

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

REV. TOM CAPO, a Minister of The
Unitarian Universalist Congregation of Miami
in Miami-Dade County, Florida,

Case No. _____

VERIFIED COMPLAINT

Plaintiff,

-against-

STATE OF FLORIDA, ASHLEY MOODY,
in her official capacity as ATTORNEY
GENERAL for the State of Florida; GINGER
BOWDEN MADDEN, in her official capacity
as State Attorney for the First Judicial Circuit
of Florida; JACK CAMPBELL, in his official
capacity as State Attorney for the Second
Judicial Circuit of Florida; JOHN DURRETT,
in his official capacity as State Attorney for the
Third Judicial Circuit of Florida; MELISSA
W. NELSON, in her official capacity as State
Attorney for the Fourth Judicial Circuit of
Florida; WILLIAM GLADSON, in his official
capacity as State Attorney for the Fifth Judicial
Circuit of Florida; BRUCE BARTLETT, in his
official capacity as State Attorney for the Sixth
Judicial Circuit of Florida; R.J. LARIZZA, in
his official capacity as State Attorney for the
Seventh Judicial Circuit of Florida; BRIAN S.
KRAMER, in his official capacity as State
Attorney for the Eighth Judicial Circuit of
Florida; MONIQUE H.WORRELL, in her
official capacity as State Attorney for the
Ninth Judicial Circuit of Florida; BRIAN
HAAS, in his official capacity as State
Attorney for the Tenth Judicial Circuit of
Florida; KATHERINE FERNANDEZ
RUNDLE, in her official capacity as State
Attorney for the Eleventh Judicial Circuit of
Florida; ED BRODSKY, in his official
capacity as State Attorney for the Twelfth
Judicial Circuit of Florida; ANDREW H.
WARREN, in his official capacity as State
Attorney for the Thirteenth Judicial Circuit of
Florida; LARRY BASFORD, in his official
capacity as State Attorney for the Fourteenth

Judicial Circuit of Florida; DAVID A. ARONBERG, in his official capacity as State Attorney for the Fifteenth Judicial Circuit of Florida; DENNIS W. WARD, in his official capacity as State Attorney for the Sixteenth Judicial Circuit of Florida; HAROLD F. PRYOR, in his official capacity as State Attorney for the Seventeenth Judicial Circuit of Florida; PHILIP G. ARCHER, in his official capacity as State Attorney for the Eighteenth Judicial Circuit of Florida; THOMAS BAKKEDAHL, in his official capacity as State Attorney for the Nineteenth Judicial Circuit of Florida; and AMIRA D. FOX, in his official capacity as State Attorney for the Twentieth Judicial Circuit of Florida,

Defendants.

VERIFIED COMPLAINT

For his Verified Complaint against Defendants the State of Florida, Ashley Moody, Ginger Bowden Madden, Jack Campbell, John Durrett, Melissa W. Nelson, William Gladson, Bruce Bartlett, R.J. Larizza, Brian S. Kramer, Monique H. Worrell, Brian Haas, Katherine Fernandez-Rundle, Ed Brodsky, Andrew Warren, Larry Basford, David A. Aronberg, Dennis W. Ward, Harold F. Pryor, Philip G. Archer, Thomas Bakkedahl, and Amira D. Fox, each of whom are sued in their official capacities (collectively referred to herein as “Defendants”), Plaintiff Tom Capo, by and through undersigned counsel, alleges and avers as follows:

PRELIMINARY STATEMENT

1. This is a lawsuit brought by Reverend Tom Capo, a Unitarian Universalist minister in Miami-Dade County, whose religious beliefs, speech, and conduct are severely burdened by the state of Florida’s criminalization of abortion in many circumstances where the Unitarian Universalist faith supports the decision to have an abortion. The lawsuit is seeking to invalidate

House Bill 5, the Reducing Fetal and Infant Mortality Act (“HB 5” or the “Act”), because it violates: (1) the rights of Plaintiff to liberty of speech and free exercise and enjoyment of religion, guaranteed by Article I, §§ 3, 4 of the Florida Constitution, (2) the Florida Religious Freedom Restoration Act, Fla. Stat. Ann. § 761.03 (“FRFRA”), and (3) Plaintiff’s freedom of speech and free exercise of religion guaranteed by the First and Fourteenth Amendments to the United States Constitution. Under HB 5 and Florida’s criminal law, Plaintiff is at risk of prosecution for counseling women, girls, and families to obtain an abortion beyond the narrow bounds of HB 5 as someone who aids and abets the crime. Under Florida’s aiding and abetting law, he commits the crime itself by counseling in favor of it.

2. The relationship between a clergy member and their congregants represents a sacred trust. In the Unitarian Universalist faith, clergy have an obligation to guide their congregants and members of the faith community in upholding the Seven Principles of their faith, including in respecting and understanding the inherent worth and dignity of every person, which includes a right to bodily autonomy and self-determination; seeking and promoting justice, equity, and compassion in human relations; and advancing the goal of world community with peace, liberty, and justice for all.

3. Congregants in the Unitarian Universalist faith seek counsel and guidance from their clergy on issues related to the spiritual, physiological, and psychological aspects of sex and sexuality including decisions related to pregnancy and childbirth, family planning, and abortion. In return, Unitarian Universalist clergy have provided counseling that aligns with the Seven Principles of the Unitarian Universalist faith.

4. Unitarian Universalists believe that the inherent worth and dignity of every person, the right of individual conscience, and respect for human life are inalienable rights due to every

person, and that the personal right to choose in regard to abortion, as well as to the safe access to abortion care, are important aspects of these rights. These fundamental beliefs have, until now, been protected, revered, and respected as sacrosanct and inviolable. Now, Defendants have inserted themselves into these basic principles of the Unitarian Universalist faith by imposing criminal penalties on those who counsel, aid, and/or assist with an abortion after fifteen weeks, with no religious accommodation provided and no exceptions for incest, rape, trafficking, non-fatal fetal abnormalities, or psychological disease or impairment.

5. Plaintiff engages in religious counseling that honors the congregants' inherent value, autonomy and right to self-determination, guiding congregants to reach informed decisions about the termination of pregnancy and to act upon them.

6. The Florida Legislature recently passed the Act, which bans abortions after fifteen weeks as dated from the first day of an individual's last menstrual period (LMP) with two extremely limited exceptions. *See* Ch. 2022-69, §§ 3–4, Laws of Fla. (amending §§ 390.011, 390.0111, Fla. Stat.); Fla. Stat. § 390.0111(1)(a)–(b); § 390.011(6). There is no exception for incest, rape, trafficking, non-fatal fetal abnormalities or psychological disease or impairment.

7. The Act was signed into law by Governor Rick DeSantis on April 14, 2022, and it took effect on July 1, 2022.

8. HB 5, entitled the Infant and Fetal Abnormality Act, establishes as the law of the State of Florida, a pernicious elevation of the legal rights of fetuses while at the same time it devalues the quality of life and the health of the woman or girl who is pregnant. It is in direct conflict with Plaintiff's clerical obligations and faith and imposes severe barriers and substantial burdens to his religious belief, speech, and conduct. It also imposes severe burdens on the religious beliefs,

speech, and conduct of his congregants and members of Plaintiff's Church, and the Unitarian Universalist faith.

9. HB 5 violates the sacred trust between a clergy member and his or her congregants, and tramples Plaintiff's First Amendment and Florida constitutional rights to free speech and free exercise of religion, and his rights under FRFRA. It also violates the separation of church and state under the federal and state constitutions.

10. Bedrock principles under the First Amendment invalidate HB 5, and Defendants' actions have caused, are causing, and will continue to cause irreparable injury to Plaintiff's fundamental and cherished liberties.

11. The dramatic change in abortion rights in Florida has caused confusion and fear among clergy and pregnant women and girls particularly in light of the criminal penalties attached. Given his general duties and work as a minister, Plaintiff intends to engage in counseling regarding abortion beyond the narrow limits of HB 5 and, therefore, risks incarceration and financial penalties.

12. When fundamental rights like the freedom of speech and free exercise hang in the balance, a plaintiff is not required to expose themselves to actual arrest or prosecution. HB 5's criminal penalties constitute a credible threat of prosecution to Plaintiff.

13. HB 5 severely chills the speech of Unitarian Universalist clergy with their members, because HB 5 is unconstitutionally vague and, therefore, substantially chills this sacred communication. The Act further provides for no exceptions for the victims of incest, rape, or trafficking, non-fatal fetal abnormalities, or psychological disease or impairment, which are all circumstances in which the Unitarian Universalist faith would support and/or counsel in favor of an individual's decision to have an abortion before or after fifteen weeks.

14. A violation of the Act constitutes a third-degree felony; “any person” who “willfully performs” or “actively participates” in an abortion in violation of the law is subject to criminal penalties, including imprisonment of up to five years and monetary penalties up to \$5,000 for a first offense. §§ 390.0111(10)(a), 775.082(8)(e), 775.083(1)(c), Fla. Stat.

15. Under Florida law, counseling or encouraging a crime constitutes “aiding and abetting” that crime and is considered under the law someone who committed the crime. *See* Fla. Stat. § 777.011 (“Whoever commits any criminal offense against the state, whether felony or misdemeanor, or aids, abets, counsels, hires, or otherwise procures such offense to be committed... is a principal in the first degree and may be charged, convicted, and punished as such, whether he or she is or is not actually or constructively present at the commission of such offense.”). Thus, counseling to obtain an abortion in violation of HB 5’s strictures appears likely to be a crime under HB 5.

16. HB 5 criminalizes abortion after fifteen weeks from a woman or girl’s LMP except in severely limited exceptions. While it clearly regulates doctors and healthcare delivery centers, its criminal penalties for them can be interpreted to create criminal aiding and abetting liability for clergy who counsel a family or pregnant woman or girl to seek an abortion beyond the narrow confines HB 5 permits. The Act is so vague that it provides no reliable guidance regarding whether Plaintiff will violate the law when they affirmatively advise and support their believers to choose an abortion beyond HB 5’s extreme limitations. *See* Ch. 2022-69, §§ 3–4, Laws of Fla. The Act leaves Plaintiff with no choice but to interpret the Act broadly due to its vagueness, or risk criminal penalties.

17. Since time immemorial, the questions of when a potential fetus becomes life and how to value maternal life during a pregnancy have been answered according to religious beliefs

and creeds. HB 5 codifies one of the possible religious viewpoints on the question, and in its operation imposes severe burdens on other believers including Unitarian Universalist clergy like Plaintiff.

18. The Act severely burdens Plaintiff's right to engage in religious speech regarding when the Unitarian Universalist faith holds that life begins and the value placed on the mother's life. It further burdens the ability to speak freely and publicly about his religious beliefs and to provide religious counseling consistent with those beliefs, in violation of Plaintiff's free speech and religious liberty rights.

19. Thus, Plaintiff seeks preliminary and permanent injunctive relief against Defendants, enjoining the enforcement of the Act, and a declaratory judgment declaring that the Act, both on its face and as applied, is an unconstitutional violation of Article I, §§ 3, and 4 of the Florida Constitution, FRFRA, and the First and Fourteenth Amendment to the United States Constitution.

THE PARTIES, JURISDICTION, AND VENUE

20. Plaintiff Tom Capo ("Plaintiff") is a minister in a Unitarian Universalist congregation operating in Miami-Dade County, Florida. Plaintiff files this lawsuit on behalf of himself because he is in danger of criminal penalty due to his sacred duty to advise and counsel the congregants, members, supporters, and families within his Unitarian congregation on the principles and ideologies of the faith, particularly related to maternal health, abortion and related reproductive healthcare measures, as well as incest, rape, and trafficking.

Defendants

21. Defendant the State of Florida, through its Legislature and Governor, adopted the challenged Act.

22. Defendant Ashley Moody is the Attorney General for the State of Florida, an elected cabinet official and the chief legal officer in the State of Florida, responsible for the enforcement of the laws of Florida and obligated to offer her opinion if she concludes that a law, such as the Act, is unconstitutional and unenforceable. Defendant Moody is sued in her official capacity as are her agents and successors.

23. Defendant Ginger Bowden Madden is the state attorney of the First Judicial Circuit of Florida. Defendant Bowden Madden is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Bowden Madden is sued in her official capacity, as are her agents and successors.

24. Defendant Jack Campbell is the state attorney of the Second Judicial Circuit of Florida. Defendant Campbell is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Campbell is sued in his official capacity, as are his agents and successors.

25. Defendant John Durrett is the state attorney of the Third Judicial Circuit of Florida. Defendant Durrett is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Durrett is sued in his official capacity, as are his agents and successors.

26. Defendant Melissa W. Nelson is the state attorney of the Fourth Judicial Circuit of Florida. Defendant Nelson is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Nelson is sued in her official capacity, as are her agents and successors.

27. Defendant William Gladson is the state attorney of the Fifth Judicial Circuit of Florida. Defendant Gladson is authorized to initiate and prosecute alleged violations of the Act.

§ 27.02(1), Fla. Stat. Defendant Gladson is sued in his official capacity, as are his agents and successors.

28. Defendant Bruce Bartlett is the state attorney of the Sixth Judicial Circuit of Florida. Defendant Bartlett is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Bartlett is sued in his official capacity, as are his agents and successors.

29. Defendant R.J. Larizza is the state attorney of the Seventh Judicial Circuit of Florida. Defendant Larizza is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Larizza is sued in his official capacity, as are his agents and successors.

30. Defendant Brian S. Kramer is the state attorney of the Eighth Judicial Circuit of Florida. Defendant Kramer is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Kramer is sued in his official capacity, as are his agents and successors.

31. Defendant Monique H. Worrell is the state attorney of the Ninth Judicial Circuit of Florida. Defendant Worrell is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Worrell is sued in her official capacity, as are her agents and successors.

32. Defendant Brian Haas is the state attorney of the Tenth Judicial Circuit of Florida. Defendant Haas is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Haas is sued in his official capacity, as are his agents and successors.

33. Defendant Katherine Fernandez-Rundle is the state attorney of the Eleventh Judicial Circuit of Florida. Defendant Fernandez-Rundle is authorized to initiate and prosecute

alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Fernandez-Rundle is sued in her official capacity, as are her agents and successors.

34. Defendant Ed Brodsky is the state attorney of the Twelfth Judicial Circuit of Florida. Defendant Brodsky is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Brodsky is sued in his official capacity, as are his agents and successors.

35. Defendant Andrew H. Warren is the state attorney of the Thirteenth Judicial Circuit of Florida. Defendant Warren is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Warren is sued in his official capacity, as are his agents and successors.

36. Defendant Larry Basford is the state attorney of the Fourteenth Judicial Circuit of Florida. Defendant Basford is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Basford is sued in his official capacity, as are his agents and successors.

37. Defendant David A. Aronberg is the state attorney of the Fifteenth Judicial Circuit of Florida. Defendant Aronberg is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Aronberg is sued in his official capacity, as are his agents and successors.

38. Defendant Dennis W. Ward is the state attorney of the Sixteenth Judicial Circuit of Florida. Defendant Ward is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Ward is sued in his official capacity, as are his agents and successors.

39. Defendant Harold F. Pryor is the state attorney of the Seventeenth Judicial Circuit of Florida. Defendant Pryor is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Pryor is sued in his official capacity, as are his agents and successors.

40. Defendant Philip G. Archer is the state attorney of the Eighteenth Judicial Circuit of Florida. Defendant Archer is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Archer is sued in his official capacity, as are his agents and successors.

41. Defendant Thomas Bakkedahl is the state attorney of the Nineteenth Judicial Circuit of Florida. Defendant Bakkedahl is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Bakkedahl is sued in his official capacity, as are his agents and successors.

42. Defendant Amira D. Fox is the state attorney of the Twentieth Judicial Circuit of Florida. Defendant Fox is authorized to initiate and prosecute alleged violations of the Act. § 27.02(1), Fla. Stat. Defendant Fox is sued in his official capacity, as are his agents and successors.

Jurisdiction and Venue

43. This Court has jurisdiction over this action pursuant to Article V, § 5(b) of the Florida Constitution and Sections 26.012(3) and 86.011, Florida Statutes.

44. This Court is authorized to grant declaratory judgment under and a permanent injunction pursuant to Chapter 86 and Section 26.012(3), Florida Statutes, and Florida Rules of Civil Procedure Rule 1.610.

45. Venue is proper in this Court pursuant to Section 47.021, Florida Statutes, because at least one Defendant has a principal office in Miami-Dade County.

STATEMENT OF FACTS

46. Unitarian Universalist clergy teach that the decision by a member of the Unitarian Universalist faith to terminate a pregnancy for any reason should be based on a combination of diverse, complex, and interrelated factors that are intimately tied to an individual woman or girl's religious values and beliefs under the Unitarian Universalist faith.

47. Some women, girls, and others who give birth, such as the members, congregants, and supporters of Plaintiff's congregation, have an abortion because it is required by their religious faith. For Unitarian Universalists, all human life is sacred, and thus the decision to bring new life into the world is not taken lightly and includes the value of life and well-being of the pregnant woman or girl. The Unitarian Universalist Association recognizes the moral, legal, personal, and societal complexity of the issue and the principles of the faith require great pastoral sensitivity to the needs of women, girls, and others who may birth, as well as all involved in decisions relating to abortion.

48. Unitarian Universalists believe that "the inherent worth and dignity of every person, the right of individual conscience, and respect for human life are inalienable rights due every person; and that the personal right to choose in regard to contraception and abortion is an important aspect of these rights." Unitarian Universalist Association, *Right to Choose: 1987 General Resolution*, <https://www.uua.org/action/statements/right-choose>.

49. The Unitarian Universalist Association embraces the "reproductive justice framework, which espouses the human right to have children, not to have children, to parent the children one has in healthy environments and to safeguard bodily autonomy..." and acknowledges

that an individual’s reproductive choices “are influenced by social and political systems as well as by factors such as racial/cultural identity, economic status, immigration/citizenship status, relationship with the justice system, health status, and ability.”_Unitarian Universalist Association, *Reproductive Justice: 2015 Statement of Conscience*, <https://www.uua.org/action/statements/reproductive-justice>.

50. The Unitarian Universalist faith believes that “[e]very person has the right to determine if, when, and how they want to have children. As people of faith, this commitment is part of our sincerest religious values: Unitarian Universalism proclaims that all individuals and communities have the right to self-determination, safety, and the resources that are necessary for health and sustainability...Comprehensive reproductive care, including access to abortion, is essential to the health and well-being of women and pregnant people.” *UUs Remain Committed to Supporting Reproductive Justice, Will Continue to Fight for Abortion Access* (May 3, 2022), <https://www.uua.org/pressroom/press-releases/fight-abortion-access>.

51. Plaintiff firmly believes and supports the principles of the Unitarian Universalist faith set forth above related to reproductive health care and procedures, including abortions, and uses these principles in counseling and advising congregants and their broader communities. Plaintiff has given sermons on reproductive justice and believes his role in counseling and advising women and girls faced with these issues is to be a pillar of discernment and support as she makes her own decision.

52. As set forth above, on July 1, 2022, the Act took effect. As a result, Florida’s law now bans abortions after fifteen weeks from the LMP with two extremely limited exceptions. *See* Ch. 2022-69, §§ 3–4, Laws of Fla. (amending §§ 390.011, 390.0111, Fla. Stat.); Fla. Stat. § 390.0111(1)(a)–(b); § 390.011(6).

53. The Act establishes as the law of the State of Florida, a particular and narrow religious view about abortion and when “life” begins. This view is contrary to the religious beliefs of Plaintiff and the Unitarian Universalist faith.

54. The Act further provides for no exceptions for the psychological health of the mother or family, non-fatal fetal abnormalities, or victims of incest, rape, or trafficking, which are all circumstances in which the Unitarian Universalist Church would, amongst other circumstances, support a girl or woman’s decision to have an abortion before or after fifteen weeks.

55. As mentioned, a violation of the Act constitutes a third-degree felony; “any person” who “actively participates” in an abortion in violation of the law is subject to criminal penalties, including imprisonment of up to five years and monetary penalties up to \$5,000 for a first offense. §§ 390.0111(10)(a), 775.082(8)(e), 775.083(1)(c), Fla. Stat. (emphasis added). Counseling or encouraging a crime constitutes “aiding and abetting” a crime under Florida law. *See* Fla. Stat. § 777.011. Thus, counseling to obtain an abortion in violation of HB 5’s strictures appears likely to be a crime under HB 5.

56. HB 5 criminalizes abortion after fifteen weeks of gestation (except for severely limited exceptions) but is so vague that it provides no reliable guidance regarding whether clergy violate the law as aiders and abettors when they affirmatively advise and support their believers to choose an abortion beyond HB 5’s extreme limitations. *See* Ch. 2022-69, §§ 3–4, Laws of Fla.

57. The Act’s vagueness and criminal penalties have chilled Plaintiff’s ability to discuss and counsel a congregant’s choices and considerations regarding healthcare, including abortion services.

58. Plaintiff has significant experience counseling pregnant individuals, and doing so is a part of the requirements of Plaintiff’s position as a Unitarian Universalist minister.

59. In providing guidance to pregnant individuals, Plaintiff, in accordance with the Unitarian Universalist faith, takes into account the physical, spiritual, and psychological effects resulting from the inception of the pregnancy, the state of being pregnant, and the potential outcome of the pregnancy. For example, in counseling a child who has been the victim of incest, rape and/or trafficking, as well as that child's parents, guardians, or family, Plaintiff would not hesitate to present to the custodial adult the likely negative repercussions of such a pregnancy and discuss all options for health care, including abortion.

60. Similarly, in counseling a pregnant adult who has been victimized by incest, rape, and/or trafficking, Plaintiff would seek to understand the state of mind and spirit of the pregnant adult, and work with the pregnant adult in accordance with the Unitarian Universalist faith to map a way forward to health and balance. Plaintiff is required by the Unitarian Universalist faith to provide that person with the guidance, tools, and information they need to decide whether to carry the pregnancy to term, exploring all options, including abortion.

61. In all cases, Plaintiff's Unitarian Universalist faith calls him to validate the decision of the pregnant individual, including if the decision is to seek an abortion.

62. Plaintiff's beliefs are consistent with Unitarian Universalist principles set forth above and, as a result, the Act substantially burdens the exercise of his religious faith because it hampers his ability to counsel congregants and speak freely on reproductive rights and issues, and burdens his congregants' ability to seek counsel from their religious leader.

63. The Act prohibits Plaintiff and similarly situated members of the clergy from practicing their faith and carrying out their duties as a clergy member and leader of a congregation. Instead, they face government intrusion, including possible criminal penalties, in violation of their First Amendment rights.

64. By impeding Plaintiff from delivering, and congregants from receiving, religious counsel on these intimate decisions about their families or when and under what circumstances to bring new life into the world, the Act not only threatens the clerical role but also the lives, dignity, and equality of Unitarian Universalists by denying religious freedom to congregants and their families. Thus, the Act effectively establishes the religion of its State proponents and prohibits the free exercise of the Unitarian Universalist religion by prohibiting Plaintiff and Plaintiff's members, congregants, and supporters from exercising their religious beliefs in the most intimate decisions of their lives in consultation with their family, medical providers, and clergy—including Plaintiff.

65. Because of the Act, Plaintiff is restricted from engaging in constitutionally protected speech, including providing counseling services to willing congregants and members of the community consistent with their sincerely held religious beliefs.

66. Because of the Act, Plaintiff, as well as other members of the Unitarian Universalist faith community, have suffered, are suffering, and will continue to suffer ongoing, immediate, and irreparable injury to their free speech and religious liberty rights.

67. Plaintiff has no adequate remedy at law to protect the ongoing, immediate, and irreparable injury to their constitutional rights.

68. The Act serves no compelling, legitimate, or rational governmental interest and in fact is harmful to the interests of the people of Florida. Thus, the relief sought by Plaintiff will serve the public interest.

COUNT I
VIOLATION OF FLORIDA RELIGIOUS FREEDOM RESTORATION ACT

69. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs as if fully set forth herein.

70. FRFRA prohibits the government from substantially burdening a person's exercise of religion even if the burden results from a law of general applicability, unless the government can demonstrate that application of the burden to the person: (1) furthers a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. The Act applies to any and all religious beliefs, speech, and conduct, not just those that are "central" to the faith. According to the Act, "any person" who "actively participates" in an abortion in violation of the law is subject to criminal penalties. §§ 390.0111(10)(a), 775.082(8)(e), 775.083(1)(c), Fla. Stat.

71. Through the Act, the government has placed a substantial burden on Plaintiff's religious practice, which is motivated by his sincere religious beliefs.

72. The Act substantially burdens Plaintiff, as well as his congregants and all members of the Unitarian Universalist faith, in the exercise of his Unitarian Universalist beliefs and practices regarding abortion.

73. Unitarian Universalism not only religiously supports access to reproductive health care, including abortion procedures, but considers it essential to its fundamental principles. "Every person has the right to determine if, when, and how they want to have children. As people of faith, this commitment is part of our sincerest religious values: Unitarian Universalism proclaims that all individuals and communities have the right to self-determination, safety, and the resources that are necessary for health and sustainability... Comprehensive reproductive care, including access to abortion, is essential to the health and well-being of women and pregnant people. ... Our faith still urgently calls us to advocate on behalf of all people to be able to readily access safe, legal abortion care whenever and wherever they need it." *UUs Remain Committed to Supporting Reproductive*

Justice, Will Continue to Fight for Abortion Access (May 3, 2022), <https://www.uua.org/pressroom/press-releases/fight-abortion-access>.

74. The Unitarian Universalist Association maintains that: “We believe that all bodies are sacred. Every person has the right to determine what happens to their own body at all phases of life—including if, when, and how they want to have children. As people of faith, this commitment is part of our deepest religious values: Unitarian Universalism proclaims that all individuals and communities have the right to self-determination, safety, and the resources that are necessary for health and sustainability.” *Outraged By Texas Abortion Law, UUs Remain Committed to Reproductive Justice* (September 10, 2021), <https://www.uua.org/pressroom/press-releases/uus-remain-committed-reproductive-justice>.

75. The Act intentionally places a substantial burden on Plaintiff’s sincerely held religious beliefs by prohibiting Plaintiff’s practice of Unitarian Universalist ideals related to abortion. This practice includes providing religious services and counseling to congregants on the principles held by Unitarian Universalism that is required as a member of the clergy, and which appear to be or are criminalized by HB 5.

76. The right to receive and support quality reproductive healthcare for all members of Unitarian Universalism, including abortion procedures in certain circumstances, is a significant component of Unitarian Universalist practice, and FRFRA guarantees the right of Plaintiff and the Church’s congregants to exercise the freedom to engage in religious practices without governmental interference absent a compelling state interest that is achieved through the least restrict means for Plaintiff.

77. There is not a compelling state interest furthered by the Act, which runs contrary to the economic, medical, psychological, and many other interests of the state.

78. Even if it were found that the Act serves a compelling state interest, it is not the least restrictive means of furthering those interests. Plaintiff is required by his faith to counsel believers that abortion decisions require consideration of many factors the Act prohibits, and to advise in favor of abortion in numerous situations the Act makes illegal.

79. The State did not provide a religious exemption or provide exceptions in cases such as non-fatal fetal abnormalities, psychological disease or impairment, rape, incest, and/or trafficking, all of which would be factors under the Unitarian Universalist faith. Instead, the Act prohibits abortions after fifteen weeks gestation with just two narrow exceptions, which means there are many instances where HB 5 violates the religious beliefs and conduct of Plaintiff.

80. The Act's violation of Plaintiff's rights under FRFRA is causing and will continue to cause Plaintiff and the Church's congregants to suffer undue and actual hardship and irreparable injury.

81. Plaintiff has no adequate remedy at law to correct the continuing deprivation of rights.

COUNT II
VIOLATION OF RIGHT TO LIBERTY OF SPEECH UNDER
ARTICLE 1, SECTION 4 OF THE FLORIDA CONSTITUTION

82. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs as if fully set forth herein.

83. Article I, § 4 of the Constitution of the State of Florida provides, "Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press."

84. The threat of criminal liability for violations of the Act restrains Plaintiff's ability to speak freely about the fundamental tenets of the Unitarian Universalist faith and to counsel

congregants on matters of family planning, pregnancy and childbirth, and abortion in accordance with Plaintiff's sincerely held religious beliefs and those of his congregants.

85. The Act vests unbridled discretion in government officials to apply or not apply the penalties in a manner that restricts free speech, and subjects Plaintiff to violations of Unitarian Universalist religious tenets.

86. Defendants lack compelling, legitimate, significant, or even rational governmental interests to justify the Act's infringements of the right to free speech.

87. The Act, on its face and as applied, is not the least restrictive means to accomplish any permissible government purposes sought to be served by the law.

88. The Act does not leave open ample alternative channels of communication for Plaintiff.

89. The Act, on its face and as applied, is irrational and unreasonable and imposes unjustifiable and unreasonable restrictions on constitutionally protected speech.

90. The Act's violation of Plaintiff's right of free speech has caused, is causing, and will continue to cause Plaintiff and Unitarian Universalist congregants to suffer undue and actual hardship and irreparable injury.

91. Plaintiff has no adequate remedy at law to correct the continuing deprivation of the cherished constitutional liberties.

COUNT III
**VIOLATION OF RIGHT TO FREE EXERCISE AND ENJOYMENT OF RELIGION
UNDER ARTICLE I, SECTION 3 OF THE FLORIDA CONSTITUTION**

92. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs as if fully set forth herein.

93. Article I, § 3 of the Florida Constitution provides, “There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof.”

94. The Florida Constitution goes beyond the United States Constitution in its protection of religious freedom in that it adds that the free exercise of religion may not be penalized. Claims under Florida’s Free Exercise Clause are analyzed the same as claims under the First Amendment.

95. Plaintiff and the members, congregants, and supporters of the Unitarian Universalist faith rely on Unitarian Universalist doctrine and ideals regarding abortion, which differs from the requirements of the Act. If the congregants and supporters of Plaintiff practice their religion regarding decisions related to abortion, they will be penalized by the State in violation of the Constitution.

96. The Act, on its face and as applied, targets Plaintiff’s sincerely held religious beliefs regarding autonomy and the right to self-determination, reproductive health, and abortion which are informed by religious text and constitute central components of their faith. Plaintiff also has sincerely held religious beliefs to provide spiritual counsel and assistance to congregants within the Church who seek such counsel and to do so from a religious viewpoint that aligns with the faith’s religious beliefs and those of the congregants.

97. The Act, on its face and as applied, violates the rights of Plaintiff and Unitarian Universalist congregants by unconstitutionally establishing religion in the context of decisions regarding abortion, and prohibiting and penalizing the practice of Unitarian Universalist principles in matters of abortion.

98. Through the implementation of the Act, Defendants are establishing their religious views on when life begins and foisting them upon Plaintiff and Unitarian Universalist congregants.

99. The Act further prohibits and penalizes Plaintiff and Unitarian Universalists for practicing their beliefs and living in accordance with their faith.

100. The Act thus places Plaintiff and Unitarian Universalist congregants in an irresolvable conflict between compliance with their religious beliefs and compliance with the Act.

101. The Act, on its face and as applied, is neither neutral nor generally applicable, but rather specifically and discriminatorily target the religious viewpoints of Plaintiff and Unitarian Universalist congregants.

102. The Act's purported interest in protecting life is unsubstantiated and thus does not constitute a compelling government interest.

103. No compelling government interests justify the burdens Defendants impose upon Plaintiff's and Unitarian Universalist congregants' rights to the free exercise of religion.

104. Even if the Act was supported by compelling government interests, they are not the least restrictive means to accomplish any permissible government purpose, which the Act seeks to serve.

105. The Act, both on its face and as applied, has failed to accommodate Plaintiff's sincerely held religious beliefs in the violation of the rights to free exercise of religion.

106. The Act's violation of Plaintiff's rights has caused, is causing, and will continue to cause Plaintiff and Unitarian Universalist congregants to suffer undue and actual hardship and irreparable injury.

107. Plaintiff has no adequate remedy at law to correct the continuing deprivation of the most cherished constitutional liberties.

COUNT IV
VIOLATION OF FREE SPEECH UNDER THE FIRST AMENDMENT

108. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs as if fully set forth herein.

109. The Act is unconstitutional on its face and as applied under the Free Speech Clause First Amendment.

110. The Free Speech Clause, which is applied to the states through incorporation into the Fourteenth Amendment, states that the government may not “abridge the freedom of speech.” U.S. Const. amend. I. Religious speech is one of the most highly valued types of speech under First Amendment doctrine. The freedom of religious speech is infringed when the government chills religious speech due to vagueness and suppresses religious speech without a compelling interest or narrow tailoring.

111. The threat of criminal liability for violations of the Act suppresses Plaintiff’s ability to speak freely about the fundamental tenets of the Unitarian Universalist faith and to counsel his congregants on matters of family planning, pregnancy and childbirth, and abortion in accordance with his sincerely held religious beliefs and those of the Unitarian Universalist Association and congregants.

112. The Act is not narrowly tailored and does not leave open ample alternative channels of communication for Plaintiff.

113. The Act, on its face and as applied, unconstitutionally chills and abridges the right of Plaintiff to freely communicate the fundamental religious beliefs of the Unitarian Universalist faith pertaining to family planning, pregnancy and childbirth, and abortion. It serves no compelling interest and is not narrowly tailored.

114. The Act vests unbridled discretion in government officials to make the choice in applying the penalties pursuant to the Act such that it restricts free speech, and subjects Plaintiff to violations of state law and Unitarian Universalist religious tenets.

115. The void-for-vagueness doctrine in the context of the First Amendment “requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory treatment.” The Act fails this test.

116. The Act is unconstitutional on its face, because it is void for vagueness by failing to specify the penalties for its violation and by failing to identify who could be prosecuted under its vague terms.

117. The Act fails to define the term “actively participates” and thus criminalizes behavior about which those of ordinary intelligence and experience would have to guess if and/or when it applies to them.

118. The Act fails to make clear if those who provide religious counseling regarding the permissibility of abortion under Unitarian Universalist principles or who support an individual’s decision to terminate a pregnancy beyond the narrow parameters of HB 5, would be subject to prosecution for “actively” participating in an abortion.

119. By failing to specify the penalties for violation of the Act, and who would be subject to such penalties, the Act leaves Plaintiff and other members of the clergy in the dark as to the dire consequences that could befall them if and when they exercise their religious beliefs, which has a chilling effect upon the freedom of religion.

120. The Act, on its face and as applied, is impermissibly vague as it requires those who could be subject to its penalties, as well as government and law enforcement officials tasked with

enforcing its penalties, to guess at their meaning and differ as to their application, severely burdening and chilling the free speech of Plaintiff and all clergy who share certain religious beliefs.

121. Defendants lack compelling, legitimate, significant, or even rational governmental interests to justify the Act's infringement on the right to free speech.

122. The Act, on its face and as applied, neither serves a compelling interest nor is narrowly tailored. The determination that a fetus becomes a human being at fifteen weeks of gestation is irrational, and there is nothing in the Act which explains why this date has been chosen to begin the imposition of harsh criminal penalties. Nor does the Act provide for accommodation for the many Unitarian Universalist clergy and believers highly value the life and well-being of the pregnant woman or girl and who do not believe that "life" begins at fifteen weeks.

123. The Act's violation of Plaintiff's right of religious speech has caused, is causing, and will continue to cause Plaintiff to suffer undue and actual hardship and irreparable injury.

124. Plaintiff has no adequate remedy at law to correct the continuing deprivation of his most cherished constitutional liberties.

COUNT V
VIOLATION OF THE FREE EXERCISE CLAUSE UNDER
THE FIRST AMENDMENT

125. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs as if fully set forth herein.

126. The Act is unconstitutional under the Free Exercise Clause on its face and as applied.

127. As described herein, and incorporated by reference, the Act violates the right of the Plaintiff, as well as the Unitarian Universalist's congregants and supporters, their families, and members of the Unitarian Universalist faith, from exercising their rights to freedom of religion in

the most intimate decisions of their lives. By harming and threatening the Unitarian Universalist faith, and the rights of Unitarian Universalist congregants who are or may become pregnant, the Act does irreparable harm and burdens Plaintiff's religious beliefs, speech, and conduct as well as the members of the Unitarian Universalist faith.

128. The Free Exercise Clause of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, provides that governments may "make no law prohibiting the free exercise [of religion]." U.S. Const. amend. I.

129. Plaintiff holds sincerely held religious beliefs to provide spiritual counsel and assistance to congregants and believers within the Unitarian Universalist congregation who seek such counsel. Plaintiff has sincerely held religious beliefs to engage in counseling honoring congregants' inherent worth and dignity, which includes the right to reach informed decisions about the termination of pregnancy and to act upon them beyond the narrow strictures of HB 5. The Free Exercise Clause permits Plaintiff to provide counseling and advice from a viewpoint that aligns with his sincerely held Unitarian Universalist beliefs and those of the congregants and believers who seek his guidance.

130. The Act, on its face and as applied, targets Plaintiff's sincerely held religious beliefs regarding the value of the life of a pregnant individual, bodily autonomy, and the right to self-determination, reproductive health, and abortion which are informed by The Seven Principles of the Unitarian Universalist faith, and which constitute central components of their faith. The Act causes them a direct and immediate conflict with Plaintiff's religious beliefs, speech, and conduct by prohibiting them from providing and receiving religious counseling that is consistent with their religious beliefs.

131. The Act, on its face and as applied, impermissibly burdens Plaintiff's sincerely held religious beliefs, speech, and conduct. The Act has also forced Plaintiff to choose between the fundamental teachings of the sincerely held religious beliefs and criminal penalties.

132. The Act places Plaintiff in an irresolvable conflict between compliance with their sincerely held religious beliefs and conduct and compliance with the Act.

133. The Act, on its face and as applied, is neither neutral nor generally applicable, but rather specifically and discriminatorily targets the religious speech, beliefs, and viewpoint of Plaintiff and those who share their beliefs in autonomy and self-determination and who treat decisions to terminate a pregnancy as fundamental to those rights.

COUNT VI
VIOLATION OF THE ESTABLISHMENT CLAUSE UNDER
THE FIRST AMENDMENT

134. Plaintiff hereby reiterates and adopts each and every allegation in the preceding paragraphs as if fully set forth herein.

135. The Establishment Clause under the First Amendment provides, in relevant part, that "Congress shall make no law respecting an establishment of religion." U.S. Const. amend. I.

136. The prohibition on abortions after fifteen weeks of gestation has no secular basis and is harmful to the interests of a wide variety of believers and citizens in Florida, including Plaintiff.

137. Women, girls, and others who terminate their pregnancy after fifteen weeks from the LMP often do so because they have health conditions that are caused or exacerbated by pregnancy or receive a diagnosis of a serious fetal condition or a serious medical condition of their own which makes carrying a fetus to term risky and medically inadvisable. Many fetal conditions

are not able to be identified until after fifteen weeks from the LMP, but these conditions are not accommodated by the Act's very limited exceptions.

138. The Act further does not recognize maternal well-being or psychological injury to the pregnant woman or girl as a weighty factor to be considered prior to an abortion, in violation of Plaintiff's faith and many other faiths. Nor does it provide for exceptions for incest, rape, or trafficking, again in conflict with many faiths including Plaintiff's. Rather, the Act reflects the views of a minority of Americans, whose faith rejects abortion and who seek, through legislation, to deny religious freedom on the issue of abortion to all others, under the notion that only they are capable of understanding God's law and judgments and the religious views of all others are wrong and thus not entitled to respect or constitutional protections.

139. The Act codifies the narrow religious views of few as the law of the State of Florida, which not only results in irreparable harm to Plaintiff and all others who espouse a different religious view.

140. The Unitarian Universalist Association has supported efforts to protect abortion rights as quintessential towards protecting the rights of women and girls, Unitarian Universalist families, and all people, which is essential in preserving the sanctity of life and ensuring the Unitarian Universalist principle of promoting the inherent worth and dignity of every person. Members and supporters of the Unitarian Universalist faith have also been among those who strongly believe in the principle of the separation of Church and state, which is violated by the Act.

141. Plaintiff's religious belief, as well as the congregants, supporters, and families of the Unitarian Universalist faith, do not require others to impose their religious views about when

life begins and the sanctify of life in order to supplant and replace by judicial fiat and the power of the State the Unitarian Universalist view of when life begins and the sanctity of life.

142. The Act, as written and applied, establishes a religion in the context of decisions regarding abortion and pregnant women and girls' well-being.

143. The Act is not justified by any compelling, legitimate, or rational justification. The purported "protection of life" with its thumb heavily on the side of the fetus over the pregnant woman or girl and the 15-week cutoff are devoid of economic, scientific, or medical merit.

144. The Act imposes on Florida the danger of the unity of the state with a singular minority religion, which the First Amendment's Establishment Clause was intended to deter. As the First Amendment's drafter, James Madison, put it: "Who does not see that the same authority which can establish Christianity, in exclusion of all other Religions, may establish with the same ease any particular sect of Christians, in exclusion of all other Sects?" *See* James Madison, Memorial and Remonstrance Against Religious Assessments (June 20, 1785), in 5 THE FOUNDERS' CONSTITUTION 82 (P. Kurland & R. Lerner eds. 1986). Plaintiff brings this lawsuit against Florida to ensure that religious diversity and mutual respect are restored to the state regarding when and how life is valued and begins.

145. Florida lawmakers and the Governor, through the Act, have imposed on the state the narrow views of a minority of believers without accommodation for any other religious believer.

146. The Act's violation of the separation of church and state has caused, is causing, and will continue to cause Plaintiff to suffer undue and actual hardship and irreparable injury.

147. An injunction of the Act is required to avoid the Act's violation of the Establishment Clause of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

A. Issue preliminary and permanent injunctive relief restraining the enforcement, operation and/or execution of HB 5 by enjoining Defendants, their officers, agents, servants and successors, from enforcing, threatening to enforce or otherwise applying the provisions of the Act in Florida due to its violation of FRFRA.

B. Issue temporary and permanent injunctive relief restraining the enforcement, operation and/or execution of HB 5 by enjoining Defendants, their officers, agents, servants, employees, appointees, or successors, as well as those in active concert or participation with any of them, from enforcing, threatening to enforce, or otherwise applying the provisions of the Act in Florida due to its violation of the rights of Plaintiff as well as the Unitarian Universalist members, congregants, supporters, and families as provided in the First and Fourteenth Amendments of the United States Constitution and Article I, sections 3 and 4 of the Florida Constitution

C. That this Court render a declaratory judgment declaring that:

- i. HB 5 violates FRFRA and therefore is invalid, unconstitutional, and of no legal force and effect.
- ii. HB 5 violates the rights of Plaintiff and Unitarian Universalist congregants, supporters and their families, as well as all others to be free to exercise their religious, spiritual and/or ethical values and beliefs, free from government intrusion; and to find that HB 5 violates the establishment and the free exercise clause of the Florida Constitution as expressed in Article I, sections 3 and 4 of the Florida Constitution and is therefore void, unenforceable, invalid and of no legal effect.

- iii. HB 5 is invalid on its face under the United States Constitution's First Amendment and permanently enjoin HB 5.
 - iv. HB 5 violates the constitutional and statutory rights of Plaintiff as a member of the clergy within the Unitarian Universalist faith regarding abortion beliefs and Plaintiff's ability to advise and counsel women and girls within the congregation on Unitarian Universalist teachings in violation of the Free Speech and Free Exercise Clauses under the First Amendment of the United States Constitution.
 - v. HB 5 violates the Establishment Clause under the First Amendment of the United States Constitution and is therefore void, unenforceable, invalid and of no legal effect.
 - vi. HB 5 violates the Establishment Clause of the United States Constitution by discriminating against Plaintiff and the religious beliefs on abortion under the Unitarian Universalist faith and is therefore void, unenforceable, invalid, and of no legal effect.
- D. Grant Plaintiff's costs and attorney's fees.
- E. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

By: /s/ Danielle Moriber

SPIRO HARRISON

Danielle Moriber (FBN 119781)

David Harrison (*to be admitted pro hac vice*)

Adlai Small (*to be admitted pro hac vice*)

1221 Brickell Avenue, Suite 900

Miami, Florida, 33131

Dmoriber@spiroharrison.com

Tel: (786) 730-2090

Marci A. Hamilton, Esq. (*to be admitted pro hac vice*)
Professor of Practice in Political Science
University of Pennsylvania
3508 Market Street, Suite 202
Philadelphia, PA 1904
marcih@sas.upenn.edu

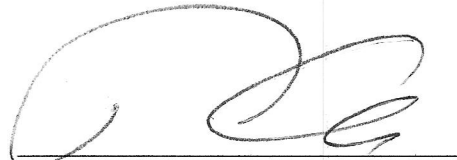
JAYARAM LAW, INC.
Vivek Jayaram (*to be admitted pro hac vice*)
Vivek @jayaramlaw.com
Liz Austermuehle (*to be admitted pro hac vice*)
Liz @jayaramlaw.com
Shayna Freyman (FBN 84993)
shayna.freyman@jayaramlaw.com
Palak V. Patel (*to be admitted pro hac vice*)
Palak @jayaramlaw.com
125 S. Clark Street, Suite 1175
Chicago, IL 60603
Attorneys for Plaintiff

VERIFICATION

I, Tom Capo, am over the age of 18 and the Plaintiff in this action. Unless otherwise indicated, I have personal knowledge of the facts set forth herein, the statements and allegations about me or which I make in this Verified Complaint are true and correct, and if called upon to testify, I would and could do so competently.

Pursuant to 28 U.S.C. § 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing facts are true and correct to the best of my knowledge.

Executed this 31 day of July, 2022.

A handwritten signature in black ink, appearing to read 'Tom Capo', written over a horizontal line.

Tom Capo

Date: 7/31/2022