

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

Mayday Health and Nancy Turbak	)	
Berry,	)	
	)	
Plaintiffs,	)	Civ. 26-4096
	)	
v.	)	
	)	
Governor Larry Rhoden and	)	
Attorney General Marty Jackley,	)	
sued in their official capacities,	)	
	)	
Defendants.	)	
_____	)	

**Complaint for Preliminary and Permanent Injunction  
and for Declaratory Relief**

### **Nature of this Case**

Plaintiffs seek pre-enforcement injunctive relief barring defendants from enforcing South Dakota House Bill 1274 (2026) against them on three grounds. First, it is unconstitutional and violates the Communications Decency Act as applied to Mayday Health; second, it is unconstitutional as applied to Nancy Turbak Berry; and third, its “advertise” prohibition is unconstitutional on its face.

### **Parties**

1. Mayday Health is a 501(c)(3) reproductive health education nonprofit. Raisner Declaration ¶ 1.

2. Nancy Turbak Berry (“Turbak”) is a South Dakota attorney. Turbak Declaration ¶ 1.

3. Larry Rhoden and Marty Jackley are the Governor and Attorney General of South Dakota, and are responsible for enforcing HB 1274. Plaintiffs sue them in their official capacities.

### **Jurisdiction**

4. This action is brought pursuant to the Civil Rights Act, 42 U.S.C. § 1983. Declaratory relief is sought pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. This Court has jurisdiction under 28 U.S.C. § 1331.

## Facts

### **Mayday's purpose and activity**

5. Mayday was founded in May 2022, in the wake of *Dobbs v. Jackson Women's Health Organization*, to respond to widespread confusion, fear, and misinformation. Mayday shares accurate information about the safety, legality, and availability of abortion pills, so that women can make informed decisions about their own bodies. Mayday owns and operates a globally-accessible website, <https://mayday.health>. Raisner Declaration ¶¶ 1 and 2.

6. Mayday provides information free of charge so that women can, if they choose, terminate pregnancies safely even though they live in places like South Dakota that limit or outlaw abortion. Raisner Declaration ¶¶ 3 to 6.

7. Mayday does not sell, handle, provide, offer for sale, or distribute any medications. Nor does it provide any medical or legal advice, charge any fee, collect any revenue related to providing medical or legal services, obtain any other valuable consideration in exchange for disseminating information, benefit from the sale of abortion medication, have any customers, or monetize the data of people who use its website. Raisner Declaration ¶ 5.

8. Mayday sells merchandise containing information about abortion pills to support its mission to provide such information. Merchandise currently available is at <https://maydayhealth-shop.fourthwall.com/>.

9. On December 8, 2025, Mayday placed signs “Pregnant? Don’t want to be?” and “Learn More at Mayday.Health” in South Dakota, one of which follows.



Raisner Declaration ¶ 7.

**The State sues Mayday, alleges that Mayday’s speech is criminal, seeks civil penalties, and threatens criminal prosecution under a variety of theories**

10. Two days after Mayday placed its signs, Attorney General Jackley wrote Mayday, stating he “demands that you **IMMEDIATELY CEASE AND DESIST** from conducting any advertising related to the delivery of abortion drugs to the State of South Dakota.” He alleged that Mayday “may face felony criminal consequences or civil penalties up to \$5,000 per violation.” Raisner Declaration ¶ 9.

11. Mayday responded, defending its First Amendment right to “make important, and truthful, public information available.” Raisner Declaration ¶ 11.

12. On December 22, the State moved for a preliminary and permanent injunction against Mayday. Raisner Declaration ¶ 12.

13. The State alleged that Mayday’s “advertisements” included “a plethora of deceptive acts and practices, false pretense[s], false promises, or misrepresentations, and the concealment, suppression, or omission of material facts in connection with the advertisement of abortion-inducing pills and abortion services; the sale of abortion related merchandise; and in the solicitation of contributions for charitable purposes, in violation of S.D.C.L. 37-24-6.” Raisner Declaration Exhibit 4 at 2.

14. The State claimed that Mayday’s “advisements” and other speech were “illegal” — a claim it repeated *eleven* times. Raisner Declaration Exhibit 4.

15. The State alleged that Mayday is part of a group of “bad actors who are knowingly advertising illegal services.” Raisner Declaration Exhibit 4 at 18.

16. In support of its motion, the State filed an Affidavit of Jeff Kollars, a Supervisory Special Agent for the South Dakota Division of Criminal Investigation, that describes Mayday’s allegedly “illegal advertising.” Raisner Declaration ¶ 14.

**Mayday sues the State—and the State continues to allege that Mayday’s speech is criminal, and continues to threaten criminal prosecution**

17. On January 6, 2026, Mayday sued Attorney General Jackley, in his official capacity, in the United States District Court for the Southern District of New York, for injunctive and declaratory relief, alleging that all its speech is lawful. Raisner Declaration ¶ 16, Exhibit 7.

18. At the temporary restraining order hearing on January 16, 2026, Attorney General Jackley told the court: “I would advise the Court, as [a] former United States attorney and attorney general, solicitation is a criminal act in South Dakota[.]” Raisner Declaration ¶ 20, Exhibit 8 at 9.

19. Jackley made clear that Mayday’s advertisements, which he also called “placards,” were criminal solicitation:

Q. THE COURT: . . . You mentioned the signs. These are the signs in the gas stations, sir, and not just the website?

A. MR. JACKLEY: Yes. I would call them a placard. When you go to a gas station, there will be a placard above the pump, or as part of the pump, that contains an advertisement. So those placards exist here in South Dakota.

\* \* \* \* \*

Q. THE COURT: Just so that I am clear, it’s not the existence of the website per se, it’s these placards that you’re construing as solicitation, or am I getting ahead of myself?

A. MR. JACKLEY: That is our position, your Honor. You are not getting ahead of yourself. That is our position.

Raisner Declaration Exhibit 8 at 9-10.

20. Attorney General Jackley’s brief continued and expanded his allegations of Mayday criminality. He told the court that Mayday’s speech “proposes an illegal transaction or is in furtherance of a criminal scheme,” so it

“receives no [First Amendment] protection.” Raisner Declaration Exhibit 9 at 3. He argued the State sought to “shut[] down advertising for an illegal transaction[.]” Raisner Declaration Exhibit 9 at 4. He wrote that his “cease-and-desist letter placed Mayday on notice that it is perpetrating unlawful acts and practices with respect to illegal pill transactions and illegally false, deceptive and misleading advertisements under South Dakota’s civil and criminal laws.” Raisner Declaration Exhibit 9 at 5. He wrote that Mayday’s “placards” “advertis[e] illegal transactions.” *Id.* He wrote that Mayday was engaged in “facilitating illegal transactions and illegal misrepresentations.” Raisner Declaration Exhibit 9 at 6. He wrote that “Mayday [was] advertising on behalf of the pill merchants.” Raisner Declaration Exhibit 9 at 8.

21. Likewise, in the state court case, Jackley told the court that “Mayday continues to advertise for companies that ship illegal abortion pills into South Dakota in contravention of its laws.” Raisner Declaration Exhibit 10 at 3.

22. At the federal court preliminary injunction hearing in federal court on January 29, Attorney General Jackley asserted a number of theories under which Mayday’s speech was criminal, including representations about his own personal beliefs (“in my mind” and “I can assure you”):

- “It’s clearly a solicitation of a crime.” Raisner Declaration Exhibit 11 at 40.
- “In my mind as a chief law enforcement officer of the state, it is an absolute criminal violation.” Raisner Declaration Exhibit 11 at 41
- “Aid Access or Buzz can’t put a placard up in South Dakota to sell these illegal drugs. So Mayday can’t do it for them. When you look at the law of solicitation, it’s indirect or direct. They fit the criminal statute.” Raisner Declaration Exhibit 11 at 42.
- “[I]t’s inducing and commencing criminal activity.” Raisner Declaration Exhibit 11 at 42.
- “I can assure you, there’s a statute in South Dakota that says what they’re pedaling is not legal.” Raisner Declaration Exhibit 11 at 44.
- “They are selling abortion pills.” Raisner Declaration Exhibit 11 at 57.
- “[T]hey’re selling a product.” Raisner Declaration Exhibit 11 at 58.

- “They are selling a product.” Raisner Declaration Exhibit 11 at 60.
- “Mayday is soliciting, inducing, commencing the illegal trafficking of pills in the State of South Dakota. There’s hard evidence of that.” Raisner Declaration Exhibit 11 at 62.

23. In a complaint filed in state court on February 18, the State continued its criminal allegations against Mayday. The State alleged that Mayday was “advertising and soliciting the sale [of] illegal abortion pills within the physical borders of the state of South Dakota” (Raisner Declaration Exhibit 12 ¶ 1); that Mayday was “advertising and soliciting abortions for teenaged children without the required parental notification” (Raisner Declaration Exhibit 12 ¶ 4); that Mayday “advertises and solicits the sale of illegal abortion pills” (Raisner Declaration Exhibit 12 ¶¶ 44, 46, 50); and that Mayday engages in an “illegal advertising campaign.” (Raisner Declaration Exhibit 12 ¶ 53).

24. In the same complaint, the State alleged that Mayday “sells merchandise on its website” with “similar messaging” about the availability of abortion pills “in all 50 states,” and provided this photograph as an example:



## "THEY DON'T WANT YOU TO KNOW THIS" CREAM CREWNECK

\$35.00

One of our most loved crewnecks! It features air-jet spun yarn which acts like fabric softener to reduce creases and piling for a crisp yet relaxed look.

- 50% cotton, 50% polyester
- Midweight fabric (8.0 oz)
- Regular fit
- Unisex sizing

Select size [Size guide](#)



Raisner Declaration Exhibit 12 ¶ 28.

**The federal court states that Mayday is correct that the First Amendment protects its speech, and dismisses based on *Younger* abstention**

25. The federal court dismissed Mayday's case based on *Younger v. Harris*, 401 U.S. 37 (1971), abstention, and ruled that but for *Younger*, it would find that Mayday's speech is protected by the First Amendment. Raisner Declaration ¶ 24.

26. The district court stated:

- "I do believe that the proper way to view Mayday's website and the materials on it is noncommercial speech subject to protection

under the First Amendment.” Raisner Declaration Exhibit 13 at 14.

- “[A]bsent Younger abstention, this Court would be granting plaintiff’s motion for injunctive relief.” Raisner Declaration Exhibit 13 at 15. “My read — what the materials I have before me suggest that Mayday’s website contains, under what I will call the NIFLA [*National Institute of Family and Life Advocates v. James*, 160 F.4th 360 (2d Cir. 2025)] case, noncommercial speech. It is speech that is based on moral beliefs with no economic motivation. The plaintiff does not charge the patrons of the website or the service providers for referrals and the fact that the website solicits donations does not transform its contents into commercial speech[.]” Raisner Declaration Exhibit 13 at 15-16.
- “I also do not believe that the website solicits or abets acts that are illegal under South Dakota law.” Raisner Declaration Exhibit 13 at 16.
- “[I]f I had jurisdiction, which I don’t believe I do, I think the South Dakota statute would be subject to strict scrutiny analysis

and we would see whether it was narrowly tailored to serve a compelling state interest under NIFLA, [and] the answer would probably be no.” Raisner Declaration Exhibit 13 at 16-17.

### **The state and federal lawsuits settle**

27. On March 5, the parties agreed to mutually dismiss their dueling lawsuits. Mayday agreed that it “will ensure the removal of the Gas Station Placards and will terminate its campaign to place additional Gas Station Placards throughout South Dakota” and that it “will not place, either directly or indirectly through third-party actions, any signs, posters, placards, billboards, or other physical media within the physical borders of South Dakota that aid, abet, or solicit illegal conduct as established by law.” Mayday maintains that all its speech is protected by the First Amendment. Raisner Declaration Exhibit 14 at 2.

### **The Legislature strikes back, targeting Mayday with HB 1274**

28. On March 9, the South Dakota Senate passed House Bill 1274 as amended. On March 10, the House of Representatives concurred in the amendments. On March 12, the bill was delivered to the Governor, and on March 30, he signed it at a press conference. <https://sdlegislature.gov/Session/Bill/26881> (last visited May 28, 2026).

29. HB 1274 as enacted is Raisner Declaration Exhibit 15.

30. The legislative proceedings that led to the enactment of HB 1274 show that it targets Mayday. Raisner Declaration Exhibits 16 to 19, and Memorandum in Support of Motion for Preliminary Injunction, Section V.

31. When Governor Rhoden signed HB 1274, he issued a press release explicitly referring to the Mayday litigation, and accusing Mayday of engaging in illegal conduct. It states: "In his State of the State Address, Governor Rhoden highlighted the fact that the biggest threat to unborn lives in South Dakota is the illegal shipment of abortion pills into the state. Governor Rhoden previously worked with Attorney General Marty Jackley to stop illegal advertisements of these pills; now HB 1274 allows the Attorney General to actually prosecute the shipment of pills for purposes of an unlawful abortion." Raisner Declaration Exhibit 20.

**HB 1274, as the Legislature intends it be applied to Mayday, and as defendants intend to apply it, deters Mayday's constitutionally protected speech about abortion**

32. The State's ceaseless threats of criminal prosecution against Mayday even before HB 1274, the enactment of HB 1274 with felony penalties, HB 1274's change from "pregnant female" to "person," and the Legislature's, the Attorney General's and the Governor's intention to enforce HB 1274 against Mayday chill

Mayday's lawful speech and credibly threaten Mayday with future prosecution for engaging in First Amendment protected speech.

33. Unless this Court intervenes, Mayday will be deterred from engaging in lawful speech that is protected by the First Amendment.

**HB 1274, as the Legislature intends it be applied, and as defendants intend to apply it, deters Turbak's constitutionally protected speech about abortion**

34. Nancy Turbak owns a Mayday sweatshirt:



Turbak Declaration ¶ 2.

35. Her sweatshirt—just like the “Pregnant? Don’t want to be?” gas station signs—provides information about abortion.

36. In the state litigation described above, the State’s Complaint alleged that Mayday’s sale of this sweatshirt was a crime. Raisner Declaration Exhibit 12 ¶ 28

(including photograph of sweatshirt), and ¶ 24 of this Complaint (also with photograph).

37. The State’s unending threats of criminal prosecution against Mayday even before HB 1274, the enactment of HB 1274 with felony penalties, HB 1274’s change from “pregnant female” to “person” at the Attorney General’s request, and the Governor’s promise to enforce HB 1274 have chilled Turbak’s lawful speech and credibly threaten Turbak with future prosecution for engaging in First Amendment protected speech. Turbak Declaration ¶ 3 to 5.

38. Unless this court grants relief, Turbak will be deterred from wearing the sweatshirt, and thereby deterred from engaging in lawsuit First Amendment-protected speech. Turbak Declaration ¶ 5.

**First Cause of Action—First Amendment—  
HB 1274 in its entirety is unconstitutional as applied to Mayday and Turbak**

39. All paragraphs above are incorporated herein by this reference.

40. House Bill 1274, as the Legislature intends it be applied to Mayday, and as defendants intend to apply it to Mayday and Turbak, violates the First Amendment.

**Second Cause of Action—First Amendment—  
HB 1274’s “advertise” prohibition is unconstitutional on its face**

41. All paragraphs above are incorporated herein by this reference.

42. Mayday’s speech and Turbak’s proposed speech are an “advertisement” within the meaning of HB 1274.

43. The “advertise” prohibition of House Bill 1274 is unconstitutional on its face because it prohibits or chills a substantial amount of protected speech. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255 (2002).

**Third Cause of Action—Section 230—  
HB 1274 as applied to Mayday violates the Communications Decency Act**

44. All paragraphs above are incorporated by this reference.

45. Mayday provides interactive computer services through its website, <https://mayday.health>.

46. Mayday’s website provides links to other internet content providers.

47. The vast majority of the State’s allegations against Mayday—excepting Mayday’s gas station signs “Pregnant? Don’t want to be?”—are based on statements made *not* by Mayday, but by other information content providers on third-party websites to which Mayday’s website links.

48. In the State's lawsuit against Mayday, the State filed four documents complaining about information on third-party websites that Mayday's website links to:

a. State's Motion for Preliminary and Permanent Injunction (Raisner Declaration Exhibit 4 at 6 to 11);

b. State's Affidavit of Jeff Kollars (Raisner Declaration Exhibit 5 at 2 ¶ 6);

c. State's Affidavit of Kayla Klemann (Raisner Declaration Exhibit 6 at 2 ¶ 9 to 6 ¶ 29); and

d. State's Complaint for Injunctive and Declaratory Relief (Raisner Declaration Exhibit 12 at 3 ¶ 18 to 7 ¶ 39).

49. The State's allegations treat Mayday as the publisher of the content on the third-party websites, which is prohibited by the Communications Decency Act, 47 U.S.C. § 230.

50. House Bill 1274, as the Legislature intends it to be applied to Mayday, and as defendants intend to apply it to Mayday, violates the Communications Decency Act, 47 U.S.C. § 230.

**Request for Relief**

Plaintiffs request judgment granting:

1. A preliminary and permanent injunction barring defendants from enforcing or threatening to enforce House Bill 1274 against Mayday and Turbak;
2. A declaratory judgment that House Bill 1274 is unconstitutional as applied to Mayday and Turbak, and that it violates Section 230 as applied to Mayday;
3. A declaratory judgment that the “advertise” prohibition of House Bill 1274 is unconstitutional on its face;
4. Attorney fees and costs pursuant to 42 U.S.C. § 1988; and
5. Such other and further relief as the Court deems just.

Dated: May 29, 2026

/s/ James D. Leach

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Attorney for Plaintiffs

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Mayday Health and Nancy Turbak Berry
(b) County of Residence of First Listed Plaintiff New York
(c) Attorneys (Firm Name, Address, and Telephone Number)
James D. Leach/Attorney/1617 Sheridan Lake Rd./Rapid City, SD 57702/605 341 4400

DEFENDANTS
Governor Larry Rhoden and Attorney General Marty Jackley, both sued in their official capacities
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
Marty Jackley/Attorney General/1302 SD Hwy 1889, #1/Pierre, SD 57501/605 773 3215

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 365 Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC 1983
Brief description of cause:
First Amendment violation - defendants seek to prevent plaintiffs from speaking about abortion

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE DOCKET NUMBER

DATE: May 29, 2026
SIGNATURE OF ATTORNEY OF RECORD: /s/ James D. Leach

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE