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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL FLORIDA, on behalf of itself, its staff, and its patients, *et al.*,

Plaintiffs,

v.

STATE OF FLORIDA, *et al.*,

Defendants.

Case No. _____

PLAINTIFFS' MOTION FOR AN EMERGENCY TEMPORARY INJUNCTION AND/OR A TEMPORARY INJUNCTION

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INTRODUCTION

For nearly 50 years, Floridians have been able to decide for themselves, based on their individual values, beliefs, and circumstances, whether to carry a pregnancy to term or to have an abortion prior to viability. The freedom to make such deeply personal decisions is enshrined in the Florida Constitution, which Florida citizens amended to provide a broad, fundamental right of privacy. The Florida Supreme Court has held, in decades of binding precedent, that this fundamental right of privacy protects Floridians' rights to make decisions about their families, bodies, and medical care, including decisions about pregnancy and abortion, free of government interference. Pursuant to those protections, for decades, Florida women have been able to obtain pre-viability abortions safely and legally in this state.

Earlier this year, in direct contravention of Floridians' constitutional rights, Florida legislators brazenly attempted to override the will of the Florida people by enacting House Bill 5, which bans abortions after 15 weeks of pregnancy, months before fetal viability and the current limit for legal abortions under Florida law. Ch. 2022-69, §§ 3–4, Laws of Fla. ("HB 5" or "the Act") (to be codified at §§ 390.011, 390.0111, Fla. Stat.). Pursuant to Florida Rule of Civil Procedure 1.610, Plaintiffs, a group of health centers and a physician who provide abortion care after 15 weeks of pregnancy,[1] move the Court for a temporary injunction enjoining all Defendants[2]

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[1] Plaintiffs are Planned Parenthood of Southwest and Central Florida (PPSWCF); Planned Parenthood of South, East and North Florida (PPSENFL); Gainesville Woman Care, LLC d/b/a Bread and Roses Women's Health Center; A Woman's Choice of Jacksonville, Inc. (AWC); Indian Rocks Woman's Center, Inc., d/b/a Bread and Roses; St. Petersburg Woman's Health Center, Inc.; Tampa Woman's Health Center, Inc.; and Shelly Hsiao-Ying Tien, M.D., M.P.H.

[2] Defendants are: the State of Florida; the Florida Department of Health; Joseph Ladapo, M.D., in his official capacity as Secretary of the Department of Health; the Florida Board of Medicine; David Diamond, M.D., in his official capacity as Chair of the Florida Board of Medicine; the Florida Board of Osteopathic Medicine; Sandra Schwemmer, D.O., in her official capacity as Chair of the Florida Board of Osteopathic Medicine; the Florida Board of Nursing; Maggie Hansen, M.H.Sc., R.N., in her official capacity as Chair of the Florida Board of Nursing;

from enforcing Section 4 of HB 5 and the related definitions of Section 4's operative terms in Section 3(6) and 3(7) because HB 5 violates the Florida Constitution. To prevent a profound and unprecedented invasion of Floridians' constitutional right of privacy, Plaintiffs respectfully request that the Court grant their motion and enjoin enforcement of the Act before it takes effect on July 1, 2022 and sufficiently in advance of July 1, 2022 to permit Plaintiffs to post a bond and to minimize disruption to patient care.

STATEMENT OF THE CASE

A. Abortion in Florida.

Plaintiffs are clinics and a physician who provide a variety of reproductive health services in Florida, including but not limited to pregnancy testing, contraceptive counseling and services, STI testing and treatment, cancer screenings, miscarriage management, and abortion care. Expert Decl. of Shelly Hsiao-Ying Tien, M.D., M.P.H. (hereinafter "Tien Decl.") ¶ 8, attached hereto as Ex. 1; Decl. of Stephanie Fraim[3] (hereinafter "Fraim Decl.") ¶¶ 4–5, attached hereto as Ex. 2; Decl. of Kelly Flynn[4] (hereinafter "Flynn Decl.") ¶ 5, attached hereto as Ex. 3; *see also* Complaint ¶¶ 12–19. Plaintiff Dr. Tien is a board-certified physician in obstetrics and gynecology and maternal-fetal medicine, a sub-specialty of obstetrics and gynecology involving advanced training and specialized practice caring for patients with high-risk pregnancies. Tien Decl. ¶¶ 1, 5; *see also* Curriculum Vitae of Shelly Hsiao-Ying Tien, attached as Ex. A to Tien Decl. Dr. Tien currently

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the Florida Agency for Health Care Administration; Simone Marstiller, J.D., in her official capacity as Secretary of the Agency; and the various state attorneys of the twenty judicial circuits in Florida, all sued in their official capacities (collectively, "Defendants" or "the State").

[3] Fraim is President and CEO of Plaintiff PPSWCF, a not-for-profit corporation that operates ten health centers across Southwest and Central Florida. PPSWCF and its predecessors have provided health care services in Florida for over fifty years. Fraim Decl. ¶¶ 1, 4.

[4] Flynn is the founder, President, and CEO of Plaintiff A Woman's Choice of Jacksonville (AWC), a woman-owned and operated corporation that has provided health services in Florida for decades. Flynn Decl. ¶¶ 1, 5, 12.

provides abortion care in Florida.[5] Tien Decl. ¶¶ 1, 8, 14–16. During her more than fourteen years of experience as a health care professional, Dr. Tien has cared for many thousands of pregnant patients across a range of states, settings (including both university-affiliated hospitals and outpatient clinics), and clinical circumstances. *Id.* ¶¶ 5–12. This includes caring for patients with medical comorbidities, pregnancy complications, diagnoses of fetal conditions, and other complex maternal-fetal medical issues; providing a full spectrum of obstetric and maternal-fetal medical care including abortions and deliveries; and training medical students, residents, and fellows in caring for high-risk pregnancies. *Id.*

Relevant to Plaintiffs' challenge to the Act, Plaintiffs currently provide abortions after 15 weeks, as dated from the patient's last menstrual period ("LMP"), which is the point at which the Act would ban abortions. *See* Tien Decl. ¶ 8; Fraim Decl. ¶ 5; Flynn Decl. ¶¶ 5, 11; *see also* Complaint ¶¶ 12–19.

Abortion is one of the safest medical procedures available in the United States; complications from abortion are rare and rarely serious. Tien Decl. ¶¶ 23, 26–27. Abortion, including abortion performed after 15 weeks LMP, is much safer than continuing a pregnancy through to childbirth. *Id.* ¶¶ 23–27. Every type of medical complication associated with pregnancy is more common among women who give birth than among those who have abortions. *Id.* ¶ 26. Indeed, the risk of death associated with childbirth is approximately *twelve to fourteen times higher* than the risk of death associated with abortion,[6] and this disparity is even greater for Black women, who die from pregnancy-related causes at a rate of three times that of white women. *Id.* ¶ 25. In

[5] Dr. Tien provides services at Plaintiff PPSENFL, a not-for-profit corporation that operates ten health centers across South, East, and North Florida. PPSENFL and its predecessors have provided health care services in Florida for decades. Tien Decl. ¶¶ 1, 2, 8, 14.

[6] Not only childbirth, but also colonoscopy, certain dental procedures, and plastic surgery have higher mortality rates than abortion. Tien Decl. ¶ 23.

2020, the maternal mortality rate was 19.1 deaths per 100,000 live births for non-Hispanic white women versus a startling 55.3 deaths per 100,000 live births for non-Hispanic Black women. *Id.* For complex societal reasons, a majority of patients seeking abortion care are Black, Indigenous, or women of color. *Id.* ¶ 29. These same populations who are most likely to need abortion care also face disproportionately high rates of maternal mortality and pregnancy-related comorbidities that increase the health risks associated with pregnancy. *Id*. ¶ 45.

Abortion is not only extremely safe, but also common: approximately one in four women in the United States will have an abortion. *Id.* ¶ 17. Nearly 80,000 abortions were performed in Florida in 2021.[7]

Plaintiffs' patients seek abortion care for a wide range of deeply personal reasons. The decision to terminate a pregnancy is motivated by a combination of diverse, complex, and interrelated factors that are intimately related to the individual patient's values and beliefs, culture and religion, health status and reproductive history, familial situation, resources and economic stability, and plans for the future. Tien Decl. ¶¶ 28–31; *see also* Fraim Decl. ¶¶ 6–10; Flynn Decl. ¶ 6. Due to a range of factors, including lack of access to affordable health care, the majority of people obtaining abortion care nationwide (75%) are poor or low-income, and are already struggling to make ends meet. Tien Decl. ¶ 34; *see also* Flynn Decl. ¶¶ 6, 8. The majority of abortion patients nationally (approximately 60%) are also already parents and may seek abortions because they are concerned that they will be unable to adequately provide, materially or emotionally, for another child while caring for their existing children. Tien Decl. ¶ 29; *see also*

[7] Fla. Agency for Health Care Admin., Reported Induced Termination of Pregnancy (ITOP), Total Cases by Patient County of Residence (2021), https://ahca.myflorida.com/MCHQ/Central_Services/Training_Support/docs/TotalsByCounty_2021.pdf (last visited May 24, 2022).

Fraim Decl. ¶ 8; Flynn Decl. ¶ 6. Some patients decide to end a pregnancy because they have determined that they are not physically, emotionally, psychologically, or financially able to become a parent, either due to age, education and/or work responsibilities, existing family responsibilities, or their lack of the necessary financial or emotional resources or partner or family support and stability. *See* Tien Decl. ¶ 29; Fraim Decl. ¶¶ 6–8; Flynn Decl. ¶ 6. Some patients seek abortions to preserve their lives, or their physical, psychological, and emotional health. Tien Decl. ¶¶ 28–30, 43–45; *see also* Fraim Decl. ¶¶ 6, 8 (describing recent patient who sought abortion because of a heart condition that made pregnancy and childbirth dangerous to her health); Flynn Decl. ¶¶ 13, 15 (describing recent abortion patient who was suffering from severe hyperemesis (extreme nausea and vomiting) during pregnancy, interfering with her ability to work and care for her children). Others decide to have an abortion because they have become pregnant as a result of rape. Tien Decl. ¶ 30; Fraim Decl. ¶ 13. Some patients experience intimate partner violence and seek abortions because they do not want to be further tethered to an abusive partner or they do not want to continue a pregnancy or raise a(nother) child in that unsafe environment. Tien Decl. ¶ 30; Flynn Decl. ¶ 9. Some patients decide to have an abortion because they have received a diagnosis of a fetal medical condition or anomaly and feel they lack the financial, medical, educational, or emotional resources to care for a child with special needs or to do so while simultaneously caring for the children they already have. Tien Decl. ¶¶ 46–48; Fraim Decl. ¶ 7; Flynn Decl. ¶¶ 9, 13.

In general, people who have decided to terminate a pregnancy seek to do so as early as possible in their pregnancies, *see* Tien Decl. ¶ 32; Fraim Decl. ¶ 9; Flynn Decl. ¶ 7, and, as a result, most abortions in Florida, and most abortions provided by Plaintiffs, occur prior to 15 weeks LMP. Tien Decl. ¶ 18; Fraim Decl. ¶ 5; Flynn Decl. ¶ 11. However, as explained more fully below,

women[8] also seek abortion in the second trimester, including after 15 weeks LMP. Nearly 5,000 abortions occur in the second trimester in Florida each year.[9]

B. Florida's Current Abortion Laws and the Enactment of HB 5.

For decades, Florida law has allowed women who need abortions to obtain that care up until approximately the end of the second trimester, or the point at which the fetus reaches viability, which is defined as "the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures." §§ 390.011(13), 390.01112, Fla. Stat.; *see also* §§ 390.011 (6), (12)(c), 390.0111(1), Fla. Stat. (prohibiting abortion in third trimester). Plaintiffs are not challenging Florida's ban on abortion after viability nor the third-trimester ban. HB 5, however, would ban abortion several months earlier by amending section 390.0111 to prohibit and criminalize the provision of abortion care after 15 weeks LMP. HB 5, §4; *see also id.* § 3(7) (amending section 390.011 to provide definitions for the 15-week-ban's operative terms). Fifteen weeks LMP is early in the second trimester, and approximately two months before the point in pregnancy at which fetal viability may occur.[10] Tien Decl. ¶ 19. No fetus is viable at 15 weeks LMP. *Id*.

A provider who violates HB 5 is subject to felony prosecution, monetary fines, and disciplinary penalties. *See* § 390.0111(10)(a), (13), Fla. Stat.; Fla. Admin. Code R. 59A-9.020 (2017). A violation of HB 5 is a third-degree felony, and subjects "any person" who "willfully

[8] Plaintiffs at times refer to "woman" or "women" herein when referring to patients seeking abortion care, but recognize that people of all gender identities, including transgender men and gender-diverse individuals, may also become pregnant and seek abortion services, and would thus also suffer irreparable harm to their constitutional rights under HB 5.

[9] Fla. Agency for Health Care Admin., *supra* note 7.

[10] Some fetuses do not become viable until even later in pregnancy, and some fetuses are never viable. Tien Decl. ¶ 19 & n.6. A full-term pregnancy is approximately 37 weeks LMP. *Id.* ¶ 19.

performs" or "actively participates" in an abortion in violation of its terms to imprisonment of up to five years and monetary penalties up to $5,000 for a first offense. §§ 390.0111(10)(a), 775.082(3)(e), 775.083(1)(c), 775.084(1)(a), Fla. Stat.

Plaintiffs and their staff are also subject to disciplinary action if they violate HB 5, including but not limited to revocation of their licenses to practice medicine and administrative fines of up to $10,000 per violation. §§ 390.0111(13), 390.018, 456.072(2), 458.331(2), 459.015(2), 464.018(2), Fla. Stat. In addition, the clinic Plaintiffs, like all clinics providing abortions in Florida, must be licensed by the Florida Agency for Healthcare Administration, and may be prevented from renewing their clinic licenses if they violate the Act. Fla. Admin. Code R. 59A-9.020 (2017).

HB 5 contains only two extremely limited exceptions. First, an abortion after 15 weeks LMP may be performed if "in reasonable medical judgment, the termination of the pregnancy is necessary" either "to save the pregnant woman's life" or to "avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition."[11] HB 5, § 4 (to be codified at § 390.0111(1)(a)–(b), Fla. Stat.). Second, the Act permits an abortion after 15 weeks LMP and prior to viability if "two physicians certify in writing that, in reasonable medical judgement, the fetus has a fatal fetal abnormality." *Id.* (to be codified at § 390.0111(1)(c), Fla. Stat.). The Act defines "fatal fetal abnormality" to mean "a terminal condition that, in reasonable medical judgment, regardless of the provision of life-saving

[11] Two physicians must so certify in writing, or a single physician may so certify if the physician also attests that the risks are "imminent" and "another physician is not available for consultation." HB 5, § 4 (to be codified at § 390.0111(1)(a)–(b), Fla. Stat.). This exception exists under current Florida law as an exception to the third trimester ban. § 390.0111(1), Fla. Stat. The Act amends section 390.0111 to lower the gestational age cut off from the third trimester to 15 weeks LMP, but does not change the scope of this exception.

medical treatment, is incompatible with life outside the womb and will result in death upon birth or imminently thereafter." *Id.* § 3(6) (to be codified at § 390.011(6), Fla. Stat.).

The Act does not contain any exception for patients who are pregnant as a result of rape or incest. *See id.* §§ 3–4 (to be codified at §§ 390.011, 390.0111, Fla. Stat.).

The Legislature made no legislative findings that the Act is necessary to ensure any compelling state interest. Indeed, the Legislature included no legislative findings in the Act at all. *See generally* § 390.0111, Fla. Stat.; HB 5.

The threat of felony prosecution and the severe monetary and professional penalties imposed by the Act will force Plaintiffs and their staff to stop providing their patients with essential, and constitutionally protected, abortion care after 15 weeks LMP. Tien Decl. ¶ 49; Fraim Decl. ¶¶ 3, 18; Flynn Decl. ¶ 12.

C. The Effect of HB 5 on Patients Seeking Abortion Care in Florida.

If allowed to take effect, the Act will be devasting for Plaintiffs' patients, who the Act will bar from obtaining the constitutionally protected medical care they require. All of these patients will face serious harm if the Act takes effect. *See* Tien Decl. ¶¶ 49–62; Fraim Decl. ¶¶ 10–23; Flynn Decl. ¶¶ 12–16.

There are many reasons why patients need an abortion after 15 weeks LMP and are unable to obtain it sooner. Some patients need abortions after 15 weeks LMP because they do not realize they are pregnant until at or close to this time; patients may be delayed in suspecting they are pregnant for many reasons, including if they have irregular menstrual cycles (which can be associated with common factors, such as use of hormonal contraception or breastfeeding) or if they do not experience pregnancy symptoms. Tien Decl. ¶ 33; Fraim Decl. ¶ 11; Flynn Decl. ¶ 7. Some patients are then further delayed in confirming their pregnancies, researching and considering their options, and locating and contacting an abortion provider. Tien Decl. ¶ 33; Fraim Decl. ¶ 12.

Patients who have abortions after 15 weeks LMP often have been delayed in accessing care by poverty-related obstacles. Poor and low-income patients are disproportionately likely to have an abortion in the second trimester. Tien Decl. ¶ 39. The vast majority of all abortion patients are already struggling to make ends meet, and it can be extremely difficult for many patients to obtain time off work or secure childcare, arrange transportation to and from the clinic, and raise the necessary funds for the procedure and related expenses (such as transportation and childcare). *Id.* ¶¶ 34–39; Fraim Decl. ¶¶ 12, 14; Flynn Decl. ¶¶ 8, 15. Many low-income patients have inflexible work schedules, little advanced notice of their schedules, and no paid (or even unpaid) time off. For some, taking time away from work for an unexpected medical appointment can risk their job, cause them to lose wages, and compromise their privacy if they are forced to tell employers or co-workers why they need to miss work. Tien Decl. ¶ 37; Fraim Decl. ¶ 14. Compounding these delays is a Florida law that recently went into effect and that forces each abortion patient to make an additional visit to the clinic prior to the abortion. § 390.0111(3), Fla. Stat. It is difficult for many patients to secure time off, child care, or transportation for two appointments in close proximity, causing delays of multiple days or weeks in some cases. Tien Decl. ¶¶ 36–37; Fraim Decl. ¶ 15; Flynn Decl. ¶¶ 8–9, 14–15.

Some patients need abortions after 15 weeks LMP because they experience health conditions that are caused or exacerbated by pregnancy, many of which may first arise or significantly worsen after 15 weeks LMP, Tien Decl. ¶¶ 43–44; Fraim Decl. ¶¶ 6, 17; Flynn Decl. ¶ 15, and many of which may not clearly fit within the Act's narrow exception for serious threats to life or "substantial and irreversible" harm to physical health, Tien Decl. ¶¶ 55–58; *see also* Flynn Decl. ¶ 15 (describing patient suffering from severe hyperemesis). Many pregnancy-related conditions, such as chronic bleeding or high blood pressure, can escalate and worsen during

pregnancy, including after 15 weeks LMP, and often in unpredictable ways. Tien Decl. ¶¶ 44, 55–56. It is "antithetical to quality patient care" to delay care and wait until a patient's condition has deteriorated to the point that they are at serious risk of becoming critically ill, *id.* ¶¶ 55–56, but that is what the Act effectively requires. Forcing providers to assess the precise "stage at which a deteriorating patient's condition qualifies for the life or health exception—at risk of a prosecutor or jury disagreeing with that assessment—puts providers in an impossible situation." *Id.* ¶ 56. The Act thus "robs patients of their autonomy to make informed decisions about how much risk to their own health to accept in the context of pregnancy," and does profound damage to the doctor-patient relationship, including by preventing providers who are treating patients facing complex and high-risk pregnancies from being able to care for their patients in ways consistent with their best medical judgment. *Id.* ¶ 57. In addition, some patients may feel rushed by the rapidly approaching cut-off under the Act to make a decision to have an abortion in order to preserve their health, rather than attempting further consultation with their doctors or seeking medical interventions that might enable them to safely continue a desired pregnancy. *Id.* ¶ 58.

Some patients with wanted pregnancies may seek abortions after 15 weeks LMP because they have received a diagnosis of a serious fetal condition and have decided that terminating the pregnancy is the best decision for themselves and their family. Many such conditions cannot be identified or confirmed until 15 weeks or later. Tien Decl. ¶¶ 46–48, 60; Fraim Decl. ¶ 17; Flynn Decl. ¶¶ 9, 13. Even if the condition may ultimately lead to the child's death, it may not fit within the Act's narrow exception for fatal fetal anomalies that "will result in death upon birth or imminently thereafter." HB 5, § 3 (to be codified at § 390.011(6), Fla. Stat.); *see also* Tien Decl. ¶ 60. It can often be difficult to predict during pregnancy precisely how a condition will manifest following delivery. In some circumstances, the newborn may be able to survive for weeks or

months; in others, chances of survival may depend on access to highly specialized neonatal care including multiple medical and surgical interventions that may not be available to patients. Tien Decl. ¶ 60. Providing compassionate, evidence-based care to patients facing such diagnoses requires an approach that "considers a patient and their family's values, beliefs, and wishes, and respects their autonomy." *Id.* ¶ 61. The Act will deny patients facing these complex and difficult scenarios the ability to make the deeply personal decision to terminate a pregnancy when that is the best decision for themselves and their loved ones. *Id*. ¶¶ 49, 61.

Patients denied abortion care under HB 5 will be left with few options. Some may attempt to obtain an abortion in another state where such care is still available,[12] but doing so will require patients to travel hundreds, if not thousands, of miles and will impose serious economic, logistical, and emotional burdens on them. Tien Decl. ¶ 52; Fraim Decl. ¶¶ 21–23; Flynn Decl. ¶¶ 14–16. For the majority of Plaintiffs' patients who are poor or low-income, Tien Decl. ¶ 34; *see also* Flynn Decl. ¶ 6, surmounting these obstacles will be extremely onerous, if not impossible. *See* Tien Decl. ¶ 52; Fraim Decl. ¶ 22; Flynn Decl. ¶¶ 14–15. Some patients may decide to attempt to end their

[12] Traveling out of state for care after 15 weeks LMP is not likely to be a feasible option for many after the Act goes into effect on July 1, 2022. As an initial matter, even today, the closest out-of-state providers of abortion care after 15 weeks LMP in Alabama, Georgia, Louisiana, or Mississippi are hundreds of miles and many, many hours by car from many parts of Florida. Tien Decl. ¶ 52. For example, to reach the nearest out-of-state providers, patients in Tallahassee or Jacksonville would need to travel approximately 500 miles round-trip (8 hours by car) to Augusta, Georgia; and patients in Sarasota, Boca Raton, or Miami would need to travel approximately 1000–1200 miles round-trip (17–19 hours by car). *Id.* ¶ 52 & n.33. And should the United States Supreme Court overturn *Roe v. Wade* as the draft opinion leaked publicly in May 2022 suggests, all the states immediately surrounding Florida—including Georgia, Alabama, Mississippi, Louisiana, Arkansas, Tennessee, South Carolina, Kentucky, and Missouri—have laws on the books that would ban abortion. *See* Ga. Code Ann. § 16-12-141(b) (2019) (six-week ban); Ala. Code § 26-23H-4 (1975) (total ban); Miss. Code Ann. § 41-41-45 (West 2007) (total ban); La. Stat. Ann. § 40:1061 (2018) (total ban); 2019 Ark. Acts 180 (total ban); Ark. Code Ann. § 5-61-404 (2021) (total ban); 2019 Tenn. Pub. Acts Ch. 351 (total ban); S.C. Code Ann. § 44-41-650 (2021) (6-week ban); 2019 Ky. Acts Ch. 152 (total ban); 2019 Ky. Rev. Stat. § 311.7705 (six-week ban); Mo. Rev. Stat. § 188.017 (2019) (total ban).

pregnancies on their own, outside the medical system. Tien Decl. ¶ 54. And the Act will prevent many patients from obtaining abortion care entirely, forcing them to continue their pregnancies and have children against their will. These forced pregnancies will violate patients' bodily autonomy and impose serious and irreparable harm on them. Being forced to continue pregnancies can imperil the stability and well-being of patients' families, have adverse effects on their existing children, and endanger patients' physical, mental, and emotional health, and even their lives. Tien Decl. ¶ 43–44, 50–51, 55–58; Fraim Decl. ¶¶ 23; Flynn Decl. ¶¶ 13, 16. Because abortion is safer than childbirth, the Act also forces patients to endure the medically riskier course, regardless of their will or the specific health risks that pregnancy and birth impose on them. Tien Decl. ¶¶ 23–25, 43–44.

ARGUMENT

I. Standard for Granting a Motion for Injunctive Relief.

The purpose of a temporary injunction is to maintain the status quo pending final determination of a case. *Smith v. Hous. Auth. of City of Daytona Beach*, 3 So. 2d 880, 881 (Fla. 1941) (en banc). Plaintiffs are entitled to a temporary injunction if they demonstrate: "(1) a substantial likelihood of success on the merits, (2) the unavailability of an adequate remedy at law, (3) irreparable harm absent the entry of an injunction, and (4) that the injunction would serve the public interest." *Fla. Dep't of Health v. Florigrown, LLC*, 317 So. 3d 1101, 1110 (Fla. 2021); *see also Liberty Couns. v. Fla. Bar Bd. of Governors*, 12 So. 3d 183, 186 n.7 (Fla. 2009); *St. John's Inv. Mgmt. Co. v. Albaneze*, 22 So. 3d 728, 731 (Fla. 1st DCA 2009).

As set forth below, Plaintiffs easily satisfy these four requirements. A temporary injunction is necessary to preserve the status quo and ensure that Floridians can continue exercising their fundamental right of privacy in making personal medical decisions free from the State's

unconstitutional intrusion, as they have for decades under binding Florida Supreme Court precedent.

II. Plaintiffs Have a Substantial Likelihood of Success on the Merits of Their Claim that HB 5 Violates the Right of Privacy.

Plaintiffs have a substantial likelihood of success on the merits because HB 5 is unconstitutional on its face. Simply put, the right to privacy enshrined in the Florida Constitution protects the right to obtain an abortion before fetal viability, and the Act contravenes that right by banning abortion months before viability.

A. The Florida Constitution Protects Abortion as a Fundamental Right.

The Florida Constitution begins with a Declaration of Rights—a statement of the fundamental rights and freedoms that are "guaranteed to each Floridian against government intrusion." *Traylor v. State*, 596 So. 2d 957, 963 (Fla. 1992). "No other broad formulation of legal principles, whether state or federal, provides more protection from government overreaching or a richer environment for self-reliance and individualism than does this 'stalwart set of basic principles.'" *Id.* (quoting *State ex rel. Davis v. City of Stuart*, 120 So. 335, 347 (Fla. 1929)).

The citizens of Florida have twice exercised their sovereign will to protect Floridians' privacy rights, including the deeply personal decision of whether to terminate a pregnancy prior to viability. This right is among the "fundamental rights and freedoms" protected by the Florida Constitution against government intrusions like HB 5. *Id.*

1. The Florida Constitution's Express Right of Privacy Provides Stronger Protections for Floridians' Privacy Rights Than Federal Law.

In 1980, the people of Florida amended the Declaration of Rights to include "an express, freestanding Right of Privacy Clause." *N. Fla. Women's Health & Counseling Servs., Inc. v. State*,

866 So. 2d 612, 619 (Fla. 2003) ("*North Florida*"). This explicit constitutional guarantee of the right of privacy provides in relevant part:

> Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein.

Art. I, § 23, Fla. Const. (the "Privacy Clause"). This express privacy right protects the "fundamental right of self-determination," defined as "an individual's control over [and] the autonomy of the intimacies of personal identity" and "a physical and psychological zone within which an individual has the right to be free from intrusion or coercion . . . by government." *In re Guardianship of Browning*, 568 So. 2d 4, 9–10 (Fla. 1990) (internal quotation marks omitted).

Florida's Privacy Clause "embraces *more* privacy interests, and extends *more* protection to the individual in those interests, than does the federal Constitution." *In re T.W.*, 551 So. 2d 1186, 1191–92 (Fla. 1989) (emphasis added). The Florida Supreme Court has explained that the Privacy Clause "was intentionally phrased in strong terms," as "[t]he drafters of the amendment rejected the use of the words 'unreasonable' or 'unwarranted' before the phrase 'governmental intrusion' in order to make the privacy right as strong as possible." *Winfield v. Div. of Pari-Mutuel Wagering*, 477 So. 2d 544, 548 (Fla. 1985). Because "the people of this state exercised their prerogative and enacted an amendment to the Florida Constitution" and because that amendment "expressly and succinctly provides for a strong right of privacy not found in the United States Constitution," the only conclusion is "that the right is much broader in scope than that of the Federal Constitution." *Id.* The Florida Supreme Court explained that, "[w]hile the federal Constitution traditionally shields enumerated and implied individual liberties from encroachment by state or federal government, the federal [Supreme] Court has long held that state constitutions may provide even greater protection." *In re T.W.*, 551 So. 2d at 1191. Thus, in adopting the Privacy Clause, Floridians

exercised their prerogative to provide greater protection for privacy rights within their state and did so without regard to any subsequent developments in federal law.

In the forty years since Floridians adopted the Privacy Clause, the Florida Supreme Court has repeatedly affirmed that the Privacy Clause provides *more* protection for privacy rights than does the federal Constitution. In *North Florida*, when expressly asked to revisit its core holding in *In re T.W.*, the Florida Supreme Court affirmed its original construction of the clause, explaining that, "[i]f Floridians had been satisfied with the degree of protection afforded by the federal right of privacy, they never would have adopted their own freestanding" Privacy Clause. 866 So. 2d at 636. In doing so, "Floridians deliberately opted for substantially more protection than the federal charter provides." *Id.* This conclusion—that Florida's Privacy Clause is broader and stronger than protections under the federal Constitution—has been repeatedly reaffirmed in an unbroken line of Florida Supreme Court precedents stretching across four decades.[13] Most recently, in 2017, the Florida Supreme Court *again* affirmed that, as compared to the federal Constitution, "Florida voters have clearly opted for a broader, explicit protection of their right of privacy." *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1253 (Fla. 2017) ("*Gainesville*").

[13] *See, e.g.*, *North Florida*, 866 So. 2d at 619; *Renee B. v. Fla. Agency for Health Care Admin.*, 790 So. 2d 1036, 1039 (Fla. 2001) (Florida's Privacy Clause "expressly and succinctly provides for a strong right of privacy" that "is much broader in scope than that of the Federal Constitution." (quoting *Winfield*, 477 So. 2d at 548)); *Von Eiff v. Azicri*, 720 So. 2d 510, 514 (Fla. 1998) ("The state constitutional right of privacy is much broader in scope, embraces more privacy interests, and extends more protection to those interests than its federal counterpart."); *Beagle v. Beagle*, 678 So. 2d 1271, 1275 (Fla. 1996) (Florida's "strong privacy provision" is a "guarantee of greater protection than is afforded by the federal constitution."); *City of N. Miami v. Kurtz*, 653 So. 2d 1025, 1027 (Fla. 1995) ("This right to privacy protects Florida's citizens from the government's uninvited observation of or interference in those areas that fall within the ambit of the zone of privacy" and "provides greater protection than the federal constitution."); *Shaktman v. State*, 553 So. 2d 148, 151 (Fla. 1989) ("[W]hile legal scholars continued to debate whether the federal constitution provided express or implied privacy protections, the people of Florida unequivocally declared for themselves a strong, clear, freestanding, and express right of privacy as a constitutional fundamental right.").

2. Florida's Fundamental Right of Privacy Encompasses and Protects the Right to Abortion.

It is equally well-settled that abortion is among the privacy rights given broad protection under the Privacy Clause. When Floridians added the Privacy Clause to their Constitution in 1980, it was seven years after the United States Supreme Court recognized a federal right to abortion in *Roe v. Wade*, 410 U.S. 113 (1973). "It can therefore be presumed that the public was aware that the right to an abortion was included under the federal constitutional right of privacy and would therefore certainly be covered by the Florida privacy amendment." *In re T.W.*, 551 So. 2d at 1197 (Ehrlich, C.J., concurring). Accordingly, when the Florida Supreme Court first squarely addressed the question of abortion rights under the Privacy Clause, the justices were *unanimous* that it codified and independently protected the right to abortion at least as strongly as *Roe v. Wade*.[14] In

[14] *See In re T.W.*, 551 So. 2d at 1191–92 (majority opinion) (summarizing rights, including those regarding procreation and abortion, protected under federal constitutional precedents and concluding that Florida's Privacy Clause "extends *more* protection to the individual in those interests[] than does the federal Constitution" (emphasis added)); *id.* at 1197 (Ehrlich, C.J., concurring) ("wholeheartedly concur[ring]" that the right to abortion as recognized in *Roe* was "certainly . . . covered by the Florida privacy amendment"); *id.* at 1201 (Overton, J., joined by Grimes, J., concurring in part and dissenting in part) ("The right of privacy provision, adopted by the people of this state in 1980, effectively codified within the Florida Constitution the principles of *Roe v. Wade* . . . as it existed in 1980."); *id.* at 1202 (Grimes, J., concurring in part and dissenting in part) ("By 1980, abortion rights were well established under the federal Constitution, and I believe the privacy amendment had the practical effect of guaranteeing these same rights under the Florida Constitution."); *id.* at 1205 (McDonald, J., dissenting) ("embracing the rationale of *Roe v. Wade* . . . particularly when this state has adopted a constitutional right of privacy," and "agree[ing] with the majority's discussion of this" generally, but disagreeing only as applied to minors).

Indeed, no Justice of the Florida Supreme Court—even those dissenting in whole or in part from the court's decisions—has *ever* cast doubt on the conclusion that the Privacy Clause protects Floridians' right to terminate a pregnancy. *See Gainesville*, 210 So. 3d at 1268–69 (Canady, J., dissenting) (disagreeing with majority as to jurisdiction and evidentiary burdens at the temporary injunction stage, but not challenging that the right of privacy encompasses abortion); *North Florida*, 866 So. 2d at 661 (Lewis, J., concurring in result only) ("It is absolutely clear that adult females have protected liberty and privacy interests to engage in independent private medical and surgical decision processes free from unwarranted governmental intrusion."); *id.* at 668 (Wells, J., dissenting) (disagreeing with majority on whether a minor has the same right of privacy as an adult, but not challenging that the right of privacy encompasses abortion); *Renee B.*, 790 So. 2d at 1042 (Shaw, J., concurring in part and dissenting in part) (agreeing with the majority's right-of-

that case, *In re T.W.*, the court struck down a law restricting minors' access to abortion and held that the Privacy Clause "is *clearly* implicated in a woman's decision of whether or not to continue her pregnancy." 551 So. 2d at 1192 (emphasis added). As the Florida Supreme Court explained, the Florida Constitution "embodies the principle that few decisions are more personal and intimate, more properly private, or more basic to individual dignity and autonomy, than a woman's decision . . . whether to end her pregnancy. A woman's right to make that choice freely is fundamental." *Id.* at 1193 (internal quotations, citations, and alterations omitted). Over the ensuing decades, the Florida Supreme Court has repeatedly reaffirmed the core holding of *In re T.W.* that the Florida Constitution's Privacy Clause protects the fundamental right to decide whether to end a pregnancy.[15]

In fact, the Florida Supreme Court has held repeatedly that the right to terminate a pregnancy is not just covered, but *central* among those liberties guaranteed by the Privacy Clause. In *North Florida*, the Court stated that "a woman has a reasonable expectation of privacy in deciding whether to continue her pregnancy, *more so than in virtually any other decision*." 866 So. 2d at 621 (emphasis added). As the Court explained in *In re T.W.* and reaffirmed in *North Florida* and *again* in *Gainesville*, the decision "whether, when, and how one's body is to become the vehicle for another human being's creation" is "fraught with specific physical, psychological, and economic

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privacy analysis, which acknowledged that the right to privacy includes the right to abortion, and dissenting on other grounds).

[15] *Accord Gainesville*, 210 So. 3d at 1254 (the Privacy Clause "encompasses a woman's right to choose to end her pregnancy"); *North Florida*, 866 So. 2d at 621 ("a woman has a reasonable expectation of privacy in deciding whether to continue her pregnancy" that is protected by the Privacy Clause); *Renee B.*, 790 So. 2d at 1041 ("The right of privacy in the Florida Constitution protects a woman's right to choose an abortion."); *Jones v. State*, 640 So. 2d 1084, 1086 (Fla. 1994) (the Privacy Clause's "right to be let alone protects adults from government intrusion into matters related to marriage, contraception, and abortion"); *cf. In re Guardianship of Browning*, 568 So. 2d at 13 (the fundamental right of privacy "safeguard[s] an individual's right to chart his or her own medical course").

implications of a uniquely personal nature for each woman" and is among the most "personal [and] private decisions concerning one's body that one can make in the course of a lifetime." *In re T.W.*, 551 So. 2d at 1192–93 (internal quotation marks omitted); *see North Florida*, 866 So. 2d at 621 (quoting *In re T.W.*, 551 So. 2d at 1192–93); *Gainesville*, 210 So. 2d at 1253 (same); *cf. State v. Presidential Women's Ctr.*, 937 So. 2d 114, 116 (Fla. 2006) ("[T]he free citizen's first and greatest right, which underlies all others [is] the right to the inviolability of [her] person . . . .").

Floridians themselves reaffirmed their commitment to strong protections for abortion rights when, in 2012, they rejected a ballot amendment that would have overruled Florida Supreme Court precedents and lessened state protections for abortion such that they would be no broader than those under federal law. *See Prohibition on Public Funding of Abortions; Construction of Abortion Rights*, Fla. Dep't of St., Division of Elec., https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=82 (last visited May 24, 2022).[16] Thus, in adopting the Privacy Clause in 1980 and in rejecting an attempt to weaken its protections in 2012, the citizens of Florida have twice expressed their clear intent to protect abortion as a fundamental right under their state Constitution.[17]

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[16] In 2004, Florida voters did ratify a separate ballot initiative that authorized the Legislature to enact a parental notification requirement for abortion, but that amendment was limited to the specific topic of parental notification and did not otherwise address Florida Supreme Court jurisprudence on abortion rights. *See* Art. X, § 22, Fla. Const. ("Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy."). The Florida Supreme Court has construed this amendment to be "extremely limited" and to pertain only to the question of parental notification. *Gainesville*, 210 So. 3d at 1262. The amendment did not "amend the right of privacy" and "in no way altered" prior precedents outlining the strength and scope of the Privacy Clause. *Id.*

[17] *See also In re T.W.*, 551 So. 2d. at 1202 (Grimes, J., concurring in part, dissenting in part) ("If the United States Supreme Court were to subsequently recede from *Roe v. Wade*, this would not diminish the abortion rights now provided by the privacy amendment of the Florida Constitution.").

B. HB 5 Infringes Floridians' Fundamental Right of Privacy, is Presumptively Unconstitutional, and Cannot Survive Strict Scrutiny.

"[L]aws that place the State between a woman . . . and her choice to end her pregnancy clearly implicate the right of privacy," *Gainesville*, 210 So. 3d at 1254, and are "presumptively unconstitutional," *id*. at 1246; *accord North Florida*, 866 So. 2d at 634–35. By banning abortion after 15 weeks LMP with only extremely narrow exceptions, HB 5 impermissibly places the State squarely between a woman and her decision to terminate a pregnancy, intruding on her fundamental rights. HB 5 is therefore presumptively unconstitutional.

1. Laws like HB 5 That Infringe Fundamental Rights Are Subject to Strict Scrutiny.

Laws that infringe fundamental rights protected by the Florida Constitution, including the fundamental privacy right to terminate a pregnancy, are subject to heightened review under the strict scrutiny standard. *Gainesville*, 210 So. 3d at 1245. This, too, is "settled" law under decades of binding Florida Supreme Court precedent. *North Florida*, 866 So. 2d at 626; *see Gainesville*, 210 So. 3d at 1246; *Renee B.*, 790 So. 2d at 1139–40; *In re T.W.*, 551 So. 2d at 1193; *see also Winfield*, 477 So. 2d at 547 (adopting strict scrutiny standard for infringements on the right of privacy); *State v. J.P.*, 907 So. 2d 1101, 1109 (Fla. 2004) ("When a statute or ordinance . . . impairs the exercise of a fundamental right, then the law must pass strict scrutiny."); *Green v. Alachua County*, 323 So. 3d 246, 250 (Fla. 1st DCA 2021), *reh'g denied* (July 16, 2021). Accordingly, strict scrutiny applies to HB 5's abortion ban.

The strict scrutiny test "shifts the burden of proof to the state to justify an intrusion on privacy," *North Florida*, 866 So. 2d at 626 (quoting *Chiles v. State Emps. Att'ys Guild*, 734 So. 2d 1030, 1033 (Fla. 1999)), including at the temporary injunction stage, *Gainesville*, 210 So. 3d at 1246; *Green*, 323 So. 3d at 250. To meet this "highly stringent" standard, the State must demonstrate "that the challenged regulation serves a compelling state interest and accomplishes

its goal through the use of the least intrusive means." *In re T.W.*, 551 So. 2d at 1192 (quoting *Winfield*, 477 So. 2d at 547); *see also North Florida*, 866 So. 2d at 620 (rejecting lower standard of scrutiny applicable under federal law). As shown next, the State cannot satisfy this demanding standard here.

2. The State Has No Compelling Interest in Banning Pre-Viability Abortions and Therefore Fails Strict Scrutiny.

Because the Act implicates Florida's constitutional right of privacy by banning abortion after 15 weeks LMP, the State bears the heavy burden to demonstrate, through specific evidence, that the Act satisfies strict scrutiny. The State cannot do so.

"[T]he Florida Constitution requires a 'compelling' state interest in all cases where the right to privacy is implicated." *In re T.W.*, 551 So. at 1195 (citing *Winfield*, 477 So. 2d at 547). The Florida Supreme Court has recognized only two compelling state interests that could even hypothetically apply in this case—the interest in protecting potential life and the interest in promoting maternal health. *See id.* at 1193–94. But neither is advanced by the Act's outright prohibition on virtually all abortions after 15 weeks LMP.

First, although the Florida Supreme Court has recognized that the State may have an interest in protecting potential life, that interest becomes compelling only "upon viability"—and not before. *Id.* at 1193. As the Court has held, "[u]ntil this point, the fetus is a highly specialized set of cells that is entirely dependent upon the mother for sustenance" such that "[t]he mother and fetus are so inextricably intertwined that their interests can be said to coincide." *Id*. It is only "[u]pon viability"—defined as "that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures"—that "society becomes capable of sustaining the fetus, and its interest in preserving its potential for life thus becomes compelling." *Id*. at 1193–94; *see also* § 390.011(13), Fla. Stat. (defining viability under Florida law). As a result,

"[f]ollowing viability," but not before, "the state may protect its interest in the potentiality of life" but only if "the mother's health is not jeopardized." *In re T.W.*, 551 So. 2d at 1194.

In *Roe v. Wade*, the U.S. Supreme Court similarly recognized that states have no compelling interest in banning abortion prior to viability. There, the Court held that, "[w]ith respect to the State's . . . interest in potential life, the 'compelling' point is at viability . . . because the fetus then presumably has the capability of meaningful life outside the mother's womb," but that the State may not "go so far as to proscribe abortion" before that point. *Roe*, 410 U.S. at 163–64. In other words, the ultimate decision whether to terminate a pregnancy prior to viability rests with the individual, not the state. This was a central and well-established tenet of federal privacy law in 1980 when Florida citizens adopted a stronger and more expansive privacy clause in their own state constitution. *See supra* Argument Section B.1.b. If a state cannot prohibit abortion prior to viability under the weaker, implicit privacy right recognized in *Roe*, Florida's *explicit* and *more* expansive right of privacy must protect *at least* as strongly a person's right to make the ultimate decision to terminate a pregnancy prior to viability.

No fetus is viable at 15 weeks LMP, or for months after. Tien Decl. ¶ 19. Moreover, Florida law *already* prohibits abortion after fetal viability. § 390.01112, Fla. Stat. Plaintiffs are not challenging this post-viability ban. Accordingly, the Act's *only* effect is to prohibit *pre-viability* abortions in Florida. Because binding Florida Supreme Court precedent holds that the State's interest in protecting fetal life is *not* compelling prior to fetal viability, any asserted interest in potential life cannot justify HB 5 under strict scrutiny. *See In re T.W.*, 551 So. 2d at 1195 (Florida Constitution "requires a *compelling* state interest in all cases" implicating fundamental rights (emphasis added)).

Second, the State's interest in protecting maternal health cannot justify the Act, as either a legal or a factual matter. Both the Florida Supreme Court and the relevant U.S. Supreme Court precedent are clear: While the state may *regulate* abortion to protect maternal health beginning at some point in pregnancy, the state's interest in maternal health does not justify *banning* abortion until viability—and, even then, adequate exceptions must be made to permit abortion to protect a woman's health and life. *See In re T.W.*, 551 So. 2d at 1193 (state's interest in maternal health may justify only regulations of "the *manner* in which abortions are performed," and "only in the least intrusive [way] designed to safeguard the health of the mother" (emphasis added)); *Roe*, 410 U.S. at 164–65 (the state may "regulate the abortion procedure in ways that are reasonably related to maternal health" in the second trimester, but it may not "proscribe[] abortion" before viability).[18] The State therefore cannot rely on any asserted interest in maternal health to justify HB 5's ban on pre-viability abortions.

Even beyond this binding precedent, the evidence in this case demonstrates that, far from advancing any purported interest in protecting health, HB 5 *endangers* the health of pregnant Floridians. By requiring pregnant Floridians to endure the serious risks of pregnancy—risks that far exceed the risks associated with abortion—the Act harms patient health. Tien Decl. ¶¶ 23–26. Even pregnancies that are otherwise uncomplicated impose serious strains and stresses on the human body, impacting multiple organ systems, and exacerbating preexisting health conditions such as insulin-resistance, autoimmune diseases, and cardiac disease; and many pregnancy-related

[18] *Roe* set the second trimester as the point at which a state's interest in regulating abortion to protect maternal health first became compelling because, even in 1973, abortion was safer than childbirth up until that point. *See* 410 U.S. at 163. But as explained *infra*, abortion at all gestational ages is now safer than childbirth. *Cf. In re T.W.*, 551 So. 2d at 1193 (noting that, even as of 1989, based on "technological developments . . . the point [until] which abortions are safer than childbirth" had already been "extended" later into pregnancy than at the time *Roe* was decided).

conditions—such as chronic bleeding or high blood pressure—can arise or worsen after 15 weeks LMP. *Id*. ¶¶ 43–44. Abortion at all gestational ages is safer than continued pregnancy and childbirth. *Id.* ¶ 25. All types of pregnancy-related complications are more common in women giving birth than in women having abortions, and the risk of death associated with childbirth is approximately *twelve to fourteen times greater* than the risk associated with abortion across women of all races, and even higher for Black women specifically. *Id*. Given this stark disparity in comparative safety, any law that mandates continued pregnancy and childbirth—the medically riskier course for *any* pregnant patient—irrespective of the individual patient's will and health circumstances cannot advance any interest in protecting maternal health. Because the Act endangers pregnant individuals and undermines their welfare, it fails to serve any compelling interest in maternal health.

For all these reasons, the Florida Supreme Court's binding precedents foreclose any argument that HB 5 advances a compelling state interest in potential life or protecting maternal health, let alone that it is the least restrictive means of doing so. Because HB 5 does not serve any compelling state interests, it fails strict scrutiny, and Plaintiffs have demonstrated a likelihood of success on the merits.

III. Plaintiffs Lack an Adequate Remedy at Law and Will Suffer Irreparable Harm Absent an Injunction.

The second and third prongs of the test for temporary injunctive relief—that the injury alleged cannot be adequately remedied at law and that irreparable harm will occur in the absence of an injunction—are "interrelated requirements." *Liza Danielle, Inc. v. Jamko, Inc.*, 408 So. 2d 735, 738 (Fla. 3d DCA 1982). Here, though, these two prongs are satisfied given Plaintiffs' showing that they are likely to succeed on the merits of their claim that HB 5 is unconstitutional. As the Florida Supreme Court held in addressing a temporary injunction against an abortion-

related law in *Gainesville*, "finding that [the law] is likely unconstitutional" proves "there is no adequate legal remedy at law for the improper enforcement of [it]" and that its "enactment would lead to irreparable harm." 210 So. 3d at 1264.

There can be no question that Plaintiffs lack an adequate remedy at law. The State defendants conceded the point in *Gainesville*, *id.* at 1262, and, in any event, money damages are not available for violations of Floridians' constitutional rights under the Privacy Clause. *See Tucker v. Resha*, 634 So. 2d 756, 759 (Fla. 1st DCA 1994) (holding that the Privacy Clause does not create a cause of action for money damages), *aff'd on other grounds*, 670 So. 2d 56 (Fla. 1996); *accord Capps v. Fla. Highway Patrol*, No. 17-cv-60365-BLOOM/Valle, 2017 WL 1436077, at *7 (S.D. Fla. Apr. 24, 2017) (rejecting compensatory damages claim for violation of Privacy Clause).

Nor should there be any dispute that Plaintiffs and their patients will suffer irreparable harm without an injunction. "Irreparable injury" means "an injury of such a nature that it cannot be redressed in a court of law." *Liza Danielle, Inc.*, 408 So. 2d at 738 (citation omitted). Florida courts have repeatedly held that the threatened or actual loss of constitutional rights, even temporarily, constitutes *per se* irreparable harm. *See, e.g.*, *Gainesville*, 210 So. 3d at 1263 (Florida courts "have presumed irreparable harm where certain fundamental rights are violated"); *Brenner v. Scott*, 999 F. Supp. 2d 1278, 1291 (N.D. Fla. 2014) ("the ongoing unconstitutional denial of a fundamental right almost always constitutes irreparable harm"); *Ne. Fla. Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990) ("on-going violation" of the right to privacy "constitutes irreparable injury"). Indeed, irreparable harm is obvious in relation to the right to have an abortion. *Cf. Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. Unit B 1981) (threatened violation of constitutional right to abortion is irreparable injury because "once an infringement has occurred it cannot be undone by

monetary relief"). As the United States Supreme Court recognized in *Roe v. Wade*, denying a woman the right to decide to terminate a pregnancy carries a host of consequences, ranging from "[s]pecific and direct," "medically diagnosable" harm and "imminent" "psychological harm" to the woman, to the burden of child care on mental and physical health, to "the distress, for all concerned, associated with the unwanted child" and "bringing a child into a family already unable, psychologically or otherwise, to care for it." 410 U.S. at 153.

Plaintiffs' evidence regarding the impact of HB 5 demonstrates that the harm flowing from the enforcement of HB 5 is both concrete and irreparable. HB 5 would prohibit pregnant Floridians from obtaining essential medical care and force them to remain pregnant and continue enduring the risks of pregnancy against their will. As discussed above, abortion is far safer than childbirth. *See supra* Statement of the Case Section A. Even healthy, uncomplicated pregnancies pose risks, and, for patients who need abortions after 15 weeks LMP for health-related reasons that do not fit HB 5's narrow maternal health exception, these risks are even greater. Tien Decl. ¶¶ 43–45, 54–58. HB 5 thus subjects patients denied abortion care to potentially life-threatening health risks.

If HB 5 is allowed to go into effect, many pregnant Floridians in need of abortions will not be able to travel out of state. Travel will be particularly out of reach for people who are poor or low-income—the majority of abortion patients. *Id.* ¶¶ 34, 52. Even today, reaching the next-closest provider of abortion care after 15 weeks LMP would require traveling hundreds of miles,[19] as well as vastly increased costs to obtain care (for transportation, childcare, and lost wages), risks to patients' privacy and confidentiality if they are forced to reveal their pregnancy and abortion decision to others to make these arrangements, and mental and emotional stress from prolonging

[19] *See supra* note 13 (noting that the next-closest providers of abortion care after 15 weeks LMP in other states are hundreds of miles or more from some parts of Florida).

an undesired pregnancy and traveling far from home to access care. *See id.* ¶¶ 51–52; *see also id.* ¶¶ 34–37; Fraim Decl. ¶¶ 15, 20–23; Flynn Decl. ¶¶ 8–9, 14–16. Those who are unable to surmount the logistical, financial, and emotional burdens of seeking care out of state will be forced either to seek care outside the medical system, or to carry to term and give birth against their will. Tien Decl. ¶¶ 51, 54; Fraim Decl. ¶ 22; Flynn Decl. ¶ 16.

HB 5 will also cause irreparable harm to Plaintiffs and their staff directly. Under HB 5, they would be subjected to severe criminal and disciplinary penalties, including the loss of their medical licenses, for providing essential medical care to their patients. *See* §§ 390.0111(10)(a), 775.082(e), 775.083(1)(c), Fla. Stat.; *see also* §§ 390.0111(13), 390.018, 456.072(2), 458.331(2), 459.015(2), 464.018(2), Fla. Stat.; Fla. Admin. Code R. 59A-9.020 (2017). Moreover, Plaintiffs will be irreparably harmed if forced to deny their patients compassionate health care and to act against their good-faith medical judgment, ethical obligations, and the best interests of their patients. Tien Decl. ¶¶ 57, 61; *see also* Fraim Decl. ¶ 5 (describing PPSWCF's mission to provide high-quality care to patients); Flynn Decl. ¶ 12 (describing AWC's mission to provide "safe and legal abortion care, free from stigma and judgment"). In prohibiting providers from being able to offer abortion care to their patients after 15 weeks, the Act will undermine the doctor-patient relationship and prevent providers from best serving their patients' needs, including in complex or high-risk medical scenarios that arise after 15 weeks LMP. Tien Decl. ¶¶ 28, 31, 57, 61. That interference with medical judgment and the doctor-patient relationship directly undermines Floridians' ability to exercise their constitutional rights.

In sum, Plaintiffs lack an adequate remedy at law and have shown that their injuries, and the injuries to their patients, would be irreparable. The second and third prongs necessary for injunctive relief are satisfied.

IV. The Public Interest Favors an Injunction

Under the final prong of the test for injunctive relief, Plaintiffs must show that an injunction serves the public interest. *Florigrown, LLC*, 317 So. 3d at 1110. Plaintiffs have satisfied this prong as well by virtue of their showing that they are likely to succeed in proving that HB 5 is unconstitutional. The public has a clear and substantial interest in preventing the State from violating their constitutional rights and in ensuring that Floridians can access the reproductive health care they need—and to which they are constitutionally entitled. Consistent with the Supreme Court's holding in *Gainesville*, a temporary injunction here would "serve the public interest" by "preventing women from enduring the additional and unnecessary burdens [a law] would impose on them in violation of the Florida Constitution." 210 So. 3d at 1264.

Thus, Florida courts have repeatedly imposed or upheld temporary injunctions once a plaintiff has established that a law is likely to violate constitutional rights. *See, e.g.*, *Gainesville*, 210 So. 3d at 1264 (holding that the public interest would be served by enjoining a law that would violate the Florida Constitution); *Coal. to Reduce Class Size v. Harris*, No. 02-CA-1490, 2002 WL 1809005, at *2 (Fla. Cir. Ct. July 17, 2002) (finding the public interest factor was satisfied because granting the injunction would preserve a constitutional right), *aff'd sub nom. Smith v. Coal. to Reduce Class Size*, 827 So. 2d 959 (Fla. 2002); *Green*, 323 So. 3d at 255 (reversing denial of temporary injunction when the law at issue infringed upon a constitutional right, observing that "enjoining the enforcement of a law encroaching a fundamental constitutional right would serve the public interest" (citing *Gainesville*, 210 So. 3d at 1263–64)); *see also, e.g.*, *A Choice for Women v. Butterworth*, 54 F. Supp. 2d 1148, 1159 (S.D. Fla. 1998) (finding that "the public interest is well served when the Court protects the constitutional rights of the public; in this case, the constitutionally protected right of women to have abortions").

A temporary injunction will preserve the status quo that has existed for decades in Florida by allowing Plaintiffs and their staff to continue providing constitutionally protected medical care to their patients until this case can be resolved on the merits.

V. The Court Should Impose a Bond No Greater than $5,000

A bond is required under Rule 1.610 whenever a court enters a temporary injunction, but this Court has discretion to determine what bond amount is "proper." Fla. R. Civ. P. 1.610(b); *see AOT, Inc. v. Hampshire Mgmt. Co.*, 653 So. 2d 476, 478 (Fla. 3d DCA 1995) (amount of injunction bond is within the court's discretion). The purpose of an injunction bond is to "secure[] the enjoined party against any damages it may incur if the injunction turns out to have been wrongfully entered," so the amount must be based either on good-faith representations of counsel regarding potential damages, or on evidence presented by the parties. *AOT, Inc.*, 653 So. 2d at 478. The Court may consider foreseeable damages, but the Court is also "permitted to consider [other] factors," such as "the adverse party's chances of overturning the temporary injunction." *Montville v. Mobile Med. Indus., Inc.*, 855 So. 2d 212, 216 (Fla. 4th DCA 2003); *see also Avalon Legal Info. Servs., Inc. v. Keating*, 110 So. 3d 75, 84 (Fla. 5th DCA 2013) (no abuse of discretion where trial court set bond below amount requested by enjoined party).

Here, the Court should order an injunction bond of no greater than $5,000. Plaintiffs submit that the chances of Defendants overturning the injunction are low given the clear right under the Florida Constitution to obtain a pre-viability abortion and HB 5's plain and unequivocal violation of that right. *See supra* Argument Section B. Even if an appellate court later overturns the injunction, Defendants will not have incurred monetary damages *because of* this Court's temporary injunction. Any costs arise from the need to litigate the unconstitutionality of HB 5, not the issuance of an injunction against HB 5's enforcement. Moreover, a substantial bond is inappropriate in a case, like this one, where an injunction is the only meaningful form of relief

available. The bond requirement should not be a barrier to Floridians accessing the courts to vindicate and enforce their constitutional rights. *See, e.g.*, *Psychiatric Assocs. v. Siegel*, 610 So. 2d 419, 423–24 (Fla. 1992) (discussing how a bond requirement in a statute could infringe on the constitutional right of access to the courts), *receded from on other grounds by Agency for Health Care Admin. v. Associated Indus. of Fla., Inc.*, 678 So. 2d 1239 (Fla. 1996); *cf. Weaver v. Myers*, 229 So. 3d 1118, 1139 (Fla. 2017) ("[C]ourts are generally opposed to any burden being placed on the rights of aggrieved persons to enter the courts because of the constitutional guarantee of access." (citation omitted)).

As time is of the essence, Plaintiffs ask that the Court impose the injunction bond at the same time as it grants their request for a temporary injunction. Thus, the forthcoming hearing on Plaintiffs' request for a temporary injunction also should encompass any evidence the parties wish to present concerning the amount of an appropriate bond.

CONCLUSION

As demonstrated above, Plaintiffs have shown a substantial likelihood of success on the merits in proving that the Act facially violates the Florida Constitution, that irreparable harm will result if the Act is not enjoined, that they lack an adequate remedy at law, and that the relief requested will serve the public interest. Thus, this Court should issue a temporary injunction enjoining all Defendants, and their officers, agents, servants, employees, appointees, or successors, as well as those in active concert or participation with any of them, from enforcing Section 4 of HB 5 and the related definitions in Section 3(6) and 3(7) of HB 5. To preserve the status quo and prevent irreparable harm, Plaintiffs respectfully request that the Court enter a temporary injunction before the Act takes effect on July 1, 2022, and sufficiently in advance of July 1, 2022 to permit Plaintiffs to post a bond and to minimize disruption to patient care, especially in light of Florida's two-trip requirement.

Respectfully submitted this 1st day of June 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Plaintiffs' Motion For An Emergency Temporary Injunction And/Or A Temporary Injunction and its attached Exhibits 1-3 have been emailed on June 1, 2022, to all defendants or their representatives, as listed on the attached service list.

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EXHIBIT 1

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL FLORIDA, on behalf of itself, its staff, and its patients, *et al.*, Plaintiffs, v. STATE OF FLORIDA, *et al.*, Defendants.	**Case No. _____**

Expert Declaration of Shelly Hsiao-Ying Tien, M.D., M.P.H.

I, Shelly Hsiao-Ying Tien, M.D., M.P.H., am over 18 years of age, am competent, and make this declaration based on my personal knowledge, unless otherwise noted.

1. I am a board-certified physician in obstetrics and gynecology, and maternal-fetal medicine. I currently practice at Planned Parenthood of South, East and North Florida ("PPSENFL"), and Genesis Maternal-Fetal Medicine in Tucson, Arizona. I also serve as a contract physician for Trust Women in Oklahoma City, Oklahoma, and Planned Parenthood Southeast, Inc., in Birmingham, Alabama.

2. The facts I state here are based on my years of medical practice as an obstetrician and maternal-fetal medicine specialist, my personal knowledge, information obtained through the course of my duties at PPSENFL, and my familiarity with relevant medical literature and statistical data recognized as reliable in the medical profession. If called and sworn as a witness, I could and would testify competently thereto.

3. I submit this declaration in support of Plaintiffs' Motion for Emergency Temporary Injunction and/or Temporary Injunction to prevent enforcement of Section 4 of House Bill 5, 2022

Leg. (Fla. 2022) ("HB 5," "the Act," or the "15-week ban"). I understand that HB 5 would ban the provision in Florida of abortions after 15 weeks of pregnancy as measured from the patient's last menstrual period ("LMP"), with extremely limited exceptions if the abortion is necessary to save the patient's life or prevent limited types of substantial and irreversible physical harm to the patient, or if the fetus has a lethal anomaly. I understand that violating HB 5 can result in criminal penalties, as well as disciplinary sanctions and adverse licensing actions. If HB 5 is allowed to take effect, I and the other providers in the state would be forced to stop providing abortions past 15 weeks LMP unless one of the Act's extremely limited exceptions applies, for fear of the Act's criminal and other penalties.

4. HB 5 will have a devastating impact on Floridians who need abortions after 15 weeks LMP, including those with non-lethal fetal anomalies or serious maternal health conditions that do not clearly fall within the narrow health exception, patients whose pregnancy is the result of rape or incest, and patients struggling with a range of other compelling life circumstances that make an abortion the best option for them. I expect that some will be forced to attempt to travel to other states for abortions, even though such travel is extraordinarily challenging for many of our patients at the best of times—and will be even more difficult if many states surrounding Florida eliminate or sharply restrict access to abortions (as seems poised to happen if the Supreme Court of the United States so permits in its upcoming decision on the constitutionality of Mississippi's 15-week abortion ban). Those who are not able to travel for an abortion will be compelled to carry pregnancies to term against their wishes or to seek ways to end their pregnancies without medical supervision. I am gravely concerned about the effects that HB 5 will have on Florida patients' emotional, physical, and financial well-being and the well-being of their families.

My Background

5. I graduated from Tufts University School of Medicine in 2008 with both M.D. and M.P.H. degrees. I then did my residency in obstetrics and gynecology at Advocate Illinois Masonic Medical Center in Chicago, Illinois. I went on to complete a three-year fellowship at the University of Minnesota in Minneapolis, Minnesota, in maternal-fetal medicine, a subspecialty of obstetrics and gynecology focused on caring for patients with high-risk pregnancies. In that capacity, I gained significant experience caring for patients with, for example, medical comorbidities, pregnancy complications, and diagnoses of fetal conditions, as well as performing pregnancy terminations for this high-risk population. During that fellowship, I also worked at Planned Parenthood North Central States, providing abortions and contraceptive care in its St. Paul health center.

6. From 2015 through 2020, I practiced at NorthShore University HealthSystem, a teaching affiliate of the University of Chicago Pritzker School of Medicine, as a maternal-fetal medicine specialist with a full-spectrum obstetrics and maternal-fetal medicine practice. I chaired NorthShore University HealthSystem's Obstetric Practice Committee, which created physician guidelines and nursing protocols for obstetric care at hospitals within the system.

7. At NorthShore, I also trained medical students, residents, and fellows in caring for high-risk pregnant patients, including when they needed abortions. My own practice at NorthShore included providing abortions up to 24 weeks LMP and I spent approximately one-quarter of my time providing these services.

8. I left Illinois to focus my career on providing reproductive health services, including abortions, in more under-resourced areas of the country. In Florida, I generally provide abortion care up to 19 weeks and 6 days LMP, and in Oklahoma, up until the recent abortion ban was allowed to go into effect, I provided abortion care up to 21 weeks and 6 days LMP. I also

provide contraception counseling, education, and services, including placement of long-acting reversible contraceptives ("LARCs") (e.g., intrauterine devices ("IUDs"), and subdermal implants), for patients who wish to have a LARC form of contraception.

9. In Tucson, I provide maternal-fetal medicine care, which involves prenatal diagnosis, specialized ultrasounds, and prenatal care for patients with high-risk pregnancies. I also serve as a consultant to my obstetrician/gynecologist colleagues in providing guidance to their patients with complex pregnancies so that their patients can have the best possible outcomes. In my role as a maternal-fetal medicine specialist, I see patients in our office setting as well as those admitted in the four Tucson-area hospitals at which I have active privileges.

10. In these multiple roles, I care for patients from Southern, Midwestern, and Western states. I observe economic hardship, poverty, and unequal access to health services among my patients, who are disproportionately women of color.

11. I am a member of the Society for Maternal-Fetal Medicine and the American College of Obstetricians and Gynecologists.

12. Since the start of my obstetric training fourteen years ago, including a residency in obstetrics and gynecology, a maternal-fetal medicine fellowship, and my ongoing direct provision of clinical care, I have counseled, educated, and cared for many thousands of pregnant patients, including thousands with complex maternal-fetal medical issues. I have delivered hundreds of babies, and been involved in counseling for thousands of pregnancies that ended in delivery even if I was not the physician who personally performed the delivery. And I have provided compassionate abortion care to thousands of patients, many for reasons of maternal and fetal medical issues. My *curriculum vitae* is attached as Exhibit A and includes additional information about my education, publications, employment, and experience.

13. I provide the following opinions as an expert in obstetrics and gynecology and maternal-fetal medicine, including the provision of abortions. The opinions herein are based on my knowledge and experience in these areas, including my training, clinical experience, teaching, ongoing review of the relevant medical literature including the research cited below, and attendance at and participation in relevant conferences.

PPSENFL and Its Services

14. As part of my medical practice, I provide services at PPSENFL approximately two weeks a month. PPSENFL is a not-for-profit corporation organized under the laws of Florida and operates ten health centers in South, East, and North Florida, including in Tallahassee, Jacksonville, Treasure Coast, Boca Raton, Pembroke Pines, and Miami. For decades, PPSENFL and its predecessors have worked to empower Floridians of all ages to make informed choices about their sexual health and to ensure their access to affordable, high-quality, and comprehensive reproductive health care and education. In 2020, PPSENFL provided care to more than 41,000 patients. That care included 7,857 abortions.

15. Across these health centers, PPSENFL provides a full range of family planning services including well-patient preventative care visits; screening for breast cancer and testicular cancer; screening and treatment for cervical cancer; testing and treatment for sexually transmitted infections ("STIs"); a wide-range of FDA-approved contraception methods, including highly effective, long-acting reversible contraceptives; pregnancy testing; risk assessments for pregnant patients to screen for high-risk issues; referral services for pregnant patients; testing and treatment for urinary tract infections; gender affirming care; fertility awareness services; miscarriage management; and abortions.

16. PPSENFL provides abortions past 15 weeks LMP at its health centers in Jacksonville, Tallahassee, West Palm Beach, and Miami.

Abortion in Florida and in the United States

17. Abortion is the second most common reproductive intervention that physicians provide for women[1] of reproductive age in the United States; only a Cesarean section ("C section") is a more common procedure.[2] Nearly one in four U.S. women will have an abortion.[3]

18. The vast majority of abortions in Florida and throughout the country occur in the first trimester.[4] Approximately 6.1% of the abortions reported in Florida in 2021 (nearly 5,000) occurred in the second trimester.[5]

19. PPSENFL only performs abortions prior to fetal viability, and indeed, Florida law not at issue in this litigation already bans abortion after viability. No pregnancy is viable at 15 weeks LMP, which is early in the second trimester and approximately two months before viability.[6] A patient's due date is 40 weeks and 0 days LMP, and a pregnancy is considered full term at or after 37 weeks LMP.

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[1] I occasionally use "woman" or "women" as a short-hand for people who are or may become pregnant, while recognizing that people of all gender identities may become pregnant and seek abortion services. I also use "woman" or "women" when citing or quoting research that reports its results in terms of "women," to preserve the accuracy of those results.

[2] Nancy Stanwood & Aileen Gariepy, *U.S. Abortion Care Safety and Quality: A Summary of the National Academies Report for Perinatologists*, 44 Seminars in Perinatology 151273, 1 (2020).

[3] Guttmacher Inst., *Induced Abortion in the United States* (Sept. 2019), https://www.guttmacher.org/fact-sheet/induced-abortion-united-states.

[4] *Id.*; Fla. Agency for Health Care Admin., *Reported Induced Terminations of Pregnancy (ITOP) by Reason, by Trimester, 2021 – Year to Date* (May 9, 2022), https://ahca.myflorida.com/mchq/central_services/training_support/docs/TrimesterByReason_2021.pdf [hereinafter, "Florida 2021 ITOP Report"].

[5] Florida 2021 ITOP report, *supra* note 4.

[6] Some fetuses do not become viable until later in pregnancy, and some fetuses are never viable.

20. There are two abortion methods commonly used in the United States: medication abortion and procedural or in-clinic abortion. A pregnancy can also be terminated by inducing labor, which most commonly is performed in hospital settings.

21. Medication abortion can be offered up to and including 11 weeks, 0 days LMP. It involves the use of a two-drug regimen to induce a process similar to early miscarriage. After 11 weeks LMP, medication can also be used to induce termination, similarly to inducing labor; this method is used less frequently and is not typically performed in an outpatient setting.

22. Procedural abortion or in-clinic abortion is sometimes referred to as a "surgical abortion" even though it is not what is commonly understood to be surgery, as it involves no incisions into the patient's skin, requires no operating room, and can be done with minimal or no sedation. It is performed by dilating (opening) the uterine cervix and then using either aspiration (suction) alone, or after approximately 14–16 weeks LMP, using instruments as well as suction to empty the patient's uterus in a procedure known as a dilation and evacuation ("D&E").

23. Abortion is among the safest outpatient procedures performed in the United States and is far safer than childbirth.[7] Indeed, colonoscopies, certain dental procedures, and plastic surgery, for example, all have higher mortality rates than abortion.[8]

24. The safety of abortion has been extensively studied and is well established. The National Academies of Sciences, Engineering, and Medicine recently undertook "a comprehensive review of the state of the science on the safety and quality of abortion services in

[7] Nat'l Acads. of Scis., Eng'g, & Med., *The Safety and Quality of Abortion Care in the United States*, at 74–75 & tbl. 2-4 (2018) [hereinafter, "Nat'l Acads. Report"]; Elizabeth G. Raymond et al., *Mortality of Induced Abortion, Other Outpatient Surgical Procedures and Common Activities in the United States*, 90 Contraception 476, 478 (2014).

[8] Nat'l Acads. Report, *supra* note 7, at 75 & tbl. 2-4.

the United States" and considered over 500 studies and reports screened for indicia of reliability.[9] As the National Academies concluded, "The clinical evidence clearly shows that legal abortions in the United States—whether by medication, aspiration, D&E, or induction—are safe and effective. Serious complications are rare."[10]

25. In considering the risks of abortion, it is helpful to consider the context of pregnancy and childbirth. Patients who seek abortions are pregnant, which itself carries risks. For pregnant patients, having an abortion is dramatically safer than carrying a pregnancy to term. Deaths associated with abortion are exceedingly rare. A 2012 study found that the risk of death associated with legal induced abortion was only 0.6 per 100,000 abortions,[11] and the National Academies has similarly estimated the same risk to be 0.7 per 100,000 abortions,[12] while the risk of death associated with childbirth among women delivering live neonates was 8.8 per 100,000—approximately 12 to 14 times higher.[13] Moreover, since then, the maternal mortality rate associated with childbirth has been increasing, while the rate associated with abortion has not. From 2014 to 2017, the maternal mortality rate was 13.4 deaths per 100,000 live births for non-Hispanic white women and a startling 41.7 deaths per 100,000 live births for non-Hispanic Black women.[14] And in 2020, the maternal mortality rate for non-Hispanic white women was 19.1 per

[9] Nat'l Acads. Report, *supra* note 7, at 1, 37–39, 132–33, 188; Stanwood & Gariepy, *supra* note 2, at 2.

[10] Nat'l Acads. Report, *supra* note 7, at 10.

[11] Elizabeth Raymond & David Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 Obstetrics & Gynecology 215, 216 & tbl. 1 (2012)

[12] Nat'l Acads. Report, *supra* note 7, at 74–75.

[13] Raymond & Grimes, *supra* note 11, at 216 & tbl. 1; Nat'l Acads. Report, *supra* note 7, at 74–75.

[14] Ctrs. for Disease Control & Prevention, *Pregnancy Mortality Surveillance System*, http://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm (last visited May 19, 2022).

100,000 live births, and the same rate for non-Hispanic Black women was 55.3 per 100,000 live births.[15]

26. Complications from abortion are rare and rarely serious, and every pregnancy-related complication is more common among women whose pregnancy results in a live birth than among women who have abortions.[16]

27. The evidence shows that, regardless of the method used, legal abortion is both safe and effective and serious complications are extremely rare, occurring in less than 0.5% of cases (including for abortions in the second trimester).[17]

Patients' Reasons for Seeking Abortion

28. I have been caring for pregnant patients for nearly fifteen years. Patients terminate both wanted and unwanted pregnancies for a multitude of reasons. In my experience counseling and caring for patients, those who decide to have an abortion consider many factors, including the health and well-being of their children and other family members; their financial ability to provide for a child or for a child in addition to their existing children; whether they are currently in a safe home environment; and their own health, including any pre-existing medical conditions that can make a pregnancy high risk or new medical conditions that arise directly from the pregnancy. It is from years of providing direct clinical care that I know how important access to abortion is to patients in Florida and elsewhere. In my experience, though some patients keep

[15] Donna L. Hoyert, *Maternal Mortality Rates in the United States, 2020*, Ctrs. for Disease Control & Prevention, Nat'l Ctr. for Health Stats. (Feb. 2022), available at https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2020/E-stat-Maternal-Mortality-Rates-2022.pdf.

[16] Raymond & Grimes, *supra* note 11, at 216–17 & fig. 1.

[17] Ushma D. Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 Obstetrics & Gynecology 175, 178–79 tbl. 3 (2015).

their reasoning fully private, most describe at least some aspect(s) of their reasoning in their confidential discussions with health care providers during the course of their abortion care.

29. The majority of women who obtain an abortion (approximately 60%) have had at least one child.[18] My patients with children are familiar with the enormous demands that parenting places on their time and resources, and decide to have an abortion based on what is best for them and their existing families. Others express that they do not want or are not ready to have children. Some patients seek abortions because they decide they need to prioritize their education or economic or familial stability. Some have elder care responsibilities. Some are struggling with food or housing insecurity, homelessness, and/or alcohol, opioid, or other substance addictions, and decide not to become a parent while struggling with those challenges. Some decide they do not have the emotional resources necessary to continue the pregnancy and become a parent. Other patients seek abortions because they have pre-existing medical conditions that make pregnancy risky for their own physical or mental health. For other patients, regardless of whether their pregnancies were planned or unintended, pregnancy itself creates new significant medical risks to their own health. As a result of historical inequities to health care access and economic inequality; approximately 61% of patients seeking abortion care identify as Black, Indigenous, or women of color,[19] and as discussed *infra* at ¶ 45 these same populations face disproportionately high rates of maternal mortality and comorbidities that increase the health risks associated with pregnancy.

[18] Guttmacher Inst., *United States Abortion Demographics*, https://www.guttmacher.org/united-states/abortion/demographics (last visited May 19, 2022);

[19] Jenna Jerman et al., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, at 5, Guttmacher Inst. (2018), available at https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014.

30. Patients also seek abortions as a result of violence. Some have experienced rape or incest, whether in the form of sexual abuse, sexual assault, gang rape, torture, or human trafficking-sexual slavery; notably, the Act contains no exception for these women and children. Providing abortions in this context is just one element to helping survivors of sexual violence regain some semblance of their physical and emotional health. Other patients live with intimate partner violence ("IPV") and do not want to continue a pregnancy or raise a child in an abusive environment, or further tie themselves to an abusive partner. Patients who are unable to access safe abortion are more likely to stay with a perpetrator of violence.[20] I have personally cared for pregnant women and girls in these horrible circumstances.

31. Whatever reasons a patient has for seeking an abortion, I am committed to providing high-quality, compassionate care that respects each patient's dignity and autonomy. Educating and counseling patients about their options so that they can best effectuate their decisions is integral to my role as a medical professional. I trust my patients to make the best decisions for themselves and their families. And I know that they do this based on the full complexity of their life circumstances, with consideration for their families, and for a multitude of deeply personal and unique reasons.

Factors That Delay Abortion Access

32. In my experience patients generally try to get an abortion as early in their pregnancy as possible. However, numerous factors can cause delay.

33. The earliest a patient may realize that she is pregnant is with a missed period, which—because pregnancy is dated by "last menstrual cycle," i.e., the patient's last period—

[20] *See* Sarah C.M. Roberts et al., *Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, 12 BMC Med. 1, 5 & fig. 2 (2014).

occurs at the very earliest at 4.5 to 5 weeks LMP.[21] Some patients do not realize that they are pregnant for additional weeks or even months, particularly if they have irregular menstrual cycles (which is common for a variety of reasons, including certain medical conditions, use of hormonal contraception, breastfeeding, or perimenopause) or if they experience bleeding in early pregnancy that can be mistaken for a period. Patients may then experience additional weeks of delay while they confirm the pregnancy, consider their options, decide to terminate the pregnancy, contact a provider, and schedule an appointment.

34. Traveling to an abortion clinic is extremely challenging for many patients. At the best of times, obtaining multiple days off work, as well as finding and paying for transportation, food, lodging, and safe and reliable childcare can be costly and difficult. These challenges have only been exacerbated by the COVID-19 pandemic. These barriers are especially problematic for patients living under or near the poverty line; nationwide, approximately 75% of abortion patients are poor or have low incomes, defined as being under 200% of the federal poverty level.[22]

35. In my experience, patients who have decided to seek an abortion frequently need to delay their appointment while they gather the necessary funds for the abortion procedure itself (as abortion is frequently not covered by insurance), and make the financial and logistical arrangements for travel away from home, childcare or care of other family members, and time away from work or school.

36. These practical obstacles are worsened by Florida's mandatory-delay law, which recently went into effect. This law requires patients to make two trips to the health center instead of one; the first is to sign state-mandated forms at least a day before the abortion. In practice this

[21] I understand that some aspects of Florida law date pregnancy according to the time since fertilization, which occurs at approximately 2 weeks LMP.

[22] Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 107 Am. J. Pub. Health 1904, 1906 tbl. 1 (2017).

causes far more than a day's delay, because many patients (and especially patients who are poor or who have low incomes) are not able to make this trip twice in close succession.

37. Many abortion patients are delayed in accessing care because of the need to find two appointments that accommodate their work schedules, because they cannot afford to take two days off of work in close proximity, or because doing so would jeopardize their jobs— especially if the patient does not want to share the reason for the time-off request. It is common for patients to have to delay an appointment by a week or several weeks for these reasons. This is especially the case for patients working jobs with inflexible schedules, as many of my patients do. Other patients cannot arrange childcare for multiple days, or cannot do so without compromising the confidentiality of their pregnancy and abortion decision. These problems are very real. Every day that I provide abortions in Florida I have to explain to patients why they have to make this additional, unnecessary trip; patients express anger, distress, and frustration at how the requirement has delayed their abortion, sometimes by weeks or more.

38. Delay in accessing abortion often has a snowball effect and leads to further delay. For example, having an abortion in the second trimester often means patients choose intravenous sedation even if they otherwise would not, which in turn means the patient must bring a companion with her to the health center; this multiplies the expenses and logistical challenges of the abortion and thus often causes further delay. After approximately 18 weeks LMP, patients often need a two-day procedure, which is more expensive and also increases the logistical challenges of arranging an additional day away from work or childcare obligations; this delay again often snowballs as patients attempt to raise additional funds for the later procedure and arrange for additional time away from work, school, and/or childcare obligations.

39. For all of these reasons, it is not surprising that patients seeking second-trimester abortions are more likely to have low incomes, more likely to report difficulty financing the abortion, and more likely to rely on financial assistance to pay for the procedure.[23] These empirical findings confirm what I see in my practice every day: that women who are most likely to be delayed in abortion until after 15 weeks LMP are those already facing the challenges of poverty or near-poverty, food insecurity, and economic instability.

40. Patients experiencing IPV are often delayed in seeking abortions.[24] It is common for women experiencing IPV to seek abortions.[25] This is due to a number of factors, including that abusers frequently sabotage a partner's ability to use contraception, leading to more unintended pregnancies; that pregnancy is often a time of escalating violence; and that a person experiencing IPV may not wish to be further tethered to an abusive partner or to bring a(nother) child into an abusive household.[26]

41. People experiencing IPV routinely have to hide their pregnancies and/or abortion decisions from their abusers. A signature characteristic of many abusive relationships is for the abuser to exert control over every aspect of their partner's life, including their movement and finances, and to systematically alienate their partner from other friends and family members so

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[23] *See, e.g.*, Vinita Goyal et al., *Factors Associated With Abortion at 12 or More Weeks Gestation After Implementation of a Restrictive Texas Law*, 102 Contraception 314, 315–16 (2020); Rachel K. Jones & Jenna Jerman, *Characteristics and Circumstances of U.S. Women Who Obtain Very Early and Second-Trimester Abortions*, PLoS ONE, at 5–11 (2017); Jessica W. Kiley et al., *Delays in Request for Pregnancy Termination: Comparison of Patients in the First and Second Trimesters*, 81 Contraception 446, 448–49 & tbls. 1 & 2 (2010).

[24] Rachel Jones & Lawrence B. Finer, *Who Has Second-Trimester Abortions in the United States?*, 85 Contraception 544, 547 (2012); Diana Greene Foster & Katrina Kimport, *Who Seeks Abortions at or After 20 Weeks*, 45 Perspectives on Sexual & Reprod. Health 210, 215–16 (2013); *see also* Megan Hall et al., *Associations Between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, 11 PLoS Med 1, 10 & tbl. 4, 11.

[25] Hall, *supra* note 24, at 5 tbl. 3, 6, 7 tbl. 4; Am. College of Obstetricians & Gynecologists, Committee Op. No. 554: *Reproductive & Sexual Coercion*, at 2 (2013, reaff'd 2019).

[26] Hall, *supra* note 24, at 8 tbl. 4, 15–16; Roberts, *supra* note 20, at 1.

that they are entirely dependent on the abuser. Having to navigate the costs and arrangements of traveling to a health center (and do this twice because of the mandatory-delay law) is all the more complex for people experiencing IPV, and typically requires significant planning that can substantially delay care, if they can get to the clinic at all.

42. The combined effect of these factors can significantly delay abortion access, causing patients who would otherwise obtain abortions prior to 15 weeks LMP to be unable to do so.

43. In addition, some patients seek abortions at or after 15 weeks LMP because of underlying health conditions exacerbated by the pregnancy. Pregnancy is a stress test for human physiology, impacting multiple organ systems. For instance, there is a 30–50% increase in blood volume during pregnancy, which can strain the heart and cardiovascular system and kidneys. And the hormones produced during pregnancy make a woman more insulin resistant, making it more difficult to maintain blood glucose levels at a stable level. Patients with autoimmune disorders such as lupus can experience exacerbation of their disease, as manifested by worsening hypertension and kidney disease. Patients with preexisting decreased cardiac function can rapidly decompensate and lose additional heart function. Pregnancy can also exacerbate mental health conditions. For instance, women with pre-existing mood disorders, like depression or anxiety, may experience a worsening of symptoms during pregnancy.

44. In other cases, a patient may start a pregnancy healthy with no preexisting medical conditions and develop complications directly because of the pregnancy. Pregnancy can affect a patient's health in a short period of time; for example, a patient with no prior high blood pressure can develop such high blood pressure over the course of an evening that ending the pregnancy, through either delivery or an abortion depending on the gestational age, is the medical standard of

care. Similarly, a patient can have sudden onset vaginal bleeding, or develop a severe infection after breaking the bag of water even in the previable period; these conditions require prompt hospitalization, multiple interventions, and depending on the severity of bleeding, pregnancy termination. In the latter example of an infection after ruptured membranes or breaking the bag of water, emptying the uterus whether by delivery or pregnancy termination is necessary to maintain the patient's health; if left untreated a uterine infection will lead to maternal death. I have provided abortions to patients in all these above circumstances.

45. Notably, these risks disproportionately impact people with low incomes and people of color, who experience more comorbidities such as obesity, hypertension, and diabetes. Centuries of systemic racism and inequality have contributed to barriers to quality education, opportunities for economic advancement, and access to quality health care, and have created a legacy of distrust of the healthcare system that can deter Black people from seeking preventive health services or prompt treatment, further compounding medical comorbidities frequently associated with poverty.[27] Patients who seek abortions later in pregnancy are more likely to have less education, report multiple disruptive life events, and be Black.[28] I have personally observed this as a physician who cares for patients seeking abortions; the scientific literature supports these observations.[29]

46. Many patients who have planned and celebrated their pregnancy with the intention of welcoming a child into their family may learn as the pregnancy progresses of a serious fetal condition, which can be genetic or structural (such as complex brain or heart defects). Definitive

[27] *See, e.g.*, Keith Churchwell et al., *Call to Action: Structural Racism as a Fundamental Driver of Health Disparities: A Presidential Advisory from the American Heart Association*, 142 Circulation e454, e455, e461 (2020).

[28] Rachel Jones & Lawrence B. Finer, *Who Has Second-Trimester Abortions in the United States?*, 85 Contraception 544, 546–47 (2012).

[29] *See id.*

diagnosis of genetic fetal conditions requires amniocentesis, which can only be performed at 15 weeks LMP or beyond, or chorionic villi sampling ("CVS"), which can be performed between 10 and 13 weeks; however, many patients in rural or resource-limited areas do not have access to a subspecialist to provide CVS. For some genetic conditions, it can take several weeks for the results of either an amniocentesis or CVS to return, further delaying the patient's decision-making regarding these fetal conditions. Structural fetal conditions may not be visible on ultrasound until between 18 and 22 weeks or even later in pregnancy.

47. Florida's reporting indicates that in 2021, at least 757 Florida abortions took place because of a serious fetal anomaly and that 484 of those took place in the second trimester.[30] However, Florida's state-required, web-based abortion reporting system, which records patients' reasons for termination, has limitations, as it allows for the selection of only one reason for having an abortion. Patients frequently have multiple reasons for seeking an abortion, and their own health or a fetal condition may be only one of many considerations. Thus, I believe the reported numbers are likely a substantial under-representation of the instances in which these factors drive or help drive a patient's decision to have an abortion.

48. Patients faced with a diagnosis of a fetal condition also need time to make the right decisions for themselves and their families, based on information from their prenatal care providers and from multiple sources with knowledge about the fetal anomaly at issue, discussion with family and other support systems, and consultation with clergy, social workers, or other resources. As a maternal-fetal medicine specialist I have treated many patients in this situation, and I know that their decision-making is often an in-depth and agonizing process.

[30] Florida 2021 ITOP Report, *supra* note 4.

HB 5's Effects

49. If HB 5 is allowed to take effect, I understand that providers across Florida will be forced to stop providing nearly all pre-viability abortions to patients from 15 weeks LMP. I will personally stop providing this care, as will other physicians at PPSENFL. When patients with pregnancies past 15 weeks LMP seek our services, we will be forced to provide abortions only if we can determine that one of the narrow legal exceptions to the 15-week ban applies.

50. If HB 5 is allowed to take effect, Floridians will lose the freedom to make a fundamental and personal decision and will experience significant and irreparable medical, emotional, and other harms. Women and girls will be directly affected, and their families and loved ones secondarily so.

51. Some patients will be prevented from obtaining an abortion despite having made the deeply personal decision that they do not want to continue their pregnancy. This will cause great harm to their physical, mental, and emotional health. People forced to carry a pregnancy to term against their will are more likely than those who obtain abortions to experience long-term economic insecurity and hardship,[31] and to experience intimate partner violence from partners involved in their pregnancies.[32] And pregnancy-related mortality rates are more than double those associated with having an abortion after 15 weeks LMP.

52. Others who can afford to do so will attempt to travel out of state to obtain an abortion. I understand that the nearest health centers to Florida that provide generally-available abortion care after 15 weeks LMP are in Huntsville, Alabama; Augusta, Georgia; New Orleans,

[31] Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 108 AJPH Research 407, 409–12 (2018).

[32] Roberts, *supra* note 20, at 5.

Louisiana; and Jackson, Mississippi, all of which are hundreds of miles or more from some parts of Florida.[33]

53. Even if patients are otherwise able to travel to these health centers—which is doubtful—I understand that each of these states has a pending law that, if the United States Supreme Court overturns *Roe v. Wade*, would prohibit abortions starting far earlier than 15 weeks LMP. Floridians seeking abortions will therefore be forced to attempt to travel even further, for example to Chapel Hill, North Carolina, which according to Google Maps is more than 825 miles/a 12-hour drive, each way, from Miami, and only slightly closer to Boca Raton) or Fairview Heights, Illinois (more than 1,200 miles/a 17-hour drive, each way, from Miami, and nearly 780 miles/over a 12-hour drive, each way, from Tallahassee) if they are able to do so. *See, e.g.*, Power to Decide, *Find a Verified Abortion Provider*, https://www.abortionfinder.org/ (last accessed May 23, 2022).

54. Other patients will attempt to end their pregnancies outside the medical system and without medical supervision.

55. HB 5's harms will be especially grave for patients whose health is threatened by their ongoing pregnancy. In many cases, even patients with significant pregnancy-related health issues may not satisfy the Act's exception to prevent a "serious risk of substantial and irreversible physical impairment of a major bodily function . . . other than a psychological condition." HB 5, § 4 (to be codified at § 390.0111(1), Fla. Stat.). Many disease processes present as a spectrum, and

[33] According to Google Maps, Augusta, Georgia is a 250-mile/4-hour drive, each way, from Jacksonville, Florida, and slightly further from Tallahassee; it is also a 500-mile/8-hour drive, each way, from Sarasota; a 550-mile/8.5-hour drive, each way, from Boca Raton; a 570-mile/9-hour drive from Fort Myers; and a 600-mile/9.5-hour drive, each way, from Miami; and as the next-closest options, New Orleans, Louisiana, is nearly a 390-mile/5.5-hour drive, each way, from Tallahassee, and nearly an 780-mile/11.5-hour drive, each way, from Fort Myers, and Huntsville, Alabama, is nearly a 690-mile/10.5-hour drive, each way, from Sarasota. *See, e.g.*, Power to Decide, *Find a Verified Abortion Provider*, https://www.abortionfinder.org/.

it is antithetical to quality patient care for a physician to delay intervention until it is clear the patient is at serious risk of substantial and permanent harm or death.

56. As an example, some patients experience chronic bleeding throughout their pregnancies that can escalate at any point, requiring active intervention and treatment. For patients who do not respond to initial treatments, it is the standard of care, depending on the gestational age, to perform an abortion to protect the patient's life and health. In the course of my career I have provided abortions to patients in this situation numerous times. Like many maternal health issues, bleeding can progress in unpredictable ways; having to assess at what stage a deteriorating patient's condition qualifies for the life or health exception—at risk of a prosecutor or jury disagreeing with that assessment—places physicians in an impossible situation.

57. A large part of a maternal-fetal medicine specialist's role is providing counseling and information to guide patients and referring providers through complex decisions. The Act would prevent doctors from exercising their best medical judgment to care for patients, which damages both the doctor-patient relationship and physicians' ability to fulfill our ethical obligations and professional mission. And it robs patients of their autonomy to make informed decisions about how much risk to their own health to accept in the context of a pregnancy. Clinical situations are complex and unpredictable, and making physicians afraid to provide timely medical treatment out of fear of prosecution will compromise patients' lives.

58. Patients whose health issues manifest or worsen near the time of the 15-week gestational age cutoff will be under enormous pressure to decide quickly whether to have an abortion, in some cases preventing them from obtaining further medical consultation or interventions to see if their condition can be managed safely to allow them to continue their pregnancy.

59. HB 5 will also impose grave harms on patients who receive diagnoses of a fetal condition after or close to 15 weeks LMP. The law's exception to the 15-week ban applies only to "fatal fetal abnormalit[ies]," defined to mean "a terminal condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb and will result in death upon birth or imminently thereafter." HB 5, § 3 (to be codified at § 390.011(6), Fla. Stat.).

60. Many fetal diagnoses that lead patients to make the devastating decision to end a desired pregnancy may not fit within this narrow exception. It is often difficult to predict during pregnancy precisely how some fetal conditions, whether structural or genetic, will manifest following delivery, and these manifestations are not simply either fatal or not fatal. In some conditions, the neonate may be able to survive for weeks or months, but only in optimal settings, with multiple medical and surgical interventions with highly specialized neonatal care teams that may or may not be available to the patient. Furthermore, many non-lethal conditions can be associated with life-long challenges, including difficulty breathing, speaking, or walking, and neurologic sequelae that can severely impact potential quality of life.

61. When I give terrible news to patients and their families—whether it be a newly discovered brain defect on a 20-week ultrasound, or the results of an amniocentesis performed at 16 weeks—I discuss the findings, and to the very best of my ability, how these findings alter the care for the remainder of the pregnancy, whether delivery will need to occur at a specialized center (and whether that is feasible for the patient), what the options are for treatment/interventions, and what the neonate's prognosis may be with those interventions. I coordinate multidisciplinary care with neonatology and pediatric subspecialty teams to provide patients and their families with as much information as possible to guide their decision-making. Every discussion aims to provide

families with evidence-based information, in a compassionate, shared decision-making approach that considers patients' and families' values, beliefs, and wishes, and respects their autonomy. The Act would hamstring my ability to provide this compassionate care, and deprive patients and their families of the privacy and ability to make the best decisions for themselves and their loved ones in these complex, difficult scenarios.

62. For all of these reasons, if HB 5 is allowed to take effect, it would be devastating for Floridians who need abortions after 15 weeks LMP. And though pregnancy, pregnancy complications, and access to safe abortion care directly affects women and girls, there are long-lasting and tangible consequences for entire families.

63. Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

Executed on May 27, 2022, in Jacksonville, Florida

Shelly Tien

Shelly Hsiao-Ying Tien, M.D., M.P.H.

EXHIBIT A

Shelly Hsiao-Ying Tien, M.D./M.P.H.
[redacted]

Genesis Maternal-Fetal Medicine, Tucson, Arizona
04/2022 – current, part-time physician

Planned Parenthood – South, East and North Florida
03/2021 – current, part-time physician

Trust Women, Oklahoma city, Oklahoma
02/2021 - current, contract physician

Planned Parenthood – Southeast, Alabama
12/2021 - current, contract physician

NorthShore University Health System/University of Chicago
07/2015 – 12/2020

Fellowship, Maternal-Fetal Medicine
University of Minnesota, Minneapolis
07/2012 – 06/2015

Residency, Obstetrics and Gynecology
Advocate Illinois Masonic Medical Center, Chicago, Illinois
07/2008 – 06/2012

Medical Education
Tufts University School of Medicine, Boston, Massachusetts
08/2003 - 05/2008
M.D./M.P.H.

Education
Undergraduate - University of Illinois, Champaign/Urbana
Biology
08/1999 - 06/2003
B.S.

Board certification
Maternal-Fetal Medicine 2018
Obstetrics and Gynecology 2013

Memberships
Society for Maternal-Fetal Medicine
2012 – current
American College of Obstetricians and Gynecologists
2008 – current

Committees

Northshore University Health System Obstetric Practice Committee - Chair, 2016 – 2020
- Educational committee that creates physician guidelines and nursing protocols for obstetric care for Evanston and Highland Park hospitals.

Northshore University Health System Epic Physician builder, 2018 – 2020
- Developed and implemented obstetric clinical workflows for our Epic electronic medical record system.

Illinois Perinatal Quality Collaborative (ILPQC) - Clinical lead for the Immediate Postpartum Long Acting Reversible Contraception initiative, 2018 – 2020
- Implementation of immediate postpartum LARCs for patients at Evanston and Highland Park hospitals.
- Provision of educational support for other birthing hospitals in the state.

Maternal-Fetal Medicine Clinical Competency Committee, 2018 - 2020
- Biannual meeting and evaluation of educational progress for maternal-fetal medicine fellows.

Volunteer Experience

Medical Students for Choice (MSFC), Massachusetts, 09/2003-04/2008
Student coordinator
- Facilitated multiple lectures and workshops on reproductive education and contraception.
- Organized the 2005 regional student conference for MSFC.

Cross Cultural Solutions, Ghana, 06/2003-07/2003
Medical Volunteer
- Volunteered through the organization Cross Cultural Solutions.
- Provided immunizations to children, assisted in the local health center pharmacy, and taught women's health education in the maternity ward.

Provena Mental Health, Illinois, 04/2001-05/2002
Suicide Hotline Volunteer
- Volunteer counselor on the suicide hotline.

- Provided mental health interventions to clients in crisis, and general health resources and information for family members and support persons.

Rape Crisis Services, Illinois, 05/2000-05/2003
Medical Advocate and Hotline Volunteer

- Hotline volunteer providing counseling, support and resources to survivors of sexual violence.
- Medical advocate for patients – provided education and support during the emergency room visits for patients who presented after an assault.

Publications

Tien SH, Crabtree JN, Gray HL, Peterson EJ. Immunologic response to vaccine challenge in pregnant PTPN22 R620W carriers and non-carriers. PLoS One. 2017 Jul 19;12(7):e0181338.

Tien S and Yamamura Y. Cervical ectopic pregnancy: persistence despite a serologically negative ß-hCG. J Reprod Med 2015;60(5-6):257-60.

Tien S, Villines D, Parilla B. Gestational Weight Gain in Obese Patients and Adverse Pregnancy Events. Health 2014;6:1420-1428.

Grimes K, Schulz M, Cohen S, Mullin B, Lehar S, Tien S. Pursuing Cost-Effectiveness in Mental Health Service Delivery for Youth with Complex Needs. J Ment Health Policy Econ 2011;14:73-86.

Publications, non-peer reviewed

Rugino A, Tien SH. Strip of the Month: Complete Heart Block Masquerading as a Reactive Nonstress Test. NeoReviews November 2018, Volume 19/Issue 11.

Rodriguez-Kovacs J, Tien SH, Plunkett BA. Selective Serotonin Reuptake Inhibitor Use in Pregnancy: Repercussions on the Oblivious Passenger. NeoReviews March 2018, Volume 19/Issue 3.

Cockrum RH, Tien SH. Strip of the Month: August 2016. NeoReviews August 2016, Volume 17/Issue 8.

Schneider P, Tien SH. Strip of the Month: February 2016. NeoReviews February 2016, Volume 17/Issue 2.

Presentations

Tien S, Crabtree J, Gray H, Peterson E. (2015, February). "Immunologic response to vaccine challenge in PTPN22 gene variants in pregnancy." Poster presentation at: the Society for Maternal-Fetal Medicine, San Diego, CA.

Tien S, Aguilera M. (2014, October). "Monochorionic Monoamniotic Twin Gestation: A review of antenatal management at three tertiary care centers." Poster presentation at: Central Association of Obstetricians and Gynecologists, Albuquerque, NM.

Tien S, Gray H, Jacobs K, Giacobbe L, Wagner W, Aguilera M. (2013, October). "A review of ten years' experience with placenta accreta at a single tertiary care center." Poster presentation at: Central Association of Obstetricians and Gynecologists, Napa Valley, CA.

Tien S, Gray H, Jacobs K, Giacobbe L, Swartout J, Aguilera M. (2013, October). "Spinal anesthesia converted to general anesthesia for cesarean hysterectomy is associated with improved neonatal Apgar scores versus general anesthesia alone." Poster presentation at: Central Association of Obstetricians and Gynecologists, Napa Valley, CA.

Tien S, Casserly K, Rauk P. (2013, April). "A right atrial thrombus in the setting of puerperal coagulopathy." Poster presentation at: Society for Obstetric Anesthesia and Perinatology, San Juan, Puerto Rico.

Tien S, Gray H, Jacobs K, Giacobbe L, Swartout J, Aguilera M. (2013, April). "Maternal obesity associated with clinically increased blood loss and postoperative hospital stay in patients undergoing peripartum hysterectomy." Poster presentation at: Society for Obstetric Anesthesia and Perinatology, San Juan, Puerto Rico.

Tien S, August C, Fernandez C, Dini M. (2012, October). "Metastatic colon cancer presenting as an adnexal mass." Poster presentation at: the Advocate Research Forum, Advocate Illinois Masonic Medical Center, Chicago, IL.

Tien S, Villines D, Parilla B. (2012, October). "Gestational Weight Gain in Obese Patients and Adverse Pregnancy Events." Oral presentation at: Central Association of Obstetricians and Gynecologists, Chicago, IL.

Tien S, Popper F. (2009, October). "A Retrospective Review of Misoprostol Efficacy for the Treatment of Early Pregnancy Failure." Poster presentation at: Central Association of Obstetricians and Gynecologists, Maui, HI.

Grimes K, Mullin B, Lehar S, Schulz M, Creeden M, Tien S. (2008, February). "Strength in Numbers: Using Concurrent Measurement to Guide Quality." Poster presentation at: Research and Training Center for Children's Mental Health, Tampa, FL.

EXHIBIT 2

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL FLORIDA, on behalf of itself, its staff, and its patients, *et al.*, Plaintiffs, v. STATE OF FLORIDA, *et al.*, Defendants.	**Case No. _____**

Declaration of Stephanie Fraim

I, Stephanie Fraim, am over 18 years of age, am competent, and make this declaration based on my personal knowledge, unless otherwise noted.

1. I am President and CEO of Planned Parenthood of Southwest and Central Florida ("PPSWCF"). I have been the President and CEO of PPSWCF since February 2018. Prior to accepting this position, I served in the Planned Parenthood network for 14 years as the Vice President of External Affairs at Planned Parenthood of Orange and San Bernardino Counties, as the CEO of Planned Parenthood of Greater Ohio, and as the Senior Vice President of Brand and Marketing at Planned Parenthood Federation of America in Washington, D.C.

2. As President and CEO of PPSWCF, I have knowledge of the management, operations, and finances of PPSWCF, including the services we provide and the communities we serve. The facts contained in this declaration are based on my experience, my knowledge of PPSWCF's business records, information obtained in the course of my duties at PPSWCF, and

personal knowledge I have acquired through my service at PPSWCF. If called and sworn as a witness, I could and would testify competently thereto.

3. I submit this declaration in support of Plaintiff's Motion for Emergency Temporary Injunction and/or Temporary Injunction to prevent enforcement of Section 4 of 2022 House Bill 5 ("HB 5" or "the Act"), which would ban abortions in Florida after 15 weeks of pregnancy as measured from the first day of the patient's last menstrual period ("LMP"), with extremely limited exceptions if the abortion is necessary to save the patient's life, avert a serious risk of substantial and irreversible physical impairment to the patient, or address a fatal fetal abnormality, as defined by statute. Violation of HB 5 could result in criminal penalties, as well as disciplinary sanctions and adverse licensing actions. If HB 5 is allowed to take effect, PPSWCF would be forced to stop providing abortions after 15 weeks LMP except those that fall within the Act's narrow exceptions, even where, in our providers' medical judgment, denying such essential medical care will harm our patients or is inconsistent with our ethical and professional obligations to them. This would cause irreparable harm to our patients past 15 weeks LMP for whom we would not be able to provide abortion care, as well as our physicians and staff, for whom this would be devastating.

Abortion Services at PPSWCF

4. PPSWCF is a not-for-profit corporation organized under the laws of Florida. PPSWCF operates ten health centers across Southwest and Central Florida, providing services including but not limited to contraception and contraceptive counseling, well-person exams, screening for breast cancer, screening and treatment for cervical cancer, vasectomies, STI testing and treatment, reproductive health education, miscarriage management, and abortions, among other services. PPSWCF brings this suit on behalf of itself, its patients, and its staff. PPSWCF and its predecessors have provided care in Florida for over five decades.

5. PSWCF provides abortions past 15 weeks at its health centers in Orlando, Tampa, Fort Myers, and Sarasota. For decades, it has been the mission of PPSWCF and its predecessors to provide affordable access to high-quality reproductive and sexual health care and accurate health information through patient care, education, and advocacy. In 2021, PPSWCF provided abortions to 11,850 patients, including 494 abortions after 15 weeks LMP.

6. Patients seek abortions for a variety of reasons, as determined by their personal life circumstances. Some patients seek abortions because they have health problems caused or worsened by the pregnancy, or (as with some cancer diagnoses) that cannot be adequately treated during a pregnancy. For example, a recent PPSWCF patient had a serious heart condition, had undergone open heart surgery and, after surgery, had been counseled by her cardiologist that she would put her health at risk if she were to carry a pregnancy to term. She subsequently became pregnant and because her heart condition created serious risks to her health, she chose to terminate the pregnancy.

7. Others seek abortions after a diagnosis of a fetal anomaly. These decisions are deeply personal and complex, and sometimes are driven by the patient's conclusion that she and her family do not have the financial, medical, or emotional resources to care for a child with special needs, or to do so while also caring for the children she has already.

8. Some patients know it is not the right time in their lives to have a child or to add to their family, including because they do not have the economic resources or support from a partner or from family members. Many of our patients seeking an abortion have children already. They know exactly what is required to parent a child, and often they are already struggling to meet the needs of their existing family. Some patients are trying to pursue further education or job opportunities. Others do not want to become parents.

9. In my experience, once a patient has decided to have an abortion, they generally try to have it as early in pregnancy as they are able.

10. Nevertheless, for a range of deeply personal reasons many patients have abortions after 15 weeks LMP and need access to that care.

11. In some cases, our patients do not realize they are pregnant for weeks or longer, and sometimes not until after they are already past 15 weeks LMP. This is especially true for patients with irregular menstrual cycles, patients who are using hormonal birth control (such as the birth control pill), or patients who have bleeding in early pregnancy that can resemble a period.

12. Once a patient realizes she is likely pregnant, it also takes time to confirm the pregnancy and gestational age, consider her options and decide that she wants to end the pregnancy, contact a provider, schedule an appointment, and raise the funds necessary for the procedure.

13. In some cases, our patients have been raped and seek care after 15 weeks LMP for reasons relating to the trauma of the rape.

14. Many patients who seek abortions after 15 weeks LMP do so because of the myriad barriers to accessing care, including the difficulty raising the funds for the procedure and for related expenses such as transportation and child care. Many have difficulty arranging time off from work, or making arrangements to cover their basic expenses as a result of lost income from missing work for the abortion appointments. Many of our patients work jobs with inflexible schedules and requesting time off work with short notice (and especially without sharing the reason) can jeopardize their jobs.

15. These challenges are further exacerbated by Florida's "two-trip" law, which recently went into effect. This law requires patients to come to a health center for a medically

unnecessary in-person visit at least 24 hours before their abortion to receive state-mandated disclosures. In practice, this translates to far more than 24 hours of delay, as patients often are not able to arrange to miss work or child care, plus arrange transportation (such as borrowing a car) twice in close succession. This is especially true for patients who are trying to keep their pregnancy or abortion decision confidential.

16. Other patients initially intend to carry their pregnancy to term but make a different decision because of a dramatic change in life circumstance such as losing a job, ending a relationship, becoming ill, or having a family member become ill.

17. For example, during the early months of the pandemic, PPSWCF saw a patient who had planned to carry her pregnancy to term, but because of the pandemic she unexpectedly lost her job and no longer had the resources to support a child. Because of this change in circumstances, this patient came to PPSWCF for an abortion.

18. For those patients seeking an abortion because of a health condition that developed or worsened during pregnancy, that change often does not happen until later than 15 weeks LMP. Similarly, patients seeking an abortion because of a serious fetal anomaly do so after testing and diagnosis that often occur after 15 weeks LMP; such anomalies often cannot be identified before 15 weeks LMP. PPSWCF has provided abortions after 15 weeks LMP to patients in each of these circumstances.

Effect of the Act

19. If the Act takes effect, PPSWCF and our providers will be forced to stop providing abortions after 15 weeks LMP, except in circumstances where we are confident that one of the Act's very limited exceptions applies. This means that if the Act takes effect, we will be forced to

turn away patients in desperate need of abortions after 15 weeks LMP, even when doing so is contrary to our physicians' medical judgment as well as to the patient's own decision-making.

20. Not being able to provide abortions after 15 weeks LMP, except in narrow circumstances, will have devastating effects on our patients, many of whom will be left with few or no options.

21. Some may attempt to obtain care in another state in which abortions after 15 weeks LMP remain available. But as set forth above many of our patients already struggle with the financial and logistical burdens of missing work or finding child care and transportation to come to our health centers in Florida. Traveling out of state will impose further burdens that will lead some patients to further delay their care. Others will have to make difficult financial decisions like whether to pay for basic needs such as rent and food or instead to pay for travel, time away from work, or child care responsibilities in order to obtain an abortion. For many of our patients it simply will not be possible to travel out of state to obtain an abortion.

22. This would be true even in typical times, but we are not in typical times. The United States Supreme Court is expected to decide in the next month whether the United States Constitution prohibits states from banning abortion prior to viability in the context of a Mississippi abortion ban. Already, the states surrounding Florida all have abortion bans earlier than 15 weeks LMP poised to go into effect if the Supreme Court's ruling permits them to do so. In that scenario, Florida patients seeking abortions will be forced to travel even further, for example to Fairview Heights, Illinois (which according to Google Maps is more than 1100 miles/a 16-hour drive, each way, from Fort Meyers, Florida, and only slightly closer to Orlando, Sarasota, or Tampa) or to Chapel Hill, North Carolina (775 miles/a 12-hour drive, each way, from Fort Meyers, and only

slightly closer to Orlando, Sarasota, or Tampa). The cost of gas alone to travel to even the nearest abortion provider will be too great a burden for some patients to bear.

23. Those who are not able to travel hundreds of miles or more for an abortion or are not able to obtain an appointment at a location they can get to, will be compelled to carry pregnancies to term against their wishes or seek ways to end their pregnancies without medical supervision, despite that the options for doing so are limited after 15 weeks LMP and in some cases may be unsafe.

24. For these reasons, the effect the Act will have on the emotional, physical, and financial wellbeing of Floridians and their families is devastating to their mental, emotional, and physical health and undermines their independence to make their own decisions.

25. Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

Executed on May 27, 2022, in Sarasota, FL.

Stephanie Fraim

Stephanie Fraim

EXHIBIT 3

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL FLORIDA, on behalf of itself, its staff, and its patients, *et al.*, Plaintiffs, v. STATE OF FLORIDA, *et al.*, Defendants.	**Case No. _____**

DECLARATION OF KELLY FLYNN IN SUPPORT OF PLAINTIFFS' MOTION FOR AN EMERGENCY TEMPORARY INJUNCTION AND/OR TEMPORARY INJUNCTION

I, Kelly Flynn, am over 18 years of age, am competent, and make this declaration based on my own personal knowledge, unless otherwise noted:

1. I have been working in the field of abortion care for over 20 years, and since 2002 have been the President and CEO of A Woman's Choice of Jacksonville ("AWC"). As President and CEO, I am responsible for the overall management of AWC and am familiar with our day-to-day operations, including the services we provide and the communities we serve. My responsibilities include overseeing the clinic's business affairs and finances, regulatory compliance, security measures, patient care, and personnel matters.

2. I submit this declaration in support of Plaintiffs' Motion for an Emergency Temporary Injunction and/or a Temporary Injunction to block enforcement of Florida House Bill 5 ("HB 5" or the "15-week Ban"). I understand that HB 5 prohibits abortions in Florida after 15 weeks of pregnancy, with extremely limited exceptions. I understand that violations of the 15-week Ban can result in criminal penalties, disciplinary sanctions, and adverse licensing actions.

3. During the 2022 legislative session I testified against HB 5 because I know that it will have a devastating impact in our community, especially for young people who seek abortion care, and for the majority of our patients who are struggling financially.

4. The facts I state here are based on my experience, my review of AWC's business records, information obtained in the course of my duties at AWC including my extensive and close interaction with and supervision of AWC's clinicians and staff members, and other information and personal knowledge that I have acquired through my time at AWC. If called and sworn as a witness, I could and would testify competently thereto.

AWC's Provision of Abortion Care

5. AWC is a woman-owned and operated corporation organized under the laws of Florida. We provide safe, legal and effective reproductive healthcare, including pregnancy and STI testing, pregnancy decision counseling, abortion care, community referrals, adoption services, contraception and contraception counseling, pap smears, and miscarriage management. AWC provides medication abortion up to 11 weeks of pregnancy as measured from the first day of a pregnant patient's last menstrual period ("LMP") and procedural/in-office abortion care up to 20 weeks and 4 days LMP.

6. The majority of our patients come from within a 150 to 200-mile radius of AWC. However, over the past several months, we have seen an influx of patients from neighboring states who are seeking abortion because of difficulties accessing care in their own communities, including from as far away as Texas and Missouri. AWC's patients come from all walks of life, with varied racial, ethnic, and religious backgrounds; our patients seek abortion care for varied medical, familial, financial, and personal reasons. Most of our patients are already parents, and a

significant portion are poor or low-income and need financial assistance to receive the abortion care they desire.

7. While patients who have made the decision to end a pregnancy generally seek to do so as soon as they are able, there are many reasons why a patient may need abortion care after 15 weeks. Some of our patients do not have regular menstrual cycles, which can make it difficult to detect that they are pregnant unless they are suffering from other symptoms or they are far enough along to notice other physical changes. For these patients, having an irregular menstrual cycle can lead to significant delays in accessing abortion care.

8. In addition, many AWC patients are already struggling financially, making it difficult to gather the necessary funds for the procedure. Saving up to pay for the abortion and related costs can take weeks or longer, which then creates a devastating cycle—as a patient's pregnancy advances, the price of the procedure increases, which means that a patient must then come up with additional funding to pay for her care. This potential for delay is magnified by the many logistical hurdles that our patients face in seeking abortion care, including making arrangements for transportation, child care, and time off from school or work. When any one of these arrangements falls through, it can create a domino effect that makes it even more difficult to once again manage all of the logistics of receiving an abortion, and our patients must make those logistical and financial arrangements on at least two separate occasions due to Florida's law that imposes a mandatory delay and requires at least two in-person trips before an abortion procedure can be performed. And our patients often do not have the support of family, friends or co-workers to help them navigate these logistical and financial obstacles.

9. AWC also sees patients who are coping with domestic violence, and it is an additional struggle for those patients to make all of the necessary arrangements while keeping their

abortion decision confidential. Young people also face barriers in seeking abortion care early in pregnancy, because Florida law requires them to either obtain parental consent or to go to court and obtain a judicial bypass, which can take up to a week or even longer. AWC also provides abortion care to patients who have received a diagnosis of a fetal condition or anomaly, many of which are not detected until later in pregnancy. Finally, Florida's mandatory delay law and two-trip requirement imposes additional hardship on all patients, particularly those who seek abortion under these challenging circumstances, because it doubles the amount of work or school they must miss, doubles the burden of arranging childcare, doubles the risk of an abusive partner finding out their plans, and doubles the number of times they must endure the protestors who gather daily outside AWC and harass our patients and staff.

10. Abortions at AWC beyond 15 weeks LMP are performed as a two-day outpatient procedure. On the day before their scheduled procedure, the clinician inserts seaweed sticks called laminaria, which allows for slow and gentle dilation of the cervix overnight. The patient then returns to the clinic the following day to have their scheduled abortion. The abortion procedure itself requires no incision or general anesthesia; the physician uses a combination of gentle suction and instruments to evacuate the contents of the uterus. Typically, an abortion after 15 weeks lasts approximately 10 to 15 minutes, and we offer our patients mild or moderate sedation for pain management.

11. On average, AWC provides between 2,000 and 2,500 abortions per year, and roughly 10% of our patients are beyond 15 weeks LMP. However, since the start of 2022, there has been a large uptick in the number of patients seeking care in the second trimester, and approximately 23% of AWC's patients in the first quarter of this year were more than 15 weeks LMP.

Harms Caused by the 15-Week Ban

12. I established AWC as a refuge and a haven for patients seeking safe and legal abortion care, free from stigma or judgment, because I know that people will always need abortion care—yesterday, today, and tomorrow. Abortions allow people to make fundamental decisions about their health, their lives, and their future. But the 15-week Ban goes against the core principles on which AWC was founded, by forcing us to deny patients the care that they need and deserve.

13. The consequences will be dire for all patients who need abortions after 15 weeks, including the many patients who lack the means to pay for the procedure earlier in pregnancy, who seek an abortion to protect their health and well-being, or who have received a diagnosis of a fetal condition and wish to end the pregnancy but do not meet HB 5's narrow exception for fatal fetal anomalies.

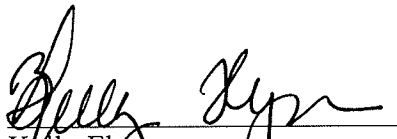
14. We have already seen the harms that Florida's mandatory delay law and two-trip requirement imposes, by creating additional barriers that delay patients in seeking abortion care as early as they would prefer. By the time some of our patients are able to navigate the logistics of missing work/school, arranging for transportation and childcare, and securing the necessary funds, they have been pushed beyond 15 weeks, which means that after July 1, 2022, some of our patients will be barred from obtaining abortions at AWC. While we will do everything we can to try and help those patients who wish to travel out-of-state to receive abortion care after 15 weeks, we know that traveling hundreds of miles and making all of the necessary lodging, transportation, childcare, and other arrangements will not be a realistic option for many.

15. To give one example, we recently provided care to a patient who was a single parent and suffering from severe nausea and vomiting (known as hyperemesis gravidarum) that prevented her from doing her job or caring for her 3 children. When she came to our clinic, she was already 14 weeks pregnant, and had no friends or family support to help her in arranging for childcare, transportation, or funding. In addition, she was desperate to keep her job, but also needed to make sure that her abortion decision was kept confidential from her employer. Ultimately, this patient was able to have her abortion at 15 weeks and 6 days LMP. However, she ended up losing a significant amount of income due to the number of required visits, and told us she does not believe she would have been able to have the abortion if she had been forced to travel out of state.

16. Allowing this harmful 15-week Ban to take effect would be a huge step backwards for our State. Forcing patients to travel hundreds of miles to access care, or to instead carry an unwanted pregnancy to term against their will, is cruel and inhumane. People need access to abortion care, including abortions later in pregnancy, and allowing politicians to take away this option from Floridians can only lead to bad outcomes. I urge the Court to block this law and to allow Floridians to continue to make this most intimate and personal decision for themselves, as they have been permitted to do for decades.

17. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 27, 2022 in Jacksonville, Florida



Kelly Flynn
President/CEO, A Woman's Choice, Jacksonville