IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SISTERSONG WOMEN OF COLOR REPRODUCTIVE JUSTICE COLLECTIVE, on behalf of itself and its members; FEMINIST WOMEN'S HEALTH CENTER; PLANNED PARENTHOOD SOUTHEAST, INC., ATLANTA COMPREHENSIVE WELLNESS CLINIC, ATLANTA WOMEN'S MEDICAL CENTER, FEMHEALTH USA d/b/a CARAFEM, COLUMBUS WOMEN'S HEALTH ORGANIZATION, P.C., SUMMIT MEDICAL ASSOCIATES, P.C., on behalf of themselves, their physicians and other staff, and their patients; CARRIE CWIAK, M.D., M.P.H., LISA HADDAD, M.D., M.S., M.P.H., and EVA LATHROP, M.D., M.P.H., on behalf of themselves and their patients,

Plaintiffs,

vs.

BRIAN KEMP, Governor of the State of Georgia, in his official capacity; CHRISTOPHER M. CARR, Georgia Attorney General, in his official capacity; KATHLEEN TOOMEY, Georgia Commissioner for Department of Public Health, in her official capacity; JOHN S. ANTALIS, M.D., GRETCHEN COLLINS, M.D., DEBI

Civil Action No.: _____

DALTON, M.D., E. DANIEL DeLOACH, M.D., CHARMAINE FAUCHER, PA-C, MICHAEL FOWLER, Sr., C.F.S.P., ALEXANDER S. GROSS, M.D., THOMAS HARDIN Jr., M.D., ROB LAW, C.F.A., MATTHEW W. NORMAN, M.D., DAVID W. RETTERBUSH, M.D., ANDREW REISMAN, M.D., JOE SAM ROBINSON, M.D., BARBY J. SIMMONS, D.O., and RICHARD L. WEIL, M.D., Members of the Georgia Composite Medical Board, in their official capacities; LaSHARN HUGHES, M.B.A., Executive Director of Georgia Composite Medical Board, in her official capacity; PAUL L. HOWARD, JR., District Attorney for Fulton County, in his official capacity; SHERRY BOSTON, District Attorney for DeKalb County, in her official capacity; JULIA SLATER District Attorney for the Chattahoochee Judicial Circuit, in her official capacity; JOHN MELVIN, Acting District Attorney for the Cobb Judicial Circuit, in his official capacity; DANNY PORTER, District Attorney for the Gwinnett Judicial Circuit, in his official capacity; and MEG HEAP, District Attorney for the Eastern Judicial Circuit, in her official capacity,

Defendants.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by and through their attorneys, bring this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof state the following:

INTRODUCTION

1. This is a constitutional challenge to House Bill 481 ("H.B. 481"), attached as Exhibit A, which bans practically all abortions. This law is an affront to the dignity and health of Georgians. It is in particular an attack on low-income Georgians, Georgians of color, and rural Georgians, who are least able to access medical care and least able to overcome the cruelties of this law. Georgians face a critical shortage of reproductive health care providers, including obstetrician-gynecologists, and the rate at which Georgians, particularly Black Georgians, die from pregnancy-related causes is among the highest in the nation.

2. Rather than working to end those preventable deaths, and rather than honoring Georgians' reproductive health care decisions, the Legislature has instead chosen to criminalize abortion from the earliest stages of pregnancy. H.B. 481 criminalizes pre-viability abortions in direct conflict with *Roe v. Wade*, 410 U.S.

113 (1973), and nearly a half century of Supreme Court precedent reaffirming *Roe*'s central holding. Specifically, it criminalizes abortion after embryonic cardiac activity is detectable, which generally occurs around six weeks in pregnancy, when many people are unaware they are pregnant. The law undermines a woman's "ability . . . to participate equally in the economic and social life of the Nation," which "has been facilitated by their ability to control their reproductive lives." *Planned Parenthood v. Casey*, 505 U.S. 833, 856 (1992).

3. In addition, this law threatens a vast array of medical care critical for the health of Georgia's women[1] of reproductive age. Its vague language threatens clinicians with prosecution for any medical care they provide to pregnant patients that could harm an embryo/fetus.[2] The threat of criminal liability is likely to have a chilling effect on health care providers across Georgia, shaping provider and patient decisions about a wide range of health conditions and restricting treatment options for people who are pregnant or perceived to be capable of pregnancy.

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[1] Plaintiffs use "woman" or "women" as a short-hand for people who are or may become pregnant, but 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 under H.B. 481.

[2] The embryonic stage of pregnancy lasts until approximately ten weeks, measured from the first day of a woman's last menstrual period ("lmp"), when the fetal stage begins.

4. The Georgia Legislature passed H.B. 481 on March 29, 2019, and the Governor signed the bill into law on May 7, 2019. The effective date is January 1, 2020. H.B. 481 § 15, 155th Gen. Assemb., Reg. Sess. (Ga. 2019).

5. Unless this Court grants an injunction in advance of the effective date, Plaintiff clinics and physicians will be forced to turn away pregnant patients seeking critical medical care. Patients seeking banned care will be forced to travel out of state if they are able; those who are unable to obtain care out of state will be forced to remain pregnant and give birth against their will, increasing the risk that they will experience death or serious injury, or they may be forced to seek care outside the regulated clinical setting.

6. Absent an injunction, H.B. 481 will prevent Georgians from exercising their fundamental constitutional right to decide whether to have an abortion prior to viability and will threaten other critical medical care for pregnant women, causing irreparable harm.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. This is a civil and constitutional rights action arising under 42 U.S.C. § 1983 and the United States Constitution.

8. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, Rules 57 and 65 of the Federal Rules of Civil Procedure, and the general legal and equitable powers of this Court.

9. Venue is appropriate under 28 U.S.C § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occur in this judicial district and division.

PLAINTIFFS

10. Plaintiff SisterSong Women of Color Reproductive Justice Collective ("SisterSong") is a non-profit organization based in Georgia that was formed in 1997 by 16 organizations led by and representing Indigenous, Black, Latinx, and Asian American women and trans people who recognized their right and responsibility to represent themselves in advancing their needs. By asserting the human right to reproductive justice, SisterSong works to build an effective network of individuals and organizations addressing institutional policies, systems, and cultural practices that limit the reproductive lives of marginalized people. A membership organization, SisterSong organizes with a large base whose members include Georgians who can become pregnant and need the freedom to make their own health care decisions, including the decision to end a pregnancy.

11. H.B. 481's draconian prohibitions would force SisterSong to divert its scarce time and resources away from many other aspects of this work to focus on helping Georgians access abortion care out of state and otherwise adjust to H.B. 481's sweeping impact. SisterSong and its members are directly impacted by H.B. 481's restrictions. SisterSong sues on behalf of itself and its members.

12. Plaintiff Feminist Women's Health Center ("Feminist") is a non-profit reproductive health care facility registered in the state of Georgia and located in Dekalb County. Feminist has been providing reproductive health care in the state since 1976. It currently provides a range of services, including abortion up to 21.6 weeks from the first day of a woman's last menstrual period ("lmp"),[3] contraception, annual gynecological examinations, miscarriage management, sexually transmitted infection ("STI") testing and treatment, and transgender health care, such as hormone replacement therapy. Feminist also engages in community education, grassroots organizing, public affairs, and advocacy programs to advance reproductive health, rights, and justice for all Georgians. Feminist sues on behalf of itself, its physicians and other staff, and its patients.

[3] Physicians often date pregnancy with the weeks before the decimal and the days after: "21.6 weeks lmp" means "21 weeks and six days lmp."

13. Plaintiff Planned Parenthood Southeast, Inc. ("PPSE") is a not-for-profit corporation, registered in the state of Georgia. PPSE operates four health centers in Georgia, located in DeKalb, Gwinnett, Cobb, and Chatham counties, and an additional three health centers in Alabama and Mississippi. PPSE provides comprehensive reproductive health care, including family planning services, testing and treatment for sexually transmitted infections, cancer screening and treatment, pregnancy testing and all options counseling. At its four Georgia health centers, PPSE also provides medication abortion up to 10 weeks lmp. PPSE and its corporate predecessors have provided care in Georgia for over 50 years. Plaintiff PPSE sues on behalf of itself, its physicians and other staff, and its patients.

14. Plaintiff Atlanta Comprehensive Wellness Clinic ("ACWC") is a private medical practice registered in the state of Georgia and located in Fulton County. ACWC has been providing reproductive health services, including abortion care up to 13.6 weeks lmp, since 2017. ACWC sues on behalf of itself, its physicians and other staff, and its patients.

15. Plaintiff Atlanta Women's Medical Center ("AWMC") is a private company registered in the state of Georgia and located in Fulton County. AWMC has been providing reproductive health services, including abortion care up to 21.6

weeks lmp, since 1977. AWMC sues on behalf of itself, its physicians, its staff, and its patients.

16. Plaintiff FemHealth USA d/b/a carafem is a nonprofit organization registered in the state of Georgia and located in Fulton County. Carafem has been providing reproductive health services, including abortion care up to 12.6 weeks lmp, since 2016. Carafem brings this action on behalf of itself, its physicians, staff, and its patients.

17. Plaintiff Columbus Women's Health Organization, P.C. ("CWHO") is a private medical office registered in the state of Georgia and located in Muscogee County. CWHO has been providing reproductive health services, including abortion care up to 13.6 weeks lmp, since 2010. CWHO brings this action on behalf of itself, its physicians and other staff, and its patients.

18. Plaintiff Summit Medical Associates, P.C. ("Summit") is a professional corporation registered in the state of Georgia and located in Fulton County. Summit has been providing reproductive health services, including abortion care up to 21.6 weeks lmp, since 1976. Summit brings this action on behalf of itself, its physicians and other staff, and its patients.

19. Plaintiff Carrie Cwiak, M.D., M.P.H., is a board-certified obstetrician and gynecologist licensed to practice in Georgia. She is Professor of Gynecology

and Obstetrics and Family Planning at Emory University School of Medicine. In addition to teaching residents, her medical practice includes providing her patients with labor and delivery care and comprehensive obstetrical and gynecological care including abortions at Emory University Hospital Midtown in Fulton County, where she is Chief of Service of Obstetrics and Gynecology, and Fulton-DeKalb Hospital, d/b/a Grady Memorial Hospital, in Fulton County. Dr. Cwiak sues as an individual on behalf of herself and her patients, and does not sue in her capacity as an employee or representative of Emory or any other organization.

20. Plaintiff Lisa Haddad, M.D., M.S., M.P.H., is a board-certified obstetrician and gynecologist licensed to practice in Georgia. She is Associate Professor of Gynecology and Obstetrics at Emory University School of Medicine. In addition to teaching residents, her medical practice includes providing her patients with labor and delivery care and comprehensive obstetrical and gynecological care including abortions at Emory University Hospital Midtown in Fulton County, and Fulton-DeKalb Hospital, d/b/a Grady Memorial Hospital, in Fulton County. Dr. Haddad sues as an individual on behalf of herself and her patients, and does not sue in her capacity as an employee or representative of Emory or any other organization.

21. Plaintiff Eva Lathrop, M.D., M.P.H. is a board-certified obstetrician and gynecologist licensed to practice in Georgia. She is Associate Professor – and as of September 1, 2019, will become Adjunct Professor – of Gynecology and Obstetrics and Family Planning at Emory University School of Medicine. In addition to teaching residents, she provides her patients with labor and delivery care and comprehensive obstetrical and gynecological care including abortions at Fulton-DeKalb Hospital, d/b/a Grady Memorial Hospital, in Fulton County. Dr. Lathrop sues as an individual on behalf of herself and her patients, and does not sue in her capacity as an employee or representative of Emory or any other organization.

DEFENDANTS

22. Defendant Brian Kemp is the Governor of the State of Georgia. He has the power to direct the Attorney General to prosecute crimes, including alleged criminal violations of H.B. 481. *See* Ga. Const. art. V, § III, ¶ IV; O.C.G.A. § 45-15-35; O.C.G.A. § 45-15-3(3). Defendant Kemp is sued in his official capacity.

23. Defendant Christopher M. Carr is the Attorney General of the State of Georgia. He has the power to prosecute crimes, including alleged criminal violations of H.B. 481, when directed to do so by the Governor. *See* Ga. Const. art.

V, § III, ¶ IV; O.C.G.A. § 45-15-3 (detailing Attorney General's powers and duties). Defendant Carr is sued in his official capacity.

24. Defendant Kathleen Toomey is the Commissioner for Georgia's Department of Public Health and has the authority to impose civil fines on physicians who fail to comply with H.B. 481's requirement that they report and justify any abortion to demonstrate that it was not unlawful under H.B. 481. *See* H.B. 481 § 11 (amending reporting requirements under O.C.G.A. § 31-9B-3); O.C.G.A. § 31-9B-3(d) (sanctions for reporting violations); O.C.G.A. § 31-9A-6 (civil fines for reporting violations). In addition, the Department of Public Health must collect these reports, *see* O.C.G.A. § 31-9B-3, and publish information reflecting H.B. 481's new ban, *see* H.B. 481 § 8 (amending O.C.G.A. § 31-9A-4). Defendant Toomey is sued in her official capacity.

25. Defendants John S. Antalis, M.D.; Gretchen Collins, M.D.; Debi Dalton, M.D.; E. Daniel DeLoach, M.D.; Charmaine Faucher, PA-C; Michael Fowler, Sr., C.F.S.P.; Alexander S. Gross, M.D.; Thomas Harbin Jr., M.D.; Rob Law, C.F.A.; Matthew W. Norman, M.D.; David W. Retterbush, M.D.; Andrew Reisman, M.D.; Joe Sam Robinson, M.D.; Barby J. Simmons, D.O.; and Richard L. Weil, M.D., are the fifteen Members of the Georgia Composite Medical Board with voting power. They are responsible for overseeing professional licensure and

discipline of physicians, physician assistants, and resident physicians. *See* O.C.G.A. § 43-34-5. The Board has the authority to discipline such professionals who have been convicted of a felony, O.C.G.A. § 43-34-8(a)(3), have engaged in any "unprofessional" conduct, O.C.G.A. § 43-34-8(a)(7), or have violated or attempted to violate any law which relates to the practice of medicine, O.C.G.A. § 43-34-8(a)(10). Performing an abortion in violation of H.B. 481, by its terms, "constitutes unprofessional conduct." H.B. 481 § 10 (amending O.C.G.A. § 31-9B-2). Defendant Members of the Georgia Composite Medical Board are sued in their official capacity.

26. Defendant LaSharn Hughes, M.B.A., is the Executive Director of the Georgia Composite Medical Board. She is responsible for conducting investigations of any unprofessional conduct. *See* O.C.G.A. §§ 43-34-6(e), 43-34-8(d). Defendant Hughes is sued in her official capacity.

27. Defendant District Attorneys, concurrently with the Governor and Attorney General, are responsible for criminal prosecution, including the prosecution of the acts made criminal by H.B. 481. *See* Ga. Const. art. 6, § 8, ¶ I(d); O.C.G.A. § 15-18-6(4).

28. Defendant Paul L. Howard, Jr. is the District Attorney for the Atlanta Judicial Circuit, which covers Fulton County. Plaintiffs ACWC, AWMC, carafem,

Summit, and Drs. Cwiak, Haddad, and Lathrop provide abortion care in Fulton County. Defendant Howard is sued in his official capacity.

29. Defendant Sherry Boston is the District Attorney for the Stone Mountain Judicial Circuit, which covers DeKalb County. Plaintiffs PPSE, Feminist, and Drs. Cwiak and Haddad provide abortion care in DeKalb County. Defendant Boston is sued in her official capacity.

30. Defendant Julia Slater is the District Attorney for the Chattahoochee Judicial Circuit, which includes Muscogee County. Plaintiff CWHO provides abortion care in Muscogee County. Defendant Slater is sued in her official capacity.

31. Defendant John Melvin is the Acting District Attorney for the Cobb Judicial Circuit, which covers Cobb County. Plaintiff PPSE has a clinic that provides abortion care in Cobb County. Defendant Melvin is sued in his official capacity.

32. Defendant Danny Porter is the District Attorney for the Gwinnett Judicial Circuit, which covers Gwinnett County. Plaintiff PPSE has a clinic that provides abortion care in Gwinnett County. Defendant Porter is sued in his official capacity.

33. Defendant Meg Heap is the District Attorney for the Eastern Judicial Circuit, which covers Chatham County. Plaintiff PPSE has a clinic that provides abortion care in Chatham County. Defendant Heap is sued in her official capacity.

STATUTORY FRAMEWORK

34. Current Georgia law prohibits abortion starting at 22.0 weeks lmp,[4] with extremely narrow exceptions. O.C.G.A. § 16-12-141(c)(1). Georgia also already singles out abortion with numerous regulations: it mandates that an abortion patient hear a government-created script and then delay her care at least 24 hours before she can consent, O.C.G.A. § 31-9-A-3(2); prohibits non-physicians from providing abortions, but allows them to provide comparable health care, O.C.G.A. §§ 16-12-141(a), 43-34-110, 43-34-25(l); limits where second-trimester abortions can take place, O.C.G.A. § 16-12-141(b)(1); and mandates specialized reporting for abortion, O.C.G.A. §§ 31-9B-3(a), 31-10-19, 16-12-141.1, 16-12-143, among other regulations.

[4] Current Georgia law prohibits abortion at "20 weeks or more," O.C.G.A. § 16-12-141(c)(1), "from the time of fertilization," O.C.G.A. § 31-9B-1(5). Medical standards date pregnancy based on last menstrual period. Because fertilization typically occurs at two weeks lmp, current Georgia law bans abortions at 22 weeks lmp.

35. H.B. 481 makes a series of amendments to Georgia laws related to abortion and to laws not heretofore related to abortion. Specifically, H.B. 481 bans almost all abortions and makes sweeping changes to Georgia's definition of "natural person" in an effort to justify the abortion ban.

36. Section 2 of H.B. 481 declares that it is the policy of the State of Georgia to recognize embryos/fetuses "as natural persons," H.B. 481 § 2(6); *see also id.* §§ 2(2), (5), purporting to promote a "more expansive state recognition of" embryos/fetuses "as persons" than "exist[ed] when *Planned Parenthood v. Casey* (1992) and *Roe v. Wade* (1973) established abortion related precedents," *id.* § 2(3).

37. Section 3 of H.B. 481 amends O.C.G.A. § 1-2-1 – which contains definitions of "Persons and their Rights" that apply throughout the Georgia Code – to define "natural person" as including "any human being including an unborn child," and defines "unborn child" as an embryo/fetus "at any stage of development" in utero. H.B. 481 § 3 (creating new O.C.G.A § 1-2-1(b), (e)(2)). It mandates the inclusion in "population based determinations" of all "natural persons," including embryos/fetuses in utero with "a detectable human heartbeat," defined as "embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac." *Id.* (creating new O.C.G.A § 1-2-1(d)-(e)).

38. Because Section 3's new definition of "natural person" is not limited to H.B. 481, and appears to apply to the relevant terms throughout the entire Georgia code, the impact of Section 3's new definition of "natural person," when read in conjunction with other parts of the Georgia code, is vague and potentially vast. For example, pursuant to O.C.G.A. § 16-5-60, a person commits the crime of "Reckless Conduct" when he or she "causes bodily harm to or endangers the bodily safety of another person by consciously disregarding a substantial and unjustifiable risk that his act or omission will cause harm or endanger the safety of the other person." Under this provision, it is unclear what potentially "risky" behavior could be deemed criminally reckless inasmuch as "person" is now re-defined to mean an embryo/fetus. Section 3 renders numerous other provisions of the Georgia code similarly vague. *See, e.g.*, O.C.G.A § 16-5-70 (cruelty to children); § 16-5-21 (aggravated assault); § 16-12-171 (sale or distribution to, or possession by, minors of cigarettes and tobacco related objects); § 19-7-5 (reporting of child abuse).

39. Under Section 4 of H.B. 481, "[n]o abortion is authorized or shall be performed if an" embryo/fetus "has been determined in accordance with Code Section 31-9B-2 to have a detectable human heartbeat," and "[n]o abortion is authorized or shall be performed in violation of subsection (a) of Code Section 31-

9B-2." H.B. 481 § 4 (amending O.C.G.A. § 16-12-141(b); creating new O.C.G.A. § 16-12-141(d)). H.B. 481 accordingly amends O.C.G.A. § 31-9B-2, "relating to physician's obligation in performance of abortions," to require "a determination of the presence of a detectable human heartbeat, as such term is defined in Code Section 1-2-1." H.B. 481 § 10 (amending O.C.G.A. § 31-9B-2(a)).

40. Under Section 4 of H.B. 481, "abortion" does not include removing an "ectopic pregnancy" or a "dead" embryo/fetus "caused by a spontaneous abortion." However, unless "a spontaneous abortion" (sometimes called miscarriage) has already caused embryonic/fetal demise, H.B. 481 prohibits completing the miscarriage. H.B. 481 § 4 (amending O.C.G.A. §§ 16-12-141(a)(1)(A), (a)(5)).

41. Section 4 of H.B. 481 has three very limited exceptions. It permits otherwise banned care only when:

a. a "medical emergency" exists, defined as "a condition in which an abortion is necessary in order to prevent the death of the pregnant woman or the substantial and irreversible physical impairment of a major bodily function of the pregnant woman." It does not allow abortion care necessary to reduce *the risk of* death or substantial harm; to prevent substantial but reversible physical impairment of a major bodily function; to prevent less than substantial but irreversible

physical impairment of a major bodily function; or to prevent substantial and irreversible physical impairment of a non-major bodily function. This exception also does not allow care that is necessary to prevent death or substantial impairment that would result from "a diagnosis or claim of a mental or emotional condition . . . or that the pregnant woman will purposefully engage in" self harm. H.B. 481 §§ 4(a)(3), 4(b)(1). H.B. 481 will force a patient with such non-exempted medical conditions to remain pregnant, notwithstanding the risk to her life and health;

b. the pregnancy is at or below 20 weeks post-fertilization and is the result of rape or incest in which an official police report has been filed alleging the offense of rape or incest. H.B. 481 § 4(b)(2); or

c. the "physician determines, in reasonable medical judgment, that the pregnancy is medically futile," defined as "a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth." H.B. 481 §§ 4(a)(4), (b)(3).

42. Violation of Section 4 of H.B. 481 is punishable by imprisonment of one to ten years. O.C.G.A. § 16-12-140(b). Such a violation also exposes a physician to licensing penalties up to and including revocation, because it both

constitutes "unprofessional conduct" under O.C.G.A. § 43-34-8(a)(7); H.B. 481 § 10(b), and constitutes independent grounds for such discipline, O.C.G.A. § 43-34-8(a)(8). *See also* O.C.G.A. § 43-34-8(b)(1)(F) (penalties include license revocation). A patient may also bring a civil action for violation of Section 4. H.B. 481 § 4(g).

43. Section 4 provides affirmative defenses if a physician, nurse, physician assistant, or pharmacist "provide[d] care for a pregnant woman which results in the accidental or unintentional injury or death of an" embryo/fetus, H.B. 481 §§ 4(h)(1-4), and if "[a] woman sought an abortion because she reasonably believed that an abortion was the only way to prevent a medical emergency." H.B. 481 § 4(h)(5). Once a prosecutor proves the *prima facie* case of a violation of H.B. 481, an accused may try to escape conviction and incarceration by raising the applicable affirmative defense, but bears the burden of proving the elements of that defense to a jury.

44. Sections 7 through 9 and 11 of H.B. 481 amend Georgia's abortion informed consent and abortion reporting statutes to mandate that the information the patient receives 24 hours before an abortion include "the presence of . . . detectable" embryonic/fetal cardiac activity, H.B. 481 § 7, to mandate that the Department of Public Health materials available to abortion patients refer to

detectable cardiac activity, H.B. 481 § 8, and to reflect the ban on abortion where there is detectable embryonic/fetal cardiac activity, H.B. 481 § 11.

FACTUAL ALLEGATIONS

45. Georgians who seek clinical abortion care will struggle and suffer under H.B. 481. Those who can will travel of out of state, though for many, such travel will delay care and impose other hardships; others will remain pregnant and give birth against their will; still others will end their own pregnancies or seek care outside the regulated clinical setting, which will expose some women to increased risk of harm. H.B. 481 will be particularly devastating for low-income Georgians, Georgians of color, and rural Georgians, who are already least able to access medical care, and who have the least resources to navigate the law's cruelties.

46. Women seek abortions for a variety of deeply personal reasons, including familial, medical, and financial. Some women have abortions because they conclude that it is not the right time in their lives to have a child or to add to their families. For example, some decide to end a pregnancy because they want to pursue their education; some because they feel they lack the economic resources or level of partner support or stability they want to raise children; some because they are concerned that if they increase their family size, they will be unable to provide and care adequately for their existing children and/or for their ill or dying parents.

Others end a pregnancy in order to be able to leave an abusive partner. Some women seek abortions to preserve their life or health by reducing their risk of injury or death; some because they have become pregnant as a result of rape or incest; and others because they decide not to have children at all. Some women decide to have an abortion because of a diagnosed fetal medical condition. Some families feel they do not have the societal or personal resources—financial, medical, educational, or emotional—to care for a child with physical or intellectual disabilities, or to do so and simultaneously provide for their existing children. The decision to terminate a pregnancy is motivated by a constellation of diverse, complex, and interrelated factors, intimately related to the individual's core religious beliefs, values, and family circumstances.

47. Approximately one in four women in this country will have an abortion by age forty-five. A majority of women having abortions (61%) already have at least one child, while most (66%) also plan to have a child or additional children in the future.[5]

[5] *See* Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 AM. J. PUBLIC HEALTH 1904 (2017), https://ajph.aphapublications.org/doi/10.2105/AJPH.2017.304042; News Release, Guttmacher Inst., *Concern for Current and Future Children a Key Reason Women Have Abortions*, (Jan. 7, 2008), https://www.guttmacher.org/news-

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Medical Background

48. Almost uniformly, clinicians measure pregnancy from the first day of a woman's last menstrual period ("lmp"). A full term pregnancy is approximately forty weeks lmp.

49. Some women have fairly regular menstrual cycles, and four weeks is a typical cycle; other women have regular cycles of different lengths; and still others have irregular cycles. In a person with regular monthly periods, fertilization typically occurs two weeks after lmp – that is, two weeks after the first day of the last menstrual period. A woman with a highly regular, four-week cycle would be four weeks lmp when she misses her period.

50. In a typically developing embryo, cells that eventually form the basis for development of the heart later in pregnancy produce cardiac activity that is generally detectible – via ultrasound – beginning at approximately six weeks lmp.[6]

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release/2008/concern-current-and-future-children-key-reason-women-have-abortions; *Abortion Facts*, Nat'l Abortion Fed'n, https://prochoice.org/education-and-advocacy/about-abortion/abortion-facts/ (last visited June 26, 2019).

[6] *See* Thomas Gellhaus, M.D., *ACOG Opposes Fetal Heartbeat Legislation Restricting Women's Legal Right to Abortion*, Am. Cong. Obstetricians & Gynecologists (Jan. 18, 2017), https://www.acog.org/About-ACOG/News-Room/Statements/2017/ACOG-Opposes-Fetal-Heartbeat-Legislation-Restricting-Womens-Legal-Right-to-Abortion.

51. The great majority of abortion patients are simply not able to confirm a pregnancy and schedule and obtain an abortion before 6 weeks lmp.

52. Prior to and even after six weeks lmp, many women do not know they are pregnant – particularly the many women who have irregular cycles, who have certain medical conditions, who have been using contraceptives, or who are breastfeeding.

53. Even for women with highly regular four-week cycles, six weeks lmp is a mere two weeks after they will have missed their period.

54. The great majority of abortions take place at or after six weeks lmp.

55. The U.S. Supreme Court has defined viability as a reasonable likelihood of sustained survival outside the uterus, with or without artificial aid.

56. Six weeks is a previability point in pregnancy: Viability does not occur until months later.

57. Legal abortion is one of the safest medical procedures in the United States. A woman's risk of death associated with childbirth is approximately 14 times higher than that associated with abortion, and every pregnancy-related

complication is more common among women giving birth than among those having abortions.[7]

58. According to the Centers for Disease Control and Prevention, pregnancy is becoming more dangerous, with pregnancy-related deaths on the rise across the United States.[8]

59. Georgians face one of the highest risks of pregnancy-related death in the nation,[9] and pregnancy is three times as deadly for Black Georgians as it is for white Georgians.[10] As Defendant Commissioner Toomey's Department of Public

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[7] Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 OBSTETRICS & GYNECOLOGY 215, 215 (Feb. 2012).

[8] Ctr. for Disease Control & Prevention, *Pregnancy Mortality Surveillance System*, https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-mortality-surveillance-system.htm (last reviewed June 26, 2019).

[9] America's Health Rankings, United Health Found., *Maternal Mortality* (2019), https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality (analyzing data from CDC WONDER Online Database, 2011-2015).

[10] In Georgia, "[b]etween 2012-2014, Black non-Hispanic women were about 3.3 times more likely to die due to pregnancy-related complications than White, non-Hispanic women." Ga. Dep't Pub. Health, Maternal Mortality Review Comm., *Maternal Mortality Report 2014* (March 2019) at 11, https://dph.georgia.gov/sites/dph.georgia.gov/files/related_files/site_page/Maternal%20Mortality%20BookletGeorgia.FINAL_.hq_.pdf.

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Health has recognized, the State could do a great deal to drive down this shameful statistic and save women's lives: In Georgia, "[b]etween 2012-2014, 61% of pregnancy-related deaths were determined to be preventable."[11]

Devastating Impact of HB 481

60. HB 481 will ban the great majority of abortions, depriving Georgians of their constitutional rights. It will have a devastating impact.

61. As between maintaining a pregnancy or having an abortion, H.B. 481 would mandate the medically far riskier course, regardless of whether it is contrary to an individual patient's will. Forcing a woman to continue a pregnancy against her will can pose a risk to her physical, mental, and emotional health, and even her life, as well as to the stability and wellbeing of her family, including her existing children.

62. Even those able to overcome the obstacles to accessing care outside Georgia would be delayed, which would increase the risks of the care: although abortion is extremely safe, the risks associated with pregnancy increase as pregnancy advances.

[11] *Id.* at 20.

63. H.B. 481's three narrow exceptions provide little relief from its near complete ban on abortions.

64. First, H.B. 481 will force women pregnant as a result of sexual assault to continue their pregnancies against their will. H.B. 481's exception for sexual assault survivors applies only before 20 weeks post-fertilization, and only when "an official police report has been filed alleging the offense of rape or incest." § 4(b)(2). Many survivors of these crimes are never able to file a police report for many reasons, including that they fear violent retaliation by the rapist, that they are coping with trauma, or that filing a report would deepen their trauma. Many more are unable to file a police report within the timeframe that H.B. 481 requires to abort a pregnancy resulting from those crimes. Plaintiffs' abortion patients include survivors of rape or incest who have not filed police reports.

65. Second, there are severe and potentially lethal fetal conditions that lead women to decide to have an abortion, but that would not satisfy H.B. 481's narrow exception for "medically futile" pregnancies, which is limited to the presence of "a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth." H.B. 481 § 4 (amending O.C.G.A. § 16-12-141(a)(4)). For example, in the condition severe diaphragmatic hernia, the fetal intestines impinge on the lungs and prevent their development, which can

result in a stillbirth. If a baby is born with this condition, surgeries may allow breathing, or such surgeries may fail, resulting in death. Yet, these and many other similarly severe conditions would not qualify as "medically futile" under H.B. 481.

66. Third, H.B. 481's "medical emergency" exception is so limited that the ban would block care even for many women who desperately need abortions to protect their health, including some of Plaintiffs' patients. A patient who was not in, or who had not yet deteriorated to the point that she was in, a medical emergency as narrowly defined would have to remain pregnant, regardless of the harm to her health.

a. In one of many examples, high blood pressure can worsen as pregnancy advances. In some patients, this leads to serious conditions during pregnancy including pre-eclampsia, eclampsia, cardiac hypertrophy, heart attack, and stroke; for some patients, remaining pregnant with high blood pressure can lead to heart or kidney damage well after pregnancy. Some patients with this profile seek abortion care to avoid these serious risks; others remain pregnant and have their physicians manage the risk as best as possible; and of those, some later decide that the risk has passed the point that they deem acceptable, and they have an abortion. But unless such a patient had

deteriorated to the point of a "medical emergency" as defined in H.B. 481, she would have to remain pregnant and be exposed to those near-term and long-term medical risks.

b. In another example, patients also include women with underlying cardiac disease, which greatly increases the risk that pregnancy will kill or harm the woman – during pregnancy or perhaps years later. A woman with cardiac disease may be reasonably healthy at 8 weeks lmp, and her doctors may well be able to manage her condition reasonably well throughout her pregnancy. But for many other patients, it is only much later in pregnancy – around 28 weeks, when pregnancy places much higher stress on the woman's heart – that the condition becomes critical. To protect themselves from the risk that their condition will become critical, many patients with cardiac disease seek abortion care earlier in pregnancy, when they are still reasonably healthy. At that point, with real concern and yet uncertainty that the condition would dramatically worsen in the third trimester for this particular patient, the physician would not be able to say that an abortion was "necessary . . . to prevent" her "death . . . or the substantial and irreversible physical impairment of a major bodily

function." H.B. 481 § 4(a)(3). Under H.B. 481, such a patient would remain pregnant and face those risks, against her will.

67. Moreover, under H.B. 481, pregnant Georgians will also face increased risk of injury or death as a result of miscarriage, which is common at and after six weeks lmp. In the great majority of cases, a woman miscarrying would not fall within any of Section 4's limited exceptions, including the narrow exception for a "medical emergency."

a. In some cases of miscarriage (sometimes called spontaneous abortion), the process of pregnancy loss itself ends embryonic/fetal cardiac activity. In those cases, H.B. 481 would allow a woman to access medical care to empty her uterus. *See* H.B. 481 § 4 (amending O.C.G.A. § 16-12-141(a)(1)(A)).

b. However, in other cases of miscarriage, cardiac activity persists while the woman is actively miscarrying. In those cases as well, the standard of care is to offer a patient medical treatment to empty her uterus, but H.B. 481 would tie the doctor's hands. In those instances, H.B. 481 will force a woman to continue undergoing the miscarriage, regardless of how desperately she wants to complete the inevitable loss of her pregnancy, and regardless of the medical risks she faces –

unless and until her condition deteriorates to the point of a "medical emergency" as H.B. 481 narrowly defines it. This would be true starting at six weeks – months before there is any possibility of survival outside the uterus. While actively miscarrying, a woman experiences some combination of symptoms including bleeding, cramping, partially passing the embryo/fetus, physical pain, emotional pain, and risk of infection.

c. Denying that treatment for miscarriage management would only increase the already high maternal mortality rate that Georgians face, including Plaintiffs' patients and SisterSong's members. It would also cruelly force women to endure needlessly prolonged physical and mental anguish.

68. In addition, the vagueness created by Section 3's definition of "natural person," as well as Section 4's affirmative defenses for clinicians whose care accidentally harms an embryo/fetus, threatens a wide range of treatment for patients who are or may be pregnant. After getting a measles, mumps, rubella vaccine, for example, a woman should avoid pregnancy for several weeks; if she does not, accidental harm to the embryo can result. Certain common antibiotics such as tetracycline can harm an embryo, and there is no way to rule out pregnancy

definitively before prescribing or dispensing them: even were a clinician and pharmacist to insist on a blood pregnancy test – rather than rely on a patient's potentially incorrect report that she is not pregnant – such tests show negative results in the first days of pregnancy. When a pregnant woman requires surgery – to treat a ruptured appendix, for example – the physician may cause a miscarriage, and the anesthesia can harm the embryo/fetus by causing the woman's blood pressure or oxygen saturation to fall. Under H.B. 481, clinicians and others in the care team will be chilled from providing routine care – and, critically, specialized care – to pregnant patients that may result in accidental injury to an embryo or fetus. H.B. 481 Section 4's affirmative defenses provide no comfort. First, providers must still fear prosecution under Section 4, in which they would have to raise and prove as an affirmative defense that the impact on the pregnancy was accidental. Second, H.B. 481's affirmative defenses would not protect against civil or criminal liability under the many other parts of the Georgia code that H.B. 481's new definition of "natural person" alters. By threatening the provision of a wide range of medical care for people who are or may be pregnant, H.B. 481 will only increase the medical risks that Plaintiffs' patients and members face.

69. Finally, pregnancy-related deaths are so high in Georgia in part because of the state's critical shortage of obstetrician-gynecologists, particularly in

rural areas. By threatening obstetrician-gynecologists with criminal penalties for abortion and other standard-of-care treatment, H.B. 481 can only drive doctors out of Georgia, exacerbating the crisis.

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70. As SisterSong represents the needs and rights of the most oppressed communities, absent an injunction, H.B. 481 would force SisterSong to divert its scarce time and resources away from other aspects of its crucial work to help Georgians access abortion care out of state and otherwise adjust to H.B. 481's sweeping impact. SisterSong is already fielding inquiries from Georgians panicked about obtaining abortions because of H.B. 481. Its members are among the people who would be most devastated were H.B. 481 to take effect.

71. Absent an injunction, Plaintiff clinics and physicians will have no choice but to turn away patients in need of banned care. Their patients would suffer the irreparable harm of gross violations of their constitutional rights, assault to their dignity, and the unconscionable imposition of risks to their health and lives.

CLAIMS FOR RELIEF

COUNT I

(Substantive Due Process / Privacy and Liberty)

72. Plaintiffs reallege and incorporate by reference the allegations contained in in Paragraphs 1 through 71.

73. By prohibiting an individual from making the ultimate decision whether to continue or to terminate a pregnancy prior to viability, H.B. 481 violates Georgians' right to privacy and liberty secured by the Fourteenth Amendment to the United States Constitution.

74. By redefining the meaning of natural person throughout the entire Georgia code to include an embryo/fetus in utero at any stage of development, H.B. 481 infringes on women's right to abortion and bodily autonomy and thereby violates Georgians' right to privacy and liberty secured by the Fourteenth Amendment to the United States Constitution.

COUNT II

(Due Process / Vagueness)

75. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1 through 71.

76. It is unclear if and/or how the new definitions in Section 3 of H.B. 481 effectively amend other provisions of the Official Code of Georgia Annotated that include the term "person" and/or "human being." These terms appear in the Code hundreds of times, and they are included in sections of the code that set forth the scope of, *inter alia*, criminal acts and civil liability.

77. These provisions and others, as amended by the new definitions in Section 3 of H.B. 481, make it impossible for pregnant women and medical providers to know what actions are forbidden or required, and thus do not provide adequate guidance as to how they can comply with the law.

78. Because these provisions, as amended by the new definitions in Section 3 of H.B. 481, do not clearly define what actions are forbidden or required, they do not meaningfully limit the actions of law enforcement and do not protect against arbitrary and discriminatory enforcement.

79. Because Plaintiffs are unable to determine what is required under the Official Code of Georgia Annotated, as amended by Section 3 of H.B. 481, H.B. 481 violates Plaintiffs' rights secured to them by the Due Process guarantees of the Fourteenth Amendment to the United States Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A. To issue a preliminary injunction in advance of the January 1, 2020, effective date and a permanent injunction restraining Defendants, their employees, agents, and successors in office from enforcing H.B. 481.

B. To enter a judgment declaring that H.B. 481 violates the Fourteenth Amendment to the United States Constitution.

C. To award Plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

D. To grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 28th day of June, 2019.

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**Pro hac vice applications forthcoming*