedingly safe form of healthcare.

B. APCs Are As Well-Qualified As Physicians To Provide Early Abortion Care

Despite overwhelming evidence to the contrary, Appellants assert that the APC Restrictions further the State's interest in "ensuring that professionals performing abortions . . . have the skills necessary to provide a high level of care . . . to protect the health and safety of Medicaid beneficiaries." Appellants' Br. 27-28, 41. This assertion ignores that APCs undergo extensive training and credentialing, routinely perform procedures and prescribe medications that are more complex than

abortion care, and provide abortion care as safely and effectively as physicians.[2] Moreover, Appellants do not argue that APCs have been providing abortion care that the State has not licensed them to provide.

1. APCs Satisfy Rigorous Education and Certification Requirements

APCs are vital, highly skilled participants in the U.S. healthcare system. They are licensed to provide a broad range of health services consistent with their rigorous educational, certification, and continuing education requirements. APCs are key providers of primary, gynecological, maternity, acute, and chronic care across Montana, including for low-income patients and those living in rural and medically underserved areas. They can and do see patients independently and run their own clinics. *E.g.*, Elena Kraus & James M. DuBois, *Knowing Your Limits: A Qualitative Study of Physician and Nurse Practitioner Perspectives on NP Independence in Primary Care*, 32 J. Gen. Internal Med. 284, 287 (2017). APCs outperform physicians on metrics of patient satisfaction, patient compliance, and health

[2] Appellants' argument that the APC Restrictions do not prevent APCs from providing abortions but only bar Medicaid from paying for those services, Appellants' Br. 32, is disingenuous. Women who qualify for Medicaid are by definition less likely to be able to pay for healthcare. If Medicaid does not pay for certain healthcare, including but not limited to abortion care, these women are more likely to forgo that care because they would be unable to cover the costs on their own. *See* Jennifer Tolbert et al., *Key Facts About the Uninsured Population*, KFF (Dec. 18, 2023), https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/.

promotion. *Id.* at 284. As one physician put it, APCs are the healthcare providers who "keep the lights on . . . ." *Id.*

NPs, for example, provide an extensive range of health services, including diagnosing and treating acute and chronic illnesses, prescribing and managing medications and other therapies, performing procedures, ordering and interpreting diagnostic tests, counseling patients, coordinating patient care, and providing health education. Am. Ass'n Nurse Pract., Scope of Practice for Nurse Practitioners (2022), https://storage.aanp.org/www/documents/advocacy/position-papers/Scope-of-Practice.pdf?_gl=1*1nqa8ov*_gcl_au*MjA5MzIwNzQ1NS4xNzA2ODIxMzcw. NPs dispense these essential health services in a wide variety of practice areas, including family medicine, pediatrics, geriatrics, and women's health. Nat'l Governors Ass'n, The Role of Nurse Practitioners in Meeting Increasing Demand for Primary Care 4 (2012).

To obtain an APRN license in Montana, nurses must graduate from a nursing program at the masters, post-masters, or doctoral level, hold an active registered nurse license, and receive certification from a national professional organization. Mont. Admin. R. 24.159.1412; Nat'l Governors Ass'n 8; Am. Ass'n Nurse Pract., *Montana Information and Resources for Montana NPs*, https://www.aanp.org/advocacy/montana. In Montana, APRNs "practice autonomously within their scope of practice for which they are trained and without

any legally mandated collaboration with or supervision by a physician." *Weems*, ¶ 25. NPs' training and testing is highly effective; data suggests that NPs are capable of providing approximately 90% of primary care services commonly provided by physicians, with comparable outcomes. Kraus & DuBois, at 284.

The women's health nurse practitioner ("WHNP") is prepared at the master's or doctoral level to provide holistic, client-centered primary care for women from puberty through the adult lifespan, with a focus on common and complex gynecologic, sexual, reproductive, menopause-transition, and post-menopause healthcare; and uncomplicated and high-risk antepartum and postpartum care. The education, certification, and practice of the WHNP are congruent with the NP role and the women's health population focus. NPWH, National Association of Nurse Practitioners in Women's Health White Paper: The Essential Role of Women's Health Nurse Practitioners 2 (2020), https://www.nccwebsite.org/content/documents/cms/npwh_white_paper_the_essential_role_of_whnps_final_7.13.2020.pdf. WHNPs provide care in outpatient, inpatient, community, and other settings, both independently and collaboratively as a healthcare team member.

Like NPs, certified nurse-midwives ("CNMs") offer a wide array of health services: they provide comprehensive assessment, diagnosis, and treatment care; independently prescribe medications, including controlled substances; admit, manage, and discharge patients; order and interpret diagnostic tests; and provide

wellness education and counseling. Am. Coll. Nurse-Midwives, Definition of Midwifery and Scope of Practice of Certified Nurse-Midwives and Certified Midwives (2021), https://www.midwife.org/acnm/files/acnmlibrarydata/uploadfilename/000000000266/Definition%20Midwifery%20Scope%20of%20Practice_2021.pdf. CNMs principally focus on the provision of patient care during pregnancy, childbirth, and the postpartum period; sexual and reproductive health; gynecologic health; and family planning services, including preconception care. *Id.*; Mont. Admin. R. 24.159.1475(1).

After obtaining a bachelor's degree and completing a graduate midwifery program, CNMs must pass a national certification exam to receive the designation of CNM (a title conferred on those who have active RN credentials when they pass the exam). Definition of Midwifery. CNMs must continuously demonstrate that they meet the Core Competencies for Basic Midwifery Practice of *Amicus* ACNM and are required to practice in accordance with the ACNM Standards for the Practice of Midwifery. *Id.*

PAs' clinical practice spans from the beginning to the completion of care and includes taking medical histories, performing physical examinations, ordering and interpreting diagnostic tests, diagnosing illnesses, developing and managing treatment plans, and prescribing medication, including controlled substances. Am. Acad. PAs, *PA Scope of Practice* (2019), https://www.aapa.org/wp-

content/uploads/2017/01/Issue-brief_Scope-of-Practice_0117-1.pdf; *see also* Mont. Code Ann. § 37-20-403(2)(a) (licensed PAs in Montana may "diagnose, examine, and treat human conditions, ailments, diseases, injuries, or infirmities, either physical or mental, by any means, method, device, or instrumentality"). PAs play an integral role in a broad range of clinical settings, including outpatient and in-hospital obstetrics and gynecology care, providing healthcare services ranging from the diagnosis and treatment of acute and chronic gynecological conditions to independently performing critical clinical procedures such as vaginal deliveries, amniotomies, inseminations, endometrial and vulvar biopsies, and loop excision electrocoagulation procedures. *See* Am. Acad. PAs, *PAs in Obstetrics and Gynecology* (2021), https://www.aapa.org/download/19515/. "A physician assistant may perform an abortion" in Montana. Mont. Code Ann. § 37-20-103.

PAs must complete an accredited master's degree program, which spans three academic years and employs a rigorous curriculum modeled on the medical school program. *PAs in Obstetrics and Gynecology*; *PA Scope of Practice*. PA students take more than 75 hours in pharmacology, 175 hours in behavioral sciences, 400 or more hours in basic sciences, and nearly 580 hours of clinical medicine; by the time they graduate, they complete at least 2,000 hours of supervised clinical practice. *PAs in Obstetrics and Gynecology*. In addition to attending an accredited PA program, PA candidates also must pass the Physician Assistant National Certifying Examination.

Mont. Code Ann. § 37-20-402; *PA Scope of Practice;* Mont. Dep't Labor & Indus., *Montana Board of Medical Examiners Physician Assistant*, https://boards.bsd.dli.mt.gov/medical-examiners/license-information/physician-assistant.

The rigorous education and certification requirements for NPs, CNMs, and PAs make clear that APCs are eminently qualified to provide abortion care.

2. APCs Routinely Provide Healthcare That Is Similar to or More Complex Than Abortion Care

APCs provide a broad range of medical services that are similar to or more complicated than abortion care. *See, e.g.*, *Weems*, ¶ 29 ("[T]he uncontroverted evidence establish[es] that APRN-FNPs and APRN-CNMs provide a broad range of health care within their scope of practice that is identical to, or significantly more complex, than early abortion care."). For example, managing miscarriages, which is within APCs' scope of practice, entails essentially the same care as early abortion. *See id.* ¶ 47. Miscarriages can be managed with medication, specifically, a combination of mifepristone and misoprostol, the same medications used in medication abortion. *See* Am. Coll. Obstetricians & Gynecologists, *Early Pregnancy Loss Practice Bulletin* (2018), https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2018/11/early-pregnancy-loss. APCs treating miscarriages may also perform an aspiration procedure—in which the cervix is dilated and a curette is used to remove the uterine contents through suction—which

is *identical* to early procedural abortion. *See* Kate Coleman-Minahan et al., *Interest in Medication and Aspiration Abortion Training Among Colorado Nurse Practitioners, Nurse Midwives, and Physician Assistants*, Women's Health Issues 167, 169 (2020); Amy J. Levi & Tara Cardinal, *Early Pregnancy Loss Management for Nurse Practitioners and Midwives*, Women's Healthcare: A Clinical Journey for NPs 43, 44 (2016).

Further, APCs provide healthcare services that are as complex as or more complex than abortion, including, but not limited to, neuraxial anesthesia, central line insertions, arterial line insertions, intubations, chest tube insertions, surgical first assistance, colonoscopies, and endoscopies. Some APC-provided services require similar skills to those required in abortion care, including inserting and removing intrauterine contraceptive devices ("IUDs") and other contraceptive implants and performing endometrial biopsies and colposcopies. *See, e.g.*, Melissa A. Rodriguez & Roderick S. Hooker, *Procedures by Physician Associates in Obstetrics and Gynecology*, 4 Women's Health Reports 536, 538 (2023); Courtney B. Jackson, *Expanding the Pool of Abortion Providers: Nurse-Midwives, Nurse Practitioners, and Physician Assistants*, Women's Health Issues S42, S42 (2011). Like aspiration abortion, inserting and removing an IUD involves placing an instrument through the cervix, and difficult removals may necessitate cervical dilation. *See* Aimee C. Holland et al., *Preparing for Intrauterine Device Consults and Procedures*,

Women's Healthcare 39 (2020), https://www.npwomenshealthcare.com/wp-content/uploads/2020/11/WHC1220_IUDConsultsProcedures.pdf.

Finally, APCs in Montana with a DEA license can prescribe controlled substances, which are potentially dangerous and addictive and carry greater risk than the medications used in medication abortion. *See* U.S. Dep't Justice, *Mid-Level Practitioners Authorization by State*, https://www.deadiversion.usdoj.gov/drugreg/practioners/mlp_by_state.pdf; Kathryn Osborne, *Regulation of Prescriptive Authority for Certified Nurse-Midwives and Certified Midwives*, 60 J. Midwifery & Women's Health 519, 526 (2015).

It is little wonder that the State of Montana allows APCs to provide abortion care. *See Weems*, ¶ 46 ("The record is devoid of any evidence that APRNs providing abortion care present a medically acknowledged, bona fide health risk . . . [A]bortion care is one of the safest forms of medical care in this country and the world, and [] APRNs are qualified providers.").

3. APCs Provide Both Medication and Aspiration Abortions as Safely and Effectively as Physicians

The APC Restrictions are particularly troubling because APCs provide both medication and aspiration abortions as safely and effectively as physicians. *See* Lydia Mainey et al., *The Role of Nurses and Midwives in the Provision of Abortion Care*, J. Clinical Nursing 1, 1 (2020). In one study, researchers compared 5,812 aspiration procedures performed by physicians with 5,675 aspiration procedures

performed by APCs over a span of four years. *See* Weitz, at 457. The APCs participating in the study were newly trained to perform aspiration abortions, with an average of one and a half years' experience providing abortion care compared to the physicians' average of fourteen years' experience. *See id*. at 455. The study found that abortion "care provided by newly trained NPs, CNMs, and PAs was not inferior to that provided by experienced physicians." *Id*. at 458. With respect to major complications, the study found that there was no significant difference in terms of risk between provider groups. *Id.* at 459 ("Both provider groups had extremely low numbers of complications, less than 2% overall—well below published rates—and only 6 complications out of 11,487 procedures required hospital-based care . . . . [W]e conclude that the difference between the 2 groups of providers is not clinically significant."). The results "confirm[ed] existing evidence from smaller studies that the provision of abortion[s] by [NPs, CNMs, and PAs] is safe and from larger international and national reviews that have found these clinicians to be safe and qualified health care providers." *Id.*

Another study similarly found no significant difference in outcomes in first-trimester aspiration abortion followed by IUD insertion when the procedures were performed by APCs versus physicians. *See* Eva Patil et al., *Aspiration Abortion with Immediate Intrauterine Device Insertion: Comparing Outcomes of Advanced Practice Clinicians and Physicians*, 61 J. Midwifery & Women's Health 325, 329

(2016). The study compared the outcomes of 445 procedures performed by physicians to 224 procedures performed by APCs over the course of two years in Oregon and determined that there were no clinically significant differences based on the type of provider. *See id.* at 326-29[3]; *see also* Mainey et al., at 1 (concluding that nurses and midwives can safely provide abortions based on systematic review of 74 published research studies and/or reports from 2008 to 2019 on the nursing or midwifery role in abortion care).

PAs have a long history of successfully providing aspiration abortions, and have been performing abortion procedures in Montana for decades. Carole Joffe & Susan Yanow, *Advanced Practice Clinicians as Abortion Providers*, 12 Reproductive Health Matters Supp. 198, 199 (2004). An analysis of first-trimester abortion procedure outcomes found that of 2,458 first-trimester abortions, those performed by PAs presented a 2.74% complication rate, even lower than the 3.08% complication rate for abortions performed by physicians. Mary Anne Freedman et

[3] The results of both studies align with research from multiple countries confirming that APCs safely provide abortion care. *See, e.g.*, Shireen J. Jejeebhoy et al., *Can Nurses Perform Manual Vacuum Aspiration (MVA) As Safely and Effectively As Physicians? Evidence From India*, 84 Contraception 615, 620 (2011); Ina Warriner et al., *Rates of Complication in First-Trimester Manual Vacuum Aspiration Abortion Done by Doctors and Mid-level Providers in South Africa and Vietnam: A Randomised Controlled Equivalence Trial*, 368 Lancet 1965, 1971 (2006).

al., *Comparison of Complication Rates in First Trimester Abortions Performed by Physician Assistants and Physicians*, 76 Am. J. Public Health 550, 550 (1986).

Similarly, studies have shown that APCs provide medication abortions with the same safety, efficacy, and patient acceptability as physicians. In fact, some research shows that APCs may provide medication abortions with *greater* efficacy and patient acceptability than physicians. *See* H. Kopp Kallner et al., *The Efficacy, Safety and Acceptability of Medical Termination of Pregnancy Provided by Standard Care by Doctors or by Nurse-Midwives*, 122 BJOG: Int'l J. Obstetrics & Gynaecology 510, 515 (2014). This study found that 99% of the women treated by nurse-midwives did not require further intervention (*e.g.*, follow-up aspiration to complete the abortion), and 95.8% experienced no complications at all. *Id.* at 514. These rates were higher than for patients treated by physicians. *Id*. Moreover, women treated by nurse-midwives were significantly more likely to express a preference for nurse-midwives if they ever required another medication abortion. *Id*.

An FDA-cited randomized study of 1,295 women who received medication abortions found that abortions provided by nurses and auxiliary nurse midwives who received government-certified training did not pose any higher risk of failure or incomplete abortions compared to abortions provided by physicians. IK Warriner et al., *Can Midlevel Health-Care Providers Administer Early Medical Abortion as Safely and Effectively as Doctors? A Randomised Controlled Equivalence Trial in*

Nepal, 377 Lancet, 1155, 1155–61 (2011). In fact, 97.3% of the medication abortions provided by certified nurses or auxiliary nurse midwives were completed without further intervention, as compared to 96.1% of those provided by physicians. *Id.* A later review of data collected in that study found that of the women who received care from certified nurses and auxiliary nurse midwives, 38% reported being highly satisfied with their care and 62% reported being satisfied, reflecting a 100% satisfaction rate, compared to 35%, 64%, and 99% for physicians, respectively.[4] Anand Tamang et al., *Comparative Satisfaction of Receiving Medical Abortion Service from Nurses and Auxiliary Nurse-Midwives or Doctors in Nepal*, 14 Reproductive Health 1, 1 (2017).

In short, studies confirm that APCs provide abortion care just as competently and effectively as physicians. The APC Restrictions ignore this reality. The District Court did not. App.B03 (crediting "evidence that APCs provide abortions as safely and effectively as physicians"). Moreover, as the District Court recognized, "[b]ecause of the low number of physicians providing abortions in Montana," the physician-only requirement of the APC Restrictions "would significantly reduce the availability of abortions and impede abortion access for Montanans on Medicaid."

[4] Significantly, there is a conspicuous but telling absence of studies or empirical data suggesting that medication abortion in states that prohibit APCs from providing this care is any more safe or effective than in states that allow APCs to do so.

App.B15; *see also* App.B02-03. An "impending OB/GYN shortage," coupled with the fact that "[p]hysicians have burnout rates that are twice the rate of other working adults," Rodriguez & Hooker, at 540, 541, means that enjoining the APC Restrictions is the only way to provide women with the healthcare they require.

C. Medical And Public Health Groups Support The Provision Of Abortions By APCs

Major medical and public health groups support APCs' provision of abortions as a means of providing patients greater access to qualified healthcare providers, underscoring the degree to which the APC Restrictions would compromise patient care in Montana. The American Public Health Association ("APHA") is the largest organization of professionals dedicated to addressing public health issues and policies backed by science. APHA recommends that trained NPs and CNMs be permitted to provide medication and aspiration abortion. *See* Am. Pub. Health Ass'n, Provision of Abortion Care by Advanced Practice Nurses and Physician Assistants (2011), https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/28/16/00/provision-of-abortion-care-by-advanced-practice-nurses-and-physician-assistants. APHA has concluded that APCs "are well positioned within the health care system to address women's needs for comprehensive primary care and preventive reproductive health services that include abortion care." *Id.*

The American College of Obstetricians and Gynecologists ("ACOG") is the leading professional organization of physicians specializing in obstetrics and gynecology. ACOG recommends supporting clinical training for "advanced practice clinicians in abortion care in order to increase the availability of trained abortion providers." ACOG, Committee Opinion 612, *Abortion Training and Education* (2014) (reaffirmed 2022), https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2014/11/abortion-training-and-education. ACOG has also called "for the cease and repeal of legislation that creates barriers to abortion access," including the cease and repeal of "requirements that only physicians or obstetrician-gynecologists may provide abortion care . . ." ACOG, Committee Opinion 815, at e107. The APC Restrictions would be such legislation.

The American Medical Women's Association ("AMWA") is dedicated to the advancement of women in medicine and the improvement of women's health. AMWA has pledged to work towards "add[ing] adequately trained Nurse-Midwives, Nurse Practitioners and Physician Assistants to the pool of potential abortion providers." Am. Med. Women's Ass'n, Principals of Abortion & Access to Comprehensive Reproductive Health Services (2018), https://www.amwa-doc.org/wp-content/uploads/2018/05/Abortion-and-Access-to-Comprehensive-Reproductive-Health-Services.pdf.

The positions of these groups reflect and support what organizations representing APCs have long asserted in terms of APCs' ability to provide abortion care. In 1991, *Amicus* NPWH (formerly National Association of Nurse Practitioners in Reproductive Health)—an association of women's health-focused nurse practitioners advocating for improved access and quality of healthcare for women—adopted a policy resolution acknowledging the provision of abortion care as within NPs' scope of practice, resolving that NPs "are qualified to provide abortions." Nat'l Ass'n Nurse Pract. Women's Health, Resolution on Nurse Practitioners as Abortion Providers (1991). NPWH recently reaffirmed this policy, stating: "[t]he breadth and depth of a WHNP program curriculum in these areas prepares the [NP] with distinct competencies to provide advanced assessment, diagnosis, and management," including the ability to "[p]rovide medication abortion." NPWH, Guidelines for Practice and Education 13-14; *see also* NPWH, *Reproductive Rights Policy Summary* (2022), https://cdn.ymaws.com/npwh.org/resource/resmgr/position statement/npwh_reproductive_rights_pol.pdf (NPWH supports "the full spectrum of reproductive health" including "abortion services").

Similarly, *Amicus* ACNM issued an updated position statement affirming that "[m]anual vacuum aspiration abortion and medication abortion may be safely provided by trained advance practice clinicians (APCs), including midwives." Am. Coll. Nurse-Midwives, Midwives as Abortion Providers 1 (2019),

https://www.midwife.org/acnm/files/acnmlibrarydata/uploadfilename/000000000314/ps-midwives-as-abortion-providers-final-19-mar-18.pdf.

Amicus AAPA has also affirmed PAs' ability to provide abortion care, stating: "the PA profession is a natural fit for team-oriented obstetrics and gynecology (OBGYN) practice . . . PAs increase patient access and contribute to improved quality by providing medical care and care coordination." *PAs in Obstetrics and Gynecology*; *see also* Am. Acad. PAs, 2023-2024 Policy Manual 97-98 (2023), https://www.aapa.org/ download/116915/?tmstv=1690405277.

The views of these professional organizations are shared globally. Since at least 2012, the World Health Organization ("WHO") has emphasized the importance of non-physician medical professionals providing abortion care. In a policy guidance paper relying on medical studies, the WHO notes "[s]ince the advent of vacuum aspiration and medical abortion, [] abortion can be safely provided by a wide range of health workers in diverse settings" and recommends that APCs be permitted to provide aspiration at up to 14 weeks gestational age and medication abortion using mifepristone plus misoprostol, or misoprostol alone, at up to 12 weeks gestational age. World Health Org., Safe Abortion 2-4; World Health Org., Abortion Care Guideline 59 (2022). The WHO has also noted that "[c]omparative studies have shown no difference in complication rates between women who had first-trimester abortions with MVA [manual vacuum aspiration] performed by midlevel health-care

providers and those who had the procedure performed by a physician." World Health Org., Safe Abortion 72.

The message of these organizations is clear: the provision of abortion services falls well within APCs' scope of practice. As a matter of promoting women's health, APC-provided abortion should be accessible to all Montanans.

IV. CONCLUSION

Women seeking abortions in Montana should have the ability to seek care from the qualified healthcare provider of their choice. Like physicians, APCs provide abortion care safely and effectively. The APC Restrictions unnecessarily impede Montanans' access to abortion care and compromise qualified healthcare providers' professional right to provide this care. The Court should rule in favor of Appellees and affirm the preliminary injunction.

Dated: February 5, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing BRIEF OF NATIONAL ASSOCIATION OF NURSE PRACTITIONERS IN WOMEN'S HEALTH, AMERICAN COLLEGE OF NURSE-MIDWIVES, AMERICAN ACADEMY OF PHYSICIAN ASSOCIATES, AND ASSOCIATION OF PHYSICIAN ASSOCIATES IN OBSTETRICS AND GYNECOLOGY AS *AMICI CURIAE* is proportionately spaced in 14-point Roman, non-script text and contains 4931 words excluding the brief's cover, table of contents, table of authorities, certificate of compliance, and certificate of service.

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