IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

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

Plaintiffs,

v.

STATE OF GEORGIA,

Defendant.

Case No. _____

VERIFIED COMPLAINT

I.
PRELIMINARY STATEMENT

1. This is a constitutional challenge to a Georgia law that is forcing pregnancy and childbirth upon countless Georgians, and at the same time prohibiting medically appropriate care for patients suffering pregnancy complications and miscarriages.[1] Plaintiffs bring this action under the Georgia Constitution's rights to privacy, liberty, and equal protection, seeking declaratory and interlocutory injunctive relief, O.C.G.A. § 9-4-1, *et seq.*, as well as a permanent injunction, O.C.G.A. § 9-5-1, *et seq.*

2. The Georgia Legislature enacted Georgia 2019 House Bill 481 ("H.B. 481," "the Act," or the "Six-Week Ban"), attached hereto as Ex. A, against a backdrop of profound health care challenges in Georgia, including a critical shortage of physicians and some of the highest rates of maternal and infant mortality in the nation. These harms are felt most acutely by Georgians of color, low-income Georgians, and people living in rural areas. Indeed, Black women in Georgia are more than twice as likely as white women to die during pregnancy.[2]

3. Instead of working to improve the safety of pregnancy and childbirth and support Georgians' reproductive health care decisions, the Legislature chose to

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[1] *See* Aff. of Martina Badell, M.D., attached hereto as Ex. B ("Badell Aff."), ¶¶ 28–37; Aff. of Carrie Cwiak, M.D., M.P.H., attached hereto as Ex. C ("Cwiak Aff."), ¶¶ 12–13, 35, 49–56; *see also* Aff. of Whitney Rice, DrPH, M.P.H., attached hereto as Ex. D ("Rice Aff."), ¶¶ 49–50, 52.

[2] Rice Aff. ¶¶ 17–23; Badell Aff. ¶ 22.

criminalize abortion beginning at approximately six weeks of pregnancy—just two weeks after a missed period and before many women[3] even know they are pregnant.[4]

4. The Six-Week Ban's exceptions for rape and incest, medical emergencies, and lethal fetal anomalies are drawn so narrowly that they fail to mitigate harm to even the most vulnerable Georgians. The young girl who has not filed a police report about her father's rapes; the woman whose doctor has counseled that pregnancy would jeopardize her life but whose health has not yet fully deteriorated; the patient whose pregnancy triggers a severe mental health episode and suicide risk; the family who receives a fetal diagnosis that would require extensive medical interventions they cannot afford—all are subject to and are being irreparably harmed by the Six-Week Ban.[5]

5. Georgians experiencing a miscarriage likewise suffer under the Act's cruel limitations. The Six-Week Ban prohibits medically appropriate care to evacuate a patient's uterus even in cases where pregnancy loss is inevitable,

[3] Consistent with the language of H.B. 481, Plaintiffs periodically use "women" to refer to people who are pregnant, but note that "not all persons who may become pregnant identify as female," and that transgender and gender non-binary people also need abortion and miscarriage care. *Reprod. Health Servs. v. Strange*, 3 F.4th 1240, 1246 n.2 (11th Cir. 2021), *reh'g en banc granted, opinion vacated on other grounds sub nom. Reprod. Health Servs. ex rel. Ayers v. Strange*, 22 F.4th 1346 (11th Cir. 2022) (mem.).

[4] Badell Aff. ¶ 25; Cwiak Aff. ¶¶ 18, 25–26.

[5] Badell Aff. ¶¶ 28, 30, 34, 39; Cwiak Aff. ¶¶ 40–48; Aff. of Samantha Meltzer-Brody, M.D., attached hereto as Ex. E ("Meltzer-Brody Aff."), ¶¶ 12, 33, 36, 40–41, 43.

extending miscarriage patients' agony and elevating their medical risk.[6]

6. The Medical Association of Georgia ("MAG"), the American College of Obstetricians and Gynecologists, and other leading state and national medical associations uniformly oppose the Six-Week Ban. MAG strongly opposed the Ban because it "violates the doctor/patient relationship" and does not "allow women and families to maintain access to quality healthcare in Georgia."[7]

7. Since 2019, the Six-Week Ban had been enjoined by federal court order as a violation of the U.S. Constitution. *SisterSong Women of Color Reprod. Just. Collective v. Kemp*, 410 F. Supp. 3d 1327, 1350 (N.D. Ga. 2019); *SisterSong Women of Color Reprod. Just. Collective v. Kemp*, 472 F. Supp. 3d 1297, 1314 (N.D. Ga. 2020). On July 20, 2022, the Eleventh Circuit Court of Appeals issued a decision vacating the permanent injunction against the Six-Week Ban based on the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, which overruled *Roe v. Wade*, 410 U.S. 113 (1973), and half a century of unbroken federal precedent holding that the U.S. Constitution protects the right to abortion. *SisterSong Women of Color Reprod. Just. Collective v. Governor of Ga.*, No. 20-13024, 2022 WL 2824904, at *3–4 (11th Cir. July 20, 2022) (citing *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242, 2283–84 (2022)).

[6] Badell Aff. ¶¶ 36–37; Cwiak Aff. ¶¶ 49–56.

[7] Cwiak Aff. ¶ 11.

8. Hours later, the Eleventh Circuit panel issued an order *sua sponte* staying the injunction of H.B. 481 until the Court's mandate issues. *SisterSong Women of Color Reprod. Just. Collective v. Governor of Ga.*, No. 20-13024, slip op. at 3 (11th Cir. July 20, 2022). The Court's stay order put the Six-Week Ban into immediate effect on July 20 and caused chaos and devastation across Georgia, as patients with scheduled abortions—some already in clinic waiting rooms—learned they could no longer obtain this time-sensitive care in Georgia.[8]

9. Every day the Six-Week Ban is in effect, it prohibits pregnant people from obtaining essential health care to end a pregnancy, to treat serious pregnancy complications, or to manage a miscarriage. Every day, it forces countless Georgians to travel hundreds or thousands of miles out of state for abortion care, at substantial expense.[9] Worse yet, it forces Georgians who do not have the means for such travel to carry pregnancies and go through labor and delivery against their will—subjecting them to severe pain and life-threatening medical risks; preventing some from escaping abusive households; and consigning many to a life of poverty.[10]

10. H.B. 481 infringes Georgians' fundamental right under the Georgia Constitution to be free from unwarranted State interference with their "life, . . . body,

[8] Aff. of Jane Doe 1, attached hereto as Ex. E ("Doe 1 Aff."), ¶ 3; Aff. of Jane Doe 2, attached hereto as Ex. F ("Doe 2 Aff."), ¶ 4.

[9] *See, e.g.*, Doe 1 Aff. ¶ 7; Doe 2 Aff. ¶ 6.

[10] Badell Aff. ¶¶ 13–22; Cwiak Aff. ¶¶ 12–13, 34–39, 46–56; Rice Aff. ¶¶ 34, 44, 45–47.

. . . [and] health," *Pavesich v. New Eng. Life Ins. Co.*, 122 Ga. 190, 195 (1905)—a liberty interest that inherently encompasses an individual's decision whether to carry a pregnancy to term.

11. There is no State interest that justifies forcing Georgians to suffer the profound risks and life-altering consequences of pregnancy and childbirth from the earliest weeks of pregnancy, *four months* before the embryo would be able survive apart from the pregnant person's body.[11]

12. In a further affront to Georgians' privacy rights and reliance interests, H.B. 481 expands upon a preexisting statutory provision that grants district attorneys virtually unfettered access to the medical files of anyone who seeks an abortion, without a subpoena. O.C.G.A. § 16-12-141(f) (the "Records Access Provision") exposes Georgians' most intimate medical conditions and personal circumstances to state officials in bald defiance of the Georgia Constitution and Georgia Supreme Court precedent. Plaintiffs also challenge this carte blanche access to abortion patients' personal health records.[12]

13. For all of these reasons, the Six-Week Ban and Records Access Provision should be declared unconstitutional and their enforcement enjoined.

[11] Badell Aff. ¶ 26; Cwiak Aff. ¶ 20.

[12] Cwiak Aff. ¶¶ 63–66.

II.
JURISDICTION AND VENUE

14. 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 under O.C.G.A. § 9-10-30.

15. With respect to Plaintiffs' claim for declaratory and interlocutory injunctive relief under the Declaratory Judgments Act, sovereign immunity has been waived under article I, section 2, paragraph V of the Georgia Constitution. That provision waives sovereign immunity "for actions in the superior court seeking declaratory relief from acts of the state . . . in violation of the laws of the Constitution of this state or the Constitution of the United States."

16. Article I, section 2, paragraph V of the Georgia Constitution likewise waives sovereign immunity with respect to Plaintiffs' claim for permanent injunctive relief under O.C.G.A. § 9-5-1. That provision waives sovereign immunity for claims for permanent injunctions "after awarding declaratory relief[.]"

III.
PLAINTIFFS

17. Plaintiffs are a coalition of Georgia-based obstetrician-gynecologists ("OB-GYNs"), reproductive health centers, and membership groups committed to reproductive freedom and justice.

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

19. H.B. 481's draconian prohibitions are forcing SisterSong to divert its scarce time and resources away from other work to help mitigate the sweeping harms the Six-Week Ban imposes. SisterSong and its members are directly impacted by H.B. 481's restrictions. SisterSong sues on behalf of itself and its members.

20. Plaintiff Feminist Women's Health Center ("Feminist") is a non-profit reproductive health care facility registered in the state of Georgia and located in Dekalb County. Feminist has been providing reproductive health care in Georgia since 1976. It currently provides a range of services, including abortions in compliance with the Six-Week Ban, as well as contraception, annual gynecological

examinations, miscarriage management, sexually transmitted infection testing and treatment, and transgender health care such as hormone replacement therapy. Before the Act took effect, Feminist provided abortion care up to 21.6 weeks as measured from the first day of the patient's last menstrual period ("LMP").[13] Feminist also engages in community education, grassroots organizing, public affairs, and advocacy programs to advance reproductive health, rights, and justice for all Georgians. Feminist sues on behalf of itself and its physicians, staff, and patients.

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

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

22. Plaintiff Atlanta Comprehensive Wellness Clinic ("ACWC") is a private medical practice registered in the state of Georgia and located in Fulton County. ACWC provides reproductive health services, including abortions in compliance with the Six-Week Ban. Before the Act took effect, ACWC provided abortion care up to 13.6 weeks LMP. ACWC sues on behalf of itself and its physicians, staff, and patients.

23. Plaintiff Atlanta Women's Medical Center ("AWMC") is a private company registered in the state of Georgia and located in Fulton County. AWMC has been providing reproductive health services, including abortion care, since 1977. AWMC currently provides abortions in compliance with the Six-Week Ban; before the Act took effect, AWMC provided abortion care up to 21.6 weeks LMP. AWMC sues on behalf of itself and its physicians, staff, and patients.

24. Plaintiff FemHealth USA d/b/a carafem is a nonprofit organization registered in the state of Georgia and located in Fulton County. carafem provides reproductive health services, including abortions in compliance with the Six-Week Ban. Before the Act took effect, carafem provided abortion care up to 12.6 weeks LMP. carafem brings this action on behalf of itself and its physicians, staff, and patients.

25. Plaintiff Summit Medical Associates, P.C. ("Summit") is a professional corporation registered in the state of Georgia and located in Fulton County. Summit

has been providing reproductive health services, including abortion care, since 1976. Summit currently provides abortions in compliance with the Six-Week Ban; before the Act took effect, Summit provided abortion care up to 21.6 weeks LMP. Summit brings this action on behalf of itself and its physicians, staff, and patients.

26. Plaintiff Carrie Cwiak, M.D., M.P.H., is a board-certified OB-GYN licensed to practice in Georgia. She is Professor of Gynecology and Obstetrics and Family Planning at Emory University School of Medicine. In addition to teaching residents, her medical practice includes providing her patients with labor and delivery care and comprehensive obstetrical and gynecological care including abortions at Emory University Hospital Midtown in Fulton County, where she is Chief of Service of Obstetrics and Gynecology, and Fulton-DeKalb Hospital, d/b/a Grady Memorial Hospital, in Fulton County. Dr. Cwiak also provides reproductive health services, including abortions, at Plaintiffs Feminist and AWMC, and she is the Medical Director at Feminist. She sues as an individual on behalf of herself and her patients, and does not sue as a representative of any institution or organization not named as a plaintiff in this lawsuit.

27. Plaintiff Lisa Haddad, M.D., M.S., M.P.H., is a board-certified OB-GYN licensed to practice in Georgia. She is Medical Director at the Center for Biomedical Research at the Population Council, a non-profit global health organization, and Adjunct Associate Professor of Gynecology and Obstetrics at

Emory University School of Medicine. In addition to research and teaching residents, her medical practice includes providing her patients with labor and delivery care and comprehensive obstetrical and gynecological care including abortions at Emory University Hospital Midtown in Fulton County, and Fulton-DeKalb Hospital, d/b/a Grady Memorial Hospital, in Fulton County. Dr. Haddad also provides reproductive health services, including abortions, at Plaintiff AWMC. Dr. Haddad sues as an individual on behalf of herself and her patients, and does not sue as a representative of any institution or organization not named as a plaintiff in this lawsuit.

28. Plaintiff Eva Lathrop, M.D., M.P.H., is a board-certified obstetrician and gynecologist licensed to practice in Georgia. She is the Medical Director for a non-profit global health organization and an Adjunct Associate Professor of Gynecology and Obstetrics and Family Planning at Emory University School of Medicine. In addition to overseeing global health initiatives and teaching residents, she provides her patients with labor and delivery care and comprehensive obstetrical and gynecological care including abortions at Fulton-DeKalb Hospital, d/b/a Grady Memorial Hospital, in Fulton County. Dr. Lathrop also provides reproductive health services, including abortions, at Plaintiff AWMC. Dr. Lathrop sues as an individual on behalf of herself and her patients, and does not sue as a representative of any institution or organization not named as a plaintiff in this lawsuit.

29. Plaintiff Medical Students for Choice ("MSFC") is a 501(c)(3) non-profit organization whose mission is to create tomorrow's abortion providers and pro-choice physicians. MSFC assists medical students and residents to maintain and expand access to abortion and family planning training, including through curriculum reform, training in a clinic setting, and abortion training institutes. MSFC sues on behalf of itself, its members, and their patients.

IV.
FACTUAL ALLEGATIONS

A. Pregnancy, Miscarriage & Abortion in Georgia

30. Pregnancy is a major medical event affecting virtually every aspect of a person's physiology. Even in uncomplicated pregnancies, many patients suffer symptoms, such as nausea, vomiting, headaches, fatigue, back pain, constipation, frequent urination, dizziness, insomnia, nose bleeds, and shortness of breath, which can cause significant pain and discomfort and interfere with essential daily tasks.[14]

31. Pregnancy poses additional medical risks in both the short- and long-term for people with co-existing conditions known as "comorbidities," such as diabetes, hypertension, asthma, cardiac disease, or autoimmune disorders like lupus. It is not uncommon for someone who had been successfully managing a health

[14] Badell Aff. ¶ 13; *see also id.* at 11–12, 14–22, 34, 40.

condition to see a dramatic deterioration over the course of a pregnancy, often with lasting consequences even after the pregnancy ends.[15]

32. Because of income inequality, lack of access to health care, and other facets of structural racism, people of color are more likely to have preexisting health conditions that exacerbate the health risks and pains of pregnancy.[16]

33. In addition, people can develop conditions for the first time in pregnancy that predispose them to medical problems later in life. For instance, gestational diabetes increases the risk of diabetes after pregnancy. Pre-eclampsia increases the risks of developing other conditions such as chronic hypertension and cardiovascular disease. Pregnant people who develop peripartum cardiomyopathy (a heart disease that makes it harder for the heart to pump blood effectively) sometimes never recover normal heart function after pregnancy.[17]

34. For many, pregnancy and the postpartum period (together, the "perinatal" period) are also times of increased vulnerability to mental health issues—both new disorders and recurrences of preexisting conditions. At least one in eight women will experience psychiatric symptoms during the perinatal period, and unplanned pregnancy and low socioeconomic status are risk factors. In a recent study

[15] *Id.* ¶ 16.

[16] *Id.* ¶¶ 15, 22; *see also* Rice Aff. ¶¶ 19–20.

[17] Badell Aff. ¶ 19; *see also* Aff. of Jane Doe 3, attached hereto as Ex. G ("Doe 3 Aff."), ¶ 3.

of pregnant and postpartum Black women in south Atlanta, *more than half* reported perinatal anxiety or mood disorder symptoms.[18]

35. Pregnancy poses a significant risk of relapse or worsening of symptoms across a broad range of perinatal psychiatric illness even among patients who continue their pre-pregnancy treatment regimen (which not all choose to do, typically because of potential risks to the fetus). For some women, a mental health episode triggered by pregnancy can be so severe and debilitating that it becomes life-threatening. A relapse of mental illness also often carries long-term practical consequences, including loss of employment and massive debt.[19]

36. Labor and delivery—whether vaginal or via caesarean section ("C-section")—present their own severe medical risks. Vaginal deliveries pose risks of laceration to the vagina, pelvic floor damage, hemorrhage, infection, retained placenta, and significant blood loss, with potential long-term consequences including uterine prolapse and incontinence. A C-section is major abdominal surgery carrying even greater risks, including hemorrhage, infection, injury to surrounding organs, need for blood transfusion, need for unanticipated surgery including

[18] *See* Meltzer-Brody Aff. ¶¶ 12–13, 16–18; Badell Aff ¶ 16.

[19] Meltzer-Brody Aff. ¶¶ 12, 21, 23–26, 30, 32–33, 35–36, 39–43; Badell Aff. ¶ 34.

hysterectomy, and death. In Georgia, one in three live births is via C-section—the ninth highest rate in the nation.[20]

37. Georgia has a dearth of physicians, particularly in rural areas. The ratio of OB-GYNs to people in Georgia is far below the national average, and nearly half of Georgia counties do not have a single OB-GYN. Lacking access to care in one's community and having to travel long distances for care results in worse outcomes.[21]

38. Indeed, according to the U.S. Centers for Disease Control and Prevention ("CDC"), Georgia's rate of pregnancy-related deaths is among the ten highest in the nation: 28.8 maternal deaths per 100,000 live births in 2018–2020, compared to an average of 20.4 nationally. The threat is particularly grave for Black women, who are 2.3 times as likely to die from pregnancy as white women in Georgia. Georgia also has one of the highest rates of infant mortality in the nation.[22]

39. These statistics ultimately reflect policy choices. Indeed, Georgia's Department of Public Health has recognized that, between 2015 and 2017 (the latest years for which such data are available), 87% of pregnancy-related deaths were preventable.[23]

[20] Badell Aff. ¶ 17.

[21] Rice Aff. ¶¶ 17–18; Cwiak Aff. ¶ 57.

[22] Badell Aff. ¶ 22; Cwiak Aff. ¶ 7; Rice Aff. ¶¶ 21–22.

[23] Rice Aff. ¶ 21.

40. Georgia has the 5th lowest number of policies supportive of the health of women and children in the nation. For instance, Georgia does not require reasonable accommodations for pregnant employees, as North Carolina and South Carolina do, and Georgia denies additional benefits to families who have additional children while on government assistance, unlike its neighbor Alabama.[24]

41. While most pregnancies in Georgia and in the United States end in a live birth, the two alternative outcomes—miscarriage and abortion—are both very common. Approximately 15–20% of pregnancies end in miscarriage, and one in four women in the United States has an abortion by age 45. In Georgia, in 2019, there were 16.9 abortions per 1,000 women of reproductive age.[25]

42. Georgians who seek an abortion do so for a variety of deeply personal reasons, including familial, medical, and financial ones. Deciding whether to continue or end a pregnancy implicates a person's core religious beliefs, values, and family circumstances. Some people have abortions because it is not the right time for them to have a child or to add to their families. Some want to pursue their education; some lack the economic resources or level of partner support or stability needed to raise children; some will be unable to care adequately for their existing children or their ill or aging parents if they increase their family size. Others end a

[24] *Id.* ¶¶ 25–27.

[25] Cwiak Aff. ¶¶ 8, 50; Badell Aff. ¶ 37.

pregnancy to be able to leave an abusive partner. Some people seek abortions because of the risks continuing a pregnancy would pose to their health or life; some because they have become pregnant as a result of rape or incest; and others because they decide not to have children. Some people decide to have an abortion because of a diagnosed fetal medical condition, concluding that they do not have the societal or personal resources—financial, medical, educational, or logistical—to care for a child with physical or intellectual disabilities, or to do so and simultaneously provide for their existing children.[26]

43. Three out of four abortion patients nationwide are either poor or low-income. And in Georgia, nearly three out of four abortion patients are people of color: 65% of abortion patients in Georgia in 2019 identified as Black, 21% as white, 9% as Hispanic, and 5% as "other." Eighty-seven percent of Georgia abortion patients are unmarried, and more than 60% already have at least one child. One in five has two children, and nearly one in five already has at least three children.[27]

44. Abortion is very safe, and far safer than pregnancy. Serious complications occur in fewer than 1% of abortions. As noted *supra* at ¶ 38, according to the CDC, there were 20.4 maternal deaths per 100,000 live births nationally in

[26] Cwiak Aff. ¶¶ 9–10; Meltzer-Brody Aff. ¶ 35; *see also* Doe 1 Aff. ¶ 2; Doe 2 Aff. ¶¶ 1–2, 7; Doe 3 Aff. ¶ 3; Aff. of Jane Doe 4, attached hereto as Ex. I ("Doe 4 Aff."), ¶ 3; Aff. of Jane Doe 5, attached hereto as Ex. J ("Doe 5 Aff."), ¶ 4.

[27] Rice Aff. ¶¶ 29–31, 30 n.71; *see also* Cwiak Aff. ¶ 9.

2018–2020. By contrast, in 2013–2018, the most recent years for which data are available, the national case fatality rate for legal induced abortion was 0.41 deaths per 100,000. Every pregnancy-related complication is more common among people who continue a pregnancy to childbirth than among those who have an abortion.[28]

45. Abortion is also safer than many other common medical procedures: colonoscopy, certain dental procedures, and plastic surgery all have higher mortality rates than abortion. However, while abortion is safe throughout pregnancy, the medical risks increase as pregnancy advances. In other words, delay increases risk.[29]

46. Georgians have to overcome numerous barriers, including those imposed by state law, which make it difficult to access care early in pregnancy. For instance, a patient must hear a special government-created script and then delay care by at least 24 hours before she is permitted to consent to an abortion, O.C.G.A. § 31-9A-3(2); young people cannot obtain an abortion unless they first notify a parent or obtain a court order, *id.* § 15-11-682; and nurse practitioners and other qualified advanced practice clinicians are prohibited from providing abortions despite being permitted to provide other health services of comparable complexity and risk, O.C.G.A. §§ 16-12-141(b), 43-34-110, 43-34-25(l). Additionally, with very narrow exceptions, Georgia bars coverage of abortion through its Medicaid program (Op.

[28] Cwiak Aff. ¶¶ 14, 16; Badell Aff. ¶ 20.

[29] Cwiak Aff. ¶¶ 15, 37.

Atty. Gen. No. U94-6, March 15, 1994), in health plans offered in the state insurance exchange (O.C.G.A. § 33-24-59.17), and in health insurance plans offered to state employees (O.C.G.A. § 45-18-4).[30]

47. Under preexisting Georgia law, abortions were prohibited beginning at 22.0 weeks LMP,[31] with extremely narrow exceptions. O.C.G.A. § 16-12-141(c)(1).

B. The Six-Week Ban

i. Statutory Framework

48. Section 10 of H.B. 481 requires that, before performing an abortion, a physician first make "a determination of the presence of a detectable human heartbeat, as such term is defined in Code Section 1-2-1." O.C.G.A. § 31-9B-2(a). As amended by H.B. 481 § 3, "[d]etectable human heartbeat" is defined as "embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac." O.C.G.A. § 1-2-1(e)(1).[32]

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[30] *See also id.* ¶ 27.

[31] Preexisting Georgia law prohibited abortion at "20 weeks or more," O.C.G.A. § 16-12-141(c)(1) (repealed 2019), "from the time of fertilization," O.C.G.A. § 31-9B-1(5). Because fertilization typically occurs at two weeks LMP, preexisting Georgia law banned abortions at 22 weeks LMP.

[32] H.B. 481 also redefines "natural person" throughout the Georgia code to include an "unborn child," defined as a human "at any stage of development who is carried in the womb." H.B. 481 § 3 (amending O.C.G.A. § 1-2-1(d)–(e)). In 2020, Plaintiffs won a facial permanent injunction of Section 3 as void for vagueness. *SisterSong Women of Color Reprod. Just. Collective*, 472 F. Supp. 3d at 1316, 1321. On July 20, 2022, the Eleventh Circuit vacated that injunction, finding that "[o]n its face, the statute is not void for vagueness," though acknowledging that "there might be vague applications of that definition in other provisions of the Georgia Code." *SisterSong Women of Color Reprod. Just. Collective*, 2022 WL 2824904, at *5. Plaintiffs' federal challenge to Section 3 is still pending, and they do not challenge it here.

49. Section 4 then provides that "[n]o abortion is authorized or shall be performed if an" embryo/fetus "has been determined . . . to have a detectable human heartbeat," and "[n]o abortion is authorized or shall be performed in violation of" the code section requiring such a determination. H.B. 481 § 4 (codified at O.C.G.A. § 16-12-141(b), (d)).

50. The Six-Week Ban contains three very narrow exceptions for a "medical emergency," rape or incest where there is an official police report, or a "medically futile" pregnancy, discussed *infra* at ¶¶ 68–72.

51. The definition on which H.B. 481 is premised is contradicted by medical science. The electrical impulses that can be detected beginning at approximately six weeks of pregnancy are not a "heartbeat": the cells that produce those early electrical impulses have not yet formed a functioning four-chamber heart. Because "heartbeat" is scientifically inaccurate, Plaintiffs refer to the ban on abortions after the detection of a "human heartbeat" as the "Six-Week Ban."[33]

52. Under Section 4 of H.B. 481, "abortion" does not include removing an "ectopic pregnancy" (*i.e.*, a pregnancy located outside the uterus). O.C.G.A. § 16-12-141(a)(1)(B).

53. The Act's definition of "abortion" also excludes an act "performed with the purpose of removing a dead unborn child caused by spontaneous abortion," *i.e.*,

[33] Cwiak Aff. ¶ 21; Badell Aff. ¶ 26.

caused by miscarriage. O.C.G.A. § 16-12-141(a)(1)(A). Under this definition, a patient suffering a miscarriage would be able to access medical care to empty her uterus *only if* the process of pregnancy loss has already ended embryonic/fetal cardiac activity. As long as cardiac activity persists, H.B. 481 will prohibit physicians from providing medically indicated care to complete the miscarriage—regardless of the patient's wishes and the inevitability of the demise of the pregnancy—unless the patient's health deteriorates to the point that the Act's extremely limited "medical emergency" exception is triggered.[34]

54. Section 11 of the Act imposes new reporting obligations for abortion providers to document that cardiac activity was not detectable before performing an abortion or that one of the Act's three extremely limited exceptions existed, detailed *infra* at ¶¶ 68–72. H.B. 481 §11 (codified at O.C.G.A. § 31-9B-3).

55. A physician who violates Section 4 faces potential imprisonment of one to ten years. O.C.G.A. § 16-12-140(b). Such a violation also exposes a physician to licensing penalties up to and including revocation, because it could constitute both "unprofessional conduct" under O.C.G.A. § 43-34-8(a)(7), *see* H.B. 481 § 10(b) (codified at O.C.G.A. § 31-9B-2), and independent grounds for such discipline, *see* O.C.G.A. § 43-34-8(a)(8); s*ee also* O.C.G.A. § 43-34-8(b)(1)(F) (penalties). A

[34] Cwiak Aff. ¶¶ 51, 53–56; Badell Aff. ¶ 36.

patient may also bring a civil action against the physician for violating Section 4. H.B. 481 § 4(g) (codified at O.C.G.A § 16-12-141(g)).

56. Section 4 offers affirmative defenses if a physician, nurse, physician assistant, or pharmacist "provide[d] medical treatment for a pregnant woman which results in the accidental or unintentional injury or death of an" embryo/fetus, or if "[a] woman sought an abortion because she reasonably believed that an abortion was the only way to prevent a medical emergency." H.B. 481 § 4(h)(1–5) (codified at O.C.G.A. § 16-12-141(h)(1–5)). Once a prosecutor proves the *prima facie* case of a violation of H.B. 481, an accused may try to escape conviction and incarceration by raising an affirmative defense, but they bear the burden of proving the elements of that defense.

ii. Embryonic Development at Six Weeks

57. In a typically developing pregnancy, ultrasound can generally detect embryonic cardiac activity beginning at approximately six weeks LMP. Thus, H.B. 481 prohibits virtually all abortions after approximately six weeks of pregnancy.[35]

58. At six weeks of pregnancy, many people do not even know they are pregnant. For a person with regular four-week menstrual cycles, six weeks LMP is

[35] Badell Aff. ¶ 26; Cwiak Aff. ¶ 22; *accord* H.B. 481 § 8 (codified at O.C.G.A. § 31-9A-4) (instructing Georgia Department of Public Health to publish information stating that, "[a]s early as six weeks' gestation, an unborn child may have a detectable human heartbeat").

only two weeks after their first missed period. Many people do not have regular menstrual periods, including due to a health condition, contraceptive usage, or breastfeeding, and some people mistake the vaginal bleeding common in early pregnancy for a period.[36]

59. At six weeks of pregnancy, an embryo (not yet a fetus) is wholly dependent on the pregnant woman for sustenance, and indeed will be entirely dependent on her body for another *four* months (or more) to follow. All nourishment comes to the embryo via the placenta attached to the uterus. The embryo is months away from having the physiological and functional structures necessary for sustained survival apart from the pregnant person's body.[37]

60. The Act's legislative findings provide that: "Modern medical science, not available decades ago, demonstrates that unborn children are a class of living, distinct persons and more expansive state recognition of unborn children as persons did not exist when *Planned Parenthood v. Casey* (1992) and *Roe v. Wade* (1973) established abortion related precedents." H.B. 481 § 2(3).

61. In fact, no advancements in science or technology in the last three decades have changed the consensus among the scientific community that an embryo is neither "living" nor "distinct" at six weeks LMP. While advancements in

[36] Cwiak Aff. ¶ 25.

[37] Badell Aff. ¶ 23; Cwiak Aff. ¶ 20.

ultrasound technology have improved physicians' ability to visualize fetal development and diagnose anomalies after 12 weeks LMP, there have been no such changes to our understanding of embryonic development at six weeks LMP. At that point in pregnancy, an embryo is too small—about 1/10 of an inch—for modern ultrasound to detect any anatomical features.[38]

62. Beginning at approximately 8–10 weeks, the pregnancy is referred to as a fetus. A fetus generally does not reach viability—the point at which, if born then, there is a reasonable likelihood of sustained survival with or without artificial support—until approximately 23–24 weeks LMP, or in rare cases with optimal conditions, 22 weeks. A full-term pregnancy is approximately 40 weeks LMP.[39]

iii. Challenges of Obtaining an Abortion Before Six Weeks

63. Patients who have made the decision to end a pregnancy generally obtain an abortion as soon as they can, and most abortions in Georgia and nationally occur in the first trimester. In 2019, more than nine out of ten abortions in Georgia occurred before 14 weeks of pregnancy.[40]

[38] Badell Aff. ¶ 27.

[39] Cwiak Aff. ¶¶ 19–20; Badell Aff. ¶ 23.

[40] Cwiak Aff. ¶¶ 23, 28; *see also* Doe 1 Aff. ¶¶ 2–3, 5; Doe 2 Aff. ¶¶ 3–5; Doe 3 Aff. ¶¶ 2–6; Doe 4 Aff. ¶¶ 2, 4–5.

64. However, in 2019, the majority of patients in Georgia were not able to access an abortion before six weeks of pregnancy.[41]

65. Many people do not even suspect they are pregnant by six weeks LMP, *i.e.*, four weeks post-fertilization—much less confirm the pregnancy, make the decision to obtain an abortion, fulfill Georgia's mandatory 24-hour delay requirement for abortion, O.C.G.A. § 31-9A-3(2), and access an abortion within that very early timeframe.[42]

66. Financial and logistical difficulties also prevent many patients from obtaining an abortion before six weeks LMP. Nationwide, 75% of abortion patients are poor or low-income, and Georgia's poverty rate is higher than the national average. Poverty in Georgia is especially high among Black people, who comprise the majority of Georgia abortion patients. People with low incomes are often delayed in accessing abortions as they struggle to raise funds to cover the cost of the abortion—which Georgia law prohibits most insurers from covering, *see supra* ¶ 46—as well as raise funds and navigate the logistics of childcare, transportation to and from the clinic, hotel rooms if traveling long distances to the nearest provider, and lost wages for missed work.[43]

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[41] Cwiak Aff. ¶ 28.

[42] *Id.* ¶¶ 24–25, 27

[43] *Id.* ¶¶ 27, 38; Rice Aff. ¶¶ 34–36.

67. The Six-Week Ban harms even the minority of patients who learn of a pregnancy before six weeks and have, or can quickly gather, sufficient resources to access care in Georgia. The Act's extremely early deadline compels patients to decide quickly how to proceed with their pregnancy—within just hours or days. While many patients know immediately upon learning of a pregnancy that they need an abortion, others take additional time to reflect and/or to consult with loved ones, health care providers, spiritual advisors, or other trusted confidantes.[44]

iv. The Six-Week Ban's Narrow Exceptions

68. The Six-Week Ban contains three extremely limited exceptions.

69. *First*, the Act permits otherwise banned abortion care when a "medical emergency" exists, strictly defined as "a condition in which an abortion is necessary in order to prevent the death of the pregnant woman or the substantial and irreversible physical impairment of a major bodily function of the pregnant woman." H.B. 481 § 4 (b)(1), (a)(3)) (codified at O.C.G.A. §16-12-141(b)(1), (a)(3)). It does not permit abortion care necessary to prevent: (1) substantial but reversible physical impairment of a major bodily function, (2) less than "substantial" but irreversible physical impairment of a major bodily function, or (3) substantial and irreversible physical impairment of a bodily function that is not "major." And where a physician

[44] *Compare* Doe 5 Aff. ¶¶ 2, 4, 6; *with, e.g.*, Doe 1 Aff. ¶ 2.

determines that an abortion is necessary to reduce *the risk of* death or substantial harm to the pregnant woman, they must weigh their medical judgment that an emergency exists against the threat of criminal liability.[45]

70. The Act's medical emergency exception also expressly prohibits a physician from providing an abortion that is necessary to prevent death or substantial impairment if based on "a diagnosis or claim of a mental or emotional condition . . . or that the pregnant woman will purposefully engage in" suicide, self-harm, or dangerous behaviors likely to result in death or self-harm. H.B. 481 § 4(a)(3), (b)(1) (codified at O.C.G.A. §(a)(3), (b)(1)). Instead, H.B. 481 forces a patient experiencing a mental health crisis due to pregnancy to continue that pregnancy and go through childbirth, no matter how dire or deadly the consequences. A psychiatric illness is no less of a medical condition than a physical illness—and suicide is a leading cause of maternal death.[46]

71. *Second*, the Act contains an exception for a pregnancy that is at or below 20 weeks post-fertilization (*i.e.*, 22 weeks LMP) and that is the result of rape or incest, but only when "an official police report has been filed alleging the offense of rape or incest." H.B. 481 § 4(b)(2) (codified at O.C.G.A. §16-12-141(b)(2)). In other words, if someone pregnant from rape/incest is unwilling or unable to file such

[45] Badell Aff. ¶ 29; Cwiak Aff. ¶¶ 47-48.

[46] Meltzer-Brody Aff. ¶¶ 12, 33, 35–36, 39–43; Badell Aff. ¶ 34; *see also* GA 2022 House Bill 1013 ("Mental Health Parity Act"), codified at O.C.G.A. § 33-21A-13.

a report—for instance, because she fears retaliatory violence by an abusive parent or partner—the State of Georgia will force her to carry that pregnancy to term. In the United States, only a small fraction of rapes are reported to police. This is due to a number of factors, including trauma and fear of violent retaliation from the abuser.[47]

72. *Third*, the Act permits abortion when the "physician determines, in reasonable medical judgment, that the pregnancy is medically futile," which is limited by definition to "a profound and irremediable congenital or chromosomal anomaly that is incompatible with sustaining life after birth." H.B. 481 § 4(a)(4), (b)(3) (codified at O.C.G.A. §16-12-141(a)(4), (b)(3)). But medicine is not so clear cut, and a physician cannot predict exactly how long a baby will survive, or how much they may suffer before they die. Moreover, a physician cannot be sure that their medical judgment would not later be second-guessed by a prosecutor or judge. Because of this uncertainty, pregnant people who receive a fetal diagnosis that is not definitively fatal but would be severely life-limiting, or require intervention that may be invasive, painful, and/or unaffordable, will likely be forced to carry the pregnancy to term and give birth regardless of their wishes and circumstances.[48]

[47] Cwiak Aff. ¶¶ 41–44.

[48] Badell Aff. ¶¶ 38–41; Cwiak Aff. ¶ 46.

v. The Impact of the Six-Week Ban

73. Since taking effect on July 20 and prohibiting most abortions in Georgia, the Six-Week Ban has already caused irreparable harm—with more devastation promised every day it is in effect.[49]

74. Already, Plaintiffs have had to send patients home from waiting rooms in tears and cancel hundreds of upcoming appointments—with some patients forced to travel hundreds or thousands of miles out of state at great cost, and others desperately pleading that if they cannot get an abortion past six weeks in Georgia, they will not be able to get one at all.[50]

75. Drs. Cwiak, Haddad, and Lathrop, the Health Center Plaintiffs' physicians, and MSFC's members are being prevented from exercising their clinical judgment to provide medically appropriate treatment to their patients seeking essential reproductive health care. The Six-Week Ban is undermining their ability to practice their profession and the physician-patient relationship.[51]

76. The Six-Week Ban is also decimating opportunities for physicians and medical students to provide and receive training in the provision of abortion and miscarriage care, to the detriment of MSFC's medical student and resident members,

[49] Cwiak Aff. ¶ 13; Doe 1 Aff. ¶¶ 2–7; Doe 2 Aff. ¶¶ 4–5.

[50] Cwiak Aff. ¶ 13; *see also* Doe 1 Aff. ¶¶ 3–5, 7; Doe 2 Aff. ¶¶ 4–6.

[51] Cwiak Aff. ¶ 13.

Drs. Cwiak, Haddad, and Lathrop, the Health Center Plaintiffs' physicians, and their patients.[52]

77. The Six-Week Ban is causing and will continue to cause tremendous harm to SisterSong's members and to Plaintiffs' patients who need abortion and miscarriage care in Georgia—with particularly acute consequences for Georgians of color, people with fewer financial resources, young people, and Georgians living in rural areas.[53]

78. While some Georgians can afford to drive or fly thousands of miles out of state to the nearest abortion provider, pay for overnight lodging, miss multiple days of work without losing their job, and arrange and pay for multi-day childcare (or else bring their children with them on the journey), many cannot.[54]

79. And while some Georgians are able to safely self-manage their own abortion outside of the formal medical system, others without adequate information or resources are not.[55]

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[52] Aff. of Pamela Merritt, attached hereto as Ex. K, ¶¶ 13–19; Cwiak Aff. ¶¶ 58, 61–62.

[53] Rice Aff. ¶¶ 18–20, 29–31, 33-36, 42–43, 50; Cwiak Aff. ¶¶ 13, 34–40, 55–57; Badell Aff. ¶¶ 11, 12, 15, 18, 22, 28–29, 31–34, 36, 41, 45–46; Doe 1 Aff. ¶ 2; Doe 2 Aff. ¶ 6.

[54] Rice Aff. ¶¶ 15–16, 31, 34–36; Cwiak Aff. ¶¶ 36, 38; *see also* Doe 1 Aff. ¶ 7; Doe 2 Aff. ¶¶ 6–7.

[55] Cwiak Aff. ¶ 39; Rice Aff. ¶ 42.

80. Instead—and by design—the Six-Week Ban will force countless Georgians to undergo pregnancy and childbirth against their will.[56]

81. In addition to the immense medical, physical, and emotional consequences of forced pregnancy, the Six-Week Ban will thwart the educational, employment, and financial goals of innumerable Georgians and condemn them and their families to lasting poverty.[57]

82. The Six-Week Ban will also severely jeopardize the life and health of survivors of intimate partner violence, denying them the abortion that might have enabled them to sever ties with their abuser and instead tethering them to a violent household through forced pregnancy and childbirth.[58]

83. Even those Georgians able to obtain an abortion out of state are facing significant harm. Because of full or partial abortion bans now in effect in nearly all of Georgia's neighbor states, the nearest abortion provider with capacity to care for Georgia patients will often be thousands of miles away, across multiple state lines. Such travel imposes substantial costs and logistical burdens, including arranging and paying for transportation, lodging, childcare, and losing wages for missed work. Having to raise funds and make arrangements for out-of-state travel will

[56] Cwiak Aff. ¶¶ 34–36, 38; Rice Aff. ¶¶ 34, 44; Badell Aff. ¶ 28.

[57] Rice Aff. ¶¶ 45–47; Badell Aff. ¶ 35; Cwiak Aff. ¶¶ 9–10; *see also* Doe 1 Aff. ¶ 2; Doe 2 Aff. ¶ 6.

[58] Rice Aff. ¶ 53.

significantly delay access to medical care for many of these patients, forcing them to remain pregnant for longer and increasing their medical risks.[59]

84. Moreover, the time, money, and logistical barriers involved in traveling to another state significantly elevate the risk that a patient's pregnancy and abortion decision will become known to employers, abusive partners, or other people to whom a patient may not otherwise disclose their private medical information.[60]

85. In addition, the Six-Week Ban harms the health of people with wanted pregnancies who experience pregnancy-related complications or pregnancy loss by chilling physicians from providing medically necessary, patient-centered care. The Ban will force physicians to withhold or delay medically indicated abortion and miscarriage care unless and until either (1) embryonic/fetal cardiac activity has stopped, or (2) the patient's health has deteriorated to the point of a medical emergency. The pall that the Six-Week Ban casts on a range of health or life-preserving medical care beyond abortion is jeopardizing Georgians' physical, mental, and emotional health.[61]

[59] *Id.* ¶¶ 34–38; Cwiak Aff. ¶¶ 37–38; *see also* Doe 1 Aff. ¶ 7; Doe 2 Aff. ¶¶ 6–7.

[60] Rice Aff. ¶ 39; *see also* Doe 1 Aff. ¶ 7.

[61] Badell Aff. ¶ 33; Cwiak Aff. ¶¶ 35, 47–56.

C. The Records Access Provision

86. As Georgia law has long recognized, patient medical records include deeply personal information about, *inter alia*, health status and medical and sexual history. Yet O.C.G.A. § 16-12-141(f), as amended by H.B. 481, provides Georgia prosecutors in both the judicial circuit where the abortion provider is located and the judicial circuit where the patient resides with seemingly unrestricted access to personal medical records. The law provides that "[h]ealth records shall be available to the district attorney of the judicial circuit in which the act of abortion occurs or the woman upon whom an abortion is performed resides." O.C.G.A. § 16-12-141(f). This provision violates a patient's right to privacy because it gives district attorneys a broad statutory right to access the medical records of abortion patients without any sort of due process, such as a subpoena.[62]

87. Thus, even for the minority of patients who would still be permitted to obtain an abortion under the Six-Week Ban, Georgia law presents an untenable choice: forgo essential medical care and remain pregnant against their will; flee to another state at great financial and logistical costs; or else be put in a position where, as a condition of receiving medical care, their health status and intimate details of their medical and sexual history would be exposed to employees of the district

[62] Cwiak Aff. ¶¶ 63–66.

attorney's office *in the judicial circuit where the patient resides* (as well as in the judicial circuit where the abortion provider is located), without due process of law.[63]

V.
COUNT I – DECLARATORY JUDGMENT

88. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 87 inclusive.

89. This Court has the power to declare the constitutionality of Georgia statutes.

90. There is an actual, present, and justiciable controversy between Plaintiffs and the State regarding whether the Six-Week Ban is void *ab initio*; whether the Six-Week Ban violates the Georgia Constitution's rights to liberty, privacy, and/or equal protection; and whether the Records Access Provision violates the Georgia Constitution's right to privacy.

91. Because federal constitutional law clearly prohibited pre-viability abortion bans when the Six-Week Ban was enacted in 2019, the Act is void *ab initio* and unenforceable. *Adams v. Adams*, 249 Ga. 477, 478–79 (1982); *Grayson-Robinson Stores, Inc. v. Oneida, Ltd.*, 209 Ga. 613, 614–15 (1953).

92. By banning abortion from the earliest weeks of pregnancy and thus forcing pregnancy and childbirth upon countless Georgians, H.B. 481 violates

[63] *Id.*

Plaintiffs' patients' and members' rights to: (a) liberty and privacy guaranteed by various provisions of the Georgia Constitution, including art. I, § 1, ¶ I (due process) and ¶ XXIX (inherent rights), and (b) equal protection as guaranteed by art. I, § 1, ¶ II of the Georgia Constitution.

93. By specifically excluding pregnant Georgians experiencing an acute psychiatric emergency from H.B. 481's "medical emergency" exception, H.B. 481 violates Plaintiffs' patients' and members' rights to: (a) liberty and privacy guaranteed by various provisions of the Georgia Constitution, including art. I, § 1, ¶ I (due process) and ¶ XXIX (inherent rights), and (b) equal protection as guaranteed by art. I, § 1, ¶ II of the Georgia Constitution.

94. By requiring Georgians pregnant as a result of rape/incest to disclose their assault to law enforcement as a condition of ending the pregnancy, H.B. 481 violates Plaintiffs' patients' and members' rights to: (a) liberty and privacy guaranteed by various provisions of the Georgia Constitution, including art. I, § 1, ¶ I (due process) and ¶ XXIX (inherent rights), and (b) equal protection as guaranteed by art. I, § 1, ¶ II of the Georgia Constitution.

95. By allowing district attorneys to access abortion patients' personal medical records without due process protections, the Records Access Provision violates Plaintiffs' patients' and members' rights to: (a) liberty and privacy guaranteed by various provisions of the Georgia Constitution, including art. I, § 1,

¶ I (due process) and ¶ XXIX (inherent rights), and (b) equal protection as guaranteed by art. I, § 1, ¶ II of the Georgia Constitution.

96. In accordance with O.C.G.A. § 9-4-2, Plaintiffs ask this Court to declare that:

a. The Georgia Constitution's protections for liberty and privacy encompass a right to abortion;

b. Sections 4, 10, and 11 of H.B. 481 are mutually dependent and form a connected scheme that violates Plaintiffs' patients' and members' rights to: (i) liberty and privacy guaranteed by various provisions of the Georgia Constitution, including art. I, § 1, ¶ I (due process) and ¶ XXIX (inherent rights), and (ii) equal protection as guaranteed by art. I, § 1, ¶ II of the Georgia Constitution.

c. The exclusion of psychiatric illness from H.B. 481's "medical emergency" exception violates Plaintiffs' patients' and members' rights to: (i) liberty and privacy guaranteed by various provisions of the Georgia Constitution, including art. I, § 1, ¶ I (due process) and ¶ XXIX (inherent rights), and (ii) equal protection as guaranteed by art. I, § 1, ¶ II of the Georgia Constitution.

d. H.B. 481's requirement that Georgians pregnant as a result of rape/incest disclose their assault to law enforcement as a condition of ending the

pregnancy violates Plaintiffs' patients' and members' rights to: (i) liberty and privacy guaranteed by various provisions of the Georgia Constitution, including art. I, § 1, ¶ I (due process) and ¶ XXIX (inherent rights), and (ii) equal protection as guaranteed by art. I, § 1, ¶ II of the Georgia Constitution.

e. O.C.G.A. § 16-12-141(f) violates Plaintiffs' patients' and members' rights to (i) liberty and privacy guaranteed by various provisions of the Georgia Constitution, including art. I, § 1, ¶ I (due process) and ¶ XXIX (inherent rights), and (ii) equal protection as guaranteed by art. I, § 1, ¶ II of the Georgia Constitution.

97. In accordance with O.C.G.A. § 9-4-3, Plaintiffs further ask this Court to enter an interlocutory injunction and a temporary restraining order to restore the status quo ante and enjoin further enforcement of H.B. 481 pending a final determination in this matter.

COUNT II – PERMANENT INJUNCTION

98. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 87 inclusive.

99. A permanent injunction is necessary to prevent irreparable harm to Plaintiffs' patients and members through the enforcement of H.B. 481 and O.C.G.A.

16-12-141(f), which unconstitutionally infringe on their rights to liberty, privacy, and/or equal protection.

100. While Plaintiffs' patients and members will suffer irreparable harm without an injunction, an injunction will not cause the State irreparable harm because the injunction will simply prevent the State from enforcing unconstitutional laws.

101. Accordingly, immediately after declaratory relief has been entered, Plaintiffs seek a permanent injunction enjoining the State of Georgia; its officers, agents, servants, employees, representatives, and attorneys, including all district attorneys in the State of Georgia; and anyone acting on behalf of, in active participation with, or in concert with the State, from enforcing Sections 4, 10, or 11 of H.B. 481 (codified at O.C.G.A. §§ 16-12-141, 31-9B-2, 31-9B-3) or O.C.G.A. § 16-12-141(f).

***

WHEREFORE, Plaintiffs respectfully request that the Court:

(1) declare Sections 4, 10, and 11 of H.B. 481 (codified at O.C.G.A. §§ 16-12-141, 31-9B-2, 31-9B-3) unconstitutional under the Georgia Constitution;

(2) declare O.C.G.A. § 16-12-141(f) unconstitutional under the Georgia Constitution;

(3) enter a temporary restraining order and interlocutory injunction prohibiting the State of Georgia; its officers, agents, servants, employees,

representatives, and attorneys, including all district attorneys in the State of Georgia; and anyone acting on behalf of, in active participation with, or in concert with the State, from enforcing Sections 4, 10, and 11 of H.B. 481(codified at O.C.G.A. §§ 16-12-141, 31-9B-2, 31-9B-3), as well as O.C.G.A. § 16-12-141(f), during the pendency of this litigation and from taking any enforcement action premised on a violation of the aforementioned laws that occurred while this order is in effect;

(4) immediately after entering declaratory relief, enter a permanent injunction prohibiting the State of Georgia; its officers, agents, servants, employees, representatives, and attorneys, including all district attorneys in the State of Georgia; and anyone acting on behalf of, in active participation with, or in concert with the State, from enforcing Sections 4, 10, and 11 of H.B. 481 (codified at O.C.G.A. §§ 16-12-141, 31-9B-2, 31-9B-3), and O.C.G.A. § 16-12-141(f);

(5) award Plaintiffs costs and fees under O.C.G.A. § 9-15-14; and

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

Respectfully submitted this 26th day of July, 2022.

/s/ Julia Blackburn Stone
Julia Blackburn Stone
Georgia Bar No. 200070
Sarah Brewerton-Palmer
Georgia Bar No. 589898
Katie W. Gamsey
Georgia Bar No. 817096

/s/ Tiana S. Mykkeltvedt
Tiana S. Mykkeltvedt
Georgia Bar No. 533512
BONDURANT MIXSON & ELMORE LLP
1201 West Peachtree Street NW, Suite 3900

CAPLAN COBB LLC
75 Fourteenth Street, NE, Suite 2700
Atlanta, Georgia 30309
Tel: (404) 596-5600
Fax: (404) 596-5604
jstone@caplancobb.com
spalmer@caplancobb.com
kgamsey@caplancobb.com

Attorneys for All Plaintiffs

/s/ Nneka Ewulonu
Nneka Ewulonu
Georgia Bar No. 373718
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF GEORGIA, INC.
P.O. Box 570738
Atlanta, Georgia 30357
Tel: (770) 303-8111
newulonu@acluga.org

Attorney for Plaintiffs SisterSong, ACWC, AWMC, carafem, Summit, and Drs. Cwiak, Haddad, & Lathrop

Carrie Y. Flaxman*
PLANNED PARENTHOOD FEDERATION OF AMERICA
1110 Vermont Avenue, NW Suite 300
Washington, District of Columbia 20005
Tel: (202) 973-4800
carrie.flaxman@ppfa.org

Susan Lambiase*
Atlanta, Georgia 30309
Tel: (404) 881-4100
Fax: (404) 881-4111
mykkeltvedt@bmelaw.com

Attorney for All Plaintiffs

Julia Kaye*
Rebecca Chan*
Brigitte Amiri*
Johanna Zacarias*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION, INC.
125 Broad Street, 18th Floor
New York, New York 10004
Tel: (212) 549-2633
jkaye@aclu.org
rebeccac@aclu.org
bamiri@aclu.org
jzacarias@aclu.org

Attorneys for Plaintiffs SisterSong, ACWC, AWMC, carafem, Summit, and Drs. Cwiak, Haddad, & Lathrop

Jiaman ("Alice") Wang*
Cici Coquillette*
CENTER FOR REPRODUCTIVE RIGHTS
199 Water Street, 22nd Floor
New York, New York 10038
Tel: (917) 637-3670
awang@reporights.org
ccoquillette@reporights.org

PLANNED PARENTHOOD FEDERATION OF AMERICA
123 William Street, Floor 9
New York, New York 10038
Tel: (212) 541-7800
susan.lambiase@ppfa.org

Attorneys for PPSE

Attorneys for Plaintiffs Feminist and MSFC

**Pro hac vice application forthcoming*