

EMW WOMEN’S SURGICAL CENTER, P.S.C., *et al.*

PLAINTIFFS

v.

DANIEL CAMERON, in his official capacity as  
Attorney General of the Commonwealth of Kentucky, *et al.*

DEFENDANTS

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**ATTORNEY GENERAL DANIEL CAMERON’S RESPONSE TO  
PLAINTIFFS’ MOTION FOR TEMPORARY INJUNCTION**

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Plaintiffs’ Motion for Temporary Injunction should be denied because while Plaintiffs’ injury is speculative, it is abundantly clear that the Commonwealth and Kentuckians are irreparably harmed during any injunction of KRS 311.772 and KRS 311.7701–311.7711.

**ARGUMENT**

Plaintiffs have failed to meet their burden of proof necessary to obtain a temporary injunction. A trial court may issue temporary injunctive relief only where a plaintiff “has shown that [it] will suffer immediate and irreparable injury, that the various equities involved favor issuance of the temporary injunction, and that a substantial question exists on the merits.” *Beshear v. Goodwood Brewing Co.*, 635 S.W.3d 788, 795 (Ky. 2021). The Plaintiffs have not made such a showing through their Complaint, affidavits, or witness testimony.

Temporary injunctive relief is an “extraordinary remedy” that should rarely be granted. *Maupin v. Stansbury*, 575 S.W.2d 695, 697 (Ky. App. 1978). This is because

in “doubtful cases,” temporary injunctive relief “should await final judgment.” *Oscar Ewing, Inc. v. Melton*, 309 S.W.2d 760, 762 (Ky. 1958); *see also Commonwealth ex rel. Conway v. Thompson*, 300 S.W.3d 152, 161 (Ky. 2009) (“A temporary injunction should not issue in ‘doubtful cases.’” (citation omitted)). At best, the Plaintiffs’ success in this case is doubtful because it asks this Court to do something that has never been done before in the Commonwealth and that flies in the face of the text of the Kentucky Constitution and the historical way abortion has been treated in the Commonwealth.<sup>1</sup> Their “[d]oubtful case[] should await trial of the merits.” *Bingo Palace v. Lackey*, 310 S.W.3d 215, 216 (Ky. 2009) (quoting *Maupin*, 575 S.W.2d at 698); *see also Gordon v. Morrow*, 218 S.W. 258, 260, 269 (Ky. 1920) (dissolving an injunction premised on “novel questions of law” that “had no foundation in fact or law”).

Even if the Plaintiffs could show some possibility of success on the merits indicating a substantial question for this Court to address—and Attorney General Cameron demonstrates in his Motion to Dismiss that they do not<sup>2</sup>—they fail to proffer a single irreparable injury that warrants temporary injunctive relief. This fact, coupled with the loss of life in the Commonwealth that will occur from the Plaintiffs

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<sup>1</sup> Kentucky’s Constitution, much like the federal Constitution, is “neither pro-life nor pro-choice.” *Dobbs*, 2022 WL 2276808, at 61 (Kavanaugh, J., concurring). It “leaves the issue for the people and their elected representatives to resolve through the democratic process.” *Id.* The evidence presented at the Court’s evidentiary hearing is for the General Assembly, not the courts. Indeed, the hearing was about health and economic policy, not purported constitutional rights or statutory interpretation. *See* VR 7-06-2022 at 10:40:43–49 (Plaintiffs’ witness tendered as an expert in “policy evaluation”). And the judiciary is not where health or economic policy should be crafted. *See Walters v. Bindner*, 435 S.W.2d 464, 467 (Ky. 1968).

<sup>2</sup> Attorney General Cameron incorporates by reference his arguments in his Motion to Dismiss as to the merits of Plaintiffs’ challenges.

continuing to perform elective abortions, weighs the equities heavily in favor of denying Plaintiffs’ request for temporary injunctive relief.

**I. It is the Commonwealth, Attorney General Cameron, and the public—not the Plaintiffs—that will suffer irreparable injury should Plaintiffs be granted temporary injunctive relief.**

By codifying the Human Life Protection Act and the Heartbeat Law, the General Assembly has declared it to be the policy of the Commonwealth to protect the lives of unborn children and has entrusted Attorney General Cameron with the responsibility to carry out that policy. “[N]on-enforcement of a duly-enacted statute constitutes irreparable harm to the public and the government.” *Cameron v. Beshear*, 628 S.W.3d 61, 73 (Ky. 2021) (citation omitted). That’s because whenever the General Assembly passes a law, it makes an “‘implied finding’ that the public will be harmed if the statute is not enforced.” *Id.* at 78 (citation omitted). Thus, any action that bars the Attorney General from enforcing the will of the people constitutes per se irreparable harm to the Commonwealth and its citizens. *See id.* at 73.

The nature of the immediate and irreparable harm here is especially pernicious. The non-enforcement of even ordinary statutes amounts to irreparable harm. *See id.* The non-enforcement of the Human Life Protection Act and Heartbeat Law amounts to something far more grave. These laws prohibit what the General Assembly has determined is the unjustified taking of unborn human life. So every day that these laws are not enforced is a day in which unborn children of the Commonwealth perish.

In contrast, the Plaintiffs cannot demonstrate any irreparable harm to them. The irreparable harm inquiry must be viewed through the Plaintiffs’ lens, not through the lens of pregnant women who may choose to become their patients, because no patients are plaintiffs here and Kentucky courts have not recognized third-party standing. *See Associated Indus. of Ky. v. Commonwealth*, 912 S.W.2d 947, 951 (Ky. 1995) (“[T]he claim to relief will not rest upon the rights of third persons.”). At most, the Plaintiffs assert that they will be unable to perform abortions. But they do not identify any irreparable harm resulting from their inability to perform abortions.<sup>3</sup> Their request for temporary injunctive relief, therefore, fails. *See Price v. Paintsville Tourism Comm’n*, 261 S.W.3d 482, 484 (Ky. 2008) (“requiring” the trial court to deny injunctive relief “unless it finds . . . that the movant’s remedy will be irreparably impaired absent the extraordinary relief”).

## **II. The equities overwhelmingly favor denying the motion for temporary injunction.**

Before granting temporary injunctive relief, “the trial court must find ‘that an injunction will not be inequitable, *i.e.* will not unduly harm other parties or disserve the public.’” *Goodwood Brewing Co.*, 635 S.W.3d at 795 (quoting *Price*, 261 S.W.3d at 484). Granting a temporary injunction here would disserve the public.

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<sup>3</sup> Plaintiffs’ assertion of irreparable harm for the purported violation of what they claim is a constitutional right, Pls.’ TI Mem. 18–19, assumes that the merits of their action are correct. As explained in Attorney General Daniel Cameron’s Motion to Dismiss, that is not the case. Plaintiffs cannot claim that they will suffer irreparable injury from the violation of constitutional rights they do not have. Without a constitutional violation, Plaintiffs’ only potential harm is a loss of business and profits. These are reparable harms that do not warrant the extraordinary relief of a temporary injunction.

The Kentucky Supreme Court has made clear that the General Assembly is the body that speaks for the public's interest and that the Kentucky Court of Justice should not "substitute[] its view of the public interest for that expressed by the General Assembly." *Cameron*, 628 S.W.3d at 75, 78; *Owens v. Clemons*, 408 S.W.2d 642, 645 (Ky. 1966). Furthermore, the public's interest "strongly favors adherence" to duly enacted legislation. *Cameron*, 628 S.W.3d at 78. As discussed above, the challenged laws constitute the General Assembly's determination that elective abortion is the unlawful killing of a human being and that determination carries with it an "implied finding' that the public will be harmed if the statute is not enforced." *Id.* (quoting *Boone Creek Props., LLC. v. Lexington-Fayette Urban Cnty. Bd. of Adjustment*, 442 S.W.3d 36, 40 (Ky. 2014)). Thus, adherence to the duly enacted laws of the General Assembly in and of itself heavily tips the equities in favor of not enjoining the laws.

Additionally, here, there is an even greater equitable interest at play: the lives of unborn children. While the Plaintiffs' asserted abortion rights are found nowhere in the text of the Kentucky Constitution and have not been recognized by the General Assembly, the rights of the human unborn child have explicit protections by both. Section 1 of the Kentucky Constitution says that "[a]ll men are, by nature, free and equal, and have certain inherent and inalienable rights" including the "right of enjoying and defending their lives." In KRS 311.772(1)(c), the General Assembly defined "unborn human being" as "an individual living member of the species homo sapiens throughout the entire embryonic and fetal stages of the unborn child from

fertilization to full gestation and childbirth.” *See also* KRS 311.781(9) (similar). Because the General Assembly has defined unborn children as human beings, members of the human family from the moment of conception until birth, they are entitled to the explicit protection of the right to life in Section 1 of the Kentucky Constitution. Furthermore, the General Assembly has repeatedly said that the Commonwealth has a legitimate interest in protecting the life of an unborn human. *See, e.g.*, KRS 311.7702 (“The Commonwealth of Kentucky has legitimate interests from the outset of the pregnancy in protecting . . . the life of an unborn human individual who may be born.”). As Plaintiffs’ witness acknowledged, an abortion terminates a pregnancy, stops a beating heart, (VR 7-06-2022 at 10:47:43–10:48:00, Transcript at 63–64), and thereby ends the life of the unborn child. Abortion is, therefore, a direct and irreparable infringement on that child’s ability to exercise his or her constitutional right to life. Such a clear harm to members of the public means the equities insurmountably weigh in favor of not granting the temporary injunction.

### **CONCLUSION**

The Court should deny Plaintiffs’ Motion for a Temporary Injunction.

Respectfully submitted,

**Daniel Cameron**  
**ATTORNEY GENERAL**

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**CERTIFICATE OF SERVICE**

I certify that on July 18, 2022, a copy of the above was filed electronically with the Court and served through the Court's electronic filing system on counsel of record and additionally by email as indicated below:

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