

IN THE DISTRICT COURT OF
LANCASTER COUNTY, NEBRASKA

PLANNED PARENTHOOD OF THE
HEARTLAND, INC., *et al.*,

Plaintiffs,

v.

MIKE HILGERS, in his official capacity
as Attorney General for the State of
Nebraska, *et al.*,

Defendants.

Case No. CI 23-1820

**PLAINTIFFS' REPLY
MEMORANDUM IN
SUPPORT
OF PLAINTIFFS'
MOTION FOR A
TEMPORARY
RESTRAINING ORDER**

ARGUMENT

Plaintiffs' motion for a temporary restraining order seeks a temporary pause of a two-subject bill enacted in clear violation of the Nebraska Constitution's single-subject rule. For three reasons, the government's response to that motion confirms that a TRO should issue.

First, the government acknowledges that a TRO's purpose is not to resolve a motion for a temporary injunction, but rather "to maintain the status quo until a court can *hear* both parties on the propriety of a temporary injunction." Opp. at 3 (citing *Melanie M. v. Winterer*, 290 Neb. 764, 778, 862 N.W.2d 76, 88 (2015)) (emphasis added). In this case, preserving the status quo means maintaining the law and rights that existed *for decades* before the sudden enactment of L.B. 574, and the sudden implementation of its abortion ban, in May 2023. The government has now also said it is prepared to respond substantively to Plaintiffs' request for a temporary injunction, *see* Opp. at 4, this Court can be confident that the temporary injunction motion can be expeditiously briefed, heard, and resolved. These are precisely the circumstance in which a TRO is warranted.

Second, the government nowhere mounts even a superficial argument that Plaintiffs are wrong on the merits. The government does not mention the text of art. III, § 14 of the Nebraska Constitution, which is unequivocal: “No bill”—none—“shall contain more than one subject.” It does not mention L.B. 574, let alone explain why the law’s two subjects—the abortion ban and the restriction on gender-affirming care—are actually “one subject” under the Nebraska Constitution. Nor does it acknowledge that, quite unlike other single-subject cases that have come before Nebraska’s courts, L.B. 574 combined two subjects only after one of them, the abortion ban, had stalled in a separate bill.

Instead, the government urges this Court to go along to get along. It insists that this Court should decline to issue a TRO not because Plaintiffs are wrong to allege a violation by the Legislature of the single-subject rule, but because “no Nebraska case has ever” found such a violation. The government’s claim, however, is both mistaken and incomplete. It is mistaken because, in fact, Nebraska courts have found violations of the single-subject rule applicable to the Legislature. *See Weis v. Ashley*, 59 Neb. 494, 81 N.W. 318, 319 (1899) (“Our conclusion is that the act of 1887 amending the prior act for the protection of owners of stallions, jacks, and bulls was not adopted in accordance with the requirements of the constitution, and is therefore null.”); *Van Horn v. State*, 46 Neb. 62, 64 N.W. 365, 368 (1895) (“In *State v. Lancaster Co.*, 17 Neb. 85, 22 N. W. 228, while the syllabus refers only to the title, it is clear from the opinion that the court deemed the act itself bad for duplicity.”). And it is incomplete because the government, including the Attorney General, neglects to mention the Attorney General’s own repeated warnings to the Legislature about bills that may violate the single-subject rule. *See* Pls.’ Mot. for Temp. Restraining Order 13 (discussing Neb. Op. Att’y Gen. No. 90023, 1990 WL 485354, at *2 (Mar. 22, 1990), and Neb. Op. Att’y Gen. No. 91042, 1991 WL 496712, at *1 (May 20, 1991)).

Third, without mentioning a single fact about the Plaintiffs or the evidence included with their motion, the government suggests that

Plaintiffs have, somehow, failed to demonstrate standing or irreparable harm. *See* Opp. at 4. The government's claims are inaccurate for all the reasons stated in Plaintiffs' motion papers and the un rebutted affidavit of Plaintiff Sarah Traxler, M.D. But the claims are also puzzling. The very point of L.B. 574—or more accurately, the very point of one-half of L.B. 574—was to impose immediate and severe limitations on the abortions that Planned Parenthood, Dr. Traxler, and others could lawfully provide to their patients, under threat of severe penalties for any violation. There is no denying that this is what L.B. 574 does.

CONCLUSION

For the foregoing reasons, and those provided in Plaintiffs' motion for a temporary restraining order, the Plaintiffs respectfully urge the Court to issue a temporary restraining order by Thursday, June 1. Since the government has now responded to that motion, the Court need not issue the order on an *ex parte* basis.

DATED this 31st day of May, 2023.

Respectfully submitted,

PLANNED PARENTHOOD OF
THE HEARTLAND, INC., *et al.*

Matthew R. Segal *
American Civil Liberties Union
Foundation, Inc.
One Center Plaza, Suite 850
Boston, MA 02108
Telephone: (617) 299-6664
E-mail: msegal@aclu.org

Julie A. Murray *
American Civil Liberties Union
Foundation, Inc.
915 15th Street NW
Washington, DC 20005
Telephone: (202) 675-2326
E-mail: jmurray@aclu.org
* *Motion for admission
pro hac vice forthcoming*

BY: /s/ Mindy Rush Chipman
Mindy Rush Chipman, #24499
Rose Godinez, #25925
Scout Richters, #25690
Jane Seu, #27452
American Civil Liberties Union of
Nebraska
134 S. 13th Street, #1010
Lincoln, NE 68508
Telephone: (402) 476-8091
E-mails:
mrushchipman@aclunbraska.org
rgodinez@aclunbraska.org
srichters@aclunbraska.org
jseu@aclunbraska.org
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she caused the foregoing Reply Memorandum in Support of Plaintiffs Motion for Temporary Restraining Order to be served upon the following parties through their counsel via email on this 31st day of May, 2023 at:

Jennifer Huxoll: jennifer.huxoll@nebraska.gov

Eric Fern: erik.fern@nebraska.gov

Christopher Felts: christopher.felts@nebraska.gov

s/ Mindy Rush Chipman
Mindy Rush Chipman
American Civil Liberties Union of
Nebraska
134 S. 13th Street, #1010
Lincoln, NE 68508
Telephone: (402) 476-8091

Certificate of Service

I hereby certify that on Thursday, June 01, 2023 I provided a true and correct copy of the Reply to the following:

Hilgers, Mike, represented by FELTS, CHRISTOPHER A (Bar Number: 26784) service method: Electronic Service to christopher.felts@nebraska.gov

Tesmer, Timothy, M.D. represented by FELTS, CHRISTOPHER A (Bar Number: 26784) service method: Electronic Service to christopher.felts@nebraska.gov

Menefee, Charity, represented by Jennifer A. Huxoll (Bar Number: 20406) service method: Electronic Service to jennifer.huxoll@nebraska.gov

Smith, Dannette, represented by FELTS, CHRISTOPHER A (Bar Number: 26784) service method: Electronic Service to christopher.felts@nebraska.gov

Pillen, Jim, represented by Jennifer A. Huxoll (Bar Number: 20406) service method: Electronic Service to jennifer.huxoll@nebraska.gov

Hilgers, Mike, represented by Erik W. Fern (Bar Number: 23733) service method: Electronic Service to erik.fern@nebraska.gov

Pillen, Jim, represented by Erik W. Fern (Bar Number: 23733) service method: Electronic Service to erik.fern@nebraska.gov

Tesmer, Timothy, M.D. represented by Jennifer A. Huxoll (Bar Number: 20406) service method: Electronic Service to jennifer.huxoll@nebraska.gov

Hilgers, Mike, represented by Jennifer A. Huxoll (Bar Number: 20406) service method: Electronic Service to jennifer.huxoll@nebraska.gov

Smith, Dannette, represented by Erik W. Fern (Bar Number: 23733) service method: Electronic Service to erik.fern@nebraska.gov

Menefee, Charity, represented by Erik W. Fern (Bar Number: 23733) service method: Electronic Service to erik.fern@nebraska.gov

Pillen,Jim, represented by FELTS, CHRISTOPHER A (Bar Number: 26784) service method:
Electronic Service to christopher.felts@nebraska.gov

Smith,Dannette, represented by Jennifer A. Huxoll (Bar Number: 20406) service method:
Electronic Service to jennifer.huxoll@nebraska.gov

Menefee,Charity, represented by FELTS, CHRISTOPHER A (Bar Number: 26784) service
method: Electronic Service to christopher.felts@nebraska.gov

Tesmer,Timothy,,M.D. represented by Erik W. Fern (Bar Number: 23733) service method:
Electronic Service to erik.fern@nebraska.gov

Signature: /s/ Mindy Rush Chipman (Bar Number: 24499)