

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL FLORIDA, on behalf of itself, its staff, and its patients; PLANNED PARENTHOOD OF SOUTH, EAST AND NORTH FLORIDA, on behalf of itself, its staff, and its patients; GAINESVILLE WOMAN CARE, LLC d/b/a BREAD AND ROSES WOMEN'S HEALTH CENTER, on behalf of itself, its staff, and its patients; A WOMAN'S CHOICE OF JACKSONVILLE, INC., on behalf of itself, its staff, and its patients; INDIAN ROCKS WOMAN'S CENTER, INC. d/b/a/ BREAD AND ROSES, on behalf of itself, its staff, and its patients; ST. PETERSBURG WOMAN'S HEALTH CENTER, INC., on behalf of itself, its staff, and its patients; TAMPA WOMAN'S HEALTH CENTER, INC., on behalf of itself, its staff, and its patients; SHELLY HSIAO-YING TIEN, M.D., M.P.H, on behalf of herself and her patients,

Plaintiffs,

Case No. _____

v.

COMPLAINT

STATE OF FLORIDA; GINGER BOWDEN MADDEN, in her official capacity as State Attorney for the First Judicial Circuit of Florida; JACK CAMPBELL, in his official capacity as State Attorney for the Second Judicial Circuit of Florida; JOHN DURRETT, in his official capacity as State Attorney for the Third Judicial Circuit of Florida; MELISSA W. NELSON, in her official capacity as State Attorney for the Fourth Judicial Circuit of Florida; WILLIAM GLADSON, in his official capacity as State Attorney for the Fifth Judicial Circuit of Florida; BRUCE BARTLETT, in his official capacity as State Attorney for the Sixth Judicial Circuit of Florida; R.J. LARIZZA, in his official capacity as State Attorney for the Seventh Judicial Circuit of Florida; BRIAN S. KRAMER, in his official capacity as State Attorney for the Eighth Judicial Circuit of Florida; MONIQUE H. WORRELL, in her official capacity as State Attorney for the Ninth Judicial Circuit of Florida;

BRIAN HAAS, in his official capacity as State Attorney for the Tenth Judicial Circuit of Florida; KATHERINE FERNANDEZ RUNDLE, in her official capacity as State Attorney for the Eleventh Judicial Circuit of Florida; ED BRODSKY, in his official capacity as State Attorney for the Twelfth Judicial Circuit of Florida; ANDREW H. WARREN, in his official capacity as State Attorney for the Thirteenth Judicial Circuit of Florida; LARRY BASFORD, in his official capacity as State Attorney for the Fourteenth Judicial Circuit of Florida; DAVID A. ARONBERG, in his official capacity as State Attorney for the Fifteenth Judicial Circuit of Florida; DENNIS W. WARD, in his official capacity as State Attorney for the Sixteenth Judicial Circuit of Florida; HAROLD F. PRYOR, in his official capacity as State Attorney for the Seventeenth Judicial Circuit of Florida; PHILIP G. ARCHER, in his official capacity as State Attorney for the Eighteenth Judicial Circuit of Florida; THOMAS BAKKEDAHL, in his official capacity as State Attorney for the Nineteenth Judicial Circuit of Florida; AMIRA D. FOX, in his official capacity as State Attorney for the Twentieth Judicial Circuit of Florida; FLORIDA DEPARTMENT OF HEALTH; JOSEPH LADAPO, M.D., in his official capacity as Secretary of Health for the State of Florida; FLORIDA BOARD OF MEDICINE; DAVID DIAMOND, M.D., in his official capacity as Chair of the Florida Board of Medicine; FLORIDA BOARD OF OSTEOPATHIC MEDICINE; SANDRA SCHWEMMER, D.O., in her official capacity as Chair of the Florida Board of Osteopathic Medicine; FLORIDA BOARD OF NURSING; MAGGIE HANSEN, M.H.Sc., R.N., in her official capacity as Chair of the Florida Board of Nursing; FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION; and SIMONE MARSTILLER, J.D., in her official capacity as Secretary of the Florida Agency for Health Care Administration,

Defendants.

I. PRELIMINARY STATEMENT

1. More than forty years ago, the people of Florida amended the Florida Constitution to guarantee Floridians a broad right of privacy, including the right to abortion. Art. I, § 23, Fla. Const. This “independent, freestanding constitutional provision which declares the fundamental right to privacy” was drafted “in order to make the privacy right as strong as possible,” *Winfield v. Div. of Pari-Mutuel Wagering*, 477 So. 2d 544, 548 (Fla. 1985), and to “embrace[] more privacy interests, and extend[] more protection to the individual in those interests, than does the federal Constitution,” *In re T.W.*, 551 So. 2d 1186, 1192 (Fla. 1989). As the Florida Supreme Court has repeatedly recognized, this broad right to privacy includes a woman’s right to decide to terminate a pregnancy. “The Florida Constitution embodies the principle that ‘[f]ew decisions are more personal and intimate, more properly private, or more basic to individual dignity and autonomy, than a woman’s decision . . . whether to end her pregnancy. A woman’s right to make that choice freely is fundamental.’” *Id.* at 1193 (quoting *Thornburgh v. Am. Coll. of Obstetricians & Gynecologists*, 476 U.S. 747 (1986)). In exercising their sovereign will more recently, Floridians reaffirmed that abortion is a fundamental right deserving of the strongest protection against government intrusion. In 2012, Floridians rejected a ballot initiative that would have amended the state constitution to overturn state court decisions construing the right to privacy broadly and to prohibit state courts from interpreting the Florida Constitution to provide stronger protection for abortion than the federal constitution.¹

¹ Fla. Dep’t of State, Div. of Elections, *Initiative Information: Prohibition on Public Funding of Abortions; Construction of Abortion Rights*, <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/10-82.pdf> (last visited May 22, 2022); Fla. Dep’t of State, Div. of Elections, *Prohibition on Public Funding of Abortions; Construction of Abortion Rights*, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=82> (last visited May 22, 2022).

2. Despite Florida’s history of protecting the right to abortion, the Florida legislature recently engaged in a brazen attempt to override the will of the Florida people. The legislature passed House Bill 5, a law that criminalizes pre-viability abortions in direct violation of Floridians’ fundamental privacy rights guaranteed by the Florida Constitution. *See* Ch. 2022-69, §§ 3–4, Laws of Fla. (“HB 5” or “the Act”) (amending §§ 390.011, 390.0111, Fla. Stat.). HB 5 was signed by Governor Ron DeSantis on April 14, 2022, and it is scheduled to take effect on July 1, 2022. The Act is attached hereto as Exhibit A-1.

3. HB 5 radically curtails the ability of Floridians to make decisions about whether or not to continue a pregnancy and have a child, in violation of their rights under the Florida Constitution. Specifically, HB 5 criminalizes the provision of abortion care after fifteen weeks as dated from the first day of a woman’s last menstrual period (“LMP”).² That timing is early in the second trimester and *months* prior to both fetal viability and the current limit under Florida law.

4. By banning the provision of abortion care after fifteen weeks LMP, the Act will unlawfully intrude upon the fundamental privacy rights of Florida women.³ It will deny Floridians’ autonomy over their own bodies and undermine their ability to make deeply personal decisions about their lives, families, and health care free of government interference.

5. The Act threatens Plaintiffs and their staff, all of whom currently provide abortion care in Florida after 15 weeks LMP, with severe penalties: it makes the provision of abortion care

² Almost uniformly, clinicians date pregnancy based on the first day of the patient’s last menstrual period.

³ Plaintiffs at times refer to “woman” or “women” herein when referring to patients seeking abortion care, but recognize that people of all gender identities, including transgender men and gender-diverse individuals, may also become pregnant and seek abortion services, and would thus also suffer irreparable harm under HB 5.

after 15 weeks LMP a felony and threatens clinics and health care professionals with adverse licensing and disciplinary action for providing essential health care to their patients.

6. If the Act goes into effect, it will cause immediate and irreparable harm to Floridians seeking abortions after 15 weeks LMP and to Plaintiffs and their staff.

7. Plaintiffs seek a declaratory judgment and a temporary and permanent injunction pursuant to Chapter 86 and Section 26.012(3), Florida Statutes, and Florida Rules of Civil Procedure Rule 1.610 to prevent the violation of Floridians' constitutional rights.

8. Unless this Court grants an injunction before HB 5 takes effect, Plaintiffs will be prevented from providing pregnant Floridians with the critical medical care that they are constitutionally entitled to receive. Patients denied an abortion under the Act will be faced with serious burdens and harms: those with the means to do so may attempt to travel hundreds, if not thousands, of miles out of state to seek care where it is still available, at great personal burden and expense; others may attempt to end their pregnancies on their own, outside the medical system; and many others will be prevented from obtaining an abortion at all and forced to carry a pregnancy to term and give birth against their will. Forcing people to remain pregnant and give birth against their will subjects them to substantially increased risks to their health and their lives, threatens the stability and security of their existing families and children, and denies them the autonomy and dignity to direct the course of their own lives.

9. Absent an injunction, the Act will prevent Floridians from exercising their fundamental constitutional right to decide whether to have an abortion prior to viability, causing irreparable harm for which there is no adequate remedy at law.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to article V, section 5, subsection (b) of the Florida Constitution and Sections 26.012(3) and 86.011, Florida Statutes.

11. Venue is proper in this Court pursuant to Section 47.021, Florida Statutes, because at least one Defendant has a principal office in Leon County.

III. THE PARTIES

A. Plaintiffs

12. Plaintiff Planned Parenthood of Southwest and Central Florida (PPSWCF) is a not-for-profit corporation organized under the laws of Florida. PPSWCF operates ten health centers across Southwest and Central Florida, providing reproductive health care services, including but not limited to contraception and contraceptive counseling, well-person exams, screening for breast cancer, screening and treatment for cervical cancer, vasectomies, STI testing and treatment, reproductive health education, miscarriage management, and abortions, including abortions after 15 weeks LMP at its health centers in Orlando, Tampa, Fort Myers, and Sarasota. PPSWCF sues on behalf of itself, its staff (including but not limited to physicians, osteopathic physicians, registered nurses, and licensed practical nurses), and its patients.

13. Plaintiff Planned Parenthood of South, East and North Florida (PPSENFL) is a not-for-profit corporation organized under the laws of Florida. PPSSENFL operates ten health centers across South, East, and North Florida, providing reproductive health services, including but not limited to contraceptive services and counseling, well-person exams, screening for breast cancer, screening and treatment for cervical cancer, STI testing and treatment, reproductive health education, miscarriage management, and abortions, including abortions after 15 weeks LMP at its health centers in Jacksonville, Tallahassee, West Palm Beach, and Miami. PPSSENFL sues on

behalf of itself, its staff (including but not limited to physicians, osteopathic physicians, registered nurses, and licensed practical nurses), and its patients.

14. Plaintiff Gainesville Woman Care, LLC d/b/a Bread and Roses Women's Health Center ("Bread and Roses (Gainesville)") is a clinic located in Gainesville, Florida, which provides reproductive health care services, including pregnancy testing, contraception counseling and services, emergency contraception services, referrals for other reproductive health care services, prenatal care and adoption services, and abortion care, including after 15 weeks LMP. Bread and Roses (Gainesville) sues on behalf of itself, its staff (including but not limited to physicians and registered nurses), and its patients.

15. Plaintiff A Woman's Choice of Jacksonville, Inc., is a woman-owned and operated health care facility that provides reproductive health care in Jacksonville, Florida, including pregnancy and STI testing, pregnancy decision counseling, community referrals, adoption services, contraception and contraception counseling, pap smears, miscarriage management, and abortion care, including after 15 weeks LMP. A Woman's Choice of Jacksonville sues on behalf of itself, its staff (including but not limited to physicians and licensed practical nurses), and its patients.

16. Plaintiff Indian Rocks Woman's Center, Inc. d/b/a Bread and Roses ("Bread and Roses (Clearwater)") is a clinic located in Clearwater, Florida, which provides abortion care services, including after 15 weeks LMP. Bread and Roses (Clearwater) sues on behalf of itself, its staff (including but not limited to physicians, osteopathic physicians, and licensed practical nurses), and its patients.

17. Plaintiff St. Petersburg Woman's Health Center, Inc. is a clinic located in St. Petersburg, Florida, which provides abortion care services, including after 15 weeks LMP.

St. Petersburg Woman's Health Center sues on behalf of itself, its staff (including but not limited to physicians, osteopathic physicians, and licensed practical nurses), and its patients.

18. Plaintiff Tampa Woman's Health Center, Inc. is a clinic located in Tampa, Florida, which provides abortion care services, including after 15 weeks LMP. Tampa Woman's Health Center sues on behalf of itself, its staff (including but not limited to physicians and licensed practical nurses), and its patients.

19. Shelly Hsiao-Ying Tien, M.D., M.P.H., is a board-certified physician in obstetrics and gynecology and maternal-fetal medicine, a sub-specialty of obstetrics and gynecology focused on caring for patients with high-risk pregnancies. She currently practices in multiple states, including in Florida at PPSNFL, where she provides reproductive health services, including contraceptive care and abortion care, including after 15 weeks LMP. Dr. Tien sues on behalf of herself and her patients.

B. Defendants

20. Defendant the State of Florida, through its Legislature and Governor, adopted the challenged Act.

21. Defendant Ginger Bowden Madden is the state attorney of the First Judicial Circuit of Florida. Defendant Bowden Madden is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Bowden Madden is sued in her official capacity, as are her agents and successors.

22. Defendant Jack Campbell is the state attorney of the Second Judicial Circuit of Florida. Defendant Campbell is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Campbell is sued in his official capacity, as are his agents and successors.

23. Defendant John Durrett is the state attorney of the Third Judicial Circuit of Florida. Defendant Durrett is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Durrett is sued in his official capacity, as are his agents and successors.

24. Defendant Melissa W. Nelson is the state attorney of the Fourth Judicial Circuit of Florida. Defendant Nelson is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Nelson is sued in her official capacity, as are her agents and successors.

25. Defendant William Gladson is the state attorney of the Fifth Judicial Circuit of Florida. Defendant Gladson is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Gladson is sued in his official capacity, as are his agents and successors.

26. Defendant Bruce Bartlett is the state attorney of the Sixth Judicial Circuit of Florida. Defendant Bartlett is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Bartlett is sued in his official capacity, as are his agents and successors.

27. Defendant R.J. Larizza is the state attorney of the Seventh Judicial Circuit of Florida. Defendant Larizza is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Larizza is sued in his official capacity, as are his agents and successors.

28. Defendant Brian S. Kramer is the state attorney of the Eighth Judicial Circuit of Florida. Defendant Kramer is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Kramer is sued in his official capacity, as are his agents and successors.

29. Defendant Monique H. Worrell is the state attorney of the Ninth Judicial Circuit of Florida. Defendant Worrell is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Worrell is sued in her official capacity, as are her agents and successors.

30. Defendant Brian Haas is the state attorney of the Tenth Judicial Circuit of Florida. Defendant Haas is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Haas is sued in his official capacity, as are his agents and successors.

31. Defendant Katherine Fernandez Rundle is the state attorney of the Eleventh Judicial Circuit of Florida. Defendant Fernandez Rundle is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Fernandez Rundle is sued in her official capacity, as are her agents and successors.

32. Defendant Ed Brodsky is the state attorney of the Twelfth Judicial Circuit of Florida. Defendant Brodsky is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Brodsky is sued in his official capacity, as are his agents and successors.

33. Defendant Andrew H. Warren is the state attorney of the Thirteenth Judicial Circuit of Florida. Defendant Warren is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Warren is sued in his official capacity, as are his agents and successors.

34. Defendant Larry Basford is the state attorney of the Fourteenth Judicial Circuit of Florida. Defendant Basford is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Basford is sued in his official capacity, as are his agents and successors.

35. Defendant David A. Aronberg is the state attorney of the Fifteenth Judicial Circuit of Florida. Defendant Aronberg is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Aronberg is sued in his official capacity, as are his agents and successors.

36. Defendant Dennis W. Ward is the state attorney of the Sixteenth Judicial Circuit of Florida. Defendant Ward is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Ward is sued in his official capacity, as are his agents and successors.

37. Defendant Harold F. Pryor is the state attorney of the Seventeenth Judicial Circuit of Florida. Defendant Pryor is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Pryor is sued in his official capacity, as are his agents and successors.

38. Defendant Philip G. Archer is the state attorney of the Eighteenth Judicial Circuit of Florida. Defendant Archer is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Archer is sued in his official capacity, as are his agents and successors.

39. Defendant Thomas Bakkedahl is the state attorney of the Nineteenth Judicial Circuit of Florida. Defendant Bakkedahl is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Bakkedahl is sued in his official capacity, as are his agents and successors.

40. Defendant Amira D. Fox is the state attorney of the Twentieth Judicial Circuit of Florida. Defendant Fox is authorized to initiate and prosecute alleged violations of the Act.

§ 27.02(1), Fla. Stat. Defendant Fox is sued in her official capacity, as are her agents and successors.

41. Defendant Florida Department of Health is the state agency authorized to investigate potential violations of the Act and, in some instances, impose penalties for violations of the Act on providers of abortion care, including members of the clinic Plaintiffs' staff. Defendant Joseph Ladapo, M.D., is Secretary of the Department and is sued in his official capacity as Secretary of Health for the State of Florida, as are his agents and successors.

42. Defendant Florida Board of Medicine is part of the Florida Department of Health. Pursuant to Florida law, the Florida Board of Medicine exercises supervisory powers over the state's physicians and conducts disciplinary proceedings and imposes penalties against physicians and physician assistants. Defendant Florida Board of Medicine is authorized to impose penalties on providers of abortion care, including Plaintiff Tien and members of the clinic Plaintiffs' staff, for violations of the Act. Defendant David Diamond, M.D., is the Chair of the Florida Board of Medicine and is sued in his official capacity as Chair of the Florida Board of Medicine, as are his agents and successors.

43. Defendant Florida Board of Osteopathic Medicine is part of the Florida Department of Health. Pursuant to Florida law, the Florida Board of Osteopathic Medicine exercises supervisory powers over the state's osteopathic physicians and conducts disciplinary proceedings and imposes penalties against osteopathic physicians. Defendant Florida Board of Osteopathic Medicine is authorized to impose penalties on providers of abortion care, including members of the clinic Plaintiffs' staff. Defendant Sandra Schwemmer, D.O., is the Chair of the Florida Board of Osteopathic Medicine and is sued in her official capacity as Chair of the Florida Board of Osteopathic Medicine, as are her agents and successors.

44. Defendant Florida Board of Nursing is part of the Florida Department of Health. Pursuant to Florida law, the Florida Board of Nursing exercises supervisory powers over the state's registered nurses, licensed practical nurses, and advanced practice registered nurses and conducts disciplinary proceedings and imposes penalties against them. Defendant Florida Board of Nursing is authorized to impose penalties on nursing professionals who participate in providing abortion care, including members of the clinic Plaintiffs' staff, for violations of the Act. Defendant Maggie Hansen, M.H.Sc, R.N., is the Chair of the Florida Board of Nursing and is sued in her official capacity as Chair of the Florida Board of Nursing, as are her agents and successors.

45. Defendant Florida Agency for Health Care Administration is the state agency authorized to license abortion clinics, including the clinic Plaintiffs, and to refuse to renew those licenses for failure to comply with the Act. Defendant Simone Marsteller, J.D., is Secretary of the Agency and is sued in her official capacity as Secretary of the Agency for Health Care Administration, as are her agents and successors.

IV. STATUTORY FRAMEWORK

46. Florida law already bans abortions after a fetus attains viability, which is defined as "the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures." § 390.011(13), Fla. Stat.; *see also* § 390.01112, Fla. Stat.

47. Section 390.0111, Florida Statutes, sets forth statutory requirements for the provision of abortion care in Florida, including the current requirements that abortions be performed prior to the third trimester of pregnancy, only by physicians, and only after obtaining informed consent from the patient.

48. Section 4 of HB 5 amends section 390.0111 to prohibit and criminalize the provision of abortion care after fifteen weeks LMP, which is early in the second trimester and approximately two months before any pregnancy can be viable. Fla. HB 5, § 4 (2022) (to be

codified at § 390.0111(1), Fla. Stat.). Section 3 of HB 5 amends section 390.011 to provide definitions for Section 4’s operative terms. Fla. HB 5, § 3(6)–(7) (to be codified at § 390.011(6)–(7)).

49. The Act contains only two extremely limited exceptions.

50. First, an abortion after fifteen weeks LMP may be performed: if “the termination of the pregnancy is necessary to save the pregnant woman’s life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition,” and either two physicians so certify this conclusion “in [their] reasonable medical judgment” in writing, or a single physician so certifies that the risks are “imminent” and “another physician is not available for consultation.” § 390.0111(1)(a)–(b), Fla. Stat.

51. Second, the Act permits an abortion after 15 weeks LMP in instances where “[t]he fetus has not achieved viability under § 390.01112 and two physicians certify in writing that, in [their] reasonable medical judgement, the fetus has a fatal fetal abnormality.” Fla. HB 5, § 4 (to be codified at § 390.0111(1)(c), Fla. Stat.). The Act defines “fatal fetal abnormality” to mean “a terminal condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb and will result in death upon birth or imminently thereafter.” *Id.* § 3 (to be codified at § 390.011(6), Fla. Stat.).

52. A violation of HB 5 constitutes a third-degree felony; “any person” who “willfully performs” or “actively participates” in an abortion in violation of the law is subject to criminal penalties, including imprisonment of up to five years and monetary penalties up to \$5,000 for a first offense. §§ 390.0111(10)(a), 775.082(8)(e), 775.083(1)(c), Fla. Stat.

53. Physicians and other health care professionals are subject to disciplinary action for violating the Act, including but not limited to revocation of their licenses to practice medicine and administrative fines of up to \$10,000 for each violation. §§ 390.0111(13), 390.018, 456.072(2), 458.331(2), 459.015(2), 464.018(2), Fla. Stat.

54. In addition, abortion clinics may be prevented from renewing their clinic licenses for violations of the Act. Fla. Admin. Code R. 59A-9.020.

55. The Act, by its terms, is scheduled to take effect on July 1, 2022. Fla. HB 5, § 8.

V. STATEMENT OF FACTS

56. Abortion is one of the safest medical procedures in the United States. Abortion, including pre-viability abortion after 15 weeks LMP, is much safer than continuing a pregnancy through to childbirth. A woman's risk of death associated with childbirth is approximately 12 to 14 times higher than her risk of death associated with abortion. In addition, every type of complication associated with pregnancy is more common among women who give birth than among those who have abortions.

57. Abortion is not only safe, but common. Approximately one in four women in this country will have an abortion. A majority of women having abortions (60%) already have at least one child.

58. Women seek abortions for a variety of deeply personal reasons, including familial, medical, and financial. Some women have abortions because they conclude that it is not the right time in their lives to have a child or to add to their families. For example, some decide to end a pregnancy because they want to pursue their education; some because they feel they lack the necessary economic resources or level of partner support or stability; some because they are concerned that adding a child to their family will make them less able to adequately provide and care for their existing children; and some because they decide not to have children at all. Some

women seek abortions to preserve their lives or their physical, psychological, and emotional health; some because they have become pregnant as a result of rape; and some because they are experiencing intimate partner violence and do not wish to be further tethered to an abusive partner or to bring a child into an abusive environment. Some women decide to have an abortion because of an indication or diagnosis of a fetal medical condition or anomaly. Some families do not feel they have the resources—financial, medical, educational, or emotional—to care for a child with special needs or to simultaneously provide for the children they already have. The decision to terminate a pregnancy for any reason is motivated by a combination of diverse, complex, and interrelated factors that are intimately related to the individual woman’s values and beliefs, culture and religion, health status and reproductive history, familial situation, and resources and economic stability.

59. Due to a range of factors, including lack of access to affordable health care, approximately 75% of people obtaining abortion care have incomes that classify them as poor or low-income. Centuries of systemic racism have also contributed to inequities in health care access and economic inequality; as a result, the majority of patients seeking abortion care are Black, Indigenous, or women of color, and these same populations face disproportionately high rates of maternal mortality and comorbidities that increase the health risks associated with pregnancy.

60. No fetus is viable at 15 weeks of pregnancy. Fifteen weeks LMP is approximately two months before the point in pregnancy at which fetal viability may occur.⁴

61. As a general matter, people who have decided to end a pregnancy seek to do so as early as possible in their pregnancies. As a result, most abortions in Florida occur prior to 14

⁴ Some fetuses do not become viable until later in pregnancy, and some fetuses are never viable.

weeks LMP. However, women seek abortion in the second trimester, including after 15 weeks LMP, for a number of reasons.

62. For example, some patients, especially those with irregular menstrual cycles or who do not experience pregnancy symptoms, may not even suspect they are pregnant for weeks or months. Because of the way pregnancy is dated, a missed period occurs at the earliest at 4.5 to 5 weeks LMP. Patients may be further delayed in confirming the pregnancy, researching and considering their options, contacting an abortion provider, and scheduling an appointment.

63. Many patients who seek abortions after 15 weeks of pregnancy do so because they face difficulty in raising the necessary funds both for the procedure itself as well as related expenses, including transportation and childcare.

64. Other patients have difficulty arranging time off from work or school, finding childcare, and arranging transportation.

65. Other patients, including women who initially intended to carry their pregnancies to term, may decide to terminate a pregnancy because their life circumstances change: they lose a job, they break up with a partner, or a family member becomes ill. Others experience health conditions that are caused or exacerbated by pregnancy or receive a diagnosis of a serious fetal condition. These health conditions may first arise or worsen after 15 weeks LMP, and many fetal conditions are not able to be identified until after 15 weeks LMP, but these conditions often do not fit squarely within the Act's very limited exceptions.

66. For all of these reasons, nearly 5,000 patients obtain abortion care after 14 weeks LMP in Florida each year.⁵

⁵ Fla. Agency for Healthcare Admin., *Reported Induced Termination of Pregnancy (ITOP) by Reason, by Trimester* (2021), https://ahca.myflorida.com/mchq/central_services/training_support/docs/TrimesterByReason_2021.pdf.

67. As a result of the Act, thousands of patients who need abortion care after 15 weeks LMP will be left with few options. Some may attempt to travel extremely long distances to obtain care in another state in which such care is still available. But doing so will impose substantial economic and logistical burdens, and simply will not be possible for many patients, 75% of whom are poor or have low incomes. Some patients may decide to end their pregnancies on their own, outside the medical system. Others will be prevented from obtaining abortion care entirely and thus will be forced to continue their pregnancies and have children against their will.

68. Being forced to continue a pregnancy against her will can pose a risk to a woman's physical, mental, and emotional health, and even her life, as well as to the stability and well-being of her family, including her existing children. The Act mandates the medically riskier course of maintaining a pregnancy, regardless of whether continuing the pregnancy is contrary to an individual patient's will, and regardless of the specific health risks it imposes on her.

69. Because of the Act's severe penalties, absent an injunction, Plaintiffs and their staff will be forced to stop providing care to patients seeking abortions after 15 weeks LMP, contrary to their good-faith medical judgment and their patients' needs and wishes. With no one available to provide such care in Florida, Florida women will suffer irreparable harm to their autonomy, their well-being, and their dignity, in violation of their rights under the Florida Constitution. The Act irreparably harms Plaintiffs, Plaintiffs' staff, and their patients, and there is no adequate remedy at law for the Act's violation of the Florida Constitution.

VI. CLAIM FOR RELIEF

COUNT I – RIGHT TO PRIVACY

70. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶ 1–69 above as if set forth fully herein.

71. The Act, on its face or, in the alternative, as applied, violates the right to privacy of women seeking and obtaining abortions in the state of Florida, as guaranteed by article I, section 23 of the Florida Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Issue a declaratory judgment that Section 4 of HB 5 and the related definitions in Section 3(6) and 3(7) of HB 5 violate the rights of Plaintiffs, their patients, and Floridians, as protected by the Florida Constitution, and are therefore void and of no effect.

2. Issue temporary and final injunctive relief restraining the enforcement, operation and execution of Section 4 of HB 5 and the related definitions in Section 3(6) and 3(7) of HB 5 by enjoining Defendants, their officers, agents, servants, employees, appointees, or successors, as well as those in active concert or participation with any of them, from enforcing, threatening to enforce, or otherwise applying the provisions of that statute.

3. Issue an order requiring expungement of the unconstitutional language in Section 4 of HB 5 and the related definitions in Section 3(6) and 3(7) of HB 5 from the official records of the State.

4. Grant Plaintiffs' costs.

5. Grant such other and further relief as may be just and proper.

Respectfully submitted this 1st day of June 2022.

/s/ Benjamin James Stevenson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Complaint and its attached Exhibit A-1 have been emailed on June 1, 2022, to all defendants or their representatives, as listed on the attached service list.

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EXHIBIT A-1

CHAPTER 2022-69

Committee Substitute for House Bill No. 5

An act relating to reducing fetal and infant mortality; amending s. 381.84, F.S.; revising the purpose and requirements for the Comprehensive Statewide Tobacco Education and Use Prevention Program; revising a provision relating to a certain report to conform to changes made by the act; creating s. 383.21625, F.S.; providing a definition; requiring the Department of Health to contract with local healthy start coalitions for the creation of fetal and infant mortality review committees in all regions of the state; providing requirements for such committees; requiring local healthy start coalitions to report the findings and recommendations developed by the committees to the department annually; requiring the department to compile such findings and recommendations in a report and submit such report to the Governor and Legislature by a specified date and annually; authorizing the department to adopt rules; amending s. 390.011, F.S.; revising and providing definitions; amending s. 390.0111, F.S.; prohibiting a physician from performing a termination of pregnancy if the physician determines the gestational age of a fetus is more than a specified number of weeks; providing an exception; amending s. 390.0112, F.S.; revising a requirement that the directors of certain medical facilities submit a monthly report to the Agency for Health Care Administration; requiring certain physicians to submit such report to the agency; requiring the report to be submitted electronically on a form adopted by the agency, the Board of Medicine, and the Board of Osteopathic Medicine; requiring the report to include certain additional information; removing obsolete language; creating s. 395.1054, F.S.; requiring that certain hospitals participate in a minimum number of quality improvement initiatives developed in collaboration with the Florida Perinatal Quality Collaborative within the University of South Florida College of Public Health; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2), (3), and (7) of section 381.84, Florida Statutes, are amended to read:

381.84 Comprehensive Statewide Tobacco Education and Use Prevention Program.—

(2) PURPOSE, FINDINGS, AND INTENT.—It is the purpose of this section to implement s. 27, Art. X of the State Constitution. The Legislature finds that s. 27, Art. X of the State Constitution requires the funding of a statewide tobacco education and use prevention program that focuses on tobacco use by youth. The Legislature further finds that the primary goals of the program are to reduce the prevalence of tobacco use among youth, adults, and pregnant women, and women who may become pregnant; reduce per capita tobacco consumption; and reduce exposure to environmental tobacco

smoke. Further, it is the intent of the Legislature to base increases in funding for individual components of the program on the results of assessments and evaluations. Recognizing that some components will need to grow faster than inflation, it is the intent of the Legislature to fund portions of the program on a nonrecurring basis in the early years so that those components that are most effective can be supported as the program matures.

(3) PROGRAM COMPONENTS AND REQUIREMENTS.—The department shall conduct a comprehensive, statewide tobacco education and use prevention program consistent with the recommendations for effective program components contained in the 1999 Best Practices for Comprehensive Tobacco Control Programs of the CDC, as amended by the CDC. The program shall include the following components, each of which shall focus on educating people, particularly pregnant women, women who may become pregnant, and youth and their parents, about the health hazards of tobacco and discouraging the use of tobacco:

(a) Counter-marketing and advertising; Internet resource center.—The counter-marketing and advertising campaign shall include, at a minimum, Internet, print, radio, and television advertising and shall be funded with a minimum of one-third of the total annual appropriation required by s. 27, Art. X of the State Constitution.

1. The campaign shall include an Internet resource center for copyrighted materials and information concerning tobacco education and use prevention, including cessation. The Internet resource center must be accessible to the public, including parents, teachers, and students, at each level of public and private schools, universities, and colleges in the state and shall provide links to other relevant resources. The Internet address for the resource center must be incorporated in all advertising. The information maintained in the resource center shall be used by the other components of the program.

2. The campaign shall use innovative communication strategies, such as targeting specific audiences who use personal communication devices and frequent social networking websites.

(b) Cessation programs, counseling, and treatment.—This program component shall include two subcomponents:

1. A statewide toll-free cessation service, which may include counseling, referrals to other local resources and support services, and treatment to the extent funds are available for treatment services; and

2. A local community-based program to disseminate information about tobacco-use cessation, how tobacco-use cessation relates to prenatal care and obesity prevention, and other chronic tobacco-related diseases.

(c) Surveillance and evaluation.—The program shall conduct ongoing epidemiological surveillance and shall contract for annual independent evaluations of the effectiveness of the various components of the program in meeting the goals as set forth in subsection (2).

(d) Youth school programs.—School and after-school programs shall use current evidence-based curricula and programs that involve youth to educate youth about the health hazards of tobacco, help youth develop skills to refuse tobacco, and demonstrate to youth how to stop using tobacco.

(e) Community programs and chronic disease prevention.—The department shall promote and support local community-based partnerships that emphasize programs involving youth, pregnant women, and women who may become pregnant, including programs for the prevention, detection, and early intervention of tobacco-related chronic diseases.

(f) Training.—The program shall include the training of health care practitioners, tobacco-use cessation counselors, and teachers by health professional students and other tobacco-use prevention specialists who are trained in preventing tobacco use and health education. Tobacco-use cessation counselors shall be trained by specialists who are certified in tobacco-use cessation.

(g) Administration and management, statewide programs, and county health departments.—The department shall administer the program within the expenditure limit established in subsection (8). Each county health department is eligible to receive a portion of the annual appropriation, on a per capita basis, for coordinating tobacco education and use prevention programs within that county. Appropriated funds may be used to improve the infrastructure of the county health department to implement the comprehensive, statewide tobacco education and use prevention program. Each county health department shall prominently display in all treatment rooms and waiting rooms counter-marketing and advertisement materials in the form of wall posters, brochures, television advertising if televisions are used in the lobby or waiting room, and screensavers and Internet advertising if computer kiosks are available for use or viewing by people at the county health department.

(h) Enforcement and awareness of related laws.—In coordination with the Department of Business and Professional Regulation, the program shall monitor the enforcement of laws, rules, and policies prohibiting the sale or other provision of tobacco to minors, as well as the continued enforcement of the Clean Indoor Air Act prescribed in chapter 386. The advertisements produced in accordance with paragraph (a) may also include information designed to make the public aware of these related laws and rules. The departments may enter into interagency agreements to carry out this program component.

(i) AHEC tobacco-use cessation initiative.—The AHEC network may administer the AHEC tobacco-use cessation initiative in each county within the state and perform other activities as determined by the department.

(7) ANNUAL REPORT REQUIRED.—By January 31 of each year, the department shall provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that evaluates the program’s effectiveness in reducing and preventing tobacco use and that recommends improvements to enhance the program’s effectiveness. The report must contain, at a minimum, an annual survey of youth attitudes and behavior toward tobacco, as well as a description of the progress in reducing the prevalence of tobacco use among youth, adults, ~~and~~ pregnant women, and women who may become pregnant; reducing per capita tobacco consumption; and reducing exposure to environmental tobacco smoke.

Section 2. Section 383.21625, Florida Statutes, is created to read:

383.21625 Fetal and infant mortality review committees.—

(1) As used in this section, the term “department” means the Department of Health.

(2) The department shall contract with local healthy start coalitions for the creation of fetal and infant mortality review committees in all regions of the state to improve fetal and infant mortality and morbidity in each region. Each committee shall:

(a) Review and analyze rates, trends, causes, and other data related to fetal and infant mortality and morbidity in a geographic area.

(b) Develop findings and recommendations for interventions and policy changes to reduce fetal and infant mortality and morbidity rates.

(c) Engage with local communities and stakeholders to implement recommended policies and procedures to reduce fetal and infant mortality and morbidity.

(3) Each local healthy start coalition shall report the findings and recommendations developed by each fetal and infant mortality review committee to the department annually. Beginning October 1, 2023, the department shall compile such findings and recommendations in an annual report, which must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(4) The department may adopt rules necessary to implement this section.

Section 3. Subsections (6) and (7) of section 390.011, Florida Statutes, are renumbered as subsections (7) and (8), respectively, present subsections (8) through (13) are renumbered as subsections (10) through (15),

respectively, present subsection (6) is amended, and new subsections (6) and (9) are added to that section, to read:

390.011 Definitions.—As used in this chapter, the term:

(6) “Fatal fetal abnormality” means a terminal condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb and will result in death upon birth or imminently thereafter.

~~(7)(6)~~ “Gestation” means the development of a human embryo or fetus as calculated from the first day of the pregnant woman’s last menstrual period between fertilization and birth.

(9) “Medical abortion” means the administration or use of an abortion-inducing drug to induce an abortion.

Section 4. Subsection (1) of section 390.0111, Florida Statutes, is amended to read:

390.0111 Termination of pregnancies.—

(1) TERMINATION AFTER GESTATIONAL AGE OF 15 WEEKS IN THIRD TRIMESTER; WHEN ALLOWED.—A physician may not perform a ~~No~~ termination of pregnancy if the physician determines the gestational age of the fetus is more than 15 weeks shall be performed on any human being in the third trimester of pregnancy unless one of the following conditions is met:

(a) Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the pregnant woman’s life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition.

(b) The physician certifies in writing that, in reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman’s life or avert a serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.

(c) The fetus has not achieved viability under s. 390.01112 and two physicians certify in writing that, in reasonable medical judgement, the fetus has a fatal fetal abnormality.

Section 5. Section 390.0112, Florida Statutes, is amended to read:

390.0112 Termination of pregnancies; reporting.—

(1) The director of any medical facility in which abortions are performed, including surgical procedures and medical abortions, including a physician's office, shall submit a report each month to the agency. If the abortion is not performed in a medical facility, the physician performing the abortion shall submit the monthly report. The report ~~must~~ may be submitted electronically on a form adopted by the agency, the Board of Medicine, and the Board of Osteopathic Medicine ~~which,~~ may not include personal identifying information, and must include:

(a) ~~Until the agency begins collecting data under paragraph (e),~~ The number of abortions performed.

(b) The reasons such abortions were performed. If a woman upon whom an abortion is performed has provided evidence that she is a victim of human trafficking pursuant to s. 390.011(3)(a)1.b.(IV), such reason must be included in the information reported under this section.

(c) For each abortion, the period of gestation at the time the abortion was performed.

(d) The number of infants born alive or alive immediately after an attempted abortion.

(e) ~~Beginning no later than January 1, 2017,~~ Information consistent with the United States Standard Report of Induced Termination of Pregnancy adopted by the Centers for Disease Control and Prevention.

(f) The number of medication abortion regimens prescribed or dispensed.

(2) The agency shall keep such reports in a central location for the purpose of compiling and analyzing statistical data and shall submit data reported pursuant to paragraph (1)(e) to the Division of Reproductive Health within the Centers for Disease Control and Prevention, as requested by the Centers for Disease Control and Prevention.

~~(3) If the termination of pregnancy is not performed in a medical facility, the physician performing the procedure shall be responsible for reporting such information as required in subsection (1).~~

~~(3)~~(4) Reports submitted pursuant to this section shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be revealed except upon the order of a court of competent jurisdiction in a civil or criminal proceeding.

~~(4)~~(5) Any person required under this section to file a report or keep any records who willfully fails to file such report or keep such records may be subject to a \$200 fine for each violation. The agency shall be required to impose such fines when reports or records required under this section have not been timely received. For purposes of this section, timely received is defined as 30 days following the preceding month.

Section 6. Section 395.1054, Florida Statutes, is created to read:

395.1054 Birthing quality improvement initiatives.—A hospital that provides birthing services shall at all times participate in at least two quality improvement initiatives developed in collaboration with the Florida Perinatal Quality Collaborative within the University of South Florida College of Public Health.

Section 7. For the 2022-2023 fiscal year, the sum of \$1,602,000 in recurring funds from the General Revenue Fund is appropriated to the Department of Health for the purpose of establishing fetal and infant mortality review committees under s. 383.21625, Florida Statutes.

Section 8. This act shall take effect July 1, 2022.

Approved by the Governor April 14, 2022.

Filed in Office Secretary of State April 14, 2022.