STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF MICHIGAN, Plaintiff/Appellee, vs. MATTHEW JOSEPH CONNOLLY; WILLIAM LOUIS GOODMAN; LAUREN BRICE HANDY; PATRICE WOODWORTH-CRANDALL, Defendants/Appellants.	COA Nos. 364104; 364105; 364106; 364107 Circuit Court Nos. 2019-045615-FH; 2019-045621-FH; 2019-045623-FH; 2019-045627-FH **ORAL ARGUMENT REQUESTED** **THE APPEAL REQUESTS A RULING THAT A STATE CRIMINAL STATUTE IS INVALID**

AMERICAN FREEDOM LAW CENTER
Robert J. Muise, Esq. (P62849)
P.O. Box 131098
Ann Arbor, Michigan 48113
(734) 635-3756
rmuise@americanfreedomlawcenter.org

GENESEE COUNTY PROSECUTOR'S OFFICE
David S. Leyton
County Prosecutor
900 S. Saginaw Street, STE 102
Flint, Michigan 48502

Counsel for Defendants/Appellants.

/

APPELLANTS' BRIEF

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Constitutions

Rules/Statutes

Other

INTRODUCTION

This case involves the peaceful exercise of conscience by four individuals (Defendants) who object to abortion on moral and religious grounds. At most, it was a misdemeanor trespass case. Unfortunately, it was transformed into a felony.

On June 7, 2019, Defendants peacefully entered the Women's Health Center in Flint, Michigan—an abortion center. No violent act was committed by any Defendant. No violent act was threatened by any Defendant. No Defendant assaulted, battered, or wounded any police officer. No Defendant possessed any weapons. No Defendant fled or attempted to flee the scene upon the arrival of the police officers. Defendants were peaceful throughout. Yet, Defendants are now convicted *felons* for what amounts to a peaceful trespass.

Defendants remained on the premises of the abortion center that day to witness for life and to remain in solidarity with those who would be harmed by abortion. The police officers arrested Defendants for refusing to leave the abortion center (a simple trespass charge). Upon their arrests, Defendants engaged in a time-honored act reminiscent of the civil rights movement that is often described as "passive resistance," although that description is inaccurate here *because Defendants offered no resistance*—they simply went limp. Defendants explained to the officers that they could not morally assist with their own arrests. As a matter of conscience, Defendants could not assist the officers with their arrests because doing so made them morally complicit in the killing of innocent lives. But Defendants did nothing that prevented the officers from exercising their police authority and arresting them. Defendants were in fact arrested and carried off the property.

There is a difference between ***actively resisting*** or ***actively obstructing*** an arrest and simply ***not assisting*** in your own arrest, particularly when the arrestee's conscience prohibits such active participation, as in this case. Nonetheless, because they were abiding by their sincerely held

religious beliefs, Defendants are now convicted felons for having violated MCL § 750.81d(1), which effectively converted a peaceful trespass that involved no violence, no threats of violence, no personal injury, and no property damage into a felony. Justice compels reversal of this felony conviction.[1]

In the final analysis, like many other peaceful civil rights advocates—Martin Luther King, Jr., and Rosa Parks come immediately to mind—Defendants were peacefully exercising their rights of conscience. They are not felons nor does the law or evidence support a felony conviction. The convictions should be reversed and the cases remanded for dismissal of the felony charges and for a new trial before a properly instructed jury on the remaining misdemeanor offenses.

JURISDICTIONAL STATEMENT

The Circuit Court sentenced Defendants on November 18, 2022. Defendants timely filed their Claims of Appeal on December 9, 2022, which was within 21 days of the entry of judgment. *See* MCR 7.105(A)(2).

QUESTIONS PRESENTED

Did the Circuit Court commit reversable error by binding over Defendants for trial on the felony offense of Assaulting/Resisting/Obstructing a Police Officer (MCL § 750.81d(1)) under the facts of the case? (Mot to Quash Hr'g Tr at 40; Order on Mot to Quash).

Circuit Court's Answer: No.

Defendants' Answer: Yes.

[1] On June 29, 2022, a jury convicted Defendants of the felony offense of Assaulting/Resisting/Obstructing a Police Officer (MCL § 750.81d(1)) and two misdemeanor offenses: Disturbing the Peace (MCL § 750.170) and Trespass (MCL § 750.552). (Trial Tr [Vol II] at 169-79).

Did the Circuit Court commit reversable error by failing to dismiss the felony offense of Assaulting/Resisting/Obstructing a Police Officer (MCL § 750.81d(1)) prior to submitting the case to the jury? (Trial Tr [Vol II] at 47-60).

Circuit Court's Answer: No.

Defendants' Answer: Yes.

Did the Circuit Court commit reversable error by failing to dismiss the felony offense of Assaulting/Resisting/Obstructing a Police Officer (MCL § 750.81d(1)) on equal protection grounds under the Fourteenth Amendment to the United States Constitution? (Mot to Quash Hr'g Tr at 40; Trial Tr [Vol II] at 47-60).

Circuit Court's Answer: No.

Defendants' Answer: Yes.

Did the Circuit Court commit reversable error by failing to dismiss the felony offense of Assaulting/Resisting/Obstructing a Police Officer (MCL § 750.81d(1)) on free exercise grounds under the First Amendment to the United States Constitution? (Mot to Quash Hr'g Tr at 40; Trial Tr [Vol II] at 47-60).

Circuit Court's Answer: No.

Defendants' Answer: Yes.

Did the Circuit Court commit reversable error by denying Defendants' request for discovery to demonstrate the discriminatory and selective enforcement of MCL § 750.81d(1) (Assaulting/Resisting/Obstructing a Police Officer)? (Mot to Compel Disc Hr'g Tr. at 28-32; Order Denying Mot to Compel Disc).

Circuit Court's Answer: No.

Defendants' Answer: Yes.

Did the Circuit Court commit reversable error by denying Defendants' requests for jury instructions on the defense of others and necessity, particularly in light of the U.S. Supreme Court's decision in *Dobbs v Jackson Women's Health Organization*, 142 S Ct 2228 (2022)? (Mot for Jury Instructions Hr'g Tr at 41-47; Order Denying Mot for Jury Instructions; Trial Tr [Vol II] at 69-76).

Circuit Court's Answer: No.

Defendants' Answer: Yes.

Did the Circuit Court commit reversable error by denying Defendants' motion to dismiss the trespass charge following the close of evidence? (Trial Tr [Vol II] at 40-46).

Circuit Court's Answer: No.

Defendants' Answer: Yes.

Did the Circuit Court commit reversable error by denying Defendants' request to include the legal definition of "occupant" in the trespass jury instruction? (Trial Tr [Vol II] at 40-46, 119-20).

Circuit Court's Answer: No.

Defendants' Answer: Yes.

STATEMENT OF FACTS[2]

I. Facts Related to Criminal Offenses.

The Women's Health Center ("WHC") is a facility that "offer[s] abortion services." (Prelim Exam Tr ["PE Tr"] at 19:18-20; *id* at 28:12-15; Trial Tr [Vol I] at 192:10-23). On June 7,

[2] The testimony provided at the preliminary examination mirrored the testimony at trial, and each trial transcript is precisely the same. Accordingly, Defendants cite here to the preliminary examination transcript ("PE Tr") and generically to the trial transcript ("Trial Tr"), noting whether it is volume I or volume II.

2019, Defendants peacefully entered WHC because they oppose abortion.[3] (PE Tr at 20:3-4; *id* 28:20-23). Defendants have "a religious or moral objection to abortion." (*Id* 28:24-25 to 29:1-2; Trial Tr [Vol I] at 198:7-11). The WHC Office Manager (Ms. Peggy Thon) asked Defendants to leave the center's waiting area "[b]ecause they were approaching [WHC] patients, handing out red roses, and letting [the patients] know that they were doing wrong." (PE Tr at 21:9-11; Trial Tr [Vol I] at 198:12-16). Upon realizing that Defendants were in the waiting area, the Office Manager moved the patients into the back of the facility, at which time, per the testimony of the Office Manager, Defendants began "singing. They were praying and they were shouting loud enough to try and reach the people that were behind the door," and Defendants were stating "[t]hat there was help. That [the WHC] patients were murdering children."[4] (PE Tr at 25:19-25; *see also id* 30:25 to 31:1-5 [observing Defendants "handing out literature and roses," "praying," "singing" "religious songs," and "pleading with individuals not to have an abortion"]). At no time while they were in the abortion center did Defendants engage in violence or threaten any act of violence. (*Id* at 29:23-25 to 30:1-4; 34:17-23; *see also* Trial Tr [Vol I] at 199:11-24; 201:2-4). Defendants did not prevent anyone from entering or leaving the abortion center. (PE Tr at 34:2-6; *see also* Trial Tr [Vol I] at 200:23-25 to 201:1).

Trooper Huey was the first officer to answer the call and was dispatched to WHC. (PE Tr at 99:14-25). Upon arriving at the abortion center, Trooper Huey spoke with Defendants and "asked them to leave and they basically said that they would like to leave but they couldn't so they didn't leave." (*Id* at 101:14-16). One of the Defendants told Trooper Huey that they "had a religious or moral objection to abortion [and] that was the basis for their protest." (*Id* at 109:15-

[3] At the time, WHC advertised abortions up to 24 weeks gestation. (*See* Trial Tr [Vol I] at 194).
[4] Defendants were pleading with the women to not have an abortion. (PE Tr at 31:6-8).

18). "After they told [Trooper Huey] that they wouldn't leave[, he] was under the impression that they probably had to be arrested for trespassing and [he] asked [for] more cars to help transport people." (*Id* at 102:3-8). Trooper Huey made a radio call stating, "[N]o active trouble, refusing to leave, backseats needed for transportation." (*Id* at 109: 19-25 to 110:1-4). Additional officers arrived to assist. (*Id* at 102:9-15).

Upon the arrival of the additional officers, Defendants were asked to leave the abortion center by the Office Manager and by Detective Trooper Martin. When Defendants did not comply with the requests to leave, the officers arrested them. (*Id* at 44:13-25 to 45:1-19). Upon being told that they were under arrest, Defendants simply went "limp." (*Id* at 35:1-3). Per the Office Manager:

> Q: Did you see any of the individuals when they were being arrested make any effort to strike or wound or batter or fight an Officer to prevent him from arresting them?
>
> * * *
>
> A: No.

(*Id* at 37:22-24; 38:7).

While being arrested, Defendants expressed to the officers "that they wanted to leave but that they felt morally obligated to stay because abortions were taking place." (*Id* at 51:10-15; *see also* Trial Tr [Vol I] at 225:11-13 [acknowledging that Defendants could not morally assist with their own arrests]).

The officers carried each Defendant out of the abortion center and into awaiting police vehicles. Defendants did not engage in any violence against any officer. They did not assault any officer. They did not kick or strike any officer. They did not batter or wound any officer. Defendants did not brandish or possess any weapons. At all times, Defendants were "peaceful."

(PE Tr at 52:15-25 to 53:1-7; *id* at 126:2-3; *see also* Trial Tr [Vol I] at 222:7-25 to 226:1-12).

Per the testimony of Detective Trooper Martin:

> Q: At the moment they were told that they were under arrest the defendants went limp, is that right?
> A: Yes.
> Q: Other than going limp did any defendant fight any Officer ***or physically struggle with them at any time***?
> A: ***No, sir***.
> Q: ***Would it be fair to say that they just wouldn't actively participate in their own arrest?***
> A: ***Yes***.

(PE Tr at 53:14-22 [emphasis added]; *see also id* at 54: 4-6 [testifying that no Defendant attempted to flee from the scene]).

Per the testimony of Trooper Huey:

> Q: You testified that I believe, I wrote down here, on a couple of occasions that one or two of the defendants made the comment that they can't assist you with their arrest? Is that correct?
> A: Yes, I heard that from at least two. I don't know, I don't remember specifically. I'm pretty sure I had it right the first time when I guessed it was Mr. Goodman.
> Q: And, it was your, ***did you have an understanding that the sentiment they were conveying is they morally could not assist with you arresting them from the abortion center?***
> A: ***Mr. Connolly explained that to me, yes. He was nice***.
> Q: ***You said he was nice?***
> A: ***He was.***

(*Id* at 112:8-20 [emphasis added]).

Per the testimony of Officer Poole:

> Q: At any time when you were assisting the, with transporting either defendant Handy or defendant Goodman, did any of them kick you?
> A: No, sir.
> Q: Any of them punch you?
> A: No, sir.
> Q: Anyone try to thrash or escape from your carrying of them?
> A: No, sir.
> Q: Were you wounded by any of the defendants?
> A: No, sir.
> Q: Were you battered by any of the defendants?

A: No, sir.
Q: Were you struck by any of the defendants?
A: No, sir.
Q: Were you assaulted by any of the defendants?
A: No, sir.
Q: Did you observe any of the defendants trying to flee from being arrested?
A: No, sir.
Q: ***Would it be fair to say that when they were placed under arrest they went limp***?
A: ***Yes***.

(*Id* at 127:1-22 [emphasis added]).

All Defendants were placed in police vehicles, taken to the "Flint city jail," and booked. (*Id* 53:23-25 to 54:1-3).

In sum, Defendants' actions on June 7, 2019, were non-violent; no Defendant committed any act of violence; all Defendants were peaceful. (*See supra*).

During the trial, Detective Trooper Huey testified similarly and as follows:

Q. So you are the officer in charge of the investigation of this case, correct?
A. I was.
Q. And at the moment when you told the defendants that they were under arrest, they were actually in the custody and control of the officers, correct?
A. Correct.
Q. And you were first to arrive on the scene?
A. I was.
Q. And I believe it was you that made the radio call that we heard previously "no active trouble, refusing to leave, backseats needed for transportation?" Is that -- do you recall making that call?
A. Yes. Anything that said 3555 before it is what I said. So that ***there was no trouble, and take their time***. Numerous times, I said that.
Q. All right. In fact, we heard on the radio there -- multiple times, they said no hurry for the officers to arrive, correct?
A. Yes, sir.
Q. Okay, and when you -- ***so there was no active trouble when you arrived and the rescuers were inside***. Is that correct?
A. ***Correct.*** No physical altercation or anything.
Q. And when you spoke with the defendants and asked them to leave, they told you that they wanted to leave, but they couldn't, correct?
A. I'm not sure if all of them said that. Some of them did, yes.
Q. Okay. In fact, I believe it was Mr. Goodman who said I would like to leave, but then he said he can't leave, correct?
A. I do remember that, yes.

Q. And you said you dealt mostly with Mr. Connelly?
A. Mostly, yes.
Q. ***And you understood when they said that they -- when they were explaining that they would like to leave, but they couldn't leave is because they -- in good conscience, they could not assist you with their arrests. Is that correct****?*
A. ***Yes***.
Q. And you understood that?
A. I understood what they were implying, yes.
Q. I believe you had a conversation with Mr. Connelly about that. Is that correct?
A. I think I did briefly, yes.
Q. And I believe -- and at the preliminary examination, you referred to Mr. Connolly as being nice, correct?
A. ***Yeah, he was nice***.
Q. In fact, he was cordial to you, wasn't he?
A. Absolutely.
Q. And you indicated you had some involvement with defendant Handy as well. Is that correct?
A. Yes.
Q. ***And she also expressed to you that she couldn't assist you with her -- with you arresting her based on her religious objection, correct****?*
A. ***Yeah, she repeatedly said that. Yes***.
Q. And no defendant threatened any act of violence. Is that correct?
A. That's correct.
Q. No defendant engaged in any act of violence?
A. That's correct.
Q. No defendant possessed a weapon?
A. Not that I know of.
Q. ***And the defendants were peaceful****?*
A. ***Yes***.
Q. At no time when you were carrying defendant Connolly was he thrashing or kicking or fighting you. He just went limp, correct?
A. He did.
Q. No defendant assaulted any officer?
A. No.
Q. No defendant kicked any officer?
A. That's correct.
Q. No defendant battered any officer?
A. Correct.
Q. No defendant wounded any officer?
A. Correct.
Q. ***And you understood that they morally cannot assist you with arresting them, correct****?*
A. ***That's what they told me, yes***.
Q. Why didn't the officers use a wheelchair to move them out of the abortion center?

A. I didn't notice a wheelchair anywhere in there. But also we are not trained to use wheelchairs. They teach us how to carry people with a three man or a four man carry. So that's what we did.
Q. ***So it's a pretty standard training SOP to carry them out the way you carried them out****?*
A. ***Yes***, it does get a little dicey when you have more than one department because you're not all doing the same. So I daresay, if we had like all one department or all state troopers, we would have functioned more efficiently because everybody does it the same way. But yes.
Q. Did anybody ask to see if there was a wheelchair available? After all, this was a medical facility.
A. No, sir.
Q. How about a gurney? Did anybody ask you if there was a gurney available to be able to transport them out?
A. Did not check.
Q. So you just used what your SOP would be for carrying somebody out who physically would not come out, correct?
A. Correct.

(Trial Tr [Vol I] at 222:7-25 to 226:1-12 [emphasis added]).

On June 7, 2019, Defendants were at the WHC abortion center because they honestly and reasonably believed that their peaceful actions were necessary to protect mothers and their unborn babies from the imminent harm caused by the violence of abortion. Defendants' objective was to peacefully and persuasively convince the mothers and their family members to choose life. At no time did any Defendant physically obstruct access to the abortion center. And at no time did any Defendant use violence toward anyone. (*See supra*).

Dr. Monica Miller testified on behalf of Defendants. Dr. Miller has been actively involved in the pro-life movement for over four decades. She has a Ph. D. in Theology from Marquette University. She taught Theology at the university-level from 1986 to 2019, and she currently teaches Catholic Moral Theology as a part-time professor at Sacred Heart Major Seminary in Detroit. Dr. Miller has written dozens of published articles in the area of Theology, and she has three books published on theological subjects. Dr. Miller confirmed that Defendants' actions,

including their "passive resistance," were motivated by their sincerely held religious beliefs. (Trial Tr [Vol II] at 88:19-25 to 91:1-11; 92:2-25 to 93:1-2; 94:6-18; 95:5-25 to 99:1-22).

Dr. Miller testified in relevant part as follows:

> A. . . . . I also need to explain if the moms continue to refuse to respond to our offer and they are not going to walk out with us - - the principal of a red rose rescue also means we have to stay with the abandoned aborted children. They have no defense. They have no one to protect them. They have no voice. So it is a spiritual principle or maybe a philosophical principle, if you will, that we have to remain with the unwanted. We can't just leave them. Somebody -- they have at least a right for somebody to be with them in their final hour. And so that's why the red rose rescuers, when they make that commitment to stay, they, in conscience, must remain. They can't just walk out. So there is that aspect to it. So it is both reaching out to the moms, trying to persuade those mothers, offer them help. But if they continue to -- you know, they are going to continue to go through with the abortion, then the rescuers have to stay with the unborn children that are about to be aborted.
> Q. Are these red rose rescues peaceful?
> A. They are very peaceful.
> Q. Ever use force, threats, or physical obstruction to block access during such rescues?
> A. No, we won't permit it.
> Q. Now, we have seen in this case [that] upon the arrest of the four defendants, we saw that they, the rescuers, they went limp. They didn't provide any response. Is there a reason for that in the red rose rescue, a theological basis for that?
> A. Right, and I think I more or less already explained that. They can't just leave. They have to be taken away. They can't cooperate with abandoning the unborn children who are about to be aborted. And so that's why, in principle, they will go limp and the police officers may have to carry them out or maybe put them in a wheelchair and wheeled them out. But it is a point of conscience for those who have made the decision to participate in a red rose rescue, that they can't just leave the abortion clinic on their own initiative.
> Q. And so that action is compelled by religious convictions? Is that correct?
> A. Yes, it is.
> Q. Could you explain (inaudible)?
> A. Well --
> Q. Let me ask you this. Is it an act of conscience?
> A. It is an act of conscience because we have to remain in solidarity with the unwanted and unborn children who are going to be aborted are unwanted. I'll be honest with you, frankly, they are treated like trash. And somebody has to be their voice and remain with them and not just leave in that final minute as these moms are going to go down the hallway and their children are going to die.
> Q. Is it out of respect and dignity for the officers that the rescuers won't in good conscience perform any direct action against them while they are trying to arrest them?

A. It is absolutely forbidden. We won't allow it.

* * *

Q. In the context of the rescuers where it would violate their conscience to actively participate in their arrest, morally and spiritually and theologically speaking, is it a grave offense against God for them to violate their conscience in that context?
A. If their conscience was telling them I cannot leave these unborn children who are about to be aborted, they have to follow that conscience. And if they don't follow their conscience in this -- if that is what their conscience is telling them to do, and this is an educated conscience -- this is not just my whim, or my opinion, or what I think -- but there is an object of good that needs to be defended and you don't do that, then you are guilty of violating the moral law. And you know, within the context of religion, you would call it sin and they have to avoid that.
Q. So they would be morally culpable if they violated their--
A. Yes.
Q. --own conscience?
A. Morally culpable. That's perfect. Yes.

(Trial Tr [Vol II] at 99:22-25 to 102:1-8; 103:7-25 to 104:1-2).

In support of their renewed motion for jury instructions on the defense of others and necessity, Defendants' counsel made the following proffer on the record at the trial:

> In light of the Court's ruling to deny the request for the defenses of defense of others and necessity in this case, I would like to proffer testimony that the defendants would have offered at this time in support of that jury instruction. Each one of the defendants [is a] veteran[] in the pro-life movement. They have vast prior experience [which] confirmed their honest and reasonable belief that coerced abortions, which are [il]legal in Michigan and were illegal in -- on June 7, 2019, were taking place at the Women's Health Center. And this belief was based upon their prior experiences which they would have testified to dealing with counseling with women, the number of times they have experienced the situation where there was coercion in the abortion decision, not to mention the fact that . . . abortion results in the death of an innocent human life. There was testimony that the abortions at this center occur up to [24] weeks. Based on their understanding, at 24 weeks, a child is able to survive outside the womb. At 24 weeks, the child has a heartbeat. At 24 weeks, the child feels pain. They would testify that there is a coercive nature of abortion [as] it is against a mother's natural instinct to destroy the life in her – within her. They would also testify in their experience that economic conditions, particularly those that are existing here in Flint, where poor women are disproportionately affected by abortion, forced into abortion decisions due to the cost of abortion being less than the raising of a child, the fact that there is a large number of single moms, fathers abandoning the mom and the child, and those are typically and unfortunately not a [rare] situation that results in coercion on the mother to have a -- to make the fateful abortion decision. Not to mention,

> they would also testify to their understanding that Flint is in a sex trafficking corridor which also calls for the proliferation of abortions, and under the context tend to be coerced. Similarly, they would testify that it is their honest and reasonable belief that there were abortions taking place where the women were not properly informed, as the law requires. An abortion performed on somebody who is not fully informed of the decision is a violation of the law. And for similar reasons, based on all of their experience dealing with conversations with women, all of their experience in the pro-life movement, their experience demonstrates that women were not being informed about what an abortion is. There are risks and dangers associated with it and [the women are] not getting the information required by law. These -- this conglomerate, as it were, of beliefs motivated their actions and they honestly and reasonably believed that their actions would have defended an innocent human life and that they were necessary under the circumstances, and we believe that the jury instructions should have been given, and we proffer this by way of evidence as testimony as to what they would have offered in support of that.

(Trial Tr [Vol II] at 115:24-25 to 118:1-18).

In sum, Defendants' actions on June 7, 2019, were motivated by their honest and reasonable beliefs based on biological facts and science, their personal experiences and observations regarding the harm caused by abortion, their personal experiences and observations, which demonstrate that most abortions are the result of coercion and lack informed consent, and they were motivated by their sincerely held religious beliefs.

Through their peaceful actions, Defendants were performing an act of defense of others—a morally positive action on behalf of persons (mother and unborn child) whose lives were *imminently* in danger. It was action arising from necessity, particularly since the police officers at the scene would not respond to Defendants' requests for assistance but instead protected the abortion center and its practices.

II. Rulings and Orders of the Circuit Court.

On November 25, 2019, the Circuit Court denied Defendants' motion to quash the felony charge. (Order Denying Mot. to Quash; Mot to Quash Hr'g Tr. at 40). On February 24, 2020, the Circuit Court denied Defendants' motion to compel discovery that would have demonstrated

discriminatory and selective enforcement of the law in this case. (Order Denying Mot to Compel; Mot to Compel Disc Hr'g Tr at 28-32). On May 26, 2022, the Circuit Court denied Defendants' requests for jury instructions on the defense of others and necessity. (Order on Mot for Jury Instructions; Mot for Jury Instructions Hr'g Tr. at 41-47). This motion was renewed during the trial and denied once again. (Trial Tr [Vol II] at 69-76). On June 29, 2022, the Circuit Court denied Defendants' motion to dismiss the felony charge following the close of evidence. (Trial Tr [Vol II] at 47-60). On the same day, the Circuit Court denied Defendants' motion to dismiss the trespass charge following the close of evidence, (Trial Tr [Vol II] at 40-46), and it denied Defendants' request for an instruction on the legal definition of "occupant" (Trial Tr [Vol II] at 40-46, 119-20).

ARGUMENT

I. The Circuit Court Erred by Failing to Dismiss the Felony Charge.

This claim of error involves the Circuit Court's order denying Defendants' motion to quash the bindover of the single felony charge (MCL § 750.81d(1)) and the Circuit Court's refusal to dismiss this charge on constitutional (First and Fourteenth Amendments) grounds.

MCL § 750.81d(1) provides as follows:

> **§ 750.81d. Assaulting, battering, resisting, obstructing, opposing person performing duty; felony; penalty; other violations; consecutive terms; definitions**
>
> **Sec. 81d.**
> **(1)** Except as provided in subsections (2), (3), and (4), an individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.
>
> **(2)** An individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties causing a bodily injury requiring medical attention or medical care

to that person is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $5,000.00, or both.

(3) An individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties causing a serious impairment of a body function of that person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $10,000.00, or both.

(4) An individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties causing the death of that person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than $20,000.00, or both.

(5) This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.

(6) A term of imprisonment imposed for a violation of this section may run consecutively to any term of imprisonment imposed for another violation arising from the same transaction.

(7) As used in this section:

(a) "Obstruct" includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.

(b) "Person" means any of the following:

(i) A police officer of this state or of a political subdivision of this state including, but not limited to, a motor carrier officer or capitol security officer of the department of state police.

(ii) A police officer of a junior college, college, or university who is authorized by the governing board of that junior college, college, or university to enforce state law and the rules and ordinances of that junior college, college, or university.

(iii) A conservation officer of the department of natural resources or the department of environmental quality.

(iv) A conservation officer of the United States department of the interior.

(v) A sheriff or deputy sheriff.

(vi) A constable.

(vii) A peace officer of a duly authorized police agency of the United States, including, but not limited to, an agent of the secret service or department of justice.

(viii) A firefighter.

(ix) Any emergency medical service personnel described in section 20950 of the public health code, 1978 PA 368, MCL 333.20950.

> **(x)** An individual engaged in a search and rescue operation as that term is defined in section 50c.
>
> **(c)** "Serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

MCL § 750.81d(1).

A. Standard of Review.

A circuit court's ruling regarding a motion to quash and the district court's decision to bind over a defendant are reviewed for an abuse of discretion; "[h]owever, where the decision entails a question of statutory interpretation, *i.e.*, whether the alleged conduct falls within the scope of a penal statute, [as in this case,] the issue is a question of law that [this Court] review[s] *de novo*." *People v Hill*, 269 Mich App 505, 513-14, 715 NW2d 301, 307 (2006) (citations omitted); *see also People v Anderson*, 501 Mich 175, 181-82, 912 NW2d 503, 506-07 (2018) (same).

During a preliminary examination, the court's "function is to determine *whether a crime has been committed* and whether there is probable cause for charging the defendant with that crime." *People v King*, 412 Mich 145, 152-53; 312 NW2d 629 (1981) (emphasis added). Consequently, to bind Defendants over for trial on the felony charge at issue, the district court was required to find probable cause that Defendants actually committed an offense in violation of MCL § 750.81d(1).

It is axiomatic that one of the primary purposes of a preliminary examination is to "weed out" unnecessary charges. *People v Duncan*, 388 Mich 489, 501; 201 NW2d 629 (1972) (internal quotations and citations omitted), *overruled on other grounds by People v Glass*, 464 Mich 266; 627 NW2d 261 (2001). Defendants contend that the proofs elicited at the preliminary examination did not rise to the requisite level to bind Defendants over for trial on the felony offense. More specifically, Defendants contend that this felony statute does not apply to the facts presented in

this case as a matter of law. Defendants further contend that its application to their religiously-motivated conduct runs afoul of the First and Fourteenth Amendments.

The Court's review is typically decided on the record made at the preliminary examination. *See generally People v Walker*, 385 Mich 565; 189 NW2d 234 (1971), *overruled on other grounds, People v Hall*, 435 Mich 599; 460 NW2d 520 (1990). The Court reviews *de novo* the legal issues of (1) whether Defendants' conduct falls within the scope of MCL § 750.81d(1) as a matter of law and (2) whether the application of MCL § 750.81d(1) to proscribe Defendants' conduct violates the U.S. Constitution. *See People v Thomas*, 438 Mich 448, 452; 475 NW2d 288 (1991). And because this issue involves the application of a criminal statute, under the rule of lenity, the statute should be construed in favor of Defendants. *United States v Lanier*, 520 US 259, 266 (1997); *see generally United States v Wiltberger*, 18 US 76 (1820). The Court reviews the factual sufficiency with regard to the decision to bind Defendants over on the felony charge for an abuse of discretion. *People v Yamat*, 475 Mich 49, 52; 714 NW2d 335 (2006).

Under MCL § 750.81d(1), the elements required to establish a violation are: "(1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties." *People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010).

B. The Circuit Court Should Have Quashed the Bindover of the Felony Offense.

The District Court's conclusion and rationale for binding over Defendants to stand trial for violating MCL § 750.81d(1) was stated as follows: "Had the Legislature wanted to specify or differentiate between passive resistance from actively resisting they would have used the phrase

actively resisting in the statute rather than resist." (PE Tr at 144:2-6). The Circuit Court affirmed the District Court's decision.

The problem with the lower courts' logic is that the term "passive resistance" is an oxymoron. According to *Merriam-Webster*, the word "resist" means "to exert force in opposition." *See* https://www.merriam-webster.com/dictionary/resist (last visited on Oct 16, 2019).[5] *Lexico* defines "passive" as follows: "Accepting or allowing what happens or what others do, without active response or resistance." *See* https://www.lexico.com/en/definition/passive (last visited on Oct 16, 2019). Defendants used no force, physical or otherwise, in this case, nor did they "resist" their arrests—they simply went limp, allowing the officers to arrest them.

1. The Felony Statute Does Not Apply as a Matter of Law.

When reviewing the application of this felony statute to the facts of this case, it is important to bear in mind what the Sixth Circuit observed in *United States v Merchant*, 288 F App'x 261, 263 (CA 6, 2008):

> [T]he placement of this statute in the "Assaults" chapter of the Michigan Penal Code evidences a legislative intent that Mich. Comp. Laws § 750.81d(1) proscribe violent conduct as opposed to passive resistance.

Additionally, it is important to bear in mind a constitutional principle arising under the Fourth Amendment that is applicable here. As again stated by the Sixth Circuit, "The Fourth Amendment does not require [a defendant] to assist in his own arrest but it may require deference to officers' election to use force when attempting to subdue and transport a violent or out-of-control suspect." *St John v Hickey*, 411 F3d 762, 773 (CA 6, 2005). Thus, Defendants have no

[5] In *People v Vasquez*, 465 Mich 83, 89-90; 631 NW2d 711 (2001) (Markman, J), the Court stated: "Resist" is defined as "to withstand, strive against, or oppose." *Random House Webster's College Dictionary* (1991) at 1146. "Resistance" is additionally defined as "the opposition offered by one thing, force, etc." *Id*. "Oppose" is defined as "to act against or furnish resistance to; combat."

obligation to assist in their own arrests. *See generally United States v Fuller*, 120 F Supp 3d 669, 686-87 (ED Mich 2015) (holding that the defendant's flight from an unlawful detention was not a violation of MCL § 750.81d(1) because the statute "prohibits an individual from resisting or obstructing only *lawful* police conduct"). And as the evidence in this case shows, Defendants were entirely deferential to the actions of the officers. Defendants did not want to assist in their own arrests based on their moral convictions, and they took no action to prevent the officers from affecting their arrests. Indeed, as Officer Huey testified with regard to his interactions with Defendant Connolly, "He was nice." (PE Tr at 112:18).

In its decision, affirmed by the Circuit Court, the District Court expressly relied upon *People v Vasquez*, 465 Mich 83; 631 NW2d 711 (2001), a case which interpreted MCL § 750.479. But *Vasquez* does not countenance applying MCL § 750.81d(1) to the facts of this case.

In *Vasquez*, the obstructing charge was based on the defendant's lying to the police about his identity after he was arrested. *See id*. The court of appeals reversed the dismissal of the charge based on *People v Philabaun*, 461 Mich 255; 602 NW2d 371 (1999) (Philabaun II), where it was held that a defendant's refusal to obey an order for a blood sample could constitute an obstruction under Michigan's "resisting and obstructing" statute. *Vasquez*, 465 Mich at 87. The Michigan Supreme Court reversed the court of appeals and reinstated the dismissal, finding that the legislature had demonstrated in MCL § 750.479 a purpose of proscribing only conduct amounting to actual or threatened physical interference. *Id* at 100. The principal purpose of the statute was to protect officers from physical harm. *Id* at 92; *see also People v Baker*, 127 Mich App 297, 299-300; 338 NW2d 391 (1983) (noting that "[t]he purpose of the resisting arrest statute [MCL § 750.479] is to protect police officers from physical violence and harm"). The defendant's lie to

the police officer about his name and age did not physically interfere with or threaten to physically interfere with the officer. *See Vasquez*, 465 Mich at 98-100.

In *People v Morris*, 314 Mich App 399; 886 NW2d 910 (2016), the court held that MCL § 750.81d(1) was not facially overbroad under the First Amendment and article I, § 5 of the Michigan Constitution as the listed terms all had the common element of physical interference, and a person could not be arrested and convicted for only utilizing constitutionally protected speech in opposition to the actions of a police officer. *Id* at 407-12. The court also held that the statute was not unconstitutionally vague, as a person of ordinary intelligence would know that an individual using some form of force to prevent a police officer from performing an official and lawful duty was in violation of MCL § 750.81d(1). *Id* at 412-13.

Upon concluding that the statute was not facially overbroad nor unconstitutionally vague, the court held that the defendant's conviction was not against the great weight of the evidence, as defendant himself stated that he and the officers were "tousling," which could "be reasonably understood to mean some level of physical struggling." *Id* at 413-15.

In this case, Defendants used no force to prevent the officers from performing their duties. Indeed, there was no "tousling" in this case whatsoever. Defendants were peaceful and entirely deferential to the officers, who simply carried Defendants out of the abortion center following their arrests. The felony statute does not apply as a matter of law.

Additionally, as applied to the facts of this case, the statute is unconstitutionally vague and overbroad. It is unconstitutionally vague because (1) it fails to provide proper notice that doing nothing to assist with your own arrest would constitute a felony and (2) it permits arbitrary enforcement. And the statute is overbroad in that it allows for the violation of rights protected by

the First Amendment. Indeed, there is no dispute that Defendants' only reason for not *actively assisting* in their own arrests was their religious beliefs.

This leads us to the constitutional arguments as to why the felony statute cannot be applied in this case. We turn now to those arguments.

2. The Felony Statute Violates the First and Fourteenth Amendments.

a. Free Exercise.

"The Free Exercise Clause categorically prohibits government from regulating, prohibiting, or rewarding religious beliefs as such." *McDaniel v Paty*, 435 US 618, 626 (1978). Moreover, "[t]he right to free exercise of religion includes the right to engage in conduct that is motivated by the religious beliefs held by the individual asserting the claim." *Bible Believers v Wayne Cnty*, 805 F3d 228, 255 (CA 6, 2015) (*en banc*).

When a law burdens religious exercise and exempts similar non-religious conduct, the government's enforcement of the law must satisfy strict scrutiny—the "most rigorous scrutiny" under the law. *Church of the Lukumi Babalu Aye, Inc v City of Hialeah*, 508 US 520, 534, 546 (1993) (striking down on Free Exercise Clause grounds an ordinance prohibiting the sacrifice of animals); *see also id* at 546 ("To satisfy the commands of the First Amendment, a law restrictive of religious practice must advance interests of the highest order and must be narrowly tailored in pursuit of those interests.") (internal quotations and citations omitted).

In *Church of the Lukumi Babalu Aye, Inc v City of Hialeah*, the Court struck down on free exercise grounds an ordinance prohibiting animal sacrifice that defined sacrifice as the "unnecessary" killing of an animal. *See id.* The law permitted some animal killings as "necessary," but deemed the ritual, religious killing of an animal as unnecessary and thus criminal. By exempting some animal killings but prohibiting animal killings for religious reasons, the

ordinance violated the challengers' right to the free exercise of religion. *See, e.g., id* at 537-38 ("Respondent's application of the ordinance's test of necessity devalues religious reasons for killing by judging them to be of lesser import than nonreligious reasons. Thus, religious practice is being singled out for discriminatory treatment.").

Consequently, if the enforcement of a law excuses certain conduct but then punishes similar conduct motivated by religious beliefs, the law violates the Free Exercise Clause of the First Amendment. *See Fulton v City of Phila*, 141 S Ct 1868, 1877 (2021) (explaining that "[a] law . . . lacks general applicability [and thus violates the Free Exercise Clause] if it prohibits religious conduct *while permitting secular conduct that undermines the government's asserted interests in a similar way*") (emphasis added).

As set forth below, the application of MCL § 750.81d(1) in this case punishes conduct motivated by religious beliefs but exempts other conduct causing the same alleged harm (*i.e.*, requiring officers to carry an arrestee) in violation of the First Amendment.

During the preliminary examination, Sergeant Daly testified as follows:

> Q: You ever have to arrest someone who is intoxicated to the point that you had to carry them to the police vehicle?
> A: No, because I've never had somebody that intoxicated for me to put them in a police vehicle. Typically, if they're that intoxicated I have them transported by ambulance.
> Q: Did you have to carry them to the ambulance?
> A: With, with (sic) gurney to where they're at usually, so, yeah I've had to pick people up.
> Q: Do you know if there was any felony charges brought against the individual because they couldn't walk out on their own because they were too intoxicated?
> A: Not that I can, no, not that I recall.

(PE Tr at 97:8-19).

Trooper Huey similarly testified as follows:

> Q: Have you ever had an occasion where you had to arrest somebody that was intoxicated that you had to carry them from outside of wherever you were arresting them to your vehicle?
> A: I'm trying to think of a specific instance. I'm sure there has been. I think I can recall one, yes, but he was, he also had a disability so I'm sure I have but I can't remember a specific one.
> Q: Do you recall, at least an incident that you recall, whether or not the individual was also charged with a felony because he had to be carried out?
> A: Well, that would be, no, I don't believe he was but physically [he] was unable to help himself.

(PE Tr at 112:23-25 to 113:1-10).

During the trial, Detective Trooper Huey testified as follows:

> Q. Did you remember . . . an incident where you had somebody with a physical disability and was intoxicated and had to be carried out?
> A. Yes, I do remember that. I've got it.
> Q. Okay, and I believe you testified here that that individual was not charged with a crime, correct?
> A. Not for resisting or obstructing or anything of that nature, no. . . .

(Trial Tr [Vol I] at 228).

In these situations, the intoxicated person is not being punished for drinking too much,[6] even though the officers would have to carry the person to a police vehicle following his arrest (or use a gurney from an ambulance, which they could have used in the case of Defendants as well). Similarly, the physically disabled person is not being punished for his medical disability, even though the officers would have to carry the person to a police vehicle following his arrest. Yet, Defendants are being punished for exercising their religious beliefs. In each case, the person is not actively assisting in his own arrest, yet the only persons being punished for doing so are Defendants. The intoxicated person is unable to assist due to his intoxication. The disabled person is unable to assist due to his disability. And Defendants are unable to assist due to their religious

[6] Voluntary intoxication is not a defense to a crime. *See* MCL § 768.37; *People v Shutter*, No 336613, 2018 Mich App LEXIS 3049, at *12 (Ct App Aug 21, 2018) (citing MCL § 768.37) ("Voluntary intoxication is not a defense in Michigan.").

beliefs. Such disparity of treatment violates the Free Exercise Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment (as set forth further below). Thus, the decision to bind Defendants over for trial on the felony charge, and the subsequent prosecution of Defendants for violating this statute because of Defendants' religious convictions, violated Defendants' rights protected by the First and Fourteenth Amendments.

b. Equal Protection.

As noted above, the application of this felony statute violates the equal protection guarantee of the Fourteenth Amendment. As stated by the Sixth Circuit:

> 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. To state an equal protection claim, a plaintiff must adequately plead that the government treated the plaintiff disparately as compared to similarly situated persons and that such disparate treatment . . . *burdens a fundamental right*, targets a suspect class, or has no rational basis.

Bible Believers, 805 F3d at 256 (*en banc*) (internal quotations and citation omitted) (emphasis added). "In determining whether individuals are 'similarly situated,' a court should not demand exact correlation, but should instead seek *relevant similarity*." *Bench Billboard Co v City of Cincinnati*, 675 F3d 974, 987 (CA 6, 2012) (emphasis added) (internal quotation marks omitted).

For similar reasons as to why the application of the felony statute in this case violates the First Amendment, its application also violates the Equal Protection Clause of the Fourteenth Amendment. The "relevant similarity" with regard to the conduct at issue is an officer having to physically carry an arrestee. The disparate enforcement in this case burdens Defendants' fundamental rights because the government punished Defendants for abiding by their religious beliefs and not actively participating in their arrests (thereby requiring the police officers to carry them) while others who also do not actively participate in their arrests (thus also requiring the police officers to carry them) for secular reasons (*e.g.*, intoxication or physical disability) are not

similarly punished by the government, in violation of the equal protection guarantee of the Fourteenth Amendment.

c. Vagueness.

The felony statute is also unconstitutionally vague. "[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v Lawson*, 461 US 352, 357 (1983). Vagueness may invalidate a criminal law for either of two independent reasons. First, the law may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits. And second, it may permit arbitrary and discriminatory enforcement. *See id*.

"[Defendants] contend that a person of ordinary intelligence would not know that doing nothing, particularly when there is no requirement to assist in your own arrest, would be a violation of this particular statute." (Trial Tr [Vol II] at 48). Accordingly, the law fails to provide proper notice of the conduct that arises to a felony, and as demonstrated here, it allows for discriminatory enforcement, in violation of the Fourteenth Amendment.

II. The Circuit Court Committed Reversible Error by Denying Defendants' Requested Jury Instructions on the Defense of Others and Necessity.

A. Standard of Review.

Claims of instructional error are reviewed *de novo*. *People v Kurr*, 253 Mich App 317, 327, 654 NW2d 651, 656 (2002). A court also reviews *de novo* the constitutional question of whether a defendant was denied his constitutional right to present a defense as a result of a trial court's refusal to provide a requested instruction. *Id*

B. A Circuit Court Must Instruct on a Proposed Defense Supported by Evidence.

A trial court must "properly instruct the jury so that it may correctly and intelligently decide the case." *People v Clark*, 453 Mich 572, 583, 556 NW2d 820 (1996). "The instructions must include all elements of the charged offense and *must not exclude* material issues, *defenses*, and *theories*, if there is evidence to support them." *People v McIntire*, 232 Mich App 71, 115, 591 NW2d 231 (1998), *rev'd on other grounds* 461 Mich 147, 599 NW2d 102 (1999) (emphasis added).

As stated by the Michigan Supreme Court:

> The court's obligation to instruct on a proposed defense was described in *People v Mills*, 450 Mich 61, 80-81; 537 NW2d 909 (1995):
>
> > A criminal defendant has the right to have a properly instructed jury consider the evidence against him. *People v Vaughn*, 447 Mich 217; 524 NW2d 217 (1994); *People v Lewis*, 91 Mich App 542; 283 NW2d 790 (1979). However, a trial court is not required to present an instruction of the defendant's theory to the jury unless the defendant makes such a request. *People v Wilson*, 122 Mich App 1, 3; 329 NW2d 513 (1982). Further, when a jury instruction is requested on any theories or defenses and is supported by evidence, *it must be given to the jury by the trial judge*. *People v Rone (On Remand)*, 101 Mich App 811; 300 NW2d 705 (1980). A <u>*trial court is required to give a requested instruction*</u>, except where the theory is not supported by evidence. *People v Stubbs*, 99 Mich. App. 643; 298 N.W.2d 612 (1980); *People v Stapf*, 155 Mich. App. 491; 400 N.W.2d 656 (1986).

People v Rodriguez, 463 Mich 466, 472-73, 620 NW2d 13, 16 (2000) (emphasis added).

Here, Defendants requested jury instructions that they would have supported with evidence. Indeed, the proffered evidence, at a minimum, raised the appropriate inference to permit the requested defense instructions and thus permit the jury to find in favor of Defendants. *See People v Hubbard*, 115 Mich App 73, 77 (1982) (providing that the court is simply required to determine whether there is proffered evidence "from which each element of such defense *may be inferred* before the defense may be considered by a trier of fact") (emphasis added); *United States*

v Cervantes-Flores, 421 F3d 825, 828 (CA 9, 2005) (providing that a defense is only precluded where "the proffered evidence, *construed most favorably to the defendant*, would fail to establish all elements of that defense") (emphasis added).

As set forth below, the Circuit Court's refusal to give the instructions on the defense of others and necessity was error as a matter of law, and this error violated Defendants' right to due process. A new trial with a properly instructed jury is warranted.

C. Defendants' Proposed Instructions Were Warranted.

Dobbs v Jackson Women's Health Organization is a game changer.[7] The Supreme Court issued its landmark decision just days (June 24, 2022) before the trial commenced (June 29, 2022) in this case.[8] In *Dobbs*, the U.S. Supreme Court stated, unequivocally: "*Roe* *was egregiously wrong from the start*. Its reasoning was exceptionally weak, and the decision has had damaging consequences." *Dobbs v Jackson Women's Health Org*, 142 S Ct 2228, 2243 (2022) (emphasis added). In other words, there was *never* a legal basis or foundation for concluding that abortion was a right protected by the U.S. Constitution. The Circuit Court erroneously ignored this important precedent, particularly as it applied to the requested defenses, as we will explain further below.

Unlike a vast majority of states at the time, Michigan was unique in that, as a matter of constitutional interpretation, its law proscribing abortion remained valid following *Roe v Wade*, 410 US 113 (1973). *See People v Bricker*, 389 Mich 524 (1973) (refusing to invalidate state criminal law proscribing abortion and construing the law consistent with the federal constitution

[7] The offenses and trial occurred prior to the passage of Proposal 3 (Article I, § 28 of the Michigan Constitution). Consequently, Proposal 3 has no relevance to this appeal, and this Court need not opine as to whether it has an impact on any future cases involving the defenses at issue here.
[8] Defendants renewed their motion for the requested jury instructions at trial in light of *Dobbs*. (Trial Tr [Vol II] at 69-76).

while maintaining loyalty to the public policy of the state); *see also id* at 529 (noting that "[i]t is the public policy of the state to proscribe abortion"). In short, on June 19, 2019, Michigan law recognized the humanity of the unborn and provided broad protection for this human life.

In *People v Higuera*, 244 Mich App 429, 431, 625 NW2d 444, 446 (2001), for example, the defendant, a medical doctor, sought dismissal of charges brought under Michigan's criminal abortion statute (MCL § 750.14) for allegedly inducing the abortion of a fetus of approximately 28 weeks. The defendant's argument that the statute was repealed by implication was rejected, and his constitutional arguments similarly could not insulate him from prosecution because the statute clearly reached the conduct involved. As a result, the dismissal of the charge was reversed. *See id* at 449-50. In other words, the Michigan appellate court applied principles of Michigan law and Michigan's strong public policy of providing protection for the unborn in a case involving abortion even prior to *Dobbs*.

Prior to *Dobbs*, Michigan law prohibited, with a narrow exception for medical emergencies, any physician from performing an abortion without "*informed* written consent, given freely and without coercion." *See* MCL § 333.17015 ("[A] physician shall not perform an abortion otherwise permitted by law without the patient's informed written consent, given freely and without coercion to abort."). Michigan law also proscribed coerced abortions. *See* MCL § 750.213a (proscribing coerced abortions and providing, *inter alia*, "information that a pregnant female does not want to obtain an abortion includes *any fact* that would clearly demonstrate to a reasonable person that she is unwilling to comply with a request or demand to have an abortion") (emphasis added).

In 1998, Michigan passed the Fetal Protection Act (MCL §§ 750.90a *et seq*). Pursuant to this Act:

> If a person intentionally commits [a criminal assault] against a pregnant individual, the person is guilty of *a felony punishable by imprisonment for life* or any term of years if all of the following apply:
>
> (a) The person intended to cause a miscarriage or stillbirth by that individual or *death or great bodily harm to the embryo or fetus*, or acted in wanton or willful disregard of the likelihood that the natural tendency of the person's conduct is to cause a miscarriage or stillbirth or death or great bodily harm to the embryo or fetus.
>
> (b) The person's conduct resulted in a miscarriage or stillbirth by that individual or *death to the embryo or fetus*.

MCL § 750.90a (emphasis added); *see Kurr*, 253 Mich App at 322 ("The plain language of [MCL § 750.90a] shows the Legislature's conclusion that fetuses are worthy of protection as *living entities* as a matter of public policy.") (emphasis added).

In *People v Kurr*, 253 Mich App 317 (2002), the defendant killed her boyfriend with a knife and was convicted by a jury of voluntary manslaughter. The trial court sentenced her as a fourth-offense habitual offender to five to twenty years imprisonment. The defendant appealed her conviction, arguing that she should have been allowed a jury instruction regarding the defense of others because the jurors could have concluded that she killed her boyfriend while defending her unborn children.[9] The appellate court agreed that a defense of others jury instruction was appropriate and reversed the conviction, remanding the case for a new trial. *Id* at 318-19.

Thus, in a case involving a defendant on trial for *homicide*—that is, the defendant used *lethal* force to protect an unborn life—the court held that "the defense [of others] extend[s] to the protection of a fetus, viable or nonviable." *Id* at 321. Consequently, the defense of the "other" could not have applied unless the "other" was fully human and had an independent right to life worthy of protection—including the use of deadly force to protect that life. Thus, *Kurr* stands for

[9] The defendant was pregnant with quadruplets at the time of the stabbing. *Kurr*, 253 Mich App at 318 n1.

the proposition that under Michigan law, the defense of others applies when the "other" is "a fetus, viable or nonviable."

In dicta, the *Kurr* court stated: "Our holding today does not apply *to what the United States Supreme Court* has held to constitute lawful abortions." *Id* at 326 (emphasis added). This is where *Dobbs* has changed the legal landscape. The only possible basis for denying the defense of others instruction in this case would be a court's reliance on the *Kurr* dicta, which is what the Circuit Court did here. But there was no longer any legal basis for such reliance. "*Roe* *was egregiously wrong from the start*." *Dobbs*, 142 S Ct at 2243 (emphasis added). Thus, it was "egregiously wrong" to deny Defendants the requested defense of others instruction in this case.

The evidence (presented and proffered) at trial showed that abortion causes grave harm in that its very purpose is to end the life of a human being. Collectively, Defendants have many decades of experience in the pro-life movement. They have witnessed firsthand the harm caused by abortion to not only the unborn babies but to their mothers. They have witnessed the coercion that is inherent in virtually every abortion, which necessarily includes those performed at WHC. Too often, it is a family member, husband, or boyfriend who insists on the abortion, coercing the mother into making the fateful decision. The mother's *natural* instinct is to *protect* the life within her. Defendants have spent time and treasure to help prevent the harm of abortion and to care for those who have been harmed by this violent act, specifically including the mothers.

In sum, it is indisputable that at all relevant times Michigan law recognized and protected the humanity of the unborn—the individual and unique "other" who is alive within a mother's womb. It is indisputable that Michigan law extends the defense of others to situations where the "other" is a "fetus, viable or nonviable." It is indisputable that *Roe v Wade* "was egregiously wrong from the start" (*i.e.*, it was rendered *void ab initio* by *Dobbs*). Thus, it is indisputable that

Roe and its legal implications have been rendered a nullity by the U.S. Supreme Court. Furthermore, it is indisputable that even prior to *Dobbs*, coerced abortions and abortions without informed consent were illegal in Michigan. And it is indisputable that WHC engages in the killing of innocent human life for profit, and it was doing so in June 2019.

Accordingly, Defendants were entitled to the requested instructions in that their actions were honestly and reasonably done for the express purpose of protecting innocent human life from imminent and violent harm, including death. Whether these beliefs were honest and reasonable under the facts were issues for a properly instructed jury to decide.

D. Michigan Law Recognizes the Requested Defenses.

1. Defense of Others.

As noted, in *People v Kurr*, 253 Mich App 317 (2002), the court recognized the defense of others in the context of a defendant taking the life of another to defend her unborn children from violence. *See also id* at 324 ("Our Legislature, as noted earlier, has expressed its intent that fetuses and embryos be provided strong protection under the law from assaults against pregnant women, and we believe that our decision today effectuates that intent."). Because this defense is available for a *homicide*, it should be available for the statutory violations at issue here. An unborn child cannot consent to the abortion, which is an assault against his or her life—a life that Michigan law, certainly at the time, recognized and protected. And *Roe v Wade* no longer stands as a bar to this defense in light of *Dobbs*. Moreover, it was Defendants' honest and reasonable belief that the women going to the abortion center on June 7, 2019, were doing so under duress and coercion as it is against a mother's natural instinct (and thus the natural moral law inscribed on the hearts of every person) to destroy the life of the baby in her womb. Michigan law proscribes abortion under

coercive circumstances. *See, e.g.*, MCL § 333.17015; MCL § 750.213a; MCL §§ 750.90a. Accordingly, Defendants were entitled to an instruction on the proposed defense of others.

2. Necessity.

Michigan courts also recognize the availability of the necessity defense in cases involving trespass. As stated by the court in *People v Hubbard*, 115 Mich App 73, 77 (1982):

> We are of the opinion that, in an appropriate factual situation, a defense of necessity may be interposed to a criminal trespass action. However, there must be some evidence from which each element of such defense may be inferred before the defense may be considered by a trier of fact.

The court ultimately rejected the defense in the context of the defendants' protest on the property of a nuclear power plant, stating, in relevant part, that "[i]n order to raise the defense of necessity, defendants' criminal act must support an *inference* that the criminal act would alleviate the impending harm. We conclude that defendants' act of criminal trespass alone could not *reasonably be presumed* to have any effect in halting the production of nuclear power at Big Rock." *Id* at 80 (stating that "defendants have acknowledged that the purpose of their trespass was to inform the company and others of their perceived danger attendant to nuclear power") (emphasis added). Consequently, unlike the futile attempt to halt the production of nuclear power at a power plant by simply trespassing on the property, Defendants' actions could "reasonably be presumed" to have the effect of halting the harm caused to women and their unborn babies who were present at the abortion center on the day in question. Thus, unlike halting a nuclear power plant, Defendants' presence at the abortion center placed them in a position to provide *direct assistance* to those who are in imminent harm and to actually avert that harm. Certainly, Defendants' acts "support an inference" that they would alleviate the impending harm.

Here, the jury should have been permitted to "weigh the loss of the life of the developing fetus against the property rights the trespass statute protects, and the social order values the arrest

statute supports." *See People v Archer*, 143 Misc 2d 390, 401, 537 NYS2d 726, 732-33 (City Ct 1988) (permitting the necessity defense in the abortion context and stating that "[t]he jury may weigh the loss of the life of the developing fetus against the property rights the trespass statute protects, and the social order values the arrest statute supports").

3. Proposed Instructions.

In support of their motion, Defendants submitted proposed instructions on the defense of others and on the defense of necessity. Michigan has a model jury instruction for the defense of others. *See* CJI2d 7.21; *see also* 7.22. Defendants proposed a slightly revised version for this case as follows:

> *7.21 Defense of Others*
>
> *(1) The defendants claim that they acted to prevent serious harm to others. A person has the right to use force or even take a life to defend someone else under certain circumstances. If a person acts in lawful defense of another, his or her actions are justified and he or she is not guilty of the criminal offense.*
>
> *(2) You should consider all the evidence and use the following rules to decide whether the defendants acted in lawful defense of another. Remember to judge the defendants' conduct according to* ***how the circumstances appeared to them at the time of their acts****.*
>
> *(3) First, at the time they acted, the defendants must not have been engaged in the commission of a crime.*
>
> *(4) Second,* ***when they acted, the defendants must have honestly and reasonably believed that another was in danger of being killed or seriously injured****.* ***If their belief was honest and reasonable, they could act at once to prevent the harm, even if it turns out later that they were wrong about how much danger anyone was in****.*
>
> *(5) Third, if the defendants only feared a minor injury, then they were not justified. The defendants must have been afraid that someone would be killed or seriously injured. When you decide whether they were so afraid, you should consider all the circumstances: the conditions of the people involved, including their relative strength, whether anyone was armed with a dangerous weapon or had some other means of injuring another, the nature of the other person's attack or threat, and*

whether the defendants knew about any previous violent acts or threats made by the attacker.

(6) Fourth, at the time the defendants acted, ***they must have honestly and reasonably believed that what they did was immediately necessary****. Under the law, a person may only use as much force as he or she thinks is needed at the time to protect the other person. When you decide whether the defendants' actions appeared to be necessary, you may consider whether the defendants knew about any other ways of preventing the harm, and you may also consider how the excitement of the moment affected the choice the defendants made.*

(7) The defendants do not have to prove that they acted in defense of others. Instead, the prosecutor must prove beyond a reasonable doubt that the defendants did not act in defense of others.

Defendants' proposed instruction on the defense of necessity was patterned after the defense of necessity instruction recommended by the U.S. Court of Appeals for the Ninth Circuit. Defendants' proposed instruction was set forth as follows:

In some situations, necessity may excuse a person's committing what would otherwise be a criminal offense, including the offenses in this case. A person is allowed to commit what would otherwise be a criminal offense if the person acts out of necessity. The rule of necessity exists because it would be unjust and contrary to public policy to impose criminal liability on a person if the harm that results from his/her breaking the law is significantly less than the harm that would result from his/her complying with the law in that particular situation.

The defendant contends that [he] [she] acted out of necessity. As I stated, necessity legally excuses the crimes charged.

The defendant must prove necessity by a preponderance of the evidence. A preponderance of the evidence means that you must be persuaded that the things the defendant seeks to prove are more probably true than not true. This is a lesser burden of proof than the government's burden to prove beyond a reasonable doubt each element of the trespass charge.

A defendant acts out of necessity if at the time of the crime charged:

1. *The defendant was faced with a choice of evils and chose the lesser evil;*
2. *The defendant honestly and reasonably believed [he] [she] acted to prevent imminent harm;*
3. *The defendant reasonably anticipated [his] [her] conduct would prevent such harm; and*
4. *There were no other legal alternatives to violating the law.*

> *If you find that each of these things has been proved by a preponderance of the evidence, you must find the defendant not guilty.*

In sum, whether Defendants honestly and reasonably believed that human life was in grave and imminent danger at WHC on June 7, 2019, thereby justifying Defendants' actions in this case, was an issue for the jury. Defendants were entitled to a properly instructed jury—a jury that should have considered the defense of others and the defense of necessity when judging the criminality of Defendants' peaceful actions under the circumstances of this case.

III. The Circuit Court Erred by Denying Defendants' Motion to Compel Discovery to Demonstrate the Discriminatory and Selective Enforcement of the Law.

A. Standard of Review.

> Discovery should be granted when the information sought is necessary to a fair trial and a proper preparation of a defense, and not merely a fishing expedition. *People v Maranian*, 359 Mich 361, 368-369; 102 NW2d 568 (1960). This Court reviews the trial court's decision for an abuse of discretion. *People v Freeman (After Remand)*, 406 Mich 514, 516; 280 NW2d 446 (1979). The refusal to grant discovery is not reversible error ***if*** defendant's rights can be fully protected by cross-examination. *People v Jesse Smith*, 81 Mich App 190, 198; 265 NW2d 77 (1978).

People v Borney, 110 Mich App 490, 495, 313 NW2d 329, 332 (1981) (emphasis added). Here, Defendants' rights were not fully protected by cross-examination.

B. Defendants' Requests Were within the Scope of Permissible Discovery.

During the trial (and out of the presence of the jury), the Prosecutor, in response to Defendants' equal protection argument outlined above, stated, "We don't have the data. We don't have the statistics. We don't have all that. If you are making like a selective prosecution claim, that [is] something that is a whole different constitutional [inaudible] that needs to be brought up beforehand." (Trial Tr [Vol II] at 56-57). Defense counsel responded,

> And with regard to selective prosecution, Your Honor, if you -- you may recall, we attempted through discovery to get the evidence to be able to make that argument and you denied our discovery requests early on in these proceedings. So we were

> denied the ability to collect the evidence which is in the hands of the government in terms of the application and enforcement of this statute in various contexts. But that is -- we were unable to present it because the discovery request was denied and we don't have access to that information. So that was earlier on in this case, you'll remember as well.

(Trial Tr [Vol II] at 59).[10]

Defendants made the following *specific* requests for discovery that were *material* and *relevant* because they were *directly* related to Defendants' constitutional defenses:

- A copy of all police reports involving individuals who were arrested for, and/or charged with, violating MCL § 750.81d(1) within the past 10 years.
- A copy of all convictions under MCL § 750.81d(1) within the past 10 years.
- A copy of all police reports involving any individual who had to be physically carried by a police officer, or someone working with a police officer, such as an EMT, to a police vehicle incident to the individual's arrest within the past 10 years. This request specifically includes, but is not limited to, any arrests of individuals who were involved in protest activity and/or engaged in "passive resistance," including any arrests related or incident to labor or other union related protests or activity.

(Defs' Mot to Compel Disc, Ex 1 [Defs' Req for Disc]). These requests were drafted as narrowly as possible to obtain the necessary information.

1. Defendants' Discovery Requests Are Permitted by MCR 6.201.

The scope of criminal discovery in Michigan is governed and defined by MCR 6.201. *People v Phillips*, 468 Mich 583, 588-89 (2003) (citing Administrative Order No. 1994-10); *Phillips*, 468 Mich at 588 (holding that MCR 6.201 controls "'discovery in criminal cases heard

[10] A selective prosecution claim is premised upon the denial of the equal protection of the law. *See Wayte v United States*, 470 US 598, 608 (1985) ("It is appropriate to judge selective prosecution claims according to ordinary equal protection standards.").

in the courts of this state'") (quoting AO 1994-10).

In clarifying what is subject to discovery under Michigan's criminal discovery rule, the Michigan Supreme Court held that either (1) the type or subject of the discovery must be set forth in MCR 6.201 or (2) the party seeking discovery must show good cause why the trial court should order the requested discovery. Absent such a showing, courts are without authority to order discovery in criminal cases. *See Phillips*, 468 Mich at 587-92.

As set forth below, the type or subject of the requested discovery falls within the scope of MCR 6.201. Moreover, there is good cause to order the requested discovery.

MCR 6.201 permits, *inter alia*, the following subject or type of discovery:

> (B) Discovery of Information Known to the Prosecuting Attorney. Upon request, the prosecuting attorney must provide each defendant:
>
> (1) *any exculpatory information or evidence* known to the prosecuting attorney . . .

MCR 6.201(B)(1) (emphasis added); *People v Channells*, Nos 321333, 321450, 2015 Mich App LEXIS 1974, at *16 (Ct App Oct 22, 2015) ("Exculpatory evidence is defined as '[e]vidence *tending* to establish a criminal defendant's innocence.'") (quoting *Black's Law Dictionary* (10th ed)) (emphasis added).

Moreover, due process requires that the Prosecuting Attorney turnover known exculpatory evidence. *Brady v Md*, 373 US 83 (1963). As stated by the U.S. Supreme Court, "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id* at 87. As the Court noted, "A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant." *Id* at 87-88. This constitutional requirement is contemplated in MCR 6.201(B)(1), which expressly includes *exculpatory*

information or evidence.

As set forth above, the requested discovery was directly relevant to Defendants' constitutional defenses regarding the application of the felony statute in this case. It is relevant and material as to whether the application of the statute to punish Defendants' religiously-motivated conduct violates the First and Fourteenth Amendments. It is relevant as to whether the government was selectively enforcing the law against Defendants because they were protesting at an abortion center. It is, therefore, "exculpatory information or evidence." And this "information or evidence" was in the sole possession of the government—the Prosecutor. Defendants were prejudiced by the denial of the requested discovery.

2. Defendants Showed "Good Cause" for the Requested Discovery.

Regardless of whether the type or subject of the requested discovery is expressly covered under MCR 6.201, the Circuit Court should have permitted the requested discovery based upon a showing of "good cause." *Phillips*, 468 Mich at 592 ("We agree that a trial court may modify the requirements or prohibitions of MCR 6.201 if good cause is shown."); *Ferranti v Elec Res Co*, No. 342934, 2019 Mich App LEXIS 7243, at *11 (Ct App, Nov 19, 2019) ("[O]n good cause shown, the court may order a modification of the requirements and limitations of the rule. MCR 6.201(I).").

Defendants had "good cause" to request discovery that was reasonably likely and calculated to produce information or evidence that was relevant, material, and favorable to their constitutional defenses to the felony charge. As the officer testimony demonstrates, evidence of disparate enforcement of MCL § 750.81d(1) exists. In its denial of Defendants' motion to quash, the Circuit Court demanded more than just this testimony. Consequently, Defendants sought, through their discovery requests, additional evidence and information to support their valid

constitutional claims. This information is in the possession of the Prosecutor. Yet, the request was denied.

In the final analysis, good cause existed for the Circuit Court to order the requested discovery.[11] By failing to do so, the Circuit Court committed reversible error as the information sought was necessary to a fair trial and a proper preparation of a defense, and Defendants' rights were not fully protected by cross-examination.

IV. The People Failed to Prove Trespass, and the Circuit Court Erred by Not Including a Legal Definition of "Occupant" in the Trespass Jury Instruction as Requested by Defendants.

This Court reviews *de novo* Defendants' challenge to the sufficiency of the evidence supporting their convictions. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). The Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the prosecution proved the crime's elements beyond a reasonable doubt. *People v Miller*, 326 Mich App 719, 735, 929 NW2d 821, 833 (2019).

As the Circuit Court instructed the jury at the beginning of the case and in its final instructions:

> To prove this charge [of trespassing], the prosecutor must prove each of the following elements beyond a reasonable doubt. First, that Peggy Lou Thon *legally occupied* property located at 3422 Flushing Road in Flint Township, Genesee County, Michigan. Second, that Peggy Lou Thon told the defendant he or she or they could not come onto the property. Third, that the defendant or defendants continued to remain on the property after being forbidden to do so.

[11] Compare, for example, the "good cause" demonstrated here with the "good cause" that was lacking in *People v Phillips*. In *Phillips*, the Court ruled that MCR 6.201 does not permit a trial court to compel the defendant to produce a written report of an expert witness when the report did not already exist. *Phillips*, 468 Mich at 584, 593. With regard to the good-cause determination, "[t]he trial court noted that defendant did not comply with the trial court's order for discovery and defendant's failure to comply provided a legally sufficient reason for 'good cause.'" *Id* at 586. On appeal, the Court disagreed, finding that the failure to disclose reports that did not exist did not constitute "good cause" to modify the requirements of MCR 6.201. *Id* at 592-93.

(Trial Tr [Vol I] at 148-49; *see also* Trial Tr [Vol II] at 157).

As Defendants' counsel argued to the Circuit Court in support of Defendants' motion to dismiss this charge at the close of evidence:

> As the Court knows, we didn't have any testimony from an owner. Originally, the way this case was charged is that Ms. Thon was the legal owner of the property.[12] Realizing that that was not correct, they modified the charge in this case to claim that she was the legal occupant of the property. And what we base it off of is the jury instruction 25.7 trespassing. That was the basis for the claim going forward. And quite frankly, she is not the legal occupant as a matter of fact and a matter of law. We cite this Court to *People* versus *Hamlin*, which is an unpublished decision, but it has in there, particularly for the trespass charge, what the definition of an occupant is as a matter of law. And *People* versus *Hamlin* is 2015 Mich -- and I have the Lexis Mich App Lexis 2291. That's a Court of Appeals decision of December 10, 2015. And they cite to Black's Law dictionary (9th ed) an occupant, as a matter of law for purposes of trespass, is one *who has possessory rights in, or control over*, certain property or premises. The Judge will recall, I specifically asked her those questions knowing that this was going to be an issue. I specifically asked her if she had any possessory rights or control in the use of the property of Women's Health Center and she expressly said no. If you recall, it was in that same sequence when I said so you don't have the authority to turn this into an ice cream stand? And she said, no, I don't. They have not presented any evidence or testimony that she was in fact a legal occupant for the purposes of the trespass statute. It's a technicality, but it is a technicality that is fatal to the People's position. That charge should be dismissed.

(Trial Tr [Vol II] at 40-41 [emphasis added]).

The testimony of Ms. Thon, referenced by Defendants' counsel above, was as follows:

> Q. And I believe you testified *you don't own the Women's Center*, correct?
> A. *Correct*.
> Q. You don't own the property where the Women's Center is located. Is that correct?
> A. Correct.
> Q. Do you know, does the Women's Center own that property or do they lease or rent it from somebody else?
> A. We lease.

[12] In the original charging document, the Prosecution alleged that Ms. Thon was the owner of the property. At the start of the jury trial and over the objection of Defendants' counsel, the Prosecution changed the charging document to state that Ms. Thon was the legal occupant of the property at issue (WHC). (Trial Tr [Vol I] at 12-15).

Q. So do you personally -- are you personally involved in renting any of this property that is where the Women's Center is located?
A. No.
Q. I take it you don't have an apartment or reside anywhere on that property, correct?
A. Correct.
Q. And who actually owns it?
A. It's a company out of Texas.
Q. Okay. You don't own -- you don't have any ownership interest in the company. Is that correct?
A. That's correct.
Q. And so it would be fair to say that it is the owner who possesses and controls the use of that property?
A. I'm sorry. I didn't understand.
Q. *It would be correct to say that it is the owner who possesses and controls the use of that property*?
A. *Yes*.
Q. So for example, you would have no authority to convert that facility to an ice cream shop, correct?
A. Correct.

(Trial Tr [Vol I] at 197-98 [emphasis added]).

Later in the proceedings, Defendants' counsel requested a modification to the jury instruction on trespass to include "a legal definition of the word occupant and we would propose, per that case law, that that instruction say 'an occupant is defined as one who has possessory rights in, or control over, certain property or premises.'" (Trial Tr [Vol II] at 119-20). The Circuit Court denied the request. (*Id*). As set forth above, it was reversible error for the Circuit Court to deny Defendants' requested jury instruction, which was supported by the evidence. *People v Rodriguez*, 463 Mich at 472-73, 620 NW2d at 16 ("[W]hen a jury instruction is requested on any theories or defenses and is supported by evidence, *it must be given to the jury by the trial judge*.") (emphasis added).

CONCLUSION

The Court should reverse the Circuit Court, vacate the convictions, dismiss the felony charges, and remand to the Circuit Court to dismiss the cases and return the matters to the District

Court for a retrial on the trespassing offenses, allowing for the defense of others and necessity instructions and an instruction defining a "legal occupant."

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert Muise (P62849)

Counsel for Appellants/Defendants

STATEMENT OF COMPLIANCE

Pursuant to MCR 7.212, I hereby certify that this brief contains 14,176 words. Counsel is relying on the word count of the word-processing system used to prepare the brief.

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2023, a copy of this brief was filed electronically through the Court's filing system and that a copy was served via this electronic filing system upon the County Prosecutor, David S. Leyton.

AMERICAN FREEDOM LAW CENTER

/s/ *Robert J. Muise*
Robert J. Muise, Esq.