

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

ACCESS INDEPENDENT HEALTH SERVICES, INC., d/b/a RED RIVER WOMEN’S CLINIC, on behalf of itself and its patients, and KATHRYN L. EGGLESTON, M.D., on behalf of herself and her patients,

Plaintiffs,

vs.

DREW H. WRIGLEY, in his official capacity as Attorney General for the State of North Dakota, BIRCH P. BURDICK, in his official capacity as the State Attorney for Cass County,

Defendants.

Case No. \_\_\_\_\_

COMPLAINT

**COMPLAINT**

1. Plaintiffs Access Independent Health Services, Inc., doing business as Red River Women’s Clinic (the “Clinic”), and Kathryn Eggleston, M.D., by and through their undersigned attorneys, bring this complaint against the above-named defendants, their employees, agents, and successors in office, and in support thereof allege the following:

**PRELIMINARY STATEMENT**

2. This is a civil rights action challenging certain provisions of North Dakota Century Code Section 12.1-31-12 (the “**Abortion Ban**” or the “**Statute**”), under the Constitution and laws of the State of North Dakota. A copy of the Statute is attached hereto as Exhibit A.

3. The Abortion Ban was enacted by the legislature and signed by the Governor during the 2007 legislative session as House Bill 1466 (“**H.B. 1466**”), and will take effect 30 days after the Attorney General, a Defendant in this case, certifies to the North Dakota legislative council the

issuance of the judgment in a case from the United States Supreme Court “which, in whole or in part, restores to the states authority to prohibit abortion.”<sup>1</sup>

4. On June 24, 2022, the U.S. Supreme Court issued its opinion in *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392, 2022 WL 2276808 (U.S. June 24, 2022) (“*Dobbs*”), which overruled *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992).

5. That same day, North Dakota Governor Doug Burgum issued a statement proclaiming that the Governor’s office “will now work diligently with the North Dakota Attorney General’s Office to fulfill our constitutional duty by carrying out the 2007 legislation that is triggered by the overturning of *Roe v. Wade*.”<sup>2</sup>

6. On June 28, 2022, Attorney General Wrigley wrote to the legislative council that “the preconditions for enforcement of [the Abortion Ban] have been satisfied, and this provision shall be given its full effect on July 28, 2022, the thirtieth day after the date of this certification letter.”<sup>3</sup>

7. The Abortion Ban violates the rights of the Clinic, its patients, and Dr. Eggleston because it prohibits all abortions with only narrow exceptions and violates the rights of patients

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<sup>1</sup> The effective date of N.D.C.C. § 12.1-31-12 was amended by House Bill 1546 (“**H.B. 1546**”), enacted and signed during the 2019 legislative session.

<sup>2</sup> Press Release, North Dakota Office of the Governor, *Burgum Releases Statement on U.S. Supreme Court Opinion That Returns Abortion Issue to the States* (June 24, 2022), <https://www.governor.nd.gov/news/burgum-releases-statement-us-supreme-court-opinion-returns-abortion-issue-states>.

<sup>3</sup> Letter from Drew H. Wrigley, Attorney General of the State of North Dakota, to John Bjornson, Director of the North Dakota Legislative Council (June 28, 2022), <https://attorneygeneral.nd.gov/sites/ag/files/documents/MediaAttachments/John%20Bjornson-LegislativeCouncil.pdf>.

seeking abortions. Further, Attorney General Wrigley’s certification is premature, as, to date, the Supreme Court has not issued its judgment in *Dobbs*.

8. Plaintiffs therefore urgently seek declaratory and injunctive relief barring Defendants and their agents from enforcing the Abortion Ban and allowing Plaintiffs to continue to provide abortion care in North Dakota.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction pursuant to N.D. Const. Art. VI, § 8 and N.D.C.C. § 27-05-06.

10. Plaintiff’s claims for declaratory and injunctive relief are authorized by N.D.C.C. §§ 32-06-02, 32-23-01 and by the general equitable powers of this Court.

11. Venue is appropriate under N.D.C.C. § 28-04-05 because Defendant Drew H. Wrigley is located in Burleigh County.

### **PARTIES**

12. Plaintiff Red River Women’s Clinic, located in Fargo, North Dakota, has been in operation since 1998. The Clinic provides reproductive healthcare services to women, including abortions. The Clinic brings claims on behalf of itself and its patients.

13. Plaintiff Kathryn Eggleston, M.D., is a physician licensed to practice medicine in North Dakota. Dr. Eggleston is the Clinic’s medical director. She provides both medication and surgical abortions to the Clinic’s patients. Dr. Eggleston brings claims on behalf of herself and her patients.

14. Defendant Drew. H. Wrigley is the State’s Attorney General. The Attorney General is charged with certifying to the North Dakota legislative council “the issuance of the judgment in any decision of the U.S. Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion,” thereby triggering the effective date of the Abortion Ban. H.B. 1546, 66th

Leg. Assemb., Reg. Sess. § 2 (N.D. 2019). The Attorney General must “[a]ppear and defend all actions against any state officer,” and “advise the several state’s attorneys in matters relating to the duties of their office.” N.D.C.C. §§ 54-12-01. He is sued in his official capacity.

15. Defendant Birch P. Burdick is the State Attorney for Cass County, where the Clinic is located. The State Attorney’s office is charged with prosecuting all public offenses on behalf of the State of North Dakota. N.D.C.C. § 11-16-01(1). He is sued in his official capacity.

## **FACTUAL ALLEGATIONS**

### **A. Red River Women’s Clinic**

16. Plaintiff Red River Women’s Clinic, located in Fargo, is the only abortion clinic in the State of North Dakota.

17. The Clinic provides abortions and offers other reproductive healthcare services, including contraception, pregnancy testing, and sexually-transmitted infection testing to its patients.

18. The Clinic serves patients who reside throughout North Dakota, as well as patients who travel to the Clinic from neighboring states.

19. The Clinic performs both surgical and medication abortions approximately one day per week.

20. The Clinic’s primary mission is to provide safe, accessible abortion care to patients. If the Abortion Ban goes into effect, the Clinic will not be able to continue operating in North Dakota.

## B. Abortion Safety and Care

21. Abortion is a common medical procedure. Approximately 1 in 4 women will have abortions in their lifetimes.<sup>4</sup> An estimated 18% of all pregnancies, excluding miscarriages, end in abortion.<sup>5</sup>

22. Abortion is also one of the safest medical procedures in the United States, and major complications from abortion are rare. Research on abortion safety shows that very few abortion patients—approximately 0.2%—experience a complication that requires hospitalization.<sup>6</sup> In 2018, the most recent year for which abortion mortality was reviewed by the Centers for Disease Control (“CDC”), only two deaths were related to legal abortion.<sup>7</sup> By contrast, in 2019, the most recent year for which pregnancy-related mortality was reviewed by the CDC, 754 deaths were related to pregnancy and childbirth.<sup>8</sup>

23. Carrying a pregnancy to term and childbirth carry much higher risks of both morbidity and mortality than does obtaining an abortion. The mortality rate associated with

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<sup>4</sup> Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 AM. J. PUB. HEALTH 1904 (2017).

<sup>5</sup> Katherine Kortzmit et al, Ctrs. for Disease Control & Prevention, *Abortion Surveillance—United States, 2019*, 70 MORBIDITY AND MORTALITY WEEKLY REPORT 9, at 7 (Nov. 26, 2021).

<sup>6</sup> Ushma D. Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 OBSTETRICS & GYNECOLOGY 175, 175, 181 (Jan. 2015), <https://pubmed.ncbi.nlm.nih.gov/25560122/>.

<sup>7</sup> Kortzmit, Ctrs. for Disease Control & Prevention, *Abortion Surveillance—United States, 2019*, at 7.

<sup>8</sup> Donna L. Hoyert, *Maternal Mortality Rates in the United States, 2019*, NAT’L CTR. FOR HEALTH STATISTICS HEALTH E-STATS, at 1 (Apr. 2021), <https://www.cdc.gov/nchs/data/hestat/maternal-mortality-2021/E-Stat-Maternal-Mortality-Rates-H.pdf>.

childbirth in the United States is approximately 14 times higher than that associated with abortion.<sup>9</sup> Carrying a pregnancy to term is approximately 33 times riskier than having an abortion, with 0.6 maternal deaths per 100,000 abortions compared to 20.1 maternal deaths per 100,000 live births.<sup>10</sup>

24. As of 2020, the most recent period for which data is available, approximately 19% of women in North Dakota were living in “maternal healthcare deserts,” meaning they lack reliable access to prenatal care.<sup>11</sup> This absence of essential care puts these patients at even higher risk for serious complications due to pregnancy, including an elevated risk of death.

25. Access to safe and legal abortion benefits the health and well-being of women and their families. Research shows that access to abortion has been important to facilitating women’s equal participation in society and in the economic and social life of the nation.<sup>12</sup>

26. Patients seek abortion care for a number of reasons. The majority of patients seen at the Clinic already have children and do not feel that they can adequately parent and support an additional child. Some patients seek abortion care because they believe that having a child will

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<sup>9</sup> *Increasing Access to Abortion*, AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS (Dec. 2020), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2020/12/increasing-access-to-abortion>.

<sup>10</sup> Lisa Marshall, *Study: Banning Abortion Would Boost Maternal Mortality by Double-Digits*, CU BOULDER TODAY, UNIV. OF COLO. BOULDER, (Sep. 8, 2021), <https://www.colorado.edu/today/2021/09/08/study-banning-abortion-would-boost-maternal-mortality-double-digits>. See also Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 OBSTETRICS & GYNECOLOGY 215, 216 (2012).

<sup>11</sup> *North Dakota is the #6 State with the Most People Living in Maternal Health Care Deserts*, STACKER (Oct. 29, 2021), <https://stacker.com/north-dakota/north-dakota-6-state-most-people-living-maternal-health-care-deserts> (using 2020 Census population data to calculate what percentage of a state’s population lives in counties defined by the March of Dimes as a “maternity care desert”).

<sup>12</sup> See Brief of *Amici Curiae* Economists in Supp. of Respondents at 6-15, *Dobbs v. Jackson Women’s Health Org.*, No. 19-1392, 2021 WL 4341729, at 6-17 (U.S. Sept. 20, 2021).

prevent them from completing their education, which would inhibit their social and economic development and their ability to provide for their families. The Clinic also serves women seeking abortion care because they are experiencing domestic violence, homelessness, and/or risky or nonviable pregnancies, or because they are survivors of rape.

27. Patients who seek and are denied access to an abortion experience worse outcomes than those who are able to receive abortions. For example, a recent study found that just six months after being denied an abortion, “women had more than three times greater odds of being unemployed than women who were able to access an abortion.”<sup>13</sup> In the long term, being denied a sought-after abortion, “resulted in an almost fourfold increase in odds that a woman’s household income was below the Federal Poverty Level, and a greater likelihood of reporting not being able to cover basic living needs.”<sup>14</sup> According to yet another study, compared to women who obtained an abortion, women who were denied an abortion experienced significant financial distress later in life, exhibiting a 78% increase in past-due debt and an 81% increase in public records related to bankruptcies, evictions, and court judgments.<sup>15</sup>

28. People also seek abortions for a range of health concerns that may not be considered “life-threatening.” For example, some patients seek abortion care because they have an existing health condition, which may be complicated or exacerbated by a pregnancy.

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<sup>13</sup> Diane G. Foster et al., *Socioeconomic Outcomes of Women who Receive and Women who are Denied Wanted Abortions in the United States*, 108 AMER. J. PUB. HEALTH 407, 412-413 (2018).

<sup>14</sup> *Id.*

<sup>15</sup> Sarah Miller, Laura R. Wherry & Diana Greene Foster, *The Economic Consequences of Being Denied an Abortion* 4, (Nat’l Bureau of Econ. Rsch., Working Paper No. 26662, 2020).

### C. The Abortion Ban

29. Plaintiffs challenge the entirety of the Abortion Ban, which makes it a Class C felony for a physician to perform an abortion within the state, but permits the physician to raise affirmative defenses for abortions performed in order to save the life of the patient or in cases of pregnancies resulting from rape or incest. H.B. 1546 provides a contingent effective date for the Abortion Ban.

30. The Abortion Ban, N.D.C.C. § 12.1-31-12, provides:

1. As used in this section:
  - a. “Abortion” means the use or prescription of any substance, device, instrument, medicine, or drug to intentionally terminate the pregnancy of an individual known to be pregnant. The term does not include an act made with the intent to increase the probability of a live birth; preserve the life or health of a child after live birth; or remove a dead, unborn child who died as a result of a spontaneous miscarriage, an accidental trauma, or a criminal assault upon the pregnant female or her unborn child.
  - b. “Physician” means an individual licensed to practice medicine under chapter 43-17.
  - c. “Professional judgment” means a medical judgment that would be made by a reasonably prudent physician who is knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
2. It is a class C felony for a person, other than the pregnant female upon whom the abortion was performed, to perform an abortion.
3. The following are affirmative defenses under this section:
  - a. That the abortion was necessary in professional judgment and was intended to prevent the death of the pregnant female.
  - b. That the abortion was to terminate a pregnancy that resulted from gross sexual imposition, sexual imposition, sexual abuse of a ward, or incest, as those offenses are defined in chapter 12.1-20.
  - c. That the individual was acting within the scope of that individual's regulated profession and under the direction of or at the direction of a physician.

31. Section 2 of H.B. 1546, which amended H.B. 1466, § 2, provides for the effective date of the Abortion Ban:

This Act becomes effective on the thirtieth day after:

1. The adoption of an amendment to the United States Constitution which, in whole or in part, restores to the states the authority to prohibit abortion; or
2. The attorney general certifies to the legislative council the issuance of the judgment in any decision of the United States Supreme Court which, in whole or in part, restores to the states authority to prohibit abortion.

32. Nothing in the Abortion Ban, therefore, allows the Attorney General to certify to the legislative council—and thus trigger the effective date of the ban—that the U.S. Supreme Court has issued an *opinion* finding that states may prohibit abortion; rather, H.B. 1546 clearly only authorizes the Attorney General to certify “the issuance of the *judgment*” in such a decision. H.B. 1546, § 2 (emphasis added).

33. Enforcement of the Abortion Ban falls to the State’s Attorneys, who are elected county officials representing the state in all prosecutions for public offenses. N.D.C.C. § 11-16-01.

34. Plaintiffs are engaged in a course of conduct that is proscribed by the Abortion Ban, and therefore face an imminent threat of enforcement upon its effective date. But for the Abortion Ban, Plaintiffs would continue to provide abortion services to patients in North Dakota.

#### **D. The United States Supreme Court’s Recent Abortion Decision**

35. On June 24, 2022, the U.S. Supreme Court issued its opinion in *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392, 2022 WL 2276808 (U.S. June 24, 2022), which overruled *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992).

36. Although the opinion in *Dobbs* has been released, the U.S. Supreme Court has not yet issued its judgment in that case, and it has not issued a certified copy of the judgment to the Court of Appeals for the Fifth Circuit.

37. H.B. 1546 only permits the Attorney General to certify “the issuance of the judgment” in a case which would allow the Abortion Ban to go into effect, H.B. 1546, § 2, which, to date, has not occurred. Ignoring the clear legislative limitation on his role in determining the Abortion Ban’s effective date, on June 28, 2022, Attorney General Wrigley purported to certify to the legislative council that the Abortion Ban would become effective on July 28, 2022.

**E. *Dobbs* and the Effective Date of the Abortion Ban**

38. The procedure by which the U.S. Supreme Court releases its opinions and issues its judgments to lower courts is defined by the Supreme Court Rules. These rules distinguish between the date when an opinion is released, which is also when the judgment is *entered* on the docket, and the date when the formal judgment is *issued* to a lower court.

39. Under the Supreme Court Rules, “[o]pinions of the Court will be released immediately upon their announcement from the bench.” SUP. CT. R. 41. On the day that the opinion is released, “[t]he Clerk enters the Court’s judgment” on the docket. *See* Stephen M. Shapiro, et al., SUPREME COURT PRACTICE § 15.8 (10th ed. 2013).

40. However, while the judgment is *entered* onto the docket on that day, the formal judgment or mandate does not *issue* to the lower court on the same day that the opinion is released. Supreme Court Rule 45 provides that the mandate (to a state court) or certified copy of the judgment (to a lower federal court) does not issue to a lower court until at least 25 days later, after the period of time to petition for rehearing has expired. *See* SUP. CT. R. 45.2 (providing that, in a case on review from state court, the mandate issues “25 days after entry of the judgment”); Shapiro, SUPREME COURT PRACTICE § 15.8 (explaining that certified copy of the judgment in a case on

review from a lower federal court issues 25 days after the entry of the judgment on the docket); *see also* SUP. CT. R. 45.3 (discussing applicability of provisions of SUP. CT. R. 45.2 to judgment in a case on review from a lower federal court). The mandate or judgment will not issue sooner than 25 days after entry of the judgment “unless the Court or a Justice shortens . . . the time, or unless the parties stipulate that it issue sooner.” SUP. CT. R. 45.2. Additionally, “[t]he filing of a petition for rehearing stays the mandate until disposition of the petition.” *Id.*

41. The U.S. Supreme Court’s docketing of cases likewise reflects that the Supreme Court’s judgments are not issued on the same day that the opinion is released and the judgment is entered on the docket. For example, in *Ramirez v. Collier*, No. 21-5592 (U.S. 2022), a case decided earlier this term, the opinion was released (and the judgment entered on the docket) on March 24, 2022. However, the case docket shows that the judgment was issued on April 25, 2022—32 days later.<sup>16</sup> Likewise, in *Hughes v. Northwestern University*, No. 19-1401 (U.S. 2022), the Supreme Court docket shows that the judgment was entered on January 24, 2022 but not “issued” until February 25, 2022—again, 32 days after the opinion was released.<sup>17</sup>

42. Similarly here, the Supreme Court docket for *Dobbs* shows that the judgment has been entered but does not yet state “JUDGMENT ISSUED.”<sup>18</sup> Because the *Dobbs* decision was released on June 24, 2022, under Rule 44.1, the parties have until July 19, 2022—25 days after

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<sup>16</sup> *See Ramirez v. Collier*, 595 U.S. \_\_\_, 142 S.Ct. 1264 (2022); docket for Case No. 21-5592, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21-5592.html>.

<sup>17</sup> *See Hughes v. Northwestern University*, 595 U.S. \_\_\_, 142 S.Ct. 737 (2022); docket for Case No. 19-1401, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-1401.html>.

<sup>18</sup> *See Dobbs v. Jackson Women’s Health*, No. 19-1392, 2022 WL 2276808 (U.S. June 24, 2022); docket for Case No. 19-1392, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/19-1392.html>.

entry of the judgment—to petition for rehearing, meaning that the Supreme Court will not issue its judgment until that date at the earliest.

43. H.B. 1546 limits the Attorney General’s role in setting the effective date for the Abortion Ban and only authorizes him to act when the Supreme Court has issued a judgment in a case which “restores to the states authority to prohibit abortion.” H.B. 1546, § 2. Because the Supreme Court has yet to issue such a judgment, the Attorney General’s premature certification is without legal effect.

**F. Plaintiffs and Their Patients Will Be Irreparably Harmed by the Abortion Ban.**

44. The Abortion Ban will entirely ban abortions in North Dakota, except in extremely narrow circumstances. Given that abortions are the principal service that the Clinic provides, the Abortion Ban will force the Clinic—the only abortion provider in North Dakota—to cease operations in the state. The Abortion Ban and the Clinic’s closure will have a devastating impact on the health, well-being, and economic prospects of women in North Dakota.

**a. Impact on Patient Access to Abortion**

45. The Abortion Ban prohibits all abortions in North Dakota, except in cases where an abortion is intended to prevent the death of a patient or performed to terminate pregnancies resulting from sexual assault and/or incest.

46. The Abortion Ban therefore prevents patients from obtaining abortions when necessary to avoid serious physical health risks associated with pregnancy that, while significant, are not as likely to be fatal. The Abortion Ban also prevents patients from obtaining abortions in cases where a patient has determined that an abortion is necessary for their emotional or social well-being, such as to allow the patient to care for existing children or other dependents, or to enable them to pursue or complete their education.

47. The Abortion Ban's threat of criminal liability may deter physicians from performing abortions even in cases where it is necessary to save a patient's life or where the pregnancy is the result of sexual assault or incest. Physicians will only have an affirmative defense under the Statute, requiring them to affirmatively prove that they performed the abortion with the intention of saving the patient's life or to terminate a pregnancy resulting from rape or incest. There is thus still risk of criminal liability for those physicians who perform those abortions which the Statute would permit. This risk of a felony prosecution and conviction may chill physicians from providing any abortion care at all, even in cases where a patient's life is at risk or where the patient is seeking to terminate a pregnancy resulting from sexual assault or incest.

48. By outlawing abortion in North Dakota except in the narrowest of circumstances, the Abortion Ban will necessarily force Plaintiffs to stop providing abortions in the state, leaving patients with no access to an abortion clinic in North Dakota. Patients seeking abortion care will be forced to travel out of state to access this essential healthcare procedure.

**b. Impact of Restricted Abortion on Patient Health, Safety, and Well-Being**

49. The Abortion Ban deprives patients of the ability to control decisions about their families and their health and thereby impairs their liberty interests under the North Dakota Constitution.

50. One study predicted that if abortions were banned nationwide in the U.S., "the annual number of pregnancy-related deaths would increase by 21% overall."<sup>19</sup> This staggering

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<sup>19</sup> Amanda Jean Stevenson, *Study Shows An Abortion Ban May Lead to a 21% Increase in Pregnancy-Related Deaths*, COL. ARTS & SCI. MAG. (Sept. 22, 2021), <https://www.colorado.edu/asmagazine/2021/09/22/study-shows-abortion-ban-may-lead-21-increase-pregnancy-related-deaths>.

statistic illustrates the enormous risk that the women of North Dakota will bear—risk that will sometimes be the difference between life and death—if the Abortion Ban goes into effect.<sup>20</sup>

51. Abortion legislation that relies on its enforcement by prosecuting healthcare providers results in a lack of access to medically necessary care, obstructs the physician-patient relationship, and chills providers from speaking candidly to patients about their medical options. For instance, in the wake of Texas Senate Bill 8, an abortion law that provides for civil liability for medical providers that provide abortions after six weeks of pregnancy, health care providers are “holding back when they need to outline medical options for their pregnant patients, particularly in the cases of those with high-risk pregnancies.”<sup>21</sup>

52. Thus, the Abortion Ban creates significant and unjustifiable public health risks by forcing pregnant women to carry unwanted pregnancies to term. It jeopardizes women’s health and safety by denying them access to a safe medical procedure that, if performed, would enable them to avoid the much greater health risks associated with pregnancy and birth.

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<sup>20</sup> *Compare Safety of Aspiration Abortion Performed by Nurse Practitioners, Certified Nurse Midwives, and Physician Assistants Under a California Legal Waiver*, 103(3) AM. J. PUB. HEALTH 454, 458 (2013) and *The Safety and Quality Of Abortion Care In The United States* 77 Nat’l Acads. Of Sci., Eng’g, And Med. (The National Academies Press 2018), available at <http://nap.edu/24950> (“The clinical evidence makes clear that legal abortions in the United States—whether by medication, aspiration, D&E, or induction—are safe and effective.”), with Lisa Marshall, *Study: Banning Abortion would boost maternal Mortality by Double-Digits*, CU BOULDER TODAY, UNIV. OF COLO. BOULDER, (Sep. 8, 2021), <https://www.colorado.edu/today/2021/09/08/study-banning-abortion-would-boost-maternal-mortality-double-digits>, and Neha Wadekar, *What Happens When Women Can’t Get Legal Abortions*, FP (Sept. 3, 2021), <https://foreignpolicy.com/2021/09/03/abortion-ban-texas-supreme-court-kenya-uganda-africa/>.

<sup>21</sup> Sneha Dey & Karen Brooks Harper, *Abortion Restrictions Threaten Care for Pregnant Patients, Providers Say*, TEXAS TRIBUNE (May 24, 2022), <https://www.texastribune.org/2022/05/24/texas-abortion-law-pregnancy-care/>.

53. The Abortion Ban will also prevent women from exercising control over their economic and social lives. Research shows that women denied access to abortion and forced to carry pregnancies to term are four times more likely to live below the federal poverty level.<sup>22</sup> Although men may also be economically affected by having a new child, parenthood widens the pay gap between men and women, significantly decreasing women’s average lifetime earnings.<sup>23</sup>

## CLAIMS FOR RELIEF

### First Claim for Relief

#### (Right to Terminate a Pregnancy)

54. The allegations of paragraphs 1 through 53 are incorporated as though fully set forth herein.

55. The North Dakota Constitution guarantees all people the inalienable right of “enjoying and defending life and liberty” and “pursuing and obtaining safety and happiness.” N.D. Const. Art. I, § 1. The due process language in article I, § 12 of the Constitution “protects and insures the use and enjoyment of the rights declared” by article I, § 1. *State v. Cromwell*, 72 N.D. 565, 575, 9 N.W.2d 914, 919 (N.D. 1943).

56. The Abortion Ban unconstitutionally deprives Plaintiffs’ patients of their right to life, safety, and happiness under Article I, §§ 1 and 12 of the Constitution of the State of North

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<sup>22</sup> *The Turnaway Study*, Advancing New Standards in Reproductive Health (ANSIRH) (last accessed: July 1, 2022) <https://www.ansirh.org/research/ongoing/turnaway-study>. See generally Diana Green Foster, *The Turnaway Study: Ten Years, a Thousand Women, and the Consequences of Having—or Being Denied—an Abortion* (Scribner 2020). See also Ushma D. Upadhyay et al., *The Effect of Abortion on Having and Achieving Aspirational One-Year Plans*, BMC WOMEN’S HEALTH (Nov. 11, 2015).

<sup>23</sup> See YoonKyung Chung et al., *The Parental Gender Earnings Gap in the United States*, Center for Economic Studies, CES 17-68 (Nov. 2017); Henrik Kleven et al., *Children and Gender Inequality: Evidence from Denmark* (Nat’l Bureau of Econ. Rsch., Working Paper No. 24219, Jan. 2018).

Dakota by prohibiting all abortions except in cases of rape, incest, or to protect the life of the pregnant woman.

57. The Abortion Ban reflects an animus towards abortion, physicians who perform abortions, and women who obtain abortions. Its sole purpose is to eliminate access to abortion in North Dakota.

58. By denying access to abortion care, the Abortion Ban deprives patients of the ability to control their reproductive decisions, impairs their liberty interests, and threatens their safety. It restricts patients' healthcare decisions by preventing them from being able to access abortion care and forcing them to remain pregnant against their will. It therefore creates a significant and unjustifiable public health crisis by forcing pregnant people to carry unwanted pregnancies to term, and it prevents Plaintiffs' patients from exercising control over their economic and social lives.

59. The Abortion Ban also deprives Plaintiffs' patients of their personal autonomy and self-determination, as well as interfering with Plaintiffs' ability to make decisions about their familial relationships.

60. Further, the Abortion Ban relies on the targeting and prosecution of healthcare providers for its enforcement. This mechanism operates as a total ban because it puts providers at risk of a felony conviction, chilling physicians from providing care even in situations where the abortion may be medically necessary to save the patient's life or forcing them to allow a patient's situation to worsen until they are at death's door. The Abortion Ban will thus cause unneeded and preventable death and serious injury.

61. The Abortion Ban therefore directly infringes on Plaintiffs' patients' rights to life, safety, and happiness, which Article I guarantees to all people, by threatening their lives, economic security, and mental health.

## Second Claim for Relief

### (Declaratory Judgment)

62. The allegations of paragraphs 1 through 61 are incorporated as though fully set forth herein.

63. The North Dakota Declaratory Judgment Act, N.D.C.C. § 32-23-01 *et seq.*, allows “[a]ny person” who is “affected by a statute, municipal ordinance, contract, or franchise, [to] have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and may obtain a declaration of rights, status, or other legal relations thereunder.” N.D.C.C. § 32-23-02. “The provisions authorizing declaratory relief are remedial and are to be construed and administered liberally to afford relief from uncertainty about rights, status, and other legal relations.” *City of Harwood v. City of Reiles Acres*, 2015 ND 33, ¶ 11, 859 N.W.2d 13 (citing N.D.C.C. § 32-23-12).

64. Under H.B. 1546, the Attorney General lacks authority to certify to the legislative council that the United States Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, Case No. 19-1392, has “restore[d] to the states authority to prohibit abortion,” as required to trigger the effective date of N.D.C.C. § 12.1-31-12, because the Supreme Court has not issued its judgment in *Dobbs*.

65. Plaintiffs seek a declaratory judgment that the Attorney General’s purported certification is without legal force or effect. Because the condition precedent to the effective date of the Abortion Ban has not been met, the Attorney General does not have the legal authority to certify the effective date of the Statute, and the Abortion Ban remains unenforceable.

66. Plaintiffs further affirmatively plead and allege that they have sued Defendants in their official capacities, state officials are necessary parties to this suit, and governmental immunity does not apply.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

- 67. Issue a declaratory judgment that the contingent effective date of the Abortion Ban cannot be triggered until the United States Supreme Court issues a judgment in *Dobbs v. Jackson Women's Health Organization*, Case No. 19-1392;
- 68. Issue a declaratory judgment that the Abortion Ban violates the Constitution of the State of North Dakota and is void and of no effect;
- 69. Issue permanent injunctive relief, without bond, restraining Defendants, their employees, agents, and successors in office from triggering the effective date of the Abortion Ban until the Supreme Court has issued its judgment in *Dobbs*;
- 70. Issue a temporary restraining order and preliminary injunction, later to be made permanent, restraining Defendants, their employees, agents, successors, and anyone acting in concert with them from enforcing the Abortion Ban; and
- 71. Grant such other and further relief as the Court may deem just and proper.

Dated this 6th day of July 2022.

/s/ Thomas Dickson

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\* Applications for admission *pro hac vice* to be filed