

STATE OF MICHIGAN
COURT OF CLAIMS

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

No. 24-000011-MM

HON. SIMA G. PATEL

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 successor,

Defendants,

and

The PEOPLE OF THE STATE OF
MICHIGAN,

Intervening Defendant.

**THE PEOPLE OF THE STATE OF MICHIGAN'S ANSWER TO VERIFIED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND
AFFIRMATIVE DEFENSES**

I. PRELIMINARY STATEMENT

1. Michiganders have a fundamental right to abortion guaranteed by their state constitution. Pursuant to this right, Michiganders seeking abortion must be free from medically unjustified laws denying, burdening, or infringing their decision to have an abortion. Further, Michiganders must be free of discrimination in the enforcement or protection of this constitutional right. In this case, abortion providers and advocates challenge three abortion restrictions that run roughshod over these constitutional guarantees.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied.

2. On November 8, 2022, following the United States Supreme Court’s decision to reverse 50 years of precedent protecting a federal right to abortion, the people of Michigan voted to enact the Reproductive Freedom For All Amendment (the “RFFA”). Const 1963, art I, § 28. The RFFA amended the Michigan Constitution to protect an individual’s “fundamental right to reproductive freedom,” including an individual’s decision about whether to have an abortion, subject to strict scrutiny. *Id.* § 28(1). As a result, Michigan cannot enact laws that “den[y], burde[n],” or “infringe[]” the individual’s right to abortion without demonstrating that such laws serve a compelling interest achieved by the least restrictive means.

Id. The only compelling interest the State can assert under the RFFA is the “limited purpose of protecting the health of an individual seeking care, consistent with accepted clinical standards of practice and evidence-based medicine.” *Id.*

§ 28(4). The RFFA explicitly dictates that the State can *never* advance a compelling state interest in patient health via means that intrude “on [an] individual’s autonomous decision-making.” *Id.*

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied.

3. In addition to this substantive fundamental liberty, the RFFA also explicitly prohibits “discriminat[ion] in the protection or enforcement of this fundamental right,” § 28(2), such that restrictions on reproductive freedom cannot stand if they privilege some reproductive choices over others, including by subjecting abortion to unique restrictions not applicable to other pregnancy care. Restrictions on abortion also cannot disproportionately harm certain groups, such as Black, indigenous, and other people of color. This nondiscrimination clause is broad on its face. Consistent with Michigan’s civil rights traditions, discrimination on the basis of religion, race, color, national origin, age, sex, sexual orientation,

gender identity or expression, height, weight, familial status, or marital status is impermissible under the RFFA's nondiscrimination clause.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan's Constitution and laws speak for themselves and any allegations that Michigan's Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan's Constitution or laws are denied.

4. This action for declaratory and injunctive relief challenges the constitutionality of three Michigan abortion restrictions that provide no health benefit whatsoever, undermine the standard of care, and interfere with patients' autonomous decision-making—the 24-Hour Delay, Mandatory Biased Counseling, and Provider Ban (collectively the “Challenged Laws”), set forth at MCL 333.17015 (attached hereto as Exhibit A) and 333.17015a (attached hereto as Exhibit B).

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan's Constitution and laws speak for themselves and any allegations that Michigan's Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan's Constitution or laws are denied.

5. The 24-Hour Delay and Mandatory Biased Counseling were designed to pressure Michiganders into choosing continuing a pregnancy over abortion. They

force patients to needlessly delay time-sensitive abortion care and impose logistical barriers. They also force patients to consume uniform information encouraging them to continue a pregnancy—much of which is irrelevant, misleading, and/or stigmatizing—regardless of their individual needs and circumstances. As a result, the 24-Hour Delay and Mandatory Biased Counseling actually *thwart* true informed consent and autonomous healthcare decision-making, which are inherently individualized and centered around a patient’s autonomy.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied.

6. For the same reasons, these laws are contrary to the standard of care. These requirements plainly violate Michiganders’ right to abortion because they lack any medical justification, are inconsistent “with accepted clinical standards of practice and evidence-based medicine,” and *intentionally* interfere with an “individual’s autonomous decision-making.” Const 1963, art 1 § 28(4). These requirements also perpetuate the false idea that pregnant Michiganders need the State’s paternalistic intervention. Michiganders have now stated through the RFFA, in the most forthright terms, that they do not need the State to help them decide what healthcare is best for them. They do not need to consume boiler-plate

ideological materials or experience a forced delay in order to make their own healthcare decisions.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied.

7. The Provider Ban, which prohibits anyone other than a physician from providing abortions, is similarly a clear violation of the individual’s fundamental right to abortion. Robust research and provider experience in numerous states demonstrates that Advanced Practice Clinicians (“APCs”) like Certified Nurse Midwives (“CNMs”), Nurse Practitioners (“NPs”), and Physician Assistants/Associates (“PAs”) provide abortion care in early pregnancy as safely and effectively as physicians. Excluding them from providing this care serves no one, and it restricts the availability of this essential and constitutionally protected healthcare for patients. As a result, the Provider Ban also infringes Michiganders’ ability to choose abortion without medical justification, is inconsistent with the standard of care, and burdens patients’ decision-making by restricting access to clinicians. Michiganders are constitutionally entitled to have access to abortion that is not limited by useless restrictions on qualified clinicians.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan’s law that guarantees that doctors perform abortions protects the safety of Michigan’s residents. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations & Others for Educ About Parochiaid, Inc v Governor*, 455 Mich 557, 568 (1997) (cleaned up).

8. For all of these reasons, all mainstream medical professional institutions that have weighed in on the provision of abortion care in the United States have concluded that laws like those challenged here—mandatory waiting periods, biased counseling provisions, and provider restrictions—have no medical basis, are out of line with the standard of care, and intrude on autonomous decision-making, thereby significantly harming patients. For example, in its comprehensive report on the safety and quality of abortion care in the United States, the National Academies of Sciences, Engineering, and Medicine concluded: “[t]he clinical evidence . . . on the provision of safe and high-quality abortion care stands in

contrast to the extensive regulatory requirements that state laws impose on the provision of abortion services,” including laws that “misinform women of the risks of the procedures they are considering, overrule women’s and clinician’s medical decision making, or require medically unnecessary services and delays in care” and those that restrict “provider type” and “provider training.” [Footnote omitted.]

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

9. Because the Challenged Laws are inconsistent with the standard of care, they also interfere with the best abortion training, requiring medical students and residents in Michigan to learn to provide abortion care in a legal context that does not best support their practice or patient wellbeing.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as the Michigan laws protect the wellbeing of patients. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

10. Only people who seek abortion are subject to the Challenged Laws; not patients seeking any other form of reproductive healthcare or any other form of healthcare, period. Thus, the Challenged Laws also violate the RFFA’s nondiscrimination provision by singling out abortion care and abortion patients for unnecessary and harmful regulation.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied. Further, to

the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

11. The Challenged Laws are also discriminatory because particular groups of Michiganders bear the brunt of these restrictions, including Black people, indigenous people, low- income people, and rural people.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

12. Prior to Michigan voters making their voices heard through the RFFA, the Michigan Legislature piled on restriction after restriction on abortion over the decades following *Roe v Wade*, including medically unjustified facility regulations

and the Challenged Laws. The RFFA has rendered these laws plainly unconstitutional. In light of this, the Michigan Legislature enacted a series of bills known as the Reproductive Health Act to repeal many of those restrictions that the Legislature recognized were no longer consistent with the Michigan Constitution. That bill package included the Challenged Laws, until they were omitted at the eleventh hour, despite the fact that they are among the most baseless and harmful restrictions. Once it became clear that the Legislature was not repealing the Challenged Laws, despite the RFFA, Plaintiffs prepared this lawsuit expeditiously to vindicate the full scope of Michiganders' constitutional rights.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan's Constitution and laws speak for themselves and any allegations that Michigan's Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan's Constitution or laws are denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients. "If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed." *Council of Organizations*, 455 Mich at 568.

II. JURISDICTION

13. This Court has jurisdiction over this action pursuant to MCL 600.6419(1)(a), which gives the Court of Claims jurisdiction “[t]o hear and determine any claim or demand, statutory or constitutional . . . or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.”

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary.

14. Plaintiffs’ action for declaratory and injunctive relief is authorized by MCR 2.605 and 3.310, and by the general legal and equitable powers of this Court.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary.

III. PARTIES

A. Plaintiffs

a. Northland

15. Northland operates some of the finest outpatient healthcare facilities in the nation. Northland has provided high quality abortion care since 1976.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

16. Northland has three reproductive healthcare clinics located in Southfield, Oakland County; Sterling Heights, Macomb County; and Westland, Wayne County. Each location provides medication abortion up to 11 weeks (dated from the pregnant individual’s last menstrual period, or “LMP”), and procedural abortion up to 24 weeks LMP. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

17. Northland regularly trains Obstetrics and Gynecology (“OB/GYN”) and Family Medicine residents, OB/GYN fellows, and medical students to provide abortion care. At present, Northland has fellows in rotation.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

18. Northland is required to abide by the Challenged Laws, and its clinicians, staff, and patients are harmed by their impact. This is particularly true for the majority of their patients who are people of color and the vast majority who are low income.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged

Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan's Constitution or laws are denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients. "If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed." *Council of Organizations*, 455 Mich at 568.

b. MSFC

19. MSFC is a 501(c)(3) non-profit organization whose mission is to train tomorrow's abortion providers and pro-choice physicians. MSFC assists medical students and residents to maintain patient access to abortion and family planning education and training, including through curriculum reform, training in a clinic setting, abortion training institutes, and MSFC's two-day annual conference for family planning. MSFC is devoted to expanding access to health services that allow patients to lead safe, healthy lives consistent with their own personal and cultural values, with respect to all aspects of sexual and reproductive health.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

20. MSFC has had chapters in Michigan for 25 years. It currently has active chapters at: Central Michigan University College of Medicine, Michigan State University College of Human Medicine East Lansing, Michigan State

University College of Human Medicine Grand Rapids, Oakland University William Beaumont School of Medicine, University of Michigan Medical School, Wayne State University School of Medicine, and Western Michigan University Homer Stryker M.D. School of Medicine. Currently, there are approximately 361 MSFC members enrolled in Michigan's medical schools.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

21. In the United States, MSFC offers multiple abortion training programs that provide its members with financial and logistical support to receive abortion and family planning training. First, the Reproductive Health Externship Funding Program provides members with financial support to receive clinical training in abortion care outside of their institution's standard curriculum by spending two to four weeks in a clinic of their choice. Second, the Clinical Abortion Observation program offers members the opportunity to spend anywhere from three to nine days in a clinical setting receiving training in abortion care. Third, MSFC's Abortion Training Institute is an intensive two-day educational opportunity for members to learn about abortion and family planning in a small-group conference setting. In the last decade, 2,350 students have been trained through these programs, around 37 of them from Michigan schools, and 5 of the trainings occurred in Michigan. MSFC members in Michigan coordinate with local organizations on the ground that offer logistical and financial support to pregnant people seeking abortion, and with

organizations that advocate for policy changes to improve the reproductive health of Michiganders. MSFC also supports residents through the Training to Competence Externship funding program, which provides medical residents with financial and logistical support for receiving clinical abortion training outside of their program's standard curriculum.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

22. MSFC members learn how to provide abortion care and counsel patients in a holistic fashion, including how to obtain individualized informed consent. In addition, MSFC members in Michigan are trained to treat patients, especially those from underserved communities, with compassion, care, and cultural literacy.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

23. MSFC's members training in Michigan are harmed by restrictions on abortion care that undermine the standard of care and create health inequities in reproductive health as are their patients. MSFC must make up the difference in training when their members are exposed to training environments that are inconsistent with the best evidence-based medicine.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

B. Defendants

24. Defendant Dana Nessel is the Attorney General of Michigan. She is responsible for defending Michigan laws against constitutional challenges. MCL 14.28-14.30; Const 1963, art 5, §§ 1, 3. The Attorney General also acts in a representative and advisory capacity with respect to Michigan administrative agencies, including the Michigan Department of Licensing and Regulatory Affairs (“LARA”). The Michigan Attorney General is sued in her official capacity, as are her agents and successors.

ANSWER: Admitted that Defendant Dana Nessel is the Attorney General of Michigan. The remaining allegations in this paragraph are legal conclusions to which no response is deemed necessary.

25. Defendant Marlon I. Brown is the Acting Director of LARA. Defendant Brown is sued in his official capacity, as are his agents and successors.

ANSWER: Admitted that Defendant Marlon I. Brown is the Acting Director of LARA. The remaining allegations in this paragraph are legal conclusions to which no response is deemed necessary.

26. Elizabeth Hertel is the Director of the Michigan Department of Health and Human Services. Defendant Hertel is sued in her official capacity, as are her agents and successors.

ANSWER: Admitted that Defendant Elizabeth Hertel is the Director of the Michigan Department of Health and Human Services. The remaining allegations in this paragraph are legal conclusions to which no response is deemed necessary.

IV. THE RFFA

27. The constitutional protections afforded by the RFFA form a powerful bulwark against medically unjustified government intrusion and discrimination that confers broad protections for individual reproductive freedom and equality.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan's Constitution and laws speak for themselves and any allegations inconsistent with Michigan's Constitution are denied.

28. The RFFA passed with overwhelming support from the people of Michigan. It is among the most robust protections for reproductive freedom in the nation.

ANSWER: Admitted only that Article I, Section 28 of the Michigan Constitution was passed by initiative. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations inconsistent with Michigan’s Constitution are denied. Further, to the extent this paragraph contains factual assertions, neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

29. Under the RFFA, “[e]very individual has a fundamental right to reproductive freedom, which entails the right to make and effectuate decisions about all matters relating to pregnancy, including but not limited to prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and infertility care,” and “[t]he state shall not discriminate in the protection or enforcement of this fundamental right.” Const 1963, art I, § 28 (1), (2).

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution speaks for itself and any allegations inconsistent with Michigan’s Constitution are denied.

30. The RFFA demands that “[a]n individual’s right to reproductive freedom shall not be denied, burdened, nor infringed upon unless justified by a compelling state interest achieved by the least restrictive means.” Const 1963, art I, § 28 (1). The RFFA specifically defines a state interest as compelling “only if it is for the limited purpose of protecting the health of an individual seeking care,

consistent with accepted clinical standards of practice and evidence-based medicine, and does not infringe on that individual’s autonomous decision-making.” *Id.* § 28 (4).

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution speaks for itself and any allegations inconsistent with Michigan’s Constitution are denied.

31. Further, because the RFFA also prohibits “discriminat[ion] in the protection or enforcement” of the fundamental right to reproductive freedom, abortion restrictions cannot single out abortion for discriminatory treatment or disproportionately harm certain groups, such as protected classes.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution speaks for itself and any allegations inconsistent with Michigan’s Constitution are denied.

V. FACTUAL BACKGROUND

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

32. Abortion is one of the safest medical procedures performed in the United States. [Footnote omitted.] Leading medical authorities, including the American College of Obstetricians and Gynecologists (“ACOG”), the American Medical Association (“AMA”), the National Academies, the American Academy of Family Physicians, the American Academy of Pediatrics, and the American

Osteopathic Association, have all concluded that abortion is one of the safest procedures in contemporary medical practice. In its comprehensive report, the National Academies concluded that aspiration and medication abortions “rarely result in complications” and do so at rates of “no more than a fraction of a percent.” [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

33. By comparison, vasectomy, a procedure that, like abortion, is frequently performed in a physician’s office as a part of reproductive healthcare, has a two percent complication rate, more than double that of abortion.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

34. In the first trimester of pregnancy, abortions are performed via medication or procedure. Medication abortion is generally available through 11 weeks LMP. Medication abortion is administered orally, typically with two medications. Patients take the first medication, mifepristone, which stops the pregnancy from growing, and then a second medication, misoprostol, up to 48 hours later, which allows patients to pass the contents of the uterus in a process similar to a miscarriage. Medication abortion is comparable in safety to ibuprofen and acetaminophen. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

35. Abortion by procedure in early pregnancy is performed by aspiration, also referred to as “suction curettage.” This is a straightforward outpatient procedure through which a clinician removes the contents of the uterus with gentle suction. Procedural abortion is sometimes referred to as “surgical” abortion, although no incision is made. Because there is no incision and instruments are introduced through a body cavity, aspiration abortion does not need to be performed in a sterile operating room. Nor does an aspiration procedure require general anesthesia. The procedure typically takes about five to ten minutes.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

36. Starting around 14 weeks LMP, clinicians use forceps or other instruments in addition to gentle suction to remove the contents of the uterus, a procedure known as dilation and evacuation or “D&E.” Because of its impressive safety record and simplicity, D&E procedures are the most commonly used method of abortion after 14 weeks LMP. D&E is a quick procedure, typically lasting under 10 minutes. Depending on the patient and the method of cervical preparation, abortion providers can perform D&E as a one or two-day procedure. D&E is

routinely and safely provided in outpatient, office-based settings nationwide, and generally involves no more than moderate sedation. D&E also requires no incision.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

37. The very same medications and procedures used in the context of abortion are used to treat patients experiencing a miscarriage.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

38. Induction abortion is the only medically proven alternative to aspiration abortion and D&E available throughout the second trimester. As the name implies, induction abortion involves medications that cause the uterus to contract and the patient to undergo labor. Second trimester induction abortions are very uncommon in the United States because they usually take place in hospitals or similar facilities, last between 8 and 36 hours, and entail contractions and the process of labor, which can be painful and require strong medications, sedatives, or anesthesia. There is also a significant cost difference between an inpatient procedure requiring multiple days of hospitalization and an outpatient procedure such as a D&E.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

39. Abortion is far safer than carrying a pregnancy to term, and it has an exceptionally low rate of complication. The risk of mortality of childbirth is 14 times higher than that associated with abortion. [Footnote omitted.] Pregnancy complications are also extremely common. They include preeclampsia, a condition that impacts the brain, kidneys, heart, and lungs, and can lead to stroke, seizure, kidney failure, liver failure, and hemorrhage. There are numerous maternal conditions that pose a substantial mortality risk in pregnancy, including pulmonary hypertension and maternal cardiac disease, some with mortality risks as high as 50 percent. [Footnote omitted.] Many pregnant individuals suffer from gestational diabetes, cardiovascular risk factors, or hypertension and preeclampsia, and these conditions disproportionately impact Black women and other people of color. [Footnote omitted.] Pregnancy can also exacerbate mental health conditions, including during the post-partum period.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

40. Most people who access abortion care are living in poverty, making up around 75% of people who have abortions due to systemic inequities in health and

healthcare access. [Footnote omitted.] A large majority of Northland’s patients qualify for some kind of financial assistance.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

41. People seeking an abortion do so for a wide variety of personal reasons, including familial, medical, and financial reasons. Nearly one in four women in the United States will have had an abortion by the time they are 45 years old.

[Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

42. People of all religious faiths have abortions: 24% are Roman Catholics; 17% are mainline Protestants; 13% are evangelical Protestants; and 8% belong to other faith traditions. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

43. Most abortion patients already have children. Nationally, three-fourths of abortion patients cite responsibility to other individuals (such as children or elderly parents) as a reason for terminating their pregnancy. Many also say they

cannot afford to become a parent or to add to their families, and that having a child would interfere with work, school, or the ability to care for dependents.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

44. Other abortion patients are experiencing intimate partner violence and may face additional threats to their safety and wellbeing if their partner becomes aware of their pregnancy or desire to obtain an abortion; many such patients fear that being forced to carry a pregnancy to term would further tether them to their abusers. Studies show that women who carry an unwanted pregnancy to term are less likely to leave an abusive relationship because of that connection to their abuser. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

45. Some patients seek abortions because they have become pregnant as a result of rape or incest.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

46. Some patients decide to have an abortion because their pregnancy has been diagnosed with a condition that means even if a baby is delivered, it would

never be healthy enough to go home. Some abortion patients with high-risk pregnancies have complications that lead them to end their pregnancies to preserve their own life or health. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

47. Whatever a patient's reason, accessing abortion is essential to their autonomy, dignity, and ability to care for themselves and their families. Becoming a parent against one's will leads to worse psychological, physical, and economic outcomes than those of pregnant people who are able to access wanted abortion care. A person forced into parenthood is more likely to experience poverty, health difficulties, and physical violence, as are their families. [Footnote omitted.] Studies show worse child development outcomes for children of women who have been denied an abortion, and children born out of abortion denial are more likely to live below the federal poverty guidelines compared to children born from a subsequent pregnancy to women who received a wanted abortion. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

48. In sum, access to abortion is an essential component of comprehensive healthcare, and it is key to facilitating equal participation in society of pregnant Michiganders, including in the economic and social fabric of Michigan.

Michiganders must be able to make autonomous personal decisions about whether and when to have children, and they have now enshrined that right in the broadest terms in their state constitution.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

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

49. Abortion is subject to restrictions inapplicable to any other form of healthcare provided in Michigan.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, this paragraph is denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

50. Decades of legislation siloed abortion from all other areas of medicine in the state. In 1988, the anti-abortion organization Right to Life of Michigan led

citizen petition drives that prohibited Medicaid funding for abortion, MCL 400.109a.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations inconsistent with Michigan’s Constitution or Michigan’s laws are denied. Further, to the extent this paragraph contains factual assertions, neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

51. In 1993, the Legislature enacted the Challenged Laws. [Footnote omitted.] Those requirements were modified repeatedly over time through litigation, settlement, and further legislation. [Footnote omitted.]

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations inconsistent with Michigan’s Constitution or Michigan laws are denied.

52. In 2012, the legislature passed H.B. 5711, known as the Abortion Omnibus Bill, which consolidated 7 previously introduced bills and created onerous and unnecessary facilities requirements, among other harms. [Footnote omitted.]

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

53. Piling on, in 2013, the State mandated that all abortions other than to avert a patient’s death could be covered in healthcare plans only by optional riders, even in cases of rape and incest. Act 182 of 2013, codified as MCL 550.541-550.551.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged

Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied.

54. Today, while some of the harmful laws mentioned above have been repealed, the 24-Hour Delay, Mandatory Biased Counseling, and Provider Ban have not, despite the fact that they are among the most burdensome restrictions for patients and directly interfere with their access to abortion and decision-making.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

55. The legislative overlay created by the Challenged Laws, applicable solely to abortion services, is unique among all other medical care in Michigan.

Pregnant patients who are not seeking abortions are not similarly restrained from obtaining the pregnancy care they require. So too, no other Michiganders experience equivalent barriers when seeking any other comprehensive reproductive or other health care—even services that are not constitutionally protected. Only pregnant individuals, and specifically those seeking abortions, are singled out in this way.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, this paragraph is denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

56. No other patients are forced to delay essential and time-sensitive healthcare or forced to consume non-individualized, irrelevant, and stigmatizing information. The State does not attempt to dissuade other people seeking healthcare from choosing care that is best for them. In no other area of healthcare are qualified trained clinicians specifically barred from providing services consistent

with their training and experience. There is nothing like the Challenged Laws anywhere else in Michigan's regulation of healthcare and for obvious reason. Abortion was singled out because of opposition to it and for no health-related reason at all.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, this paragraph is denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan's informed consent law and 24-hour waiting period ensure that an individual's right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. "If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed." *Council of Organizations*, 455 Mich at 568.

57. These restrictions also promote stereotyped notions that motherhood is the preferred, natural, and proper state for Michiganders who become pregnant, and that they are not capable of making decisions about the timing, number, and spacing of children, but rather must be protected from the consequences of making decisions others see as wrong. They also reflect the blatant falsehood that abortion is unsafe when it is among the safest healthcare available in the U.S.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, this paragraph is denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

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

58. There are significant disparities in access to abortion nationally and in Michigan, specifically. People who already face significant barriers to healthcare access, including Black women and other people of color, indigenous people, people living on low incomes, and rural people, face disproportionate barriers in accessing abortion. These disparities are particularly significant in Michigan because of the challenges these communities have historically faced in the state.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

59. About 87% of Michigan counties have no abortion clinics, but over one-third of Michiganders of reproductive capacity live in these counties. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

60. Michigan has large rural areas that make transportation difficult. The Upper Peninsula and northeastern Lower Peninsula do not contain a single urban county. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

61. Traveling to an abortion clinic may pose extreme difficulties for people of color, indigenous people, low-income people, and rural people who lack access to public transportation or their own household vehicle. Around 18% of Black households in Michigan do not have access to a car. [Footnote omitted.] In addition, low-income people and people of color already live in public transit deserts. “Michiganders who take public transportation spend an extra 67.7% of their time commuting and non-White households are 5.6 times more likely to commute via public transportation. 17% of trains and other transit vehicles in the state are past useful life.” [Footnote omitted.] Research consistently shows that access to abortion care is sensitive to increases in logistical burdens—even small increases in travel distance or congestion at abortion facilities due to reduced access can stop people from getting care and force them to carry an unwanted pregnancy to term. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs. To the extent that Plaintiffs' allegations cite to State of Michigan webpages, those pages speak for themselves and any representations inconsistent with those webpages are denied.

62. Struggling families in Michigan also do not have adequate access to general healthcare, prenatal and post-natal care, parental leave, childcare, lactation support, and accommodations for disabilities. In Michigan, more women than men are impoverished. [Footnote omitted.] Moreover, a large proportion of these struggling families are Black. Between 2018 and 2020, 35% of Black Michiganders lived in poverty, more than twice the overall Michigan poverty rate and far higher than the national Black poverty rate (20.8%). [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

63. In Michigan, more than half of abortion patients are Black. [Footnote omitted.] The majority of Northland's patients are Black women or other people of color. That abortion restrictions fall hardest on communities of color is no accident. Abortion restrictions are part and parcel of America's history of reproductive and sexual control policies targeting pregnant individuals, especially Black and indigenous women. Reproductive control policies have been used to systematically

deprive pregnant individuals of the liberty to make decisions about when, whether, and under what conditions to birth and raise children. These state-sanctioned policies have included enslavement and forced birth, the removal of children from their families and cultures, sterilization, and contraception and abortion restrictions. [Footnote omitted.] The impact of these harms over time can be felt in today's entrenched inequities in health and access to healthcare. As a result, today's abortion restrictions cut deepest into communities that have suffered generations of reproductive coercion and discrimination.

ANSWER: To the extent that Plaintiffs' allegations cite to State of Michigan webpages, those pages speak for themselves and any representations inconsistent with those webpages are denied. This paragraph contains legal conclusions to which no response is deemed necessary. As for the remaining factual assertions, neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

64. One of the most devastating manifestations of these inequities is the maternal health crisis affecting Black women and other people of color. Forcing these communities to experience unnecessary burdens and delays in accessing reproductive healthcare or to carry unwanted pregnancies perpetuates systemic discrimination by worsening the maternal mortality crisis and exacerbating racial health disparities. According to a recent report by the World Health Organization, our country is one of only 13 countries worldwide with a rising maternal mortality

rate and is the only country with an advanced economy where the rate is worsening.

[Footnote omitted.] In Michigan, maternal mortality is dramatically worse for Black women than white women. Between 2014 and 2018, Black women were approximately 2.8 times more likely to die from pregnancy-related causes.

[Footnote omitted.] This racial disparity is even higher in Detroit. In general, the maternal death rate in Detroit is three times the national average. But pregnant Black women in Detroit are at even greater risk; they are 4.5 times more likely to die than white women. [Footnote omitted.]

ANSWER: To the extent that Plaintiffs' allegations cite to State of Michigan webpages, those pages speak for themselves and any representations inconsistent with those webpages are denied. As for the remaining factual assertions, neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

65. Pregnancy carries numerous risks of complications and conditions that pose a substantial mortality risk, such as preeclampsia, pulmonary hypertension and maternal cardiac disease, some with mortality risks as high as 50 percent. These conditions affect Black women at higher rates than white women. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

66. Nationwide, maternal morbidity also reflects racial inequality.

[Footnote omitted.] Maternal morbidity refers to cases in which a pregnant person faces a life-threatening diagnosis or must undergo a life-saving medical procedure—like a hysterectomy, blood transfusion, or mechanical ventilation—to avoid death.

[Footnote omitted.] For every maternal death in the country, there are close to 100 cases of severe maternal morbidity. [Footnote omitted.] Black women are twice as likely as their white counterparts to suffer severe maternal morbidity. [Footnote omitted.] Indeed, Black women have the highest rates for 22 of 25 severe morbidity indicators used by the Center for Disease Control (“CDC”). [Footnote omitted.]

Delivery through cesarean section, which carries risks of hemorrhage, infection, and injury to internal organs, is also more common among Black than white women.

[Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

67. For people with existing medical co-morbidities, forced pregnancy results in more high-risk pregnancies and increased risk for severe maternal morbidity and mortality. Such severe maternal morbidity and mortality disproportionately affects Black women. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

68. Research shows that the stress of racism itself creates a “weathering” effect that may lead to poor health outcomes, including the development of chronic conditions. [Footnote omitted.] During pregnancy, these health risks increase for Black individuals because they disproportionately face systemic racism, poverty, provider bias, and lack of access to prenatal and post-natal care. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

69. In addition, a person’s ability to access abortion has consequences not only for that person, but also for a whole network of other people who rely on those individuals. In Michigan, two-thirds of abortion patients have already given birth, and over 40% have given birth at least twice. A vast number of Michigan families with children live in a single parent household— 33.5%. [Footnote omitted.] In addition, in the U.S., 16.9% of Black women provide unpaid eldercare. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

70. Being able to choose when and whether to be pregnant and parent a child is tied to the overall economic and social health of communities, and this is particularly so for Black communities given the structural barriers to equality they

face. Restricting abortion thus impacts the ability of communities of color to advance in Michigan by inhibiting access to education and higher income employments.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

VI. THE CHALLENGED LAWS VIOLATE THE RFFA

96. The Challenged Laws are comprised of two statutes that violate the RFFA by intruding on an individual’s constitutional right to abortion without any justification, much less a compelling one, and doing so in discriminatory ways. MCL 333.17015, 333.17015a. The Challenged laws “den[y], burde[n],” and “infringe[]” the right to abortion without serving—in any way—the “limited purpose of protecting the health of an individual seeking care.” Const 1963, art I, § 28. Each is “[in]consistent with accepted clinical standards of practice and evidence-based medicine.” *Id.* § 28(4). And each law intrudes “on [an] individual’s autonomous decision-making.” *Id.* Further, they all cause significant harm to pregnant Michiganders.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged

Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied.

97. The RFFA also prohibits “discriminat[ion] in the protection or enforcement of this fundamental right,” *id.*, such that restrictions on reproductive freedom cannot stand if they privilege some reproductive choices over others, including by subjecting abortion to unique restrictions not applicable to other pregnancy care. Restrictions on abortion also cannot disproportionately harm certain groups, such as Black women and other people of color.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

A. The 24-Hour Delay.

65. The 24-Hour Delay forces patients to wait a minimum of 24 hours after receiving the Mandatory Biased Counseling before they can obtain an abortion. Far

from benefiting patients, delay pushes patients seeking abortion care to obtain that care later in pregnancy or, in some cases, not at all. Moreover, because the 24-Hour Delay causes patients to delay care, providers in Michigan are prevented from encountering patients in the best position for care and from providing abortion care that is timely and medically and scientifically indicated.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

66. The majority of patients meet the requirements to trigger the 24-hour delay period by accessing a website maintained and operated by the Michigan Department of Health and Human Services. The website requires that a patient

read and click through several pages of information— on the procedure, on gestational age and fetal development, and on prenatal care and parenting— which then prompts the patient to sign an acknowledgement and consent form. MCL 333.17015(5).

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied.

67. Patients who access the website are required to print a “confirmation form from the website that the patient has reviewed” this information “at least 24 hours before an abortion being performed on the patient” and “supply the valid confirmation” to the provider. MCL 333.17015(5). This printing requirement, itself, imposes extra burdens on abortion patients.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied. Further, to the extent this paragraph contains factual assertions, neither admitted

nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

68. Mandatory delay periods like Michigan’s are purportedly justified on the basis that they help patients be more certain about their decision to have an abortion and prevent regret and mental health harms. [Footnote omitted.] Indeed, § 333.7015 requires the Michigan Department of Health and Human Services to create materials that inform patients of risks of “depression” and “feelings of guilt.” MCL 333.17015(11)(b)(iii). But a robust body of research demonstrates that most women seeking an abortion in the United States are already certain of their decision by the time they present for care and that mandatory delays do not improve certainty. [Footnote omitted.] Further, decades of empirical research looking at the effects of abortion on women’s mental health have found that there is no evidence that safe, legal abortion care harms a woman’s mental health, whether due to regret or anything else. [Footnote omitted.]

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s

informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

69. Abortion providers are trained to provide individualized informed consent counseling. MSFC’s programs, for example, provide such training and teach about how to counsel patients holistically, including by assessing their certainty and encouraging them to take as much time as they need.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

70. Northland reports that they have never seen the 24-Hour Delay benefit a single patient. The vast majority of Northland’s patients are certain of their decision well before they walk through Northland’s doors. And Northland’s holistic counseling and informed consent process ensures that patients are informed about their care and that Northland addresses their needs in an individualized manner. For patients who are uncertain, they can take all the time they need to come to a decision. Like any quality healthcare provider, Northland does not provide services to people who are undecided about receiving care.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

71. While abortion is extremely safe, delay incrementally increases the risks and complexity of abortion. Forcing pregnant people to delay abortion care is thus detrimental to their health and exposes them to greater risks with no medical justification. [Footnote omitted.] For this reason, the National Academies recommends that abortion be performed “as early in pregnancy as possible,” and considers timeliness one of the core dimensions of high quality care. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

72. In addition, studies have found that mandatory delay laws exacerbate the burdens that people experience in seeking abortion care, including by increasing costs, prolonging wait times, increasing the risk that a woman will have to reveal her decision to others, and potentially preventing a woman from having the type of abortion that she prefers or any abortion at all. [Footnote omitted.] Mandatory waiting periods can place additional emotional burdens on women, causing them increased anxiety and discomfort. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

73. For example, a 2009 literature review of studies evaluating the impact of mandatory counseling and waiting period laws concluded that such laws are likely to increase both the personal and financial costs of obtaining an abortion, which may prevent some women from accessing abortion services altogether. [Footnote omitted.] The review also found that such laws may delay women who are seeking abortions and result in a higher proportion of second-trimester abortions. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

74. Delay can mean that some pregnant people become ineligible for the abortion method most appropriate for them, and instead must undergo a more invasive, more expensive, and/or lengthier abortion procedure. Medication abortion, which is preferred by many, and is the most common method of abortion in the United States, is available at Northland only up to 11 weeks, and even a short delay can push patients outside this window. Delay can also mean that people become ineligible for a first trimester abortion (available up to 13 weeks, 6 days LMP), and are forced to incur substantially higher costs to obtain a second trimester abortion. Later in pregnancy, procedural abortion becomes more complex—as pregnancy

advances beyond approximately 14 weeks, it can become a two-day procedure to accomplish advanced dilation of the cervix.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

75. The 24-Hour Delay’s impacts are particularly severe for those who already face systemic barriers to accessing care, including Black women and other people of color, indigenous people, low-income people, and rural people, which makes the impact of the delay on these groups particularly severe. And it can be very difficult for people living on low incomes to take time off work and arrange childcare. People without means already face burdens in saving enough money to afford a first trimester procedure. For patients who struggle to afford a first trimester procedure, a second trimester procedure could be financially out of reach. Most patients who access abortion at Northland require some kind of financial assistance.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

76. The printing requirement is particularly burdensome as most of Northland’s patients don’t have printers or computers at home—most use a smart phone as their sole device. Northland reports that at least 10 patients a month are waylaid by this requirement. They come in for care, but are told that they need to

sign a physical copy of the acknowledgement and consent form and then are forced to wait another 24 hours.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

77. Delays are all the more problematic in the post-Roe world, where people are traveling long distances to seek care in the states where abortion remains legal.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

78. Further, the 24-Hour Delay impedes medical training for MSFC's members because the requirement is devoid of a scientific basis and inconsistent with the standard of care. When medical students or residents navigate a restriction to medical care that does not benefit patient outcomes and is not based in science, they are no longer learning medicine in an environment that is consistent with best educational practices.

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

79. Michigan does not impose any such mandatory delay on any other procedures, including medical procedures that pose far greater risks than abortion.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied.

80. For all of these reasons, the 24-Hour Delay violates the fundamental constitutional right to abortion enshrined in the RFFA. And, because it discriminates against people who seek one form of reproductive healthcare and disproportionately impacts communities of color, low- income people, rural people, and others who face systemic barriers to healthcare access, it also violates RFFA’s prohibition on discrimination. Further, the requirement harms Northland and MSFC individually by undermining the provision of evidence-based care and evidence-based medical training.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or laws are denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s

informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

B. The Mandatory Biased Counseling.

81. This one-size-fits-all requirement that providers dispense the State’s version of relevant information does not provide any medical benefit and actually thwarts the true goals of informed consent, which is inherently individualized. State-mandated counseling also undermines autonomous decision-making. The Mandatory Biased Counseling forces providers to tell patients information that is unnecessary, irrelevant, inaccurate, and/or stigmatizing—all for the purpose of dissuading people from choosing to have an abortion. The requirement damages patient-provider trust and takes time and attention away from information targeted at the individual patient’s needs. The requirement also undermines medical training, as MSFC members are forced to learn how to counsel patients in a legal context that does not support learning the best evidence-based counseling and informed consent practices.

ANSWER: Denied, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her

fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

82. The statute requires that an abortion provider must—not less than 24 hours before performing an abortion—(1) confirm the patient is pregnant and determine the probable gestational age of the fetus; (2) orally describe to the patient the gestational age, information about what to do should any complications arise from the abortion, and information about how to obtain pregnancy prevention resources; and (3) provide the patient with physical copies of the following: a summary of the procedure, a medically accurate depiction of a fetus at the gestational age nearest the probable gestational age of the patient’s fetus, a prenatal care and parenting information packet, and a prescreening summary on prevention of coercion to abort. MCL 333.17015(3).

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s laws speak for themselves and any allegations inconsistent with Michigan’s laws are denied.

83. In addition, after a patient arrives for their appointment, before obtaining the patient’s signature on the acknowledgement and consent form, “a physician personally . . . shall” (1) confirm that the patient has received a screening on coercion to abort; (2) inform the patient of the right to withhold or withdraw

consent at any time before performance of the abortion; and (3) orally describe risks of any complications associated with abortion as well as risks of any complications that could arise should the patient choose to continue the pregnancy. *Id.*

333.17015(6).

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s laws speak for themselves and any allegations inconsistent with Michigan’s laws are denied.

84. The Mandatory Biased Counseling is at odds with the standard of care, which requires an unbiased, individualized informed consent process. The standard of care before providing any abortion is to provide patients with information that is necessary and relevant to their decision-making, including risks, benefits, and alternatives, afford the opportunity to ask questions, and ensure that the patient is certain of their decision. Abortion providers like Northland are guided by ethical principles and professional standards in informing their patients with accurate, adequate, and understandable information that is individualized and medically relevant.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s laws speak for themselves and any allegations inconsistent with Michigan’s laws are denied. Further, to the extent this paragraph contains factual assertions, neither admitted nor denied as

Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

85. According to ACOG, “[t]he highest ethical standard for adequacy of clinical information requires that the amount and complexity of information be tailored to the desires of the individual patient and to the patient’s ability to understand this information.” [Footnote omitted.] As a result, ACOG opposes laws that “interfere with the ability of physicians to have open, honest, and confidential communications with their patients.” [Footnote omitted.] Laws that “interfere with the patient’s right to be counseled by a physician according to the best currently available medical evidence and the physician’s professional medical judgment” are contrary to informed consent. [Footnote omitted.] Indeed, “[e]xamples of legislative interference in the informed consent process include state-mandated consent forms” and “laws that require physicians to give, or withhold, specific information when counseling patients before undergoing an abortion.” [Footnote omitted.]

ANSWER: The cited documents speak for themselves and statements inconsistent with the cited documents are denied. Further answering, it is denied that any of the challenged laws do any of the things discussed in this paragraph, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the

existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

86. Informed consent is grounded in respect for patient autonomy—its purpose is to ensure that patients have control over their own bodies and can make their own healthcare decisions. A respectful informed consent process is critical to establishing trust between patients and providers. Non-medical, inaccurate, irrelevant, or biased information undermines these principles. Conveying the state’s disapproval of a patient’s healthcare choices is the antithesis of informed consent, as is forcing patients to consume uniform information not tailored to their individual circumstances.

ANSWER: Intervening defendant respects patient autonomy, and it denies that any of the cited laws burden or interfere with this autonomy. All remaining allegations are denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

87. Northland reports that they have never seen the Mandatory Biased Counseling benefit a single patient. Rather, the requirement is a needless overlay that takes time away from the actual, holistic counseling Northland does with each patient. When MSFC provides and facilitates training for its members, it needs to ensure that they are learning how to counsel patients via the best evidence-based methods. Forcing providers to dispense and patients to consume unnecessary, misleading, inaccurate, and/or stigmatizing information is not consistent with evidence-based medicine.

ANSWER: It is specifically denied that providers are forced “to dispense and patients to consume unnecessary, misleading, inaccurate, and/or stigmatizing information . . . not consistent with evidence-based medicine.” Further factual assertions are neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

88. The Mandatory Biased Counseling contains extensive fetal imagery and is heavily weighted toward encouraging continuing a pregnancy. These materials are designed to induce shame and persuade people to change their mind about having an abortion regardless of their personal circumstances. According to providers, the fetus in the image included in the mandatory materials is often more developed than an actual fetus, making this information inaccurate, misleading, and even disturbing.

ANSWER: The allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

89. MCL 333.17015 also requires the Michigan Department of Health and Human Services to create materials that inform patients of risks of “depression” and “feelings of guilt” and “[i]dentify services available through public agencies” should a patient “experience subsequent adverse psychological effects from” an abortion. *Id.* 333.17015(11)(b)(iii), (vii). But people are not more likely to experience depression after having an abortion. [Footnote omitted.] They are, however, more likely to experience lower self-esteem, lower life satisfaction, and more anxiety symptoms if they cannot access a wanted abortion. [Footnote omitted.]

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and

reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

90. Further, most people who have abortions are already parents. It is particularly inappropriate to inundate these patients with materials on prenatal care and parenting. The information is cruel to those with much wanted pregnancies who choose to have an abortion because of a severe diagnosis.

ANSWER: The allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

91. Patients must also be “screened” for coercion via a uniform set of requirements under the challenged statute. MCL 333.17015a. But providers already ensure that patients are not facing coercion. Further, for patients experiencing intimate partner violence who choose abortion to avoid being further tethered to their abuser, this screening can be upsetting and a grave interruption in the trust they have with their provider.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

92. No other form of healthcare in Michigan is subject to an overlay of uniform materials and information, much less information that is biased and designed to discourage people from accessing care. Healthcare providers in every other area of medicine in Michigan obtain informed consent through an individualized process in line with the standard of care for their specialties and their ethical obligations.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and

reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

93. Further, Black women and other people of color, indigenous people, low-income people, and rural people, among others who face systemic barriers to healthcare access are disproportionately impacted by stigma and coercion based on the history of discrimination they have faced, including within the healthcare system. The Mandatory Biased Counseling undermines the patient-provider relationship, which reinforces the ways these communities have already had their reproductive choices manipulated.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

94. For all of these reasons, the Mandatory Biased Counseling violates the fundamental constitutional right to abortion enshrined in the RFFA. And because it discriminates against people who seek one form of reproductive healthcare and disproportionately impacts communities of color, low-income people, rural people, and others who face systemic barriers to healthcare access, it also violates the RFFA's prohibition on discrimination. Further, the requirement harms Northland and MSFC individually by undermining the provision of evidence-based care and evidence-based medical training.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan's Constitution and laws speak for themselves and any allegations that Michigan's Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan's Constitution or laws are denied. To the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan's informed consent law and 24-hour waiting period ensure that an individual's right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. "If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed." *Council of Organizations*, 455 Mich at 568.

C. The Provider Ban.

95. The Challenged Laws also include a “physician only” provision that thereby bans health care providers who are not physicians from providing abortions, *i.e.*, the Provider Ban. MCL 333.17015 (a “*physician* shall not perform an abortion . . . without the patient’s informed written consent . . .”) (emphasis added).

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s laws speak for themselves and any allegations inconsistent with Michigan’s laws are denied.

96. But for the Provider Ban, Northland and other providers in Michigan could hire Advanced Practice Clinicians (“APCs”) like Certified Nurse Midwives (“CNMs”), Nurse Practitioners (“NPs”), and Physician Assistants/Associates (“PAs”) to provide early abortions and thus greatly expand available services and appointments. Hiring APCs to provide abortions would also free up physician time for more complex care. The increased availability of procedural care is particularly important in the post-Roe world because so many patients are traveling long distances.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, this paragraph is denied as Michigan’s laws speak for themselves and any allegations inconsistent with Michigan’s laws are denied. Further, to the extent this paragraph contains factual assertions, neither admitted nor denied as Intervening Defendant lacks information sufficient

to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

97. APCs are highly qualified clinicians who, based on advanced education and training, have a broad scope of practice, including extensive prescriptive authority and the ability to perform a range of complex medical procedures. APCs routinely provide abortions in other states, including in California, Colorado, Illinois, Maine, Montana, New Hampshire, New York, Oregon, Vermont, Virginia, Washington, Connecticut, Hawaii, Maryland, New Jersey, Rhode Island, and the District of Columbia.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, this paragraph is denied as the cited jurisdictions' laws speak for themselves and any allegations inconsistent with those laws are denied. Further, to the extent this paragraph contains factual assertions, neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

98. Research shows no difference in outcomes between an early abortion provided by an APC and one provided by a physician. [Footnote omitted.]
Complication rates and other safety measures are the same. [Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

99. For these reasons, every mainstream professional organization to weigh in on APCs providing abortions has affirmed that these clinicians should not be prohibited from providing abortion care. ACOG published an opinion in December 2020 calling for the repeal of requirements that only physicians or obstetrician-gynecologists provide abortion care and stating that the literature supports that “trained advanced practice clinicians can safely provide abortion services.” [Footnote omitted.] The American Public Health Association issued a Policy Statement in 2011 stating, “[t]here is evidence that with appropriate education and training, NPs, CNMs, and PAs can competently provide all components of medication abortion care (pregnancy testing counseling, estimating gestational age by exam and ultrasound, medical screening, administering medications, and postabortion follow-up care)[.]” [Footnote omitted.] It recommended that APCs be engaged in the provision of early abortions and that scope-of-practice regulations should align with this recommendation. [Footnote omitted.] The World Health Organization similarly recommends that medication abortion be managed by “traditional and complementary medicine professionals, nurses, midwives, associate/advanced associate clinicians, generalist medical practitioners and specialist medical practitioners” as well as community health workers, pharmacy workers, and patients themselves. [Footnote omitted.] The

National Academies concluded based on extensive research that a wide array of clinicians, including APCs, provide safe and effective medication and aspiration abortions consistent with training and experience. And it concluded that policies “establishing higher-level credentials than are necessary” thereby “reduce the availability of providers” and result in “inequitable access” to care, “limit patient preferences,” “impact[] patient-centered care,” and reduce “efficiency of care.”

[Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

100. There is no logical reason—let alone any reason related to patient health—to prevent APCs in Michigan from providing early abortion care consistent with their training and experience. In Michigan, APCs manage early miscarriages with *the very same techniques* they could use for patients seeking abortion. APCs’ prescriptive authority includes risky controlled substances. Some APCs also provide far more complex care than abortion—CNMs provide obstetrical care, for example, and childbirth is far more dangerous than any method of abortion.

[Footnote omitted.]

ANSWER: Neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

101. While failing to advance patient health in any way, the Provider Ban contributes to logistical barriers by reducing the availability of abortion care. As mentioned above, as of 2022, 87% of Michigan counties had no abortion clinic. Over one-third of Michigan women and people of reproductive age live in these counties. [Footnote omitted.] This deficiency is particularly dire in the predominantly rural Upper Peninsula and northeastern Lower Peninsula. [Footnote omitted.] Because APCs are more likely to provide medical care in rural areas and other medical deserts, allowing them to provide abortions to the extent of their training and competence would likely give Michiganders more locations to obtain abortion care. Preventing qualified providers from entering the field (because the law disfavors abortion) disproportionately affects those who already struggle to access care, including Black women and other people of color, indigenous people, low-income people, and rural people. This further exacerbates the effects of poor maternity care generally. As of 2015, Michigan's 57 rural counties only had 29 hospitals providing maternity care. [Footnote omitted.]

ANSWER: This paragraph contains legal conclusions to which no response is deemed necessary. To the extent a response is required, neither admitted nor denied as Intervening Defendant lacks information sufficient to form a belief about the truth of the allegation and leaves Plaintiffs to their proofs.

102. For all of these reasons, the Provider Ban violates the fundamental constitutional right to abortion enshrined in the RFFA. And because it

discriminates against one form of reproductive healthcare—including by barring APCs from providing identical care to abortion patients that they already provide to miscarriage patients—the Provider Ban also violates the RFFA’s prohibition on discrimination. It also discriminates because it disproportionately impacts communities of color, low-income people, rural people, and others who face systemic barriers to healthcare access. Further, the requirement harms Northland and MSFC individually by undermining the provision of evidence-based care and evidence-based medical training.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, Michigan’s Constitution and laws speak for themselves and any allegations that Michigan’s Constitution and the three challenged Michigan laws are inconsistent are denied, and any allegations inconsistent with Michigan’s Constitution or Michigan’s laws are denied. Further, to the extent this paragraph contains factual assertions, the allegations are denied, as Michigan laws protect the wellbeing of patients and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

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

103. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 102 above.

ANSWER: Intervening Defendant incorporates its above responses.

104. The Challenged Laws each violate Section (1) of the RFFA by denying, burdening, and infringing Michiganders’ fundamental right to reproductive freedom, which encompasses the right to abortion, without medical justification, and do so by imposing requirements that are inconsistent with the standard of care and that intrude on patients’ autonomous decision-making. Further, the Challenged Laws harm Northland and MSFC individually by undermining the provision of evidence-based care and evidence-based medical training.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, this paragraph is denied, as Michigan laws protect the wellbeing of patients, i.e., Michigan’s law that guarantees that doctors perform abortions protects the safety of Michigan’s residents and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the

existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

SECOND CLAIM FOR RELIEF

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

110. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 102 above.

ANSWER: Intervening Defendant incorporates its above responses.

111. The Challenged Laws violate Section (2) of RFFA by discriminating in the protection and enforcement of the right to reproductive freedom in at least two ways. First, each of the Challenged Laws singles out abortion providers and people seeking abortion from their counterparts in other areas of reproductive healthcare like obstetrical care. Second, each of the Challenged Laws visits particular harms on certain Michigan communities, including Black people and other people of color, indigenous people, low-income people, and rural people.

ANSWER: The allegations in this paragraph are legal conclusions to which no response is deemed necessary. To the extent a response is required, this paragraph is denied, as Michigan laws protect the wellbeing of patients, i.e., Michigan’s law that guarantees that doctors perform abortions protects the safety of Michigan’s residents and Michigan’s informed consent law and 24-hour waiting period ensure that an individual’s right to make and effectuate a decision of her fundamental right is informed, voluntary, and reflective. “If any state of facts reasonably can be conceived that would sustain a legislative act, the

existence of the state of facts at the time the law was enacted must be assumed.” *Council of Organizations*, 455 Mich at 568.

VII. REQUEST FOR RELIEF

- A. Issue a Declaratory Judgment that the Challenged Laws are unconstitutional because they violate the RFFA;
- B. Enjoin Defendants, their successors, agents, servants, employees, and attorneys, and all persons in active concert or participation with them, including all persons supervised by the Defendants, from enforcing the Challenged Laws preliminarily without bond and permanently;
- C. Grant such other and further relief as this Court deems just, proper, and equitable, including an award of costs and attorney’s fees to Plaintiffs.

ANSWER: This paragraph contains legal demands to which no response is deemed necessary. To the extent a response is necessary, the paragraph, and all its subparts, is denied, and it is requested that no relief be given to Plaintiffs.

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 on which relief can be granted.
- 3. Plaintiffs lack standing to sue.

4. This Court lacks Jurisdiction to hear this case.
5. Plaintiffs are barred from recovery of any damages, fees, or costs against the People of the State of Michigan.
6. The People of the State of Michigan reserve the right to assert additional affirmative and/or other defenses pending completion of discovery.

Respectfully submitted,

/s/ Kendell S. Asbenson

Kendell S. Asbenson (P81747)
Assistant Attorney General

B. Eric Restuccia (P49550)
John G. Fedynsky (P65232)
David W. Thompson (P75356)
Assistant Attorneys General
Attorneys for Intervening Defendant
The People of the State of Michigan
P.O. Box 30212
Lansing, MI 48909
(517) 335-7628

Dated: August 7, 2024