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JEFFERSON CIRCUIT COURT

DIVISION _____

JUDGE _____ ~~MEDIA~~ 5033-6

JANE DOE, on behalf of herself and all others similarly situated, and PLANNED PARENTHOOD GREAT NORTHWEST, HAWAII, ALASKA, INDIANA, AND KENTUCKY, INC.

PLAINTIFFS

v.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

DANIEL CAMERON, in his official capacity as Attorney General of the Commonwealth of Kentucky;

DEFENDANTS

SERVE: Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, KY 40601
servethecommonwealth@ky.gov

ERIC FRIEDLANDER, in his official capacity as Secretary of Kentucky’s Cabinet for Health and Family Services;

SERVE: Office of the Secretary
275 E. Main St. 5W-A
Frankfort, KY 40621
WesleyW.Duke@ky.gov

MICHAEL S. RODMAN, in his official capacity as Executive Director of the Kentucky Board of Medical Licensure;

SERVE: Board of Medical Licensure
310 Whittington Pkwy, Suite 1B
Louisville, KY 40222
kbml@ky.gov
Leanne.diakov@ky.gov

and

GERINA D. WHETHERS, in her official capacity as Commonwealth’s Attorney for the 30th Judicial Circuit of Kentucky

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SERVE: Office of the Commonwealth’s Attorney
30th Judicial Circuit
514 West Liberty Street
Louisville, KY 40202
jbmoore@louisvilleprosecutor.com

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* * * * *

PRELIMINARY STATEMENT

1. Abortion is a critical component of reproductive healthcare and crucial to the ability of Kentuckians to control their lives. Pregnancy and childbirth impact an individual’s health and well-being, finances, and personal relationships. Whether to take on the health risks and responsibilities of pregnancy and parenting is a personal and consequential decision that must be left to the individual to determine for herself without governmental interference.

Pregnant Kentuckians have the right to determine their own futures and make private decisions about their lives and relationships. Access to safe and legal abortion is essential to effectuating those rights.

2. Guided by their individual health, values, and circumstances, Kentuckians seek abortions for a variety of deeply personal reasons, including medical, familial, and financial concerns. Previous Kentucky patients have shared their reasons for deciding to have an abortion, including to preserve their health, to protect their ability to care and provide for their existing children, because of financial concerns about the ability to work or go to school while pregnant or parenting, or because of complicated family circumstances. Without the ability to decide whether to continue a pregnancy, Kentuckians have lost the right to make critical decisions about their health, bodies, lives, and futures.

3. Plaintiff Jane Doe, proceeding under pseudonym to protect her privacy, is one of those individuals. Jane is a Kentucky resident who is currently approximately 8 weeks pregnant

and seeks to terminate her pregnancy in the Commonwealth but cannot legally do so because of the challenged abortion bans. Jane Doe brings this action on behalf of herself and a class of similarly situated people who are now or later become pregnant and seek an abortion in Kentucky but cannot obtain one in the Commonwealth because of the challenged abortion bans.

4. Plaintiff Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana, and Kentucky, Inc. ("Health Care Provider Plaintiff"), provided abortions to Kentuckians in its Louisville health center—one of only two Kentucky outpatient health centers licensed to provide abortions—prior to the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

5. Plaintiffs seek declaratory and injunctive relief to prevent Defendants from enforcing the challenged laws which, collectively, eliminated access to virtually all abortion in the Commonwealth and are inflicting acute and irreparable harm on Kentuckians.

6. Plaintiffs challenge two separate Kentucky abortion bans (collectively, the "Bans") under the Kentucky Constitution: KRS 311.772 (the "Total Ban") (attached as Exhibit A) and KRS 311.7701–11 (the "Six-Week Ban") (attached as Exhibit B). Following the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), the Total Ban prevented the provision of *any* abortions in Kentucky except in very narrow emergency circumstances. The Six-Week Ban made it a crime to provide an abortion after embryonic cardiac activity becomes detectable, which generally occurs around six weeks of pregnancy, as measured from the first day of the patient's last menstrual period ("LMP").

7. At this moment, Jane Doe and the other putative and future class members, are suffering medical, constitutional, and irreparable harm because they are denied the ability to obtain an abortion.

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8. The threat of criminal penalties from the Bans has forced Health Care Provider Plaintiff to stop providing abortions to Jane Doe and all others seeking this time-sensitive healthcare and they have been forced to turn away all patients seeking abortion in Kentucky since the two challenged laws were allowed to take effect.

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9. The Bans and the irreparable harms they inflict are an affront to the health and dignity of all Kentuckians. The inability to access abortion in the Commonwealth forcibly imposes the health risks and physical burdens of continued pregnancy on all Kentuckians who would otherwise choose to access safe and legal abortion. For many individuals, the Bans altogether foreclose the ability to access abortion, thus forcing them to carry their pregnancies to term and give birth, which carries a risk of death up to fourteen times higher than that associated with abortion. These individuals will be made to suffer the life-altering physical, emotional, and economic consequences of unexpected pregnancy, childbirth, and parenting. Others, pushed by the Bans to travel out of state for legal care, bear the burdens both of increased health risks from being pushed later into pregnancy and of the cost and logistical difficulties of long-distance travel. The Bans also harm those who seek to terminate their unwanted pregnancies outside a clinical setting, which could put them at medical or legal risk. The Bans harm all Kentuckians, but are an attack on Kentuckians with low incomes and Black Kentuckians in particular, as they are among the least able to readily access medical care and the most vulnerable to dying from pregnancy-related causes.

10. The Bans violate Sections One and Two of the Commonwealth’s Constitution by infringing on Jane Doe’s, and the class she represents’, rights to privacy and self-determination. Additionally, the Total Ban unlawfully (i) delegates legislative power in violation of Sections 27,

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28, and 29 of the Constitution, and (ii) takes effect upon the authority of an entity other than the General Assembly in violation of Section 60 of the Constitution.

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11. To protect the constitutional rights of Plaintiff Jane Doe and the class she represents and the Health Care Provider Plaintiff, this Court must declare the Bans unconstitutional and permanently enjoin their enforcement.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to Sections 109 and 112 of the Kentucky Constitution and KRS 23A.010.

13. Plaintiffs’ claims for declaratory and injunctive relief are authorized by KRS 418.040, KRS 418.045, Ky. R. Civ. P. 57, Ky. R. Civ. P. 65.01, and the general legal and equitable powers of this Court.

14. Venue is appropriate in this Court pursuant to KRS 452.005(1)–(2) because this is a civil action that challenges the constitutionality of Kentucky statutes and that seeks declaratory and injunctive relief against individual state officials in their official capacities, and the Health Care Provider Plaintiff resides in Jefferson County.

15. Pursuant to KRS 418.075(1) and KRS 452.005(3), notice of this action challenging the constitutionality of enactments of the General Assembly is being provided to the Attorney General, who is also a defendant in this action, by serving copies of the Complaint upon him.

Presiding Judge: HON. MITCH PERRY (630267)

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PARTIES

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Plaintiffs¹

16. Plaintiff Jane Doe is a resident of Kentucky, who is pregnant and seeking an abortion. As of the date of this filing, Plaintiff Jane Doe is approximately 8 weeks pregnant. She has decided that the best course of action for herself and her family is to terminate the pregnancy; however, she is unable to access a legal abortion in the Commonwealth due to the challenged abortion bans. She sues under a pseudonym because she would like to keep her medical information and healthcare decisions private, including that she is pregnant and would like to have an abortion. Plaintiff Jane Doe sues on her own behalf and as a class representative for similarly situated people who are now or later become pregnant and seek an abortion in Kentucky but cannot obtain one in the Commonwealth because of the challenged abortion bans.

17. Plaintiff Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana, and Kentucky, Inc., is a nonprofit organization incorporated under Washington law that operates two health centers in Kentucky, one of which is a licensed abortion facility in Louisville (“Planned Parenthood Louisville”) that offered abortion care before the Bans took effect. Planned Parenthood Louisville provides a variety of medical services to its patients, including birth control, pregnancy testing, and sexually transmitted infection testing and treatment. Before the U.S. Supreme Court’s decision in *Jackson Women’s Health*, the Louisville health center offered

¹ Health Care Provider Plaintiff and other abortion providers challenged the Bans in 2022. This Court issued a temporary injunction, which the Attorney General appealed. The Kentucky Supreme Court held that the provider plaintiffs had not satisfied the third-party standing requirements to raise the constitutional rights of their patients, and further indicated that a patient could herself bring a challenge under a pseudonym. *Cameron v. EMW Women’s Surgical Ctr.*, P.S.C., 664 S.W.3d 633 (Ky. 2023).

medication abortion up to 10 weeks LMP, and procedural abortion up to 13 weeks and 6 days LMP.

Defendants

18. Defendant Daniel Cameron is the Attorney General of the Commonwealth of Kentucky and, as such, is the Commonwealth’s chief law-enforcement officer. In his capacity as Attorney General, Defendant Cameron “may seek injunctive relief as well as civil and criminal penalties in courts of proper jurisdiction to prevent, penalize, and remedy violations of . . . KRS 311.710 to 311.830,” which includes the Bans. KRS 15.241(1)(b). Defendant Cameron is likewise charged with “seek[ing] injunctive relief as well as civil and criminal penalties” against “abortion facilities” to prevent violations of the provisions of KRS Chapter 216B regarding abortion facilities or the administrative regulations promulgated in furtherance thereof. KRS 15.241(1)(a). Those regulations include the requirement that all abortion facilities ensure “compliance with . . . state . . . laws,” including the Bans. 902 K.A.R. 20:360 § 5(1)(a). Additionally, Defendant Cameron may initiate or participate in criminal prosecutions for violations of the Bans at the request of, *inter alia*, the Governor, any court of the Commonwealth, or local officials. KRS 15.190; KRS 15.200. Defendant Cameron is sued in his official capacity.

19. Defendant Eric Friedlander is the secretary of the Cabinet for Health and Family Services (“the Cabinet”)—an agency of the Commonwealth of Kentucky. In his capacity as secretary of the Cabinet, Defendant Friedlander is charged with, *inter alia*, oversight and licensing of abortion providers and the regulatory enforcement of those facilities. KRS 216B.0431(1); 902 KAR 20:360 § 5(1)(a). The Cabinet’s regulations include the requirement

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that all abortion facilities ensure “compliance with . . . state . . . laws,” including the Bans. 902 KAR 20:360, § 5(1)(a). Defendant Friedlander is sued in his official capacity.

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20. Defendant Michael S. Rodman serves as Executive Director of the Kentucky Board of Medical Licensure (“the Board”). Defendant Rodman and the Board possess authority to pursue disciplinary action up to and including license revocation against Kentucky physicians for violating the Bans. *See* KRS 311.565; KRS 311.606. Defendant Rodman is sued in his official capacity.

21. Defendant Gerina D. Whethers serves as the Commonwealth’s Attorney for the 30th Judicial Circuit of Kentucky. In this capacity, Defendant Whethers has authority to enforce the Bans’ criminal penalties in Jefferson County, where Health Care Provider Plaintiff is located. *See* KRS 15.725(1); KRS 23A.010(1). Defendant Whethers is sued in her official capacity.

CLASS ACTION ALLEGATIONS

22. Pursuant to 23.01 and 23.02 of the Kentucky Rules of Civil Procedure, Jane Doe brings this action on behalf of herself and all others who are now or later become pregnant and seek an abortion in Kentucky but cannot obtain one in the Commonwealth because of the challenged abortion bans.

23. The class is so numerous that joinder is impracticable. In 2021, the last full year that abortion was legal in Kentucky, over 4,400 people obtained abortions in the Commonwealth.

24. Joinder is inherently impractical because the number of unnamed, future class members who will need access to abortion in Kentucky is unknown and unknowable.

25. Moreover, the inherently temporal nature of pregnancy adds to the impracticability of joining future class members.

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26. There are questions of law common to the Plaintiff Class that are capable of class-wide resolution, including whether the challenged laws violate the Kentucky Constitution's right to privacy and right to self-determination, and whether the Total Ban unlawfully delegates legislative authority to the U.S. Supreme Court.

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27. The claims of the Plaintiff Class members share common issues of fact, including that all of them are barred from obtaining abortion care in Kentucky.

28. The claims of class representative Jane Doe are typical of the claims of the members of the Plaintiff Class because they arise from the same course of conduct—Defendants' enforcement of the Bans—and are based on the same legal theory of deprivation of constitutional rights.

29. Plaintiff Jane Doe, as class representative, will fairly and adequately protect the interests of the Plaintiff Class. She does not have any significant interests antagonistic to or conflicting with those of the unnamed class members and will vigorously prosecute the class interests through qualified counsel.

30. The attorneys representing Plaintiff Jane Doe are experienced civil rights attorneys and are considered able practitioners in reproductive rights and other complex civil litigation. Some of the attorneys have previously been appointed as class counsel in other cases and should be appointed as class counsel here too.

31. By enforcing the challenged laws, Defendants have acted, have threatened to act, and will act on grounds generally applicable to the Plaintiff Class, thereby making final injunctive and declaratory relief appropriate to the class as a whole. The Plaintiff Class may therefore be properly certified under CR 23.02(b).

32. Prosecution of separate actions by individual members of the Plaintiff Class would create the risk of inconsistent or varying adjudications and would establish incompatible standards of conduct for Defendants. The Plaintiff Class may therefore also be properly certified under CR 23.02(a)(i).

APPLICABLE CONSTITUTIONAL LAW

33. Section One of the Kentucky Constitution provides, in relevant part: “All men² are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: First: The right of enjoying and defending their lives and liberties. . . . Third: The right of seeking and pursuing their safety and happiness.”

34. Section Two of the Kentucky Constitution provides: “Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.”

35. Section 27 of the Kentucky Constitution provides: “The powers of the government of the Commonwealth of Kentucky shall be divided into three distinct departments, and each of them be confined to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.”

² As used in the Kentucky Bill of Rights, “men” is a generic term encapsulating all people, including women. *Official Report of the Proceedings and Debates in the Convention*, 1890, Ky. Vol. I, 817–18 (discussing proposed amendment to Section 1 to change "men" to "persons" and receiving explanation that "men" is generic and applies to all, including women); *Posey v. Commonwealth*, 185 S.W.3d 170, 200 (Ky. 2006) (Scott, J., concurring in part) (“Nor did the word ‘men,’ in the first section of the Bill of Rights, limit the enjoyment of those Rights to males, as some might suggest.”).

36. Section 28 of the Kentucky Constitution provides: “No person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.”

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37. Section 29 of the Kentucky Constitution provides: “The legislative power shall be vested in a House of Representatives and a Senate, which, together, shall be styled the ‘General Assembly of the Commonwealth of Kentucky.’”

38. Section 60 of the Kentucky Constitution provides, in relevant part: “No law . . . shall be enacted to take effect upon the approval of any other authority than the General Assembly, unless otherwise expressly provided in this Constitution.”

STATUTORY FRAMEWORK

Total Ban

39. The Total Ban prohibits anyone from either knowingly “[a]dminister[ing] to, prescrib[ing] for, procur[ing] for, or sell[ing] to any pregnant woman any medicine, drug, or other substance” or knowingly “[u]s[ing] or employ[ing] any instrument or procedure upon a pregnant woman” if those actions are done “with the specific intent of causing or abetting the termination of the life of an unborn human being.” KRS 311.772(3)(a)(1)–(2).

40. The Total Ban was enacted to “become effective immediately upon, and to the extent permitted, by the occurrence of . . . [a]ny decision of the United States Supreme Court which reverses, in whole or in part, *Roe v. Wade*, 410 U.S. 113 (1973), thereby restoring to the Commonwealth of Kentucky the authority to prohibit abortion.” KRS 311.772(2)(a).

41. Because of the Total Ban’s serious criminal penalties, the threat of enforcement of the Total Ban following the *Jackson Women’s Health* decision has stopped the provision of abortion in Kentucky, except in very narrow circumstances. KRS 311.772(3)(a)(1)–(2).

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42. The Total Ban’s extremely limited medical emergency exception permits abortion only “to prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman.” KRS 311.772(4)(a). The Total Ban contains no exceptions for cases of rape or incest or in situations where there is a fatal fetal diagnosis.

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43. Under the Total Ban, any person who knowingly provides an abortion to someone who is pregnant would be guilty of a Class D felony, KRS 311.772(3)(b), punishable by imprisonment of one to five years, KRS 532.060(2)(d).

Six-Week Ban

44. The Six-Week Ban requires the doctor who intends to terminate an intrauterine pregnancy to first determine whether there is embryonic or fetal cardiac activity. KRS 311.7704(1); KRS 311.7705(1). If such activity is detected, the Six-Week Ban makes it a felony to “caus[e] or abet[] the termination of” the pregnancy. KRS 311.7706(1).

45. Detectable cardiac activity generally occurs around six weeks LMP, when the cells that form the basis for development of the heart later in gestation generally begin producing pulsations that are detectable by vaginal ultrasound. Many patients do not yet know they are pregnant at this early stage, and even for patients with highly regular, four-week menstrual cycles, six weeks LMP will be just two weeks after they have missed their first period. By banning abortion at this early point in pregnancy, the Six-Week Ban prohibits the vast majority of abortions that were previously provided in the Commonwealth prior to *Jackson Women’s Health*.

46. The Six-Week Ban has only a very limited emergency exception. It permits abortion after detection of cardiac activity only if the abortion is necessary to 1) prevent the

pregnant patient’s death, or 2) prevent a “substantial and irreversible impairment of a major bodily function.” KRS 311.7706(2)(a). The Six-Week Ban contains no exceptions for cases of rape or incest or in situations where there is a fatal fetal diagnosis.

47. A violation of the Six-Week Ban is a Class D felony, which is punishable by imprisonment of one to five years. KRS 311.990(21)–(22); KRS 532.060(2)(d). Additionally, a patient who receives an abortion may bring a civil action for violation of the Six-Week Ban. KRS 311.7709.

FACTUAL ALLEGATIONS

Pregnancy Has Significant Medical, Financial, and Personal Consequences

48. People experience their pregnancies in a range of different ways. While pregnancy can be a celebratory and joyful event for many people, even an uncomplicated pregnancy challenges the pregnant individual’s entire physiology. For many, pregnancy can be a period of physical and personal distress.

49. Every pregnancy necessarily involves significant physical change. A typical pregnancy lasts roughly 40 weeks. During that time, the body experiences a dramatic increase in blood volume, a faster heart rate, increased production of clotting factors, breathing changes, digestive complications, and a growing uterus.

50. As a result of these changes and others, pregnant individuals are more prone to blood clots, nausea, hypertensive disorders, and anemia, among other complications. Many of these complications are mild and resolve without the need for medical intervention. Some, however, require evaluation and occasionally urgent or emergent care to preserve the patient’s health or save their life.

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51. Pregnancy may aggravate preexisting health conditions such as hypertension and other cardiac disease, diabetes, kidney disease, autoimmune disorders, obesity, asthma, and other pulmonary disease.

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52. Other health conditions such as preeclampsia, deep-vein thrombosis, gestational diabetes, and cardiomyopathy may arise for the first time during pregnancy. Patients who develop certain pregnancy-induced medical conditions are at a higher risk of developing the same condition in a subsequent pregnancy.

53. Patients face mental health risks as well. For example, mental health is a probable or certain contributing factor to almost 44% of maternal deaths in Kentucky.³ Additionally, approximately 15% of patients suffer from post-partum depression, which if left untreated can lead to guilt, anxiety, suicidal ideation, and inability to care for oneself and/or for the baby.⁴

54. Pregnancy also increases the risk of intimate partner violence, with the severity sometimes escalating during or after pregnancy. Homicide has been reported as a leading cause of maternal mortality, the majority caused by an intimate partner.⁵

55. Separate from pregnancy, childbirth itself is a significant medical event. Even a normal pregnancy can suddenly become life-threatening during labor and delivery. During labor, increased blood flow to the uterus places the patient at risk of hemorrhage and, in turn, death.

56. People who undergo labor and delivery can experience other unexpected adverse events such as infection or hemorrhage.

³ Ky. Dept. for Pub. Health, Maternal Mortality Review: 2021 Annual Report at 13 (2021), <https://chfs.ky.gov/agencies/dph/dmch/Documents/MMRAnnualReport.pdf>.

⁴ Teri Pearlstein et al., *Postpartum Depression*, 200 Am. J. Obstetrics & Gynecology 357 (2009).

⁵ Am. Coll. Obstetricians & Gynecologists, *Committee Opinion 518: Intimate Partner Violence* (Feb. 2012), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2012/02/intimate-partner-violence>.

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57. Vaginal delivery can lead to injury, including pelvic floor injury, such as tearing of the perineum, which is painful and requires time to heal. More extensive tears can lead to problems with a patient's bowel and bladder function.

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58. A substantial proportion of deliveries now occur by cesarean section (C-section), abdominal surgery requiring hospitalization for at least a few days. While common, C-sections carry risks of hemorrhage, infection, damage to surrounding organs, and in some cases hysterectomy.

59. Pregnancy and childbirth are expensive. Pregnancy-related healthcare and childbirth are some of the costliest hospital-based health services, particularly for complicated or higher-risk pregnancies. These expenses are not always covered by insurance, so even insured patients may pay for significant labor and delivery costs out of pocket.

60. The financial burdens of pregnancy and childbirth weigh even more heavily on patients without insurance, who are disproportionately people of color, and on people with unintended pregnancies, who may not have sufficient savings to cover the unexpected pregnancy-related expenses. A costly pregnancy, particularly for people already facing an array of economic hardships, could have long-term and severe impacts on a family's financial security.

61. According to the Centers for Disease Control and Prevention, pregnancy is becoming more dangerous, with pregnancy-related deaths on the rise across the United States.⁶ Since the CDC's "Pregnancy Mortality Surveillance System was implemented, the number of reported pregnancy-related deaths in the United States steadily increased from 7.2 deaths per

⁶ Ctrs. for Disease Control & Prevention, *Pregnancy Mortality Surveillance System*, <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm> (last updated Mar. 23, 2023).

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100,000 live births in 1987 to 17.6 deaths per 100,000 live births in 2019.”⁷ While Kentucky has seen a slight drop in pregnancy-related mortality from 2017 to 2018, the 2018 number is still high, at 16.6 per 100,000 live births.⁸ “Underlying causes for pregnancy-related deaths in 2018 included amniotic fluid embolism, esophageal intubation, malnutrition and cardiac event, mental health and inter-partner issues, obesity, psychiatric and seizure disorder, substance use, and thrombophlebitis respectively.”⁹

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62. Pregnancy is three times as deadly for Black Kentuckians as it is for white Kentuckians.¹⁰ As the Kentucky Department for Public Health has recognized, the Commonwealth could do a great deal to drive down these regrettable statistics and save lives: indeed “91% of [Kentucky’s] maternal deaths reviewed from the 2018 cohort were considered preventable.”¹¹

63. Regardless of an individual’s plans for after birth, the pregnancy, delivery, and recovery will impact and potentially imperil their ability to find or maintain employment, provide for their family, and care for any existing children. Many Kentuckians lack basic legal protections against pregnancy discrimination or paid or even unpaid leave for pregnancy-related medical reasons, labor and delivery, and recovery. Kentuckians whose primary responsibilities

⁷ *Id.*

⁸ Ky. Dept. for Pub. Health, *supra* note 3, at 10. “Pregnancy-related” is defined as the “[d]eath of a woman during pregnancy or within one year of the end of the pregnancy, from a pregnancy complication, a chain of events initiated by a pregnancy, or the aggravation of an unrelated condition by the physiologic effects of pregnancy.” *Id.* at 5.

⁹ *Id.* at 10.

¹⁰ *Id.* at 11.

¹¹ *Id.* at 15.

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include unpaid work, such as caring for young children or elderly or disabled loved ones, have no safety net at all for pregnancy and childbirth.

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64. Given the impact of pregnancy and childbirth on a person's health and well-being, finances, and personal relationships, whether to become or remain pregnant is one of the most personal and consequential decisions a person will make in their lifetime. Certainly, many people decide that adding a child to their family is well worth all of these risks and consequences. But when abortion is unavailable in the Commonwealth, thousands of Kentuckians currently are or later will be forced to assume those risks involuntarily.

Abortion Is Safe, Common, and Essential Healthcare

65. Legal abortion is one of the safest procedures in contemporary medical practice in the United States. A Committee of the National Academies of Sciences, Engineering, and Medicine previously issued a report concluding that abortion in the United States is safe; serious complications are rare; and abortion does not increase the risk of long-term physical or mental health disorders.¹²

66. In Kentucky in 2021, the last full year that abortion was legal, over 99.7% of abortions in the Commonwealth involved no complications at all, and of the less than 0.3% that did, nearly all were minor, such as retained tissue treatable by an additional dose of medication, and there were no deaths.¹³ In Kentucky in 2022, the year that abortion was banned, 2,550

¹² Nat'l Acad. Of Scis., Eng'g & Med., The Safety & Quality of Abortion Care in the United States 77, 161–62 (2018), <https://nap.nationalacademies.org/catalog/24950/the-safety-and-quality-of-abortion-care-in-the-united-states>.

¹³ Office of Vital Stat., Ky. Dept. for Pub. Health, Kentucky Annual Abortion Report for 2021, at 12 [hereinafter "2021 Abortion Report"].

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abortions were performed, and there were also no deaths and only two complications (or 0.078% of all abortions), both of which were minor.¹⁴

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67. Abortion entails significantly less medical risk than carrying a pregnancy to term and giving birth. Overall, the risk of death from carrying a pregnancy to term can be up to fourteen times higher than that from having an abortion, and every pregnancy-related complication is more common among people giving birth than among those having abortions.¹⁵

68. There are two primary methods of abortion: medication abortion and procedural abortion. Both methods are safe and effective in terminating a pregnancy.

69. Medication abortion involves a combination of two medications, mifepristone and misoprostol, which expel the contents of the uterus in a manner similar to a miscarriage. The passing of the pregnancy takes place after the patient has left the clinic, in a location of their choosing, typically their own home.

70. Procedural abortion involves the use of gentle suction, and in some instances, other instruments, to empty the contents of the patient's uterus. Even though procedural abortions are sometimes referred to as "surgical abortions," it is not what is commonly understood to be "surgery" because it involves no incisions.

71. These are the same types of medical treatments used for miscarriage. Miscarriage care is also prohibited under the challenged laws unless there is no embryonic or fetal cardiac activity or unless one of the Bans' limited medical emergency exceptions is met.

¹⁴ Office of Vital Stat., Ky. Dept. for Pub. Health, Kentucky Annual Abortion Report for 2022, at 20.

¹⁵ Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *Obstetrics & Gynecology* 215, 216–17 (2012).

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72. Abortion is common: Approximately one in four women in this country will have an abortion by age forty-five.

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73. Nationwide, a majority of women having abortions (61%) already have at least one child, while most (66%) also plan to have a child or additional children in the future. Likewise, in Kentucky, nearly 66% of abortion patients in 2021 already had at least one child.¹⁶

74. Three-quarters of U.S. abortion patients have low incomes, with nearly half living below the federal poverty level.¹⁷

75. In the United States, more than 60% of abortion patients are people of color, including 28% who are Black.¹⁸ In Kentucky, over 34% of abortion patients identified as Black in 2021,¹⁹ despite comprising only around 9% of the Commonwealth's population.²⁰

76. Although unable to currently provide abortion care because the challenged bans are in effect, Planned Parenthood Louisville is one of only two outpatient healthcare centers in Kentucky licensed to provide abortion care. Both are located in Louisville. In 2021, these two health centers provided 99.7% of all abortions in the Commonwealth.²¹

¹⁶ See 2021 Abortion Report, *supra* note 13, at 9.

¹⁷ Jenna Jerman et al., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, at 5 (May 2016), https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf.

¹⁸ *Id.*

¹⁹ 2021 Abortion Report, *supra* note 13, at 6.

²⁰ U.S. Census Bureau, QuickFacts: Kentucky, <https://www.census.gov/quickfacts/fact/table/KY/RHI225221#RHI225221> (last visited December 5, 2023) (estimating 8.7% of Kentuckians identified as Black alone in 2022); U.S. Census Bureau, *Kentucky: 2020 Census*, Aug. 25, 2021, <https://www.census.gov/library/stories/state-by-state/kentucky-population-change-between-census-decade.html> (noting 9.7% of Kentuckians identified as Black alone or in combination in 2020).

²¹ 2021 Abortion Report, *supra* note 13, at 2.

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77. Prior to the bans taking effect, the only two licensed abortion clinics, including Planned Parenthood Louisville, collectively provided abortions to around 3,000 to 4,000 patients per year.²²

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78. Like in the United States as a whole, approximately half of all abortions in Kentucky were medication abortions, and the other half were procedural abortions.

79. In 2021, only 4% of abortions in Kentucky occurred prior to six weeks of pregnancy, while 26% occurred in the sixth week when cardiac activity typically becomes detectable and the remaining 70% of abortions occurred after six weeks LMP.²³

Lack of Access to Abortion in the Commonwealth Is Imposing Irreparable Harms to Pregnant Kentuckians and Their Families

80. Jane Doe and the Plaintiff Class need access to safe and legal abortion in the Commonwealth in order to exercise autonomy over their lives and to engage fully and equally in society. Everyone who can become pregnant has a right to determine their own future and to make decisions about their relationships and life opportunities without government interference that puts their health and well-being at risk.

81. When individuals seek but are unable to access abortion, they are forced to take on the health risks, physical burdens, and other life-altering consequences of continued pregnancy and childbirth, outlined *supra* ¶¶ 48–64.

82. Further, those who are forced to give birth and add a child to their household when they were not prepared to do so face wide-reaching economic and family consequences.

²² See *id.* (4,428); Office of Vital Stat., Ky. Dept. for Pub. Health, Kentucky Annual Abortion Report for 2020, at 2 (4,092); Office of Vital Stat., Ky. Dept. for Pub. Health, Kentucky Annual Abortion Report for 2019, at 2 (3,645); Office of Vital Stat., Ky. Dept. for Pub. Health, Kentucky Annual Abortion Report for 2018, at 2 (3,185).

²³ See 2021 Abortion Report, *supra* note 13, at 7.

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83. The costs related to parenting a child resulting from an unexpected pregnancy could have severe negative impacts on an individual and their family’s well-being. For example, those who seek but are denied an abortion often face years of economic hardship and financial insecurity, as compared with those who were able to access abortion.

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84. Children in a family affected by abortion denial are likely to experience a decrease in resources, including both increased rates of poverty and less available parental time, which may have significant impacts on the children’s lifelong educational and economic outcomes.

85. Families affected by abortion denial may also be more prone to experiencing violence at home. For example, individuals who sought but were unable to access abortion have been found to be more likely to experience physical violence from the man involved in the pregnancy, even years after being denied the wanted abortion.

86. Some Kentuckians who seek but are unable to access abortion in the Commonwealth will attempt to travel to access this healthcare in another state. Even for those class members who are able to find the time and resources to travel, not being able to access abortion in Kentucky causes significant harm.

87. Any delays in accessing a wanted abortion expose the abortion seeker to increased health risks, both as a result of the inherent risks of pregnancy and by pushing the procedure later in pregnancy, when there is a higher risk of complications and when a more complex and expensive procedure may be required.

88. The members of the Plaintiff Class who are forced to travel are being or will be exposed to these risks and burdens due to delays associated with accessing abortion in another

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state, including from the need to raise additional funds, make travel arrangements, and the time it takes to travel.

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89. Since the U.S. Supreme Court overturned the federal constitutional right to abortion, there are fewer places to access abortion, and the providers in states where abortion remains available do not currently have capacity to meet the increased demand for their services from out-of-state patients in a timely manner. As a result, Kentuckians are having to travel longer distances and wait longer for an available appointment.

90. For most individuals, traveling long distances to access time-sensitive abortion care in another state is extremely difficult, and in many cases the burdens of travel—including travel expenses, finding childcare, and arranging time off work or school—make it impossible for members of the Plaintiff Class to obtain the desired abortion at all.

91. Some class members who are denied clinical care because of the Bans may attempt to end their pregnancies on their own, outside the medical system. While safe and effective methods to induce abortion outside clinical settings with medication exist, attempts to access and use these abortion-inducing drugs, often from unlicensed sources, can put patients at serious legal risk. Others without the resources to access medically safe though legally risky methods of self-managed abortion may resort to dangerous tactics to try to terminate an unwanted pregnancy, such as throwing themselves down the stairs or ingesting poison. These attempts to access healthcare criminalized by Kentucky force individuals to take on added legal and medical risks, and may jeopardize pregnant Kentuckians' lives, safety, health, future, and their families' welfare.

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The Bans are Causing Irreparable Harm

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92. The inability to access abortion in Kentucky causes irreparable harm to Jane Doe and the class that she represents, including by forcibly imposing the physical burdens and health risks of continued pregnancy and childbirth. Those who seek an abortion but are unable to access that healthcare because of the Bans are being or will be forced to suffer the life-altering physical, emotional, economic, and family consequences of unexpected pregnancy and childbirth. These consequences can be particularly acute for patients who are pregnant as a result of rape, experiencing domestic violence, or facing fetal diagnoses incompatible with sustained life after birth.

93. The Plaintiff Class members who are experiencing pregnancy risks or complications that may seriously and permanently impair their health, but in a way that does not meet the Bans' limited emergency exceptions, are being or will be forced to remain pregnant and suffer serious and potentially life-long harms to their health. Even those whose dire situations may technically qualify for one or both of the Bans' varying emergency exceptions may still be refused care out of hospitals' or providers' fears of being held criminally liable under one or both of the Bans. This is already happening in emergency rooms across the country, where physicians are afraid to terminate patients' pregnancies because they fear being sued.²⁴

94. Even those class members who may be able to arrange for out-of-state abortions will suffer the harms associated with the delay, expense, and additional burdens of long-distance travel, as well as the increased medical risk that comes with delaying care until later in pregnancy.

²⁴ See, e.g., *Zurawski v. Texas*, D-1-GN-000968 (Dist. Ct. Travis Co., Texas), complaint available at <https://reproductiverights.org/wp-content/uploads/2023/03/Zurawski-v-State-of-Texas-Complaint.pdf>.

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95. Still other class members who are denied clinical care due to the Bans may attempt to end their pregnancies on their own, outside the medical system, which may entail legal and/or medical risks that could jeopardize their lives, health, safety, and welfare.

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96. In addition to the irreparable harms outlined above, Jane Doe and the class she represents and the Health Care Provider Plaintiff are also suffering the irreparable harm that results from the violation of their constitutional rights.

97. Jane Doe and the class she represents and the Health Care Provider Plaintiff have no adequate remedy at law.

CLAIMS FOR RELIEF

Count I (by Jane Doe):

Violation of Kentucky Constitution §§ 1 & 2 (Right to Privacy) – Total Ban

98. The allegations in each of the foregoing paragraphs are incorporated as though fully set forth herein.

99. The guarantees of individual liberty provided in Sections One and Two of the Kentucky Constitution, *see* Ky. Const. §§ 1(1), 1(3) & 2, protect the right to privacy.

100. The constitutional right to privacy protects against the intrusive police power of the state, putting personal and private decision-making related to sexual and reproductive matters beyond the reach of the state. The right to privacy thus protects the right of a pregnant individual to access abortion if they decide to terminate their pregnancy.

101. The right to privacy is a fundamental liberty and inalienable right to which strict scrutiny applies. To survive strict scrutiny, the government must prove that the challenged action furthers a compelling governmental interest that is narrowly tailored to that interest.

102. The Total Ban does not further any compelling governmental interest. Even if it did, the law is not narrowly tailored.

103. By imposing a total prohibition on abortion, the Total Ban infringes the ability of Jane Doe, and the class she represents, to decide to terminate a pregnancy, in violation of their right to privacy as guaranteed by Sections One and Two of the Kentucky Constitution.

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**Count II (by Jane Doe):
Violation of Kentucky Constitution §§ 1 & 2 (Right to Self-Determination) – Total Ban**

104. The allegations in each of the foregoing paragraphs are incorporated as though fully set forth herein.

105. The guarantees of individual liberty provided in Sections One and Two of the Kentucky Constitution, *see* Ky. Const. §§ 1(1), 1(3) & 2, protect the right to self-determination and personal autonomy.

106. The constitutional right to self-determination guards every Kentuckian’s ability to possess and control their own person and to determine the best course of action for themselves and their body. An individual who is required by the government to remain pregnant against her will— a significant physiological process affecting one’s health for 40 weeks and culminating in childbirth—experiences interference of the highest order with her right to possess and control her own person. The right to self-determination thus protects Kentuckians’ power to control whether to continue or terminate their own pregnancies.

107. The right to self-determination as protected by the constitutional right to liberty is a fundamental and inalienable right. Any statute that inhibits such a fundamental right is subject to strict scrutiny and cannot stand unless the government can prove that the statute furthers a compelling governmental interest that is narrowly tailored to that interest.

108. The Total Ban does not further any compelling governmental interest. Even if it did, it is not narrowly tailored.

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109. By imposing a total ban on abortion, the Total Ban infringes on the ability of Jane Doe, and the class she represents, to decide to terminate a pregnancy, in violation of their right to self-determination as guaranteed by Sections One and Two of the Kentucky Constitution.

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Count III (by all Plaintiffs):
Violation of Kentucky Constitution §§ 27, 28, & 29 (Unlawful Delegation) – Total Ban

110. The allegations in each of the foregoing paragraphs are incorporated as though fully set forth herein.

111. Section 29 of the Kentucky Constitution vests legislative power in the General Assembly. Sections 27 and 28 establish and enforce the separation of powers within the Kentucky government.

112. What conduct will in the future constitute a crime or be subject to severe penalties in Kentucky is a matter for the Kentucky General Assembly to determine in view of the conditions existing when the need for such a statute arises. It is not a matter that may be delegated to the federal government.

113. The Total Ban does not specify a point in pregnancy when its ban on abortion becomes operative. Rather, the General Assembly left it to the U.S. Supreme Court to determine the point at which abortion becomes a crime under Kentucky law: The law's prohibition is effective "to the extent permitted" by a U.S. Supreme Court decision "which reverses, in whole or in part, *Roe v. Wade*, 410 U.S. 113 (1973)." KRS 311.772(2)(a).

114. By leaving the future delineation of what conduct constitutes a crime in Kentucky in the hands of the U.S. Supreme Court, the Total Ban improperly delegates the nondelegable legislative duty of the General Assembly to define the scope of Kentucky criminal law, in violation of Sections 27, 28, and 29 of the Kentucky Constitution.

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Count IV (by all Plaintiffs):
Violation of Kentucky Constitution § 60 (Approval of Authority Other Than General Assembly) – Total Ban

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115. The allegations in each of the foregoing paragraphs are incorporated as though fully set forth herein.

116. Section 60 of the Kentucky Constitution provides that “No law . . . shall be enacted to *take effect* upon the approval of any authority other than the General Assembly, unless otherwise expressly provided in this Constitution” (emphasis added). This means that the General Assembly cannot make a law’s life and vitality depend upon the affirmative act of another.

117. The General Assembly did not enact the Total Ban to take effect upon its own authority. Instead, it enacted it to “*become* effective immediately upon, and to the extent permitted by . . . [a]ny decision of the United States Supreme Court which reverses, in whole or in part, *Roe v. Wade*, 410 U.S. 113 (1973).” KRS 311.772(2)(a) (emphasis added). The General Assembly played no role in the determination of when the Total Ban takes effect; its effectiveness depended upon the affirmative acts of the U.S. Supreme Court and Kentucky’s Attorney General and other prosecutors, who will take affirmative actions to begin effectuating the Total Ban.

118. Because the Total Ban took effect only upon the approval of the authority of the United States Supreme Court and Kentucky’s Attorney General, the Total Ban violates Section 60 of the Kentucky Constitution.

Count V (by Jane Doe):
Violation of Kentucky Constitution §§ 1 & 2 (Right to Privacy) – Six-Week Ban

119. The allegations in each of the foregoing paragraphs are incorporated as though fully set forth herein.

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120. The Kentucky Constitution protects the fundamental right to privacy, which encompasses the right to abortion. *See supra* ¶¶ 98–102.

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121. Statutes impacting fundamental rights can only stand if they survive strict scrutiny. *See supra* ¶ 101. The Six-Week Ban cannot survive strict scrutiny because it does not further any compelling governmental interest and, even if it did, the law is not narrowly tailored.

122. By imposing a ban on abortion upon detection of any embryonic cardiac activity, the Six-Week Ban violates Jane Doe’s, and the class she represents’, right to privacy as guaranteed by Sections One and Two of the Kentucky Constitution.

Count VI (by Jane Doe):
Violation of Kentucky Constitution §§ 1 & 2 (Right to Self-Determination) – Six-Week Ban

123. The allegations in each of the foregoing paragraphs are incorporated as though fully set forth herein.

124. The Kentucky Constitution protects the fundamental right to self-determination, which encompasses the right to abortion. *See supra* ¶¶ 104–08.

125. Statutes impacting fundamental rights must be reviewed under strict scrutiny. *See supra* ¶ 107. The Six-Week Ban cannot survive strict scrutiny because it does not further any compelling governmental interest and, even if it did, the law is not narrowly tailored.

126. By imposing a ban on abortion upon detection of any embryonic cardiac activity, the Six-Week Ban violates Jane Doe’s, and the class she represents’, right to self-determination as guaranteed by Sections One and Two of the Kentucky Constitution.

Count VII:
Claim for Injunctive Relief Against Defendants (All Claims)

127. The allegations in each of the foregoing paragraphs are incorporated as though fully set forth herein.

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128. Plaintiffs' claims for injunctive relief are authorized by Kentucky Rule of Civil Procedure 65.

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129. As described *supra* in Counts I to VI, the Total Ban and Six-Week Ban are violating Plaintiffs' constitutional rights.

130. Plaintiffs are suffering, and will continue to suffer, immediate and irreparable injury in the absence of injunctive relief preventing Defendants from enforcing the Bans.

131. Plaintiffs have no adequate remedy at law or otherwise to address this injury, save in a court of equity.

132. The balance of the equities weighs in favor of granting injunctive relief because an injunction would restore the status quo ante, and serve the public interest in protecting public health and stopping constitutional violations.

133. Plaintiffs are entitled to permanent injunctive relief, restraining and enjoining Defendants and their agents, attorneys, representatives, and any other person in active concert or participation with them, from enforcing the Bans.

Count VIII:
Claim for Declaratory Judgment (All Claims)

134. The allegations in each of the foregoing paragraphs are incorporated as though fully set forth herein.

135. Plaintiffs' claims for declaratory relief are authorized by Kentucky Rule of Civil Procedure 57 and KRS 418.040–45.

136. This is an actual and justiciable controversy with respect to the constitutionality of the Total Ban and Six-Week Ban.

137. The Bans violate the Kentucky Constitution, as described *supra* in Counts I to VI.

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138. Plaintiffs therefore are entitled to a declaratory judgment that the Bans violate the Kentucky Constitution and are void pursuant to Section 26 of the Kentucky Bill of Rights. Ky.

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Const. § 26 (“[A]ll laws ... contrary to this Constitution, shall be void.”).

PRAYER FOR RELIEF

Accordingly, Plaintiffs respectfully request the Court grant the following relief:

- a. Declare the Total Ban, KRS 311.772, and the Six-Week Ban, KRS 311.7701–11, unconstitutional and unenforceable.
- b. Enjoin Defendants, their employees, agents, and successors in office from enforcing the Total Ban and Six-Week Ban.
- c. Grant Plaintiffs costs herein expended.
- d. Grant such other and further relief as this Court may deem just, proper, and equitable.

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Respectfully submitted,

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