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Utah Abortion Fund
Salt Lake City, Utah
(801) 215-9441
hello@utafund.org

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

To the Utah Abortion Fund and its employees, volunteers, 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 the Utah Abortion Fund is violating this statute by aiding or abetting criminal abortions in Utah, apparently because it thinks 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 against you while the injunction remains in effect. It does not shield the Utah Abortion Fund or its employees, volunteers, or donors from future prosecution or punishment for the abortions that they assist 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 aids or abets violations of section 76-7a-201 will be met with the full force of the law.

The Utah Abortion Fund appears 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 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 the Utah Abortion Fund and its donors are held accountable for every criminal abortion that you assist in violation of section 76-7a-201. This legislation will 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 funds and their donors 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 funds, we will do everything in our power to ensure that the U.S. Attorney in the next Republican Administration holds abortion funds accountable for every criminal act that they aid or abet 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 funds and their donors under civil RICO over these violations of 18 U.S.C. §§ 1461–1462.

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

First. The Utah Abortion Fund must immediately stop aiding or abetting abortions in Utah except those permitted by section 76-7a-201, and you must remain in compliance with section 76-7a-201 regardless of whether a court temporarily enjoins state officials from initiating criminal prosecutions under that statute.

Second. The Utah Abortion Fund must preserve all evidence of every criminal abortion that takes place in the state of Utah. A criminal abortion includes any abortion performed in Utah on or after June 24, 2022, apart from those permitted by section 76-7a-201. The Utah Abortion Fund must also preserve any evidence that identifies the individuals or entities that aided or abetted these illegal abortions, including the identity of each of your employees, volunteers, and donors, and anyone else who aided or abetted these criminal acts.

Third. The Utah Abortion Fund 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. Destroying or spoliating evidence of these crimes will expose you and your attorneys to severe civil and criminal penalties.

Fourth. The Utah Abortion Fund 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: National Association of Abortion Funds (NAAF)