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, *et al.*, ***Plaintiffs*,** **v.** **CHARLES T. MILLER, *et al.*,** ***Defendants.***	**Civil Action No.** **Hon.**

AFFIDAVIT OF DR. JOHN DOE, M.D.

I, Dr. John Doe, M.D., being duly sworn, state under penalty of perjury that the foregoing is true and correct:

1. I am over the age of 21.

2. I am a Plaintiff in this action. I am bringing my claims on behalf of myself and my patients. I write this affidavit in support of Plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction against enforcement of West Virginia Code section 61-2-8 (the "Criminal Abortion Ban"). I have personal knowledge of the facts set forth in this affidavit and could and would testify competently to those facts if called as a witness.

Background and Experience

3. I am a native West Virginian. I currently reside in Pittsburgh, Pennsylvania.

4. I graduated from West Virginia University School of Medicine in 2018 and completed my residency in Family Medicine at New York Presbyterian Hospital/Columbia University Medical Center in New York in 2021.

5. I was certified by the American Board of Family Medicine in 2021. I am currently licensed to practice medicine in West Virginia, Pennsylvania, and New York.

6. I have trained residents in providing both procedural and medication abortion care.

7. I have provided medication and procedural abortion services at the Women's Health Center (the "WHC" or "Center") in Charleston, since September 2021.

8. I also provide abortion care and non-abortion medical services, including full-spectrum primary care to patients of all ages, at multiple facilities in Pennsylvania.

Women's Health Center

9. As noted, at the Center, I provide both medication and procedural abortion care to patients.

10. Abortion is one of the safest medical procedures available, and far safer than continuing a pregnancy to term.

11. Medication abortion is available to patients who are at or before 11 weeks and 0 days, as measured from the last menstrual period ("LMP"), and is a common abortion method for many of the patients I see at this stage in pregnancy. Medication abortion involves ingestion of two pills: mifepristone and misoprostol.

12. For patients receiving medication abortion care, a licensed practical nurse first contacts the patient 24 hours before the patient's appointment to read them state-mandated language regarding medication abortion. When the patient arrives at the Center for their visit, a medical assistant at the Center administers preliminary urine pregnancy and sexually transmitted infection ("STI") tests. A nurse practitioner then performs the patient's ultrasound and counsels the patient on the initial steps of the medication process. Once the patient has met with the nurse practitioner, the patient then has the option of meeting with a counselor at the clinic. I then meet with the patient and provide information regarding the medications.

13. In West Virginia, the law requires that medications used in a medication abortion be prescribed in person.[1] Accordingly, I prescribe both pills in person. After the patient has signed the consent forms, I administer the first pill—mifepristone—in person, and the patient self-administers the second pill—misoprostol—in the privacy of their own home or at another location of their choice, 24 to 48 hours later.

[1] *See* W. Va. Code § 30-3-13a(g)(5).

14. While medication abortion is effective at terminating the pregnancy in the vast majority of cases, in very rare instances, there will be an ongoing pregnancy. In that case, the standard of care is for the patient to receive a procedural abortion at the Center.

15. I also provide procedural abortions, which I perform at the Center with the assistance of a medical assistant or a licensed practical nurse. Although sometimes referred to as a "surgical abortion," a procedural abortion is not what is commonly understood to be "surgery," as it involves no incision and no need for general anesthesia.

16. For an in-clinic, procedural abortion, medical staff at the Center go through a similar process as for medication abortion of administering initial urine pregnancy and STI tests, performing ultrasounds, and providing educational information and state-mandated language to the patient regarding the procedure. Then, the patient takes a combination of Valium and ibuprofen, or, if they have chosen twilight sedation, is escorted to the procedure room and an IV is inserted by a certified nurse anesthetist. I then perform the abortion procedure. When the procedure is complete, the patient is then transported to the recovery room and, once the patient feels ready, is discharged and free to return home.

17. Occasionally, patients who are beyond 17 weeks and 6 days LMP will come to the Center seeking an abortion, and we are unable to help them. Those situations are uniformly difficult; the patient typically experiences a moment of grief, worry, and/or panic. When faced with these situations, I inform these patients that there are resources available to them and that how far they are into their pregnancies will not necessarily be a barrier to their obtaining abortion care. I refer them to other staff members at the Center, who provide these patients with specifics and connect them with other clinics and/or abortion funds outside of West Virginia that are able to help them.

Abortion Care

18. As I noted above, abortion is one of the safest medical procedures in the United States. In terms of mortality and morbidity, abortion is significantly safer than remaining pregnant or giving birth. Whereas the risk of death for childbirth is 8.8 per 100,000, it is just 0.7 per 100,000 for a legal abortion.[2]

19. Abortion is also very common. Prior to *Dobbs*, approximately one in four women in the United States had an abortion.[3]

20. I know from my experience as a provider that people in West Virginia decide to terminate their pregnancies for a variety of personal reasons, including familial, medical, and financial.

21. Some pregnant people have abortions because they conclude that it is not the right time to have a child or add to their families. For example, some decide to end a pregnancy because of their conviction that they lack the necessary financial resources, sufficient partner or familial support, or stability; their age; or their desire to pursue their education or career. Some are concerned that adding a child to their family will make them less able to adequately provide and care for their existing children, whereas others have decided they do not want to have children at all. Nearly 65% of people who had an abortion in West Virginia in 2019 already had at least one child.[4]

22. Some pregnant people seek abortions to preserve their lives or their physical, psychological, and/or emotional health, or because of a fetal diagnosis; some because

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[2] *See* Nat'l Academies of Scis., Eng'g, and Med., *The Safety & Quality of Abortion Care in the United States* 74–75 (2018).

[3] Guttmacher Inst., *Abortion Is a Common Experience for U.S. Women, Despite Dramatic Declines in Rates* (Oct. 19, 2017), https://www.guttmacher.org/news-release/2017/abortion-common-experience-us-women-despite-dramatic-declines-rates..

[4] Katherine Kortsmit et al., *Abortion Surveillance – United States, 2019*, 70(9) Surveillance Summ. (Nov. 26, 2021), https://www.cdc.gov/mmwr/volumes/70/ss/ss7009a1.htm.

they have become pregnant as a result of incest or rape; and some because they are experiencing intimate partner violence and worry that remaining pregnant and/or having a child will put them at greater risk of violence, further tether them to an abusive partner, or subject a child to an abusive environment.

23. Ultimately, the decision to terminate a pregnancy is motivated by a combination of diverse, complex, and interrelated factors that are intimately related to the individual's values and beliefs, culture and religion, health status and reproductive history, familial situation, and resources and economic stability.

Pregnancy

24. Every pregnancy is a major medical experience involving profound physiological changes, even when the patient is healthy and the pregnancy uncomplicated. These changes can have a lasting effect on a pregnant person's health and wellbeing. The physiological impacts of pregnancy are even greater for those with underlying medical conditions, such as diabetes, hypertension, and obesity, all of which are common in West Virginia.

25. The risk of death associated with childbirth is approximately fourteen times higher than that associated with abortion.[5]

26. Maternal mortality is a particularly acute problem in the United States. In 2019, 754 women died of maternal causes in the United States—a significant increase from the 658 who died in 2018.[6] The U.S. has the highest maternal mortality rate of all high-income

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[5] Elizabeth Raymond & David Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 Obstetrics & Gynecology 215, 216 (Feb. 2012).

[6] Donna L. Hoyert, *Maternal Mortality Rates in the United States, 2019*, Centers for Disease Control & Prevention 3 (Apr. 2021) ("*Maternal Mortality Rates*"), https://www.cdc.gov/nchs/data/hestat/maternal-mortality-2021/E-Stat-Maternal-Mortality-Rates-H.pdf.

countries, and the difference is not marginal—the maternal mortality rate here is more than double that of most other high-income countries.[7]

27. Pregnancy-related deaths in the United States are disproportionately high among people of color. In 2019, the maternal mortality rate was 44 per 100,000 live births for Black people as compared to 17.9 for non-Hispanic White people.[8]

28. From the onset of pregnancy, every patient is at risk of complications. Pregnancy-related complications are much more common than abortion-related complications.[9]

29. Even an uncomplicated pregnancy affects a person's entire physiology and stresses most major organs.

30. A pregnant patient's lungs must work harder to breathe, and the pregnancy puts pressure on the lungs, leaving many patients feeling chronically out of breath. During pregnancy, the heart pumps 30–50% more blood; as a result, the kidneys become enlarged, and the liver produces more clotting factors, which raises the risk of blood clots or thrombosis. Pregnant patients are highly likely to experience gastrointestinal symptoms like nausea and vomiting. In severe cases, these symptoms can cause dehydration requiring treatment with IV fluids and medications.

31. Patients who suffer from chronic conditions such as asthma, cardiac conditions, diabetes, gallbladder disease, hypertension, immunological conditions, lung disease, and thyroid disease are more likely to experience pregnancy complications.

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[7] Roosa Tikkanen et al., *Maternal Mortality and Maternity Care in the United States Compared to 10 Other Developed Countries*, The Commonwealth Fund (Nov. 18, 2020), https://www.commonwealthfund.org/publications/issue-briefs/2020/nov/maternal-mortality-maternity-care-us-compared-10-countries.

[8] *Maternal Mortality Rates* at 1.

[9] Elizabeth Raymond & David Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119(2) Obstetrics & Gynecology 215, 216 (Feb. 2012).

32. These consequences of pregnancy can cause discomfort, pain, stress, and anxiety, and can make daily activities, including work and family responsibilities, difficult and exhausting.

33. In addition, health conditions such as preeclampsia, deep-vein thrombosis, and gestational diabetes, may arise during pregnancy.

34. Many pregnant women seek emergency department care at least once during their pregnancy. One study found that 49% visited the emergency department at least once, and 23% visited twice or more.[10] Patients with comorbidities such as diabetes, hypertension and obesity—all of which are experienced at increased rates in West Virginia—are more likely to present to the emergency department for urgent or non-urgent care.[11]

35. Ectopic pregnancy is a common pregnancy complication. An ectopic pregnancy occurs when a fertilized egg implants anywhere other than in the endometrial lining of the uterus. An ectopic pregnancy is, by definition, nonviable. If an ectopic pregnancy ruptures, the pregnant person can die.

36. Pregnant patients also remain at risk for miscarriage throughout their pregnancy. Approximately 17% of pregnant patients miscarry. Especially when it occurs later in pregnancy, miscarriage carries risk of infection, hemorrhage, and other complications.

37. Pregnancy and/or the postpartum period can also trigger the emergence or recurrence of mental health conditions.

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[10] Shayna D. Cunningham et al., *Association Between Maternal Comorbidities and Emergency Department Use Among a National Sample of Commercially Insured Pregnant Women*, 26 Acad. Emergency Med. 940, 942 (2017).

[11] *See id.* at 941; *see also* West Virginia Dep't of Health & Human Resources, Div. of Health Promotion & Chronic Disease, *Fast Facts* (2018), https://dhhr.wv.gov/hpcd/data_reports/Pages/Fast-Facts.aspx.

38. Managing a mental health condition during pregnancy can be complicated. A pregnant person regulating a mental health condition with medication that carries teratogenic risks may have to decide whether to discontinue or modify their medication regimen in order to avoid risking harm to the fetus, thereby significantly increasing the likelihood that they will experience a recurrence of mental illness.

39. Childbirth too is a serious medical event. During labor and delivery, 20% of the pregnant person's blood flow is diverted to the uterus, placing them at risk of hemorrhage or even death. To try to protect against hemorrhage, the body produces more clotting factors, which leads to an increased risk of blood costs or embolisms. Labor and delivery can involve unexpected adverse events, including transfusion, perineal laceration, ruptured uterus, and unexpected hysterectomy. Vaginal delivery can lead to injury, such as to the pelvic floor, with possible long-term consequences, including incontinence. Delivery by cesarean section occurs in one third of pregnancies, and involves an open abdominal surgery requiring hospitalization and carries risk of hemorrhage, infection, and injury to internal organs.

Criminal Abortion Ban

40. I have read the Criminal Abortion Ban and am gravely concerned about the effect that it will have on my ability to provide abortion care and on my patients' ability to access necessary health care.

41. I understand that the Criminal Abortion Ban was never explicitly repealed by the West Virginia legislature and therefore the Attorney General or Kanawha Prosecuting Attorney may try to enforce the Criminal Abortion Ban against physicians who provide abortion care in West Virginia, and against anyone who helps or attempts to help a pregnant person obtain an abortion now that the Supreme Court has overruled *Roe v. Wade* in *Dobbs v. Jackson*

Women's Health Organization. Accordingly, as of June 24, 2022, the day *Dobbs* was decided, the Center has stopped providing abortion services.

42. Even if the Center had not stopped providing abortion services, I would not continue to provide abortion care in West Virginia because I cannot risk not only my livelihood, but also my liberty. I am deeply concerned that if I administer or prescribe medication abortion, or perform a procedural abortion, then I will have committed a felony under West Virginia law and would be subject to imprisonment for up to ten years. I also understand that I could lose not only my West Virginia state medical license but also my licenses to practice in New York and Pennsylvania if I were convicted of a felony under the Criminal Abortion Ban.

43. I understand that the Criminal Abortion Ban contains an exception for abortions performed to save the life of the pregnant person or for measures taken to save the life of the embryo or fetus.

44. The meaning of the exception for life-saving care, without any further definition or elaboration, is not clear to me. Given the harsh criminal penalties the Ban imposes, I would be afraid to interpret the language as encompassing anything beyond an immediate or imminent threat to the life of the patient.

45. Moreover, I am concerned that the elected law enforcement officials in West Virginia who would enforce the Criminal Abortion Ban do not have the requisite medical or professional training and experience to be able to determine what constitutes life-saving care, and so might bring criminal charges arbitrarily. Many of these elected officials have made their anti-abortion views a core part of their political platform. In reality, health situations are incredibly complex. Physicians and health care professionals are far more capable of considering the nuances of patient care and determining what constitutes "life-saving care," and I

would feel more comfortable exercising my medical judgment regarding when care is necessary to save a life if that provision were enforced by licensing boards comprised of other medical professionals.

46. Furthermore, a law permitting abortion only to save the life of the patient is extremely narrow and woefully inadequate. Such an exception does not encompass the broad range of serious health conditions that lead some people to seek abortion care—*i.e.*, diabetes mellitus and chronic hypertension—that can result in significant, life-altering health consequences short of death.

47. The Criminal Abortion Ban also impacts my employment. Now that the Center has stopped providing abortion care, it no longer needs my services as an abortion provider.

48. In addition to the harms that enforcement of the Criminal Abortion Ban creates for me personally, it also gravely harms my patients and others in West Virginia. The Criminal Abortion Ban has effectively eliminated access to abortion care in West Virginia. The day that *Dobbs* was decided, staff at the Center had to cancel the appointments of dozens of patients who had been scheduled for abortions in the coming weeks.

49. Because the Criminal Abortion Ban has forced the Center to stop providing abortion care, my patients will be forced to travel out of state to obtain abortion care; to self-manage their abortions, which could also be illegal under West Virginia's sweeping criminal law; or to remain pregnant and deliver against their will.

50. Even for those who are able to travel, it may be difficult to secure care out of state. Following *Dobbs*, the other out-of-state clinic where I provide abortion care has already been overwhelmed by the increased call volume from out-of-state pregnant people seeking care,

including many patients from West Virginia. Indeed, appointments at my out-of-state clinic and at similar clinics are already booking up weeks beyond patients' gestational limits and may not have the capacity to handle all the increased demand, and some patients likely will be unable to access care as a result.

51. I was born and grew up in West Virginia, and will always consider myself a West Virginian regardless of where I live. The culture in West Virginia is so beautiful and the people here are my family. I am deeply committed to serving people in West Virginia. Before medical school, I was very involved in political advocacy and grassroots organizing, and seeing the practical change that advocates could make is what propelled me to become a doctor in the first place. I attended medical school here, and I decided to return to provide care in West Virginia after finishing my residency because I want to serve the community I'm from.

52. Ultimately, the Criminal Abortion Ban requires me to choose between breaking the Hippocratic Oath and violating the criminal code. Providing abortion care to my patients is essential health care. But if I continue to do so, I will face criminal penalties and adverse licensing actions. No physician should be put to that choice.

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AFFIANT FURTHER SAYETH NAUGHT.

DR. JOHN DOE, M.D.

SWORN TO AND subscribed before me this 27 day of June, 2022.

Notary Public

Commonwealth of Pennsylvania - Notary Seal
JASON MARTIN, Notary Public
Allegheny County
My Commission Expires June 6, 2025
Commission Number 1313284