

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

OCT - 2 2015

TIM RHODES  
COURT CLERK

(1) NOVA HEALTH SYSTEMS, D/B/A )  
REPRODUCTIVE SERVICES, on behalf )  
of itself, its staff, and its patients, )

Plaintiff, )

v. )

Case No. 31

(2) E. SCOTT PRUITT, in his official capacity )  
as Attorney General of Oklahoma, )

Judge Parrish

(3) STEVE KUNZWEILER, in his official )  
capacity as District Attorney for Tulsa )  
County, )

(4) LYLE KELSEY, in his official capacity as )  
Executive Director of the Oklahoma State )  
Board of Medical Licensure and )  
Supervision, and )

(5) TERRY L. CLINE, in his official capacity )  
as Oklahoma Commissioner of Health, )

Defendants. )

CV-2015-1838

**VERIFIED PETITION**

Plaintiff Nova Health Systems d/b/a Reproductive Services (“Reproductive Services”), by and through the undersigned attorneys, brings this Petition against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following:

**I. PRELIMINARY STATEMENT**

1. This is a civil rights action challenging Oklahoma House Bill (“HB”) 1721, 2015 Okla. Sess. Laws Serv. Ch. 59, and HB 1409, 2015 Okla. Sess. Laws Serv. Ch. 255 (jointly the “Acts”), under the Constitution of the State of Oklahoma. The Acts are scheduled to take effect November 1, 2015. Copies of HB 1721 and HB 1409 are attached hereto as Exhibits A and B, respectively.

2. HB 1721 bans the most common second-trimester abortion procedure, a dilation and evacuation (D & E), and threatens to deprive Oklahoma women of their constitutional right to end a pregnancy prior to viability.

3. As a result, HB 1721 will prevent Reproductive Services from providing second-trimester abortion procedures.

4. Because Reproductive Services is the only licensed abortion facility that provides second-trimester abortion procedures in the entire state, Oklahoma women will be forced to travel out of state to access second-trimester abortion.

5. HB 1409 triples Oklahoma's existing 24-hour waiting period. Currently, a woman seeking an abortion must undergo mandatory state-directed counseling and receive specific pregnancy-related information, including an offer to view materials prepared by the Oklahoma Board of Medical Licensure and Supervision (the "Medical Board") at least 24 hours before the procedure. 63 O.S. § 1-738.2. HB 1409 will force women seeking an abortion in Oklahoma to delay the abortion procedure for at least 72 hours, regardless of their medical needs, life circumstances, or their physicians' medical judgment. HB 1409, § 1.

6. Pursuant to HB 1409, the materials offered to each woman during the state-mandated counseling prior to the abortion procedure must be amended to include the phrase "[a]bortion shall terminate the life of a whole, separate, unique, living human being," and abortion facilities must publish a link to these materials on their own website. HB 1409, § 2.

7. These Acts, when viewed against the backdrop of Oklahoma's comprehensive statutory scheme regulating and restricting access to abortion, serve no purpose other than to block access to abortion and jeopardize women's health and well-being.

8. The Acts violate the constitutional rights of Oklahoma women to reproductive

autonomy and to bodily integrity under the Oklahoma Constitution, and the Oklahoma Constitution's prohibition against special laws.

9. In addition, HB 1409 violates the Oklahoma Constitution's protection of the freedom of speech.

10. Preliminary and permanent injunctive relief is necessary to protect the health and safety of Oklahoma women and the constitutional rights of Reproductive Services and its patients.

## **II. JURISDICTION AND VENUE**

11. Jurisdiction is conferred on this Court by OKLA. CONST. art. VII, § 7(a).

12. Plaintiff's claims for declaratory and injunctive relief are authorized by 12 O.S. §§ 1651 and 1381 and by the general equitable powers of this Court.

13. Venue is appropriate under 12 O.S. § 133 because Defendants Pruitt, Kelsey, and Cline have official residences in Oklahoma County.

## **III. PARTIES**

14. Plaintiff Reproductive Services (the "Clinic"), a part of NOVA Health Systems, a non-profit charitable corporation, is a medical clinic in Tulsa, Oklahoma that has been in operation since 1974. Reproductive Services provides a range of reproductive health care services to women in Oklahoma, including surgical and medication abortions, contraception counseling and services, pregnancy testing, options counseling, adoption counseling, and referrals for other medical and social services, including referrals to a licensed adoption agency. It is a member of the National Abortion Federation ("NAF") and is licensed as an abortion facility by the Oklahoma State Department of Health.

15. Reproductive Services brings claims on behalf of itself, its staff, and its patients.

16. Defendant E. Scott Pruitt is the Attorney General of Oklahoma. The Attorney General is the “chief law officer of the state,” 74 O.S. § 18, whose duties include “appear[ing] in any action in which the interests of the state or the people of the state are at issue. . . .” 74 O.S. § 18b(A)(3). He is sued in his official capacity.

17. Defendant Steve Kunzweiler is the District Attorney for Tulsa County. Defendant Kunzweiler is the prosecuting attorney to maintain a cause of action against a person who has performed or attempted to perform an abortion in violation of HB 1721 or HB 1409 in Tulsa County. HB 1721, § 4; 63 O.S. § 1-738.5. He is sued in his official capacity.

18. Defendant Terry L. Cline is the Oklahoma Commissioner of Health. He oversees the Oklahoma State Board of Health, which issues licenses to facilities at which abortions are performed and oversees compliance with the regulation of such facilities. 63 O.S. §§ 1-706(A), (B)(1); O.A.C. § 310:600-7-3. He is sued in his official capacity.

19. Defendant Lyle Kelsey is the Executive Director of the Medical Board. The Medical Board, among other things, issues medical licenses, publishes materials and maintains the website containing information that must be offered to women seeking abortion, and has the authority to take disciplinary action against licensees, including Reproductive Services’ physicians. 59 O.S. §§ 495, 503, 509; 63 O.S. §§ 1-738.2, 1-738.5(A). He is sued in his official capacity.

#### **IV. FACTUAL BACKGROUND AND LEGISLATIVE HISTORY**

##### **A. Abortion Services in Oklahoma**

20. Abortion is one of the safest and most common medical procedures performed in the United States: about 3 in 10 women in the United States will have an abortion in their lifetimes.

21. The risk of complications associated with first- and second-trimester abortions are exceedingly low. The risk of complications associated with labor and delivery are 14 times higher than the risks associated with abortion.

22. In the first trimester, abortion can be performed one of two ways. Medication abortion can be performed up to approximately 10 weeks of pregnancy, as calculated from the first day of the woman's last menstrual period ("LMP"), and is achieved by giving a woman a series of medications, mifepristone and misoprostol, to induce uterine contraction and expulsion of the pregnancy without instrumentation of the uterus.

23. First-trimester surgical abortion is generally performed by suction aspiration. A suction curette, which is a thin tube attached to the suction machine, is used to empty the contents of the uterus.

24. Beginning at approximately 14 weeks LMP, second-trimester surgical abortion is generally accomplished by D & E. A D & E procedure is very similar to a first-trimester suction aspiration. The difference is that, in a D & E procedure, after the initial use of suction, the physician uses forceps to remove the uterine contents, followed by additional suction to ensure that the uterus is completely emptied.

25. Women seek abortions for a variety of medical, familial, economic, and personal reasons. Some women feel they do not have the resources to provide for a child at that time, or to adequately provide for their existing family. Others seek abortion to protect their life or health, due to fetal anomalies, or because the pregnancy is the result of rape.

26. About 72% of women seeking abortions in Oklahoma already have at least one child. Oklahoma State Department of Health, Abortion Surveillance in Oklahoma, 2002-2014

Summary Report, [http://www.ok.gov/health2/documents/HCI\\_2002-2014ITOPtrends.pdf](http://www.ok.gov/health2/documents/HCI_2002-2014ITOPtrends.pdf) (“Oklahoma Abortion Surveillance”).

27. Women who seek abortions in the second trimester of pregnancy do so for many of the same reasons that they seek them earlier in pregnancy, and for other reasons such as state restrictions that impede their access to care, difficulties reaching an abortion provider or coming up with the necessary funds for the procedure, or receiving a diagnosis of a serious fetal anomaly.

28. Aside from Reproductive Services, there is only one other physician licensed to perform abortions in Oklahoma, located in Norman, Oklahoma, about a two-hour drive from Reproductive Services in Tulsa, Oklahoma.

29. Women who reside throughout the state of Oklahoma, as well as women from Missouri, Kansas, Arkansas, and Texas travel to Reproductive Services to access reproductive health care.

30. Two physicians provide abortions and other reproductive health care at the Clinic; both are board-certified obstetricians-gynecologists who work there part-time. The physicians provide surgical and medication abortions Tuesdays through Fridays.

31. Reproductive Services offers medication abortions during the first trimester for women up to 9 weeks (63 days) LMP. Over 50% of Reproductive Services’ abortion patients in their first trimester choose medication abortion.

32. Reproductive Services performs surgical abortions during the first and second trimesters of pregnancy, up to 17 weeks LMP. During the first trimester, Reproductive Services performs abortions using suction aspiration. Beginning at approximately 13 weeks LMP, although occasionally earlier, Reproductive Services performs abortion by D & E.

33. On average, the Clinic provides about 150-200 abortions each month.

34. Reproductive Services is the only licensed abortion facility in Oklahoma that provides abortions after the first trimester of pregnancy.

35. Every woman seeking an abortion procedure at Reproductive Services first has an ultrasound to confirm the pregnancy, and then meets with a staff member to discuss her options and plans for her pregnancy. Our staff discuss all of the options available to a woman, including carrying the pregnancy to term and parenting, adoption, and abortion. Reproductive Services supports a woman's right to choose what is best for her and her family and does not steer women towards any particular outcome. The Clinic offers neutral, unbiased information in order to help their patients make an informed choice. The Clinic has bilingual staff members to assist, as many of its patients are native Spanish speakers.

36. Almost all of Reproductive Services' patients are certain of their decision to have an abortion by the time they arrive at the Clinic for the procedure. At that point, a woman has already made the initial phone call to the Clinic, received the state-mandated counseling either by phone or in person, and made all of the necessary arrangements to come to her appointment, including taking time off from work or school, arranging for childcare if she already has children, and coming up with the necessary funds to pay for procedure. Most of Reproductive Services' patients have considered their options and made up their mind several days, if not weeks, before they arrive at the Clinic to have the abortion.

37. In the extremely rare event that a woman is uncertain of her decision to have an abortion on the day of her scheduled procedure, Reproductive Services will not perform the abortion. Rather, the Clinic's staff will encourage that patient to take more time to consider her options, and if she wishes, to reschedule her appointment.

38. The Clinic screens all its patients for possible coercion, to ensure that a woman's decision to have an abortion is her own. Patients are asked about possible coercion when they meet with Clinic staff in person, in private, and also on the state-mandated forms that all patients are required to complete. In the rare circumstance that Clinic staff suspect possible coercion, the Clinic will not perform the abortion.

39. All of Reproductive Services' abortion patients sign a consent form, indicating that they have received information about the abortion procedure itself as well as the risks involved.

### **B. Regulatory Framework in Oklahoma**

40. Oklahoma women seeking abortion already face difficulties in accessing the procedure imposed because of existing statutes and regulations dictating when, and under what circumstances, women may obtain abortions.

41. After viability, abortions are generally prohibited. 63 O.S. § 1-732. Pre-viability, second-trimester abortions may not be performed by a procedure referred to as a "partial birth abortion," unless necessary to save a woman's life. 21 O.S. § 21-684.

42. Abortion facilities must be licensed, O.A.C. § 310:600-3-1(a), and are subject to extensive regulations governing administration, staffing, clinical services, recordkeeping, and physical plant requirements. O.A.C. §§ 310:600-1-1-310:600-13-3.

43. No public facilities or hospitals may be used for abortions, and no public employees may provide abortions, except when necessary to save the woman's life or if the pregnancy was a result of rape or incest. 63 O.S. § 1-741.1(A).

44. Women seeking abortions are required to wait at least 24 hours after receiving certain state-mandated information and being offered materials designed to discourage them from having the abortion. 63 O.S. § 1-738.2.



45. Women reliant on Medicaid can only obtain coverage for abortion if the pregnancy is life-threatening or the result of rape or incest. 63 O.S. § 1-741.1(B); Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, 128 Stat. 409, §§ 506-07.

46. In addition, since 2008, the Oklahoma Legislature has enacted 19 separate bills addressing abortion. Several of these bills have been enjoined. *See Nova Health Sys. v. Edmondson*, 2010 OK 21, 233 P.3d 380 (permanently enjoining on single-subject grounds a 2008 statute imposing abortion restrictions); *Davis v. Edmondson*, No. CJ-2009-9154, 2010 WL 1734636 (Okla. Cty. Dist. Ct. Mar. 2, 2010) (permanently enjoining on single-subject grounds a 2009 statute imposing abortion restrictions); *Nova Health Sys. v. Pruitt*, 2012 OK 103, 292 P.3d 28 (permanently enjoining 2010 mandatory ultrasound law on federal substantive due process grounds), *cert. denied*, 134 S. Ct. 617 (2013); *Cline v. Okla. Coal. for Reprod. Justice*, 2012 OK 102, 292 P.3d 27 (permanently enjoining 2011 law restricting access to medication abortion on federal substantive due process grounds), *cert. granted*, 133 S. Ct. 2887 (2013), *certified questions answered*, 2013 OK 93, 313 P.3d 253, *cert. dismissed as improvidently granted*, 134 S. Ct. 550 (2013). However, a number of these restrictions are in effect.

47. In 2010, the Legislature enacted 5 separate abortion restrictions. HB 3284 imposes lengthy and burdensome reporting requirements, including a survey involving at least 30 questions for each individual patient. 63 O.S. § 1-738k. Oklahoma Senate Bill (“SB”) 1890 prohibits abortions sought due to the gender of the fetus. 63 O.S. § 1-731.2. HB 3075 requires large signs to be posted informing patients that coercion is prohibited. 63 O.S. § 1-737.4. SB 1891 allows healthcare facilities to deny admission to patients requiring abortion care. 63 O.S.

§ 1-728d. And SB 1902 bans the use of telemedicine to provide medication abortions using mifepristone. 63 O.S. § 1-729a.

48. In 2011, the Legislature passed HB 1888, banning all abortions after 22 weeks LMP, regardless of viability. 63 O.S. § 1-745.5. The Legislature also passed SB 547, which prohibits coverage for abortion in either the state health insurance exchange or private insurance plans, unless purchased through an optional rider for an additional fee. 63 O.S. § 1-741.3.

49. In 2012, the Legislature enacted HB 2561, which imposes additional civil liability on abortion providers. 63 O.S. § 1-738.3f. The 2012 Legislature also passed SB 1274, requiring women seeking abortion be offered an opportunity to hear the fetal heartbeat. 63 O.S. § 1-745.14. And it passed HB 2381, which expanded SB 1902's telemedicine ban to prohibit telemedicine for any medically-induced abortion. 63 O.S. § 1-729.1.

50. In 2013, the Legislature enacted HB 2015, which requires physicians to submit each patient's ultrasound image to the Department of Health. 63 O.S. § 1-738k. The 2013 Legislature also passed HB 1361, and HB 1588, which impose additional, burdensome requirements on minors seeking abortion who wish to obtain a judicial bypass of Oklahoma's parental involvement requirements. 63 O.S. § 1-740.3.

51. In 2014, the legislature adopted two extremely onerous restrictions. HB 2684 requires physicians providing medication abortions to use an outdated and less effective protocol. SB 1848 would close one of the two clinics in the state by requiring physicians performing abortions to have admitting privileges at a hospital within thirty miles of the facility.

52. Both HB 2684 and SB 1848 are currently enjoined. *Okla. Coal. for Reprod. Justice v. Cline*, No. CV-2014-1886 (Okla. Cty. Dist. Ct. Aug. 27, 2015); *Burns v. Cline*, 2014 OK 90, 339 P.3d 887.

53. In 2015, the Legislature enacted HB 1721 and HB 1409, which are the subject of this litigation, as well as HB 642, which imposes four unrelated abortion restrictions. Among the most onerous, HB 642 would arguably impose criminal and civil liability on physicians for any violation of more than 140 statutes regulating abortion, and expand the Department of Health's authority to inspect abortion facilities and to conduct warrantless searches. HB 642, §§ 4, 3.

54. The legislative history for HB 1409 and HB 1721 offers scant justification for these Acts, and demonstrates that virtually no consideration was given to the impact they would have on women seeking abortions in Oklahoma.

55. At no point in the debate regarding HB 1721 in either the House or Senate was it acknowledged that the measure would ban the most common method of second-trimester abortion. To date, there is only one other state, Kansas, that has enacted a similar ban, and that law has been enjoined by a state trial court. *Hodes & Nauser v. Schmidt*, No. 2015-CV-490 at 8 (Dist. Ct. of Shawnee Cty., Kan., Div. 6 June 30, 2015). A copy of the trial court decision is attached hereto as Exhibit C.

56. Possible alternatives to D & E were mentioned only briefly during the Senate debate, and not at all in the House. See *Okla. House Floor Proceedings on H.B. 1721*, recording of proceedings (Feb. 26, 2015), available at [http://okhouse.granicus.com/MediaPlayer.php?view\\_id=&clip\\_id=1633&meta\\_id=534397](http://okhouse.granicus.com/MediaPlayer.php?view_id=&clip_id=1633&meta_id=534397), 01:19:42 – 01:41:05; *Okla. Senate Floor Proceedings on H.B. 1721*, recording of proceedings

(April 8, 2015), available at <http://www.oksenate.gov/audioarchive/archive-040815.htm>, 1:22:14 – 1:45:23). While much of the discussion focused on potential fetal life, there was virtually no discussion of how banning the most prevalent method of second-trimester abortion might impact a woman’s health. *Id.*

57. After a one-sentence description of the bill by the House sponsor, HB 1409 was passed by the House in less than 10 minutes. *See Okla. House Floor Proceedings on H.B. 1409*, recording of proceedings (Feb. 11, 2015), available at [http://okhouse.granicus.com/MediaPlayer.php?view\\_id=&clip\\_id=1541&meta\\_id=445475](http://okhouse.granicus.com/MediaPlayer.php?view_id=&clip_id=1541&meta_id=445475), 00:17:12 – 00:26:00. The bill’s sponsor asserted that “quite a few states have increased the time.” *Id.* at 00:21:45 – 00:21:50 (Representative Lisa Billy on HB 1409).

58. The bill passed the Senate with no debate. *See Okla. Senate Floor Proceedings on H.B. 1409*, recording of proceedings (April 21, 2015), available at <http://www.oksenate.gov/audioarchive/archive-042115.htm>, 3:58:15 – 4:00:32.

59. Other than Oklahoma, there are only 4 other states that impose a similar 72-hour waiting period. *See* Guttmacher Institute, *State Policies in Brief: Counseling and Waiting Periods for Abortion* (Sep. 1, 2015), [http://www.guttmacher.org/statecenter/spibs/spib\\_MWPA.pdf](http://www.guttmacher.org/statecenter/spibs/spib_MWPA.pdf).

60. Legislative debate of HB 642 was similarly sparse. HB 642 implements several legislative recommendations from the anti-abortion organization Americans United for Life (“AUL”). AUL’s 2015 state-specific report on Oklahoma—which places Oklahoma fourth in its ranking of states that have enacted the most anti-abortion laws—makes three legislative “recommendations” for Oklahoma, including, “[e]nhanced penalties and enforcement

mechanisms for the state’s abortion-related laws.” Americans United for Life, *Defending Life 2015* at 6, [http://aul.org/downloads/defending-life-2015/state-cards/AUL2015\\_OK.pdf](http://aul.org/downloads/defending-life-2015/state-cards/AUL2015_OK.pdf).

### **C. The Impact of HB 1721’s Prohibition on D & E Procedures**

61. D & E is the most common method of performing a second-trimester abortion, and it accounts for approximately 95% of all second-trimester procedures nationally, which are primarily performed in outpatient settings.

62. A surgical abortion performed in either the first or second trimester requires the physician to first achieve adequate dilation of the cervix. In the first trimester, dilation is usually achieved through the use of mechanical dilators, which are graduated, tapered rods inserted and then removed from the cervix. The physician then uses a suction machine attached to the suction curette to empty the uterus.

63. Reproductive Services’ physicians generally perform surgical abortions using D & E starting at approximately 13 weeks LMP.

64. A D & E is typically performed as two-day procedure; on the first day, the patient has laminaria inserted to help soften and dilate the cervix over the next twenty-four hours to ensure proper dilation. The following day, once adequate dilation has been achieved, the physician uses a combination of suction aspiration using the suction curette and forceps, often under ultrasound guidance, to remove the fetus and empty the uterus.

65. In 2014, there were 4,916 abortions performed in Oklahoma. While most were performed in the first trimester, almost 6% took place at 13 weeks LMP and beyond. *See Oklahoma Abortion Surveillance.*

66. HB 1721 makes it unlawful for anyone to purposely perform or attempt to perform a “dismemberment abortion,” defined as follows:

with the purpose of causing the death of an unborn child, purposely to dismember a living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush, and/or grasp a portion of the unborn child's body to cut or rip it off. This definition does not include an abortion which uses suction to dismember the body of the developing unborn child by sucking fetal parts into a collection container.

HB 1721, §§ 3(A), 2(3).

67. The only exception to the prohibition is for a "serious health risk," defined as "a condition that so complicates [the woman's] medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions." *Id.* § 2(6), 3(A).

68. This definition is exceedingly narrow, and would mean that a physician would have to wait until a patient becomes so gravely ill that she falls within the narrow exception before he or she would be able to perform the D & E procedure. In the practice of medicine, physicians do not otherwise wait until a patient's health deteriorates to the point of posing a serious risk of a substantial and irreversible impairment before providing medically necessary care.

69. Violations of HB 1721 are punishable by up to two years in prison and a \$10,000 fine. *Id.* § 7. The Act creates a cause of action for injunctive relief against someone who has violated its prohibition, as well as an action for damages that may be brought by the woman, or her maternal grandparents if she is a minor or deceased. *Id.* §§ 4(A), 5(A).

70. Because HB 1721's prohibition applies to virtually all D & E abortions, and Reproductive Services is the only licensed abortion facility in the state that provides second-

trimester abortion, HB 1721 will ban the performance of nearly all pre-viability, second-trimester abortions in Oklahoma.

71. The only alternative procedure to D & E in the second trimester is the use of medications to induce labor and delivery.

72. Induction of labor must be done in a hospital on an inpatient basis, can take several days to complete, and is significantly more costly. Physicians who perform abortion via induction of labor must be able to rely on D & E as a backup method, in the event that the woman's condition deteriorates during the labor induction.

73. Labor induction is not an alternative to second-trimester D & E for the vast majority of Oklahoma women, because Oklahoma hospitals either prohibit abortion altogether, or severely restrict the circumstances under which they may be performed.

74. The only other method that would allow Oklahoma physicians to perform second-trimester abortions without subjecting themselves to criminal prosecution under HB 1721 would be to induce fetal demise prior to performing a D & E procedure.

75. Techniques for inducing fetal demise include injection of a feticidal agent (intra-vaginally or intra-abdominally), or division of the umbilical cord.

76. According to the American College of Obstetricians and Gynecologists ("ACOG"), "[n]o evidence currently supports the use of induced fetal demise to increase the safety of second-trimester medical or surgical abortion." ACOG Practice Bulletin Number 135: Second-Trimester Abortion, 121 *Obstet. Gynecol.* 1394, 1396 (June 2013).

77. Some physicians induce fetal demise prior to performing a D & E abortion, beginning at approximately 18 to 20 weeks LMP. The pharmacological agent most often used to induce demise is digoxin, a medication used to treat certain heart conditions.

78. Digoxin is typically administered using an 18 gauge, 20 gauge, or 22 gauge spinal needle passed through the woman's abdomen, or her vagina and cervix, and into the uterus under ultrasound guidance. The injection is either intra-amniotic or intra-fetal and usually contains approximately one milligram of digoxin. It is performed using a sterile technique on the abdomen without pain management.

79. Digoxin is usually administered one to two days before the D & E procedure when cervical preparation begins. It can take up to 24 hours to be effective.

80. Injection of digoxin is not 100% effective at inducing demise, particularly at earlier gestations.

81. If fetal demise does not occur in the expected time period after the first digoxin injection, a second injection, as well as an additional 24-hour delay for it to take effect, would be required.

82. There is virtually no literature regarding the safety of digoxin to induce fetal demise in pregnancies less than 17 weeks LMP.

83. The limited medical studies that exist have not found that the digoxin injection confers any clear medical benefit, and show that digoxin injection is associated with an increased risk of infection, spontaneous delivery outside of the healthcare facility, and hospital admission.

84. Injection of potassium chloride ("KCl"), may also be administered to induce fetal demise. However, KCl must be administered by an intracardiac fetal injection, a complex medical procedure that requires specialized training and is generally performed in hospitals by maternal-fetal medicine specialists.



85. Injection of KCl poses risks to the patient, including a risk of maternal cardiac arrest if inadvertent intravascular injection occurs.

86. It may be possible, in some instances, to induce fetal demise by transecting the umbilical cord at the outset of the D & E procedure.

87. Umbilical cord transection requires the physician to break the amniotic sac and remove the amniotic fluid, and to then use either a surgical instrument or the suction curette to grasp the cord and transect it. If the physician is able to successfully transect the cord, he or she must then wait for several minutes, until cessation of fetal cardiac activity has been confirmed.

88. As with fetal injection, there are risks associated with cord transection, and no established health benefit for the patient. Moreover, the additional step of cord transection would make the D & E procedure lengthier and more complex for the physician, and increase the patient's risk of infection, uterine perforation, and bleeding.

89. It is not always possible to successfully perform an umbilical cord transection, especially prior to 17 weeks LMP, when the cord is more difficult to visualize and locate. Because cord transection will not reliably induce fetal demise in all cases, a physician may still be required to administer an injection of digoxin after attempting to perform a cord transection, thereby exposing the patient to another physically invasive and painful procedure that poses risks, but offers no clear medical benefit.

90. The Clinic's physicians do not induce fetal demise before performing a D & E because there is not evidence to support its safety for patients who are less than 17 weeks LMP, the Clinic's gestational limit, and because they do not want to perform an experimental procedure on their patients.

91. The only alternatives available to a patient wishing to avoid an experimental fetal demise procedure would be to either forgo the abortion altogether, or to travel out of state in order to obtain the abortion.

**D. The Impact of HB 1409 Tripling Oklahoma’s Mandatory Waiting Period from 24 to 72 Hours**

92. Current Oklahoma law requires that, except in the case of a medical emergency, an abortion patient wait at least 24 hours between receiving certain state-mandated counseling and obtaining an abortion. 63 O.S. § 1-738.2. The information can be given over the phone or in person. *Id.*

93. HB 1409 amends the current law by requiring a woman to receive the state-mandated information at least 72 hours before the abortion. HB 1409, § 1.

94. The only exception to the mandatory delay is for life-threatening medical emergencies, defined as “the existence of any physical condition, not including any emotional, psychological, or mental condition, which a reasonably prudent physician, with knowledge of the case and treatment possibilities with respect to the medical conditions involved, would determine necessitates the immediate abortion of the pregnancy of the female to avert her death or to avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy.” 63 O.S. § 1-738.1A(5).

95. In addition, the act requires the Medical Board to amend the materials that must be offered to the woman during her counseling session by adding the phrase “[a]bortion shall terminate the life of a whole, separate, unique, living human being.” HB 1409, § 2.

96. The act also requires abortion facilities with a website to publish an “easily identifiable link” to the Medical Board’s biased counseling materials, stating: “The State Board of Medical Licensure and Supervision maintains a website containing information about the

development of the unborn child, as well as video and ultrasound images of the unborn child at various stages of development. The Board's website can be reached by clicking here: [www.awomonsrights.org](http://www.awomonsrights.org)." HB 1409, § 2.

97. The mandatory delay of 72 hours will, in practice, cause a much longer delay for some of Reproductive Services' patients. At the Clinic, if a woman receives the state-mandated information on Wednesday, it is possible for her to have an abortion that same week. Under HB 1409, however, if she receives the information on Wednesday, she will be delayed until the following Tuesday, almost a full week, before she can have the abortion.

98. Because the risks of abortion, while extremely low, increase as the pregnancy advances, the 72-hour mandatory delay will increase the risk of complications for women seeking abortion.

99. Women who are close to the cutoff for medication abortion (which is 63 days LMP at the Clinic), may be forced to have a surgical abortion instead, even if a medication abortion would be a more appropriate option.

100. For patients who are close to 12 weeks LMP, the 72-hour delay may push them from a first-trimester surgical procedure to second-trimester procedure, which carries additional health risks for women, costs more than a first-trimester procedure, and is almost always is a two-day procedure.

101. If the Clinic is still able to perform D & E procedures up to 17 weeks LMP, the mandatory delay law may push some women beyond the gestational limit for when abortions are available at the Clinic and therefore in the state, forcing them to turn to out-of-state providers.

102. Knowing or reckless violation of the provisions of HB 1409 are punishable as a felony and would subject a physician to disciplinary action by the Medical Board. 63 O.S. §§ 1-738.5(A), (D).

**E. The Acts' Individual and Combined Impact on Women Seeking Abortions**

103. If HB 1721 takes effect, the Clinic's physicians will be forced to deny women necessary care, or to change their practices in ways that will inflict irreparable harm.

104. In order to avoid criminal liability, doctors would be forced to subject women to an additional fetal demise procedure that is longer, more complex, and may impose greater risks to their health. Because the Clinic's physicians are unwilling to perform these experimental procedures, the Clinic will be forced to stop providing abortions after 13 weeks LMP, so as to be absolutely certain that they would not need to use forceps at any point during the procedure, thereby avoiding the criminal penalties imposed by HB 1721.

105. HB 1409's lengthy waiting period for abortion—a waiting period the Legislature does not impose on any other medical procedure—stigmatizes women seeking abortions and sends the message that they are incompetent decision-makers. The act perpetuates gender stereotypes that women do not understand the nature of the abortion procedure, have not thought carefully about their decision to have an abortion, and are less capable of making an informed decision about their health care than men.

106. The cumulative effect of the D & E ban, which threatens to eliminate access to second-trimester abortions, and the mandatory waiting period, which will push women later into pregnancy, when access is more restricted and abortion procedures are more expensive and more time-consuming, may lead women to seek illegal or self-induced abortions, both of

which carry significantly greater health risks than obtaining a legal abortion from a medical professional.

**V. CLAIMS FOR RELIEF**

**First Claim for Relief**  
**(Substantive Due Process)**

107. The allegations of paragraphs 1 through 106 are incorporated as though fully set forth herein.

108. The Acts violate women's fundamental rights to choose to terminate a pregnancy and to bodily integrity in violation of OKLA. CONST. art. II, § 7.

**Second Claim for Relief**  
**(Special Law)**

109. The allegations of paragraphs 1 through 108 are incorporated as though fully set forth herein.

110. The Acts create special laws where general laws could be made applicable in violation of OKLA. CONST. art. V, § 59 by, among other things, singling out for special treatment women seeking abortions, and physicians who treat those women.

**Third Claim for Relief**  
**(Free Speech)**

111. The allegations of paragraphs 1 through 110 are incorporated as though fully set forth herein.

112. HB 1409 violates Plaintiff's right to freedom of speech in violation of OKLA. CONST. art. II, § 22.

**Fourth Claim for Relief**  
**(Declaratory Judgment – Unconstitutional and Void)**

113. The allegations of paragraphs 1 through 112 are incorporated as though fully

set forth herein.

114. Because the Acts violate the Oklahoma Constitution, and declaratory judgment would terminate the controversy giving rise to this proceeding, Plaintiff requests a declaration from this Court stating that the Acts are unconstitutional and void. 12 O.S. § 1651.

**Fifth Claim for Relief**  
**(Temporary Injunction or Temporary Restraining Order)**

115. The allegations of paragraphs 1 through 114 are incorporated as though fully set forth herein.

116. Temporary injunctive relief is warranted because Plaintiff, and those whose interests Plaintiff represents, will suffer irreparable injury if the Acts are allowed to take effect. 12 O.S. § 1382.

**Sixth Claim for Relief**  
**(Permanent Injunction)**

117. The allegations of paragraphs 1 through 116 are incorporated as though fully set forth herein.

118. Because the Acts violate the Oklahoma Constitution, warranting a declaratory judgment stating that the Acts are unconstitutional and void, Defendants should be permanently enjoined from enforcing the Acts.

**VIII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

119. Issue a declaratory judgment that HB 1721 and HB 1409 violate the Oklahoma Constitution and are void and of no effect; and

120. Issue permanent injunctive relief, without bond, restraining Defendants, their employees, agents, and successors in office from enforcing HB 1721 and HB 1409; and

121. Grant such other and further relief as the Court may deem just and proper, including reasonable attorney's fees and costs.

Dated: October 2, 2015

Respectfully submitted,



J. Blake Patton, Oklahoma Bar No. 30673

WALDING & PATTON PLLC  
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Oklahoma City, OK 73102  
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and

Autumn Katz\*  
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CENTER FOR REPRODUCTIVE RIGHTS  
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New York, NY 10038  
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Email: akatz@reprorights.org  
tzegeye@reprorights.org

*\*Out-of-State Attorney Applications Filed.*

ATTORNEYS FOR PLAINTIFF

**VERIFICATION**

The undersigned represents Plaintiff Nova Health Systems, d/b/a Reproductive Services. The undersigned has read the contents of the Verified Petition. The undersigned hereby verifies, under the penalty of perjury, that the contents of the Verified Petition are true and correct to the best of her present knowledge.



Brandie Haddan

Clinic Administrator and Nursing Supervisor, Nova Health Systems d/b/a Reproductive Services

Sworn to before me this 26<sup>th</sup>  
day of September, 2015.



NOTARY PUBLIC





# **Exhibit A**

# An Act

ENROLLED HOUSE  
BILL NO. 1721

By: Peterson, Ritze, Christian,  
Roberts (Sean), Faught,  
Strohm, Kern, Ownbey,  
Johnson, McBride,  
Montgomery, McCall,  
Lockhart, Newell and  
Bennett of the House

and

Brecheen, Loveless, Griffin  
and Boggs of the Senate

An Act relating to public health and safety; creating the Oklahoma Unborn Child Protection from Dismemberment Abortion Act; defining terms; prohibiting certain act; providing certain hearing before State Board of Medical Licensure and Supervision; excluding certain liability; permitting injunctive relief; providing for civil damages; providing for attorney fee; providing for criminal penalty; providing for anonymity of certain individual in court proceedings; providing for certain construction; providing for severability; providing for codification; and providing an effective date.

SUBJECT: Oklahoma Unborn Child Protection from Dismemberment  
Abortion Act

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Unborn Child Protection from Dismemberment Abortion Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

For the purposes of the Oklahoma Unborn Child Protection from Dismemberment Abortion Act:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device:

- a. to purposely kill the unborn child of a woman known to be pregnant, or
- b. to purposely terminate the pregnancy of a woman known to be pregnant, with a purpose other than:
  - (1) after viability to produce a live birth and preserve the life and health of the child born alive, or
  - (2) to remove a dead unborn child;

2. "Attempt to perform an abortion" means to do or omit to do anything that, under the circumstances as the actor believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in the actor performing an abortion. Such substantial steps include, but are not limited to:

- a. agreeing with an individual to perform an abortion on that individual or on some other person, whether or not the term "abortion" is used in the agreement, and whether or not the agreement is contingent on another factor such as receipt of payment or a determination of pregnancy, or
- b. scheduling or planning a time to perform an abortion on an individual, whether or not the term "abortion" is used, and whether or not the performance is contingent on another factor such as receipt of payment or a determination of pregnancy.

This definition shall not be construed to require that an abortion procedure actually must be initiated for an attempt to occur;

3. "Dismemberment abortion" means, with the purpose of causing the death of an unborn child, purposely to dismember a living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush, and/or grasp a portion of the unborn child's body to cut or rip it off. This definition does not include an abortion which uses suction to dismember the body of the developing unborn child by sucking fetal parts into a collection container;

4. "Physician" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery, or otherwise legally authorized to perform an abortion;

5. "Purposely" means the following: A person acts purposely with respect to a material element of an offense when:

- a. if the element involves the nature of his or her conduct or a result thereof, it is his or her conscious objective to engage in conduct of that nature or to cause such a result, and
- b. if the element involves the attendant circumstances, he or she is aware of the existence of such circumstances or he or she believes or hopes that they exist;

6. "Serious health risk to the unborn child's mother" means that in reasonable medical judgment she has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function; and

7. "Woman" means a female human being whether or not she has reached the age of majority.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other provision of law, it shall be unlawful for any person to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless necessary to prevent serious health risk to the unborn child's mother.

B. A person accused in any proceeding of unlawful conduct under subsection A of this section may seek a hearing before the State Board of Medical Licensure and Supervision on whether the dismemberment abortion was necessary to prevent serious health risk to the unborn child's mother. The Board's findings are admissible on that issue at any trial in which such unlawful conduct is alleged. Upon a motion of the person accused, the court shall delay the beginning of the trial for not more than thirty (30) days to permit such a hearing to take place.

C. No woman upon whom an abortion is performed or attempted to be performed shall be thereby liable for performing or attempting to perform a dismemberment abortion. No nurse, technician, secretary, receptionist or other employee or agent who is not a physician but who acts at the direction of a physician and no pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician shall be thereby liable for performing or attempting to perform a dismemberment abortion.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A cause of action for injunctive relief against a person who has performed or attempted to perform a dismemberment abortion in violation of Section 3 of this act may be maintained by:

1. A woman upon whom such a dismemberment abortion was performed or attempted to be performed;

2. A person who is the spouse, parent or guardian of, or a current or former licensed health care provider of, a woman upon whom such a dismemberment abortion was performed or attempted to be performed; or

3. A prosecuting attorney with appropriate jurisdiction.

B. The injunction shall prevent the defendant from performing or attempting to perform further dismemberment abortions in violation of Section 3 of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A cause of action for civil damages against a person who has performed a dismemberment abortion in violation of Section 3 of this act may be maintained by:

1. Any woman upon whom a dismemberment abortion has been performed in violation of Section 3 of this act; or

2. If the woman had not attained the age of eighteen (18) years at the time of the dismemberment abortion or has died as a result of the abortion, the maternal grandparents of the unborn child.

B. No damages may be awarded a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

C. Damages awarded in such an action shall include:

1. Money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion; and

2. Statutory damages equal to three times the cost of the dismemberment abortion.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If judgment is rendered in favor of the plaintiff in an action described in Section 4 or 5 of this act, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant.

B. If judgment is rendered in favor of the defendant in an action described in Section 4 or 5 of this act and the court finds that the plaintiff's suit was frivolous and brought in bad faith,

the court shall render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

C. No attorney fee may be assessed against the woman upon whom an abortion was performed or attempted to be performed except in accordance with subsection B of this section.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

Whoever violates Section 3 of this act shall be fined Ten Thousand Dollars (\$10,000.00) or imprisoned for not more than two (2) years or both.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.14 of Title 63, unless there is created a duplication in numbering, reads as follows:

In every civil, criminal, or administrative proceeding or action brought under the Oklahoma Unborn Child Protection from Dismemberment Abortion Act, the court shall rule whether the identity of any woman upon whom an abortion has been performed or attempted to be performed shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less-restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted to be performed, anyone other than a public official who brings an action under Section 4 or 5 of this act shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.15 of Title 63, unless there is created a duplication in numbering, reads as follows:

Nothing in the Oklahoma Unborn Child Protection from Dismemberment Abortion Act shall be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.16 of Title 63, unless there is created a duplication in numbering, reads as follows:

If any one or more provisions, sections, subsections, sentences, clauses, phrases or words of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases or words be declared unconstitutional.

SECTION 11. This act shall become effective November 1, 2015.



Passed the House of Representatives the 26th day of February, 2015.

John D. Jones, Jr.  
Presiding Officer of the House  
of Representatives

Passed the Senate the 8th day of April, 2015.

Stephen J. Finley  
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 9<sup>th</sup>  
day of April, 20 15, at 1:09 o'clock P M.  
By: Audrey Lockwell

Approved by the Governor of the State of Oklahoma this 13<sup>th</sup>  
day of April, 20 15, at 3:22 o'clock P M.

Mary Fallin  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 13<sup>th</sup>  
day of April, 20 15, at 4:07 o'clock P M.  
By: C. Benge

# **Exhibit B**

# An Act

ENROLLED HOUSE  
BILL NO. 1409

By: Billy, Ritze, Hall,  
Christian, Faught,  
Brumbaugh, Kern, Vaughan  
and Lockhart of the House

and

Treat, Jolley, Loveless,  
Silk and Brecheen of the  
Senate

An Act relating to public health and safety; amending 63 O.S. 2011, Sections 1-738.2, 1-738.3, 1-738.3a, 1-738.8, 1-738.13, 1-738m, as amended by Section 2, Chapter 303, O.S.L. 2013, Section 2, Chapter 175, O.S.L. 2014 and Section 6, Chapter 175, O.S.L. 2014 (63 O.S. Supp. 2014, Sections 1-738m, 1-746.2 and 1-746.6), which relate to abortion; increasing time period of voluntary and informed consent prior to abortion; requiring certain facilities to publish link on website to State Board of Medical Licensure and Supervision's website; requiring certain information on link; providing savings clause; updating references; providing for codification; and providing an effective date.

SUBJECT: Abortion

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-738.2, is amended to read as follows:

Section 1-738.2 A. No abortion shall be performed in this state except with the voluntary and informed consent of the woman upon whom the abortion is to be performed.

B. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

1. a. not less than ~~twenty-four (24)~~ seventy-two (72) hours prior to the performance of the abortion, the woman is told the following, by telephone or in person, by the physician who is to perform the abortion, or by a referring physician, or by an agent of either physician:
  - (1) the name of the physician who will perform the abortion,
  - (2) the medical risks associated with the particular abortion procedure to be employed,
  - (3) the probable gestational age of the unborn child at the time the abortion is to be performed,
  - (4) the medical risks associated with carrying her child to term, and
  - (5) that ultrasound imaging and heart tone monitoring that enable the pregnant woman to view her unborn child or listen to the heartbeat of the unborn child are available to the pregnant woman. The physician or agent of the physician shall inform the pregnant woman that the ~~web site~~ website and printed materials described in Section 1-738.3 of this title, contain phone numbers and addresses for facilities that offer such services at no cost,
- b. the information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the woman. If the information is supplied by telephone, the information shall be based on facts supplied to the physician,
- c. the information required by this paragraph shall not be provided by a tape recording, but shall be provided during a consultation in which the physician is able to ask questions of the woman and the woman is able to ask questions of the physician,

- d. if a physical examination, tests, or other new information subsequently indicates, in the medical judgment of the physician, the need for a revision of the information previously supplied to the woman, that revised information may be communicated to the woman at any time prior to the performance of the abortion, and
- e. nothing in subparagraph a of this paragraph may be construed to preclude provision of the required information in a language understood by the woman through a translator;

2. Not less than ~~twenty-four (24)~~ seventy-two (72) hours prior to the abortion, the woman is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by an agent of either physician:

- a. that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care,
- b. that the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion,
- c. that:
  - (1) she has the option to review the printed materials described in Section 1-738.3 of this title,
  - (2) those materials have been provided by the State Board of Medical Licensure and Supervision, and
  - (3) they describe the unborn child and list agencies that offer alternatives to abortion, and
- d. (1) if the woman chooses to exercise her option to view the materials in a printed form, they shall be mailed to her, by a method chosen by the woman, or
  - (2) if the woman chooses to exercise her option to view the materials via the Internet, the woman

shall be informed at least ~~twenty-four (24)~~  
seventy-two (72) hours before the abortion of the  
specific address of the Internet ~~web-site~~ website  
where the material can be accessed.

The information required by this paragraph may be provided by a  
tape recording if provision is made to record or otherwise register  
specifically whether the woman does or does not choose to review the  
printed materials;

3. The woman certifies in writing, prior to the abortion, that  
she has been told the information described in subparagraph a of  
paragraph 1 of this subsection and in subparagraphs a, b and c of  
paragraph 2 of this subsection and that she has been informed of her  
option to review or reject the printed information described in  
Section 1-738.3 of this title; and

4. Prior to the abortion, the physician who is to perform the  
abortion or the agent of the physician receives a copy of the  
written certification prescribed by paragraph 3 of this subsection.

C. The State Board of Medical Licensure and Supervision and the  
State Board of Osteopathic Examiners shall promulgate rules to  
ensure that physicians who perform abortions and referring  
physicians or agents of either physician comply with all the  
requirements of this section.

D. Before the abortion procedure is performed, the physician  
shall confirm with the patient that she has received information  
regarding:

1. The medical risks associated with the particular abortion  
procedure to be employed;

2. The probable gestational age of the unborn child at the time  
the abortion is to be performed; and

3. The medical risks associated with carrying the unborn child  
to term.

SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-738.3, is  
amended to read as follows:

Section 1-738.3 A. Within one hundred twenty (120) days of the  
effective date of this act, the State Board of Medical Licensure and

Supervision shall cause to be published, in English and in Spanish, and shall update on an annual basis, the following printed materials in such a way as to ensure that the information is easily comprehensible:

1. a. geographically indexed materials designed to inform the woman of public and private agencies, including adoption agencies and services that are available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including:
  - (1) a comprehensive list of the agencies available,
  - (2) a description of the services they offer, including which agencies offer, at no cost to the pregnant woman, ultrasound imaging that enables a pregnant woman to view the unborn child or heart tone monitoring that enables the pregnant woman to listen to the heartbeat of the unborn child, and
  - (3) a description of the manner, including telephone numbers, in which they might be contacted, or
- b. at the option of the Board a toll-free, twenty-four-hour-a-day telephone number which may be called to obtain, in a mechanical, automated, or auditory format, a list and description of agencies in the locality of the caller and of the services they offer; and
2. a. materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including:
  - (1) any relevant information on the possibility of the survival of the unborn child, and
  - (2) pictures or drawings representing the development of unborn children at two-week gestational increments, provided that the pictures or drawings shall describe the dimensions of the

unborn child and shall be realistic and appropriate for the stage of pregnancy depicted,

- b. the materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages, and
- c. the material shall also contain objective information describing:
  - (1) the methods of abortion procedures commonly employed,
  - (2) the medical risks commonly associated with each of those procedures,
  - (3) the possible detrimental psychological effects of abortion and of carrying a child to term, and
  - (4) the medical risks commonly associated with carrying a child to term, and
- d. the material shall contain the statement "Abortion shall terminate the life of a whole, separate, unique, living human being."

B. 1. The materials referred to in subsection A of this section shall be printed in a typeface large enough to be clearly legible.

2. The materials required under this section shall be available at no cost from the State Board of Medical Licensure and Supervision and shall be distributed upon request in appropriate numbers to any person, facility, or hospital.

C. 1. The Board shall provide on its stable Internet ~~web-site~~ website the information described under subsection A of this section.

2. The ~~web-site~~ website provided for in this subsection shall be maintained at a minimum resolution of 72 PPI.

D. Any facility performing abortions that has a website shall publish an easily identifiable link on the homepage of such website



that directly links to the Board's website, [www.awomansright.org](http://www.awomansright.org), that provides informed consent materials under the Woman's Right-to-Know Act. Such link shall read: "The State Board of Medical Licensure and Supervision maintains a website containing information about the development of the unborn child, as well as video of ultrasound images of the unborn child at various stages of development. The Board's website can be reached by clicking here: [www.awomansright.org](http://www.awomansright.org)."

SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-738.3a, is amended to read as follows:

Section 1-738.3a A. By February 1, 2008, the State Department of Health shall prepare and make available on its stable Internet ~~web site~~ website the form described in subsection B of this section. A copy of this act shall be posted on the ~~web site~~ website. Physicians performing abortions shall complete and electronically submit the required forms to the Department no later than April 1 for the previous calendar year. Nothing in the report shall contain the name, address, or any other identifying information of any patient.

B. The form for physicians shall contain a listing for the following information:

1. The number of females to whom the physician, or an agent of the physician, provided the information described in Section 1-738.2 of Title 63 of the Oklahoma Statutes; of that number, the number provided the information by telephone and the number provided the information in person; and of each of those numbers, the number provided the information in the capacity of a referring physician and the number provided the information in the capacity of a physician who is to perform the abortion; and of each of those numbers, the number provided the information by the physician and the number provided the information by an agent of the physician;

2. The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Section 1-738.3 of Title 63 of the Oklahoma Statutes other than on the ~~web site~~ website, and the number who did not; and of each of those numbers, the number who, to the best of the information and belief of the reporting physician, went on to obtain the abortion; and

3. The number of abortions performed by the physician in which information otherwise required to be provided at least ~~twenty-four~~ seventy-two (72) hours before the abortion was not so provided because an immediate abortion was necessary to avert the death of the female, and the number of abortions in which the information was not so provided because a delay would cause substantial and irreversible impairment of a major bodily function.

C. The State Department of Health shall ensure that the reporting forms described in subsection B of this section are posted, on its stable Internet ~~web-site~~ website, within one hundred twenty (120) days after the effective date of this act. The State Department of Health shall notify the following of the requirements of this act:

1. By March 1, 2008, all physicians licensed to practice in this state;

2. Each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and

3. By December 1 of each year, other than the calendar year in which forms are first made available to all physicians licensed to practice in this state.

D. By February 28 of each year following a calendar year in any part of which this section was in effect, each physician who provided, or whose agent provided, information to one or more females in accordance with Section 1-738.2 of Title 63 of the Oklahoma Statutes during the previous calendar year shall electronically submit to the State Department of Health the form described in subsection B of this section, with the requested data entered accurately and completely.

E. Reports that are not electronically submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period the reports are overdue. Any physician required to report in accordance with this section who has not completed and electronically submitted a report, or has electronically submitted only an incomplete report, more than one (1) year following the due date, may, in an action brought by the State Department of Health, be directed by a court of competent jurisdiction to electronically submit a complete report

within a period stated by court order or be subject to sanctions for civil contempt.

F. By June 30 of each year, the State Department of Health shall prepare and make available on its stable Internet ~~web site~~ website a public report providing statistics for the previous calendar year compiled from all items listed in subsection B of this section. Each report shall also provide statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The State Department of Health shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual providing or provided information in accordance with subsection B of this section.

G. The State Department of Health may promulgate rules in accordance with the Administrative Procedures Act to alter the dates established by this section or consolidate the form or report described in this section with other forms or reports to achieve administrative convenience, fiscal savings or to reduce the burden of reporting requirements, as long as reporting forms are made available, on its stable Internet ~~web site~~ website to all licensed physicians in the state, and the report described in this section is issued at least once every year.

SECTION 4. AMENDATORY 63 O.S. 2011, Section 1-738.8, is amended to read as follows:

Section 1-738.8 A. Except in the case of a medical emergency, at least ~~twenty-four (24)~~ seventy-two (72) hours prior to an abortion being performed on an unborn child whose probable gestational age is twenty (20) weeks or more, the physician performing the abortion or the agent of the physician shall inform the pregnant female, by telephone or in person, of the right to review the printed materials described in Section ~~10~~ 1-738.10 of this ~~act~~ title, that these materials are available on a state-sponsored ~~web site~~ website, and the web address of that ~~web site~~ website. The physician or the agent of the physician shall orally inform the female that the materials have been provided by the State of Oklahoma and that the materials contain information on pain and the unborn child. If the female chooses to view the materials other than on the ~~web site~~ website, the materials shall either be given to the female at least ~~twenty-four (24)~~ seventy-two (72) hours before the abortion, or ~~mailed to~~ received by the female at least seventy-two (72) hours before the abortion by certified mail, restricted

delivery to the addressee. The information required by this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to receive the printed materials given or mailed.

B. The female shall certify in writing, prior to the abortion, that the information described in subsection A of this section has been furnished to the female and that the female has been informed of the opportunity to review the printed materials described in Section ~~10~~ 1-738.10 of this ~~act~~ title. Prior to the performance of the abortion, the physician who is to perform the abortion or the agent of the physician shall obtain a copy of the written certification and retain the copy on file with the medical record of the female for at least three (3) years following the date of receipt.

SECTION 5. AMENDATORY 63 O.S. 2011, Section 1-738.13, is amended to read as follows:

Section 1-738.13 A. Within ninety (90) days after the Unborn Child Pain Awareness/Prevention Act becomes law, the State Department of Health shall prepare a reporting form for physicians containing a reprint of the Unborn Child Pain Awareness/Prevention Act and listing:

1. The number of females to whom the physician or an agent of the physician provided the information described in subsection A of Section ~~8~~ 1-738.8 of this ~~act~~ title; of that number, the number provided by telephone and the number provided in person; and of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion or agent of such a physician;

2. The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Section ~~10~~ 1-738.10 of this ~~act~~ title other than on the ~~web-site~~ website, and the number who did not; and of each of those numbers, the number who, to the best of the information and belief of the reporting physician, went on to obtain the abortion; and

3. The number of abortions performed by the physician in which information otherwise required to be provided at least ~~twenty-four~~ (24) seventy-two (72) hours before the abortion was not so provided because an immediate abortion was necessary to avert the death of the female, and the number of abortions in which such information

was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function.

B. The Department shall ensure that copies of the reporting forms described in subsection A of this section are provided:

1. Within one hundred twenty ~~days~~ (120) days after the Unborn Child Pain Awareness/Prevention Act becomes law, to all physicians licensed to practice in this state;

2. To each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and

3. By December 1 of each year, other than the calendar year in which forms are distributed in accordance with paragraph 1 of this subsection, to all physicians licensed to practice in this state.

C. By February 28 of each year following a calendar year in any part of which the Unborn Child Pain Awareness/Prevention Act was in effect, each physician who provided, or whose agent provided, information to one or more females in accordance with Section § 1-738.8 of this ~~act~~ title during the previous calendar year shall submit to the Department a copy of the form described in subsection A of this section, with the requested data entered accurately and completely.

D. Reports that are not submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period the reports are overdue. Any physician required to report in accordance with this section who has not submitted a report, or has submitted only an incomplete report, more than one (1) year following the due date may, in an action brought by the State Board of Medical Licensure and Supervision, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

E. By June 30 of each year, the Department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection A of this section. Each such report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional

information from late or corrected reports. The Department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual providing or provided information in accordance with subsection A or B of Section § 1-738.8 of this ~~act~~ title.

F. The Department, by rule promulgated in accordance with the Administrative Procedures Act, may alter the dates established by paragraph 3 of subsection B, subsection C, or subsection E of this section or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements, so long as reporting forms are sent to all licensed physicians in the state at least once every year and the report described in subsection E of this section is issued at least once every year.

SECTION 6. AMENDATORY 63 O.S. 2011, Section 1-738m, as amended by Section 2, Chapter 303, O.S.L. 2013 (63 O.S. Supp. 2014, Section 1-738m), is amended to read as follows:

Section 1-738m. A. Beginning in 2013, by June 1 of each year, the Department shall issue, on its stable Internet website, a public Annual Abortion Report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with the Statistical Abortion Reporting Act.

B. The Department's public report shall also provide statistics for all previous calendar years for which abortion-reporting requirements have been in effect, adjusted to reflect any additional information from late or corrected reports.

C. The Annual Abortion Report shall include, but not be limited to, the following information:

1. The number of induced abortions performed in the previous calendar year, broken down by month and county in which the abortion was performed;

2. The number of abortions classified by:

- a. the state or foreign country of residence of the mother,
- b. the age, marital status, and race of the mother, and

- c. the number of years of education of the mother;
3. The number of abortions classified by:
- a. the number of previous pregnancies of the mother,
  - b. previous live births to the mother,
  - c. previous miscarriages, and
  - d. previous induced abortions;
4. The number of abortions by week of gestational age;
5. The number of abortions performed by each reported method;
6. The number of abortions resulting in an infant born alive; of these, the number of cases in which life-sustaining measures were taken; and a statistical summary of the length of survival of such infants;
7. The number of cases in which anesthesia was administered to the mother and the number of each type of anesthesia;
8. The number of cases in which anesthesia was administered to the unborn child, and the number of each type of anesthesia and of each method of administration;
9. The number of each reported method of fetal disposal;
10. The reasons reported for the abortions, and the number of times each reported reason was cited;
11. The number of abortions paid for by:
- a. private insurance,
  - b. public health plan,
  - c. Medicaid,
  - d. private pay, or
  - e. other;

12. The number of abortions in which medical health insurance coverage was under:

- a. a fee-for-service insurance company,
- b. a managed care company, or
- c. other;

13. A statistical summary of the fees collected;

14. Specialty area of medicine of the physician;

15. The number of abortions in which ultrasound equipment was used before, during, or after the abortion, and the number of times vaginal ultrasound, abdominal ultrasound, or both were used in each of the three circumstances;

16. The number of abortions before which an ultrasound was performed by:

- a. the physician performing the abortion,
- b. a physician other than the physician performing the abortion, or
- c. other;

17. The number of abortions resulting in reported complications, and of those, how many were reported by the physician who performed the abortion, and how many were reported by another physician, the types of reported complications, and the number of each type based on data which shall be compiled and transmitted to the State Department of Health by the State Board of Medical Licensure and Supervision and the State Board of Osteopathic Examiners;

18. The number of abortions resulting in the reported death of the mother;

19. The number of females to whom the physician provided the information in subparagraph a of paragraph 1 of subsection B of Section 1-738.2 of this title; of that number, the number provided by telephone and the number provided in person; and of each of those



numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion;

20. The number of females to whom physicians or agents of physicians provided the information in paragraph 2 of subsection B of Section 1-738.2 of this title; of that number, the number provided by telephone and the number provided in person; of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion; and of each of those numbers, the number provided by the physician and the number provided by an agent of the physician;

21. The number of females who availed themselves of the opportunity to have a copy of the printed information described in Section 1-738.3 of this title mailed to them; and of that number, the number who, based on the submitted reports, did and did not obtain an abortion;

22. The number of abortions performed by the physician in which information otherwise required to be provided at least ~~twenty-four~~ (24) seventy-two (72) hours before the abortion was not so provided because an immediate abortion was necessary to avert the death of the female, and the number of abortions in which such information was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function;

23. The number of females to whom physicians or their agents provided the information described in subsection A of Section 1-738.8 of this title; of that number:

- a. the number provided by telephone and the number provided in person; and of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion, or by the agent of such physician, and
- b. the number of females who availed themselves of the opportunity to be given or mailed the materials described in Section 1-738.10 of this title, and the number who did not; and of each of those numbers, the number who, to the best of the information and belief

of the reporting physician, went on to obtain the abortion;

24. The number of females to whom the information described in subsection A of Section 1-738.8 of this title would have had to be provided but for a medical emergency determination; of that number, the number for whom an immediate abortion was necessary to avert the death of the female, and the number for whom a delay would have created serious risk of substantial and irreversible impairment of a major bodily function;

25. The number of abortions performed within the scope of employment of Oklahoma state employees and employees of an agency or political subdivision of the state, the number of abortions performed with the use of public institutions, facilities, equipment, or other physical assets owned, leased, or controlled by this state, its agencies, or political subdivisions, and for each category:

- a. the number of abortions reported as necessary to save the life of the mother, the life-endangering conditions identified, and the number of each such condition reported,
- b. the number of abortions reported from pregnancies resulting from forcible rape, the number of such rapes reported to law enforcement authorities, general categories of law enforcement authorities to whom reports were made and the number made to each category, and a statistical summary of the length of time between the dates of reporting to law enforcement authorities and the dates of the abortions, and
- c. the number of abortions reported from pregnancies resulting from incest committed against a minor, the number of perpetrators of incest in such cases reported to law enforcement authorities, general categories of law enforcement authorities to whom reports were made and the number made to each category, and a statistical summary of the length of time between the dates of reporting to law enforcement authorities and the dates of the abortions;

26. The number of females to a parent of whom the physician provided notice as required by Section 1-740.2 of this title; of

that number, the number provided personally as described in that section, and the number provided by mail as described in that section, and of each of those numbers, the number of females who, to the best of the information and belief of the reporting physician, went on to obtain the abortion;

27. The number of females upon whom the physician performed an abortion without the notice to or consent of the parent of the minor required by Section 1-740.2 of this title; of that number, the number who were emancipated minors and the number who suffered from a medical emergency, and of the latter, the number of cases in which a parent was notified subsequently and the number of cases in which a judicial waiver was obtained. In the case of medical emergencies in which a parent was informed subsequently, a statistical summary of the period of time elapsed before notification;

28. The number of abortions performed after receiving judicial authorization to do so without parental notice and consent;

29. The number of abortions performed on minors after judicial authorizations were granted because of a finding that the minor girl was mature and capable of giving informed consent;

30. The number of abortions performed on minors after judicial authorizations were granted because of a finding that the performance of the abortion without parental notification and consent was in the best interest of the minor;

31. The number of abortions performed after which the remains of the fetus after the abortion were examined to ensure that all such remains were evacuated from the mother's body;

32. The number of male children aborted and female children aborted, as determined from the examination of fetal remains after abortion;

33. The number of male children aborted and female children aborted, as determined by any method other than those reported in paragraph 32 of this subsection;

34. The number of instances in which the mother was informed prior to the abortion that the child to be aborted was a female;

35. The number of abortions performed without surgery but rather as the result of the administration of chemicals;

36. The number of abortions performed as reported in paragraph 35 of this subsection, in which the physician was present in the same room as the woman to whom the chemicals were administered at the time any such chemicals were first administered;

37. The number of abortions performed for each hospital at which the abortionist had hospital privileges at the time of the abortion;

38. The number of abortions performed at which ultrasound equipment was used before the abortion;

39. The number of abortions reported in paragraph 38 of this subsection, during which the mother was under the effect of anesthesia at the time of the ultrasound;

40. The number of abortions performed at which ultrasound equipment was used during the abortion;

41. The number of abortions reported in paragraph 40 of this subsection, during which the mother was under the effect of anesthesia at the time of the ultrasound;

42. The number of abortions performed at which ultrasound equipment was used after the abortion;

43. The number of abortions reported in paragraph 42 of this subsection, during which the mother was under the effect of anesthesia at the time of the ultrasound;

44. The mean gestational age of the fetus at the time of the abortion, as determined by ultrasounds reported;

45. The number of abortions for which no determination of probable postfertilization age was made as required by Section 1-745.5 of this title; and

46. The number of abortions in which the pregnant woman was told that it may be possible to make the embryonic or fetal heartbeat of the unborn child audible for the pregnant woman to hear; the number of abortions in which the pregnant woman was asked if she would like to hear the heartbeat; and the number of abortions in which the embryonic or fetal heartbeat of the unborn child was

made audible for the pregnant woman to hear, using a Doppler fetal heart rate monitor.

D. Beginning in 2013, by June 1 of each year, the State Department of Health shall post, on its stable Internet website, a public Annual Judicial Bypass of Abortion Parental Consent Summary Report providing statistics which shall be compiled and supplied to the Department by the Administrative Office of the Courts giving the total number of petitions or motions filed under Section 1-740.3 of this title and of that number, the number in which:

1. The court appointed a guardian ad litem;
2. The court appointed counsel;
3. The judge issued an order authorizing an abortion without parental notification or consent, and of those:
  - a. the number authorized due to a determination by the judge that the minor was mature and capable of giving consent to the proposed abortion, and
  - b. the number authorized due to a determination by the judge that an abortion was in the best interest of the minor; and
4. The judge denied such an order, and of this, the number of:
  - a. denials from which an appeal was filed,
  - b. the appeals that resulted in the denial being affirmed, and
  - c. appeals that resulted in reversals of the denials.

E. Each Annual Judicial Bypass of Abortion Parental Consent Summary Report shall also provide the statistics for all previous calendar years for which the public statistical report was required to be issued, adjusted to reflect any additional information from late or corrected reports.

F. The Department's public reports shall not contain the name, address, hometown, county of residence, or any other identifying information of any individual female, and shall take care to ensure that none of the information included in its public reports could

reasonably lead to the identification of any individual female about whom information is reported in accordance with the Statistical Abortion Reporting Act or of any physician providing information in accordance with the Statistical Abortion Reporting Act. Nor shall the information described in the preceding sentence be subject to the Oklahoma Open Records Act.

SECTION 7. AMENDATORY Section 2, Chapter 175, O.S.L. 2014 (63 O.S. Supp. 2014, Section 1-746.2), is amended to read as follows:

Section 1-746.2 No abortion shall be performed or induced or attempted to be performed or induced without the voluntary and informed consent of the female upon whom the abortion is to be performed or induced or attempted to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if, at least ~~twenty-four (24)~~ seventy-two (72) hours before the abortion:

1. In the case of a female seeking an abortion of her unborn child diagnosed with a fetal anomaly incompatible with life, the female is informed, by telephone or in person, by the physician who is to perform the abortion or the physician's agent:

- a. that perinatal hospice services are available,
- b. this service is an alternative to abortion,
- c. that she has the right to review the printed materials described in this section,
- d. that these materials are available on a state-sponsored website, and
- e. what the website address is where she can access this information.

The information required by this paragraph may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to have the printed materials given or mailed to her;

2. The physician or the physician's agent shall orally inform the female that the materials have been provided by the State of Oklahoma and that they list the places which offer perinatal hospice

services both in her state and nationally. If the female chooses to view the materials other than on the website, they shall either be given to her at least ~~twenty-four (24)~~ seventy-two (72) hours before the abortion, or ~~mailed to~~ received by her at least seventy-two (72) hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee;

3. The female certifies in writing, prior to the abortion, that the information described in paragraphs 1 and 2 of this section has been furnished her, and that she has been informed of her opportunity to review the information referred to in paragraph 2 of this section; and

4. Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's agent receives a copy of the written certification prescribed by paragraph 3 of this section. This certification shall be maintained in the female patient's file for not less than five (5) years.

SECTION 8. AMENDATORY Section 6, Chapter 175, O.S.L. 2014 (63 O.S. Supp. 2014, Section 1-746.6), is amended to read as follows:

Section 1-746.6 A. Within ninety (90) days after this act is enacted, the State Board of Medical Licensure and Supervision shall prepare a reporting form for physicians containing a reprint of this act and listing:

1. The number of females to whom the physician or an agent of the physician provided the information described in paragraph 1 of Section 2 of this act; of that number, the number provided by telephone and the number provided in person; of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion; and of each of those numbers, the number provided by the physician and the number provided by an agent of the physician;

2. The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Section 3 of this act other than on the website, and the number who did not; and of each of those numbers, the number who, to the best of the reporting physician's information and belief, went on to obtain the abortion; and

3. The number of abortions performed by the physician in which information otherwise required to be provided at least ~~twenty-four~~ seventy-two (72) hours before the abortion was not so provided because an immediate abortion was necessary to avert the female's death, and the number of abortions in which such information was not so provided because a delay would create serious risk of substantial and irreversible impairment of a major bodily function.

B. The Board shall ensure that copies of the reporting forms described in subsection A of this section are provided:

1. Within one hundred twenty (120) days after this act is enacted, to all physicians licensed to practice in this state;

2. To each physician who subsequently becomes newly licensed to practice in this state, at the same time as official notification to that physician that the physician is so licensed; and

3. By December 1 of each year, other than the calendar year in which forms are distributed in accordance with paragraph 1 of this subsection, to all physicians licensed to practice in this state.

C. By February 28 of each year following a calendar year in any part of which this act was in effect, each physician who provided, or whose agent provided, information to one or more females in accordance with Section 2 of this act during the previous calendar year shall submit to the Board a copy of the form described in subsection A of this section, with the requested data entered accurately and completely.

D. Reports that are not submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period or portion of a thirty-day period they are overdue. Any physician required to report in accordance with this section who has not submitted a report, or has submitted only an incomplete report, more than one (1) year following the due date, may, in an action brought by the Board, be directed by a court of competent jurisdiction to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

E. By June 30 of each year the State Board of Medical Licensure and Supervision shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering



that year submitted in accordance with this section for each of the items listed in subsection A of this section. Each such report shall also provide the statistics for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The Board shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual provided information in accordance with paragraph 1 of Section 2 of this act.

F. The Board may by rule alter the dates established by paragraph 3 of subsection B or subsection C or E of this section or consolidate the forms or reports described in this section with other forms or reports to achieve administrative convenience or fiscal savings or to reduce the burden of reporting requirements, so long as reporting forms are sent to all licensed physicians in the state at least once every year and the report described in subsection E of this section is issued at least once every year.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.5a of Title 63, unless there is created a duplication in numbering, reads as follows:

If some or all of the newly amended provisions of 63 O.S. 2011, Section 1-738.2, 63 O.S. 2011, Section 1-738.3; 63 O.S. 2011, Section 1-738.3a; 63 O.S. 2011, Section 1-738.8; 63 O.S. 2011, Section 1-738.13; 63 O.S. 2011, Section 1-738m, as amended by Section 2, Chapter 303, O.S.L. 2013 (63 O.S. Supp. 2014, Section 1-738m); Section 2, Chapter 175, O.S.L. 2014 (63 O.S. Supp. 2014, Section 1-746.2); or Section 6, Chapter 175, O.S.L. 2013 (63 O.S. Supp. 2014, Section 1-746.6), resulting from the actions taken by the 2015 session of the Oklahoma legislature are ever temporarily or permanently restrained or enjoined by judicial order, these sections shall be enforced as though such restrained or enjoined provisions had not been adopted; provided, however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

SECTION 10. This act shall become effective November 1, 2015.

Passed the House of Representatives the 30th day of April, 2015.

*Remond John*  
Presiding Officer of the House  
of Representatives

Passed the Senate the 21st day of April, 2015.

*Nathan Dalton*  
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 4<sup>th</sup>  
day of May, 20 15, at 3:20 o'clock P M.  
By: *Audrey Lockwell*

Approved by the Governor of the State of Oklahoma this 6<sup>th</sup>  
day of May, 20 15, at 9:24 o'clock A M.

*Maury Fallin*  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 6<sup>th</sup>  
day of May, 20 15, at 5:23 o'clock P. M.  
By: *C. Benz*

# **Exhibit C**

**IN THE DISTRICT COURT  
OF SHAWNEE COUNTY, KANSAS**

**HODES & NAUSER, MDs, P.A.;** )  
**HERBERT C. HODES, M.D.; and** )  
**TRACI LYNN NAUSER, M.D.,** )

**Plaintiffs,** )

v. )

**DEREK SCHMIDT, in his official** )  
**capacity as Attorney General** )  
**of the State of Kansas; and STEPHEN M.** )  
**HOWE, in his official capacity as District** )  
**Attorney for Johnson County,** )

**Defendants.** )

**Case No. 2015CV490**  
**Division 6**

**ORDER GRANTING TEMPORARY INJUNCTION**

**K.S.A. 60-905**

On the 25<sup>th</sup> day of June, 2015, the Plaintiffs' Motion For Temporary Injunction and/or Temporary Restraining Order came before the Court. Plaintiffs appeared by counsel Janet Crepps, Robert V. Eye, Genevieve Scott, and Erin Thompson. Defendants appeared by counsel Shon D. Qualseth, Sarah E. Warner, Stephen R. McAllister, Jeffrey A. Chanay, and Dennis D. Depew. There were no other appearances.

Having reviewed the pleadings, heard arguments of counsel, and having been duly advised on the premises, the Court Orders, for the reasons stated from the bench at the hearing on the Motion and as outlined herein, that Plaintiffs' Motion is granted.

This Order is effective as of the date and time shown on the file stamp.

### **Findings of Fact**

The Court finds that the Defendants did not dispute in their Response Opposing Plaintiffs' Motion for Temporary Restraining Order/ and/or Temporary Injunction the facts outlined in the Plaintiffs' Memorandum in support of that motion. Therefore, the Court adopts those facts as outlined below.

Senate Bill 95 prohibits the performance on a living fetus of an abortion procedure described in the Act as "dismemberment abortion," defined as a procedure done:

with the purpose of causing the death of an unborn child, knowingly dismembering a living unborn child and extracting such unborn child one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush or grasp a portion of the unborn child's body in order to cut or rip it off.

S.B. 95 § 2(b)(1).

Violation of the ban is a criminal offense. *Id.* § 6. In addition, the Act authorizes the Attorney General or any District or County Attorney with appropriate jurisdiction to "bring a cause of action for injunctive relief against a person who has performed or attempted to perform" an abortion in violation of the Act. *Id.* § 4. The Act also creates a cause of action for damages against a person who violates the ban. *Id.* § 5.

Although "dismemberment abortion" is not a medical term, the parties agree and the Court finds that the Act prohibits Dilation & Evacuation ("D & E") procedures. The D & E procedure is used for 95% of the abortions done in the second trimester.

The Plaintiffs in this case are Hodes & Nauser, M.D.s, PA; Dr. Herbert C. Hodes; and Dr. Traci Lynn Nauser, on behalf of themselves and their patients. The Plaintiff physicians are board-certified obstetrician-gynecologists who practice in Overland Park, Kansas. They provide pre-viability second-trimester abortions using D & E procedures. The Plaintiffs do not induce fetal demise prior to their D & E procedures.

The Defendants, both sued in their official capacity, are Derek Schmidt, Attorney General of the State of Kansas, and Stephen M. Howe, District Attorney for Johnson County.

Defendants propose three alternative procedures to D & E: labor induction, induction of fetal demise using an injection, and induction of fetal demise using umbilical cord transection.

Labor induction is used in approximately 2% of second-trimester abortion procedures. It requires an inpatient labor process in a hospital that will last between 5–6 hours up to 2–3 days, includes increased risks of infection when compared to D & E, and is medically contraindicated for some women.

There is no established safety benefit to inducing demise prior to a D & E procedure.

An injection of digoxin may be administered via either transabdominal or transvaginal injection. Injections to induce demise using digoxin prior to D & E are not practiced prior to 18 weeks gestation, and the impact of subsequent doses of digoxin, required in cases where a first dose is not effective, is virtually unstudied. Research studies have shown increased risks of nausea, vomiting, extramural delivery, and hospitalization.

Umbilical cord transection prior to a D & E is not possible in every case. Requiring transection prior to a D & E increases procedure time, makes the procedure more complex, and increases risks of pain, infection, uterine perforation, and bleeding. The use of transection to

induce fetal demise has only been discussed in a single retrospective study, the authors of which note that its main limitation is “a potential lack of generalizability.”

### **Conclusions of Law**

“[T]he purpose of a temporary or preliminary injunction is not to determine any controverted right, but to prevent injury to a claimed right *pending a final determination of the controversy on its merits*,” and to maintain the *status quo*. *Idbeis v. Wichita Surgical Specialists, P.A.*, 285 Kan. 485, 491 (2007) (quoting *Steffes v. City of Lawrence*, 284 Kan. 380, 394 (2007)). A moving party may obtain a temporary injunction if it shows that: (1) it has a substantial likelihood of success on the merits; (2) there is a reasonable probability that it will suffer irreparable future injury; (3) it cannot obtain an adequate remedy at law; (4) the threat of injury to itself outweighs any injury that the injunction may cause opposing parties; and (5) the injunction will not harm the public interest. *Id.*

Plaintiffs are not required to establish to a certainty that they will prevail on the merits or that their patients will suffer irreparable harm, but only that they are substantially likely to prevail and that there is a reasonable probability of harm. *See Bd. of Cnty Comm’rs of Leavenworth Cnty v. Whitson*, 281 Kan. 678, 684 (2006) (rejecting “proof of the *certainty* of irreparable harm rather than the mere probability” as setting “too high a standard for parties seeking injunctions”).

The Court finds that the Plaintiffs have standing to assert the rights of their patients. *Alpha Medical Clinic v. Anderson*, 280 Kan. 903, 921 (2006) (citing *Singleton v. Wulff*, 428 U.S. 106, 117 (1976)).

#### I. Likelihood of Success on the Merits

Plaintiffs’ claims are brought under Sections 1 and 2 of the Bill of Rights of the Kansas

Constitution,<sup>1</sup> and therefore the Court must address the threshold question of whether these provisions afford protection to the right to abortion.

While “[t]his court is free to construe our state constitutional provisions independent of federal interpretation of corresponding federal constitutional provisions,” *State v. Morris*, 255 Kan. 964, 981 (1994), the Kansas Supreme Court has customarily interpreted the provisions of the Kansas Constitution to “echo federal standards.” *Alpha Med. Clinic*, 280 Kan. at 920 (citations omitted).

Although the Kansas Supreme Court has not addressed protection for the right to abortion under the Kansas Constitution, in *Alpha* the Court noted that, “[w]e have not previously recognized—and need not recognize in this case despite petitioners’ invitation to do so—that [rights to privacy protecting abortion] also exist under the Kansas Constitution,” but went on to say, “[b]ut we customarily interpret its provisions to echo federal standards.” *Id.*

Absent explicit guidance from the Kansas Supreme Court on this issue, this Court is bound to apply the customary rule, which the *Alpha* decision suggests will apply to abortion. *See also Morris*, 255 Kan. at 981 (“The liberal construction which must be placed upon [Kansas] constitutional provisions for the protection of personal rights requires that the constitutional guaranties, however differently worded, should have as far as possible the same interpretation [as the federal provisions].”).

The Court therefore concludes that Sections 1 and 2 of the Bill of Rights of the Kansas Constitution independently protects the fundamental right to abortion.

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<sup>1</sup> Section 1 of the Kansas Constitution Bill of Rights states: “All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.” Section 2 provides: “All political powers inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit. No special privileges or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body, and this power shall be exercised by no other tribunal or agency.”



In determining whether the Act violates the right to abortion, the Court recognizes that “[a] statute comes before the court cloaked in a presumption of constitutionality and it is the duty of the one attacking the statute to sustain the burden of proof.” *State ex rel. Schneider v. Liggett*, 223 Kan. 610, 616 (1978) (citations omitted). As the Court explained in *Schneider*, however, “[a] more stringent test has emerged,” where, as here, the case involves suspect classifications or fundamental rights or interests. *Id.* at 617 (citations omitted). In such cases, “the courts peel away the protective presumption of constitutionality and adopt an attitude of active and critical analysis, subjecting the classification to strict scrutiny. The burden of proof to justify the classification falls upon the state.” *Id.* (citation omitted).

Having concluded that the Act implicates the fundamental right to abortion protected under the Kansas Constitution, this Court cannot presume that the Act is constitutional, but must instead subject it to active and critical analysis.

Turning to the merits, Plaintiffs have established a substantial likelihood of success on their claims that the Act violates their patients’ right to abortion protected under Sections 1 and 2 of the Kansas Constitution Bill of Rights.

Under applicable federal law, the State is prohibited from enacting laws that impose an undue burden on access to abortion services. See *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 874 (1992). The Kansas Supreme Court has applied the undue burden standard set out in *Casey* when analyzing challenges based on the federal right to terminate a pregnancy. See *Alpha Med. Clinic*, 280 Kan. at 920. Thus, the Court will apply *Casey*’s undue burden test in deciding whether Plaintiffs have established a likelihood of success on this claim.

“A finding of an undue burden is a shorthand for the conclusion that a state regulation has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion

of a nonviable fetus.” *Casey*, 505 U.S. at 877. “A statute with this purpose is invalid because the means chosen by the State to further the interest in potential life must be calculated to inform the woman’s free choice, not hinder it.” *Id.* “And a statute which, while furthering the interest in potential life or some other valid state interest, has the effect of placing a substantial obstacle in the path of a woman’s choice cannot be considered a permissible means of serving its legitimate ends.” *Id.*

The United States Supreme Court has held that a ban on the most commonly-used method of second-trimester abortion is unconstitutional. See *Gonzales v. Carhart*, 550 U.S. 124, 147, 164–65 (2007); *Stenberg v. Carhart*, 530 U.S. 914, 945–46 (2000); *Planned Parenthood of Central Mo. v. Danforth*, 428 U.S. 52, 77–79 (1976). The Act bans the most common method of second-trimester abortion, a D & E, which does not involve a separate procedure to induce fetal demise. Thus, the Supreme Court has already balanced the State interests asserted here against a ban on the most common method of second-trimester abortion and determined that it is unconstitutional.

Defendants’ reliance on *Gonzales* for the proposition that the ban is constitutional based on the availability of alternative procedures is misplaced. Though the *Gonzales* Court ultimately upheld the ban on the “intact D & E” procedure, it only did so after determining that the most common method of second-trimester abortion—D & E—which the parties did not contest was safe and reliable, was not banned. *Gonzales*, 550 U.S. at 150–54.

Plaintiffs have therefore established a likelihood of success on the merits of their claim that the Act imposes an impermissible burden by banning D & E procedures. Though the State has legitimate interest in protecting potential life, that interest does not justify S.B. 95’s

imposition of an undue burden on a woman's right to terminate a pre-viability pregnancy. *Stenberg*, 530 U.S. at 945–46. *See also Gonzales*, 550 U.S. at 146.

Alternative procedures suggested by Defendants for Plaintiffs to comply with the Act would also impose an undue burden on the right to abortion. The alternatives proposed by Defendants include labor induction, a transabdominal or transvaginal injection to induce fetal demise prior to D & E, or umbilical cord transection to induce fetal demise prior to D & E.

Based on the evidence presented, the Court finds that the alternatives proposed by Defendants are not reasonable, would force unwanted medical treatment on women, and in some instances would also operate as a requirement that physicians experiment on women with known and unknown safety risks as a condition accessing the fundamental right to abortion.

The Defendants' view that these alternatives do not impose an undue burden is extreme and not supported by Supreme Court precedent. Plaintiffs have established that based on the threat of injury to their patients, their patients' right to terminate a pre-viable pregnancy outweighs the Defendants' asserted interests. Therefore, I find that forcing women to accept the possibility of having to undergo an unnecessary medical procedure in order to effectuate their abortion decision independently constitutes an undue burden.

Accordingly, the Court concludes that Plaintiffs have established a likelihood of success on the merits of their claim that enforcement of the Act will violate the abortion rights of their patients protected under Sections 1 and 2 of the Kansas Constitution Bill of Rights.

Because I find that Plaintiffs prevail on the likelihood of success of this claim and, as discussed below, the other temporary injunction factors weigh in their favor, I need not reach Plaintiffs' improper purpose claim or Plaintiffs' claim that S.B. 95 violates women's fundamental right to bodily integrity.

## II. Irreparable Injury/ Adequate Remedy at Law

Plaintiffs have shown a reasonable probability that their patients will suffer irreparable future injury and that they lack an adequate remedy at law should the Act be enforced. *Idbeis*, 285 Kan. at 491. The federal standards for temporary injunctive relief are similar to those in Kansas. See, e.g., *Bonner Springs Unified Sch. Dist. No. 204 v. Blue Valley Unified Sch. Dist. No. 229*, 32 Kan. App. 2d 1104, 1118 (2004). The federal decisions establish that if a constitutional right will be abridged, no further showing of irreparable harm is required; a deprivation of a constitutional right is in and of itself irreparable harm. See *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001); *ACLU v. Johnson*, 194 F.3d 1149, 1163 (10th Cir. 1999); *Adams v. Baker*, 919 F. Supp. 1496, 1505 (D. Kan. 1996). Because Plaintiffs have established a substantial likelihood of success as to their constitutional claim that the Act will deprive women seeking second-trimester abortions of their constitutional right to abortion, they have demonstrated a reasonable probability of irreparable future harm without adequate remedy at law.

## III. Balance of Hardships

Plaintiffs have also established that the threat to their patients outweighs any harm that might inure to the Defendants. *Idbeis*, 285 Kan. at 491. The balance of hardships in this case is in lockstep with irreparable harm. Plaintiffs have shown a likelihood of success that their patients' fundamental right to terminate a pregnancy will be unduly burdened if S.B. 95 goes into effect. In contrast, Defendants face little, if any, injury from issuance of an injunction, which will impose no affirmative obligations and will preserve the *status quo*. The same logic applies to the State's interest in regulating the medical profession because, at this point, the injunction will do nothing more than maintain the *status quo* until the issues can be resolved on the merits.

34117820, at \*5-6 (Kan. Dist. Ct. 2001) (holding threatened injury to plaintiffs' constitutional rights "outweighs whatever damage there may be to [defendants']" inability to enforce "what appears to be an unconstitutional ordinance") (citing *Johnson*, 194 F.3d at 1163). For these reasons, Plaintiffs have demonstrated that the balance of hardships weighs in their favor.

#### IV. Public Interest

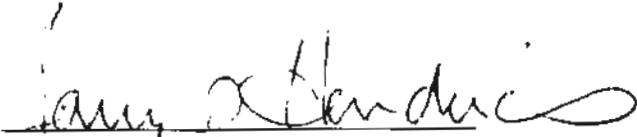
Finally, Plaintiffs have established that a temporary injunction would not be adverse to the public interest. *Idbeis*, 285 Kan. at 491. The public's interest in not suffering a potential constitutional limitation is served more by maintaining the *status quo* than by permitting a law which may be unconstitutional to go into effect. *See Adams*, 919 F. Supp. at 1505.

#### Order

The Court hereby grants the Temporary Injunction: Senate Bill 95 shall not be enforced until further order of this Court or until final judgment is entered in this matter. Pursuant to Kansas Statute 60-905(b), the Court further orders that Plaintiffs shall not be required to post a bond.<sup>2</sup>

IT IS SO ORDERED.

Dated this 7<sup>th</sup> of June, 2015

  
Larry D. Hendricks  
District Court Judge

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<sup>2</sup> The Court having issued a temporary injunction need not rule on Plaintiffs' alternative request for a temporary restraining order.