

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**WOMEN’S HEALTH CENTER OF WEST VIRGINIA, *on behalf of itself, its staff, its physicians, and its patients*; DR. JOHN DOE, *on behalf of himself and his patients*; DEBRA BEATTY; DANIELLE MANESS, and KATIE QUIÑONEZ,**

**Plaintiffs,**

**Civil Action No. \_\_\_\_**

**Honorable \_\_\_\_**

**v.**

**CHARLES T. MILLER, *in his official capacity as Prosecuting Attorney of Kanawha County*; and PATRICK MORRISEY, *in his official capacity as Attorney General of West Virginia*,**

**Defendants.**

**PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs Women’s Health Center of West Virginia, Debra Beatty, Dr. John Doe, Danielle Maness, and Katie Quiñonez (collectively, “Plaintiffs”) hereby move this Court pursuant to Rule 65 of the West Virginia Rules of Civil Procedure for a preliminary injunction enjoining Defendants, their employees, agents, and successors in office, and all those acting in concert with them, from enforcing West Virginia Code Section 61-2-8 (“the Criminal Abortion Ban” or “the Ban”), or from taking any enforcement action premised on a violation of the Criminal Abortion Ban that occurred while such relief was in effect.

Enacted over 150 years ago, the Criminal Abortion Ban makes it a felony for any person to “administer,” “cause,” or “use any means” to produce an abortion. W. Va. Code § 61-2-8. For a half century, however, the Criminal Abortion Ban has lain dormant and not been enforced. In

its place, the West Virginia Legislature has enacted a detailed, comprehensive statutory regime that recognizes and regulates the provision of legal abortion in West Virginia. Yet in the wake of the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. \_\_\_\_ (2022), overturning *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), Plaintiffs fear that they could be subject to prosecution under the Criminal Abortion Ban should they continue to provide abortion care in West Virginia. Because of the specter of criminal liability, they have stopped providing abortion care in West Virginia. They seek declaratory and injunctive relief from this Court to prevent enforcement of the Criminal Abortion Ban.

As detailed more fully in the accompanying Memorandum of Law, Plaintiffs satisfy the requirements for preliminary injunctive relief.

*First*, Plaintiffs are likely to succeed on the merits of their claims that the Criminal Abortion Ban is void under West Virginia law because (1) the outdated Ban was impliedly repealed by West Virginia's more recent enactment of a comprehensive statutory scheme regulating the provision of legal abortion care, and (2) in the alternative, the Ban is void for desuetude.

*Second*, Plaintiffs and their patients will suffer irreparable harm if the Criminal Abortion Ban is not enjoined. Plaintiffs face a credible threat of criminal prosecution and licensure penalties; the Women's Health Center is now unable to continue its normal operations and pursue its organizational mission, and is facing a budget shortfall that has already necessitated staff layoffs and may require more in the future; and pregnant people in West Virginia who wish to terminate their pregnancies are left without any option for in-state abortion care, causing them physical, emotional, psychological, and financial harm.

*Finally*, the balance of equities and public interest favor Plaintiffs. Whereas Plaintiffs and their patients are already suffering grave harm in the absence of an injunction, Defendants will suffer no injury from an injunction. The Criminal Abortion Ban has not been enforced for a half century, such that a preliminary injunction will merely preserve that status quo. In addition, there is a strong public interest in ensuring continued access to abortion care.

Accordingly, Plaintiffs have satisfied each factor for obtaining a preliminary injunction against enforcement of the Criminal Abortion Ban.

The Court should also determine, in its discretion, that the circumstances of this case do not compel the posting of an injunctive bond under West Virginia Rule of Civil Procedure 65(c) and should waive this bond requirement.

A proposed order is attached.

**PLAINTIFFS**  
**By Counsel**  
**Dated: June 29, 2022**

---

Loree Stark (WVSB No. 12936)  
Nicholas Ward (WVSB No. 13703)  
AMERICAN CIVIL LIBERTIES UNION OF WEST  
VIRGINIA FOUNDATION  
P.O. Box 3952  
Charleston, WV 25339-3952  
Phone: (914) 393-4614  
lstark@acluwv.org  
nward@acluwv.org

Alexa Kolbi-Molinas\*  
AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
125 Broad St., 18th Floor  
New York, NY 10004  
Phone: (212) 549-2633  
akolbi-molinas@aclu.org

Marc Suskin\*  
Patrick Hayden\*  
Angeline Chen\*  
Vidya Dindiyal\*  
Michael Bannon\*  
COOLEY LLP  
55 Hudson Yards  
New York, NY 10001-2157  
Phone: (212) 479-6000  
msuskin@cooley.com  
phayden@cooley.com  
axchen@cooley.com  
vdindiyal@cooley.com  
mbannon@cooley.com

*Counsel for Plaintiff Dr. John Doe*

*\*Applications for pro hac vice admission of out-of-state counsel pending*

---

Sarah K. Brown (WVSB No. 10845)  
Bren J. Pomponio (WVSB Bar No. 7774)  
MOUNTAIN STATE JUSTICE, INC.  
1217 Quarrier Street  
Charleston, WV 23501  
Phone: (304) 344-3144  
sarah@msjlaw.org  
bren@msjlaw.org

Kathleen Hartnett\*  
Julie Veroff\*  
Darina Shtrakhman\*  
COOLEY LLP  
3 Embarcadero Center 20th Floor  
San Francisco, CA 94111-4004  
Phone: (415) 693-2000  
khartnett@cooley.com  
jveroff@cooley.com  
dshtrakhman@cooley.com

Alex Robledo\*  
COOLEY LLP  
500 Boylston Street, 14th Floor  
Boston, MA 02116-3736  
Phone: (617) 937-2300  
arobledo@cooley.com

Heather Speers\*  
COOLEY LLP  
4401 Eastgate Mall  
San Diego, CA 92121-1909  
Phone: (858) 550-6000  
hspeers@cooley.com