

If you do not respond to this document within applicable time limits, judgment could be entered against you as requested.

Troy L. Booher (Bar No. 9419)
J. Frederic Voros, Jr. (Bar No. 3340)
Dick J. Baldwin (Bar No. 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 (Bar No. 13965)
Valentina De Fex (Bar No. 17785)
Jason M. Groth (Bar No. 16683)
ACLU OF UTAH FOUNDATION, INC.
355 N. 300 W.
Salt Lake City, UT 84103
jmejia@acluutah.org
vdefex@acluutah.org
jgroth@acluutah.org
(801) 521-9862

Julie Murray*
Hannah Swanson*
PLANNED PARENTHOOD FEDERATION
OF AMERICA
1110 Vermont Avenue, NW, Suite 300
Washington, DC 20005
julie.murray@ppfa.org
hannah.swanson@ppfa.org
(202) 803-4045

Camila Vega*
PLANNED PARENTHOOD FEDERATION
OF AMERICA
123 William Street, 9th Floor
New York, NY 10038
camila.vega@ppfa.org
(212) 261-4548

**Pro hac vice application forthcoming*

Attorneys for Plaintiff Planned Parenthood Association of Utah

**THIRD JUDICIAL DISTRICT COURT FOR
SALT LAKE COUNTY, UTAH**

PLANNED PARENTHOOD ASSOCIATION OF
UTAH, on behalf of itself and its patients,
physicians, and staff,

Plaintiff,

v.

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 Occupational and
Professional Licensing,

Defendants.

**COMPLAINT FOR
DECLARATORY & INJUNCTIVE
RELIEF**

(Tier 2)

Case No.

Judge

1. On June 24, 2022, Utah Senate Bill 174, Gen. Sess. (2020) (codified at Utah Code Ann. tit. 76, ch. 7A) (the “Act,” or the “Criminal Abortion Ban”), took effect in Utah, making the provision of abortion in this state at any point in pregnancy a crime. A true and correct copy of the Act is attached hereto as Exhibit A.

2. In the absence of legal abortion in Utah, roughly 2,800 Utahns each year will face a government-mandated trilemma: carry a pregnancy to term against their will; remain pregnant until they can amass the resources (if they are even able to do so) to travel out of state to access critical, time-sensitive abortion services; or attempt to self-manage their abortions outside the medical system.

3. Utahns harmed by this extreme abortion ban will include women¹ who seek care just days or weeks after discovering a missed period; those who are already struggling to pull their children out of poverty, finish school, escape an abusive partner, or overcome addiction; sexual assault survivors who, as is common, do not report their assault to law enforcement; and families grieving fetal diagnoses that they know they are ill-equipped to cope with.

4. In each of these cases, and countless others, Utahns who have relied on safe, legal access to abortion—access that has existed for at least five decades—will lose the right to determine the composition of their families and whether and when to become parents; their entitlement to be free from discriminatory state laws that perpetuate stereotypes about women and their proper societal role; the right to bodily autonomy and to be free from involuntary servitude; and the right to make private health care decisions and to keep those health care decisions free from public scrutiny.

¹ References to “woman” or “women” are meant as shorthand for people who are or may become pregnant. However, people with other gender identities, including transgender men and gender-diverse individuals, may also become pregnant and seek abortion services.

5. Utah doctors who violate the law face one-to-fifteen-year prison terms, steep criminal fines, and loss of their professional licenses and their families' livelihoods. *See* Utah Code Ann. §§ 76-7a-201(3)–(5), 76-3-203(2), 76-3-301(1)(a), 76-3-302(1).

6. As a result of this new law, Plaintiff Planned Parenthood Association of Utah (“PPAU”) and its staff, who provide abortions among other sexual and reproductive health care in Utah, have had no choice but to stop performing abortions that are not permitted by the Act in the state, effective immediately. At this time, PPAU is cancelling appointments today for roughly a dozen patients who had abortions scheduled. PPAU has more than 55 patients scheduled for abortion appointments in the next week, including 12 on Monday, 19 on Tuesday, and 19 on Wednesday.

7. The Criminal Abortion Ban violates the Utah Constitution. Although *Dobbs v. Jackson Women’s Health Organization* (“*JWHO*”), No. 19-1392 (U.S. June 24, 2022), has revoked the right to previability abortions under the U.S. Constitution, the Utah Constitution serves as an independent source of rights for Utahns. And the Utah Supreme Court has made clear that state constitutional guarantees may be more expansive than those under federal law, *see State v. DeBooy*, 2000 UT 32, ¶ 12, 996 P.2d 546, 549, as they are here. Moreover, even where the Utah Constitution’s provisions are similar or identical to their federal analogs, Utah courts should “not hesitate to give the Utah Constitution a different construction where doing so will more appropriately protect the rights of this state’s citizens.” *Jensen ex rel. Jensen v. Cunningham*, 2011 UT 17, ¶ 98, 250 P.3d 465 (quoting *DeBooy*, 2000 UT 32, ¶ 12, 996 P.2d 546).

8. On behalf of itself, its staff, and its patients, Plaintiff PPAU seeks a declaration that the Criminal Abortion Ban violates the Utah Constitution, along with a temporary restraining order

and preliminary and permanent injunctive relief to prevent Defendants from enforcing this flagrantly unconstitutional law.

PARTIES

A. Plaintiff

9. Plaintiff PPAU is a Utah non-profit corporation dedicated to ensuring Utahns' access to affordable, quality sexual and reproductive health care and education. Each year, PPAU provides well-person visits, contraceptive care, sexually transmitted infection (“STI”) testing, among numerous other forms of care, to approximately 46,000 Utahns at its eight health centers.

10. Until the Criminal Abortion Ban took effect, PPAU—through its board-certified physicians—also provided abortions at three health centers, two in Salt Lake City and one in Logan, each of which is licensed as an “abortion clinic” under Utah law and is authorized to perform abortions.

11. If declaratory and injunctive relief are granted in this case, PPAU’s health centers would resume providing abortions beyond those narrow exceptions permitted by the Act.

12. PPAU’s staff includes Utah-licensed physicians and other employees who are involved in the provision of abortion. PPAU also maintains a pharmacy license for in-clinic dispensing of medications, including medications used in an abortion.

13. PPAU sues on its own behalf, on behalf of its patients seeking abortions, and on behalf of its physicians and staff who provide abortions.

B. Defendants

14. Defendant the State of Utah is responsible for upholding the Utah Constitution. The State of Utah has enacted the Criminal Abortion Ban and has authority through state and local officials to enforce it.

15. Defendant Sean D. Reyes is the Attorney General of Utah, the state’s chief legal officer. He exercises supervisory power over local prosecutors “in all matters pertaining to the duties of the district and county attorneys’ offices,” and, “when required by the public service or directed by the governor,” he assists local prosecutors in the discharge of their duties. Utah Code Ann. § 67-5-1(f), (h). Mr. Reyes is sued in his official capacity.

16. Defendant Spencer Cox is the Governor of Utah. He may require the Attorney General to aid local prosecutors in the discharge of their prosecutorial duties. *Id.* § 67-1-1(7); *accord id.* § 67-5-1(h). Mr. Cox is sued in his official capacity.

17. Defendant Mark B. Steinagel is the Director of the Utah Division of Occupational and Professional Licensing (“UDOPL”), the state agency responsible for licensing physicians, nurses, pharmacists, and pharmacies, and enforcing disciplinary sanctions against licensees. *See id.* §§ 58-1-103, 106(1); *see also id.* tit. 58, chs. 17B, 31B, 67. He performs all “duties, functions, and responsibilities” of UDOPL. *Id.* § 58-1-104(2). Mr. Steinagel is sued in his official capacity.

VENUE AND JURISDICTION

18. The Third Judicial District Court for Salt Lake County is the proper venue for this action because the Criminal Abortion Ban was adopted in this county, prohibits PPAU’s provision of abortion in this county, and impinges on the constitutional rights of Plaintiff’s patients who reside in this county, and because one or more Defendants reside in this county. *See Utah Code Ann.* §§ 78B-3-302(3),-307(1).

19. The Third Judicial District Court for Salt Lake County has jurisdiction over the matter of this Complaint under Utah Code sections 78A-5-102(1)–(2) and 78B-6-401; article VIII, section 5, of the Utah Constitution; and Rules 57 and 65A of the Utah Rules of Civil Procedure.

20. This Court has power to grant declaratory and equitable relief pursuant to Utah’s Declaratory Judgment Act, Utah Code Ann. § 78B-6-401, *et seq.*, as well as through its general equitable powers to enforce the Utah Constitution.

FACTUAL ALLEGATIONS

A. The Criminal Abortion Ban

21. In 2020, the Utah Legislature adopted the Criminal Abortion Ban, which bars abortion at any point in pregnancy with only three limited exceptions.

22. The Act’s exceptions apply only where (1) abortion is necessary to protect the patient’s life or to prevent “a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed” (the “Death and Permanent Injury Exception”); (2) two maternal-fetal medicine physicians confirm in writing that a fetus—in terms left undefined by statute—either has a health condition that is “uniformly diagnosable and uniformly lethal” or “has a severe brain abnormality that is uniformly diagnosable”; or (3) where a patient’s pregnancy is the result of rape or incest and the physician performing the abortion confirms that the assault has been reported to law enforcement, irrespective of a patient’s wishes, her maturity, and whether the assault would already need to be reported under applicable child abuse and other mandatory reporting laws (the “Reported Rape Exception”). Utah Code Ann. § 76-7a-201.

23. Instead of making the Criminal Abortion Ban immediately operative, the Legislature provided that the Act would take effect only upon the legislative general counsel’s certification “that a court of binding authority ha[d] held that a state may prohibit the abortion of [a fetus] at any time during the gestational period, subject to the exceptions enumerated in” the Ban. 2020 Utah Laws Ch. 279, § 4(2).

24. On June 24, 2022, the U.S. Supreme Court held in *JWHO* that *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), and its progeny were overruled. In so doing, the U.S. Supreme Court eliminated nearly fifty years of precedent protecting a federal substantive due process right to abortion until viability, which generally occurs at approximately 24 weeks of pregnancy. The U.S. Supreme Court made clear, however, that the *JWHO* decision served to return authority to the states to make decisions about abortion. *JWHO*, slip. op. at 79.

25. Based on the *JWHO* decision, on June 24, 2022, the Utah legislative general counsel sent an e-mail to the Legislative Management Committee stating that he was certifying that the Criminal Abortion Ban had been triggered and took immediate effect. A copy of the document reported to serve as the certification is attached hereto as Exhibit B and was obtained at <https://npr.brightspotcdn.com/5a/3c/f48d7a084fc7a8deb70e6a6fd1f8/sb-174-and-hb-166-now-in-effect.pdf>.

26. Performing an abortion in Utah is now a second-degree felony in nearly all cases. Abortion providers and other staff who assist in the performance of an abortion risk a prison term of one to fifteen years per abortion, as well as criminal fines. In addition, providers risk licensing and other professional penalties.

B. The Impact of the Challenged Law on Plaintiff, Its Patients, and Staff

27. When the Act took effect, PPAU and its staff were forced to immediately stop performing abortions in Utah beyond those few that are permitted by the Act. If relief is granted in this case, PPAU's health centers would resume providing abortions that would not qualify for any of the Act's exceptions.

28. To PPAU's knowledge, the only other outpatient provider in Utah has also stopped performing virtually all abortions, except the few allowed by the Ban.

29. In the most recent year for which statewide data are available, there were 2,776 abortions obtained by Utahns in this state.

30. Yet, under the Criminal Abortion Ban, patients wishing to have an abortion at any point in pregnancy are unable to do so in Utah except in the narrowest of circumstances enumerated in the Act.

31. If left in place, the Criminal Abortion Ban will be catastrophic for Utahns. The Act will force some Utahns seeking abortion to instead carry pregnancies to term against their will, with all of the physical, emotional, and financial costs that entails. Some Utahns will inevitably 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 even Utahns who are ultimately able to obtain an abortion, either because they have been able to scrape together resources to travel out of state or because they meet one of the Ban's narrow exceptions, will suffer grave harm.

*(i) **The impact of forced pregnancy and parenting***

32. Even in an uncomplicated pregnancy, an individual experiences a wide range of physiological challenges. Individuals experience a quicker heart rate, a substantial rise in their blood volume, digestive difficulties, increased production of clotting factors, significant weight gain, changes to their breathing, and a growing uterus. These and other changes increase a pregnant patient's risk of blood clots, nausea, hypertensive disorders, anemia, and other complications. Pregnancy can also exacerbate preexisting health conditions, including diabetes, obesity, autoimmune disorders, and other pulmonary disease. It can lead to the development of new and serious health conditions as well, such as hyperemesis gravidarum, preeclampsia, deep vein thrombosis, and gestational diabetes.

33. Many people seek emergency care at least once during a pregnancy, and people with comorbidities (either preexisting or those that develop as a result of their pregnancy) are significantly more likely to seek emergency care. People who develop pregnancy-induced medical conditions are also at higher risk of developing the same condition in subsequent pregnancies.

34. Pregnancy can also induce or exacerbate mental health conditions. Some people with histories of mental illness experience a recurrence of their illness during pregnancy. Mental health risks can be higher for patients with unintended pregnancies, who may face physical and emotional changes and risks that they did not choose to take on. For context, almost 20% of pregnancies in Utah are unintended, and this percentage is much higher for Utahns who are Black or Hispanic/Latino.

35. Some pregnant patients also face an increased risk of intimate partner violence, with the severity of that violence sometimes escalating during or after pregnancy.

36. Separate from pregnancy, labor and childbirth are themselves significant medical events with many risks. The risk of mortality from pregnancy and childbirth is more than 12 times greater than for legal abortion.

37. The health risks of childbirth also go beyond mortality. Complications during labor occur at a rate of over 500 per 1,000 hospital stays, and the vast majority of childbirth delivery stays have a complicating condition. Even a normal pregnancy with no comorbidities or complications can suddenly become life-threatening during labor and delivery. Adverse events include hemorrhage, transfusion, ruptured uterus or liver, stroke, unexpected hysterectomy (the surgical removal of the uterus), and perineal laceration (the tearing of the tissue around the vagina and rectum). The most severe perineal tears involve tearing between the vagina through the anal sphincter and into the rectum and must be surgically repaired. These can result in long-term urinary

and fecal incontinence and sexual dysfunction. Vaginal delivery may also lead to injury to the pelvic floor, urinary incontinence, fecal incontinence, and pelvic organ prolapse (the displacement of internal organs, resulting in some cases in their protrusion from the vagina). Anesthesia or epidural administered during labor also carries risks.

38. In Utah, more than one in five deliveries occur by cesarean section (“C-section”) rather than vaginally. A C-section is an open abdominal surgery that requires hospitalization for at least a few days and carries significant risks of hemorrhage, infection, blood clots, and injury to internal organs. It can also have long-term risks, including an increased risk of placenta accreta in later pregnancies (when the placenta grows into and possibly through the uterine wall causing a need for complicated surgical interventions, massive blood transfusions, hysterectomy, and risk of maternal death), placenta previa in later pregnancies (when the placenta covers the cervix, resulting in vaginal bleeding and requiring bed rest), and bowel or bladder injury in future deliveries. Pregnant people with a prior history of mental health conditions also face a heightened risk of postpartum illness, which may go undiagnosed for months or even years.

39. Negative pregnancy and childbirth-related health outcomes are even greater for Utahns of color. Postpartum depression also disproportionately affects people of color in Utah.

40. In addition to these physical and mental injuries, the Act will impinge on some of the most personal and consequential decisions of PPAU’s patients: whether to become or remain pregnant.

41. Patients have a range of views on the morality of abortion dependent not only on their unique circumstances, but also on varying religious and spiritual views about when life begins.

42. Roughly half of abortion patients in Utah already have one or more children, and in 2021, 45% of PPAU abortion patients reported earning less than 130% of the federal poverty level.

43. If the Criminal Abortion Ban remains in effect, it will dramatically impair the ability of Utah families to determine their own composition, free from state interference, and it will lead to long-term negative impacts for women forced to give birth and for their existing children. Research shows that only a small minority (14%) of patients who seek but are denied an abortion say after denial that they are considering adoption as an alternative, and among those who give birth after being denied an abortion, 91% parent the child. Patients who decide to place their infant for adoption face extensive medical, legal, and counseling expenses, as well as the physical consequences of a full-term pregnancy, labor, and delivery. Moreover, this decision can be extremely emotionally taxing, including for patients who feel that they cannot afford to parent. As context, in 2020, just over 500 children were adopted in Utah at any age, with 686 children waiting for adoption and, as of the last day of Fiscal Year 2020, 2,373 children remained in foster care.

44. Ninety-five percent of women who obtain abortions feel it was the right decision for them three years later. Women who seek but are denied an abortion are, when compared to those who are able to access abortion, more likely to lower their future goals, and less likely to be able to exit abusive relationships. Their existing children are also more likely to suffer measurable reductions in achievement of child developmental milestones and an increased chance of living in poverty. As compared to women who received an abortion, women denied an abortion are also less likely to be employed full-time, more likely to be raising children alone, more likely to receive public assistance, and more likely to not have enough money to meet basic living needs.

45. If denied an abortion, women whose pregnancies are the result of rape may be forced to share custody of or otherwise parent the child with their rapist, especially if the rape does not ultimately result in a conviction. *See Utah Code Ann. § 76-5-414.*

46. The economic impact of forced pregnancy, childbirth, and parenting will also have dramatic, negative effects on Utah families' financial stability. Some side-effects of pregnancy render patients unable to work, or unable to work the same number of hours as they otherwise would. For example, some patients with hyperemesis gravidarum must adjust their work schedules because they vomit throughout the day. And other patients with preeclampsia must severely limit activity for a significant amount of time. These conditions may result in job loss, especially for people who work jobs without predictable schedules, paid sick or disability leave, or other forms of job security. Even without these conditions, pregnancy-related discrimination can result in lower earnings for women both during pregnancy and over time. Further, Utah does not require employers to provide paid family leave, meaning that for many pregnant Utahns, time taken to recover from pregnancy and childbirth or to care for a newborn is unpaid. A typical Utahn who takes four weeks of unpaid leave could lose more than \$3,000 in income.

47. Pregnancy-related health care and childbirth are also some of the most expensive hospital-based health services, particularly for complicated or at-risk pregnancies.

48. This financial burden weighs most heavily on patients without insurance, who make up nearly 13% of all Utahns, including more than 36% of Hispanic/Latino Utahns, more than 26% of Black Utahns, more than 23% of Native Hawaiian/Pacific Islander Utahns, and more than 18% of American Indian/Alaska Native Utahns. Over one in nine women of childbearing age in Utah are uninsured. Even insured pregnant patients must often still pay for considerable labor and delivery costs out of pocket. In 2015, of the 98.2% of commercially-insured women who had out-

of-pocket spending for their labor and delivery, the mean spending for all modes of delivery was \$4,569; the mean spending for that same group of women for vaginal birth was \$4,314; and the mean spending for that same group of women for C-section was \$5,161.

49. Beyond childbirth, raising a child is expensive, both in terms of direct costs and due to lost wages. On average, women experience a large and persistent decline in earnings following the birth of a child, which compounds the additional costs of parenting. In Utah, the average cost of infant care is more than \$8,500 per year, and Utah is the second least affordable state for infant and toddler care in a center. These costs can be particularly onerous for people who do not have partners or other support systems in place.

(ii) The impact of forcing patients to seek abortion services outside of Utah

50. Although some of those forced by the Act to remain pregnant may eventually be able to obtain abortions out of state, they will be forced to remain pregnant against their will until they can obtain that care, likely later in pregnancy than if they had had abortion access in Utah.

51. These Utahns will suffer additional costs and burdens of substantial travel. At this time, the nearest clinics providing abortion outside of Utah are located in Idaho² (the closest of which is a distance of 219 miles from Salt Lake City, one way); Jackson, Wyoming³ (a distance of 272 miles, one way); and Steamboat Springs, Colorado (a distance of 329 miles, one way).

52. For patients who need an abortion beyond the first trimester (i.e., after approximately 14 weeks of pregnancy), the closest provider is located in Meridian, Idaho, which

² At present, Idaho's total abortion ban is set to take effect in the near future, at which point abortions will no longer be available in Idaho. *See* Idaho Senate Bill 1385, 65th Leg., 2d Reg. Sess. (2020).

³ Like Idaho, Wyoming also has a total abortion ban set to take effect in the near future. *See* Wyoming House Bill 92, 66th Leg., Budget Sess. (2022).

is 347 miles each way from Salt Lake City, and the next closest provider is located in Durango, Colorado, which is 394 miles each way from Salt Lake City.

53. Some pregnant Utahns may also be forced, in order to obtain transportation or child care while they have an abortion out of state, to compromise the confidentiality of their decision to have an abortion.

54. The Act will deprive all pregnant Utahns seeking abortion of the availability of these services from a provider of their choice in their own community.

(iii) **The impact of the Act on patients who can obtain abortion in Utah only by relying on the Act's exceptions**

55. The Criminal Abortion Ban will harm even those patients who may satisfy the Act's limited exceptions. Those with rapidly worsening medical conditions who could have obtained an abortion without explanation prior to the Ban will be forced to wait until their conditions become deadly or threaten permanent impairment so as to meet the Ban's Death and Permanent Injury Exception.

56. Patients facing devastating fetal diagnoses will be forced to prove, based on the written concurrence of "two physicians who practice maternal fetal medicine" that the diagnosis qualifies for abortion. Utah Code Ann. § 76-7a-201(1)(b). There are fewer than 50 maternal fetal medicine specialists in Utah, and they are geographically concentrated. Additionally, the process of obtaining this paperwork is likely to delay access to care and increase the expense and emotional toll of such a diagnosis.

57. Sexual assault survivors in Utah, of whom up to 88% do not report their assaults and therefore could not meet the Ban's Reported Rape Exception, will be faced with choosing between accessing abortion services and maintaining their privacy in deciding whether to come forward about the assault, a "choice" forced on no other autonomous patient in Utah's medical

system.

(iv) **The Act's impact on PPAU, its physicians, and staff**

58. The Criminal Abortion Ban eliminates PPAU's ability to offer abortion services to the vast majority of Utahns who need them.

59. The Act threatens PPAU and staff with criminal and licensing penalties, reputational harm, and harm to their livelihoods.

CLAIMS FOR RELIEF

First Cause of Action

*Violation of Right to Determine Family Composition and to Parent
Under Article I, Sections 2, 25, and 27 of Utah's Constitution*

60. Plaintiff restates and reincorporates paragraphs 1–59.

61. The Utah Supreme Court has recognized that “[t]he rights inherent in family relationships—husband-wife, parent-child, and sibling—are the most obvious examples of rights retained by the people. They are ‘natural,’ ‘intrinsic,’ or ‘prior’ in the sense that our Constitutions presuppose them, as they presuppose the right to own and dispose of property.” *In re J.P.*, 648 P.2d 1364, 1372–74 (Utah 1982) (recognizing a person’s right to maintain parental ties). It has also held that “the ideals of individual liberty which . . . protect the sanctity of one’s home and family” are “essential in a free society.” *In re Castillo*, 632 P.2d 855, 856 (Utah 1981). These fundamental rights are protected under article I, sections 2, 25, and 27 of the Utah Constitution.

62. The Criminal Abortion Ban violates these rights in two ways. First, it eliminates wholesale the fundamental right to determine one’s family composition. Second, it also affects existing parent-child relationships, as well as the relationship between potential parents. Many Utahns seeking abortions are already parents. Many seek an abortion because they cannot afford another child, or because having another child may negatively impact the welfare of their family, including any existing children.

63. Because the Ban prevents individuals from making fundamental decisions about how to arrange their family relationships, it violates families' and individuals' rights guaranteed under the Utah Constitution. Restrictions on these rights are subject to heightened scrutiny and are not afforded a presumption of constitutionality.

64. The Act fails heightened scrutiny because it is not narrowly tailored to achieve a compelling state interest. Even if rational-basis review applied, the Act could not survive because it lacks any legitimate purpose, rests on invidious stereotypes, and is not rationally related to any purported state interest.

Second Cause of Action

Violation of Plaintiffs' Equal Protection Rights Under Article IV, Section 1 of Utah's Constitution

65. Plaintiff restates and reincorporates paragraphs 1–64.

66. The Criminal Abortion Ban violates Utahns' right to equality between the sexes, as guaranteed by the Utah Constitution's Equal Rights Amendment, which provides that “[t]he rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges.” Utah Const. art. IV, § 1.

67. The Equal Rights Amendment grants to Utahns a positive entitlement to “enjoy equally” the rights and privileges of citizenship, and prohibits Utah from directly or indirectly relying on gender as a determining factor for the availability of rights or benefits. The Utah Equal Rights Amendment forbids laws that result in either disparate treatment or disparate impact on women as compared to men.

68. The Criminal Abortion Ban singles out and categorically bars medical care for “wom[e]n,” Utah Code Ann. § 76-7a-201(1)(a), (c) (emphasis added), while leaving untouched

the medical care available to men, and in operation, it disproportionately limits women’s bodily autonomy and liberty. It therefore discriminates against Plaintiff’s patients on the basis of sex.

69. Under Utah’s Equal Rights Amendment, government classifications are subject to heightened scrutiny and are presumptively unconstitutional.

70. The Act fails heightened scrutiny and cannot survive even rational basis review because it lacks any legitimate purpose, rests on invidious stereotypes, and is not rationally related to any purported state interest.

Third Cause of Action

Violation of Plaintiffs’ Right to the Uniform Operation of Laws Under Article I, Sections 2, 24 of Utah’s Constitution

71. Plaintiff restates and reincorporates paragraphs 1–70.

72. The Utah Constitution, article I, section 24, states that “[a]ll laws of a general nature shall have uniform operation.” Article I, section 2 states that “[a]ll political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.”

73. The Criminal Abortion Ban creates three unconstitutional classifications. First, it treats women differently and has a disparate impact on women as opposed to men. Second, within the class of pregnant people, it targets those who seek to terminate their pregnancy, versus those who seek to continue their pregnancy to childbirth. Finally, even within the class of pregnant people seeking abortions, the Act treats women—such as those who have reported to law enforcement that they have been raped or whose fetuses have grave abnormalities—seeking abortion differently for reasons deemed sympathetic from those with no less need for abortion.

74. Under Utah’s Uniform Operation of Laws provision, government classifications are subject to heightened scrutiny.

75. The Act fails heightened scrutiny and cannot survive even rational basis review because it lacks any legitimate purpose, rests on invidious stereotypes, and is not rationally related to any purported state interest.

Fourth Cause of Action
Violation of Substantive Due Process Right to Bodily Integrity
Under Article I, Sections 1, 7, 11 of Utah’s Constitution

76. Plaintiff restates and reincorporates paragraphs 1–75.

77. The right to bodily integrity is recognized throughout the Utah Constitution. Article I, section 1, states that “[a]ll persons have the inherent and inalienable right to enjoy and defend their lives and liberties”; Article I, section 7, states that “[n]o person shall be deprived of life, liberty or property, without due process of law”; and Article I, section 11, states that “every person, for an injury done to the person in his or her person . . . shall have remedy by due course of law . . .” *See, e.g., Malan v. Lewis*, 693 P.2d 661, 674 n.17 (Utah 1984) (relying on article I, section 11, as protecting “a person’s bodily integrity”). The rights to bodily integrity and its corollary, privacy, are fundamental and inalienable in Utah, with deep roots in early Utahns’ desires to remain free from unwarranted governmental intrusion.

78. Bodily integrity is violated whenever one’s health and safety is imperiled without one’s consent. It includes not only risk of medical injury, but any contact that is expressly unwanted.

79. Forcing Utahns to remain pregnant against their wishes and forcing them to endure increased physical risk violates their right to bodily integrity.

80. Infringements on the fundamental right to bodily autonomy are subject to heightened scrutiny and are presumptively unconstitutional.

81. The Act fails heightened scrutiny and cannot survive even rational basis review because it lacks any legitimate purpose, rests on invidious stereotypes, and is not rationally related to any purported state interest.

Fifth Cause of Action

*Violation of the Prohibition on Involuntary Servitude
Under Article I, Section 21 of the Utah Constitution*

82. Plaintiff restates and reincorporates paragraphs 1–81.

83. Article I, section 21(1) of the Utah Constitution provides that “[n]either slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within this State.” This broad prohibition admits of only one exception: the otherwise “lawful administration of the criminal justice system.” Utah Const. art. I, § 21(2).

84. The Utah Supreme Court has recognized that no person has a “right in law to insist that another must work for him.” *McGrew v. Indus. Comm’n*, 96 Utah 203, ___, 85 P.2d 608, 610–11 (1938). Yet that is precisely what the Criminal Abortion Ban does by forcing pregnant Utahns to carry pregnancies to term against their will. In doing so, it forces people who become pregnant to undertake the mental and physical labor of pregnancy and childbirth against their will, and to become biological mothers, precisely what they do not wish to do. This conscription is impermissible under the Utah Constitution and requires invalidation of the Act.

Sixth Cause of Action

*Violation of Plaintiffs’ Rights of Conscience
Under Article I, Section 4, of Utah’s Constitution*

85. Plaintiff restates and reincorporates paragraphs 1–84.

86. Article I, section 4, of the Utah Constitution provides that “[t]he rights of conscience shall never be infringed” and “[t]he State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof.” Moreover, under this provision, “[t]here shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions.”

87. Read together, these provisions have been interpreted to “protect religious exercise and freedom of conscience in general” and “to prevent the imposition of civil limitations based on one’s religious beliefs or lack thereof.” *Soc’y of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 935 (Utah 1993).

88. The Criminal Abortion Ban violates these foundational precepts by imposing on Utahns a State-mandated view as to when life begins, which is an inherently religious and spiritual one. On the one hand, the Act forces Utahns to act in conformity with a religious view of when human life begins that they may not share. On the other hand, it prevents Utahns from acting in conformity with the teachings of their chosen religious institution.

89. By imposing its determination of when life begins on all Utahns, regardless of their religious beliefs or specific moral beliefs about abortion, the State of Utah has taken on a religious role strictly prohibited by the Utah Constitution and deprived Utahns of the ability to approach their family-planning decisions in accordance with their own religious and moral beliefs. This infirmity of the Criminal Abortion Ban requires invalidation of the Act.

Seventh Cause of Action
Violation of Right to Privacy
Under Article I, Sections 1, 14 of Utah's Constitution

90. Plaintiff restates and reincorporates paragraphs 1–89.

91. Under the Utah Constitution, the right to privacy “should extend to protect against intrusion into or exposure of not only things which might result in actual harm or damage, but also to things which might result in shame or humiliation, or merely violate one’s pride in keeping [] private affairs to [one]self.” *Redding v. Brady*, 606 P.2d 1193, 1195 (Utah 1980). It includes “those aspects of an individual’s activities and manner of living that would generally be regarded as being of such personal and private nature as to belong to” the individual “and to be of no proper concern to others.” *Id.*

92. The Criminal Abortion Ban’s intrusion on this right are two-fold. First, an individual’s pregnancy and their decision to form family relationships is one such “activit[y] and manner of living that would generally be regarded as being of such personal and private nature as to belong to [one]self and to be of no proper concern to others.” *Id.* Second, one of the few exceptions to the Criminal Abortion Ban requires individuals to report their rape or incest to the police, forcing them to create a public record of a private and personal event in order to access medical care, in violation of Utahns’ right to informational privacy. Both are prohibited under Utah’s Constitution and require invalidation of the Act.

RELIEF SOUGHT

WHEREFORE, Plaintiff requests that the Court:

93. Declare that the Criminal Abortion Ban violates Plaintiff’s and its patients’ constitutional rights under the Utah Constitution and that the Act is therefore invalid;

94. Issue a temporary restraining order and preliminary and permanent injunctions prohibiting Defendants and their officers, employees, servants, agents, appointees, or successors from administering, preparing for, and enforcing the Act with respect to any abortion provided during the temporary and permanent injunctions;

95. Waive any security requirement for any injunction issued under Utah Rule of Civil Procedure 65A;

96. Retain jurisdiction of this action to render any further orders that this Court may deem appropriate;

97. Award Plaintiff's costs and expenses; and

98. Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

/s/Troy L. Booher
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

/s/John Mejia
John Mejia (Bar No. 13965)
Valentina De Fex (Bar No. 17785)
Jason M. Groth (Bar No. 16683)
ACLU OF UTAH FOUNDATION, INC.
355 N. 300 W.
Salt Lake City, UT 84103
(801) 521-9862
jmejia@acluutah.org
vdefex@acluutah.org
jgroth@acluutah.org

/s/ Julie Murray
Julie Murray*
Hannah Swanson*
PLANNED PARENTHOOD FEDERATION
OF AMERICA
1110 Vermont Avenue, NW, Suite 300
Washington, DC 20005
julie.murray@ppfa.org
hannah.swanson@ppfa.org
(202) 803-4045

/s/ Camila Vega
Camila Vega*
PLANNED PARENTHOOD FEDERATION
OF AMERICA
123 Williams Street, 10th Floor
New York, NY 10038
camila.vega@ppfa.org
(212) 261-4548

**Pro hac vice application forthcoming*

Attorneys for Plaintiff Planned Parenthood Association of Utah

Dated: June 25, 2022

Exhibit A

30 Section 1. Section **76-7a-101** is enacted to read:

31 **CHAPTER 7a. ABORTION PROHIBITION**

32 **76-7a-101. Definitions.**

33 As used in this chapter:

34 (1) (a) "Abortion" means:

35 (i) the intentional termination or attempted termination of human pregnancy after
36 implantation of a fertilized ovum through a medical procedure carried out by a physician or
37 through a substance used under the direction of a physician;

38 (ii) the intentional killing or attempted killing of a live unborn child through a medical
39 procedure carried out by a physician or through a substance used under the direction of a
40 physician; or

41 (iii) the intentional causing or attempted causing of a miscarriage through a medical
42 procedure carried out by a physician or through a substance used under the direction of a
43 physician.

44 (b) "Abortion" does not include:

45 (i) removal of a dead unborn child;

46 (ii) removal of an ectopic pregnancy; or

47 (iii) the killing or attempted killing of an unborn child without the consent of the
48 pregnant woman, unless:

49 (A) the killing or attempted killing is done through a medical procedure carried out by
50 a physician or through a substance used under the direction of a physician; and

51 (B) the physician is unable to obtain the consent due to a medical emergency.

52 (2) "Abortion clinic" means a type I abortion clinic licensed by the state or a type II
53 abortion clinic licensed by the state.

54 (3) "Department" means the Department of Health.

55 (4) "Down syndrome" means a genetic condition associated with an extra chromosome
56 21, in whole or in part, or an effective trisomy for chromosome 21.

57 (5) "Hospital" means:

58 (a) a general hospital licensed by the department; or

59 (b) a clinic or other medical facility to the extent the clinic or other medical facility is
60 certified by the department as providing equipment and personnel sufficient in quantity and
61 quality to provide the same degree of safety to a pregnant woman and an unborn child as would
62 be provided for the particular medical procedure undertaken by a general hospital licensed by
63 the department.

64 (6) "Incest" means the same as that term is defined in Title 78A, Chapter 6, Juvenile
65 Court Act.

66 (7) "Medical emergency" means a condition which, on the basis of the physician's good
67 faith clinical judgment, so threatens the life of a pregnant woman as to necessitate the
68 immediate abortion of her pregnancy to avert her death, or for which a delay will create serious
69 risk of substantial and irreversible impairment of major bodily function.

70 (8) "Physician" means:

71 (a) a medical doctor licensed to practice medicine and surgery in the state;

72 (b) an osteopathic physician licensed to practice osteopathic medicine in the state; or

73 (c) a physician employed by the federal government who has qualifications similar to
74 an individual described in Subsection (8)(a) or (b).

75 (9) "Rape" means the same as that term is defined in Title 76, Utah Criminal Code.

76 (10) (a) "Severe brain abnormality" means a malformation or defect that causes an
77 individual to live in a mentally vegetative state.

78 (b) "Severe brain abnormality" does not include:

79 (i) Down syndrome;

80 (ii) spina bifida;

81 (iii) cerebral palsy; or

82 (iv) any other malformation, defect, or condition that does not cause an individual to
83 live in a mentally vegetative state.

84 Section 2. Section **76-7a-201** is enacted to read:

85 **Part 2. Prohibition**

86 76-7a-201. Abortion prohibition -- Exceptions -- Penalties.87 (1) An abortion may be performed in this state only under the following circumstances:88 (a) the abortion is necessary to avert:89 (i) the death of the woman on whom the abortion is performed; or90 (ii) a serious risk of substantial and irreversible impairment of a major bodily function91 of the woman on whom the abortion is performed;92 (b) two physicians who practice maternal fetal medicine concur, in writing, in the93 patient's medical record that the fetus:94 (i) has a defect that is uniformly diagnosable and uniformly lethal; or95 (ii) has a severe brain abnormality that is uniformly diagnosable; or96 (c) (i) the woman is pregnant as a result of:97 (A) rape;98 (B) rape of a child; or99 (C) incest; and100 (ii) before the abortion is performed, the physician who performs the abortion:101 (A) verifies that the incident described in Subsection (1)(c)(i) has been reported to law102 enforcement; and103 (B) if applicable, complies with requirements related to reporting suspicions of or104 known child abuse.105 (2) An abortion may be performed only:106 (a) by a physician; and107 (b) in an abortion clinic or a hospital, unless it is necessary to perform the abortion in108 another location due to a medical emergency.109 (3) A person who performs an abortion in violation of this section is guilty of a second110 degree felony.111 (4) In addition to the penalty described in Subsection (3), the department may take112 appropriate corrective action against an abortion clinic, including revoking the abortion clinic's113 license, if a violation of this chapter occurs at the abortion clinic.

114 (5) The department shall report a physician's violation of any provision of this section
115 to the state entity that regulates the licensing of a physician.

116 Section 3. Section **76-7a-301** is enacted to read:

117 **Part 3. Superseding Clause**

118 **76-7a-301. Superseding clause.**

119 If, at the time this chapter takes effect, any provision in the Utah Code conflicts with a
120 provision of this chapter, the provision of this chapter supersedes the conflicting provision.

121 Section 4. **Contingent effective date.**

122 (1) As used in this section, "a court of binding authority" means:

123 (a) the United States Supreme Court; or

124 (b) after the right to appeal has been exhausted:

125 (i) the United States Court of Appeals for the Tenth Circuit;

126 (ii) the Utah Supreme Court; or

127 (iii) the Utah Court of Appeals.

128 (2) The provisions of this bill take effect on the date that the legislative general counsel
129 certifies to the Legislative Management Committee that a court of binding authority has held
130 that a state may prohibit the abortion of an unborn child at any time during the gestational
131 period, subject to the exceptions enumerated in this bill.

Exhibit B

Dear Members of the Legislative Management Committee,

This email advises you about the effect of the United States Supreme Court opinion issued today in the case of *Dobbs v. Jackson Women's Health Organization*. That decision affects the effective date of two pieces of legislation: all of S.B. 174, Abortion Prohibition Amendments, 2020 Annual General Session; and part of H.B. 166, Down Syndrome Nondiscrimination Abortion Act, 2019 Annual General Session. Based upon the contingent effective date requirements established by the Legislature in those bills, I conclude that the relevant statutory provisions in both bills are now in effect.

I. Senate Bill 174, Abortion Prohibition Amendments, 2020 Annual General Session, Senator McCay, Representative Lisonbee

S.B. 174, Abortion Prohibition Amendments, was enacted by the Legislature and signed by the governor in 2020. The bill, which bans abortion in Utah with certain exceptions, did not take effect because the bill had a contingent effective date. The text of the bill provided that the provisions banning abortion in Utah would take effect “on the date that the legislative general counsel certifies to the Legislative Management Committee that a court of binding authority has held that a state may prohibit the abortion of an unborn child at any time during the gestational period, subject to the exceptions enumerated in this bill.” The bill also defines specifically the meaning of “a court of binding authority.”

The United States Supreme Court issued an opinion today in *Dobbs v. Jackson Women's Health Organization* addressing whether existing United States Supreme Court precedent continues to restrict a state's ability to regulate or prohibit abortion. The Court held that “The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion.” Justice Alito wrote the majority opinion; Justices Thomas, Gorsuch, Kavanaugh, and Barrett joined that opinion. Chief Justice Roberts concurred in the court's judgment and authored a concurring opinion; Justices Thomas and Kavanaugh also wrote concurring opinions. Justice Breyer authored the dissenting opinion, which Justices Sotomayor and Kagan joined.

Because the United States Supreme Court is a court of binding authority, and because its majority opinion authorizes a state to prohibit the abortion of an unborn child at any time during the gestational period, the contingency required by the Legislature in S.B. 174 has been met. Specifically, Sections 76-7a-101, 76-7a-201, and 76-7a-301, enacted by S.B.174, 2020 annual general session, are now in effect, beginning today, June 24 , 2022, at the time that this email was sent.

II. House Bill 166, Down Syndrome Nondiscrimination Abortion Act, 2019 Annual General Session, Representative Lisonbee, Senator Bramble

H.B.166, Down Syndrome Nondiscrimination Abortion Act, was enacted by the Legislature and signed by the governor in 2019. The bill, among other provisions that have already taken effect, prohibited a provider from performing an abortion if “the pregnant mother's sole reason for the abortion is that the unborn child has or may have Down syndrome” with certain exceptions. That bill contained a contingent effective date, which mandated that the prohibition would take effect “on the date that the legislative general counsel certifies to the Legislative Management Committee that a court of binding authority holds that a state may prohibit the abortion of an unborn child before the unborn child is viable outside of the mother if the sole reason for the abortion is that the unborn child has or may have Down syndrome.”

Because the United States Supreme Court is a court of binding authority, and because its majority opinion today in *Dobbs v. Jackson Women's Health Organization* authorizes a state to prohibit the abortion of an unborn child at any time during the gestational period, the contingency required by the Legislature in H. B. 166 has been met. Specifically, Section 76-7-302.4, enacted by H.B.166, 2019 annual general session, is now in effect, beginning today, June 24, 2022, at the time that this email was sent.

Best,

John L. Fellows
General Counsel, Utah Legislature

A lawsuit has been filed against you. You must respond in writing by the deadline for the court to consider your side. The written response is called an Answer.

Deadline!

Your Answer must be filed with the court and served on the other party **within 21 days** of the date you were served with this Summons.

If you do not file and serve your Answer by the deadline, the other party can ask the court for a default judgment. A default judgment means the other party can get what they asked for, and you do not get the chance to tell your side of the story.

Read the complaint/petition

The Complaint or Petition has been filed with the court and explains what the other party is asking for in their lawsuit. Read it carefully.

Answer the complaint/petition

You must file your Answer in writing with the court **within 21 days** of the date you were served with this Summons. You can find an Answer form on the court's website: utcourts.gov/ans



Scan QR code to visit page

Serve the Answer on the other party

You must email, mail or hand deliver a

Se ha presentado una demanda en su contra. Si desea que el juez considere su lado, deberá presentar una respuesta por escrito dentro del periodo de tiempo establecido. La respuesta por escrito es conocida como la Respuesta.

¡Fecha límite para contestar!

Su Respuesta debe ser presentada en el tribunal y también con la debida entrega formal a la otra parte **dentro de 21 días** a partir de la fecha en que usted recibió la entrega formal del Citorio.

Si usted no presenta una respuesta ni hace la entrega formal dentro del plazo establecido, la otra parte podrá pedirle al juez que asiente un fallo por incumplimiento. Un fallo por incumplimiento significa que la otra parte recibe lo que pidió, y usted no tendrá la oportunidad de decir su versión de los hechos.

Lea la demanda o petición

La demanda o petición fue presentada en el tribunal y ésta explica lo que la otra parte pide. Léala cuidadosamente.

Cómo responder a la demanda o petición

Usted debe presentar su Respuesta por escrito en el tribunal **dentro de 21 días** a partir de la fecha en que usted recibió la entrega formal del Citorio. Puede encontrar el formulario para la presentación de la Respuesta en la página del tribunal: utcourts.gov/ans-span



Para acceder esta página escanee el código QR

Entrega formal de la respuesta a la otra parte

copy of your Answer to the other party (or their attorney or licensed paralegal practitioner, if they have one) at the address shown at the top left corner of the first page of this Summons.

Usted deberá enviar por correo electrónico, correo o entregar personalmente una copia de su Respuesta a la otra parte (o a su abogado o asistente legal, si tiene) a la dirección localizada en la esquina izquierda superior de la primera hoja del citatorio.

Finding help

The court's Finding Legal Help web page

(utcourts.gov/help)

provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.



Scan QR code to visit page

Cómo encontrar ayuda legal

Para información sobre maneras de obtener ayuda legal, vea nuestra página de Internet Cómo

Encontrar Ayuda Legal.

(utcourts.gov/help-span)

Algunas maneras de obtener ayuda legal son por medio de una visita a un taller jurídico gratuito, o mediante el Centro de Ayuda. También hay ayuda legal a precios de descuento y consejo legal breve.



Para acceder esta página escanee el código QR



بالمسح قم
لرمز الضوئي
الصفحة لزيارة

An Arabic version of this document is available on the court's website:

نسخة عربية من هذه الوثيقة على موقع المحكمة على الإنترنت: ت وجد

utcourts.gov/arabic

A Simplified Chinese version of this document is available on the court's website:

本文件的简体中文版可在法院网站上找到：

utcourts.gov/chinese



请扫描QR码访问网页

A Vietnamese version of this document is available on the court's website:

Một bản tiếng Việt của tài liệu này có sẵn trên trang web của tòa:

utcourts.gov/viet



Xin vui lòng quét mã QR (Trả lời nhanh) để viếng trang