

CASE NO. \_\_\_\_\_

JEFFERSON CIRCUIT COURT  
DIVISION \_\_\_\_\_  
JUDGE \_\_\_\_\_

LISA SOBEL  
LOUISVILLE, KY 40241

PLAINTIFF

and

JESSICA KALB  
LOUISVILLE, KY 40241

and

SARAH BARON  
LOUISVILLE, KY 40207

v.

**COMPLAINT FOR DECLARATORY RELIEF**

DANIEL CAMERON, in his official  
Capacity as Attorney General of the  
Commonwealth of Kentucky;

DEFENDANT

SERVE: Office of the Attorney General  
700 Capitol Avenue, Suite 118  
Frankfort, KY 40601  
servethecommonwealth@ky.gov

and

THOMAS B. WINE, in his official capacity  
as Commonwealth's Attorney for the 30<sup>th</sup>  
Judicial Circuit of Kentucky

DEFENDANT

SERVE: Office of the Commonwealth's Attorney  
514 West Liberty Street  
Louisville, KY 40202  
tbwine@louisvilleprosecutor.com

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## **PARTIES**

### **Plaintiffs**

1. Plaintiff, Lisa Sobel, is a resident of Jefferson County, Kentucky.
2. Plaintiff, Jessica Kalb, is a resident of Jefferson County, Kentucky.
3. Plaintiff, Sarah Baron, is a resident of Jefferson County, Kentucky.
4. Plaintiff, Lisa Sobel, is a thirty-eight-year-old Jewish mother who is a member of The Temple, Congregation Adath Israel Brith Sholom in Louisville, Kentucky.
5. Lisa's husband is an employee of The Temple, Congregation Adath Israel Brith Sholom in Louisville, Kentucky.
6. Lisa and her husband are both Jewish and need genetic counseling as both Lisa and her husband suffer from medical conditions that do not allow them to get pregnant without in vitro fertilization (hereinafter, "IVF").
7. Lisa and her husband underwent two rounds of IVF with their first and only child.
8. Jessica Kalb is a thirty-two-year-old Jewish mother who was raised in the Jewish tradition and is raising her daughter in the Jewish tradition.
9. Jessica Kalb has one child that was conceived using IVF. Jessica has nine (9) cryopreserved ("frozen") embryos in the event she chooses to have more children. She does not plan on having nine (9) more children using the embryos currently cryopreserved and she has not decided whether to discard the excess embryos or donate them.
10. Sarah Baron is a thirty-seven-year-old Jewish mother of two children who is a board member at Adath Jeshurun synagogue in Louisville, KY.

11. Sarah is of advanced maternal age and faces many risk factors if she chooses to have a third child. Individuals of Ashkenazi Jewish ancestry have a heightened risk of passing on genetic anomalies, like Tay-Sachs disease, for which there is no cure and the average lifespan of those with the condition is four years of age. Kentucky's current law related to reproduction has discouraged Sarah from having more children.

### **Defendants**

12. Defendant Daniel Cameron is the Attorney General of the Commonwealth of Kentucky. Under Kentucky law, Defendant Cameron "may seek injunctive relief as well as civil and criminal penalties in courts of proper jurisdiction to prevent, penalize, and remedy violations of ..... KRS 311.710 to 311.830."

13. Under Kentucky law, KRS 15.200, Defendant Cameron may intervene, participate in, or direct any investigation or criminal action, or portions thereof, within the Commonwealth of Kentucky necessary to enforce the laws of the Commonwealth.

14. Defendant Thomas B. Wine serves as the Commonwealth's Attorney for the 30<sup>th</sup> Judicial Circuit of Kentucky. In this capacity, Defendant Wine has authority to enforce criminal felony penalties in Jefferson County, Kentucky where Plaintiffs are located.

### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over this action pursuant to Sections 109 and 112 of the Kentucky Constitution and KRS 23A.010.

16. Plaintiffs' claims for declaratory relief are authorized by KRS 418.040, KRS 418.045, CR 57, and the general legal and equitable powers of this Court.

17. Venue is appropriate in this Court pursuant to KRS 452.005 because this is a civil action that challenges the constitutionality of Kentucky statutes and that seeks declaratory relief

against individual state officials in their official capacities, and all three Plaintiffs reside in Jefferson County.

18. Pursuant to KRS 418.075(1) and KRS 452.005(3), notice of this action challenging the constitutionality of enactments of the General Assembly is being provided to the Attorney General, who is also a defendant in this action, by serving copies of the Complaint upon him.

### **FACTUAL ALLEGATIONS – IN VITRO FERTILIZATION**

19. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth with particularity herein.

20. IVF is a procedure used to assist with pregnancy wherein a human egg is fertilized with sperm in a laboratory and then implanted in the uterus. If the fertilized egg successfully implants in the uterus, a pregnancy will result.

21. The IVF process often results in surplus embryos, wherein more embryos are fertilized than will be implanted in the mother. These embryos may be kept frozen at high costs or discarded by the clinics at the consent of the donors.

22. Under KRS 311.720(8), a “human being” means any member of the species homo sapiens from fertilization until death. Under KRS 311.7701 and KRS 311.781(1), “Fertilization” means the fusion of a human spermatozoon with a human ovum. Under KRS 311.7701 and KRS 311.781(9) an “Unborn child” means an individual organism of the species homo sapiens from fertilization until live birth.

23. Under KRS 507A.020 (1) A person is guilty of fetal homicide in the first degree when (a) with intent to cause the death of an unborn child or with the intent to commit an offense

under KRS 507.020(1)(a), he causes the death of an unborn child . . . (2) Fetal homicide in the first degree is a capital offense.

24. It is common practice for a couple who has undergone IVF to choose to discard their embryos.

25. It is unclear whether under Kentucky law choosing to discard embryos during IVF is a prohibited capital offense.

#### FACTUAL ALLEGATIONS – ABORTION LAW

26. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth with particularity herein.

27. Following the US Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, (U.S. June 24, 2022), KRS 311.772 (the "Trigger Ban") has prevented any abortion in Kentucky except in very narrow emergency circumstances after the detection of fetal cardiac activity.

28. KRS 311.7704 requires a determination of whether there is a fetal cardiac activity.

29. Fetal cardiac activity is a subjective determination and has little to no relationship with scientific understanding of fetal development.

30. KRS 311.705 makes it a felony to "terminate" a pregnancy if cardiac activity is detected.

31. The only exceptions, under KRS 311.7706, to having an abortion after the presence of cardiac activity is to (1) prevent the pregnant patient's death, or (2) to prevent a "substantial and irreversible impairment of a major bodily function." This cardiac activity ban contains no exceptions for rape, incest, mental health of the pregnant person, or viability of the fetus.

32. All of the statutes relating to abortion under KRS 311 (hereinafter the “Abortion Law,”) are internally contradictory, vague, and unintelligible.

### **FACTUAL ALLEGATIONS – JEWISH LAW**

33. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth with particularity herein.

34. Judaism has never defined life beginning at conception. Jewish views on the beginning of life originate in the Torah (called in Christian tradition, the “Old Testament,”) e.g., Book of Exodus, 21:22-3, which was compiled thousands of years ago. Millenia of commentary from Jewish scholars has reaffirmed Judaism's commitment to reproductive rights.

35. Under Jewish law, a fetus does not become a human being or child until birth. Under no circumstances has Jewish law defined a human being or child as the moment that a human spermatozoon fuses with a human ovum.

36. The question of when life begins for a human being is a religious and philosophical question without universal beliefs across different religions.

37. Judaism has never made any distinction related to the moment that an egg is fertilized or the moment cardiac activity may be detected.

38. Jewish law stresses the necessity of protecting birth givers in the event a pregnancy endangers the woman’s life and causes the mother physical and mental harm. Harm includes but is not limited to rape, incest, or the case of a significant fetal anomaly.

39. Plaintiff’s religious beliefs demand that they have more children through IVF, yet the law forces Plaintiffs to spend exorbitant fees to keep their embryos frozen indefinitely or face potential felony charges. This dilemma forces Plaintiffs to abandon their sincere religious beliefs

of having more children by limiting access to IVF and substantially burdens their right to freely exercise these sincerely held religious beliefs.

**FACTUAL ALLEGATIONS – SECTARIAN CHRISTIAN  
THEOLOGICAL BASIS FOR ABORTION LAW**

40. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth with particularity herein.

41. In a recent order on the pending matter *EMW Womens' Surgical Center, et al. v. Daniel Cameron*, Jefferson County Circuit Court Judge Mitch Perry wrote, the notion “that life begins at the very moment of fertilization. . . is a distinctly Christian and Catholic belief. . .” No. 22-CI-3225, Opinion and Order Granting Temporary Injunction. Moreover, this religious belief is of relatively recent provenance.

42. As late as 1869, when the Papacy issued *Apostolicae Sedis moderationi*, even the Catholic Church differentiated between early and late term abortions, only viewing late term abortion as “murder.”

43. When the Church changed its view in the Nineteenth Century, some two-thousand five hundred (2,500) years or more after the Jewish views on reproductive rights were promulgated, the Catholic Church officially adopted the view that life begins at conception. Even by this late date, many Protestant sects did not agree.

44. In 1971, more than a century after *Apostolicae Sedis moderationi*, the Southern Baptist Convention, which represents the largest Protestant sect in America, adopted a resolution demanding legal abortion under certain conditions, including some conditions not exempted from Kentucky's abortion ban. “How Southern Baptists Became Pro-Life,” David Roach, <https://www.baptistpress.com/resource-library/news/how-southern-baptists-became-pro-life/>, accessed 9/22/22.

45. In 1973, W.A. Criswell, former president of the Southern Baptist Convention (“SBC”), praised the Court’s decision in *Roe v. Wade*, writing, “I have always felt that it was only after a child was born and had a life separate from its mother that it became an individual person, and it has always, therefore, seemed to me that what is best for the mother and for the future should be allowed.” *Id.*

46. Fifty years later, the SBC holds very different views on abortion. The changes of the last fifty years relate to the “Culture Wars,” a period of reactionary backlash to the dramatic sociopolitical changes in America during the latter half of the Twentieth Century. During these Culture Wars, figures such as Jerry Falwell organized groups like the Moral Majority to militate against social changes such as desegregation. By the end of the 1970s, these groups began to focus their ire against abortion, signaling a sectarian change in evangelical theology relating to reproductive rights.

47. Although groups such as the SBC had previously seen opposition to abortion as a Catholic issue, the Culture Wars brought the political stance into the evangelical fold. In 1979, Presbyterian evangelical Francis Schaeffer began screening his influential pro-life film, *Whatever Happened to the Human Race?*, to evangelical churches across the nation. In 1981, he published *A Christian Manifesto*, which called on evangelicals to use civil disobedience to protest abortion. Five years later, in 1986, Operation Rescue began the now-familiar tactic of preaching and protesting outside abortion clinics. By the 1990s, anti-abortion views were cornerstone political beliefs of sectarian evangelical Christianity.

48. A recent survey demonstrates the critical role of anti-abortion politicking to modern sectarian evangelical theology: while close to half of American evangelicals deny the divinity of Jesus, and about two thirds of American evangelicals deny original sin, less than ten percent of



American evangelicals question whether abortion is a sin. *The State of Theology*, Ligonier Ministries, <https://thestateoftheology.com/>, accessed 9/22/22. The divinity of Jesus and the nature of original sin are traditionally important elements of evangelical Christianity. *Id.* However, based on the surveyed beliefs of evangelicals, it appears that anti-abortion activism is a more important theological element to some sectarians than the nature of God or the human relationship to God.

49. Kentucky's Abortion Law is a product of this sectarian movement.

50. The Abortion Law bans are alien to traditional Kentucky legal attitudes toward the regulation of abortion: until the Culture Wars, regulation of abortion in Kentucky, as well as every other state that regulated abortion, was focused on the safety of the procedure to the potential birth giver, and abortion bans were passed only to protect the potential birth giver's life from a then-unsafe surgical procedure. Buell, Samuel (January 1, 1991). "Criminal Abortion Revisited". *New York University Law Review*. 66 (6): 1774–1831.

51. Kentucky's contemporary Abortion Law is focused on preservation of ova and blastocysts on the basis of a religious understanding of fetal personhood. The views on life-at-conception endorsed by the Abortion Law are the sectarian beliefs of the groups discussed above.

### **Count I Void for Vagueness**

52. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth with particularity herein.

53. In passing a restrictive criminal statute infringing religious rights that is so vague that ordinary people such as Plaintiffs cannot understand what conduct is prohibited, the Kentucky legislature has passed a law that is void for vagueness, violating the principles of Due

Process under the Fifth and Fourteenth Amendments and the rights conferred by the First Amendment.

54. People's reproductive lives and decisions are complex and variegated. There is no "one size fits all" approach to reproduction. Kentucky's Abortion Law flattens the reproductive experience into non-scientific falsehoods such as a "fetal heartbeat" and penalizes potential birth givers with a felony if they guess wrong as to what the law is "supposed" to mean.

55. Plaintiff Kalb currently has nine (9) preserved blastocysts in cold storage. She does not know what regulations she must follow, how she will be penalized for terminating them if she does so, or whether she is responsible for paying for their preservation indefinitely.

56. Plaintiffs cannot reproduce without access to IVF treatment. IVF treatment frequently involves at least one nonviable pregnancy. Plaintiffs do not know whether they must carry every dead fetus to miscarriage, or whether they may conceive using this method knowing it may involve a nonviable pregnancy. Plaintiffs cannot determine whether they are prevented from having children at all.

57. The Abortion Law's soft language regarding IVF, i.e., KRS 311.715, is misleading: while the procedure itself has some basic protection under blackletter, the disposal of blastocysts, ova, etc., has none, nor is the termination of a nonviable fetus protected under law. Both of these outcomes are strong possibilities for any IVF patient, and without legal protections for these medical procedures, IVF becomes legally dangerous if not impossible.

58. The Abortion Law does not impose clear standards, rules, or regulations regarding the potential experiences of potential birth givers with regards to their access to reproductive technology. A criminal statute must "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited[.]" *Kolender v. Lawson*, 461 U.S.

352, 357 (1983). A “statute [must] provide fair notice by containing sufficient definiteness so that ordinary people can understand what conduct is prohibited. In addition, a “statute [must] be worded in such a manner so as not to encourage arbitrary or discriminatory enforcement.” *Wilfong v. Commonwealth*, 175 S.W.3d 84, 95 (Ky. Ct. App. 2004).

59. Where "the intent of [a statute] is so obscure that any effort to ascribe some rational meaning to it would be based solely on conjecture," *Burke v. Stephenson*, 305 S.W.2d 926, 929 (Ky. 1957), that statute is void for vagueness.

60. “The void-for-vagueness doctrine is most often applied in the context of the First Amendment, the criminal law, and punitive civil laws.” *Bd. of Trs. of the Judicial Form Ret. Sys. v. AG*, 132 S.W.3d 770, 778 (Ky. 2003). The Abortion Law includes a felony criminal penalty for uncertain acts involving reproductive rights. Further, because this law infringes on the religious rights of Plaintiffs (Counts III, IV, V), the First Amendment is implicated.

61. The remedy for such vagueness is to void the statute. *E.g.*, *Commonwealth v. Looper*, 294 S.W.3d 39, 43 (Ky. Ct. App. 2009).

## **Count II Void for Unintelligibility**

62. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth with particularity herein.

63. In passing a restrictive statute so vague that people upon whom it is designed to operate cannot understand it, and about which the courts cannot deduce the legislative will behind it, the Kentucky legislature abrogated its duty to legislate to executive branch prosecutors and judicial branch judges, in violation of § 27, 28, and 29 of the Kentucky Constitution.

64. The Kentucky Legislature was intentionally vague in crafting the Abortion Law. The purpose of this vagueness was to avoid negative political fallout, provide a path for the

further erosion of reproductive rights, and spread culpability for their ultimately unpopular attempt to control women, to those they would task with crafting, enforcing, and interpreting their vague law: Commonwealth's Attorneys and county Circuit Judges.

65. Due to this intentional vagueness, Kentucky will ultimately have a patchwork of reproductive technology access practices and byways that vary from county to county, and from circuit to circuit. Each prosecutor in the state may interpret this law in any way they see fit, may prosecute any potential birth giver they see fit to prosecute, and may punish any woman for any real or imagined infraction to an embryo, blastocyst, ovum, or fetus. The only check on this patchwork erosion of human rights is the state judiciary, which is now unconstitutionally tasked with writing abortion law in the state.

66. "Certain [] provisions meant to favor a powerful special interest are intentionally written in obscure styles. The obscurity not only limits the benefit of such provisions to the narrow interest group, it also makes it less likely that the public at large will discover, understand and criticize the favor." Edward J. McCaffery, *The Holy Grail of Tax Simplification*, 1990 Wis. L. Rev. 1267, 1284-85 (1990), cited in *Bd. of Trs. of the Judicial Form Ret. Sys. v. AG*, 132 S.W.3d 770, 780 (Ky. 2003).

67. Even if the legislature's Abortion Law was not intentionally unintelligible, the Abortion Law is nevertheless so unintelligible as to be void: intentionality is not a requirement for Plaintiff to prevail on this claim, merely unintelligibility. As stated in Count I, Plaintiffs cannot discern what they may or may not do with their own bodies under the Abortion Law.

68. "[W]here the law-making body, in framing the law, has not expressed its intent intelligibly, or in language that the people upon whom it is designed to operate or whom it affects can understand, or from which the courts can deduce the legislative will, the statute will be

declared to be inoperative and void.” *Folks v. Barren Cty.*, 232 S.W.2d 1010, 1013 (1950). Thus, the remedy for such an unintelligible law is to void the statute. *Id.*

**Count III**  
**The Abortion Law Violates the Kentucky**  
**Religious Freedom Restoration Act**

69. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth with particularity herein.

70. The Kentucky Religious Freedom Restoration Act, KRS 446.350 ("KRFRA"), states that "[g]overnment shall not substantially burden a person's freedom of religion" unless the government "proves by clear and convincing evidence that it has a compelling governmental interest in infringing the specific act or refusal to act and has used the least restrictive means to further that interest." KRS 446.350.

71. In short, the KRFRA imposes strict scrutiny on all government actions that "substantially burden a person's freedom of religion." *Id.*

72. The KRFRA defines a "burden" as including "indirect burdens such as withholding benefits, assessing penalties, or an exclusion from programs or access to facilities." *Id.*

73. The KRFRA is "equivalent" to the federal Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb et seq. *Moorish Sci. Temple of Am., Inc. v. Thompson*, No. 2014-CA-001080-MR, 2016 WL 1403495, at \*4 (Ky. App. Apr. 8, 2016). Like RFRA, the KRFRA "is a codification by the legislature of the strict scrutiny test applied in case law." *Id.* Because the statutes are substantially similar, cases interpreting RFRA are instructive in interpreting the KRFRA.

74. RFRA broadly defines the "exercise of religion" to include "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. §

2000bb-2(4) (citing 42 U.S.C. § 2000cc-5). In *Burwell v. Hobby Lobby Stores, Inc.*, the United States Supreme Court stated that the exercise of religion involves "not only belief and profession but the performance of (or abstention from) physical acts that are engaged in for religious reason." 573 U.S. 682, 710 (2014) (citing *Employment Division v. Smith*, 494 U.S. 872, 877 (1990)).

75. A compelling interest includes "only those interests of the highest order." *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). And the least-restrictive-means standard is "exceptionally demanding." *Hobby Lobby*, 573 U.S. at 728. To pass the least-restrictive-means test, the government must show "that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion" by the religious objector. *Id.*

76. By drafting a law that violates the religious freedoms of Jewish birth givers, Kentucky's legislature has passed a law that runs afoul of KRFRA.

77. Assuming *arguendo* that there is a compelling governmental interest in preserving a fetal life or more broadly life itself, it neither follows that there is a compelling governmental interest in the broad prohibitions on reproductive technologies found in a plain reading of Kentucky's Abortion Law, nor that Kentucky has imposed the least restrictive means to protect that interest. Indeed, there is a lack of clear and convincing evidence regarding either.

78. Plaintiffs' religious beliefs have been infringed: they are Jewish and Jewish law ("halakha") asked and answered the question of fetal personhood thousands of years ago and rabbis, commentators and Jewish legal scholars have repeatedly confirmed these answers in the intervening millenia.

79. While a fetus is deserving of some level of respect under halakha, the birth giver takes precedence. Jews have never believed that life begins at conception. This belief belongs to certain Christian groups.

80. Kentucky's legislature has imposed sectarian theology on Jews.

81. Furthermore, while there are broad differences among Jews and between Jewish schools of thought, most American Jews, over 80%, *Pew Religious Landscape Study*, <https://www.pewresearch.org/religion/religious-landscape-study/religious-tradition/jewish/views-about-abortion/> accessed 9/22/22, believe that abortion should be legal in all or most cases, and fall in line with liberal Jewish thought, which since the Nineteenth Century has held increasingly permissive views on abortion and reproductive technology.

82. Plaintiffs are among the 80%: their beliefs on reproductive rights are sincerely held and are religious in nature. Plaintiffs are active in the Jewish community, frequent Sabbath services at their synagogues and temples, and hold informed views on their reproductive rights under halakha. For Plaintiffs, "this is not just a matter of Jewish law, but of Jewish values," "The Jewish Case for Abortion Rights," Sheila Katz and Danya Ruttenberg, *Newsweek*, June 29, 2020, <https://www.newsweek.com/abortion-jewish-right-scotus-june-medical-services-louisiana-constitution-1514214>, accessed 10/4/2022.

83. The Kentucky Legislature has substantially burdened Plaintiffs' freedom of religion and has failed to articulate a substantial governmental interest in its interference with reproductive technology.

84. Kentucky has also failed to impose the least restrictive means in protecting fetal interest. Pregnancy scans that occur after the detection of a fetal cardiac activity can reveal that a baby will not survive pregnancy or birth, yet Kentucky law only provides for legal termination of the fetus in the event the mother's life is in danger, rather than allow Jews their religious viewpoint that abortion is necessary to protect the health of the mother.

85. Forcing a mother to deliver a dead fetus to term, or one that will certainly die moments after birth, does not advance a governmental interest to protect fetal life, is contrary to Jewish law, severely damages the mental health of the mother, is flatly cruel and degrading, does not promote “life,” and serves no legitimate purpose at all.

**Count IV**  
**Violation of Kentucky Constitution Section 5 by**  
**Giving Preference to Sectarian Christianity**

86. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth with particularity herein.

87. Section 5 of the Kentucky Constitution states, “No preference shall ever be given by law to any religious sect, society or denomination; nor to any particular creed, mode of worship or system of ecclesiastical polity. . .” Furthermore, “No human authority shall, in any case whatever, control or interfere with the rights of conscience.” *Id.*

88. Plaintiffs do not share the sectarian religious views of evangelical Christians. They hold the millenia-old views on reproductive rights of one of the world's oldest monotheistic religions.

89. Kentucky nevertheless has adopted politicized sectarian religious views and imposed them on those who do not share them, including Plaintiffs.

90. The state legislature's passage of the theocratic Abortion Law violates Section 5 of the Kentucky Constitution, by giving preference to these alien, sectarian views, and interferes with Plaintiffs’ rights of conscience.

91. The remedy for the passage of an unconstitutional law is to void the law.



**Count V**  
**Violation of Kentucky Constitution Section 5 by**  
**Diminishing Plaintiffs' Privileges, Rights, and Capacities**  
**on Account of their Jewish faith**

92. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth with particularity herein.

93. Section 5 of Kentucky's Constitution states, that "the civil rights, privileges or capacities of no person shall be taken away, or in anywise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma or teaching." Furthermore, "No human authority shall, in any case whatever, control or interfere with the rights of conscience." *Id.*

94. Plaintiffs have special needs regarding reproductive care. Plaintiffs are Jews who rely on IVF to reproduce at all.

95. IVF almost always involves the production of at least one, but often many, nonviable embryos, which ultimately are discarded. Without this technology, Plaintiffs cannot reproduce at all.

96. Procreation has a special place in Jewish law, thought, and tradition. While all Abrahamic religions value the divine injunction to "Be fruitful and multiply," Jewish births are of special significance to Jewish people today because of the genocide they suffered during the Holocaust, which destroyed much of world Jewry.

97. There are fewer Jews alive today than before the Holocaust in 1939, despite the massive growth in global population.

98. With Kentucky's vague and theocratic Abortion Law in place, Plaintiffs are enjoined from reproduction. They do not know if their reproductive needs are illegal (*see* Counts I and II) and they cannot access the technologies they need in the Commonwealth of Kentucky. Kentucky's Abortion Law is predicated on a sectarian view that excludes the beliefs of Plaintiffs.

Kentucky's restrictions on reproductive technology push a "quiet genocide" onto the Jewish people.

99. Kentucky's assault on reproductive rights through the passage of the Abortion Law removes Plaintiffs' access to these necessary technologies. Kentucky's Abortion Law is blind to the reproductive needs of pregnant birth givers undergoing IVF.

100. Kentucky's unconstitutional Abortion Law diminishes Plaintiffs' privileges, rights, and capacities on account of their Jewish faith and beliefs, and their disbelief of the sectarian views currently encoded in KRS Chapter 311. It is therefore unconstitutional under Section 5 of the Kentucky Constitution, since discarding embryos during IVF is not a violation of Jewish law and helps encourage reproduction, but is a violation of Kentucky law.

101. The remedy for an unconstitutional law is to void the law.

#### **Prayer for relief**

WHEREFORE, plaintiffs request that this Court:

- a. Declare that the Abortion Law is unlawful for the reasons noted above;
- b. Enter a preliminary injunction, later to be made permanent, enjoining defendants from taking any action that would prevent or otherwise interfere with the ability of the plaintiffs, from obtaining any health care as directed by their sincere religious beliefs;
- c. Award plaintiffs their costs and reasonable attorneys' fees;
- d. Award all other proper relief.

Respectfully submitted,

/s/ Benjamin Potash /s/ Aaron Kemper

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