

STATE OF MICHIGAN  
COURT OF CLAIMS

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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<sup>1</sup> 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.

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<sup>1</sup> On February 23, 2024, Governor Whitmer appointed Marlon I. Brown as the permanent Director of the Michigan Department of Licensing and Regulatory Affairs.

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Document received by the MI Court of Claims.

**DEFENDANT DIRECTOR BROWN’S ANSWER TO COMPLAINT AND  
AFFIRMATIVE DEFENSES**

Defendant Marlon I. Brown, named in his official capacity as Director of the Michigan Department of Licensing and Regulatory Affairs (LARA), through his counsel, Assistant Attorney General Christopher W. Braverman, answers Plaintiffs’ February 6, 2024 verified complaint as follows:

**I. PRELIMINARY STATEMENT**

1. The allegations are legal conclusions, not allegations of fact, for which no response is required.

2. Director Brown admits that Michigan voters approved the Reproductive Freedom For All amendment that ultimately became Article 1, § 28 of Michigan’s 1963 Constitution. The remainder of the allegations are legal conclusions, not allegations of fact, for which no response is required.

3. The allegations are legal conclusions, not allegations of fact, for which no response is required.

4. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

5. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

6. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

7. The allegations are legal conclusions, not allegations of fact, for which no response is required.

8. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

9. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

10. The allegations are legal conclusions, not allegations of fact, for which no response is required.

11. The allegations are legal conclusions, not allegations of fact, for which no response is required.

12. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

## **II. JURISDICTION**

13. Admitted.

14. Admitted.

## **III. PARTIES**

### **A. Plaintiffs**

#### **a. Northland**

15. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

16. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

17. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

18. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

**b. MSFC**

19. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

20. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

21. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

22. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

23. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

**B. Defendants**

24. Admitted.

25. Admitted. By way of further answer, Director Brown was appointed as the permanent Director of the Michigan Department of Licensing and Regulatory Affairs on February 23, 2024.

26. Admitted.

#### IV. THE RFFA

27. The allegations are legal conclusions, not allegations of fact, for which no response is required.

28. The allegations are legal conclusions, not allegations of fact, for which no response is required.

29. Admitted.

30. Admitted.

31. The allegations are legal conclusions, not allegations of fact, for which no response is required.

#### V. FACTUAL BACKGROUND

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

32. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

33. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

34. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

35. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

36. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

37. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

38. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

39. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

40. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

41. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

42. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

43. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

44. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

45. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

46. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

47. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

48. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

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

49. The allegations are legal conclusions, not allegations of fact, for which no response is required.

50. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

51. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

52. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

53. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither

admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

54. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

55. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

56. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

57. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

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

58. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

59. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

60. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

61. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

62. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

63. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

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65. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

66. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

67. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

68. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

69. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

70. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

## **VI. THE CHALLENGED LAWS VIOLATE THE RFFA**

96.<sup>2</sup> The allegations are legal conclusions, not allegations of fact, for which no response is required.

97. The allegations are legal conclusions, not allegations of fact, for which no response is required.

### **A. The 24-Hour Delay**

65. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

66. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

67. Admitted that the quoted portions of the statute are accurate. As to the remainder of the allegations, Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

68. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither

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<sup>2</sup> Director Brown's Answer uses the paragraph numbers as included in Plaintiffs' Complaint, which appear out of sequence from this point forward.

admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

69. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

70. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

71. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

72. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

73. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

74. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

75. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

76. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

77. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

78. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

79. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

80. The allegations are legal conclusions, not allegations of fact, for which no response is required.

**B. The Mandatory Biased Counseling**

81. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

82. Admitted.

83. Admitted.

84. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

85. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

86. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

87. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

88. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

89. Admitted that the quoted portions of the statute are accurate. As to the remainder of the allegations, Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

90. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

91. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

92. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

93. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

94. The allegations are legal conclusions, not allegations of fact, for which no response is required.

**C. The Provider Ban**

95. Admitted.

96. The allegations are a combination of legal conclusions, for which no response is required, and factual allegations for which Director Brown neither admits nor denies, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

97. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

98. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

99. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

100. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

101. Director Brown neither admits nor denies the allegations, based on lack of sufficient knowledge or information, and leaves Plaintiffs to their proofs.

102. The allegations are legal conclusions, not allegations of fact, for which no response is required.

## VII. CLAIMS FOR RELIEF

### FIRST CLAIM FOR RELIEF

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

103. Director Brown similarly incorporates by reference his answers to the paragraphs above.

104. The allegations are legal conclusions, not allegations of fact, for which no response is required.

### SECOND CLAIM FOR RELIEF

#### Const 1963, Art I, § 28(2) RFFA – Nondiscrimination

105. Director Brown similarly incorporates by reference his answers to the paragraphs above.

106. The allegations are legal conclusions, not allegations of fact, for which no response is required.

## AFFIRMATIVE DEFENSES

1. Plaintiffs are not entitled to an award of costs, attorney fees, damages, or other monetary relief as against Director Brown.
2. Plaintiffs' claims may be barred in whole or in part by governmental immunity or immunity granted as a matter of law.
3. Director Brown reserves the right to amend his answer and affirmative defenses as permitted by the Michigan Court Rules and as may be appropriate during the course of discovery.

Respectfully submitted,

/s/ Christopher W. Braverman  
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Attorney for Director Brown  
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Dated: August 7, 2024

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