



ORIGINAL

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SUPREME COURT
STATE OF OKLAHOMA

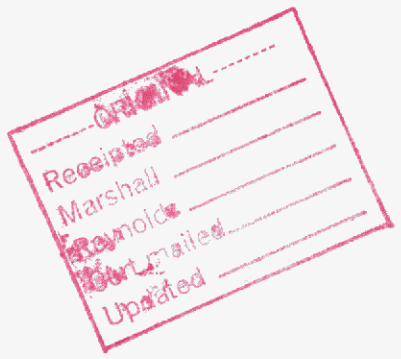
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

SEP 25 2015

MICHAEL S. RICHIE
CLERK

(1) LARRY A. BURNS, D.O., on behalf of)
 himself and his patients,)
)
 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**



**BRIEF IN SUPPORT OF APPLICATION TO
ASSUME ORIGINAL JURISDICTION AND
PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

TABLE OF CONTENTS

I. Introduction 1

II. The Challenged Statute 1

III. The Court Should Assume Original Jurisdiction Because the Case Presents
an Issue of Extraordinary Public Interest and Great Urgency 4

 A. Original Jurisdiction 4

 B. The Specter of Enforcement of an Unconstitutional Law is a Matter of
 Great Public Importance 5

 C. Declarative and Injunctive Relief Against S.B. 642 is a Matter of Great
 Urgency 7

IV. The Act is Constitutionally Infirm as a Flagrant Violation of the Single
Subject Rule 8

V. Declaratory and Injunctive Relief is Warranted 12

VI. Conclusion 15

TABLE OF AUTHORITIES

CASES

<i>Campbell v. White</i> , 1993 OK 89, 856 P.2d 255	6
<i>Daffin v. State ex rel. Okla. Dep't of Mines</i> , 2011 OK 22, 251 P.3d 741	13
<i>Davis v. Edmondson</i> , No. CJ-2009-9154, 2010 WL 1734636 (Dist. Ct. Okla. Cty. Mar. 2, 2010)	10, 12
<i>Douglas v. Cox Ret. Props., Inc.</i> , 2013 OK 37, 302 P.3d 789	9, 12
<i>Dowell v. Pletcher</i> , 2013 OK 50, 304 P.3d 457	13
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	14
<i>Edmondson v. Pearce</i> , 2004 OK 23, 91 P.3d 605	4, 5, 13
<i>Entm't Merchs. Ass'n v. Henry</i> , No. CIV-06-675-C, 2006 WL 2927884 (W.D. Okla. 2006)	15
<i>Fent v. Fallin</i> , 2013 OK 107, 315 P.3d 1023	1, 7
<i>Fent v. State ex rel. Okla. Capitol Improvement Auth.</i> , 2009 OK 15, 214 P.3d 799	10, 11, 12
<i>Halstead v. McHendry</i> , 1977 OK 131, 566 P.2d 134	5
<i>In re Initiative Petition No. 382</i> , 2006 OK 45, 142 P.3d 400	9, 10, 11, 12
<i>Johnson v. Walters</i> , 1991 OK 107, 819 P.2d 694	6
<i>Keating v. Johnson</i> , 1996 OK 61, 918 P.2d 51	5
<i>Kikumura v. Hurley</i> , 242 F.3d 950 (10th Cir. 2001)	14
<i>Nova Health Sys. v. Edmonson</i> , 2010 OK 21, 244 P.3d 380	9, 10, 12
<i>Okla. Coal. for Reprod. Justice v. Okla. State Bd. of Pharm.</i> , No. CV-2013-1640, 2014 WL 585353 (Dist. Ct. Okla. Cty. Jan. 29, 2014)	10
<i>Okla. Pub. Emps. Ass'n v. Okla. Military Dep't</i> , 2014 OK 48, 330 P.3d 497	13, 14
<i>Okla. State Chiropractic Indep. Physicians Ass'n v. Fallin</i> , 2011 OK 102, 290 P.3d 1	13

<i>Phillips v. Okla. Tax Comm'n</i> , 1978 OK 34, 577 P.2d 1278	5, 6
<i>Post Oak Oil Co. v. Okla. Tax Comm'n</i> , 1978 OK 20, 575 P.2d 964.....	5
<i>State ex. rel. Babb v. Mathews</i> , 1928 OK 751, 273 P. 352.....	5
<i>State ex rel. Trapp v. Chambers</i> , 1923 OK 943, 220 P. 890.....	13
<i>Tulsa Order of Police Lodge No. 93 v. City of Tulsa</i> , 2001 OK CIV APP 153, 39 P.3d 152	14

OKLAHOMA CONSTITUTION AND STATUTES

OKLA. CONST. art II, § 22.....	2
OKLA. CONST. art. V, § 57	1, 6, 8, 12
OKLA. CONST. art. V, § 56	6
2015 Okla. Sess. Law Serv. Ch. 387 (West) (Senate Bill 642)	<i>passim</i>
63 O.S. § 1-729a <i>et seq.</i>	3
63 O.S. § 1-737.4	7
63 O.S. § 1-737.4(B)	3
63 O.S. § 1-738k(C).....	3, 7
63 O.S. § 1-740.4b	1
63 O.S. § 1-749	1, 2
63 O.S. § 1-749.1	1, 2
63 O.S. § 1-750	1, 3

OTHER AUTHORITIES:

Americans United for Life, <i>Defending Life 2015: State Cards—Oklahoma</i> , 6 (2015), http://aul.org/downloads/defending-life-2015/state-cards/AUL_2015_OK.pdf	4
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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/>4

I. Introduction

Contrary to the mandate of the Oklahoma Constitution and the unequivocal authority of the Court's precedents, the Oklahoma Legislature passed a law last session that contravenes the State's single subject rule, Okla. Const. art. V, § 57. As a result, Petitioner brings this original matter before the Court to challenge the constitutionality of this law, Oklahoma Senate Bill 642, 2015 Okla. Sess. Law Serv. Ch. 387 (West) (to be codified at 63 O.S. §§ 1-740.4b, 1-749, 1-749.1, 1-750) ("S.B. 642" or "the Act"). The Act addresses multiple subjects ranging from new procedures related to abortion for minors under 14, to licensing and inspection of abortion facilities, to creating a new categories of civil and criminal liability for various sections of the abortion code. Enforcing the Act will require rule-making by two separate state agencies—the State Bureau of Investigation and the Department of Health. The Act was signed into law by the Governor on June 4, 2015 and has an effective date of November 1, 2015. S.B. 642 § 5.

Less than two years ago, this Court assumed original jurisdiction and issued declaratory relief from a statute that violated the single subject rule. *See Fent v. Fallin*, 2013 OK 107, 315 P.3d 1023. Given that similar constitutional considerations are at stake here, Petitioner respectfully requests this Court to exercise its discretion to assume original jurisdiction and grant declaratory and injunctive relief in this matter.

II. The Challenged Statute

The Act has four separate sections, each of which addresses an entirely different subject. Section 1 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 (to be 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,¹ 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 the 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 physicians to preserve fetal tissue recovered from an abortion performed on a minor under the age of 14. S.B. 642 § 2(A). Section 2 also delegates rule-making and implementation to the Oklahoma State Bureau of Investigation to govern the amount and type of tissue to be preserved, the preservation of tissue for DNA testing, the documentation of chain of custody, the creation of forms to collect information, and procedures for disposal. S.B. 642 § 2(A), (B).

Section 3 creates an entirely new statutory scheme providing for the licensing and inspection of abortion facilities. S.B. 642 § 3 (to be codified at 63 O.S. § 1-749.1). Under this new scheme, the State Department of Health is directed to establish policies and procedures for pre-licensure and re-licensure inspections of abortion facilities, S.B. 642 § 3(A), to promulgate rules for conducting inspections and investigations pursuant to complaints against abortion facilities, S.B. 642 § 3(B), and to conduct on-site inspections before issuing or re-issuing a license. S.B. 642 § 3(A). Section 3 of the Act subjects abortion facilities to unannounced searches, and deems the facility’s application for a license to “constitute[] permission for, and complete acquiescence in, an entry or inspection of the

¹ On its face, this provision potentially implicates the “liberty of speech” guaranteed to Oklahoma citizens in Article II, Section 22 of the Oklahoma Constitution.

premises during the pendency of the application and, if licensed, during the term of the license.” S.B. 642 § 3(C), (D).

Section 4 is a new catch-all provision. S.B. 642 § 4 (to be 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.*”

Petitioner is uncertain if 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 raise serious constitutional concerns because it would impose felony penalties for, *inter alia*, posting required signage in large but not boldfaced type, 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).

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 the 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.”² 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.³

III. The Court Should Assume Original Jurisdiction Because the Case Presents an Issue of Extraordinary Public Interest and Great Urgency

a. Original Jurisdiction

Where, as here, the Supreme Court and the district courts have concurrent jurisdiction under Article VII of the Oklahoma Constitution, this Court has the discretion to assume original jurisdiction. *Edmondson v. Pearce*, 2004 OK 23 ¶ 10, 91 P.3d 605, 613, *cert. denied*, 543 U.S. 987 (2004). The Court has exercised this discretion in cases that concern the public interest and have some urgency or pressing need for an early determination of the

² Americans United for Life, *Defending Life 2015: State Cards—Oklahoma*, 6 (2015), http://aul.org/downloads/defending-life-2015/state-cards/AUL2015_OK.pdf.

³ 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/>.

matter. *Id.* ¶ 11, 91 P.3d at 613; *see also, e.g., Post Oak Oil Co. v. Okla. Tax Comm'n*, 1978 OK 20, 575 P.2d 964, 967 (original jurisdiction assumed where controversy regarding new conservation excise tax of great public importance and immediacy; *Phillips v. Okla. Tax Comm'n*, 1978 OK 34, 577 P.2d 1278, 1281 (original jurisdiction assumed to ascertain constitutionality of tax increase where judicial resolution was essential to the state's orderly fiscal management and budgeting); *Halstead v. McHendry*, 1977 OK 131, 566 P.2d 134, 136 (original jurisdiction assumed because county's imminent execution of lease agreement and bond issuance a matter of public importance and immediacy); *State ex. rel. Babb v. Mathews*, 1928 OK 751, 273 P. 352, 353 (same, in challenge to ballot initiative creating a state court of tax review); *cf. Keating v. Johnson*, 1996 OK 61, 918 P.2d 51, 58–59 (original jurisdiction declined where controversy regarding state separation of powers was of great public importance but no immediacy).

This case qualifies on both fronts: it presents the important public issue of whether the Oklahoma Legislature passed S.B. 642 in violation of the single subject rule of the Oklahoma Constitution. And, there is urgency in determining this question because if the Act goes into effect on November 1, the consequences to Petitioner will be immediate and severe, and two separate state agencies will be required to create new rules. Accordingly, the Court should assume original jurisdiction in this case because it presents a narrow but urgent question of great public interest that this Court can resolve efficiently and swiftly.

b. The Specter of Enforcement of an Unconstitutional Law is a Matter of Great Public Importance

The constitutionality of legislation that will be imminently enforced has been repeatedly found by this Court to present those “rare” circumstances in which the Court will

exercise its discretion to assume original jurisdiction. *See, e.g., Campbell v. White*, 1993 OK 89, 856 P.2d 255, 258–59 (assuming original jurisdiction and granting declaratory relief against statute that violated the single subject rule); *Johnson v. Walters*, 1991 OK 107, 819 P.2d 694, 699 (same); *see also Phillips*, 1978 OK 34, 577 P.2d at 1281, 1285 (assuming original jurisdiction and granting injunctive relief against state tax statute held to violate Commerce Clause of U.S. Constitution.).

Additionally, the Court has assumed original jurisdiction in a number of cases that involved violations of the single subject rule. In *Campbell*, this Court granted original jurisdiction and held that two bills were unconstitutional under the single subject rule. 1993 OK 89, 856 P.2d at 258–59. One, entitled “An Act Relating to State Cultural Entities,” contained appropriations to a variety of cultural, arts, and tourism institutions. *Id.* at 257. The other, entitled “State Business Regulatory Agencies,” contained appropriations to state agencies pertaining to banking, commerce, credit, labor, petroleum, and securities. *Id.* The Court held that both bills violated the single subject rule at issue here, Okla. Const. art.V, § 57, as well as the single subject rule pertaining specifically to appropriations, Okla. Const. art. V, § 56. *Campbell*, 1993 OK 89, 856 P.2d at 259.

In *Johnson*, this Court granted original jurisdiction and held that two other bills were unconstitutional under the single subject rule found at Section 56 and at Section 57 of Article V. 1991 OK 107, 819 P.2d 694, 699. One of the bills related to state employee benefits, coal-fired electric plants, the indigent criminal defense system, state travel reimbursement, and traffic citations. *Id.* at 698. The other bill related to space allocation in the State Capitol Building and the sale of surplus water by the Oklahoma Water Resources Board. *Id.* at 698–99.

Most recently, in *Fallin*, the Court assumed original jurisdiction in a single subject challenge and granted declaratory relief. 2013 OK 107, 315 P.3d 1023, 1025 (statute provided state income tax reduction and funded repairs to State Capitol Building). As described in detail below, S.B. 642 presents the same constitutional infirmity that has prompted the Court to assume original jurisdiction in multiple cases in the past.

Further, this case is of great public importance because S.B. 642 further restricts access to safe and legal abortion in Oklahoma, where such access is already limited. Abortion is the subject of vigorous debate and concern among the public within the State and nationally, and it is frequently the subject of legislation and litigation. Whether or not the Act is enforced will impact the ability of physicians and clinics to provide, and women to continue to receive, safe and legal abortion care in the State of Oklahoma.

c. Declarative and Injunctive Relief Against S.B. 642 is a Matter of Great Urgency

The constitutionality of S.B. 642 also presents a matter of great urgency because both Petitioner and the public at large face the specter of imminent harm.

If the Act is not enjoined, the imposition of criminal and civil consequences for unintentional violations of even minor requirements of the abortion code may increase overnight. Petitioner will arguably risk immediate criminal jeopardy for any violation of over 140 statutory provisions, many of which relate to the flow of paperwork and other matters of office management. *See, e.g.*, 63 O.S. §§ 1-737.4, 1-738k(C) (signage and recordkeeping requirements). His medical practice will be subject to unfettered, unannounced searches to find any such technical violations, which the State might claim to be felonies under S.B. 642.

And, clinics providing abortion will generally be subject to an inspection scheme with no meaningful procedural protections. S.B. 642 § 3(C)–(E).

Further, if the Act takes effect, both the Oklahoma Bureau of Investigation and the Oklahoma Department of Health will be required to promulgate new rules. For example, the Act requires the Department of Health to create new policies and procedures for pre-licensure and re-licensure of abortion facilities, inspections and investigations, and licensure revocations, S.B. 642 § 3(A), (B), and the Bureau of Investigation to create rules concerning the handling of fetal tissue, S.B. 642 § 2(B).

Because S.B. 642 raises a constitutional issue of great public importance, poses an imminent threat of harm to Petitioner and will immediately waste state resources if enforced, this Court should assume original jurisdiction and enjoin enforcement of the Act.

IV. The Act is Constitutionally Infirm as a Flagrant Violation of the 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. Edmonson, 2010 OK 21, ¶ 1, 244 P.3d 380, 381 (footnotes omitted); *Douglas v. Cox Ret. Props., Inc.*, 2013 OK 37, ¶ 4, 302 P.3d 789, 792.

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,” *In re Initiative Petition No. 382*, 2006 OK 45, ¶ 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 792–93 (citation omitted).

Oklahoma courts have repeatedly rejected attempts to satisfy the single subject rule by inventing a broad label to cover multiple-subject bills. In *Nova Health Sys.*, 2010 OK 21, ¶ 1, 233 P.3d at 382, this Court struck down a statute regulating abortion, 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. The Court 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. at ¶ 1, 381–82 (emphasis in original). See also *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) (summary judgment granted where statute restricting distribution of emergency contraception and regulating health insurance violated the single subject rule); *Davis v. Edmondson*, No. CJ-2009-9154, 2010 WL 1734636 (Dist. Ct. Okla. Cty. Mar. 2, 2010) (summary judgment granted where statute banning sex-selective abortions and imposing new reporting requirements violated the single subject rule).

The Act at issue here violates the constitutional prohibition on multiple subjects in exactly the manner that the statute in *Nova* did. That its myriad subjects relate in some manner to the broad subject of “abortion” does not cure its constitutional defect. See *Nova Health Sys.*, 2010 OK 21, ¶ 1, 233 P.3d at 382 (held statute unconstitutional under single subject rule notwithstanding all provisions related to abortion); see also *Fent v. State ex rel. Okla. Capitol Improvement Auth.*, 2009 OK 15, ¶¶ 11, 23, 214 P.3d 799, 803, 807 (held statute unconstitutional under single subject rule notwithstanding all provisions related to water and flood control). S.B. 642 addresses multiple, unrelated subjects—parental-consent provisions, a new licensing and regulatory scheme for facilities, evidence collection for statutory rape investigations, and draconian criminal and civil penalties—that are all joined together by the legislature in contravention of the single subject mandate of the Oklahoma Constitution. As such, it is a multiple-subject law that cannot survive constitutional scrutiny.

The constitutional requirement that laws address one subject only is to prevent logrolling. This Court held that a ballot initiative dealing with two separate subjects violated the single subject rule because it presented an “all-or-nothing choice” to voters. *In re Initiative Petition No. 382*, 2006 OK 45, ¶ 15, 142 P.3d at 408. In that case, one provision of

the initiative limited the power of public bodies to take private property by eminent domain, and the other required just compensation to be paid to any landowner whose property value was negatively affected by a zoning law. *Id.* ¶¶ 10–11, 142 P.3d at 406. The proponent argued that the initiative petition 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.

This Court also invalidated, on single subject grounds, a statute authorizing the Oklahoma Capitol Improvement Authority to issue bonds for three projects in *Okla. Capitol Improvement Auth.*, 2009 OK 15, ¶¶ 11, 23, 214 P.3d at 803, 807. The State argued that the bill was constitutional because it addressed the single subject of approving funding of capital projects through a common financing mechanism, and all provisions involved water or flood control. *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 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.” *Id.* ¶ 23, 214 P.3d at 807.

Likewise, S.B. 642 involves four different subjects (parental consent, statutory rape, licensing and regulation of abortion facilities, draconian criminal and civil sanctions) and directives to at least three distinct sets of state actors (State Department of Health; State Bureau of Investigation; Attorney General and district attorneys). Legislators who may have favored one provision of S.B. 642 could not have voted to enact that one 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. A legislator could reasonably have been in favor of, for example, preserving tissue samples for statutory rape prosecutions, without supporting language in the Act that the State might claim to be a basis for imposing felony penalties for any violation of the state’s numerous abortion regulations. *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.

S.B. 642 was passed amidst a “national discussion on the proper limitations on the power of” the government to restrict the fundamental right to abortion and was “clearly an attempt at logrolling.” *See In re Initiative Petition No. 382*, 2006 OK 45, ¶ 15, 142 P.3d at 408. Its multiple subjects are not “germane, relative, and cognate to a readily apparent common theme and purpose.” *See Davis*, 2010 WL 1734636. Accordingly, the Act constitutes a facial violation of the single subject rule.

Finally, the unconstitutional scope of S.B. 642 is betrayed by its title. The Constitution instructs: “Every act of the Legislature shall embrace but one subject, which shall be clearly expressed in its title.” Okla. Const. art. V, § 57. The title of S.B. 642 is far from “clearly expressed” and certainly embraces multiple subjects; it contains over 200 words and requires 30 separate clauses to describe all the different subjects.

V. Declaratory and Injunctive Relief is Warranted

S.B. 642 violates the Oklahoma Constitution’s clear limit on legislative power and thus is an affront to the rights of all Oklahoma citizens, and particularly Petitioner who faces immediate harm. This Court should therefore exercise its discretion to assume original jurisdiction, declare S.B. 642 unconstitutional and void, and permanently enjoin its

enforcement. 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 in this Court); *Edmondson v. Pearce*, 2004 OK 23, 91 P.3d 605 (same).

In the alternative, this Court has the power to issue temporary relief pending its full consideration of this case. See *State ex rel. Trapp v. Chambers*, 1923 OK 943, 220 P. 890, 893. Temporary relief would preserve the *status quo* while this Court has an opportunity to consider whether the Act runs afoul of the Oklahoma Constitution. *Okla. Pub. Emps. Ass'n v. Okla. Military Dep't*, 2014 OK 48, ¶ 15, 330 P.3d 497, 504 (citation omitted) (“A temporary injunction protects a court’s ability to render a meaningful decision on the merits of the controversy.”). Thus, the Court may issue a temporary injunction or temporary restraining order to prevent S.B. 642 from taking effect while it considers the merits of Petitioner’s Application to Assume Original Jurisdiction and Petition for Declaratory and Injunctive Relief.

In considering temporary injunctive relief, the four factors to be weighed are the following: (1) Petitioner’s likelihood of success on the merits; (2) irreparable harm to Petitioner if injunctive relief is denied; (3) relative effect on the other interested parties; and (4) public policy concerns arising out of the issuance of injunctive relief, or whether the injunction is in the public interest. *Dowell v. Fletcher*, 2013 OK 50, ¶ 7, 304 P.3d 457, 460; *Daffin v. State ex rel. Okla. Dep’t of Mines*, 2011 OK 22, ¶ 7, 251 P.3d 741, 745.

Each factor weighs in favor of granting temporary injunctive relief. As an initial matter, for all the reasons set forth *supra* at Section IV, Petitioner is likely to succeed on his constitutional challenge to S.B. 642. Secondly, absent injunctive relief, S.B. 642 will cause irreparable harm by violating the constitutional rights of Petitioner and other Oklahoma

citizens. Oklahoma law defines “irreparable” harm as “incapable of being fully compensated by money damages. . . .” *Tulsa Order of Police Lodge No. 93 v. City of Tulsa*, 2001 OK CIV APP 153, ¶ 28, 39 P.3d 152, 159 (internal quotation marks and citation omitted). The Act adversely affects Petitioner in a manner that is potentially sweeping. The State may take the position that S.B. 642 imposes felony liability for a broad swath of abortion statutes and regulations, as well as severe civil monetary penalties and civil liability to any “person or persons adversely affected” by the violation. S.B. 642 § 4(A), (C), (G). The Act also greatly expands the inspections and investigations to which Petitioner will be subjected to as a licensed abortion provider, and gives a range of state employees unfettered access to his clinic and the power to impact his license, with no procedural safeguards or protections established in the statute. S.B. 642 § 3(C)–(E). This Court has held that far less drastic consequences than these constitute irreparable harm. *See Okla. Pub. Emps. Ass’n*, 2014 OK 48, ¶ 34, 330 P.3d at 509 (imposition of an unauthorized conditional wage increase irreparably harmed those who lost merit system protections).

Moreover, the Legislature’s blatant violation of the single subject rule offends the rule of law in Oklahoma. Such deprivation of constitutional rights is *per se* irreparable harm. *See, e.g., Elrod v. Burns*, 427 U.S. 347, 373 (1976) (loss of constitutional “freedoms . . . unquestionably constitutes irreparable injury”); *see also Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) (internal quotation marks and citation omitted) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”).

Third, Defendants, in contrast to Petitioner, will suffer no harm whatsoever if a temporary injunction is granted. As for the fourth factor, enforcement of an unconstitutional

law is contrary to the public interest. *See, e.g., Entm't Merchs. Ass'n v. Henry*, No. CIV-06-675-C, 2006 WL 2927884 at *3 (W.D. Okla. 2006). Accordingly, the public interest weighs heavily in favor of granting temporary injunctive relief.

In sum, Petitioner respectfully requests that the Court assume original jurisdiction and permanently or temporarily enjoin S.B. 642.

VI. Conclusion

Original jurisdiction in this Court is warranted given the urgency of the matter, the great public interest in the issues involved, and the pure question of law presented as to the appropriate interpretation of the Constitution's single subject rule, which this Court has addressed several times in recent years.

For the foregoing reasons, Petitioner respectfully requests this Court to consider his application and petition on an expedited basis, declare S.B. 642 unconstitutional and void, and permanently enjoin its enforcement. In the alternative to considering the petition on an expedited basis, Petitioner requests this Court to issue a temporary injunction or temporary restraining order to preserve the *status quo* and prevent enforcement of S.B. 642 during the pendency of the litigation before this Court contesting the Act's constitutionality.

Respectfully submitted,



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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 Brief in Support of Application to Assume Original Jurisdiction and Petition for Declaratory and Injunctive Relief was served via hand delivery on the following:

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