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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WOMANCARE OF SOUTHFIELD, P.C.; NORTHLAND FAMILY PLANNING CLINIC, INC.; NORTHLAND FAMILY PLANNING CLINIC, INC. - WEST; NORTHLAND FAMILY PLANNING CLINIC, INC. - EAST; SCOTTSDALE WOMEN'S CENTER; MARSHALL D. LEVINE, M.D., on behalf of themselves and the patients they serve,

Plaintiffs,

v.

JENNIFER M. GRANHOLM, Attorney General of the State of Michigan, in her official capacity; JAMES A. CHERRY, Prosecuting Attorney for Berrien County, in his official capacity; CARL J. MARLINGA, Prosecuting Attorney for Macomb County, in his official capacity; DAVID GORCYCA, Prosecuting Attorney for Oakland County, in his official capacity; and JOHN D. O'HAIR, Prosecuting Attorney for Wayne County, in his official capacity,

Defendants.

00-70585

ARTHUR J. TARNOW

MAGISTRATE JUDGE SCHEER

CIVIL ACTION
NO: _____

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COMPLAINT

Plaintiffs, 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:

I. Preliminary Statement

1. This civil rights action challenges the constitutionality of Michigan Public Act No. 107, 1999 Mich. Leg. Serv. P.A. 107 (to be codified at Mich. Comp. Laws § 750.90g) [hereinafter "the Act"]. The Act is scheduled to take effect March 10, 1999. A copy of the Act is attached as Exhibit A.

2. Plaintiffs seek declaratory and injunctive relief against the Act which, upon pain of criminal penalties, bans the intentional performance of "a procedure or . . . any action upon a live infant with the intent to cause the death of the live infant." "Live infant" is defined as a "human fetus at any point after any part of the fetus is known to exist outside of the mother's body" and has "(i) a detectable heartbeat; [or] (ii) evidence of spontaneous movement; or (iii) evidence of breathing." The Act defines "outside the body of the mother" to mean "beyond the outer abdominal wall or beyond the plane of the vaginal introitus," and "part of the fetus" as "any portion of the body of a human fetus that has not been severed from the fetus, but not including the umbilical cord or placenta."

3. Beginning as early as 8 weeks of pregnancy, as measured from the first day of the woman's last menstrual period ("lmp"), when an embryo is first considered a fetus, the Act bans virtually all methods of abortion. Thus, if the Act is not enjoined, it will effectively eliminate the availability of abortions after approximately 8 weeks lmp.

4. The Act makes no exception for procedures or actions required to preserve

a woman's health and contains only an inadequate life exception.

5. By prohibiting physicians from providing abortions, the Act burdens a woman's fundamental right to terminate a pregnancy. The Act imposes these burdens without serving a compelling or even legitimate state interest.

6. The Act has both the purpose and effect of imposing an undue burden on the right of a woman to choose abortion prior to fetal viability.

7. The Act is overbroad because it potentially criminalizes all abortion methods.

8. Thus, the Act violates the rights of Plaintiffs and their patients to privacy, liberty, life, due process, and equal protection guaranteed under the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

II. Jurisdiction and Venue

9. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

10. Plaintiffs' claim for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

11. Venue is appropriate under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred in this district.

III. Parties

A. Plaintiffs

12. Plaintiff Womancare of Southfield, P.C. ("Womancare") is a women's reproductive health-care facility in Lathrup Village, Oakland County, Michigan, that

provides a full range of gynecological services including: pregnancy testing; non-directive options counseling; abortion up to twenty-four weeks lmp or until fetal viability, whichever is earlier; contraceptive counseling; contraceptives; and detection and treatment of sexually transmitted diseases. Womancare sues on behalf of itself, its staff and on behalf of its patients seeking abortions.

13. Plaintiffs Northland Family Planning Clinic, Inc., Northland Family Planning Clinic, Inc. - West, and Northland Family Planning Clinic, Inc. - East (together, "Northland") are women's reproductive health care facilities in Southfield (Oakland County), Westland (Wayne County), and Clinton Township (Macomb County), Michigan, respectively. The Northland facilities provide a full range of gynecological services, including: annual examinations and pap smears; pregnancy testing; non-directive options counseling; contraceptive counseling and services; detection and treatment of sexually transmitted diseases; and community outreach education programs. In addition, Northland provides abortion services up to twenty-four weeks lmp or until fetal viability (whichever is earlier). Northland sues on behalf of itself, its staff and on behalf of its patients seeking abortions.

14. Plaintiff Scottsdale Women's Center is a women's reproductive health-care facility in Detroit, Wayne County, Michigan. Scottsdale provides a full range of gynecological and obstetrical services including: pregnancy testing; non-directive options counseling; pre-natal care; gynecological care; cancer screening; abortion up to twenty-four weeks lmp or until fetal viability, whichever is earlier; contraceptive counseling; contraceptives; and detection and treatment of sexually transmitted diseases. Scottsdale sues on behalf of itself, its staff and on behalf of its patients seeking abortions.

15. Plaintiff Marshall Levine, M.D., is a physician licensed to practice medicine in the State of Michigan. He is board-certified in obstetrics and gynecology, as well as in medical genetics. He currently specializes in gynecology and provides abortions up to twenty weeks lmp at the Michiana Clinic in Niles, Berrien County, Michigan. Dr. Levine sues on his own behalf and on behalf of his patients seeking abortions.

16. Beginning at approximately eight weeks lmp, when an embryo has a heartbeat and is first regarded as a "fetus," Plaintiffs utilize abortion techniques and procedures that fall within the proscription of the Act. After the effective date of the Act, the plaintiffs intend to continue to provide the best possible care to their patients, which includes continuing to use the safest abortion or obstetrical procedures for each individual pregnant woman. The plaintiffs therefore reasonably fear criminal prosecution under the Act.

B. Defendants

17. Defendant Jennifer M. Granholm is the Attorney General of the State of Michigan. She is responsible for enforcement of the Act and for supervising local prosecuting attorneys. Defendant Gramholm is sued in her official capacity, as are her successors.

18. Defendant James A. Cherry is the prosecuting attorney for Berrien County, Michigan. He is responsible for criminal enforcement of the Act in that County. Defendant Cherry is sued in his official capacity, as are his successors.

19. Defendant Carl J. Marlinga is the prosecuting attorney for Macomb County, Michigan. He is responsible for criminal enforcement of the Act in that County.

Defendant Marlinga is sued in his official capacity, as are his successors.

20. Defendant David Gorcyca is the prosecuting attorney for Oakland County, Michigan. He is responsible for criminal enforcement of the Act in that County. Defendant Gorcyca is sued in his official capacity, as are his successors.

21. Defendant John D. O'Hair is the prosecuting attorney for Wayne County, Michigan. He is responsible for criminal enforcement of the Act in that County. Defendant O'Hair is sued in his official capacity, as are his successors.

IV. The Statutory Framework

22. Under the Act, "a person who intentionally performs a procedure or takes any action upon a live infant with the intent to cause the death of the live infant is guilty of a felony punishable by imprisonment for life or any term of years or a fine of not more than $50,000.00, or both." Mich. Comp. Laws § 750.90g(3).

23. A "live infant" is defined as "a human fetus at any point after any part of the fetus is known to exist outside of the mother's body and has one or more of the following: (i) [a] detectable heartbeat[;] (ii) [e]vidence of spontaneous movement[;] (iii) [e]vidence of breathing." Id. § 750.90g(6)(a). "Outside of the mother's body" is defined as "beyond the outer abdominal wall or beyond the plane of the vaginal introitus." Id. § 750.90g(6)(b). "Part of the fetus" is defined to mean "any portion of the body of a human fetus that has not been severed from the fetus, but not including the umbilical cord or placenta." Id. § 750.90g(6)(c).

24. The Act applies regardless of viability, i.e. that stage in pregnancy at which the fetus is capable of sustained, independent survival outside of the womb.

25. It is not a violation of the Act "if a physician takes measures at any point

after a live infant is partially outside of the mother's body" that in the "physician's reasonable medical judgment" are necessary to save the life of the mother, provided, "every reasonable precaution is also taken to save the live infant's life." Id. § 750.90g(4). A woman may therefore be required to bear significantly greater risks to her life and health in order to avail herself of this provision. Only a physician, and not those assisting him or her, are protected by the exemption.

26. The Act makes no exception for procedures or actions taken to preserve a woman's health. Thus, physicians are not permitted to perform a procedure that falls within the Act's proscription, even if it is the most appropriate for the woman's health and it is the procedure of her choice.

27. In passing the Act, the Michigan Legislature specifically rejected a proposed amendment that would have permitted procedures to preserve the pregnant woman's health, as well as an amendment that would have limited the scope of the Act to procedures or actions taken upon viable fetuses.

28. The Act includes the following findings: "[t]hat a live infant partially outside his or her mother is neither a fetus nor potential life, but is a person;" "[t]hat the United States supreme court decisions defining a right to terminate pregnancy do not extend to the killing of a live infant that has begun to emerge from his or her mother's body;" "[t]hat the state has a compelling interest in protecting the life of a live infant by determining that a live infant is a person deserving of legal protection at any point after any part of the live infant exists outside of the mother's body." Id. § 750.90g(2).

V. Statement of Facts

A. Abortion Procedures.

29. There are a limited number of abortion procedures, both medical and surgical, available to terminate a pregnancy. The most appropriate abortion procedure for any given woman depends on a range of factors, including the woman's health; any medical contraindications; the length of gestation; the woman's prior surgical history; whether she wants to preserve her future fertility; whether it would be beneficial to remove the fetus intact to enable genetic testing; the woman's assessment of the alternative risks she wishes to undertake; the cost of the procedure; and the location and skill of the physician.

Suction Curettage Abortion Procedures

30. In the first trimester of pregnancy, up to fourteen weeks lmp, suction curettage (also known as suction aspiration or vacuum aspiration) is by far the most commonly used method.

31. Suction curettage can be performed in a physician's office or clinic and the procedure itself usually takes less than ten minutes.

32. In a suction curettage procedure, the doctor dilates the opening to the uterus, called the cervix, inserts a tube known as a cannula into the uterus, and removes the fetus, in parts or in one piece, and the other products of conception, through the vagina by the use of suction.

33. When performing suction curettage, a physician does not know whether the fetus will come out of the vagina intact or fragmented. A fetus is sometimes still "alive," in that it has a detectable heartbeat, after it has been removed from the uterus and

after part of it has traversed the vaginal introitus. When a portion of the fetus has been evacuated with suction and other parts of the fetus remain in the uterus, the part that remains in the uterus will also sometimes be alive.

34. At eight weeks lmp, it is possible for a fetus with a heartbeat to be removed intact from a woman's body and for the physician to see the intact fetus pass through the cannula. As the gestational age of the fetus increases, the fetus is increasingly less fragile. Thus the likelihood of a fetus with a heartbeat passing intact out of a woman's body increases as the gestational age of the fetus increases.

35. Once a suction curettage has begun the physician cannot alter the course of the procedure based on whether a fetus that comes within the definition of a "live infant" passes through the cannula.

36. A physician who performs a suction curettage procedure understands that fetal demise is the inevitable outcome of the steps he takes to complete the procedure.

37. Suction curettage is also used at the beginning of the second trimester, up through approximately sixteen weeks lmp. After that, dilation and evacuation (D&E) is typically the surgical method used because the fetus is too large to remove only by means of suction.

D&E Abortion Procedures

38. In the D&E procedure, the physician dilates the cervix, typically over twelve to thirty-six hours, with multiple intracervical osmotic dilators. After removal of the dilators, the physician inserts a speculum, which widens the vagina, and attaches a tenaculum to the cervix, which brings it forward and stabilizes it so that instruments may pass through more easily. Use of the speculum and tenaculum shortens the vagina so that

there may be very little space between the cervix and the vaginal introitus. Next, using a combination of forceps, suction curettage, and sharp curettage, the physician removes the products of conception.

39. The precise way in which D&E procedures are performed varies by physician, depending upon the position and size of the fetus in the uterus, the stage of gestation, the woman's health, the skill of the physician and other individual considerations. After the cervix has been dilated, a D&E procedure takes approximately twenty to thirty minutes, and can be performed in a doctor's office or clinic setting.

40. When performing a D&E, the physician may use suction to remove some fetal parts and products of conception, depending on the size of the fetus and the amount of dilation achieved. The physician will then insert forceps into the woman's uterus in order to grasp and remove the remaining parts of the fetus from the uterus through the cervix, into the vagina, and then out of the woman's body.

41. This process frequently involves dismemberment of the fetus and repeated insertions of the forceps into the woman's uterus to grasp and remove remaining fetal parts.

42. The grasped fetal part will sometimes detach before being drawn through the cervix. Often, however, the physician draws part of the intact fetus through the cervix and into the vaginal canal. Part of the fetus may traverse the vaginal introitus at any time during this procedure. After the grasped part has come through the cervix, the physician, using the traction of the fetal body against the cervix, disjoins the grasped part from the rest of the fetus, which remains in the uterus.

43. In some D&E procedures, the first fetal part that the physician grasps with

the forceps is the head. When this occurs, the physician usually crushes the calvarium (skull) before drawing it though the cervix into the vaginal canal.

44. In some D&E procedures, there will be sufficient dilation of the cervix to allow the physician to extract a fetus intact. When an abortion proceeds in this fashion, there is minimal insertion of forceps into the woman's uterus.

45. While crushing the skull eventually kills the fetus, the fetus may still be "alive" for purposes of the Act when the physician draws the fetal head into the vaginal canal. Part of the fetus may traverse the vaginal introitus at any time during this procedure. After the fetal head is pulled into the vaginal canal, the traction caused by the torso against the cervix sometimes causes the head to detach. Other times, the fetal body will follow the head without disattachment.

46. During some D&E procedures, again depending on the gestational age and size of the fetus and the response of the woman's cervix to the dilation process, the physician will extract the fetus intact into the vagina, but the skull will lodge in the cervix, at which point the physician will compress the skull to complete the extraction. Part of the fetus may traverse the vaginal introitus at any time during this procedure.

47. When performing a D&E procedure, the physician usually does not know whether the fetus will come out of the uterus intact or fragmented. Physicians who perform D&E abortions know that disarticulating a fetal limb from a pre-viable fetus will cause the fetus to die within a few minutes; however, they do not know at what point the fetal heartbeat ceases. Physicians who perform abortions know that crushing the calvarium will cause the fetus to die immediately or within a few minutes, although they are not certain at what point the fetal heartbeat ceases. During D&E procedures, there

may be fetal cardiac activity and other signs of life after some part of the fetus has been extracted into the vagina and out of the woman's body.

48. A physician who performs a D&E procedure understands that fetal demise is the inevitable outcome of the steps he takes to complete the procedure. Once a D&E procedure is underway, the physician cannot stop the procedure without endangering the life of the woman. Nor can the physician do anything to save the life of a non-viable fetus.

49. The main alternative to D&E procedures for abortions after the first trimester is the induction method, in which medications are used to induce pre-term labor. There are several ways of inducing labor, which typically lasts in excess of twelve hours, after which time the fetus is expelled. This induced labor has all the potential complications of labor and delivery at term and, therefore, involves more pain, time and expense than D&E procedures. In addition, induction methods are contraindicated if, for example, the fetus is in a transverse position (lying crosswise in the uterus), the woman has an active pelvic infection, or the woman has previously had a classical cesarean section. Induction procedures must be performed in a hospital or hospital-level setting and are typically not performed before sixteen weeks lmp.

50. Another alternative post-first-trimester abortion procedure is hysterotomy, which is, in essence, a cesarean section performed before term. It is more dangerous, however, than a cesarean section because the uterus is thicker than it is at term, and the incision causes more bleeding. Hysterotomy may cause uterine rupture in any future pregnancies, even before labor, and necessitates a cesarean section for any future births. A more extreme alternative procedure is hysterectomy, in which the uterus is completely

removed, precluding future childbearing. Hysterectomy and hysterotomy are major surgical procedures that are medically justifiable as abortion methods only in rare circumstances and can only be performed in a hospital setting.

51. D&E procedures account for about 96% of post-first-trimester abortions; inductions account for about 4%; and hysterotomy and hysterectomy less than 1%.

VI. The Act's Effects on Women's Health and Access to Abortion

52. Although designated as an "infant protection act," the Act applies to "fetuses" without regard to viability. An embryo exists through the embryonic period, or through the end of the seventh week lmp, at which point it is considered to be a fetus. A heartbeat develops at around 4-5 weeks lmp, and a fetus may manifest spontaneous movement at about 9-10 weeks lmp.

53. Under the statute's definition of "live infant" (a "human fetus") the Act applies to abortion procedures beginning as early as eight weeks lmp.

54. In suction curettage, D&E procedures, and induction, part or all of an "unsevered fetus" may pass through the vaginal introitus prior to fetal demise, thereby potentially triggering the prohibitions of the Act.

55. As early as 8 weeks, the fetus may be large enough so that a physician would be able to identify it as such when it passes through the cannula. Fetal heartbeat may continue in a suction curettage procedure even after a fetus is completely removed from the woman's body. A fetus may have a heartbeat as part of it passes beyond the plane of the vaginal introitus whether it is wholly intact or if part of the fetus has been severed. Therefore, under the Act, any physician who performs a suction curettage abortion after 8 weeks lmp may be in violation of the law.

56. The Act also criminalizes D&E procedures because during a D&E, part of a fetus can pass through the vaginal introitus prior to fetal demise, thereby triggering the prohibitions of the Act. This can occur spontaneously, or as a result of part of the fetus being pulled by forceps through the cervix. It is not infrequent, avoidable, or medically undesirable for part of an unsevered fetus to pass through the vaginal introitus, given the size of the fetus and the fact that the distance between the cervix and vaginal introitus is shortened when pressure is applied to bring the fetus through the cervix. Indeed, when a woman has a prolapsed uterus, there is no distance between her cervix and vaginal introitus, so it is even more common for these women that, during D&E procedures, part of a "live infant" would protrude through the introitus.

57. The most common alternative to a D&E procedure is an induction abortion which the Act also proscribes. In this procedure the fetus, which is intact, sometimes partially emerges through the vaginal introitus while the fetus is still "live" as defined in the Act--in other words, with a fetal heartbeat or breathing or spontaneous movement. In such cases, the physician will be in violation of the Act if he takes any action to complete the procedure and thereby cause fetal demise. Thus, a physician could face prosecution under the Act for performing an induction procedure.

58. Even if they were not encompassed by the Act, the induction procedure is not generally a reasonable alternative to D&E, due to the limited availability of hospitals that permit the procedure and the increased costs and significant health risks associated with it.

59. Even hysterotomies are encompassed within the Act because it is possible that a "live infant" will pass "beyond the outer abdominal wall" in the course of such

procedures.

60. Prior to approximately twenty weeks lmp there is no medical benefit to women for physicians to ensure fetal demise in order to avoid the Act's criminal sanctions on abortion procedures. While it is possible to cause demise by injecting the fetus with a drug, such as digoxin, it is difficult to do so before twenty weeks lmp. The risk of missing the fetus and inadvertently injecting the drug into the woman is higher. Further, digoxin is not a reasonable option for women for whom it is contraindicated, for example, because of certain heart conditions or obesity.

61. The Act's criminal prohibition is so broad that it reaches beyond abortion procedures to procedures undertaken because of complications arising from pregnancy. For example, if a woman is in the process of miscarrying, part of the fetus may protrude out of the vaginal introitus, even while the head remains in the cervix. Even though the fetus is not viable, it may still have a heartbeat. Similarly, a woman could carry to term a hydrocephalic fetus with a large head, but no brain tissue, a condition incompatible with life, yet with a detectable heartbeat. During the course of delivery into the vagina when part of the fetus may protrude through the introitus, a physician may discover that the head is too large to pass through the cervix. In either case, the best way to preserve the woman's health may be to remove the fetus by compressing the head before completing delivery. The Act would criminalize this medically necessary behavior.

62. In addition to being overbroad, the Act does not describe with specificity the conduct it prohibits. If the Act is not enjoined, a physician will not be able to know with any degree of certainty what conduct will fall within the scope of the Act's criminal prohibitions. For example, the Act defines a "live infant" as existing the moment "any

portion of a human fetus that has not been severed from the fetus" protrudes out of the vaginal introitus. However, the Act does not specify what it means by a "non-severed" fetus. If a single limb has been removed (as commonly occurs, for example, in D&E procedures) and part of the remaining non-severed fetus protrudes from the vagina, it is unclear if the Act will apply. If two limbs are removed, and a portion of the remaining "fetus" then protrudes out of the vaginal introitus, will that remaining fetal mass constitute a "fetus" under the statute and thereby subject physicians to criminal liability?

63. In addition, the Act defines a "live infant" as having either a "detectable heartbeat" or exhibiting evidence of spontaneous movement or breathing. The term "live infant" is confusing because, regarding spontaneous movement and breathing, the Act apparently requires "evidence", but it imposes no such requirement of "evidence" as to fetal heartbeat.

64. The lack of clarity allows prosecutors to differ widely about what conduct they believe is proscribed by the Act. Consequently, the Act subjects physicians to arbitrary and discriminatory prosecution.

65. If doctors in Michigan stop providing abortion procedures that are encompassed by the Act, abortions will be virtually impossible to obtain in Michigan after approximately eight weeks lmp.

66. If doctors in Michigan stop performing procedures encompassed by the Act, some women will be prevented from obtaining abortions altogether; some women will be delayed in obtaining abortions due to out-of-state travel, thus increasing the risks of the procedure; and some women will be forced to have riskier alternative procedures, increasing the possibility of damage to their lives and health.

67. Both the purpose and effect of the Act is to impose substantial obstacles in the path of women seeking pre-viability abortions and restrict a woman's right to the safest and most common methods of abortions.

68. The Act's lack of any health exception impermissibly narrows women's ability to obtain constitutionally protected abortions, even as applicable to those abortions performed after viability.

69. The Act's narrow life exception does not permit a physician to perform a procedure to protect a woman from damage to her health, no matter how serious, permanent, or irreparable that damage may be. By requiring a physician to take "every reasonable precaution" to save the life of a "live infant," the Act unconstitutionally requires a pregnant woman to potentially bear an increased medical risk in order to save the fetus, regardless of viability.

70. In addition, even when a procedure may be necessary to save a woman's life, the Act imposes an impermissibly vague objective standard on the physician because the determination as to whether an abortion falls within the life exception is judged by "the physician's reasonable medical judgment."

71. Although the Act contains a scienter requirement–requiring a person to act "intentionally"–this scienter requirement is inadequate to protect the physician because every step taken during an abortion is done intentionally, rather than by happenstance. The physician may expect that the procedure will be accomplished in a certain manner, such as by the removal of the fetus in pieces, rather than intact. If circumstances are not as the physician expects, however, the physician must nonetheless intentionally take all steps necessary to safely complete the procedure.

VII. Lack of Justification

72. The Act interferes with women's ability to obtain the safest and most appropriate abortion procedures and medical care, but is not rationally related to and does not further the state's interest in maternal health or potential life.

73. The Act bans the most common first and second trimester abortion procedures and was enacted with the purpose of undermining the constitutionally protected rights recognized in Roe v. Wade, 410 U.S. 113 (1973), and its progeny.

74. The Act interferes with women's ability to obtain the most appropriate, safest abortion procedures to preserve their lives or health both before and after fetal viability, without justification.

VIII. First Claim for Relief

75. Plaintiffs hereby incorporate by reference Paragraphs 1 through 75 above.

76. By failing to give adequate notice of the procedures it proscribes, and encouraging arbitrary enforcement, the Act is void for vagueness and is overbroad in violation of the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. § 1983.

IX. Second Claim for Relief

77. Plaintiffs hereby incorporate by reference Paragraphs 1 through 77 above.

78. Because it is not reasonably related to a recognized state interest, the Act violates the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. § 1983.

X. Third Claim for Relief

79. Plaintiffs hereby incorporate by reference Paragraphs 1 through 79 above.

80. By prohibiting the performance of the safest and most common methods of abortions at or after eight weeks, the Act has the purpose and effect of imposing an

undue burden on women's right to choose abortion in violation of their due process right to privacy and liberty guaranteed by the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. § 1983.

XI. Fourth Claim for Relief

81. Plaintiffs hereby incorporate by reference Paragraphs 1 through 81 above.

82. By prohibiting physicians from taking any action or performing an abortion procedure prohibited by the Act—whether pre- or post-fetal viability—where it is necessary to preserve a woman's health, the Act violates a woman's right to privacy, liberty and life guaranteed by the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. § 1983.

XII. Fifth Claim for Relief

83. Plaintiffs hereby incorporate by reference Paragraphs 1 through 83 above.

84. By forcing a trade-off between a woman's life and fetal survival when an abortion is necessary to preserve a woman's life, the Act violates a woman's right to privacy, liberty and life guaranteed by the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. § 1983.

XIII. Sixth Claim for Relief

85. Plaintiffs hereby incorporate by reference Paragraphs 1 through 85 above.

86. By infringing upon the fundamental right to abortion with no compelling, substantial or legitimate justification, the Act violates the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983.

XIV. Seventh Claim for Relief

87. Plaintiffs hereby incorporate by reference Paragraphs 1 through 87 above.

88. By preventing only women from choosing medically appropriate health care treatment with no compelling, substantial or legitimate justification, the Act violates the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983.

XVI. Eighth Claim for Relief

89. Plaintiffs hereby incorporate by reference Paragraphs 1 through 89 above.

90. By imposing irrational burdens only on abortions and other obstetrical procedures, with no compelling, substantial or legitimate justification, the Act violates the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983.

XVII. Injunctive Relief

91. Plaintiffs' claims meet the standard for injunctive relief because: 1) they have no adequate remedy at law; 2) they and their patients will suffer immediate and irreparable harm for continued violations of their constitutional rights should the Act be permitted to go into effect and applied to them; 3) they are likely to succeed on the merits of their claims; and 4) Defendants will suffer no harm in being denied the opportunity to enforce an invalid and unconstitutional Act pending resolution of the merits of this claim. Issuance of the injunction will retain the status quo.

WHEREFORE, Plaintiffs ask this Court:

A. To issue a temporary restraining order and/or a preliminary injunction restraining Defendants, their employees, agents, and successors from enforcing Michigan Public Act No. 107, 1999 Mich. Leg. Serv. P.A. 107;

B. To enter judgment declaring the challenged Act to be in violation of the United States Constitution, and 42 U.S.C. § 1983;

C. To issue an order permanently enjoining the Act; and

D. To grant such other and further relief as this Court should find just and proper, including attorneys' fees and costs.

Dated: Detroit, Michigan

~~January~~ February 1, 2000

Respectfully submitted,

By: Tracie Dominique Palmer (by LR)

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