

**IN THE DISTRICT COURT OF
LANCASTER COUNTY, NEBRASKA**

PLANNED PARENTHOOD OF THE
HEARTLAND, INC. and SARAH
TRAXLER, M.D.,

Plaintiffs,

vs.

MIKE HILGERS, in his official
capacity as Attorney General for the
State of Nebraska; JIM PILLEN, in
his official capacity as Governor of the
State of Nebraska; DANNETTE
SMITH, in her official capacity as
Chief Executive Officer of the
Nebraska Department of Health and
Human Services; CHARITY
MENEFFEE, in her official capacity as
the Director of the Nebraska
Department of Health and Human
Services Division of Public Health;
and TIMOTHY TESMER, in his
official capacity as Chief Medical
Officer of the Nebraska Department of
Health and Human Services,

Defendants.

Case No. CI 23-_____

**COMPLAINT AND
PETITION FOR
DECLARATORY
AND INJUNCTIVE
RELIEF**

COME NOW Plaintiffs Planned Parenthood of the Heartland, Inc. (“PPH”) and Dr. Sarah Traxler, by and through undersigned counsel, and for their cause of action against the Defendants state as follows:

I. INTRODUCTION

1. Plaintiffs PPH and Dr. Traxler are abortion service providers and require immediate temporary and permanent injunctive relief from enforcement of a compounded Legislative Bill (“L.B.”) 574 because its abortion-related provisions took effect on May 23, 2023. Each day that passes, Plaintiffs are being forced to turn away patients seeking time-sensitive abortion services. Plaintiffs will face the loss of their medical licenses and could also be subject to civil and criminal penalties under Nebraska law with the enforcement of L.B. 574.

2. When Nebraska’s most recent legislative session began on January 4, 2023, lawmakers introduced more than eight hundred pieces of proposed legislation. L.B. 574, entitled the “Let Them Grow Act,” was introduced to prohibit gender-affirming care for youth under nineteen years of age (the “Original L.B. 574”). L.B. 626, or the “Nebraska Heartbeat Act,” was a wholly separate bill that was introduced to ban abortion after approximately six weeks of pregnancy.

3. Both bills went through the initial stages of the legislative process, but L.B. 626 failed to advance when it did not receive enough votes to pass the second round of debate on April 27, 2023. The Original L.B. 574, meanwhile, continued to advance to further rounds of debate.

4. In May 2023, however, a lawmaker introduced Amendment 1658 (the “Amendment”) to the Original L.B. 574. The Amendment proposed to add sections that resembled L.B. 626 in nearly every respect, except it banned abortion at 12 weeks, rather than six, measured from the first day of the last menstrual period (“LMP”).

5. Even though the Amendment was inserted into the Original L.B. 574, the abortion provisions of the Amendment were given a separate title: the “Preborn Child Protection Act.”

6. The Amendment logrolled two distinct and unrelated subjects into one combined bill, forcing lawmakers into an all-or-nothing bargain: to either vote for or against both proposals simultaneously (combined referred to as the “Compound L.B. 574”).

7. On May 16, 2023, the Nebraska Legislature adopted the Amendment, and the Compound L.B. 574 went forward.

8. On May 19, 2023, the Compound L.B. 574 narrowly passed in the Nebraska Legislature, and on May 22, 2023, it was signed into law by Governor Pillen. The abortion-related provisions of Compound L.B. 574 became effective as of May 23, 2023. The gender-affirming care provisions will not become operative until October 2023.

9. Article III, § 14 of the Nebraska Constitution requires that all bills have only one subject. The Compound L.B. 574 contains more than one subject and is unconstitutional under Article III, Section 14 of the Nebraska Constitution.

10. Plaintiffs pray for a declaration that Compound L.B. 574 is unconstitutional because it adopts two separate acts: one banning abortion after 12 weeks of pregnancy LMP and the other prohibiting gender-affirming care for youth under nineteen years of age in violation of Article III, § 14 of the Nebraska Constitution. PPH and Dr. Traxler also request temporary and permanent injunctive relief, their costs and attorneys' fees, and all other relief this Court deems proper.

II. JURISDICTION AND VENUE

11. This Court has jurisdiction over Plaintiffs' claims pursuant to Neb. Rev. Stat. § 24-302; §§ 25-21,149 through 25-21,164; § 25-1064 through 25,1064.02; and its inherent equitable authority to enforce the Nebraska Constitution.

12. Venue is proper in Lancaster County District Court pursuant to Neb. Rev. Stat. § 25-21,165, and § 25-403.01 because one or more Defendants reside here, the challenged law was adopted here, and Plaintiffs provide services regulated by the Compound L.B. 574 here.

III. PARTIES

A. Plaintiffs

13. Plaintiff Planned Parenthood of the Heartland ("PPH") is a not-for-profit corporation organized under the laws of Iowa and operating in

Iowa and Nebraska. In Nebraska, PPH operates health centers in Lincoln and Omaha, both of which provide a wide range of reproductive and sexual health services to patients, including but not limited to services such as cancer screenings, birth control counseling, human papillomavirus (HPV) vaccines, annual gynecological exams, contraception, adoption referral, and miscarriage management. Prior to the passage of Compound L.B. 574, the health centers provided medication abortion through 11 weeks and 0 days of pregnancy LMP and in-clinic abortion procedures through 16 weeks and 6 days LMP (collectively “abortion services”). Currently, with Compound L.B. 574 in effect, PPH is only able to provide abortion services through 11 weeks 6 days of pregnancy. PPH’s health centers are and must continue to be licensed by the Nebraska Division of Public Health of the Department of Health and Human Services as “health clinics” in order to provide abortions. Neb. Rev. Stat. § 71-416. PPH relies on physicians licensed to practice medicine in Nebraska to provide abortions. PPH sues on its own behalf, on behalf of its staff, and on behalf of its patients who will be adversely affected by Defendants’ actions.

14. Plaintiff Sarah Traxler is a board-certified obstetrician and gynecologist licensed to practice medicine in Nebraska, South Dakota, Minnesota, North Dakota, Iowa, and Maine. Dr. Traxler provides reproductive health services to PPH patients, including both medication abortion and in-clinic abortion procedures. Dr. Traxler sues on her own behalf and on behalf of her patients who will be adversely affected by Defendants’ actions.

B. Defendants

15. Defendant Mike Hilgers is the Nebraska Attorney General, and as such has the power to enforce the laws of the State. Neb. Rev. Stat. § 84-731. The Attorney General has the power and duty to initiate disciplinary proceedings under the Uniform Credentialing Act, which Compound L.B. 574 amends. Neb. Rev. Stat. § 38-186. Attorney General Mike Hilgers is sued in his official capacity.

16. Defendant Jim Pillen is the Governor of Nebraska and is charged with the implementation and execution of the laws of the State of Nebraska. *See* Neb. Const. art. IV, § 6; Neb. Rev. Stat. § 84-731. Governor Jim Pillen is sued in his official capacity.

17. Defendant Dannette Smith is the Chief Executive Officer of the Nebraska Department of Health and Human Services (“NE DHHS”), the state agency that—through its Division of Public Health—oversees the Uniform Credentialing Act, professionals including physicians, and health care clinics. Neb. Rev. Stat. § 71-6208.01. Ms. Smith is responsible for the supervision and administration of NE DHHS and its divisions. Neb. Rev. Stat. § 81-3117. Defendant Smith is sued in her official capacity.

18. Defendant Charity Menefee is the Director of the NE DHHS Division of Public Health, and as such has the power to administer credentialing and disciplinary action against a health-related professional’s credentials for violations of Compound L.B. 574, under the Uniform Credentialing Act. Neb. Rev. Stat. §§ 38-116, 38-192, 38-196. Defendant Menefee is sued in her official capacity.

19. Defendant Timothy Tesmer has been appointed and is acting as the Chief Medical Officer of the NE DHHS and as such is responsible for performing the duties of the Director of the NE DHHS Division of Public Health with respect to administering disciplinary proceedings generally and administering disciplinary proceedings against health-related professionals in contested cases for violations of Compound L.B. 574 under the Uniform Credentialing Act. Neb. Rev. Stat. § 38-1,101. Defendant Tesmer is sued in his official capacity.

IV. STATEMENT OF FACTS

A. The Nebraska Constitution’s Single-Subject Rule

20. The Nebraska Constitution provides: “No bill shall contain more than one subject, and the subject shall be clearly expressed in the title.” Neb. Const., art. III, § 14.

21. The Constitution’s one-subject rule is violated when lawmakers “join[] two or more bills together in order that the friends of the several bills may combine and pass them.” *Van Horn v. State*, 46 Neb. 62, 64 N.W. 365, 369 (1895).

22. Legislation enacted in violation of Section 14’s one-subject command is “null.” *Weis v. Ashley*, 59 Neb. 494, 81 N.W. 318, 319 (Neb. 1899).

23. The single-subject rule prevents logrolling, namely, the passage of legislation that, if standing alone, could not muster the necessary votes for enactment. *See, e.g., Conservative Sav. & Loan Ass’n of Omaha v. Anderson*, 116 Neb. 627, 218 N.W. 423, 423 (1928); *People v. Olender*, 854 N.E.2d 593, 599 (Ill. 2005); Millard H. Ruud, *No Law Shall Embrace More Than One Subject*, 42 Minn. L. Rev. 389, 391 (1958).

24. The single-subject rule also promotes transparency in the legislative process and accountability by lawmakers. When a bill contains one subject, no senator can credibly claim that a vote for (or against) that bill was meant to support (or oppose) only part of it. When a bill contains more than one subject, it is impossible to know whether the lawmaker’s vote signaled support for (or opposition to) the entire bill, or just some of it.

B. The Nebraska Legislature’s Adoption of the Challenged Law, in Violation of the Single-Subject Rule

25. On May 19, 2023, the Nebraska Legislature violated the single-subject rule by adopting Compound L.B. 574, which contains more than one subject in a single piece of legislation.

i. L.B. 626, an abortion ban, fails to advance in the Nebraska Legislature.

26. On January 17, 2023, Nebraska State Senator Joni Albrecht introduced L.B. 626, known as the “Nebraska Heartbeat Act.” L.B. 626, Neb. Leg., 108th Leg., Reg. Sess. (Neb. 2023).

27. The Statement of Intent for L.B. 626 reads, “L.B. 626 provides that a physician may not perform or induce an abortion before testing for a fetal heartbeat, and that a physician may not perform or induce an

abortion if a fetal heartbeat is detected, except in cases of sexual assault, incest, or medical emergency. An unlawful abortion by a physician in violation of L.B. 626 constitutes unprofessional conduct. The purpose of L.B. 626 is to save the lives of unborn children. To encourage greater respect for human life in society and to preserve the integrity of Nebraska's medical profession.” Senator Joni Albrecht, *Introducer’s Statement of Intent LB626*, Neb. Leg., 108th Leg., Reg. Sess., at 1 (2023), <https://nebraskalegislature.gov/FloorDocs/108/PDF/SI/LB626.pdf>. L.B. 626 proposed to ban abortion at approximately six weeks in pregnancy, as measured from the patient’s LMP. Under L.B. 626, a physician performing abortions in violation of the six-week ban would have been subject to mandatory forfeiture of their license to practice medicine, civil fines of up to \$20,000 per abortion.

28. On April 27, 2023, a motion to invoke cloture failed to receive the requisite thirty-three “yes” votes to end debate and advance the L.B. 626 to Final Reading, the final round of debate. As a result, L.B. 626 failed to advance in the legislative process. *LB626 Actions*, Neb. Leg., https://nebraskalegislature.gov/bills/view_actions.php?DocumentID=50641.

29. On April 28, 2023, the day after L.B. 626 failed to advance to Final Reading, the Speaker of the Legislature Senator John Arch confirmed to members of the media that he would follow the plan he had laid out in a February 10, 2023 memo indicating that he would not reschedule bills that failed to advance, stating, “[I]f a motion to invoke cloture fails, I will consider the bill finished for the year.” Chris Dunker, *Speaker: Abortion bill won't return to Nebraska Legislature’s agenda this year*, Longview News-J. (May 2, 2023), https://www.news-journal.com/speaker-abortion-bill-wont-return-to-nebraska-legislatures-agenda-this-year/article_7ab56311-fa0e-5ba9-abc4-25e0bc0a2760.html; see also *Speaker Arch’s Procedural Motions Memo*, Neb. Leg. (Feb. 10, 2023), <http://news.legislature.ne.gov/speaker/2023/02/10/speaker-archs-procedural-motions-memo/>.

ii. L.B. 574 is introduced to restrict gender-affirming care for transgender youth under nineteen years of age.

30. On January 17, 2023, the same day L.B. 626 was introduced, Nebraska State Senator Kathleen Kauth introduced the Original L.B. 574, otherwise known as the “Let Them Grow Act.” L.B. 574, Neb. Leg., 108th Leg., Reg. Sess. (Neb. 2023).

31. The Statement of Intent for Original L.B. 574 reads, “LB 574, to be known and cited as the Let Them Grow Act, would prohibit the performance of gender altering procedures for individuals under the age of 19, provide for definition of terminology and allow for civil action to be brought against violators of the act.” Senator Kathleen Kauth, *Introducer’s Statement of Intent LB574*, Nebraska Legislature (2023), <https://nebraskalegislature.gov/FloorDocs/108/PDF/SI/LB574.pdf>. The operative date for the Original L.B. 574 was designated to be October 1, 2023.

32. The Original L.B. 574 included provisions related to what the bill described as “gender altering procedures,” including, for example, certain surgeries and “puberty blocking drugs.” It did not contain the words “abortion,” “preborn child,” “gestational age” or “woman” anywhere in the title or body of the legislative bill.

33. After two full rounds of debate, L.B. 574 was placed on Final Reading on April 18, 2023, to be scheduled for its final round of debate. *LB574 Actions*, Neb. Leg., https://nebraskalegislature.gov/bills/view_actions.php?DocumentID=49961.

iii. A late-stage amendment to L.B. 574 regulating abortion is added.

34. In early May of 2023, just days after the L.B. 626 abortion ban failed to advance in the legislative process, an abortion ban was introduced to L.B. 574 as Amendment 1658 (the “Amendment”) while the Original L.B. 574 was on Final Reading. Amendments to LB 574, AM 1658, Neb. Leg., 108th Leg., Reg. Sess. (Neb. 2023) (adopted by the Unicameral, May 16, 2023).

35. Although packaged into an amendment to L.B. 574, the abortion ban sections of the Amendment had their own title: the “Preborn Child Protection Act.”

36. Until the introduction of the Amendment, L.B. 574 did not address abortion in any way.

37. Sections one through six of the Amendment resembled L.B. 626. *Compare* L.B. 626, Neb. Leg., 108th Leg., Reg. Sess. (Neb. 2023) *with* Amendments to LB 574, AM 1658, Neb. Leg., 108th Leg., Reg. Sess. (Neb. 2023) (adopted by the Unicameral, May 16, 2023). For example, the Amendment provided the same definition of “abortion” as L.B. 626. The Amendment provided the same penalties against physicians who perform or induce abortions and the same exceptions as L.B. 626. *Id.* Additionally, like L.B. 626, the Amendment failed to address criminal penalties for abortion already in effect.

38. The sole difference between L.B. 626 and the “Preborn Child Protection Act” inserted via the Amendment into L.B. 574 was that L.B. 626 had placed the gestational limit for abortion at six weeks LMP and the Amendment put the limit at 12 weeks LMP. *Id.*

39. The “Preborn Child Protection Act” never received a legislative hearing, public comment, or full debate in the legislative process.

40. The Amendment was introduced with an emergency clause, that would allow the abortion ban sections to take effect immediately after it was passed and signed into law by the governor.

41. Compound L.B. 574 itself violates the Rules of the Nebraska Unicameral Legislature by including an amendment to a bill that is not germane to the specific subject of the bill and is not in the “natural and logical sequence to the subject matter of the original proposal.” Rule 7(C), § 3(d) of the Rules of the 108th Nebraska Unicameral Legislature, Reg. Sess. (2023–2024).

42. During legislative debate on May 16, 2023, and May 19, 2023, several senators expressed concerns about adding the Amendment into the Original L.B. 574 as the two subjects were unrelated and doing so

violated the procedural rule on germaneness and the single-subject rule of the Nebraska Constitution.

iv. The Amendment to L.B. 574 is adopted, forcing Senators to an all-or-nothing final vote on the compounded bill.

43. On May 16, 2023, the Amendment was adopted to the Original L.B. 574, now forming Compound L.B. 574. See *LB 574 Actions*, Nebraska Legislature, https://nebraskalegislature.gov/bills/view_actions.php?DocumentID=49961.

44. In the final vote on L.B. 574, Nebraska senators could not use their votes to effectively express their support or opposition to the individual merits of the “Let Them Grow Act” or the “Preborn Child Protection Act.” They were forced to vote in support of or opposition to the bill as a whole.

45. On May 19, 2023, Compound L.B. 574 passed with an emergency clause. See *LB574 Actions*, Nebraska Legislature, https://nebraskalegislature.gov/bills/view_actions.php?DocumentID=49961. The designation of an “emergency” allowed the Legislature to circumvent the typical three-month delay between session adjournment and the effective date of a law. See Neb. Const. art. III, § 27.

46. As the Original L.B. 574 had provided, the Compound L.B. 574 mandated that the gender-affirming care provisions would not become operative until October 1, 2023.

47. On May 22, 2023, Governor Pillen signed Compound L.B. 574, thereby making it law. See *LB574 Actions*, Nebraska Legislature, https://nebraskalegislature.gov/bills/view_actions.php?DocumentID=49961.

48. Unlike the provisions relating to gender-affirming care which do not become operative until October 1, 2023, the abortion-related provisions of Compound L.B. 574 became operative at 12:01 a.m. on May 23, 2023.

C. Compound L.B. 574 takes effect and causes immediate and substantial harm to Plaintiffs and their patients.

49. Because the Legislature had denominated the 12-Week Ban as “emergency” legislation, that portion of Compound L.B. 574 took effect on May 23, 2023, shortly after the Governor’s signature.

50. The emergency clause immediately reduced the window of time during which abortion is legal in Nebraska, from 22 weeks LMP to 12 weeks LMP.

51. A full-term pregnancy has a duration of approximately 40 weeks from the LMP.

52. The 12-Week Ban provides only narrow exceptions for “medical emergencies,” sexual assault, and incest. *LB574*, Slip Law §§ 8(16), 21, 108th Legis., 1st Sess. (May 22, 2023), <https://nebraskalegislature.gov/FloorDocs/108/PDF/Slip/LB574.pdf>.

53. Prior to Compound L.B. 574, Plaintiffs provided abortion services in Nebraska through 16 weeks, 6 days of pregnancy LMP. When Compound L.B. 574 took effect, they were forced to immediately stop providing care at 12 weeks of pregnancy LMP and beyond. Absent Compound L.B. 574, they would and could return to providing abortion in Nebraska at and after 12 weeks of pregnancy LMP.

54. In general, people who have decided to end a pregnancy seek to do so as early as possible in their pregnancies. But in the last three years, nearly one-third of PPH abortion patients in Nebraska did so at or after 12 weeks of pregnancy LMP, which would have been over the gestational limit in Compound L.B. 574.

55. There are many reasons why many Nebraskans do not, and realistically cannot, access abortion before 12 weeks of pregnancy LMP. For example, some patients have irregular menstrual cycles or do not experience pregnancy symptoms, and therefore may not suspect they are pregnant for weeks or months.

56. Patients may be further delayed in confirming their pregnancy, researching and considering their options, contacting an abortion provider, and scheduling an appointment.

57. Nebraska has also erected numerous legal barriers to abortion that make it more difficult for patients to obtain an abortion when they need it.

58. Nebraska law provides that patients cannot have an abortion until they have waited 24 hours after receiving certain state-mandated information designed to dissuade them from their abortion decision. Nebraska also bans the use of telemedicine to provide medication abortion, a safe and effective abortion method that many patients would prefer, particularly in rural areas. In addition, Nebraska requires pregnant minors to obtain parental consent for abortion or go to court to obtain permission from a judge, a process that can take a substantial amount of time. And Nebraska bans the inclusion of abortion coverage in public and private insurance policies, forcing Nebraskans to pay for abortion services out of pocket or to raise funds from family, friends, and other support networks. Neb. Rev. Stat. § 28-327, § 28-335, § 71-6903, § 44-8403. These restrictions, among others, make access difficult for many Nebraskans, pushing the time they can access abortion services further in pregnancy.

59. In addition, many Nebraskans need to arrange for time off work or school, coordinate travel, find childcare, and come up with money to pay for gas, lodging, and the abortion itself. Nebraskans in abusive relationships, or those who are pregnant as a result of sexual assault but not in a position where it is safe for them to report the assault, may also need more time to obtain an abortion while dealing with other physical and emotional trauma.

60. For those Nebraskans who live outside of the Lincoln and Omaha metropolitan areas, the only locations in Nebraska with outpatient abortion care, it is even more difficult to access abortion services in Nebraska given the 12-week limit and travel distance to the nearest provider.

61. Patients who seek abortion due to fetal diagnoses generally do not—and in many instances cannot—obtain those diagnoses until well after 12 weeks of pregnancy. For these patients, the 12-Week Ban

forecloses abortion as an option. Compound L.B. 574 does not contain exceptions for fetal diagnoses or fetal anomalies meaning that those Nebraskans who receive these diagnoses, likely after the 12-week limit, have no option to access abortion services in Nebraska. These individuals will be forced to travel out of state or remain pregnant against their will.

62. The 12-Week Ban is also especially burdensome for those with low incomes and those with medical complications that do not fall under the extremely narrow medical emergency exception provided in Compound L.B. 574.

63. In the days since Compound L.B. 574 has been in effect, PPH has already had to cancel appointments for numerous patients who are now over the gestational limit.

64. The consequences for violations of Compound L.B. 574 are significant for PPH and Dr. Traxler. A violation of the abortion provisions of Compound L.B. 574 triggers mandatory revocation of one's license to practice medicine and carries the possibility of a \$20,000 civil fine, per abortion. PPH's license as a health clinic could also be revoked for permitting or assisting abortions covered by Compound L.B. 574.

65. For all these reasons, the harms resulting from Compound L.B. 574 on PPH, Dr. Traxler, and PPH patients are pervasive and ongoing.

V. CLAIM FOR RELIEF

Violation of Article III, § 14, of the Nebraska Constitution.

66. Plaintiffs hereby reaffirm and reallege each and every allegation made above as if set forth fully herein.

67. Article III, § 14, of the Nebraska Constitution requires that “[n]o bill shall contain more than one subject, and the subject shall be clearly expressed in the title. No law shall be amended unless the new act contains the section or sections as amended and the section or sections so amended shall be repealed.”

68. Compound L.B. 574 violates § 14, and is therefore void and unenforceable, because it includes two subjects: an abortion ban and restrictions on gender-affirming care for youth.

69. Compound L.B. 574 thus deprives Plaintiffs of their right to be subjected only to laws adopted in conformity with § 14's constitutional safeguards.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully urge this Court to enter judgment as follows:

- (1) Declare Compound L.B. 574 unconstitutional and void in its entirety under Article III, §14, of the Nebraska Constitution;
- (2) Enter without bond temporary, preliminary and permanent injunctions barring Defendants and their officers, employees, servants, agents, appointees, and successors from administering and enforcing Compound L.B. 574 in any way, including with respect to any conduct occurring under the protection of preliminary injunctive relief;
- (3) Award Plaintiffs their costs incurred herein; and
- (4) Grant any other relief this Court finds just and proper.

DATED this 30th of May, 2023.

PLANNED PARENTHOOD OF THE
HEARTLAND, INC. and SARAH
TRAXLER, M.D.,

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* *Motion for admission pro hac vice forthcoming*