

STATE OF MICHIGAN
COURT OF CLAIMS

NORTHLAND FAMILY PLANNING CENTER, on behalf of itself, its staff, its clinicians, and its patients; NORTHLAND FAMILY PLANNING CENTER INC. EAST, on behalf of itself, its staff, its clinicians, and its patients; NORTHLAND FAMILY PLANNING CENTER INC. WEST, on behalf of itself, its staff, its clinicians, and its patients; and MEDICAL STUDENTS FOR CHOICE, on behalf of itself, its members, and its members' patients,
Plaintiffs,

No. 24-000011-MM

HON. SIMA G. PATEL

**DEFENDANT ATTORNEY
GENERAL DANA NESSEL'S
RESPONSE TO PLAINTIFFS'
02/06/2024 MOTION FOR A
PRELIMINARY INJUNCTION**

v.

DANA NESSEL, Attorney General of the State of Michigan; MARLON I. BROWN, Acting Director of Michigan Licensing and Regulatory Affairs; and ELIZABETH HERTEL, Director of the Michigan Department of Health and Human Services, each in their official capacities, as well as their employees, agents, and successors,
Defendants.

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**DEFENDANT ATTORNEY GENERAL DANA NESSEL'S RESPONSE TO
PLAINTIFFS' 02/06/2024 MOTION FOR A PRELIMINARY INJUNCTION**

ARGUMENT

Plaintiffs, Northland Family Planning Center, Northland Family Planning Center Inc. East, Northland Family Planning Center Inc. West, and Medical Students for Choice, have requested that this Court enter a preliminary injunction enjoining Defendants, Attorney General Dana Nessel, Michigan Department of Licensing and Regulatory Affairs Director Marlon Brown, and Michigan Department of Health and Human Services Director Elizabeth Hertel, from enforcing MCL 333.17015 and MCL 333.17015a, which Plaintiffs have termed “the Challenged Laws.” In their verified complaint and motion for a preliminary injunction, Plaintiffs categorize the provisions of the Challenged Laws into three

distinct groups: the “24-Hour Delay,” “Mandatory Biased Counseling,” and the “Provider Ban.”

The Attorney General agrees that—given the evidence cited in Plaintiffs’ verified complaint and motion for a preliminary injunction (see, e.g., Verified Compl, pp 25–39; Mot for PI, pp 2–8)—Plaintiffs are likely to succeed on the merits of their argument that the 24-Hour Delay, Mandatory Biased Counseling, and Provider Ban provisions of the Challenged Laws do not pass muster under the “compelling interest” test of Article 1, § 28, of Michigan’s 1963 Constitution. The Attorney General also agrees that the other preliminary injunction factors are satisfied in this context. *Mich Coal of State Employee Unions v Civil Serv Comm*, 465 Mich 212, 225 n 11 (2001) (explaining four-factor test for issuance of preliminary injunction). Therefore, the Attorney General does not oppose entry of a preliminary injunction enjoining enforcement of the 24-Hour Delay, Mandatory Biased Counseling, and Provider Ban provisions of the Challenged Laws.¹

It appears, however, that Plaintiffs seek a preliminary injunction that far exceeds this scope. That is, Plaintiffs seemingly request that this Court enjoin the enforcement of the Challenged Laws *as a whole*. Yet, the Challenged Laws contain various provisions that cannot be described as falling within the 24-Hour Delay, Mandatory Biased Counseling, or Provider Ban categories. For instance, both MCL 333.17015 and MCL 333.17015a contain provisions aimed at confidentiality and

¹ The Department of Attorney General has erected a conflict wall in this case, and it is the Attorney General’s understanding that a team of attorneys representing the State of Michigan will be moving to intervene in this lawsuit to defend the Challenged Statutes.

domestic violence prevention. E.g., MCL 333.17015(19); MCL 333.17015(11)(i)(iv); MCL 333.17015a(2)–(5).

Plaintiffs advance no argument as to why § 28 would invalidate provisions such as these. And, notably, MCL 333.17015(17) expressly provides:

If any portion of this act or the application of this act to any person or circumstances is found invalid by a court, that invalidity does not affect the remaining portions or applications of the act that can be given effect without the invalid portion or application, if those remaining portions are not determined by the court to be inoperable.

As such, while the Attorney General does not contest the entry of a preliminary injunction enjoining enforcement of the 24-Hour Delay, Mandatory Biased Counseling, and Provider Ban provisions of the Challenged Laws, under MCL 333.17015(17), the Attorney General believes that the preliminary injunction should be narrowly drawn to enjoin enforcement of *only* those provisions, leaving in place those portions of the Challenged Laws that do not implicate § 28.

CONCLUSION AND RELIEF REQUESTED

For these reasons, the Attorney General does not oppose Plaintiffs' request for a preliminary injunction enjoining the enforcement of the 24-Hour Delay, Mandatory Biased Counseling, and Provider Ban provisions of the Challenged Laws. However, the Attorney General respectfully requests that this Court limit the scope of such preliminary injunction to apply to *only* those provisions.

Respectfully submitted,

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Attorney General

/s/Kyla L. Barranco

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Dated: February 27, 2024

PROOF OF SERVICE

Kyla L. Barranco certifies that on February 27, 2024, she served a copy of the above document in this matter on:

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