

**IN THE DISTRICT COURT  
OF LANCASTER COUNTY, NEBRASKA**

**PLANNED PARENTHOOD OF  
THE HEARTLAND, INC. and  
SARAH TRAXLER, M.D.**

**Plaintiffs,**

**v.**

**MIKE HILGERS, in his official  
capacity as Attorney General  
for the State of Nebraska; JIM  
PILLEN, in his official capacity  
as Governor of the State of  
Nebraska; DANNETTE SMITH,  
in her official capacity as Chief  
Executive Officer of the  
Nebraska Department of  
Health and Human Services;  
CHARITY MENEFEE, in her  
official capacity as Director of  
the Nebraska Department of  
Health and Human Services  
Division of Public Health; and  
TIMOTHY TESMER, in his  
official capacity as Chief  
Medical Officer of Nebraska  
Department of Health and  
Human Services,**

**Defendants.**

**Case No. CI 23-1820**

**DEFENDANTS'  
OBJECTION TO  
PLAINTIFFS' MOTION FOR  
A TEMPORARY  
RESTRAINING ORDER**

**COMES NOW**, Defendants, Michael Hilgers, in his official capacity as Attorney General for the State of Nebraska, Jim Pillen, in his official capacity as Governor of the State of Nebraska, Dannette Smith, in her official capacity as Chief Executive Officer of the Nebraska Department of Health and Human Services (“DHHS”), Charity Menefee, in her official capacity as Director of DHHS’s Division of Public Health, and Timothy Tesmer, in his official capacity as Chief Medical Officer of DHHS, by and through counsel, and object to the Plaintiffs’ motion for a temporary restraining order.

Plaintiffs ask this Court to be the first ever to find that an act of the Nebraska legislature violates the single subject rule found in Art. III § 14 of the Nebraska Constitution, and to act contrary to the very high bar presented by the sheer volume of Nebraska Supreme Court cases entered to date. See *Campbell v. City of Lincoln*, 182 Neb. 459, 155 N.W.2d 444 (1968); *Anderson v. Tiemann*, 182 Neb. 393, 155 N.W.2d 322 (1967); *State ex rel. Baldwin v. Strain*, 152 Neb. 763, 42 N.W.2d 796 (1950); *Dorrance v. County of Douglas*, 149 Neb. 685, 32 N.W.2d 202 (1948); *City of Mitchell v. Western Public Service Co.*, 124 Neb. 248, 246 N.W. 484 (1933); *Mehrens v. Greenleaf*, 119 Neb. 82, 227 N.W. 325 (1929); *State v. Painter*, 117 Neb. 42, 219 N.W. 794 (1928); *Murray v. Nelson*, 107 Neb. 52, 185 N.W. 319 (1921); *Birdhead v. State*, 105 Neb. 296, 180 N.W. 583 (1920); *State ex rel. Hall County Farm Bureau v. Miller*, 104 Neb. 838, 178 N.W. 846 (1920); *Sandlovich v. State*, 104 Neb. 169, 176 N.W. 81 (1920); *Gauchat v. School Dist. No. 5 in Nemaha County*, 101 Neb. 377, 163 N.W. 334 (1917). See also *Peet Stock Remedy Co. v. McMullen*, 32 F.2d 669 (8th Cir. 1929).

Temporary Restraining Orders (“TRO”) involve the extraordinary powers of the court and should be exercised with the greatest of caution. *State ex rel. Beck v. Associates Discount Corp.*, 161 Neb. 410, 73 N.W.2d 673 (1955). A party requesting a TRO is required to show (1) a probability of succeeding on the merits, (2) immediate and irreparable harm, and (3) a need to maintain the status quo. See 11A Charles Alan Wright & Arthur R. Miller et al., Federal Practice

and Procedure, Civil §§ 2948, 2951 (3d ed.). In addition, the purpose of a temporary restraining order is only to maintain the status quo until a court can hear both parties on the propriety of a temporary injunction. *Melanie M. v. Winterer*, 290 Neb. 764, 778, 862 N.W.2d 76, 88 (2015) (Citing *State ex rel. Beck v. Associates Discount Corp.*, 161 Neb. 410, 73 N.W.2d 673 (1955)).

Plaintiffs have failed to demonstrate that they can meet any of the criteria required for the Court to exercise the extraordinary remedy of entering a temporary restraining order, and most notably to find a likelihood of success on the merits on a violation of the single subject rule applicable to the legislature—where no Nebraska case has ever done so before. Moreover, there are additional questions concerning Plaintiffs’ ability to meet their burden in order to be granted the requested injunctive relief, including whether the Plaintiffs have standing or have raised an immediate and irreparable harm—a harm so immediate and irreparable that such an extraordinary action against the State is not just recommended, but required. These questions are appropriate for a hearing on Preliminary Injunction where all parties have an opportunity to be heard and present evidence. The Motion for Temporary Restraining Order should be denied.

**WHEREFORE**, Defendants request that the Plaintiffs’ Motion for Temporary Restraining Order be denied, that the Court set the matter for a hearing on the Plaintiffs’ Motion for Preliminary Injunction and issue a briefing schedule on the preliminary injunction.

DATED this 30<sup>th</sup> day of May 2023.

**MICHAEL HILGERS, JIM  
PILLEN, DANNETTE SMITH,  
CHARITY MENEFFEE, and  
TIMOTHY TESMER, in their  
official capacities, Defendants.**

By: MICHAEL T. HILGERS, #24483  
*Nebraska Attorney General*

By: /s/ Christopher A. Felts  
Christopher A. Felts, #26784  
Jennifer Huxoll, #20406  
Erik Fern, #23733  
*Assistant Attorneys General*

OFFICE OF THE ATTORNEY GENERAL  
2115 State Capitol  
Lincoln, NE 68509-8920  
Tel. (402) 471-1845  
Fax. (402) 471-4725  
[christopher.felts@nebraska.gov](mailto:christopher.felts@nebraska.gov)  
[Jennifer.Huxoll@nebraska.gov](mailto:Jennifer.Huxoll@nebraska.gov)  
[Erik.Fern@nebraska.gov](mailto:Erik.Fern@nebraska.gov)  
*Attorneys for Defendants.*