VERMONT SUPERIOR COURT
LAMOILLE UNIT
CIVIL DIVISION

A.V.,

Plaintiff, Civil Action No. _____

v.

VERMONT DEPARTMENT FOR CHILDREN AND FAMILIES; COPLEY HOSPITAL; and LUND,

Defendants.

COMPLAINT

Introduction

1. This is a civil rights action pursuant to the Vermont Constitution; the Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §§ 4500 *et seq*. (VFHPAA); Vermont's Freedom of Choice Act, 18 V.S.A. §§ 9493 *et seq*.; Vermont Rule of Civil Procedure 75; and Vermont common law, seeking declaratory, injunctive, and monetary relief from Defendants Vermont Department for Children and Families (DCF), Copley Hospital, and Lund for their employees' unlawful, discriminatory, and unconstitutional acts against A.V.[1]

2. In 2022, DCF received anecdotal and unverified reports that A.V.—then in her third trimester of pregnancy—was exhibiting symptoms of a mental health disorder.

3. Despite not speaking with or receiving any information from a mental health professional, and even though no DCF employee had spoken with A.V., DCF initiated a unilateral "assessment" into her alleged lack of parental capacity.

4. This was doubly unlawful. First, DCF had no jurisdiction to investigate A.V. because its authority applies solely to cases involving a born child, not a fetus. Second, Vermont law mandates that assessments be voluntary and supportive, with individuals retaining the right to refuse DCF's involvement.

5. But DCF did not reach out to A.V. Instead, DCF sought information from Lund—a family services, adoption, and treatment organization where A.V. had earlier received confidential counseling about her pregnancy options—who proceeded to disclose sensitive information about A.V.'s pregnancy to DCF, including her birthing and breastfeeding plans.

6. DCF was also in contact with previously known staff at Copley Hospital—where A.V. planned to give birth—and obtained the details of her confidential medical records

[1] To protect her privacy due to the intensely personal nature of the events of this case, Plaintiff A.V. is identified by her initials only. Her full identity is known to Defendants.

without her authorization, knowledge, or consent. Additionally, DCF asked Copley Hospital staff to notify them when A.V. went into labor.

7. Copley Hospital obliged. As A.V. went into labor, its staff provided updates directly to DCF, regularly informing the agency about A.V.'s condition.

8. While A.V. was still in labor, DCF, relying on unsubstantiated allegations about A.V.'s mental fitness, sought an ex parte emergency care order ("ECO") from the Family Division of the Lamoille Superior Court, seeking to transfer temporary custody of "Baby [V.]" to DCF. At the time the accompanying affidavit was notarized and the motion filed, DCF was well aware A.V. had not yet delivered her child.

9. The affidavit was replete with unsubstantiated, anecdotal allegations about A.V.'s mental condition—none of which was based on the opinion of a mental health professional or contact with A.V. herself.

10. Moreover, as DCF was well aware, any transfer of temporary custody is proper only when "the court determines that the child's continued residence in the home"—not a fetus in utero—"is contrary to the child's welfare," and may be granted ex parte only if "reasonably supported by [an] affidavit." 33 V.S.A. § 5305(a).

11. This false representation about the child's birth led the court to issue an ECO granting DCF custody of a fetus, who, at that time, had not yet been born.

12. A.V. wanted as natural a birth as possible. She provided her advanced birthing preferences to Copley Hospital, including minimal vaginal examinations, monitoring only as medically necessary, no pain medications, relaxation techniques, the birthing position of her choice, maternal-infant bonding, and breastfeeding. Accordingly, she repeatedly declined Copley Hospital staff's requests for additional fetal monitoring and their suggestion that she undergo a vacuum assisted delivery or a cesarean surgery—as was her right as a Vermonter to make decisions about her own medical treatment.

13. At DCF's urging, hospital staff contacted the Vermont Department of Mental Health ("DMH") in an apparent attempt to have her treated involuntarily. DMH appropriately rejected the staff's request, concluding there was no basis for even a threshold evaluation of A.V.'s competency.

14. Undeterred by DMH's insistence on honoring A.V.'s medical and reproductive autonomy, Copley Hospital and DCF then took the extraordinary step of filing a motion for an emergency court-ordered injunction in civil court, seeking to force A.V. to remain at Copley Hospital and undergo the procedures against her will.

15. Unlike the earlier petition for the ECO in family court, the civil injunction filing acknowledged—necessarily, considering the nature of DCF's request—that the baby was not born yet. However, the motion also claimed that "[A.V.'s] baby will be in DCF emergency custody *upon birth* pursuant to an already-issued order of this court's Family Division," implying that the family court had already blessed DCF's attempts to take custody over a fetus (emphasis added). The motion did not call attention to the fact that

DCF had secured the emergency care order only by falsely representing that the baby had *already* been born.

16. A telephonic hearing was held later that day. The court heard testimony from Copley's Chief Medical Officer, who—contrary to their prior insistence that A.V. was completely uncooperative—admitted that A.V. had already consented to a vacuum-assisted delivery, which had been unsuccessful. Expressing its skepticism about DCF's assertions, the court insisted on speaking with A.V. directly. While Copley staff coordinated getting a telephone to her, they learned that A.V. had also already consented to a cesarean surgery. The court closed the hearing and ultimately rendered the motion moot.

17. On February 12, 2022, A.V. delivered a healthy daughter, S.V.

18. A.V.'s joy was short-lived. A.V. was not allowed to hold—or even touch—her baby. Instead, immediately after birth, hospital staff, acting at DCF's direction, took physical custody of S.V. and removed her from the delivery room.

19. This instant separation contradicted widely accepted medical guidelines on maternal-infant bonding.

20. The deprivation of immediate skin-to-skin contact, breastfeeding, and the provision of colostrum not only disrupted the physical connection between A.V. and her daughter but also inflicted lasting emotional trauma. A.V. was not even allowed to look at her daughter in the hospital nursery.

21. Over the next seven months, DCF retained custody of S.V. based solely on the ECO without ever substantiating the allegations contained in the affidavit, while pursuing plans to delay reunification and sever A.V.'s parental rights.

22. Ultimately, in July 2022, the family court rejected DCF's allegations and concluded that S.V. be returned to A.V.'s care. In November 2022, after approximately nine months of seeking separation, DCF finally dismissed its petition.

23. No court ever found that A.V. lacked parental capacity.

24. In fact, evaluations by mental health professionals concluded that A.V. suffered none of the mental health conditions alleged by DCF.

25. A.V.'s experience reflects a broader, troubling pattern and practice of DCF surveilling and punishing pregnant Vermonters based on unsubstantiated claims that extend beyond its jurisdiction. In fact, upon information and belief, DCF maintains a "high-risk pregnancy docket" or "high-risk pregnancy calendar" to target and track pregnant Vermonters it deems supposedly unsuitable for parenthood, relying on confidential information from medical providers and social services organizations it enlists to assist with surveillance without the legal authority or consent to do so from the individuals it surveils.

26. Staff at Copley Hospital and Lund routinely disclose confidential information about pregnant Vermonters to DCF based on concerns about the expectant parent's choices, even where there are no allegations or suspicions of child neglect or abuse. These unauthorized disclosures violate patient confidentiality, erode trust in healthcare providers, and deter pregnant people from seeking critical healthcare.

27. The term "high-risk pregnancy" in the docket and calendar's title is a cruel misnomer. The women tracked by DCF are not high-risk in any medical sense, and DCF does not track pregnant Vermonters out of concerns for their reproductive health or well-being. Rather, DCF deems them "high-risk" based solely on speculative concerns about future parenting ability, a determination that often relies on outdated, anecdotal, unsubstantiated, subjective, and discriminatory criteria.

28. By law, Vermonters' reproductive decisions—including their birthing choices—are personal, confidential, and protected. Nevertheless, DCF cultivates and relies on a network of informers, including medical and social work professionals like the staff at Copley Hospital and Lund, to unlawfully collect sensitive information about pregnant Vermonters, even where there is no allegation or suspicion of neglect or abuse. DCF then uses the collected information to zealously seek termination of parental rights, often without having substantiated the anecdotes, information, or concerns directly.

29. Having been capriciously and maliciously denied custody over the fetus still within her body; autonomy in her medical decision-making; and enjoyment of the first seven months of her daughter's life, A.V. turns to this Court to redress the violations of her statutory and constitutional rights, and to ensure that no Vermonter endures the same unlawful treatment in the future.

Jurisdiction and Venue

30. A.V. brings this action on behalf of herself under the Vermont Constitution; the Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §§ 4500 *et seq*. (VFHPAA); Vermont's Freedom of Choice Act, 18 V.S.A. §§ 9493 *et seq*.; Vermont Rule of Civil Procedure 75; and Vermont common law.

31. Jurisdiction is proper under 4 V.S.A. § 31.

32. Venue is proper in this territorial unit of the Court under 4 V.S.A. § 37 and 12 V.S.A. § 402(a) because Plaintiff A.V. resides in Lamoille County.

Parties

A. Plaintiff

33. A.V., age 36, female, is the mother of S.V. and resides in Elmore, Vermont 05661.

B. Defendants

34. Defendant Vermont Department for Children and Families is a state agency, headquartered at 280 State Drive, HC 1 North, Waterbury, Vermont 05671.

35. Defendant Copley Hospital is a private medical hospital, located at 528 Washington Highway, Morrisville, Vermont 05661.

36. Defendant Lund is a not-for-profit organization providing residential treatment, education, and adoption services located at 50 Joy Drive, South Burlington, Vermont 05403.

Factual Allegations

A. DCF Surveils A.V. and Conducts an Unlawful Assessment on a Fetus

37. In 2021, 32-year-old A.V. became pregnant with her first child.

38. Lund—a Vermont organization offering "education, treatment, family support, and adoption" services—advertises the provision of "nonjudgmental counseling" for mothers to "talk through all [their] pregnancy options." Taking Lund at its word, A.V. reached out to Lund to have a confidential conversation about her pregnancy.

39. Around the beginning of her third trimester, A.V. was unable to remain in her apartment in Elmore, Vermont. She temporarily relocated to Charter House, a homeless shelter in Middlebury, Vermont.

40. Charter House did not conduct a mental health evaluation of A.V. However, in January 2022, the Executive Director of Charter House spoke to DCF about A.V. According to DCF, Charter House suggested that A.V. "appear[ed] to have untreated mental health issues of paranoia and dissociative behaviors, PTSD and . . . a history of sexual trauma and physical abuse." DCF further claimed that the Director stated that Charter House was "worried she does not have an awareness that she is having a baby."

41. These concerns were baseless. A.V. was eagerly anticipating the arrival of her baby and was excited to become a mother.

42. At the time DCF spoke to the Executive Director of Charter House, A.V. had not yet given birth. Nevertheless, DCF accepted the report "for an assessment for lack of parental capacity" and assigned Jennifer Stone as the caseworker.

43. Even though DCF has no authority to assess or investigate a fetus or a first-time, expectant mother, and its actions were inconsistent with lawful assessment procedures, Stone began an aggressive investigation into A.V., contacting individuals who Stone knew or believed had information about her personal matters, including confidential medical and reproductive choices.

44. Stone, under the guidance of her supervisor at DCF Karen Reynolds, first connected with A.V.'s case managers at Charter House before speaking to Lund's counselor; a social worker at Copley Hospital, where A.V. planned to deliver; and her midwife.

45. Lund, upon Stone's request, knowingly shared the details of their confidential counseling conversation with A.V.

46. At Stone's urging, Copley Hospital disclosed information in A.V.'s medical records without her consent or a court order. Stone also instructed Copley staff to keep her informed if and when A.V. went into labor.

47. None of these individuals performed a formal evaluation of A.V.'s mental health.

48. Stone also contacted A.V.'s mother, who informed her that A.V. was entirely aware she was pregnant, had made preparations for the baby's arrival, and did not have any mental health diagnoses.

49. Stone's actions exceeded DCF's enabling legislation, and violated its own internal policies governing assessments.

50. When DCF receives a report of abuse or neglect, or allegations that a "child" is without proper parental care, the agency is authorized by statute to undertake an assessment. *See* 33 V.S.A. § 5106(1).

51. A child is statutorily defined as "an individual under the age of majority." *Id*. § 4912(3).

52. Thus, DCF cannot conduct an assessment on a fetus or an expectant parent. The only circumstance where DCF can interact with an expectant Vermonter is if a parent or caretaker has a documented "substantial history" with DCF. *See* DCF Policy 51: Screening Reports of Child Abuse and Neglect.[2]

53. Additionally, the hallmark of an "assessment" is that it is voluntary and supportive. The purpose of an assessment is to provide families with services tailored to their unique needs. Unlike an investigation, which "result[s] in a formal determination as to whether the reported abuse or neglect has occurred," 33 V.S.A. § 4912(7), an assessment "focuses on the identification of the strengths and support needs of the child and the family and any services they may require to improve or restore their well-being and to reduce the risk of future harm" and does not result in a formal determination, *id*. § 4912(2).

54. By law, an assessment begins once DCF contacts the child's parent or caregiver to initiate an interview with the parent and an evaluation of the child's safety. DCF Policy 52: Child Safety Interventions - Investigations and Assessments;[3] 33 V.S.A. § 4915a(a).

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[2] Available at:
https://outside.vermont.gov/dept/DCF/Shared%20Documents/FSD/Policies/Policy51.pdf
[3] Available at:
https://outside.vermont.gov/dept/DCF/Shared%20Documents/FSD/Policies/Policy52.pdf

55. Critically, assessments are elective. DCF caseworkers are required to collaborate with the family, which has the option to decline services, thereby ending the assessment process. *Id*. §§ 4915a(a), (c).

56. Nothing about DCF's "assessment" of A.V. and her fetus complied with statutory or policy limitations. Despite mandates that assessments be voluntary, initiated through contact with the parent, and designed to provide a family with services, neither Stone nor any other DCF worker ever spoke with A.V. directly or notified her that DCF was conducting an assessment.

57. Instead, without any communication with A.V., and only three weeks after opening the assessment, Stone determined there were "significant concerns related to [A.V.'s] mental health."

B. DCF Moves for an Ex Parte Emergency Care Order Transferring Temporary Custody of the Fetus

58. Once A.V. returned to her apartment from the shelter, she continued preparing for the arrival of her baby. Like many Vermonters, she determined that she wanted a natural, nonintrusive labor and delivery for herself and the birth of her child.

59. In the early hours of February 11, 2022, Stone's contacts at Copley Hospital informed her that A.V. was at the hospital and in labor. They also reported that despite being in active labor, A.V. was supposedly declining to push and was permitting only intermittent fetal monitoring—a decision supported by A.V.'s mother.

60. Stone continued to receive frequent updates throughout the day regarding A.V.'s labor from Copley's social worker and hospital staff. These updates included confidential details about A.V.'s receipt of pain medication, her use of the restroom, her conversations with hospital staff regarding medical procedures, and frequent reports on the dilation of her cervix.

61. While A.V. was still in labor, DCF and Deputy State's Attorney Aliena Gerhard filed a motion for an ex parte emergency care order ("ECO") with the Family Division of the Lamoille Superior Court, seeking to transfer temporary custody of "Baby [V.]" to DCF.

62. As DCF knew at the time of filing, "Baby [V.]" had not yet been born.

63. This motion was accompanied by a lengthy affidavit from Stone alleging that temporary custody was necessary "given the significant concerns regarding A.V.'s mental state, and her ability to provide safe care for an infant." The affidavit also falsely claimed A.V. had already given birth and incorrectly listed the baby's date of birth as "2/11/22." At the time the affidavit was notarized and the motion filed, A.V. was still in labor, as Stone was aware.

64. Despite never having spoken to A.V., Stone further alleged that she had probable cause to believe the baby "is a child 'in need of care and supervision'" because she was "without proper parental care" (also known as 'CHINS-B' within the family court system).

65. In addition to listing the unsubstantiated, third-party allegations concerning A.V.'s mental health, Stone included a section titled "HISTORICAL CONCERNS." This section described an incident from when A.V. was 16-years-old involving DCF after a physical altercation with her father and allegations of parental abuse. As the affidavit itself makes clear, these decades-old details of A.V.'s alleged victimization as a child were intended to serve as further evidence of her purported parental incapacity—suggesting that DCF viewed its prior involvement with her as a teenager as justification for surveilling and intervening into her life as a parent and an adult.

66. As Stone and DCF knew, the transfer of temporary custody is proper only when "the court determines that the child's continued residence in the home"—not the fetus in utero—"is contrary to the child's welfare," and may be granted ex parte only if "reasonably supported by the affidavit." 33 V.S.A. § 5305(a).

67. However, despite there being no living child in A.V.'s home and A.V. not having yet delivered her baby, and based on allegations in DCF's motion and the affidavit containing false information, the court issued the ECO, transferring temporary custody of Baby V. to DCF on February 11, 2022.

68. Neither DCF, the State's Attorney, nor the court had spoken with A.V., who remained in labor, never told that these proceedings were taking place.

C. Having Obtained Custody of A.V.'s Fetus, DCF Moves for an Ex Parte Injunction to Force A.V. to Undergo a Cesarean Surgery and Prevent Her from Leaving the Hospital

69. Unaware that DCF had already secured temporary custody of her fetus, A.V. continued to labor through the night and into the next day.

70. She had provided her advanced birthing preferences to Copley Hospital, including minimal vaginal examinations, monitoring only as medically necessary, no pain medications, relaxation techniques, the birthing position of her choice, maternal-infant bonding, and breastfeeding.

71. Consistent with her desire to have a vaginal birth, A.V. declined Copley Hospital staff's suggestion that she undergo a cesarean surgery.

72. Frustrated with A.V.'s repeated assertions that she did not want to have surgery, Copley staff contacted the Vermont Department of Mental Health (DMH) in an apparent attempt to have her treated involuntarily.

73. DMH appropriately rejected the staff's request and advised that an emergency evaluation—a mental health assessment that is merely the first step toward commitment and is a statutorily required predicate to subjecting a patient to involuntary treatment, *see* 18 V.S.A. §§ 7504(a), 7101(17), 7611—was "inappropriate for this situation."

74. Ignoring DMH's decision, Copley staff circumvented DMH's conclusion and contacted an Assistant Attorney General, who referred them to DCF attorney Ted Kenney.

75. On February 12, Kenney—who is listed on court documents as representing both DCF and Copley Hospital—filed an emergency motion in civil court for an ex parte injunction to prevent A.V. from leaving the hospital and to force her to undergo the medical interventions and surgery recommended by hospital staff.

76. The motion alleged that A.V. was "showing signs of delusions and paranoia"—despite the fact that no emergency mental health evaluation had been conducted and that DMH had advised that no evaluation was necessary.

77. The motion also claimed that "A.V.'s baby will be in DCF emergency custody *upon birth* pursuant to an already-issued order of this court's Family Division" (emphasis added), implying that the family court had already blessed DCF's custody over a fetus. The motion did not call attention to the fact that the ECO had been granted based on a false representation that the baby had *already* been born.

78. DCF attached Stone's prior, false affidavit and a new, supplemental affidavit reiterating allegations of A.V.'s "delusional and paranoid state." The supplemental affidavit acknowledged—necessarily, given the nature of DCF's request—that the baby had not yet been born.

79. The supplemental affidavit argued that "an emergency vacuum procedure or cesarian section must immediately occur."

80. A telephonic hearing was held later that day at 3:05 PM. After taking testimony from Copley's Chief Medical Officer, the court requested to speak directly with A.V.

81. While Copley staff coordinated getting a telephone to A.V., Kenney pointed out to the court that her Charter House case manager reported that A.V. was "experiencing significant paranoia." However, the court expressed skepticism, noting that it doubted whether "a social worker has the authority to give an opinion about competency."

82. During the hearing, Copley staff learned that, contrary to their insistence that A.V. was entirely uncooperative, she had already consented to a vacuum assist, which was unsuccessful, and ultimately consented to a cesarean surgery. The hearing was closed, and the motion was deemed moot.

D. At DCF's Direction, Copley Staff Seize S.V. Immediately Upon Birth, Denying A.V. Even the Opportunity to Hold Her Baby

83. After consenting to surgery, A.V. delivered S.V. around 2:30 PM on February 12, 2022.

84. Despite delivering a healthy baby girl, A.V.'s joy was short-lived. At DCF's direction, hospital staff immediately took physical custody of S.V. as she entered the world.

85. A.V. was not allowed to hold—or even touch—her baby. Instead, S.V. was immediately removed from the hospital room.

86. The critical importance of skin-to-skin contact immediately after birth is well-documented. *See, e.g.*, Ann-Marie Widström et al., *Skin-to-skin contact the first hour after birth, underlying implications and clinical practice*, Acta Paediatrica (Mar. 13, 2019). By denying A.V. these essential "golden hour" moments, Defendants DCF and Copley Hospital irreparably harmed her ability to bond with her daughter during the critical first moments of her life, a period she will never be able to regain.

87. DCF relied on A.V.'s alarm and confusion to coerce her into cooperating with its efforts. For example, after seizing S.V., DCF asked A.V. to sign a consent form to disclose her confidential medical records—records that DCF had already been privy to without her consent.

88. Throughout the trauma of having her newborn taken, hospital staff disrespected A.V. and extended her little empathy. For example, staff placed A.V. in a room adjacent to the hospital's nursery, where a police officer served her paperwork informing her that S.V.'s custody had been transferred to DCF. Although A.V. could hear infants, including presumably S.V., cry in the next room, she was told that she was not allowed to approach the nursery and could not attempt to view her baby under any circumstances.

E. DCF Continues to Advocate Against Reunification and for Severing Parental Rights

89. As A.V. attempted to regain custody of her baby, DCF fought her at every turn. A temporary care hearing was held and continued on February 14, 2022, while A.V. was still hospitalized. She was assigned a public defender who objected to DCF's custody. At this hearing, DCF stated that S.V. had been discharged from Copley Hospital and placed in foster care two hours away from A.V.'s home. Due to the distance, DCF proposed that visits between mother and child occur only twice a week.

90. On the day S.V. was born, A.V. completed a mental health screening with Lamoille County Mental Health (LCMH), which determined that, aside from a flattened affect, all indicators—including speech, mood, thought processes and content, concentration, and eye contact—were normal, and she did not require inpatient hospitalization.

91. Despite receiving a signed release from A.V., DCF declined to review LCMH's assessment or contact LCMH for additional information.

92. Instead, over the next seven months, through four continued temporary care order hearings and multiple emergency motions, DCF delayed S.V.'s return to A.V. and pursued plans to sever her parental rights.

93. During this time, visits between A.V. and S.V. were infrequent and closely monitored.

94. DCF required many of these visits to occur in sterile and intimidating environments—including at the Middlebury, Vermont police station—making it nearly impossible for mother and child to bond.

F. After Many Months, DCF Finally Returns S.V. to Her Mother's Care Without Ever Substantiating its CHINS-B Allegations

95. In July 2022, the Family Division ordered DCF to gradually return S.V. to A.V., building up to full-time custody, as the long separation had caused S.V. to bond with her foster mother instead of her actual, biological mother.

96. The court never found that S.V.'s removal from A.V. was appropriate or necessary for the welfare of the child.

97. Despite DCF's insistence on separating S.V. from her mother, no court ever determined that A.V. lacked parental capacity. The family court rejected DCF's characterizations of A.V.'s mental health and concluded that S.V. must be returned to her mother.

98. Although the court ordered reunification, DCF repeatedly filed frivolous "emergency" motions to stop the ordered return of custody. These motions were ultimately denied, but they succeeded in further delaying reunification and prolonging the emotional distress and harm experienced by A.V. and S.V.

99. Following S.V.'s return to A.V.'s care in the fall of 2022, DCF finally dismissed its CHINS-B petition in November 2022.

100. DCF's actions—both during A.V.'s pregnancy, labor, and delivery, and in the months following S.V.'s birth—had a profound impact on both mother and child. A.V. experienced extreme emotional distress throughout the prolonged separation and the ongoing threat of permanently losing her parental rights.

101. Because her visits with S.V. were observed by DCF, A.V. feared that any perceived misstep could be used by DCF to justify further separation.

102. Specifically, A.V. feared her discomfort and S.V.'s unfamiliarity with her would be used as grounds to delay reunification or sever her custody rights. For example, DCF frequently reported that S.V. cried inconsolably during visits with her mother, and it attempted to use these reports as evidence of A.V.'s purported parental unsuitability. Yet, DCF failed to inform A.V. about information it deemed important, including details about S.V.'s formula. This created a vicious cycle in which A.V. was subjected to unjustified criticism by DCF, all aimed at preventing her from regaining custody of her baby.

103. A.V. was led to believe that if S.V. cried during a visit, then she would be blamed and would not be allowed to see or hold her baby in the future, let alone regain custody.

104. In one instance, A.V. became so distressed during a visit—fearing that DCF's actions were causing irreparable harm to her and S.V.—that she called 911 for help.

G. DCF's Pattern and Practice of Unlawfully Surveilling Pregnant Vermonters and Punishing Them for Protected Health Choices

105. Tragically, A.V.'s experience is not unique. She is only one of many expectant Vermonters who have been ensnared in DCF's speculative surveillance and brazen intervention into their pregnancy and birthing plans.

106. Vermont has long represented itself as a haven for bodily autonomy, and the General Assembly legislates against a backdrop of protection for reproductive rights, not conceptions of fetal personhood. Yet despite its limited statutory mandate to protect existing, born children, DCF regularly seeks out information about pregnant Vermonters who have never previously interacted with the agency. DCF amasses pre-birth evidence to support its subjective belief that these women will later make poor parents. Upon, or shortly after birth, DCF then intervenes to seize their infants.

107. In fact, upon information and belief, DCF maintains a registry of pregnant Vermonters under surveillance, known as the "high-risk pregnancy docket" or "high-risk pregnancy calendar."

108. The registry's title is a cruel irony. The women included on DCF's list are not carrying "high-risk pregnancies" in the medical sense. DCF does not track these pregnant Vermonters out of concerns for their reproductive health or well-being. Rather, they are deemed "high-risk" solely because DCF speculates they will be unfit parents.

109. The "calendar" in the registry's title is a reference to DCF's system of tracking the due dates of expectant mothers and calculating backwards from that date in order to collate information about them in the months leading up to birth.

110. Indeed, having one's name on the "high-risk pregnancy docket" or "calendar" triggers aggressive investigation by DCF. To justify its speculative concerns and eventual post-birth intervention, DCF amasses sensitive pre-birth information from a variety of sources, including, as in A.V.'s case, comprehensive medical information and accounts from social service providers, or it establishes anticipatory relationships with those who will interact with the expectant mother during labor and delivery.

111. DCF employees, like Stone, cultivate networks of private individuals—including medical and mental health professionals—across Vermont, urging them to share information about pregnant women without their authorization.

112. There are no official criteria defining the type or amount of information DCF may collect through this surveillance, as there are no formal guidelines for inclusion on the docket or calendar. Instead, DCF places women on the registry based on vague and subjective concerns about parental suitability, such as unsubstantiated reports of addiction, alcohol, or drug use; "irresponsible" behavior; mental or physical health issues—that is, disability; prior involvement with DCF as a child; housing status; or an expectant mother's preference for "natural" over medically assisted birth.

113. There is no statutory authority allowing the "high-risk pregnancy docket" or "calendar," or DCF's collection of information about expectant Vermonters.

114. Indeed, DCF licenses treatment centers and adoption agencies, including Defendant Lund. DCF's own licensing regulations require agencies, including Lund, to maintain client confidentiality. *See* Licensing Regulations for Residential Treatment Programs § 202, Vt. Code of Rules 13 172 001. The only exception is when an agency must report a specific incident of child abuse or neglect within 24 hours. *Id*. § 118. For such an exception to apply, there must be both a child and an incident to report.

115. DCF internal Policy 51 purports to authorize limited pre-birth interventions in specific circumstances, such as when "a woman is pregnant and either parent or caretaker has a substantial history with DCF," or when allegations suggest "a serious threat to a child's health or safety due to the mother's substance abuse during pregnancy."

116. However, DCF lacks jurisdiction to investigate or assess pregnant Vermonters unless and until a child is born. DCF's abuse-and-neglect authority is limited to cases involving "valid allegation[s] of *child* abuse or neglect." 33 V.S.A. § 4915a(a) (emphasis added); *see id.* § 4915b(a) ("An investigation, to the extent that it is reasonable under the facts and circumstances presented by the particular allegation of *child* abuse, shall include all of the following . . . .") (emphasis added). Similarly, DCF's CHINS authority applies only "to a *child* who is or may be the subject of a petition." *Id.* § 5106 (emphasis added); *see id.* § 5106(2) (cabining authority to "investigat[ing] complaints and allegations that a *child* is in need of care or supervision.") (emphasis added).

117. The "high-risk pregnancy docket" or "calendar" goes well beyond even DCF's internal policies. Contrary to the essential logic of an "assessment," which must be voluntary, many women placed on the "docket" are never informed of their inclusion and have no opportunity to contest or remove themselves from it.

118. There are no formal procedures for contesting inclusion on the "high-risk pregnancy docket" or "calendar" or seeking removal from it.

119. DCF does not obtain—or even attempt to obtain—warrants, subpoenas, or other court orders before collecting sensitive information about women placed on the "high-risk pregnancy docket" or "calendar."

120. Upon information and belief, A.V. was included on the "high-risk pregnancy docket" or "calendar," which triggered the unauthorized surveillance, intrusion into her medical care, and eventual unlawful intervention and family separation described in this Complaint.

Causes of Action

Count 1—Violation of Article 1 of the Vermont Constitution—DCF's Intrusion on A.V.'s Fundamental Right to Bodily and Medical Autonomy

121. A.V. incorporates the foregoing paragraphs as though fully contained herein.

122. DCF violated A.V.'s right to bodily and medical autonomy, a fundamental common law right protected by Article 1 of the Vermont Constitution. *See* Vt. Const. ch. 1, art. 1.

123. Article 1 of the Vermont Constitution provides that "all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty." *Id.*

124. As the Vermont Supreme Court has explained, this provision "explicitly states that people are born free and enjoy freedom from restraint as a natural, inherent and unalienable right," and is implicated where "fundamental privacy and liberty interests are at stake." *In re G.K.*, 147 Vt. 174, 178–79, 514 A.2d 1031, 1033–34 (1986).

125. Indeed, the Court has "often treated what protections we have found in Article 1 as coextensive with those of the Fourteenth Amendment to the United States Constitution." *Benning v. State*, 161 Vt. 472, 478, 641 A.2d 757, 760 (1994); *see also State v. Cadigan*, 73 Vt. 245, 252, 50 A. 1079, 1081 (1901).

126. There is no stronger natural right than the right to bodily autonomy. As the U.S. Supreme Court has noted, "[n]o [legal] right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pac. Ry. Co. v. Botsford,* 141 U.S. 250, 251 (1891). As Judge Cardozo famously wrote, "[e]very human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages." *Schloendorff v. Soc'y of N.Y. Hosp.,* 105 N.E. 92, 93 (N.Y. 1914).

127. For that reason, other states have readily concluded that "[t]he right of a patient to refuse medical treatment arises both from the common law and the unwritten and penumbral constitutional right to privacy" and observed that "[t]his right has come to be widely recognized and respected by the courts of this nation." *Brophy v. New England Sinai Hosp., Inc.*, 497 N.E.2d 626, 633 (Mass. 1986) (internal citations omitted).

128. Our own Supreme Court has observed that "[m]any states have constitutional provisions very similar to Article 1," *Benning*, 161 Vt. at 479–80 (internal citations omitted), and that "Article 1 [is] characteristic of constitutions of New England states," *Shields v. Gerhart*, 163 Vt. 219, 225, 658 A.2d 924, 929 (1995) (internal citations omitted), including Massachusetts.

129. The framers of the Vermont Constitution intended to enshrine the fundamental right to bodily and medical autonomy—the ability to choose for oneself whether to accept or reject specific medical treatments—as an unalienable right protected by Article 1.

130. This deeply rooted natural right is judicially enforceable. Although the Supreme Court has concluded that "Article 1 is not self-executing"—that is, "[a]lone," Article 1 "does not provide rights to individuals that may be vindicated in a judicial action"—fundamental rights protected by Article 1 may themselves be judicially enforceable of their own accord. *Shields*, 163 Vt. at 226.

131. The fundamental right to bodily and medical autonomy is one such right. Indeed, the Vermont Supreme Court has held that involuntary mental health treatment orders violate Article 1 unless they are time-bound, precisely because of the "fundamental privacy and liberty interests" implicated. *In re G.K.*, 147 Vt. at 179. So too here.

132. DCF violated A.V.'s right to bodily and medical autonomy by misrepresenting facts to obtain legal custody over the fetus she carried and divesting her of legal control over her pregnancy.

133. DCF also inserted itself into A.V.'s medical decision-making by first attempting to force A.V. to undergo unwelcomed fetal monitoring and then by participating in a vacuum assisted delivery and cesarean surgery against her express wishes.

134. When A.V. exercised her right to decline medical treatment—and proceed with a natural birth as she envisioned—DCF further sought to compel her compliance through a court-ordered injunction. DCF did so despite DMH expressly advising the agency that an emergency evaluation—which is only the first step towards involuntary treatment—was "inappropriate for this situation."

135. DCF then used A.V.'s protected medical decisions as grounds to immediately remove S.V. from her care upon birth.

136. As a result, DCF violated A.V.'s fundamental right to bodily and medical autonomy. A.V. is entitled to damages for the harm caused by DCF's unlawful actions.

Count 2—Violation of 18 V.S.A. §§ 9493 *et seq.*—DCF's Interference with A.V.'s Statutorily Protected Decisions Surrounding Birth

137. A.V. incorporates the foregoing paragraphs as though fully contained herein.

138. 18 V.S.A. § 9493—Vermont's Freedom of Choice Act—confirms that "[t]he State of Vermont recognizes the fundamental right of every individual who becomes pregnant to choose to carry a pregnancy to term, to give birth to a child, or to have an abortion."

139. Accordingly, the statute provides that "[a] public entity . . . shall not, in the regulation or provision of benefits, facilities, services, or information, deny or interfere with an individual's fundamental rights to choose or refuse contraception or sterilization or to

choose to carry a pregnancy to term, to give birth to a child, or to obtain an abortion." *Id.* § 9494.

140. The protection of an individual's fundamental right to "choose to carry a pregnancy to term" and "to give birth to a child" encompasses the choice of *whether*, *when,* and *how* to give birth. *See id.*

141. DCF violated A.V.'s fundamental rights to carry her pregnancy to term and to give birth in the manner of her choosing.

142. DCF first divested A.V. of legal control over the fetus she was carrying before birth—thereby interfering with and denying her ability to make medical decisions as her labor progressed.

143. DCF then attempted to force A.V. to undergo unwelcomed fetal monitoring and participate in a vacuum assisted delivery and cesarean surgery against her express wishes.

144. When A.V. exercised her fundamental right to pursue a natural birth as she envisioned, DCF sought to compel her compliance through a court-ordered injunction, despite DMH expressly advising DCF that an emergency evaluation—which is only the first step towards involuntary treatment— was "inappropriate for this situation."

145. DCF then used A.V.'s protected decisions about her birthing plan as grounds to immediately remove S.V. from her care upon birth.

146. DCF continues to retain—for possible future use—information about A.V.'s protected medical decisions and her birthing plan, despite lacking authority to do so.

147. 18 V.S.A. § 9498(a) provides a private right of action "against a public entity" for interfering with or denying a Vermonter's protected choices around birth, contraception, or abortion.

148. DCF is a "public entity" as defined by the statute. *See id.* § 9496(2)(A).

Count 3—Violation of Article 11 of the Vermont Constitution—DCF's Unreasonable and Unlawful Search of A.V.

149. A.V. incorporates the foregoing paragraphs as though fully contained herein.

150. DCF violated A.V.'s right against unreasonable searches, a fundamental right protected by Article 11 of the Vermont Constitution. *See* Vt. Const. ch. 1, art. 11.

151. Article 11 provides that "the people have a right to hold themselves, their houses, papers, and possessions, free from search or seizure." *Id.*

152. "Article 11 of the Vermont Constitution, like the Fourth Amendment to the U.S. Constitution, seeks to protect our freedom from unreasonable government intrusions into

. . . legitimate expectations of privacy." *State v. Boyer*, 2023 VT 40, ¶ 9 (internal citation and quotation marks omitted).

153. The Vermont Supreme Court has consistently held that Article 11 is more protective of individual rights than its federal counterpart. *See, e.g.*, *State v. Walker-Brazie*, 2021 VT 75, ¶¶ 16, 18 (internal citations omitted).

154. Vermonters have a legitimate expectation of privacy in their medical information. *See State v. Medina*, 2014 VT 69, ¶ 59 n.22 (recognizing a privacy interest in medical records beyond the identity of the records holder); *State v. Welch*, 160 Vt. 70, 75–78, 624 A.2d 1105, 1107–09 (1992) ("[D]efendant does have a privacy interest that derives from her expectation that [pharmacy] records cannot be arbitrarily disclosed.").

155. This expectation of privacy was recognized at common law and is specifically protected by multiple Vermont statutes. *Lawson v. Halpern-Reiss*, 2019 VT 38, ¶ 14 ("[W]e join the consensus of jurisdictions recognizing a common-law private right of action for damages arising from a medical provider's unauthorized disclosure of information obtained during treatment."); 18 V.S.A. § 1881(b) ("A covered entity . . . shall not disclose protected health information unless the disclosure is permitted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)."); 12 V.S.A. § 1612(a) ("Unless the patient waives the privilege or unless the privilege is waived by an express provision of law, a person authorized to practice medicine, chiropractic, or dentistry, a registered professional or licensed practical nurse, or a mental health professional as defined in 18 V.S.A. § 7101(13) shall not be allowed to disclose any information acquired in attending a patient in a professional capacity, including joint or group counseling sessions, and which was necessary to enable the provider to act in that capacity."); 18 V.S.A. § 1852(a)(7) ("The patient has the right to expect that all communications and records pertaining to his or her care shall be treated as confidential. Only medical personnel, or individuals under the supervision of medical personnel, directly treating the patient, or those persons monitoring the quality of that treatment, or researching the effectiveness of that treatment, shall have access to the patient's medical records. Others may have access to those records only with the patient's written authorization.").

156. During DCF's unlawful assessment of A.V., DCF requested and obtained private and confidential medical information about her to which she had a protected and legitimate expectation of privacy.

157. *First*, DCF successfully urged Copley Hospital staff to share details of A.V.'s medical records with DCF, including faxing documents in full, without her consent or knowledge and without a court order.

158. *Second*, DCF requested that Copley staff advise DCF when A.V. went into labor, and on February 11, 2022, Copley staff did so.

159. *Third*, DCF requested ongoing updates from Copley staff about A.V.'s labor, delivery process, and S.V.'s status and condition. Throughout the labor and delivery, Copley staff complied with these requests, providing continuous updates.

160. DCF did not have a warrant or other court order permitting it to access and review A.V.'s medical information, nor did it seek or obtain A.V.'s consent to access and review such information until after she had given birth and S.V. had already been removed from her care and custody.

161. DCF relied on the confidential medical information it unlawfully obtained in determining how to proceed and presented this information in both family and civil court proceedings.

162. DCF's access, review, and use of A.V.'s private and confidential medical information constituted an unreasonable and unlawful search, violating her rights under Article 11.

163. DCF is liable to A.V. for this violation, and she is entitled to damages for the harm DCF caused.

Count 4—Violation of Article 11 of the Vermont Constitution—DCF's Unreasonable and Unlawful Seizure of A.V.

164. A.V. incorporates the foregoing paragraphs as though fully contained herein.

165. DCF violated A.V.'s right against unreasonable seizures, a fundamental right protected by Article 11 of the Vermont Constitution. *See* Vt. Const. ch. 1, art. 11.

166. An encounter between an individual and public officials is a "seizure" within the meaning of Article 11 if, based on the totality of the circumstances, a reasonable person would not feel free to leave and terminate the encounter. *See, e.g.*, *State v. Jestice*, 2004 VT 65, ¶ 5.

167. Here, DCF obtained, on the basis of false information presented to the family court, an emergency care order directing that custody of A.V.'s child be transferred to DCF while A.V. was still pregnant.

168. Moreover, DCF moved in civil court for an injunction prohibiting A.V. from "Leaving Copley Hospital"—a request that became moot only when A.V. gave birth to S.V. and DCF took immediate custody of her child.

169. A reasonable person, aware of DCF's actions, including the ECO and the motion for an injunction, would not feel free to leave the hospital. Indeed, as a direct result of these actions, A.V. was not free to leave.

170. DCF's seizure of A.V. and its interference with her ability to freely leave the hospital without legal justification violated her rights under Article 11.

171. As a result, DCF is liable to A.V. for this violation, and she is entitled to damages for the harm DCF caused.

Count 5—Violations of the Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §§ 4500 *et seq.*— DCF's Unlawful Discrimination Based on A.V.'s Perceived Disability and Failure to Make Modifications

172. A.V. incorporates the foregoing paragraphs as though fully contained herein.

173. The VFHPAA is an anti-discrimination statute that ensures broad protections for Vermonters' equal access to goods and services provided by places of public accommodation, regardless of an individual's disability status.

174. "[A]ll governmental entities [are] subject to the public accommodations law." *Dep't of Corr. v. Hum. Rts. Comm'n*, 2006 VT 134, ¶ 25. Because DCF is a governmental entity that "offer[s] to the general public" state assistance in the form of "services, facilities, goods, privileges, advantages, benefits, or accommodations," DCF is a place of public accommodation under the VFHPAA. 9 V.S.A. § 4501(1).

175. Under the VFHPAA, "[n]o individual with a disability shall be excluded from participation in or be denied the benefit of the services, facilities, goods, privileges, advantages, benefits, or accommodations or be subjected to discrimination by any place of public accommodation on the basis of his or her disability." *Id*. § 4502(c). The VFHPAA further requires places of public accommodation to make reasonable modifications when necessary to accommodate disabilities. *Id*.

176. The VFHPAA defines "disability" as "(A) a physical or mental impairment that limits one or more major life activities; (B) a history or record of such an impairment; or (C) being regarded as having such an impairment." *Id*. § 4501(2).

177. Based on unsubstantiated reports from Charter House staff and its own biases, DCF perceived A.V. as having a mental impairment.

178. This belief is apparent in Jennifer Stone's initial affidavit filed with the ECO motion, which included multiple references to A.V.'s purported display of paranoia, dissociative behaviors, post-traumatic stress disorder, and an inability to process information.

179. DCF's emergency motion for an ex parte injunction and Stone's supplemental affidavit also referenced A.V.'s purported delusion and paranoia.

180. Furthermore, even after a family court judge ordered S.V. to be returned to A.V.'s custody, DCF continued to insist in its emergency filings that it had "significant concerns involving [A.V.'s] mental health presentation."

181. DCF violated the VFHPAA in two ways: by perceiving A.V. as having a disability and failing to make accommodations for her, and by denying A.V. the full benefit of its services because of her perceived disability.

182. *First,* when a place of public accommodation perceives an individual as having a disability, the VFHPAA requires the entity to make reasonable accommodations to ensure the qualified individual has equal access to its services. Indeed, DCF's governing statute

specifically "recogniz[es] that persons with a disability can be successful parents," 33 V.S.A. § 4922(b), and its own policy notes the potential need for "reasonable accommodations," *see* DCF Policy 52: Working with Individuals Who May Require Reasonable Accommodations.[4] Under this policy, when working with a parent with a disability, DCF should discuss with the parent "their limitations and needs" and "[s]eek input from an expert or someone with relevant expertise," among other accommodations. *Id*.

183. However, DCF declined to make *any* accommodations. Contrary to its policy, DCF did not even speak to A.V. until after she had given birth.

184. This failure to make reasonable accommodations in response to A.V.'s perceived disability violated the VFHPAA.

185. *Second,* rather than make the statutorily required accommodations, DCF instead discriminated against A.V. on the basis of her perceived disability.

186. As described above, DCF maintains an ultra vires "high-risk pregnancy docket" or "calendar" that involves unlawful invasions of privacy against certain expectant parents. Inclusion in this "calendar" is based, in part, on a parent's actual or perceived disability status.

187. Upon information and belief, DCF unlawfully placed A.V. on this "calendar" after Charter House reported her alleged mental impairment, flagging her for monitoring due to her perceived disability.

188. Moreover, DCF repeatedly deviated from its own policies and procedures during its unlawful assessment of A.V. and subsequent legal filings. These deviations were motivated by DCF's perception of A.V. having a disability.

189. As an initial matter, DCF improperly opened an assessment on a fetus based on an assumed lack of parental capacity after receiving a report that A.V. had "untreated mental health issues."

190. DCF then decided to forgo the procedural requirement of informing and interviewing A.V. for its assessment because, due to her perceived mental impairment, she was "assessed as an acute flight risk" and would possibly "flee" if contacted prior to giving birth.

191. DCF also failed to offer A.V. any services, as required by the policy guiding assessments. Instead, DCF moved for temporary custody before S.V. was even born "due to significant concerns related to [A.V.'s] mental health."

192. Additionally, DCF deliberately ignored DMH's advice that an emergency evaluation—which must be completed before involuntary medical treatment—was unwarranted in

[4]Available at: https://outside.vermont.gov/dept/DCF/Shared%20Documents/FSD/Policies/Policy52.pdf

A.V.'s situation. Instead, DCF moved for an order prohibiting A.V. from leaving the hospital and compelling her to undergo certain procedures, including a vacuum assist and emergency cesarean surgery, accusing A.V. of exhibiting signs of delusions and paranoia.

193. Finally, after unlawfully seizing S.V. from A.V., DCF continued to delay their reunification for months and repeatedly raised the possibility of terminating A.V.'s parental rights, claiming that "DCF has observed significant concerns involving [A.V.'s] mental health presentation," despite the fact that A.V. had been cleared by a mental health professional shortly after giving birth—a report that DCF chose to ignore.

194. DCF violated the VFHPAA by engaging in discriminatory treatment on the basis of A.V.'s perceived disability.

195. DCF is liable to A.V. for both of these violations of the VFHPAA, and she is entitled to damages for the harm DCF caused.

Count 6—Wrongful Use of a Civil Proceeding—DCF's Unlawful Initiation of Ex Parte Emergency Care Order Proceedings

196. A.V. incorporates the foregoing paragraphs as though fully contained herein.

197. An emergency care order separating a child from their caregiver is an extraordinary form of relief, to be issued only if "the court determines that the child's continued residence in the home is contrary to the child's welfare." 33 V.S.A. § 5305(a).

198. If the court makes this determination ex parte—that is, without hearing from the parent—it must be supported by a DCF officer's detailed affidavit, *id*., which "include[s] the reasons for taking the child into custody," *id*. § 5302(b)(2).

199. At the time that DCF filed its ex parte motion for an emergency care order, DCF had exceeded its statutory authority and violated its own procedures by conducting an unlawful assessment without ever speaking to A.V.

200. As such, DCF did not have probable cause or a reasonable belief to support its claim that A.V.'s child—in actuality, a fetus—was without proper parental care.

201. Moreover, due to its close collaboration with Copley Hospital staff, DCF was fully aware that, when it filed the motion on February 11, 2022, A.V. had not yet delivered her child.

202. Yet, DCF nevertheless sought an emergency care order under false pretenses for the improper purpose of taking custody of the fetus A.V. was carrying.

203. Because A.V. was unaware of DCF's involvement in her pregnancy and was not notified of the emergency care order motion, the proceedings occurred ex parte. Without A.V.'s participation, the Court relied entirely upon Stone's affidavit.

204. This affidavit included material misrepresentations: Stone falsely listed the fetus's date of birth as "2/11/22" and opened her affidavit with the inaccurate assertion that "A.V. gave

birth to baby [V.] on 2/11/22, at Copley Hospital in Morrisville, VT." This false testimony was intended to mislead the Court.

205. As a result of DCF's request for an emergency care order transferring custody of a fetus and its presentation of false testimony to support that request, when A.V. delivered a healthy newborn daughter on February 12, 2022, S.V. was seized immediately. DCF took custody of S.V., and A.V. did not regain custody for months.

206. DCF's unlawful use of a civil proceeding caused significant harm to A.V., including emotional distress, loss of maternal-child bonding time, and interference with her fundamental rights.

207. Accordingly, DCF is liable for the harm that resulted from its unlawful use of a civil proceeding, and A.V. is entitled to damages.

Count 7—Rule 75—DCF's Unauthorized and *Ultra Vires* Surveillance of Pregnant Vermonters Through its "High-Risk Pregnancy Docket" or "Calendar"

208. A.V. incorporates the foregoing paragraphs as though fully contained herein.

209. There is no statutory authority authorizing the creation and use of the "high-risk pregnancy docket" or "calendar," or DCF's practice of collecting and maintaining information about expectant Vermonters.

210. DCF lacks jurisdiction to investigate or assess pregnant Vermonters unless and until a child is born. DCF's abuse-and-neglect authority is limited to assessing a "valid allegation of *child* abuse or neglect." 33 V.S.A. § 4915a(a) (emphasis added); *see id.* § 4915b(a) ("An investigation, to the extent that it is reasonable under the facts and circumstances presented by the particular allegation of *child* abuse, shall include all of the following . . . .") (emphasis added).

211. Similarly, in the CHINS context, the DCF Commissioner has authority only "with respect to a *child* who is or may be the subject of a petition brought under the juvenile judicial proceedings chapters." *Id.* § 5106 (emphasis added); *see id.* § 5106(2) (cabining authority to "investigat[ing] complaints and allegations that a *child* is in need of care or supervision") (emphasis added).

212. Accordingly, DCF's surveillance and investigation of pregnant Vermonters who have not given birth is unauthorized and *ultra vires*.

213. Vermont Rule of Civil Procedure 75 is the proper vehicle for challenging unauthorized or *ultra vires* agency action, including DCF's "high-risk pregnancy docket" or "calendar." V.R.C.P. 75. Rule 75(a) provides a cause of action for challenging "[a]ny action or failure or refusal to act by an agency of the state or a political subdivision thereof, including any department, board, commission, or officer" that is not governed by statute, so long as "such review is otherwise available by law."

214. As the Vermont Supreme Court has explained, our state has long recognized "[e]xtraordinary writs such as mandamus, scire facias, prohibition, quo warranto and certiorari"—"remedies 'of ancient common law origin.'" *Hunt v. Vill. of Bristol*, 159 Vt. 439, 440, 620 A.2d 1266, 1267 (1992).

215. Procedurally, Vermont has "abolished common law writs and replaced them with Rules 74 and 75." *Garbitelli v. Town of Brookfield*, 2011 VT 122, ¶ 6. In determining whether an agency action may be challenged under Rule 75, the inquiry is whether review would have been "otherwise available by law," V.R.C.P. 75(a)—that is, "whether [the agency's actions] fall within the class of decisions appealable at common law under one of the extraordinary writs," *Rheaume v. Pallito*, 2011 VT 72, ¶ 5.

216. Challenging *ultra vires*, unauthorized, or extra-jurisdictional agency actions is a classic function of extraordinary writs and relief.

217. Historically, English law provided that "[o]fficials who acted in excess of jurisdiction . . . could be reached by prerogative writs." Louis L. Jaffe, *Suits Against Governments and Officers: Sovereign Immunity*, 77 Harv. L. Rev. 1, 19 (1963). Based on this tradition, American courts have long embraced "the availability of equitable relief against unlawful government action." James E. Pfander & Jacob P. Wentzel, *The Common Law Origins of* Ex Parte Young, 72 Stan. L. Rev. 1269, 1330 (2020).

218. In *Osborn v. Bank of the United States,* for example, the U.S. Supreme Court concluded that state officials were properly enjoined from seizing funds "without authority," explaining that "it is the province of a Court of equity, in such cases, to arrest the injury, and prevent the wrong." 22 U.S. 738, 845 (1824).

219. Since *Osborn*, the U.S. Supreme Court has repeatedly emphasized the inherent "power of the court to grant relief where [a government official] has assumed and exercised jurisdiction in a case not covered by the statutes." *Am. Sch. of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 107–08 (1902). Even before *Osborn*, state courts had reached similar conclusions. *See, e.g.*, *Belknap v. Belknap*, 1817 WL 1598, at *6 (1 N.Y. Ch. Ann. 452) (where government officials have "exceeded their powers . . . chancery would restrain them by injunction and keep them strictly within the limits of their power.").

220. This inherent power is traceable to courts' authority "to interpose by injunction or *mandamus*." *Bd. of Liquidation v. McComb,* 92 U.S. 531, 536 (1875); *see id.* at 541 (upholding injunction against agency acting beyond its legal authority and noting that, in such cases, "the writs of *mandamus* and injunction are somewhat correlative to each other").

221. Because enjoining *ultra vires*, unauthorized, or extra-jurisdictional agency action has long been within the inherent power of courts, and historically was traceable to extraordinary writs, a remedy for DCF's actions is "otherwise available by law" under Rule 75, and relief may be granted pursuant to the Rule.

222. Accordingly, an injunction should issue to prevent DCF from continuing its unlawful expansion of statutory jurisdiction and its *ultra vires* intrusion into Vermonters' private medical and pregnancy-related decisions, including its unauthorized collection and use of information about A.V.

Count 8—Violation of Article 11 of the Vermont Constitution—DCF's Pattern and Practice of Unlawfully Surveilling Pregnant Vermonters Through its "High-Risk Pregnancy Docket" or "Calendar"

223. A.V. incorporates the foregoing paragraphs as though fully contained herein.

224. DCF's ongoing pattern and practice of unlawfully surveilling pregnant Vermonters through the "high-risk pregnancy docket" or "calendar" constitutes a violation of the right to privacy and freedom from unreasonable searches protected under Article 11 of the Vermont Constitution.

225. By definition, the "high-risk pregnancy docket" or "calendar" is a document that tracks pregnant women based on their otherwise-confidential expected due date.

226. To substantiate its speculation about women placed on the "high-risk pregnancy docket" or "calendar" and to eventually justify post-birth intervention, DCF amasses sensitive pre-birth information from a variety of sources. Specifically, DCF seeks comprehensive medical records; collects information about expectant mothers' personal habits; and accesses confidential and sensitive materials from social service providers or other third parties.

227. These practices constitute unlawful "searches" within the meaning of Article 11 of the Vermont Constitution.

228. DCF does not obtain, or even seek to obtain, warrants, subpoenas, or other court orders to authorize its collection of sensitive information about pregnant Vermonters listed on the "high-risk pregnancy docket" or "calendar."

229. DCF is aware of—and actively encourages—staff to engage in these surveillance practices without legal authority.

230. Injunctive relief is necessary and proper to prevent DCF's ongoing and systemic intrusion into Vermonters' constitutionally protected privacy rights and to ensure DCF discontinues its use of or reliance on unlawfully obtained information in any future action.

Count 9—Violation of Article 7 of the Vermont Constitution—DCF's Unconstitutional Use of Sex in Maintaining its "High-Risk Pregnancy Docket" or "Calendar"

231. A.V. incorporates the foregoing paragraphs as though fully contained herein.

232. DCF's use of the "high-risk pregnancy docket" or "calendar" operates based on an unlawful sex classification in violation of Article 7 of the Vermont Constitution, commonly known as Vermont's Common Benefits Clause.

233. Specifically, DCF has a policy and practice of investigating, surveilling, and targeting pregnant Vermonters based on specific characteristics and behavior, but does not investigate, surveil, or target similarly situated male parents or expectant fathers engaging in identical conduct.

234. As DCF's investigation of A.V. illustrates, DCF collects sensitive information about mothers-to-be based on suspicions that, when they eventually give birth, they may lack parental capacity. Pregnant Vermonters may find themselves investigated by DCF—and included on the "high-risk pregnancy docket" or "calendar"—based on unsubstantiated reports of addiction, alcohol, or drug use; subjective characterizations of "irresponsible" behavior; concerns about their physical or mental health—that is, disability; housing status; or even their prior involvement with DCF as children.

235. To substantiate these suspicions, DCF collects sensitive information from various sources, including social service providers, doctors, or caseworkers, without the expectant mother's knowledge or authorization.

236. Expectant fathers, however, are not investigated in the same way by DCF before a child is born. That remains true even where fathers-to-be exhibit identical behavior; DCF simply does not initiate comparable action against a father suspected of lacking parental capacity until after the child's birth.

237. DCF's practice of unjustifiably surveilling expectant non-male Vermonters substantially disadvantages them by subjecting them to invasive government intrusion and serves no compelling governmental purpose. It therefore violates the Common Benefits Clause of the Vermont Constitution.

238. To the extent that DCF asserts any justification for this disparate treatment—that is, a belief that expectant mothers pose particular risks of future incapacity that expectant fathers do not—such justifications are predicated on gender-based stereotypes and cannot withstand constitutional scrutiny.

239. In interpreting Vermont's Common Benefits Clause, the Supreme Court has long been guided by federal Equal Protection jurisprudence, subjecting suspect classifications to heightened judicial scrutiny. *See, e.g.*, *Brigham v. State*, 166 Vt. 246, 265, 692 A.2d 384, 396 (1997); *In re Est. of Murcury*, 2004 VT 118, ¶ 6.

240. Even when departing from traditional Equal Protection principles, the Court has made clear that Article 7 bars arbitrary sex-based differentiation. *See Baker v. State*, 170 Vt. 194, 215 n.13, 744 A.2d 864, 880 (1999) (explaining how governmental action "that discriminated on the basis of sex would bear a heavy burden under the Article 7 analysis set forth above").

241. A statute, policy, or rule that differentiates based on sex presumptively violates Article 7 and must be subject to heightened scrutiny.

242. Upon information and belief, DCF would not have targeted A.V. or included her on the "calendar" had she exhibited identical behavior but had been male.

243. Accordingly, damages and injunctive relief are proper and available in this instance to redress DCF's ongoing sex-based discrimination in violation of Article 7.

Count 10—Violation of Article 4 of the Vermont Constitution—DCF's Denial of Due Process to Vermonters Included on the "High-Risk Pregnancy Docket" or "Calendar"

244. A.V. incorporates the foregoing paragraphs as though fully contained herein.

245. There are no formal criteria for inclusion on the "high-risk pregnancy docket" or "calendar." Instead, DCF adds pregnant women to the registry based on vague, arbitrary, and non-specific concerns about parental suitability without any objective standard.

246. Pregnant women, including A.V. are never notified when they are added to the "high-risk pregnancy docket" or "calendar."

247. There are no formal procedures for contesting inclusion on the "high-risk pregnancy docket" or "calendar," meaning pregnant Vermonters have no opportunity to challenge their listing.

248. Nor are there formal procedures for seeking removal from the "high-risk pregnancy docket" or "calendar" once a pregnant person has been listed.

249. DCF's policy and practice of maintaining and using the "high-risk pregnancy docket" or "calendar" violates Vermonters' right to due process under Article 4 of the Vermont Constitution by: (1) adding pregnant people to the docket or calendar based on arbitrary and subjective criteria; (2) failing to provide notice to individuals of their inclusion on the docket or calendar; (3) failing to allow individuals to contest their inclusion; and (4) failing to provide a clear, formal process for individuals to petition for removal from the docket or calendar.

250. The lack of procedural safeguards results in significant harm, including ongoing surveillance and the potential for future DCF intervention without any means of redress.

251. As a pregnant Vermonter presumably included on the "calendar," A.V. has suffered each of these violations of her right to due process and may do so again in the future.

252. Accordingly, damages and injunctive relief are proper and necessary in this instance to prevent further violations of A.V.'s and pregnant Vermonters' due process rights.

Count 11—Violation of Article 22 of the Vermont Constitution—DCF's Pattern and Practice of Unconstitutionally Infringing Personal Reproductive Autonomy Through its "High-Risk Pregnancy Docket" or "Calendar"

253. A.V. incorporates the foregoing paragraphs as though fully contained herein.

254. DCF's ongoing pattern and practice of unlawfully surveilling pregnant Vermonters through the "high-risk pregnancy docket" or "calendar" systemically violates the right to personal reproductive autonomy protected under Article 22 of the Vermont Constitution. Vt. Const. ch. 1, art. 22.

255. Article 22—enacted in 2022 as "Proposition 5" or the "reproductive liberty amendment"—constitutionalizes Vermont's firm commitment to individual reproductive autonomy. *Id.*

256. Specifically, the amendment provides "[t]hat an individual's right to personal reproductive autonomy is central to the liberty and dignity to determine one's own life course and shall not be denied or infringed unless justified by a compelling State interest achieved by the least restrictive means." *Id.*

257. DCF's pattern and practice of surveilling pregnant Vermonters substantially interferes with and infringes upon their reproductive liberty. As described above, inclusion on the "high-risk pregnancy docket" or "calendar" triggers aggressive and unwarranted investigation by DCF, which, in turn, becomes the unauthorized surveillance of individual pregnant women, intrusion into their medical care and medical choices, and unlawful intervention into an individual woman's choice to parent through unjustified and unjustifiable family separation.

258. DCF places women on the registry based on vague and subjective concerns about parental suitability rooted in otherwise lawful or protected behavior such as unsubstantiated reports of addiction, alcohol, or drug use; supposedly "irresponsible" actions; mental or physical health disabilities or impairments; prior involvement with DCF as a child; or an expectant mother's preference for "natural" over medically assisted birth. Punishing, disadvantaging, or otherwise criminalizing a pregnant Vermonter for these actions infringes on their reproductive autonomy and liberty.

259. DCF's unlawful actions are grounded in a legal concept of fetal personhood that is wholly incompatible with Article 22's robust protection of individual reproductive autonomy. As described earlier, no statutory authority allows for the creation and use of the "high-risk pregnancy docket" or "calendar," or DCF's practice of collecting and maintaining information about expectant Vermonters. Instead, DCF has unlawfully expanded its own jurisdiction solely by relying on the assumption that a "child" includes a fetus.

260. DCF has no compelling state interest justifying its routine intrusion into Vermonters' reproductive liberty.

261. Nor is the "high-risk pregnancy docket" or "calendar"—which lacks formal criteria for inclusion or indeed any procedural safeguards whatsoever—the least restrictive means of achieving any state interest, no matter how compelling.

262. DCF continues to retain—for possible future use—information about A.V.'s protected reproductive decisions and her birthing plan, despite lacking authority to do so.

263. Article 22 is self-executing, and injunctive relief is necessary and proper to prevent DCF's ongoing and systemic intrusion into Vermonters' constitutionally protected rights of reproductive liberty, including protecting A.V. from further penalty or criminalization due to her protected medical decisions and birthing plan for S.V.

Count 12—Unauthorized Disclosure of Information Obtained During Treatment—Copley Hospital's Unauthorized Disclosure of A.V.'s Medical Information to DCF

264. A.V. incorporates the foregoing paragraphs as though fully contained herein.

265. In Vermont, medical patients have "the right to expect that all communications and records pertaining to [their] care shall be treated as confidential." 18 V.S.A. § 1852(a)(7).

266. Accordingly, Vermont recognizes a common-law private right of action for damages arising from a medical provider's unauthorized disclosure of information obtained during treatment. *Lawson v. Halpern-Reiss*, 2019 VT 38, ¶ 14.

267. Copley Hospital unlawfully disclosed confidential medical information to DCF about A.V. on multiple occasions without her consent.

268. Specifically, Copley Hospital staff spoke to DCF on February 8, 2022, describing and disclosing A.V.'s medical records to DCF, including records received from another hospital. Hospital staff also faxed records in full to DCF.

269. Additionally, Copley Hospital staff maintained frequent contact with DCF throughout A.V.'s labor and delivery on February 11 and 12, 2022, repeatedly disclosing confidential information about A.V. These disclosures included details about her receipt of pain medication; her use of the restroom; her conversations with staff about specific medical procedures; and frequent updates about the dilation of her cervix.

270. Copley Hospital staff disclosed this information willingly and voluntarily. DCF did not provide a warrant, subpoena, or court order compelling these disclosures.

271. Nor were Copley Hospital staff otherwise legally obligated to disclose this sensitive and confidential information under any policy, rule, or statute.

272. The unauthorized disclosure of confidential information caused significant harm to A.V., including emotional distress, invasion of privacy, and loss of trust in medical care.

273. Damages are available for this unlawful disclosure. *Halpern-Reiss*, 2019 VT 38, ¶ 14.

Count 13—Unauthorized Disclosure of Information Obtained During Treatment—Lund's Unauthorized Disclosure of A.V.'s Counseling and Family Planning Information to DCF

274. A.V. incorporates the foregoing paragraphs as though fully contained herein.

275. Lund unlawfully disclosed confidential counseling and treatment information to DCF about A.V. without her consent.

276. Specifically, a Lund staff member spoke to DCF on February 9, 2022, and disclosed details of A.V.'s past family planning counseling sessions to DCF without authorization. This staff member further speculated about A.V.'s mental health.

277. Additionally, she unlawfully disclosed to DCF confidential information concerning A.V.'s private family planning choices, including her breastfeeding preferences.

278. Lund staff disclosed this information willingly and voluntarily to DCF, and without A.V.'s consent. DCF did not provide a warrant, subpoena, or court order to compel these disclosures.

279. Nor were Lund staff legally required to disclose this sensitive and confidential information under any policy, rule, or statute.

280. In fact, DCF's own regulations required Lund, as a licensee, to maintain client confidentiality. Specifically, Vermont's Licensing Regulations for Residential Treatment Programs mandate that licensees must protect the confidentiality of client information except when reporting actual incidents of abuse or neglect. *See* Licensing Regulations for Residential Treatment Programs § 202, Vt. Code of Rules 13 172 001.

281. By unlawfully disclosing confidential counseling and family planning information to DCF, Lund violated its duty of confidentiality, causing significant harm to A.V., including emotional distress and an invasion of privacy.

282. Damages are available for this unlawful disclosure. *Halpern-Reiss*, 2019 VT 38, ¶ 14.

Request for Relief

WHEREFORE, A.V. prays that the Court issue the following relief:

a. A declaratory judgment that DCF violated A.V.'s constitutional, statutory, and common law rights, and that DCF's pattern and practice of surveilling pregnant Vermonters, including A.V. through its "high-risk pregnancy docket" or "high-risk pregnancy calendar" is unauthorized, *ultra vires*, and unlawful.

b. An injunction ordering DCF to: delete all information about A.V. and her confidential counseling, medical records, and protected medical choices from its investigative files; cease its pattern and practice of unlawfully surveilling pregnant individuals without a valid report of child abuse or neglect; and permanently abandon its pattern and practice of surveilling pregnant Vermonters through its "high-risk pregnancy docket" or "calendar."

c. Award A.V. damages adequate to compensate her for the violation of her constitutional, statutory, and common law rights by DCF, Copley Hospital, and Lund, as well as for her resulting emotional distress, and physical pain and injuries.

d. Award A.V. punitive damages against DCF for its unlawful, willful, egregious, and malicious misconduct, which was a direct and proximate cause of her pain and injuries.

e. Award A.V. costs of this action, including reasonable attorneys' fees, as permitted by law.

f. Allow any further relief to which A.V. may be entitled under law or equity.

Respectfully submitted,

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