

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

GENERATION TO GENERATION, INC., etc.

Plaintiff,

Case No. 2022 CA 980

v.

**THE STATE OF FLORIDA; RON DeSANTIS, et al.,
Defendants.**

_____ /

**Affidavit of Rabbi Barry Silver
in support of Motion for Temporary Injunction**

State of Florida
County of Palm Beach

1. My name is Rabbi Barry Silver and I am writing this affidavit based on personal knowledge and deeply held religious belief.
2. From as far back as I can remember, I have loved and been inspired by my father Rabbi Samuel Silver who influenced me to cherish Jewish ideals and follow in his footsteps by sharing a loving, joyous, rational and activist approach to Judaism as a powerful force for improving the world.
3. I have been the spiritual leader of Congregation L'Dor Va-Dor (LDVD) for 25 years, starting as my father's assistant rabbi and taking over as its sole rabbi upon his death in May 2008.
4. As reflected in its Mission Statement, LDVD practices Judaism as interpreted through science and reason, integrating the great revelations of science and Judaism to improve the world (tikkun olam). A world where all children are wanted children and parenthood is chosen out of love and freedom rather than imposed by fear and coercion, is essential for achieving this Jewish mission.
5. I was raised as a Reform Jew by my mother whose mother founded Planned Parenthood in Connecticut and my father, a renowned Reform Rabbi. LDVD emerged from Reform Judaism and embraces its proud tradition of activism on progressive issues including abortion rights.
6. At LDVD we love the Torah, read and translate it every Shabbat, say blessings before and after reading it, conduct weekly Torah study, and consider an evolved understanding of the Torah the sacred font of Jewish ideals, truths and morality. Like all Jews today, we do not take the entire Torah literally, as no Jews today stone adulterers, Sabbath violators, disrespectful children, blasphemers, and non-virgin brides, nor do Jews today sacrifice animals and practice polygamy. LDVD adopts my father's view that many stories in the Torah didn't happen, but they are true because they teach eternal truths and lessons. We reject blind faith, and put our faith in reason, science, the profound revelations of evolution and Jewish ideals to separate truth from fiction.
7. I consider the Torah sacred, not because it was written by an infallible being, but because it was written by fallible Jewish ancestors sharing their vision of a world of peace, love and justice with

others, who were willing to sacrifice their lives to pass down their hopes and dreams throughout the generation to the Jews of today. These prophetic dreams can become a reality with Jewish idealism, our indomitable spirit and our willingness to challenge injustice such as HB 5.

8. Jews possess a range of beliefs about God, but this diversity does not detract from the essential unity of shared reverence for Creation, Jewish ideals and family life.

9. Our prophets of old and of today, teach us respect for 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, and protecting women's autonomy over their own body and their right to choose when they are ready to accept the joy, love, and awesome responsibility of parenthood.

10. In the Torah, Genesis 2:7 states that humans were created in a divine image and that God "breathed into his nostrils the breath of life and it was then that 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.

11. 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 that in Judaism, the beginning of life is always equated with breathing, which takes place at birth.

12. 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" for a woman, but not requiring this penalty for the death of a fetus, it is irrefutable that the fetus was not considered a human life in the Torah.

13. In the Biblical book of Numbers 5:27 if a man suspects his pregnant wife is pregnant was not faithful, he takes her to the priest, who administers a potion. If the fetus is not his, God performs an abortion consistent with the Jewish view that the fetus is not a nefesh, i.e. a person and 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 child and no funeral takes place.

14. The Book of Jeremiah 1:5 also supports the Jewish view that human life begins at birth: "Before I formed you in the womb I knew you..." In Hebrew, like Spanish and other languages, there are two words for "to know": "yodea", means knowledge of things and "makir" indicates acquaintanceship with a person. Jeremiah uses "yodea" towards the fetus corroborating the Jewish view that a fetus was not considered a human being until birth "lav nefesh hu" it is not a person. Many Christians who do not know Hebrew erroneously cite Jeremiah mistakenly thinking this supports their claim.

15. At the time Jewish and Christian Scripture were written, legal codes of neighboring people banned abortion, but both Bibles have a pregnant silence about abortion and let the woman decide.

16. The great icon of Orthodox Judaism Maimonides, relying upon the Talmud, Torah and other writings, opined "Ubar yerech imo" (the fetus is part of its mother) i.e., and was not considered a person (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 view that human life begins at birth and a woman is required to abort a fetus to save herself from physical or emotional harm, up until the time of birth, is an established precept of Jewish law (halacha) for traditional Jews and has become part of the shared fabric of Jewish belief today.

17. While LDVD and I do not believe in the supernatural, we believe the natural is super. We read the Bible and post-Biblical passages as metaphor for the miracle of life which is reflected in breathing. The word spirit is derived from the Latin word for breath, and the words for human being in Hebrew, nefesh, n'shamah and ruach all relate to breathing which Jewish law equates with the onset of life.

18. Baruch Spinoza believed the capacity for rational thought makes us human, and government should protect freedom of thought. Martin Buber spoke of the I-Thou relationship as essential to being human which consists of human interaction. Albert Einstein concurred that a defining quality of humans is relationship with one another, which takes place after birth. Spinoza, Buber and Einstein are modern day prophets who understand human life to involve a sacred union with one another.

19. Science informs us that the expansion and contraction of the cosmos 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 our lungs. Thus, breathing links us every moment of every day with the creative power that generated all existence and is coextensive with human life on Earth.

20. 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, to a reptile, then a mammal. The fetus grows a coat of hair and a vestigial tail which then disappears as it did in human evolution. Thus, the fetus is not a human being until fully evolved at birth.

21. HB 5's proponents tend to doubt the fact of evolution and often share the ancient view of a fetus as a homunculus, a little person in miniature, which they call an "unborn baby". Referring to a fetus as an unborn baby is like calling a living person a pre-dead corpse and confuses actual with potential.

22. Physiological changes and environmental influences upon the neonate transform the fetus into a human being at birth. Although we cannot be sure of the mental experiences of a fetus, according to the latest findings of neonatal physicians and scientists, prior to its first breath, the fetus is in a state of suspended animation, and lacks human consciousness and/or awareness.

23. Jewish sources from the Bible to the Talmud, Maimonides, Buber, Spinoza and Einstein, and science, concur that human life begins at birth. The essence of being human is our ability to think, reflect, interact, love others and appreciate the miracles of life, a fetus does none of these things.

24. This view that human life deserves protection at birth is consistent with my Jewish values which finds it abhorrent in an overcrowded world to force parenthood upon the unwilling. Societies that treat women as breeding cattle, suffer and decline, while those which respect women's rights, prosper.

25. To ask when life begins is a nonsensical question from both a Jewish and scientific perspective. Life began approximately 4 billion years ago in a continuous chain of events when the first strands of RNA morphed into DNA and then evolved into humans. Life did not begin for humans at conception as the egg and sperm are alive and even conception is not a discreet event but takes place in stages.

26. Science rejects the view that at conception, a zygote which cannot think, hear, see or feel is equivalent to a born human. These human qualities also do not emerge at 15 weeks.

27. If true that human life begins at conception, then HB 5 condones the mass murder of countless "people" aborted under HB 5 prior to 15 weeks. If this were true, Jews would be the first to protest.

28. Scientists estimate that more zygotes are destroyed during the first moments, hours or days after conception due to natural causes than all human-induced abortions. The proponents of HB 5 do not seem to worry about natural abortions and do not treat fetuses as people when calculating the census, determining their age, requiring a funeral for a miscarriage, or for any other reason.

29. To ask when life begins from a Jewish perspective also makes no sense. The relevant question is when does the fetus become a nefesh chayah, i.e. a person, entitled to human rights.

30. In Judaism personhood begins at birth and the best interests of the mother prevail over those of the fetus at all stages of pregnancy. HB 5 says the opposite, reflecting a view that life begins at conception and/or 15 weeks of gestation and places the interests of the fetus over the mother. Thus HB 5 criminalizes Judaism and subjects those who practice Judaism to fines and imprisonment.

31. I am frequently asked my views on abortion, and I am morally bound to share the Jewish view which contradicts the mandate of HB 5. If a woman were to act on my rabbinic counsel and have an abortion, I believe that I could be put in jail under HB 5.

32. As the fetus approaches birth and becomes more human-like, the potential life is given greater consideration, but until the time of birth, the mother still gets to make this decision. Thus, abortions that occur near the time of birth are exceedingly rare and usually take place only when a terrible fetal abnormality will subject the fetus to a hellish life on Earth, or if a grave problem with the pregnancy threatens the life, health or wellbeing of the mother. In such cases, Judaism not only permits, it requires an abortion to protect the mother, yet this religious mandate is criminalized under HB 5.

33. As a constitutional and abortion rights attorney, I am unable to determine what the phrase "actively participates" in an abortion means as used in HB 5. I suspect others who lack a law degree will not know either. The vagueness of HB 5 and its criminal penalties have a chilling effect upon clergy who may decide not to speak at all on this topic, or if they do, to tout the narrow Christian view reflected in the law, rather than risk going to jail.

34. Jews have survived while more powerful empires who sought our destruction are consigned to the dustbin of history, because those empires believed in the love of power while Jews believe in the power of love, transmitted from generation to generation, (L'Dor Va-Dor) from parents to children by the family. HB 5 threatens the integrity of the Jewish family, and thus threatens Jewish survival.

35. Considerations of women's rights, religious freedom, the tragedy to society and 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, which further traps them in a cycle of poverty, health risks and death due to complications from childbirth, which are suffered exclusively by women and not by the males who voted to pass HB 5, the lack of resources to provide for people already on Earth, psychological harm, fetal abnormalities and tragic and violent circumstances which surround some pregnancies, including the nightmare of Tay-Sachs disease, are among the factors that Jews consider in deciding upon abortion. These factors that are important to those who truly cherish life, seem not to be considered in HB 5.

36. In traditional and modern Judaism, a fetus which threatens the physical or mental health or wellbeing of the mother, is considered by many Jews to be a "rodef" or pursuer, and a woman is not just entitled, but required by Jewish law to abort the fetus to protect herself and her family.

37. Other faiths are free to adopt and reinterpret our Torah, but their interpretations, no matter how sincere, cannot fairly or constitutionally be imposed upon the Jews. As part of our mission to serve as a light to the nations, Jews, who authored the Bible, are obligated to share a Jewish view of the Bible

with others that unites, rather than divides people and respects women's rights. With HB 5, sharing this view regarding abortion and the onset of life is now a crime, punishable by imprisonment.

38. Proponents of HB 5 do not speak for all Christians nor for Jews when they reinterpret the Biblical story of Adam and Eve to teach the misogynistic view that we are born evil due to original sin introduced to the world by a woman, who seduced Adam with an apple and with sex. HB 5 reflects this reactionary Christian concept that views each person as literally conceived in sin, being a product of sexual union and emerging from a woman's body, which they find sinful.

39. Thus, according to this view, if sex does not lead to childbirth, it is even more sinful. Accordingly, women must be "punished" for their sexuality with childbirth, and if she dies in the process, according to many proponents of HB 5, this is God's will so it's okay. Thus, with no evidence, they view physical harm and death to women as the result of HB 5 to be in the hands of God and of no concern to them.

40. Most Jews find such misogynistic views abhorrent. Judaism honors women, looks positively upon sexuality, love and family, respects the sacrifices made and risks taken by women when they decide to bring life into the world, and does not seek to "punish" women with childbirth.

41. I oppose HB 5 which seems to require women with pregnancies that could seriously harm or kill the mother to postpone an abortion until great physical harm is imminent, which delay would place her in grave danger, and could cause horrific complications such as vesicovaginal fistulas.

42. HB 5 has no rational basis and serves no compelling governmental interest. The only interest it serves is the lust for power of Governor DeSantis who wants to appeal to his base and become the next President. Women should not have to pay with their lives, and the freedom of speech and religion of Floridians should not be sacrificed on the altar of political ambition.

43. It is my moral, religious conviction that when life is brought into the world by choice, and out of love, this is among life's greatest blessings but when parenthood is forced upon a woman by the power of the state against her will, this is a curse upon the woman and society.

44. To make no exceptions for pregnancies that result from rape, incest or mental trauma after 15 weeks of pregnancy, is morally reprehensible and a violation of the most basic rights of a woman. I will not refrain from sharing my views on abortion as I interpret Judaism, and if a woman chooses abortion based on my advice and counsel, I could be arrested and thrown in jail under HB 5.

45. If a woman is raped in Florida by a man who seized control of her body by force, HB 5 permits the State to take further control of her body by force of law by requiring her to deliver her rapist's or family member's baby against her will in clear violation of Jewish law and human decency.

46. Like an estimated 83% of Jews in a 2015 Pew Research poll, LDVD and I are pro-choice. I have staged rallies, discussions and seminars promoting abortion rights. In the legislature, on the pulpit and in the Courtroom, I have fought for abortion rights in the footsteps of my father who was an outspoken activist rabbi who taught me to challenge abusive authority. I defeated Operation Rescue in Court and according to the Judge who heard the case, I am probably the only attorney in the district who would have seen the case through to the end without charge to his client in the face of much harassment and aggressive tactics by the opposition.

47. I perform many weddings, funerals and baby namings and the families I serve are considered members of our congregational family and part of my outreach as a rabbi. Many of these members are of child-bearing age and some of them will be unable to exercise their rights as Jews to practice their religion due to the restrictions of HB 5. If I share my Jewish beliefs on abortion and women act upon them by having an abortion, I could be arrested for practicing my faith.

48. Because my practice of Judaism is at odds with HB 5 which prescribes criminal penalties for its violation, HB 5 criminalizes the practice of Judaism by LDVD, its spiritual leaders and its congregants. I am asked all the time my opinion as a rabbi on many ethical issues, including abortion and I am ethically compelled to continue to counsel women to have an abortion in circumstances that run afoul of HB 5. Thus I may be branded a criminal and subject to the harsh penalties of HB 5 for practicing Judaism. The practice of Judaism is now a criminal offense in Florida.

49. It is my deeply held religious belief that the right to abortion is essential for society to flourish, Jews to be free to practice our faith, for women to achieve equality, and to protect the Jewish family.

50. Whether by design or inadvertence, HB 5 has an anti-Semitic effect by criminalizing the practice of Judaism, and by associating abortion with murder which demonizes those who support the right of abortion, who happen to consist of many Jewish individuals and organizations.

51. HB 5 is a crack in the wall of separation between church and state that was established by the founding fathers of America as the bulwark of liberty in America. President Washington supported this wall in his letter to the Jews of Newport, President Jefferson praised it in his letter to the Danbury Baptists and James Madison explained that this wall was designed to protect the soil of America from being soaked in blood as it was in Europe due to constant religious wars and corruption.

52. The soil of Europe was often first soaked in Jewish blood when the wall of separation crumbled as we saw with the Crusades, Inquisitions, Pogroms, expulsions and violence against the Jews and then spread to others afterwards. Thus, Jews are ever vigilant to work with others to safeguard this wall of separation and when necessary to work with others to repair the cracks.

53. HB 5 targets women, Jews and free thinkers, who were the frequent targets of the Church for centuries and were tortured and burned at the stake by fanatical clerics. Thousands of women whose sexuality was threatening to ecclesiastical authorities were absurdly accused of being witches across Europe and in America and were tortured and murdered when the wall of separation was dismantled.

54. As a Jew, I am morally compelled to protest and fight back on behalf of women. Starting with Abraham, the first Jew, we have been iconoclasts, smashing the idolatrous worship of every age, continuing with Moses who challenged the abusive power of Pharaoh and even argued with God in his pleas for justice for his people. The Book of Leviticus exhorts "Don't stand idly by the blood of your neighbor" and calls up us to, "Proclaim liberty throughout the land unto all the inhabitants thereof" which is found on the Liberty Bell. Jewish partisan leader Tuvia Bielski said "Freedom begins with an act of defiance", and Elie Wiesel taught us "There are times when we cannot prevent injustice, but there should never be a time when we fail to protest",

55. Those who defend women by opposing HB 5 are subject to retaliation from Governor DeSantis who showed his willingness to retaliate against those who do not share his views, such as Disney World for defending gays and lesbians, Rebekah Jones who defended the truth about Covid-19 and

the health of Floridians and had her home invaded by state agents, and Andrew Warren who was suspended for exercising his prosecutorial discretion and following his conscience.

56. Finally, as one who from personal experience knows all too well the ravages of chemotherapy on the human body, I find it abhorrent that a woman diagnosed with cancer after 15 weeks in her pregnancy, who must undergo chemotherapy, is not permitted to have an abortion under these devastating circumstances unless she meets the extremely difficult standards of HB 5.

Further affiant sayeth naught. I hereby swear and affirm that the foregoing is true and correct based on my personal knowledge and belief.

Barry Silver

Date

Came before me Barry Silver, who is personally known to me or showed identification this August ____, 2022, and upon being duly sworn affirmed that the contents of the foregoing affidavit are true and correct base upon his personal knowledge.

Signed by _____ on this _____ day of August, 2022 in Boca Raton,

Florida, notary public in the State of Florida. My commission expires: