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National Abortion Federation
1090 Vermont Avenue, NW, Suite 1000
Washington, DC 20005
naf@prochoice.org

Re: Your members' violations of Utah abortion laws and 18 U.S.C. §§ 1461–1462

To the National Abortion Federation and its employees, members, and donors:

The law of Utah imposes felony criminal liability on every person who performs or assists an abortion, unless the abortion is performed to save the life of the mother or avert a serious risk of substantial and irreversible impairment of a major bodily function, or unless the pregnancy is the result of an act of rape or incest that has been reported to law enforcement, or unless the abortion is performed in response to severe fetal deformities. *See* Utah Code Ann. § 76-7a-201. Violations of section 76-7a-201 are punishable by up to 15 years imprisonment per abortion.

It has come to our attention that two of your members—Planned Parenthood Association of Utah and the Wasatch Women's Center—are violating this statute, apparently because they think that the preliminary injunction that Judge Stone issued on July 19, 2022, “blocked” the law itself and allows abortions in Utah to resume without fear of future criminal punishment. Judge Stone's injunction does no such thing. *See Whole Woman's Health v. Jackson*, 141 S. Ct. 2494, 2495 (2021) (“[C]ourts enjoy the power to enjoin individuals tasked with enforcing laws, not the laws themselves.”). The injunction merely restrains the named defendants in that case from initiating criminal prosecutions while the injunction remains in effect. It does not shield your members from future prosecution or punishment for the abortions that they are currently performing if the preliminary injunction is vacated or reversed on appeal. *See Edgar v. MITE Corp.*, 457 U.S. 624, 653 (1982) (Stevens, J., concurring). Abortion remains a criminal offense in Utah, notwithstanding the preliminary injunction issued by Judge Stone, and anyone who is violating or assisting violations of section 76-7a-201 will be met with the full force of the law.

Your members appear to be laboring under the fallacy that equates a preliminary injunction with a formal suspension or revocation of the underlying statute. We are writing to disabuse you of that notion, and to provide fair warning that your members' violations of section 76-7a-201 will be met with criminal sanctions as soon as Judge Stone's injunction is vacated. Although Judge Stone's preliminary injunction purports to prohibit “future enforcement actions for conduct that occurred during the pendency of this injunction,” that protection will no longer exist if Judge Stone's order is vacated or reversed by an appellate court.

We will also be introducing legislation next session to ensure that NAF and its members are held accountable for every criminal abortion that they perform or assist in violation of section 76-7a-201. This legislation will require state licensing officials to revoke the professional licenses of anyone who performed or assisted an abortion in violation of section 76-7a-201 or federal law, regardless of whether they did so in reliance on Judge Stone's preliminary injunction. It will also empower the Attorney General, as well as district attorneys from throughout the state, to prosecute abortion-related crimes—including violations of section 76-7a-201—whenever the local district attorney fails or refuses to do so. The bill will also prohibit abortion-provider networks from invoking Judge Stone's preliminary injunction as a defense to criminal prosecution or civil sanctions if that injunction is vacated or reversed on appeal. Finally, this proposed legislation will eliminate any statutes of limitations that currently apply to section 76-7a-201 or other abortion-related crimes.

We also write to inform you that federal law imposes felony criminal liability on anyone who mails or ships abortion-inducing drugs (or any “article” or “thing” designed, adapted, or intended for producing abortion) in interstate commerce. *See* 18 U.S.C. §§ 1461–1462. Violations of 18 U.S.C. §§ 1461–1462 are punishable by five years imprisonment and qualify as predicate offenses under the Racketeer Influenced and Corrupt Organizations Act (RICO). *See* 18 U.S.C. § 1961(1). Although the Biden Administration is not currently enforcing 18 U.S.C. §§ 1461–1462 or RICO against abortion providers, we will do everything in our power to ensure that the U.S. Attorney in the next Republican Administration holds NAF and its members accountable for every criminal act they commit in violation of these federal statutes. We will also be introducing legislation to give the Attorney General of Utah *parens patriae* standing to litigate on behalf of unborn Utahans, which will enable him to sue abortion-provider networks such as NAF under civil RICO for their members' violations of 18 U.S.C. §§ 1461–1462.

In the meantime, you must take each of the following steps:

First. NAF must immediately stop funding or affiliating with abortion providers in Utah that violate section 76-7a-201, and it must instruct its members to remain in compliance with section 76-7a-201 regardless of whether a court temporarily enjoins state officials from initiating criminal prosecutions under that statute. NAF must also insist that its members immediately comply with 18 U.S.C. §§ 1461–1462 and stop shipping or receiving abortion drugs and abortion-related paraphernalia through the mails or through any other channel or instrumentality of interstate commerce.

Second. NAF must preserve all evidence of every criminal abortion and every violation of 18 U.S.C. §§ 1461–1462 that takes place at its members' clinics or elsewhere. A criminal abortion includes any abortion performed in Utah on or after June 24, 2022, apart from those permitted by section 76-7a-201. NAF must also preserve any evidence that identifies the individuals or entities that aided or abetted these illegal abortions, including the identity of every employee, volunteer, and donor to NAF.

Third. NAF must preserve all communications with its attorneys that fall within the crime–fraud exception to the attorney–client privilege. This includes any communications with your attorneys concerning any abortion performed in Utah on or after June 24, 2022, apart from those permitted by section 76-7a-201. It also includes any communications with your attorneys concerning any act that violates 18 U.S.C. §§ 1461–1462. Destroying or spoliating evidence of these crimes will expose you and your attorneys to severe civil and criminal penalties.

Fourth. NAF must refrain from advising or counseling others to commit any act that would violate section 76-7a-201 or 18 U.S.C. §§ 1461–1462, regardless of whether a court has temporarily enjoined officials from initiating criminal prosecutions under those statutes. Individuals who advise or counsel others to violate these laws are subject to felony criminal prosecution under the principle of accomplice liability.

Conduct yourselves accordingly.

Sincerely,

Representative Walt Brooks
Representative Cory Maloy
Representative Ken Ivory
Representative Jordan Teuscher
Representative Kera Birkeland
Representative Karianne Lisonbee
Representative Cheryl Acton
Representative Melissa Ballard
Representative Adam Robertson
Representative Judy Rohner
Representative Jon Hawkins
Representative Mark Strong
Representative Mike Petersen
Representative Stephen Whyte
Representative Stephen Handy
Representative Matt Gwynn
Representative Rex Shipp
Representative Carl Albrecht
Representative Kay Christofferson
Representative Colin Jack
Representative Steve Lund
Representative Brady Brammer
Candidate Stephanie Gricius
Candidate Katy Hall

cc: Planned Parenthood Association of Utah
Wasatch Women's Center