

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

REV. TOM CAPO, a Minister of The
Unitarian Universalist Congregation of Miami
in Miami-Dade County, Florida,

Case No. _____

VERIFIED COMPLAINT

Plaintiff,

-against-

STATE OF FLORIDA, ASHLEY MOODY,
in her official capacity as ATTORNEY
GENERAL for the State of Florida; GINGER
BOWDEN MADDEN, in her official capacity
as State Attorney for the First Judicial Circuit
of Florida; JACK CAMPBELL, in his official
capacity as State Attorney for the Second
Judicial Circuit of Florida; JOHN DURRETT,
in his official capacity as State Attorney for the
Third Judicial Circuit of Florida; MELISSA
W. NELSON, in her official capacity as State
Attorney for the Fourth Judicial Circuit of
Florida; WILLIAM GLADSON, in his official
capacity as State Attorney for the Fifth Judicial
Circuit of Florida; BRUCE BARTLETT, in his
official capacity as State Attorney for the Sixth
Judicial Circuit of Florida; R.J. LARIZZA, in
his official capacity as State Attorney for the
Seventh Judicial Circuit of Florida; BRIAN S.
KRAMER, in his official capacity as State
Attorney for the Eighth Judicial Circuit of
Florida; MONIQUE H. WORRELL, in her
official capacity as State Attorney for the
Ninth Judicial Circuit of Florida; BRIAN
HAAS, in his official capacity as State
Attorney for the Tenth Judicial Circuit of
Florida; KATHERINE FERNANDEZ
RUNDLE, in her official capacity as State
Attorney for the Eleventh Judicial Circuit of
Florida; ED BRODSKY, in his official
capacity as State Attorney for the Twelfth
Judicial Circuit of Florida; ANDREW H.
WARREN, in his official capacity as State
Attorney for the Thirteenth Judicial Circuit of
Florida; LARRY BASFORD, in his official
capacity as State Attorney for the Fourteenth

Judicial Circuit of Florida; DAVID A. ARONBERG, in his official capacity as State Attorney for the Fifteenth Judicial Circuit of Florida; DENNIS W. WARD, in his official capacity as State Attorney for the Sixteenth Judicial Circuit of Florida; HAROLD F. PRYOR, in his official capacity as State Attorney for the Seventeenth Judicial Circuit of Florida; PHILIP G. ARCHER, in his official capacity as State Attorney for the Eighteenth Judicial Circuit of Florida; THOMAS BAKKEDAHL, in his official capacity as State Attorney for the Nineteenth Judicial Circuit of Florida; and AMIRA D. FOX, in his official capacity as State Attorney for the Twentieth Judicial Circuit of Florida,

Defendants.

VERIFIED COMPLAINT

For his Verified Complaint against Defendants the State of Florida, Ashley Moody, Ginger Bowden Madden, Jack Campbell, John Durrett, Melissa W. Nelson, William Gladson, Bruce Bartlett, R.J. Larizza, Brian S. Kramer, Monique H. Worrell, Brian Haas, Katherine Fernandez-Rundle, Ed Brodsky, Andrew Warren, Larry Basford, David A. Aronberg, Dennis W. Ward, Harold F. Pryor, Philip G. Archer, Thomas Bakkedahl, and Amira D. Fox, each of whom are sued in their official capacities (collectively referred to herein as “Defendants”), Plaintiff Tom Capo, by and through undersigned counsel, alleges and avers as follows:

PRELIMINARY STATEMENT

1. This is a lawsuit brought by Reverend Tom Capo, a Unitarian Universalist minister in Miami-Dade County, whose religious beliefs, speech, and conduct are severely burdened by the state of Florida’s criminalization of abortion in many circumstances where the Unitarian Universalist faith supports the decision to have an abortion. The lawsuit is seeking to invalidate

House Bill 5, the Reducing Fetal and Infant Mortality Act (“HB 5” or the “Act”), because it violates: (1) the rights of Plaintiff to liberty of speech and free exercise and enjoyment of religion, guaranteed by Article I, §§ 3, 4 of the Florida Constitution, (2) the Florida Religious Freedom Restoration Act, Fla. Stat. Ann. § 761.03 (“FRFRA”), and (3) Plaintiff’s freedom of speech and free exercise of religion guaranteed by the First and Fourteenth Amendments to the United States Constitution. Under HB 5 and Florida’s criminal law, Plaintiff is at risk of prosecution for counseling women, girls, and families to obtain an abortion beyond the narrow bounds of HB 5 as someone who aids and abets the crime. Under Florida’s aiding and abetting law, he commits the crime itself by counseling in favor of it.

2. The relationship between a clergy member and their congregants represents a sacred trust. In the Unitarian Universalist faith, clergy have an obligation to guide their congregants and members of the faith community in upholding the Seven Principles of their faith, including in respecting and understanding the inherent worth and dignity of every person, which includes a right to bodily autonomy and self-determination; seeking and promoting justice, equity, and compassion in human relations; and advancing the goal of world community with peace, liberty, and justice for all.

3. Congregants in the Unitarian Universalist faith seek counsel and guidance from their clergy on issues related to the spiritual, physiological, and psychological aspects of sex and sexuality including decisions related to pregnancy and childbirth, family planning, and abortion. In return, Unitarian Universalist clergy have provided counseling that aligns with the Seven Principles of the Unitarian Universalist faith.

4. Unitarian Universalists believe that the inherent worth and dignity of every person, the right of individual conscience, and respect for human life are inalienable rights due to every

person, and that the personal right to choose in regard to abortion, as well as to the safe access to abortion care, are important aspects of these rights. These fundamental beliefs have, until now, been protected, revered, and respected as sacrosanct and inviolable. Now, Defendants have inserted themselves into these basic principles of the Unitarian Universalist faith by imposing criminal penalties on those who counsel, aid, and/or assist with an abortion after fifteen weeks, with no religious accommodation provided and no exceptions for incest, rape, trafficking, non-fatal fetal abnormalities, or psychological disease or impairment.

5. Plaintiff engages in religious counseling that honors the congregants' inherent value, autonomy and right to self-determination, guiding congregants to reach informed decisions about the termination of pregnancy and to act upon them.

6. The Florida Legislature recently passed the Act, which bans abortions after fifteen weeks as dated from the first day of an individual's last menstrual period (LMP) with two extremely limited exceptions. *See* Ch. 2022-69, §§ 3–4, Laws of Fla. (amending §§ 390.011, 390.0111, Fla. Stat.); Fla. Stat. § 390.0111(1)(a)–(b); § 390.011(6). There is no exception for incest, rape, trafficking, non-fatal fetal abnormalities or psychological disease or impairment.

7. The Act was signed into law by Governor Rick DeSantis on April 14, 2022, and it took effect on July 1, 2022.

8. HB 5, entitled the Infant and Fetal Abnormality Act, establishes as the law of the State of Florida, a pernicious elevation of the legal rights of fetuses while at the same time it devalues the quality of life and the health of the woman or girl who is pregnant. It is in direct conflict with Plaintiff's clerical obligations and faith and imposes severe barriers and substantial burdens to his religious belief, speech, and conduct. It also imposes severe burdens on the religious beliefs,

speech, and conduct of his congregants and members of Plaintiff's Church, and the Unitarian Universalist faith.

9. HB 5 violates the sacred trust between a clergy member and his or her congregants, and tramples Plaintiff's First Amendment and Florida constitutional rights to free speech and free exercise of religion, and his rights under FRFRA. It also violates the separation of church and state under the federal and state constitutions.

10. Bedrock principles under the First Amendment invalidate HB 5, and Defendants' actions have caused, are causing, and will continue to cause irreparable injury to Plaintiff's fundamental and cherished liberties.

11. The dramatic change in abortion rights in Florida has caused confusion and fear among clergy and pregnant women and girls particularly in light of the criminal penalties attached. Given his general duties and work as a minister, Plaintiff intends to engage in counseling regarding abortion beyond the narrow limits of HB 5 and, therefore, risks incarceration and financial penalties.

12. When fundamental rights like the freedom of speech and free exercise hang in the balance, a plaintiff is not required to expose themselves to actual arrest or prosecution. HB 5's criminal penalties constitute a credible threat of prosecution to Plaintiff.

13. HB 5 severely chills the speech of Unitarian Universalist clergy with their members, because HB 5 is unconstitutionally vague and, therefore, substantially chills this sacred communication. The Act further provides for no exceptions for the victims of incest, rape, or trafficking, non-fatal fetal abnormalities, or psychological disease or impairment, which are all circumstances in which the Unitarian Universalist faith would support and/or counsel in favor of an individual's decision to have an abortion before or after fifteen weeks.

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