

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

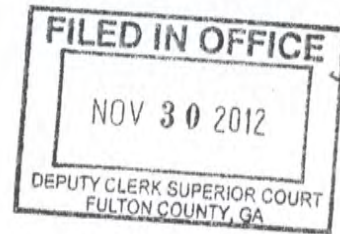
Eva Lathrop, M.D., Carrie Cwiak, M.D., Lisa )  
Haddad, M.D., )  
Plaintiffs, )

vs. )

CIVIL ACTION  
FILE NO. 2012 CV 224423

NATHAN DEAL, Governor of the State of )  
Georgia, in his official capacity, and his )  
successors in office; SAM OLENS, Attorney )  
General of the State of Georgia, in his official )  
capacity, and his successors in office; PAUL )  
HOWARD, District Attorney for Fulton County, )  
in his official capacity, and his successors in )  
office; ROBERT JAMES, District Attorney for )  
DeKalb County, in his official capacity, and his )  
successors in office; BRENDA FITZGERALD, )  
Commissioner of the Georgia Department of )  
Public Health, in her official capacity, and )  
her successors in office; WILLIAM BUTLER, )  
RICHARD WEIL, JOHN ANTALIS, )  
GILBERT CHANDLER, DANIEL DELOACH, )  
ALEXANDER GROSS, ALICE HOUSE, )  
KATHY KEMLE, MARION LEE, )  
JANE MCGARITY, DAVID RETTERBUSH, )  
WILLIAM SIGHTLER, WENDY TROYER, )  
CHARLES WHITE, Officers and Members of )  
the Georgia Composite Medical Board, in )  
their official capacities, and their successors in )  
office; and LASHARN HUGHES, Executive )  
Director of the Georgia Composite Medical )  
Board, in her official capacity, and her )  
successors in office, )

Defendants. )



---

**VERIFIED COMPLAINT**

**I.**  
**PRELIMINARY STATEMENT**

1. This action challenges O.C.G.A. §§ 16-12-140, 16-12-141, 31-9B-1, 31-9B-2, and 31-9B-3, as set forth in House Bill 954 (“the Act”), a copy of which is attached hereto as Exhibit A, under the state constitutional rights to privacy and equal protection insofar as the Act restricts the right to obtain pre-viability abortion care and allows district attorneys unrestricted access to abortion patients’ medical records. Plaintiffs bring this action under the Georgia Constitution and seek declaratory and injunctive relief.

2. The Act, which bans nearly all pre-viability abortions after 20 weeks post-fertilization, infringes on the fundamental right of a woman to decide whether and when to bear a child, as guaranteed by the broad right to privacy found in the Georgia Constitution. Furthermore, with only a narrow exception for medical emergencies, the Act unconstitutionally endangers women’s health. Finally, the Act uses vague terms and appears to grant District Attorneys unfettered access to the private medical files of abortion patients in violation of state constitutional rights to due process, privacy, and equal protection. The Act should therefore be declared unconstitutional and its enforcement enjoined insofar as it violates the Georgia Constitution.

**II.**  
**JURISDICTION AND VENUE**

3. This action arises under the authority vested in this Court by virtue of O.C.G.A. §§ 9-4-2, 9-4-3, 9-5-1, and the Georgia Constitution. Venue is proper in this Court pursuant to O.C.G.A. § 9-10-30.

**III.**  
**PARTIES**

A. Plaintiffs:

4. Plaintiff Eva Lathrop, M.D., is a board-certified obstetrician and gynecologist, licensed to practice in Georgia. In addition to teaching residents, she provides her patients with labor and delivery care and comprehensive, general gynecological care, including: well-woman visits; complex contraceptive care; and abortion care, including, each year, a limited number of pre-viability abortions at and after 20 weeks at the Emory University Hospital, in DeKalb County and at the Fulton-DeKalb Hospital, d/b/a Grady Memorial Hospital, in Fulton County. Dr. Lathrop sues as an individual on behalf of herself and her patients seeking pre-viability abortion care at and after 20 weeks, and does not sue in her capacity as an employee or representative of Emory University or any other organization.

5. Plaintiff Carrie Cwiak, M.D., is a board-certified obstetrician and gynecologist licensed to practice in Georgia. In addition to teaching residents, she provides her patients with labor and delivery care and comprehensive, general

gynecological care, including: well-woman visits; complex contraceptive care; and abortion care, including, each year, a limited number of pre-viability abortions at and after 20 weeks at the Emory University Hospital, in DeKalb County and at the Fulton-DeKalb Hospital, d/b/a Grady Memorial Hospital, in Fulton County. Dr. Cwiak sues as an individual on behalf of herself and her patients seeking pre-viability abortion care at and after 20 weeks, and does not sue in her capacity as an employee or representative of Emory University or any other organization.

6. Plaintiff Lisa Haddad, M.D., is a board-certified obstetrician and gynecologist licensed to practice in Georgia. In addition to teaching residents, she provides her patients with labor and delivery care and comprehensive, general gynecological care, including: well-woman visits; complex contraceptive care; and abortion care, including, each year, a limited number of pre-viability abortions at and after 20 weeks at the Emory University Hospital, in DeKalb County and at the Fulton-DeKalb Hospital, d/b/a Grady Memorial Hospital, in Fulton County. Dr. Haddad sues as an individual on behalf of herself and her patients seeking pre-viability abortion care at and after 20 weeks, and does not sue in her capacity as an employee or representative of Emory University or any other organization.

B. Defendants:

7. Defendant Nathan Deal is the Governor of Georgia, located at 206 Washington Street Southwest, Atlanta, Georgia, 30334. According to the Georgia

Constitution, “[t]he chief executive powers” are “vested in the Governor,” Ga. Const. art. 5 § 2, ¶ 1, and “[t]he Governor shall take care that the laws are faithfully executed,” *id.* at ¶ 2. Under Georgia law, the Governor “shall provide for the defense of any action . . . the result of which is of interest to the state because of any claim inconsistent with the state’s sovereignty, jurisdiction, or rights.” O.C.G.A. § 45-12-26. As such, Defendant Deal is responsible for the enforcement of the Act. Defendant Deal is sued in his official capacity, as are his successors in office.

8. Defendant Samuel S. Olens is the Attorney General of Georgia, located at 40 Capitol Square Southwest, Atlanta, Georgia, 30334. According to the Georgia Constitution, the Attorney General is “the legal advisor of the executive department” and “shall perform such . . . duties as shall be required by law.” Ga. Const. art. 5, § 3, ¶ IV; see also O.C.G.A. § 45-15-3 (detailing Attorney General’s powers and duties). As such, Defendant Olens is responsible for enforcement of the Act, and is an appropriate defendant in this case. Defendant Olens is sued in his official capacity, as are his successors in office.

9. Defendant Paul Howard is the District Attorney for Fulton County, located at 1590 Joseph E. Boone Boulevard Northwest, Atlanta, Georgia, 30314. District attorneys are authorized to draw up all indictments or presentments for grand juries and to prosecute all indictable offenses. O.C.G.A. § 15-18-6. District

attorneys also appear to have unrestricted access to medical records of abortion patients under O.C.G.A. § 16-12-141(d). Defendant Howard is sued in his official capacity, as are his successors in office.

10. Defendant Robert James is the District Attorney for DeKalb County, located at 556 North McDonough Street, Decatur, Georgia, 30030. District attorneys are authorized to draw up all indictments or presentments for grand juries and to prosecute all indictable offenses. O.C.G.A. § 15-18-6. District attorneys also appear to have unrestricted access to medical records of abortion patients under O.C.G.A. § 16-12-141(d). Defendant Howard is sued in his official capacity, as are his successors in office.

11. Defendant Brenda Fitzgerald is the Commissioner of the Georgia Department of Public Health (“DPH”), located at 2 Peachtree Street, Atlanta, Georgia, 30303. DPH is responsible for preparing the reporting forms required by O.C.G.A. § 31-9B-3 and is authorized to enforce the Act’s reporting requirements via fines and court-imposed sanctions for civil contempt. O.C.G.A. § 31-9A-6(e). Defendant Fitzgerald is sued in her official capacity, as are her successors in office.

12. Defendant William Butler is Chairperson of, Defendant Richard Weil is Vice-Chairperson of, Defendants John Antalis, Gilbert Chandler, Daniel DeLoach, Alexander Gross, Alice House, Kathy Kemle, Marion Lee, Jane McGarity, David Retterbush, William Sightler, Wendy Troyer, and Charles White

are Members of, and Defendant LaSharn Hughes is Executive Director of the Georgia Composite Medical Board (“Board”), located at 2 Peachtree Street Northwest, Atlanta, Georgia, 30303. The Board is responsible for licensing physicians within the state of Georgia and has authority to discipline physicians who do not comply with the requirements of O.C.G.A. §31-9B. O.C.G.A. § 43-34-8. Defendant Officers, Members, and Executive Director of the Board are sued in their official capacity, as are their successors in office.

#### **IV. BACKGROUND**

13. The Act, which is scheduled to take effect January 1, 2013, makes it a crime to provide abortion care if “the probable gestational age” of the fetus has been determined to be 20 weeks or later, unless the pregnancy has been diagnosed as “medically futile” or the woman is in a “medical emergency.” O.C.G.A. § 16-12-141(c)(1).

14. The Act defines “probable gestational age” as the age of the fetus, “in reasonable medical judgment and with reasonable probability,” at the time the abortion is to be performed, as measured from the date of fertilization. The Act thus bans abortion starting at 20 weeks post-fertilization. O.C.G.A. § 31-9B-1(a)(5).

15. The Act defines a “medically futile” pregnancy as existing where, “in reasonable medical judgment,” the fetus has a “profound and irremediable

congenital or chromosomal anomaly that is incompatible with sustaining life after birth.” O.C.G.A. § 31-9B-1(a)(3).

16. The Act defines a “medical emergency” as existing when an abortion is “necessary to avert the death of the pregnant woman or avert serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman.” O.C.G.A. § 16-12-141(c)(1)(A).

17. In the case of a “medical emergency,” as defined by the Act, “the physician shall terminate the pregnancy in the manner which . . . provides the best opportunity for the unborn child to survive unless . . . termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function.” O.C.G.A. § 16-12-141(c)(2).

18. The Act contains no exception for a woman pregnant as a result of rape or incest; for a woman who faces medical harm from a condition outside the statutory definition of “medical emergency”; or for a woman whose fetus has severe anomalies that fall outside the statutory definition of “medically futile pregnancy.” O.C.G.A. § 16-12-141; O.C.G.A. § 31-9B-2.

19. The Act contains the legislative assertion that “[a]t least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain.” Exhibit A, § 1.



20. The Act requires that “[h]ospital or other licensed facility records shall be available to the district attorney of the judicial circuit in which the hospital or health facility is located.” O.C.G.A. § 16-12-141(d).

21. The Act requires the Department of Public Health to promulgate regulations and reports relating to the reporting of, *inter alia*, abortions performed under the terms of the Act. O.C.G.A. § 31-9B-3.

22. A physician convicted of providing health care in violation of the Act “shall be punished by imprisonment for not less than one nor more than ten years.” O.C.G.A. § 16-12-140(b).

23. Failure to comply with any requirement of the Act constitutes unprofessional conduct for purposes of medical licensing sanctions, including fines and/or license revocation. O.C.G.A. § 31-9B-2(b).

24. Failure to comply with the reporting requirements may result in additional fines and must also be reported to the Georgia Composite Medical Board for disciplinary action. O.C.G.A. §§ 31-9B-2, 31-9B-3, 31-9A-6, and 31-9A-6.1.

25. A physician may also be subject to civil remedies if a plaintiff can prove by clear and convincing evidence that the physician was negligent in determining gestational age. O.C.G.A. § 31-9A-6.1.

**V.**  
**FACTS**

26. The Act bans, inter alia, pre-viability abortions.

27. With very narrow exceptions, the Act bans all abortions starting at 20 weeks, which is a pre-viability point in pregnancy – a point at which the fetus does not have a reasonable likelihood of sustained survival outside the woman.

28. Where a healthy woman is carrying a healthy, singleton fetus, viability generally occurs at 22 weeks post-fertilization. In many instances in which the woman is sick, the fetus is compromised in some way, and/or it is a multi-fetal pregnancy, the fetus does not become viable until later in pregnancy, if at all.

29. The vast majority of abortion care provided in the United States and in Georgia occurs in the first trimester of pregnancy. Only a small fraction of abortions occur at or after 20 weeks.

30. Women obtain abortions at or after 20 weeks for a variety of reasons, including that continuation of the pregnancy poses a threat to their health, that the fetus has been diagnosed with a medical condition or anomaly, or that they are losing the pregnancy (“miscarrying”).

31. Women who seek abortion care to preserve their health do so either because the pregnancy exacerbates a pre-existing medical condition or because the pregnancy itself causes a medical threat.

32. In many instances, although the threat to the woman's health is serious, and may become more so over time, her condition does not meet the statutory definition of "medical emergency." Of these women, some decide to terminate the pregnancy before viability in order to reduce current or future risks to their health. Starting at 20 weeks, the Act would force such a woman to continue the pregnancy against her will until she gives birth, miscarries, or experiences a deterioration of her condition to the point that she does fall under the Act's narrow definition of "medical emergency." Limiting the reason that a woman may obtain a pre-viability abortion to narrowly defined medical emergencies thus places significant burdens on the health of some women seeking abortion care.

33. Other women with similar conditions attempt to continue the pregnancy, because they are willing to run the attendant risks in order to have a baby. Of those women, some succeed in giving birth to a child, while others ultimately decide that the risks of continued pregnancy have become too great, and the chances of having a baby too small. Under the Act, some women who would otherwise try to remain pregnant longer, in the hope of giving birth, may terminate before 20 weeks, in order not to lose the opportunity to do so if necessary to protect their health after 20 weeks, because of the Act's ban.

34. Many women obtain prenatal testing at approximately 16 to 18 weeks. Through this testing, some women learn that the fetus has a medical condition or

anomaly that may be incompatible with life; that is life-threatening; or that, while not life-threatening, will cause severe and debilitating lifelong disabilities. Some of these women will choose to terminate the pregnancy; regardless of their ultimate decision, they often need some period of time to consult with family, doctors, and other trusted individuals to reach their conclusion.

35. The Act's narrow definition of "medically futile" pregnancies will take the decision away from many such women. The definition does not include pregnancies in which the fetus has a severe but non-lethal anomaly, and it does not clearly encompass all instances in which an anomaly is life-threatening (as opposed to definitively lethal). Starting at 20 weeks, the Act may force these women to remain pregnant, whether they want to or not.

36. Just as with women facing health conditions, the Act will also rush women and families who have learned of a fetal anomaly to decide before 20 weeks whether to continue the pregnancy. Some women may terminate before 20 weeks, so as not to lose the ability to do so after 20 weeks, and of those some may have – given more time – decided to continue their pregnancies.

37. By prohibiting all abortions beginning at 20 weeks except those that come within the Act's narrow medical emergency or "futility" exceptions, the Act will harm Plaintiffs' patients by denying or delaying access to abortions, including

abortions they seek to preserve their health. Each of these harms constitutes irreparable harm to Plaintiffs' patients.

38. The Act presents physicians, including Plaintiffs, with an untenable choice: to face criminal prosecution and up to ten years imprisonment, as well as disciplinary and licensing sanctions, for continuing to provide abortion care in accordance with their best medical judgment or to stop providing the critical care their patients seek.

39. The Act provides district attorneys with apparently unrestricted access to the records of abortion patients. O.C.G.A. § 16-12-141(d).

40. On information and belief, district attorneys do not have the statutory right to access the medical records of any other patients without any sort of due process.

41. By stripping their medical records of the same level of privacy protections enjoyed by all other patients, the Act causes irreparable harm to Plaintiffs' patients.

**VI.**  
**FIRST CAUSE OF ACTION:**  
**FOR VIOLATIONS OF THE STATE**  
**CONSTITUTIONAL RIGHT TO PRIVACY**

42. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 41 inclusive.

43. By criminalizing and otherwise penalizing abortion care where the fetus has not reached the point of viability, the Act violates Plaintiffs' patients' right to privacy guaranteed by various provisions of the Georgia Constitution, including art. I, § 1, ¶ I (due process), ¶ III (freedom of conscience), and ¶ XXIX (inherent rights).

**SECOND CAUSE OF ACTION:  
FOR VIOLATIONS OF THE STATE  
CONSTITUTIONAL RIGHT TO PRIVACY**

44. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 41 inclusive.

45. By allowing district attorneys to access patient medical records without due process protections, the Act violates Plaintiffs' patients' rights to privacy guaranteed by various provisions of the Georgia Constitution, including art. I, § 1, ¶ I (due process), ¶ III (freedom of conscience), and ¶ XXIX (inherent rights).

**THIRD CAUSE OF ACTION:  
FOR VIOLATIONS OF THE STATE  
CONSTITUTIONAL RIGHT TO EQUAL PROTECTION**

46. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 41 inclusive.

47. By allowing district attorneys to access abortion patient medical records without due process protections, the Act violates Plaintiffs' patients' rights to equal protection as guaranteed by art. I, § I, ¶ II (equal protection) of the Georgia Constitution.

**FOURTH CAUSE OF ACTION  
FOR VIOLATIONS OF THE STATE  
CONSTITUTIONAL RIGHT TO PRIVACY**

48. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 41 inclusive.

49. By criminalizing and otherwise penalizing previabilty abortion care even where continued pregnancy presents current or future threats to a woman's life or health, the Act violates Plaintiffs' patients' rights to privacy as guaranteed by various provisions of the Georgia Constitution, including art. I, § 1, ¶ I (due process), ¶ III (freedom of conscience), and ¶ XXIX (inherent rights).

**FIFTH CAUSE OF ACTION:  
FOR VIOLATIONS OF THE STATE  
CONSTITUTIONAL RIGHT TO PRIVACY**

50. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 41 inclusive.

51. By requiring Plaintiffs to terminate the pre-viability pregnancies of critically ill women using the method most likely to result in a live birth, the Act violates Plaintiffs' patients' rights to privacy as guaranteed by various provisions of the Georgia Constitution, including art. I, § 1, ¶ I (due process), ¶ III (freedom of conscience), and ¶ XXIX (inherent rights).

**SIXTH CAUSE OF ACTION:  
FOR VIOLATIONS OF THE STATE  
CONSTITUTIONAL RIGHT TO DUE PROCESS**

52. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 41 inclusive.

53. By subjecting Plaintiffs to criminal prosecution and other penalties for violations of a statute that uses vague terms such as “medically futile pregnancy,” the Act violates Plaintiffs’ rights to due process of law as guaranteed by art. I, § 1, ¶ I (due process) of the Georgia Constitution.

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) declare that the Georgia Constitution protects a woman’s fundamental right to reproductive privacy, including the right to obtain pre-viability abortion care;

(2) declare H.B. 954, to be codified at O.C.G.A. §§ 16-12-140, 16-12-141, 31-9B-1, 31-9B-2, and 31-9B-3, unconstitutional under the Georgia Constitution insofar as it restricts the right to obtain pre-viability abortion care;

(3) enjoin Defendants, their employees, agents, and successors in office from enforcing O.C.G.A. §§ 16-12-140, 16-12-141, 31-9B-1, 31-9B-2, and 31-9B-3 insofar as they unconstitutionally restrict the right to obtain pre-viability abortion care under the Georgia Constitution;



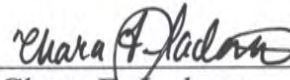
(4) enjoin Defendants Howard and James, their employees, agents, and successors in office from enforcing O.C.G.A. § 16-12-141(d) in violation of the right to privacy and equal protection under the Georgia Constitution;

(5) award Plaintiffs' costs and attorneys' fees; and

(6) grant Plaintiffs such other, further, and different relief as the Court may deem just and proper.

Dated: November 30, 2012

Respectfully submitted,



Chara F. Jackson  
Georgia Bar No. 386101  
Chad M. Brock  
Georgia Bar No. 357719  
ACLU Foundation of Georgia  
1900 The Exchange, Suite 425  
Atlanta, GA 30339  
Telephone: (770) 303-8111

Alexa Kolbi-Molinas \*  
Susan Talcott Camp \*  
American Civil Liberties Union  
Foundation  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004  
[akolbi-molinas@aclu.org](mailto:akolbi-molinas@aclu.org)  
[tcamp@aclu.org](mailto:tcamp@aclu.org)  
(212) 549-2633

\* - motion for admission *pro  
hac vice* pending

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

Eva Lathrop, M.D., et al.

Plaintiffs,

vs.

NATHAN DEAL, Governor of the State of  
Georgia, in his official capacity, et al.

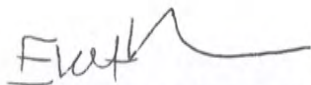
Defendants.

CIVIL ACTION  
FILE NO.

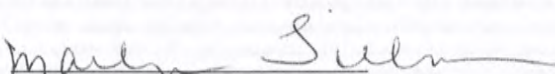
VERIFICATION

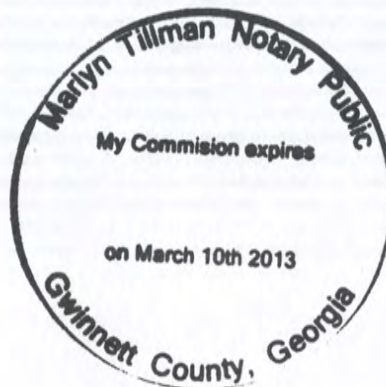
I, Eva Lathrop, personally appeared before the undersigned Notary Public,  
and say under oath that I am a Plaintiff in the above-styled action and that  
the facts stated in the Complaint are true and correct to the best of my  
knowledge and belief.

Dated this the 28 day of November, 2012.

  
\_\_\_\_\_  
Eva Lathrop, Plaintiff

Sworn to and subscribed before me this the 28 day of November, 2012.

  
\_\_\_\_\_  
Notary Public



**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing VERIFIED COMPLAINT

via **CERTIFIED MAIL** on the following:

Samuel S. Olens  
Office of the Attorney General  
40 Capitol Square, SW  
Atlanta, GA 30334  
404-656-3300

Governor Nathan Deal  
Office of the Governor  
203 State Capitol  
Atlanta, GA 30334  
404-656-1776

Paul Howard  
Fulton County District Attorney  
136 Pryor Street SW, Third Floor  
Atlanta, GA 30303  
404-612-4981

Robert James  
DeKalb Co. District Attorney  
556 N. McDonough Street  
Suite 700  
Decatur, GA 30030  
404-371-4961

Brenda Fitzgerald  
Two Peachtree Street, NW  
Atlanta, GA 30303-3186  
404-657-2700

William Butler  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465  
404-656-9723

Richard Weil  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465  
404-656-9723

John Antalis  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465  
404-656-9723

Gilbert Chandler  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465  
404-656-9723

Daniel DeLoach  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465  
404-656-9723

Alexander Gross  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465

404-656-9723

Kathy Kemle  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465  
404-656-9723

Jane McGarity  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465  
404-656-9723

William Sightler  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465  
404-656-9723

Charles White  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465  
404-656-9723

Alice House  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465

404-656-9723

Marion Lee  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465  
404-656-9723

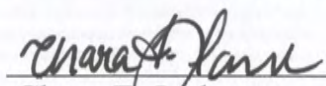
David Retterbush  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465  
404-656-9723

Wendy Troyer  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465  
404-656-9723

Lasharn Hughes  
Two Peachtree Street, NW  
Third Floor  
Atlanta, GA 30303-3465  
404-656-9723

This 30<sup>th</sup> day of November, 2012.

ACLU FOUNDATION OF  
GEORGIA

  
Chara F. Jackson  
Georgia Bar No. 386101

Chad M. Brock  
Georgia Bar No. 357719  
ACLU Foundation of  
Georgia  
1900 The Exchange,  
Suite 425  
Atlanta, GA 30339  
Telephone: (770) 303-  
8111

**EXHIBIT A**

**H.B. 954 OR "THE ACT"**

House Bill 954 (AS PASSED HOUSE AND SENATE)

By: Representatives McKillip of the 115<sup>th</sup>, Collins of the 27<sup>th</sup>, England of the 108<sup>th</sup>, Hamilton of the 23<sup>rd</sup>, Sheldon of the 105<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 5 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated,  
2 relating to abortion, so as to change certain provisions relating to criminal abortion; to  
3 change certain provisions relating to when abortion is legal; to amend Title 31 of the Official  
4 Code of Georgia Annotated, relating to health, so as to define certain terms; to require a  
5 determination of gestational age prior to abortion; to provide for certain reporting  
6 requirements with respect to performance of abortions; to change certain provisions relating  
7 to civil and professional penalties for violations of the "Woman's Right to Know Act"; to  
8 provide for confidentiality; to change certain provisions relating to definitions relative to the  
9 "Woman's Right to Know Act"; to state legislative findings; to provide for other related  
10 matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 The General Assembly makes the following findings:

- 14 (1) At least by 20 weeks after fertilization there is substantial evidence that an unborn  
15 child has the physical structures necessary to experience pain;
- 16 (2) There is substantial evidence that, by 20 weeks after fertilization, unborn children  
17 seek to evade certain stimuli in a manner which in an infant or an adult would be  
18 interpreted as a response to pain;
- 19 (3) Anesthesia is routinely administered to unborn children who have developed 20  
20 weeks or more past fertilization who undergo prenatal surgery;
- 21 (4) Even before 20 weeks after fertilization, unborn children have been observed to  
22 exhibit hormonal stress responses to painful stimuli. Such responses were reduced when  
23 pain medication was administered directly to such unborn children;
- 24 (4.1) Probable gestational age is an estimate made to assume the closest time to which  
25 the fertilization of a human ovum occurred and does not purport to be an exact diagnosis  
26 of when such fertilization occurred; and

27 (5) It is the purpose of the State of Georgia to assert a compelling state interest in  
 28 protecting the lives of unborn children from the stage at which substantial medical  
 29 evidence indicates that they are capable of feeling pain.

30

## SECTION 2.

31 Article 5 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to  
 32 abortion, is amended by revising Code Sections 16-12-140 and 16-12-141, relating to  
 33 criminal abortion and when abortion is legal, respectively, as follows:

34 "16-12-140.

35 (a) ~~Except as otherwise provided in Code Section 16-12-141, a~~ A person commits the  
 36 offense of criminal abortion when in violation of Code Section 16-12-141, he or she  
 37 administers any medicine, drugs, or other substance whatever to any woman or when he  
 38 or she uses any instrument or other means whatever upon any woman with intent to  
 39 produce a miscarriage or abortion.

40 (b) A person convicted of the offense of criminal abortion shall be punished by  
 41 imprisonment for not less than one nor more than ten years.

42 16-12-141.

43 (a) ~~Nothing in this article shall be construed to prohibit an abortion performed by a~~  
 44 ~~physician duly licensed to practice medicine and surgery pursuant to Chapter 34 of Title~~  
 45 ~~43, based upon his or her best clinical judgment that an abortion is necessary, except that~~  
 46 ~~Code Section 16-12-144 is a prohibition of a particular abortion method which shall apply~~  
 47 ~~to both duly licensed physicians and laypersons. No abortion is authorized or shall be~~  
 48 ~~performed in violation of subsection (a) of Code Section 31-9B-2.~~

49 (b)(1) No abortion is authorized or shall be performed after the first trimester unless the  
 50 abortion is performed in a licensed hospital, in a licensed ambulatory surgical center, or  
 51 in a health facility licensed as an abortion facility by the Department of Community  
 52 Health.

53 (2) An abortion shall only be performed by a physician licensed under Article 2 of  
 54 Chapter 34 of Title 43.

55 (c)(1) ~~No abortion is authorized or shall be performed after the second trimester~~ if the  
 56 probable gestational age of the unborn child has been determined in accordance with  
 57 Code Section 31-9B-2 to be 20 weeks or more unless the physician and two consulting  
 58 physicians certify that the pregnancy is diagnosed as medically futile, as such term is  
 59 defined in Code Section 31-9B-1, or in reasonable medical judgment the abortion is  
 60 necessary in their best clinical judgment to preserve the life or health of the woman to:



61 (A) Avert the death of the pregnant woman or avert serious risk of substantial and  
 62 irreversible physical impairment of a major bodily function of the pregnant woman. No  
 63 such condition shall be deemed to exist if it is based on a diagnosis or claim of a mental  
 64 or emotional condition of the pregnant woman or that the pregnant woman will  
 65 purposefully engage in conduct which she intends to result in her death or in substantial  
 66 and irreversible physical impairment of a major bodily function; or

67 (B) Preserve the life of an unborn child.

68 As used in this paragraph, the term 'probable gestational age of the unborn child' has the  
 69 meaning provided by Code Section 31-9B-1.

70 (2) In any case described in subparagraph (A) or (B) of paragraph (1) of this subsection,  
 71 the physician shall terminate the pregnancy in the manner which, in reasonable medical  
 72 judgment, provides the best opportunity for the unborn child to survive unless, in  
 73 reasonable medical judgment, termination of the pregnancy in that manner would pose  
 74 a greater risk either of the death of the pregnant woman or of the substantial and  
 75 irreversible physical impairment of a major bodily function of the pregnant woman than  
 76 would another available method. No such greater risk shall be deemed to exist if it is  
 77 based on a diagnosis or claim of a mental or emotional condition of the pregnant woman  
 78 or that the pregnant woman will purposefully engage in conduct which she intends to  
 79 result in her death or in substantial and irreversible physical impairment of a major bodily  
 80 function. If the product of the abortion child is capable of meaningful or sustained life,  
 81 medical aid then available must be rendered.

82 (d) The performing physician shall file with the commissioner of public health within ten  
 83 days after an abortion procedure is performed a certificate of abortion containing such  
 84 statistical data as is determined by the Department of Public Health consistent with  
 85 preserving the privacy of the woman. Hospital or other licensed health facility records  
 86 shall be available to the district attorney of the judicial circuit in which the hospital or  
 87 health facility is located."

88 **SECTION 3.**

89 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by adding  
 90 a new Chapter 9B to read as follows:

91 "CHAPTER 9B

92 31-9B-1.

93 (a) As used in this chapter, the term:

94 (1) 'Abortion' has the meaning provided by Code Section 31-9A-2.

- 95 (2) 'Medical emergency' has the meaning provided by Code Section 31-9A-2.  
 96 (3) 'Medically futile' means that, in reasonable medical judgment, the unborn child has  
 97 a profound and irremediable congenital or chromosomal anomaly that is incompatible  
 98 with sustaining life after birth.  
 99 (4) 'Physician' has the meaning provided by Code Section 31-9A-2.  
 100 (5) 'Probable gestational age of the unborn child' means what will, in reasonable medical  
 101 judgment and with reasonable probability, be the postfertilization age of the unborn child  
 102 at the time the abortion is planned to be performed or induced, as dated from the time of  
 103 fertilization of the human ovum.  
 104 (6) 'Reasonable medical judgment' means a medical judgment that would be made by a  
 105 reasonably prudent physician, knowledgeable about the case and the treatment  
 106 possibilities with respect to the medical conditions involved.  
 107 (7) 'Unborn child' has the meaning provided by Code Section 31-9A-2.
- 108 31-9B-2.  
 109 (a) Except in the case of a medical emergency or when a pregnancy is diagnosed as  
 110 medically futile, no abortion shall be performed or attempted to be performed unless the  
 111 physician performing it has first made a determination of the probable gestational age of  
 112 the unborn child or relied upon such a determination made by another physician.  
 113 (b) Failure by any physician to conform to any requirement of this Code section constitutes  
 114 unprofessional conduct for purposes of paragraph (7) of subsection (a) of Code Section  
 115 43-34-8 relating to medical licensing sanctions.
- 116 31-9B-3.  
 117 (a) Any physician who performs or attempts to perform an abortion shall report to the  
 118 department, in conjunction with the reports required under Code Section 31-9A-6 and in  
 119 accordance with forms and rules and regulations adopted and promulgated by the  
 120 department:  
 121 (1) If a determination of probable gestational age was made, the probable gestational age  
 122 determined and the method and basis of the determination;  
 123 (2) If a determination of probable gestational age was not made, the basis of the  
 124 determination that a medical emergency existed or that a pregnancy was diagnosed as  
 125 medically futile;  
 126 (3) If the probable gestational age was determined to be 20 or more weeks, the basis of  
 127 the determination that the pregnant woman had a medically futile pregnancy or had a  
 128 condition which so complicated her medical condition as to necessitate the termination  
 129 of her pregnancy to avert her death or to avert serious risk of substantial and irreversible

130 physical impairment of a major bodily function, or the basis of the determination that it  
131 was necessary to preserve the life of an unborn child; and  
132 (4) The method used for the abortion and, in the case of an abortion performed when the  
133 probable gestational age was determined to be 20 or more weeks, whether the method of  
134 abortion used was one that, in reasonable medical judgment, provided the best  
135 opportunity for the unborn child to survive or, if such a method was not used, the basis  
136 of the determination that the pregnancy was medically futile or that termination of the  
137 pregnancy in that manner would pose a greater risk either of the death of the pregnant  
138 woman or of the substantial and irreversible physical impairment of a major bodily  
139 function of the pregnant woman than would other available methods.  
140 (b) By June 30 of each year, the department shall issue a public report providing statistics  
141 for the previous calendar year compiled from all of the reports covering that year submitted  
142 in accordance with this Code section for each of the items listed in subsection (a) of this  
143 Code section. Each such report shall also provide the statistics for all previous calendar  
144 years during which this Code section was in effect, adjusted to reflect any additional  
145 information from late or corrected reports. The department shall take care to ensure that  
146 none of the information included in the public reports could reasonably lead to the  
147 identification of any pregnant woman upon whom an abortion was performed.  
148 (c) The department shall ensure that the names and identities of the physicians filing  
149 reports under this chapter shall remain confidential. The names and identities of such  
150 physicians shall not be subject to Article 4 of Chapter 18 of Title 50.  
151 (d) Any physician who fails to submit a report by the end of the grace period of 30 days  
152 following the due date shall be subject to sanctions as specified in subsection (e) of Code  
153 Section 31-9A-6.  
154 (e) The department shall adopt such rules and regulations as are reasonable and necessary  
155 to implement the provisions of this Code section."

156

**SECTION 4.**

157 Said title is further amended by revising Code Section 31-9A-6.1, relating to civil and  
158 professional penalties for violations of the "Woman's Right to Know Act," as follows:

159 "31-9A-6.1.

160 (a) In addition to whatever remedies are available under the common or statutory law of  
161 this state, failure to comply with the requirements of this chapter shall be reported to the  
162 Georgia Composite Medical Board for disciplinary action.

163 (b) Any plaintiff seeking relief in the form of civil remedies for a violation of Code  
164 Section 31-9B-2 shall produce clear and convincing evidence that the physician

165 determining the probable gestational age of the fetus or the physician whose determination  
166 was relied upon was negligent in his or her determination.  
167 (c) Any female who solicits or conspires to solicit an abortion who makes a false  
168 representation of her age or name shall not have standing to state a claim against any party  
169 pursuant to this chapter or Chapter 9B of this title nor shall any agency or instrumentality  
170 of the state consider any action related to such claim."

171 **SECTION 5.**

172 Said title is further amended by revising paragraph (2) of Code Section 31-9A-2, relating to  
173 definitions relative to the "Woman's Right to Know Act," as follows:

174 "(2) 'Medical emergency' means any condition which, on the basis of the physician's  
175 good faith clinical judgment, so complicates the medical condition of a pregnant female  
176 as to necessitate the immediate abortion of her pregnancy to avert her death or for which  
177 a delay will create serious risk of substantial or irreversible impairment of a major bodily  
178 function: 'Medical emergency' means any condition which, in reasonable medical  
179 judgment, so complicates the medical condition of a pregnant female as to necessitate the  
180 immediate abortion of her pregnancy to avert her death or for which a delay will create  
181 serious risk of substantial or irreversible impairment of a major bodily function of the  
182 pregnant woman or death of the unborn child. No such condition shall be deemed to exist  
183 if it is based on a diagnosis or claim of a mental or emotional condition of the pregnant  
184 woman or that the pregnant woman will purposefully engage in conduct which she  
185 intends to result in her death or in substantial and irreversible physical impairment of a  
186 major bodily function."

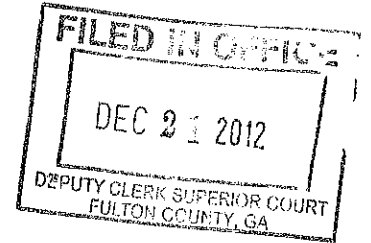
187 **SECTION 6.**

188 For purposes of promulgating rules and regulations, this Act shall become effective upon  
189 approval by the Governor or upon its becoming law without such approval. For all other  
190 purposes, this Act shall become effective on January 1, 2013.

191 **SECTION 7.**

192 All laws and parts of laws in conflict with this Act are repealed.

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA



Eva Lathrop, M.D., et al., )  
)  
Plaintiffs, )  
)  
v. )  
)  
NATHAN DEAL, Governor of the State )  
of Georgia, in his official capacity, et al. )  
)  
Defendants. )  
)  
\_\_\_\_\_ )

Civil Action File No.: 2012-cv-224423

**ORDER GRANTING PLAINTIFFS' MOTION FOR  
INTERLOCUTORY INJUNCTIVE RELIEF**

This matter having come before the Court upon Plaintiffs' motion for an interlocutory injunction; and the Court having considered the submissions of the parties in support thereof and in opposition thereto; and for good cause shown;

IT IS HEREBY ORDERED that, sufficient reason having been shown therefor, Plaintiffs' motion for an interlocutory injunction is granted pursuant to O.C.G.A. § 9-11-65, and until further order of this Court, Defendants, their officers, agents, servants, employees, and successors, and all others acting in concert or participation with them are enjoined from enforcing any of the provisions of HB 954, as passed by the Georgia General Assembly during the 2012 session, insofar as they prohibit pre-viability abortion care, and are further enjoined from enforcing the current provisions of the second sentence of O.C.G.A. § 16-12-141(d), which reads "Hospital or other licensed health facility records shall be available to the district attorney of the judicial circuit in which

the hospital or health facility is located.” Nothing herein shall preclude a district attorney from seeking to obtain records from a hospital or other licensed health facility pursuant to a search warrant.

So ordered this 20 day of December, 2012.



---

The Honorable Doris L. Downs  
Superior Court of Fulton County

cc:

Chad M. Brock  
Chara F. Jackson  
ACLU Foundation of Georgia  
1900 The Exchange, Suite 425  
Atlanta, GA 30339

Alex Kolbi-Molinas  
Susan Talcott Camp  
American Civil Liberties Union Foundation  
125 Broad Street, 18<sup>th</sup> Floor  
New York, NY 10004

Shalen S. Nelson  
Senior Assistant Attorney General  
40 Capitol Square, SW  
Atlanta, GA 30334-1300