



ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA
SEP 25 2015
MICHAEL S. RICHIE
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

(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.)

No. #11431 2



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.*

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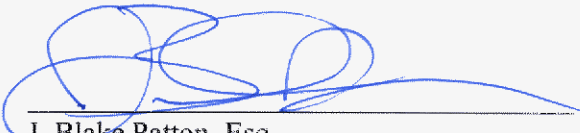
CERTIFICATE OF SERVICE

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:

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