Melissa A. Holyoak (9832)
Utah Solicitor General
Stanford E. Purser (13440)
Deputy Solicitor General
Lance F. Sorenson (10684)
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
P.O. Box 140856
Salt Lake City, UT 84114
(801) 366-0533

Attorneys for Defendants-Petitioners

Tyler R. Green (10660)
Consovoy McCarthy PLLC
222 S. Main Street, 5th Floor
Salt Lake City, UT 84101
(703) 243-9423

In the Supreme Court of the State of Utah

Planned Parenthood Association of Utah, *Plaintiff-Respondent*, v. State of Utah, et al., *Defendants-Petitioners.*	No. _____

Petition for Permission to Appeal an Interlocutory Order
(subject to assignment to the Court of Appeals)

On petition for permission to appeal an interlocutory order
from the Third Judicial District Court
Honorable Andrew Stone
No. 220903886

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Introduction

When left to decide for itself, Utah has prohibited abortions, with limited exceptions, dating back to territorial days. *Roe* largely took that authority away. *Dobbs* restored it. With decision making authority on this issue back in the hands of citizens and their duly elected representatives, the State returned to its long-held policy of prohibiting abortions with limited exceptions.

Planned Parenthood Association of Utah (PPAU) challenges Utah's renewed abortion policy as violating an alleged implied state constitutional right to abortion. And the district court preliminarily enjoined the State from enforcing its law. That extraordinary remedy warrants immediate review by and relief from this Court. First, PPAU lacks standing by itself or representing others to assert a right to abortion. The district court therefore lacks jurisdiction. Second, PPAU has no possibility of winning on its claims given the anti-abortion legal landscape both before and after Utah's Constitution was adopted. That means PPAU's issues are neither substantially likely to prevail nor serious questions warranting more litigation. The district court should not have issued a preliminary injunction barring the State from enforcing a duly enacted law.

Background

SB 174. The Utah Legislature enacted Senate Bill 174, codified at Utah Code §§ 76-7a-101 to -301, in its 2020 General Session. 2020 Utah Laws 1981-82. The law prohibits abortion, with three exceptions. First, an abortion may be performed when "necessary to avert . . . the death of the woman on whom the abortion is performed" or "a serious risk of substantial and irreversible impairment of a major bodily function." Utah Code § 76-7a-201(1)(a). Second, abortion is permitted when, as certified by two qualified physicians, the fetus suffers from a "uniformly diagnosable and uniformly lethal" condition or a "severe brain abnormality that is uniformly diagnosable." *Id.* § -201(1)(b). Third, SB

174 permits an abortion if the woman is pregnant as a result of rape or incest that has been reported to law enforcement. *Id.* § -201(c).

SB 174 further requires that abortions be performed only by a physician, and only in a clinic or hospital (absent a medical emergency). *Id.* § -201(2). Any person "who performs an abortion in violation of [SB 174] is guilty of a second degree felony," *id.* § -201(3), and clinics or physicians can have their licenses revoked. *Id.* § -201(4)-(5).

SB 174 becomes effective. In light of then-governing legal precedent, the Legislature gave SB 174 a "[c]ontingent effective date." 2020 Utah Laws 1981, 1982. SB 174 would take effect whenever legislative general counsel certified that "a court of binding authority has held that a state may prohibit abortion of an unborn child at any time during the gestational period, subject to the exceptions enumerated in [SB 174]." *Id.*

That contingency happened on June 24, 2022. The United States Supreme Court issued *Dobbs v. Jackson Women's Health Organization,* 142 S. Ct. 2228 (2022). While recognizing that "[a]bortion presents a profound moral question," *id.* at 2284, the Supreme Court held the federal "[c]onstitution does not prohibit the citizens of each State from regulating or prohibiting abortion." *Id.* at 2284. And because "*Roe* and *Casey* arrogated that authority," the Supreme Court "overrule[d] those decisions and return[ed] that authority to the people and their elected representatives." *Id.* Later that day, legislative general counsel certified that SB 174's contingency had been met. Complaint, Ex. B. SB 174 immediately took effect. 2020 Utah Laws 1982.

PPAU claims SB 174 violates a state constitutional right to abortion. The next day, PPAU filed a complaint in Third District Court claiming SB 174 violates the Utah Constitution. But, like the U.S. Constitution, the state constitution says nothing about abortion. In fact, "such a right was entirely unknown in American law" until the latter part

of the 1900s. *Dobbs*, 142 S. Ct. at 2242. Nor is the alleged right otherwise "deeply rooted in this Nation's history and tradition." *Id.* So to prevail, PPAU would have to conjure an *implied* right to abortion from somewhere within Utah's charter that clearly barred SB 174. PPAU's complaint attempts to carry that heavy burden by asserting seven claims contending that SB 174 violates eleven different state constitutional provisions that alone or in various combinations impliedly guarantee a right to abortion: (1) a right to determine family composition under Utah Const. art. 1, §§ 2, 25, 27; (2) the Equal Rights Clause, Utah Const. art. IV, § 1; (3) the Uniform Operations of Laws, Utah Const. art. I, §§ 2, 24; (4) a substantive due process right to bodily integrity under Utah Const. art. I, §§ 1, 7, 11; (5) the prohibition against involuntary servitude, Utah Const. art. I, § 21; (6) a right of conscience, Utah Const. art. I, § 4; and (7) a right to privacy, Utah Const. art. I, § 1 and art. 14. *See* Compl. ¶¶ 60-92. Some claims involved double-implied rights—implying a right to abortion from another implied right. *See, e.g.,* Compl. ¶ 61 (discussing family composition and parental claim); *id.* ¶ 77 (discussing bodily integrity claim); *id.* ¶¶ 91-92 (discussing right to privacy claim). And one claim relies on this Court's caselaw openly criticizing *Roe v. Wade*. *See* Compl. ¶ 61 (discussing family composition claim and citing *In re J.P.*, 648 P.2d 1364, 1372-74 (Utah 1982), which distinguishes the parental rights at issue in that case from the "substantive due process cases like *Roe v. Wade* . . . which rely on a 'right of privacy' not mentioned in the Constitution to establish other rights unknown at common law"). PPAU simultaneously requested a temporary restraining order against SB 174's enforcement, which the district court granted before the State could submit any responsive briefing.

The district court preliminarily enjoins SB 174. PPAU then moved for a preliminary injunction on six of its claims. PI Mot. at 19-43. The parties submitted briefs

and the court heard argument. At the end of the hearing, the court announced its decision to grant the preliminary injunction. Prel. Inj. Tr. (Tr.) at 46-54 (attachment 2 hereto). The court determined that PPAU had standing as an abortion provider to challenge SB 174 and that PPAU has "representative standing" to press the claims on behalf of putative abortion seekers. Tr. at 46. Turning to the preliminary injunction, the court said the test was flexible and a stronger showing on irreparable harm meant less of a need to show likelihood of success. Tr. at 47. In fact, the court wouldn't comment on the strength of PPAU's claims, Tr. at 47, instead finding merely that "there are clearly serious constitutional issues here to be litigated, *and the claims are plainly not frivolous*." Tr. at 52 (emphasis added).

The court issued a written preliminary injunction order (Order) on July 19, 2022 (attachment A hereto) before the State had a chance to object to the draft. *See* Utah R. Civ. P. 7(j)(4). As to standing, the order stated that "PPAU has demonstrated an injury in its own right and to its patients" that an injunction would redress. Order at 4. Alternatively, the court ruled that PPAU has "representative standing because it is an appropriate party to litigate this case of significant public import." *Id.*

On the preliminary injunction test, the district court determined all four factors favored PPAU. The court found PPAU made a strong showing that SB 174 will cause irreparable harm based almost entirely on alleged harm to non-plaintiff, unnamed "Utahns" who would have to carry an unwanted pregnancy or travel out of state for an abortion or turn to self-managed abortions. *Id.* at 2. Based again mostly on these non-plaintiffs, the court reasoned the balance of harms weighed in PPAU's favor because "it is unclear on this record whether and to what extent the Act will ultimately further its legislative goals." *Id.* The court then announced a preliminary injunction is in the public interest because it

"would maintain the status quo while the constitutional issues in this case can be resolved on the merits." *Id.* at 3.

Finally, the court said PPAU had demonstrated "at least serious issues on the merits that should be subject to further litigation" as to their claims that one or more of the asserted constitutional provisions guarantees a right to abortion. *Id.* at 3. The court said these were "novel and complicated" issues upon which PPAU might prevail. *Id.* at 4. And the court concluded it would benefit from further issue development, including any facts the parties wanted to present. *Id.*

With that, the court entered a preliminary injunction against SB 174's enforcement pending final resolution of the case. *Id.* at 5. The State now timely requests permission to challenge the district court's preliminary injunction order. Utah R. App. P. 5(a).

Issues Presented

1. Did the district court err by concluding that PPAU has standing on its own or on behalf of third parties to challenge SB 174?
2. Did the district court abuse its discretion by granting a preliminary injunction against SB 174's enforcement despite the fact that PPAU failed to show a substantial likelihood of success or serious issue on their claims that the Utah Constitution impliedly protects a right to abortion?

Preservation: The State raised both issues in its memorandum in opposition to plaintiff's motion for a preliminary injunction. PI Opp. at 18-67.

Standard of review: Standing generally presents a mixed question of fact and law; the question whether a "given individual or association has standing to request a particular relief is primarily a question of law" and the Court gives "minimal discretion" to the district court's determination of whether specific facts satisfy standing requirements. *Hinkle v.*

Jacobsen, 2019 UT 72, ¶ 18, 456 P.3d 738. The Court reviews the grant of a preliminary injunction for abuse of discretion. *Aquagen Int'l, Inc. v. Calrae Trust*, 972 P.2d 411, 413 (Utah 1998). And a court abuses its discretion when it grants a preliminary injunction even though the plaintiff has no possibility of prevailing on the merits. *Id.*

Reasons Why Interlocutory Appeal Should Be Permitted

An appeal from an interlocutory order may be granted when the order "involves substantial rights and may materially affect the final decision," or when immediate review "will better serve the administration and interests of justice." Utah R. App. P. 5(g). Both reasons justify interlocutory appeal here. PPAU lacks its own or third-party standing to challenge SB 174 based on an implied constitutional right to abortion. Reviewing that issue (and dismissing the case) now, rather than a year or two later on direct appeal, better serves the administration and interests of justice. More importantly, the case involves profound and substantial rights—protecting the lives of unborn children—and the State and public interest in enforcing SB 174's policy choices. The preliminary injunction unjustifiably blocks those rights given PPAU's lack of any possibility of winning or serious claims. Reversing the district court now will not only allow the State to enforce its duly enacted law but will reinforce the correct analysis for resolving PPAU's claims on the merits.

I. The district court erred by concluding PPAU has standing to assert a constitutional right to abortion.

The district court ruled that PPAU has standing itself and as a representative of others. That's wrong on both counts. The Court should grant immediate review to reverse and dismiss this litigation for lack of jurisdiction. *Living Rivers v. Exec. Dir. of the Utah Dept. of Env't Quality*, 2017 UT 64, ¶ 27, 417 P.3d 57.

PPAU lacks standing by itself. The district court concluded that PPAU had standing because it showed "an injury in its own right and to its patients" and an injunction

"would redress those injuries." Order at 4. But standing demands more than just a redressable injury. A plaintiff must also have a "personal stake" in the dispute, *Jenkins v. Swan*, 675 P.2d 1145, 1148 (Utah 1983), based on its "own rights" rather than the claims of non-parties or the public at large, *Provo City Corp. v. Thompson*, 2004 UT 14, ¶ 9, 86 P.3d 735 (to have standing, "a party may generally assert only his or her own rights and cannot raise the claims of third parties who are not before the court" (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 610 (1973)). That means PPAU "must assert [its] own legal rights and interests, and cannot rest [its] claim[s] to relief on the legal rights or interests of third parties." *Shelledy v. Lore*, 836 P.2d 786, 789 (Utah 1992).

PPAU lacks standing because it has no personal stake in this case *based on its own rights*. Rather, all of its claims for relief are based on the alleged implied constitutional right to abortion that, even if it existed, would belong to women who seek abortions, not clinics like PPAU that perform the procedure. That's why the overwhelming majority of PPAU's Complaint focuses on arguments about the legal rights of, and harms to, third-party patients who are not before the Court. PPAU has not alleged that SB 174 violates any of PPAU's own actual or alleged constitutional rights. And PPAU has no interest implicated by SB 174 sounding in privacy, bodily integrity, equal protection, family composition, or any of the other alleged constitutional rights from which it hopes to derive an implied abortion right.

PPAU failed to establish, and the district court failed to find, all three elements of standing. *Alpine Homes, Inc. v. City of W. Jordan*, 2017 UT 45, ¶ 34, 424 P.3d 95 (party must show all three standing elements). The district court was not free to skip any "standing requirements simply because the plaintiff wishes to assert a constitutional claim." *Haik v. Jones*, 2018 UT 39, ¶ 21 n.3, 427 P.3d 1155. The district court erred in

concluding PPAU on its own has standing to assert SB 174 violates an alleged implied constitutional right to abortion.

PPAU lacks standing to represent non-parties. In the alternative, the district court determined PPAU "has representative standing because it is an appropriate party to litigate this case of significant public import." Order at 4. It is not totally clear what the district court means. The court may be conflating associational standing and public interest standing. Whatever the case, the court wrongly decided PPAU had standing to press others' claims.

An association has standing if its individual members satisfy traditional standing requirements and their participation is not necessary to resolve the case. *Utah Chapter of Sierra Club v. Utah Air Quality Bd.*, 2006 UT 74, ¶ 21, 148 P.3d 960. But PPAU is not a membership association (with patients as members) and does not seriously claim to have or demonstrate associational standing. *See* PI Motion at 6; PI Reply at 4. So the district court erred to the extent it suggested PPAU had associational standing. *See ACLU of Utah v. State*, 2020 UT 31, ¶ 3, 467 P.3d 832 (noting petitioners never claimed associational standing).

Nor does PPAU merit alternative standing under the public interest standing doctrine.[1] Under current precedent, courts may allow standing as an exception to the traditional rules "where matters of great public interest and societal impact are concerned," but Utah courts "will not readily relieve a plaintiff of the salutory requirement of showing

[1] Public interest standing rests on shaky ground—"two members of this court have expressed serious doubt about the intellectual underpinnings of the doctrine and have invited further discussion of its continued viability." *Haik*, 2018 UT 39, ¶ 23 n.5. The State reserves the right to challenge the doctrine in its brief on the merits should the Court grant this petition for permission to file an interlocutory appeal.

a real and personal interest in the dispute." *Jenkins*, 675 P.2d at 1149-50. To warrant public interest standing, PPAU must show, among other things, that the issues it wants to litigate are unlikely to be raised by anyone else if PPAU is denied standing. *ACLU*, 2020 UT 31, ¶ 4. The district court's order did not address this issue but the court stated at the hearing that it is a "natural conclusion to think" a woman needing an abortion would not find a lawsuit to be "the most efficient way to serve her own interests." Tr. at 46. That may be true for some women facing an abortion choice. But given the examples of women asserting abortion rights in court, no one could reasonably conclude that it is unlikely anyone but PPAU will challenge SB 174. Like the plaintiffs who asserted a federal constitutional right in *Roe v. Wade* and its companion case *Doe v. Bolton*, Utahns affected by SB 174 could bring a constitutional challenge in their own name, form an association to do so, or join PPAU's suit letting it do the heavy lifting. *See, e.g., Women of State of Minn. by Doe v. Gomez*, 542 N.W.2d 17, 20-21 nn.2-3 (Minn. 1995) (plaintiffs, including individual women, challenged regulations restricting abortion access under the state constitution).

For similar reasons, PPAU cannot rely on the third-party standing exception discussed in *Shelledy* (which the district court did not mention, much less apply here). The exception would apply only if, among other things, it is *impossible* for the third-party right holders to assert their own claims. *Shelledy*, 836 P.2d at 789. That's not the case here—women affected by SB 174 have "never been precluded from asserting" their own alleged abortion rights. *Id.*

Finally, PPAU argued—but the district court did not address—that it would have standing in federal court under the relaxed abortion-related third-party standing exception, so PPAU necessarily has standing in state court. PI Mot. at 6. But state and federal standing

requirements are not identical, *Gregory*, 2013 UT 18, ¶ 12, and PPAU's argument fails to explain why the Court should adopt the federal standard PPAU prefers.

II. The district court abused its discretion in preliminarily enjoining SB 174.

A preliminary injunction may issue "only" if the applicant shows (1) it will suffer irreparable harm absent the injunction, (2) the harm to the applicant outweighs the damage the injunction will cause to the restrained party, (3) the injunction is not adverse to the public interest, and (4) a substantial likelihood of prevailing on the merits or "the case presents serious issues on the merits which should be the subject of further litigation." Utah R. Civ. P. 65A(e). These factors were derived from Tenth Circuit cases and federal case authority should assist state courts in developing the standards. *See* Utah R. Civ. P. 65A(e) advisory committee note, para. (e).

Because preliminary injunctions are extraordinary remedies, they should not be "lightly granted." *Sys. Concepts, Inc. v. Dixon*, 669 P.2d 421, 425 (Utah 1983). The movant's right to relief must be "clear and unequivocal." *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003). PPAU did not, and cannot, meet this high standard for extraordinary relief. The district court abused its discretion in issuing the preliminary injunction. Order at 2-4.

PPAU's claims do not raise serious issues warranting further litigation and have no possibility of prevailing. The district court did not find that PPAU showed a substantial likelihood of success on the merits. Instead, the court determined that PPAU had raised "serious issues on the merits" that should be litigated more. Order at 3. The court said PPAU's issues were "novel and complicated" and it "may prevail" on one of its claims. *Id.* at 4. The claims are certainly novel, but they are not complicated and PPAU cannot prevail under the governing law and legal landscape. Put another way, PPAU's claims fail

the serious-question prong because they are not "genuinely debatable." *Tri-State Generation and Transmission Ass'n, Inc. v. Shoshone River Power, Inc.*, 805 F.2d 351, 359 (10th Cir. 1986).[2]

PPAU's problems start with "the general and well-established rule that legislative enactments are presumed to be constitutional unless the contrary clearly appears." *Highland Boy Gold Mining Co. v. Strickley*, 78 P. 296, 297 (Utah 1904); *see also Vega v. Jordan Valley Med. Ctr., LP,* 2019 UT 35, ¶ 12, 449 P.3d 31 ("The presumption of constitutionality also means that we will seek to resolve doubts about a statute's validity in favor of constitutionality, and will not declare a legislative enactment invalid unless it clearly violates a constitutional provision.").

And PPAU's task gets more difficult given the analytical framework it must use to overcome that presumption of constitutionality. Utah courts interpreting the Utah Constitution "seek to ascertain and give power to the meaning of the text as it was understood by the people who validly enacted it as constitutional law." *Richards v. Cox*, 2019 UT 57, ¶ 13, 450 P.3d 1074; *see also Neese v. Utah Bd. of Pardons & Parole*, 2017 UT 89, ¶ 95, 416 P.3d 663 (holding that Utah constitutional analysis is an "originalist inquiry" that aims to "ascertain[] the 'original public meaning' of the constitutional text"). This inquiry's "focus is on the objective original public meaning of the text, not the intent

[2] Under Tenth Circuit case law, the serious-question test no longer exists. *See Diné Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276, 1287 (10th Cir. 2016) (stating "our modified test [using the serious-question element] is inconsistent with the Supreme Court's recent decision in [*Winter*]. . . . Under *Winter*'s rationale, any modified test which relaxes one of the prongs for preliminary relief and thus deviates from the standard test is impermissible"). But even when the test still existed, it would not have applied to PPAU's claims: "[w]here . . . a preliminary injunction 'seeks to stay governmental action taken in the public interest pursuant to a statutory or regulatory scheme,' the less rigorous fair-ground-for-litigation standard should not be applied." *Heideman*, 348 F.3d 1182, 1189 (10th Cir. 2003) (internal quotation marks omitted).

of those who wrote it." *S. Salt Lake v. Maese*, 2019 UT 58, ¶ 19 n.6, 450 P.3d 1092. That is, a court's interpretive "task is to understand what" a constitutional provision "meant to those who voted to approve the Utah Constitution"—to discern "what the general public understanding was at the time of statehood." *Id.* ¶ 21 & n.7.

"[T]here is 'no magic formula'" for answering that question. *Salt Lake City Corp. v. Haik*, 2020 UT 29, ¶ 12, 466 P.3d 178. But the Court's cases lay down markers that guide the inquiry. When interpreting the Utah Constitution, that Court has analyzed a constitutional provision's "text, historical evidence of the state of the law when it was drafted, and Utah's particular traditions at the time of drafting," *id.* (internal quotation marks omitted), as well as "the shared linguistic, political, and legal presuppositions and understandings of the ratification era," *Neese*, 2017 UT 89, ¶ 98. Those "different sources will be more or less persuasive depending on the constitutional question and the content of those sources." *Maese*, 2019 UT 58, ¶ 19.

Following the settled original-public-meaning guideposts here leads to only one conclusion—there is no implied right to abortion in the Utah Constitution.

a. No express textual support. The "'starting point in interpreting a constitutional provision is the textual language itself.'" *Haik*, 2020 UT 29, ¶ 15. PPAU references ten constitutional provisions in its motion for preliminary injunction—article I, §§ 1, 2, 4, 7, 11, 14, 24, 25, 27, and article IV, § 1. None of them expressly refers to "abortion." Nor does any one of them refer to a "miscarriage," a word that at the time of the founding meant "substantially the same" thing as abortion. *Crook*, 51 P. at 1093.

b. No constitutional convention support. When "the plain language of the Utah Constitution does not answer the question," *Maese*, 2019 UT 58, ¶ 28, the Court considers evidence from the debates in the 1895 Utah Constitutional Convention to inform its

original-public-meaning inquiry. *See Haik*, 2020 UT 29, ¶¶ 24-34; *Maese*, 2019 UT 58, ¶¶ 30-33. As far as the State can tell, neither "abortion" nor "miscarriage" were mentioned during the convention. And nothing in the debates on provisions PPAU relies on suggests they protected an implied right to abortion. PI Opp. at 24-34.

c. The 1898 and later codes criminalized abortion. The 1898 Utah Code provides an important source of "historical evidence" about "Utah's particular traditions at the time" the constitution was adopted. *Haik*, 2020 UT 29, ¶ 12 (internal quotation marks omitted). This code "holds particular significance because it was the first effort to codify the law after adoption of our constitution." *Maese*, 2019 UT 58, ¶ 45. And coming immediately after statehood, that code helps show "the contemporaneous public meaning of certain constitutional terms and concepts." *Id.* ¶ 46.

Here, the 1898 code fatally undermines PPAU's claim that the constitution protects an implied right to abortion. One code section reenacted a prior territorial criminal prohibition on performing an abortion. Utah Rev. Stat. Tit. 75, ch. 27, § 4226 (1898) (attachment 3, exh. C). Another section made it a new crime for a woman to solicit or submit to an abortion. *Id.* § 4227 (attachment 3, exh. C). The provisions making it a crime to perform or obtain an abortion remained part of the Utah Code from 1898 until the U.S. Supreme Court decided *Roe* in 1973. *See* 410 U.S. at 118 n.2 (citing Utah Code §§ 76-2-1, -2 (1953)). The Legislature's long, consistent treatment of abortion as a crime confirms that the legislative view "closest in time to the enactment of our constitution did not question the" constitutional "propriety of" banning abortion. *Maese*, 2019 UT 58, ¶ 58.

What's more, in 1907, the Legislature passed even more statutes that regulated abortion by making it an act of professional misconduct for a physician or surgeon to "offer[] or attempt[] to procure or aid or abet in procuring a criminal abortion" or to

"procur[e] or aid[] and abet[] in procuring a criminal abortion." Comp. Laws of Utah, Tit. 63, § 1736(1)-(2) (1907) (attachment 3, exh. D). It reenacted those regulations in 1917, 1933, and 1943. *See* Comp. Laws of Utah, Tit. 85, § 4448(1)-(2) (1917); Rev. Stat. of Utah § 79-9-18(1) (1933); Utah Code § 79-9-18(1) (1943) (attachment 3, exh. E to G). And between 1907 and 1933, physicians or surgeons who performed an abortion had their medical license revoked and were banned from practicing medicine in Utah. *See* Comp. Laws of Utah, Tit. 63, §§ 1734-1735 (1907); Comp. Laws of Utah, Tit. 85, §§ 4446-4447 (1917) (attachment 3, exh. D, E).

d. The executive and judicial branches enforced these early abortion laws.

Notably, prosecutors charged and convicted defendants who violated those abortion laws. And when cases seeking appellate review of those convictions reached this Court, no one challenged the abortion laws' validity and the Court affirmed the conviction or otherwise disposed of the appeals without questioning whether the abortion statutes violated the constitution. *See State v. McCoy*, 49 P. 420, 421-22 (Utah 1897); *State v. Crook*, 51 P. 1091, 1091-92 (Utah 1898); *State v. Davis*, 75 P. 857, 858 (Utah 1904); *State v. McCurtain*, 172 P.2d 481, 482-83 (Utah 1918); *State v. Cragun*, 38 P.2d 1071, 1071, 1079 (Utah 1934); *State v. Clark*, 284 P.2d 700, 701 (Utah 1955). Similarly, the Court upheld revocations of medical licenses for performing an abortion, again with no party challenging those laws and the Court always acknowledging that abortion was a crime in Utah and never suggesting any constitutional doubts about the ban. *See Moormeister v. Golding*, 27 P.2d at 449; *Moormeister v. Dep't of Registration of State*, 288 P. at 903; *Cragun*, 20 P.2d at 248.

Had those convictions or laws posed potential constitutional problems, some defendant surely would have raised the issue and the Court would have said as much. After

all, the Court has long recognized "it is the plain duty of the courts to declare [a statute's] invalidity" if the statute "violates the supreme law of the state." *Block*, 76 P. at 23. The failure of any litigant to raise this issue and absence of any Court rulings on it further confirm that the general public at the time of the founding did not understand the Utah Constitution to protect an implied right to abortion.

e. Neither Utah territorial law, the common law, nor sister states recognized a constitutional right to abortion. The Court has also discerned original public meaning by "examin[ing] the backdrop of 'legal presuppositions and understandings' against which" the constitution "was drafted." *Haik*, 2020 UT 29, ¶ 40. The Court has looked for those backdrop presumptions and understandings in "laws in effect at the time of the Utah Constitution's ratification," *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 55, 140 P.3d 1235, and "common law sources," *id.* ¶ 49, including, "at times, … sister state law," *Maese*, 2019 UT 58, ¶ 59. In fact, "[t]he laws in effect in Utah in 1895, both statutory and common law," provide "the clearest picture of the values and policy judgments of the people of Utah when they voted for their constitution." *Am. Bush*, 2006 UT 40, ¶ 50.

Here, each of those sources further confirms that the Utah Constitution does not protect an implied right to abortion. First, Utah territorial law had already outlawed performing abortions for two decades before statehood. Terr. of Utah Comp. Laws § 1972 (1876) (attachment 3, exh. A); Comp. Laws of Utah, Title 9, ch. 3, § 4507 (vol. II, p. 591) (1888) (attachment 3, exh. B).

Second, the common law in 1896 likewise did not recognize a right to abortion. The U.S. Supreme Court just held as much in *Dobbs*: "[a]t common law, abortion was criminal in at least some stages of pregnancy and was regarded as unlawful and could have very serious consequences at all stages." 142 S. Ct. at 2248. In England, the "authorities differed

on the severity of punishment for abortions committed at different points in pregnancy," but "none endorsed the practice." *Id.* at 2251. And "[i]n 1803, the British Parliament made abortion a crime at all stages of pregnancy and authorized the imposition of severe punishment." *Id.* at 2252. The common-law record "[i]n this country" is "similar." *Id.* at 2251. "The few cases available from the early colonial period corroborate that abortion was a crime" in colonial America. *Id.* In short, the common law is fatal to PPAU's claims.

Third, *Dobbs* confirms the status of abortion protections in "sister state law" in 1896. *Maese*, 2019 UT 58, ¶ 59. "Until the latter part of the 20th century, . . . [n]o state constitutional provision had recognized" a right "to obtain an abortion." *Dobbs*, 142 S. Ct. at 2248. And "[b]y 1868, the year when the Fourteenth Amendment was ratified, three-quarters of the States, 28 out of 37, had enacted statutes making abortion a crime even if it was performed before quickening." *Id.* at 2252-53. "Of the nine States that had not yet criminalized abortion at all stages, all but one did so by 1910." *Id.* at 2253. So too "in the Territories that would become the last 13 States"; "[a]ll of them criminalized abortion at all stages of pregnancy between 1850 (the Kingdom of Hawaii) and 1919 (New Mexico)." *Id.* Thus, "[b]y the end of the 1950s, according to the *Roe* Court's own count, statutes in all but four States and the District of Columbia prohibited abortion 'however and whenever performed, unless done to save or preserve the life of the mother.'" *Id.* (quoting *Roe*, 410 U.S. at 139). Beyond that, "[t]here is ample evidence that" States passed their abortion bans in the 1800s and 1900s "spurred by a sincere belief that abortion kills a human being. Many judicial decisions from the late 19th and early 20th centuries made that point." *Id.* at 2256.

* * *

"In light of" that crushing weight of "historical evidence"—the common law, Utah territorial law, the 1898 and successive Utah Codes, and virtually all sister states in 1896

prohibiting abortion—"it is inconceivable that the framers of our constitution or the citizens of this state intended to protect" abortion as an implied "constitutional right." *Am. Bush*, 2006 UT 40, ¶ 65. All the constitutional provisions PPAU rely on date to the original 1896 constitution, without any substantial changes, and thus held force for decades alongside abortion bans even stricter than SB 174. *See* attachment 4 hereto (chart containing constitutional provisions PPAU relies on as worded in 1896 and now).

At the hearing, the court said it needed original public meaning analysis for recent amendments to some of the constitutional provisions PPAU relies on. Tr. at 50-51. But none of the amendments could plausibly create an implied right to abortion. *See id*. For example, amendments to article I, sections 1, 11 in 2020—the same year SB 174 was enacted—added gender neutral language that the Voter Information Pamphlet explained made no changes to the provisions' substance or meaning. *See* 2020 Voter Information Ballot at 41-43.[3] The pamphlet is strong evidence of how the public understood the amendments. *See, e.g, State v. Willis*, 2004 UT 93, ¶ 15, 100 P.3d 1218; *State v. Kastanis*, 848 P.2d 673, 675 (Utah 1993). The amendment to article I, section 4 in 2000 similarly had nothing to do with abortion and cannot plausibly read to create such a right. 2000 Voter Information Pamphlet at 34.[4] Beyond the voter guides, it is ludicrous to suggest that voters could have thought they were adding an implied right to abortion to the state constitution without *any* public debate on the issue—the most contentious public policy matter of the last half century.

In short, PPAU's claims about an implied state constitutional right to abortion do

[3] https://voteinfo.utah.gov/wp-content/uploads/sites/42/2021/03/Utah-VIP-2020-General-FIN.pdf.

[4] https://voteinfo.utah.gov/wp-content/uploads/sites/42/2021/03/Utah-VIP-2020-General-FIN.pdf.

not raise genuinely debatable, serious questions worthy of additional litigation. The claims have no possibility of surviving an original-public-meaning analysis required by this Court. The district court abused its discretion and should be reversed on interlocutory appeal on this ground alone. *Aquagen Int'l*, 972 P.2d at 413.

PPAU did not make a strong showing of irreparable harm. The district court wrongly relied mostly on alleged harms to third parties, not PPAU. Order at 2. As noted above, those women are not parties to this case and PPAU has no standing to press their rights. So their alleged harm does not show any irreparable harm to PPAU. Focusing only on PPAU as rule 65A(e)(1) requires, its alleged harms are mostly economic—the inability to provide abortion services. PI Mot. at 16; Order at 2. Those types of harm are not irreparable. *Hunsaker v. Kersh*, 1999 UT 106, ¶9, 991 P.2d 67; *see also Tri-State Generation & Transmission Ass'n, Inc. v. Shoshone River Power, Inc.*, 805 F.2d 351, 355 (10th Cir. 1986). The Court noted PPAU (and its staff) may also suffer reputational harm or the threat of criminal and licensing penalties. Order at 2. But this is far from a strong showing of irreparable harm (and again includes non-party staff in the calculation).

The court failed to properly balance the actual harms. Again including the alleged harms to third parties, the district court found those harms outweighed any interest the State had in a statute the court said was uncertain to achieve its purposes. Order at 2. That's wrong on several levels. First, the court should not have included third-party harms on PPAU's side of the balance. Utah R. Civ. P. 65A(e)(2) (weighing the "threatened harm to the applicant"). Second, the court ignored recognized harms to the State. *See, e.g., Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) ("[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury."). Third, enjoining SB 174 imposes a

particularly severe irreparable harm on the State side of the balance given the profound State and public interest at stake—the preservation of human life, both the mother's and unborn child's. Utah Code § 76-7-301.1(1). Abortion is irreparable and irreversible. That injury outweighs any PPAU harm that denying equitable relief might cause. *See* Utah R. Civ. P. 65A(e)(2).

A preliminary injunction adversely affects compelling public interest. The district court said only that a preliminary injunction is in the public interest because it would maintain the status quo while the constitutional claims are resolved on the merits. Order at 3. But that's doubly wrong. First, the injunction does not *maintain* the status quo; it *changes* the status quo to permit abortions that are illegal under SB 174. The district court's contrary view effectively reads *Dobbs* out of existence. Second, the court again ignores the compelling State and public interest in preserving the lives of unborn children and mothers. Utah Code § 76-7-301.1. SB 174 balances and seeks to protect both the unborn child and the mother's life and health and mental well-being. PPAU (and the preliminary injunction) do not and adversely affect the public interest. To be sure, the State "does not have an interest in enforcing a law that is likely constitutionally infirm." *Chamber of Com. of U.S. v. Edmondson*, 594 F.3d 742, 771 (10th Cir. 2010). But SB 174 is constitutionally sound, and PPAU cannot swing the public interest in its favor merely by claiming it raises "serious issues" in need of further litigation.

Interlocutory Appeal Advances the Termination of the Litigation

PPAU lacks standing to assert a right to an abortion on its own behalf or on behalf of non-party women who might want an abortion not authorized by SB 174. PPAU's lack of standing means the district court lacks jurisdiction and the case must be dismissed, terminating the litigation. Making that ruling now will spare the parties and the public

another 12-18 months of litigation followed by a direct appeal only to arrive back at the same point—PPAU lacks standing.

The Court Should Retain and Decide This Matter

The Court should retain and decide this petition rather than transferring it to the court of appeals. The petition raises important questions about standing, preliminary injunction factors, and constitutional interpretation that will affect the parties' dispute and future cases. More importantly, SB 174 involves compelling State interests: the protection and preservation of human life, existing and unborn. The State and the public need a definitive answer now, that only this Court can provide, about whether SB 174 is enforceable pending resolution of PPAU's claims.

Conclusion

For the foregoing reasons, the Court should grant the State's petition for permission to appeal the district court's preliminary injunction order. If the Court grants the petition, the State will propose a briefing schedule so the matter can be resolved as soon as reasonably possible.

Respectfully submitted,

s/ Melissa A. Holyoak
Melissa A. Holyoak
Utah Solicitor General
Counsel for Defendants-Petitioners

Certificate of Compliance

1. This petition does not exceed 20 pages, excluding any tables or addenda, in compliance with Utah Rule of Appellate Procedure 5(d).

2. This petition has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Times New Roman font in compliance with the typeface and typesize requirements of Utah Rule of Appellate Procedure 27(a).

3. This brief contains no non-public information and complies with Utah Rule of Appellate Procedure 21(g).

s/ Melissa A. Holyoak

Certificate of Service

I hereby certify that on 9 August 2022 a true, correct and complete copy of the foregoing Petition for Permission to Appeal from an Interlocutory Order was filed with the Court and served via United States Mail and/or electronic mail as follows:

Troy L. Booher
J. Frederic Voros, Jr.
Dick J. Baldwin
Zimmerman Booher
tbooher@zbappeals.com
fvoros@zbappeals.com
dbaldwin@zbappeals.com

Julie Murray
Camila Vega
Planned Parenthood
Federation of America
julie.murray@ppfa.org
camila.vega@ppfa.org

John Mejia
Valentina De Fex
Jason M. Groth
ACLU of Utah Foundation, Inc.
jmejia@acluutah.org
vdefex@acluutah.org
jgroth@acluutah.org

s/ Rita Auva'a

Attachments

1. Order Granting Plaintiff's Motion for a Preliminary Injunction

2. Transcript of Preliminary Injunction Hearing

3. Utah abortion laws from 1876 Compiled Laws to 1943 Utah Code

4. Chart comparing state constitutional provisions PPAU relies on in 1896 and now

Attachment 1

The Order of the Court is stated below:
Dated: July 19, 2022 08:43:04 AM
/s/ ANDREW H STONE
District Court Judge

THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY, UTAH

PLANNED PARENTHOOD ASSOCIATION OF UTAH, on behalf of itself and its patients, physicians, and staff, *Plaintiff*, v. STATE OF UTAH, *et al.*, *Defendants*.	**ORDER GRANTING PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION** Case No. 220903886 Judge Andrew Stone

This matter came before the Court on Plaintiff Planned Parenthood Association of Utah's ("PPAU's") Motion for a Preliminary Injunction. The Motion seeks relief under Rule 65A of the Utah Rules of Civil Procedure against Defendants the State of Utah; Sean D. Reyes, in his official capacity as the Attorney General of the State of Utah; Spencer Cox, in his official capacity as the Governor of Utah; and Mark B. Steinagel, in his official capacity as the Director of the Utah Division of Occupational and Professional Licensing (collectively, "Defendants"). Having considered the Motion and Responses thereto; the Declarations of David Turok, Colleen Helfin, Lauren Hunt, Jane Doe, Alex Roe, and Ann Moe; the brief of Amici American College of Obstetricians & Gynecologists, et al; and the arguments presented in a hearing before this Court on July 11; and for good cause shown, the Court hereby GRANTS the Motion as follows:

Findings and Conclusions

The Court finds:

1. On June 24, 2022, Senate Bill 174, 2020 Leg., Gen Sess. (Utah 2020) (codified at Utah Code Ann. tit. 76, ch. 7A) (the "Act") went into effect.

2. As a result of the Act, PPAU and its staff, who provide abortions among other sexual and reproductive health care in Utah, stopped performing all abortions in the state, effective immediately, unless those abortions were eligible for one of the Act's exceptions. Turok Decl. ¶¶ 4, 21. PPAU resumed providing abortions that would otherwise be prohibited by the Act, after the Court granted its motion for a temporary restraining order on June 27, 2022.

3. PPAU has made a strong showing that, without a preliminary injunction, the Act will cause irreparable harm to PPAU, its patients, and its staff. If left in place, the Act will force some Utahns to continue carrying a pregnancy that they have decided to end, with all of the physical, emotional, and financial costs that entails. *Id.* ¶ 5; *see also id.* ¶¶ 21–43. Some Utahns will turn to self-managed abortion by buying pills or other items online and outside the U.S. health care system, which may in some cases be unsafe and threaten their health. *Id.* ¶ 22. Others will try to go out of state for abortions, if they have the means to do so, likely resulting in delayed care and imposing additional physical, emotional, and financial costs on these individuals and their families. Heflin Decl. ¶¶ 21–24; 37–40; see also Doe Decl. ¶ 11;Roe Decl. ¶ 8; Moe Decl. ¶¶ 19–21. Even Utahns who are able to obtain an abortion under one of the law's narrow exceptions will suffer irreparable harm. Turok Decl. ¶¶ 44–54. Finally, PPAU and its staff will also suffer harms, including the threat of criminal and licensing penalties, reputational harm, and harm to their livelihoods. *See id.* ¶ 3; *see also* ACOG Br. 17–21 (discussing the impact of the Act on the ethical obligations of medical professionals).

4. The balance of harms weighs in PPAU's favor. While PPAU, its patients, and its staff will suffer irreparable harm without a preliminary injunction, it is unclear on this record whether and to what extent the Act will ultimately further its legislative goals.

5. The issuance of a preliminary injunction is in the public interest. A preliminary injunction would maintain the status quo while the constitutional issues in this case can be resolved on the merits.

6. PPAU also has demonstrated that there are at least serious issues on the merits that should be the subject of further litigation, specifically as to: (1) a right to equal protection under Utah's Equal Rights Amendment (article IV, section 1 of the Utah Constitution); (2) a right to the uniform operation of laws under article I, sections 2 and 24 of the Utah Constitution; (3) a right to bodily integrity under article I, sections 1, 7, and 11 of the Utah Constitution, *see, e.g.*, *Malan v. Lewis*, 693 P.2d 661, 674 n.17 (Utah 1984); *Wood v. Univ. of Utah Med. Ctr.*, 2002 UT 134, ¶¶ 28–29, 67 P.3d 436; (4) a right to determine one's own family composition under article I, sections 2, 25, and 27 of the Utah Constitution, *see, e.g.*, *In re J.P.*, 648 P.2d 1364, 1372–74 (Utah 1982) (recognizing a person's right to maintain parental ties); (5) a right of conscience under article I, section 4 of the Utah Constitution, *see, e.g.*, *Soc'y of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 935 (Utah 1993) (Utah Constitution protects "religious exercise and freedom of conscience in general" and prevents "the imposition of civil limitations based on one's religious beliefs or lack thereof"); and (6) a right to privacy under article I, sections 1 and 14 of the Utah Constitution, *see, e.g.*, *Redding v. Brady*, 606 P.2d 1193, 1195 (Utah 1980) (right to privacy under Utah Constitution "should extend to protect against intrusion into or exposure of not only things which might result in actual harm or damage, but also to things which might result in shame or humiliation, or merely violate one's pride in keeping [] private affairs to [one]self").

7. To be clear, the Court is not deciding the merits of Plaintiff's claims at this time.

Rather, based on the arguments presented, the Court is of the view that this case raises novel and complicated issues, and that Plaintiff may prevail on one or more of its claims. The Court's consideration of these issues will benefit from further development, including through any facts that the parties may wish to introduce in the normal course.

8. The Court easily concludes that it has jurisdiction. PPAU has demonstrated an injury in its own right and to its patients, *see supra* ¶ 3, and a decision by this Court enjoining the Act would redress those injuries, *see Sonntag v. Ward*, 2011 UT App 122, ¶ 3, 253 P.3d 1120. The Court also concludes that PPAU, alternatively, has representative standing because it is an appropriate party to litigate this case of significant public import. *Utah Chapter of Sierra Club v. Utah Air Quality Bd.*, 2006 UT 74, ¶¶ 35-39, 148 P.3d 960, 972; *Gregory v. Shurtleff*, 2013 UT 18, ¶¶ 14–18, 299 P.3d 1098.

Preliminary Injunction

Based on the foregoing, and the entire record before the Court, the Court exercises its discretion under Utah Rule of Civil Procedure 65A to GRANT PPAU's Motion for Preliminary Injunction.

The Court hereby ENJOINS AND RESTRAINS Defendants and their officers, employees, servants, agents, appointees, or successors from administering and enforcing the Act with respect to any abortion provided while this Order is in effect, including in any future enforcement actions for conduct that occurred during the pendency of this injunction.[1]

1 At the preliminary injunction hearing, Defendants sought clarification that any preliminary injunction order would not prevent them from enforcing other provisions of the Utah Code that regulate abortion, specifically Utah's prohibition on providing post-viability abortions and abortions after 18 weeks of pregnancy. *See* Utah Code §§ 76-7-302, 76-7-302.5. The Court confirms that its order does not restrict the administration or enforcement of these laws, which PPAU does not challenge in this case.

The Court also hereby ORDERS Defendant State of Utah to provide a copy of this Preliminary Injunction to all county and local prosecutors.

IT IS FURTHER ORDERED that the security requirement of Utah Rule of Civil Procedure 65A is waived due to the fact that "the injunction carries no risk of monetary loss to the [D]efendant[s]." *See Corp. of President of Church of Jesus Christ of Latter-Day Saints v. Wallace*, 573 P.2d 1285, 1287 (Utah 1978).

This Preliminary Injunction is effective immediately upon entry and shall remain in effect pending the final resolution of this case, unless earlier extended or dissolved by the Court.

End of Order

Entered as of the date and time indicated on the first page above.

In accordance with Utah R. Civ. P. 10(e) and Utah State District Courts E-filing Standard No. 4, this Order does not bear the handwritten signature of the Court, but instead displays an electronic signature at the top of the first page of this Order.

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2022, I caused the foregoing to be electronically filed and served on the following via the method indicated:

Via ECF:

DAVID N. WOLF
E-mail: dnwolf@agutah.gov
LANCE SORENSON
Email: lancesorenson@agutah.gov
OFFICE OF THE UTAH ATTORNEY GENERAL

Via E-mail:

TYLER GREEN
Email: tyler@consovoymccarthy.com
CONSOVOY MCCARTHY PLLC

/s/ Troy L. Booher

Attachment 2

THIRD DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

*****

PLANNED PARENTHOOD ASSOCIATION, Plaintiff, vs. STATE OF UTAH, et al., Defendants.	)	CASE NO. 220903886 WITH KEYWORD INDEX

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PRELIMINARY INJUNCTION

JULY 11, 2022

HONORABLE ANDREW H. STONE

*****

APPEARANCES:

FOR THE PLAINTIFF: JULIE MURRAY

FOR THE DEFENDANTS: TYLER GREEN
MELISSA HOLYOAK
LANCE SORENSON
JIM McGLONE

*****

SALT LAKE CITY, UTAH; JULY 11, 2022

HONORABLE ANDREW H. STONE

(Transcriber's note: Identification of speakers may not be accurate with audio recordings.)

(TIME 1:13:40)

THE COURT: … 6, Planned Parenthood Association versus State of Utah.

Counsel, could I have appearances, please?

MS. HOLYOAK: This is Melissa Holyoak on behalf of the State defendants.

MR. SORENSON: Lance Sorenson on behalf of the State defendants.

MR. GREEN: Tyler Green, and I've got my colleague from our firm, Jim McGlone, also on behalf of the State defendants.

MS. MURRAY: Good morning, Your Honor. Julie Murray on behalf of Planned Parenthood.

THE COURT: Did I get everybody? All right. A couple of housekeeping matters. I had a motion to file an amicus brief by the American College of Obstetricians and Gynecologists, the American Medical Association, and the Society for Maternal Fetal Medicine. I think that is something the Court can grant ex parte and I will do it, and I have reviewed the brief.

I have a motion to submit declarations under

pseudonyms. I wonder if the State wants to be heard on that?

MR. GREEN: No, Your Honor.

THE COURT: All right. I -- I'll grant that motion as well, and we can consider the affidavits.

All right. Who's going to be arguing for plaintiffs?

MS. MURRAY: I am, Your Honor.

THE COURT: All right. Go ahead, please.

MS. MURRAY: Well, good afternoon. Tomorrow alone, Planned Parenthood Association of Utah has more than ten patients who have abortion appointments, and will not have access in the state of Utah to the care they need without a continued injunction. Over the next month, we estimate that number will reach more than 200 people who are turned away from care. And in the months or years that it could take to resolve this case, thousands of pregnant Utahns and their families will be harmed as a result of Utah's criminal abortion ban.

Despite the opportunity to make its case, the State has produced no evidence to rebut the wide-ranging harms that the ban will cause. It doesn't deny, for example, that the ban will result in forced pregnancy and childbirth, and increase a pregnant person's risk of physical injury and even death.

That's supported by the declaration of David Turok at paragraphs 24 to 35. It does not refute that even pregnant

Utahns able to travel to another state to get an abortion will do so later in pregnancy than they would have had they had abortion access in their own communities. This cross-state travel when -- will impose additional financial and other harms on patients, forcing some to make difficult trade-offs between getting abortions and paying rent, feeding their kids, or enrolling in college.

This, too, is supported by the declaration of David Turok, and the declaration of Colleen Heflin that we submitted. It is also submitted -- or supported by the declarations of three Planned Parenthood patients that we sub -- submitted last evening.

The State says nothing about the long-term financial, social, and emotional impact of the ban, which will disproportionately fall on the shoulders of Utahns of color and families with low incomes, and it doesn't deny that only a tiny share of pregnant people seeking abortion in Utah would meet the exceptions to the ban. For example, although the ban provides that individuals who are pregnant as a result of a reported rape can obtain an abortion, we know that more than 88 percent of abor -- of sexual assault victims in Utah do not report their assaults to law enforcement. That, too, is supported by the record, including the declaration from the Rape Recovery Center at paragraph 6.

Instead of disputing these harms, the State argues

that the harms to pregnant people and their families caused by the ban are constitutionally irrelevant. They are not. These harms, which the Court must accept as unrebutted on this record, more than demonstrate the irreparable injury necessary for a preliminary injunction.

If PPAU were also required to show irreparable harm to itself and staff, it has done so. The ban would render highly trained doctors who provide abortions, people who have committed their professional lives to Utahns in need of sexual and reproductive healthcare, as criminals if they violate the ban. It threatens them with jail time, and PPAU with a felony criminal conviction and license revocation, all for care that has legally and safely been provided in Utah for nearly five decades. In sum, a finding of substantial and irreparable harm is the only one consistent with the unrebutted record that plaintiffs have put before the Court.

Planned Parenthood's evidence also requires the conclusion that a public -- that a preliminary injunction is in the public interest. The State claims that it has a countervailing interest in protecting potential fetal life. But, of course, the preliminary injunction, as to the ban, would not prevent the State from enforcing preexisting restrictions on abortion, of which there are many in Utah. That includes a ban on post-viability abortion that has long been on the books and with which Planned Parenthood has long

complied.

And the State has a range of readily available alternatives to the criminal abortion ban, if it would like to encourage pregnant people to carry their pregnancies to term and to become parents in the state. It could, for example, address the maternal mortality crisis in Utah where the risk of death from pregnancy-related cause -- causes, has, in fact, increased, not decreased, in the past three decades. And it could take a range of steps to make sure that people facing an unintended pregnancy have the support they need to make parenting a realistic option for them, including paid leave, for example, or income supports.

As discussed in the Heflin declaration -- this is at paragraph 41 -- a previous study of people seeking abortion in Utah specifically found that 56 percent of them reported food or housing insecurity in the previous year. The criminal abortion ban, of course, would do nothing for those individuals.

The State also argues against a preliminary injunction on the ground that enforcement of a valid law serves the public interest. But that argument simply begs the question whether the criminal abortion ban is, in fact, valid, and for all the reasons addressed in our briefs, it is not.

So before turning to the merits, Your Honor, I -- I would like to take a moment to address the standard for

preliminary injunction because I think it's critically important for the scope of the Court's future decision. The parties agree that under the applicable standard, Planned Parenthood does not have to show that it will likely prevail on all of its claims in this case. In fact, at this stage, the parties agree, Planned Parenthood doesn't have to show that it's likely to prevail on any of its claims in order for a preliminary injunction to be appropriate.

Instead, as the State explains -- and I'm quoting here from page 64 of its own response -- "A plaintiff must at least show that the issues being litigated are open questions of law not previously addressed by the courts, on which the plaintiff might prevail on the merits, even if it's not likely to prevail."

Planned Parenthood more than meets this standard, as is evident from the extensive briefing already before the Court, including the State's 67-page response brief. Given this standard for a preliminary injunction, the Court need not break new ground to provide injunctive relief here, or bog down in the various merits issues. Rather, it's enough for the Court to conclude that Planned Parenthood's claims challenging the criminal abortion ban raise serious legal issues that are deserving of this Court's close and further review.

In contrast, in order to rule for the State and

against a preliminary injunction, the Court would have to conclude, as to each and every one of the claims that Planned Parenthood has raised, that there is no possibility that Planned Parenthood -- and, again, quoting from the State's own brief -- might prevail on the merits. Given the precedent and -- and record, the Court cannot possibly do that.

Now, as to the merits of the claims before Your Honor, before addressing the specifics of those claims, I would like to address one overarching disagreement between the parties. And that is the proper way for Utah courts to figure out what the Constitution means. The State's suggested approach is at least easy to apply. As I understand their position, if the law in 1896 banned abortion, as it did, and the men who crafted that law thought the ban was constitutionally sound, then that's the end of the inquiry. Abortion ban is upheld.

But the Utah courts have never ascribed to this distorted view of originalism, and if they did, the Utah legislature could come back next spring and rebut all sorts of laws from the 1890s that would never pass constitutional muster today. Without offending the Utah Constitution, under the State's position, the legislature could pass a law banning interracial marriage, as was true in the 1890s. It could forbid the sale of alcohol to Native Americans, as it was prohibited then too. And it could bar women from playing

music in front of groups of two or more people, or discount the value of their testimony in court simply because they were women. All of this would be patently absurd under today's view of the Utah Constitution. But it would be entirely consistent with the State's position here.

Fortunately, that is not the way that Utah courts interpret the Constitution. As we make clear in our papers, courts use a range of interpretative tools, including by relying on sister-state law and policy arguments. And at least some of the provisions on which Planned Parenthood relies, such as the uniform operation of law clause and the Equal Rights provision are, on their face, guarantees of rights and privileges that evolve over time alongside other civil rights that society has recognized.

As Your Honor is well aware, we moved for a preliminary injunction on six of our constitutional claims. Both parties have submitted extensive briefing, but there are just a few points I'd like to make on each of these. I'd like to start with our claim under the -- the Equal Rights provision, which has two sentences, one that specifically speaks to suffrage for women and their ability to hold office, and another that guarantees more broadly that men and women shall equally enjoy the same civil, political, and religious rights and privileges.

The State asks this Court to treat the second

sentence as mere surplusage. The description of benefits that will flow from women's ability to vote. But that position reads text right out of the Utah Constitution, and it's inconsistent with Article I, Section 26, which confirms, in no uncertain terms, that all constitutional provisions are mandatory as an express indication otherwise.

If the State's reading were correct, the State of Utah could, consistent with the Equal Rights provision, permit only male lawyers to appear in Utah courts, decide to tax women but not men, or bar women but not men from taking paying work outside the home. And in the State's view, as I understand their brief, the only recourse women would have in such circumstances, under the Equal Rights provision, would be to vote themselves out of their own oppression. That is not the law.

The two sentences of the Equal Rights provision work in tandem. Without civil, political, and religious rights and privileges, women cannot hold office and engage politically on an equal basis with men. The State's argument to the contrary gets things backward. This Court should instead interpret the provision as the founders would have intended, with a non-static meaning and interpretation that secures to women equal civil and political footing to men.

For similar reasons, Planned Parenthood has shown that the criminal abortion ban also violates the Uniform

Operations clause. On the Uniform Operation claim -- I'd first like to address a disagreement between the parties about which test applies. Although the State seeks to rely on a traditional application of that clause, which looked only at whether general laws were applied uniformly, Justice Lee, writing for the Utah Supreme Court just last month, recognized that the clause also has a more modern application that looks at whether statutes are, themselves, discriminatory.

The criminal abortion ban is. It imposes three discriminatory classifications in violation of Utah's Constitution. It distinguishes between women and men, and adversely treats women. It distinguishes between pregnant women who want an abortion versus those who choose to carry to term. And it treats women seeking abortions, for reasons that the State deems sympathetic or worthy of abortion, differently from those who need abortions for different reasons.

As to the first of these classifications between men and women, the State argues that the Act doesn't actually distinguish between the genders, but it ignores the plain language of the Act, which defines the scope of the prohibition by reference to women, not men. And the State further ignores the disparate impact that the ban has on women. (Unintelligible) outright bar on reproductive freedom for one of the sexes. This outcome is clearly at odds with the Uniform Operation clause.

As to the distinction between pregnant women who want an abortion and those who don't, and the distinction between certain groups of people who want an abortion that the State deems more sympathetic or worthy, these classifications are also impermissible. As Planned Parenthood has shown, the Uniform Operation clause extends beyond characteristics that are immutable, contrary to what the State suggests in its response.

Finally, the State has absolutely no counter or narrowly tailored rationale for the Act's distinction between groups of pregnant women who want an abortion and those who carry to term, or qualify for one of the Act's exceptions.

With respect to Planned Parenthood's bodily integrity claim, as we've explained, the Utah Constitution provides a guarantee of bodily integrity to citizens of the state. And by enacting the ban, the State has prevented pregnant people in Utah from ending their pregnancies, forcing them to submit to roughly nine months of dramatic physical transformation, implicating the most personal aspects of their lives and identities, and putting them at increased physical risks, including death, without their consent.

The State is wrong to suggest that bodily integrity under the Utah Constitution does not include a right to abortion. This right stems not only from Article I, Section 11, on which the State focuses in its reply, but also from

Sections 1, 7, and 14. These include Utah's guarantee of due process, which has both substantive and procedural forms.

As we discuss in our reply, the right to abortion in Utah is at least as expansive as the federal right was in 2002. In that year, the Utah Supreme Court decided Wood v. University of Utah Medical Center, which addressed a law barring tort liability against doctors who failed to advise patients of certain fetal health conditions. The litigant in Wood argued that the tort restriction created a sentence for anti-abortion doctors to withhold information from patients with the intent of preventing those patients from accessing abortion.

The plaintiff raised both federal and state due process challenges with respect to the abortion right. Wood recognized that the Utah constitutional -- Constitution's protection for due process, as it applied to abortion, was at least as protective of an abortion right under Roe v. Wade and Casey. Federal precedents that at the time of Wood, flatly prohibited state bans on pre-viability abortion.

THE COURT: What was -- tell me again the year Wood was decided.

MS. MURRAY: 2002, Your Honor.

THE COURT: Thanks.

MS. MURRAY: With respect to our claim on family compo -- composition, as Planned Parenthood has explained,

Utah has substantial precedent recognizing a fundamental right in family relationships, and for the -- and for families, not the government, to decide how they will be composed. As the State -- the State acknowledges this right to parent, even though, notably, the Constitution in Utah does not contain the word "parent," just as it does not contain the word "abortion."

However, the State attempts to carve out from this right decisions about not to parent. We rebut that argument in our reply, but it bears emphasis that even assuming the outer bounds of this right are unsettled, Planned Parenthood has still raised a serious legal issue as to this claim that we justify a preliminary injunction.

In addition, the State entirely ignores Planned Parenthood's argument that the abortion ban impairs Utahns' ability to take care of their existing children. And of course, it hasn't rebutted the evidence in the record that roughly half of abortion patients in Utah are already parents.

Substantial evidence in the record, both in the Heflin declaration and the Turok declaration, supports Planned Parenthood's position that banning abortion will negatively affect patients' existing children, and limit their ability to provide the kids they already have with the resources and attention that they want to give them. The declarations filed last night, two from patients of Planned Parenthood who

already have children, also support that claim.

With respect to a right of conscience, this would be our fifth claim presented in the preliminary injunction motion, the State doesn't dispute that the Act reflects its view of when life begins. It just argues that Utahns are free to believe that life begins at a later point in pregnancy, so long as their conduct complies with state law; that is, so long as they remain pregnant as the State wishes them to be.

Instead, the State's primary response -- the State points to this distinction between conduct and belief, but of course, these are interwoven, as we explain in our reply. And although the -- the State points to other morally charged issues that the State regulates, and -- and that it believes are morally charged, but they haven't been subject to constitutional challenge. I think that position simply underscores why a preliminary injunction is appropriate here, to permit the time and space for this Court to consider the conscience claim.

Finally, Planned Parenthood has raised two privacy claims with respect to its preliminary injunction. The first arguing that the Act's ban on abortion violates Utahns' decisional privacy to obtain an abortion. And the second, arguing that the Act's reported rape exception, which permits a victim of sexual assault to obtain an abortion, only if that sexual assault is reported to law enforcement. That this

exception violates patients' right to keep their personal information private, including from the State.

I'd like to start with the second of these, the informational privacy claim. Utah's right of privacy includes -- and -- and this is from Redding v. Brady, a Utah Supreme Court case from 1980, includes those aspects of an individual's activities and manner of living that would generally be regarded as of such personal and private nature as to belong to oneself.

As the State itself notes in response, the Utah legislature, by statute, has already recognized that patients who have been raped have a liberty interest in abortion. That is at Section 76-7-301.14, which states that in instances of rape and incet -- incest, a liberty interest outweighs, quote, "the unborn child's right to protection."

Despite this recognition included in the Utah code, the Act would require patients who have been victims of sexual assault to report the rape or assault to law enforcement first, and for the physician who performs the abortion to confirm that such a report has been made. As the Turok declaration and the declaration from the Rape Recovery Center show, the overwhelming majority of survivors do not report their rapes, and forcing them to do so to get healthcare has tangible negative harms.

The State fails to articulate a meaningful defense of

the reported rape exception, and it has none. There is no way to explain, for example, why an individual who becomes pregnant and seeks care, including for a miscarriage, need not have her private information divulged to the State. But that that same patient, if she wants an abortion, does.

Planned Parenthood has also shown that the Act violates Utahns' right to decisional privacy. That is the right to decide whether to have an abortion in the first place. The State's main opposition to this argument is that it's rooted in Article I, Section 14, which is limited to the search and seizure context. But as we explained in our reply, Utah caselaw makes clear that that is not the sole basis for a privacy right, and in fact, that privacy rights, even under the search and seizure provision, are broader than those afforded under the Fourth Amendment to the U.S. Constitution.

With that, Your Honor, I will stop there and would be happy to answer any questions that you might have. We would urge you to enter a preliminary injunction.

THE COURT: I wonder if you could walk through your -- many of your arguments are based on specific constitutional provisions that have been amended in one form or another since statehood, some of them quite contemporary. I wonder if you could just walk through which provisions you think are affected by analysis of what voters intended when they reincorporated the language?

MS. MURRAY: Well, I think, Your Honor, as we point out in our brief, for example -- and -- and the State notes in its brief as well, that some of the provisions including, I believe, Article I, Section 1 and -- and others have been amended just in the past couple of years to remove gender-based language from them.

So Section 1 would recognize now that all people, not just men, have a right to -- have certain inalienable rights to their liberties.

THE COURT: I guess what I'm looking for is, I -- I recognize that they may have different reasons, Article I, Section 1, Article I, Section 4. There were a number of other ones that you pointed out, I think. What I'm really looking at is in terms of constitutional interpretation, I believe that the recent cases are directing me to look at the time of amendment rather than the time of initial adoption. What did an average voter mean -- interpret that language to mean, for example, in 2020 or 2000.

MS. MURRAY: Yes, Your Honor, and we -- and we certainly support that, I believe, with some cases in our brief, that when a -- a provision in the Constitution has been amended, that you would look to the -- the contemporary meaning of any amendments, in addition to all of the other tools of -- of constitutional interpretation that we described in our brief.

I think to the extent that, for example, we are looking at the amendments in 2020, the Court does need to consider the backdrop of those amendments to remove a gendered frame in the Constitution, and the backdrop at that time was a longstanding constitutional right that permitted Utahns to obtain abortion and other sexual reproductive healthcare in the state.

THE COURT: All right. Thank you.

Who will be arguing for the State?

MR. GREEN: I will, Your Honor.

THE COURT: All right.

MR. GREEN: This is Tyler Green. Can you hear me okay?

THE COURT: Yes. Thank you, Mr. Green. Go ahead.

MR. GREEN: Great. Thank you, Judge.

If I could, I think, you know, where I'd like to start is reflective of something I think that is -- comments that have been made, the discussions that I've had over the past few weeks about this case and about abortion in general, it seems, Your Honor, that the country is more or less split 50/50 on this issue, on Dobbs, on what it means for this right and the states, and there's been some comments that it seems like the warring sides here can't really agree on even the basic terms of the debate, that they're sort of ships passing in the night in talking about these issues.

And I think, Your Honor, those of us on this call today, we don't have that luxury. We have to get to a place where we are starting from the same first principles, or at least if we disagree about first principles, I think there -- we owe it to the public, to the legislature, and to any reviewing courts to explain what the partic -- particular first principle we disagree about is and why we disagree about it.

Now, as the Court knows from reading our brief, our view is that the method that has been specified -- constitutional interpretation method that's been specified by the Utah Supreme Court in no fewer than, you know, the three cases in the last three or four years that we cite in our brief, but there are a number of them in addition to that, Your Honor. I see my video is --

Oh, excuse me.

THE COURT: No, you're back. Yeah.

MR. GREEN: Video's back? Okay.

THE COURT: Yeah.

MR. GREEN: Sorry about that.

The -- the Court has specified, Your Honor, both a "what" and a "how" when it comes to state constitutional interpretation. And the "what," Your Honor, I think quite clearly, is instructions from the Utah Supreme Court to go and find what the original public meaning of any specific

constitutional provision is.

And I think Your Honor, when you quoted -- or mentioned earlier, a few minutes ago, what would the ordinary, average speaker of English have understood at the time those amendments were adopted, that's the original public meaning that we're looking for. That's the "what."

The "how" --

THE COURT: So, for example, on the freedom of conscience claim, that language --

MR. GREEN: Uh-huh.

THE COURT: -- is reincorporated in the year 2000.

MR. GREEN: Yes.

THE COURT: So I'm looking at what would someone in the year 2000 regard as rights of conscience?

MR. GREEN: I think to the extent there are changes in that language, yes. I think that's right. Whatever changes in the language occur along the course of the Constitution's growth and organic evolution, by virtue of amendments to the Constitution itself.

And I think one place to look in particular for this, Your Honor, is the Patterson decision that --

THE COURT: Yeah.

MR. GREEN: -- that Planned Parenthood cites in its reply brief. That -- that decision, of course, was about, what is the -- was about some specific provisions in the Utah

Constitution granting judicial power, and what is the scope of the habeas remedy. There was some provisions originally enacted in 1896, there were later ones that were enacted in 1984, and the course -- and in the course of analyzing those provisions, the Court in Patterson I think was as clear as it could be that said, we are analyzing these provisions, the ones that govern, in 1984, because that's the operative language of the Constitution right now.

So yes, to the extent there's been changes in the Constitution along the way, I think it would be appropriate to look at what the -- the general public understood those to mean at the time of the adoption.

Now, as I understand it, Your Honor, of the ten -- I don't think I've heard anything argued differently today -- out of the ten provisions that we're talking about, only seven of the -- only three of them, rather, have been changed since 1896. The other seven are as they were originally enacted.

And those changes, I don't -- I didn't see anything in the briefing or in the complaint, nothing, in fact, until the reply brief that was filed late last night that we saw first thing this morning, talking about the import of the 2020 questions -- excuse me -- of the 2020 amendments.

And if I could, if we're talking about original public meaning, I think this is, you know, something that bears on this discussion right now, if there's a way for me to

place something in the chat feature right now for everybody to see, as the Court knows, every time there's a constitutional amendment proposed, there's a voter guide that the legislature sends out and gives to the Utah voters so that they know -- summarizes what those proposed constitutional amendments are and what the effect or intent of them was.

And I just want to pull up for the Court's viewing right now, if I could put it in the chat, that 2020 voter guide -- and hopefully everyone can see that link. And this is --

THE COURT: Maybe you want to share your screen? Is that possible?

MR. GREEN: I don't -- it's -- might be above my technical pay grade, Your Honor --

THE COURT: Well, we -- we have to do it on our end, but that would make it easier to see.

MR. GREEN: Sure. That'd be fine, if -- if the Court can do it there. If the Court can do that, what I would do is see if whoever's sharing the screen can go down to page 43 of this voter -- Utah Voter Information Pamphlet from 2020.

THE COURT: Okay. You should have privileges to share screen if you have it right now.

MR. GREEN: Let me see if I can figure out how to do that.

THE COURT: I don't want to put you in a tough spot.

It's just easier for me if I see it up on the screen.

MR. GREEN: That's okay. I -- I'll -- I don't mind being in a tough spot here for a few minutes and we can figure this out. Okay. Grant access and system preferences. Let's see. Be just a second here, Your Honor, I apologize. It looks like there's a place where I could potentially check it, but for some reason that check box is not allowing me to check the box --

THE COURT: All right. Well --

MR. GREEN: -- to grant permission to share the screen.

THE COURT: -- I followed the link. What page do you want me to be on, this voter information?

MR. GREEN: Page -- page 43, please, Your Honor. This is constitutional amendment. This is the amendments going to updating the language from gender-specific to gender-neutral language. Constitutional Amendment A, argument in favor.

And I apologize, I couldn't get the screenshare to work, Your Honor.

THE COURT: All right. I'm there.

MR. GREEN: You're there? Okay.

THE COURT: Yeah.

MR. GREEN: So you'll see that there's a gray box that has argument in favor, then in white text, the Utah

Constitution -- immediately under that -- the Utah Constitution has 237 sections. Constitutional Amendment A makes technical changes to the terminology in six of those sections, bringing them into conformity with the other 231. Uniformity of language is important, et cetera, et cetera.

To the next paragraph, the third paragraph, this is, I think, the important part -- or the most important. This amendment -- quote, "This amendment does not alter the substance or meaning of any part of the Utah Constitution. It is simply a technical update to the language in six out of the 237 sections of the Utah Constitution."

So to the extent any amendments that Planned Parenthood is relying on come from this amendment changing gender-specific language to gender-neutral language, I think the legislature there was clear about what its understanding was. This was not intended to be any sort of substantive change to extend or broaden the scope of the substantive protections, it was merely a technical update.

And I think, as additional evidence in support of that, Your Honor, this, as you know, was a 2020 vote. This was a 2020 amendment that the voters approved to the Utah Constitution. That also happens to be the same legislative session when SB174 was passed.

So I think it's at best improbable that the same legislature that passed 174 would have thought that by

recommending these amendments in favor of updating gender-specific to gender-neutral language, it was somehow changing the substantive scope of whatever the abortion amendment might be in the Constitution at that point, and I don't think that's a fair inference from that.

THE COURT: I don't really have a quarrel with that proposition, but isn't the focus really on what the average voter would have understood it to do? And isn't what the voter actually voted on is the language that -- below this information guide, but what appears on the ballot is the proposal to amend Utah Constitution --

MR. GREEN: Sure.

THE COURT: -- terminology update. Okay.

MR. GREEN: Yeah, absolutely. We don't -- we don't have any quarrel with that, Your Honor. I think the -- the -- the punchline, though, I think from that particular line of reasoning is that it's not the State's job to do any work to show what the average voter understood it to be. But there may be -- I'm perfectly willing to concede there may be other sources or other bits of evidence out in the record -- in the historical records someplace -- and it's not that long ago, it's less than two years ago when the voters approved this -- to show that this is what the voters understood, but I think this is a critical (overtalking) --

THE COURT: I agree, I mean, and that's what we would

get into in --

MR. GREEN: Right.

THE COURT: -- litigating on the merits. But doesn't that make this an issue that is litigatable on the merits?

MR. GREEN: Your Honor, I -- I don't -- again, I don't think so.

THE COURT: Okay.

MR. GREEN: At least at this point in the proceedings, when Planned Parenthood has the burden to come forth and show some sort of evidence someplace that the voters would have understood changing this language, you know, from a gender-specific to a gender-neutral bit of language would have had that effect, particularly in light of all the other bits of evidence and sources that the Utah Supreme Court has instructed litigants and district judges to look to when trying to interpret provisions of the Constitution.

THE COURT: Okay. Thanks.

MR. GREEN: I think a related point to that, Your Honor, is what we've been -- one of the things we've been talking about today that relates to this question of is -- of substantial likelihood of success on the merits, or, you know, serious questions that deserve further litigation. Everything that I have read so far in these briefs and everything that I've heard so far today, talks about the recognition of abortion rights somewhere in the Constitution. I think I

heard Ms. Murray concede earlier that that's not an expressly protected right, that that word nowhere appears in the Constitution, so it's got to be, if anything, an implied right. But just merely saying that the right exists as an implied right gives no substance or scope or content to what that right looks like.

And I tell you why I think that matters. There's a couple of reasons. Even Roe -- I think you can go back to Roe versus Wade itself, when the Supreme Court first decided that case and recognized that there was a right to abortion under that -- under the federal Constitution, which of course has since been overruled, the Court had to take a step further and do what it viewed was an appropriate set of balancing tests to decide when could lines be drawn -- they didn't say that there was a right to abortion for 40 weeks of an entire pregnancy and that a woman could get it at any point in time. Even that court recognized that there were serious and substantial State interests in protecting the life of the unborn child, and those interests -- other related interests that grew up in caselaw along the way.

But this is what I have still been struggling to get my arms around, Your Honor. This is Planned Parenthood's complaint in this case. This is page 22 of their complaint, paragraph 94, under the heading that says, Relief Sought. Paragraph 94. "Issue a temporary restraining order and

preliminary and permanent injunctions prohibiting defendants and their officers, employees, servants, agents, appointees, or successors, from, quote, 'administering, preparing for, and enforcing the Act with respect to any abortion provided during the temporary and permanent injunctions.'" Any abortion provided.

And I -- it seems to me that's not a typo in their request because this morning when the reply brief came in, this is also like -- looks like the identical language that's in the conclusion of the reply brief. Asks for that same thing, a preliminary injunction that does -- applies to the State and all of its officers, et cetera, and prevents them from, quote, "administering or enforcing the Act with respect to any abortion provided while this order is in effect." That's page 25 of the reply brief.

THE COURT: But Counsel --

MR. GREEN: That's the language --

THE COURT: -- Ms. Murray --

MR. GREEN: I'm sorry.

THE COURT: -- acknowledged that this doesn't challenge existing law in -- in effect, so am I mistaken in thinking that really the effect of this injunction would bar abortions during the first 18 -- is it 18 weeks?

MR. GREEN: Well, that's -- and that's precisely the question that we are trying to get some -- we're hoping to get

some explanation on this morning, Your Honor.

THE COURT: Yeah.

MR. GREEN: Because it's not the scope of what they've asked for in their complaint. The complaint asks for relief as to any abortion at any point --

THE COURT: But it's just this Act. It's limited to this Act as to any abortion --

MR. GREEN: But --

THE COURT: -- as I understand, and that -- I can fix that easily. I mean, it -- I --

MR. GREEN: I --

THE COURT: -- mean, Counsel's conceded that they're not challenging the existing law, other than this Trigger Act.

MR. GREEN: Well, I think the Act -- the Act doesn't apply just to 18 -- up to 18 weeks, Your Honor. The Act applies at any point temporally during the course of a pregnancy.

THE COURT: Yeah, and that's my point --

MR. GREEN: So --

THE COURT: -- is that pregnancy -- terminations after 18 weeks are already prohibited by existing law.

MR. GREEN: But that's -- but I don't understand, Your Honor, their point to be limited to the interplay versus -- of this Act versus another one. The request in the complaint asks about this specific act.

And even if we're wrong about that, Your Honor, even if there is something that they say, well, fine, whatever, if existing law, they agree, is 18 weeks, and they're not seeking to enjoin any abortion that's performed after that, that gets us to the separate question of not just is there a right to abortion under the Utah Constitution, but is there a right to abortion that somehow has an administrable line, or that the general public understood how the line could be drawn at 18 weeks. Or that somehow the State understood at the time of enactment in 1896 that abortions after 18 weeks could be constitutionally prohibited, but before 18 weeks could not be.

There's some serious line-drawing problems here, Your Honor, when we're talking about what the general public understood. And I don't understand any of the briefing or the evidence or historical record or anything that Planned Parenthood has pointed to in this case so far to answer those pro -- those important questions. And I think they are important for a host of reasons, but most -- right at the top of the list is what I think the Court can probably glean from our brief, and what is codified in the Utah code right now, which is that the legislature views the preservation of unborn life as a compelling state interest.

And in the course of trying to figure out how it can exercise its legislative and state police powers consistent with its authority under the state constitution, if there is

some constitutional prohibition that prevents them from doing that, if there is a line someplace, I think the legislature's going to want to know where that line is and what it can constitutionally do consistent with whatever the Court's view of what that right is.

So with that, I think I would turn next and just talk for a few minutes about standing. I think we mentioned this and had a brief discussion about this the last time we had a hearing a couple of weeks ago during the TRO hearing. And in the course of looking at the Utah Supreme Court's cases on standing and public interest standing, it's clear, number one, that standing is a jurisdictional requirement.

It's also clear, number two, that for public interest standing, one of the things that a plaintiff invoking the public interest standing must show is that they are an appropriate party. I think that's the money language from the cases. And the cases further define that to mean a showing that these claims are unlikely to be brought by anyone else.

And I think we heard this morning, if -- if I wrote them down correctly when Ms. Murray mentioned them, there were ten patients scheduled for tomorrow, and 200 people scheduled over the course of -- my notes are not clear about that -- was it the next month or the next couple of months. But in any event, it seems like there are a number of women for whom this right -- no doubt, they hold it seriously and they consider it

important to them, that's precisely the kind of person under the third-party standing doctrine, or the public-interest standing doctrine, that is an appropriate party in this case, not Planned Parenthood itself.

So I think there's a -- there's a jurisdictional problem to finding a likely -- either a likelihood of success, or serious questions that continue to be litigated in this case.

I'm sorry, is there -- was the Court going to say something?

THE COURT: No.

MR. GREEN: Oh, okay. All right. I apologize. Didn't mean to -- didn't mean to talk over you if you were.

With respect to -- with respect to the harms, Your Honor, we heard a lot of discussion from Ms. Murray about things the State did or didn't say, and there was a -- a point in her discussion as well where she talked a little bit about -- and cast the State's arguments as question-begging.

And I think our answer with respect to the question about harms, and the question about standing, those are interrelated questions, and I think they implicate the same concern that Ms. Murray raised, which is that those harms, to the extent -- the non-Planned Parenthood harms, let me be clear about that, because Planned Parenthood has talked about some financial harms, some economic harms that could come to

it, we think those are fully compensable. They're not the type of harms that would support or justify equitable relief.

But to the extent the Court wants to look to the harms that they've discussed when it comes to pregnant women and those who are seeking abortions, those harms, Your Honor, certainly they're important and they're deeply felt, but if the right is not a constitutional right, if the Utah Supreme Court -- excuse me -- if the Utah Constitution doesn't protect that right, then I think we're also back into the land of question-begging, because the legislature can make decisions as it sees fit to make decisions to regulate whatever's within the scope of the police power, as long as it's not infringing on a constitutional right.

And in the course of all of these discussions, I do want to be clear about this and emphasize this, the legislature -- and I think this is -- you know, Justice Scalia said something like this at some point in a number of his dissents: Legislatures are free to pass unwise laws, or foolish laws, or stupid laws. You can pick whatever adjective is the flavor of the day and whatever the Court thinks might be the most appropriate. And the recourse that citizens have when those types of laws are passed is to vote the bums out of office. If they don't like them, that's how they get rid of them. There's -- the recourse is not to say that a foolish law protects something that I think should be a constitutional

right and, therefore, that's why the Court should strike down the law.

So in the course of talking about whether these harms exist or not, and whether they're relevant to this question, that, I think, inextricably is inter -- intertwined with the underlying merits question of what are these constitutional rights, if these -- implied constitutional rights, if they exist, and where are they in the Constitution, from what sources, from what provisions are they derived, and what's their scope and their content? Because if those things don't exist, if there's not a substantial likelihood of success on those questions, and if there are, at a minimum, serious questions that deserve further litigation on those particular issues, then I think the question of harms, Your Honor, as we stated in our brief, is -- is not something that's relevant.

The recourse in those situations, in that situation, is for the women to show up at legislative hearings and to call their legislators. If they want to, they could launch a ballot initiative or some sort of referendum to change the law. All of those things would be perfectly appropriate responses, and they raise perfectly valid and important interests as to why those laws might want to be changed. But they're not reasons to find a constitutional right, independent of some source going back to original public meaning of 1896 or the vast majority of these provisions, save

for those few amendments we've talked about along the way.

And then the last -- the last preliminary injunction question, separate from the merits, is this notion of public interest. I think the State has made clear, the legislature has made clear by virtue of the statutes that it's passed and what it's enacted, that there is a strong public interest in two things, one in protecting human life, and -- and potential human life. That's an interest -- compelling interest, the State interest of the highest order.

And there's also a strong public interest under the Utah Supreme Court caselaw enforcing valid state statutes. Now, if we get to a place, Your Honor, where the -- the best that Planned Parenthood can show is that there are serious questions on the merits as to whether these are valid, I think that necessarily means there are also serious questions on the merits as to whether they are valid. And in that circumstance where there's at least a coin-flip chance that the law is valid and constitutionally okay, that the strong state interest in having its statutes enforced as they exist would override and -- and be a separate reason to deny a preliminary injunctive relief.

Now, as to the scope of the pleadings themselves -- oh, I found -- sorry, is my screen frozen again?

THE COURT: Yeah, you appear to be. I can hear you.

MR. GREEN: Okay. I apologize, I'm --

THE COURT: Nope, now you're okay.

MR. GREEN: Okay. We'll be putting in a sternly worded call to Comcast here when we're finished, Your Honor.

But in the meantime, we submitted, as the Court knows, a brief where we discussed these issues at length, to paraphrase what's been attributed to Mark Twain, I think if we'd have had a little more time, we might have been able to submit a shorter brief, so I appreciate the Court's indulgence in granting us the -- the leave to file that brief that we did.

I think there are a couple of reasons, you know, even if we had more time, as I -- as I talk about it, I'm not sure that we could have done it a whole lot shorter than we did it for a couple of reasons. The first one gets back to what we talked about earlier, Your Honor, and this -- what we view as a binding imperative and a directive from the Utah Supreme Court to go back and try to figure out what the original public meaning of all of these provisions was in 1896 when they were first enacted.

And in the course of doing that, looking at the very sources that the Utah Supreme Court has looked to in the course of performing those questions, what does the text of the Constitution say? What did the framers talk about at the constitutional convention? Is that evidence for which we can glean original public meaning?

What did the 1898 co-provisions say? This looks, of course, to what the legislature understood and thought they meant, and how the legislature acted on what it might have understood or said in the course of the convention. What is the law and what was the practice in the state immediately after -- excuse me -- immediately after the Constitution was adopted?

And I think when you look at all those things -- and -- and in addition to that -- pardon me -- looking at territorial law and what was the state of the common law when -- when the Constitution was adopted, that's all things that -- excuse me -- could influence what the original public meaning of the Constitution was.

We have tried to do that, Your Honor, the first -- as the Court knows, I'm sure, the first section of our brief is devoted entirely to that inquiry. And it took a lot of space because there are a lot of provisions. It took us a lot of time to try to figure out what each of those meant and whether there's any evidence in the record from which -- historical record or any of those sources from which we could plausibly say that anyone at the time of the adoption of the Constitution understood abortion to be a constitutionally protected right.

Our view, as you know, is that none of those things even come remotely close to making that showing, and I think

the most -- that all of them are important, but I would draw the Court's particular attention to what happened in the 1898 code and what the Utah Territorial Code was before that.

It bears mentioning, Your Honor, abortion has been a crime in Utah -- or was a crime in Utah from 1876 until 1973. I don't -- that's not -- that's just a -- that's a historical fact, I don't think it's disputable. And it's also, I think, a historical fact that during the course of those many decades, of that almost 100 years, that was not a paper tiger. That was a criminal prohibition that prosecutors actively enforced, went out and tried to obtain and secure convictions. And sometimes when they did, the defendants appealed and the Supreme Court affirmed those convictions. Sometimes on appeal they were reversed, but during the course of those reversals, there was never a hint from the Utah Supreme Court that any of those criminal prohibitions could have been constitutionally problematic.

And besides the criminal prohibitions themselves, there are decades' worth of statutes in the Utah Code that -- that in -- were exercises of the legislature's police power to regulate the practice of medicine, and made providing an abortion professional misconduct that for a period of time was punishable as specified by statute, and afterwards, as best we can tell, was relegated to the regulatory authority over doctors and was -- consequences were imposed that way.

I think it just strains all credulity, Your Honor, to say that in light of all those historical facts, and particularly the prohibitions and the prosecutions and the affirming of those prosecutions in the Utah Supreme Court decisions with respect to those affirmances, that there was any understanding by anyone in the general public at the time these provisions were adopted, that they were protected by the Constitution. I think that's true for all of them, and I understand there's been some specific discussion this morning. If the Court -- rather than, you know, go into additional detail, if the Court has specific questions for us about our views on any of those provisions, I'm certainly happy to answer them.

THE COURT: Thanks. All right. Anything else?

MR. GREEN: No, Your Honor, not at this point.

THE COURT: Mr. Murray, you want to reply? I think you're on mute.

THE CLERK: Hold on. (Unintelligible).

THE COURT: All right. Try now.

MS. MURRAY: Sorry about that, Your Honor. Just a -- a few small points. I -- I think, to Mr. Green's point, with respect to the meaning of these provisions and how they would have been understood, I -- I think -- I'd like to make two -- two points that I think do not -- do not come out through our reply, but based on what he said this morning, I do want to

bring to Your Honor's attention.

The first is that, you know, to the extent that the State's position is we have to look to the meaning of what these provisions would have been in 1896, and that, you know, in their view, it couldn't possibly be that abortion would have been covered as a protected right.

I think it's notable at page 61 of their response brief that they actually take the position that Sections 1 and 7 of Article I, which we rely on as well for some -- some of our claims, protect a right to life for a fetus. And that, of course, would not have been the understanding at the time of statehood, and as is evidenced, for example, by the fact that the State, when pointing to criminal prohibitions on abortion, those prohibitions notably did not treat abortion, even after quickening, as a -- a crime of murder that you would have seen with a, you know, person who's birthed.

So I -- I think that the State in some ways is trying to have it both ways here to say you look at the understanding in 1896 when it is helpful to us, but when it is not helpful, or when the text is not helpful, as it -- as it is not to their position with respect to the Equal Rights amendment, you can ignore that sentence, you can read into these constitutional protections a protection to life equivalent to a person after birth for a fetus, and that, too, was not the understanding of this coverage for constitutional protections

at the time of statehood.

I also think, to the extent that, you know, we're looking at a voter guide with respect to a constitutional amendment, and what particular senators and representatives said about the language for people to vote on, I would just say, I think that underscores why this is not a case in which the Court could hold that there is no possibility of Planned Parenthood prevailing on its claims. And I want to be clear here. We are not saying that we can -- as Mr. Green suggested -- that we could only show that there are serious legal issues. We believe that we have shown that we are likely to prevail. The point we are making, Your Honor, is that you don't need to find that to determine that a preliminary injunction is appropriate here.

With respect to the standing issue, I -- I think, as I understand the State's position, it acknowledges that there is a public interest standing doctrine that would confer jurisdiction on this Court to decide Planned Parenthood's claims, but that Planned Parenthood is not an appropriate party.

With respect, I -- there are two outpatient abortion providers remaining in the entire state of Utah and Planned Parenthood is one of them. It is in court, trying to vindicate the rights of its patients who do not have time to come in and bring their own suits. There are, as we have

demonstrated both in the briefs and in the declarations that we have submitted, significant structural impediments to their doing so.

And Planned Parenthood is here with the incentive backed by, you know, threats of criminal penalties against it and its doctors, to vindicate the constitutional rights of patients that will -- would otherwise be violated if this law is enforced.

So I think it is unquestionable, not only that Planned Parenthood is an appropriate party, but, in fact, is the best party to bring this suit, given the stakes for it and its -- its doctors, and the fact that it is directly regulated by the statute at hand.

Finally, with respect to the scope of relief sought, Your Honor, we are -- I do want to be clear about this. We have, as you indicated, accept that there are other restrictions on abortion that would remain in effect, including a post-viability abortion ban, and at this time, a ban on abortion after 18 weeks of pregnancy. To my knowledge, there is not a -- certainly not with respect to the 18-week ban and I don't think with respect to the post-viability ban either, it is not as if the -- the criminal abortion ban would, for example, provide stronger criminal penalties than the existing restrictions.

And, of course, there is no argument, because the

facts simply would not support it, that Planned Parenthood is running afoul of those other restrictions on abortion. It is complying with other laws and it would continue to do so under an injunction with respect to the criminal abortion ban.

I do think, however, that the language that we have used in our request for relief is important both to ensure that Planned Parenthood does not face criminal -- threats of criminal prosecution or enforcement through licensing authorities, for any abortions that are provided under the -- the coverage of an injunction from this Court, including enforcement efforts that could be threatened based on action during the injunction itself.

So I think, to the extent that Your Honor were to clarify or confirm in an order that that order does not restrict enforcement of other abortion laws, should those laws be violated, I think we would have no qualms with that because Planned Parenthood is following the law.

But the scope of the relief with respect to enforcement of this particular ban, I think it was, in fact, intentionally crafted to ensure that Planned Parenthood could provide abortions to patients in need during the duration of this injunction without fearing, during that injunction, or after -- potentially, if the injunction were lifted at a later time, without fear of criminal penalties could -- that could land doctors in prison and Planned Parenthood with a felony

conviction.

With that, Your Honor, we would urge you to enter a preliminary injunction in order to protect the constitutional rights of patients throughout the duration of the litigation.

THE COURT: All right. Thank you.

MR. GREEN: Your Honor, could I make just one brief response to that?

THE COURT: Sure.

MR. GREEN: The only thing I guess I would say in response is that if the Court were to enter a preliminary injunction here, I think the question that we are -- and the AG's office is necessarily going to get from members of the legislature and from members of the executive departments who enforce the abortion laws is what does this mean for the 18-week ban? What does it mean for the post-viability ban? Are they threatened? Are they somehow, you know, at issue, or could these be next?

And I think that's the answer that we're going to have to provide to them, and I think that's what -- if -- if there's some -- if there is some preliminary injunction order that the Court should issue, that's what we would ask the Court to make clear. Where is the line and why is the line there and -- and again, tying that line back to whatever the original public meaning was of the Constitution that, in fact, creates whatever line the Court finds, if the Court, in fact,

finds one.

THE COURT: All right. Well, and I'm not sure that now is the time to talk about particular line drawing; we're on a preliminary injunction.

But let me just start with standing. I don't have any difficulty concluding that plaintiff has standing here. I think it has standing in its own right, given its purpose and activities and providing reproductive healthcare to women.

I think the amicus brief was useful here, too, where it discusses the ethical difficulties that doctors face and the kind of fundamental changes to the doctor-patient relationship that this would result in.

I also think they have representative standing. I think they are an appropriate representative. I think it's not a natural conclusion to think that a woman facing a decision for an abortion, which is available by traveling out of state, or often through mail-order medications, would necessarily think that the lawsuit was the most efficient way to serve her own interests, and Planned Parenthood has a collective capacity to represent all women in that class. So I do think they have standing, at least jurisdictionally.

I want to reiterate what we're doing today. We're not deciding the merits of the case, and if -- I think if this argument has demonstrated anything, there are a lot of nuances to this case and some difficult legal work to be done. We are

deciding a preliminary injunction, and that involves a number of different prongs. First is irreparable harm. Second is looking at the balance of the harms between the parties. Third is whether the injunction would offend public policy. And then finally, a likelihood of success on the merits.

It's a flexible test. A stronger showing on irreparable harm means a less -- less of a need to show a likelihood of success. Plaintiff is correct that a likelihood of success does not mean that success is more likely than not, or a probability of success. I'm really not ranking the arguments at this point in their strength. What I'm really doing is saying, we have serious things to talk about; is there a need to litigate this case before we alter the status quo? Status quo remains important, maybe a little less so than on the temporary restraining order process, but it -- it still remains important for preliminary injunction.

So on irreparable harm, I think plaintiffs have made a strong showing here. Absent safe access -- access to early-term abortions, and I think that's mainly what we're talking about, although there are differences and consequences for later abortions under this Act. The main effect of this would be to stop abortions in the first 18 weeks of pregnancy.

But without safe access to those abortions, women are going to be delaying treatment, which increases their health risk. They're going to obtain abortions through less

accessible means, which involves health risks. Some women will likely resort to unsafe and illegal methods, which involve risks to not only the woman, but obviously the -- any life or potential life she's carrying.

Both physical and mental health of women denied legal access to medically safe abortions is threatened here. And plaintiffs and other providers' ability to provide medically appropriate care to women is harmed.

That's irreparable harm. Again, in that prong I focus on the harm to the plaintiff.

When I get to balance of harms, I have sort of a different problem here. I -- I assume that the legislature's goal is, as the State said in its brief, rooted in a moral conviction. And I have no quarrel with that sentiment and I have respect for people who hold that deeply held view. There are, I think, some issues down the road regarding the legislature's to ability -- ability to impose that view on everyone, but I'll assume it for now.

Again, we're talking about women who elect to have an abortion during the first 18 weeks of pregnancy. Many women are going to obtain that treatment out of state. Many are going to use readily available medications. Many are going to resort to unsafe means.

What I don't have any clear picture of is whether this Act, which will cause harm, will actually prevent the

harm that it was meant to prevent. I don't have any quantification of that, or any real idea whether women will simply get abortions, they will simply not be legal in Utah.

So if I balance the harms, I really think I'm balancing what is a fairly predictable, a no-harm, against something that's very unpredictable. And so based on that, I think the balance of harms favors plaintiffs as well.

Public policy. I think it's important to recognize that statues are presumed constitutional, and the legislature has declared a policy here. But the analysis can't end there or otherwise this prong would always favor the State in any injunction action against the State and that's just not the case.

I think this is where status quo becomes important and intertwined with the public policy question. This law was intended to effect a radical change in existing law. And again, I don't have any quarrel with that. I believe that the people that enacted this had deep feelings about this and wanted a radical change. But when you're talking about a seismic change in women's health treatment, it's prudent to look before you leap. And that's really what the status quo and public policy are really after here. These are serious questions. They have to be litigated fully, and before we cross that bridge, we make an informed and careful decision before upsetting the ordinary medical treatment that has been

in place in Utah for nearly 50 years.

So that leads me to likelihood of success. Again, I'm not handicapping these theories; I'm not deciding them today. But there are clearly several theories that raise serious issues that go to the merits.

There's no controlling precedent, as both sides have acknowledged. I'll read Article I, Section 27, "Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government." That's in Utah's constitution, it's in several states' constitution, and I think it's probably paraphrasing George Mason's language in the Virginia Declaration of Rights.

We ask ourselves, and this is what fundamental rights have the people retained for themselves? Article I, Section 25, "The enumeration of rights shall not be construed to impair or deny others retained by the people." These are natural law concepts.

So the fact that abortion isn't expressly mentioned in the Constitution is relevant, but it's not dispositive. The Constitution itself recognizes there can be implied rights.

I haven't really received the temporal -- the contemporaneous analysis of each of these for some of the key provisions, and I alluded to that in my questions with counsel.

Article I, Section 1, Section 4 and 11 all have been reincorporated in the Constitution relatively recently. And while voter information guides are interesting, and I've seen other cases where I wondered why the Supreme Court didn't use that as an interpretive tool, but I'm not aware of when they -- where they have, but fundamentally, voters are voting on the language they're enacting. And it's not simply what the legislators thought the reason was for this amendment, it's not what certain information was the reason, it's really, I start with the language they enacted and what their understanding would be.

So I don't have that analysis for some of these relevant sections. There is an argument here that this Act treats classes of people differently and there is potentially a violation there of Article I, Section 1; Article IV, Section 1; Article I, Section 24. Any one of those would be sufficient to constitute a likelihood of success.

There is a reasonable argument here that the Act violates some right to bodily integrity. Family rights enjoy constitutional production -- protection, in re JP, recognize that, is at least a reasonable argument to extend decisions relating whether to have a child, to family decisions and family rights such as the relationship of parent to child.

I think there is likely some form of right to privacy implicit under the Utah Constitution; it hasn't been fleshed

out well. There's another question there, is where a decision to obtain an abortion is included within whatever right of privacy exists.

Plain meaning of freedom of conscience is implicated here. It's pretty absolute language when you read the Constitution. The rights of conscience shall never be infringed. Was last adopted by people -- the people of Utah in 2000. Roe, at the time, was settled law. It was also very much an issue of public debate at the time. It was very much -- the debate circled very much on religious lines. I think there's a serious question there, whether the understanding of the people in 2000 would have been that that right of conscience included this right to determine whether or not to obtain an abortion.

There are lots of different religious and secular views of what constitutes human life. People of faith differ in that view. People within the same faith differ in that view. People without faith differ in those views. This law selects a single view of that question and imposes it on everyone. I think there are serious questions there on the rights of conscience.

So there are clearly serious constitutional issues here to be litigated, and the claims are plainly not frivolous, so I will grant the preliminary injunction. No bond is necessary.

I think the problem comes what the State alluded to is -- I don't perceive it as a problem. I think the language in the complaint is clear enough that we're really not preventing enforcement of existing laws other than this Trigger Act, but I'd invite any language clarifying that that the State wants to make sure so there's no difficulty in administering this.

The State apologized to me for the length of its brief, and there's no apology necessary. I will say this. The briefs in this case, the briefs of -- all the briefs of the parties and the briefs of the amici are extraordinarily thorough, extraordinarily scholarly, and many, many people are following this issue and will have their own opinions, good and bad, of what I've done today. And I would commend people who are genuinely interested in this issue to review the briefs of all the parties on the amici in this case. May not change your mind, but you'll see, I think, the level of legal analysis required to address this question and the level of thought that's gone into this by both sides and the amici.

So with that, I'll ask that the plaintiffs submit an appropriate order, let the State look at it, and maybe you can agree on language, but the injunction will be in effect of -- from today.

MR. GREEN: Judge, thanks. Could I ask one follow-up question?

THE COURT: Yes.

MR. GREEN: Some of the Rules of Appellate Procedure that are in place for getting interlocutory appeal of stays and injunctions -- it's unclear if they require us to move this Court for a stay before we file a motion and -- with any sort of appellate court. I assume if we asked you to stay your injunction pending appeal or pending the outcome of the case, it -- the Court would deny it for the reasons already said?

THE COURT: Yeah, that's correct. And I don't mean to do anything to discourage appeal. As I think I referenced last time on the TRO, we all know that this is going to head up there and that's really who needs to ultimately make this constitutional determination is the Supreme Court, so ...

MR. GREEN: Great. Thank you, Your Honor. Just want to make sure the record was -- is clear on that.

THE COURT: All right. Okay.

MR. GREEN: Thanks.

THE COURT: All right. Thanks, everybody, and thanks again for your arguments as well.

MR. GREEN: Thank you, Your Honor.

MS. MURRAY: Thank you, Your Honor.

THE COURT: We'll be in recess.

(Proceedings conclude at 2:27:35.)

CERTIFICATE

STATE OF UTAH)
) SS.
COUNTY OF WEBER)

I, Laurie Shingle, Certified Court Reporter in and for the State of Utah, do hereby certify:

That the preceding pages of transcript were transcribed by me and/or under my direction from an electronic recording.

That the proceedings transcribed are a full, true, and correct transcription of said proceedings, subject to the ability to hear and understand the recording.

Dated at Pleasant View, Utah, this the 12th day of July, 2022.

Laurie Shingle

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Laurie Shingle, UT CCR, RPR, CMRS

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Attachment 3

Exhibit A

THE

COMPILED LAWS

OF THE

TERRITORY OF UTAH,

CONTAINING ALL THE

GENERAL STATUTES NOW IN FORCE,

TO WHICH IS PREFIXED

THE DECLARATION OF INDEPENDENCE,

CONSTITUTION OF THE UNITED STATES, ORGANIC ACT OF UTAH,

AND

LAWS OF CONGRESS ESPECIALLY APPLICABLE TO THIS TERRITORY.

COMPILED AND PUBLISHED

BY AUTHORITY.

PRINTED AT THE DESERET NEWS STEAM PRINTING ESTABLISHMENT,

SALT LAKE CITY, UTAH.

1876.

TITLE XXI.

PENAL CODE.

PRELIMINARY PROVISIONS.

SECTION.
1831. Penal code.
1832. When this act takes effect.
1833. Not retroactive.
1834. Construction of the penal code.
1835. Effect of the code upon past offenses.
1836. Certain terms defined in the senses in which they are used in this code.
1837. What intent to defraud is sufficient.
1838. Civil remedies preserved.
1839. Authority of courts martial preserved. Courts of justice to punish for contempts.
1840. Of sections declaring crimes punishable; duty of court.
1841. Punishments, how determined.
1842. Witness' testimony may be read against him on prosecution for perjury.
1843. "Crime" and "public offense" defined.
1844. Crimes, how divided.
1845. "Felony" and "misdemeanor" defined.
1846. Punishment of felony, when not otherwise prescribed.
1847. Punishment of misdemeanor, when not otherwise prescribed.
1848. To constitute crime, there must be unity of act and intent.
1849. Intent, how manifested, and who considered of sound mind.
1850. Drunkenness no excuse for crime; when it may be considered.
1851. This act, how cited.

An Act to establish a penal code.

[*Approved February* 18, 1876.]

Penal code.

(1831.) SEC. 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That this act shall be known as

THE PENAL CODE OF UTAH.

When this act takes effect.

(1832.) SEC. 2. This code takes effect at twelve o'clock, noon, on the fourth day of March, eighteen hundred and seventy-six.

Not retroactive.

(1833.) SEC. 3. No part of it is retroactive unless expressly so declared.

Construction of the penal code.

(1834.) SEC. 4. The rule of the common law that penal statutes are to be strictly construed has no application to

TITLE IX.

OF CRIMES AGAINST THE PERSON AND AGAINST PUBLIC DECENCY AND GOOD MORALS.

CHAPTER I. Rape, abduction, carnal abuse of children, and seduction.
CHAPTER II. Abandonment and neglect of children.
CHAPTER III. Abortions.
CHAPTER IV. Child stealing.
CHAPTER V. The crime against nature.
CHAPTER VI. Violating sepultures and the remains of the dead.
CHAPTER VII. Of crimes and offenses against good morals.
CHAPTER VIII. Indecent exposure, obscene exhibition, books and prints, and bawdy and other disorderly houses.
CHAPTER IX. Lotteries.
CHAPTER X. Gaming.
CHAPTER XI. Other injuries to persons.

CHAPTER I.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

SECTION.
1964. Rape defined.
1965. When physical ability must be proved.
1966. Penetration sufficient.
1967. Punishment of rape.
SECTION.
1968. Abduction for purposes of prostitution.
1969. Abduction of female under age of eighteen for prostitution.

(1964.) SEC. 134. Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances: Rape defined.

First—When the female is under the age of ten years.

Second—Where she is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent.

Third—Where she resists but her resistance is overcome by force or violence.

Fourth—Where she is prevented from resisting by threats of immediate and great bodily harm, accompanied by apparent power of execution; or by any intoxicating, narcotic, or anæsthetic substance administered by or with the privity of the accused.

child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter, or attention for such child is guilty of a misdemeanor. Omitting to provide child with necessaries.

(1971.) SEC. 141. Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the penitentiary not exceeding five years, or in a county jail not exceeding six months. Deserting child.

CHAPTER III.

ABORTIONS.

SECTION 1972. Administering drugs, etc., with intent to produce miscarriage.

(1972.) SEC. 142. Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the penitentiary not less than two nor more than ten years. Administering drugs, etc., with intent to produce miscarriage.

CHAPTER IV.

CHILD STEALING.

SECTION 1973. Definition and punishment of child stealing.

(1973.) SEC. 143. Every person who maliciously, forcibly, or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal Definition and punishment of child stealing.

Exhibit B

THE

COMPILED LAWS OF UTAH

THE DECLARATION OF INDEPENDENCE

AND

CONSTITUTION OF THE UNITED STATES

AND

STATUTES OF THE UNITED STATES LOCALLY APPLICABLE AND IMPORTANT.

COMPILED AND PUBLISHED

BY AUTHORITY.

VOL. I.

SALT LAKE CITY:
HERBERT PEMBROKE, BOOK, JOB AND LEGAL BLANK PRINTER, 72 EAST TEMPLE STREET.

1888.

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PENAL CODE.

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4377 Witness' testimony may be read against him on prosecution for perjury.
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4384 Intent, how manifested, and who considered of sound mind.
4385 Drunkenness no excuse for crime; when it may be considered.
4386 This act, how cited.

Feb. 18, 1876. Penal Code.

§ 4366. (1831) Be it enacted, etc., That this act shall be known as "The Penal Code of Utah."

When this act takes effect.

§ 4367. (1832) This Code takes effect at twelve o'clock, noon, on the fourth day of March, eighteen hundred and seventy-six.

Not retroactive.

§ 4368. (1833) No part of it is retroactive unless expressly so declared.

TITLE IX.

OF CRIMES AGAINST THE PERSON AND AGAINST PUBLIC DECENCY AND GOOD MORALS.

CHAPTER I. Rape, abduction, carnal abuse of children, and seduction.
CHAPTER II. Abandonment and neglect of children.
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CHAPTER IV. Child stealing.
CHAPTER V. The crime against nature.
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CHAPTER VIII. Indecent exposure, obscene exhibition; books and prints, and bawdy and other disorderly houses.
CHAPTER IX. Lotteries.
CHAPTER X. Gaming.
CHAPTER XI. Other injuries to persons.

CHAPTER I.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN, AND SEDUCTION.

SECTION.
4499 Rape defined.
4500 When physical ability must be proved.
4501 Penetration sufficient.
4502 Punishment of rape.
4503 Abduction for purposes of prostitution.
4504 Abduction of female under age of eighteen for prostitution.

§ 4499. (1964) Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator, under either of the following circumstances: Rape defined. Jan. 26, 1888.

1. When the female is under the age of thirteen years.

2. Where she is incapable, through lunacy or any other unsoundness of mind, whether temporary or permanent, of giving legal consent.

3. Where she resists but her resistance is overcome by force or violence.

CHAPTER II.

ABANDONMENT AND NEGLECT OF CHILDREN.

SECTION.
4505 Omitting to provide child with necessaries.
4506 Deserting child.

§ 4505. (1970) Every parent or guardian of any child who wilfully omits, without lawful excuse, to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter or attention for such child is guilty of a misdemeanor. Omitting to provide child with necessaries.

§ 4506. (1971) Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever, with intent wholly to abandon it, is punishable by imprisonment in the penitentiary not exceeding five years, or in a county jail not exceeding six months. Deserting child.

CHAPTER III.

ABORTIONS.

SECTION.
4507 Administering drugs, etc., with intent to produce miscarriage.

§ 4507. (1972) Every person who provides, supplies or administers to any pregnant woman, or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the penitentiary not less than two nor more than ten years. Administering drugs, etc., with intent to produce miscarriage.

Exhibit C

THE

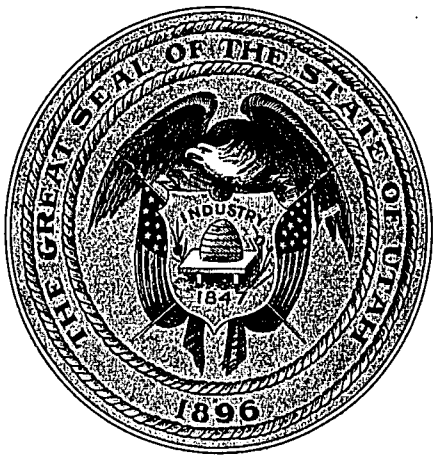
REVISED STATUTES

OF THE

STATE OF UTAH,

IN FORCE

JAN. 1, 1898.



Revised, Annotated, and Published by Authority of the Legislature,

BY

RICHARD W. YOUNG,

GRANT H. SMITH,

WILLIAM A. LEE,

Code Commissioners.

TOGETHER WITH THE CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF UTAH, THE ENABLING ACT, AND THE NATURALIZATION LAWS.

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TITLE 75.

PENAL CODE.

CHAPTER 1.

PRELIMINARY PROVISIONS.

4051. Title known as Penal Code. This title shall be known as the Penal Code. [C. L. § 4386*.

Cal. Pen. C. § 1*.

4052. Provisions not to be strictly construed. The rule of the common law that penal statutes are to be strictly construed has no application to the Revised Statutes. The provisions of the Revised Statutes are to be construed according to the fair import of their terms with a view to effect the objects of the statutes and to promote justice. [C. L. § 4369.

Cal. Pen. C. § 4.

Statutes to be liberally construed, § 2489. Liberal construction, civil procedure, §§ 2980, 3008, 3285. No part of revised statutes retroactive unless expressly so declared, § 2490. Effect of repeal by revised statutes, §§ 2484-2486.

It is no defense to an indictment for charging illegal fees, that the defendant honestly believed the law to be that he could charge fees under the by-laws of the mining district. People v. Monk, 8 U. 35; 28 P. 1115.

4053. Sense in which certain words are used herein. Whenever the terms mentioned in this chapter are employed in the penal code, they are employed in the senses hereafter affixed to them, except where a different sense plainly appears:

1. The term "wilfully," when applied to the intent with which an act is done or omitted implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

2. The terms "neglect," "negligence," "negligent," and "negligently," import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

3. The term "corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

4. The terms "malice" and "maliciously" import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or by presumption of law.

5. The term "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of the code. It does not require any knowledge of the unlawfulness of such act or omission.

6. The term "bribe" signifies any money, goods, right in action, property, thing of value, or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence unlawfully the person to whom it is given in his action, vote, or opinion in any public or official capacity.

7. When the term "person" is used in this code to designate the party whose property may be the subject of any offense, it includes this state, and any state, government, or country which may lawfully own any property within this

CHAPTER 27.

ABORTION.

4226. Administering drugs, etc. Using instruments. Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than two nor more than ten years. [C. L. § 4507.

Cal. Pen. C. § 274*.
Conviction cannot be had on testimony of woman alone, § 4858.

4227. Woman producing miscarriage on self. Penalty. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than one nor more than five years.

Cal. Pen. C. § 275.

CHAPTER 28.

CRIME AGAINST NATURE.

4228. Penalty. Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than three years nor more than twenty years. [C. L. § 4509*.

Cal. Pen. C. § 286*. Assault with intent to commit, § 4179.

4229. Any penetration sufficient. Any sexual penetration, however slight, is sufficient to complete the crime against nature. [C. L. § 4510.

Cal. Pen. C. § 287.

CHAPTER 29.

VIOLATING SEPULTURE.

4230. Mutilation or removal of dead bodies. Every person who mutilates, disinters, or removes from the place of sepulture the dead body of a human being without authority of law, is guilty of felony. But the provisions of this section do not apply to any person who removes the dead body of a relative or friend for reinterment, nor to any physician who shall make a post mortem examination with the consent of relatives or friends of the deceased. [C. L. § 4511; '94, p. 53.

Cal. Pen. C. § 290*.

4231. Removal of dead body for dissection, etc. Every person who removes any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same or to dissect it without authority of law, or from malice or wantonness, is punishable by imprisonment in the state prison not exceeding five years. [C. L. § 4512.

Cal. Pen. C. § 291.

Exhibit D

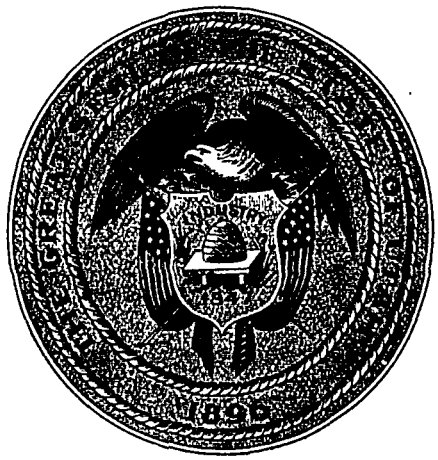
THE

COMPILED LAWS

OF THE

STATE OF UTAH

1907



Compiled, annotated, and published by authority
of an act of the Legislature by

JAMES T. HAMMOND,
GRANT H. SMITH,
Compilation Commissioners.

Together with the Constitution of the United States,
the Constitution of the State of Utah, the
Enabling Act, and the Naturalization Laws.

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jobbers, wholesalers, and manufacturers to retail druggists, nor to sales at retail by retail druggists to regular practitioners of medicine, dentistry, or veterinary medicine, nor to sales made to manufacturers of proprietary or pharmaceutical preparations for use in the manufacture of such preparations, nor to sales to hospitals, colleges, scientific or public institutions. '07, p. 227.

1727x3. Penalty. Any person, firm, or corporation violating any provision of this chapter shall be deemed guilty of a misdemeanor, and be fined in any sum not less than $25 nor more than $100. '07, p. 227.

TITLE 63.

PHYSICIANS AND SURGEONS.

1728. State board. Qualifications of members. Vacancies. There shall be appointed by the governor at each regular session of the legislature, by and with the consent of the senate, a state board of medical examiners, which shall consist of nine members, who shall be representatives of the various recognized schools of medicine, each of whom shall be at the time of his appointment a licensed graduate practitioner of medicine in the state. Each person so appointed shall qualify by taking an oath before a judge of the district court, that he is a graduate of a legally chartered medical college in good standing, and that he will faithfully perform the duties of his office, and upon the qualification of every person appointed, as aforesaid, he shall hold his office until his successsor is appointed and qualified. Vacancies in the board shall be filled by appointment by the governor within one month from the time the vacancy shall occur. Said board shall have power to sue and be sued in its official name, the board of medical examiners of the state of Utah; to employ legal counsel and clerical assistance; and the money received under this title may be applied in defraying expenses incurred by the said board either in the employment of said legal counsel or clerical assistance, or in any other manner whatsoever. Am'd, '07, p. 94.

Where the law provides for collecting of fees by medical board, without specifying disposition to be made, such fees may be used for payment of ordinary expenses. People v. Hasbrouck, 11 U. 291; 39 P. 918.

1729. Board must organize. Powers and duties. Certificate. Said board shall organize immediately after its appointment by selecting from its members a president, secretary, and treasurer. Five members of the board shall constitute a quorum. The board shall have a seal with which it shall attest its official acts. Any member of the board shall have authority to administer oaths, and the board shall have authority to take testimony in all matters relating to the duties of the board. The board shall have power to examine any person who furnishes satisfactory proof of having received a degree or diploma from a legally chartered medical school, which at the time of granting such diploma required at least the following hours of study: Anatomy, 420; histology, 90; physiology, 300; chemistry, 300; therapeutics, 90; bacteriology, 140; pathology, 240; physical diagnosis, 100; surgery, 540; obstetrics, 160; and gynecology, 160; a leeway of ten per cent being allowed, or a minimum total of 2,286 hours. And any legally chartered school making the foregoing requirements shall be deemed a recognized school of medicine. If the

applicant has received a certificate from a high school of the first grade or educational attainments equivalent thereto, and if, upon examination of such person by the board, the said board shall be satisfied that the applicant is qualified to practice medicine and surgery, then the said board shall have power to issue a certificate to such person so qualified and examined. The board shall issue two forms of certificates or license, one for persons holding such a degree or diploma who has been examined and favorably passed upon by the board, and another for persons desiring to practice obstetrics under the provisions of § 1740. Certificates or licenses shall be signed by all members of the board granting them. R. S. '98, §§ 1729, 1740; '07, p. 95.

The prohibitions of the United States constitution against state legislation abridging the privileges of citizens are not violated by act March 10, 1892, applicable alike to citizens of Utah and of other states and territories, which authorizes the licensing, without examination, of medical graduates who were, but not those who were not, in actual practice at its passage, and also of persons who had practiced for ten years in the territory before the taking effect of the act, upon passing an examination, although without a diploma, while requiring others to have a diploma besides passing an examination.

People v. Hasbrouck, 11 U. 291; 39 P. 918.

Nor is such act, in authorizing the board to ascertain and determine the qualifications of applicants to practice medicine, unconstitutional, as conferring judicial power on the board.

Id.

1730. Fee. The fee for the examination provided for in the next preceding section shall be $15, which shall be paid to the treasurer of the board of medical examiners. Am'd '07, p. 96.

1731. Non-graduate practitioners. No non-graduate licensed under the provisions of the acts of the territorial legislature shall in any way advertise as a doctor, physician, or surgeon, but shall, if he advertise at all, do so as a licensed non-graduate practitioner of medicine. The secretary of the board shall enter, without fee, upon the register to be kept by him, the names of all persons to whom certificates are issued as physicians and surgeons. Am'd '07, p. 96.

1732. Certificate to be recorded. Every person holding a certificate from the said board shall have it recorded in the office of the recorder of the county in which he resides, within three months from its date, and the date of record shall be indorsed thereon. Until such certificate is recorded as herein provided, the holder thereof shall not exercise any of the privileges confered therein to practice medicine. Any person removing to another county to practice medicine shall record the certificate in like manner in the county to which he removes, and the holder of the certificate shall pay the recorder the usual fees for recording such certificates. Am'd '07, p. 96.

1733. Duty of county recorder. The county recorder shall keep in a book provided for that purpose a complete list of certificates recorded by him, with the date of the issue of the certificate, and, if the certificate be based upon a degree and examination, the name of the medical college conferring the degree, and the date thereof. Am'd '07, p. 96.

1734. Refusal to grant certificate. Witnesses. Contempt. Examination may be wholly or partially in writing. Said board must refuse a certificate to any applicant guilty of unprofessional conduct as defined in this title; but before such refusal the applicant must be cited by citation, signed by the secretary of the board, and sealed with its seal. No such citation shall be issued except upon a sworn complaint filed with the secretary of the board and sealed with its seal, charging the applicant with having been guilty of unprofessional conduct, and setting forth the particular acts constituting such unprofessional conduct. On the filing of such complaint the secretary must forthwith issue a citation, and make the same returnable at the next regular session of said board, occurring at least thirty days next after filing the complaint. Such citation shall notify the applicant of the time and place

when and where the matter of such unprofessional conduct shall be heard, the particular unprofessional conduct with which the applicant is charged, and that the applicant shall file his written answer, under oath, within twenty days next after the service on him of said citation, or default will be taken against him and his application for a certificate refused. The attendance of witnesses at such hearing shall be compelled by subpoena issued by the secretary of the board, under its seal; and said secretary shall in no case refuse to issue any such subpoenas, upon a fee of twenty cents being paid him for each subpoena. Said citation and said subpoenas shall be served in accordance with the statutes of this state then in force as to the service of citation and subpoenas generally, and all of the provisions of the statutes of this state then in force relating to subpoenas are hereby made applicable to the subpoenas provided for herein. If any person refuse to obey a subpoena served upon him in accordance with the statutes of this state then in force providing for the manner of serving subpoenas, the fact of such refusal shall be certified by the secretary of said board, under the seal thereof, to the district court of the county in which the service was had, and said court shall thereupon proceed to hear said matter, in accordance with the statutes of this state then in force as to contempts for disobedience of process of the court; and should said court find that the subpoena had been legally served, and that the party so served had wilfully disobeyed the same, it shall proceed to impose such penalty as provided in cases of contempt of court. In all cases of alleged unprofessional conduct arising under this title, depositions of witnesses may be taken, the same as in civil cases, and all the provisions of the statutes of this state then in force as to the taking of depositions are hereby made applicable to the taking of depositions under this title. If the applicant shall fail to file with the secretary of said board his answer, under oath, to the charge made against him, within twenty days after service on him of said citation, or within such further time as the board may give him, and the charges on their face be deemed sufficient by the board, default shall be entered against him, and his application refused. If the charges on their face be deemed sufficient by the board, and issue be joined thereon by answer, the board shall proceed to determine the matter, and to that end shall hear such evidence as may be adduced before it; and if it appear to the satisfaction of the board that the applicant is guilty as charged, no certificate shall be issued to him. No certificate shall be refused on the ground of unprofessional conduct unless the applicant has been guilty of such conduct subsequently to the passage of this title, and unless he has been guilty of such conduct within two years next preceding his application. Am'd '07, p. 96.

1735. Revocation of certificate. Whenever any licensed practitioner of medicine and surgery or obstetrics in this state is guilty of unprofessional conduct, as the same is defined in this title, then the license or certificate of such person shall be revoked or canceled in the manner hereinafter provided by the district court of the county where the holder of such certificate or license practiced at the time of such unprofessional conduct. Proceedings for such revocation or cancellation shall be conducted in the manner provided by law for proceedings in civil cases, except as in this title provided. The board of medical examiners of the state of Utah shall be plaintiff and the person charged shall be defendant in any such proceeding. The complaint in said proceeding shall be in writing, certified by the oath of one of the members of the board, or by any person having knowledge of the facts constituting the unprofessional conduct, and praying a decree of the court canceling or revoking the certificate or license of the defendant, and an injunction perpetually enjoining him from practicing medicine or surgery in this state. When, after trial, the defendant is found guilty as charged, or when, upon

his default, which may be entered as in civil cases, provided the facts stated in the complaint constitute unprofessional conduct as defined in this title, then in either such case the court must decree a cancellation or revocation of the certificate or license of the defendant, and must enjoin him from practicing medicine or surgery in this state. Upon the entry of such judgment and decree, it shall be the duty of the secretary of the said board of medical examiners to file a certified copy of said judgment and decree with the county recorder of the counties in which the certificate of the defendant is recorded, and said recorder must thereupon write upon the margin of the record of said certificate of said defendant the following:

"This certificate was revoked and canceled by a decree of the district court of ..... county, Utah, on the ..... day of .....," giving the day, month, and year of such revocation by said court, together with the county wherein said decree was made and entered by said district court.

No certificate shall be revoked for unprofessional conduct under this section unless the accused has been guilty thereof subsequently to March 14, 1907, and unless he has been guilty thereof within two years next preceding the time of filing the complaint charging him with such unprofessional conduct. R. S. '98, § 1734; '07, p. 97.

1736. "Unprofessional conduct" defined. The words "unprofessional conduct," as used in this title, are hereby defined to mean any of the following acts, to wit:

1. Offering or attempting to procure or aid or abet in procuring a criminal abortion;

2. The procuring or aiding or abetting in procuring a criminal abortion;

3. The obtaining of any fee on the assurance that a manifestly incurable disease can be permanently cured;

4. The wilfully betraying of a professional secret;

5. All advertising of medical business in which grossly improbable statements are made;

6. All advertising of medicines or of any means whereby the monthly periods of women can be regulated, or the menses re-established if suppressed;

7. Conviction of any offense involving moral turpitude;

8. Habitual intemperance or any excessive use of drugs or gross immorality. '07, p. 98.

1737. Practicing medicine contrary to law. Any person practicing medicine, surgery, or obstetrics within the state contrary to law may, at the instance of the board herein created appearing as plaintiff in the district court, be enjoined by said court from practicing medicine, surgery, or obstetrics in this state until such person shall have been by said board lawfully admitted to practice. The proceedings in said district court shall be the same, as near as may be, as hereinbefore provided in this title in case of revocation or cancellation of licenses or certificates. '07, p. 99.

1738. Practicing medicine defined. Any person shall be regarded as practicing medicine within the meaning of this title who shall diagnose, treat, operate upon, prescribe or advise for, any physical ailment of another for a fee, or who shall hold himself out by means of signs, cards, advertisements, or otherwise, as a physician or surgeon; but nothing in this title shall be construed to prohibit services in case of emergency, or the administration of family remedies, nor to prevent medical officers of the United States army from the discharge of their official duties, nor to prohibit visiting physicians

in the act of consultation, nor shall anything in this title be construed to apply to those who heal only by spiritual means without pretending to have a knowledge of the science of medicine. R. S. '98, § 1735; '07, p. 99.

1739. Penalty. Any person practicing medicine, surgery, or obstetrics within this state without holding a lawful certificate or license, or otherwise contrary to the provisions of this title, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both such fine and imprisonment. R. S. '98, § 1736; '07, p. 99.

1740. Obstetrics. Examination. Fee. Persons desiring to practice obstetrics in this state shall be entitled to a license upon satisfactorily passing an examination by the board of medical examiners and paying to the treasurer thereof a fee of $5; *provided,* that this section shall not be construed to prevent physicians holding a certificate from practicing obstetrics, or to prohibit such service or the acceptance of a fee in case of emergency, or persons practicing obstetrics in communities where there are no licensed practitioners. R. S. '98, § 1737; '07, p. 99.

1741. Meetings of board. The board of medical examiners shall meet on the first Monday in January, April, July, and October, of each year, at ten o'clock a. m., and such other times as the president of the board shall deem necessary. The place of meeting shall be at the state capital. R. S. '98, § 1738; '07, p. 100.

1742. Removal of members of board. Any member of said board may be removed for misconduct in office by a two-thirds vote of all the members of the board, but no member shall be removed until after he has been given a trial before said board. R. S. '98, § 1739; '07, p. 100.

1742x. Examination may be waived, when. The said board may in its discretion accept and register upon the payment of the registration fee of $25 and without examination of the applicant any certificate which shall have been issued to him by the medical examining board of the District of Columbia, or any state or territory of the United States; *provided, however,* that the applicant has received a degree or diploma from a legally chartered medical school, the requirements of which shall have been at the time of granting such diploma in no particular less than those prescribed by the association of American medical colleges for that year; and, *provided further,* that the legal requirements of such medical examining board of such state or territory shall have been at the time of issuing such certificate in no degree or particular less than those of this state at the time when such certificate shall be presented for registration to the board created by this title; and, *provided further,* that the provisions in this paragraph contained shall be held to apply only to such of said medical examining boards of such states and territories as accept and register the certificates granted by this board without examination by said boards of the one holding such certificates. '07, p. 100.

1742x1. Osteopathy. Certificate. Nothing in this title shall be deemed to require persons now holding certificates from the territorial or state board of medical examiners to make application for license, and any person who is now practicing osteopathy in the state of Utah, who holds a degree or diploma from a regularly chartered college of osteopathy, whose requirements are not less than those prescribed by the associated colleges of osteopathy for that year, upon presenting his diploma to said state board of medical examiners within sixty days after March 14, 1907, shall be entitled to receive a certificate or license to practice medicine and surgery in this state. Said certificate

CHAPTER 27.

ABORTION.

4226. Administering drugs, etc. Using instruments. Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than two nor more than ten years.

Cal. Pen. C., § 274*.

Conviction cannot be had on testimony of woman alone, § 4858, and note.

It is competent for a doctor giving expert testimony to give his opinion, from an examination of the body after death, and from his previous knowledge of the deceased, that it was not necessary to produce an abortion in order to save her life.

State v. McCoy, 15 U. 136; 49 P. 420.

Where an indictment for murder contains allegations concerning an abortion and miscarriage and the instruments and drugs used to produce the miscarriage, which merely show the manner of and the means used in perpetrating the offense, it is not bad for duplicity.

State v. Carrington, 15 U. 480; 50 P. 526.

The terms "procuring a miscarriage" and "procuring an abortion" mean, in common language and under the statute, substantially the same thing in characterizing the crime; but in charging the criminal act of destroying the foetus at any time before birth, it is necessary to charge the offense named in the statute which declares the act a crime.

State v. Crook, 16 U. 212; 51 P. 1091.

A contention in an action on a bail bond given by one charged with an abortion that no such crime was known to the law of the state was without merit.

State v. Davis, 27 U. 368; 75 P. 857.

4227. Woman producing miscarriage on self. Penalty. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than one nor more than five years.

Cal. Pen. C., § 275.

CHAPTER 28.

CRIME AGAINST NATURE.

4228. Penalty. Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than three years nor more than twenty years.

Cal. Pen. C., § 286*.

Assault with intent to commit, § 4179.

4229. Any penetration sufficient. Any sexual penetration, however slight, is sufficient to complete the crime against nature.

Cal. Pen. C., § 287.

Exhibit E

THE

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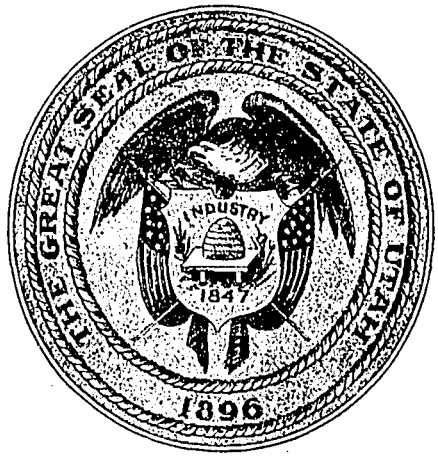

VOLUME I

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of an act of the Legislature by

ALLEN T. SANFORD
RICHARD B. THURMAN,
Compilation Commissioners.

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upon a degree and examination, the name of the medical college conferring the degree, and the date thereof. Am'd '07, p. 96.

4446. (1734.) Refusal to grant certificate. Witnesses. Contempt. Examination may be wholly or partly in writing. Said board must refuse a certificate to any applicant not of good moral character or who has been guilty of unprofessional conduct as defined in this title. But before such refusal, the applicant must be cited by citation signed by the secretary of the board and with its seal. No citation shall be issued except upon sworn complaint filed with the secretary of the board and setting forth such particular acts constituting such immorality or unprofessional conduct. On the filing of such complaint, the secretary must forthwith issue a citation and make same returnable at the next regular session of said board occuring at least thirty days next after the filing of the complaint. Such citation shall notify the applicant of the time and place when and where the matter of such immorality or such unprofessional conduct shall be heard, the particular immorality or unprofessional conduct with which the applicant is charged, and that the applicant shall file his written answer under oath within twenty days next after the service on him of such citation, or default will be taken against him and his application for a certificate refused. The attendance of witnesses to such hearing may be compelled by subpœna issued by the secretary of the board under its seal, and said secretary shall in no case refuse to issue any such subpœna upon a fee of 20 cents being paid him for each subpœna by the defendant. Said citation and subpœnas, and all the provisions of the statutes of this state then in force relating to subpœnas, are hereby made applicable to the subpœnas provided for herein. In case of the refusal of a witness properly served with subpœna to attend before said board, such refusal may be certified by the secretary of said board to the district court of the county in which service was had, and said court shall thereupon issue a subpœna to said witness to appear before it, and in case of further refusal on the part of said witness, the court shall then cite said witness or witnesses to appear before it and show cause why he should not be punished for contempt, and if the court finds upon hearing that said witness has wilfully disobeyed the mandate of the court, it shall then proceed to impose such penalties as are provided for in cases of contempt of court.

'07, p. 96; am'd '11, p. 132.

4447. (1735.) Revocation of certificate. Whenever any licensed practitioner of medicine or surgery or obstetric physician is guilty of unprofessional conduct, as the same is defined in this title, then the license or certificate of such person shall be revoked or canceled in the manner hereinafter provided by the district court of the county where the holder of such certificate or license practiced at the time of such unprofessional conduct. Proceedings for such cancellation or revocation shall be brought and conducted in the manner provided by law for proceedings in civil cases except as in this title provided. The trial in such proceeding shall be before the court without a jury unless the court shall call an advisory jury. The board of medical examiners of the state of Utah shall be plaintiff, and the person charged shall be defendant in any such proceedings. The complaint in such proceedings shall be in writing verified by oath of one of the members of the board, or any person having knowledge of the facts constituting the unprofessional conduct, and shall pray a decree of the court canceling and revoking the certificate or license of the defendant and an injunction perpetually enjoining him from practicing medicine or surgery in this state. When, after trial, the defendant is found guilty as charged, or when, upon his default, which may be entered as in other civil cases; *provided,* that the facts stated in the complaint constitute unprofessional conduct as defined in this title, then in either such case the court must decree a cancellation or revocation of the certificate or license of the defendent and must enjoin him from practicing medicine or surgery in the state. Upon the entry of such judgment or decree it shall be the duty of the secretary of the said board to file

a certified copy of said judgment and decree with the county recorder of the counties in which the certificate of the defendant is recorded, and said recorder must thereupon write on the margin of the copy of said certificate of said defendant the following:

"This certificate was revoked and canceled by a decree of the district court of ..... county, Utah, on the ..... day of .....," giving the day, month, and year of such revocation by said court, together with the county wherein said decree was made and entered by said district court. No certificate shall be revoked for unprofessional conduct under this section unless the accused has been guilty thereof within two years next preceding the time of the filing of the complaint charging him with such unprofessional conduct.

R. S. '98, § 1734; '07, p. 97; am'd '11, p. 134.

For prescribing alcohol, § 3371.

4448. (1736.) "Unprofessional conduct" defined. The words "unprofessional conduct," as used in this title, are hereby defined to mean any of the following acts, to wit:

1. Offering or attempting to procure or aid or abet in procuring a criminal abortion;
2. The procuring or aiding or abetting in procuring a criminal abortion;
3. The obtaining of any fee on the assurance that a manifestly incurable disease can be permanently cured;
4. The wilful betrayal of a professional secret;
5. Any advertising naming diseases of or in relation to the diagnosis or treatment of, or medicine for any abnormal or diseased condition of, or pertaining to the organs of generation;
6. All advertising of medicine or of any means whereby the monthly period of women can be regulated or the menses re-established if suppressed;
7. Conviction of any offense involving moral turpitude;
8. Habitual intemperance or gross immorality;
9. Lending his name to be used as a physician or surgeon by another person who is not a physician or surgeon;
10. Street advertising, soliciting, or other public peddling or selling of medical or surgical remedies or appliance in person or by proxy;
11. Prescribing any intoxicating liquors to be used as a beverage;
12. Prescribing morphine or cocaine or other narcotic with intent that the same shall be used otherwise than medicinally or with intent to evade any law in relation to the sale, use, or disposition of such drugs;
13. Wilful violation of the law in regard to the registration of births and deaths and the reporting of infectious diseases. '07, p. 97; am'd '11, p. 134.

Limitations on prescriptions of alcohol, § 3370, of narcotics, § 4432.

4449. (1737.) Practicing medicine contrary to law. Any person practicing medicine, surgery, or obstetrics within the state contrary to law may, at the instance of the board herein created appearing as plaintiff in the district court, be enjoined by said court from practicing medicine, surgery, or obstetrics in this state until such person shall have been by said board lawfully admitted to practice. The proceedings in said district court shall be the same, as near as may be, as hereinbefore provided in this title in case of revocation or cancellation of licenses or certificates. '07, p. 99.

The district court has jurisdiction on complaint of the medical examiners to grant injunction against a chiropractor practicing medicine.
Board of M. Ex. v. Freenor, 47 U. 430; 154 P. 941.

4450. (1738.) Practicing medicine defined. Any person shall be regarded as practicing medicine within the meaning of this title, who shall diagnose, treat, operate upon, or prescribe or advise for, any physical or mental ailment or any abnormal mental or physical condition of another, after having received or with the intent to receive therefor, either directly or indirectly, any fee, gift, compensation, or other pecuniary benefit, reward, or consideration; or who shall hold himself out by means of signs, cards, advertisements, or otherwise as a physician or surgeon; *provided*, that nothing in this title shall be construed to prohibit gratuitous services in

cases of emergency or the sale or administration of proprietary or domestic family remedies or the sale of appliances, nor to prevent medical officers of the United States from the discharge of their official duties; nor shall anything in this title be construed to apply to those who heal only by spiritual means without pretending to have a knowledge of the science of medicine; nor to prohibit visiting physicians in the act of consultation.

R. S. '98, § 1735; '07, p. 99; am'd '11, p. 135.

This act does not prohibit the business of an ordinary masseur, but prohibits one from treating diseases who has not the regular qualifications.
Board of M. Ex. v. Terrill, 48 U. 647; 161 P. 451.
An information in the language of this section is sufficient.
State v. Erickson, 47 U. 452; 154 P. 948.
The court should have instructed on the meaning of the phrase "domestic family remedies."
State v. Yee Foo Lun, 45 U. 531; 147 P. 488.
One who diagnosed the symptoms of his patients, and thereafter treated them, for compensation, by readjusting the displaced vertebrae, with his bare hands, practiced medicine.
Board of M. Ex. v. Freenor, 47 U. 430; 154 P. 941.

4451. (1739.) Penalty. Any person practicing medicine, surgery, or obstetrics within this state without holding a lawful certificate or license, or otherwise contrary to the provisions of this title, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both such fine and imprisonment.

R. S. '98, § 1736; '07, p. 99.

4452. (1740.) Obstetrics. Examination. Fee. Persons desiring to practice obstetrics in this state shall be entitled to a license upon passing a satisfactory examination by the board of medical examiners and paying to the treasurer thereof a fee of $15; *provided, however,* that this section shall not be construed to prevent physicians holding a certificate from practicing obstetrics, or to prohibit such services or the acceptance of a fee in the case of emergency or persons practicing obstetrics in communities where there are no licensed practitioners.

R. S. '98, § 1737; '07, p. 99; am'd '11, p. 135.

4453. (1741.) Meetings of board. The board of medical examiners shall meet on the first Monday in January, April, July, and October, of each year, at ten o'clock a. m., and such other times as the president of the board shall deem necessary. The place of meeting shall be at the state capital.

R. S. '98, § 1738; '07, p. 100.

4454. (1742.) Removal of members of board. Any member of said board may be removed for misconduct in office by a two-thirds vote of all the members of the board, but no member shall be removed until after he has been given a trial before said board. R. S. '98, § 1739; '07, p. 100.

4455. (1742x.) Examination may be waived, when. Said board may, in its discretion accept and register, upon the payment of the registration fee of $75, without examination of an applicant, any certificate which shall have been issued to him by the board of the district of Columbia, or any state or territorial board for the licensing of practitioners of medicine, surgery, within the meaning of this title, the requirements of which shall at the time of issuing be not less than those of this state; and *provided, further,* that the provisions in this section contained shall be held to apply only to such of said examining boards of such states and territories as accept and register the certificates granted by this board without examination by said board of the one holding such certificate. If for any reason the said applicant is denied such license, $50 of the said $75 shall be returned to said applicant. '07, p. 100; '11, p. 135.

The title to chap. 93, '11 does not purport to amend § 1742 or § 1742x (4454 and 4455); in the body of the act, § 1742x (4455) is amended but it is given the number 1742.

4456. (1742x1.) Osteopathy. Certificate. Nothing in this title shall be deemed to require persons now holding certificates from the territorial or state board of medical examiners to make application for license, and any person who is now practicing osteopathy in the state of Utah, who holds a degree or diploma from a regularly chartered college of osteopathy, whose require-

CHAPTER 28.

ABORTION.

8118. (4226.) Administering drugs, etc. Using instruments. Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than two nor more than ten years.

Cal. Pen. C., § 274*.

Conviction cannot be had on testimony of woman alone, § 8988, and note.

It is competent for a doctor giving expert testimony to give his opinion, from an examination of the body after death, and from his previous knowledge of the deceased, that it was not necessary to produce an abortion in order to save her life.

State v. McCoy, 15 U. 136; 49 P. 420.

Where an indictment for murder contains allegations concerning an abortion and miscarriage and the instruments and drugs used to produce the miscarriage, which merely show the manner of and the means used in perpetrating the offense, it is not bad for duplicity.

State v. Carrington, 15 U. 480; 50 P. 526.

The terms "procuring a miscarriage" and "procuring an abortion" mean, in common language and under the statute, substantially the same thing in characterizing the crime; but in charging the criminal act of destroying the foetus at any time before birth, it is necessary to charge the offense named in the statute which declares the act a crime.

State v. Crook, 16 U. 212; 51 P. 1091.

A contention in an action on a bail bond given by one charged with an abortion that no such crime was known to the law of the state was without merit.

State v. Davis, 27 U. 368; 75 P. 857.

Evidence on a prosecution for abortion held insufficient to show the production of the miscarriage was not necessary to save the woman's life, the burden of proof being on the state.

State v. Wells, 35 U. 400; 100 P. 681.

For the purpose of showing intent, evidence that the defendant performed operations on others who were in good health is admissible.

State v. McCurtain, 51 U. —; 172 P. 481.

The person on whom the criminal operation is performed, though at her request and at her consent, is not an accomplice.

Id.

8119. (4227.) Woman producing miscarriage on self. Penalty. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than one nor more than five years.

Cal. Pen. C., § 275.

CHAPTER 29.

CRIME AGAINST NATURE.

8121. (4228.) Penalty. Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than three years nor more than twenty years.

Cal. Pen. C., § 286*.

Assault with intent to commit, § 8047.

Sodomy may only be committed per anum, not in the mouth.

State v. Johnson, 44 U. 18; 137 P. 632.

Evidence held sufficient to support a conviction of assault with intent to commit a crime against nature, evidence of substance found on underwear worn by the boy at the time was admissible.

State v. Morasco, 42 U. 5; 128 P. 571.

8122. (4229.) Any penetration sufficient. Any sexual penetration, however slight, is sufficient to accomplish the crime against nature.

Cal. Pen. C., § 287.

Exhibit F

REVISED
STATUTES OF UTAH
1933

Published June 17, 1933, by
Authority of an Act of the Legislature
Effective June 26, 1933, at 1:00 o'Clock A. M.

Together with the Constitution of the United States,
the Constitution of the State of Utah, the Enabling Act,
and the Naturalization Laws of the United States.

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TITLE 79

DEPARTMENT OF REGISTRATION

CHAPTER 1

GENERAL PROVISIONS

79-1-1. Department to Administer Laws Regulating Professions, etc.

There shall be a department of the state government known as the "Department of Registration," which shall be charged with administering the laws regulating professions, trades and occupations as in this title provided.

(L. 21, p. 363, §§ 1, 2.)

GENERAL ANNOTATIONS

Under Territorial Law—People v. Hasbrouck, 39 P. 918, 11 U. 291.
Under Laws 1907, Chap. 88—State v. Erickson, 154 P. 948, 47 U. 452.
Under C. L. 1907—State ex rel Hallen v. Board of Examiners, 108 P. 347, 37 U. 339.
Under Laws 1911, Chap. 93—State v. Yee Foo Lun, 147 P. 488; State v. Erickson, 154 P. 948, 47 U. 452; Board of Medical Examiners v. Freenor, 154 P. 941, 47 U. 430; Board of Medical Examiners v. Terrill, 161 P. 451, 48 U. 647.
Under C. L. 1917—Board of Medical Examiners v. Blair, 196 P. 221, 57 U. 516.
Under Laws 1921, Chap. 91—State v. Waldram, 231 P. 431, 64 U. 406; Moorehouse v. Hammond, 209 P. 883, 60 U. 593; State v. Bradford, 280 P. 733, 74 U. 506; State v. Hale, 263 P. 86, 71 U. 134; Moormeister v. Dept. of Registration, 288 P. 900, 76 U. 146.
Legislation of this character is a legitimate exercise of police power, does not violate the due process clause, nor abuse the privileges and immunities of citizens, nor delegate judicial power. "Due process is not necessarily judicial process." People v. Hasbrouck, supra.
In State v. Yee Foo Lun, supra, the defense was that the defendant merely sold herbs, but it was pointed out that the statute defined the practice of medicine as diagnosis, treatment or advice for physical ailments for compensation. "Domestic family remedies" was therein defined and the duty of the trial court to define in its charge discussed.
In Board of Examiners v. Freenor, supra, attention was called to the fact that under the statute defining practice of medicine the use of drugs, agencies and appliances was no part of it; it was the treatment, diagnosis or advice for compensation that so defined it. The same definition was applied to chiropractors in State v. Erickson, supra.
The right of the board to enjoin practice without a license was sustained in Board of Examiners v. Freenor, supra; and later in Board of Examiners v. Blair, supra, in disposing of the contention that injunctive procedure deprived the defendant of trial by jury, the court repeated: "The only reason or justification for the enactment of such legislation as this in question is to protect the public from anyone treating physical ailments who has not by experience or by study acquired the necessary knowledge to enable him to entirely understand the needs of the human system and to intelligently prescribe for such ailments."
Massage, as such, was distinguished from practicing medicine in State v. Terrill, supra, and the court again repeated the policy of the legislation, viz., to protect the sick and the community from those unskilled, regardless of school.
In State ex rel Hallen v. Board of Examiners, supra, the statute regulating the practice of optometry was sustained.
In State v. Waldram, supra, the statute was held constitutional as to chiropractors.
In Moorehouse v. Hammond, supra, 35-4-32, requiring physicians to report communicable disease was involved as grounds for revoking license. State v. Bradford, supra, was a prosecution for practicing without license and the information was held sufficient. In State v. Hale, supra, an information charging the offense in the language of the statute was held insufficient.
In Moormeister v. Depart. of Registration, supra, the plaintiff sought to prohibit action of the Department to revoke his license. The writ was denied and the functions of the professional committee, the necessity for a hearing and report was discussed, and the statute construed.
Necessity that a statute should prescribe a rule of procedure for exercising discretionary powers, 12 A. L. R. 1435.
Failure to obtain required license as affecting validity of contracts, 30 A. L. R. 834, 42 A. L. R. 1226.
Validity of statute providing for revocation, 5 A. L. R. 85.
Grounds for revocation, 54 A. L. R. 1504.
Accountants—
Notes on regulation, 42 A. L. R. 765, 43 A. L. R. 1095.
Architects
Notes on regulation, 20 A. L. R. 1356.
Barbers
Notes on regulation, 31 A. L. R. 433.
Dentists
Notes on regulation, L. R. A. 1915 D 538.
Embalmers
Notes on regulation, 23 A. L. R. 71.
Physicians
Notes on forbidding advertising, 54 A. L. R. 400.
Discrimination against particular schools or methods, 37 A. L. R. 680, 42 A. L. R. 1342.

79-1-2. Director—Term — Salary — Oath and Bond.

It shall be under the supervision and control of a director of registration. The director of registration shall be appointed by the governor by and with the consent of the senate for a term of four years and until his successor is appointed and qualified, and he shall receive an annual salary of $3,000 payable quarterly. He shall qualify by taking the oath of office and giving a bond to the state in the sum of $5,000, conditioned on the faithful performance of his duties.

(L. 23, p. 104, § 5.)

Official Oaths and Bonds, Title 65.

79-1-3. Id. Qualifications.

The director of registration shall not be affiliated either as teacher, officer or stockholder with any college or school of any of the professions, trades or occupations which are or may be subject to the department of registration; nor shall he hold any license, certificate, permit, student card or apprentice card to work at or practice any such profession, trade or occupation; nor shall he have been engaged at any time in the practice of the same. (L. 23, p. 104, § 5.)

79-1-4. Id. To Enforce Laws.

The director shall enforce the laws relating to the practice of the several professions, trades or occupations which are or may be subject to the department of registration as in this title provided. (L. 21, p. 363, § 2 [f].)

79-1-5. Function Exercised by Director and Committees—Committees Enumerated.

The functions of the department of registration shall be exercised by the director of registration and, when so provided, in collaboration with and with the assistance of representative committees of the several professions, trades and occupations as follows:

(1) For accountants, a committee of three competent public accountants who shall have been engaged in the practice in this state for at least three years.

(5) An "operator" is a person, not an apprentice, who engages in and follows any of the practices of said classified occupations.

(6) An "instructor" is a person who gives instruction to apprentices.

(7) A "hairdressing, cosmetical, or electrologist shop" is any building or part thereof wherein such classified occupations are respectively practiced. (L. 27, p. 29, §§ 2, 3.)

79-8-13. Shops—License—Restricted Uses of Premises.

Any person who now or hereafter conducts a hairdressing, cosmetical or electrologist shop shall secure from the department of registration a license to conduct such shop, which shall be renewed annually. It shall be unlawful to use any such shop for sleeping or residential purposes. The building in which such shop is located must have a sign on the outer wall designating the same as hairdressing, cosmetical or electrologist shop, and the work must be done in a room set apart for that purpose, which shop must be open to public inspection every day of the week, excepting holidays, between the hours of nine o'clock a. m. and five o'clock p. m. (L. 27, p. 29, §§ 3, 11.)

Holidays, Title 37.

79-8-14. Diseased Persons Not to be Served.

No hairdresser, cosmetician or electrologist shall knowingly serve a person afflicted with any contagious or infectious disease, but it shall be his duty to report the case of any such person to the state board of health or local health officer. No person so afflicted shall be served or apply for service in any hairdressing, cosmetical or electrologist shop or school until he shall have first obtained a clean bill of health from a medical practitioner. The secretary of the state board of health shall have authority to fumigate at the expense of the person in charge any hairdressing, cosmetical or electrologist shop or school where any contagious or infectious disease has been contracted or where a person having such disease has been served. (L. 27, p. 29, § 4.)

Health regulations, 35-1-12 et seq.

79-8-15. Unprofessional Conduct Defined.

The words "unprofessional conduct" as relating to hairdressers, cosmeticians and electrologists are hereby defined to include:

(1) Habitual intemperance or excessive use of narcotics.

(2) Having a contagious or infectious disease.

(3) Gross incompetency.

(4) Extortion or overcharging.

(5) Keeping a shop or school, its furnishings, tools, utensils, linen or appliances in an insanitary condition.

(6) Failing to display cards and permits as herein provided.

(7) Violating any rule of the state board of health prescribing sanitary requirements for hairdressers, cosmeticians, electrologists shops or schools. (L. 27, p. 29, § 10.)

79-8-16. Id. Revocation of License—Reissue.

Any person whose license or apprentice card has been revoked for unprofessional conduct may after the expiration of a time to be fixed by the department of registration, which shall not be less than thirty nor more than ninety days, apply to the department to have the same reissued. (L. 27, p. 29, § 10.)

79-8-17. Barbering Excepted.

Nothing in this chapter contained shall prohibit barbers from carrying on the occupation of barbering. (L. 27, p. 29, § 14.)

CHAPTER 9

PRACTICE OF MEDICINE AND SURGERY and THE TREATMENT OF HUMAN AILMENTS

79-9-1. Qualifications.

Any resident of the state twenty-one years old who possesses the necessary qualifications of learning and ability may apply for a license to practice medicine or any of the other systems or methods of treating human ailments, or to practice obstetrics, within the state of Utah. (L. 21, p. 272, § 3.)

Committees for these several practitioners, 79-1-5 (9) (10) (11) (13).

79-9-2. Requirements From Applicants.

Every applicant for such license must:

(1) Produce satisfactory evidence of good moral character.

(2) Designate in his application whether he desires to practice medicine and surgery in all branches thereof or to treat human ailments without the use of drugs or medicine and without operative surgery. If he desires to treat human ailments without the use of drugs or medicines and without operative surgery, the designation shall be in accordance with the tenets of the professional school, college or institution of which he is a graduate.

(3) Have the preliminary and professional education hereinafter provided for.

(4) Pass a satisfactory examination as hereinafter provided. (L. 21, p. 272, §§ 2, 3.)

out the use of drugs or medicines and without operative surgery shall be of the same character as that required of those who desire to practice medicine and surgery in all branches thereof, excepting therefrom materia medica, therapeutics, surgery, obstetrics and theory and practice. If the applicant is a graduate of a professional school, college or institution in which the subject of obstetrics as taught therein is deemed equal to that taught in a medical college reputable and in good standing, he may on his request be examined in the subject of obstetrics. In the subject of theory and practice the applicant shall be examined in accordance with the theory and practice taught by the professional school, college or institution of which the applicant is a graduate. (L. 21, p. 272, § 8.)

79-9-14. Id. Of Applicants Licensed to Practice Without Drugs to Practice in All Branches.

Any person licensed to practice in any school or system of treating human ailments without the use of drugs or medicines and without operative surgery may take an examination to practice medicine and surgery in all branches thereof upon proof of having successfully completed a course of study such as is required for admission to an examination for a license to practice medicine and surgery in all branches thereof. In such case the applicant shall take an examination in therapeutics, materia medica, theory and practice, surgery and obstetrics only. If the applicant successfully passes such examination, a license to practice medicine and surgery in all branches thereof may be issued. (L. 23, p. 119, § 11.)

79-9-15. Id. When Dispensed With.

The department may in its discretion issue a license without examination to a physician who has the required preliminary and professional education and who has passed an examination for admission to the medical corps of the United States army or navy or the United States public health service or who has successfully passed an examination conducted by the National Board of Medical Examiners of the United States of America. (L. 25, p. 257, § 12 [6].)

79-9-16. Fees for License Without Examination.

Applications for license without examination shall be filed with the department on blanks prepared and furnished by it and shall be accompanied by a fee of $50.

(L. 25, p. 257, § 12 [6].)

79-9-17. Practicing Medicine Defined—Exceptions.

Any person who shall diagnose, treat or profess to treat, or prescribe or advise for, any physical or mental ailment of, or any physical injury to, or any deformity of, another; or who shall operate upon another for any ailment, injury or deformity, shall be regarded as practicing medicine or treating human ailments. But nothing in this section shall be construed to include the following cases:

(1) The administration of domestic or family remedies in case of emergency.

(2) The practice of dentistry or dental surgery by any legally licensed dentist exclusively engaged in practicing dentistry and dental surgery.

(3) The practice of pharmacy by legally registered pharmacists.

(4) The treatment of the sick or suffering by prayer or other spiritual means without the use of any drug or material remedy.

(5) The practice of optometry by any legally licensed optometrist exclusively engaged in such practice.

(6) The practice of chiropody by any legally licensed chiropodist.

(7) The practice of medicine and surgery by any surgeon of the United States army or navy or public health service, in the discharge of his official duties. (L. 21, p. 272, § 15.)

79-9-18. Unprofessional Conduct Defined.

The words "unprofessional conduct" as relating to the practice of medicine, or any other system of treating human ailments, or the practice of obstetrics, are hereby defined to include:

(1) Procuring, or aiding in or abetting, or offering or attempting to procure or aid in or abet the procuring of, a criminal abortion.

(2) Procuring any fee or recompense on the assurance that a manifestly incurable diseased condition of the mind or body can be permanently cured.

(3) Communicating without the consent of the patient information acquired in treating a patient necessary to enable one to act for such patient.

(4) Advertising, announcing or stating directly, indirectly or in substance, that the holder of any license issued under the rules and regulations of the department of registration, or that any other person, company or association by whom he is employed, will cure or attempt to cure or will treat any person or persons for lost manhood, sexual weakness or venereal diseases, or will cure or attempt to cure or treat any disorder or any disease of the sexual organs; or acting in the service of any person, firm, association or corporation so advertising, announcing or stating any of such things.

(5) Advertising in a way that is intended or has a tendency to deceive the public or to impose upon credulous or ignorant persons, or that may be harmful or injurious to public morals or safety.

TITLE 103
PENAL CODE

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1

DEFINITIONS, ETC.

103-1-1. Title Known as "Penal Code."

This title shall be known as the Penal Code. (C. L. 17, § 7891.)

103-1-2. Penal Statutes Not Strictly Construed.

The rule of the common law that penal statutes are to be strictly construed has no application to these revised statutes. The provisions of these revised statutes are to be construed according to the fair import of their terms with a view to effect the objects of the statutes and to promote justice. (C. L. 17, § 7892.)

Statutes in derogation of common law not strictly construed, 88-2-2.
Effect of repeal on prosecution of offenses already committed, 88-1-7, 8; 88-2-5.

Rule applied to municipal ordinances. Salina City v. Lewis, 172 P. 286, 52 U. 7.
Cited: State v. Sawyer, 182 P. 206, 54 U. 275.

103-1-3. Definitions.

Whenever the terms mentioned in this section are employed in this code they are employed in the senses hereafter affixed to them, except where a different sense plainly appears:

(1) The term "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law or to injure another or to acquire any advantage.

(2) The terms "neglect," "negligence," "negligent" and "negligently" import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own affairs.

(3) The term "corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

(4) The terms "malice" and "maliciously" import a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or by presumption of law.

Cited: State v. Inlow, 141 P. 530, 44 U. 485.
Ref. State v. Coleman, 82 P. 465, 29 U. 417.

(5) The term "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.

Applied: Skeen v. Chambers, 86 P. 492, 31 U. 36.

(6) The term "bribe" signifies any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given or accepted with a corrupt intent to influence unlawfully the person to whom it is given in his action, vote or opinion in any public or official capacity.

(7) When the term "person" is used in this code to designate the party whose property may be the subject of any offense, it includes this state, and any other state, government and country which may lawfully own any property within this state, and all public and private corporations, joint associations and partnerships, as well as individuals. (C. L. 17, § 7893.)

Construction of terms generally, 88-2-12.

Cited: State v. Coleman, 82 P. 465, 29 U. 417.

103-1-4. Intent to Defraud—Victim May Include a Body Corporate.

Whenever by any of the provisions of this code an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association or body politic or corporate whatever. (C. L. 17, § 7894.)

103-1-5. Criminal Liability Does Not Affect Civil Liability.

The omission to specify or affirm in this code any liability to damages, penalty or forfeiture, or other remedy imposed by law and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein does not affect any right to recover or enforce the same. (C. L. 17, § 7895.)

Civil and criminal remedies do not merge, 88-2-4.

103-1-6. Public Officers and Offices of Trust —Right of Removal or Forfeiture Not Affected.

The omission to specify or affirm in this code any ground of forfeiture of a public office, or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, does not affect such forfeiture or power, or any pro-

ARTICLE 3

PARTIES TO CRIME

103-1-42. Principals and Accessories.

Parties to crimes are classified as:

(1) Principals; and,

(2) Accessories.

(C. L. 17, § 7918.)

Compounding or concealing crimes, 103-26-58.
Principals and accessories; certain distinctions abolished, 105-21-24.
Principals without the state, 105-8-1.
Jurisdiction over principal and accessory, 105-8-6, 7.

103-1-43. Principals Defined.

All persons concerned in the commission of a crime, either felony or misdemeanor, whether they directly commit the act constituting the offense or aid and abet in its commission or, not being present, have advised and encouraged its commission, and all persons counseling, advising or encouraging children under the age of fourteen years, lunatics or idiots to commit any crime, and all persons who by fraud, contrivance or force occasion the drunkenness of another for the purpose of causing him to commit any crime, or who by threats, menaces, command or coercion compel another to commit any crime, are principals in any crime so committed.

(C. L. 17, § 7919.)

To advise and encourage a criminal act is in itself a crime. State v. McCornish, 201 P. 637, 59 U. 58.
Thief delivering property to one knowing it to have been stolen is a principal and hence an accomplice. State v. Coroles, 277 P. 203, 74 U. 94.
Ref. State v. King, 68 P. 418, 24 U. 482. State v. Morgan, 61 P. 527, 22 U. 162.

103-1-44. Accessories Defined.

All persons who, after full knowledge that a felony has been committed, conceal it from a magistrate, or harbor and protect the person who committed it, are accessories.

(L. 25, p. 201, § 7920.)

Compounding felony, 103-26-58.
Compromising offenses, 105-50.
Ref. 105-21-24.

103-1-45. Punishment of Accessories.

Except in cases where a different punishment is prescribed, an accessory is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding $5,000, or by both such fine and either of such imprisonments.

(C. L. 17, § 7921.)

Accessory may be tried and punished though principal not tried, or, if tried, acquitted, 105-21-25.

CHAPTER 2

ABORTION

103-2-1. Defined—Penalty.

Every person who provides, supplies or administers to any pregnant woman, or procures any such woman to take, any medicine, drug or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than two nor more than ten years.

(C. L. 17, § 8118.)

Conviction cannot be had on testimony of woman alone, 105-32-14.

103-2-2. Woman Producing Miscarriage on Self—Penalty.

Every woman who solicits of any person any medicine, drug or substance whatever, and takes the same, or who submits to any operation or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than one nor more than five years.

(C. L. 17, § 8119.)

Corroboration necessary, 105-32-14.

Contention in action on bail bond given by one charged with committing an abortion that no such crime was known to the law, held without merit. State v. Davis, 75 P. 857, 27 U. 368.
Intent—Like operation by defendant about same time may be shown to prove. State v. McCurtain, 172 P. 481, 52 U. 63.
Accomplice—Prosecutrix is not, although operation performed at her request and with her consent. State v. McCurtain, 172 P. 481, 52 U. 63.
Alleged father, present at operation is. State v. McCurtain, 172 P. 481, 52 U. 63.
Indictment and Information—See, State v. Carrington, 50 P. 526, 15 U. 480; State v. Crook, 51 P. 1091, 16 U. 212.
Defense—Necessary to save life. State v. McCurtain, 172 P. 481, 52 U. 63.
The negative is part of the corpus delicti, and the burden is upon the state. State v. Wells, 100 P. 681, 35 U. 400.
Presumption from no showing of ill health. State v. Wells, 100 P. 681, 35 U. 400.
Expert testimony as to whether or not operation was necessary to save life held competent. State v. McCoy, 49 P. 420, 15 U. 136.

CHAPTER 3

ABUSE OF PROCESS

103-3-1. In Justices' Court—Action in Wrong Venue.

Any party to any suit or proceeding, and any attorney or agent for such party, who knowingly commences, prosecutes or maintains any action, suit or proceeding in any justices' court, other than as provided by section 104-71-1, is guilty of a misdemeanor. (C. L. 17, § 8510.)

103-3-2. Id. Assuming Liability for Purpose of Conferring Jurisdiction.

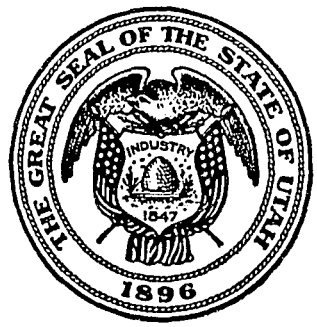
Any person who binds himself, or voluntarily becomes liable jointly or jointly and severally with any other person, for the purpose of conferring jurisdiction of any cause upon any justice of the peace in any precinct or city that would be without jurisdiction except for such liability of such joint obligor, and any person who induces such person to assume such liability

Exhibit G

THE

UTAH CODE ANNOTATED

1943



VOLUME 1

Published December 31, 1942, by
Authority of an Act of the Legislature
Effective January 2, 1943

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TITLE 79

DEPARTMENT OF REGISTRATION *

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Chapter 5. CHIROPODY.
Chapter 5a. CONTRACTORS.
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* **Validity of act.** This act is constitutional, and this was true even before 79-1-36 prescribed the course of appeal to the courts, and the time in which the appeal was to be taken. Nor was it invalid on the ground that its title was defective under Const. Art. VI, § 23. Baker v. Department of Registration, 78 U. 424, 3 P.2d 1082; Moormeister v. Golding, 84 U. 324, 27 P.2d 447.

Act held not unconstitutional as conferring judicial powers upon administrative body. State v. Waldram, 64 U. 406, 231 P. 431.

Act did not discriminate against chiropractor in favor of general practitioner and hence was not unconstitutional on that ground. State v. Waldram, 64 U. 406, 231 P. 431.

Territorial act, regulating practice of medicine, was legitimate exercise of police power and was not unconstitutional. People v. Hasbrouck, 11 U. 291, 39 P. 918.

CHAPTER 1

GENERAL PROVISIONS

79-1-1. Department to Administer Laws Relative to Trades, Occupations, etc.
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CHAPTER 9

PRACTICE OF MEDICINE AND SURGERY AND THE TREATMENT OF HUMAN AILMENTS *

79-9-1. Qualifications.
79-9-2. Requirements from Applicants.
79-9-3. License—Several Classes.
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79-9-6. Osteopaths — As Physician Only.
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79-9-8. Id. Treatment Without Drugs or Surgery.
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79-9-12. Id. Scope for Practice in All Branches.
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79-9-15. Id. When Dispensed with.
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79-9-19. Use of Antiseptics—Antidotes Permitted.
79-9-20. Fraud and Fraudulent Practices—Penalty.
79-9-21. Unauthorized Practice—Penalty.

L. 1939, ch. 95; eff. May 9.

NATUROPATHIC PHYSICIANS

79-9-22. Educational Requirements.
79-9-23. Conflicting Acts Repealed.

* **Validity of act.** The provisions of this chapter are constitutional. People v. Hasbrouck, 11 U. 291, 39 P. 918; State v. Waldram, 64 U. 406, 231 P. 431.

Legislature, in exercise of police power of state, has authority, for protection of health and safety of citizens, to determine and prescribe qualifications necessary to practice medicine, surgery, or obstetrics within state. Board of Medical Examiners v. Blair, 57 U. 516, 196 P. 221.

The right given to board of medical examiners to regulate practice of medicine is not for benefit or protection of members of medical fraternity, but rather for creation of method of procedure to protect health of community, and hence does not violate provision of Constitution prohibiting the granting of privileges. Board of Medical Examiners v. Blair, 57 U. 516, 196 P. 221.

79-9-1. Qualifications.

Any resident of the state twenty-one years old who possesses the necessary qualifications of learning and ability may apply for a license to practice medicine or any of the other systems or methods of treating human ailments, or to practice obstetrics, within the state of Utah.

(L. 21, p. 272, § 3.)

Comparable provisions.

Cal. Bus. and Prof. Code, § 2192, as amended by Laws of 1939 (stating required professional instruction of applicant for physician's and surgeon's certificate); § 2231, as amended by Laws of 1939 (stating required professional instruction of applicant for drugless practitioner's certificate).

Idaho Code, 1940 Supp., § 53-2102 (requiring persons, desiring to commence practice of medicine and surgery, to make written application to department of law enforcement).

Iowa Code 1939, § 2540 (stating requirements of applicant for license to practice medicine); § 2541 (state department of health may, with approval of medical examiners, accept in lieu of examination prescribed in section 2540 a certificate of examination issued by national board of medical examiners).

Mont. Rev. Codes, § 3116 (board of medical examiners); § 3118 (any person

State Board of Medical Examiners v. Terrill, 48 U. 647, 161 P. 451, Ann. Cas. 1918 B 1117.

A chiropractor is "practicing medicine" within the meaning of this section, at least where he "diagnoses" the symptoms of his patient. Board of Medical Examiners v. Freenor, 47 U. 430, 154 P. 941, applying Laws 1911, Ch. 93; State v. Erickson, 47 U. 452, 154 P. 948.

It is no answer under this section to say that system as practiced by defendant does no harm. Board of Medical Examiners v. Freenor, 47 U. 430, 154 P. 941.

2. "Domestic or family remedies."

In a proper case, it is the duty of the court to define what is meant by "domestic or family remedies." State v. Yee Foo Lun, 45 U. 531, 147 P. 488.

The court should instruct the jury, in prosecution for practicing medicine without a license, as to the meaning of "domestic or family remedies" as used in subdivision (1). State v. Yee Foo Lun, 45 U. 531, 147 P. 488.

The question whether various herbs sold by defendant, under prosecution for practicing medicine without a license, were "domestic family remedies," is mixed question of law and fact; therefore court properly refused to instruct that such herbs were "domestic family remedies," as a matter of law. State v. Yee Foo Lun, 45 U. 531, 147 P. 488.

A concoction or compound of ginseng, cinnamon, licorice, sarsaparilla, etc., can neither in law nor in fact be regarded as a "domestic family remedy." State v. Yee Foo Lun, 45 U. 531, 147 P. 488.

3. Christian Science.

Subdivision (4) would seem to have reference to Christian Science. See Board of Medical Examiners v. Freenor, 47 U. 430, 447, 154 P. 941.

4. Masseur.

Under former statute it was said that one claiming to be a mere "masseur" or "scientific manipulator" was not practicing medicine, because mere "massaging" is not within meaning of statute "diagnosing, treating, operating upon or prescribing or advising for any physical or mental ailment or abnormal condition of another." State Board of Medical Examiners v. Terrill, 48 U. 647, 161 P. 451, Ann. Cas. 1918 B 1117.

5. Chiropractor.

Treatment of workman's wrenched spine by chiropractor held practicing medicine within scope of chiropractor's license. Shober v. Industrial Commission, 92 U. 399, 68 P.2d 756.

Chiropractic treatment of workman who wrenched his back held medical services for which claim was allowable under Compensation Act. Shober v. Industrial Commission, 92 U. 399, 68 P.2d 756.

6. Information for practicing without use of drugs or medicine.

The complaint is sufficient if it clearly and definitely describes the offense; it need not contain statutory definition. The information should charge the same offense described in complaint, and preserve its identity. State v. Waldram, 64 U. 406, 231 P. 431.

Prior to the 1935 amendments to the Code of Criminal Procedure, complaint and information charging a violation of this section had to advise accused as to whom, for what ailment, and in what manner he was charged with treating. State v. Hale, 71 U. 134, 263 P. 86.

Particularly since the passage of Laws 1935, Ch. 118, and information for violation of the provisions of this chapter is sufficient if it states the acts constituting the offense in such language and in such manner as to enable defendant to understand what was intended and what by the information it was claimed he did and what acts were committed by him. State v. Bradford, 74 U. 506, 280 P. 733.

A complaint and the information should properly charge that treatment was that of an ailment of someone other than the defendant, but it would seem to be sufficient, in light of 105-21-8, to charge the offense in the language of this section, though prior to repeal of R. S. 1933, 105-21-3, it was held to be insufficient to charge the offense in the language of the statute. See State v. Hale, 71 U. 134, 263 P. 86.

A. L. R. notes.

Electrical treatment as practice of medicine or surgery within statute, 115 A. L. R. 957; optometry as within statute relating to practice of medicine, 22 A. L. R. 1173.

79-9-18. Unprofessional Conduct Defined.

The words "unprofessional conduct" as relating to the practice of medicine, or any other system of treating human ailments, or the practice of obstetrics, are hereby defined to include;

(1) Procuring, or aiding in or abetting, or offering or attempting to procure or aid in or abet the procuring of, a criminal abortion.

(2) Procuring any fee or recompense on the assurance that a manifestly incurable diseased condition of the mind or body can be permanently cured.

(3) Communicating without the consent of the patient information acquired in treating a patient necessary to enable one to act for such patient.

(4) Advertising, announcing or stating directly, indirectly or in substance, that the holder of any license issued under the rules and regulations of the department of registration, or that any other person, company or association by whom he is employed, will cure or attempt to cure or will treat any person or persons for lost manhood, sexual weakness or venereal diseases, or will cure or attempt to cure or treat any disorder or any disease of the sexual organs; or acting in the service of any person, firm, association or corporation so advertising, announcing or stating any of such things.

(5) Advertising in a way that is intended or has a tendency to deceive the public or to impose upon credulous or ignorant persons, or that may be harmful or injurious to public morals or safety.

(6) Advertising medicine or means whereby the monthly periods of women can be regulated or the menses reëstablished if suppressed.

(7) Habitual intemperance or excessive use of narcotics.

(8) Lending one's name to be used as a physician or surgeon by another person who is not licensed to practice in this state.

(9) Street advertising or the public peddling or selling of medical or surgical remedies or appliances in person or by proxy.

(10) Prescribing morphine or cocaine or other narcotics, with intent that the same shall be used otherwise than medicinally, or with intent to evade any law in relation to the sale, use or disposition of such drugs.

(11) Prescribing intoxicating liquor to be used as a beverage.

(12) Willfully violating the law in regard to the registration of births and deaths and the report of infectious diseases.

(13) Diagnosing or treating a case of venereal disease and failing to make report thereof to the health authorities in such form and manner as the state board of health shall direct.

(14) Treating venereally infected individuals and failing to fully inform such persons of the danger of transmitting the disease to others, and failing to advise against marriage by the person who has such disease in a communicable form.

(15) Advertising or professing publicly to treat human ailments under a system or school of treatment or practice other than that for which he holds a license.

(16) Willfully violating the rules and regulations of the department of registration governing examinations.

(17) Using fraud or deceit to secure a license to practice.

(L. 25, p. 257, § 17; L. 19, p. 135, §§ 2, 3.)

Cross-references.

Prescription of narcotics, 79-10a-14 et seq.; for minors, 103-40-4; prescription of intoxicants, 46-0-108, 46-0-109, 46-0-230; intoxication of physician, 103-44.

criminal purposes, 108 A. L. R. 331; responsibility of persons participating in jail delivery for homicide committed by one of their number, 15 A. L. R. 456.

103-1-44. Accessories Defined.

All persons who, after full knowledge that a felony has been committed, conceal it from a magistrate, or harbor and protect the person who committed it, are accessories. (L. 25, p. 201, § 7920.)

History.

This section is practically identical with Comp. Laws 1876, § 1856; 2 Comp. Laws 1888, p. 563, § 4391; R. S. 1898, § 4075; Comp. Laws 1907, § 4075.

Comparable provisions.

Cal. Penal Code, § 32 (person who, after felony has been committed, harbors, conceals or aids principal with intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that principal has committed such felony or has been charged therewith or convicted thereof, is accessory to such felony).

Idaho Code, § 17-205, Mont. Rev. Codes, § 10733 (similar; "* * * or harbor and [Idaho] or [Mont.] protect the person charged with or convicted thereof, are accessories").

Cross-references.

Compounding felony, 103-26-58; compromising offenses, 105-50; principals and accessories, 105-21-39.

1. Accessory after the fact.

One who is a principal cannot be an accessory after the fact. A person is an accessory after the fact only after he has full knowledge that a felony has been committed and then conceals that knowledge from a magistrate, or harbors and protects the person charged or connected therewith. People v. Chadwick, 7 U. 134, 138, 25 P. 737. See also 103-1-43.

2. Evidence on trial of accessory.

Where accessory is brought to trial after principal has been tried and convicted, record of conviction is prima facie proof of principal's guilt, and that crime charged has been committed, and is admissible to show those facts. State v. Justesen, 35 U. 105, 99 P. 456.

3. Witness upon prosecution.

Witness in burglary prosecution held not an accomplice as far as the corroboration of his testimony might go, although he might have been an accessory after the fact or the receiver of stolen property. State v. Bowman, 92 U. 540, 70 P.2d 458, 111 A. L. R. 1393.

103-1-45. Punishment of Accessories.

Except in cases where a different punishment is prescribed, an accessory is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding $5,000, or by both such fine and either of such imprisonments. (C. L. 17, § 7921.)

Comparable provisions.

Cal. Penal Code, § 33, Mont. Rev. Codes, § 10734 (similar; not exceeding two years in county jail; the following words are omitted: "or by both such fine and either of such imprisonments").

Cross-references.

Accessory may be tried and punished though principal not tried, or, if tried, acquitted, 105-21-40; intoxicating liquor offenses, 46-0-243.

CHAPTER 2

ABORTION

103-2-1. Defined—Penalty.
103-2-2. Woman Producing Miscarriage on Self—Penalty.

103-2-1. Defined—Penalty.

Every person who provides, supplies or administers to any pregnant woman, or procures any such woman to take, any medicine, drug or sub-

stance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than two nor more than ten years.

(C. L. 17, § 8118.)

History.

This section is practically identical with Comp. Laws 1876, § 1972; 2 Comp. Laws 1888, § 4507; R. S. 1898, § 4226; Comp. Laws 1907, § 4226.

Comparable provisions.

Cal. Penal Code, § 274 (substantially identical, except as to being worded in part: "* * * nor more than five years"; word "pregnant" is omitted).

Idaho Code, § 17-1810, Mont. Rev. Codes, § 11023 (identical, except as reading in part: "* * * nor more than five years").

Iowa Code 1939, § 12973 (similar in purport).

Cross-references.

Conviction cannot be had on testimony of woman alone, 105-32-14.

1. Status of crime.

Contention in action on bail bond given by one charged with abortion, that no such crime was known to law of state, was without merit. State v. Davis, 27 U. 368, 75 P. 857.

2. Words and phrases defined.

As generally used and understood in common language, "procuring abortion" means substantially same as "procuring miscarriage," and former statutes, when construed together, recognized quoted phrases as having practically same meaning in characterizing crime. State v. Crook, 16 U. 212, 51 P. 1091.

Criminal act of destroying foetus at any time before birth is usually termed in law "procuring miscarriage." State v. Crook, 16 U. 212, 51 P. 1091.

3. Operation to save woman's life.

In prosecution for abortion, the fact that woman was unmarried and that defendant had illicit sexual intercourse with her, held insufficient to show that operation was not necessary to save woman's life. State v. Wells, 35 U. 400, 100 P. 681, 136 Am. St. Rep. 1059, 19 Ann. Cas. 631.

In abortion prosecution where state proved that abortion was not necessary to save life of prosecutrix, admission of evidence of other abortions committed upon other women was incompetent, irrelevant, and reversible error. State v. Cragun, 85 U. 149, 38 P.2d 1071. (Folland, J., dissenting.)

Where it is shown that woman was healthy and in normal condition, and medicine was administered to her, or operation performed upon her to produce miscarriage, evidence is sufficient to raise inference, and to find fact, that production of miscarriage was not necessary to save woman's life, or that it is sufficient where it is shown that there was nothing in condition of woman to indicate any necessity for procured miscarriage, and negative in the information need not be shown by direct or positive evidence, but may be shown by circumstantial evidence. State v. Wells, 35 U. 400, 410, 100 P. 681, 136 Am. St. Rep. 1059, 19 Ann. Cas. 631.

Of course the testimony of expert medical witnesses may be introduced upon question whether it was necessary to produce abortion to save life of deceased. State v. McCoy, 15 U. 136, 49 P. 420.

4. Pleading and proof.

5. — in general.

It is essential for state to allege and prove that production of miscarriage was not necessary to save woman's life, and burden of proving such fact is upon state. State v. Wells, 35 U. 400, 100 P. 681, 136 Am. St. Rep. 1059, 19 Ann. Cas. 631.

6. — complaint and information.

Charge in complaint and information that defendant did specified things with intent to procure "miscarriage" of pregnant woman, instead of with intent to procure "abortion," held within terms of former statute which was similar to this section. State v. Crook, 16 U. 212, 51 P. 1091.

Where, upon indictment for murder, allegations are made concerning abortion and miscarriage, as well as respecting drugs and instruments used to procure the miscarriage, such statements do not constitute a separate and distinct charge, but are merely statements showing means used in perpetration of murder. State v. Carrington, 15 U. 480, 484, 50 P. 526.

7. Accomplices and accessories.

Person on whom criminal operation is performed, either at her request or with her consent, is not accomplice. State v. McCurtain, 52 U. 63, 172 P. 481.

In prosecution for abortion, wherein it appeared that father of child with which

prosecutrix was pregnant testified respecting operation, held court erred in not instructing jury what, under statute, constitutes an accomplice, and that if they found that witness was an accomplice within purview of statute they should not convict defendants unless testimony was corroborated as required. State v. McCurtain, 52 U. 63, 172 P. 481.

In abortion prosecution, contention of defendant that prosecutrix, in voluntarily submitting to abortion, was accomplice, and hence, that he could not be convicted upon her testimony, was held without merit, since voluntarily committing abortion on one's self is distinct offense under 103–2–2, and not part of this section, and such person could not be convicted as accomplice under this section. State v. Cragun, 85 U. 149, 38 P.2d 1071.

8. Evidence.

For purpose of proving that operation was, in fact, criminal, and as showing intent of accused, state may show that similar operations were performed upon other pregnant women. State v. McCurtain, 52 U. 63, 172 P. 481.

In abortion prosecution, testimony of mother of prosecutrix that she accompanied prosecutrix to defendant's office and saw him use instrument for purpose of producing abortion was sufficient to corroborate testimony of prosecutrix. State v. Cragun, 85 U. 149, 38 P.2d 1071.

A. L. R. notes.

Criminal responsibility of one other than subject or actual perpetrator of abortion, 4 A. L. R. 351; pregnancy as element of offense of attempt to procure a miscarriage or of homicide predicated on such attempt, 10 A. L. R. 314; prosecution for abortion, admissibility of evidence of other abortions or attempted abortions by accused on same woman, 39 A. L. R. 106; right of action for injury to, or death of, woman who consents to illegal or immoral operation, 49 A. L. R. 960.

103–2–2. Woman Producing Miscarriage on Self—Penalty.

Every woman who solicits of any person any medicine, drug or substance whatever, and takes the same, or who submits to any operation or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than one nor more than five years. (C. L. 17, § 8119.)

History.

This section is practically identical with R. S. 1898, § 4227; Comp. Laws 1907, § 4227.

Comparable provisions.

Cal. Penal Code, § 275, Idaho Code, § 17–1811, Mont. Rev. Codes, § 11024 (identical).

Cross-references.

Corroboration necessary, 105–32–14.

1. Woman as accomplice.

In abortion prosecution, contention of defendant that prosecutrix, in voluntarily submitting to abortion, was accomplice, and hence, that he could not be convicted upon her testimony, was held without merit, since voluntarily committing abortion upon one's self is distinct offense under this section and not part of 103–2–1, and such person could not be convicted as accomplice under latter section. State v. Cragun, 85 U. 149, 38 P.2d 1071.

CHAPTER 3

ABUSE OF PROCESS

103–3–1. In Justices' Court—Action in Wrong Venue.
103–3–2. Id. Assuming Liability for Purpose of Conferring Jurisdiction.
103–3–3. Id. Wrongful Attachment—Liability.

Attachment 4

Constitutional provision	Text in 1896	Text in 2022
Article I, § 1	[**Inherent and inalienable rights.**] All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.	**[Inherent and inalienable rights.]** All ~~men~~ persons have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.
Article I, § 2	[**All political power inherent in the people.**] All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.	No change
Article I, § 4	[**Religious liberty.**] The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of	**[Religious liberty.]** The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no

	religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment. No property qualification shall be required of any person to vote, or hold office, except as provided in this Constitution.	union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment. ~~No property qualification shall be required of any person to vote, or hold office, except as provided in this Constitution.~~ (Deleted text moved to art. IV, §7)
Article I, § 7	[**Due process of law.**] No person shall be deprived of life, liberty or property, without due process of law.	No change
Article I, § 11	[**Courts open. Redress of injuries.**] All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.	**[Courts open -- Redress of injuries.]** All courts shall be open, and every person, for an injury done to ~~him~~ the person in his or her person, property, or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, ~~by himself~~ with or without counsel, any civil cause to which ~~he~~ the person is a party.

Article I, § 14	***[Unreasonable searches forbidden -- Issuance of warrant.]*** The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.	No change
Article I, § 24	[**Uniform operation of laws.**] All laws of a general nature shall have uniform operation.	No change
Article I, § 25	[**Rights retained by people.**] This enumeration of rights shall not be construed to impair or deny others retained by the people.	No change
Article I, § 27	[**Fundamental rights.**] Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.	No change
Article IV, § 1	[**Equal political rights.**] The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges.	No change.