NO. 23-CI-007561

JEFFERSON CIRCUIT COURT
DIVISION _____ (__)
JUDGE _____

JANE DOE, *et al.* PLAINTIFFS

v.

DANIEL CAMERON, *et al.* DEFENDANTS

NOTICE

Please take notice that on Monday, December 18, 2023, counsel for Plaintiffs Jane Doe and Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana, and Kentucky, Inc., shall appear during the Court's regularly scheduled motion hour to present the following motion:

MOTION FOR CLASS CERTIFICATION

Plaintiffs, by counsel, hereby move pursuant to CR 23 for certification of the following class: All persons 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.

In support of this motion, Plaintiffs submit the attached memorandum and proposed order.

DATE: December 8, 2023

Respectfully submitted,

/s/ *Michele Henry*

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CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2023, I served true and accurate copies of the foregoing by email on the following counsel of record for Defendants:

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MEMORANDUM IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

* * *

INTRODUCTION

This lawsuit challenges the constitutionality of two Kentucky statutes that, collectively, prohibit abortion in the Commonwealth. Plaintiff Jane Doe,[1] a Kentuckian who is now pregnant and seeks an abortion in the Commonwealth but is unable to obtain one because of the bans, brings this action on behalf of herself and all others similarly situated, seeking a declaration of unconstitutionality and a permanent injunction preventing Defendants from enforcing the challenged laws in any way that interferes with the Class's ability to access abortion in Kentucky.

Plaintiff Jane Doe hereby moves for class certification pursuant to CR 23.01 and 23.02. Because all members of the proffered class seek or will seek abortion in the Commonwealth, the central question of this litigation is whether the challenged laws violate the Proposed Class's rights under the Kentucky Constitution. This inquiry focuses on the uniform application of law against a readily identifiable class and thus is ideally suited for class treatment.

[1] Jane Doe is proceeding under a pseudonym for the reasons stated in Jane Doe's motion filed today seeking leave to proceed pseudonymously.

FACTUAL BACKGROUND

The Challenged Laws

This case concerns two near-total bans on abortion (collectively, "the Bans") that were initially passed by the General Assembly in 2019 but did not take effect until 2022. Prior to the Bans taking effect, Kentuckians had for decades relied on access to safe and legal abortion care in the Commonwealth to protect their health, lives, autonomy, and the well-being of themselves and their families. Since the Bans took effect, thousands of Kentuckians have been prevented from accessing abortion in the Commonwealth, to the detriment of their health and lives.

The Total Ban

The first law, KRS 311.772 (the "Total Ban"), criminalizes the provision of abortion throughout pregnancy. The General Assembly left the scope and timing of the ban up to the U.S. Supreme Court: The Total Ban would 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)." KRS 311.772(2)(a). Three years after the Total Ban was passed, the U.S. Supreme Court overruled the federal constitutional right to abortion recognized in *Roe*. *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228, 2279 (2022). Accordingly, the Total Ban now criminalizes virtually all abortions in the Commonwealth.

The law 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" at any stage of pregnancy 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). 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).[2] The statute contains no exceptions for cases of rape or incest or in situations where there is a fatal fetal diagnosis. Any person who knowingly provides an abortion in violation of the Total Ban is guilty of a Class D felony, KRS 311.772(3)(b), punishable by imprisonment of one to five years, KRS 532.060(2)(d).

The Six-Week Ban

In 2019, the General Assembly also passed a separate, near-total abortion ban, KRS 311.7701–11 (the "Six-Week Ban"). The Six-Week Ban deprives individuals in the Commonwealth of their ability to have an abortion beginning very early in pregnancy by making it a crime to "caus[e] or abet[] the termination of" a pregnancy once embryonic or fetal cardiac activity is detectable. KRS 311.7706(1); KRS 311.7705(1); KRS 311.7704(1). In a typical pregnancy, a transvaginal ultrasound can detect this activity beginning around six weeks of pregnancy, as measured from the first day of the patient's last menstrual period ("LMP"), when cells that form the basis for development of the heart later in gestation begin producing pulsations. Six weeks LMP is before many patients realize they are pregnant, and even for individuals with highly regular, four-week menstrual cycles, it is just two weeks after their first missed period. In 2021, the last full year abortion was permitted in the Commonwealth, only 4% of abortions in Kentucky were provided prior to six weeks LMP.[3]

[2] *See* Tessa Redmond, *No Abortions Reported in Kentucky in February*, Apr. 6, 2023, https://www.kentuckytoday.com/news/no-abortions-reported-in-kentucky-during-february/article_2d1fe036-d488-11ed-9db2-472f2a5f3ecb.html (noting only 5 abortions since the Bans took effect August 1, 2022).

[3] Office of Vital Stat., Ky. Dept. for Pub. Health, Kentucky Annual Abortion Report for 2021, at 7 (2022).

The Six-Week Ban contains exceptions only for abortions necessary to prevent the pregnant patient's death, or to prevent a "substantial and irreversible impairment of a major bodily function." KRS 311.7706(2)(a). The law contains no exceptions for cases of rape or incest or in situations where there is a fatal fetal diagnosis. A violation of the Six-Week Ban is a Class D felony, KRS 311.990(21)–(22), which is punishable by imprisonment of one to five years, KRS 532.060(2)(d).

The Proposed Class

Abortion is a safe, effective, and common form of medical care. Guided by their individual health, values, and circumstances, pregnant individuals across the nation—including Kentuckians—seek abortions for a variety of deeply personal reasons, including medical, familial, and financial concerns. Prior to the *Dobbs* decision, it was estimated that approximately one in four women in the United States would have an abortion by the age of forty-five. Indeed, in Kentucky, according to the State's data, prior to the challenged Bans taking effect, approximately 4,000 people sought abortion care in the Commonwealth each year. Plaintiff Jane Doe is a Kentuckian who seeks an abortion. She is a resident of Kentucky who is approximately 8 weeks pregnant and seeking an abortion in the Commonwealth. Although abortion was legal in Kentucky for decades, due to the Bans, Jane Doe and all others similarly situated are now unable to access abortion care in the Commonwealth. Jane Doe and the Proposed Class challenge the abortion Bans under the Kentucky Constitution, alleging violations of the constitutional right to privacy, the right to self-determination, and the non-delegation clauses.

DEFINITION OF THE PROPOSED CLASS

Based on the foregoing statement of facts and the argument below, Plaintiffs propose a Class comprised of the following:

All persons 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.

LEGAL STANDARD

To qualify for class certification, a proposed class must clear two procedural hurdles. *Hensley v. Haynes Trucking, LLC*, 549 S.W.3d 430, 442 (Ky. 2018) ("In Kentucky, a party must fulfill the prerequisites of CR 23.01 and 23.02 to be able to maintain a class action."). First, the class must satisfy all four elements of CR 23.01: numerosity, commonality, typicality, and adequacy. Second, just *one* of the conditions listed in CR 23.02 must be present, such as when the opposing party "has acted . . . on grounds generally applicable to the class," CR 23.02(b), or when "prosecution of separate actions" by individual class members could result in "incompatible standards of conduct," CR 23.02(a)(i). Because Civil Rule 23 "mirrors its federal counterpart," Federal Rule of Civil Procedure 23, "federal law should guide this Court's analysis" of the class certification factors. *Hensley*, 549 S.W.3d at 436 & n.4.[4] *See also Neb. All. Realty Co. v. Brewer*, 529 S.W.3d 307, 311 (Ky. App. 2017) (noting that "CR 23.01 and 23.02 are nearly identical to their federal counterparts" and that "[i]t is well established that Kentucky courts rely upon Federal caselaw when interpreting a Kentucky rule of procedure that is similar to its federal counterpart"). A plaintiff whose suit meets the Civil Rules' requirements has a "categorical" right "to pursue his claim as a class action." *See Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010).

[4] "The general pattern of the [Kentucky] Rules follows quite closely the mechanical and logical arrangement of the Federal Rules of Civil Procedure. The Kentucky Rules incorporate most of the fundamental concepts implicit in the Federal Rules." *Id.* at 436 n.4 (quoting Kurt A. Philipps, Jr., 6 Ky. Prac. R. Civ. Proc. Ann. Rule 1, Comment 2 (Aug. 2017 update)).

ARGUMENT

Here, Defendants' enforcement of the Bans denies nearly all pregnant people in Kentucky the ability to access an abortion in the Commonwealth. As set forth below, a class action is an appropriate vehicle to resolve such widespread harm. All four of the CR 23.01 requirements are satisfied: (1) Numerosity is met because the Proposed Class of all persons who are now or later become pregnant and seek an abortion in Kentucky consists of approximately 4,000 people per year, making it so numerous that joinder is impracticable; (2) Commonality is met because there are questions of law common to the class that are capable of class-wide resolution, including whether the Bans violate the Proposed Class's constitutional rights; (3) Typicality is met because Jane Doe's claims that the Bans violate the Kentucky Constitution, including the constitutional rights to privacy and self-determination, and the non-delegation clauses, arise from the same course of conduct that gives rise to claims of other class members and are based on the same legal theory; and (4) Adequacy is met because the class representative has no interest antagonistic to other members of the class and will vigorously prosecute the interests of the class through qualified counsel.

Additionally, although only one is required for certification, the Proposed Class satisfies the conditions set forth in both CR 23.02(b) and 23.02(a)(i). The Proposed Class may be certified under CR 23.02(b) because, by enforcing the Bans, the Defendants are acting in a manner generally applicable to the class, thereby making final injunctive and declaratory relief appropriate with respect to the class as a whole. In the alternative, the Proposed Class could also be certified under CR 23.02(a)(i) because the class action will avoid the risk of inconsistent individual rulings on the questions presented. The Proposed Class easily satisfies the criteria set forth in CR 23.01 and 23.02, and class certification is, therefore, proper.

I. The Proposed Class Satisfies the Requirements of CR 23.01.

A. The Proposed Class Is Sufficiently Numerous that Joinder of All Members Is Impracticable.

To qualify for class certification, the Proposed Class must be "so numerous that joinder of all members is impracticable." CR 23.01(a). "There is no precise size or number of class members that automatically satisfies the numerosity requirement." *Hensley*, 549 S.W.3d at 443. Rather, "impracticability of joinder is the lynchpin of the numerosity determination." *Id.* at 447. *See also Moorman v. Louisville Metro Hous. Auth. Dev. Corp.*, No. 2014-CA-001449-MR, 2018 WL 1038394, at *4 (Ky. App. Feb. 23, 2018) (unpublished) ("Impracticality is the linchpin."). The practicability of joinder depends on such considerations as "[t]he substantive nature of the claim, the type of the class action, . . . the relief requested[,] . . . the size of the class, the ease of identifying its members and determining their addresses, facility of making service on them, and their geographic dispersion." *Hensley*, 549 S.W.3d at 443 (quoting Kurt A. Philipps, Jr., et al., 6 Ky. Prac. R. Civ. Proc. Ann. Rule 23.01, Comment 5 (Aug. 2017 update)). Moreover, "[i]mpracticability does not mean impossibility. The class representative need show only that it is extremely difficult or inconvenient to join all members of the class." *Id.*

Here, the proposed class is sufficiently numerous that joinder of all members is impracticable. According to the Commonwealth's data, thousands seek abortion care in Kentucky each year; in 2021 alone, over 4,400 people obtained abortions in the Commonwealth.[5] The Proposed Class thus consists of approximately 4,000 people each year. The large number alone "raises a presumption of impracticability of joinder." *St. Stephen's Cemetery Ass'n v. Seaton*, No. 2022-CA-0080-ME, 2022 WL 16842445, at *6 (Ky. App. Nov. 10, 2022) (unpublished) ("Though

[5] Office of Vital Stat., Ky. Dept. for Pub. Health, Kentucky Annual Abortion Report for 2021, at 2.

there is no absolute minimum number of class members, many courts have found 'a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone.'" (quoting 1 William B. Rubenstein, *Newberg & Rubenstein on Class Actions* § 3:12 (6th ed. 2022))). The joinder of such a large number of plaintiffs is entirely impracticable, as it could not be achieved without substantial difficulty, expense, and hardship.

Joinder is also inherently impractical in this case because of the unnamed, unknown *future* class members who will later become pregnant and seek an abortion in Kentucky. Classes including future claimants generally meet the numerosity requirement due to the "impracticality of counting such class members, much less joining them." 1 William B. Rubenstein, *Newberg & Rubenstein on Class Actions* § 3:15 (6th ed. 2022). *See also Card v. City of Cleveland*, 270 F.R.D. 280, 291 (N.D. Ohio 2010) ("[U]nknown future members should be properly considered and included as a part of the class and joinder of such persons is inherently impracticable." (quoting *San Antonio Hisp. Police Officer's Org., Inc. v. City of San Antonio*, 188 F.R.D. 433, 442 (W.D. Tex. 1999))). Moreover, the inherently temporal nature of pregnancy adds to the impracticability of joining all future class members as they become eligible. *See, e.g.*, *Clark v. Ardery*, 222 S.W.2d 602, 603–04 (Ky. 1949) (finding that "it is obviously impracticable to bring" voters whose registrations were suspended "before the Court within a reasonable time."); *Black v. Elkhorn Coal Corp.*, 26 S.W.2d 481, 483 (Ky. 1930) (finding that because class of bondholders is "constantly changing … it is a practical impossibility to bring all of them before the court."). The Proposed Class easily meets CR 23.01's numerosity requirement.

B. The Proposed Class Meets the Commonality Requirement of CR 23.01.

To qualify for class treatment, questions of law or fact must be common to the Class. CR 23.01(b). In other words, class claims must "depend upon a common contention . . . that is capable

of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Hensley*, 549 S.W.3d at 443 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). This standard "does not require that all questions of law or fact be common." *Id.* Rather, "even a single common question" of law or fact is enough to satisfy the commonality requirement. *Manning v. Liberty Tire Servs. of Ohio, LLC*, 577 S.W.3d 102, 113 (Ky. App. 2019) (cleaned up) (quoting *Dukes*, 564 U.S. at 359). At bottom, "[c]ommonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Dukes*, 564 U.S. at 349–50 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). "What matters to class certification . . . is not the raising of common 'questions'— even in droves—but rather, the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* at 350 (citation omitted).

Here, the Proposed Class meets this standard. Defendants' enforcement of the Bans imposes the same injury on all Proposed Class members: an inability to access a safe and legal abortion in the Commonwealth. The common questions of law at the center of this case are whether such restrictions violate the Kentucky Constitution, including the constitutional rights to privacy and self-determination, and non-delegation principles. In short, resolution of the constitutional questions "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Hensley*, 549 S.W.3d at 443 (quoting *Dukes*, 564 U.S. at 350). This alone establishes a common issue of law which suffices to satisfy the commonality requirement. Indeed, "class suits for injunctive or declaratory relief," such as this one, "by their very nature often present common questions satisfying" the commonality requirement. 7A Wright, Miller & Kane, *Fed. Prac. & Proc*. § 1763 (4th ed. 2022).

C. The Claims of the Class Representative Are Typical of Those of the Class.

Rule 23.01(c) requires that the claims or defenses of the class representatives be typical of the claims or defenses of the class members. Class representatives' claims are considered typical, within the meaning of CR 23.01, "if they arise from the same event, practice, or course of conduct that gives rise to the claims of other class members and if the claims of the representative are based on the same legal theory." *Hensley*, 549 S.W.3d at 443 (quoting Kurt A. Philipps, Jr., et al., 6 Ky. Prac. R. Civ. Proc. Ann. Rule 23.01, Comment 7 (Aug. 2017 update)).

Here, Plaintiff Jane Doe's legal claims are typical of the Proposed Class. Like other class members, her right to access an abortion in the Commonwealth is at stake. She, like other Proposed Class members, is pregnant and seeks an abortion in Kentucky but is unable to access that medical care due to Defendants' enforcement of the Bans. As a result, Jane Doe and the Proposed Class members suffer the same injuries, namely denial of medical care and deprivation of constitutional rights. The relief Jane Doe seeks is the same relief that could remedy each class members' injury. Thus, in every material respect, the claims and legal theory of the representatives are typical of the claims and legal theory of the Class as a whole. The typicality requirement is easily met.

D. Representation of the Parties Will Fairly and Adequately Protect the Interests of the Class.

The fourth and final requirement of CR 23.01 mandates that the representatives must "fairly and adequately protect the interests of the class." CR 23.01(d). Courts generally consider two factors to determine whether representation of the Class is adequate: "(1) the representative must have common interest with the unnamed members of the class; and (2) it must appear that the representative will vigorously prosecute the interests of the class through qualified counsel." *Hensley*, 549 S.W.3d at 443 (quoting Kurt A. Philipps, Jr., et al., 6 Ky. Prac. R. Civ. Proc. Ann. Rule 23.01, Comment 8 (Aug. 2017 update)). To determine whether class counsel is qualified, the

Court must consider "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." CR 23.07(1)(a). Here, the adequacy prong is met because the class representative has common interests with the absent class members and will vigorously prosecute those interests through qualified counsel.

1. The Representative Has Common Interest with Unnamed Class Members.

Plaintiff Jane Doe is willing and able to serve as class representative and to work with class counsel to prosecute the claims in the case. She does not have any significant interests antagonistic to or conflicting with those of the unnamed class members. The named Plaintiff will fairly and adequately protect the interests of the Proposed Class because she seeks relief on behalf of the class as a whole and has no interest antagonistic to other members of the class. Their mutual goal is to obtain a declaration that the Bans are unconstitutional and a permanent injunction against the Bans so that those seeking abortions can obtain the care they need in the Commonwealth.

2. The Representative Will Vigorously Prosecute the Class Interests Through Qualified Counsel.

Additionally, Plaintiff's counsel is sufficiently experienced and competent to prosecute the class claims. Plaintiff Jane Doe is represented by counsel from the American Civil Liberties Union ("ACLU") Foundation, the ACLU of Kentucky, Planned Parenthood Federation of America, Craig Henry PLC, and O'Melveny & Myers LLP. These entities have a history of defending civil rights and civil liberties in state and federal courts, including through class actions, and have the resources necessary to litigate this case effectively. The individual attorneys representing the named Plaintiff 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. *See, e.g.*, *Garza v. Hargan*, 304 F. Supp. 3d 145, 158 n.3 (D.D.C. 2018) (finding ACLU's Brigitte Amiri "to be fully competent and qualified" to serve as class counsel for class of immigrant minors seeking abortion care), *aff'd in relevant part, vacated in part, remanded sub nom. J.D. v. Azar*, 925 F.3d 1291 (D.C. Cir. 2019); *Whitlock v. FSL Mgmt., LLC*, No. 3:10CV-00562-JHM, 2012 WL 3274973, at *9–10 (W.D. Ky. Aug. 10, 2012) (finding Plaintiffs' counsel, including Craig Henry PLC's Michele Henry, to "have sufficient experience and ability" to be appointed class counsel), *aff'd*, 843 F.3d 1084 (6th Cir. 2016). The Plaintiffs' attorneys have more than a half-century of experience. There can be no doubt that Plaintiff's counsel are competent and will adequately represent the class with zeal.

The Class representative has common interests with the absent Class members and will vigorously prosecute those interests through qualified counsel. Therefore, the adequacy requirement is satisfied.

* * *

In sum, the Proposed Class satisfies the numerosity, commonality, typicality, and adequacy requirements of CR 23.01.

II. Class Certification is Proper Because the Proposed Class Satisfies the Requirements of CR 23.02(b) and, in the alternative, CR 23.02(a)(i).

A. Certification Is Appropriate Under CR 23.02(b) Because Defendants Act on Grounds That Apply Generally to the Class.

Civil Rule 23.02(b) allows for class certification where "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Certification of the Proposed Class under CR 23.02(b) is appropriate in this case because Defendants act on grounds generally applicable to the Proposed Class: Defendants enforce the

challenged Bans, which prevent the pregnant class members from timely accessing safe and legal abortion care in the Commonwealth. The Proposed Class requests uniform relief in the form of a declaration that the Bans are unconstitutional and a permanent injunction prohibiting Defendants from enforcing the Bans. Because a single declaration and/or injunction would afford relief to all members of the Proposed Class, this Class should be certified under CR 23.02(b). Indeed, class certification under this Rule is particularly appropriate in the context of civil rights litigation, such as the instant action, that challenges unconstitutional government conduct. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997) ("[c]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of FRCP 23(b)(2) class); Fed. R. Civ. P. 23, Adv. Comm. Notes 1966, Note on Subdivision (b)(2) (noting that "actions in the civil-rights field" are "[i]llustrative" of the type of cases appropriate for resolution as a 23(b)(2) class).[6] Because the Proposed Class meets all the requirements of CR 23.01 and also satisfies CR 23.02(b), this Court should grant class certification.[7]

B. In the Alternative, Certification Is Appropriate Under CR 23.02(a)(i) Because the Class Action Will Avoid the Risk of Inconsistent Individual Rulings.

As an alternative to CR 23.02(b), this Court could also properly certify the Class under 23.02(a)(i). Under this provision, a class that meets all the requirements of CR 23.01 should be certified if prosecution by individual class members would create a risk of "inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class." CR 23.02(a)(i). This

[6] FRCP 23(b)(2) is the federal equivalent of CR 23.02(b).

[7] Pursuant to CR 23.03(4)(a), certification under CR 23.02(b) does not require notification to class members.

rule "clearly embraces cases in which the party is obliged by law to treat the class members alike." 7AA Wright, Miller & Kane, *Fed. Prac. & Proc. Civ.* § 1773 (3d ed. 2022).[8] *See, e.g.*, *Doster v. Kendall*, 342 F.R.D. 117, 127 (S.D. Ohio 2022) (finding class certifiable "under Rule 23(b)(1)(A) because the First Amendment and RFRA oblige the Defendants to treat the members of the class alike" and if similar claims were brought in different courts they "may arrive at incompatible conclusions with respect to" how defendants should treat the plaintiff class). Such is the case here. There is no question that Defendants are required to treat the Class members alike with regard to uniform enforcement of the Bans. Therefore, the question of whether Defendants can continue to enforce the Bans applies uniformly to the Class as a whole. If Class members were forced to prosecute their claims individually, Defendants will run the risk of inconsistent rulings on this central, common question. Such inconsistent rulings would establish incompatible standards of conduct for Defendants, who could be mandated by some courts to stop enforcing the challenged laws to allow abortion access, while being told the opposite by others. The way to avoid such an incoherent outcome is to certify the Class and to adjudicate the members' common claims together. Because the Proposed Class meets all the requirements of CR 23.01 and also satisfies CR 23.02(a)(i), this Court should grant class certification.[9]

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court grant this Motion for Class Certification and enter the attached order defining and certifying the class as set forth above so that Plaintiff Jane Doe and others similarly situated may pursue class-wide relief for their constitutional claims.

[8] FRCP 23(b)(1)(A) is the federal equivalent of CR 23.02(a)(i).

[9] Pursuant to CR 23.03(4)(a), certification under CR 23.02(a)(i) does not require notification to class members.

DATE: December 8, 2023

Respectfully submitted,

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Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2023, I served true and accurate copies of the foregoing Memorandum of Law in Support of Motion for Class Certification by email on the following counsel of record for Defendants:

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NO. 23-CI-007561

JEFFERSON CIRCUIT COURT
DIVISION _____ (__)
JUDGE _____

JANE DOE, *et al.* PLAINTIFFS

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DANIEL CAMERON, *et al.* DEFENDANTS

ORDER

Plaintiffs having moved, pursuant to CR 23, for the entry of an order of class certification, and the Court having reviewed the submissions of the parties and being otherwise sufficiently advised, it is hereby

ORDERED that Plaintiffs' Motion for Class Certification, dated December 8, 2023, is **GRANTED**; it is further

ORDERED that Jane Doe is certified as the representative of a class pursuant to CR 23.01 and 23.02(b). The class is defined as all persons 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; it is further

ORDERED that the Court appoints as class counsel Michelle Henry of Craig Henry PLC; Crystal Fryman of the American Civil Liberties Union of Kentucky; Brigitte Amiri and Chelsea Tejada of the American Civil Liberties Union Foundation; Anjali Salvador and Valentina De Fex of Planned Parenthood Federation of America; and Leah Godesky of O'Melveny & Myers LLP.

_____
JUDGE

Date: _____

Tendered by:

Michele Henry (KBA No. 89199)

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