

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

CIVIL DIVISION
CASE NO. 2022 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, its members, its supporters and their families; RABBI ARTHUR WASKOW; THE SHALOM CENTER,

Plaintiffs,

v.

THE STATE OF FLORIDA; RON DeSANTIS, in his official capacity as Governor of 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 HANSEN, M.H.S, R.N. in her official capacity as Chair of the Florida Board of Nursing; FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION, SIMONE MARSTILLER, J.D. in her official capacity as Secretary of the Florida Agency for Health Care Administration, and ASHLEY MOODY, in her official capacity as ATTORNEY GENERAL for the State of Florida.

Defendants.

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

PRELIMINARY STATEMENT

1. This lawsuit seeks to declare unconstitutional and enjoin House Bill 5, the Reducing Fetal and Infant Mortality Act (“HB 5” or the “Act”), because it violates:
 - a. the right to privacy guaranteed by Article I, section 23 of the Florida Constitution;
 - b. the Free Exercise of religion clause of the Florida Constitution, Article 1, Section 3;
 - c. the Establishment Clause of the Florida Constitution, Article 1, Section 3;
 - d. the right not to be penalized for the practice of religion under Article 1, Section 3 of the Florida Constitution.;
 - e. Florida’s Religious Freedom and Restoration Act, Fla. Stat. 761.01, et seq, Florida Stat. (FRFRA) by substantially burdening exercise of religion and by establishing religion;
 - f. the right to Due Process under the Florida Constitution Article 1, Section 9 of the Florida Constitution by enacting vague statutes which permit the government to arbitrarily and capriciously enforce the Act, thus having a chilling effect upon the exercise of constitutional rights;
 - g. the Basic Rights under Article 1, Section 2 of the Florida Constitution to equal non-discriminatory treatment;
 - h. the right to speak, write and publish sentiments on all subjects, and the right to be free from laws which restrain or abridge the liberty of speech or of the press, under Article 1, Section 4 of the Florida Constitution.
2. Over a generation ago, the people of Florida 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). In Florida, the constitutional right to privacy includes a woman’s right to terminate a pregnancy. *Id.* at 1193. Floridians have reaffirmed that abortion is a fundamental right deserving of the strongest protection against government intrusion.¹

3. The Florida Constitution protects religious freedom and prohibits penalizing free expression of religion. Article 1, Section 3: “There shall be no law respecting the establishment of religion or prohibiting or penalizing the free expression thereof.” Floridians’ religious freedom is further protected by Religious Freedom Restoration Act (FRFRA), 761.01 *et seq.* Fla. Stat., which mandates that the government “not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability” unless such burden “(a) Is in furtherance of a compelling governmental interest; and (b) Is the least restrictive means of furthering that compelling governmental interest.” *Id.* at 761.03. These religious rights are more potent than those in the Federal Constitution.
4. House Bill 5, entitled the Infant and Fetal Abnormality Act, criminalizes certain abortions, and otherwise fundamentally restricts a woman’s right to terminate a pregnancy. Ch. 2022-

¹ In 2012, Floridians rejected a ballot initiative that would have amended the state constitution to overturn precedent by construing the right to privacy narrowly to prohibit state courts from interpreting the Florida Constitution to provide stronger protection for abortion than the federal constitution. Fla. Dep’t of State, Div. of Elections, *Initiative Information: Prohibition on Public Funding of Abortions; Construction of Abortion Rights*, <https://dos.elections.myflorida.com/initiatives/fulltext/pdf/10-82.pdf>; Fla. Dep’t of State, Div. of Elections, *Prohibition on Public Funding of Abortions; Construction of Abortion Rights*, <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=10&seqnum=82> (last visited May 22, 2022)

69, §§ 3–4, Laws of Fla. (“HB 5” or “the Act”) (amending §§ 390.011, 390.0111, Fla. Stat.).

HB 5 was signed by Governor Ron DeSantis on April 14, 2022 and took effect on July 1, 2022.

5. The Governor’s signing of the Act took place in what the Florida Phoenix called “a quasi-religious ceremony” in a church with the “accoutrements of a worship service,”²
6. The Act codifies certain religious tenets and it penalizes adherents of other religious tenets for practicing their religions.
7. Florida Governor Ron DeSantis signed into law the state’s recent stringent abortion restrictions.
8. The Act bans abortions after fifteen weeks as dated 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. (amending §§ 390.011, 390.0111, Fla. Stat.); Fla. Stat. § 390.0111(1)(a)–(b); § 390.011(6). There is no exception for incest, rape, trafficking, non-fatal fetal abnormalities, or psychological disease or impairment.
9. The Act’s mandate for the counting of the 15 weeks means that conception may not have occurred at the beginning of the 15 week period.
10. A violation of the Act 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.
11. Under Florida law, counseling or encouraging a crime constitutes “aiding and abetting” that

² <https://floridaphoenix.com/2022/04/14/desantis-signs-15-week-abortion-ban-into-law-during-quasi-religious-ceremony/>

crime and is considered under the law someone who committed the crime. *See Fla. Stat. § 777.011* (“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 a rabbi (or anyone else) who counsels a person to have an abortion in violation of the Act is subject to be punished for the illegal abortion and is subject to prosecution.

12. Any non-family member who “assists” or provides “aid” to a person who counsels the criminalized abortion, or who seeks or has an abortion, is subject to felony criminal prosecution as an “accessory after the fact.” 777.03 Fla. Stat. (accessory “maintains or assists the principal or an accessory before the fact, or gives the offender any other aid, knowing that the offender had committed a crime and such crime was a third degree felony, or had been an accessory thereto before the fact, with the intent that the offender avoids or escapes detection, arrest, trial, or punishment, is an accessory after the fact.”)
13. Anyone who is “intercepted” or “prevented” from counseling the criminalized abortion, or who seeks or has an abortion, or who “encourages” someone to do so, or who “conspires” in that regard, is subject to felony criminal prosecution for the crime of attempt. 777.04 Fla. Stat.
14. The Act criminalizes abortion after fifteen weeks from the LMP except in severely limited exceptions. The Act’s criminal penalties for them can be interpreted to create criminal aiding and abetting liability for clergy, counselors, congregational members who counsel a family or pregnant woman or girl to seek an abortion beyond the narrow confines the Act permits.

These criminal penalties constitute a credible threat of prosecution to Plaintiffs.

15. The Act is so vague that it provides no reliable guidance regarding whether Plaintiffs will violate the law when, based on their faith and the woman's or girl's circumstances, they affirmatively advise and support their members and believers to choose an abortion beyond HB 5's extreme limitations. *See* Ch. 2022-69, §§ 3–4, Laws of Fla. The Act leaves Plaintiff with no choice but to interpret the Act broadly due to its vagueness, or risk criminal penalties. In addition, the Act's vagueness vests unbridled discretion in government officials to apply or not apply the penalties in a manner that restricts free speech.
16. The Act is in direct conflict with Plaintiffs' congregational and rabbinic obligations and faith and imposes severe barriers and substantial burdens to their religious belief, speech, and conduct. It also imposes severe burdens on the religious beliefs, speech, and conduct of congregant members of the synagogue, pastoral care providers, the rabbinic and pastoral functions of RABBI WASKOW, and the speech, counseling and advocacy of Rabbi WASKOW, THE SHALOM CENTER, and of the Jewish faith.
17. The Act violates the separation of church and state under the Florida Constitution, and the Act constitutes an Establishment of Religion.
18. The Act has caused confusion and fear among rabbis, congregation members, pastoral care providers, and pregnant girls, women and families, particularly in light of the criminal penalties attached. Given his rabbinic and pastoral role, Plaintiff WASKOW intends to engage in counseling, publishing and advocacy regarding abortion and the Jewish faith beyond the narrow limits of the Act and, therefore, risks incarceration and financial penalties. The Act leaves Plaintiffs with no choice but to interpret the Act broadly due to its vagueness, or risk criminal penalties.

19. The Act severely chills the speech of the congregation's members because it is unconstitutionally vague. The Act further provides for no exceptions for the victims of incest, rape, or trafficking, non-fatal fetal abnormalities, or psychological disease or impairment, which are all circumstances in which the congregation and Plaintiff WASKOW would support and/or counsel in favor of an individual's decision to have an abortion before or after fifteen weeks.
20. Historically in the United States, the questions of when a potential fetus or fetus becomes a life and how to value maternal life during a pregnancy have been answered according to religious and moral beliefs and creeds. The Act codifies only one of possible religious viewpoints on the question, a viewpoint directly at odds with Jewish law, tradition and practice, and in the law's operation imposes severe burdens on the free exercise of the Jewish religion.
21. The Act's prohibitions and penalties directly and irreconcilably conflict with fundamental Judaism. For example, Jewish law accords no personhood to a fetus until it "draws its first breath". The physical, emotional and psychological health and safety of the mother takes absolute precedence over that of a fetus throughout the pregnancy. This is both ancient Jewish law and the view of modern "poskim" (religious decisors)..
22. The Act severely burdens Plaintiffs' right to engage in religious speech regarding reproductive health issues, including but not limited to abortion. It further burdens the ability to speak freely and publicly about her religious beliefs and to provide religious counseling consistent with those beliefs, in violation of the Florida Constitution's free speech and religious liberty rights; the Act drastically penalizes the exercise of religious freedom and in fact criminalizes such exercise.

23. Plaintiff seeks preliminary and permanent injunctive relief against Defendants, enjoining the enforcement of the Act, and a declaratory judgment declaring that the Act, both on its face and as applied, is an unconstitutional violation of multiple provisions of the Florida Constitution, and of Florida's Religious Freedom and Restoration Act, Fla. Stat. 761.01, et seq, Florida Stat.

THE PARTIES

24. 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, ("L'Dor Va-Dor"), operating in Palm Beach County, Florida for 25 years. L'dor Va-Dor translates from the Hebrew as "from generation to generation," a religious precept found in multiple verses in the Hebrew Scriptures and Jewish liturgy. It refers to the transmission of the religion's values, rituals, traditions, and history to the next generation. L'Dor va-Dor, an organization with members and congregants, brings suit on behalf of its members and congregants. The congregation has a mission to educate, advance and secure their members in fulfillment and adherence to the tenets and practices of their faith; those tenets and practices include, among other things, counseling, support, pastoral care and assistance to women, girls and families with regard to abortion and other reproductive health matters.

25. Plaintiff RABBI ARTHUR WASKOW received a bachelor's degree from The Johns Hopkins University in 1954 and a Ph.D. in American history from University of Wisconsin–Madison. He was a senior fellow at the Peace Research Institute from 1961 through 1963. He helped found the Institute for Policy Studies in 1963, and he served as resident fellow until 1977. From 1982 to 1989, WASKOW was a member of the faculty of the Reconstructionist Rabbinical College, where he taught courses on contemporary theology and practical

rabbis. He also taught as a visiting professor in the religion departments of Swarthmore College, Temple University, Drew University, and Vassar College. From 1982 to 1989 he served on the faculty of the Reconstructionist Rabbinical College and in 2005 on the faculty of the Hebrew Union College-Jewish Institute for Religion. RABBI WASKOW is a prolific author of books and articles. He is a founder and leader in the Jewish Renewal movement.

26. Plaintiff THE SHALOM CENTER is a prophetic voice in Jewish, multireligious, and American life. It is based in Philadelphia, and was founded by RABBI ARTHUR WASKOW. It publishes Torah teachings and commentaries, and articles and teachings on a variety of religious topics which are distributed nationally including to Florida. For example, in a recent essay published May 18, 2022 before enactment of the Act, RABBI WASKOW presented an essay by another author titled, “Who Owns Women's Bodies --- in Bible & Today?”
27. Defendant STATE OF FLORIDA, through its Legislature and Governor, adopted the challenged Act. It took effect on July 1, 2022.
28. Defendant RON DESANTIS is Governor of the State of Florida, and led the effort to pass the Act not to further any legitimate rational purpose or compelling state interest, but due to political ambition and power. He is sued in his official capacity, as are his agents and successors.
29. 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. 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.
30. Defendant FLORIDA BOARD OF MEDICINE is part of the Florida Department of Health.

The Florida Board of Medicine exercises supervisory powers over the state's physicians and 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.

31. 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.
32. Defendant FLORIDA BOARD OF OSTEOPATHIC MEDICINE is part of the Florida Department Health. Pursuant to Florida law, the Florida Board of Osteopathic Medicine is authorized to impose penalties on providers of abortion care. 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.
33. Defendant FLORIDA BOARD OF NURSING is part of the Florida Department of Health. Pursuant to Florida law, the FLORIDA BOARD OF NURSING exercises supervisory powers over the state's registered nurses, licensed practical nurses, and advanced practice registered nurses and conducts disciplinary proceedings and imposes penalties against them. FLORIDA BOARD OF NURSING is authorized to impose penalties on nursing professionals who participate in abortion care for violations of the Act.
34. Defendant MAGGIE HANSEN, M.H.Sc, R.N., is the Chair of the FLORIDA BOARD OF NURSING and is sued in her official capacity as Chair of the FLORIDA BOARD OF NURSING, as are her agents and successors.
35. 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.

36. As Secretary of the FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION, Defendant SIMONE MARSTILLER, J.D. is sued in her official capacity as Secretary of the Agency as are her agents and successors.
37. Defendant ASHLEY MOODY, in her official capacity as ATTORNEY GENERAL for the State of Florida is the chief legal officer in Florida authorized to enforce the laws of Florida. She is sued in her official capacity.

JURISDICTION AND VENUE

38. This Court has jurisdiction over this action pursuant to Article V, § 5(b) of the Florida Constitution and Sections 26.012(3) and 86.011, Florida Stat..
39. This Court is authorized to grant a declaratory judgment and an injunction pursuant to Chapter 86 and Section 26.012(3), Florida Stat., and a temporary injunction under Florida Rules of Civil Procedure Rule 1.610.
40. Venue is proper in this Court pursuant to Section 47.021, Florida Stat., because at least one Defendant has a principal office in this Circuit and Leon County, and all Defendants operate and have authority state-wide, including under the challenged Act.

STATEMENT OF FACTS

Named Plaintiffs³

41. Plaintiffs incorporate here by reference as if fully set forth all the allegations in the remainder of the Statement of Facts below.
42. L’DOR VA-DOR files this lawsuit on behalf of itself, its congregants and members, including families. The Act’s deficiencies challenged in this suit directly harm L’DOR VA-DOR’s ability to function as a spiritual home for its congregants, members, and to perform

³ Sub-headings are for convenience only, and are not substantive.

fundamental functions of a synagogue. Because the Act affects the profound personal, familial and spiritual core of the synagogue, the matters at stake in this litigation are of vital concern to L'DOR VA-DOR. The Act traps L'DOR VA-DOR in a conflict between Jewish tenets and practices and those that are reflected in the Act and which inspired the Act's passage. Due to the threat of the Act's penalties, L'DOR VA-DOR is unable to fulfill its religious mission to serve its members, and to exercise its constitutional rights and freedoms.

43. In providing pastoral care, RABBI WASKOW speaks with women and their partners nationally on their personal and spiritual needs and on personal questions such as continuing or terminating pregnancy. RABBI WASKOW has provided counseling and support to individuals in Florida. He writes often in national publications and in The Shalom Center's widely-distributed religious perspectives on issues including the wisdom and teachings of Judaism and their intersection with matters relevant to the Jewish and other communities including, for example, abortion. Plaintiff files this lawsuit on behalf of himself because he is in danger of criminal penalty due to his sacred duty to advise and counsel women, girls and families on the principles and tenets of Judaism, particularly related to maternal health, abortion and related reproductive healthcare measures, as well as incest, rape, and trafficking. In addition, both his public speech and his private rabbinic counseling is chilled by the threat of enforcement of the Act. Since being ordained, PLAINTIFF WASKOW has counseled women and families on reproductive issues such as pregnancy and childbirth, family planning, and infertility and at-risk pregnancies. As a result of the conflict between Judaism and the Act, it is inevitable that additional women and families will seek counsel on these issues.

44. THE SHALOM CENTER publishes and distributes nationally religious teachings and

guidance for contemplation and action on contemporary issues of concern to the Jewish people and others. Its audience includes individuals in Florida. These teachings and guidance draw on inspiration from the Torah, the Prophets and the other writings which comprise the Hebrew Bible. For example, in a recent essay published May 18, 2022 before enactment of the Act, RABBI WASKOW presented an essay by another author titled, "Who Owns Women's Bodies --- in Bible & Today?" THE SHALOM CENTER has noted the passage of the Act and intends to continue to communicate on the contradictions between the Act and Judaism. THE SHALOM CENTER's ability to freely fulfill its prophetic and religiously-guided mission is threatened and chilled by the Act.

The Act Obstructs and Threatens Religious Practice and Observance

45. Judaism teaches that the decision by a Jew to terminate a pregnancy for any reason should be based on a combination of diverse, complex, and interrelated factors that are often intimately tied to individual and family religious values and beliefs of each such woman, girl and family.
46. Abortions are sought for a variety of deeply personal reasons, including familial, medical, and economic. Some women seek abortions to preserve their lives or their physical, psychological, and emotional health; some after rape or incest; some after intimate partner violence. Other women may decide to have an abortion because of an indication or diagnosis of a fetal medical condition or anomaly, or for other reasons.
47. Some women, such as the members, congregants, supporters of Plaintiff L'DOR VA-DOR and their families, have abortions because it is required by their religious faith. For Jews, all life is precious; and thus the decision to bring new life into the world cannot be determined by state fiat. In Jewish law, abortion is required if necessary to protect the health, mental or

physical health or well-being of the woman. The Act prohibits Jewish women, girls and families from practicing their faith free of government intrusion and thus violates their state law privacy rights and religious freedom. The Act effectively establishes a religion and penalizes those who practice their Jewish religious faith.

48. Plaintiffs recognize the moral, legal, personal, and societal complexity of the issue, especially on behalf of disadvantaged and minority groups. Judaism requires great pastoral sensitivity and openness to the challenges imposed by pregnancy on women, girls and families.
49. As set forth above, on July 1, 2022, the Act took effect. As a result, Florida's law now bans abortions after fifteen weeks from the LMP with two extremely limited exceptions. *See* Ch. 2022-69, §§ 3–4, Laws of Fla. (amending §§ 390.011, 390.0111, Fla. Stat.); Fla. Stat. § 390.0111(1)(a)–(b); § 390.011(6).
50. The Act establishes, as the law of the State of Florida, a particular religious view about the status of a fetus. This view is contrary to the religious beliefs of Plaintiffs. For centuries, it has been a fundamental tenet of Judaism that life begins at birth, with the breath which echoes God's breath which energized Creation, and God's breath of life. Judaism, which recognizes that in some situations abortion is required by Jewish law, practice and belief, respects the mother's right to manage and oversee her own body, and to make her own decisions consistent with her religious, physical, emotional, and psychological conditions and beliefs.
51. The Act provides for no exceptions for the psychological health of the mother or family, non-fatal fetal abnormalities, or victims of incest, rape, or trafficking. These are all circumstances which Judaism would expect to be considered as factors in the abortion decision.
52. The Act requires any woman whose pregnancy could seriously harm or kill her to postpone

an abortion until great physical harm is imminent, which delay would place her in grave danger.

Criminalizing Counseling, Encouraging, or Providing Aid

53. A violation of the Act 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.
54. Under Florida law, counseling or encouraging a crime constitutes “aiding and abetting” that crime and is considered under the law someone who committed the crime. *See* Fla. Stat. § 777.011 (“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 a rabbi (or anyone else) who counsels a person to have an abortion in violation of the Act is subject to be punished for the illegal abortion and is subject to prosecution.
55. Any non-family member who “assists” or provides “aid” to a person who counsels the criminalized abortion, or who seeks or has an abortion, is subject to felony criminal prosecution as an “accessory after the fact.” 777.03 Fla. Stat. (accessory “maintains or assists the principal or an accessory before the fact, or gives the offender any other aid, knowing that the offender had committed a crime and such crime was a third degree felony, or had been an accessory thereto before the fact, with the intent that the offender avoids or escapes detection, arrest, trial, or punishment, is an accessory after the fact.”)

56. Anyone who is “intercepted” or “prevented” from counseling the criminalized abortion, or who seeks or has an abortion, or who “encourages” someone to do so, or who “conspires” in that regard, is subject to felony criminal prosecution for the crime of attempt. 777.04 Fla. Stat.
57. The Act criminalizes abortion after fifteen weeks from the LMP except in severely limited exceptions. The Act’s criminal penalties for them can be interpreted to create criminal aiding and abetting liability for clergy, congregational members and anyone else who counsel a family or pregnant woman or girl to seek an abortion, or who aided the person after the abortion. These criminal penalties constitute a credible threat of prosecution to Plaintiffs.

Burden on Religious Faith and Practice

58. The Act criminalizes abortion after fifteen weeks of gestation (except for severely limited exceptions) but is so vague that it provides no reliable notice regarding whether anyone, including Plaintiffs, violate the law as aiders and abettors when they affirmatively advise, encourage or and support members of the Jewish community to choose an abortion beyond the Act’s extreme limitations.
59. The Act’s vagueness and criminal penalties have chilled Plaintiffs’ ability to discuss and counsel members of the Jewish community about choices and considerations regarding healthcare, including abortion services. Plaintiffs must proceed cautiously in advising and guiding congregants on reproductive healthcare rights and procedures, including abortion care, out of concern for the legal repercussions under the Act.
60. The Act substantially burdens the exercise of Plaintiffs’ religious faith because it hampers their ability to counsel and congregants, and to publish and speak freely on reproductive rights and issues. For L’DOR VA-DOR, the Act burdens its congregants’ ability to seek

counsel from their religious leader. For RABBI WASKOW and THE SHALOM CENTER, the Act burdens their ability to publish and speak freely on reproductive rights and issues, and burdens Rabbi Waskow's rabbinic pastoral counseling role.

61. The Act prohibits Plaintiff and similarly situated members of the clergy from practicing their faith and carrying out their congregational and communal duties. Instead, they face government intrusion, including possible criminal penalties, in violation of their First Amendment rights.

Establishment of Religion

62. The Act effectively establishes the religion of its State proponents and prohibits the free exercise of the Plaintiffs' religion by prohibiting Plaintiffs from exercising their religious beliefs with regard to the most intimate decisions of the lives of those whom they serve. Plaintiffs are restricted from engaging in speech which is constitutionally protected under state law, including providing services and advice to members of their congregations and/or communities consistent with their sincerely held religious beliefs.

Least Restrictive Means

63. Florida's Religious Freedom and Restoration Act, Fla. Stat. § 761.01, et seq. (FRFRA) prohibits the government 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.
64. Under Florida law, any restriction or penalty on religious, even if is based on a compelling governmental interest, must be "the least restrictive means of furthering that compelling governmental interest." The Act's failure to address, account for, or accommodate the sincere

religious belief of Plaintiffs and members of their congregations and communities, thus fails the “least restrictive” test.

Vagueness and its Consequences

65. The Act is unconstitutionally and void for vagueness by failing to specify the penalties for its violation and by failing to identify who could be prosecuted under its vague terms such as “willfully performs” and “actively participates” in an abortion. A physician assistant or nurse practitioner or technician may be found to “willfully perform” an abortion if a doctor is present in the room. A woman who has an abortion “actively participates.” The rabbi or counselor who advised the abortion; the rabbi or counselor who hold her hand; or prays with her, during the abortion; the spouse, partner or friend in the waiting room; and the person who provided or paid the medical fees or for transportation -- all may be subject to prosecution.

66. The Act permits an abortion in some circumstances if a physician affirms that the fetus will die at birth or “imminently.” The term “imminently” is undefined, probably undefinable, and in any event is unconstitutionally vague.

67. Our legal system abhors traps for the unwary vague laws which could impose Draconian penalties upon those who exercise their fundamental rights. The Act criminalizes behavior about which those of ordinary intelligence would have to guess as to its meaning and whether it applies to them.

Harm, Remedy and Interests

68. Plaintiffs have suffered, are suffering, and will continue to suffer ongoing, immediate, and irreparable injury to their state law free speech and religious liberty rights.

69. Plaintiff has no adequate remedy at law to protect the ongoing, immediate, and irreparable

injury to her constitutional rights.

70. 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 Plaintiff will serve the public interest. Money damages would not be adequate relief.
71. The Defendants would suffer no judicially cognizable harm if compelled to obey the Florida Constitution or the Religious Freedom Restoration Act.

CAUSES OF ACTION

COUNT I

VIOLATION OF FLORIDA CONSTITUTIONAL RIGHT TO PRIVACY

72. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶ 1–71 above as if set forth fully herein.
73. The Act, on its face and/or, as applied, violates the right to privacy of women and girls seeking and obtaining abortions in the State of Florida, guaranteed by Article I, section 23 of the Florida Constitution. Plaintiffs and those whom they serve and with whom they communicate, have the right to be free from government intrusion into their private lives including their private religious decisions. Women of child-bearing years, as well as their parents, grandparents, children and other family members are adversely affected by HB 5.
74. The Act, on its face and/or as applied, violates the tenets and practices of Judaism, of L’DOR VA-DOR, and also of Plaintiffs WASKOW and THE SHALOM CENTER, regarding decisions about abortion, reproductive and other health care decisions, resulting in irreparable harm to the Plaintiffs.
75. The Act, on its face and/or as applied, is irrational and unreasonable and imposes unjustifiable and unreasonable restrictions on constitutionally-protected privacy rights.
76. The Act’s violation of Plaintiff’s right of privacy has caused, is causing, and will continue to

cause Plaintiff and its congregants to suffer undue hardship and irreparable injury for which there is no adequate remedy at law.

**COUNT II:
VIOLATION OF FLORIDA CONSTITUTIONAL FREE EXERCISE CLAUSE**

77. Plaintiff repeats the allegations of ¶¶ 1–71 above as if set forth fully herein.
78. The Act, on its face and/or as applied, violates the Free Exercise clause of the Florida Constitution, Article 1, Section 3. As a result of Defendants’ constitutional violation, the Plaintiff and its congregants have suffered irreparable harm for which there is no adequate remedy at law.
79. As born in a divine image, Jews believe that women and girls are entitled to equal rights, privacy rights, reproductive freedom and autonomy over their own bodies. The Act violates Jewish tenets and practices in that deprives Jewish women, girls and families of their their privacy, autonomy and dignity.
80. The Act further violates the right of Plaintiffs to freedom of religion and their entitlement to practice Judaism and to adhere to its principles in the most intimate and consequential decisions of their lives by harming and threatening the autonomy of the Jewish family and its right to make reproductive choices free of governmental intrusion.

**COUNT III
VIOLATION OF FLORIDA CONSTITUTION ESTABLISHMENT CLAUSE**

81. Plaintiff repeats the allegations of ¶¶ 1–71 above as if set forth fully herein.
82. The Act, on its face and/or as applied, violates the Establishment Clause of the Florida Constitution, Article 1, Section 3. As a result of Defendant’s Constitutional violation, Plaintiffs suffer irreparable harm, for which there is no adequate remedy at law.
83. The Act reflects the views of a minority of Christians in the Act’s restriction of religious

freedom to others. The Act threatens and harms the framework of our Democracy, including the cherished ideal of the separation of church and state which our founders knew was essential to our liberty.

84. The Jewish people have often borne the brunt of the horrors that occur when the power of Christianity has merged with the power of the state. The result has been Inquisitions, Crusades, ghettos and pogroms for the Jews, the Holocaust and the eventual loss of freedom for others. The Founders, well aware of such evils in Europe, enshrined in our founding documents the principle of the separation of church and state.
85. In matters of abortion, the Act establishes and imposes, upon Jews, a Christian view of when life begins, and penalizes Jews who practice and live according the Jewish teachings and views on such issues. The Act establishes the onset of human life at or soon after conception.
86. This Christian view is espoused primarily by evangelical sects and is contrary to the beliefs of other Christians who's religious principles support a woman's right to choose.
87. The establishment of a state religion and the power of churches to impose their beliefs on those who do not share them is one of the primary reasons that the Pilgrims fled Europe and came to North America. The founders of our nation were acutely aware of the churches' powers to persecute. That fear led to the adoption of anti-establishment and free exercise clauses in the state constitutions Florida and many other states.
88. Judaism teaches that the fetus does not possess personhood; rather, life begins at birth. If a fetus poses a threat to the health or emotional well-being of its mother, at any stage of gestation, Jewish law not only entitles, but requires, the mother to take measures to preserve her own physical, emotional and psychological health, and to consider the health of her

family and community, including abortion.

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

**COUNT IV
VIOLATION OF FLORIDA CONSTITUTION PROHIBITION
OF PENALIZING THE PRACTICE OF RELIGION**

90. Plaintiff repeats the allegations of ¶¶ 1–71 above as if set forth fully herein.
91. The Act penalizes the practice of Judaism in violation of Article 1, Section 3 of the Florida Constitution.
92. 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 requirements of the Act.
93. Defendants have no compelling interest in penalizing the practice of Judaism and have failed to use the least restrictive means to carry out whatever ends it claims or may claim to be addressing by adoption of and enforcement of the Act.

**COUNT V
VIOLATION OF FLORIDA RELIGIOUS FREEDOM RESTORATION ACT
BY PROHIBITING THE FREE EXERCISE OF JUDAISM
AND BY ESTABLISHING A RELIGION**

94. Plaintiff repeats the allegations of ¶¶ 1–71 above as if set forth fully herein.
95. Florida’s Religious Freedom and Restoration Act, Fla. Stat. § 761.01, et seq. (FRFRA) prohibits the government 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.

96. FRFRA may be asserted as a claim or defense in judicial proceedings and provides the appropriate relief in either case. *Id.*
97. The Act substantially burdens the Plaintiffs' members, congregants and others in their exercise of their religious beliefs and makes it impossible for Jews to practice their religion and/or to follow the tenets or practices of Judaism regarding abortion.
98. Jewish law not only permits, it requires a woman to undergo an abortion when necessary to protect the mother physically or psychologically. The Act limits consideration of physical harm, and it does not permit a woman's or a girl's psychological well-being from even being considered as a factor in obtaining an abortion after 15 weeks of gestation. The Act thus violates the rights of Jewish women and girls exercising their state law religious freedom.
99. FRFRA entitles each person the right to freely exercise their religion which includes the right of women and girls to choose to exercise autonomy over her reproductive system and to choose abortion even after 15 weeks under circumstances not permitted under the Act, all free of governmental interference.
100. The Act effectively establishes a religion. It establishes a narrow, Christian view of abortion for Jews and all others and prohibits Jews and others from acting pursuant to their religious tenets and practice without governmental interference.
101. The Defendants have no compelling state interest in placing the Act's unnecessary, criminalizing and severe restrictions upon the rights of Jewish women girls and their families.
102. Even if it served a compelling state interest, the Act is not the least restrictive means to accomplish its goals. For example, the State could have provided a religious exemption to

accommodate Jewish religious tenets and practices. The Act could also have provided counseling or other measures, such as persuasion, to try to accomplish its goals, instead of coercion and the threat of criminal prosecution.

103. As a result of the Defendants' violations of FRFRA, Plaintiffs have been harmed. As prevailing parties, Plaintiffs are entitled to recover reasonable attorney's fees from the Defendants. Plaintiffs have agreed to pay the undersigned attorney a reasonable fee for services if they prevail in this matter.

**COUNT VI
VIOLATION OF FLORIDA CONSTITUTION DUE PROCESS**

104. Plaintiff repeats the allegations of ¶¶ 1–71 above as if set forth fully herein.

105. The Act violates due process under the Florida Constitution as provided in Article 1, Section 9. As a result of Defendants' violation of their constitutional rights, the Plaintiffs are irreparably harmed, and there is no adequate remedy at law.

106. 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 which permit the government to arbitrarily and capriciously enforce the Act, thus having a chilling effect upon the exercise of constitutional rights. Key provisions of the Act, detailed above, are unconstitutionally vague as people of common intelligence must necessarily guess at their meaning.

**COUNT VII
VIOLATION OF FLORIDA CONSTITUTION BASIC RIGHTS**

107. Plaintiff repeats the allegations of ¶¶ 1–71 above as if set forth fully herein.

108. The Act violates Article 1, Section 2 of the Florida Constitution which guarantees among

the Basic Rights: “All natural persons, female or male alike, are equal before the law and have inalienable rights.”

109. It thus follows that a Basic Right is to be treated equally with regard to the State’s providing accommodation of religious tenets or practices, including by the grant of an exemption from statutory provisions which conflict with one’s religious tenets or practices.

110. In the medical context, the State of Florida exempts adults from the obligation to cause their children to receive immunizations when the same “conflicts with his or her religious tenets or practices.” Fla. Stat. Ann. § 1003.22. Similarly, the State provides for religious exemptions with regard to childcare standards.

111. The Act fails to grant a parallel exemption from its provisions when such provisions conflicts with “a person’s religious tenets or practices.” This failure denies equal protection of the law by failing to accord Plaintiffs a religious exemption in the medical context of abortion.

112. Separately from the above, the Act establishes this discrimination: it prohibits all consideration of psychological harm to the mother due to the pregnancy (no matter how severe or how disabling) as a ground for an exception to the abortion ban, yet the Act permits consideration of physical harm to the mother due to the pregnancy,

113. There is no rational basis or compelling state interest in making these unequal discriminations.

**COUNT VIII
VIOLATION OF FLORIDA CONSTITUTION FREEDOM OF SPEECH**

114. Plaintiff repeats the allegations of ¶¶ 1–71 above as if set forth fully herein.

115. Article I, § 4 of Florida Constitution provides, “Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law

shall be passed to restrain or abridge the liberty of speech or of the press.”

116. Plaintiffs’ right to speak, write and publish sentiments on religious matters, including but not limited to Judaism’s tenets and practices, are inhibited and chilled by the Act.
117. Defendants lack compelling, legitimate, significant, or rational governmental interests to justify the Act’s infringements of these rights.
118. The Act, on its face and as applied, is not the least restrictive means to accomplish any permissible government purposes sought to be served by the law.
119. Plaintiff has no adequate remedy at law to correct the deprivation of these rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

120. Stay the enforcement of the act and enjoin any prosecution or enforcement for acts committed while the stay is in effect”
121. Issue a declaratory judgment that the Act violates Plaintiffs’ right to privacy as protected in Article 1, Section 23 of the Florida Constitution and is therefore void, unenforceable, invalid and of no legal effect.
122. Issue a declaratory judgment that the Act violates the rights of Plaintiffs, to be free to exercise their religious, spiritual and ethical values and beliefs, free from government intrusion.
123. Issue a declaratory judgment that the Act violates the rights of Plaintiffs in that the Act effectively establishes a religion in violation of the Florida Constitution, Article 1 section 3, and is s therefore void, unenforceable, invalid and of no legal effect.
124. Issue a declaratory judgment that the Act violates the rights of Plaintiffs by in that the vagueness of the Act violates the due process clause of the Florida Constitution as expressed

in Article 1, section 9, and is therefore void, unenforceable, invalid and of no legal effect.

125. Issue a declaratory judgment that the Act violates of the Basic Rights under the Florida Constitution by failing to treat adherents to a religious faith equally, , and therefore the Act is void, unenforceable, invalid and of no legal effect.

126. Issue a declaratory judgment that the Act violates the FRFRA and therefore is invalid, unconstitutional and of no legal force and effect.

127. Issue temporary and permanent injunctive relief restraining the enforcement, operation and/or execution of the Act by enjoining Defendants, their officers, agents, servants, employees, appointees, or successors, as well as those in active concert or participation with any of them, from enforcing, threatening to enforce, or otherwise applying the provisions of the Act.

128. Issue temporary and permanent injunctive relief restraining the enforcement, operation and/or execution of the Act by enjoining Defendants, their officers, agents, servants and successors, from enforcing, threatening to enforce or otherwise applying the provisions of the Act in Florida due to its violation of FRFRA.

129. Grant Plaintiff's costs under all counts and attorney's fees under FRFRA.

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

Respectfully submitted,

/s/ David Ferleger

David Ferleger
413 Johnson Street, Suite 203
Philadelphia, PA 19146
(215) 498-1777
david@ferleger.com
(pro hac vice motion pending)

/s/ Barry Silver

Barry Silver, FBN 382108
18624 Cape Sable Drive
Boca Raton, Fl. 33498
(561) 302-1818
Barryboca@aol.com

/s Henry P. Sorett

58 Longfellow Road
Sudbury, Massachusetts 01776
(617) 899-2854
HankSorett@gmail.com
(pro hac vice motion pending)

/s/ Daniel W. Uhlfelder

Daniel W. Uhlfelder, FLN 0133922
daniel@dwulaw.com
DANIEL W. UHLFELDER, P.A.
124 East County Highway 30-A
Santa Rosa Beach, FL 32459
(850) 534-0246

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Second Amended Complaint has been sent by electronic mail to the defendants or their representatives, as listed on the service list below, this August 9, 2022.

/s Barry Silver
Barry Silver FBN 382108
18624 Cape Sable Drive
Boca Raton, Fl. 33498
(561) 302-1818
Barryboca@aol.com
Attorney for the Plaintiff

Dave A. Aronberg, State Attorney
401 N. Dixie Highway, Suite 2800
West Palm Beach, Florida 33401-4209
Email: dave@sa15.org

Dennis W. Ward, State Attorney
530 Whitehead Street, Suite 201
Key West, Florida 33040-6547
Email: dward@keyssao.org

Florida Department of Health
c/o Joseph A. Ladapo, M.D., State Surgeon General
4052 Bald Cypress Way Tallahassee, Florida 32399-1719
Email: John Wilson, General Counsel, john.wilson@flhealth.gov
Email: Joseph A. Ladapo, M.D., State Surgeon General, FloridaSurgeonGeneral@flhealth.gov

Simone Marstiller, J.D., Secretary
Fla Agency for Health Care Admin.
2727 Mahan Dr. Tallahassee, Florida 32308
Email: Deputy General Counsel simone.marstiller@ahca.myflorida.com

State of Florida
c/o Ashley Moody
Florida Attorney General
PL-01 The Capitol
Tallahassee, Fl. 32399-1050

Joseph A. Ladapo, M.D., State Surgeon General &
Florida Department of Health Secretary
4052 Bald Cypress Way Tallahassee, Florida 32399-1719
Email: Joseph A. Ladapo, M.D., State Surgeon General, FloridaSurgeonGeneral@flhealth.gov

Florida Board of Medicine
c/o David Diamond, M.D., Chair
Office of the General Counsel
2585 Merchants Row Blvd. Tallahassee, Florida 32399
Email: Ed Tellechea, Chief Assistant Attorney General, ed.tellechea@myfloridalegal.com

David Diamond, M.D., Chair
Florida Board of Medicine
Office of the General Counsel
2585 Merchants Row Blvd. Tallahassee, Florida 32399
Email: Ed Tellechea, Chief Assistant Attorney General, ed.tellechea@myfloridalegal.com

Florida Board of Osteopathic Medicine
c/o Sandra Schwemmer, D.O., Chair
Office of the General Counsel
2585 Merchants Row Blvd. Tallahassee, Florida 32399
Email: Donna McNulty, Senior Assistant Attorney General, donna.mcnulty@myfloridalegal.com

Florida Board of Nursing
c/o Maggie Hansen, MHSc, RN, Chair
Office of the General Counsel
2585 Merchants Row Blvd.
Tallahassee, Florida 32399
Email: Deborah Loucks, Senior Assistant
Attorney General,
deborah.loucks@myfloridalegal.com
Email: David Flynn, Assistant Attorney
General, david.flynn@myfloridalegal.com

Maggie Hansen, MHSc, RN, Chair
Florida Board of Nursing
Office of the General Counsel
2585 Merchants Row Blvd.
Tallahassee, Florida 32399
Email: Deborah Loucks, Senior Assistant
Attorney General,
deborah.loucks@myfloridalegal.com
Email: David Flynn, Assistant Attorney
General, david.flynn@myfloridalegal.com

Florida Agency for Health Care Administration
c/o Simone Marstiller, J.D., Secretary
2727 Mahan Dr.
Tallahassee, Florida 32308
Email: Deputy General Counsel,
William.Roberts@ahca.myflorida.com
Email: simone.marstiller@ahca.myflorida.com

State of Florida
c/o Jack Campbell
State Attorney for the Second Judicial Circuit
of the State of Florida
Leon County Courthouse
301 S. Monroe St. Suite #475
Tallahassee, Fl. 32301
Email: campbellj@leoncountyfl.gov

Jack E. Campbell
State Attorney for Leon County
Leon County Courthouse
301 S. Monroe St. Suite #475
Tallahassee, Fl. 32301
Email: campbellj@leoncountyfl.gov