

STATE OF MICHIGAN
COURT OF CLAIMS

NORTHLAND FAMILY PLANNING CENTER, on behalf of itself, its staff, its clinicians, and its patients; NORTHLAND FAMILY PLANNING CENTER INC. EAST, on behalf of itself, its staff, its clinicians, and its patients; NORTHLAND FAMILY PLANNING CENTER INC. WEST, on behalf of itself, its staff, its clinicians, and its patients; and MEDICAL STUDENTS FOR CHOICE, on behalf of itself, its members, and its members' patients,

Plaintiffs,

v.

DANA NESSEL, Attorney General of the State of Michigan; MARLON I. BROWN, Acting Director of Michigan Licensing and Regulatory Affairs; and ELIZABETH HERTEL, Director of the Michigan Department of Health and Human Services, each in their official capacities, as well as their employees, agents, and successors,

Defendants,

The PEOPLE OF THE STATE OF MICHIGAN,
Intervening Defendant.

No. 24-000011-MM

HON. SIMA G. PATEL

**DEFENDANT ATTORNEY
GENERAL DANA NESSEL'S
ANSWER AND AFFIRMATIVE
DEFENSES**

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**DEFENDANT ATTORNEY GENERAL DANA NESSEL'S ANSWER AND
AFFIRMATIVE DEFENSES**

Defendant Attorney General Dana Nessel, through her attorneys, states for her answer and affirmative defenses to Plaintiffs' verified complaint for declaratory and injunctive relief as follows:

I. Preliminary Statement

1. The allegations represent legal conclusions, which by law require no answer.

2. The allegations represent legal conclusions, which by law require no answer.
3. The allegations represent legal conclusions, which by law require no answer.
4. The allegations represent legal conclusions, which by law require no answer.
5. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.
6. The allegations concerning the standard of care and Article 1, § 28 represent legal conclusions, which by law require no answer. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.
7. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning research and provider experience in other states. The remaining allegations represent legal conclusions, which by law require no answer.
8. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.
9. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.
10. The allegations represent legal conclusions, which by law require no answer.

11. The allegations represent legal conclusions, which by law require no answer.

12. The Attorney General admits the allegation that the Michigan Legislature enacted a series of bills known as the Reproductive Health Act, which repealed many of abortion-related restrictions. The Attorney General further admits that the bill package included the Challenged Laws, which were later omitted. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

II. Jurisdiction

13. Admitted.

14. Admitted.

III. Parties

A. Plaintiffs

a. Northland

15. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

16. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

17. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

18. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

b. MSFC

19. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

20. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

21. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

22. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

23. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

B. Defendants

24. The Attorney General admits that she has been sued in her official capacity. The remaining allegations represent legal conclusions, which by law require no answer.

25. Admitted.

26. Admitted.

IV. The RFFA

27. The Attorney General pleads no contest.

28. The Attorney General admits that the RFFA passed with overwhelming support from Michigan voters. The Attorney General lacks

knowledge or information sufficient to form a belief as to the truth of the remaining allegation.

29. The allegations represent legal conclusions, which by law require no answer.

30. The allegations represent legal conclusions, which by law require no answer.

31. The allegations represent legal conclusions, which by law require no answer.

V. Factual Background

A. **Abortion is extraordinarily safe, common, and an essential component of pregnancy care.**

32. The Attorney General lacks knowledge or information sufficient to form a belief as to the safety of abortions performed in the United States relative to all other medical procedures performed in the United States. The Attorney General otherwise pleads no contest to the allegations that legal abortions are administered safely, and that current data reflects that abortions induced consistent with the standard of care are safer than childbirth.

33. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

34. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of whether medication abortion is comparable in safety to ibuprofen and acetaminophen. The Attorney General admits the remaining allegations contained in this paragraph.

35. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

36. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

37. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

38. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

39. The Attorney General admits that abortion is far safer than carrying a pregnancy to term, and it has an exceptionally low rate of complication. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

40. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

41. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

42. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

43. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

44. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

45. The Attorney General pleads no contest.

46. The Attorney General pleads no contest.

47. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

48. The Attorney General admits that access to abortion is an essential component of comprehensive healthcare, and it is key to facilitating equal participation in society of pregnant Michiganders. The remaining allegations represent legal conclusions, which by law require no answer.

B. Michigan law singles out abortion from other reproductive healthcare for uniquely discriminatory treatment.

49. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

50. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

51. The allegations represent legal conclusions, which by law require no answer. To the extent an answer may be required, the Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

52. The allegations represent legal conclusions, which by law require no answer. To the extent an answer may be required, the Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

53. The allegations represent legal conclusions, which by law require no answer. To the extent an answer may be required, the Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

54. The allegations represent legal conclusions, which by law require no answer. To the extent an answer may be required, the Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

55. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

56. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

57. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

C. Restricting access to abortion disproportionately harms communities of color and other people facing systemic barriers to healthcare access.

58. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the non-specific allegation that the disparities in access to abortion are particularly significant in Michigan because of the challenges certain communities have historically faced in the State. The Attorney General pleads no contest for the remaining allegations.

59. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

60. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

61. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

62. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the specific facts contained in these allegations. However, the Attorney General pleads no contest for the allegation that struggling families in Michigan often do not have adequate access to general healthcare, prenatal and post-natal care, parental leave, childcare, lactation support, and accommodations for disabilities.

63. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

64. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

65. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the specific facts contained in these allegations. However, the Attorney General pleads no contest to the general allegation that pregnancy carries numerous risks of complications and conditions.

66. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

67. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

68. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

69. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

70. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

VI. THE CHALLENGED LAWS VIOLATE THE RFFA¹

96. The allegations represent legal conclusions, which by law require no answer.

97. The allegations represent legal conclusions, which by law require no answer.

A. The 24-Hour Delay

65. The allegations represent legal conclusions, which by law require no answer. The Attorney General pleads no contest to the allegation that the 24-Hour Delay provision burdens patients' right to reproductive care as described.

66. The allegations represent legal conclusions, which by law require no answer.

¹ The Attorney General notes that, from this point forward in Plaintiffs' complaint, the paragraph numbering is inaccurate. The numbers in this answer, however, reflect those in Plaintiffs' complaint.

67. The allegations represent legal conclusions, which by law require no answer.

68. The allegations represent legal conclusions, which by law require no answer. To the extent that an answer may be required, the Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

69. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

70. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

71. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

72. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

73. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

74. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

75. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

76. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

77. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

78. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

79. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

80. The allegations represent legal conclusions, which by law require no answer.

B. The Mandatory Biased Counseling

81. The allegations represent legal conclusions, which by law require no answer.

82. The allegations represent legal conclusions, which by law require no answer.

83. The allegations represent legal conclusions, which by law require no answer.

84. The allegations represent legal conclusions, which by law require no answer. Regarding Northland's practices, the Attorney General lacks knowledge or information sufficient to form a belief as to the truth of those allegations.

85. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

86. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

87. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

88. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning legislative intent. The Attorney General otherwise pleads no contest.

89. The allegations regarding MCL 333.17015 represent legal conclusions, which by law require no answer. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

90. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

91. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations that providers already ensure that patients are not facing coercion and those regarding the patient experience. The Attorney General otherwise pleads no contest for the remaining allegations.

92. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

93. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

94. The allegations represent legal conclusions, which by law require no answer.

C. The Provider Ban

95. The allegations represent legal conclusions, which by law require no answer.

96. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

97. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

98. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

99. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

100. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

101. The Attorney General lacks knowledge or information sufficient to form a belief as to the truth of the allegations.

102. The allegations represent legal conclusions, which by law require no answer.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Const 1963, Art I, § 28(1) RFFA – Fundamental Constitutional Right to Abortion

103. The Attorney General likewise incorporates by reference all previous responses.

104. The allegations represent legal conclusions, which by law require no answer.

SECOND CLAIM FOR RELIEF

Const 1963, Art I, §(2) RFFA – Nondiscrimination

110. The Attorney General likewise incorporates by reference all previous responses.

111. The allegations represent legal conclusions, which by law require no answer.

AFFIRMATIVE DEFENSES

1. Some or all of Plaintiffs' claims may be barred by sovereign immunity, governmental immunity, qualified immunity, or other immunity granted by law.

2. Plaintiffs have failed to state a claim upon which relief may be granted against the Attorney General.

3. Plaintiffs' claims against the Attorney General are barred for lack of standing.

4. Plaintiffs are barred from recovery of any damages, fees, or costs against the Attorney General.

5. The Attorney General reserves the right to assert additional affirmative and/or other defenses pending completion of discovery.

PRAYER FOR RELIEF

The Attorney General respectfully requests that this Court dismiss her from this action without prejudice, costs, or fees to any party.

Respectfully submitted,

/s/ Kyla L. Barranco
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Dated: August 6, 2022