

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

FemHealth USA, Inc., d/b/a carafem, on)	
behalf of itself, its physicians, and its)	
patients,)	
)	
Plaintiff,)	Civil Action No. 3:19-cv-01141
)	
v.)	JUDGE RICHARDSON
)	
City of Mount Juliet; Kenny Martin, City)	
Manager of Mount Juliet, in his official)	
capacity; James Hambrick, Chief of Police of)	MAGISTRATE JUDGE
Mount Juliet, in his official capacity, Jennifer)	NEWBERN
Hamblen, Zoning Administrator of Mount)	
Juliet, in her official capacity,)	
)	
Defendants.)	
)	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
AMENDED MOTION FOR A PRELIMINARY INJUNCTION**

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I. INTRODUCTION

Plaintiff FemHealth USA, Inc., d/b/a carafem (hereinafter, “carafem”), on behalf of itself, its physicians and staff, and its patients, seeks a preliminary injunction to stop enforcement of Ordinances 2019-16 (the “Ordinance”) and 2020-8 (the “Amendment”), which together had the clear purpose and effect of targeting carafem, the only abortion clinic within the city limits of Mt. Juliet, Tennessee, and preventing it from performing surgical abortions.

The Ordinance, introduced just days after carafem’s opening, amended the city’s zoning restrictions to bar carafem from offering surgical abortions in Mt. Juliet. In a statement to local news, City Commissioner Ray Justice made the purpose behind the Ordinance clear: “The members of the commission I have talked to are 100 percent behind shutting this abomination down. . . . This is not Mt. Juliet. This is not us.”¹ As set forth below, other officials made similar public statements demonstrating the Ordinance’s singular purpose of blocking access to abortion. Moreover, the effect of the Ordinance is to prohibit carafem from providing surgical abortions to patients in need thereof, and to place an undue burden on women seeking to access their constitutionally-protected right to abortion. Absent the relief requested in this motion, carafem and its patients will continue to suffer irreparable harm from this violation of their due process rights and the denial of carafem’s patients’ constitutionally-protected right to abortion.

II. STATEMENT OF FACTS

A. Carafem Opens Its Doors in Mt. Juliet

Carafem is a 501(c)(3) nonprofit organization that provides women’s reproductive health

¹ Andy Humbles, *Mt. Juliet elected officials, religious leaders vow to fight new abortion clinic in city*, NASHVILLE TENNESSEAN (March 1, 2019, 5:03PM), <https://www.tennessean.com/story/news/local/wilson/2019/03/01/mt-juliet-abortion-provider-carafem-resistance-city-church/3029532002/>.

services. *See* the attached Declaration of Melissa Grant (“Grant Decl.”), ¶ 2. Carafem operates a network of health centers, including one located in Mt. Juliet, that provide information and low-cost options for people seeking abortion care, as well as most methods of birth control and testing for sexually-transmitted infections. *Id.* In addition to its Mt. Juliet location, carafem has clinics located in Atlanta, Georgia; Washington, D.C.; and Chicago, Illinois. *Id.*

In the months before it opened the Mt. Juliet clinic, carafem regularly saw women² from Tennessee travel to its Atlanta, Georgia facility for abortion services. *Id.*, ¶ 4. This is because access to abortion services is limited in Tennessee and in the Nashville metropolitan area in particular. *Id.*, ¶ 3. Before the Mt. Juliet clinic opened, there was just one abortion clinic in the area—a Planned Parenthood health center in Nashville. *Id.*³ As carafem learned in 2018, this clinic cannot meet the needs of all individuals seeking abortion. *Id.*, ¶ 4. Indeed, the Planned Parenthood-Nashville clinic was unable to offer abortion services at all for several months in early 2019. *Id.*, ¶ 3. Even when abortion services were available, it could not meet the needs of all patients seeking abortion care, with patients waiting weeks for an appointment. *Id.*, ¶¶ 28-30. Many of these patients were forced to travel elsewhere for abortion services, including to carafem’s clinic in Atlanta. *Id.*, ¶¶ 26-28.

To better serve these patients, carafem decided to open a new facility in the Nashville metropolitan area. *Id.*, ¶ 5. Carafem identified a location for its new facility in a commercial area of Mt. Juliet, in the Providence Medical Pavilion, which leases medical office space to several health care providers and specialists. *Id.*, ¶¶ 6-7. The Providence Medical Pavilion

² Carafem uses “woman” or “women” in this memorandum as a short-hand term for people who are or may become pregnant. However, people of all gender identities may also become pregnant and seek abortion services and thus suffer irreparable harm as a result of the Ordinance.

³ Another Nashville clinic that had provided abortion services closed in 2018. Grant Decl., ¶ 3.

houses several other medical clinics in addition to carafem, including multiple obstetrics and gynecology offices, an ambulatory surgery center, a neurosurgery suite, and several other specialists. *Id.*, ¶ 7. Providence Medical Pavilion is located in a commercial interchange (“CI”) zoning district. *See* the attached Declaration of Heather M. Schneider (“Schneider Decl.”), Ex.

1. Under Mt. Juliet’s Land Development Code (the “Development Code”), “professional services, medical,” which includes various types of physicians’ offices and clinics, dental offices, optometrists, and outpatient medical service facilities, is a permitted use in CI districts.

Carafem’s Mt. Juliet location opened on March 1, 2019, providing medication abortion to women up to 10 weeks from their last menstrual period (“LMP”), as well as birth control options and emergency contraception. Grant Decl., ¶ 9. Within 48 hours of opening, carafem was completely booked for the next 30 days. *Id.* While carafem only offered medication abortion after the Mt. Juliet clinic opened, it planned to expand its services to include a second form of abortion, aspiration abortion, shortly thereafter, to meet the needs of its patients, as announced in a February 28, 2019 press release.⁴ *Id.*, ¶ 10..

In the first trimester of pregnancy, there are two abortion methods: medication abortion and aspiration abortion. *See* the attached Declaration of Aileen Gariepy, M.D., M.P.H., M.H.S. (“Gariepy Decl.”), ¶ 16. For a medication abortion, the patient ingests two pills and passes the pregnancy at home. *Id.* The second method, aspiration abortion—a type of surgical abortion—is the most common method of first-trimester abortion, involving the use of gentle suction to empty the contents of the uterus.⁵ *Id.*, ¶ 17. Aspiration abortion generally takes less than ten minutes to

⁴ *carafem Opens Doors in the Nashville, Tennessee Area*, carafem website, (February 28, 2019), <https://carafem.org/carafem-opens-doors-nashville-tennessee-area/>.

⁵ Aspiration abortion is also known as “vacuum aspiration,” “suction curettage,” “dilation and curettage,” and “D&C”—these all describe the same procedure. *See* Gariepy Decl., ¶ 17, n.13.

complete and is among the safest procedures in modern medicine—far safer than numerous other medical procedures also commonly performed in an outpatient setting. *Id.*, ¶¶ 17, 25-27. While both first-trimester abortion methods are common and extremely safe, not all patients are candidates for medication abortion. *Id.*, ¶ 20. Medication abortion is only available through 11 weeks LMP, while aspiration abortion can be provided up to approximately 15 weeks. *Id.*, ¶ 19. Moreover, medication abortion is not suitable for patients who have medical contraindications. *Id.*, ¶ 20. Additionally, medication abortion requires the patient to pass the pregnancy at home over the course of several hours or days, and so patients with, *e.g.*, caregiving responsibilities may require aspiration abortion instead. *Id.* ¶¶ 22-23.

B. Carafem Faced Immediate Opposition from Mt. Juliet Politicians

Immediately after carafem’s opening, numerous Mt. Juliet officials made public statements expressing their opposition, explicitly stating that they would act to prevent carafem from providing abortion services. City Commissioner Brian Abston, in remarks published in *The Tennessean* on March 1, 2019, said: “I was disgusted to hear they plan to open in my district and my town. . . . If there is anything we can legally do to keep them from opening in Mt. Juliet we will do it.”⁶ Commissioner Abston provided a similar statement to *The Wilson Post*, a county newspaper: “I realize they have rights, but my constituents and I don’t want it here. I am pro-life so I will take any action possible within the law to make sure it’s not here.”⁷

⁶ Andy Humbles, *Mt. Juliet elected officials, religious leaders vow to fight new abortion clinic in city*, NASHVILLE TENNESSEAN (March 1, 2019, 5:03PM), <https://www.tennessean.com/story/news/local/wilson/2019/03/01/mt-juliet-abortion-provider-carafem-resistance-city-church/3029532002/>.

⁷ Laurie Everett, *MJ moves to stop abortion clinic*, THE WILSON POST, March 6, 2019), https://www.wilsonpost.com/community/mj-moves-to-stop-abortion-clinic/article_3748b5ca-3fd5-11e9-acee-bba608f35793.html.

Similarly, in a Facebook posting on March 1, 2019, Commissioner Ray Justice also stated that the Mt. Juliet Board of Commissioners would pursue ways to restrict carafem's operations:

The City of Mt. Juliet did not approve an abortion clinic in our city! . . . We are pursuing every possible legal option to stop this 'organization' from being in Mt. Juliet. To a man, our city commission is Christian Conservative and will not just 'let this happen' without fighting.

Schneider Decl., Ex. 2. Commissioner and Vice Mayor James Maness shared his opposition to carafem's opening on his official website: "I am pro-life. The taking of innocent life is called murder. Abortion is not a matter of choice, it's a matter of life and how we value life." *Id.*, Ex. 3. Mayor Ed Hagerty also voiced his opposition to carafem in an open letter to supporters that was published in the blog Left-Handed Conservative, stating: "I too am pro-life. . . . I am guessing most if not all on this email feel the same. Candidly, I am embarrassed and disgusted that this happened on my watch. If I had the power to stop it, I would have done so."⁸

Consistent with these public statements, the Mt. Juliet Board of Commissioners announced a special meeting for Sunday, March 3, 2019, two days after carafem's opening. Schneider Decl., Ex. 4. The only item on the agenda for the special meeting was the first reading of the Ordinance: an amendment to the zoning ordinances that effectively prohibited the provision of surgical abortion services anywhere within the city. *Id.* At the March 3, 2019 special meeting, all four members of the Board voted in favor of the Ordinance. A video recording of the meeting posted on the Mt. Juliet website shows the entire meeting lasted less than five minutes.⁹ After review and approval by the Mt. Juliet Planning Commission on March

⁸ Lefty, *Under cover of darkness*, LEFT-HANDED CONSERVATIVE (March 4, 2019), <https://lefthandedconservative.wordpress.com/2019/03/04/under-cover-of-darkness/>.

⁹ Video of City of Mt. Juliet Board of Commissioners Special Meeting, March 3, 2019, <http://mtjulietcitytn.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1834>.

21, 2019, the Board approved the Ordinance on April 8, 2019.¹⁰ Schneider Decl., Exs. 5, 6. At each of these meetings, officials made no statements regarding the purpose or intent of the Ordinance apart from the self-evident purpose of blocking access to abortion, heard no public comments or evidence regarding any benefits that would be promoted by the Ordinance, and introduced no other testimony or other evidence that supported the passage of the Ordinance.

C. Ordinance 2019-16: A Ban on Surgical Abortion Clinics in Mt. Juliet

The Ordinance banned all surgical abortion clinics in Mt. Juliet by amending Part B of the Unified Development Code of the City of Mt. Juliet. Schneider Decl., Ex. 6. The Ordinance limited Surgical Abortion Clinics – defined as “any entity, place or building in which surgical activity is primarily conducted or aimed toward terminating pregnancy, otherwise known as abortion as defined at Tenn. Code Ann. § 39-15-201” – to be a permitted use in industrial zones I-G and I-S. *Id.*, Table 7-102A. Further, no Surgical Abortion Clinic could “be located within 1,000 feet (measured property line to property line) of any church, public or private school ground, college campus, public park or recreation facility, public library, child care facilities, or a lot zoned residentially or devoted primarily to residential use.” *Id.* Pursuant to the Ordinance, there was no land in Mt. Juliet where a Surgical Abortion Clinic could be located. There is no land in Mt. Juliet zoned I-S, and the only two areas in Mt. Juliet currently zoned I-G are within either 1000 feet from a lot zoned for residential use or a church. Schneider Decl., Ex. 7. Thus, in purpose and effect, the Ordinance banned surgical abortion clinics from Mt. Juliet.

D. Mt. Juliet Amends the Ordinance, Continuing to Prohibit Carafem From Offering Surgical Abortions

Plaintiffs filed this lawsuit on December 18, 2019, seeking preliminary injunctive relief

¹⁰ Video of City of Mt. Juliet Board of Commissioners Regular Meeting, April 8, 2019, <http://mtjulietcitytn.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1826>.

against enforcement of the Ordinance. Defendants failed to timely oppose Plaintiffs' motion. However, on January 13, 2020—nearly a month after carafem filed the instant litigation but without providing any notice to carafem—the Mount Juliet Board of Commissioners introduced an amendment, Ordinance 2020-8 (the “Amendment”). Schneider Decl., Ex. 8. During all three meetings at which the Amendment was introduced, it was passed unanimously as a consent resolution, thus bypassing any comment or discussion by the Board. *See id.*, Exs. 9-11. The Amendment was signed into law by Mayor Hagerty. *Id.*, Ex. 8.

The Amendment revises the Ordinance in two relevant respects. First, it modifies the operative language as follows:

No establishment shall be located within ~~1000~~ **200** feet ~~(measured property line to property line)~~ of any church, public or private school, college campus, public park or **public** recreation facility, public library, child care facility, **or a single family residential home. Distance will be measured along the shortest drivable route from the center of the main entrance (i.e. front door) of one location to the center of the main entrance (i.e. front door) of the other location. After permitting of the establishment, any protected use that comes within the protected area of the establishment will not affect the establishment's ability to continue operations.**

Id. This revised language continues to prohibit carafem from offering surgical abortions at its current facility, but purports to allow them within two I-G zoned areas of Mt. Juliet. No medical office facilities exist in either I-G-zoned area, and one of them is a vacant plot of land in an isolated region. It would be cost-prohibitive for carafem to attempt to relocate to one of these areas. Grant Decl. ¶¶ 37-38. Carafem is in a long-term lease that expires more than a year from now. Carafem cannot construct a properly equipped medical clinic from the ground-up. *Id.* Moreover, given the investments that carafem has expended on building out and marketing its current location, and its difficulty finding a landlord, it would be infeasible for carafem to relocate to the remaining zone where Surgical Abortion Clinics are not prohibited. *Id.* ¶ 5.

Additionally, more than ten months after the Ordinance was first enacted, the Amendment belatedly purports to identify rationales for the restrictions against Surgical Abortion Clinics. It alleges that the Ordinance was enacted for the purpose of regulating antiabortion protests, stating in particular that it was adopted “for the purpose of promoting the health, safety and welfare of not only those seeking to utilize the services of a surgical abortion clinic but also to preserve the City’s economic growth and shift protests to a less densely populated area.” Schneider Decl., Ex. 8. But critically, as set forth below, these alleged benefits do not constitute constitutionally permissible justifications for a zoning restriction, nor are they advanced by the Ordinance. Indeed, even though carafem cannot perform surgical abortions in Mt. Juliet, it continues to provide medication abortion in its current location, *and it is the subject of anti-abortion protest there*. Grant Decl. ¶¶ 11, 40-41. The Ordinance thus does nothing to further the belatedly articulated justification. Moreover, nothing in the Ordinance does anything to benefit the “health, safety, and welfare” of any patients seeking surgical abortions. In fact, despite this language in the Amendment, the record is clear that the sole purpose of the Ordinance was to limit the availability of abortion in Mt. Juliet, thereby harming public health.

E. The Ordinance Is Irreparably Harming Carafem’s Patients

The Ordinance has irreparably harmed carafem’s patients and will continue to do so each and every day it remains in effect. Since the Ordinance was enacted, carafem has been forced to turn away women seeking aspiration abortion services who are not eligible for medication abortion, including all women past 11 weeks of pregnancy and those with contraindications to medication abortion. *See* Grant Decl. ¶¶ 25-27. Even in the limited time since carafem initiated this litigation, it has had to turn away women seeking surgical abortions. Grant Decl. ¶ 27. Denying these women access to time-sensitive medical care causes them irreparable injury.

There is just one other abortion clinic in the Nashville area; its limited capacity means that women seeking aspiration abortion incur a lengthy wait time of at least 2-3 weeks, with some unable to get an appointment at all. *Id.*, ¶¶ 28-32. While abortion is a very safe procedure, such delay subjects patients to increased medical risks. *See* Gariepy Decl., ¶ 34. Women unable to obtain abortions in the Nashville area face the prospect of traveling hundreds of miles round-trip to the next-closest clinics—and doing so twice (or securing lodging for a multiple-night stay) if the clinic is in a state like Tennessee that mandates multiple in-person visits to the clinic at least 48 hours apart. *See* the attached Declaration of Sheila Katz (“Katz Decl.”) ¶ 28; *see also* Tenn. Code Ann. § 39-15-202(a)-(h). Many women seeking Carafem’s services are low-income, Grant Decl. ¶ 24, and for many poor women struggling to make ends meet, financial and logistical challenges make such travel difficult or impossible, and, at minimum, result in delayed access to care. Katz Decl. ¶ 29. In short, the Ordinance deprives women of their constitutional right to abortion, and will continue to cause irreparable injury absent relief from this Court.

III. ARGUMENT

A. Legal Standard for a Preliminary Injunction

Carafem readily satisfies all requirements to obtain preliminary injunctive relief. “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *accord City of Pontiac Retired Emps. Ass’n v. Schimmel*, 751 F.3d 427, 430 (6th Cir. 2014). “When a party seeks a preliminary injunction on the basis of a potential constitutional violation, ‘the likelihood of success on the merits often will be the determinative factor.’” *Schimmel*, 751 F.3d at 430 (quoting *Obama for Am. v. Husted*,

697 F.3d 423, 436 (6th Cir. 2012)). Indeed, “[w]hen constitutional rights are threatened or impaired, irreparable injury is presumed.” *Obama for Am.*, 697 F.3d at 436 (citing *ACLU of Ky. v. McCreary Cty., Ky.*, 354 F.3d 438, 445 (6th Cir. 2003)). “Additionally, if the plaintiff shows a substantial likelihood that the challenged law is unconstitutional, no substantial harm to others can be said to inhere in its enjoinder.” *Déjà Vu of Nashville, Inc. v. Metro. Gov’t of Nashville & Davidson Cnty., Tenn.*, 274 F.3d 377, 400 (6th Cir. 2001). “Moreover, ‘it is always in the public interest to prevent violation of a party’s constitutional rights.’” *Id.* (quoting *G&V Lounge, Inc. v. Mich. Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994)).

B. Carafem Is Likely to Succeed on the Merits

The Ordinance, both as enacted and as amended, is unconstitutional under decades of binding precedent, and carafem is substantially likely to prevail on the merits of its claims.

1. Carafem Is Likely to Prevail on Its Undue Burden Claims

First, carafem is overwhelmingly likely to prevail on its claim that the purpose and effect of the Ordinance are to unduly burden its patients’ constitutionally protected right to abortion. “Constitutional protection of the woman’s decision to terminate her pregnancy derives from the Due Process Clause of the Fourteenth Amendment.” *Planned Parenthood of SE Pa. v. Casey*, 505 U.S. 833, 846 (1992) (quoting U.S. Const. amend. XIV, § 1). This constitutionally protected liberty includes the “right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.” *Id.* at 851 (quoting *Eisenstadt v. Baird*, 430 U.S. at 453). Indeed, as the Supreme Court explained: “These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment.” *Id.* at 851.

As such, women have the constitutionally-protected right to choose to have an abortion before viability of the fetus without undue burdens from the state. “[T]here ‘exists’ an ‘undue burden’ on a woman’s right to decide to have an abortion, and consequently a provision of law is constitutionally invalid, if the ‘purpose or effect’ of the provision ‘is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.’” *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2300 (2016) (quoting *Casey*, 505 U.S. at 878). As the Supreme Court clarified in *Whole Woman’s Health*, the undue burden test entails a balancing analysis, in which the court must “weigh[] the asserted benefits against the burdens.” *Id.* at 2310. Here, both the purpose and effect of the Ordinance are to unduly burden Tennessee women seeking a surgical abortion, and the Ordinance is thus constitutionally invalid.

a. *The Purpose of the Ordinance Was to Unduly Burden Tennessee Women Seeking Surgical Abortions*

As the Sixth Circuit has made clear, a law with the purpose of “mak[ing] it more difficult . . . to obtain an abortion” is constitutionally invalid. *Memphis Planned Parenthood, Inc. v. Sundquist*, 175 F.3d 456, 461 (6th Cir. 1999); accord *Planned Parenthood of Greater Iowa, Inc. v. Atchison*, 126 F.3d 1042, 1049 (8th Cir. 1997). Indeed, “[a] purposeful state effort to undermine a constitutionally protected liberty interest is incompatible with the Constitution. *Casey* prohibits state actions that ‘serve no purpose other than to make abortions more difficult.’” *Whole Woman’s Health Alliance v. Hill*, 937 F.3d 864, 877 (7th Cir. 2019) (quoting *Casey*, 505 U.S. at 901). As a result, courts are required to “scrutinize the reasons given for a state action,” as well as “the evidence provided by the state supporting its action.” *Id.* And, particularly relevant here, “[i]f the evidence does not support the state’s proffered reason, or it reveals instead an impermissible reason, the state law cannot stand.” *Id.*

It is difficult to envision a legislative history more baldly indicative of an impermissible,

purposeful effort to target abortion than that here. The contemporaneous statements of the officials who enacted the Ordinance make clear that its purpose was to block access to abortion in Mt. Juliet. Indeed, the day after carafem announced its intentions to provide surgical abortions at its Mt. Juliet clinic, city commissioners announced their intention “to stop this ‘organization’ from being in Mt. Juliet.” *Schneider Decl. Ex. 2, see also Section II.B, supra*. These public statements make plain that the purpose of the Ordinance is “to undermine a constitutionally protected liberty interest,” *Hill*, 937 F.3d at 877, and are analogous to those which have been deemed evidence of improper purpose to restrict abortion access in other cases. *See, e.g., Planned Parenthood of the Heartland v. Heineman*, 724 F. Supp. 2d 1025, 1032, 1043–44 (D. Neb. 2010) (addressing statements by legislators expressing contempt for *Roe v. Wade*).

Moreover, the Ordinance’s “operation in practice confirms [its] purpose.” *United States v. Windsor*, 570 U.S. 744, 746 (2013); accord *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 535 (1993) (“the effect of a law in its real operation is strong evidence of its object”). Carafem is barred from offering surgical abortion in Mt. Juliet at its current facility, and it is infeasible to relocate to one of the few parcels of land in Mt. Juliet where a Surgical Abortion Clinic may be located. *See Grant Decl. ¶¶ 37-39*. As such, there is no provider of surgical abortions operating within city limits, which is the very intent of the Ordinance.

The bare statements of purported purpose set forth in the Amendment cannot overcome this record, which makes clear that the Ordinance was passed solely to inhibit the right to abortion. Indeed, “the Constitution does not tolerate pretext that covers up unconstitutional motives. It is plain that an official action, taken for the purpose of violating constitutional rights has no legitimacy at all under our Constitution.” *Hill*, 937 F.3d at 877 (quoting *City of Richmond, Va. v. U.S.*, 422 U.S. 358, 378 (1975)). The Ordinance is precisely such an action.

b. *The Effect of the Ordinance Is to Unduly Burden Tennessee Women, Particularly Low-Income Women, Seeking Abortions*

Even if the Ordinance were not unconstitutional on the basis of its impermissible purpose alone—which it manifestly is—it is unconstitutional because its effect is to unduly burden abortion access. To determine whether a restriction on abortion has the effect of imposing an undue burden, the Court must assess whether the Ordinance confers “benefits sufficient to justify the burdens upon access” it imposes under a balancing analysis. *Hellerstedt*, 136 S. Ct. at 2300. The more attenuated the purported benefits of a state action, “the likelier the burden, even if slight, to be ‘undue’ in the sense of disproportionate or gratuitous.” *Planned Parenthood of Wisconsin, Inc. v. Van Hollen*, 738 F.3d 786, 798 (7th Cir. 2013); *see also Hellerstedt*, 136 S. Ct. at 2318; *Planned Parenthood Ariz., Inc. v. Humble*, 753 F.3d 905, 912-13 (9th Cir. 2014). Here, the Ordinance imposes severe burdens, furthers no legally valid government interest, and it is thus unduly burdensome and unconstitutional.

i. *The Burdens Imposed by the Ordinance*

The Ordinance places substantial burdens on access to abortion by barring the lone provider within city limits from performing surgical abortions. For women in need of such services, the Ordinance’s burdens are extreme: Women are faced with traveling hundreds of miles round-trip to access abortion elsewhere, delaying care for weeks while attempting to obtain an abortion at Planned Parenthood in Nashville, or foregoing an abortion altogether. Each of those “options” is unduly burdensome. *See, e.g., Planned Parenthood of Wisconsin, Inc. v. Schimel*, 806 F.3d 908, 919 (7th Cir. 2015) (travel-related obstacles found unduly burdensome); *Hellerstedt*, 136 S. Ct. at 2318 (“3-week wait times” found unduly burdensome); *Casey*, 505 U.S. at 877 (denial of abortion found unduly burdensome). Indeed, as Dr. Katz, an expert in women’s poverty, explains, for poor and low-income women, the inter-city travel to an alternate

clinic imposed by the Ordinance delays women in obtaining an abortion and prevents others from being able to obtain an abortion altogether.¹¹ Katz Decl., ¶¶ 29-30. For instance, although “a 90-mile trip is no big deal for persons who own a car or can afford an Amtrak or Greyhound ticket,” for patients living in poverty, the costs of travel and lodging to access an abortion in another city “may be prohibitively expensive.” *Schimmel*, 806 F.3d at 919. Three-quarters of women seeking abortions already struggle to meet their basic needs. Katz Decl., ¶ 26. Being forced to undertake lengthy travel to obtain an abortion exacerbates those hardships. *Id.* ¶¶ 31-42. Since abortion costs increase as the pregnancy advances, delayed access to abortion only compounds the burden on women forced to undergo lengthy, expensive travel. *Id.*, ¶ 50.

Carafem cannot alleviate these burdens by simply relocating to one of the few, isolated areas in Mt. Juliet where a Surgical Abortion Clinic may theoretically be permitted. First, no medical office space exists in either I-G zoned area, and it would be cost-prohibitive for carafem—or any nonprofit health provider—to build a medical facility from the ground up. Grant Decl. ¶¶ 37-38. Moreover, carafem’s lease extends for more than one year, and it has expended significant investment in equipment and marketing for its current location. It cannot afford the cost of renovating another office space.¹² *Id.* Notably, courts have rejected similar zoning restrictions targeting abortion providers, even those that did not impose a total ban within city limits. *P.L.S. Partners, Women’s Med. Ctr. Of R.I., Inc. v. City of Cranston*, 696 F. Supp. 788, 796 (D. R.I. 1988) (irrelevant that clinic “could have located . . . in several other zones”);

¹¹ See *Planned Parenthood SE, Inc. v. Strange*, 33 F. Supp. 3d 1381, 1395 (M.D. Ala. 2014) (“PPSE”) (finding Dr. Katz’s “testimony to be credible and helpful in understanding the effects of the law on women seeking abortions”).

¹² Even if another suitable facility existed in the remaining I-G zone, and carafem were able to relocate, it is doubtful that a landlord would be willing to lease space to an abortion provider. Grant Decl. ¶ 5 (five landlords refused to lease to carafem on account of opposition to abortion).

W. Side Women's Servs., Inc. v. City of Cleveland, Ohio, 573 F. Supp. 504, 517-18 (N.D. Ohio 1983) (“WSWS”) (“an ordinance which interferes with a woman’s exercise of her fundamental right is not safe from constitutional challenge merely because it is limited in its geographical scope”); *Deerfield*, 661 F.2d at 336 (undue burden even though “other abortion facilities are located in ‘nearby’ communities” because “immediate impact ... [was] to forestall the availability of abortion facilities in Deerfield Beach for an indefinite period of time”).

That carafem is able to provide *medication* abortion in its current location does not meaningfully mitigate the burdens imposed by the Ordinance. Many patients are not eligible for medication abortion, including those more than 11 weeks pregnant, patients with intrauterine devices, and those with numerous common medical conditions. Gariepy Decl., ¶ 20. “The proper focus of constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.” *Casey*, 505 U.S. at 894. As a result of the Ordinance, carafem has been forced to turn away patients for whom the Ordinance “is a restriction,” *id.*; *see also* Grant Decl., ¶¶ 26-27. Moreover, courts have routinely rejected similar legislative efforts to proscribe particular abortion methods. *See, e.g., Northland Family Planning Clinic, Inc. v. Cox*, 487 F.3d 323, 337 (6th Cir. 2007) (a law that prohibits any of “the most common pre-viability abortion methods,” including “suction curettage,”—*i.e.*, aspiration abortion—“creates an unconstitutional undue burden in violation of *Casey*”); *accord Hope Clinic v. Ryan*, 195 F.3d 857, 861 (7th Cir. 1999) (en banc) (“Prohibiting any one of” the “principal methods of performing abortions”—including “suction curettage”—“would conflict with the right of abortion recognized by cases such as *Casey*.”), *vacated on other grounds*, 530 U.S. 1271.

The existence of Planned Parenthood in Nashville also does not relieve the burden on carafem’s patients. In December 2018, Planned Parenthood stopped offering any abortion

services at that location, reportedly due to staffing difficulties. *See* Grant Decl., ¶¶ 3-4. Although abortion services resumed at that location in March 2019, availability is intermittent, and at best there are lengthy wait times of two to three weeks for abortion services due to capacity constraints. Grant Decl., ¶¶ 28-33. These wait times were discussed in recent litigation involving Planned Parenthood-Nashville; patients seeking to schedule an abortion at the clinic have to wait one to three weeks for their first visit and an additional two to six days for the second appointment if they are having a medication abortion, or over a week for the second appointment if they are having a surgical abortion. Schneider Decl., Ex. 12, Trial Transcript Vol. 2, at 97:1-24, *Adams & Boyle P.C. v. Slatery*, No. 3:15-cv-00705 (M.D. Tenn. Sep. 24, 2019). For some patients, the total delay is as long as six weeks from the initial request to the scheduling of the abortion. *Id.* As the Supreme Court made clear in *Hellerstedt*, subjecting patients to such delays as they attempt to “get abortions in crammed-to-capacity” clinics is unduly burdensome—particularly where the law creating those conditions is without legitimate justification. 136 S. Ct. at 2318 (emphasizing unconstitutional burden of “3-week wait times”).

Capacity constraints and wait times at Planned Parenthood-Nashville, coupled with the effective ban on carafem’s provision of surgical abortion, require patients to travel hundreds of miles to obtain surgical abortion services at another clinic. This is burdensome for anyone, but particularly for low-income women who are disproportionately likely to be seeking abortion services. Katz Decl., ¶ 29; *see also* Gariepy Decl., ¶¶ 31-35. Quite simply, “[a] significant number of [affected] women would be prevented from obtaining an abortion; others would be delayed in obtaining abortions, exposing them to greater risks of complications; and even the women who are able to obtain abortions would suffer significant harms in terms of time, financial cost, and invasion of privacy.” *PPSE*, 33 F. Supp. 3d at 1355-56. *See also Hellerstedt*,

136 S. Ct. at 2313 (“increased driving distances” can create an undue burden). Due to the Ordinance, Mt. Juliet women face the prospect of traveling to other abortion providers and incurring burdensome expenses, including expenses associated with obtaining childcare, transportation, lodging, and lost wages.

In sum, the burdens imposed by the Ordinance are severe, and the Ordinance’s purported benefits are not remotely “sufficient to justify” those burdens. *Hellerstedt*, 136 S. Ct. at 2300.

ii. *The Ordinance’s Purported Benefits Are Pretextual*

The Amendment attempted to justify these burdens on the right to abortion—for the first time, ten months after the Ordinance was passed—by asserting that it was adopted “for the purpose of promoting the health, safety and welfare of not only those seeking to utilize the services of a surgical abortion clinic but also to preserve the City’s economic growth and shift protests to a less densely populated area.” *Schneider Decl.*, Ex. 8. But a court should “refus[e] to defer to a state’s purported justifications, and instead carefully evaluat[e] the facts.” *Hill*, 937 F.3d at 877. Here, the record disproves these alleged goals; in fact, the justification is beyond “feeble[]”—it is wholly pretextual. *Van Hollen*, 738 F.3d at 798. *See also* *WSWS* 573 F. Supp. at 521 (internal citations omitted) (rejecting justifications advanced by city for zoning ordinance). Because the Ordinance imposes “obstacles confronting women seeking abortions in [Mt. Juliet] without providing any benefit . . . capable of withstanding any meaningful scrutiny . . . [it is] unconstitutional on [its] face.” *Hellerstedt*, 136 S. Ct. at 2319.

First, Defendants’ purported goal of “shift[ing] protests to a less densely populated area,” is a legally impermissible basis to restrict abortion. Neither the Supreme Court nor any other court has ever so much as suggested that the government may invoke *anti-abortion protesters’* activities *as a reason to restrict abortion clinics*. And with good reason: If the government were

permitted to restrict abortion access because abortion *opponents'* activities might be witnessed by third parties, that would give those who oppose the fundamental right to abortion a heckler's veto over its exercise. *See, e.g., Roe v. Crawford*, 514 F.3d 789, 796 (8th Cir. 2008) ("If the State . . . banned abortion in general, on the basis of concerns about societal disruption due to protests at the clinics, the [heckler's veto] principle would no doubt apply and the government would be required to take steps to ensure access, rather than enacting a ban."); *Planned Parenthood of N. New England v. City of Manchester*, No. CIV. 01-64-M, 2001 WL 531537, at *3 (D.N.H. Apr. 27, 2001) (government "acquiescence in public opposition [to abortion] . . . is . . . impermissible"). By the logic underlying the Ordinance, when anti-Semitic protesters target a synagogue, a state can respond by forcing the *synagogue* to close or move on the sole basis that bystanders might witness the anti-Semitic protests—an unheard-of result that would give those opposed to the exercise of a constitutional right veto power over the congregants' religious exercise. That is not a constitutionally valid basis for state action. *See, e.g., Deerfield*, 661 F.2d at 337-38 (this rationale would "permit arbitrary governmental action aimed at the suppression of protected activity solely because the residents of the community disapproved of the nature of the activity or were offended by it"); *WSWS*, 573 F. Supp. at 523 ("A municipality has no legitimate interest in shielding certain members of a community from constitutionally-protected activities which they find offensive on personal, moral, or even religious grounds.").

Nor does the Ordinance actually *further* this alleged goal of limiting protests. *Cf. Edenfield v. Fane*, 507 U.S. 761, 770-71 (1993) (government cannot rely on "interests [that] are substantial in the abstract," but must prove that its "restriction will in fact [further] them to a material degree"). Even though it is prohibited from offering surgical abortions, carafem has already attracted frequent demonstrations protesting carafem's provision of medication abortion.

Grant Decl., ¶ 11. There is no indication, nor any reason to believe, that by preventing carafem from offering surgical abortions, the Ordinance in fact limits anti-abortion protests at its facility. Under such circumstances, courts have rejected the very justification propounded by Defendants, where, as here, “protests will continue at the [] clinic’s current location even if the [] law were to take effect” *W. Ala. Women’s Ctr. v. Miller*, 299 F. Supp. 3d 1244, 1258 (M.D. Ala. 2017) (“WAWC”). Further, carafem’s current facility is already located in a “less densely populated area” than some of the I-G zoned areas in Mt. Juliet, surrounded only by professional offices, a hotel, and a vacant plot of land. Grant Decl. ¶ 41. In contrast, both I-G zones in Mt. Juliet are surrounded by residentially-zoned land. This, too, belies the purported justification for the Ordinance, as “[l]egislative purpose may be inferred from the extent to which the statute actually furthers, or fails to further, the purported state interests.” *WAWC*, 299 F. Supp. 3d at 1258 n9.

Nor can the Ordinance pass constitutional scrutiny merely because the Board stated that it was adopted “for the purpose of promoting the health, safety and welfare of ... those seeking to utilize the services of a surgical abortion clinic.” *Schneider Decl.*, Ex. 8. Quite simply, nothing about relegating surgical abortion clinics to industrial-zoned areas of Mt. Juliet in any way advances health or safety. Rather, the Ordinance has “such a tangential relationship to patient safety in the context as to be [] arbitrary.” *Herllerstedt*, 136 S.Ct. at 2316. In fact, surgical abortions are exceedingly safe, with far fewer complication risks than medical procedures unregulated by the Ordinance—including numerous outpatient medical procedures commonly performed in doctors’ offices such as colonoscopies, wisdom tooth extraction, and tonsillectomy. *Gariepy Decl.*, ¶ 28. Even the Supreme Court has explicitly recognized that “[v]acuum aspiration is considered particularly safe,” *Stenberg v. Carhart*, 530 U.S. 914, 923 (2000), and has found “well supported” a district court’s finding that a statute requiring heightened standards

for abortion care were unnecessary and did not benefit patients. *Hellerstedt* 136 S. Ct. at 2315. In fact, by barring carafem from offering surgical abortions, the Ordinance *undermines* patient health and safety by requiring at least some women to carry pregnancies to term, thereby subjecting them to increased medical risk, since, “[n]ationwide, childbirth is 14 times more likely than abortion to result in death.” *Id.* See also Gariepy Decl., ¶ 33. As a result, the Ordinance makes reproductive health care less safe for the women of metropolitan Nashville by denying them access to legal abortion services. *Id.*, ¶¶ 33-34.

Finally, the notion that the Ordinance is calculated to “preserve the City’s economic growth,” Schneider Decl. Ex. 8, is too vague and unparticularized to even warrant a response. There is no explanation at all as to how the provision of surgical abortions at carafem’s current facility could possibly stifle economic development—particularly in light of carafem’s continued provision of medication abortion. Moreover, since carafem opened, Mt. Juliet has received significant investment, including an Amazon facility expected to create up to 2,000 jobs. (Grant Decl. ¶ 42.) As such, the Ordinance “burdens a constitutional right” with no “constitutionally permissible reason,” and is invalid. *Hill*, 937 F.3d at 877; see also *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 337 (5th Cir. 1981) (justification for targeting abortion providers was “too vague and unsubstantiated by the record to justify the burdens”).

2. Carafem Is Likely to Succeed on the Merits of Its Equal Protection Claim

Carafem is also overwhelmingly likely to prove the elements of a successful Equal Protection claim. “The Equal Protection Clause of the Fourteenth Amendment commands that no State shall ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). The Clause “safeguards

against the disparate treatment of similarly situated individuals as a result of government action that either burdens a fundamental right, targets a suspect class, or has no rational basis.” *Paterek v. Vill. of Armada, Mich.*, 801 F.3d 630, 649 (6th Cir. 2015) (quotation omitted).

Regardless of the level of scrutiny applied to the Ordinance,¹³ it violates the Equal Protection Clause and is unconstitutional. A plaintiff may demonstrate that a state action lacks a rational basis “either by negating every conceivable basis which might support the government action, or by showing that the challenged action was motivated by animus or ill-will.”

TriHealth, Inc. v. Bd. of Comm’rs, Hamilton Cty., Ohio, 430 F.3d 783, 788 (6th Cir. 2005).

“[T]he desire to impede a politically unpopular group is not a legitimate state interest,” *Bannum, Inc. v. City of Louisville, Ky.*, 958 F.2d 1354, 1360 (6th Cir. 1992), and “state action based on [] animus alone violates the Equal Protection Clause.” *Stemler v. City of Florence*, 126 F.3d 856, 873-74 (6th Cir. 1997); *see also Romer v. Evans*, 517 U.S. 620, 632 (1996).

For the reasons described above, there is no legitimate basis for the Ordinance, which improperly distinguishes between surgical abortions and numerous comparable medical procedures. Notably, the Supreme Court has recognized that “abortions taking place in an abortion facility are safe—indeed, safer than numerous procedures that take place outside hospitals.” *Hellerstedt*, 136 S. Ct. at 2315 (summarizing record evidence). With nothing but impermissible personal opposition to abortion truly justifying this discriminatory treatment, the Ordinance denies carafem equal protection under the law and is unconstitutional.

¹³ Abortion is a fundamental right, warranting strict scrutiny where the government discriminates on the basis of that right. *Casey*, 505 U.S. at 871; *Craigsmiles v. Giles*, 312 F.3d 220, 223 (6th Cir. 2002) (“When a statute regulates certain ‘fundamental rights’ (e.g., voting or abortion) . . . [it] is subject to ‘strict scrutiny.’”). However, carafem has demonstrated an overwhelming likelihood of success on its Equal Protection claim even under rational basis review.

a. *The Ordinance Codifies Disparate Treatment of Abortion Providers from Comparable Medical Practitioners*

While the Ordinance prohibits carafem from offering surgical abortions at its current location, comparable and even more invasive procedures are performed in the very same building as carafem's Mt. Juliet Office. Indeed, the Providence Medical Pavilion, where carafem is located, houses several other facilities that perform a variety of outpatient surgical procedures, including those performed under general anesthesia.¹⁴ Courts, including the Supreme Court, have long held that providers of outpatient surgery are similarly situated to abortion clinics. *See Hellerstedt*, 136 S. Ct. at 2315 (provision imposed heightened requirement on abortion providers "that simply is not based on differences between abortion and other surgical procedures"); *WSWS*, 573 F. Supp. at 520, 523 (no basis for ordinance to distinguish between "abortion services and other medical procedures"); *Deerfield*, 661 F.2d at 337 (record was "void of any legitimate basis" for distinguishing abortion clinic "from other medical facilities").

b. *The Disparate Treatment of Abortion Providers is Unconstitutional*

"There is no question that abortion has been singled out for special treatment by the city of [Mt. Juliet]. . . . Absent a compelling reason for treating abortion differently . . . the special treatment conflicts with the guarantees of equal protection." *P.L.S. Partners*, 696 F. Supp. at 798. Here, as discussed above, the city has failed to identify any "compelling reason" for the Ordinance—or any legitimate basis whatsoever. Where the only purported justifications are pretextual, and without evidentiary support, carafem has a strong likelihood of success in proving the Ordinance unconstitutional. *See Bannum*, 958 F.2d at 1360 (overturning zoning

¹⁴ *See About Your Surgery*, PROVIDENCE SURGERY CENTER, <http://providenceasc.com/about-your-surgery>.

ordinance where “[t]he city was able to present the district court with no evidence supporting its” proffered reasons for the action); *WSWS*, 573 F. Supp. at 521-22. Indeed, the “rational relationship standard is not met when the classification relied upon by the legislative authority is ‘so attenuated as to render the distinction arbitrary or irrational.’” *Bannum*, 958 F.2d at 1361 (quoting *Cleburne*, 473 U.S. at 446). Rather, to justify a disparate treatment, “some data reflecting the extent of the [alleged] danger must exist.” *Id.* No such data exists here.

Finally, the Ordinance also violates the Equal Protection clause because the record demonstrates it was motivated by anti-abortion ill-will; that is, by “animus toward the class it affects.” *Romer*, 517 U.S. at 632. The statements of Mt. Juliet politicians discussed above make clear that the introduction and passage of the Ordinance was motivated by their acknowledged “disgust” for abortion—not any legitimate interest of the municipality—and those statements provide relevant evidence that it lacks any rational basis. *See City of Cuyahoga Falls, Ohio v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 196–97 (2003) (statements made by decision-makers may constitute relevant evidence of discriminatory intent in an equal protection challenge).

In short, no belatedly articulated rationale can justify the Ordinance. Carafem has shown a strong likelihood of success on its equal protection claim.

3. The Ordinance Is Irreparably Harming Carafem and Its Patients

A finding of irreparable harm is warranted when a party suffers an injury that is not fully compensable by money damages. *See Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992). The violation of due process and equal protection rights for carafem and its patients, and the denial of carafem’s patients’ constitutionally-protected right to abortion, necessarily constitute ongoing, irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Obama for Am.*, 697 F.3d at 436; *Deerfield*, 661 F.2d at 338.

The Ordinance is inflicting ongoing, irreparable harm to carafem’s patients, as it forces carafem to turn away patients seeking constitutionally protected, time-sensitive medical care. Grant Decl., ¶¶ 25-28.¹⁵ Due to capacity constraints at the only other abortion clinic in the Nashville area, the Ordinance *at minimum* subjects carafem’s potential patients to weeks-long delays in their ability to obtain an abortion. *Id.* ¶¶ 28-34. Although abortion is safe throughout pregnancy, its risks increase with gestational age; by delaying access to abortion, the Ordinance imposes additional costs and health risks on women who would otherwise be able to obtain abortions earlier in pregnancy. Gariepy Decl., ¶ 32. That unquestionably constitutes irreparable harm. *See Van Hollen*, 738 F.3d at 796 (finding irreparable harm where “[p]atients will be subjected to weeks of delay ... and delay in obtaining an abortion can result in the progression of a pregnancy to a stage at which an abortion would be less safe, and eventually illegal”); *Harris v. Bd. of Supervisors L.A. Cty.*, 366 F.3d 754, 766 (9th Cir. 2004) (finding irreparable harm based on increased likelihood of medical complications resulting from delayed medical care).

Such delays are a best-case scenario. Some patients are unable to secure an appointment in Nashville at all, including when that clinic is unable to provide abortion services. Grant Decl., ¶¶ 29-33. These patients face hundreds of miles of travel to access abortion services, which renders abortion inaccessible for many of carafem’s low-income patients, and subjects others to substantial delay. Katz Decl. ¶¶ 29-30. Those harms are also irreparable. *See Preterm–Cleveland v. Himes*, 294 F. Supp. 3d 746, 757 (S.D. Ohio 2018) (“That Plaintiffs’ patients will have to either travel out of state to obtain the care to which they are constitutionally entitled, or otherwise carry a child to term against their wishes, establishes that they will incur an irreparable

¹⁵ The Ordinance harms carafem as well as its patients. Carafem secured office space specifically for the purpose of providing surgical abortion care, and is barred from using the space for this purpose. Grant Decl., ¶¶ 8, 18.

injury.”); *Planned Parenthood SE, Inc. v. Bentley*, 951 F. Supp. 2d 1280, 1289 (M.D. Ala. 2013).

In short, each and every day the Ordinance remains in effect, it has a deleterious impact on the health and constitutional rights of Tennessee women.

C. The Balance of Equities Weighs Strongly in Carafem’s Favor and a Preliminary Injunction Would Serve the Public Interest

The balance of equities strongly favors carafem in this case because Defendants would suffer no harm if this Court were to enjoin Defendants from enforcing the Ordinance. Neither the city nor the public have an interest in the enforcement of unconstitutional laws. *Planned Parenthood Ass’n of Cincinnati, Inc. v. City of Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987) (the “public is certainly interested in the prevention of enforcement of ordinances which may be unconstitutional”); *see also Deerfield*, 661 F.2d at 338-39 (no public interest in state actions that “interfere with the exercise of fundamental rights,” including the right to abortion). Moreover, any harm to Defendants would clearly be outweighed by the inability of women to exercise their constitutional right to abortion, as described above. *See Van Hollen*, 738 F.3d at 795.

IV. A BOND IS NOT NECESSARY IN THIS CASE

Finally, this Court should exercise its discretion and waive the Fed. R. Civ. P. 65(c) bond requirement, because the relief sought will result in no monetary loss for Defendants. *See Appalachian Reg’l Healthcare, Inc. v. Coventry Health and Life Ins. Co.*, 714 F.3d 424, 431-32 (6th Cir. 2013) (bond estimates loss associated with compliance of preliminary injunction).

V. CONCLUSION

For the reasons set forth above, carafem respectfully requests that the Court enter a preliminary injunction that prohibits Defendants, their agents, and their successors in office from enforcing the Ordinance or Amendment while this case is pending.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing
Memorandum Of Law In Support Of Plaintiff's Amended Motion For A Preliminary Injunction
has been served via the Court's electronic filing system on the following parties on the 13th day
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