

The Order of the Court is stated below:

Dated: May 16, 2023  
01:05:04 PM

/s/ ANDREW H STONE  
District Court Judge



Troy L. Booher (9419)  
J. Frederic Voros, Jr. (3340)  
Dick J. Baldwin (14587)  
ZIMMERMAN BOOHER  
341 South Main Street, Fourth Floor  
Salt Lake City, UT 84111  
tbooher@zbappeals.com  
fvoros@zbappeals.com  
dbaldwin@zbappeals.com  
(801) 924-0200

John Mejia (13965)  
Valentina De Fex (17785)  
ACLU OF UTAH FOUNDATION, INC.  
311 South State Street, Suite 310  
Salt Lake City, UT 84111  
jmejia@acluutah.org  
vdefex@acluutah.org  
(801) 521-9862

*Attorneys for Plaintiff Planned Parenthood  
Association of Utah*

Hannah Swanson (pro hac vice)  
PLANNED PARENTHOOD FEDERATION  
OF AMERICA  
1110 Vermont Avenue NW, Suite 300  
Washington, DC 20005  
hannah.swanson@ppfa.org  
(202) 803-4030

Camila Vega (pro hac vice)  
Emma Noftz Stern (pro hac vice)  
PLANNED PARENTHOOD FEDERATION  
OF AMERICA  
123 William Street, 9th Floor  
New York, NY 10038  
camila.vega@ppfa.org  
emma.stern@ppfa.org  
(212) 965-7000

THIRD JUDICIAL DISTRICT COURT  
FOR SALT LAKE COUNTY, STATE OF UTAH

<p>PLANNED PARENTHOOD ASSOCIATION OF UTAH, on behalf of itself and its patients, physicians, and staff,</p> <p style="text-align: right;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>STATE OF UTAH, <i>et al.</i>,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p><b>ORDER GRANTING PLAINTIFF’S SECOND MOTION FOR A PRELIMINARY INJUNCTION</b></p> <p>Case No. 220903886</p> <p>Judge Andrew Stone</p>
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This matter came before the Court on Plaintiff Planned Parenthood Association of Utah’s (“PPAU’s”) Second Motion for a Preliminary Injunction and Supporting Memorandum. The

Motion sought relief under Rule 65A of the Utah Rules of Civil Procedure against Defendants the State of Utah; Sean D. Reyes, in his official capacity as the Attorney General of the State of Utah; Spencer Cox, in his official capacity as the Governor of Utah; Mark B. Steinagel, in his official capacity as the Director of the Utah Division of Professional Licensing; and the Utah Department of Health and Human Services (collectively, “Defendants”). Having considered the Motion and Responses thereto; the two Declarations of David Turok and the Declarations of Annabel Sheinberg and Colleen Heflin; the prior briefing and evidence incorporated by reference, including the Brief of Amici Curiae filed by the American College of Obstetricians and Gynecologists, the American Medical Association, and the Society for Maternal-Fetal Medicine; and the arguments presented in a hearing before this Court on April 28, 2023; and for good cause shown, as detailed in the Memorandum Decision of May 2, 2023, the Court GRANTS the Motion as follows:

### **Factual Background**

Unrebutted evidence establishes the following facts:

1. Through board-certified physicians licensed to practice in Utah by the Utah Division of Professional Licensing, PPAU provides abortion up to 18 weeks of pregnancy at three health centers in Salt Lake City and Logan. Decl. of David Turok, M.D., M.P.H., FACOG in Supp. of Pl.’s Mot. for TRO (“First Turok Decl.”) ¶ 15; Decl. of David Turok, M.D., M.P.H., FACOG in Supp. of Pl.’s Second Mot. for Prelim. Inj. (“Second Turok Decl.”) ¶¶ 14–6. Those three health centers hold “abortion clinic” licenses issued by the Utah Department of Health and Human Services (“DHHS”). Second Turok Decl. ¶ 14; Decl. of Annabel Sheinberg in Supp. of Pl.’s Second Mot. for Prelim. Inj. (“Sheinberg Decl.”) ¶ 4.

2. PPAU provides medication abortion, aspiration abortion, and abortion by dilation and evacuation (“D&E”). First Turok Decl. ¶ 17; Second Turok Decl. ¶ 15. These methods of abortion are simple, straightforward medical treatments that typically take no more than 10 minutes to perform, have an extremely low complication rate, are almost always provided in outpatient, office-based settings, and unlike some other office-based procedures such as vasectomies, involve no incisions. Second Turok Decl. ¶ 18.

3. Abortion is one of the safest procedures in contemporary medical practice and is safely and routinely provided in outpatient settings in countries around the world. Second Turok Decl. ¶ 32. Major complications, defined as those requiring hospital admission, surgery, or blood transfusion, occur in just 0.23 percent of abortions performed in outpatient, office-based settings. *Id.* ¶ 34. Abortion compares favorably, with a markedly lower complication rate, to other procedures routinely performed in outpatient, office-based settings, including vasectomies. *Id.* ¶ 35.

4. Last summer, this Court entered a preliminary injunction blocking enforcement of Utah Senate Bill 174, 2020 Leg., Gen. Sess. (Utah 2020) (the “Trigger Ban”), which bans abortion except when necessary to prevent the patient’s death or permanent injury, or in cases of grave fetal anomaly or pregnancy resulting from rape or incest that has been reported to law enforcement. With the Trigger Ban enjoined, abortion is legal in Utah up to 18 weeks of pregnancy and in certain limited circumstances thereafter.

5. In March 2023, the Utah legislature passed House Bill 467, 2023 Leg., Gen. Sess. (Utah 2023) (“HB 467”), which, in relevant part, requires all abortions to be performed in a hospital. Providing an abortion at a health care facility other than a hospital is a crime and

triggers mandatory facility license revocation by DHHS. HB 467 also eliminates the “abortion clinic” facility licensure category by prohibiting DHHS from issuing new abortion clinic licenses starting May 3, 2023, and by sunseting existing abortion clinic facility licenses. PPAU refers to these parts of HB 467 collectively as the “Clinic Ban.” In addition to criminal and facility licensing penalties, HB 467 imposes professional licensing penalties on individual clinicians who provide abortions in health care facilities other than hospitals (the “Professional Licensing Penalties”).

6. In addition to the Clinic Ban and Professional Licensing Penalties described above, HB 467 modifies the exceptions to the Trigger Ban. But because the Trigger Ban itself remains enjoined by order of this Court, HB 467’s changes to the Trigger Ban’s exceptions have no operative effect.

7. Because HB 467 would subject PPAU and its staff to criminal, facility licensing, and professional licensing penalties if they provide abortion at PPAU’s licensed abortion clinics, HB 467 would force PPAU and its staff to stop providing all abortions. Second Turok Decl. ¶¶ 7, 62. The only other outpatient abortion provider in Utah would also be forced to stop providing all abortions. *Id.* ¶ 7.

8. PPAU and the one other outpatient provider currently provide over 95 percent of the abortions in Utah. Second Turok Decl. ¶¶ 7, 60, 63; First Turok Decl. ¶ 18. For a number of financial, logistical, and political reasons, including Utah laws restricting how abortion can be paid for and laws permitting health care institutions and staff to refuse to participate in providing abortion, Utah hospitals provide abortion only when a medical condition seriously threatens a patient’s life or health, upon a diagnosis of a grave fetal anomaly, or, more rarely, in cases of

pregnancy resulting from rape or incest that has been reported to law enforcement. Second Turok Decl. ¶¶ 7, 60, 63–70.

9. Both the University of Utah Hospital and Intermountain Healthcare, Utah’s largest hospital system, only provide abortion as a result of maternal medical conditions, grave or lethal fetal anomalies, or rape or incest and follow internal rules against providing abortion in all other circumstances. Induction abortion, the method of abortion most appropriately performed in a hospital setting, is only performed at the University of Utah Hospital once every few weeks. Second Turok Decl. ¶ 49.

10. There is no evidence to suggest that Utah hospitals will begin offering abortion in a wider range of circumstances if HB 467 prevents licensed abortion clinics from providing abortion. Dr. Turok is not aware of any detailed or coordinated plan by a Utah hospital to expand its capacity to provide abortions to more patients in the event HB 467 takes effect. Second Turok Decl. ¶ 67.

11. Meanwhile, credible medical evidence demonstrates that there is no medical reason to require abortion to take place in hospitals and not abortion clinics. Second Turok Decl. ¶¶ 18–59. In Utah, as is done throughout the country, legal abortions are safely and routinely performed in doctors’ offices and outpatient health center settings. *Id.* ¶ 41.

12. No scientific evidence indicates abortions performed in a hospital are safer than those performed in an appropriate outpatient, office-based setting. To the contrary, as is true for nearly every medical procedure, fewer complications are seen in settings that perform higher volumes of the same procedure, making abortion clinics like PPAU’s safer than hospitals for most abortion patients. Second Turok Decl. ¶ 43.

13. Published research supports the conclusion that abortion is safest when performed by clinicians who are experienced in providing abortions. Second Turok Decl. ¶ 44. PPAU’s physicians have low abortion complication rates and superb safety records. *Id.* ¶ 46.

14. National medical experts such as the National Academies of Sciences, Engineering, and Medicine; the American College of Obstetricians and Gynecologists; and the American Public Health Association reject the notion that abortions should be performed in hospitals. Second Turok Decl. ¶ 48.

15. In Utah, procedures with risks similar to the risks associated with abortion—including endometrial biopsy, colposcopy, hysteroscopy (scoping of the cervix and uterus), Loop Electrosurgical Excision Procedure (“LEEP”) (removing pre-cancerous cells from the cervix), and dilation and curettage for miscarriage management, which, from a clinical perspective, is the same procedure as aspiration abortion—are routinely performed in outpatient clinics and physicians’ offices rather than in hospitals. Second Turok Decl. ¶ 54.

16. Procedures with higher complication rates than abortion are routinely performed in outpatient, office-based settings throughout Utah. These include colonoscopies, wisdom teeth extractions, tonsillectomies, and vasectomies. Second Turok Decl. ¶ 55.

17. Even in the rare event that an abortion complication arises during the procedure, it can nearly always be safely and appropriately managed in an outpatient office setting. For example, most cases of hemorrhage (the technical term for bleeding) are managed in the clinical setting with uterotonic medications, like misoprostol, that cause uterine contractions and reduce bleeding, and with uterine massage. Second Turok Decl. ¶ 57. Most cases of cervical laceration are managed in the clinic setting either with Monsel’s Solution or suture. Cases of incomplete

abortion are generally managed through repeat aspiration or medication. In the exceedingly rare event that a higher level of care is needed to manage complications, patients are safely stabilized and transferred to a hospital, sometimes even more quickly than they would be transferred between departments within the same hospital system. *Id.* ¶¶ 57–9.

18. HB 467’s hospital requirement therefore does not further an interest in patient safety. Rather, the requirement appears calculated to eliminate outpatient health care facilities, such as PPAU’s, that provide what the bill’s sponsors referred to as “elective abortions.”<sup>1</sup>

19. HB 467 only permits facilities licensed as “hospitals,” not abortion clinics, to perform abortions as of May 3, 2023. Under HB 467’s expanded definition of “hospital,” PPAU’s licensed abortion clinics should qualify as “hospitals” and therefore should be able to continue performing abortions without violating HB 467’s criminal prohibitions. But DHHS has thus far adopted an interpretation of HB 467 that prevents the plaintiff from qualifying as a “hospital” notwithstanding the language of HB 467. Sheinberg Decl. ¶ 7.

20. Because HB 467’s expanded definition of “hospital” appears to apply to PPAU’s licensed abortion clinics, on March 20, 2023, Ms. Sheinberg met with the director of the DHHS Division of Licensing and Background Checks and asked what PPAU’s licensed abortion clinics would need to do to be designated as “hospitals” under HB 467, such that they could remain licensed and continue providing abortion after May 2, 2023, despite HB 467. Sheinberg Decl. ¶ 15.

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<sup>1</sup> *Hearing on H.B. 467 before the H.*, recording starting at 01:22:20 (Utah Feb. 17, 2023) (statement of Rep. Karianne Lisonbee, floor sponsor of HB 467) (explaining that HB 467 “unlicenses abortion clinics that are specifically there to conduct elective abortions” but permits other clinics to provide abortions “for people who fall under exemptions [to the Trigger Ban]”), available at <https://le.utah.gov/av/floorArchive.Jsp?markerID=122136>.

21. At that meeting, the DHHS licensing division director informed Ms. Sheinberg that only licensed general hospitals and satellite facilities operating under a general hospital's license would be eligible for HB 467's expanded "hospital" definition. Sheinberg Decl. ¶ 16.

22. The next day, by email, Ms. Sheinberg asked the DHHS licensing division director to confirm this understanding. They responded on March 27, 2023, confirming that PPAU's health centers would either have to be licensed as general hospitals or have to operate as satellite facilities under a general hospital license in order to continue providing abortion after May 2, 2023. Sheinberg Decl. ¶ 17.

### **Conclusions**

23. The Court's analysis and conclusions are laid out in full in the Memorandum Decision issued May 2, 2023, and incorporated here by reference. In summary:

24. Under Utah Rule of Civil Procedure 65A(e),

A restraining order or preliminary injunction may issue only upon a showing by the applicant that:

(e)(1) there is a substantial likelihood that the applicant will prevail on the merits of the underlying claim;

(e)(2) the applicant will suffer irreparable harm unless the order or injunction issues;

(e)(3) the threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined; and

(e)(4) the order or injunction, if issued, would not be adverse to the public interest.

PPAU has satisfied each of these factors.

25. PPAU, its patients, and its staff will suffer irreparable harm unless the preliminary injunction issues. Utah R. Civ. P. 65A(e)(2). If permitted to take effect, the Clinic Ban and Professional Licensing Penalties will functionally ban abortion in Utah, which in turn will force



some Utahns to continue carrying a pregnancy that they have decided to end, with all of the physical, emotional, and financial costs that pregnancy and childbirth entail. Second Turok Decl. ¶¶ 7–8, 10, 60, 77–86; *see also* First Turok Decl. ¶¶ 5, 21–43. Some Utahns will turn to self-managed abortion by buying pills or other items online and outside the U.S. health care system, which may in some cases be unsafe and threaten their health or subject them to criminal investigation or prosecution. First Turok Decl. ¶ 22; Second Turok Decl. ¶ 9. Others will try to go out of state for abortions, if they have the means to do so, likely resulting in delayed care and imposing additional physical, emotional, and financial costs on these individuals and their families. Second Turok Decl. ¶¶ 72–5; *see also* Heflin Decl. ¶¶ 21–4; 37–40; First Turok Decl. ¶¶ 44–6. Even Utahns who are able to obtain an abortion at a Utah hospital will suffer irreparable harm. Second Turok Decl. ¶¶ 68–70. Finally, PPAU and its staff will also suffer harms, including the threat of criminal and licensing penalties, and harm to their mission, reputations, livelihoods, and ability to recruit and retain medical staff. *See* Second Turok Decl. ¶¶ 9, 77–89. There is an absence of evidence from Defendants to counter PPAU’s evidence of these harms.

26. The threatened injury to PPAU, its patients, and its staff outweighs whatever damage the proposed preliminary injunction may cause Defendants. Utah R. Civ. P. 65A(e)(3). While the record supports PPAU’s contention that PPAU, its patients, and its staff will suffer irreparable harm without a preliminary injunction, Defendants have submitted no evidence indicating that the proposed preliminary injunction will damage the State or its interests.

27. The issuance of a preliminary injunction is not adverse to the public interest. Utah R. Civ. P. 65A(e)(4). Defendants have submitted no evidence indicating that a preliminary injunction would be adverse to the public interest. On the contrary, maintaining the status quo

while the substantial constitutional issues in this case can be resolved on the merits will serve the public interest.

28. There is a substantial likelihood that PPAU will prevail on the merits of the underlying claim. Utah R. Civ. P. 65A(e)(1). Because HB 467 requires that abortion be provided at hospitals and penalizes licensed abortion clinics for providing abortion, even though licensed abortion clinics can provide abortion as safely as hospitals, PPAU is substantially likely to prevail on its claim that HB 467 violates the Utah Constitution’s Uniform Operation of the Laws Clause (article I, section 24). *Salt Lake City Corp. v. Utah Inland Port Auth.*, 2022 UT 27, ¶¶ 11–28, 524 P.3d 573; *Merrill v. Utah Labor Comm’n*, 2009 UT 26, ¶¶ 7, 10, 223 P.3d 1089; *State v. Outzen*, 2017 UT 30, ¶ 20, 408 P.3d 334; *Mountain Fuel Supply Co. v. Salt Lake City Corp.*, 752 P.2d 884, 889 (Utah 1988); *Malan v. Lewis*, 693 P.2d 661, 670–2 (Utah 1984); *Dodge Town, Inc. v. Romney*, 25 Utah 2d 267, 268, 480 P.2d 461 (1971); *Broadbent v. Gibson*, 105 Utah 53, 140 P.2d 939, 946 (1943). A fundamental principle of article I, section 24 is that “the law should treat persons who are similarly situated in a similar fashion, and persons who are dissimilarly situated should be treated dissimilarly.” *State v. Bishop*, 717 P.2d 261, 266 (Utah 1986). PPAU is likely to prevail on its claim that HB 467 fails this test.

29. Without determining what level of review applies to PPAU’s claims under the Uniform Operation of the Laws Clause, the Court concludes that PPAU is substantially likely to succeed in showing that the Clinic Ban cannot withstand even rational basis review, because the Clinic Ban treats similarly situated health care facilities differently without a legitimate or reasonable justification.

30. HB 467 draws a classification between similarly situated entities. Abortions

performed in clinics are as safe as abortions performed in hospitals, yet are criminalized by the Clinic Ban. Further, while hospitals are required to meet standards bearing a rational relationship to improving the safety of the care they offer, HB 467 penalizes abortion clinics for failing to comply with standards bearing no rational relationship to improving the safety of the care they offer. In addition, Utah law permits procedures with higher complication rates than abortion—such as colonoscopies, wisdom teeth extractions, tonsillectomies, and vasectomies—to be performed on an outpatient basis. And Utah law permits women to give birth at home, despite that childbirth is far more dangerous than abortion.

31. HB 467’s classification does not bear a rational relationship to a legitimate or reasonable state interest. Despite Defendants’ assertion in litigation that the Legislature’s objective in passing HB 467 was improving patient safety, PPAU has presented a factual record supporting the conclusion that the Legislature’s classification bears no reasonable relationship to patient safety and instead directly and discriminatorily targets abortion clinics and PPAU specifically. This invidious purpose is not a legitimate justification.

32. The Court therefore grants PPAU’s motion on the grounds that, in addition to satisfying the other Rule 65A factors, PPAU has shown a substantial likelihood of prevailing on the merits of its claim that HB 467’s Clinic Ban violates the Uniform Operation of the Laws Clause.

33. PPAU has standing to seek injunctive relief against HB 467’s Clinic Ban and Professional Licensing Penalties. At a minimum, PPAU has demonstrated an injury in its own right, and a decision by this Court enjoining HB 467’s Clinic Ban and Professional Licensing Penalties would redress that injury. *See Sonntag v. Ward*, 2011 UT App 122, ¶ 3, 253 P.3d 1120.

### **Preliminary Injunction**

Based on the foregoing and the entire record before the Court, and as explained in full in its Memorandum Decision of May 2, 2023, the Court exercises its discretion under Utah Rule of Civil Procedure 65A to GRANT PPAU's Second Motion for a Preliminary Injunction.

The Court hereby ENJOINS AND RESTRAINS Defendants and their officers, employees, servants, agents, appointees, and successors from administering and enforcing HB 467's Clinic Ban<sup>2</sup> and Professional Licensing Penalties<sup>3</sup> with respect to any abortion provided during the pendency of either this injunction or the injunction against the Trigger Ban, including in any future enforcement actions for conduct in reliance on either injunction.

The Court also hereby ORDERS Defendant State of Utah to provide a copy of this Preliminary Injunction to all county and local prosecutors.

IT IS FURTHER ORDERED that the security requirement of Utah Rule of Civil Procedure 65A is waived due to the fact that "the injunction carries no risk of monetary loss to the [D]efendant[s]." *See Corp. of President of Church of Jesus Christ of Latter-Day Saints v. Wallace*, 573 P.2d 1285, 1287 (Utah 1978).

This Preliminary Injunction took effect upon entry of the Court's Memorandum Decision on May 2, 2023, and shall remain in effect pending the final resolution of this case, unless earlier extended or dissolved by the Court.

### **End of Order**

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2 HB 467 §§ 1–6, 16–7, 21, 24–5, 28–9 (amending Utah Code Ann. §§ 26-21-2, -6.5, -7–8, -11, -25; 76-7-301(6), -302(3), -305(2)(a), -314(3), -314(7), -314.5(1); 76-7a-101(4), -201(2)(b)).

3 HB 467 §§ 7–14 (amending Utah Code Ann. §§ 58-31b-502(1)(q); 58-44a-502(8); 58-67-304, -502(1)(e); 58-68-304, -502(1)(e); 58-70a-501(9); 58-77-603(6)).

**Approved as to form:**

ZIMMERMAN BOOHER

/s/ Troy L. Booher  
Troy L. Booher  
J. Frederic Voros, Jr.  
Dick J. Baldwin  
*Attorneys for Plaintiff*

**Approved as to form:**

/s/ Lance Sorenson  
Melissa A. Holyoak  
Utah Solicitor General  
David N. Wolf  
Lance Sorenson  
*Attorneys for State of Utah, et al*  
(Electronic signature added with permission)

**Entered as of the date and time indicated on the first page above.**

**In accordance with Utah R. Civ. P. 10(e) and Utah State District Courts E-filing Standard No. 4, this Order does not bear the handwritten signature of the Court, but instead displays an electronic signature at the top of the first page of this Order.**

**CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 2023, I caused the foregoing to be electronically filed and served on the following via GreenFiling:

Melissa A. Holyoak (melissaholyoak@agutah.gov)

Utah Solicitor General

David N. Wolf (dnwolf@agutah.gov)

Lance F. Sorenson (lancesorenson@agutah.gov)

Assistant Utah Attorneys General

OFFICE OF THE UTAH ATTORNEY GENERAL

Tyler Green (tyler@consovoymccarthy.com)

CONSOVOY MCCARTHY PLLC

/s/ Troy L. Booher

Troy L. Booher