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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

PLANNED PARENTHOOD ASSOCIATION OF
UTAH, on behalf of itself and its patients,
physicians, and staff,

Plaintiff,

v.

JOSEPH MINER, in his official capacity as
Executive Director of the Utah Department of
Health; MARK B. STEINAGEL, in his official
capacity as Director of the Utah Division of
Occupational and Professional Licensing; SIM
GILL, in his official capacity as District Attorney
for Salt Lake County; SEAN D. REYES, in his
official capacity as Attorney General for the State of
Utah; and GARY R. HERBERT, in his official
capacity as Governor for the State of Utah,

Defendants.

Case No. 2:19-cv-00238-EJF

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Hon. Evelyn J. Furse

Plaintiff Planned Parenthood Association of Utah (“PPAU”), on its own behalf and on behalf of its patients, physicians, and staff, hereby complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this civil rights action under 42 U.S.C. § 1983 to challenge the constitutionality of recently enacted Utah House Bill 136 (hereinafter “HB 136” or “the Act”), Utah’s latest attempt to prevent women from exercising their constitutional right to abortion. *See* HB 136, attached as Exhibit A, *to be codified at* Utah Code Ann. §§ 76-7-301 to 76-7-314. HB 136 bans nearly all abortions beginning at 18 weeks of pregnancy (“the 18-week ban”), threatening the rights, liberty, and wellbeing of Utah women and their families. It is scheduled to take effect on May 14, 2019.

2. No fetus is viable at 18 weeks of pregnancy. Accordingly, the 18-week ban is in flagrant violation of more than four decades of settled Supreme Court precedent, starting with *Roe v. Wade*, 410 U.S. 113 (1973), which held that a woman has a protected right to end a pregnancy. Since *Roe*, no court has upheld a law banning abortion prior to viability. To the contrary, decades of unanimous precedent have made clear that a ban on such abortions violates the Fourteenth Amendment to the U.S. Constitution. In fact, in *Jane L. v. Bangerter*, 102 F.3d 1112 (10th Cir. 1996), the Tenth Circuit already invalidated a Utah law that banned abortion at 22 weeks of gestation. In striking down that statute, the court of appeals faulted Utah for its “deliberate decision to disregard controlling Supreme Court precedent.” *Id.* at 1116. Undeterred, Utah has yet again enacted a patently unconstitutional ban on previability abortion.

3. Plaintiff seeks declaratory and injunctive relief preventing enforcement of HB 136 to safeguard its patients from this constitutional violation and to avoid irreparable harm to its patients, its providers, and itself.

JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

5. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

6. Venue in this judicial district is proper under 28 U.S.C. § 1391 because Defendants reside here and a substantial part of the events giving rise to the claims occurred here.

PARTIES

7. Plaintiff PPAU is a Utah non-profit corporation that provides comprehensive reproductive health care to tens of thousands of individuals each year at eight health centers throughout the state. PPAU provides annual wellness exams, contraception and contraceptive education, pregnancy testing and options counseling, testing for HIV and sexually transmitted infections, and screening for breast and cervical cancer. At one of PPAU's health centers, its Metro Health Center in Salt Lake City, PPAU provides previability abortion services, including after 18 weeks of pregnancy, as measured from the first day of the woman's last menstrual period ("LMP"). This health center is licensed under Utah law as an "abortion clinic" authorized to perform first- and second-trimester abortions. *See* Utah Code Ann. §§ 26-21-6.5; 26-21-2(24). Upon information and belief, PPAU's Metro Health Center is the only clinic providing generally available abortion care in Utah at and after 18 weeks of pregnancy. PPAU sues on its own behalf, on behalf of its

patients seeking previability abortions at and after 18 weeks, and on behalf of its physicians and staff who provide these services.

8. Defendant Joseph Miner is the Executive Director of the Utah Department of Health (“UDOH”), the state agency responsible for enforcing health care facility rules applicable to “abortion clinics” operating in Utah. *Id.* §§ 26-21-6; 26-21-11. He is the chief administrative officer of the agency. *Id.* § 26-1-8. Mr. Miner is sued in his official capacity.

9. Defendant Mark B. Steinagel is the Director of the Utah Division of Occupational and Professional Licensing (“UDOPL”), the state agency responsible for licensing physicians and enforcing disciplinary sanctions against physicians. *Id.* § 58-1-106. He performs all duties, functions, and responsibilities of UDOPL. *Id.* § 58-1-104(2). Mr. Steinagel is sued in his official capacity.

10. Defendant Sim Gill is the District Attorney for Salt Lake County, the county in which PPAU offers abortion care at and after 18 weeks. He has authority to prosecute criminal violations of the 18-week ban. *Id.* §§ 17-18a-203; 17-18a-401(a). Mr. Gill is sued in his official capacity.

11. Defendant Sean D. Reyes is the Attorney General of Utah, the state’s chief legal officer. He exercises supervisory power over District Attorney Gill “in all matters pertaining to the duties of [his] office[],” and, “when required by the public service or directed by the governor,” he assists District Attorney Gill in the discharge of his duties. Utah Code Ann. § 67-5-1(6), (8). The Attorney General also prosecutes and defends all causes to which a state officer is a party. *Id.* § 67-5-1(2). Mr. Reyes is sued in his official capacity.

12. Defendant Gary R. Herbert is the Governor of Utah. He may require the Attorney General to aid District Attorney Gill in the discharge of his prosecutorial duties. Utah Code Ann. § 67-1-1(7); *accord id.* § 67-5-1(8). Mr. Herbert is sued in his official capacity.

FACTUAL ALLEGATIONS

Utah’s Earlier Abortion Ban and Lawsuit

13. In 1991, the Utah Legislature adopted a law that banned nearly all abortions in the state, subject to very limited exceptions, such as to save the life of a pregnant woman. One portion of the law applied to abortions before 22 weeks LMP of pregnancy, and another—which further narrowed applicable exceptions to permit abortion—applied to those after 22 weeks LMP.¹

14. In a case brought by Plaintiff PPAU against the Attorney General and Governor of Utah, this Court held that the provision banning abortions before 22 weeks violated the substantive due process rights of women seeking abortions before fetal viability. *See Jane L.*, 102 F.3d at 1113 & n.3. The state defendants did not appeal that ruling, *id.* at 1113–14, after conceding in district court that the provision “appear[ed] to be unconstitutional,” *Jane L. v. Bangerter*, 809 F. Supp. 865, 870 (D. Utah 1992), *rev’d in part on other grounds*, 61 F.3d 1493 (10th Cir. 1995), *rev’d on other grounds sub nom. Leavitt v. Jane L.*, 518 U.S. 137 (1996).

15. The Tenth Circuit held that the ban on previability abortions occurring *after* 22 weeks of pregnancy also violated the Fourteenth Amendment’s substantive due process protections. *Jane L.*, 102 F.3d at 1114. It concluded that the Utah Legislature, in adopting the law,

¹ Although the text of this earlier Utah law actually distinguished between abortions before and after 20 weeks of pregnancy, the law at that time dated pregnancy from conception as opposed to LMP. Because the latter calculation is how pregnancies are dated in the medical context, Plaintiff gives gestational age by LMP throughout. *See Jane L.*, 102 F.3d at 1114 n.3.

had “made a deliberate decision to disregard controlling Supreme Court precedent.” *Id.* at 1116. That precedent makes clear that, “until [fetal] viability is actually present[,] the State may not prevent a woman from choosing to abort.” *Id.* at 1118. The U.S. Supreme Court denied review of the Tenth Circuit’s decision. *Leavitt v. Jane L.*, 520 U.S. 1274 (1997).

16. After this ruling, the Utah Legislature amended its abortion statute to ban only those abortions occurring after fetal viability. Accordingly, under Utah law as it exists now, unaltered by HB 136, an abortion may be performed in the following circumstances: (a) the fetus is not viable, Utah Code Ann. § 76-7-302(3)(a), or (b) the fetus is viable and abortion is necessary (1) to save a patient’s life, (2) to prevent “a serious risk” to the patient “of substantial and irreversible impairment of a major bodily function,” (3) to end a pregnancy resulting from rape or incest, but only where the physician “verifies” that the crimes have “been reported to law enforcement,” and (4) to end a pregnancy involving a “uniformly diagnosable” and “uniformly lethal” fetal defect, *id.* § 76-7-302(3)(b).

17. Utah law defines viability to mean that the fetus “is potentially able to live outside the womb, as determined by the attending physician to a reasonable degree of medical certainty.” *Id.* § 76-7-302.

18. Although the point at which an individual fetus may attain viability varies, no fetus is viable at 18 weeks.

The Challenged Act

19. In March 2019, the Utah Legislature passed HB 136, which amends Utah’s abortion code to provide that, “[n]otwithstanding” other state statutory provisions on the availability of

abortion, “a person may not perform or attempt to perform an abortion after” a fetus “reaches 18 weeks gestational age.” HB 136, § 3 (creating Utah Code Ann. § 76-7-302.5).

20. HB 136 measures “gestational age ... from the first day of the last menstrual period of the pregnant woman.” *Id.* § 1 (amending Utah Code Ann. § 76-7-301(5)).

21. The 18-week ban is subject only to the exceptions applicable to the previous prohibition on postviability abortions, *see supra* ¶ 16, plus a new exception added by HB 136 for postviability and post-18-week abortions in the case of a “severe [fetal] brain abnormality that is uniformly diagnosable,” HB 136, § 2 (amending Utah Code Ann. § 76-7-302(3)).

22. HB 136 imposes new reporting mandates to ensure compliance with the 18-week ban. It requires physicians who perform abortions to certify to UDOH whether the fetus “was older than 18 weeks gestational age at the time of the abortion.” As existing law already does for postviability abortions, Utah Code Ann. § 76-7-313(2), HB 136 also requires physicians performing abortions after 18 weeks to report to UDOH “the reason for [each such] abortion,” HB 136, § 4.

23. HB 136 provides that violation of the 18-week ban is punishable as a second-degree felony, which carries a minimum one-year and maximum fifteen-year prison term. HB 136, § 5 (amending Utah Code Ann. § 76-7-314); Utah Code Ann. § 76-3-203. A second-degree felony also carries a potential \$10,000 fine for individuals, and a \$20,000 fine for corporations. Utah Code Ann. §§ 76-3-301(1)(a), 76-3-302(1).

24. HB 136 mandates that UDOH report a doctor who violates the 18-week ban to Utah’s Physician and Surgeon Licensing Board. HB 136, § 5 (amending Utah Code Ann. § 76-7-314(5)). That board in turn recommends licensing actions to UDOPL, Utah Code Ann. § 58-1-

202(1)(d), which is authorized to revoke a physician’s license for “unprofessional conduct,” *id.* §§ 58-1-401(2), 58-1-501(2).

25. The Act also authorizes UDOH to take action against a facility licensed as an “abortion clinic” if a violation of the 18-week ban occurs onsite. *Id.* § 76-7-314(7). Such action includes license revocation where the clinic “permit[s], aid[s], or abet[s] the commission of any illegal act in the ... facility.” *Id.* § 26-21-11.

26. HB 136 and the Utah law at issue in the *Jane L.* litigation both ban nearly all previability abortions at or after 18 weeks of pregnancy. *See* Utah Code Ann. § 76-7-302 (repealed 2009); HB 136, § 3 (adding § 76-7-302.5). Whether such a ban violates the substantive due process rights of patients under the Fourteenth Amendment has already been fully litigated in this Court and the Tenth Circuit. The Defendants are therefore collaterally estopped from defending the constitutionality of HB 136 on the ground that the ban on previability abortions at or after 18 weeks is consistent with the Fourteenth Amendment.

The Act’s Impact on Patients

27. Legal abortion is one of the safest procedures in contemporary medical practice and is far safer than childbirth.

28. Patients decide to end a pregnancy for a variety of reasons, including familial, medical, financial, and personal reasons. Some patients end a pregnancy because they conclude it is not the right time in their lives to have a child; some do so because they already have one or more children and decide they cannot add to their families; some do so to preserve their life, health, or safety; some do so because they receive a diagnosis of a fetal anomaly; some do so because they have become pregnant as a result of rape or incest; and some do so because they choose not to

have biological children. Approximately one in four women in this country will have an abortion by age forty-five.

29. Roughly nine out of ten abortions in the United States and in Utah take place in the first twelve weeks of pregnancy. Only a small fraction of abortions are performed at or after 18 weeks.

30. Patients obtain abortions at or after 18 weeks for a variety of reasons. Some are delayed in accessing abortion care because of barriers encountered during pregnancy. Women, particularly those living in poverty or without insurance, may not be able to confirm their pregnancies, obtain options counseling, schedule an appointment, and make the logistical and financial arrangements (including time off work and childcare) to obtain an abortion for many weeks after they realize that they may be pregnant and decide to end the pregnancy. Other patients obtain an abortion for medical reasons that do not arise until at or after 18 weeks, or because they are suffering from post-traumatic issues following rape or incest.

31. Under Utah law, patients seeking an abortion must first complete a biased “information” module created by the state and certify their completion. They must then have an initial consultation with a licensed provider to, again, receive biased, state-mandated disclosures. *See* Utah Code Ann. § 76-7-305. Patients must travel to Salt Lake City, the only city where abortions are generally available in Utah, and their abortions may not take place until after the expiration of a mandatory 72-hour waiting period following the initial consultation. *Id.* Women seeking abortions must also find financial resources to pay the substantial cost of an abortion, often made higher by travel costs.

32. Under HB 136, women wishing to have a previability abortion at or after 18 weeks will be unable to do so in Utah unless they are covered by one of the exceptions applicable under the Act. Those exceptions to the 18-week ban would not cover many of PPAU's patients who seek abortions at or after 18 weeks, even though many of these patients are facing very challenging circumstances. They include women who have a health condition that does not clearly fit within the exceptions to save a patient's life or prevent certain irreversible impairments; women who have a compromised pregnancy and learn that their fetus is likely to suffer medical complications (unless the physician determines that the fetus has a "lethal" anomaly or "severe brain abnormality" that is "uniformly diagnosable"); women who were raped but did not report that rape or who are uncertain whether their pregnancy is the result of the rape they reported; and women who suffered incest but did not report that incest or who are uncertain whether their pregnancy is the result of the incest.

33. Absent an injunction, the overwhelming majority of PPAU's patients seeking abortions at or after 18 weeks LMP will not be able to obtain them in Utah. Some will be forced to attempt to travel hundreds of miles to out-of-state providers to obtain abortions and will experience resulting expenses, delays, and other harms. For many patients, however, reaching an out-of-state abortion provider will simply be impossible. Some patients will be forced to carry unwanted pregnancies to term. Some may even turn to self-induced abortion. Each of these harms constitutes irreparable harm to Plaintiff's patients.

34. The Act presents PPAU and its providers with an untenable choice: face criminal sanction and license revocation for continuing to provide abortion care in accordance with their best medical judgment, or stop providing the critical care on which patients across Utah rely.

CLAIM FOR RELIEF

35. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 34 above.

36. By banning previability abortion care starting at 18 weeks, the Act violates the substantive due process rights of Plaintiff's patients, as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

37. Declare that HB 136's ban on previability abortion at or after 18 weeks' gestation is unconstitutional under the Fourteenth Amendment to the U.S. Constitution and in violation of 42 U.S.C. § 1983;

38. Issue preliminary and permanent injunctive relief, without bond, enjoining Defendants, their employees, agents, and successors from enforcing HB 136, §§ 3 through 5;

39. Award Plaintiff its attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

40. Grant such other relief as this Court deems just and proper.

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Dated: April 10, 2019

Respectfully submitted,

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*Attorneys for Plaintiff Planned Parenthood
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ABORTION AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Cheryl K. Acton

Senate Sponsor: Deidre M. Henderson

6	Cosponsors:	Steve Eliason	Susan Pulsipher
7	Carl R. Albrecht	Timothy D. Hawkes	Adam Robertson
8	Kyle R. Andersen	Jon Hawkins	Douglas V. Sagers
9	Melissa G. Ballard	Ken Ivory	Travis M. Seegmiller
10	Stewart E. Barlow	Dan N. Johnson	Rex P. Shipp
11	Brady Brammer	Marsha Judkins	Keven J. Stratton
12	Walt Brooks	Karianne Lisonbee	Mark A. Strong
13	Kay J. Christofferson	Phil Lyman	Norman K. Thurston
14	Kim F. Coleman	A. Cory Maloy	
15	Brad M. Daw	Merrill F. Nelson	

LONG TITLE

General Description:

This bill enacts and modifies provisions relating to abortion.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ prohibits an abortion from being performed after the unborn child reaches 18 weeks gestational age except under certain circumstances;
- ▶ modifies the circumstances under which an abortion may be performed after the unborn child reaches 18 weeks gestational age;
- ▶ modifies provisions that require a physician to report certain information to the

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28 Department of Health relating to an abortion; and
29 ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **76-7-301**, as last amended by Laws of Utah 2018, Chapter 282

37 **76-7-302**, as last amended by Laws of Utah 2018, Chapter 282

38 **76-7-313**, as last amended by Laws of Utah 2018, Chapter 282

39 **76-7-314**, as last amended by Laws of Utah 2018, Chapter 282

40 ENACTS:

41 **76-7-302.5**, Utah Code Annotated 1953



43 *Be it enacted by the Legislature of the state of Utah:*

44 Section 1. Section **76-7-301** is amended to read:

45 **76-7-301. Definitions.**

46 As used in this part:

47 (1) (a) "Abortion" means:

48 (i) the intentional termination or attempted termination of human pregnancy after
49 implantation of a fertilized ovum through a medical procedure carried out by a physician or
50 through a substance used under the direction of a physician;

51 (ii) the intentional killing or attempted killing of a live unborn child through a medical
52 procedure carried out by a physician or through a substance used under the direction of a
53 physician; or

54 (iii) the intentional causing or attempted causing of a miscarriage through a medical

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55 procedure carried out by a physician or through a substance used under the direction of a
56 physician.

57 (b) "Abortion" does not include:

58 (i) removal of a dead unborn child;

59 (ii) removal of an ectopic pregnancy; or

60 (iii) the killing or attempted killing of an unborn child without the consent of the
61 pregnant woman, unless:

62 (A) the killing or attempted killing is done through a medical procedure carried out by
63 a physician or through a substance used under the direction of a physician; and

64 (B) the physician is unable to obtain the consent due to a medical emergency.

65 (2) "Abortion clinic" means the same as that term is defined in Section 26-21-2.

66 (3) "Abuse" means the same as that term is defined in Section 78A-6-105.

67 (4) "Department" means the Department of Health.

68 (5) "Gestational age" means the age of an unborn child as calculated from the first day
69 of the last menstrual period of the pregnant woman.

70 [~~5~~] (6) "Hospital" means:

71 (a) a general hospital licensed by the department according to Title 26, Chapter 21,
72 Health Care Facility Licensing and Inspection Act; and

73 (b) a clinic or other medical facility to the extent that such clinic or other medical
74 facility is certified by the department as providing equipment and personnel sufficient in
75 quantity and quality to provide the same degree of safety to the pregnant woman and the
76 unborn child as would be provided for the particular medical procedures undertaken by a
77 general hospital licensed by the department.

78 [~~6~~] (7) "Information module" means the pregnancy termination information module
79 prepared by the department.

80 [~~7~~] (8) "Medical emergency" means that condition which, on the basis of the
81 physician's good faith clinical judgment, so threatens the life of a pregnant woman as to

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82 necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay
83 will create serious risk of substantial and irreversible impairment of major bodily function.

84 [~~(8)~~] (9) "Minor" means an individual who is:

85 (a) under 18 years of age;

86 (b) unmarried; and

87 (c) not emancipated.

88 [~~(9)~~] (10) (a) "Partial birth abortion" means an abortion in which the person performing
89 the abortion:

90 (i) deliberately and intentionally vaginally delivers a living fetus until, in the case of a
91 head first presentation, the entire fetal head is outside the body of the mother, or, in the case of
92 breech presentation, any part of the fetal trunk past the navel is outside the body of the mother,
93 for the purpose of performing an overt act that the person knows will kill the partially delivered
94 living fetus; and

95 (ii) performs the overt act, other than completion of delivery, that kills the partially
96 living fetus.

97 (b) "Partial birth abortion" does not include the dilation and evacuation procedure
98 involving dismemberment prior to removal, the suction curettage procedure, or the suction
99 aspiration procedure for abortion.

100 [~~(10)~~] (11) "Physician" means:

101 (a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter
102 67, Utah Medical Practice Act;

103 (b) an osteopathic physician licensed to practice osteopathic medicine under Title 58,
104 Chapter 68, Utah Osteopathic Medical Practice Act; or

105 (c) a physician employed by the federal government who has qualifications similar to a
106 person described in Subsection [~~(10)~~] (11)(a) or (b).

107 (12) (a) "Severe brain abnormality" means a malformation or defect that causes an
108 individual to live in a mentally vegetative state.

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109 (b) "Severe brain abnormality" does not include:
110 (i) Down syndrome;
111 (ii) spina bifida;
112 (iii) cerebral palsy; or
113 (iv) any other malformation, defect, or condition that does not cause an individual to
114 live in a mentally vegetative state.

115 Section 2. Section **76-7-302** is amended to read:

116 **76-7-302. Circumstances under which abortion authorized.**

117 (1) As used in this section, "viable" means that the unborn child has reached a stage of
118 fetal development when the unborn child is potentially able to live outside the womb, as
119 determined by the attending physician to a reasonable degree of medical certainty.

120 (2) An abortion may be performed in this state only by a physician.

121 (3) An abortion may be performed in this state only under the following circumstances:

122 (a) the unborn child is not viable; or

123 (b) the unborn child is viable, if:

124 (i) the abortion is necessary to avert:

125 (A) the death of the woman on whom the abortion is performed; or

126 (B) a serious risk of substantial and irreversible impairment of a major bodily function
127 of the woman on whom the abortion is performed;

128 (ii) two physicians who practice maternal fetal medicine concur, in writing, in the
129 patient's medical record that the fetus:

130 (A) has a defect that is uniformly diagnosable and uniformly lethal; or

131 (B) has a severe brain abnormality that is uniformly diagnosable; or

132 (iii) (A) the woman is pregnant as a result of:

133 (I) rape, as described in Section [76-5-402](#);

134 (II) rape of a child, as described in Section [76-5-402.1](#); or

135 (III) incest, as described in Subsection [76-5-406\(10\)](#) or Section [76-7-102](#); and

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136 (B) before the abortion is performed, the physician who performs the abortion:
137 (I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been reported to
138 law enforcement; and

139 (II) complies with the requirements of Section 62A-4a-403.

140 (4) An abortion may be performed only in an abortion clinic or a hospital, unless it is
141 necessary to perform the abortion in another location due to a medical emergency.

142 Section 3. Section 76-7-302.5 is enacted to read:

143 **76-7-302.5. Circumstances under which abortion prohibited.**

144 Notwithstanding any other provision of this part, a person may not perform or attempt
145 to perform an abortion after the unborn child reaches 18 weeks gestational age unless the
146 abortion is permissible for a reason described in Subsection 76-7-302(3)(b).

147 Section 4. Section 76-7-313 is amended to read:

148 **76-7-313. Department's enforcement responsibility -- Physician's report to**
149 **department.**

150 (1) In order for the department to maintain necessary statistical information and ensure
151 enforcement of the provisions of this part:

152 (a) any physician performing an abortion must obtain and record in writing:

153 (i) the age, marital status, and county of residence of the woman on whom the abortion
154 was performed;

155 (ii) the number of previous abortions performed on the woman described in Subsection
156 (1)(a)(i);

157 (iii) the hospital or other facility where the abortion was performed;

158 (iv) the weight in grams of the unborn child aborted, if it is possible to ascertain;

159 (v) the pathological description of the unborn child;

160 (vi) the given [~~menstrual~~] gestational age of the unborn child;

161 (vii) the date the abortion was performed;

162 [~~(vii)~~] (viii) the measurements of the unborn child, if possible to ascertain; and

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- 163 [~~viii~~] (ix) the medical procedure used to abort the unborn child; and
- 164 (b) the department shall make rules in accordance with Title 63G, Chapter 3, Utah
- 165 Administrative Rulemaking Act.
- 166 (2) Each physician who performs an abortion shall provide the following to the
- 167 department within 30 days after the day on which the abortion is performed:
- 168 (a) the information described in Subsection (1);
- 169 (b) a copy of the pathologist's report described in Section [76-7-309](#);
- 170 (c) an affidavit:
- 171 (i) that the required consent was obtained pursuant to Sections [76-7-305](#) and
- 172 [76-7-305.5](#); and
- 173 (ii) described in Subsection (3), if applicable; and
- 174 (d) a certificate indicating:
- 175 (i) whether the unborn child was or was not viable, as defined in Subsection
- 176 [76-7-302](#)(1), at the time of the abortion; [~~and~~]
- 177 (ii) whether the unborn child was older than 18 weeks gestational age at the time of the
- 178 abortion; and
- 179 [~~ii~~] (iii) if the unborn child was viable, as defined in Subsection [76-7-302](#)(1), or older
- 180 than 18 weeks gestational age at the time of the abortion, the reason for the abortion.
- 181 (3) If the information module or the address to the website is not provided to a
- 182 pregnant woman, the physician who performs the abortion on the woman shall, within 10 days
- 183 after the day on which the abortion is performed, provide to the department an affidavit that:
- 184 (a) specifies the information that was not provided to the woman; and
- 185 (b) states the reason that the information was not provided to the woman.
- 186 (4) All information supplied to the department shall be confidential and privileged
- 187 pursuant to Title 26, Chapter 25, Confidential Information Release.
- 188 (5) The department shall pursue all administrative and legal remedies when the
- 189 department determines that a physician or a facility has not complied with the provisions of this

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190 part.

191 Section 5. Section **76-7-314** is amended to read:

192 **76-7-314. Violations of abortion laws -- Classifications.**

193 (1) A willful violation of Section [76-7-307](#), [76-7-308](#), [76-7-310](#), [76-7-310.5](#), [76-7-311](#),
194 or [76-7-312](#) is a felony of the third degree.

195 (2) A violation of Section [76-7-326](#) is a felony of the third degree.

196 (3) A violation of Section [76-7-302.5](#) or [76-7-314.5](#) is a felony of the second degree.

197 (4) A violation of any other provision of this part, including Subsections
198 [76-7-305\(2\)\(a\)](#) through (c), and (e), is a class A misdemeanor.

199 (5) The Department of Health shall report a physician's violation of any provision of
200 this part to the Physicians Licensing Board, described in Section [58-67-201](#).

201 (6) Any person with knowledge of a physician's violation of any provision of this part
202 may report the violation to the Physicians Licensing Board, described in Section [58-67-201](#).

203 (7) In addition to the penalties described in this section, the department may take any
204 action described in Section [26-21-11](#) against an abortion clinic if a violation of this chapter
205 occurs at the abortion clinic.

JS 44 (Rev. 08/18)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>PLANNED PARENTHOOD ASSOCIATION OF UTAH, on behalf of itself and its patients, physicians, and staff</p> <p>(b) County of Residence of First Listed Plaintiff Salt Lake County <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number)</p> <p>Leah Farrell, ACLU of Utah, 355 N 300 W, Salt Lake City, UT; 801-871-0335 (for other attorneys, see attached Complaint)</p>	<p>DEFENDANTS</p> <p>JOSEPH MINER, in his official capacity as Executive Director of the Utah Department of Health, et al.</p> <p>County of Residence of First Listed Defendant Salt Lake County <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) Unknown.</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 485 Telephone Consumer Protection Act</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 1983

Brief description of cause:

Challenge to H.B. 136, Utah's 18-week abortion ban

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint. JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE: 04/10/2019 SIGNATURE OF ATTORNEY OF RECORD: /s Leah Farrell

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP

Case: 2:19-cv-00238
Assigned To : Furse, Evelyn J.
Assign. Date : 4/10/2019
Description: Planned Parenthood Association of Utah v. Miner, et al