

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

NOV 23 2015

TIM RHODES
COURT CLERK

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(1) LARRY A. BURNS, D.O., on behalf of)
 himself and his patients,)
)
 Plaintiff,)
)
 v.)
)
 (2) TERRY L. CLINE, in his official capacity)
 as Oklahoma Commissioner of Health, and)
 (3) GREG MASHBURN, in his official)
 capacity as District Attorney for Cleveland,)
 Garvin, and McClain Counties,)

Case No. CV-2015-2050

Judge Prince

Defendants.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

TO BE HEARD THE 8th DAY OF
January, 2016 AT 9:00 AM
JUDGE Prince

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Pursuant to Rule 13(a) of the Rules for District Courts of Oklahoma, 12 O.S. ch. 2, app. R. 13(a), and 12 O.S. § 2056(A), Plaintiff Larry A. Burns, D.O., moves this Court for summary judgment. There is no substantial controversy as to any material fact, and Dr. Burns is entitled to judgment against Defendants as a matter of law. Dr. Burns seeks entry of a declaratory judgment that Oklahoma Senate Bill 642 (2015 Okla. Sess. Law Serv. Ch. 387 (West)) (“S.B. 642” or “the Act”) violates the single-subject rule of article V, section 57 of the Oklahoma Constitution because it addresses four distinct subjects with no readily apparent common theme or purpose. Dr. Burns further seeks a permanent injunction restraining Defendants, their employees, agents, and successors in office from enforcing the Act.

INTRODUCTION

Contrary to the mandate of the Oklahoma Constitution, the Oklahoma Legislature last session enacted S.B. 642 (“the Act”), a law that contravenes the State’s single-subject rule. The Act addresses multiple subjects ranging from parental consent for abortion, to new procedures and rule-making for rape investigations by the Oklahoma Bureau of Investigation, to licensing and inspection of abortion facilities by the Oklahoma Department of Health, to creating a potentially broad, new category of felonies. The Act clearly violates the constitutional single-subject rule because it encompasses four different subjects that are not germane, relative, and cognate to a readily apparent common theme and purpose.

This challenge to the Act was filed in district court on November 3, 2015. The issue on which Dr. Burns seeks summary judgment—that S.B. 642 violates Oklahoma’s single-subject rule—presents no issues of disputed material fact and is ripe for summary judgment.

THE CHALLENGED STATUTE AND PROCEDURAL HISTORY

The Act is composed of four sections, each addressing a separate subject. The four sections, respectively, amend title 63, section 1-740.4b, and enact title 63, sections 1-749, 1-749.1, and 1-750 of the Oklahoma Statutes. S.B. 642 §§ 1–4; *see also* Petition ¶ 15, Exhibit 1.

Section 1 of the Act amends the statute that prohibits the use of false or fraudulent documents or representations to evade Oklahoma’s requirement that minors seeking an abortion obtain parental consent. S.B. 642 § 1 (codified at 63 O.S. § 1-740.4b). The new provisions further prohibit any person from “aid[ing], abet[ting] or assist[ing]” a minor to obtain an abortion without parental consent, and impose significant civil and criminal penalties. S.B. 642 § 1(A), (D). Section 1 also authorizes the Attorney General, a district attorney, “or any person adversely affected or who reasonably may be adversely affected by such conduct” to enjoin a minor from obtaining an abortion. S.B. 642 § 1(E).

Section 2 of the Act creates a new section of the code, 63 O.S. § 1-749, that requires the Oklahoma State Bureau of Investigation to collect fetal tissue recovered from an abortion performed on a minor under the age of 14, for rape investigations. S.B. 642 § 2(A). The Bureau of Investigation is required, under section 2, to promulgate regulations governing the amount and type of tissue to be preserved, the means of preservation of tissue for DNA testing, the documentation of the chain of custody, the creation of forms to collect information, and procedures for tissue disposal. S.B. 642 § 2(A), (B).

Section 3 creates a new statutory scheme for the licensing and inspection of abortion facilities. S.B. 642 § 3 (codified at 63 O.S. § 1-749.1). Under this new scheme, the State Board of Health is directed to establish policies and procedures for pre-licensure and re-licensure inspections of abortion facilities, S.B. 642 § 3(A), and to promulgate rules for

conducting inspections and investigations pursuant to complaints against abortion facilities. S.B. 642 § 3(B). It also directs the State Department of Health to conduct on-site inspections before issuing or re-issuing a license. S.B. 642 § 3(A), (B). Section 3 of the Act subjects abortion facilities to unannounced searches, S.B. 642 § 3(C), and deems the facility's application for a license to "constitute[] permission for, and complete acquiescence in, an entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license." S.B. 642 § 3(D).

Section 4 (S.B. 642 § 4 (codified at 63 O.S. §1-750)) includes a provision that states that any "person who intentionally, knowingly or recklessly violates any provision or requirement of this act, Section 1-729a *et seq.* of Title 63 of the Oklahoma Statutes or any rule or regulation adopted under Section 1-729a *et seq.* of Title 63 of the Oklahoma Statutes is guilty of a felony." S.B. 642 § 4(A). It is unknown whether the State will assert that Section 4 should be read as establishing that an intentional, knowing, or reckless violation of any and all of the abortion statutes starting at Section 1-729a and extending through Section 1-750 (*i.e.*, more than 140 sections) will become punishable as a felony, an interpretation of the Act that would impose felony penalties for, *inter alia*, posting required signage in the wrong font, and for submitting a form to the Department of Health several days late. *See* 63 O.S. § 1-737.4(B) ("sign required . . . shall be printed with lettering that is legible and shall be at least three-quarters-of-an-inch boldfaced type"); § 1-738k(C) ("Any physician performing abortions shall fully complete and submit, electronically, an Individual Abortion Form to the State Department of Health by the last business day of the calendar month following the month in which the physician performs an abortion, for each abortion the physician performs.").

Additionally, Section 4 provides that any violations of “Section 1-729a *et seq.*” are punishable by penalties and fines up to \$100,000 per day of violation, S.B. 642 § 4(C), and that any person who violates Section 1-729a *et seq.* is “civilly liable to the person or persons adversely affected by the violation or violations,” including damages for psychological and emotional harm and punitive damages. S.B. 642 § 4(G).

S.B. 642 had its first reading in the Oklahoma Senate on February 2, 2015. At that time, S.B. 642 addressed a single subject: it required fetal tissue preservation from abortions performed on girls under the age of 14, for rape investigations, under rules to be promulgated by the State Board of Health. S.B. 642, 55th Leg., 1st Sess. (Okla. 2015), http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20INT/SB/SB642%20INT.PDF (as introduced to Senate).

Subsequent to the initial reading of S.B. 642, sections addressing two additional subjects highlighted in the annual report of an anti-abortion organization, Americans United for Life (“AUL”),¹ were appended to the act. In its annual report for 2015, AUL recommended that Oklahoma adopt measures related to “evidence retention and remedies for third-party interference with parental rights” and “[e]nhanced penalties and enforcement mechanisms for the state’s abortion-related laws.” See Americans United for Life, *Defending Life 2015: State Cards – Oklahoma*, 6 (2015), http://aul.org/downloads/defending-life-2015/state-cards/AUL2015_OK.pdf. Two sections were then added to S.B. 642, incorporating these recommendations. S.B. 642 §§ 1, 4. The wording of these added sections substantially track language from the two different pieces of AUL model legislation. See Americans United for

¹ See Americans United for Life, “Mission,” <http://www.aul.org/about-aul/mission/> (last visited Nov. 17, 2015).

Life, Model Legislation & Policy Guide for the 2012 Legislative Year, “Child Protection Act” (2011), <http://www.aul.org/wp-content/uploads/2012/04/Child-Protection-Act-2012-LG.pdf>; Americans United for Life, Model Legislation & Policy Guide for the 2013 Legislative Year, “Abortion Patients’ Enhanced Safety Act” (2012), <http://www.aul.org/wp-content/uploads/2012/11/Abortion-Patients-Enhanced-Safety-Act-2013-LG.pdf>.

Prior to passage, a section regarding the subject of licensure and inspection of abortion facilities was included in the text of S.B. 642 as well. S.B. 642 § 3.

S.B. 642 was passed by the Legislature on May 22, 2015 and signed into law by the Governor on June 4, 2015, with an effective date of November 1, 2015. On September 25, 2015, Plaintiff petitioned the Supreme Court of the State of Oklahoma to assume original jurisdiction and grant declaratory and injunctive relief barring enforcement of S.B. 642. *See* Application to Assume Original Jurisdiction and Petition for Declaratory and Injunctive Relief, Exhibit 2. Defendants in the instant petition were Respondents in the Supreme Court case.

On October 13, 2015, Referee Barbara Swimley, for the Supreme Court, heard oral argument concerning whether the Court should assume original jurisdiction over the petition, and whether S.B. 642 was unconstitutional under the single-subject rule. The Supreme Court assumed jurisdiction, and on October 26, 2015 issued an Order (and, subsequently, a Corrected Order) staying enforcement of S.B. 642, initially for 30 days from the date of the Order, to be continued in effect upon Plaintiff filing for declaratory and injunctive relief in the Oklahoma County District Court. *See* Petition ¶ 4, Exhibit 1.

On November 16, 2015, the Oklahoma Supreme Court issued an Order explicitly continuing the stay of enforcement of S.B. 642 during the instant case “until further order from this Court.” The Order is attached hereto as Exhibit 3.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Plaintiff Larry A. Burns, D.O., is a licensed doctor of osteopathic medicine who has been providing abortion care in Norman, Oklahoma for over four decades. Affidavit of Larry A. Burns, D.O. (“Burns Aff.”), attached hereto as Exhibit 4, ¶ 1.

2. Dr. Burns practices medicine at his wholly-owned professional corporation, Larry A. Burns, D.O., Inc. d/b/a Abortion Surgery Center. *Id.* ¶ 2.

3. Abortion Surgery Center is licensed as an abortion facility by the Oklahoma State Department of Health. *Id.* ¶ 3.

4. In his medical practice at Abortion Surgery Center, Dr. Burns provides reproductive health care services to women, including first-trimester surgical and medication abortions, contraception counseling and services, pregnancy testing, and ultrasounds. *Id.* ¶ 4.

ARGUMENTS AND AUTHORITIES

A. Standard for Summary Judgment

Summary judgment is proper when “the evidentiary material filed with the motion or subsequently filed with leave of court show[s] that there is no substantial controversy as to any material fact.” 12 O.S. ch. 2, app., R. 13(a). “Although a trial court in making a decision on whether summary judgment is appropriate considers factual matters, the ultimate decision turns on purely legal determinations, i.e. whether one party is entitled to judgment as a matter of law because there are no material disputed factual questions.” *Fleming & Gandall, PLLC v. Town of Cashion*, 2007 OK CIV APP 74, ¶ 10, 167 P.3d 975, 977 (quoting *Carmichael v. Beller*, 1996 OK 48 ¶ 2, 914 P.2d 1051, 1053).

An “opposing party has the obligation of showing some probative evidence, formulated as specific facts, to justify a trial of the issues. A party cannot merely rely upon conjecture or suppositions, and assert ‘that facts exist or might exist [because that] is not sufficient to create a substantial controversy. . . .’” *First Nat’l Bank & Trust Co. of Vinita v. Kissee*, 1993 OK 96, 859 P.2d 502, 505 (alteration in original) (footnote omitted) (quoting *Mengel v. Rosen*, 1987 OK 23, 735 P.2d 560, 563).

Dr. Burns’ claim that S.B. 642 violates the Oklahoma Constitution’s single-subject rule does not involve contested issues of material fact, and therefore, he is entitled to judgment as a matter of law. 12 O.S. ch. 2, app., R. 13(e); see *Orthopedic Hosp. of Okla. v. Okla. State Dep’t of Health*, 2005 OK CIV APP 43, ¶ 4, 118 P.3d 216, 220 (granting summary judgment where there were only questions of law, and statute violated the Oklahoma Constitution).

B. S.B. 642 Violates the Oklahoma Constitution’s Single-Subject Rule

S.B. 642 violates the Oklahoma Constitution because it addresses at least four distinct

subjects with no readily apparent common theme or purpose.

Under the Oklahoma Constitution, “Every act of the Legislature shall embrace but one subject, which shall be clearly expressed in its title.” Okla. Const. art. V, § 57. The rule has two purposes: (1) “to ensure that the legislators . . . of Oklahoma are adequately notified of the potential effect of the legislation;” and (2) “to prevent ‘logrolling,’ the practice of assuring the passage of a law by creating one choice in which a legislator . . . is forced to assent to an unfavorable provision to secure passage of a favorable one, or conversely, forced to vote against a favorable provision to ensure that an unfavorable provision is not enacted.” *Nova Health Sys. v. Edmondson*, 2010 OK 21, ¶ 1, 233 P.3d 380, 381 (footnotes omitted); *accord Douglas v. Cox Ret. Props., Inc.*, 2013 OK 37, ¶ 4, 302 P.3d 789, 792; *Okla. Coal. for Reprod. Justice v. Okla. State Bd. of Pharm.*, No. CV-2013-1640, 2014 WL 585353 (Dist. Ct. Okla. Cty. Jan. 29, 2014); *Davis v. Edmondson*, No. CJ-2009-9154, 2010 WL 1734636 (Dist. Ct. Okla. Cty. Mar. 2, 2010).

Oklahoma courts apply a “germaneness” test to determine whether an act complies with the single subject rule, requiring that its provisions be germane, relative, and cognate to a readily apparent common theme or purpose. *See Douglas*, 2013 OK 37, ¶ 6, 302 P.3d at 793; *Nova Health Sys.*, 2010 OK 21, ¶ 1, 233 P.3d at 382; *In re Initiative Petition No. 382*, 2006 OK 45, ¶ 9, 142 P.3d 400, 405. “[T]he issue is not how similar or ‘related’ any two provisions in a proposed law are, or whether one can articulate some rational connection between the provisions of a proposed law,” *id.* ¶ 14, 142 P.3d at 408, “but whether it appears that the proposal is misleading or . . . those voting on the law would be faced with an all-or-nothing choice.” *Douglas*, 2013 OK 37, ¶ 6, 301 P.3d at 793.

Importantly, S.B. 642 contains, among other things, provisions lifted from two separate

pieces of model legislation drafted by AUL, the self-described “legal architect of the pro-life movement.”² In AUL’s 2015 state-specific report on Oklahoma, these two pieces of model legislation were among those recommended by AUL to the Legislature of Oklahoma for passage. Language in section 2 of S.B. 642 is taken directly from one model statute in the AUL playbook. The enhanced civil penalties provision of section 4 is taken directly from another AUL model statute. It appears that the Oklahoma Legislature combined sections from the different pieces of AUL model legislation with other provisions having some nexus to abortion.

The Legislature’s attempt to gloss over the multifarious nature of S.B. 642 by listing its subject in the heading of the statute as “[a]bortion procedure compliance requirements” is unavailing. All laws, of course, are “compliance requirements.” The subject of the Act in plain language is: various and sundry laws pertaining directly or tangentially to abortion. As set forth below, the cases of *Nova Health Systems*, *Davis*, and *Oklahoma Coalition* have made clear that all-encompassing subjects such as “abortion” cannot survive constitutional scrutiny.

In *Nova Health Systems*, 2010 OK 21, ¶ 1, 233 P.3d at 381–82, the Supreme Court struck down a statute regulating abortion in various ways, holding that, although each provision concerned “freedom of conscience,” the statute was “obviously violative” of the single subject rule because it comprised portions of five bills and involved multiple subjects.³ The Court

² See Americans United for Life, “Mission,” <http://www.aul.org/about-aul/mission/> (last visited Nov. 17, 2015).

³ The Act at issue in *Nova Health Systems* authorized individuals and health care facilities to refuse to perform or participate in abortion; imposed limitations on the administration of mifepristone (a medication used to induce abortions); required signage in facilities that provide abortion; directed that certain information be provided to minors seeking an abortion; imposed an ultrasound and waiting period requirement on women seeking an abortion; and prohibited actions for “wrongful life” or “wrongful birth” based on a claim that the defendant’s act or

admonished:

We are growing weary of admonishing the Legislature for so flagrantly violating the terms of the Oklahoma Constitution. It is a waste of time for the Legislature and the Court, and a waste of the taxpayer's money. . . .

[W]e again restate: THE CLEAR LANGUAGE OF THE OKLAHOMA CONSTITUTION REQUIRES THAT ALL LEGISLATIVE ACTS SHALL EMBRACE BUT ONE SUBJECT.

Id. ¶ 1, 233 P.3d at 382 (emphasis in original).

Similarly, in *Oklahoma Coalition*, 2014 WL 585353, at *1, the district court granted summary judgment, on single-subject grounds, where the challenged statute restricted distribution of emergency contraception and regulated health insurance prescription forms. In another district court case, *Davis*, 2010 WL 1734636, the court granted summary judgment on single-subject grounds, striking down a statute that banned sex-selective abortions, imposed new reporting requirements on abortion providers, and amended definitions of abortion-related terms.

The Act at issue here violates the constitutional prohibition on multiple subjects in exactly the manner that the statutes in *Nova Health Systems*, *Davis*, and *Oklahoma Coalition* did. The multiple, unrelated subjects of abortion parental-consent provisions and prohibitions, evidence collection for statutory rape investigations, licensure and regulation of abortion facilities, and catch-all criminal and civil sanctions are all joined together in one Act by the Legislature. As such, S.B. 642 plainly violates the single subject mandate of the Oklahoma Constitution.

In several contexts, the Supreme Court has rejected laws, much like the one at issue

omission prevented the mother from having an abortion. 2008 Okla. Sess. Law. Serv. Ch. 36 (West).

here, that present “all-or-nothing choices.” In *Fent v. State ex rel. Oklahoma Capitol Improvement Authority*, the Supreme Court invalidated, on single subject grounds, a statute authorizing the Oklahoma Capitol Improvement Authority to issue bonds for three projects. 2009 OK 15, 214 P.3d 799. The State had argued that the bill was constitutional because it addressed the single subject of approving funding of capital water and flood control projects through a common financing mechanism. *Id.* ¶¶ 11, 23, 214 P.3d at 803, 807. However, the Court held that because the statute involved three separate bond issues to three separate entities for three separate purposes, it was “quintessential logrolling,” such that those voting on the law would be faced with “an unpalatable all-or-nothing choice.” *Id.* ¶ 23, 214 P.3d at 807.

In another case, involving a ballot initiative that limited the power of public bodies to take private property by eminent domain and also required just compensation to be paid to any landowner whose property value was negatively affected by a zoning law, the Court held that it violated the single subject rule because it presented an “all-or-nothing choice” to voters. *In re Initiative Petition No. 382*, 2006 OK 45, ¶¶ 10–11, 15, 142 P.3d at 406, 408. The proponent had argued that Initiative Petition 382 addressed the single subject of comprehensively regulating governmental taking power. *Id.* ¶ 7, 142 P.3d at 405. However, the Court explained that the case turned on the fact that one of the provisions implicated “a national discussion on the proper limitations on the power of eminent domain,” and voters who might approve of the first subject of the initiative petition “would by no means necessarily approve” of the second subject. *Id.* ¶ 15, 142 P.3d at 408.

The same constitutional problems undermine the legality of S.B. 642. A legislator could reasonably have been in favor of, for example, preserving tissue samples for statutory rape prosecutions, yet “would by no means necessarily approve”

language in the Act that the State might claim to be a basis for imposing felony penalties for any infraction of the State’s numerous abortion regulations. *See id.*; *see also Douglas*, 2013 OK 37, ¶¶ 10–11, 302 P.3d at 793–94; *Nova Health Sys.*, 2010 OK 21, ¶ 1, 233 P.3d at 382; *Davis*, 2010 WL 1734636. Legislators who may have favored the one provision of S.B. 642 could not have voted to enact that part of the bill without voting to enact the other, unrelated provisions as well. *See Okla. Capitol Improvement Auth.*, 2009 OK 15, ¶ 23, 214 P.3d at 807.

Moreover, the different subjects of S.B. 642 (parental consent, statutory rape, licensing and regulation of abortion facilities, draconian criminal and civil sanctions) involve directives to different state actors (State Department of Health; State Bureau of Investigation; Attorney General and district attorneys), in much the same way that the three projects in the legislation at issue in *Oklahoma Capitol Improvement Authority* involved directives to different state actors. And like Initiative Petition 382, which concerned eminent domain and zoning compensation, S.B. 642 was passed amidst a “national discussion on the proper limitations on the power of” the government – in this case to restrict the fundamental right to abortion. *See In re Initiative Petition 382*, 2006 OK 45, ¶ 15, 142 P.3d at 408.

As shown above, Oklahoma courts have repeatedly rejected attempts to satisfy the single subject rule by inventing a broad label to cover multiple-subject bills. The Act’s purported subject of “[a]bortion procedure compliance requirements” is insufficiently narrow to comply with the mandate of article V, section 57 of the Oklahoma Constitution. Consistent with the State’s substantial single subject jurisprudence, S.B. 642 should be struck down as a violation of the Oklahoma Constitution.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant his motion for summary judgment and (1) declare that S.B. 642 violates the single-subject rule of the Oklahoma Constitution, and (2) enter a permanent injunction against its enforcement.

Dated: November 23, 2015

Respectfully submitted,



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**Admitted to practice pro hac vice by order of
the Supreme Court of the State of Oklahoma on
September 28, 2015*

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23rd day of November, 2015, a true and correct copy of the foregoing Motion for Summary Judgment was served via U.S. Mail, postage prepaid, on the following:

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J. Blake Patton, Esq.

EXHIBIT 1

FILED IN DISTRICT COURT
IN THE DISTRICT COURT OF OKLAHOMA, ADAMS COUNTY
STATE OF OKLAHOMA

NOV - 3 2015

TIM RHODES
COURT CLERK

(1) LARRY A. BURNS, D.O.,)
)
 Plaintiff,)
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 v.)
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(2) TERRY L. CLINE, in his official capacity)
 as Oklahoma Commissioner of Health, and)
(3) GREG MASHBURN, in his official)
 capacity as District Attorney for Cleveland,)
 Garvin, and McClain Counties,)
)
 Defendants.)
)

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Case No. CV-2015-2050

Judge Prince

PETITION

Plaintiff Larry A. Burns, D.O., by and through his 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 petition seeks declaratory and injunctive relief from Oklahoma Senate Bill 642, 2015 Okla. Sess. Law Serv. Ch. 387 (West) ("S.B. 642" or "the Act"), which violates the single-subject mandate of article V, section 57, of the Constitution of the State of Oklahoma. A copy of S.B. 642 is attached hereto as Exhibit A.

2. The Act was scheduled to take effect on November 1, 2015. On September 25, 2015, Plaintiff Larry A. Burns, D.O., petitioned the Supreme Court of the State of Oklahoma to assume original jurisdiction and to grant declaratory and injunctive relief barring enforcement of S.B. 642. *Burns v. Cline et al.*, No. 114,312. Defendants in the instant petition were Respondents in the Supreme Court case.



3. On October 13, 2015, Referee Barbara Swimley, for the Supreme Court, heard oral argument concerning whether the Court should assume original jurisdiction over the petition, and whether S.B. 642 was unconstitutional under the single-subject rule.

4. The Supreme Court assumed jurisdiction, and on October 26, 2015 issued an Order (and, subsequently, a Corrected Order) staying enforcement of S.B. 642, initially for 30 days from the date of the Order. The Supreme Court further ordered that, upon filing of the instant petition in Oklahoma County District Court, and upon notice to the Supreme Court of such filing, "the stay shall continue in effect."

5. A copy of the Corrected Order, dated and signed on October 26, 2015 and filed on October 28, 2015, is attached hereto as Exhibit B.

6. Plaintiff is filing in the Supreme Court a "Motion to Stay Pending Litigation in District Court" later today. Attached to that motion will be a file-stamped copy of the instant petition.

7. As set forth below, the Act addresses four separate subjects, in violation of the Oklahoma Constitution. Plaintiff seeks declaratory and injunctive relief from this constitutional violation.

II. JURISDICTION AND VENUE

8. Jurisdiction is conferred on this Court by article VII, section 7(a) of the Oklahoma Constitution.

9. Plaintiff's claims for declaratory and injunctive relief are authorized by sections 1651 and 1381 of title 12 of the Oklahoma Statutes, and by the general equitable powers of this Court.

10. Venue is appropriate under title 12, section 133 of the Oklahoma Statutes

because Defendant Cline has an official residence in Oklahoma County.

III. PARTIES

11. Plaintiff Larry A. Burns, D.O., is a doctor of osteopathic medicine who has been providing safe abortion care in Norman, Oklahoma for over four decades at Abortion Surgery Center, his wholly-owned professional corporation. Dr. Burns provides reproductive health care services to women, including surgical and medication abortions, contraception counseling and services, pregnancy testing, and ultrasounds. Abortion Surgery Center is licensed as an abortion facility by the Oklahoma State Department of Health.

12. Defendant Terry L. Cline is the Oklahoma Commissioner of Health. He oversees the Oklahoma State Department 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.

13. Defendant Greg Mashburn is the District Attorney for Cleveland, Garvin, and McClain counties. He is sued in his official capacity.

14. Both Defendants have a role in the implementation or enforcement of the Act.

IV. THE CHALLENGED STATUTE

15. S.B. 642 was passed by the Legislature and signed by the Governor on June 4, 2015. It contains four separate sections, each of which addresses an entirely different subject. The four sections, respectively, amend title 63, section 1-740.4b, and enact title 63, sections 1-749, 1-749.1, and 1-750 of the Oklahoma Statutes.

16. The Oklahoma Constitution mandates that “Every act of the Legislature shall embrace but one subject, which shall be clearly expressed in its title.” Okla. Const. art. V, §

57. As set forth below, S.B. 642 violates the constitutional prohibition on legislation encompassing multiple subjects.

17. Section 1 of the Act amends the statute that prohibits the use of false or fraudulent documents or representations to evade Oklahoma's requirement that minors seeking an abortion obtain parental consent. S.B. 642 § 1 (codified at 63 O.S. § 1-740.4b). The new provisions further prohibit any person from "aid[ing], abet[ting] or assist[ing]" a minor to obtain an abortion without parental consent, and impose significant civil and criminal penalties. S.B. 642 § 1(A), (D). Section 1 also authorizes the Attorney General, a district attorney, "or any person adversely affected or who reasonably may be adversely affected by such conduct" to enjoin a minor from obtaining an abortion. S.B. 642 § 1(E).

18. Section 2 of the Act creates a new section of the code, 63 O.S. § 1-749, that requires the Oklahoma State Bureau of Investigation to collect fetal tissue recovered from an abortion performed on a minor under the age of 14, for rape investigations. S.B. 642 § 2(A). The Bureau of Investigation is required, under section 2, to promulgate regulations governing the amount and type of tissue to be preserved, the means of preservation of tissue for DNA testing, the documentation of the chain of custody, the creation of forms to collect information, and procedures for tissue disposal. S.B. 642 § 2(A), (B).

19. Section 3 creates a new statutory scheme for the licensing and inspection of abortion facilities. S.B. 642 § 3 (codified at 63 O.S. § 1-749.1). Under this new scheme, the State Board of Health is directed to establish policies and procedures for pre-licensure and re-licensure inspections of abortion facilities, S.B. 642 § 3(A) and to promulgate rules for conducting inspections and investigations pursuant to complaints against abortion facilities, S.B. 642 § 3(B). It also directs the State Department of Health to conduct on-site inspections

before issuing or re-issuing a license. S.B. 642 § 3(A), (B). Section 3 of the Act subjects abortion facilities to unannounced searches, S.B. 642 § 3(C), and deems the facility's application for a license to "constitute[] permission for, and complete acquiescence in, an entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license." S.B. 642 § 3(D).

20. Section 4 is a new catch-all provision. S.B. 642 § 4 (codified at 63 O.S. §1-750). It provides that a "person who intentionally, knowingly or recklessly violates any provision or requirement of this act, Section 1-729a *et seq.* of Title 63 of the Oklahoma Statutes or any rule or regulation adopted under Section 1-729a *et seq.* of Title 63 of the Oklahoma Statutes is guilty of a felony." S.B. 642 § 4(A). It is unclear which precise statutes are included within the term "*et seq.*"

21. It is also unclear whether the State will assert that Section 4 should be read as establishing that an intentional, knowing, or reckless violation of any and all of the abortion statutes starting at Section 1-729a and extending through to Section 1-750 (*i.e.*, more than 140 sections) are to be punished as felonies, an interpretation of the Act that would raise serious constitutional concerns because it would impose felony penalties for, *inter alia*, posting required signage in large but not boldfaced type, or for submitting a form to the Department of Health several days late. *See* 63 O.S. § 1-737.4(B) ("sign required . . . shall be printed with lettering that is legible and shall be at least three-quarters-of-an-inch boldfaced type"); *id.* § 1-738k(C) ("Any physician performing abortions shall fully complete and submit, electronically, an Individual Abortion Form to the State Department of Health by the last business day of the calendar month following the month in which the physician performs an abortion, for each abortion the physician performs.").

22. Additionally, Section 4 provides that any violations of “Section 1-729a *et seq.*” are punishable by penalties and fines up to \$100,000 per day of violation, S.B. 642 § 4(C), and that any person who violates Section 1-729a *et seq.* is “civilly liable to the person or persons adversely affected by the violation or violations,” including damages for psychological and emotional harm and punitive damages. S.B. 642 § 4(G).

23. The hodgepodge character of S.B. 642 stems from its likely origin. Some of the provisions appear to have been lifted from the annual report of the anti-abortion group Americans United for Life (“AUL”). In its annual report, AUL reviewed the existing and recently-passed abortion-related legislation in Oklahoma and recommended that Oklahoma adopt measures related to “evidence retention and remedies for third-party interference with parental rights” and “[e]nhanced penalties and enforcement mechanisms for the state’s abortion-related laws.”¹ Significant portions of the Act’s language are drawn directly from at least two different pieces of AUL model legislation. The Legislature seems to have adopted AUL’s various recommendations in one single bill.²

24. The Act clearly violates the single-subject rule because it encompasses four different subjects: prohibited conduct regarding minors and parental consent for abortion; tissue collection and analysis for statutory rape investigations; inspection and licensing of clinics; and imposition of criminal and civil liability for, potentially, any infraction of the

¹ Americans United for Life, *Defending Life 2015: State Cards—Oklahoma*, 6 (2015), http://aul.org/downloads/defending-life-2015/state-cards/AUL2015_OK.pdf.

² Americans United for Life, *Oklahoma Expands Enforcement Options for Abortion Law Violations, Creates Legal Standards to Hold Sex Offenders Accountable Requiring Abortionists to Protect Young Girls* (June 5, 2015), <http://www.aul.org/2015/06/oklahoma-expands-enforcement-options-for-abortion-law-violations-creates-legal-standards-to-hold-sex-offenders-accountable-requiring-abortionists-to-protect-young-girls/>.

abortion regulations. These multiple subjects are not germane, relative, and cognate to a readily apparent common theme and purpose.

25. Although each provision relates to regulating abortion directly or tangentially, a legislator could reasonably be in favor of tissue preservation for statutory rape investigations, without supporting a potentially draconian expansion of criminal and civil liability for physicians and office staff employed by abortion facilities. Thus, the passage of S.B. 642 was the result of classic logrolling, in violation of the single-subject mandate of the Constitution.

26. Plaintiff seeks (a) a declaration that the Act is unconstitutional, void, and of no effect, and (b) a permanent injunction to ensure that Defendants may not enforce it.

V. CLAIMS FOR RELIEF

First Claim for Relief (Single-Subject Law)

27. The allegations of paragraphs 1 through 26 are incorporated as though fully set forth herein.

28. S.B. 642 violates article V, section 57 of the Oklahoma Constitution because it addresses more than one subject.

Second Claim for Relief (Declaratory Judgment – Unconstitutional and Void)

29. The allegations of paragraphs 1 through 26 are incorporated as though fully set forth herein.

30. Because the Act violates 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 Act is unconstitutional and void. 12 O.S. § 1651.

Third Claim for Relief
(Permanent Injunction)

31. The allegations of paragraphs 1 through 26 are incorporated as though set forth herein.

32. Because the Act violates the Oklahoma Constitution, warranting a declaratory judgment stating that the Act is unconstitutional and void, Defendants should be permanently enjoined from enforcing the Act.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

33. Issue a declaratory judgment that S.B. 642 violates the Oklahoma Constitution and is void and of no effect; and

34. Issue permanent injunctive relief, without bond, restraining Defendants, their employees, agents, and successors in office from enforcing S.B. 642; and

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

Dated: November 3, 2015

Respectfully submitted,



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New York, NY 10038
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Fax: (917) 637-3666
Email: ijaroslaw@reprorights.org

**Admitted to practice pro hac vice by order of
the Supreme Court of the State of Oklahoma on
September 28, 2015*

ATTORNEYS FOR PETITIONER


CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of November, 2015, a true and correct copy of the foregoing Petition was served via process server on the following:

Oklahoma Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

Terry L. Cline
Oklahoma Commissioner of Health
Oklahoma State Department of Health
1000 NE 10th Street
Oklahoma City, OK 73117

District Attorney Greg Mashburn
201 S Jones Avenue #300
Norman, OK 73069



J. Blake Patton, Esq.

Exhibit A

An Act

ENROLLED SENATE
BILL NO. 642

By: Treat, Shortey, Newberry,
and Sharp of the Senate

and

Grau and Ritze of the House

An Act relating to abortion; amending 63 O.S. 2011, Section 1-740.4b, which relates to unlawful acts; broadening grounds for certain unlawful acts; providing for civil liability; permitting awarding of damages for certain violations; specifying grounds for violations; authorizing certain awards for costs and damages; providing certain exclusion; permitting courts to enjoin certain conduct; specifying grounds for certain injunction; requiring physicians to preserve and submit fetal tissue under certain circumstances; providing standards for rules; providing punishments for violations; requiring State Board of Health to establish certain policies and procedures and to promulgate rules; requiring inspections of certain facilities prior to issuance or reissuance of certain license; permitting State Commissioner of Health and designated personnel to enter and inspect certain facilities; providing acquiescence by certain entities for certain purposes; permitting State Commissioner of Health to take certain actions for certain violations; establishing certain felony; providing exemption for certain persons; providing civil penalty; providing that each day of violation constitutes a separate violation; providing certain standards for use by courts in determining imposition of fines; permitting Attorney General and district attorneys to institute legal action for certain purposes; providing for civil liability; stating types of damages that may be awarded; providing for severability; clarifying

references; clarifying language; providing for codification; and providing an effective date.

SUBJECT: Abortion procedure compliance requirements

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-740.4b, is amended to read as follows:

Section 1-740.4b. A. A person who knowingly or recklessly uses a false governmental record or makes a fraudulent representation or statement in order to obtain an abortion for a minor in violation of this act title or intentionally causes, aids, abets or assists an unemancipated minor to obtain an abortion without the consent required by Section 1-740.2 of this title commits a felony.

B. A physician who intentionally or knowingly performs an abortion on a pregnant unemancipated minor in violation of this act title commits a felony.

C. 1. It is a defense to prosecution under subsection B of this section if the person falsely representing himself or herself as the parent or guardian of the minor displayed an apparently valid governmental record of identification such that a reasonable person, under similar circumstances, would have relied on the representation.

2. The defense does not apply if the physician, or agent of the physician, failed to use due diligence in determining the age of the minor or the identity of the person represented as the parent or guardian of the minor.

D. ~~An unemancipated minor, or the parent of the minor, upon whom an abortion has been performed, or attempted to be performed, without complying with this act may maintain a cause of action against the person who performed, or attempted to perform, the abortion~~ A person who knowingly or recklessly uses a false governmental record or makes a fraudulent representation or

statement in order to obtain an abortion for a minor in violation of this title or intentionally causes, aids, abets or assists an unemancipated minor to obtain an abortion without the consent required by Section 1-740.2 of this title or any physician who intentionally or knowingly performs an abortion on a pregnant unemancipated minor in violation of this title shall be civilly liable to the minor and to the person or persons required to give consent pursuant to the provisions of Section 1-740.2 of this title. A court may award damages to the person or persons adversely affected by a violation of this section including compensation for emotional injury without the need for personal presence at the act or event, and the court may further award attorney fees, litigation costs, and punitive damages. Any adult who engages in or consents to another person engaging in a sexual act with a minor, which results in the minor's pregnancy, shall not be awarded damages under this section.

E. A court of competent jurisdiction may enjoin conduct that would be in violation of this section upon petition by the Attorney General, a district attorney or any person adversely affected or who reasonably may be adversely affected by such conduct, upon a showing that such conduct:

1. Is reasonably anticipated to occur in the future; or
2. Has occurred in the past, whether with the same minor or others, and that it is reasonably expected to be repeated.

E- F. It is not a defense to a claim brought pursuant to this section that the minor gave informed and voluntary consent.

F- G. An unemancipated minor does not have the capacity to consent to any action that violates this ~~act~~ title.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-749 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any physician who performs an abortion on a minor who is less than fourteen (14) years of age at the time of the abortion shall preserve, in accordance with rules promulgated by the Oklahoma State Bureau of Investigation, fetal tissue extracted during such

abortion. The physician shall submit the tissue to the Oklahoma State Bureau of Investigation.

B. The Oklahoma State Bureau of Investigation shall adopt rules to implement the provisions of this section. Such rules shall contain, at a minimum:

1. The amount and type of fetal tissue to be preserved and submitted by a physician pursuant to the provisions of this section;

2. Procedures for the proper preservation of such tissue for the purposes of DNA testing and examination;

3. Procedures for documenting the chain of custody of such tissue for use as evidence;

4. Procedures for the proper disposal of fetal tissue preserved pursuant to this section;

5. A uniform reporting form mandated to be utilized by physicians when submitting fetal tissue under this section, which shall include the name and address of the physician submitting the fetal tissue and the name and complete address of residence of the parent or legal guardian of the minor upon whom the abortion was performed; and

6. Procedures for communication with law enforcement regarding evidence and information obtained pursuant to this section.

C. Failure of a physician to comply with any requirement of this section or any rule adopted thereunder:

1. Shall constitute unprofessional conduct pursuant to the provisions of Section 509 of Title 59 of the Oklahoma Statutes; and

2. Is a felony.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-749.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health shall establish policies and procedures for conducting pre-licensure and re-licensure inspections of abortion facilities. Prior to issuing or reissuing a license, the Department shall conduct an on-site inspection to ensure compliance with the rules promulgated by the Board.

B. The Board shall promulgate rules for conducting inspections and investigations pursuant to complaints received by the State Department of Health and made against any abortion facility. The Department shall receive, record, and dispose of complaints in accordance with established policies and procedures.

C. If the State Commissioner of Health determines that there is reasonable cause to believe a licensee, licensed abortion facility or abortion facility that is required to be licensed in this state is not adhering to the requirements of Section 1-729a et seq. of Title 63 of the Oklahoma Statutes, local fire ordinances or rules or any other law, administrative rule or regulation relating to abortion, the Commissioner and any duly designated employee or agent of the Commissioner including employees of county or city-county health departments and county or municipal fire inspectors, consistent with standard medical practices, may enter on and into the premises of the licensee, licensed abortion facility or abortion facility that is required to be licensed in this state during regular business hours of the licensee or abortion facility to determine compliance with the provisions of Section 1-729a et seq. of Title 63 of the Oklahoma Statutes, local fire ordinances or rules, and any other law, administrative rule or regulation relating to abortion.

D. An application for a license to operate a private office, freestanding outpatient clinic or other facility or clinic in which abortions are performed constitutes permission for, and complete acquiescence in, an entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license.

E. If an inspection or investigation conducted pursuant to this section reveals that an applicant, licensee or licensed abortion facility is not adhering to the requirements of this section, the provisions of Title 1-729a et seq. of Title 63 of the Oklahoma Statutes, local fire ordinances or rules and any other law,

administrative rule or regulation relating to abortion, the Commissioner may take action to deny, suspend, revoke or refuse to renew a license to operate an abortion facility.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-750 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A person who intentionally, knowingly or recklessly violates any provision or requirement of this act, Section 1-729a et seq. of Title 63 of the Oklahoma Statutes or any rule or regulation adopted under Section 1-729a et seq. of Title 63 of the Oklahoma Statutes is guilty of a felony.

B. No criminal penalty may be assessed against the pregnant woman upon whom the abortion is performed for a violation of any provision or requirement of this act, Section 1-729a et seq. of Title 63 of the Oklahoma Statutes or any rule or regulation adopted under Section 1-729a et seq. of Title 63 of the Oklahoma Statutes.

C. Any violation of this act, Section 1-729a et seq. of Title 63 of the Oklahoma Statutes or any rule or regulation adopted under Section 1-729a et seq. of Title 63 of the Oklahoma Statutes may be subject to a civil penalty or a fine up to One Hundred Thousand Dollars (\$100,000.00).

D. Each day of violation shall constitute a separate violation for purposes of assessing civil penalties or fines.

E. In deciding whether and to what extent to impose fines, a court shall consider the:

1. Gravity of the violation or violations including the probability that death or serious physical harm to a patient or individual will result or has resulted;
2. Size of the population at risk as a consequence of the violation or violations;
3. Severity and scope of the actual or potential harm;

4. Extent to which the provisions of the applicable statutes or regulations were violated;

5. Indications of good faith exercised by the licensee, abortion facility or the person performing the abortion;

6. Duration, frequency, and relevance of any previous violations committed by the licensee, abortion facility or person performing the abortion; and

7. Financial benefit to the abortion facility or person performing the abortion from committing or continuing the violation or violations.

F. The Office of the Attorney General and a district attorney for the county in which the violation or violations occurred may institute a legal action to enforce collection of civil penalties or fines.

G. Any person who violates this act, Section 1-729a et seq. of Title 63 of the Oklahoma Statutes or any rule or regulation adopted under Section 1-729a et seq. of Title 63 of the Oklahoma Statutes shall be civilly liable to the person or persons adversely affected by the violation or violations. A court may award damages to the person or persons adversely affected by any violation of this act, Section 1-729a et seq. of Title 63 of the Oklahoma Statutes or any rule or regulation adopted under Section 1-729a et seq. of Title 63 of the Oklahoma Statutes including compensation for emotional, physical, and psychological harm; attorney fees, litigation costs, and punitive damages.

H. The provisions of this act are severable, and if any part or provision shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

I. If some or all of the newly amended provisions of this act resulting from the actions taken by the 2015 Session of the Oklahoma Legislature are ever temporarily or permanently restrained or enjoined by judicial order, this act 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.

J. The Oklahoma State Bureau of Investigation and the State Board of Health shall promulgate rules to implement the provisions of this act.

SECTION 5. This act shall become effective November 1, 2015.

Passed the Senate the 22nd day of May, 2015.

Arthur D. Little
Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of May, 2015.

Lee R. Doney
Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 22nd
day of May, 20 15, at 8:08 o'clock P M.
By: Audrey Lockwell

Approved by the Governor of the State of Oklahoma this 4th
day of June, 20 15, at 3:04 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 4th
day of June, 20 15, at 5:19 o'clock P M.
By: Chris Messersmith

Exhibit B



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

LARRY A. BURNS, D.O.,)
)
 Petitioner,)
)
 v.)
)
 TERRY L. CLINE, in his official capacity)
 capacity as Oklahoma Commissioner of)
 Health and GREG MASHBURN, in his)
 official capacity as District Attorney for)
 Cleveland, Garvin and McClain Counties,)
)
 Respondents.)

No. 114,312

FILED
SUPREME COURT
STATE OF OKLAHOMA

OCT 28 2015

MICHAEL S. RICHIE
CLERK

Rec'd (date)	10/28/15
Posted	✓
Mailed	✓
Distrib	✓
Publish	yes <input checked="" type="checkbox"/> no <input type="checkbox"/>

CORRECTED ORDER

Original jurisdiction is assumed. The enforcement of Senate Bill 642, which amends 63 O.S. §1-740.4b, and enacts 63 O.S. §§1-749, 1-749.1 and 1-750, is stayed for 30 days from the date of this order. If, within that 30 days, the petitioner files a petition for declaratory and injunctive relief in the Oklahoma County District Court, and notifies this Court of the filing of the petition, the stay shall continue in effect. If no petition is filed, the stay shall be dissolved.

This Court does not express any opinion on the constitutionality of Senate Bill 642 at this time.

DONE BY THE ORDER OF THE SUPREME COURT IN CONFERENCE
 THIS 26th DAY OF OCTOBER, 2015.

CHIEF JUSTICE

ALL JUSTICES CONCUR

EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

SUPREME COURT
STATE OF OKLAHOMA

SEP 25 2015

MICHAEL E. RICHIE
CLERK

(1) LARRY A. BURNS, D.O.,)
)
 Petitioner,)
)
 v.)
)
 (2) TERRY L. CLINE, in his official capacity)
 as Oklahoma Commissioner of Health, and)
 (3) GREG MASHBURN, in his official)
 capacity as District Attorney for Cleveland,)
 Garvin, and McClain Counties,)
)
 Respondents.)
)

#11431 2

No. _____

**APPLICATION TO ASSUME ORIGINAL JURISDICTION
AND PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

I. Introduction

1. By this application to assume original jurisdiction and petition for declaratory and injunctive relief, Petitioner respectfully requests this Court to take up an urgent question of public importance: whether Senate Bill 642, 2015 Okla. Sess. Law Serv. Ch. 387 (West) (“S.B. 642” or “the Act”) is unconstitutional as a violation of the Oklahoma Constitution’s single subject rule and should be declared void and of no effect and permanently enjoined.

2. The Act imposes four different sets of requirements or restrictions on abortion providers in Oklahoma, each of which involves a separate subject.

3. Petitioner seeks expedited consideration of this matter because the Act is scheduled to take effect on November 1, 2015. See S.B. 642 § 5. Should the Act take effect,



it will have an immediate and detrimental impact on Petitioner Dr. Burns and on the provision of abortion services in the state of Oklahoma.

4. Petitioner is Larry A. Burns, D.O. Dr. Burns is a doctor of osteopathic medicine who has been providing safe abortion care in Norman, Oklahoma for over four decades.

5. Respondents are Terry L. Cline, in his official capacity as Oklahoma Commissioner of Health, and Greg Mashburn, in his official capacity as District Attorney for Cleveland, Garvin, and McClain counties. Both Respondents have a role in the implementation or enforcement of the Act.

II. This Court Should Assume Original Jurisdiction Because the Case Presents an Urgent Matter of Great Public Interest

6. This Court has the power to exercise original jurisdiction in this matter pursuant to Section 4, Article 7 of the Oklahoma Constitution, and Supreme Court Rule 1.191. *See also Ethics Comm'n of State of Okla. v. Cullison*, 1993 OK 37, 850 P.2d 1069, 1073 (“This Court has the jurisdiction to provide declaratory relief so as to afford a party a means to vindicate a judicially cognizable interest.”); *State ex rel. Trapp v. Chambers*, 1923 OK 943, 220 P. 890 (establishing that the Supreme Court has the power to issue injunctions in support of its decisions).

7. This case has been brought as an original action for declaratory and injunctive relief in the Supreme Court because it meets the Court’s criteria for such actions: it involves an urgent matter of public interest. *See Edmondson v. Pearce*, 2004 OK 23, ¶¶ 10–11, 91 P.3d 605, 613–14 (citations omitted).

8. The question to be addressed in determining whether the matter concerns the public interest is whether it affects the people or community at large. *Id.* ¶ 11, 91 P.3d at 613.

9. This case affects the people of Oklahoma and the community at large because whether the Act is enforced will impact the ability of physicians and clinics to provide, and women to receive, safe and legal abortion care in the state of Oklahoma. Abortion is the subject of vigorous debate and concern among the public in Oklahoma and nationally, and it is frequently the subject of legislation and litigation.

10. There is also “some urgency or pressing need for an early decision.” *Id.* Without judicial intervention, the Act will take effect on November 1, 2015, with immediate consequences for doctors, clinics, and several state agencies. If the Act takes effect, it will subject all those affected (individuals, agencies, etc.) to a set of requirements that were adopted in an unconstitutional manner, in violation of the single subject rule. Further, the criminal and civil consequences for violations of even minor requirements of the abortion code may dramatically increase overnight. Abortion clinics will also be subject to an overbroad inspection scheme for licensing, with Petitioner afforded no meaningful procedural protections.

11. This case also involves a pure question of constitutional law: whether the Oklahoma Legislature violated the single subject rule, Okla. Const. art. V, § 57, in passing the Act. This narrow but urgent question of significant public interest can be resolved efficiently and swiftly in this Court. *Cf. Ethics Comm’n of Okla. v. Cullison*, 1993 OK 37, 850 P.2d 1069, 1080 (declining to take original jurisdiction of a “highly fact-specific claim”).

III. Petitioner Seeks Declaratory and Injunctive Relief

12. The remedy or relief sought in this action, should the Court accept jurisdiction, is declaratory and injunctive relief. See *Okla. State Chiropractic Indep. Physicians Ass'n v. Fallin*, 2011 OK 102, ¶ 3, 290 P.3d 1, 3 (declaratory relief may be sought in an original action); *Edmondson*, 2004 OK 23, ¶ 11–16 91 P.3d 605, 614–15 (same); *State ex rel. Trapp*, 1923 OK 943, 220 P. 890 (Supreme Court has authority to issue injunctions in an original action); 6 Okla. App. Prac. § 22:71 (2014 ed.) (same).

13. Because the Act is an unconstitutional violation of the prohibition on legislation encompassing multiple subjects, Petitioner seeks a declaration that the Act is unconstitutional, void, and of no effect, and a permanent injunction to ensure that Respondents may not enforce it.

IV. The Act Violates the Single Subject Rule and Is Unconstitutional

14. The Oklahoma Constitution mandates that “Every act of the Legislature shall embrace but one subject, which shall be clearly expressed in its title.” Okla. Const. art. V, § 57.

15. Oklahoma courts apply a “germaneness” test to determine whether an act complies with the single-subject rule, which requires that the various provisions of a statute be germane, relative, and cognate to a readily apparent common theme or purpose. See *Douglas v. Cox Ret. Props., Inc.*, 2013 OK 37, ¶ 6, 302 P.3d 789, 792–93; *Nova Health Sys. v. Edmonson*, 2010 OK 21, ¶ 1, 244 P.3d 380, 382; *In re Initiative Petition No. 382*, 2006 OK 45, ¶ 9, 142 P.3d 400, 405.

16. The Act violates the single subject rule because it encompasses four different subjects in that it does the following: it (1) expands the scope of existing law that makes it a

crime to assist a minor to obtain an abortion in violation of the laws related to parental consent; (2) requires abortion providers to preserve fetal tissue from a procedure performed on a minor under 14 and submit the tissue to the Oklahoma State Bureau of Investigation; (3) requires the Department of Health to establish policies and procedures for licensing-related inspections, and for inspections and investigations pursuant to complaints, with broad authority to enter and inspect an abortion facility; and (4) arguably establishes broad criminal and civil penalties as well as civil liability for violation of a broad swath of abortion statutes.

17. Each section deals with a different topic: minors and parental consent; tissue preservation; inspection and investigation of clinics; and criminal and civil liability for abortion providers. The Act constitutes a facial, *per se* violation of the single-subject rule. It contains multiple subjects that are not “germane, relative, and cognate to a readily apparent common theme and purpose.” See *Davis v. Edmonson*, No. CJ-2009-9154, 2010 WL 1734636 (Dist. Ct. Okla. Cty. Mar. 2, 2010).

18. The Act directs three sets of state actors (the Oklahoma State Bureau of Investigation; the Department of Health; and the Attorney General and district attorneys) to implement new policies and procedures for different purposes under different sections, in contravention of the single subject mandate of the Oklahoma Constitution. See *Fent v. State ex rel. Okla. Capitol Improvement Auth.*, 2009 OK 15, ¶¶ 11, 23, 214 P.3d 799, 803, 807 (holding that because the challenged statute authorized three separate bonds to three separate entities with three separate purposes, it was “quintessential logrolling,” such that those voting on the law would be faced with “an unpalatable all-or-nothing choice”).

19. Although each provision relates to regulating abortion in some manner, a legislator could reasonably be in favor of tissue preservation for statutory rape investigations, without supporting a potentially draconian expansion of criminal and civil liability for physicians and office staff employed by abortion facilities. See *Douglas*, 2013 OK 37, ¶¶ 10–11, 302 P.3d at 793–94; *Nova Health Sys.*, 2010 OK 21, ¶ 1, 233 P.3d at 382; *Davis*, 2010 WL 1734636.

20. It is not surprising that the Act encompasses several subjects when its origins are considered. The Act adopts several of the recommendations of the anti-abortion group Americans United for Life that were included in its annual report related to the state of Oklahoma. Americans United for Life in its report reviewed the existing and recently-passed abortion-related legislation in Oklahoma, and then specifically recommended that Oklahoma adopt measures related to “evidence retention and remedies for third-party interference with parental rights” and “[e]nhanced penalties and enforcement mechanisms for the state’s abortion-related laws.”¹ The Act appears to be an effort to take each of these recommendations and adopt them in one single bill. In fact, significant portions of the Act’s language are drawn directly from at least two different pieces of Americans United for Life model legislation.²

¹ Americans United for Life, *Defending Life 2015: State Cards—Oklahoma*, 6 (2015), http://aul.org/downloads/defending-life-2015/state-cards/AUL2015_OK.pdf.

² Americans United for Life, *Oklahoma Expands Enforcement Options for Abortion Law Violations, Creates Legal Standards to Hold Sex Offenders Accountable Requiring Abortionists to Protect Young Girls*, (June 5, 2015), <http://www.aul.org/2015/06/oklahoma-expands-enforcement-options-for-abortion-law-violations-creates-legal-standards-to-hold-sex-offenders-accountable-requiring-abortionists-to-protect-young-girls/>.

21. As this Court has previously explained, such clear violations of the Oklahoma Constitution's requirement that all legislative acts embrace but one subject are "a waste of time for the Legislature and the Court, and a waste of the taxpayer's money." *Nova Health Sys.*, 2010 OK 21, ¶ 1, 233 P.3d at 381-82.

V. Conclusion

In light of the foregoing, and for the reasons explained in the attached brief, Petitioner respectfully requests that this Court, on an expedited basis, assume original jurisdiction and grant relief in the form of a declaration that the Act is unconstitutional, void, and of no effect and a permanent injunction to block its enforcement.

Respectfully submitted,



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**Application for admission to practice filed concurrently.*

ATTORNEYS FOR PETITIONER


CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of September, 2015, a true and correct copy of the foregoing Application to Assume Original Jurisdiction and Petition for Declaratory and Injunctive Relief was served via process server on the following:

Oklahoma Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

Terry L. Cline
Oklahoma Commissioner of Health
Oklahoma State Department of Health
1000 NE 10th Street
Oklahoma City, OK 73117

District Attorney Greg Mashburn
201 S Jones Avenue #300
Norman, OK 73069



I. Blake Patton, Esq.

EXHIBIT 3

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ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

NOV 16 2015

MICHAEL S. RICHIE
CLERK OF
THE APPELLATE COURTS

LARRY A. BURNS, D.O.,)
)
 Petitioner,)
)
 v.)
)
 TERRY L. CLINE, in his official capacity)
 as Oklahoma Commissioner of Health, and)
 GREG MASHBURN, in his official capacity)
 as District Attorney for Cleveland, Garvin)
 and McClain Counties,)
)
 Respondents.)

No. 114,312

Rec'd (date)	11-16-15
Posted	<i>[Signature]</i>
Mailed	<i>[Signature]</i>
Distrib	<i>[Signature]</i>
Publish	yes <i>[Signature]</i>

ORDER

Petitioner's motion to continue stay in effect is granted. The Court notes that petitioner has filed a petition in the Oklahoma County District Court on November 3, 2015, in *Burns v. Cline*, case no. CV-2015-2050. This Court's stay of the enforcement of Senate Bill 642 remains in effect until further order from this Court.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE
THIS 16th DAY OF NOVEMBER, 2015.

[Signature]

CHIEF JUSTICE

ALL JUSTICES CONCUR



EXHIBIT 4

4. In my medical practice at Abortion Surgery Center, I provide reproductive health care services to women, including first-trimester surgical and medication abortions, contraception counseling and services, pregnancy testing, and ultrasounds.

Larry A. Burns, D.O.
Larry A. Burns, D.O.

Sworn to before me this 19
day of November, 2015.

Deborah Lee Burns
NOTARY PUBLIC

