

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION**

| | | |
|-----------------------------------|---|----------------------------|
| YELLOWHAMMER FUND, on |) | |
| behalf of itself and its clients. |) | CASE NO. 2:23-cv-00450-MHT |
| |) | |
| Plaintiff, |) | CIVIL ACTION |
| |) | |
| v. |) | |
| |) | |
| ATTORNEY GENERAL OF |) | |
| ALABAMA STEVE MARSHALL, |) | |
| in his official capacity |) | |
| |) | |
| Defendant. |) | |
| |) | |
| WEST ALABAMA WOMEN'S |) | |
| CENTER, on behalf of themselves |) | |
| and their staff; et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STEVE MARSHALL, in his official |) | |
| capacity as Alabama Attorney |) | |
| General, |) | |
| |) | |
| Defendant. |) | |

PLAINTIFF YELLOWHAMMER FUND'S
MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iv

INTRODUCTION..... 1

STATEMENT OF FACTS..... 2

 A. Defendant Threatened to Prosecute Abortion Funds for Helping Pregnant People Travel to Obtain Lawful Abortions in Other States..... 2

 B. Plaintiff Is a Reproductive Justice Organization that Communicates a Message of Solidarity and Support to Pregnant Alabamians. 4

 C. Plaintiff Wants to Resume Engaging in Constitutionally Protected Activities. 5

 D. Plaintiff’s Constitutionally Protected Activities Would Offer Vital Resistance to Alabama’s Abortion Ban. 7

 E. Plaintiff Filed this Lawsuit so it Can Resume Helping Pregnant People Travel to Obtain Lawful Abortion Care..... 9

STANDARD OF REVIEW..... 11

ARGUMENT..... 11

 A. Defendant’s Threatened Prosecutions Violate the Right to Travel. 13

 1. The Predominant Purpose of Defendant’s Threats of Prosecution Is to Prevent the Exercise of the Right to Interstate Travel and to Oppress Those Who Exercise That Right. 15

 2. The Right to Travel Is a Hollow Shell if Movement Among the States Does Not Allow Freedom of Action..... 21

 3. Plaintiff Has Third-Party Standing to Vindicate the Right to Travel for Those it Serves. 24

 4. Plaintiff Can Bring a Right to Travel Claim Itself..... 28

 B. Defendant’s Threatened Prosecutions Are First Amendment Violations... 33

 1. Defendant’s Threats are Presumptively Unconstitutional Because They Are Content- and Viewpoint-Based Restrictions on Speech..... 34

 a. Plaintiff Engages in Both Speech and Expressive Conduct to Support People in Need. 35

 b. Defendant’s Threatened Prosecutions Are Content- and Viewpoint-Based Because They Exclusively Target Speech and Expressive Conduct About Lawful, Out-of-State Abortion Care. 40

- 2. Defendant’s Threatened Prosecutions Violate Plaintiff’s Right to Associate with Like-Minded Abortion Funds, Supporters, and Pregnant Alabamians..... 42
- 3. Defendant’s Threatened Enforcement Cannot Survive Strict Scrutiny. 45
- C. Applying the Alabama Abortion Ban to Criminalize Abortion in a State Where it Is Lawful Would Violate the Due Process Clause and Foundational Principles of Sovereignty and Comity..... 48
 - 1. Due Process Does Not Allow Prosecutions of Lawful Conduct. 49
 - 2. Defendant’s Prosecution of Plaintiff Would Offend Principles of Comity and Sovereignty..... 51
- D. Plaintiff Yellowhammer Fund Meets the Standard for Declaratory Judgment and Permanent Injunction for Each Claim. 54
- CONCLUSION..... 56

TABLE OF AUTHORITIES

| | PAGE(S) |
|--|----------------|
| CASES | |
| <i>303 Creative LLC v. Elenis</i> , 143 S. Ct. 2298 (2023)..... | 34, 35 |
| <i>Aetna Life Ins. Co. v. Haworth</i> , 300 U.S. 227 (1937)..... | 54 |
| <i>Alabama v. U.S. Army Corps of Engineers</i> , 424 F.3d 1117 (11th Cir. 2005) | 55 |
| <i>Ams. for Prosperity Found. v. Bonta</i> , 594 U.S. 595 (2021)..... | 44 |
| <i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)..... | 11 |
| <i>Ashcroft v. American Civil Liberties Union</i> , 535 U.S. 564 (2002)..... | 34 |
| <i>Ashcroft v. Free Speech Coal.</i> , 535 U.S. 234 (2002)..... | 34 |
| <i>Attorney General of New York v. Soto-Lopez</i> , 476 U.S. 898 (1986)..... | 13, 15, 18, 20 |
| <i>Bantam Books, Inc. v. Sullivan</i> , 372 U.S. 58 (1963)..... | 33 |
| <i>Barrows v. Jackson</i> , 346 U.S. 249 (1953)..... | 26 |
| <i>Bigelow v. Virginia</i> , 421 U.S. 809 (1975)..... | 47, 48, 53 |
| <i>BMW of N. America, Inc. v. Gore</i> , 517 U.S. 559 (1996)..... | 50, 51 |
| <i>Bolger v. Youngs Drug Products Corp.</i> , 463 U.S. 60 (1983)..... | 34 |
| <i>Boy Scouts of Am. v. Dale</i> , 530 U.S. 640 (2000)..... | 43 |
| <i>Brady v. Carnival Corp.</i> , 33 F.4th 1278 (11th Cir. 2022) | 11 |
| <i>Carey v. Pop. Servs. Int’l</i> , 431 U.S. 678 (1977)..... | 25 |

| | |
|---|---------------|
| <i>Citizens United v. Fed. Election Comm’n</i> , 558 U.S. 310 (2010)..... | 32 |
| <i>Clark Const. Co., Inc. v. Pena</i> , 930 F. Supp. 1470 (M.D. Ala. 1996)..... | 55 |
| <i>Coral Ridge Ministries Media, Inc. v. Amazon.com, Inc.</i> , 6 F.4th 1247 (11th Cir. 2021)..... | 39 |
| <i>Corfield v. Coryell</i> , 6 F. Cas. 546 (C.C.E.D. Pa. 1823)..... | 22 |
| <i>Craig v. Boren</i> , 429 U.S. 190 (1976)..... | 25, 26, 27 |
| <i>Crandall v. Nevada</i> , 73 U.S. 35 (1867)..... | <i>passim</i> |
| <i>Dennis v. United States</i> , 341 U.S. 494 (U.S. 1951)..... | 47 |
| <i>DJR Assocs. LLC v. Hammonds</i> , 241 F. Supp. 3d 1208 (N.D. Ala. 2017)..... | 52 |
| <i>Dobbs v. Jackson Women’s Health Organization</i> , 597 U.S. 215 (2022)..... | 1, 2, 52 |
| <i>Edelman v. Jordan</i> , 415 U.S. 651 (1974)..... | 13 |
| <i>Edwards v. California</i> , 314 U.S. 160 (1941)..... | <i>passim</i> |
| <i>Elrod v. Burns</i> , 427 U.S. 347 (1976)..... | 43, 44, 55 |
| <i>Fla. State Conf. of N.A.A.C.P. v. Browning</i> , 522 F.3d 1153 (11th Cir. 2008)..... | 54 |
| <i>Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale</i> , 901 F.3d 1235 (11th Cir. 2018)..... | <i>passim</i> |
| <i>Garvie v. City of Fort Walton Beach</i> , 366 F.3d 1186 (11th Cir. 2004)..... | 11 |
| <i>Griswold v. Connecticut</i> , 381 U.S. 479 (1965)..... | 25 |
| <i>Grosjean v. Am. Press Co.</i> , 297 U.S. 233 (1936)..... | 32 |
| <i>Healy v. James</i> , 408 U.S. 169 (1972)..... | 44 |

| | |
|---|--------|
| <i>Hodes & Nauser v. Schmidt</i> , 440 P.3d 461 (Kan. 2019)..... | 46 |
| <i>Holder v. Humanitarian Law Project</i> , 561 U.S. 1 (2010)..... | 45 |
| <i>Holloman ex rel. Holloman v. Harland</i> , 370 F.3d 1252 (11th Cir. 2004) | 36, 39 |
| <i>Hope Clinic for Women, Ltd. v. Flores</i> , 991 N.E.2d 745 (Ill. 2013)..... | 46 |
| <i>Hulbert v. State Farm Mut. Auto. Ins. Co.</i> , 723 So.2d 22 (Ala. 1998)..... | 29, 30 |
| <i>June Med. Servs. L.L.C. v. Russo</i> , 591 U.S. 299 (2020)..... | 25, 27 |
| <i>Kaplan v. California</i> , 413 U.S. 115 (1973)..... | 35 |
| <i>Kassel v. Consol. Freightways Corp. of Delaware</i> , 450 U.S. 662 (1981)..... | 32 |
| <i>Kent v. Dulles</i> , 357 U.S. 116 (1958)..... | 14, 24 |
| <i>Kowalski v. Tesmer</i> , 543 U.S. 125 (2004)..... | 26 |
| <i>Matal v. Tam</i> , 137 S. Ct. 1744 (2017)..... | 40 |
| <i>Matsumoto v. Labrador</i> , No. 1:23-cv-00323-DKG, 2023 WL 7386998 (D. Idaho Nov. 8, 2023)..... | 29 |
| <i>McCutcheon v. Fed. Election Comm’n</i> , 572 U.S. 185 (2014)..... | 39 |
| <i>MedImmune, Inc. v. Genentech, Inc.</i> , 549 U.S. 118 (2007)..... | 54 |
| <i>Minn. Voters All. v. Mansky</i> , 585 U.S. 1 (2018)..... | 45 |
| <i>Moe v. Sec’y of Admin. & Fin.</i> , 417 N.E.2d 387 (Mass. 1981)..... | 46 |
| <i>Myers v. United States</i> , 377 F.2d 412 (5th Cir. 1967) | 18 |
| <i>NAACP v. Alabama ex rel. Patterson</i> , 357 U.S. 449 (1958)..... | 44 |

Nat’l Pork Producers Council v. Ross,
 598 U.S. 356 (2023)..... 51

Nat’l Rifle Ass’n of Am. v. Vullo,
 No. 22-842, 2024 WL 2751216 (U.S. May 30, 2024)..... 33, 50

New York Life Ins. Co. v. Head,
 234 U.S. 149 (1914)..... 51

Nielsen v. Oregon,
 212 U.S. 315 (1909)..... 45, 49, 52

Otto v. City of Boca Raton,
 981 F.3d 854 (11th Cir. 2020) 41, 42, 45, 47

Paul v. Virginia,
 75 U.S. 168 (1868)..... 22

Pembina Consol. Silver Mining & Milling Co. v. Com. of Pennsylvania,
 125 U.S. 181 (1888)..... 32

Planned Parenthood Greater N.W. v. Labrador,
 No. 23-cv-001420, 2023 WL 4864962 (D. Idaho July 31, 2023) 42

Planned Parenthood of Montana v. State,
 515 P.3d 301 (Mont. 2022)..... 46

Planned Parenthood Se. v. Bentley,
 951 F. Supp. 2d 1280 (M.D. Ala. 2013)..... 56

Police Dep’t of Chic. v. Mosley,
 408 U.S. 92 (1972)..... 34

Powers v. Ohio,
 499 U.S. 400 (1991)..... 25, 26, 28

Reed v. Town of Gilbert,
 576 U.S. 155 (2015)..... 40, 41, 47

Right to Choose v. Byrne,
 450 A.2d 925 (N.J. 1982) 46

Roberts v. U.S. Jaycees,
 468 U.S. 609 (1984)..... 43, 45

Robinson v. Marshall,
 No. 2:19-cv-365-MHT, 2022 WL 2314402 (M.D. Ala. June 24, 2022)..... 2

Rosenberger v. Rector and Visitors of Univ. of Va.,
 515 U.S. 819 (1995)..... 40

Rutan v. Republican Party of Ill.,
 497 U.S. 62 (1990)..... 48

| | |
|--|---------------|
| <i>Saenz v. Roe</i> , 526 U.S. 489 (1999)..... | 13 |
| <i>Shapiro v. Thompson</i> , 394 U.S. 618 (1969)..... | 13, 15 |
| <i>Singleton v. Wulff</i> , 428 U.S. 106 (1976)..... | 26, 27, 28 |
| <i>Speech First, Inc. v. Cartwright</i> , 32 F.4th 1110 (11th Cir. 2022) | 40 |
| <i>Spence v. State of Wash.</i> , 418 U.S. 405 (1974)..... | 36, 37, 38 |
| <i>Spokeo, Inc. v. Robins</i> , 578 U.S. 330 (2016)..... | 25 |
| <i>State Farm Mut. Auto. Ins. Co. v. Campbell</i> , 538 U.S. 408 (2003)..... | 52 |
| <i>Steffel v. Thompson</i> , 415 U.S. 452 (1974)..... | 54 |
| <i>Stewart v. Baldwin Cty. Bd. of Educ.</i> , 908 F.2d 1499 (11th Cir. 1990) | 36 |
| <i>Susan B. Anthony List v. Driehaus</i> , 573 U.S. 149 (2014)..... | 26, 54 |
| <i>Texas v. Johnson</i> , 491 U.S. 397 (1989)..... | 35, 38 |
| <i>Toomer v. Witsell</i> , 334 U.S. 385 (1948)..... | 22 |
| <i>Turner Broad. Sys., Inc. v. F.C.C.</i> , 512 U.S. 622 (1994)..... | 34 |
| <i>United States v. Goodwin</i> , 457 U.S. 368 (1982)..... | 49 |
| <i>United States v. Guest</i> , 383 U.S. 745 (1966)..... | <i>passim</i> |
| <i>United States v. Se. Underwriters Ass’n</i> , 322 U.S. 533 (1944)..... | 22 |
| <i>Valley Hosp. Ass’n, Inc. v. Mat-Su Coal. for Choice</i> , 948 P.2d 963 (Alaska 1997) | 46 |
| <i>Ward v. State</i> , 79 U.S. 418 (1870)..... | 22 |

| | |
|--|--------------------|
| <i>Williams v. Fears</i> , 179 U.S. 270 (1900)..... | 24 |
| <i>Wollschlaeger v. Governor of Fla.</i> , 848 F.3d 1293 (11th Cir. 2017) | 41 |
| <i>Women of State of Minn. by Doe v. Gomez</i> , 542 N.W.2d 17 (Minn. 1995) | 46 |
| <i>Young Apartments, Inc. v. Town of Jupiter</i> , 529 F.3d 1027 (2008)..... | 27 |
| <i>Zobel v. Williams</i> , 457 U.S. 55 (1982)..... | 13, 23, 24, 31 |
| STATUTES | |
| 28 U.S.C. § 2201(a)..... | 54, 56 |
| 42 U.S.C. § 1988..... | 10 |
| Ala. Code § 13A-2-23..... | 10, 12, 13, 48, 53 |
| Ala. Code § 13A-2-26..... | 17 |
| Ala. Code § 13A-4-3..... | 10, 12, 48, 53 |
| Ala. Code § 13A-4-4..... | 10, 53 |
| Ala. Code § 13A-5-6..... | 2 |
| Ala. Code § 13A-5-11..... | 2 |
| Ala. Code § 26-23H-4..... | 2, 7 |
| Ala. Code § 26-23H-6(a) | 2 |
| Ark. Code Ann. § 5-61-304 | 7 |
| Fla. Stat. Ann. § 390.0111 | 8, 28 |
| Ga. Code Ann. § 16-12-140..... | 8, 28 |
| Ga. Code Ann. § 16-12-141..... | 8, 28 |
| Idaho Code § 18-622 | 7 |
| Ind. Code Ann. § 16-34-2-1..... | 7 |
| Ky. Rev. Stat. Ann. § 311.772..... | 7 |
| La. Stat. Ann. § 40:1061 | 7 |
| Miss. Code Ann. § 41-41-45..... | 7, 8 |
| Mo. Rev. Stat. § 188.017 | 7 |
| N.D. Cent. Code Ann. § 12.1-19.1-02..... | 7 |
| Okla. Stat. Ann. tit. 21, § 861 | 7 |

S.D. Codified Laws § 22-17-5.1 7
 Tenn. Code Ann. § 39-15-213 7, 8
 Tex. Health & Safety Code Ann. § 170A.002..... 7
 W. Va. Code § 16-2R-3 7

RULES

Fed. R. Civ. P. 56(a) 11
 Rules of H.R., 118th Cong. (2023), Rule XI, cl. 2(m)(3)(D).....30

CONSTITUTIONAL PROVISIONS

Cal. Const. art. I, § 1.1 46
 Cal. Const. art. I, § 18 (1849) 46
 Ill. Const. art XIII, § 16 46
 Ind. Const. art. XI, § 7 (1816) 46
 Iowa Const. art. II, § 23 (1846) 46
 Kan. Const. Bill of Rts. § 6 (1861)..... 46
 Md. Const. Decl. of Rts., art. 24 (1864)..... 46
 Mich. Const. art. XI (1835) 46
 Minn. Const. art. I, § 2 (1857) 46
 Nev. Const. art. I, § 17 (1864) 46
 Ohio Const. art. I, § 22 46
 Ohio Const. art. VIII, § 2 (1802) 46
 Or. Const. art. I, § 34 (1857)..... 46
 U.S. Const. amend. I *passim*
 U.S. Const. art. I, § 8, cl. 3 24
 U.S. Const. art. IV, § 2, cl. 1 23
 U.S. Const. amend. V 24
 U.S. Const. amend. XIV, § 1 12, 23, 24
 Vt. Const. ch. 1, art. 22 46
 Vt. Const. ch. I, § 1 (1777) 46
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OTHER AUTHORITIES

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Induced Termination of Pregnancy Statistics, Alabama Center for Health Statistics, Alabama Center for Health Statistics, Alabama Department of Public Health, 1 (2022)..... 9

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LaFrance, Mary, *Constitutional Implications of Acquisition-Value Real Property Taxation: Assessing the Burdens on Travel and Commerce*, 1994 Utah L. Rev. 1027 (1994)..... 31

Membership Has Its Privileges and Immunities: Congressional Power To Define and Enforce the Rights of National Citizenship, 102 Harv. L. Rev. 1925, 1935 (1989)..... 23, 24

Moderated by Manley F. Brown, The Honorable Marc T. Treadwell, *The United States Attorney's Office Middle District of Georgia: Gary B. Blasingame, Manley F. Brown, Joseph H. Davis, and Joseph W. Popper, Jr.*, 22 J.S. Legal Hist. 73, 109 n. 46 (2014)..... 19

Sacks, Katherine, et al., *Maternal Mortality Among Vulnerable US Communities*, Milken Institute, 4 (2023)..... 8

Sunstein, Cass R., *Democracy and the Problem of Free Speech*, The Free Press, 181 (1993) 35

Tribe, Laurence H., *Saenz Sans Prophecy: Does the Privileges or Immunities Revival Portend the Future-or Reveal the Structure of the Present?*, 113 Harv. L. Rev. 110, 152 (1999) 21, 22

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INTRODUCTION

Plaintiff Yellowhammer Fund asks this Court to find that, just as state actors may not prevent residents from traveling to another state to engage in lawful conduct, neither may they prevent helpers from assisting residents in doing so. Yellowhammer Fund is a non-profit helper founded in Tuscaloosa that operated an abortion fund for approximately five years before Alabama's abortion ban took effect. Following *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), and Alabama's abortion ban taking effect, Defendant Alabama Attorney General Steve Marshall threatened to prosecute organizations that help pregnant people leave the state for lawful abortion care.

Helpers are the people who aid others in accessing their rights. When helpers extend a hand, they do more than simply provide aid; they send a message. To those who are persecuted, they send a message of solidarity. To oppressors, helpers send a message of protest and defiance. This is true whether the aid furthers a politically popular viewpoint or one held by the minority. And it is especially true when a state disagrees with the message, values, or goals of the aid provided.

Yellowhammer Fund wants to help people, as it has done in the past, get lawful abortion care outside of Alabama. It wants to send a message of solidarity to those persecuted by the Alabama abortion ban, and a message of defiance to those who

enacted it and those who enforce it—a message inherently communicated by Yellowhammer Fund supporting the right to travel of those it serves. Yellowhammer Fund seeks summary judgment so that it may reopen its abortion fund and resume helping pregnant Alabamians seek lawful, out-of-state abortion care.

STATEMENT OF FACTS

A. Defendant Threatened to Prosecute Abortion Funds for Helping Pregnant People Travel to Obtain Lawful Abortions in Other States.

Alabama’s near-total abortion ban—Alabama Code § 26-23H-4 (“Abortion Ban”)—took effect on June 24, 2022, the day the United States Supreme Court released its opinion in *Dobbs*, 597 U.S. 215. *See Robinson v. Marshall*, No. 2:19-cv-365-MHT, 2022 WL 2314402, at *1 (M.D. Ala. June 24, 2022). Violations of the Abortion Ban are punishable by up to life in prison and a fine of up to \$60,000. Ala. Code §§ 13A-5-6, 13A-5-11, 26-23H-6(a).

On August 11, 2022, Defendant appeared on the Jeff Poor Show, a local talk radio program, and threatened to prosecute abortion helpers in Alabama. Among other things, Defendant stated, “if someone was promoting themselves . . . as a funder of abortion out of state . . . that is potentially criminally actionable for us,” and that he would “look . . . closely” at anyone who uses funds to “facilitate” out-

of-state abortion care.¹ Declaration of Paige Suelzle ISO Mot. Summ. J. ¶¶ 3–7 (“Suelzle Decl.”). In his remarks, Defendant specifically mentioned “groups out of Tuscaloosa” that provide support for out-of-state abortion. Suelzle Decl. ¶ 6.

Members of Plaintiff’s staff learned about Defendant’s statements after his appearance on the Jeff Poor Show. Declaration of Jenice Fountain ISO Mot. Summ. J. ¶ 22 (“Fountain Decl.”); Declaration of Kelsea McClain ISO Mot. Summ. J. ¶ 23 (“McLain Decl.”). Yellowhammer Fund believed that Defendant’s threats specifically targeted them. *See* McLain Decl. ¶ 23; Fountain Decl. ¶¶ 6, 22–23. Following his radio appearance, Defendant has repeatedly touted his desire to prosecute abortion helpers when they assist with lawful, out-of-state abortion care.² *See* Fountain Decl. ¶¶ 24–27, 29–30; McLain Decl. ¶¶ 24–25, 33; *see also* Def.’s Answer to Yellowhammer Compl. ¶¶ 11–12, ECF No. 56; Def.’s Answer to WAWC Compl. ¶ 30, ECF No. 57 (“Admitted that Matt Clark reported statements made by

¹ The Suelzle Declaration contains a transcription of Alabama Attorney General Steve Marshall, Jeff Poor Show FM Talk 1065, August 11, 2022, at 4:29:09 p.m., 8:00 min – 10:01, available at <https://fmtalk1065.com/podcast/alabama-attorney-general-steve-marshall-jeff-poor-show-thursday-8-11-22> (last visited June 10, 2024).

² *See, e.g.*, Ashley Bowerman, *Alabama AG clarifies prosecution rules under abortion law*, WSFA 12 News (Jan. 11, 2023), <https://www.wsfa.com/2023/01/12/alabama-ag-clarifies-prosecution-rules-under-abortion-law/>; Nathaniel Weixel, *Abortion advocates sue Alabama AG over prosecution threats for out-of-state travel*, The Hill (July 31, 2023), <https://thehill.com/policy/healthcare/4128993-abortion-advocates-sue-alabama-ag-over-prosecution-threats-for-out-of-state-travel/> (explaining that the attorney general responded to the filing of this lawsuit by stating that he “will continue to vigorously enforce Alabama laws protecting unborn life which include the Human Life Protection Act. That includes abortion providers conspiring to violate the Act”).

Defendant that . . . the conspiracy statute ‘could apply to attempts to procure an abortion out of state.’”). He has further done so in this litigation.³

B. Plaintiff Is a Reproductive Justice Organization that Communicates a Message of Solidarity and Support to Pregnant Alabamians.

Yellowhammer Fund is a reproductive justice organization founded in 2017. Fountain Decl. ¶¶ 6–7; McLain Decl. ¶ 17. Reproductive justice organizations are typically Black-led organizations that believe all people have the right to decide whether to have children, when to have children, and how to parent the children they have in safe and healthy environments. Fountain Decl. ¶ 6; McLain Decl. ¶ 17. Yellowhammer Fund believes that every person should be free to make decisions about their bodies, families, and futures without shame or governmental interference. Fountain Decl. ¶¶ 1, 6–7, 9–13, 16–19; McLain Decl. ¶¶ 17, 32. Plaintiff provides support to pregnant Alabamians and their families to help eliminate barriers to abortion care, with a specific focus on addressing racial inequity in reproductive healthcare. *See, e.g.*, Fountain Decl. ¶¶ 8–16, 19–20; McLain Decl.

³ *See, e.g.*, Def.’s Mot. Dismiss at 16–17, ECF No. 28 (“[I]t is plainly illegal pursuant to Ala. Code § 13A-4-4 for Plaintiffs to conspire with others to procure abortions that would be illegal in Alabama. The criminal conduct is the agreement (the conspiracy) itself, which is conduct that occurs *in Alabama* that Alabama has every right to prosecute.”); *id.* at 18 (“Alabama can criminalize Alabama-based conspiracies to commit abortions elsewhere, even if the State lacked jurisdiction to prosecute out-of-state crimes.”); *id.* at 23 (“Plaintiffs undeniably would violate the statute as written.”); Def.’s Reply ISO Mot. Dismiss at 11, ECF No. 36 (“Alabama seeks to punish an unlawful conspiracy formed in this State—not potentially lawful conduct in another State.”).

¶¶ 6–8, 14–16. As a helper, Plaintiff communicates a message of solidarity and support to people in need. *See* Fountain Decl. ¶¶ 10–13, 18–20; McLain Decl. ¶¶ 11–14; 29–30, 32.

C. Plaintiff Wants to Resume Engaging in Constitutionally Protected Activities.

From 2017 to June 24, 2022, Yellowhammer Fund operated an abortion fund that provided financial and logistical support to pregnant people seeking abortion care. Fountain Decl. ¶¶ 7, 14–18; McLain Decl. ¶¶ 6–13. The fund provided support to pregnant Alabamians and residents of other states who needed help accessing abortions within and outside of Alabama. McLain Decl. ¶¶ 3, 6, 18; Fountain Decl. ¶ 7. In addition to paying for the cost of abortion care, the fund helped callers with transportation, childcare, and lodging, and it provided guidance, moral support, and information about reproductive healthcare. McLain Decl. ¶¶ 6–13; Fountain Decl. ¶¶ 7, 18. Members of Plaintiff’s staff also drove patients to abortion appointments both within and outside of Alabama. Fountain Decl. ¶ 16.

Plaintiff’s abortion fund was a core part of the organization’s mission. *See* Fountain Decl. ¶¶ 10, 14–19. The fund met a critical gap for pregnant Alabamians, with a particular focus on helping people of color and people with low incomes. McLain Decl. ¶¶ 11–16; Fountain Decl. ¶¶ 19–20. Well before *Dobbs*, Plaintiff began to plan for a future in which abortion care would be banned in Alabama.

McLain Decl. ¶¶ 18–21. Plaintiff anticipated the abortion fund would play a critical role in helping pregnant Alabamians travel to states where abortion care remained legal. *Id.* It began developing plans to expand the fund to meet community needs. *Id.*

After *Dobbs*, Plaintiff paused the operation of the abortion fund. McLain Decl. ¶ 22; Fountain Decl. ¶ 21. Plaintiff has not resumed providing support to pregnant Alabamians seeking abortion care outside the state because it fears criminal prosecution because of Defendant’s threats. McLain Decl. ¶¶ 23–25; Fountain Decl. ¶¶ 24–26, 29–30. Its resources have been diverted to supporting more educational initiatives and providing free emergency contraception, pregnancy tests, Plan B, and basic necessities like diapers, food supplies, school supplies, period products, and other items to meet community needs. Fountain Decl. ¶¶ 8–9. Also, because Defendant’s threats have caused Yellowhammer Fund to divert resources, it now informs clients that it cannot help them obtain an abortion but that it can provide other support during their pregnancy and after giving birth. McLain Decl. ¶ 29. In addition to no longer associating with pregnant Alabamians seeking abortion care in the way they both would like, Plaintiff also has stopped collaborating with abortion funds, advocacy groups, and out-of-state clinics out of fear that its associations will be criminalized. Fountain Decl. ¶¶ 17, 25; McLain Decl. ¶¶ 7, 27.

Since *Dobbs*, pregnant Alabamians continue to contact Yellowhammer Fund seeking support for accessing abortion care in states where abortion is legal. McLain Decl. ¶ 26. Plaintiff’s helpline receives between five and ten calls per week from people seeking support from the fund. *Id.* Because Plaintiff no longer operates the fund, it notifies callers that it cannot provide them with help. *Id.* at ¶ 27. Plaintiff would resume providing support to callers and advertising the services of the fund if it could be assured that criminal prosecution would not result from it doing so. *Id.* at ¶¶ 32–33; Fountain Decl. ¶¶ 28–30. Plaintiff also would resume providing information to callers about out-of-state abortion care. McLain Decl. at ¶¶ 32–33; Fountain Decl. ¶¶ 28–30.

D. Plaintiff’s Constitutionally Protected Activities Would Offer Vital Resistance to Alabama’s Abortion Ban.

Today, fourteen states, including Alabama, have near-total abortion bans.⁴ Of the four states that border Alabama, Mississippi and Tennessee currently have near-

⁴ Ala. Code § 26-23H-4; Ark. Code Ann. § 5-61-304; Idaho Code § 18-622; Ind. Code Ann. § 16-34-2-1; Ky. Rev. Stat. Ann. § 311.772; La. Stat. Ann. § 40:1061; Miss. Code Ann. § 41-41-45; Mo. Rev. Stat. § 188.017; N.D. Cent. Code Ann. § 12.1-19.1-02; Okla. Stat. Ann. tit. 21, § 861; S.D. Codified Laws § 22-17-5.1; Tenn. Code Ann. § 39-15-213; Tex. Health & Safety Code Ann. § 170A.002; W. Va. Code § 16-2R-3. Notably, 57 percent of Black women of reproductive age live in states where abortion is banned, where there have been significant legislative attempts to ban abortion, where there are legal challenges to a ban pending, or where there are gestational limits between six and twenty weeks. Camille Kidd et al., *State abortion bans threaten nearly 7 million Black women, exacerbate the existing Black maternal mortality crisis*, Nat’l P’ship for Women & Families (May 2024), <https://nationalpartnership.org/report/state-abortion-bans-threaten-black-women> (considering Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Carolina,

total bans on abortion, Miss. Code Ann. § 41-41-45; Tenn. Code Ann. § 39-15-213, and Georgia and Florida have 6-week bans, Ga. Code Ann. §§ 16-12-140, 16-12-141; Fla. Stat. Ann. § 390.0111. Pregnant Alabamians who seek abortion care must travel long distances to access care in states where abortion is legal. *See* Declaration of Kari White ISO Mot. Summ. J. ¶ 21 (“White Decl.”); McLain Decl. ¶¶ 28, 31.

People who are unable to obtain abortion care face significant medical, social, and economic consequences. White Decl. ¶¶ 22, 27. The United States has a higher rate of maternal mortality than any other developed nation, and that rate has increased in recent years. *Id.* at ¶ 28. Alabama has the third highest maternal mortality rate in the country. *Id.*⁵ Carrying a pregnancy to term is especially dangerous for certain populations. Pregnancy-related deaths disparately impact communities of color. *Id.* at ¶ 29. According to a 2021 report, the maternal mortality rate for Black women is 2.6 times higher than the rate for non-Hispanic white women. *Id.* Specifically, the maternal mortality rate for non-Hispanic white women

North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, and Wyoming).

⁵ Since the signing of the White Declaration, the location of the Maternal Mortality report has changed to https://www.alabamapublichealth.gov/perinatal/assets/2020_annual_mmr.pdf. Notably, other sources now report Alabama as having the highest rate of mothers dying from pregnancy-related issues. Katherine Sacks et al., *Maternal Mortality Among Vulnerable US Communities*, Milken Institute, 4 (2023), <https://milkeninstitute.org/sites/default/files/2023-07/MaternalMortalityamongVulnerableUSCommunities.pdf>.

in 2021 was 26.6 deaths per 100,000 live births, while the maternal mortality rate for Black women was 69.9 deaths per 100,000 live births. *Id.*

Those who seek abortion care in Alabama are disproportionately people of color and have low incomes. *Id.* at ¶ 23.⁶ Along with Kentucky, Alabama is the sixth-poorest state in the country. *Id.* at ¶ 24. Since *Dobbs*, abortion has become increasingly inaccessible for pregnant Alabamians. *Id.* at ¶¶ 16, 26. Without financial and logistical support from abortion funds and practical support organizations, many Alabamians struggle to access abortion care today. *Id.* at ¶¶ 24–25.

E. Plaintiff Filed this Lawsuit so it Can Resume Helping Pregnant People Travel to Obtain Lawful Abortion Care.

Yellowhammer Fund filed this lawsuit on July 31, 2023. Yellowhammer Compl., ECF No. 1. It alleged that Defendant’s threats to prosecute Yellowhammer and other abortion funds for helping pregnant people obtain lawful, out-of-state abortion care violate (1) the federal constitutional right to travel (*id.* at ¶¶ 87–97); (2) the First Amendment right to free speech and expression (*id.* at ¶¶ 70–78); (3) the First Amendment right to association (*id.* 1 at ¶¶ 79–86); and (4) the Due Process Clause and principles of sovereignty and comity within the U.S. Constitution (*id.* at

⁶ In 2022, Black Alabamians comprised 67 percent of the state’s abortion patients while only comprising around 27 percent of the Alabama population. *Induced Termination of Pregnancy Statistics*, Alabama Center for Health Statistics, Alabama Department of Public Health, 1 (2022), <https://www.alabamapublichealth.gov/healthstats/assets/itop-2022.pdf>.

¶¶ 98–106). On August 21, 2023, this Court consolidated *West Alabama Women’s Center et al. v. Marshall*—a case brought by medical providers concerned about how Defendant’s threats limit their ability to support their patients in obtaining out-of-state care—with this case. Order Granting Mot. Dismiss, ECF No. 22 (formerly Civil Action No. 2:23cv451-MHT).

On August 28, 2023, Yellowhammer Fund moved for summary judgment. Mot. Summ. J., ECF No. 27. Defendant filed a motion to dismiss later that day. Def.’s Mot. Dismiss, ECF No. 28. On May 6, 2024, the Court ruled on the motion to dismiss. Order Mot. Dismiss, ECF No. 48. At a status conference, the Court and parties agreed that rather than supplement the motion for summary judgment Yellowhammer Fund filed on August 28, 2023, the Court would deny it without prejudice, so that Yellowhammer Fund could refile by June 17, 2024. Order Den. Mot. Summ. J., ECF No. 54; Scheduling Order, ECF No. 55.

Yellowhammer Fund’s complaint and this motion ask this Court to declare unconstitutional and permanently enjoin enforcement of Alabama Code §§ 13A-2-23, 13A-4-3, and 13A-4-4, for speech and actions to assist Alabama residents leaving the state to obtain lawful abortion care. Plaintiff also asks for an award of attorneys’ fees and costs pursuant to 42 U.S.C. § 1988 and any other relief the Court deems just, proper, and equitable.

STANDARD OF REVIEW

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “[A] ‘genuine’ dispute exists if ‘a jury applying [the applicable] evidentiary standard could reasonably find for either the plaintiff or the defendant’ as to the material fact.” *Brady v. Carnival Corp.*, 33 F.4th 1278, 1281 (11th Cir. 2022) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). However, “the mere existence of *some* alleged factual dispute between the parties” will not defeat a summary judgment motion unless the dispute is genuine and the fact is material to the outcome of the case. *Anderson*, 477 U.S. at 247–48.

Summary judgment is appropriate if “the pertinent facts are obvious and indisputable from the record,” and “the only remaining truly debatable matters are legal questions that a court is competent to address.” *Garvie v. City of Fort Walton Beach*, 366 F.3d 1186, 1190 (11th Cir. 2004).

ARGUMENT

This Court should grant Yellowhammer Fund’s motion for summary judgment because no factual disputes preclude the resolution of its claims. Defendant’s threatened prosecutions blatantly infringe on Plaintiff’s and pregnant Alabamians’ right to travel by penalizing those who would assist people seeking to

travel across state lines for lawful abortion care. Defendant can no more punish helpers assisting travel than it could punish the pregnant person for traveling.

Plaintiff necessarily engages in speech, expressive conduct, and expressive association to pursue the organization's mission and values. Defendant's threats to prosecute abortion helpers for speaking about lawful, out-of-state activities violate the First Amendment because he seeks to chill and restrict speech based on its content and viewpoint.

The Due Process Clause and principles of sovereignty and comity strictly forbid Defendant from applying Alabama laws outside the state's borders. Certainly, that would be the result of his threatened prosecutions. This case is only about lawful out-of-state abortions. To prosecute Plaintiff for conspiracy or aiding and abetting there must be an Alabama crime. Ala. Code § 13A-4-3(a); Ala. Code § 13A-2-23. Since the assistance and agreements would only support lawful, out-of-state conduct, Defendant is essentially arguing that he can extend Alabama's laws outside the state to make unlawful the abortion care that another state deems lawful, and in some cases constitutionally protects.

The consequences of threatening prosecution or initiating prosecution against Yellowhammer Fund's employees for doing the essential duties of employment are

significant. This is true even if, ultimately, the prosecution would be unsuccessful.⁷ Plaintiff seeks an order that would allow it to reopen its abortion fund without fear of prosecution so that it can assist pregnant people who no longer want to be pregnant to leave Alabama for lawful abortion care.

A. Defendant’s Threatened Prosecutions Violate the Right to Travel.

The U.S. Supreme Court has firmly established and repeatedly recognized a right to travel. *Zobel v. Williams*, 457 U.S. 55, 67 (1982) (Brennan, J., concurring); *Shapiro v. Thompson*, 394 U.S. 618, 630 (1969), *overruled on other grounds by Edelman v. Jordan*, 415 U.S. 651 (1974). It is a right that ensures people can enter and leave any state. *Saenz v. Roe*, 526 U.S. 489, 500 (1999). The right to travel is “so elementary” that it inherently accompanies the Union that the Constitution established. *United States v. Guest*, 383 U.S. 745, 758 (1966). How else could a loose confederation of states be transformed into one nation? *See Zobel*, 457 U.S. at 67 (Brennan, J., concurring); *Attorney General of New York v. Soto-Lopez*, 476 U.S.

⁷ This Court need not construe the Alabama criminal statutes to decide whether they apply to Plaintiffs’ speech and conduct, because the highest law enforcement officeholder in the state asserts he can and will prosecute the subject speech, association, expressive conduct, and travel under these statutes. The threats in themselves are sufficient to justify a need to enjoin such prosecutions and declare that such prosecution would violate federal law. Plaintiff Yellowhammer Fund—while deeply offended by the extreme misreading of Alabama law—has no claim in this litigation that requires this Court to interpret Alabama Code §§ 13A-2-23, 13A-4-3, and 13A-4-4. To the extent Yellowhammer Fund talks about how one cannot be prosecuted for conspiring to do a lawful act, or that clearly there is no extraterritorial effect of state law, it is only to show Defendant’s animosity toward concepts of sovereignty and comity and illustrate how the Due Process Clause is implicated.

898, 902 (1986) (noting “the important role [the right to travel] has played in transforming many States into a single Nation”); *Crandall v. Nevada*, 73 U.S. 35, 43 (1867) (“[T]he people of these United States constitute one nation.”).

As this court noted in its May 6, 2024, order and opinion, the right to travel’s origins date back at least as far as the Magna Carta. Order Mot. Dismiss at 43, ECF No. 48 (citing Magna Carta (1215) cl. 41; *Kent v. Dulles*, 357 U.S. 116, 125–26 (1958)). It is clear that “damage and havoc . . . would ensue if the States had the power to prevent the free movement of citizens from one State to another.” *Edwards v. California*, 314 U.S. 160, 178 (1941) (Douglas, J., concurring). Considering the importance of the right to travel, its broad interpretation is necessary because “[i]f our bodies can move among states, but our freedom of action is tied to our place of origin, then the ‘right to travel’ becomes a hollow shell.” Seth F. Kreimer, *Lines in the Sand; The Importance of Borders in American Federalism*, 150 U. Pa. L. Rev. 973, 1007 (2002).

Defendant’s threats convey to Plaintiff, and the pregnant people in Alabama that it serves, that Plaintiff’s employees and volunteers could be prosecuted and face up to a life sentence in prison if Plaintiff helps pregnant people travel to a state where abortion is legal. When California made it illegal for helpers to bring indigent people into the state, the U.S. Supreme Court invalidated the law. *Edwards*, 314 U.S. at 166. When a Nevada law taxed people leaving the state, the U.S. Supreme Court

overturned it. *Crandall*, 73 U.S. at 49. And when the Ku Klux Klan inflicted violence in Georgia meant to stop Black people from using highways to travel between states, the U.S. Supreme Court declared this violence a violation of the right to travel. *Guest*, 383 U.S. at 760. Plaintiff’s right to travel claim can be resolved by applying well-established constitutional principles. No factual issues prevent this Court from entering summary judgment in Plaintiff’s favor.

1. The Predominant Purpose of Defendant’s Threats of Prosecution Is to Prevent the Exercise of the Right to Interstate Travel and to Oppress Those Who Exercise That Right.

State action implicates the right to travel when impeding travel is its primary objective. *Soto-Lopez*, 476 U.S. at 903; *see also Guest*, 383 U.S. at 760. When the government infringes upon the right to travel, the government’s actions will be unlawful. *Shapiro*, 394 U.S. at 634. Three cases—*Edwards*, *Crandall*, and *Guest*—make abundantly clear that the right to travel is implicated here.

Edwards shows why Plaintiff—a helper seeking to assist in the exercise of the right to travel—has suffered a constitutional violation. Fred Edwards traveled from Texas to California with his brother-in-law to help him start a new life. *Edwards*, 314 U.S. at 170–71. His brother-in-law had \$20 to his name and, because of his indigency, he believed California could offer him and his family new opportunities. *Id.* at 171. At the time, California law criminalized helpers like Mr. Edwards, specifically making it unlawful to transport indigent people into the state. *Id.* The

trial court sentenced Mr. Edwards to six months in the county jail for coming to the aid of his brother-in-law. *Id.* The U.S. Supreme Court found that no single state could “isolate itself” by prohibiting indigent people from entering and held that fundamental constitutional rights were at play—rights we now call “the right to travel.” *Id.* at 173. Though sympathetic to the “grave and perplexing social and economic dislocation” that led California to use its police power to restrict travel, the Court held that this interest could not overcome the countervailing importance of preserving the free movement of people across state lines. *Id.*

The similarities between *Edwards* and this case are striking. Like Mr. Edwards, Plaintiff is a helper seeking to transport people who do not have the funds to travel to another state. *See, e.g.*, Fountain Decl. ¶ 14. Like Mr. Edwards, Plaintiff will be criminalized if it aids in another’s travel. *See, e.g.*, Fountain Decl. ¶ 24; McLain Decl. ¶¶ 23–24. And like Mr. Edwards, Yellowhammer Fund is being deprived of the fundamental right to move freely between states while being faced with a state’s efforts to isolate itself and its residents from other states in the Union. *See* Fountain Decl. ¶¶ 16, 26.

Crandall also establishes that Plaintiff is a proper party, and that Defendant’s threats violate the constitutional right to travel. In 1865, Nevada enacted a law that levied a tax of one dollar upon any person leaving the state by railroad, stagecoach, or other vehicle for hire. *Crandall*, 73 U.S. at 35–39. The Court found Nevada’s

actions in conflict with the Constitution, discussing the havoc that would befall the nation if the government could place burdens on the right to leave a state. *Id.* at 49. “The people of these United States constitute one nation. They have a government in which all of them are deeply interested.” *Id.* at 43. Rejecting Nevada’s argument that this was “not a tax upon the passenger, but upon the business of the carrier who transports him,” *id.* at 39, the Court explained that it is against the principles of our nation to erect barriers to leaving a state, which would interfere with the activities of national citizenship, *id.* at 43–44. “[N]o power can exist in a State to obstruct this right that would not enable it to defeat the purposes for which the government was established.” *Id.* at 44.

Crandall guides this case for two additional reasons. First, Mr. Crandall was not a passenger but the agent for a stagecoach. *Id.* at 36. Like Mr. Edwards, he was able to get judicial relief even though the law at issue violated the right to travel of the stagecoach passengers traveling out of Nevada. Second, the infringement on that right was merely a one-dollar fee. Here, Defendant threatens a sentence of up to life in prison. *See* Suelzle Decl. ¶ 6. Even if unsuccessful, a criminal prosecution would deeply impact Yellowhammer Fund’s mission and work, and its employees and leadership would be embroiled in criminal legal proceedings, and potentially charged for criminal activity undertaken by the organization. *See* Ala. Code § 13A-2-26 (“A person is criminally liable for conduct constituting an offense which he

performs or causes to be performed in the name of or in behalf of a corporation to the same extent as if such conduct were performed in his own name or behalf.”).

Finally, *Guest* demonstrates that the right to travel is infringed if the predominant purpose of the challenged act is to “impede or prevent the exercise of the right of interstate travel, or to oppress a person because of his exercise of that right.”⁸ *Guest*, 383 U.S. at 760. *Guest* arises from the Ku Klux Klan shooting of Lt. Col. Lemuel Penn in Athens, Georgia, and the rash of racially motivated terror inflicted on Athens around the time of the shooting. See *Myers v. United States*, 377 F.2d 412, 416 (5th Cir. 1967) (describing facts of the murder that were the basis of *Guest*).⁹ Lt. Col. Lemuel Penn was shot while driving back to Washington after

⁸ Plaintiff moves for summary judgment here on a theory that the primary objective of the Defendant’s threats is to impede or prevent the right to interstate travel or to oppress a person because of his exercise of that right. *Attorney General of New York v. Soto-Lopez* also allows Plaintiff to establish a violation through additional theories. 476 U.S. 898, 903 (1986). Plaintiff recognizes that proceeding on those alternative theories may require reliance upon issues of fact, and therefore, this summary judgment motion only proceeds on “primary objective grounds.” By doing so, Plaintiff does not waive its right to present evidence in support of the additional theories if summary judgment is not granted.

⁹ During the Spring and Summer of 1964, Athens, Georgia, had been plagued with violence arising from a group of Ku Klux Klansmen and the complicity of law enforcement in their violence. *Myers v. United States*, 377 F.2d 412, 414–16 (1967) (discussing law enforcement’s frequent presence when the Ku Klux Klan acted). In the backdrop, young Black residents were picketing The Varsity drive-in restaurant in Athens because the business refused to serve Black residents. *Id.* at 414–15. A group of Klansmen, often with the same few actors, traversed the town with weapons, beat Black men, shot into homes in Black residential neighborhoods costing a man his eye and a 13-year-old girl her lip, and sought to scare Black people with out-of-state license plates off the interstate highways through a rash of violence. *Id.* at 414–16. Around 5 a.m. on July 11, 1964, Lt. Col. Lemuel Penn and two other Black army officers were driving to Washington D.C. from Fort Benning, Georgia, after completing summer training duties. *Id.* at 416. They stopped in Athens, Georgia, where Lt. Col. Penn took the wheel. *Id.* About 20 miles

completion of reserve military duty at Fort Benning, Georgia. *Id.* After a local jury failed to convict the suspects of murder, the federal government sought to prosecute the men for conspiring to deprive Black people of their constitutional rights, including the right to travel. *Guest*, 383 U.S. at 747 n.1. Initially, the district court dismissed the indictment. *Id.* at 748.

On appeal, the U.S. Supreme Court had to determine whether the Department of Justice could indict under 18 U.S.C. § 241. *Id.* at 746–47, 750–51. *Guest*, one of the first cases argued by Thurgood Marshall as Solicitor General, is primarily about the Court’s decision to extend the protection of the Fourteenth Amendment to people who suffer a deprivation of their constitutional rights at the hands of private actors. Peggy Cooper Davis et. al., *The Persistence of the Confederate Narrative*, 84 Tenn. L. Rev. 301, 342 (2017). But the case is rooted in, and explores deeply, the constitutional right to travel. *Guest*, 383 U.S. at 757. The Supreme Court stated that “[t]he constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so,

outside of town, a light-colored car approached the three men’s vehicle. *Id.* Two shotgun blasts were fired, one of these going through a rear window and missing the occupants. *Id.* The other blast smashed a hole in the window near Lt. Col. Penn—a decorated veteran of World War II, an assistant superintendent of schools in Washinton D.C., a husband, and a father of three—striking his head and killing him instantly. *Id.*; see also Moderated by Manley F. Brown, The Honorable Marc T. Treadwell, *The United States Attorney's Office Middle District of Georgia: Gary B. Blasingame, Manley F. Brown, Joseph H. Davis, and Joseph W. Popper, Jr.*, 22 J.S. Legal Hist. 73, 109 n. 46 (2014). None of these facts are described in the text of *Guest* but provide the context of the case.

occupies a position fundamental to the concept of our Federal Union.” *Id.* It continued:

Although the Articles of Confederation provided that ‘the people of each State shall have free ingress and regress to and from any other State,’ that right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution. . . . Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel, there is no need here to canvass those differences further. All have agreed that the right exists.

Id. at 758–59 (internal citations and footnotes omitted). The Court allowed the indictment, explaining:

[I]f the predominant purpose of the conspiracy is to impede or prevent the exercise of the right to interstate travel, or to oppress a person because of his exercise of that right, then, whether or not motivated by racial discrimination, the conspiracy becomes a proper object of the federal law under which the indictment in this case was brought.

Id. at 760. Since then, the “predominant purpose” or “primary objective” test has been one way a party can show infringement of the right to travel. *See Soto-Lopez*, 476 U.S. at 903.

Here, the predominant purpose of Defendant’s threats of prosecution are to “impede or prevent the exercise of the right to interstate travel” and to “oppress a person because of his exercise of that right.” One need only look to Defendant’s statements for proof of their purpose. He specifically acknowledged his inability to

prosecute the pregnant person for exercising the right. Suelzle Decl. ¶ 6 (“You know there is nothing about that law that restricts any individual from driving across state lines and, uh, seeking an abortion, uh, in another place . . .”). But he went on to explain how he would stop that travel by prosecuting abortion funds. *Id.* (“[H]owever, I would say that if any individual held themselves out, uh, as a, as an entity or a group that is using funds, that they are able to raise, uh, to be able to facilitate those [sic] those visits then that, uh, is something we are going to look at closely.”). Defendant is threatening enforcement specifically to prevent organizations and individuals like Plaintiff from transporting people to other states, just as in *Edwards* and *Crandall*. And, like in *Guest*, his purpose in making this threat is to impede travel. Further, *Guest* makes clear that “actions” (i.e., the unspeakable violence Black Georgians’ faced), not just laws, can violate the right to travel. Here, like the actions in *Guest*, Defendant’s threats, if carried out, are life-destroying, as Defendant is threatening a sentence of life in prison without the possibility of parole to any helper. A non-profit organization cannot carry out its mission in the face of the criminalization of its primary activities and its primary speech.

2. The Right to Travel Is a Hollow Shell if Movement Among the States Does Not Allow Freedom of Action.

The conclusion that a state’s legal system must not hobble a citizen as she travels from state to state follows from a conception of interstate mobility that entails something more than just a change of scenery. If each state could decide for itself, possibly with some measure of congressional authorization, how much of its legal system

its citizens would have to carry around on their backs while seeking to take advantage of the legal environments of other states, then the right to choose which state to enter for any purpose lawful in that state would amount to nothing more than the right to have the physical environment of the states of one's choosing pass before one's eyes in a kind of virtual reality arcade while one remained strapped at all times in a legally fixed and closed environment. Surely, however, more than that is involved in the right of interstate mobility that follows from the basic structure of our federal Union.

- Professor Lawrence Tribe¹⁰

In its order and opinion denying Defendant's motion to dismiss, this Court engaged in a significant discussion on the origins of the right to travel, looking predominantly to Article IV's Privileges and Immunities Clause. Plaintiff agrees that the Privileges and Immunities Clause is *one* origin of the right to travel and helps establish that the right includes both the right to move physically between the States and to do what is legal in the destination State. *See* Order Mot. Dismiss at 45–47, ECF No. 48 (citing 3 J. Story, *Commentaries on the Constitution of the United States*, 3:674–75, § 1800 (1833); *Paul v. Virginia*, 75 U.S. 168, 180 (1868), *overruled in part on other grounds by United States v. Se. Underwriters Ass'n*, 322 U.S. 533 (1944); *Corfield v. Coryell*, 6 F. Cas. 546, 552 (C.C.E.D. Pa. 1823) (Washington, J., on circuit); *Ward v. State*, 79 U.S. 418, 430 (1870); *Toomer v. Witsell*, 334 U.S. 385 (1948)).

¹⁰ Lawrence Tribe, *Saenz Sans Prophecy: Does the Privileges or Immunities Revival Portend the Future-or Reveal the Structure of the Present?*, 113 Harv. L. Rev. 110, 152 (1999).

But courts have declined to cabin the origin of the right to travel to one particular constitutional source. *See, e.g., Zobel*, 457 U.S. at 66–67 (Brennan, J., concurring). In the *Zobel* concurrence, Justice Brennan explained:

I note that the frequent attempts to assign the right to travel some textual source in the Constitution seem to me to have proved both inconclusive and unnecessary. Justice O’CONNOR plausibly argues, *post*, at 2322–2323, that the right predates the Constitution and was carried forward in the Privileges and Immunities Clause of Art. IV. But equally plausible, I think, is the argument that the right resides in the Commerce Clause, *see Edwards v. California*, 314 U.S. 160, 173, 62 S.Ct. 164, 166, 86 L.Ed. 119 (1941), or in the Privileges and Immunities Clause of the Fourteenth Amendment, *see id.*, at 177–178, 62 S.Ct., at 168–169 (Douglas, J., concurring). In any event, in light of the unquestioned historic recognition of the principle of free interstate migration, and of its role in the development of the Nation, we need not feel impelled to “ascribe the source of this right to travel interstate to a particular constitutional provision.” *Shapiro v. Thompson*, 394 U.S. 618, 630, 89 S.Ct. 1322, 1329, 22 L.Ed.2d 600 (1969).

Id. In fact, over the last two centuries, justices have suggested at least seven different sources. For some, it has been the Article IV Privileges and Immunities Clause. U.S. Const. art. IV, § 2, cl. 1.; *see, e.g., Zobel*, 457 U.S. at 73–74 (O’Connor, J., concurring in the judgment). For others, it has been the Fourteenth Amendment Privileges and Immunities Clause. U.S. Const. amend. XIV, § 1; *see Edwards*, 314 U.S. at 178 (Douglas, J., concurring). It has been rooted in a conception of national citizenship implicit in “the structural logic of the Constitution itself.” *Membership*

Has Its Privileges and Immunities: Congressional Power To Define and Enforce the Rights of National Citizenship, 102 Harv. L. Rev. 1925, 1935 (1989); see *Crandall*, 73 U.S. at 43. In *Edwards*, sourcing within the Commerce Clause featured prominently. U.S. Const. art. I, § 8, cl. 3; see *Edwards*, 314 U.S. at 172–73. The Equal Protection Clause has been mentioned, U.S. Const. amend. XIV, § 1; see, e.g., *Zobel*, 457 U.S. at 60 n. 6, as have each of the Due Process Clauses, U.S. Const. amend. V; U.S. Const. amend. XIV, § 1; *Kent v. Dulles*, 357 U.S. 116, 125 (1958) (Fifth Amendment Due Process Clause); *Williams v. Fears*, 179 U.S. 270, 274 (1900) (Fourteenth Amendment Due Process Clause). While Plaintiff agrees with the Court’s analysis on the motion to dismiss, it submits that each basis supports the proposition that the right to travel protects not just the movement among states but the right to engage in lawful conduct on arrival. Regardless of its source, the right to travel is hollow if unaccompanied by the freedom to engage in lawful conduct in the states to which one travels.

3. Plaintiff Has Third-Party Standing to Vindicate the Right to Travel for Those it Serves.

While *Edwards* and *Crandall* make clear that Plaintiff can bring this claim on its own behalf,¹¹ Plaintiff also has third-party standing to vindicate the right to travel

¹¹ This Court found, and Defendant has not disputed, that Plaintiff has also satisfied Article III standing requirements. Order Mot. Dismiss at 21, ECF No. 48. Plaintiff has amply demonstrated through its complaint and declarations that it has suffered an injury-in-fact, its injuries are fairly

on behalf of those it serves. Third-party standing is a prudential doctrine, not a constitutional requirement under Article III, and the rule disfavoring it “is hardly absolute.” *June Med. Servs. L.L.C. v. Russo*, 591 U.S. 299, 317–18 (2020) (plurality opinion); *accord id.* at 354 n.4 (Roberts, C.J., concurring). The Supreme Court has, for example, permitted third-party standing in cases where a litigant has Article III standing to challenge the constitutionality of a law, policy, or action, and the “rights of third parties . . . would be ‘diluted or adversely affected’ should [its] constitutional challenge fail.” *Carey v. Pop. Servs. Int’l*, 431 U.S. 678, 684 (1977) (quoting *Craig v. Boren*, 429 U.S. 190, 195 (1976)). Such cases have entailed a variety of fact patterns and interests. *See, e.g., Powers v. Ohio*, 499 U.S. 400, 415 (1991) (holding that a criminal defendant had third-party standing to assert the rights of potential jurors excluded from jury service); *Carey*, 431 U.S. at 683–84 (holding that a company selling non-medical contraceptives had third-party standing to assert the rights of potential customers, including minors); *Craig*, 429 U.S. at 194 (holding that a beer vendor had third-party standing to assert the rights of potential customers); *Griswold v. Connecticut*, 381 U.S. 479, 481 (1965) (holding that healthcare providers had third-party standing to assert the rights of patients seeking

traceable to Defendant’s threatened prosecutions, and its injuries would be redressed by a decision from this Court enjoining Defendant from prosecuting Plaintiff and declaring such prosecutions unconstitutional. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). All facts in the complaint are supported by the declarations attached to this motion and evince Article III standing.

to use contraception); *Barrows v. Jackson*, 346 U.S. 249, 258–59 (1953) (holding that white property owners had third-party standing to assert the rights of potential Black purchasers). Plaintiff is the “obvious claimant” and the “least awkward challenger” because Plaintiff is the target of Defendant’s threats. *See Craig*, 429 U.S. at 197.

Plaintiff also satisfies third-party standing because it has suffered an injury-in-fact, there is a sufficiently close relationship between Yellowhammer Fund and the pregnant people it supports, and pregnant Alabamians are hindered from protecting their own rights. *Kowalski v. Tesmer*, 543 U.S. 125, 129–30 (2004).

First, Yellowhammer Fund is suffering an injury-in-fact that is caused by Defendant’s credible threat of prosecution, and Plaintiff’s injury would be redressed by a judgment declaring that Defendant’s threatened prosecution infringes upon its right to travel. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158–59 (2014) (explaining that, when a plaintiff seeks to engage in conduct that is proscribed by statute, a credible threat of enforcement gives rise to injury-in-fact).

Second, Yellowhammer Fund has a close relationship with pregnant Alabamians seeking to travel out of state for lawful abortion care such that Plaintiff is “fully, or very nearly, as effective a proponent of the right” as its clients would be. *Singleton v. Wulff*, 428 U.S. 106, 115 (1976) (plurality opinion); *Powers*, 499 U.S. at 413. Before pregnancy, Plaintiff serves its clients through education, mutual aid,

and other programmatic initiatives. Fountain Decl. ¶¶ 8–11. Once a client becomes pregnant and seeks an abortion, Plaintiff used to play a crucial role in enabling its clients to travel. McLain Decl. ¶ 18. There are clients presently in need of Plaintiff’s services, and it regularly receives requests from clients who cannot travel without Plaintiff’s financial and logistical assistance. *Id.*, ¶¶ 26, 29. Additionally, Plaintiff’s interests are aligned with those of the pregnant people they serve: Plaintiff’s mission is to provide abortion funding and travel support to those who wish to obtain a lawful abortion, which gives Plaintiff a direct interest in protecting pregnant people’s right to travel. Fountain Decl. ¶ 30. And Defendant is effectively targeting pregnant people by threatening criminal prosecution against helpers such that the clients’ rights are “inextricably bound up with the activity the litigant wishes to pursue.” *Singleton*, 428 U.S. at 114; *see also June Med. Servs. L.L.C.*, 591 U.S. at 319 (“[T]he ‘threatened imposition of governmental sanctions’ . . . eliminates any risk that [Plaintiff’s] claims are abstract or hypothetical.” (quoting *Craig*, 429 U.S. at 195)).

Third, pregnant people in Alabama face significant hindrances to asserting the right to travel on their own behalf. Pregnant people seeking lawful abortion are likely to face hostility from some if they draw attention to their desire to obtain an abortion and are “reluctant to raise such claims for fear of provoking additional policing measures” or other legal risks. *Young Apartments, Inc. v. Town of Jupiter*, 529 F.3d 1027, 1044 (2008). Plaintiff has observed its clients’ fear of being wrongfully

criminalized for obtaining an abortion out of state and their desire for privacy. *See* McLain Decl. ¶ 24. A pregnant person may be chilled from asserting their own right to travel by the publicity of a court suit, *Singleton*, 428 U.S. at 117, and someone seeking to travel also faces the imminent mootness of their claim, *id.* (“Only a few months, at the most, after the maturing of the decision . . . her right thereto will have been irrevocably lost.”).¹² Plaintiff’s clients predominantly have low-incomes, lack the means to travel out of state, and would face significant “economic burdens of litigation.” *Powers*, 499 U.S. at 415; *see* Fountain Decl. ¶ 20. Thus, someone who is unable to obtain an abortion through litigation has “little incentive to set in motion the arduous process needed to vindicate [their] own rights.” *Powers*, 499 U.S. at 415. Plaintiff’s clients face several hindrances to asserting their own rights in Alabama’s climate of abortion hostility. *See, e.g.*, White Decl. ¶¶ 20–22, 26.

Accordingly, Plaintiff may assert pregnant Alabamians’ constitutional right to travel.

4. Plaintiff Can Bring a Right to Travel Claim Itself.

The Court need not decide whether a nonprofit company with employees seeking to travel between states may assert a right to travel claim for Yellowhammer

¹² A client may have even less time to obtain an abortion than the Court contemplated in *Singleton v. Wulff* due to the gestational age bans in neighboring states. *See, e.g.*, Ga. Code Ann. §§ 16-12-140, 16-12-141 (Georgia’s 6-week ban); Fla. Stat. Ann. § 390.0111 (Florida’s 6-week ban).

Fund to receive the full relief it seeks because the relief Yellowhammer Fund seeks is co-extensive with the relief it seeks on behalf of its clients. And while no appellate court has decided the issue, a district court in Idaho recently found an abortion fund and a helper nonprofit working within indigenous communities could bring a right to travel claim. *Matsumoto v. Labrador*, No. 1:23-cv-00323-DKG, 2023 WL 7386998, at *5 (D. Idaho Nov. 8, 2023). Moreover, there is good reason to rule that Yellowhammer Fund can bring a right to travel claim.

The primary cases relating to the right to travel in instances where a regulation prevents entry to and exit from a state have been brought by helpers, but have not discussed third-party standing. *See supra* § A.1 (discussing *Crandall* and *Edwards*); Order Mot. Dismiss at 54, ECF No. 48 (“[T]ravel restrictions directed toward those who facilitate travel for others can offend the Constitution.”).

Nonprofits certainly serve as travel facilitators, as demonstrated here. Here, Yellowhammer Fund traditionally assigned their employees to accompany certain pregnant people who needed lawful care out-of-state and had needs along the way that must be met by a travel companion. *See* Fountain Decl. ¶ 16. Yellowhammer Fund also paid for that travel, which happened on company time and furthered Yellowhammer Fund’s mission. *Id.* ¶¶ 15–16, 18. If there were a traffic accident while an employee was traveling with a pregnant person, *respondeat superior* suggests Yellowhammer Fund could be liable. *See Hulbert v. State Farm Mut. Auto.*

Ins. Co., 723 So.2d 22, 23 (Ala. 1998). And prohibiting Yellowhammer Fund from sending its employees to travel with those who cannot travel for out-of-state care alone frustrates its organizational mission: it may be unable to assist some of the populations it seeks to aid. See Fountain Decl. ¶¶ 24–30. Presumably, on these excursions, accompanying pregnant people in their travel, its employees and volunteers would return with information about how pregnant people are treated during travel for lawful out-of-state abortion care. In a post-*Dobbs* world, accompanying clients would allow it to fulfill its mission more effectively, but also would allow it to better engage in intercourse between states on reproductive autonomy and justice. See Seth F. Kreimer, *Lines in the Sand: The Importance of Borders in American Federalism*, 150 U. Pa. L. Rev. 973, 1007 (2002) (“It is by intercourse as equals that the country is knit together across parochial boundaries, and it is by sharing the experience of others that our personal horizons are broadened and our liberty reaffirmed.”). Lastly, Yellowhammer Fund can be summoned to testify before Congress just as an individual can. Rules of H.R., 118th Cong. (2023), Rule XI, cl. 2(m)(3)(D) (“Subpoenas for documents or testimony may be issued to any person or entity, whether governmental, public, or private, within the United States”); see *Crandall*, 73 U.S. at 43 (“Th[e] government has a right to call to this point any or all of its citizens to aid in its service, . . . and this right cannot be made to depend upon the pleasure of a State over whose territory they must pass to

reach the point where these services must be rendered.”); *see also id.* at 44 (“[I]f the government has these rights on her own account, the citizen also has correlative rights. He has the right to . . . seek its protection, . . . a right to free access . . . , and this right is in its nature independent of the will of any State over whose soil he must pass in the exercise of it.”); *see also Edwards*, 314 U.S. at 179 (Douglas, J., concurring) (there was “not a shred of evidence in the record of the *Crandall* case that the persons there involved were en route on any such mission [to petition their government],” arguing that it “was merely an illustration of the damage and havoc which would ensue if the States had the power to prevent the free movement of citizens from one State to another.”).

This Court understandably struggled with the limited guidance on the *Bellotti* footnote and when constitutional rights are withheld from nonprofits. Order Mot. Dismiss at 60–61, ECF No. 48. However, the right to travel is unique among constitutional rights in that it has so many sources for its existence within the Constitution. *See supra* § A.2. Not all the sources have allowed corporations to assert the rights, but this should not “bar [a corporate] plaintiff from premising a right-to-travel challenge on another constitutional provision, such as the Commerce or Equal Protection Clauses.” Mary Lafrance, *Constitutional Implications of Acquisition-Value Real Property Taxation: Assessing the Burdens on Travel and Commerce*, 1994 Utah L. Rev. 1027, 1046 n. 104 (1994) (citing *Zobel*, 457 U.S. at 73–74 & n.3).

But the U.S. Supreme Court has never said that the right to travel belongs only to individuals. And corporations, including nonprofit organizations like Yellowhammer Fund, have long been able to vindicate their rights under the other constitutional sources from which the right to travel originates. *See Pembina Consol. Silver Mining & Milling Co. v. Com. of Pennsylvania*, 125 U.S. 181, 189 (1888) (“[T]here is no doubt that a private corporation is included” under the designation of “person” in the Equal Protection Clause); *Grosjean v. Am. Press Co.*, 297 U.S. 233, 244 (1936) (“[A] corporation is a ‘person’ within the meaning of the equal protection and due process of law clauses” of the Fourteenth Amendment.); *Kassel v. Consol. Freightways Corp. of Delaware*, 450 U.S. 662, 669 (1981) (entertaining a trucking company’s Commerce Clause challenge to a state law that burdened interstate commerce).

Additionally, entities enjoy numerous other constitutional rights. For example, the Constitution protects corporate speech, even though corporations themselves cannot physically speak in the way that individuals can. *See Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 346 (2010) (“[T]he Government cannot restrict political speech based on the speaker’s corporate identity.”). The same is true for Yellowhammer Fund’s right to travel—its desired travel and travel

assistance is protected, even though the nonprofit entity cannot physically travel itself.¹³

In sum, this Court does not need to decide on this issue because the relief is co-extensive with Yellowhammer Fund’s third-party standing relief, but there are strong arguments that Yellowhammer Fund may also bring this claim on its own behalf.

B. Defendant’s Threatened Prosecutions Are First Amendment Violations.

Defendant’s threatened prosecution of Plaintiff violates the First Amendment. “[T]he First Amendment prohibits government officials from relying on the ‘threat of invoking legal sanctions and other means of coercion . . . to achieve the suppression’ of disfavored speech.” *Nat’l Rifle Ass’n of Am. v. Vullo*, No. 22-842, 2024 WL 2751216, at *7 (2024) (U.S. May 30, 2024) (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963)). “[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas,

¹³ In rejecting Defendant’s argument on corporate criminal liability, this Court stated: “[E]nforcement against the plaintiffs’ staff is the functional equivalent of enforcement against the organizations themselves, considering that the Attorney General’s stated objective is to target the organizations.” Order Mot. Dismiss at 28, ECF No. 48. The same rationale can apply to Yellowhammer Fund’s right to travel. The Attorney General’s stated objective is to target organizations with the unconstitutional purpose of impeding lawful travel, and enforcement against Plaintiff’s staff is the functional equivalent of enforcement against Yellowhammer Fund itself.

its subject matter, or its content.” *Police Dep’t of Chic. v. Mosley*, 408 U.S. 92, 95 (1972) (addressing an ordinance that determined which picketing was permissible based on subject matter); *see also Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002) (same) (quoting *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 65 (1983)). On their face, Defendant’s threats blatantly target expression and association because of the messages they convey and the perspectives they embrace. As further explained below, Plaintiff is entitled to summary judgment on its First Amendment claims because Defendant impermissibly seeks to criminalize speech, conduct, and association based on content and viewpoint, and Defendant cannot satisfy strict scrutiny.

1. Defendant’s Threats are Presumptively Unconstitutional Because They Are Content- and Viewpoint-Based Restrictions on Speech.

The First Amendment “bars the government from dictating what we see or read or speak or hear.” *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245 (2002). It protects the right of all people to make their own decisions about “the ideas and beliefs deserving of expression, consideration, and adherence,” *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994), even when those ideas and beliefs are unpopular. *See, e.g., 303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2312 (2023).

a. Plaintiff Engages in Both Speech and Expressive Conduct to Support People in Need.

Although the First Amendment uses the term “speech,” constitutional protection “does not end at the spoken or written word.” *Texas v. Johnson*, 491 U.S. 397, 404 (1989). In addition to speech, the First Amendment also protects conduct of an “expressive nature.” *Id.*; see also *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1240 (11th Cir. 2018) (hereinafter “*FLFNB*”) (“The constitutional protection is afforded to ‘speech,’ and acts that qualify as signs with expressive meaning qualify as speech within the meaning of the Constitution.”) (quoting Cass R. Sunstein, *Democracy and the Problem of Free Speech* 181 (1993)).

As a matter of law, Defendant’s threats are infringing on Plaintiff’s right to engage in pure speech related to lawful out-of-state abortion care. There can be no genuine dispute that Plaintiff’s abortion fund wishes to provide information to pregnant Alabamians about lawful out-of-state abortion care, including referrals, guidance, and moral support. See, e.g., Fountain Decl. ¶ 15; McLain Decl. ¶¶ 7, 29. This type of communication clearly constitutes “pure speech” that receives First Amendment protection. See *303 Creative LLC*, 143 S. Ct. at 2312 (“All manner of speech—from ‘pictures, films, paintings, drawings, and engravings,’ to ‘oral utterance and the printed word’—qualify for the First Amendment’s protections.” (quoting *Kaplan v. California*, 413 U.S. 115, 119–20 (1973))).

Defendant's threats also prevent Plaintiff from engaging in protected expressive conduct. The Supreme Court has announced a two-part test to determine whether conduct is protected by the First Amendment: (1) whether the speaker has "[a]n intent to convey a particularized message," and (2) whether "in the surrounding circumstances the likelihood [i]s great that the message would be understood by those who viewed it." *Spence v. State of Wash.*, 418 U.S. 405, 410–11 (1974). But "in determining whether conduct is expressive, [courts] ask whether the reasonable person would interpret it as *some* sort of message, not whether an observer would necessarily infer a *specific* message." *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004) (emphasis in original); *see also Stewart v. Baldwin Cty. Bd. of Educ.*, 908 F.2d 1499, 1501, 1505 (11th Cir. 1990) (a school employee's "quiet and nondisruptive" early departure from a mandatory meeting was expressive).

First, as a helper supporting people seeking healthcare, Plaintiff is engaged in expressive conduct. *See, e.g., FLFNB*, 901 F.3d at 1240–41 (explaining that providing access to a necessary human right is a form of expressive conduct). Plaintiff intends to convey a message of solidarity, love, and support when it helps pregnant Alabamians access lawful out-of-state abortion care. *See, e.g., Fountain Decl.* ¶¶ 10–13, 18–20; *McLain Decl.* ¶¶ 11–14, 29–30, 32. Plaintiff is a mission-driven organization that envisions a world where all people can access reproductive

healthcare, regardless of their income level or place of residence. *See* Fountain Decl. ¶ 6. There can be no dispute that Plaintiff’s abortion fund seeks to advance the organization’s mission and message by helping community members afford abortion care and reducing barriers that limit access to care. *See* Fountain Decl. ¶ 11–12.

Second, the context and circumstances surrounding abortion care in Alabama demonstrate that Plaintiff’s desired activities constitute expressive conduct. *See, e.g.,* White Decl. ¶¶ 16–20, 25–26. *FLFNB* is particularly instructive. In that case, the Eleventh Circuit held that an organization that hosted food-sharing events in a public space was engaged in expressive conduct. 901 F.3d at 1240–41. The court’s decision emphasized that “the context in which a symbol is used for purposes of expression is important, for the context may give meaning to the symbol.” *Id.* at 1241 (quoting *Spence*, 418 U.S. at 410). By distributing food in a public park, sharing information and literature, and hosting public events, *FLFNB* intentionally communicated a message “that all persons are equal, regardless of socio-economic status, and that everyone should have access to food as a human right.” *Id.* at 1240–41. The court observed that “the treatment of the City’s homeless population is an issue of concern in the community,” *id.* at 1242, which added essential context for a reasonable observer to understand that “*FLFNB*’s food sharing sought to convey some message.” *Id.* at 1243.

Like FLFNB, Plaintiff’s abortion fund helps members of the community access a critical human need: healthcare. Just as food and lodging for the homeless population was an issue of public concern in *FLFNB*, access to reproductive healthcare in Alabama is unquestionably a topic of rapid change and significance to the community. *See, e.g.*, White Decl. ¶¶ 16, 20, 25–27. The context illustrates that abortion care is inaccessible for many pregnant Alabamians due to financial limitations, political restrictions, and geography. *See id.* ¶¶ 20–27. One can reasonably conclude that navigating this landscape without assistance (information, logistic assistance, money, transportation, etc.) would be incredibly difficult and for some, impossible. *See supra* at 28 n. 12.

Against this backdrop, Plaintiff necessarily communicates an important message about the injustice of barriers to reproductive healthcare. *See, e.g.*, Fountain Decl. ¶ 18. Plaintiff seeks to provide funding and logistical support for lawful out-of-state abortions during a critical moment in the struggle for reproductive justice. *See, e.g., Johnson*, 491 U.S. at 406 (holding that timing of flag burning, which “coincided with the convening of the Republican Party,” contributed to conclusion that it was expressive conduct); *Spence*, 418 U.S. at 410 (concluding that displaying an American flag with peace symbols affixed to it was expressive when it was “roughly simultaneous with and concededly triggered by the Cambodian incursion and the Kent State tragedy, also issues of great public moment”); White Decl. ¶¶ 16,

20–24. Further, as a previous funder of abortion, Plaintiff seeks to contribute financially to pregnant Alabamians’ out-of-state abortions and provide logistical support for travel, childcare, lodging, and other related needs. *See* McLain Decl. ¶¶ 32–33. Courts have repeatedly recognized that donating money to a political, charitable, or social cause qualifies as expressive conduct. *See, e.g., McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 191 (2014) (“[T]he right to participate in democracy through political contributions is protected by the First Amendment.”); *Coral Ridge Ministries Media, Inc. v. Amazon.com, Inc.*, 6 F.4th 1247, 1254–55 (11th Cir. 2021) (“[W]e have no problem finding that Amazon engages in expressive conduct when it decides which charities to support through the AmazonSmile program.”). The expressive nature of Plaintiff’s conduct does not depend on the resolution of facts—it is self-evident from the context surrounding abortion access in Alabama and the historical role of helpers in the struggle for civil rights. *See, e.g.,* White Decl. ¶¶ 16, 20–24; *see also FLFNB*, 901 F.3d at 1240–42; *Holloman*, 370 F.3d at 1270 (Conduct is expressive if a “reasonable person would interpret it as *some* sort of message”).

For these reasons, Plaintiff’s activities constitute pure speech and expressive conduct and are therefore protected by the First Amendment.

b. Defendant’s Threatened Prosecutions Are Content- and Viewpoint-Based Because They Exclusively Target Speech and Expressive Conduct About Lawful, Out-of-State Abortion Care.

By threatening to prosecute Plaintiff for supporting lawful abortion care, Defendant targets Plaintiff’s speech based on its content and viewpoint. Content-based laws “target speech based on its communicative content,” while viewpoint-based laws prohibit speech based on the “particular views taken by speakers on a subject.” *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1125–26 (11th Cir. 2022). “Content-based laws . . . are presumptively unconstitutional.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

“Viewpoint discrimination is . . . an egregious form of content discrimination.” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). “The Supreme Court has reiterated time and again—and increasingly of late—the ‘bedrock First Amendment principle’ that ‘[s]peech may not be banned on the ground that it expresses ideas that offend.’” *Speech First, Inc.*, 32 F.4th at 1126 (quoting *Matal v. Tam*, 137 S. Ct. 1744, 1751 (2017)).¹⁴

¹⁴ This Court’s order on Defendant’s motion to dismiss did not address whether the Attorney General’s threatened enforcement of Alabama law would constitute viewpoint discrimination because the Attorney General conceded that the statutes at issue discriminate against speech based on content. Order Mot. Dismiss at 72 n.18, ECF No. 48. The Court stated that, “The question the court must confront is whether *Giboney*’s exception to strict scrutiny for content-based restrictions on speech can accommodate these novel circumstances.” *Id.* at 76. Because *Giboney*’s exception for speech integral to criminal conduct does not apply here, strict scrutiny

Here, there can be no dispute that Defendant’s threats prohibit speech based on the message it communicates and the goals it advances: Defendant concedes that his threatened enforcement discriminates on the basis of content and viewpoint. Def.’s Mot. Dismiss at 26, ECF No. 28. Defendant’s threats specifically target abortion helpers that “promot[e] themselves” as funders of out-of-state abortions and use funds to “facilitate” out-of-state abortions. *See* Suelzle Decl. ¶ 6. To determine if a speaker violated these restrictions, Defendant would have to examine the content of Plaintiff’s message to pregnant Alabamians, abortion supporters, volunteers, and members of the public to decide whether it was promoting and facilitating out-of-state abortions. *See Reed*, 576 U.S. at 164 (explaining that a restriction is content-based if its enforcement depends “entirely on the communicative content” of the speech); *see also Otto v. City of Boca Raton*, 981 F.3d 854, 863 (11th Cir. 2020) (holding that a ban on conversion therapy was content-based because it prohibited certain therapy based on “the content of the words used in that therapy”); *Wollschlaeger v. Governor of Fla.*, 848 F.3d 1293, 1307–08 (11th Cir. 2017) (holding that law was content-based because it restricted doctors from asking patients about

must apply. As such, Plaintiff focuses its argument on content-based discrimination but maintains that Defendant’s threatened enforcement also discriminates on the basis of viewpoint.

firearm ownership but did not apply to other types of doctor-patient communications).¹⁵

On their face, Defendant’s threats prevent Plaintiff and other abortion helpers from speaking about a specific issue—lawful abortion care in other states—without disturbing their ability to speak about a host of other issues and viewpoints. As a result, Defendant’s threats are both viewpoint- and content-based.

2. Defendant’s Threatened Prosecutions Violate Plaintiff’s Right to Associate with Like-Minded Abortion Funds, Supporters, and Pregnant Alabamians.

Defendant’s threatened prosecutions also violate Plaintiff’s First Amendment right to expressive association. The Supreme Court has “long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding

¹⁵ Again, Plaintiff maintains that Defendant’s threats also prohibit speech based on the viewpoint it advances. By threatening to prosecute people who support and fund lawful out-of-state abortions, Defendant targets speech that expresses the view that abortion care should be accessible. Like the restriction on conversion therapy in *Otto*, Defendant’s threats seek to “codify a particular viewpoint”—that abortion care should be inaccessible to pregnant Alabamians—and punish abortion helpers like Plaintiff for “advancing any other perspective.” 981 F.3d at 864 (holding that restriction on conversion therapy was both content- and viewpoint-based). Further, Defendant’s threats silence Plaintiff and other abortion helpers *only* when they speak in support of lawful out-of-state abortion. *See Planned Parenthood Greater N.W. v. Labrador*, No. 23-cv-001420, 2023 WL 4864962, at *22 (D. Idaho July 31, 2023) (holding that threats to prosecute healthcare providers for referring people for out-of-state abortion care were content- and viewpoint-based restrictions because they silence healthcare providers “on a single topic—abortion,” while permitting them to “provide information and referrals about out-of-state resources like anti-abortion counseling centers or prenatal care”). But as the Court indicated in its order and opinion on the motion to dismiss, it need only find that the threatened enforcement is a content-based restriction on speech and expression to apply strict scrutiny.

right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). Indeed, “[t]he Constitution guarantees freedom of association of this kind as an indispensable means of preserving other individual liberties.” *Id.* at 618. Restrictions on the right to associate can be sustained only if they satisfy strict scrutiny. *Id.* at 623 (Infringements on expressive association must “serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.”); *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000).

Laws unconstitutionally restrict the right to associate when they punish individuals based on the company they keep or the goals and values they share. In *Elrod v. Burns*, the Supreme Court held that it was unconstitutional for a sheriff’s office to deny or grant public benefits, including public employment, on the basis of an individual’s affiliation with a political party. 427 U.S. 347, 357–59 (1976). The Court explained that threatening dismissal for an individual’s failure to support a specific political party “unquestionably inhibits protected belief and association,” penalizing people for choosing to associate with a different political party or support another party’s goals. *Id.* at 359. In striking down the political patronage system in *Elrod*, the Court recognized that the right to associate forbids the government from forcing people to associate *and* requires the government to permit individuals to

choose their own associations and advance favored goals together. *Id.* at 357; *see also NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958) (“Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.”).

On their face, Defendant’s threats prevent Plaintiff and other abortion helpers from associating with pregnant Alabamians for the purpose of helping them travel to other states for lawful abortion care. *See* Suelzle Decl. ¶ 6. Like all helpers, Plaintiff associates with others to help them access their rights. *See, e.g.,* McLain Decl. ¶¶ 7, 24, 29; Fountain Decl. ¶¶ 18, 26. By threatening to prosecute helpers like Plaintiff for holding themselves out as funders of out-of-state abortion, Defendant’s threats impede Plaintiff’s ability to advance its goals in collaboration with others—including pregnant Alabamians, other abortion funds, and abortion advocacy groups. *See, e.g., Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 600-01, 616 (2021) (State-required “disclosure [of charitable organizations’ donors] can chill association ‘even if there is no disclosure to the general public.’”) (internal quotation omitted); *see also Healy v. James*, 408 U.S. 169, 181 (1972) (holding that a college’s refusal to officially recognize a student political organization created an “impediment to free association” that limited “the organization’s ability to participate in the intellectual give and take of campus debate”).

There can be no dispute that Defendant’s threatened prosecutions chill expressive association by forbidding collaboration and support in favor of lawful out-of-state abortion care. Thus, Defendant’s threatened prosecutions violate Plaintiff’s right to associate under the First Amendment.

3. Defendant’s Threatened Enforcement Cannot Survive Strict Scrutiny.

Because Defendant’s threats restrict Plaintiff’s speech, expressive conduct, and association based on their message and viewpoint, they can be justified only by “compelling state interests, unrelated to the suppression of ideas.” *Roberts*, 468 U.S. at 623; *see also Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010) (holding that state action targeting expressive conduct because of its message is subject to strict scrutiny). In *Otto*, the Eleventh Circuit suggested, but did not conclusively determine, that viewpoint-based speech restrictions are per se unconstitutional. 981 F.3d at 864; *see also Minn. Voters All. v. Mansky*, 585 U.S. 1, 11 (2018) (“[R]estrictions based on content must satisfy strict scrutiny, and those based on viewpoint are prohibited.”). There is no justification for Defendant’s threatened prosecutions that can meet this demanding standard.

First, as a matter of law, the State has no interest—much less a compelling one—in punishing a person for supporting or associating to advance *lawful* out-of-state conduct. *See, e.g., Nielsen*, 212 U.S. at 321 (holding that a state cannot

prosecute someone “for doing within the territorial limits of [another state] an act which that [separate] state had specifically authorized him to do”); *see also supra* at 12–14. Not only is abortion lawful in most states, “[s]ome States regard the freedom to terminate a pregnancy as so sacred that the liberty interest is protected in their constitutions.”¹⁶ Order Mot. Dismiss at 83, ECF No. 48. Although courts have

¹⁶ *See also* Cal. Const. Art. I, § 1.1 (“The state shall not deny or interfere with an individual’s reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives”); Ohio Const. Art. I, § 22 (““Every individual has a right to make and carry out one’s own reproductive decisions, including but not limited to decisions on: contraception; fertility treatment; continuing one’s own pregnancy; miscarriage care; and abortion.”); Vt. Const. Ch. 1, Art. 22 (“Personal reproductive liberty. That an individual’s right to personal reproductive autonomy is central to the liberty and dignity to determine one’s own life course and shall not be denied or infringed unless justified by a compelling State interest achieved by the least restrictive means.”); *Valley Hosp. Ass’n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997) (“[R]eproductive rights are fundamental, and . . . they are encompassed within the right to privacy expressed in article I, section 22 of the Alaska Constitution.”); *Hope Clinic for Women, Ltd. v. Flores*, 991 N.E.2d 745, 760 (Ill. 2013) (recognizing a right to abortion under state due process clause); *Hodes & Nauser v. Schmidt*, 440 P.3d 461, 466 (Kan. 2019) (holding that Section 1 of the Kansas Constitution Bill of Rights includes “a woman’s right to make decisions about her body, including the decision whether to continue her pregnancy”); *Moe v. Sec’y of Admin. & Fin.*, 417 N.E.2d 387, 399 (Mass. 1981) (discussing how the “constitutional guarantee of due process has sometimes impelled” the court to go further than the United States Supreme Court regarding abortion); *Women of State of Minn. by Doe v. Gomez*, 542 N.W.2d 17, 27 (Minn. 1995) (“[T]he right of privacy under the Minnesota Constitution encompasses a woman’s right to decide to terminate her pregnancy.”); *Planned Parenthood of Montana v. State*, 515 P.3d 301, 307–08 (Mont. 2022) (reaffirming that Montana’s constitutional right to privacy guarantees the right of each individual to make medical judgments free from government interference and the right to procreative autonomy); *Right to Choose v. Byrne*, 450 A.2d 925, 934 (N.J. 1982) (“The right to choose whether to have an abortion, however, is a fundamental right of all pregnant women . . .”). There are few examples of a country more divided over an issue. Prior to the Civil War, abolition provisions were engrained in the constitutions of at least fourteen states and yet a portion of the country went to war to uphold slavery. Cal. Const. art. I, § 18 (1849); Ill. Const. art. XIII, § 16 (1848); Ind. Const. art. XI, § 7 (1816); Iowa Const. art. II, § 23 (1846); Kan. Const. Bill of Rts. § 6 (1861); Md. Const. Decl. of Rts., art. 24 (1864); Mich. Const. art. XI (1835); Minn. Const. art. I, § 2 (1857); Nev. Const. art. I, § 17 (1864); Ohio Const. art. VIII, § 2 (1802); Or. Const. art. I, § 34 (1857); Vt. Const. ch. I, § 1 (1777); Wis. Const. art. I, § 2 (1848);

acknowledged that the crime of conspiracy inherently targets speech, the justifications for the constitutional exception permitting states to prosecute conspiracy evaporate when the speech does not further conduct that is criminal. *See Dennis v. United States*, 341 U.S. 494, 575 (U.S. 1951) (Jackson, J., concurring) (explaining that the State may not “punish conspiracy to advocate something, the doing of which it may not punish”).

Second, Defendant has no “interest in regulating” what its residents “may hear or read about” lawful, out-of-state abortion. *See Bigelow*, 421 U.S. at 827-28. Alabama has no interest in “shielding its citizens from information about activities outside [its] borders.” *Id.* The First Amendment does not permit the government to “calibrate the propriety and utility of speech on certain topics.” *Otto*, 981 F.3d at 868. Moreover, even if Defendant identifies a compelling interest, he must prove that his threats “further[] a compelling governmental interest and [are] narrowly tailored to that end.” *Reed*, 576 U.S. at 171. Defendant’s disagreement with other state’s abortion laws does not justify his threats to prosecute all speech and association related to funding and supporting out-of-state abortions. Even if these

see also Massachusetts Constitution and the Abolition of Slavery, Mass.gov (last visited June 11, 2024), <https://www.mass.gov/guides/massachusetts-constitution-and-the-abolition-of-slavery#-the-quock-walker-case-> (discussing a series of court cases, known collectively as the Quock Walker case, from 1781 to 1783 that determined slavery was incompatible with the Massachusetts Constitution prior to statehood).

were compelling interests, Defendant’s threatened prosecutions go far beyond expressing disagreement with Plaintiff’s activities: instead, they attempt to “shield[]” Alabamians “from information about activities outside [Alabama’s] borders, activities that [Alabama’s] police powers do not reach.” *Bigelow*, 421 U.S. at 827–28; *see also Rutan v. Republican Party of Ill.*, 497 U.S. 62, 75 (1990) (explaining that the First Amendment prohibits the government from forcing people to “conform their beliefs and associations to some state-selected orthodoxy”).

For these reasons, Defendant’s threatened prosecutions cannot survive strict scrutiny, and Plaintiff is entitled to summary judgment on its free expression and association claims.

C. Applying the Alabama Abortion Ban to Criminalize Abortion in a State Where it Is Lawful Would Violate the Due Process Clause and Foundational Principles of Sovereignty and Comity.

Alabama’s general conspiracy statute requires an intent to violate an Alabama *criminal offense*. Ala. Code § 13A-4-3(a). Accessory liability involves holding a person accountable for an Alabama *criminal offense*, if that person assists in the commission of that offense. Ala. Code § 13A-2-23. Therefore, it is proper to ask one additional question: can Alabama apply its own abortion ban to criminalize out-of-state abortions for its residents? If Alabama cannot, then Defendant lacks authority to prosecute Plaintiff for agreeing with others to facilitate travel for out-of-state abortions that are legal under the laws of the states where they occur. Similarly,

Defendant would lack the authority to prosecute people for paying for out-of-state, lawful abortion care and for aiding and abetting in such lawful acts. Because, as detailed below, the law is clear that Alabama has no power to project its Abortion Ban outside its borders and into other states, it necessarily follows that Alabama also lacks the power to use its existing criminal statutes (on conspiracy and aiding and abetting), to prosecute Plaintiff for agreeing to assist someone in doing something entirely legal in another jurisdiction.

1. Due Process Does Not Allow Prosecutions of Lawful Conduct.

“To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort.” *United States v. Goodwin*, 457 U.S. 368, 372 (1982) (internal citation omitted). “Within a decade after the Fourteenth Amendment’s adoption in 1868, the Supreme Court began to read the territorial restrictions on state sovereignty into the definition of due process.” Seth F. Kreimer, *Lines in the Sand: The Importance of Borders in American Federalism*, 150 U. Pa. L. Rev. 973, 979 (2002). Courts have long upheld the rule that a state cannot prosecute a person “for doing within the territorial limits of [another state] an act which that state had specially authorized him to do.” *Nielsen v. Oregon*, 212 U.S. 315, 321 (1909). Acts that are “done within the territorial limits of [one state], under authority and license from that state . . . cannot be prosecuted and punished by [a different state].” *Id.* If Defendant cannot prosecute an Ohio-based provider for

providing a pregnant person from Alabama with lawful abortion care in Ohio, he should not be able to prosecute those who provide that pregnant person information or emotional, physical, or practical support to help them obtain that care. *Nat'l Rifle Ass'n of Am.*, 2024 WL 2751216, at *8 (“[A] government official cannot do indirectly what she is barred from doing directly.”). Alabama cannot punish lawful out-of-state conduct occurring beyond the bounds of its jurisdiction, nor can it impose penalties “in order to deter conduct that is lawful in other jurisdictions.” *BMW of N. America, Inc. v. Gore*, 517 U.S. 559, 573 (1996) (holding that lawful out-of-state conduct could not be considered by the court when awarding punitive damages in a state that prohibited that same conduct).

There are no facts that must be resolved to decide whether Alabama can apply its Abortion Ban extraterritorially—this is a purely legal inquiry. Here, Defendant cannot punish helpers for aiding or abetting or conspiring to do something that does not violate Alabama’s Abortion Ban. If Defendant punishes abortions that are provided out-of-state under Alabama’s Abortion Ban, including in jurisdictions where abortion is not only lawful but in some cases statutorily or constitutionally protected, this would constitute an unconstitutional extraterritorial application of Alabama’s laws.

2. Defendant’s Prosecution of Plaintiff Would Offend Principles of Comity and Sovereignty.

While at its heart, Plaintiff’s claim is a Due Process Clause claim, it is also a claim about respecting the sovereignty of other states. The “original and historical understandings of the Constitution’s structure and the principles of ‘sovereignty and comity’ it embraces” similarly cannot allow for such an outcome. *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 376 (2023) (citing *BMW of North America, Inc.*, 517 U.S. at 572). In *National Pork Producers Council v. Ross*, the Court found that a state can require those who sell pork within California to follow certain production requirements. *Id.* at 364–66. In its holding, the Court reinforced the principles of “sovereignty and comity” within the Constitution. *Id.* at 376.

Relatedly,

[I]t would be impossible to permit the statutes of [a State] to operate beyond the jurisdiction of that State . . . without throwing down the constitutional barriers by which all the States are restricted within the orbits of their lawful authority and upon the preservation of which the Government under the Constitution depends.

New York Life Ins. Co. v. Head, 234 U.S. 149, 161 (1914). It is an essential feature of American federalism that people can travel among the states and avail themselves of the laws of the state they are visiting. “The tradition of American federalism stands squarely against efforts by states to punish their citizens for conduct that is protected in the sister state where it occurs.” Seth F. Kreimer, *The Law of Choice*

and Choice of Law: Abortion, the Right to Travel, and Extraterritorial Regulation in American Federalism, 67 N.Y.U. L. Rev. 451, 462 (1992). This is what makes the country a cohesive nation of states while respecting the sovereignty of each state.

Another “basic principle of federalism is that each State may make its own reasoned judgment about what conduct is permitted or proscribed within its borders, and each State alone can determine what measure of punishment, if any, to impose on a defendant who acts within its jurisdiction.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 422 (2003). The majority in *Dobbs* reinforced this principle when returning the issue of the abortion to the states: “[T]he people of the various States may evaluate those interests differently.” *Dobbs*, 142 S. Ct. at 2257. Indeed, “the federal system, as it has been understood since the founding of our republic, demands that the moral commitments of each state be tempered by a regard for the commitments of its neighbors; the moral sovereignty of each state ends at its borders.” Kreimer, *The Law of Choice*, 67 N.Y.U. L. Rev. at 519.

Thus, Alabama may not impose its policy preferences on other states that have chosen to allow abortion within their borders. “Alabama does not have the right to insist that its view of” abortion be enforced “with respect to conduct occurring entirely in another state, particularly where Alabama’s policy choices conflict with those of the other state.” *DJR Assocs. LLC v. Hammonds*, 241 F. Supp. 3d 1208, 1233 (N.D. Ala. 2017); *see also Nielsen*, 212 U.S. at 321 (“[O]ne state cannot

enforce its opinion against that of the other; at least, as to an act done within the limits of that other state.”).

It is axiomatic that each state’s right to set policy preferences and exercise its police powers extends only as far as its own jurisdiction. A “State does not acquire power or supervision over the internal affairs of another State merely because the welfare and health of its own citizens may be affected when they travel to that State.” *Bigelow*, 421 U.S. at 824. A state cannot bar the dissemination of information about an activity that is legal in another state, even “under the guise of exercising internal police powers.” *Id.*. The same is true here: Plaintiff is only seeking to support legal abortions taking place in another state, which are obviously “activities that [Alabama’s] police powers do not reach.” *Id.* at 828.

In sum, the only way that Defendant could use Alabama Code §§ 13A-4-3, 13A-4-4, and 13A-2-23, or any other Alabama criminal law, to prosecute helpers supporting lawful, out-of-state abortions is if he were to apply Alabama’s Abortion Ban to lawful extraterritorial conduct. The Due Process Clause will not tolerate such an egregious overreach of sovereign power. Accordingly, to the extent the Attorney General’s position rests on such a construction or application of the Alabama Ban, Plaintiff is entitled to summary judgment of its due process claim.

D. Plaintiff Yellowhammer Fund Meets the Standard for Declaratory Judgment and Permanent Injunction for Each Claim.

Plaintiff has met the requirements for the relief it seeks. The Declaratory Judgment Act provides that “[i]n a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a). Disputes must be “definite and concrete, touching the legal relations of parties having adverse legal interests”; “real and substantial”; and seek “relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.” *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007); *see also Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 239–40 (1937) (explaining that “cases of actual controversy” in the Act means the type of “cases” and “controversies” that are justiciable under Article III).

An actual arrest, prosecution, or other enforcement action is not a prerequisite for a case or controversy under Article III when a plaintiff is subject to a threat of enforcement, so it similarly follows that it is not a pre-requisite for a declaratory judgment. *See Steffel v. Thompson*, 415 U.S. 452, 459 (1974); *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1164 (11th Cir. 2008) (allowing nonprofits to bring pre-enforcement challenge to voter registration restrictions); *Susan B. Anthony List*, 573 U.S. at 161 (holding that nonprofits faced a credible threat of

enforcement from a statute that criminalized making false statements in the course of political campaigns). The Court should issue a declaratory judgment in Plaintiff's favor.

Plaintiff is also entitled to a permanent injunction because it has shown that: (1) it has established the violation of the rights asserted in its complaint; (2) there is no adequate remedy at law for the violation of these rights; and (3) irreparable harm will result if the court does not order injunctive relief. *See Alabama v. U.S. Army Corps of Engineers*, 424 F.3d 1117, 1128 (11th Cir. 2005). The inadequate remedy element is “inextricably intertwined with the irreparable injury element,” because an inadequate remedy causes irreparable harm. *Clark Const. Co., Inc. v. Pena*, 930 F. Supp. 1470, 1490 (M.D. Ala. 1996).

Here, Plaintiff is experiencing an ongoing infringement of its First Amendment rights to speech, expressive conduct, and association. Plaintiff has established that it would resume providing funding and logistical support to pregnant Alabamians seeking out-of-state abortion care if it could be assured that it would not face prosecution for doing so. *See, e.g., McLain Decl.* ¶ 33; *Fountain Decl.* ¶¶ 24, 29–30. It cannot be assured of this because of Defendant's threats of prosecution. *See, e.g., Suelzle Decl.* ¶ 6. Every moment that Plaintiff is prohibited from speaking in accordance with its values, beliefs, and goals constitutes ongoing irreparable injury. *See Elrod v. Burns*, 427 U.S. at 373 (“The loss of First Amendment freedoms,

for even minimal periods of time, unquestionably constitutes irreparable injury.”). Further, as the threats of enforcement of the Abortion Ban through conspiracy and aiding and abetting laws remain, Plaintiff’s right to travel and due process rights are impacted, and its clients’ rights to travel are impacted in the myriad ways shown above. *See supra* at § A. Moreover, for those clients, it is well-established that delays in abortion care are an irreparable harm. *See, e.g., Planned Parenthood Se. v. Bentley*, 951 F. Supp. 2d 1280, 1289 (M.D. Ala. 2013). Plaintiff has therefore shown that it has an actual controversy under 28 U.S.C. § 2201(a) and that Defendant’s threats of prosecution are a violation of constitutional law, for which Plaintiff will suffer irreparable harm because there is no adequate remedy at law.

CONCLUSION

For the reasons set forth above, this Court should grant Plaintiff’s motion for summary judgment in its entirety.

Dated: June 17, 2024

Respectfully submitted,

/s/ Jamila Johnson

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*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I, Jamila Johnson, do hereby Certify that a true and correct copy of the foregoing has been furnished by ECF electronic service, on this 17th day of June 2024, to counsel of record for Defendant Steve Marshall.

Date: June 17, 2024

/s/ Jamila Johnson
Jamila Johnson

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION**

| | | |
|-----------------------------------|---|----------------------------|
| YELLOWHAMMER FUND, on |) | |
| behalf of itself and its clients. |) | CASE NO. 2:23-cv-00450-MHT |
| |) | |
| Plaintiff, |) | CIVIL ACTION |
| |) | |
| v. |) | |
| |) | |
| ATTORNEY GENERAL OF |) | |
| ALABAMA STEVE MARSHALL, |) | |
| in his official capacity |) | |
| |) | |
| Defendant. |) | |
| |) | |
| WEST ALABAMA WOMEN’S |) | |
| CENTER, on behalf of themselves |) | |
| and their staff; et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STEVE MARSHALL, in his official |) | |
| capacity as Alabama Attorney |) | |
| General, |) | |
| |) | |
| Defendant. |) | |

**DECLARATION OF JENICE FOUNTAIN IN SUPPORT OF PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT**

I, JENICE FOUNTAIN, hereby declare under penalty of perjury that the following statements are true and correct:

1. I am the Executive Director of Yellowhammer Fund, a nonprofit organization incorporated under the laws of Alabama. Yellowhammer Fund is a

registered 501(c)(3) organization that provides support to pregnant people and their families in Alabama, Mississippi, and the Florida Panhandle. Our goal is to ensure that all people have access to the resources they need to make decisions about their bodies, families, and futures.

2. I am a resident of Birmingham and have lived in Alabama for 31 years. I have worked for Yellowhammer Fund since 2020. I have been in my current position with Yellowhammer Fund since June 2022. Previously, I served as a Family Justice Organizer with Yellowhammer Fund beginning in 2021.

3. As Executive Director, I am responsible for managing the organization's projects to ensure that we are fulfilling our mission. Additionally, I supervise staff members and serve as the primary liaison with our organization's Board of Directors and funders.

4. I am also the founder of Margins: Women Helping Black Women, which is an Alabama-based community aid organization that addresses the reproductive, financial, and material needs of low-income Black mothers and their children.

5. I provide the following testimony based on my personal knowledge.

Yellowhammer Fund Seeks to Destigmatize Abortion Care and Communicate a Message of Love and Solidarity to All Pregnant People

6. Yellowhammer Fund is a reproductive justice organization. Reproductive justice organizations are typically Black-led organizations that believe

all people have the right to decide whether to have children, the right to decide when to have children, and the right to parent the children they have in safe and healthy environments. We are committed to ensuring access to reproductive health care for all members of our community, regardless of race, income, location, age, gender, sexuality, disability, number of children, or status as a citizen.

7. Our organization was initially founded in 2017 in Tuscaloosa as an abortion fund. In this capacity, we provided financial and logistical support to pregnant Alabamians seeking abortion care both within and outside of Alabama, as well as people from other states seeking abortion care in Alabama.

8. Today, we continue to work to meet the needs of our community in Alabama by providing education, mutual aid, policy advocacy, and other support to parenting and pregnant people and their families. We have seven full-time employees and approximately twenty regular volunteers. Among other things, our volunteers attend events on behalf of Yellowhammer Fund, speak to community members about our mission, and distribute supplies.

9. Yellowhammer Fund's services are divided into two programs. First, our reproductive health services program provides free emergency contraception by mail, safer-sex kits, accurate and comprehensive sex education materials and information, pregnancy tests, and referrals for a wide range of sexual and reproductive health care. Second, our Family Justice Program provides basic

necessities to families, including diapers, food supplies, school supplies, period products, Plan B, cleaning supplies, hygiene products, and other items, regardless of their location or income level.

10. Additionally, Yellowhammer Fund engages in abortion advocacy, with the goal of educating the community about policy proposals and legislation that could impact access to abortion and other forms of reproductive healthcare for pregnant people in Alabama. During June and July 2023, we launched a Reproductive Justice Bus Tour across the state of Alabama to recognize the anniversary of the fall of *Roe v. Wade* and the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*. Throughout the tour, we distributed emergency contraception, condoms, pregnancy tests, diapers, and other supplies to communities across the state, spread awareness about our work and programs, and advocated for policies and laws that will increase access to reproductive healthcare. If not for Defendant's threats, we would have also used our bus tour to speak about our abortion fund and practical support activities and share information about the availability of lawful out-of-state abortion care. We would have provided information about our fund and shared the names of clinics in states where abortion is legal. Providing this information is critical to our mission of sharing resources with our community members about reproductive healthcare. The absence of this

information, as a result of Defendant's threats of prosecution, diluted the value of our bus tour and hampered our ability to achieve our mission.

11. Yellowhammer Fund envisions a society in which reproductive decisions can be made free from coercion, shame, or state interference. By providing material assistance, education, and mutual aid to pregnant and parenting Alabamians and their families, we send an important message to our community about individual dignity and each person's innate ability to make the decisions that are best for themselves and their families. We also seek to communicate to funding recipients, volunteers, employees, supporters, other abortion advocacy groups, and the general public the belief that all people deserve access to the resources necessary to make the decisions that are right for them.

12. We believe that abortion should be accessible. Our work sends a strong message that abortion should be destigmatized, that it is a necessary form of reproductive healthcare, and that it is critical to individual liberty and bodily autonomy.

13. Because Black, Indigenous, and other people of color are disproportionately impacted by abortion restrictions across Alabama, Yellowhammer Fund is also committed to increasing reproductive healthcare equity. Alabama has one of the highest maternal mortality rates in the country, and Black women in Alabama are more likely to experience pregnancy-related death and illness than their white

peers. In contrast to childbirth and pregnancy, abortion is extremely safe. Yellowhammer Fund believes that it is important to recognize the risk of pregnancy because it demonstrates the true costs of abortion bans. We strongly believe that access to reproductive healthcare, including abortion, is a racial justice issue and is crucial for improving maternal mortality rates in the Black community. Our work is grounded in the fight for racial equity. By providing support services to pregnant and parenting Alabamians, we seek to communicate that the Black community in Alabama deserves support to make their own decisions about their bodies, families, and futures.

Before *Dobbs* and the Attorney General’s Threats, the Abortion Fund was a Core Component of Yellowhammer’s Mission

14. Yellowhammer Fund was founded to meet a critical need in our community: the inaccessibility of abortion care for many pregnant Alabamians. When the organization was founded, the abortion fund was our only program. The fund provided financial support to pregnant people who were seeking abortion care. From 2017 to June 2022, when the U.S. Supreme Court decided *Dobbs*, most of the fund’s clients were Alabamians who needed support to pay for abortions in Alabama. However, we also supported Alabamians who needed to travel to other states for abortion care, and residents of neighboring states—including Louisiana and Mississippi—who traveled to Alabama to access abortion care.

15. In addition to providing funding to help pay for the cost of abortions, Yellowhammer Fund's abortion fund also provided practical support to help pregnant people with other needs, including lodging, travel costs, food, and childcare. The abortion fund also provided information to pregnant people seeking abortion care, including information about types of abortion care, referrals to providers, and guidance and moral support.

16. Yellowhammer Fund's abortion fund worked to remove all barriers that stood in the way of our community members' ability to access abortion care. This meant that we regularly asked our community members what they needed and adapted our services and offerings to be responsive to their needs, including providing transportation, technology support, and language assistance. Transportation was often a significant barrier for our clients. Yellowhammer Fund staff and volunteers provided direct transportation for pregnant people who needed assistance traveling to their abortion appointments. Before *Dobbs*, I personally drove pregnant people to their abortion appointments in order to ensure that they were able to access care, and, on occasion, I personally drove pregnant people across state lines for abortion care.

17. Our fund also worked in collaboration with other abortion funds and abortion advocacy groups in Alabama and beyond. We worked together to ensure that anyone seeking an abortion had the resources and support they needed. We

regularly communicated with other funds and abortion advocacy groups to achieve our goals. We associated with abortion providers in Alabama to raise awareness about the fund's services and ensure that any pregnant person seeking abortion care could access them if needed.

18. Even as Yellowhammer Fund's programs evolved and grew, the abortion fund remained a core part of our mission. When we started the fund, we recognized that too many Alabamians—especially Black, Indigenous, and other people of color—were forced to carry pregnancies to term or delay abortion care because of financial and logistical barriers to accessing abortion care. The goal of the abortion fund was to eliminate those barriers so that people could access the care they needed. Additionally, by seeking to close barriers to abortion access, the fund communicated a message that barriers to healthcare are unnecessary and unjust. The fund also communicated to funding recipients that their reproductive healthcare decisions were valid, worthy, and deserving of respect. Through our work, the fund envisioned a society where no one would be prevented from accessing necessary medical care because of financial restrictions or residence.

19. By making abortion care more accessible for people in Alabama, the abortion fund helped to ensure that pregnant Alabamians had the resources and support they needed to make decisions that were best for themselves and their families.

20. Many of the people we served through the fund were people of color and low-income people from marginalized communities. Many of them already had children and were unable to care for more children. Our callers were also victims of intimate partner violence and many had unstable housing situations. Our callers were fearful of retaliation for accessing abortion care and they came to us for trustworthy and private support. The fund promoted the dignity of all people by reducing the stress of accessing necessary healthcare. Additionally, it sent a message of love and solidarity by upholding the rights and humanity of those who are most marginalized in our community.

The Attorney General's Threats Have Frustrated Yellowhammer Fund's Mission

21. Immediately after *Dobbs*, Alabama banned abortion with very limited exceptions. Yellowhammer Fund temporarily stopped operating our abortion fund that day.

22. Soon after *Dobbs*, I learned that Attorney General Steve Marshall threatened to prosecute abortion funds and advocacy organizations for helping Alabamians access abortion care in states where it is legal.

23. At the time of the Attorney General's threats, Yellowhammer Fund was based in Tuscaloosa. Because he mentioned groups that work in Tuscaloosa and Yellowhammer Fund was the only abortion fund based in Tuscaloosa, I understood the attorney general's threats to be specifically directed at Yellowhammer Fund.

24. Because the attorney general's threats continue to make us fearful of criminal prosecution, we have not resumed providing funds and logistical support to abortion seekers. Even though I believe that providing support to pregnant Alabamians traveling to other states for abortion care is a constitutionally protected activity, I am fearful of criminal prosecution against me, my staff, and my volunteers. Yellowhammer Fund will not resume providing abortion funding and support for out-of-state abortions until we can be assured that we will not face criminal prosecution for doing so.

25. Since the attorney general's threats, we have also stopped collaborating with other abortion funds and abortion advocacy groups because we are fearful that our association will be criminalized.

26. The attorney general's threats also forced Yellowhammer Fund to abandon our plans to expand the fund. Before the threats, we planned to hire new staff to help with transportation to states where abortion care is legal. When we were forced to close our fund, we had to cancel those plans.

27. Additionally, we had to make the difficult decision to eliminate the position of Healthcare Access Director. Previously, that role helped connect community members to abortion care by making referrals, connecting them with funding, and providing logistical and practical support. When we stopped operating our fund, we had to eliminate that position.

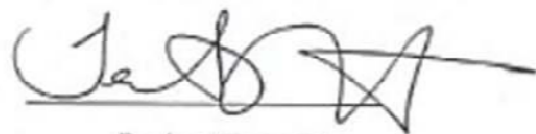
28. I know that the need for our abortion fund has only grown since the Defendant's threats. Yellowhammer Fund continues to receive calls from pregnant Alabamians seeking support. Because we no longer provide these services, we are forced to tell callers that we cannot help them.

29. We have waited for the attorney general to disavow his threats towards Yellowhammer Fund but he has not done so. As a result, we continue to fear prosecution and have not resumed the operations of our fund. We are also concerned that even sharing information about lawful abortion care and the states where abortion is legal could subject us to prosecution.

30. If we could be assured that providing assistance to help pregnant people in Alabama leave the state in search of lawful abortion health care could be done without prosecution, we would resume funding and providing support to pregnant Alabamians seeking abortion care in other states. Resuming the abortion fund's operations would allow us to continue our work destigmatizing abortion care and advancing the liberty and autonomy of our community members.

31. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8/25/2023

A handwritten signature in black ink, appearing to read "Jenice Fountain", written over a horizontal line.

Jenice Fountain

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION**

| | | |
|-----------------------------------|---|----------------------------|
| YELLOWHAMMER FUND, on |) | |
| behalf of itself and its clients. |) | CASE NO. 2:23-cv-00450-MHT |
| |) | |
| Plaintiff, |) | CIVIL ACTION |
| |) | |
| v. |) | |
| |) | |
| ATTORNEY GENERAL OF |) | |
| ALABAMA STEVE MARSHALL, |) | |
| in his official capacity |) | |
| |) | |
| Defendant. |) | |
| |) | |
| WEST ALABAMA WOMEN’S |) | |
| CENTER, on behalf of themselves |) | |
| and their staff; et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STEVE MARSHALL, in his official |) | |
| capacity as Alabama Attorney |) | |
| General, |) | |
| |) | |
| Defendant. |) | |

**DECLARATION OF KARI WHITE, PH.D. M.P.H., IN SUPPORT OF
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

KARI WHITE, PH.D. M.P.H., hereby declares under penalty of perjury that the following statements are true and correct:

1. I am a public health researcher focusing on the impacts of health policies that affect access to reproductive healthcare and health outcomes, with a particular focus on states in the South, including Alabama. I was engaged in this matter to help the Court understand the reproductive health environment, specifically with regard to abortion care, for pregnant people in Alabama.

2. I was asked to opine on the reproductive healthcare landscape in Alabama since the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, with a specific focus on the availability and incidence of abortion care and the risks of pregnancy and childbirth.

3. In reaching my opinion, I relied upon data about the number of abortions obtained before and after *Dobbs*, Alabama demographic information, health outcomes data and research, geographic analysis of abortion clinics across the country, and public health literature about access to health care and health outcomes.

My Professional Background and Qualifications

4. I earned a Master of Public Health degree from Tulane University School of Public Health in New Orleans, Louisiana, and a Ph.D. in sociology with a specialization in demography from the University of Texas at Austin ("UT Austin"). The study of public health looks at factors that affect the health of a population or certain groups within a population, with a focus on the social determinants of

health. The study of demography looks at factors that contribute to population change, including mortality, fertility, and immigration.

5. I am currently an Associate Professor of Social Work and Sociology at UT Austin.

6. I also serve as the Principal Investigator of the Texas Policy Evaluation Project (“TxPEP”), a collaborative group of university-based investigators who evaluate the impact of legislation in Texas related to women’s reproductive health. Based at UT Austin’s Population Research Center, the project began in 2011. Its mission is to conduct methodologically principled research and communicate the results to a broad audience through peer-reviewed scientific publications, research briefs, and other materials.

7. Prior to joining the faculty of UT Austin, I served as an Associate Professor at the University of Alabama at Birmingham’s School of Public Health from 2011 to 2019. While there, I taught in the Department of Health Care Organization and Policy.

8. My training and professional experience in public health have centered on reproductive health behaviors, public health policies, and the delivery and provision of reproductive health services.

9. My research focuses on family planning and reproductive healthcare. Specifically, my research has examined contraceptive and other family planning

services provided at publicly funded clinics, access to abortion, and vasectomy access. I also have studied postpartum contraceptive use. I lecture on reproductive health policy, family planning, and immigrant health.

10. I have authored more than 100 peer-reviewed articles, and I serve as a reviewer for several respected journals, including the Journal of the American Medical Association (JAMA), American Journal of Public Health, Obstetrics and Gynecology, Contraception, and Perspectives on Sexual and Reproductive Health. Among other things, my publications have addressed Medicaid postpartum sterilization, post-abortion contraception preferences, and travel for abortion services in Alabama. A list of these publications is attached within my C.V. at **Exhibit 1**.

11. During my career, I have focused my research on reproductive healthcare in the Deep South. My work has included research projects in Alabama, Georgia, Mississippi, Louisiana, and Texas, among other states. This background has provided me with a deep understanding of the abortion service provision environment in the Deep South.

12. I have published eight peer-reviewed articles that focus on reproductive healthcare in Alabama. In 2017, I published a study on abortion access in Alabama that explored the impact of travel distance to clinic locations and delays in accessing abortion care. My study found that lower income people in Alabama were more

likely to experience longer intervals between their initial consultation appointment and their abortion appointments than patients with higher incomes.¹

13. I have also published research on the role of abortion funds in navigating access to abortion care for patients with limited abortion care options in their states of residence.

14. I am a member of the American Public Health Association, the Population Association of America, and the Society of Family Planning.

15. The following testimony is based on my personal knowledge, professional experience, original research, and knowledge of the relevant professional literature.

Impact of *Dobbs* on Abortion Access in Alabama

16. Based on my assessment of state and national abortion numbers, the geographic location of abortion clinics in the South, as well as data from professional organizations studying abortion, it is my expert opinion that abortion has become increasingly inaccessible for many pregnant Alabamians since the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*.

¹ K. White, J.M. Turan, and D. Grossman, *Travel for abortion services in Alabama and delays obtaining care*, *Women's Health Issues* 27(5): 523-529 (2017).

17. Even before *Dobbs*, abortion clinics were few and difficult for patients to access. In 2021, there were five abortion clinics in Alabama. By June 2022, that number had been reduced to three clinics.²

18. According to data from the Alabama Department of Health, at least 1,800 Alabamians traveled out of state to obtain needed abortion care in 2021. That figure represents about 22% of all abortions, or over 1 in 5 abortions, that Alabamians received in that year.³

19. Before *Dobbs*, Alabamians were required to travel approximately 34 miles, on average, to the closest abortion clinic.⁴

20. Today, sixteen states, including Alabama, ban or restrict abortion care at or before six weeks since a pregnant person's last menstrual period.⁵ Many of the states closest to Alabama, including Mississippi, Louisiana, Tennessee, Arkansas, and Georgia, are among those that severely restrict abortion in most circumstances.⁶ Access to abortion care in the South is constantly changing as other states in the

² Maddison Booth & Todd Stacy, *Post-Dobbs, Alabama providers examine abortion law*, Alabama Daily News (July 7, 2022), <https://aldailynews.com/post-dobbs-alabama-providers-examine-abortion-law/>.

³ *Induced Termination of Pregnancy Statistics*, Alabama Center for Health Statistics, Alabama Department of Public Health, at 1 (2021).

⁴ See Abortion Access Dashboard, Data and Methodology, <https://about-the-abortion-access-dashboard-analysis-1.hub.arcgis.com/> (last visited Aug. 9, 2023).

⁵ See *Tracking Abortion Bans Across the Country*, <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html> (last visited Aug. 9, 2023).

⁶ *Id.*

region continue to pass new abortion restrictions and these restrictions are challenged in court.

21. Since *Dobbs*, Alabamians must travel significant distances to obtain abortion care unless they qualify for a very narrow exception in Alabama's abortion ban. Today, the average distance that Alabamians must travel for abortion care is 160 miles.⁷ For Alabamians that reside in certain counties that are furthest from states where abortion is accessible, the closest abortion clinic may be as far as 270 miles in each direction.⁸ These distances are consistent with a national trends, where people across the country now must travel significantly further to access abortion care than they did before *Dobbs*.⁹

22. Nationally, the inaccessibility of abortion since *Dobbs* has led to many thousands of pregnant people being unable to obtain an abortion from a clinician.¹⁰ These impacts are disproportionately experienced by Black, Indigenous, and other people of color, who now face the longest travel times to the closest abortion

⁷ See Abortion Access Dashboard, States Data, <https://about-the-abortion-access-dashboard-analysis-1.hub.arcgis.com/> (last visited Aug. 9, 2023).

⁸ See Abortion Access Dashboard, Counties Data, <https://about-the-abortion-access-dashboard-analysis-1.hub.arcgis.com/> (last visited Aug. 9, 2023).

⁹ See Abortion Access Dashboard, States Data, <https://about-the-abortion-access-dashboard-analysis-1.hub.arcgis.com/> (last visited Aug. 9, 2023).

¹⁰ #WeCount Report April 2022-March 2023, Society of Family Planning, at 6 (June 15, 2023), https://societyfp.org/wp-content/uploads/2023/06/WeCountReport_6.12.23.pdf (reporting that 25,640 fewer abortions were obtained from a clinician between July 2022 and March 2023 compared to the pre-*Dobbs* period).

facility.¹¹ Those who reside in states that ban abortion and seek out-of-state abortion care are more likely to be Black than those who reside in states where abortion is lawful.¹² Even before *Dobbs*, residents of states that have now banned abortion were more likely to travel out-of-state for abortion care than their peers in states where abortion is legal, and those residents were more likely to be Black.¹³

23. Before *Dobbs*, Black pregnant people disproportionately accessed abortion care in Alabama. In 2021, Black Alabamians comprised 67 percent of the state's abortion patients while only comprising around 27 percent of the Alabama population.¹⁴ And most abortion patients in Alabama in 2021 had previously given birth to at least one child.¹⁵

¹¹ See Guttmacher Institute, <https://www.guttmacher.org/article/2023/04/characteristics-abortion-patients-protected-and-restricted-states-accessing-clinic>; Rachel K. Jones & Doris W. Chiu, *Characteristics of Abortion Patients in Protected and Restricted States Accessing Clinic-Based Care 12 Months Prior to the Elimination of the Federal Constitutional Right to Abortion in the United States* (Apr. 11, 2023), <https://doi.org/10.1363/psrh.12224>.

¹² *Id.*

¹³ *Id.*

¹⁴ *Induced Termination of Pregnancy Statistics*, Alabama Center for Health Statistics, Alabama Department of Health, at 1 (2021), https://www.alabamapublichealth.gov/healthstats/assets/2021_itop_annual_report.pdf (reporting that 5,581 of Alabama residents obtaining an abortion were Black, compared to 8,294 total abortions in 2021); U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/AL,US/RHI225222>.

¹⁵ *Induced Termination of Pregnancy Statistics*, Alabama Center for Health Statistics, Alabama Department of Health, at 2 (2021), https://www.alabamapublichealth.gov/healthstats/assets/2021_itop_annual_report.pdf.

24. Along with Kentucky, Alabama has the sixth largest percentage of residents living in poverty among all states in the country.¹⁶ In Alabama today, there are more than 800,000 people, including 250,000 children, living below the poverty line.¹⁷ Since there are such high levels of poverty among Alabama residents, it is going to be difficult for people to get sufficient resources required to travel and pay for abortion care, and therefore they need the financial assistance that abortion funds and practical support organizations provide.

25. Based on my research, interviews with patients who live in states with limited access to abortion care and the abortion funds and practical support organizations that support them, and the relevant literature, it is my expert opinion that abortion funds play an important role connecting patients in states with restricted abortion access to abortion care in states where abortion is lawful. Since *Dobbs*, abortion funds must help patients navigate their way to care by supporting travel, funding for their abortion, and other needs.

26. Based on my research with abortion funds and patients who live in states with limited abortion access, it is also my opinion that *Dobbs* has increased the challenges faced by patients and by the funds and organizations that support

¹⁶ See U.S. Department of Agriculture, https://data.ers.usda.gov/reports.aspx?ID=17826#Pdc43fdb6c80441dc945ff17e42ec00aa_3_229iT3.

¹⁷ *Id.*

them. Since *Dobbs*, patients must travel further to access care and the time and resources involved with accessing care is significantly greater than it was before *Dobbs*.¹⁸

27. Studies have shown that people who seek but are unable to obtain an abortion are more likely to have diminished educational and job prospects, greater economic insecurity, and poorer health outcomes than those who obtained an abortion.¹⁹

Childbirth Risks

28. The United States has a higher rate of maternal mortality than any other developed nation, and that rate has increased in recent years.²⁰ Alabama has the third highest maternal mortality rate in the country, at 36.4 deaths per 100,000 live births.²¹

¹⁸ See Abortion Access Dashboard, States Data, <https://about-the-abortion-access-dashboard-analysis-1.hub.arcgis.com/> (last visited Aug. 9, 2023)

¹⁹ Sarah Miller, Laura Wherry, & Diana Greene Foster, *The Economic Consequences of Being Denied an Abortion* <http://www.nber.org/papers/w26662.pdf>; Diane Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 108 AM. J. PUB. HEALTH 407 (2018) <https://doi.org/10.2105/AJPH.2017.304247>; Caitlin Gerdts et al., *Side Effects, Physical Health Consequences, and Mortality Associated with Abortion and Birth after an Unwanted Pregnancy*, 26 WOMEN'S HEALTH ISSUES 55 (2016), <https://doi.org/10.1016/j.whi.2015.10.001>; Lauren J. Ralph, et al., *Self-reported Physical Health of Women Who Did and Did Not Terminate Pregnancy After Seeking Abortion Services: A Cohort Study*, 171 ANNALS INTERN MED. 238 (2019), ;171(4), <https://doi.org/10.7326/M18-1666>.

²⁰ See generally Roosa Tikkanen et al., *Maternal Mortality and Maternity Care in the United States Compared to 10 Other Developed Countries*, Commonwealth Fund, Nov. 2020, <https://doi.org/10.26099/411v-9255>.

²¹ See Alabama Dep't of Public Health, Bureau of Family Health Services, *2020 Maternal Morality Review*, at 6, https://www.alabamapublichealth.gov/perinatal/assets/2020_final_annual_mmr.pdf.

29. Carrying a pregnancy to term is especially dangerous for certain populations. Pregnancy-related deaths disparately impact communities of color. The maternal mortality rate among Black women in the United States is particularly high. According to a 2021 report, the maternal mortality rate for non-Hispanic Black women is 2.6 times higher than the rate for non-Hispanic white women.²² Specifically, the maternal mortality rate in 2021 was 26.6 deaths per 100,000 live births for non-Hispanic white women, while the maternal mortality rate for Black women was 69.9 deaths per 100,000 live births.²³

30. Generally, the rate of maternal mortality is significantly higher—especially for Black women—in states that severely restrict abortion as opposed to states where abortion is lawful.²⁴ The maternal mortality rate is 62% higher in states that restrict abortion access than states where abortion is lawful.²⁵ Additionally, states that restrict abortion access have fewer maternal care providers than states

²² Centers for Disease Control & Prevention, *Maternal Mortality Rates in the United States, 2021*, <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2021/maternal-mortality-rates-2021.htm>.

²³ *Id.*

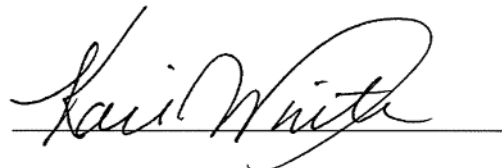
²⁴ See Commonwealth Fund, *The U.S. Maternal Health Divide: The Limited Maternal Health Services and Worse Outcomes of States Proposing New Abortion Restrictions*, <https://www.commonwealthfund.org/publications/issue-briefs/2022/dec/us-maternal-health-divide-limited-services-worse-outcomes>.

²⁵ *Id.* (documenting 28.8 per 100,000 births in restrictive states compared to 17.8 per 100,000 births in states that allow abortion.)

with abortion access.²⁶

31. Many Alabama counties are considered maternity care deserts, meaning that people who reside in those counties do not have access to birthing facilities or maternity care providers.²⁷ 28% of women in Alabama have no birthing hospital within 30 minutes of their residence, compared with just 10% of women nationally.²⁸ In some Alabama counties, especially those in the Black Belt of Alabama, the distance to the nearest birthing hospital or maternity care provider can be up to 70 minutes each way.²⁹ As the March of Dimes has explained “the farther a woman travels to receive maternity care, the greater the risk of maternal morbidity and adverse infant outcomes, such as stillbirth and NICU [Neonatal Intensive Care Unit] admission.”³⁰

Signed this 21 day of August, 2023.



Kari White, Ph.D, M.P.H.

²⁶ *Id.*

²⁷ March of Dimes, *Where You Live Matters: Maternity Care Access in Alabama*, <https://www.marchofdimes.org/peristats/reports/alabama/maternity-care-deserts>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

EXHIBIT 1

KARI WHITE

Office Address

University of Texas at Austin
Steve Hicks School of Social Work, 3.106D
Department of Sociology, RLP 2.620E
Austin, TX 78712
Phone: (512) 232-5742; (512) 471-2499
Email: kariwhite@utexas.edu

Mailing Address

1925 San Jacinto Blvd
Stop D3500
Austin, TX 78712

EDUCATION

Doctor of Philosophy, Sociology

Concentration: Demography May 2011
University of Texas at Austin, Austin, TX
Dissertation: Determinants of fertility across context: a comparison of Mexican and Turkish immigrant women

Master of Public Health, International Health and Development

May 2003
Tulane University School of Public Health, New Orleans, LA

Master of Arts, Latin American Studies

Dec 2001
University of Arizona, Tucson, AZ

Bachelor of Arts, Psychology, Summa Cum Laude

May 1998
University of New Mexico, Albuquerque, NM

FACULTY APPOINTMENTS

Associate Professor with tenure

Aug 2019 - present
Steve Hicks School of Social Work, University of Texas at Austin, Austin, TX
Department of Sociology, University of Texas at Austin (joint appointment)

Faculty Research Associate

Aug 2019 - present
Population Research Center, University of Texas at Austin, Austin TX

Adjunct Associate Professor

Aug 2019 - present
Health Care Organization & Policy, University of Alabama at Birmingham, Birmingham, AL

Associate Professor with tenure

Oct 2017 – Aug 2019
Health Care Organization & Policy, University of Alabama at Birmingham, Birmingham, AL

Assistant Professor

July 2011 – Sept 2017
Health Care Organization & Policy, University of Alabama at Birmingham, Birmingham, AL

Associate Scholar

July 2011 - Aug 2019
Lister Hill Center for Health Policy, University of Alabama at Birmingham, Birmingham, AL

Associate Scientist

June 2014 - Aug 2019
Minority Health & Health Disparities Research Center, University of Alabama at Birmingham, Birmingham, AL

PROFESSIONAL MEMBERSHIPS

Society of Family Planning
Population Association of America
American Public Health Association

Kari White

FELLOWSHIPS/AWARDS/DISTINCTIONS

| | |
|---|-------------|
| Early Achievement Award, <i>Population Association of America</i> | 2020 |
| Loan Repayment Program, <i>National Institutes of Health, Health Disparities Research</i> | 2014 - 2016 |
| Pre-doctoral Fellow, <i>National Institute of Child Health and Human Development</i> | 2007 - 2010 |
| Doug Forbes Research Award, <i>University of Texas at Austin, Population Research Center</i> | 2008 |
| Summer Language Scholar, <i>Institute for Turkish Studies</i> | 2007 |
| Critical Languages Scholar – Turkish, <i>US Department of State</i> | 2007 |
| Turkish Language Scholar, <i>University of Texas at Austin, Center for Middle Eastern Studies</i> | 2006 |
| Health Leadership Fellow, <i>Connecticut Health Foundation</i> | 2005 - 2006 |
| Tinker Foundation Award, <i>Tulane University, Center for Latin American Studies</i> | 2002 |
| Tinker Foundation Award, <i>University of Arizona, Center for Latin American Studies</i> | 2000 |
| Phi Beta Kappa, Phi Kappa Phi, Golden Key National Honors Society | 1997 |

RESEARCH**Current Grants**

| | |
|---|----------------------|
| Grant #5574 Principal Investigator, Texas Policy Evaluation Project Private non-profit foundation | Sept 2019 – Aug 2023 |
| Grant # G-21-2122854 Principal Investigator, Texas Policy Evaluation Project Collaborative for Gender + Reproductive Equity | Sept 2021 – Aug 2025 |
| Grant 2022, Cycle 1 Principal Investigator, Texas Policy Evaluation Project Jacob & Therese Hershey Foundation | June 2022 – May 2024 |
| Grant #2022-74184 Principal Investigator, Mitigating approaches to Support Long-term Abortion care Access David and Lucile Packard Foundation | Sept 2022 – Aug 2024 |
| Grant R01 HD098127-01A1 Co-Investigator, Multilevel factors affecting postpartum sterilization National Institute of Child Health and Human Development (K. Arora, PI) | May 2020 – Jan 2024 |
| Grant #A2255A1 Co-Investigator, Creating evidence and consensus in support of over-the-counter mifepristone-misoprostol Society of Family Planning (D. Grossman and N. Kapp, PIs) | Oct 2018 – Dec 2023 |

Previous Grants

| | |
|---|---------------------|
| Contract #202102641 Principal Investigator, Sexual & Reproductive Healthcare Landscape Analysis Every Body Texas | Oct 2021 – Aug 2022 |
| Grant #2018-67490 Principal Investigator, Mississippi Women’s Health Experiences & Options Study David and Lucile Packard Foundation | Aug 2018 – Jun 2022 |
| Pilot grant, Level II Principal Investigator, Piloting online recruitment and retention for men considering vasectomy UT Austin, Population Research Center | Jan 2021 – Dec 2021 |

Kari White

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|--|----------------------|
| Grant #5255 Co-Director Research Core, Co-Investigator, Center for Reproductive Health Research in the Southeast Private non-profit foundation (K. Hall, PI) | Aug 2017 – Jul 2020 |
| Grant # 5379 Co-Investigator, Louisiana Admitting Privileges Project Private non-profit foundation (S. Roberts, PI) | Apr 2019 – Jul 2020 |
| K01 HD079563-01A1 Principal Investigator, Factors influencing vasectomy use National Institute of Child Health and Human Development | Dec 2014 – Aug 2019 |
| Grant #2017-66910 Principal Investigator, Louisiana Women’s Access Study David and Lucile Packard Foundation | Feb 2018 – Jun 2019 |
| C40118041, C50119045 Principal Investigator,* Plan First: Medicaid Waiver Evaluation Alabama Department of Public Health (*Co-Investigator, Oct 2011-April 2016; J. Bronstein, PI) | Oct 2011 – Aug 2019 |
| Grants #3862, #3673, #5123 Co-Investigator, Texas Policy Evaluation Project Private non-profit foundation (J.E. Potter, PI) | Oct 2011 – Aug 2019 |
| Grant #2016-64118 Principal Investigator, Improving services & policies around reproductive health care in Mississippi David and Lucile Packard Foundation | Apr 2016 – Aug 2017 |
| SFPRF7-JI3 Principal Investigator, Access to abortion care in the Deep South Society of Family Planning | Jul 2013 – Jul 2015 |
| SFPRF7-10 Co-Investigator, Reproductive stigmas and pregnancy decision-making in Alabama Society of Family Planning (J.M. Turan, PI) | Oct 2013 – Mar 2015 |
| C40870013 Co-Investigator, Title V Maternal Child Health Needs Assessment Alabama Department of Public Health (J. Preskitt, PI) | Jan 2014 – Dec 2014 |
| Research Award Principal Investigator, Unintended pregnancy among recent Latina immigrants UAB Minority Health and Health Disparities Research Center | Oct 2012 – Jun 2014 |
| 2009-031039 Co-Investigator, Texas Teen Opportunity Project Texas Department of State Health Services (K. Hopkins, PI) | Mar 2009 – Sept 2010 |

Peer-reviewed publications (Underline indicates co-author was a student, fellow, or staff)

101. A. Chatillon, E. Vizcarra, B. Kumar, S.L. Dickman, A.D. Beasley, and **K. White**. 2023. Access to care following Planned Parenthood’s termination from Texas’ Medicaid network: A qualitative study. *Contraception*, In Press.

100. **K. White**, O. Leyser-Whalen, B. Whitfield, A. Dane’el, A. Andrea, A. Rupani, B. Kumar, G. Moayedi. 2023. “Abortion assistance fund staff and volunteers as patient navigators following an abortion ban in Texas.” *Perspectives on Sexual and Reproductive Health*, In Press.

Kari White

99. W. Arey, K. Lerma and **K. White**. 2023 “Self-diagnosing the end of pregnancy after medication abortion.” *Culture, Health & Sexuality*. In Press.
98. K.S. Arora, A. Chua, E. Miller, M. Boozer, T. Serna, B.W. Bullington, **K. White**, D.D. Gunzler, J.L. Bailit, and K. Berg. 2023. “Medicaid and Fulfillment of Postpartum Permanent Contraception Requests.” *Obstetrics and Gynecology*; 141(5):918-925.
97. W. Arey, K. Lerma, E. Carpenter, G. Moayed, L. Harper, A.D. Beasley, T. Ogburn, and **K. White**. 2023. “Abortion access and medically complex pregnancies before and after Texas Senate Bill 8” *Obstetrics and Gynecology*; 141(5): 995-1003.
96. G. Sierra, N.F. Berglas, L.G. Hofler, D. Grossman, S.C.M. Roberts, and **K. White**. 2023. “Out-of-state travel for abortion among Texas residents following an executive order suspending in-state services during the coronavirus pandemic.” *International Journal of Environmental Research and Public Health*, 24(4): 3679.
95. A. Nagle, K. Lerma, and **K. White**. 2023. “Abortion-client religious identity and self-judgment in a setting with antiabortion protestors in Mississippi.” *Contraception*; 121: 109977.
94. B. Whitfield, E. Vizcarra, A. Dane’el, L. Palomares, G. D’Amore, J. Maslowsky, and **K. White**. 2023. “Minors’ experiences accessing confidential contraceptive care in Texas.” *Journal of Adolescent Health*; 72(4): 591-598.
93. K. Lerma, E. Carpenter, A. Chatillon, and **K. White**. 2023. “Publicly funded family planning organizations’ response to the COVID-19 pandemic in Texas.” *Women’s Health Issues*; 33(3): 228-234.
92. S.E. Baum, G. Sierra, D. Grossman, E. Vizcarra, J.E. Potter, and **K. White**. 2023. “Comparing preference for and use of medication abortion in Texas after policy changes in 2014 and 2018.” *Contraception*; 119: 109912.
91. S. Vohra-Gupta, E.J. Ela, E. Vizcarra, L. Petruzzi, K. Hopkins, J.E. Potter, and **K. White**. 2022. “Evidence-based family planning services among publicly funded providers in Texas” *BMC Health Services Research*; 22(1): 1498.
90. J. Yarger, K. Hopkins, S. Elmes, I. Rossetto, S. De La Melena, C.E. McCulloch, **K. White**, and C.C. Harper. 2023. “Perceived Access to Contraception via Telemedicine Among Young Adults: Inequities by Food and Housing Insecurity.” *Journal of General Internal Medicine*; 38(2): 302-308.
89. **K. White**, G. Sierra, K. Lerma, A. Beasley, L.G. Hofler, K. Tocce, V. Goyal, T. Ogburn, J.E. Potter, S.L. Dickman. “Association of Texas’ 2021 ban on abortion in early pregnancy with the number of facility-based abortions in Texas and surrounding states.” 2022. *JAMA*, 328(20): 2048-2055.
88. K.L. Burke, G. Sierra, K. Lerma, and **K. White**, 2022. “Service delivery at Title X sites in Texas during the COVID-19 pandemic.” *Perspectives on Sexual and Reproductive Health* 54(4): 198-207.
87. E. Carpenter, H. Gyuras, K.L. Burke, D. Czarnecki, D. Bessett, M. McGowan, and **K. White**. 2023. “Seeking abortion care in Ohio and Texas during the COVID-19 pandemic.” *Contraception*; 118: 109896.
86. Q. Chen, E. Carpenter, and **K. White**. 2022. “Non-physicians’ challenges in sexual and reproductive health care provision for women of reproductive age with cancer: a scoping review of barriers and facilitators.” *Supportive Care in Cancer*; 30(12): 10441-10452.
85. M.A. Biggs, K. Ehrenreich, N. Morris, K. Blanchard, C.K. Bustamante, S.Y. Choimorrow, D. Hauser, Y. Hernandez, N. Kapp, T. Kromenaker, G. Moayed, J. Perritt, L. Ralph, E.G. Raymond, E.S. Valladares, **K. White** and D. Grossman. 2022. “Comprehension of an over-the-counter drug facts label prototype for a mifepristone and misoprostol medication abortion product.” *Obstetrics & Gynecology*. 139(6): 1111-1122.
84. W. Arey, K. Lerma, A. Beasley, G. Moayed, L. Harper, **K. White**. 2022. “A preview of the dangerous future of abortion bans – Texas Senate Bill 8.” *New England Journal of Medicine*. 387: 388-390.

Kari White

83. N. Berglas, **K. White**, R. Schroeder, S.C.M. Roberts. 2022. “Geographic Disparities in Disruptions to Abortion Care in Louisiana at the Onset of the COVID-19 Pandemic.” *Contraception*. 115: 17-21.
82. **K. White**, M. Martinez-Ordenes, D.K. Turok, J.D. Gipson, S. Borrero. 2022. “Vasectomy knowledge and interest among US men who do not intend to have more children.” *American Journal of Men’s Health*, 16(3): 1557988322109857.
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80. A. Biggs, L. Ralph, N. Morris, K. Ehrenreich, J. Perritt, N. Kapp, K. Blanchard, **K. White**, R. Barar, D. Grossman 2022. “A cross-sectional survey of U.S. abortion patients’ interest in obtaining medication abortion over the counter” *Contraception*, 109: 25-31.
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Kari White

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Kari White

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Invited presentations

K. White, with H. Allison, M. Jones, C. Torres, and M. Vemireddy. “Criminalization of pregnancy: History, impact and lived experiences.” University of Texas School of Law, May 2023.

K. White, with D. Greene Foster and U. Upadhyay. “Presidential panel on abortion.” Annual meeting of the Population Association of America, New Orleans, LA, April 2023.

K. White, with L. Ikemoto, M. Oberman and A. Salganicoff. “Reproductive Health and Rights in a post-*Dobbs* World.” University of Nevada Las Vegas, Health Law conference, virtual meeting, April 2023.

K. White, with S. Borrero, C. Myers and W. Rice “Assessing geographic access to care post-*Dobbs*.” Society of Family Planning Social Science pre-conference meeting, Baltimore, MD, December 2022.

K. White. “Abortion in Texas after *Dobbs*.” Department of Obstetrics and Gynecology, University of Texas, Rio Grande Valley, Edinburg, TX, November 2022.

K. White. “Effects of Texas’ recent abortion bans on access to care.” School of Medicine Dean’s Research Seminar series, University of Texas, Rio Grande Valley, Edinburg, TX, November 2022.

K. White, with A. Gonzalez Velez, C. Roth, and L. Thaxton. “Reproductive rights in the Americas: An historical perspective.” Teresa Lozano Long Institute of Latin American Studies, University of Texas at Austin, September 2022.

K. White, with A.R.A. Aiken and M. Pineda Torres. “Perspective on the Roe reversal: Implications for Texas.” LBJ Futures Forum, LBJ School of Public Affairs, University of Texas at Austin. July 2022.

K. White. “Assessing the impact of abortion restrictions in Texas.” California Center for Population Research, University of California, Los Angeles. May 2022.

K. White. “A view of abortion access at ground zero: Mississippi, Texas and a post-Roe United States.” Bixby Center for Reproductive Health, University of California, Los Angeles. May 2022.

K. White, with J. Marcella and H. Palacio. “Sexual and reproductive health, rights and justice: peering at post-Roe world through an equity lens.” Academy Health: Health Datapalooza and National Health Policy Conference, Washington, D.C. April 2022.

Kari White

K. White, with W. Arey and E. Vizcarra. “What evidence from Texas can (and cannot) teach us.” Webinar organized by the Society of Family Planning, March 2022.

K. White, with A.R.A. Aiken, and E. Ramirez. “U.S. Reproductive Rights at a Crossroads: The Impacts of a Decade of Policy-Making in Texas and Urgent Policy Priorities for the Future.” Austin, TX, Association for Public Policy Analysis and Management. March 2022.

K. White, with L. Fuentes, R. Mariappuram, L. Thaxton, A. Williams. “The Future of Reproductive Justice: Discussing the Impact of Texas SB8.” Columbia School of Social Work. February 2022.

K. White, with A. Salvador, D. Greene Foster, and A. Appannagari. “The current state of abortion policy in the U.S.” CityMatCH, December 2021.

K. White, with M. Fontes, and S. Dickman. “Texas abortion ban: What it means and what happens next.” Sexual and Reproductive Health Matters, October 2021.

K. White, with C. Tejada, S. Dickman, S. Medley. “Understanding and Upending Texas SB8: Arguments in the Court.” New York University Law School, September 2021.

K. White, with E. Carpenter, H. Gyuras, D. Bessett, M. McGowan, A. Foster and A. Ghorashi. “Impact of COVID-19 on abortion provision: Patient and provider perspectives” webinar organized by the Society of Family Planning, March 2021.

K. White. “Navigating NIH career development awards as a family planning researcher,” webinar organized by the Society of Family Planning, January 2021.

K. White and S.C.M. Roberts. “Evaluating Louisiana’s abortion restrictions.” Tulane University, July 2020.

K. White. “The impact of restrictive legislation on high risk patients and providers in Texas.” Perspectives on Reproductive Health panel at the annual meeting of the Society for Maternal Fetal Medicine, Grapevine, TX, February 2020.

K. White. “The impact of abortion policy on women’s health.” Lister Hill Center for Health Policy, University of Alabama at Birmingham, November 2019.

K. White. “Healthcare and immigration: The intersection of national and state policies in Alabama.” Center for Health Ecology and Health Equity Research, Auburn University, Auburn, AL, February 2019.

K. White. “Changes in family planning services in Texas after legislation to defund Planned Parenthood.” Grand Rounds, Department of Obstetrics and Gynecology, University of Tennessee Medical Center at Knoxville, Knoxville, TN, April 2017.

K. White. “Family planning research and policy in Texas: Steps forward and set backs.” Family planning symposium, University of Utah, Salt Lake City, Utah, February 2017.

K. White. “Postpartum contraception in Texas.” Grand Rounds, Department of Obstetrics and Gynecology, Texas Tech University, El Paso, TX, February 2017.

K. White. “Facilitating access to medication abortion.” Grand Rounds, Department of Obstetrics and Gynecology, Emory University, Atlanta, GA, December 2015.

K. White. “What do we really know about how the public system is serving women, men and providers?” Presented at “The 37%: Developing a research agenda for addressing mistimed, unintended, unplanned and unwanted pregnancy in the US.” National Institute of Child Health and Human Development, Rockville, MD, June 2013.

Kari White

K. White. “The impact of HB56 on Latina women and children’s use of health services.” Immigrants and Public Health Forum, Montgomery, AL, October 2012.

K. White. "Contraindications to POPs compared to COCs." OCs OTC Working Group Meeting, Washington DC, October 2011.

Conference Presentations (last 4 years)

2023

K. Lerma, W. Arey, A. Chatillon, and **K. White.** “Reasons for participation in abortion research in restrictive settings.” Oral presentation at the annual meeting of the National Abortion Federation, Denver, CO, May 2023.

K. Hopkins, I. Rosetto, J. Yarger, A. Sanchez, **K. White,** and C.C. Harper. “Use of preferred contraceptive method among young adults: Inequities by race/ethnicity and language spoken at home.” Oral presentation at the annual meeting of the Population Association of America, New Orleans, LA. April 2023.

2022

K. White, W. Arey, A. Dane’el, E. Vizcarra, J.E. Potter, T. Ogburn and A.D. Beasley. “Abortion patients’ priorities and tradeoffs deciding where to obtain out-of-state care following Texas’ 2021 abortion ban.” Oral presentation at the annual meeting of the Society of Family Planning, Baltimore, MD, December 2022.

*Featured at the meeting’s plenary session: “Spotlight on Science.”

A. Nagle, K. Lerma, G. Sierra, **K. White.** “Preferred contraception use and barriers to care in Mississippi.” Poster presentation at the annual meeting of the Society of Family Planning, Baltimore, MD, December 2022.

B. Whitfield, G. Sierra, K. Lerma, V. Goyal, L. Thaxton, B. Kumar, A. Gilbert, and **K. White.** “Changes in return rate and wait time between ultrasound and abortion following Texas’ executive order banning abortion during COVID-19.” Poster presentation at the annual meeting of the Society of Family Planning, Baltimore, MD, December 2022.

C.C. Harper, S. Elmes, J. Yarger, K. Brandi, K. Hopkins, I. Rosetto, D. Van Liefde, **K. White,** U. Upadhyay. “Medication abortion via telemedicine: Interest among young adults in Texas and California.” Poster presentation at the annual meeting of the Society of Family Planning, Baltimore, MD, December 2022.

K. White, with V. Goyal, R. Mariappuram, and A. Rupani. “Texas Senate Bill 8: Implications on the ground and lessons learned.” Panel presentation at the annual meeting of the National Abortion Federation, May 2022.

K. Lerma, A. Nagle, G. Sierra, **K. White.** “Perceptions of abortion legality and availability in Mississippi” Oral presentation at the annual meeting of the National Abortion Federation, May 2022.

K. Burke, G. Sierra, K. Lerma, and **K. White.** 2022. “Service delivery at Title X sites in Texas during the COVID-19 pandemic.” Oral presentation at the annual meeting of the Population Association of America, April 2022.

2021

K. White, G. Sierra, E Vizcarra, L. Hofler, N. Berglas, D. Grossman, and S.C.M. Roberts. Travel patterns among Texas residents obtaining out-of-state abortion care following an executive order suspending in-state services during the coronavirus pandemic. Poster presentation at the annual meeting of the Society of Family Planning (virtual meeting) October 2021.

B. Whitfield, E. Vizcarra, A. Dane’el, L. Palomares, G. D’Amore, J. Maslowsky, **K. White.** Minors’ experiences accessing confidential contraception in Texas. Poster presentation at the annual meeting of the Society of Family Planning (virtual meeting) October 2021.

Q. Chen, E. Carpenter, **K. White.** “Nonphysician’s challenges in sexual and reproductive health care provision for women of reproductive age with cancer: Barriers and facilitators.” Poster presentation at the annual meeting of the Multinational Association in Supportive Care for Cancer (virtual meeting) June 2021.

Kari White

E. Carroll, K. Lerma, A. McBrayer, T. Evans, S. Nathan, **K. White**. Patient experiences with protestors while accessing abortion care in Mississippi. Oral presentation at the annual meeting of the National Abortion Federation (virtual meeting) May 2021.

S. Narasimhan, E. Carroll, A. McBrayer, S.A. Hartwig, P. Rogers, R. Rebouché, M. Kottke, K.S. Hall, and **K. White**. Minors' decision making around abortion and parental involvement in two Southern states. Poster presentation at the annual meeting of the Population Association of America (virtual meeting). May 2021.

E. Carpenter, E.J. Ela, and **K. White**. Dynamics of low-income women's fertility intentions and contraceptive use in the postpartum period. Oral presentation at the annual meeting of the Population Association of America (virtual meeting). May 2021.

M. Williams, S. Nathan, and **K. White**. Inconsistent access to reproductive healthcare among abortion patients in Mississippi. Oral presentation at the annual meeting of the Population Association of America (virtual meeting). May 2021.

2020

S. Narasimhan, S. Hartwig, E. Rockwell, A. McBrayer, M. Kottke, R. Rebouche, K. Stidham Hall, and **K. White**. The impact of parental involvement laws on abortion quality of care in three Southeastern states. Oral presentation at the annual meeting of the American Public Health Association (virtual meeting), October 2020.

A. Akle, B. Kumar, C. Labgold, O. Leyser-Whalen, M. Lingwall, O. Njoku, **K. White**. Abortion funds and research: Building collaborations that support service delivery and advocacy. Panel presentation at the annual meeting of the Society of Family Planning (virtual meeting) October 2020.

K. White, G. Sierra, Sarah E. Baum, Kristine Hopkins, Joseph E. Potter, Daniel Grossman. Attitudes about second-trimester abortion and the impact of restrictive laws among reproductive-aged Texas women. Poster presentation at the annual meeting of the Society of Family Planning (virtual meeting) October 2020.

D. Grossman, G. Sierra, S.E. Baum, K. Hopkins, J.E. Potter, **K. White**. Factors associated with delays obtaining abortion care in Texas. Poster presentation at the annual meeting of the Society of Family Planning (virtual meeting) October 2020.

K. Coleman-Minahan, E.J. Ela, **K. White** and D. Grossman. Contraindications to hormonal contraception among postpartum women in Texas. Poster presentation at the annual meeting of the Society of Family Planning (virtual meeting) October 2020.

S. Raifman, G. Sierra, D. Grossman, S.E. Baum, K. Hopkins, J.E. Potter, **K. White**. Out-of-state abortions increased for Texas residents after House Bill 2. Oral presentation at the annual meeting of the Society of Family Planning (virtual meeting) October 2020.

SERVICE

Professional Service

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|---|----------------------|
| Steering Committee, Society of Family Planning #WeCount Rapid Surveillance | 2022-present |
| Early Career Award Committee, Population Association of America | 2021-present |
| Robert J. Lapham Award Committee, Population Association of America | 2020-present |
| Scientific Review Committee, Society of Family Planning annual meeting | 2014-2018, 2021-2023 |
| Steering Committee, Society of Family Planning Abortion Clinical Trials Network | 2016-2017 |
| Planning Committee, Society of Family Planning Social Science Interest Group | 2017 |
| Poster judge, Society of Family Planning annual meeting | 2015 |
| Session moderator, Population Association of America annual meeting | 2013, 2015 |
| Session moderator, American Public Health Association annual meeting | 2012 |

Kari White

Journal reviewer

Reproductive Health: *American Journal of Obstetrics and Gynecology*; *Contraception*; *Culture, Health & Sexuality*, *Journal of Family Planning and Reproductive Health Care*; *Journal of Women's Health*; *Perspectives on Sexual and Reproductive Health*; *Women's Health Issues*; *Women & Health*

General public health/social science: *American Journal of Men's Health*; *American Journal of Public Health*; *American Sociological Review*; *Demographic Research*; *Ethnicity & Disease*; *Family & Community Health*; *Gender & Society*, *Health Affairs*, *Health & Place*; *Health Equity*; *Health Promotion Practice*; *International Migration Review*; *JAMA*, *Journal of Health Care for the Poor and Underserved*; *Journal of Immigrant and Minority Health*; *Journal of Marriage and Family*; *Medical Care*; *Patient Education and Counseling Innovation*

Grant review committees

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|---|------|
| Society of Family Planning Research Fund, <i>Leveraging Existing Resources to Document Dobbs Impact</i> | 2023 |
| Society of Family Planning Research Fund, <i>Increasing Access to Medication Abortion, Pt II</i> | 2020 |
| Society of Family Planning Research Fund, <i>Junior Investigator Awards</i> | 2017 |
| Gulf States Health Policy Center, <i>Health Policy Research RFA-GSHPC-15-15-001</i> | 2015 |
| UAB Center for Clinical Translational Sciences, <i>NIH Pathway to Independence Award K99/R00</i> | 2015 |
| UAB Lister Hill Center, <i>Intramural Pilot Grant Review</i> | 2013 |

University service

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| Norval Glenn Committee, best graduate student paper in family sociology, UT-Austin Dept of Sociology | 2022-2023 |
| Andrew Carnegie Fellows Program, UT internal competition, UT Office of the Vice President for Research | 2021 |
| Governance Committee, UT-Austin Population Research Center | 2020-present |
| Lecturer Review Committee, UT-Austin Dept of Sociology | 2020-2021 |
| Social Work & Mitigation Advocacy Faculty Search Committee, UT-Austin School of Social Work | 2020 |
| Doctoral Committee, UT-Austin School of Social Work | 2019-present |
| Faculty Affairs Committee, UAB School of Public Health | 2018-2019 |
| Medical Sociology Faculty Search Committee, UAB College of Arts & Sciences | 2018-2019 |
| Outcomes Research Faculty Search Committee, UAB School of Public Health | 2017-2019 |
| Diversity and Inclusion Committee, UAB School of Public Health | 2017-2019 |
| Safety Committee, UAB School of Public Health | 2015 |
| Admissions and Graduation Committee, UAB School of Public Health | 2012-2018 |
| Maternal and Child Health MPH Admissions Committee, UAB School of Public Health | 2012-2019 |
| Wicked Health Case Competition, Judge, UAB School of Public Health | 2016 |
| Wicked Health Case Competition, Faculty mentor, UAB School of Public Health | 2014 |
| Rhodes Scholarship, Finalist Preparatory Interview Committee, UAB Honors College | 2014 |
| Teaching Awards Committee, UAB School of Public Health | 2012-2013 |

Other service

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| Severe Maternal Morbidity & Mortality Technical Expert Panel, member National Institute of Child Health & Human Development | 2021-2023 |
| Co-led Amicus brief on social science research on abortion restrictions <i>Submitted to the U.S. Supreme Court in Dobbs v Jackson Women's Health Organization (Case Nos. 19-1392)</i> | 2021 |
| Contraceptive Development & Behavior Workshop member National Institute of Child Health & Human Development | 2020 |

Kari White

Declaration on access to abortion services in Texas 2020
Submitted to the U.S. District Court in Planned Parenthood v Abbott (Case No. 1:20-cv-323-LY)

Co-led Amicus brief on social science research on abortion restrictions 2019
Submitted to the U.S. Supreme Court in June Medical Service v Russo (Case Nos. 18-1323, 18-1460)

TEACHING & MENTORING**Courses****University of Texas at Austin**

Course Director, Women's Health Policy (SW 395K) Spring 2021, 2022

University of Alabama at Birmingham

Course Director, Immigrant Health (HCO 629/729) Fall 2014, 2017-2018
 Course Co-Director, Writing Grants and Program Applications (HCO 695) Spring 2016

Guest Lectures**University of Texas at Austin**

Fertility and Reproduction (SOC 307K) Spring 2023
Abortion and the current US policy landscape

Massachusetts Institute of Technology

Race, Gender, and Social Inequality: Reproductive Health Care in the United States (WGS 224) Spring 2021
Conducting research on abortion & abortion restrictions

University of Pittsburgh, School of Public Health

Politics of Health Policy (HPM 2063) Spring 2021
Abortion restrictions in Texas

University of Alabama at Birmingham

Maternal Child Health Fundamentals I (HCO 605) Fall 2011-2013, 2015-2018
US family planning programs and policies

School of Medicine, Difficult Dialogues in Healthcare Fall 2018
Healthcare and immigration: The intersection of national and state policies in Alabama

Maternal Child Health Fundamentals II (HCO 606) Spring 2016
Qualitative research approaches in maternal and child health

Qualitative & Mixed Methods in Public Health (HCO 628/728) Spring 2015
Mixed methods to study access to abortion in Alabama

Sociology of Sex and Gender (SOC 220) Spring 2016-2017
Evaluating reproductive health policies in Texas

Emory University, Rollins School of Public Health

Global Elimination of Maternal Mortality from Abortion (GEMMA) Spring 2015
Access to abortion in Alabama

Kari White

Research mentorship**Early stage investigators**

Lauren Thaxton, MD, MSBS MBA, Assistant Professor, co-mentor 2020-present
 UT Austin, Dell Medical School Women's Health

Ghazaleh Moayedi, DO, research mentor 2020-2023
 Physicians for Reproductive Health

Post-doctoral fellows

Whitney Arey, PhD, primary mentor 2021-present
 Anna Chatillon, PhD, primary mentor 2021-present
 Emma Carpenter, PhD MSW, primary mentor 2020-2021
 Elizabeth J. Ela, PhD, co-mentor 2019-2021

Doctoral Dissertation Committee Member

Michelle Eilers, *Department of Sociology, University of Texas at Austin* April 2023
 "Psychosocial Predictors of Young Adult Sexual and Reproductive Health Behaviors Amidst Conflicting Norms"

Pamela Musoke, *School of Public Health, University of Alabama at Birmingham* Mar 2019
 "Examining the impact of couple relationship factors on male engagement in pregnancy health and communal coping"

Whitney Smith, *School of Public Health, University of Alabama at Birmingham* May 2016
 "Examining the social and policy context of unintended pregnancy"

Medical students/fellows/other scholars

Lucy Cheng, Medical Student, *School of Medicine, University of Pittsburgh* Dec 2022 – present
 Evaluating the impact of socioeconomic and political events on patients' vasectomy perspectives
 Clinical Scientist Training Program, co-mentor

Adaobi Anakwe, Doctoral Student, *College for Public Health & Social Justice, St. Louis University* Oct 2020 – 2021
 The social ecosystem of men's preconception health and reproductive planning, SFP Emerging Scholars mentor

Ashley White, Doctoral Student, *Arnold School of Public Health, University of South Carolina* Oct 2019 – Sept 2020
 Men's vasectomy attitudes, knowledge, and practices, SFP Emerging Scholars mentor

Margaret Williams, Medical Student, *School of Medicine, University of Alabama at Birmingham* Apr 2018 – 2021
 Inconsistent healthcare access among abortion patients in Mississippi, mentor

Elizabeth Clark, Family Planning Fellow, *Dept of Obstetrics & Gynecology, Emory University* Sept 2018 – Aug 2019
 ACCESS: Assessment of Costs and Coverage of Ending pregnancy in the Southeastern States, co-mentor

Michelle Wang, Medical Student, *School of Medicine, University of Alabama at Birmingham* Feb 2018 – Aug 2019
 Assessment of barriers to access of emergency contraception for sexual assault survivors in Alabama, mentor

Comprehensive Exam Committee Chair

Amanda Nagle, MPH, *Department of Sociology University of Texas at Austin* Spring 2023
 Brooke Whitfield, MA, *Department of Sociology University of Texas at Austin* Fall 2022
 Kristen Burke, MA, *Department of Sociology University of Texas at Austin* Fall 2021

Master's Thesis Supervisor

Brooke Whitfield, *Department of Sociology, University of Texas at Austin* May 2022
 "Examining the relationship between primary contraceptive method use and sexually transmitted disease in a nationally representative sample of young women"

Kari White

Master's Thesis Reader

Kristen Burke, *Department of Sociology, University of Texas at Austin* Dec 2019
 "Short-acting hormonal contraceptive use among low-income postpartum women in Texas"

Master's Thesis Committee Member

Brianna Trejo, *Department of Sociology, University of Texas, El Paso* expected June 2022
 "Abortion funds as care work: Navigating the emotional toll of the Texas executive order and COVID-19 pandemic"

Anna Bianchi, *Department of Anthropology, University of Alabama, Tuscaloosa* May 2017
 "Health deservingness frames of pregnant immigrant women by health care practitioners in Tuscaloosa, Alabama"

Victoria deMartelly, *Rollins School of Public Health, Emory University* May 2015
 "Socioeconomics and barriers to abortion access in Alabama"

Master's Practicum supervisor

Kara Abshire, *Rollins School of Public Health, Emory University* June – Aug 2018
 Victoria deMartelly, *Rollins School of Public Health, Emory University* June – Aug 2014

Masters Student Advising, University of Alabama at Birmingham

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|---------------------------|----------------------|
| Elizabeth Tyron-Ebert | Aug 2018 – Aug 2019 |
| Katelin Adams | June 2018 – Aug 2019 |
| Macarena Martinez Ordenes | Sept 2017 – May 2019 |
| Daniele Wesley | Sept 2017 – Dec 2018 |
| Allison Thompson | Aug 2016 – 2019 |
| Ashley Bridgmon | Jan 2016 – Dec 2017 |
| Emily Morrell | Jan 2016 – Aug 2017 |
| Kaylene Logan | May 2015 – Aug 2016 |
| Haglaeeh Contreras | Aug 2013 – May 2016 |
| Elaine McGlaughlin | Aug 2013 – Aug 2015 |
| Erin Carroll Rockwell | Aug 2012 – May 2014 |
| Lisa Moyer | Aug 2012 – Dec 2013 |

Undergraduate Thesis Supervisor

Eva Strelitz-Block, *Plan II, University of Texas at Austin* May 2023
 "The Politics of Medical Education: Abortion Care Training in Texas Medical Schools"
 *Received Dean's Distinguished Graduate Award

Undergraduate Thesis Reader

Gabriela Covarrubias, *Plan II, University of Texas at Austin* May 2022
 "Reforming sex ed in Texas"

Undergraduate Research Supervisor

Pritika Paramasivam, independent research project, *University of Texas at Austin* 2020-2023
 "Cultural, Political, and Social Barriers to Obtaining Abortions for Asian Americans in Texas: A Qualitative Study"

Rachel Wolleben, *Bridging Disciplines Connecting Experiences, UT Austin* 2021

PREVIOUS PROFESSIONAL POSITIONS

Research Associate Sept 2009 – June 2011
Division of Preventive Medicine, University of Alabama at Birmingham, Birmingham, AL

Graduate Research Assistant Aug 2006 – May 2011

Kari White

Population Research Center, University of Texas at Austin, Austin, TX

Research Associate

School of Medicine, Yale University, New Haven, CT

Sept 2003 – July 2006

Bilingual Family Advocate

National Alliance for the Mentally Ill – Southern Arizona, Tucson, AZ

Aug 2000 – May 2001

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION**

| | | |
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| YELLOWHAMMER FUND, on |) | |
| behalf of itself and its clients. |) | CASE NO. 2:23-cv-00450-MHT |
| |) | |
| Plaintiff, |) | CIVIL ACTION |
| |) | |
| v. |) | |
| |) | |
| ATTORNEY GENERAL OF |) | |
| ALABAMA STEVE MARSHALL, |) | |
| in his official capacity |) | |
| |) | |
| Defendant. |) | |
| |) | |
| WEST ALABAMA WOMEN’S |) | |
| CENTER, on behalf of themselves |) | |
| and their staff; et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STEVE MARSHALL, in his official |) | |
| capacity as Alabama Attorney |) | |
| General, |) | |
| |) | |
| Defendant. |) | |

**DECLARATION OF KELSEA MCLAIN IN SUPPORT OF PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT**

I, KELSEA MCLAIN, hereby declare under penalty of perjury that the following statements are true and correct:

1. I am the Deputy Director of the Yellowhammer Fund, a nonprofit corporation based in Alabama. Yellowhammer Fund provides support to pregnant and parenting people in Alabama, Mississippi, and the Florida Panhandle.

2. As Deputy Director, I ensure that all of our current programs are run successfully and that our budgets are delivered to the Executive Director. I am also responsible for human resources at Yellowhammer Fund, including supporting staff and new hires, maintaining performance goals, and honoring our team's hard work.

3. Before becoming Deputy Director in July 2022, I served as the Healthcare Access Director at Yellowhammer Fund. In that role, I helped to ensure that pregnant Alabamians had the funding and logistical support they needed to access abortion care both within and outside of Alabama. I also provided support to residents of other states who traveled to Alabama for abortion care. This role was focused on addressing the pressing abortion care needs of our community.

4. In total, I have been with the Yellowhammer Fund for four years. I have devoted my career to advocating for access to reproductive health care across the South, and have worked or volunteered in Texas, Alabama, Florida, and North Carolina.

5. I provide the following testimony based on personal knowledge.

Yellowhammer Fund's Abortion Fund Provided Critical Support to Pregnant People Seeking Abortion Care

6. Before *Dobbs*, one of my core responsibilities at Yellowhammer Fund was to support our abortion fund. The abortion fund was founded in 2017 in order to meet

pregnant Alabamians' need for financial and logistical support to access abortion care. I helped oversee the fund, ensuring that we were meeting our mission of decreasing barriers to abortion care, raising awareness about the fund and its services, and constantly improving our services to be more responsive to the needs of our community.

7. I worked directly with abortion clinics and other abortion care providers to ensure that they were aware of our services. I regularly communicated with clinics and providers, as well as other abortion funds and advocacy groups, to spread awareness of the fund and collaboratively address the needs of our community members. In addition to providing funding for abortions, our abortion fund also helped pregnant people with other logistical and practical needs associated with abortion access. These needs range from transportation to childcare arrangements to lodging to food. Our fund also assisted patients by making referrals to abortion providers.

8. Yellowhammer Fund's abortion fund operated a telephone help line and text line that patients could contact if they needed financial and logistical assistance for their abortions. In addition, clinics and providers would sometimes call the line to notify us that a patient needed financial and logistical support. Most of the patients who called our phone line had been referred by clinics or individual providers. We also accepted referrals via email.

9. After a patient or provider contacted us, Yellowhammer Fund's abortion fund would determine the total cost of the abortion, as well as the logistical and practical

support needs of our callers. We made financial pledges directly to clinics to help cover the cost of the abortion. If we were not able to cover the total cost of an abortion, we worked with other abortion funds to fill the gap. We also referred callers from other states to abortion funds in their state to help ensure that their financial needs were met.

10. I served as a case manager and provided direct support to our individual callers. It was my role to ensure that our callers received the support they needed, communicate with them to ensure that they were able to access care, and provide any follow-up support. We were there to support clients for as long as they needed us to be there for them.

11. The services provided by Yellowhammer Fund's abortion fund were incredibly important for our community. Many of our callers struggled to make ends meet, and most were below the federal poverty level. The majority of callers were on Medicaid or were uninsured. Our callers had limited savings, and many were already parents of one or more children. Depending on the gestational age of their pregnancies, the cost of abortion could range from several hundred to tens of thousands of dollars. Without our support, many of our callers would have struggled to gather the necessary funds for their abortions, and some would have been forced to carry their pregnancies to term against their wishes. Our abortion fund helped to ease the stress of accessing abortion care for our callers while helping them make decisions for themselves and their families.

12. Clients would often verbalize other health needs, including concerns over the health of their pregnancy and potential outcomes should they be forced to carry a pregnancy to term. Clients often expressed that they needed an abortion to protect their health and their lives. They were also concerned about the lack of access to health care providers in Alabama to ensure a safe and healthy pregnancy.

13. Additionally, many of the abortion fund's clients struggled to address the other needs associated with accessing abortion care. The cost of abortion care is more than the cost of the procedure or medication itself. For example, our callers also needed help making childcare arrangements, and many needed help with transportation and lodging. Even while abortion was still legal in Alabama, the limited number of abortion clinics in the state meant that some of our callers had to travel long distances to reach the nearest clinic. The cost of travel, as well as the costs of lodging and food, were insurmountable for many callers. Our fund helped cover those costs while also supporting our callers with the many logistical decisions necessary for accessing care—including making hotel arrangements, purchasing bus and plane tickets, and providing funds and assistance for food and childcare.

14. Like the majority of abortion patients in Alabama before *Dobbs*, most of the abortion fund's callers were Black. Black pregnant people face the most severe barriers to accessing abortion care. Our abortion fund helped to ease these burdens by ensuring

that our callers could make individual reproductive decisions for themselves and their families, regardless of their income level.

15. Our callers were also all low-income. Alabama is the sixth poorest state in the country, and our callers did not have the funds necessary to pay for expensive abortion care in other states, let alone to travel and cover all of their logistical needs—including lodging and childcare.

16. Many of our callers already had children and decided to have an abortion in order to ensure that they had the resources they needed to parent their children and care for their family.

17. As a reproductive justice organization, Yellowhammer Fund strongly believes that every person has the right to have a child, the right not to have a child, and the right to parent the children they have in safe and healthy environments. Our abortion fund helped communicate that message by ensuring that the callers we served could access the care they decided was best for themselves and their families.

Before the Attorney General's Threats, Yellowhammer Fund Intended to Continue Funding Out-of-State Abortions

18. Even before the U.S. Supreme Court's decision in *Dobbs*, Yellowhammer Fund anticipated that, if *Roe v. Wade* were overturned, the abortion fund would play a critical role helping pregnant Alabamians travel to states where abortion care remained legal.

19. In preparation for the potential decision, our fund started to plan to ensure we would be ready to provide travel support in the event that abortion was criminalized in Alabama. Among other things, I began developing relationships with clinics in states where abortion care was likely to remain legal. I estimate that before *Dobbs*, between 15-20% of the callers our fund supported had to travel outside of the state for abortion care. We expected that number to rise to 100% after *Dobbs*. I developed a spreadsheet with information about clinics across the country that could serve pregnant Alabamians, in order to ensure that our fund was ready to act quickly by making referrals for our callers. I also began to develop systems, including referral and case management systems, that we could use to ensure that we could respond appropriately to an increase in demand for funds and support after *Dobbs*.

20. Additionally, I worked with my team to ensure that our budget could accommodate requests for support. We anticipated that the requests would increase and that the costs of travel and of abortion care would increase exponentially if abortion was banned in Alabama.

21. I also began to prepare for potential expansion of the abortion fund. Because we anticipated that many more callers would have to travel out of the state for abortions, I expected to hire more people to help me with case management, travel support, and other needs of our callers. We were beginning to have conversations about other ways we could expand our work, including transporting clients across state lines.

**Since the Attorney General's Threats, the Need for Yellowhammer Fund's
Abortion Fund Has Only Grown**

22. After *Dobbs*, Alabama began enforcing a ban on abortion with few exceptions. Our fund temporarily stopped providing abortion funding and logistical support to pregnant Alabamians.

23. Soon after *Dobbs*, I learned that Attorney General Steve Marshall made threats to criminally prosecute abortion funds that provide support to Alabama residents who seek abortion care in states where it is legal. I learned that the attorney general made threats to prosecute funds for conspiracy or serving as an accessory to a violation of Alabama's abortion ban if they help provide financial and logistical support to Alabama residents traveling for out-of-state lawful abortion care. His comments specifically mentioned groups that work in Tuscaloosa, so I understood the threats to be directed towards us specifically. My general impression was that in the attorney general's statements, he described Yellowhammer Fund, our work, and our organization, without directly saying our name. We are the only group in Tuscaloosa doing this work that we are aware of, so his threats felt targeted directly at us.

24. These threats made me worried that I could be prosecuted for providing support through Yellowhammer Fund's abortion fund. I am also worried that my staff members and volunteers could be prosecuted if we provide funding and logistical support to help pregnant Alabamians access abortion care in states where it is lawful. We also feared that these threats would expose our clients to additional surveillance or that

their abortions would be implicated in any legal case brought against Yellowhammer Fund. These threats concerned us because we are always heavily focused on protecting our clients' privacy.

25. Because the attorney general's threats continue to make us fearful of prosecution, Yellowhammer Fund has not resumed providing funding and support through our abortion fund.

26. Even though our fund is no longer in operation, I continue to hear from pregnant Alabama residents who need financial and logistical support to access abortion care in other states where it is legal. Abortion is banned in Alabama, but it remains legal in other states in the country. Yellowhammer Fund's telephone help line receives between five and ten calls a week from people who are seeking support from the fund. We also still receive calls from clinics and providers who are trying to help patients find the resources they need to obtain an abortion. A significant portion of callers are later in their pregnancies because they have not been able to find support from other funds. For many callers, it feels like we are getting the phone call because we are their last hope, and these callers are at the end of the line trying to figure out resources for their abortions.

27. When Yellowhammer Fund receives those calls, our staff sends a response message to inform callers that we are no longer operating our abortion fund. Our message also tells callers that we cannot provide them with financial or practical support for an abortion in another state. We do not share information with patients about lawful

abortion care in other states because we are afraid that doing so could subject us to prosecution.

28. Now that abortion is illegal in Alabama, pregnant people in Alabama must travel several hundred miles to other states to access abortion care. It is no longer a matter of determining the nearest abortion clinic. Patients now have to consider a variety of factors when arranging abortion care: accessibility, if they know anyone who lives in the state they are traveling to, and availability of appointments, to name a few. Patients now commonly have to navigate air travel instead of arranging a car ride. The costs of travel, lodging, and other needs are very high.

29. Because Yellowhammer Fund is not able to provide support to pregnant Alabama residents, many of the people we would like to serve do not have the support they need. We know that some people who are not able to get funding or logistical support for out-of-state abortions are forced to carry their pregnancies to term. When we talk to people who reached out to us for funding, they sometimes tell us they were not able to get an abortion. We let these patients know they can reach out to Yellowhammer Fund for other support in their pregnancy and after giving birth. We are also hearing anecdotally from health care providers that some pregnant people report that they are carrying a pregnancy they would have otherwise terminated if they had been able to access abortion care.

30. There is heavy stigma and shame associated with parenting a child after not being able to obtain an abortion. The Defendant's threats harm pregnant Alabamians who are seeking lawful out-of-state abortion care because they isolate them from the supporters who can help them.

31. Many of the states surrounding Alabama ban or severely limit access to abortion. This includes Louisiana, Mississippi, North Carolina, South Carolina, Georgia, and Texas. As more states continue to restrict abortion care, the costs of traveling out-of-state for abortion care will continue to increase, making abortion increasingly inaccessible to many pregnant Alabamians.

32. I wish that the Yellowhammer Fund abortion fund could resume providing assistance to help meet Alabamians' significant need for financial and logistical support for abortions in other states, which has only grown since the attorney general's threats. Providing assistance to help pregnant Alabamians access abortion care in other states was an important way for me to send a message of dignity, love, and support to pregnant Alabamians. The abortion fund's services also helped to communicate the importance of bodily autonomy and every person's right to make decisions about their body. Funding abortion is not just about bridging the gaps but also about affirming the right to access abortion care and sending the message that getting an abortion shouldn't bankrupt people or ruin their lives. Funding abortion shows patients that unfair and unjust barriers to care should not impact how they feel about that care or their choice to obtain it.

33. If not for Attorney General Marshall's threats, I would be providing financial and practical support through Yellowhammer Fund's abortion fund. I would also be helping to advertise the services of the Yellowhammer Fund abortion fund, ensuring that pregnant Alabamians were aware of the fund and the availability of out-of-state abortion care, and overseeing a growing staff to meet the needs of pregnant Alabamians. Additionally, Yellowhammer Fund would be providing information about our services and our support of lawful out-of-state abortion care on our website and on social media. Yellowhammer Fund would be holding itself out as a funder and supporter of lawful abortion and helping as many pregnant Alabamians as our resources allowed.

34. Lastly, I am someone who has had abortions with the support of an abortion fund. This is why the restrictions in Alabama and the attorney general's threats have been so emotionally difficult for me: I have firsthand knowledge of how important abortion funds are for supporting pregnant people's dignity and autonomy. Abortion funds dismantle the stigma and shame people feel when they struggle to afford the necessary things in life. The amount of harm a person experiences when they cannot access abortion care is immeasurable and has a lifelong impact on people's families, happiness, health, and lives.

35. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 08/14/2023

A handwritten signature in black ink, appearing to read 'Kelsea McLain', written over a horizontal line.

Kelsea McLain

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION**

| | | |
|-----------------------------------|---|----------------------------|
| YELLOWHAMMER FUND, on |) | |
| behalf of itself and its clients. |) | CASE NO. 2:23-cv-00450-MHT |
| |) | |
| Plaintiff, |) | CIVIL ACTION |
| |) | |
| v. |) | |
| |) | |
| ATTORNEY GENERAL OF |) | |
| ALABAMA STEVE MARSHALL, |) | |
| in his official capacity |) | |
| |) | |
| Defendant. |) | |
| |) | |
| WEST ALABAMA WOMEN’S |) | |
| CENTER, on behalf of themselves |) | |
| and their staff; et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STEVE MARSHALL, in his official |) | |
| capacity as Alabama Attorney |) | |
| General, |) | |
| |) | |
| Defendant. |) | |

**DECLARATION OF PAIGE SUELZLE IN SUPPORT OF PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT**

I, PAIGE SUELZLE, hereby declare under penalty of perjury that the following statements are true and correct:

1. I am a Legal Fellow at The Lawyering Project and counsel for Plaintiff in this action. I began my employment at The Lawyering Project in November 2022.

2. I provide the following testimony based on personal knowledge.

3. In preparation for this lawsuit, I searched online for an audio recording of Attorney General Steve Marshall's statements about prosecuting abortion funds which had previously been reported in the media. On or around December 15, 2022, I found the audio recording of Attorney General Marshall's comments on the Jeff Poor Show, 106.5 FM Talk, at the following link: <https://fmtalk1065.com/podcast/alabama-attorney-general-steve-marshall-jeff-poor-show-thursday-8-11-22>.

4. The recording was dated August 11, 2022, at 4:29:09 pm.

5. The Lawyering Project transcribed Attorney General Marshall's comments for purposes of this action, from approximately the 8:00 minute mark to the 10:01 minute mark.

6. I have verified that the following is an accurate transcription of Attorney General Marshall's radio remarks:

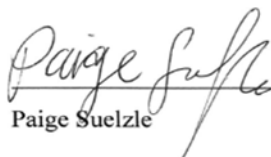
There is no doubt that [the Abortion Ban] is a criminal law, and the general principles that apply to a criminal law would apply to this . . . a classic felony, the most significant offense that we have as far as punishment goes under our criminal statute absent a death penalty case, and so, uh, provisions relating to accessory liability—uh provisions relating to conspiracy—uh would have applicability involving [the Abortion Ban]. So, for example, if

someone was promoting themselves out as a funder of abortion out of state, uh, then that is potentially criminally actionable for us. And so, one thing we will do in working with local law enforcement and prosecutors is making sure that we fully implement this law. You know there is nothing about that law that restricts any individual from driving across state lines and, uh, seeking an abortion, uh, in another place, however, I would say that if any individual held themselves out, uh, as a, as an entity or a group that is using funds, that they are able to raise, uh, to be able to facilitate those, uh, those visits then that, uh, is something we are going to look at closely. . . . To the extent that there is groups, and we've seen groups out of Tuscaloosa for example, that have one point in time have talked about it, some of them are doing it now, uh, but if they are promoting this as one of the services, uh, we clearly will be taking a look at that.

7. Over the past several months since discovering the audio recording, I have re-listened to the above-linked audio recording numerous times to confirm the accuracy of the transcription.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8/10/23


Paige Suelzle