IN THE CIRCUIT COURT OF THE SECOND CIRCUIT OF THE STATE OF FLORIDA
IN AND FOR LEON COUNTY, FLORIDA
CIVIL DIVISION

CASE NO. CA 000980

GENERATION TO GENERATION, INC., a religious non-profit organization in Palm Beach County, Florida, d/b/a Congregation L'Dor Va-Dor, on behalf of itself, its congregants, members, supporters and their families; THE RELIGIOUS SOCIETY OF FRIENDS OF SARASOTA, a religious non-profit organization in Sarasota County, Florida on behalf of itself, its congregants, its members, supporters and their families; RABBI BARRY SILVER; REVEREND HARRIS RIORDAN; REVEREND MAYA MALAY; and DR. DANIEL SACKS,

Plaintiffs,

v.

THE STATE OF FLORIDA; RON DeSANTIS, in his official capacity as Governor of the State of Florida; ASHLEY MOODY, in her official capacity as ATTORNEY GENERAL for the State of Florida; FLORIDA DEPARTMENT OF HEALTH, JOSEPH LADAPO, M.D. in his official capacity as Secretary of Health for the State of Florida; FLORIDA BOARD OF MEDICINE; DAVID DIAMOND, M.D. in his official capacity as Chair of the Florida Board of Medicine; FLORIDA BOARD OF OSTEOPATHIC MEDICINE; SANDRA SCHWEMMER, D.O. in her official capacity as Chair of the Florida Board of Osteopathic medicine; FLORIDA BOARD OF NURSING; MAGGIE HANSSEN, M.H.S, R.N. in her official capacity as Chair of the Florida Board of Nursing; FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION; and SIMONE MARSTILLER, J.D. in her official capacity as Secretary of the Florida Agency for Health Care Administration

Defendants.

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SECOND AMENDED COMPLAINT FOR DECLARATORY RELIEF AND FOR TEMPORARY AND PERMANENT INJUNCTION DECLARING HOUSE BILL 5 INVALID, UNCONSTITUTIONAL AND UNENFORCEABLE

COME NOW, the Plaintiffs, by and through undersigned counsel, sue the above-named Defendants for temporary and permanent injunctive and declaratory relief and allege:

I. PRELIMINARY STATEMENT

1. A generation ago, Floridians amended the Florida Constitution to guarantee Floridians a broad right of privacy, including the right to abortion. Art. I, § 23, Fla. Const. This "independent, freestanding constitutional provision which declares the fundamental right to privacy" was drafted "in order to make the privacy right as strong as possible," *Winfield v. Div. of Pari-Mutuel Wagering*, 477 So. 2d 544, 548 (Fla. 1985), and to "embrace more privacy interests, and extend more protection to the individual in those interests, than does the federal Constitution," *In re T.W.*, 551 So. 2d 1186, 1192 (Fla. 1989). The Florida Supreme Court held this broad right to privacy to include a woman's right to terminate a pregnancy. "The Florida Constitution embodies the principle that '[f]ew decisions are more personal and intimate, more properly private, or more basic to individual dignity and autonomy, than a woman's decision . . . whether to end her pregnancy. A woman's right to make that choice freely is fundamental.'" *Id.* at 1193 (quoting *Thornburgh v. Am. Coll. of Obstetricians & Gynecologists*, 476 U.S. 747 (1986)). Floridians consistently affirmed that abortion is a fundamental right deserving the strongest protection against government intrusion. In 2012, Floridians rejected a ballot initiative that would have amended the state constitution to construe the right to privacy more narrowly.

2. In violation of the will of the people, Florida's Constitution, and Florida's history of protecting the right to abortion as fundamental and inviolate, the Florida legislature passed House Bill 5, a law that bans and criminalizes all abortions after 15 weeks from the first day of a

woman's last menstrual period (LMP) with two extremely limited exceptions. *See* Ch. 2022-69, §§ 3–4, Laws of Fla. ("HB 5" or "the Act") (amending §§ 390.011, 390.0111, Fla. Stat.). There is no exception for rape, incest, sex trafficking or fatal fetal abnormalities unless the death of the fetus can be proven to be "imminent". A child rape victim is forced to bear her rapist's child which could tear her apart physically and emotionally under the Act (attached as Exhibit A).

3. The cut-off date of 15 weeks LMP is arbitrary and capricious and lacks a rational, legitimate or compelling state interest to support it. There is no qualitative difference in the fetus before or after 15 weeks LMP to justify the burden on the Plaintiffs' religious belief and practice. It is difficult to determine when 15 weeks LMP has occurred, yet the Act imposes harsh penalties on those who guess differently than state authorities who enforce the Act. Calculating the age of a fetus from 15 weeks LMP lacks a rational basis and artificially adds two weeks to the gestational age of a fetus, which protects the fetus at the expense of a live human being.

4. The placing of the interests of the fetus above those of a woman, the claim that personhood exists at conception and/or 15 weeks, the lack of compassion for women, who risk their lives to bring new life to the world, the lack of exceptions for rape, incest or mental health, the lack of exemptions to accommodate religious belief, its vague, undefined terms, and its harsh penalties burden the Plaintiffs' practice of their religion, which, unlike the Act, gives priority to women over a fetus, believes that personhood attaches at birth not conception, uses compassion in dealing with abortion, and empowers women, not the state to make such decisions.

5. The Act burdens Plaintiffs' religious practice by making compassion illegal, reason obsolete and the practice of plaintiffs' religion a criminal offense in Florida. Unlike the Act, Jews give priority to a woman over a fetus and consider personhood to begin with the first breath at birth, not at conception, nor at 15 weeks LMP.

6. While most bills are signed into law in Tallahassee, on April 14, 2022, the Act was signed amidst much religious fanfare and Christian rhetoric by the Governor as head of state, in a church, in order for the Governor to graphically demonstrate that the wall of separation between church and state has crumbled and no longer exists in the State of Florida.

7. Our system of Democracy is based on a wall of separation between Church and State as guaranteed by President Jefferson in his letter to the Danbury Baptists, by President Washington in his letter to the Jews of Newport and expressed in the Treaty of Tripoli, signed by President John Adams and ratified unanimously by the Senate on June 7, 1797, which consisted of many other of our founding fathers, and as described by one of the architects of our democracy, James Madison as follows: *The purpose of separation of church and state is to keep forever from these shores the ceaseless strife that has soaked the soil of Europe in blood for centuries.*

8. The blood that soaked the soil of Europe was often first and foremost Jewish blood, in such orgies of death as the Crusades, The Inquisition, and pogroms, and then spread to the rest of the population. As prophesied in the Bible, and as history has shown, lands that bless the Jews are blessed, while those lands that curse the Jews are cursed. Thus, the Act not only burdens and criminalizes Plaintiffs' religion, it threatens America itself, and has already caused the strife warned about by James Madison when Church and State are merged.

9. HB 5 violates Plaintiffs' and its members' rights as provided in the Florida Constitution in Article 1, Section 3 (the Establishment and Free Exercise Clause), Article 1, Section 2 (the Equal Protection Clause), Article 1, Section 4 (the Right of Free Speech), Article 1, Section 9 (the Due Process Clause), Article 1, Section 23 (the Right of Privacy) and it violates the Florida Religious Freedom Restoration Act (FRFRA).

II. JURISDICTION AND VENUE

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

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

III. THE PARTIES

A. Plaintiffs

12. Plaintiff GENERATION TO GENERATION, Inc. is a religious non-profit corporation organized under the laws of Florida, d/b/a Congregation L'Dor Va-Dor, which consists of its members, congregants, families, and supporters (hereinafter "L'Dor Va-Dor" or "LDVD"), operating in Palm Beach County, Florida for 25 years. It files this lawsuit on behalf of itself, its congregants, members, supporters and families, and out of concern for the Jewish community, and those of all faiths and creeds, whether recognized as a religion or not, including atheists and free thinkers, whose faith, religion or creed is in conflict with the Act.

13. Plaintiff the RELIGIOUS SOCIETY OF FRIENDS OF SARASOTA, (hereinafter "QUAKERS and\or FRIENDS") is a religious, non-profit organization based in Sarasota County, Florida, united in the belief that God dwells in all people and is accessible to all, without intermediary, who are open to a relationship with the divine.

14. Plaintiff QUAKERS believe that the decision whether or not to have children is a deeply personal, individual decision to be made by those involved in the presence of Spirit. FRIENDS believe that all families have privacy rights and people of all genders have the right to reproductive freedom. Thus, HB 5 burdens QUAKERS and its members in the free exercise of their faith when the Spirit leads them to consider abortion proper and the Act does not.

15. Plaintiff QUAKERS further believes that "Rapid population growth leads to famine, war and destruction of natural resources. Voluntary restraint in procreation along with simplicity in living hold the promise of restoring the 'ecological balance'". This belief and practice is penalized, criminalized and burdened by HB 5.

16. Plaintiff MAYA MALAY (hereinafter "MALAY") is a practicing Buddhist, resident of Palm Beach County and sui juris. She holds a Master's Degree in Theology, is a Pastoral Counselor, Loving Relationships Counselor, rebirther, lecturer, teacher and counselor of Buddhism. Reverend MALAY moderates the Global Enlightenment Meditation (GEM), a weekly meditation led by experts and diverse faith leaders from around the world.

17. Reverend MALAY is the founder of the Lotus Mind Ministries, serves as secretary on the Board of Directors for the Lake Worth Interfaith Network and serves on the Board of the Temple of Understanding, Palm Beach County Chapter. These interfaith groups are dedicated to maintaining the separation of church and state so that people of all faiths are free to practice their religion unburdened by restrictions from the state.

18. As a practicing Buddhist, Plaintiff MALAY believes that human consciousness and personhood begin at birth, and before birth, the soul is not necessarily in the body. When its karma is not to inhabit the body at birth, this results in miscarriage, abortions and fetal death. According to this view, the soul's karma prefers abortion rather than a life of pain and misery and the soul is in a better place waiting in the spirit world until a more timely and suitable birth and incarnation is destined for the soul. HB 5 criminalizes and penalizes this belief.

19. Plaintiff REVEREND HARRIS RIORDAN is sui juris, a resident of Palm Beach County, Florida and was raised in the First Unitarian Church of Brooklyn. She has a Master's Degree in Divinity from the Union Theological Seminary in New York City. She was ordained

in 1982 by All Souls Unitarian Church in New York City and has served Unitarian Universalist congregations ever since and is currently Minister Emerita of the Unitarian Universalist Fellowship of Boca Raton, after serving there for 25 years.

20. As a Unitarian Universalist leader, Plaintiff RIORDAN believes in the separation of church and state to ensure that people of all faiths are free to practice their religion unburdened by the State. She strongly believes in a woman's right to abortion at all stages of pregnancy according to her own moral dictates and the guidelines of her religion unburdened by the State. She has in the past and will continue to counsel women that they have the freedom and the right to have an abortion in circumstances in which abortion is not permitted by the Act and thus her freedom to speak and to practice her religion are burdened by the Act and its chilling effect.

21. Plaintiff RABBI BARRY SILVER, (hereinafter "SILVER") is sui juris and is a resident of Boca Raton, Palm Beach County, Florida.

22. SILVER was inspired by his father Rabbi Samuel Silver to become a rabbi and to carry on his father's legacy of rational, joyous, ecumenical Judaism and serves as Rabbi for LDVD. SILVER is an abortion rights/civil rights attorney, former legislator and activist who formed HEART (Help Enforce Abortion Rights Today) to defend abortion rights for all people.

23. SILVER's parents were strong advocates of women's rights and abortion rights based on Jewish law and his grandmother, Helen Shapiro, was a women's suffragist who founded a Planned Parenthood chapter in Bridgeport, Connecticut.

24. SILVER carries on his family's deep commitment to women's equality and abortion rights. He served on the Board of Planned Parenthood, authors articles, creates and performs music, lectures and preaches on abortion rights, and championed abortion rights in the Florida Legislature. SILVER has litigated for abortion rights without charge to his clients for

years and obtained an injunction against the anti-abortion "The Woman's Right to Know" Act. He was the first to use RICO against abortion protestors on behalf of a local National Organization for Women chapter resulting in an injunction against Operation Rescue and ending its intimidating clinic blockades across America and was awarded attorney's fees for his efforts.

25. In awarding SILVER attorney's fees, the Judge stated the results he obtained in that case were significant, the public interest was served, and probably no other attorney in the district would have seen it through to the end with all the harassment, threats and hostility SILVER faced from the Defendants.

26. Plaintiff DANIEL N. SACKS, MD, FACOG, (hereinafter "SACKS") is a resident of Palm Beach County, Florida, is sui juris and is the Founder, President and Attending Physician of Palm Beach-Wellington Women's Care; "FACOG" stands for "Fellow of the American Congress of Obstetricians and Gynecologists." In order to earn this distinction, a doctor must earn Board certification and meet additional criteria that demonstrates the doctor keeps abreast of the latest medical guidelines, treatments, and techniques in women's health care.

27. Plaintiff SACKS obtained his medical doctor's degree from the University of South Florida in 1996, has delivered over 3000 healthy babies and provides a full range of women's services with individualized patient care, information and options that empower women to make decisions for themselves based on the most accurate and current medical knowledge regarding infertility, surgical options, colposcopy, contraception and abortion.

28. Plaintiff SACKS is Jewish and believes as a Jew and physician that personhood begins at birth, and that a woman has the right and obligation to protect her life, health, and/or wellbeing over the potential life of a fetus at all stages of pregnancy. He believes that abortion is essential healthcare and is not the termination of a human life and that the restrictions of the

Act burden his practice as a Jew and a physician which require him to empower women to base their choice on whether to abort or continue her pregnancy on her own unique circumstances.

29. SACKS believes that due to the significant physical and emotional health risks of giving birth and raising a child, a woman is the only one who can make this life-altering decision. The Act burdens his practice of Judaism and his obligations to his patients if he cannot speak freely to his patients in order to counsel them in the essential healthcare that they deserve.

B. Defendants

30. Defendant the State of Florida, through its Legislature and Governor, adopted the challenged Act. It took effect on July 1, 2022.

31. Defendant, Governor Ron DeSantis led the effort to pass the Act not to further any legitimate, rational and/or compelling state interest, but rather to further his political interests and lust for power by ingratiating himself with his base, who seek to tear down the wall of separation between church and state and replace it with a theocratic religious tyranny. He is sued in his official capacity, as are his agents and successors.

32. Defendant Florida Department of Health is the state agency authorized to investigate potential violations of the Act and impose penalties for violations of the Act.

33. Defendant Joseph Ladapo, M.D., is Secretary of the Department and is sued in his official capacity as Secretary of Health for the State of Florida, as are his agents and successors.

34. Defendant Florida Board of Medicine is part of the Florida Department of Health, exercises supervisory powers over the state's physicians, conducts disciplinary proceedings and imposes penalties against physicians and their assistants. Defendant Florida Board of Medicine is authorized to impose penalties on providers of abortion care for violations of the Act.

35. Defendant David Diamond, M.D., is the Chair of the Florida Board of Medicine and is sued in his official capacity as Chair of the Florida Board of Medicine.

36. Defendant Florida Board of Osteopathic Medicine is part of the Florida Department of Health. Pursuant to Florida law, the Florida Board of Osteopathic Medicine is authorized to impose penalties on providers of abortion care.

37. Defendant Sandra Schwemmer, D.O., is the Chair of the Florida Board of Osteopathic Medicine and is sued in her official capacity as Chair of the Florida Board of Osteopathic Medicine, as are her agents and successors.

38. Defendant Florida Board of Nursing is part of the Florida Department of Health. Pursuant to Florida law, it exercises supervisory powers over the state's registered nurses, licensed practical nurses, and advanced practice registered nurses, conducts disciplinary proceedings and imposes penalties against them. Florida Board of Nursing is authorized to impose penalties on nurses who participate in abortion care in violation of the Act.

39. Defendant Maggie Hansen, M.H.Sc, R.N., is sued in her official capacity as Chair of the Florida Board of Nursing, as are her agents and successors.

40. Defendant Florida Agency for Health Care Administration is authorized to license abortion clinics or refuse to renew licenses for failure to comply with the Act.

41. As Secretary of the Agency, Defendant Simone Marstiller, J.D. is sued in her official capacity as Secretary of the Agency as are her agents and successors.

42. Defendant ASHLEY MOODY is sued in her official capacity as ATTORNEY GENERAL for the State of Florida, chief legal officer in Florida authorized to enforce the Act.

IV. HISTORICAL PERSPECTIVE ON ABORTION RIGHTS IN FLORIDA

43. Section 390.0111, Florida Statutes, sets forth statutory requirements for the provision of abortion care in Florida, including the current requirements that abortions be performed prior to the third trimester of pregnancy, only by physicians, and only after obtaining informed consent from the patient.

44. Section 4 of HB 5 amends section 390.0111 to prohibit and criminalize the provision of abortion care after fifteen weeks LMP. Fla. HB 5, § 4 (2022) (to be codified at § 390.0111(1), Fla. Stat.). Section 3 of HB 5 amends section 390.011 to provide definitions for Section 4's operative terms. Fla. HB 5, § 3(6) and (7) (to be codified at § 390.011(6) and (7)).

45. The Act contains only two extremely limited exceptions, which in reality will never or rarely be applied. First, an abortion after fifteen weeks LMP may be performed if "the termination of the pregnancy is necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition," and either two physicians certify this conclusion "in [their] reasonable medical judgment" in writing, or a sole physician certifies that the risks are "imminent" and "another physician is not available for consultation." F.S. § 390.0111(1)(a)–(b).

46. The Act permits abortions after 15 weeks LMP when "[t]he fetus has not achieved viability under § 390.01112 and two physicians certify in writing that, in [their] reasonable medical judgement, the fetus has a fatal fetal abnormality." Fla. HB 5, § 4 (to be codified at § 390.0111(1)(c), Fla. Stat.). The Act defines "fatal fetal abnormality" as "a terminal condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb and will result in death upon birth or imminently thereafter." Id. § 3 (to be codified at § 390.011(6), Fla. Stat.). By this definition, a fetus with Tay-Sachs, a fatal disease found among Jews, would not qualify for the exception, because Tay-

Sachs usually cannot be detected until after 15 weeks LMP and often does not result in "imminent" death, and while death is inevitable, may take months. Other fatal fetal abnormalities and threats to the mother also may not qualify as exceptions to the Act, since it is impossible to know precisely when their death will occur and the Act offers no guidelines to define "imminent", e.g. an hour, a day, a month or minutes. No doctor should be expected to risk his medical license and imprisonment to guess what the Legislature intended by the word "imminent" in hopes that a judge will agree with his assessment, especially in a state where a judge lack the maturity of a 16-year-old and thinks a child with no income, money or parents is ready to become a parent. The Act's vague language cannot be understood by those of common intelligence, and in a state that is hostile to abortion rights, places a chilling effect upon Plaintiffs' constitutional rights.

47. If Plaintiff SILVER counsels a woman to abort a fetus with Tay-Sachs disease as most rabbis do to spare the mother and the doomed child from needless suffering, Plaintiff could face criminal charges.

48. The Act serves no rational, legitimate, nor compelling purpose by prohibiting a woman from aborting a fetus with a fatal disease in many situations. Plaintiffs are guided by compassion in such decisions, but under the Act compassion is outlawed, Plaintiffs' religions are criminalized, reason is ignored, and constitutional rights are violated.

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

50. Under Florida law, counseling or encouraging a crime constitutes "aiding and abetting" that crime and is punished equally to the crime itself. (See Fla. Stat. 777.01 "Whoever

commits any criminal offense against the state, whether felony or misdemeanor, or aids, abets, counsels, hires, or otherwise procures such offense to be committed…. is a principal in the first degree and may be charged, convicted, and punished as such, whether he or she is or is not actually or constructively present at the commission of such offense.") Thus, Plaintiffs who counsel women to have an abortion in violation of HB 5 are subject to criminal penalties.

51. Conspiracy is also a crime in Florida and one who conspires with others to violate a law can be prosecuted for violation of that law. Thus Plaintiffs, doctors, nurses and the driver of a pregnant woman to the clinic could all be subject to arrest under the Act.

52. Physicians and health care professionals are subject to disciplinary action for violating the Act, including, but not limited to, revocation of their license to practice medicine and administrative fines of up to $10,000 for each violation. §§ 390.0111(13), 390.018, 456.072(2), 458.331(2), 459.015(2), 464.018(2), Fla. Stat.

53. In addition, abortion clinics may be prevented from renewing their clinic licenses for violations of the Act. Fla. Admin. Code R. 59A-9.020. The Act requires extensive reporting requirements not required of any other medical procedures in Florida.

V. STATEMENT OF FACTS

54. Abortion is one of the safest medical procedures in the United States. Abortion is much safer than childbirth. A woman's risk of death associated with childbirth is approximately 12 to 14 times higher than her risk of death associated with abortion. Every type of complication from pregnancy is more common among women who give birth than those who have abortions.

55. Abortion is not only safe, but common. Approximately one in four women in this country will have an abortion. A majority of women having abortions (60%) already have at least one child. Abortion has been stigmatized and kept in the shadows which endangers women's

lives. The Act exacerbates this dangerous silence with harsh penalties for those who "actively participate" in an abortion not authorized by the Act at a time when a woman needs help.

56. Women seek abortions for a variety of deeply personal reasons. Some families lack the resources—financial, medical, or emotional—to care for a child and provide for the children they already have. The decision to terminate a pregnancy is motivated by diverse, complex, and interrelated factors. Plaintiffs' religious beliefs hold that a woman is best able to weigh these factors, and the state may not violate her right to decide about abortion.

57. Using the beliefs of some Christians to determine for everyone when abortion is permissible and when life begins establishes a narrow view of Christianity as the law in Florida and prohibits the free exercise of all other religions, including those of the Plaintiffs.

58. The Act denies equal protection to the mentally ill by allowing no exception for mental illness. There is no rational nor compelling governmental interest for such exclusion.

59. The Act forces a woman to become a parent against her will and violates the rights and equal protection of women, non-Christians, the mentally ill, minorities, the poor and those who do not wield political and economic power in the State of Florida. The wealthy may be able to travel out of state for an abortion, but the poor may not be able to do so due to the expense, inability to get time off from work, and the time required to raise the funds for an abortion.

60. The Act serves no rational, legitimate or compelling governmental interest and is harmful to the people of Florida. Societies that respect women's rights and grant them control over their body and reproductive autonomy flourish, while societies that treat women and their uterus as the property of the State, decline. Forced parenthood violates the rights of women, denigrates the family and harms society and takes our nation back a time of inequality for women.

61. Permitting women and families to make a knowing, informed decision of whether

they are ready to make one of the most consequential decisions of their lives, i.e., bringing new life into the world, rather than being forced to do so by the state, serves the public interest. "Forced labor" is practiced in dictatorships, not democracies.

62. The undefined phrase "actively participates" in an abortion, as used in the Act, is unconstitutionally vague because it is impossible for people of average intelligence, or even for constitutional attorneys such as Plaintiff SILVER, to discern who may be subject to criminal prosecution under the Act and what actions may trigger such penalties.

63. Religious institutions, leaders and practitioners such as the Plaintiffs are burdened in their practice of their religion by the chilling effect of HB 5 which places them in fear of prosecution and other harsh penalties for exercising their right to practice their religion by speaking, counseling and/or educating others and showing compassion to those in need. who face an unwanted pregnancy, in ways that conflict with the provisions of the Act. This is especially true for Plaintiffs SILVER and LDVD whose practice of Judaism not only permits but requires abortion in many circumstances where abortion is forbidden under the Act.

64. The vague term "actively participates" makes it unclear if this applies to a woman having an abortion, her physician and staff, a driver of the woman to the clinic, her pastor, her counselor and others, and what actions will trigger the onerous provisions of the Act. The vague phrase "willfully performs" does nothing to aid understanding and only adds to the confusion.

65. When fundamental rights such as freedom of speech, religion and privacy are at stake, plaintiffs are not required to risk arrest or prosecution or to guess at the meaning of the law. HB 5's criminal penalties pose an even greater chilling effect upon the Plaintiffs and others in a state where Defendant DeSANTIS targets and retaliates against health care workers, school boards, corporations and State Attorneys who disagree with him, and follow their conscience,

religious beliefs and/or professional judgment. Plaintiffs are morally compelled to offer compassion, guidance and teaching from their religious tradition and medical training, to those considering abortion, yet this exercise of Plaintiffs' religion is a crime under the Act.

66. Due to his involvement in this issue, Plaintiff SILVER faces prosecution if he offers rabbinic counsel on abortion based on Judaism, rather than the cruel provisions of the Act.

67. Our legal system abhors traps for the unwary and prohibits vague laws with Draconian penalties upon the exercise of fundamental rights such as religion, free speech and privacy. By not defining "actively participates", "imminent", and "willfully performs" the Act criminalizes behavior which those of ordinary intelligence would have to guess at its meaning.

68. As a rabbi and abortion rights attorney, Plaintiff SILVER is often consulted by pregnant women and others who wish to understand the Jewish view of abortion to help guide them in making this important decision. SILVER has often counseled women that abortion is permissible, and at times required, by Jewish law and practice in order to protect the life, physical or emotional health and/or wellbeing of the mother, who is a human being, over the fetus.

69. Thus the Act burdens, criminalizes and penalizes Plaintiff SILVER's practice of Judaism and freedom of speech and uses harsh penalties to compel speech that the Plaintiff doesn't believe and Judaism does not teach, thus denying SILVER and LDVD the right to counsel women and families about abortion and health care according to Jewish belief and practice.

70. SILVER serves "L'Dor Va-Dor" which is Hebrew for "Generation to Generation", reflecting that he and his parents founded the Congregation with his father as the founding rabbi and his mother as musical director. As a family, they promoted Jewish ideals of love, humor, education, inspiration, freedom and rational faith in Jewish ideals and values.

71. The family is the vehicle by which Jewish values, culture and civilization are

transmitted "L'Dor Va-Dor", i.e. throughout the generations. The family has been a key to Jewish survival for 1000s of years. Jews have outlasted more powerful empires that sought to destroy them, because they believed in the love of power while Jews believe in the power of love as transmitted by the family. The Act threatens the Jewish family and thus threatens Jewish survival.

72. So important is family to Plaintiff SILVER and LDVD that families of couples united in marriage by its Rabbi are given free membership to LDVD. SILVER counsels such couples, most of whom are of child bearing age and who intend to have children, and others about abortion, according to Jewish law, which is a criminal act under HB 5.

73. The Act violates women's rights with restrictions on her medical care, reporting requirements that invade her privacy and harsh penalties for those who perform abortions not seen in other areas of medicine. This targeting by the Act of doctors who provide women with essential medical care violates the civil rights of women and their right to be treated equally.

74. Plaintiffs' religious beliefs compel them to seek the goal of a world where all children are wanted children and parenthood is chosen out of love and freedom rather than imposed by fear and coercion by the State. Thus, Plaintiffs' religious views are in conflict with the Act and are penalized, criminalized and burdened by the Act.

75. Congregation L'Dor Va-Dor emerged out of the Reform Jewish Movement which has vocally supported abortion rights for decades. In 1967, the Reform rabbinic association urged the "broad liberalization of abortion laws" and used its influence to help protect abortion rights in the *Roe v. Wade* decision. SILVER and LDVD share these views and activism.

76. Jewish prophets of old and today, respect the sanctity of life by seeking health care for all, food for the poor, shelter for the homeless, beating swords into plowshares, kindness towards animals, compassion and love, protecting our planet and respecting women. Plaintiff

SILVER and LDVD believe that forcing parenthood upon the unwilling in an already over-crowded world thwarts these and other Jewish ideals and reflects a lack of reverence for life.

77. In the Torah, Genesis 2:7 states that humans were created in a divine image and God "breathed into his nostrils the breath of life and then the man became a "nefesh chayah" i.e. "a living being". Thus, although man was fully formed physically prior to this time, he was not considered a living being in the Torah until he took his first breath. This understanding has shaped the Jewish view of when life begins since the inception of Judaism and is consistent with science.

78. We read in Ezekiel 37:5 and 6, "Thus says the Lord God to these bones: Behold, I will cause breath to enter you, and you shall live." This passage confirms the consistent position in Judaism that the beginning of life is always equated with breathing, which takes place at birth.

79. Exodus 21:22 states that if a man causes a woman to have a miscarriage, he shall be fined but if the woman dies then he will be put to death based on the Jewish maxim "Nefesh Tachat Nefesh" (a life for a life). After stating a "life for a life" but not requiring this penalty for the death of a fetus, it is clear that the fetus was not considered a human life in the Torah.

80. In the Biblical book of Numbers 5:27 if a man suspects that his wife is pregnant with the offspring of another man, he is instructed to take his wife to the priest, who administers a potion. If the fetus is not of the husband, God performs an abortion, and the fetus dies. This confirms the Jewish view that a fetus is not considered a nefesh, i.e. a human life. Spontaneous abortions often occur naturally in the early stages of pregnancy beyond the awareness of the mother, and this is not treated as the death of a human being and no funeral takes place.

81. The Book of Jeremiah 1:5 supports the Jewish view that human life begins at birth: "Before I formed you in the womb I knew you…" In Hebrew, like French and Spanish, there are two words for "to know": "yodea" is used for things, while "makir" indicates knowledge of

people. Jeremiah used "yodea" which is used for objects not people and confirms the Jewish view that a fetus was not considered a human being, or a nefesh in Hebrew, until birth.

82. The great icon of Orthodox Judaism Maimonides, relying upon the foundational text of Orthodox Judaism, the Talmud, as well as the Torah and other writings, opined "Ubar yerech imo" (the fetus is part of its mother) i.e., it is not considered an independent entity or a human life (nefesh) until its head or "greater part" of its body emerged from the mother. Maimonides was a highly revered physician, philosopher, scientist and expert on Jewish law of the 12th century. His views about when human life begins and the religious duty of a woman to abort her fetus up until the time of birth if the fetus threatens her physical or emotional health or wellbeing, is an established precept of traditional Jewish law (halacha) and has become part of the shared cultural, ethical fabric of the Jewish community and all branches of Judaism today.

83. The legal codes of surrounding cultures at the time Jewish and Christian Scripture were written, prohibit abortion, but Jewish and Christian Scripture maintain a "pregnant silence" on this issue, leaving this decision up to the woman, not religious or political authorities.

84. LDVD interprets these Biblical and post-Biblical passages as metaphors for the miracle of life which is reflected in breathing. The word spirit and spiritual are derived from the Latin word for breath, and the words for a human being in Hebrew, nefesh, n'shamah and ruach all relate to breathing and thus connect breathing with the onset of human life, i.e. personhood.

85. Baruch Spinoza believed the capacity for rational thought makes us distinctly human, and government should protect human freedom from domination by one group. Martin Buber spoke of the I-Thou relationship as what makes us truly human, which is only possible when humans interact with one another. Albert Einstein concurred that a defining quality that makes us human is our relationship with one another. These philosophers are considered modern

day prophets at LDVD and proclaim that personhood involves interaction with others.

86. Science informs us that breathing is essential to human life and the expansion and contraction of the universe that occurred "in the beginning" with the big bang is repeated in the act of breathing over 20,000 times a day with the expansion and contraction of the lungs. Thus, breathing links us every moment of every day with the creative power that generated all existence.

87. Although the theory "ontogeny recapitulates phylogeny" is not precisely accurate, the development of the fetus in the womb from a one-celled zygote to a human being roughly parallels the evolution of homo sapiens from a one-celled amoeba to a fish with gills in water, an amphibian, a reptile, then a mammal. The fetus grows a coat of hair and a vestigial tail which are discarded as occurred in human evolution as well.

88. HB 5's proponents tend to doubt evolution and share the ancient discredited view of a fetus as a homunculus, a person in miniature they call an "unborn baby". Referring to a fetus as an unborn baby confuses actual with potential and is like calling an acorn an oak tree.

89. Physiological changes and environmental influences upon the neonate transform the fetus into a human being at birth. Although no one can be sure of the mental experiences of a fetus, according to the latest findings of neonatal medicine and science, prior to its first breath, the fetus is in a state of suspended animation, and lacks human consciousness and/or awareness.

90. SILVER and LDVD rely on science and religion to guide their religious beliefs. Jewish sources from the Bible to the Talmud, Maimonides, Buber, Spinoza, Einstein, and modern science concur that human life begins at birth.

91. Traditional Judaism, modern denominations, the opinion of most Jews today, and science concur that the fetus is not a nefesh, i.e. a person until birth. SILVER and LDVD share this view with those contemplating abortion and teach that personhood begins at birth. Under HB

5, SILVER could be branded a criminal and put in jail for counseling and advising that in Jewish law abortion is permissible, and sometimes required, in circumstances prohibited by the Act.

92. Science and reason guide SILVER'S practice of Judaism, and they both reject the view that a zygote at conception, or a fetus at 15 weeks, which cannot think, hear, see, feel or act in any way like a person, is entitled to the same rights as a human being.

93. To ask when life begins from a Jewish perspective makes no sense. The relevant question is when does the fetus become a nefesh, i.e. a person, in Judaism. Traditional Judaism says of the fetus "lav nefesh hu" (it is not a human life). The interests of the mother, who is a human life prevail over the fetus, which is potential human life at all stages of gestation.

94. As the fetus nears birth, the potential life is given more weight, but until the time of birth, the mother still has priority in Jewish law. Thus, abortions near the time of birth are rare and take place when a grave fetal abnormality will subject the fetus to a hellish life, or if a problem pregnancy threatens the mother's life, health, or wellbeing. In such cases, Jewish law deems the fetus a "rodef" (pursuer) and requires abortion to protect the mother from the fetus.

95. Considerations of women's rights, religious freedom, the tragedy to society and to the individual of unwanted children, forcing the unwilling to bring children into an already overcrowded world, effects upon minorities and the poor who are disproportionately harmed by lack of access to abortion and thus trapped in a cycle of poverty, the health risks and death due to complications from childbirth, which are suffered by women and not by any males who voted for HB 5, the fact that childbirth is far more dangerous than abortion, environmental concerns, the risk of psychological harm, economic deprivation and fetal abnormalities like Tay-Sacks which could condemn a child and its parents to horrible suffering, and tragic and violent circumstances which surround some pregnancies, are among the factors that plaintiffs consider in determining

whether abortion is appropriate in each situation. None of these factors are considered in the Act.

96. Christians are free to reinterpret Jewish Scripture for themselves, but their interpretations, no matter how sincere, cannot fairly or constitutionally be imposed upon the Jews.

97. The supporters of HB 5 seek to impose their brand of Christianity on all others, including their reinterpretation of the story of Adam and Eve, as found in the Jewish Bible, with a misogynistic view that all humans are born in sin which was introduced by Eve who seduced Adam first with an apple and then with sex. Jews believe all humans are born with a pure soul.

98. HB 5 reflects this view of church fathers who perceived all humanity as literally conceived and born in sin, having come through the body of a woman. According to this view, if sex is engaged in for pleasure, rather than to produce children, it is sinful. Thus, women must be "punished" for their sexuality with childbirth *in pain* (emphasis added), according to the Book of Genesis, and if she experiences pain, injury or death, this is God's will. The purpose of the Act is to put into law a religious view that injury and death to women from pregnancy are not a problem but are part of God's divine plan for each of us and the world as long as we do his will.

99. Plaintiffs reject such views and instead, honor women, cherish sexuality based on love, and respect the sacrifice and risks taken by women when they bring life into the world, which leads Plaintiffs to believe women should become parents by choice, not by compulsion.

100. HB 5 burdens Plaintiffs' practice of their religion by requiring women with pregnancies that could harm or kill the mother to postpone an abortion until grave harm is imminent. Such delay is dangerous and requires the physician and patient to disregard the best interests of the patient by waiting until serious harm or death is imminent and then guess whether the mother's death is imminent enough to warrant an abortion under the Act, and risk criminal penalties if they guess wrong. Such vagueness and harsh penalties may render exceptions after

15 weeks LMP illusory. Thus, the Act is a danger to women and requires Plaintiffs to ignore the dictates of their conscience and their faith by remaining silent to the suffering of women.

101. HB 5 prohibits a woman diagnosed with cancer from aborting her fetus to save her life, health and/or wellbeing, requiring her to remain pregnant while undergoing chemotherapy after 15 weeks LMP. Being forced to remain silent to such cruelty and disdain for life, burdens Plaintiffs SILVER and LDVD's exercise of their religion. Under Jewish law and practice as understood by Plaintiffs, SILVER and LDVD, they have no choice as Jews, but to speak out against immoral laws that threaten the rights and well-being of society.

102. Plaintiffs believe in compassion, respect and dignity for women dealing with pregnancy, which sometimes results from violence, sex trafficking and exploitation. The Act tramples upon a right that the Florida Supreme Court has said is the most basic and fundamental of all, bodily integrity and deciding when to bring life into the world.

103. The misogynistic Act was inspired, promulgated and instigated by the same conservative Christian influences that have persecuted and condemned women, Jews and free thinkers for centuries, which include irrationally and sadistically branding thousands of women as witches and subjecting them to torture, drowning and immolation at the stake, along with Jews and free thinkers of the past. These same groups are targeted in Florida by the Act.

104. The Act is not narrowly tailored and does not use the least restrictive means to achieve any purported governmental interest because it lacks an exemption to accommodate the sincerely held religious views of Plaintiffs and others, and lacks an exception for rape, incest, sex trafficking, mental illness, non-imminent fatal fetal abnormalities, fatal fetal abnormalities after viability, or harm to a woman's health or life other than a vaguely defined "imminent" harm.

105. If a woman is raped, trafficked or victimized by incest by a man who seized control

of her body by force, HB 5 lets the State of Florida take further control of her body by force of law and requires her to deliver the rapist's or family member's baby. The Act burdens Plaintiffs' religious practice by coercing them to remain silent to this moral atrocity.

106. The overwhelming majority of Jews support a woman's right to choose abortion in circumstances now made a crime under HB 5. Many Jewish organizations such as the National Council of Jewish Women, Hadassah, the Reform Jewish Movement, Conservative Judaism, Reconstructionist Judaism and Humanistic Judaism and their affiliated organizations fight on the front lines for abortion rights as this is a deeply ingrained right among the Jewish people.

107. The Jewish mother is honored for her love and devotion to family, faith and nation and for creating a Jewish home filled with love, joy and Jewish ideals. The Act is an assault against the Jewish view of motherhood by making it compulsory and inflicting it upon people under harsh and cruel circumstances. Thus, the Act has and will continue to alter the decision of Jews of child-bearing age to live in Florida, to become pregnant and to practice their faith.

108. By conflating a fetus with a baby, recklessly describing abortion as murder, and linking abortion to Jews, some opponents of abortion stoke anti-Semitism with charges of Jewish doctors getting rich by killing babies and committing a holocaust. By inadvertence or design, the Act promotes ancient anti-Semitic tropes and blood libels against Jews as diabolical baby killers.

109. At a time when Jews are targeted on college campuses and in their synagogues with harassment and violence, the Act's demonization of Jews and its making Jewish law a crime, burdens Plaintiff SILVER and LDVD's practice of Judaism and may cause some Jews to hide their Jewish identity, remove their Jewish star and refrain from visiting their synagogues.

110. The onerous provisions of the Act will cause some abortion providers, who are already besieged by the State of Florida to stop performing abortions. Christian nationalists seek

to banish abortion providers such as Plaintiff SACKS from the State with draconian laws and harsh penalties. The Act's targeting of abortion providers threatens the right to abortion since a right which cannot be exercised is not a right, it is an illusion.

111. The Act burdens the religious practice of the congregants, parishioners and/or members of Plaintiffs LDVD and the QUAKERS in the free exercise of their religion by depriving them of the ability to receive counsel, guidance and compassion regarding abortion and severely burdens all Plaintiffs' religious practice by prohibiting them from providing such counsel, guidance and compassion to members of their faith on these important issues.

112. The Act restricts Plaintiff and other clergy from engaging in constitutionally protected speech including, but not limited to counseling congregants and others who seek guidance on important, intimate decisions consistent with their sincere religious beliefs.

113. Plaintiffs file this action to prevent a narrow view of Christianity from being established and imposed upon the Plaintiffs by those who believe that they know the will of God and who therefore consider the Plaintiffs and all "others" morally unfit to determine for themselves matters of abortion, when life begins and other such issues.

114. Because of the Act, Plaintiffs, their congregants, members, families and friends have suffered, are suffering and will continue to suffer ongoing, immediate, substantial and irreparable harm to their rights of privacy, free speech, freedom of religion and basic civil rights as protected by the Florida Constitution and FRFRA.

115. The Act burdens and restricts Plaintiffs' free exercise and practice of their religious beliefs and their freedom of speech, by criminalizing their religious guidance, teaching and counsel to members of their faith consistent with their sincerely held religious beliefs.

116. Plaintiffs have no adequate remedy at law to prevent and/or protect against the

continuing, immediate, irreparable injury to their constitutional rights by the Act.

117. Plaintiffs seek a declaratory judgment and a temporary and permanent injunction pursuant to Chapter 86 and Section 26.012(3), Florida Statutes, and Florida Rules of Civil Procedure Rule 1.610, declaring the Act to be unconstitutional, invalid, unenforceable, and of no legal effect, in order to prevent the violation of Plaintiffs' constitutional rights.

118. To obtain injunctive relief, Plaintiffs must demonstrate a substantial likelihood of success on the merits, irreparable harm to the Plaintiffs, no adequate legal remedy, that the equities are with the Plaintiff and that an injunction would not disserve the public interest.

119. This complaint alleges all these prerequisites and more and alleges that an injunction and/or declaratory relief is essential to serve the public interest and prevent irreparable harm to the Plaintiffs and to society.

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

COUNT I
VIOLATION OF FLORIDA RELIGIOUS FREEDOM RESTORATION ACT

121. Plaintiff repeats and adopts the allegations of ¶¶ 1–120 as if fully set forth herein.

122. Florida's Religious Freedom Restoration Act, Fla. Stat. § 761.01, et seq. (FRFRA) prohibits the state from substantially burdening a person's exercise of religion even if the burden results from a law of general applicability, unless the government can demonstrate that application of the burden to the person: (1) furthers a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. The Act applies to all religious belief, speech and conduct, not just those that are central to the faith.

123. Through the Act, the government Defendants have placed a substantial burden on Plaintiffs' religious practice, which is motivated by the Plaintiffs' sincere religious beliefs.

124. The Act places a substantial burden upon the religious practice of the Plaintiffs, as well as their congregants, members, and patients, in the exercise of their beliefs and practice regarding abortion. Plaintiffs deem the right to abortion as essential to protecting the rights and lives of women and girls, and thus, this is a sincerely held religious belief of the Plaintiffs.

125. Plaintiffs' practice of their religion includes, but is not limited to, providing religious counseling, education, care, comfort and guidance to their members, congregants and practitioners according to the principles of their faiths.

126. These rights of the clergy and the practitioners of the Plaintiffs' faiths are criminalized, penalized and/or forbidden by HB 5.

127. FRFRA entitles each person the right to freely exercise their religion unburdened and free of governmental interference, intimidation, coercion or penalties.

128. The right to receive and provide quality reproductive healthcare, including abortion, is a significant component of Plaintiffs' religious practice. FRFRA guarantees the right of Plaintiffs and their congregants and practitioners, to exercise the freedom to engage in their religious practice without governmental interference and/or intimidation absent a compelling state interest achieved by the least restrictive means for Plaintiffs and which is narrowly tailored.

129. There is no compelling state interest, rational basis or legitimate governmental interest furthered by the Act. The Act runs contrary to the economic, educational, and medical interests of the state and the wellbeing of its inhabitants. The Act harms the stability of the family and harms the medical, economic, educational, and emotional wellbeing of women.

130. Even if it was found that there was a compelling state interest, the Act is not the least restrictive means of furthering that interest when it provides no exception for rape, incest, sincerely held religious beliefs, mental distress, Tay-Sachs and other fatal diseases, and other compelling reasons for abortion after 13 weeks of gestation. The Act could have imposed restrictions after 20 weeks and started calculating this time period from conception, not from two weeks before conception as occurs when the time period under the Act begins with the first day of the pregnant woman's LMP.

131. Tay-Sachs cannot usually be detected until after 15 weeks of gestation. The Act does not allow exceptions for Tay-Sachs, which afflicts mostly Jews, as well as other fatal diseases after 15 weeks LMP, which is actually only 13 weeks after conception due to the Act's misleading and inaccurate way of calculating LMP. The Act tramples upon the rights of Jews and forces Jews to deliver a fetus with Tay-Sachs disease and then watch it die. This substantially burdens, criminalizes and penalizes the practice of Judaism, which believes in aborting fetuses with Tay-Sachs at any stage of gestation and which gives priority of a pregnant woman over the fetus at all stages of gestation. With no exemption for a fetus with Tay-Sachs and other fatal diseases, after 15 weeks, the Act, is not the least restrictive means to accomplish any state interest.

132. The Act establishes the religious beliefs about abortion, women and the beginning of life of a minority of Christians upon everyone else. This minority Christian view, reflected by the Act, was enacted by those who do not believe in freedom of religion or the separation of church and state, which is essential to American democracy. Instead they wish to impose a Christian theological tyranny upon all Americans.

133. The Act was enacted not to serve any legitimate purpose, but rather to enshrine and establish a narrow Christian religious view about abortion and when life begins upon all

Floridians and to prevent the free exercise of the religious views of Plaintiffs and others.

134. Thus, the Act not only results in irreparable harm to the Plaintiffs, it threatens and harms democracy and freedom in America which depend upon the separation of church and state.

135. The Jews have often borne the brunt of the horrors that occur when the powers of Christianity and the state merge. The result has been Inquisitions, Crusades, ghettoes and pogroms for Jews and the eventual loss of freedom and bloodshed for everyone else. The founding fathers enshrined in our Constitution a wall of separation between Church and State to protect the rights of religious minorities, including Jews. FRFRA was enacted to ensure that the protections of the establishment clause and the free exercise clause are strengthened in Florida.

136. The Act reflects another step towards dismantling the wall of separation between Church and State and the undermining of FRFRA and the Florida Constitution in a state where the words "In God we trust" are placed in every school. The Act is designed to take Florida back to a time when the merger of Christianity and government produced genocide, slavery, misogyny, and the denial of rights to those who did not share the gender, race or religion of those in power.

137. The Act criminalizes, penalizes, and prohibits the practice of Plaintiffs' religion. It provides a fine, jail, a felony conviction and other penalties for those who practice their religion, such as Plaintiffs, in violation of the Act. It also adds the potential loss of his license to practice medicine if Plaintiff SACKS violates the Act. The Plaintiffs all suffer the chilling effect of these draconian penalties if they "actively participate" in an abortion, which is undefined, but may apply to Plaintiffs if they provide counsel, advice and/or medical care to those seeking abortion.

138. Thus, as written and applied the Act violates the rights of Plaintiffs by unconstitutionally establishing religion in the context of decisions regarding abortion and prohibiting the religion of the plaintiffs in matters of abortion and when life begins.

139. As a result of the Act, and the establishment of a narrow Christian view on abortion and the commencement of life in Florida, Plaintiffs are unable to freely exercise and practice their religious faith.

140. As a result of the Act, and its violation of FRFRA, Plaintiffs have suffered, are suffering and will continue to suffer irreparable harm for which there is no adequate legal remedy.

141. Plaintiffs have no adequate remedy at law to redress the significant and life-threatening violations to their fundamental constitutional rights and freedom. Plaintiffs have a substantial likelihood of success on the merits in this litigation.

142. Thus, Plaintiffs seek temporary and permanent injunctive and declaratory relief, invalidating HB 5, declaring it unenforceable and a substantial burden on Plaintiff's religion. Plaintiffs further request costs, attorney's fees and any other remedy deemed proper by this Court.

COUNT II: VIOLATION OF THE FREE EXERCISE CLAUSE OF THE FLORIDA CONSTITUTION

143. Plaintiff repeats the allegations of ¶¶ 1–142 as if set forth fully herein.

144. Article 1, Section 3 of the Florida Constitution provides, "There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof."

145. The Florida Constitution goes beyond the First Amendment of the United States Constitution in its protection of religious freedom in that it adds that the free exercise of religion may not be penalized, in addition to saying that it cannot be prohibited as federal law provides.

146. Claims under Florida's Free Exercise Clause are analyzed in a similar manner to claims brought under the First Amendment to the United States Constitution's Establishment Clause, but the Courts scrutinize a challenged Act more stringently when brought under the Florida Constitution, because of the prohibition against penalizing the practice of religion.

147. The Act violates the right of Plaintiffs and others to the free exercise of their

religion as guaranteed by Article I, Section 3 of the Florida Constitution in making the most intimate decisions of their lives, unburdened by the State. The Act criminalizes, penalizes and prohibits the practice of Plaintiffs' religion in matters of abortion, issues of when life begins, and their religious obligation to provide care, comfort and love to those in need.

148. As a result of the Act, Plaintiffs, their congregants, parishioners, members and patients are denied the free exercise of the practice of their religions. As a result of this violation, Plaintiffs have suffered, are suffering and will continue to suffer irreparable harm for which there is no adequate remedy at law to redress the serious violations of their constitutional rights.

149. Thus, Plaintiffs seek injunctive and declaratory relief, invalidating HB 5, plus costs, attorney's fees and any other remedy deemed just and proper by this Court.

COUNT III: VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FLORIDA CONSTITUTION, ARTICLE 1, SECTION 3

150. Plaintiffs repeat and adopt the allegations of ¶¶ 1–142 as if set forth fully herein.

151. The Act reflects the views of a minority of Christians who claim to speak for God and who deny religious freedom to all others, including fellow Christians, under the notion that the proponents of the Act know God's will and thus all other religious views are false, evil and not entitled to constitutional protections. Proponents of HB 5 used their political power to enshrine their narrow religious views as the law of the State of Florida, which not only results in irreparable harm to Plaintiffs and all others who espouse a different view, but it also threatens and harms Democracy itself, and the cherished ideal of the separation of church and state which is essential to the freedom we enjoy in America and the envy of people throughout the world.

152. Plaintiffs strongly believe in the principle of the separation of Church and state in order to keep America as a bastion of freedom and a source of hope for people around the world rather than to take us back to the dark days of the past when the light of freedom flickered.

153. Thus, as written and applied the Act violates the rights of Plaintiffs by unconstitutionally establishing religion in the law of abortion and the question of when life begins. This Establishment of a narrow Christian view on these issues, prohibits, penalizes, criminalizes and thus burdens, the religious practice of the Plaintiffs in matters of abortion and issues surrounding the question of when life begins.

154. As ecumenical leaders, Plaintiffs bring this challenge on behalf of the practitioners of their religion and themselves, and also on behalf of people of all faiths and creeds.

155. The Act fails to further any compelling state interest, lacks a rational basis for its enactment, and fails to adopt the least restrictive means to accomplish any purported purpose.

156. The Act violates the establishment clause of the Florida Constitution expressed in Article 1, Section 3. As a result of the Act, the Plaintiffs, their congregants, members and practitioners have suffered, are suffering and will continue to suffer irreparable harm for which there is no adequate remedy at law to redress the harm to the Plaintiffs.

157. Plaintiffs seek declaratory and injunctive relief invalidating, declaring unconstitutional and rendering of no legal effect HB 5, as well as costs, interest, attorney's fees and any other remedy deemed just and valid by this Court.

COUNT IV: VIOLATION OF FLORIDA CONSTITUTION ARTICLE 1, SECTION 3 PROHIBITING THE STATE FROM PENALIZING THE PRACTICE OF RELIGION

158. Plaintiff repeats and realleges paragraphs 1 to 142 as if fully set forth herein.

159. Article 1, Section 3 of the Florida Constitution prohibits the State from penalizing the free exercise of religion.

160. The Act provides for severe penalties for its violation, sets out vague definitions or no definitions at all to guide its interpretation, is unclear as to who can be punished and why, and provides no exemptions for those whose religious beliefs are inconsistent with the harsh

requirements of the Act, nor does it provide exceptions for rape or incest, threats to the pregnant woman's health, life and/or wellbeing.

161. The Act penalizes compassion, which is the central tenet of Plaintiffs' religion as well as most moral codes.

162. Accordingly, the Act penalizes the practice of the religions of the Plaintiffs in violation of Article 1, Section 3 of the Florida Constitution. Defendants have no compelling interest in penalizing the practice of the Plaintiffs' religions and have failed to use the least restrictive means to carry out whatever ends it claims or may claim under the Act.

163. As a result of the Act, and its penalizing of Plaintiffs' practice of their religion, the Plaintiffs have suffered, are suffering and will continue to suffer irreparable harm, for which there is no legal remedy.

164. Plaintiffs seek declaratory and injunctive relief, declaring HB 5 unconstitutional, invalid, unenforceable and of no legal effect and granting Plaintiffs' costs, interest, attorney's fees and any other remedy deemed just and proper by this Court.

COUNT V: VIOLATION OF FREEDOM OF SPEECH AS PROVIDED BY ARTICLE 1, SECTION 4 OF THE FLORIDA CONSTITUTION

165. Plaintiffs reallege and adopt paragraphs 1 to 142 as if fully set forth herein

166. Article I, § 4 of the Constitution of the State of Florida provides, "No law shall be passed to restrain or abridge the liberty of speech or of the press."

167. The threat of criminal liability for violations of the Act restrains Plaintiffs' ability to speak freely about the fundamental tenets of their faith and to counsel their congregants, members and practitioners on matters of family planning, pregnancy, childbirth, and abortion in accordance with Plaintiff's sincerely held religious beliefs and those of its congregants.

168. The Act vests unbridled discretion in government officials to apply or not apply

the penalties in a manner that restricts free speech. Its vague terms such as "actively participates" and "intentionally performs" regarding abortion, has a chilling effect upon the Plaintiffs and allows government officials the ability to target those religions or individuals who say things that the Defendants do not like.

169. The Jews have been targeted in the past by the government and this Governor has targeted any group or individual that does not go along with his point of view. Plaintiffs SILVER and LDVD are outspoken in their opposition to the Act and thus it is likely that they will be targets of the Governor in the implementation and enforcement of the Act.

170. Defendants lack a compelling, legitimate, or even a rational governmental interest that justifies the serious infringements on Plaintiffs' Constitutional right of free speech.

171. The Act, on its face and as applied, is not the least restrictive means nor is it narrowly tailored to accomplish any legitimate governmental purpose under the Act.

172. The Act does not leave open any alternative channels of communication for Plaintiffs. No exceptions are made under the Act and its broad scope and vague terminology provide for no meaningful discourse about abortion.

173. The Act penalizes Plaintiff SACKS if he tells the truth to his patients and provides medical advice and care that is in their best interests. The Act requires Plaintiff SACKS to replace his Hippocratic oath with a hypocritical approach to his patients which he refuses to do.

174. The Act, on its face and as applied, is irrational and unreasonable and imposes unjustifiable and unreasonable restrictions on Plaintiffs' constitutionally protected speech. By requiring the Plaintiffs to say certain things about abortion and not say other things, the Act compels the Plaintiffs to say what the State demands, rather to speak the truth as they know it.

175. The Act's violation of Plaintiffs' right of free speech has caused, is causing, and

will continue to cause Plaintiffs and their congregants, and Plaintiff SACKS and his patients, irreparable injury due to the violation of their right of free speech on issues of major importance.

176. Plaintiffs have no adequate remedy at law to correct the deprivation of its right of free speech and those of their congregants.

177. The Plaintiffs seek declaratory and injunctive relief declaring the Act to be invalid, unconstitutional, and unenforceable, as well as costs, interest, attorney's fees and any other remedy deemed just and proper by this Court.

COUNT VI: VIOLATION OF PLAINTIFFS' RIGHT TO PRIVACY

178. Plaintiffs hereby reallege ¶¶ 1–142 above as if set forth fully herein.

179. The Florida Constitution Article 1, Section 23 provides "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein." This right of privacy has been interpreted consistently by the Florida Supreme Court to include the right to an abortion, which is considered fundamental in the State of Florida (see *In Re TW* id.)

180. The Act, on its face and/or, as applied, violates the right to privacy of women seeking abortions in the state of Florida, as guaranteed by Article I, section 23 of the Florida Constitution. Women have the right to be let alone from government intrusion into their private lives, as well as their private religious decisions.

181. As a result of the Act, the right of privacy of Plaintiffs LDVD, the QUAKERS, and their congregants, members and parishioners, many of whom are of child-bearing age, and the rights or the other Plaintiffs, has been violated, resulting in irreparable harm to the Plaintiffs.

182. The Act, on its face and as applied, is irrational and unreasonable and imposes unjustifiable and unreasonable restrictions on constitutionally protected privacy rights.

183. The Act's violation of the right of privacy of Plaintiff's practitioners and patients, has caused, is causing, and will continue to cause Plaintiffs to suffer irreparable injury.

184. Plaintiffs have no adequate remedy at law to correct the deprivation of its right of privacy of its congregants, practitioners and patients.

185. Plaintiffs seek declaratory and injunctive relief declaring the Act to be invalid, unconstitutional and unenforceable and granting the Plaintiffs their costs, interest, attorney's fees and any other remedy deemed just and proper by this Court.

COUNT VII: VIOLATION OF DUE PROCESS

186. Plaintiff repeats the allegations of reallege ¶¶ 1–142 as if fully set forth herein.

187. Article I, Section 9 of the Florida Constitution provides that no person in the State of Florida may be deprived of their right to life, liberty or the pursuit of happiness without Due Process of Law. This provision prohibits laws, like the Act, which are vague and permit the government to arbitrarily target people they don't like as violators of the Act.

188. A law is unconstitutionally vague when people of common intelligence must necessarily guess at its meaning. Laws, such as the Act, which provide criminal penalties are considered unconstitutionally vague when they invite selective, arbitrary and discriminatory enforcement, as written or applied, and thus have a chilling effect upon the exercise of constitutional rights. The vagueness of the Act invites arbitrary enforcement, especially with an administration eager to punish those who disagree with the Governor.

189. The Act violates the right of due process of the Plaintiffs as protected by the Florida Constitution as provided in Article 1, Section 9.

190. As a result of the Act, plaintiffs and others have suffered, are suffering and will continue to suffer irreparable injury for which there is no adequate remedy at law.

191. Plaintiffs request that this Court grant declaratory and injunctive relief declaring the Act to be invalid, unconstitutional, and of no legal effect and to grant to the Plaintiffs their costs, interest, attorney's fees and any other remedy deemed just and proper by this Court.

COUNT VIII: VIOLATION OF EQUAL PROTECTION AND BASIC RIGHTS

192. Plaintiff repeats the allegations of ¶¶ 1–142 above as if set forth fully herein.

193. The Florida Constitution Article I, Section 2 provides "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability.

194. The Act excludes any exceptions of its drastic restrictions on abortion rights due to the adverse mental health effects of forcing pregnancy upon a woman.

195. There is no rational basis nor compelling state interest in ignoring the psychological harm inflicted upon women by forcing them to carry a pregnancy to term and to bear a child against her will, especially in the case of rape, incest or other traumatic circumstances.

196. Regardless of how devastating the psychological harm would be from forcing parenthood upon a woman against her will, while exceptions are made for other reasons, no exception is made due to mental health considerations. In the case of rape, after a rapist has taken control of a woman's body by force, the state of Florida takes further control of her body by forcing her to deliver the child of her rapist, regardless of the trauma this will cause the woman. Florida law will also require the rape victim, to continue to have her rapist in her life, since as the father of her child, they must work together to promote the best interests of their child.

197. On June 7, in response to yet another deadly shooting in Uvalde, Texas, Governor

Ron DeSantis signed a bill that will require mental health "crisis intervention" training for on-campus officers. The new law also requires that 80 percent of employees at all schools receive training in "youth mental health awareness and assistance," and recognizes that under certain circumstances, mental health concerns can represent a crisis in one's life, especially to the young.

198. By allowing other considerations to be considered, but excluding mental health consequences of forced parenthood, regardless of the level of trauma, the Act discriminates against the mentally ill.

199. There is no law in Florida which prohibits a man from undergoing a medical recommended by his doctor, yet the Act criminalizes the performance or even the mention of medical procedures necessary for the health of women and recommended by their physicians.

200. Thus, the Act deprives women of their equal rights.

201. The Defendants are treating women differently and ignoring the findings of the Supreme Court of Florida that abortion is among the most fundamental of rights in Florida.

202. By not being able to speak freely about a woman's right to abortion and to practice their religion, Plaintiffs are being denied their basic rights as spiritual leaders, congregations and a physician and are coerced by the State to remain silent while women's rights are being violated.

203. As a result of the continuing violation of plaintiff's rights in violation of Article I, Section 2 of the Florida Constitution, plaintiffs have suffered, are suffering and will continue to suffer irreparable harm for which there is no adequate remedy at law to redress this harm.

204. Plaintiffs seek declaratory and injunctive relief declaring the Act unconstitutional, unenforceable and invalid and awarding Plaintiffs their costs, interest and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Issue a declaratory judgment that HB 5 violates the rights of Plaintiffs their members, congregants, practitioners and patients and declare HB 5 to be invalid, unconstitutional and unenforceable due to its violation of FRFRA and/or the provisions of the Florida Constitution, Article 1, Sections 2, 3, 4, 9 and/or 23, cited herein.

2. Issue temporary and permanent injunctive relief declaring HB 5 to be invalid, unconstitutional and unenforceable due to its violations of FRFRA and/or due to its violation of the Florida Constitution, article 1, Sections 2, 3, 4, 9 and/or 23 and prohibiting its enforcement.

3. Issue temporary and permanent injunctive relief restraining the enforcement and/or operation of HB 5 by enjoining Defendants, their officers, agents, servants, employees, appointees, or successors, as well as those acting in concert with them, from enforcing, threatening to enforce, or otherwise applying the provisions of the Act in Florida due to its violation of the rights of Plaintiffs, their practitioners, congregants, patients and others in Florida as protected by FRFRA and the Florida Constitution, Article 1, sections 2, 3, 4, 9, and/or 23.

4. In the alternative, issue a temporary and permanent injunction granting an exemption for the Plaintiffs and those whose faith or religious beliefs are burdened by the Act, and/or an exemption to those who suffer mental illness or will suffer mental illness and/or mental distress as a result of the Act, and/or an exemption to those who become pregnant as the result of rape or incest, and/or an exemption to those whose health or life is threatened by their pregnancy.

5. Grant Plaintiffs costs, interest and attorney's fees should the Plaintiffs prevail in this litigation and/or if the State voluntarily repeals some or all of the Act.

6. Grant Plaintiffs such other and further relief as this Court deems just and proper.

EXHIBIT A

CHAPTER 2022-69
Committee Substitute for House Bill No. 5

An act relating to reducing fetal and infant mortality; amending s. 381.84, F.S.; revising the purpose and requirements for the Comprehensive Statewide Tobacco Education and Use Prevention Program; revising a provision relating to a certain report to conform to changes made by the act; creating s. 383.21625, F.S.; providing a definition; requiring the Department of Health to contract with local healthy start coalitions for the creation of fetal and infant mortality review committees in all regions of the state; providing requirements for such committees; requiring local healthy start coalitions to report the findings and recommendations developed by the committees to the department annually; requiring the department to compile such findings and recommendations in a report and submit such report to the Governor and Legislature by a specified date and annually; authorizing the department to adopt rules; amending s. 390.011, F.S.; revising and providing definitions; amending s. 390.0111, F.S.; prohibiting a physician from performing a termination of pregnancy if the physician determines the gestational age of a fetus is more than a specified number of weeks; providing an exception; amending s. 390.0112, F.S.; revising a requirement that the directors of certain medical facilities submit a monthly report to the Agency for Health Care Administration; requiring certain physicians to submit such report to the agency; requiring the report to be submitted electronically on a form adopted by the agency, the Board of Medicine, and the Board of Osteopathic Medicine; requiring the report to include certain additional information; removing obsolete language; creating s. 395.1054, F.S.; requiring that certain hospitals participate in a minimum number of quality improvement initiatives developed in collaboration with the Florida Perinatal Quality Collabora- tive within the University of South Florida College of Public Health; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2), (3), and (7) of section 381.84, Florida Statutes, are amended to read:

381.84 Comprehensive Statewide Tobacco Education and Use Preven- tion Program.—

(2) PURPOSE, FINDINGS, AND INTENT.—It is the purpose of this section to implement s. 27, Art. X of the State Constitution. The Legislature finds that s. 27, Art. X of the State Constitution requires the funding of a statewide tobacco education and use prevention program that focuses on tobacco use by youth. The Legislature further finds that the primary goals of the program are to reduce the prevalence of tobacco use among youth, adults, and pregnant women, and women who may become pregnant; reduce per capita tobacco consumption; and reduce exposure to environmental tobacco

smoke. Further, it is the intent of the Legislature to base increases in funding for individual components of the program on the results of assessments and evaluations. Recognizing that some components will need to grow faster than inflation, it is the intent of the Legislature to fund portions of the program on a nonrecurring basis in the early years so that those components

that are most effective can be supported as the program matures.

(3) PROGRAM COMPONENTS AND REQUIREMENTS.—The depart- ment shall conduct a comprehensive, statewide tobacco education and use prevention program consistent with the recommendations for effective program components contained in the 1999 Best Practices for Comprehensive Tobacco Control Programs of the CDC, as amended by the CDC. The program shall include the following components, each of which shall focus on educating people, particularly pregnant women, women who may become pregnant, and youth and their parents, about the health hazards of tobacco and discouraging the use of tobacco:

(a) Counter-marketing and advertising; Internet resource center.—The counter-marketing and advertising campaign shall include, at a minimum, Internet, print, radio, and television advertising and shall be funded with a minimum of one-third of the total annual appropriation required by s. 27, Art. X of the State Constitution.

1. The campaign shall include an Internet resource center for copy- righted materials and information concerning tobacco education and use prevention, including cessation. The Internet resource center must be accessible to the public, including parents, teachers, and students, at each level of public and private schools, universities, and colleges in the state and shall provide links to other relevant resources. The Internet address for the resource center must be incorporated in all advertising. The information maintained in the resource center shall be used by the other components of the program.

2. The campaign shall use innovative communication strategies, such as targeting specific audiences who use personal communication devices and frequent social networking websites.

(b) Cessation programs, counseling, and treatment.—This program component shall include two subcomponents:

1. A statewide toll-free cessation service, which may include counseling, referrals to other local resources and support services, and treatment to the extent funds are available for treatment services; and

2. A local community-based program to disseminate information about tobacco-use cessation, how tobacco-use cessation relates to prenatal care and obesity prevention, and other chronic tobacco-related diseases.

(c) Surveillance and evaluation.—The program shall conduct ongoing epidemiological surveillance and shall contract for annual independent evaluations of the effectiveness of the various components of the program in meeting the goals as set forth in subsection (2).

(d) Youth school programs.—School and after-school programs shall use current evidence-based curricula and programs that involve youth to educate youth about the health hazards of

tobacco, help youth develop skills to refuse tobacco, and demonstrate to youth how to stop using tobacco.

(e) Community programs and chronic disease prevention.—The depart- ment shall promote and support local community-based partnerships that emphasize programs involving youth, pregnant women, and women who may become pregnant, including programs for the prevention, detection, and early intervention of tobacco-related chronic diseases.

(f) Training.—The program shall include the training of health care practitioners, tobacco-use cessation counselors, and teachers by health professional students and other tobacco-use prevention specialists who are trained in preventing tobacco use and health education. Tobacco-use cessation counselors shall be trained by specialists who are certified in tobacco-use cessation.

(g) Administration and management, statewide programs, and county health departments.—The department shall administer the program within the expenditure limit established in subsection (8). Each county health department is eligible to receive a portion of the annual appropriation, on a per capita basis, for coordinating tobacco education and use prevention programs within that county. Appropriated funds may be used to improve the infrastructure of the county health department to implement the comprehensive, statewide tobacco education and use prevention program. Each county health department shall prominently display in all treatment rooms and waiting rooms counter-marketing and advertisement materials in the form of wall posters, brochures, television advertising if televisions are used in the lobby or waiting room, and screensavers and Internet advertising if computer kiosks are available for use or viewing by people at the county health department.

(h) Enforcement and awareness of related laws.—In coordination with the Department of Business and Professional Regulation, the program shall monitor the enforcement of laws, rules, and policies prohibiting the sale or other provision of tobacco to minors, as well as the continued enforcement of the Clean Indoor Air Act prescribed in chapter 386. The advertisements produced in accordance with paragraph (a) may also include information designed to make the public aware of these related laws and rules. The departments may enter into interagency agreements to carry out this program component.

(i) AHEC tobacco-use cessation initiative.—The AHEC network may administer the AHEC tobacco-use cessation initiative in each county within the state and perform other activities as determined by the department.

(7) ANNUAL REPORT REQUIRED.—By January 31 of each year, the department shall provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that evaluates the program's effectiveness in reducing and preventing tobacco use and that recommends improvements to enhance the program's effectiveness. The report must contain, at a minimum, an annual survey of youth attitudes and behavior toward tobacco, as well as a description of the progress in reducing the prevalence of tobacco use among

youth, adults, and pregnant women, and women who may become pregnant; reducing per capita tobacco consumption; and reducing exposure to environmental tobacco smoke.

Section 2. Section 383.21625, Florida Statutes, is created to read: 383.21625 Fetal and infant mortality review committees.—
(1) As used in this section, the term "department" means the Depart- ment of Health.

(2) The department shall contract with local healthy start coalitions for the creation of fetal and infant mortality review committees in all regions of the state to improve fetal and infant mortality and morbidity in each region. Each committee shall:

(a) Review and analyze rates, trends, causes, and other data related to fetal and infant mortality and morbidity in a geographic area.

(b) Develop findings and recommendations for interventions and policy changes to reduce fetal and infant mortality and morbidity rates.

(c) Engage with local communities and stakeholders to implement recommended policies and procedures to reduce fetal and infant mortality and morbidity.

(3) Each local healthy start coalition shall report the findings and recommendations developed by each fetal and infant mortality review committee to the department annually. Beginning October 1, 2023, the department shall compile such findings and recommendations in an annual report, which must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(4) The department may adopt rules necessary to implement this section.

Section 3. Subsections (6) and (7) of section 390.011, Florida Statutes, are renumbered as subsections (7) and (8), respectively, present subsections
(8) through (13) are renumbered as subsections (10) through (15),

respectively, present subsection (6) is amended, and new subsections (6) and
(9) are added to that section, to read:

390.011 Definitions.—As used in this chapter, the term:

(6) "Fatal fetal abnormality" means a terminal condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb and will result in death upon birth or imminently thereafter.

(7)(6) "Gestation" means the development of a human embryo or fetus as calculated from the first day of the pregnant woman's last menstrual period between fertilization and birth.