

IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY
STATE OF OKLAHOMA

LORA JOYCE DAVIS and WANDA STAPLETON, as
residents and taxpayers of the State of Oklahoma,

Plaintiffs,

v.

- (1) W.A. DREW EDMONDSON, in his official
capacity as Attorney General of Oklahoma;
(2) TERRY L. CLINE, Ph.D, in his official capacity as
Oklahoma Commissioner of Health;
(3) LYLE KELSEY, in his official capacity as
Executive Director of the Oklahoma State Board of
Medical Licensure and Supervision; and
(4) CHERYL A. VAUGHT, in her official capacity as
President of the Oklahoma State Board of
Osteopathic Examiners,

Defendants.

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

Case No. _____ SEP 29 2009

Judge _____ by _____ PATRICIA PRESLEY, COURT CLERK
DEPUTY

CJ-2009-9154

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FOR A TEMPORARY INJUNCTION

Anne E. Zachritz, Esq.
ANDREWS DAVIS
100 N. Broadway, Suite 3300
Oklahoma City, OK 73102-8812
Telephone: (405) 272-9241
Facsimile: (405) 235-8786
aezachritz@andrewsdavis.com

Martha M. Hardwick, Esq.
HARDWICK LAW OFFICE
P.O. Box 35975
Tulsa, OK 74153
Telephone: (918) 749-3313
mh@hardwicklawoffice.com

Stephanie Toti, Esq.*
Jennifer Mondino, Esq.*
CENTER FOR REPRODUCTIVE RIGHTS
120 Wall Street, 14th Floor
New York, NY 10005
Telephone: (917) 637-3600
Facsimile: (917) 637-3666
stoti@reprorights.org
jcrepps@reprorights.org
jmondino@reprorights.org

*Motion to Associate Counsel pending

ATTORNEYS FOR PLAINTIFF

Dated: September 29, 2009

TABLE OF CONTENTS

Table of Authorities ii

I. Introduction.....1

II. Statement of Facts.....2

III. Argument and Authorities6

A. Standard for Temporary Injunctive Relief6

B. Absent an Injunction, Plaintiffs Will Suffer Irreparable Harm.....7

C. The Balance of Equities and the Public Interest Weigh in Favor of a Temporary Injunction8

D. Plaintiffs Have a Strong Likelihood of Success on the Merits of Their Claim that the Act Violates the Oklahoma Constitution’s Single-Subject Rule.....9

IV. Conclusion14

TABLE OF AUTHORITIES

Cases

Am. Civil Liberties Union v. Johnson, 194 F.3d 1149 (10th Cir. 1999).....8

Bd. of Educ. of Territory v. Territory, 12 Okla. 286, 70 P. 792 (Okla. 1902).....7

Campbell v. White, 856 P.2d 255 (Okla. 1993).....10, 10 n.5

Entm't Merch. Ass'n v. Henry, 2006 WL 2927884 (W.D. Okla. Oct. 11, 2006)7, 8

Fent v. Oklahoma. Capitol Improvement Auth., 1999 OK 64, 984 P.2d 2006

Fent v. State ex rel. Oklahoma. Capitol Improvement Auth., 2009 OK 15,
214 P.3d 799 (Okla. Mar. 24, 2009)9, 10, 11, 13

Fent v. State ex rel. Oklahoma Tax Com'n, 2004 OK 59, 99 P.3d 2416

Hastings v. Kelly, 2008 OK CIV APP 36, 181 P.3d 750.....6, 8

In re Initiative Petition No. 382, 2006 OK 45, 142 P.3d 400 *passim*

Johnson v. Walters, 819 P.2d 694 (Okla. 1991)11

Kikumura v. Hurley, 242 F.3d 950 (10th Cir. 2001).....7

Nova Health Systems v. Edmondson, No. CJ-2008-9119 (Okla. Sept. 3, 2009).....1 n.1, 10

Nova Health Systems v. Edmondson, No. CJ-2008-9119 (Okla. Oct. 9, 2008).....12

Okla. Ass'n for Equitable Taxation v. City of Okla. City, 901 P.2d 800 (Okla. 1995).....6

Okla. Pub. Employees Ass'n v. Okla. Dep't of Central Serv., 2002 OK 71,
55 P.3d 10727

State v. Huston, 113 P. 190 (Okla. 1910).....7

Tulsa Order of Police Lodge No. 93 v. City of Tulsa, 2001 OK
CIV APP 153, 39 P.3d 1526

Weddington v. Henry, 2008 OK 102, 202 P.3d 14310

Statutes

Sess. Laws ch. 36 (to be codified at OKLA. STAT. tit. 63, §§ 1-730, 1-731.1,
1-738a-h)..... *passim*

Okla. Stat. tit. 12, § 1382 (1993).....	6
Okla. Stat. tit. 63, § 1-738 (2008)	1 n.1, 3 n.4, 11-12
Okla. Stat. tit 69, § 1958(B)(1999)	2 n.3
Okla. Stat. tit. 74, § 130.16 (D)-(E) (2002).....	2 n.3
Constitutions	
Okla. Const. art. V, § 57	9
Other	
11A Charles Alan Wright, et al., Federal Practice and Procedure § 2948.1 (2d ed.1995)	7

I. Introduction

Plaintiffs Lora Joyce Davis and Wanda Stapleton respectfully move for a temporary injunction, pursuant to OKLA. STAT. tit. 12, § 1382 (1993), to preserve the *status quo* and prevent enforcement of the challenged statute, House Bill 1595 (the “Act” or “H.B. 1595”), 2009 Okla. Sess. Laws ch. 36 (to be codified at OKLA. STAT. tit. 63, §§ 1-730, 1-731.1, 1-738a-h) (attached as Exhibit (“Ex.”) 1), during the pendency of this litigation. Several of the provisions of H.B. 1595 are scheduled to take effect on November 1, 2009. 2009 Okla. Sess. Laws ch. 36§ 13. To ensure that the motion is decided before that date, Plaintiffs also move for expedited briefing and hearing of the motion. In the alternative, Plaintiffs request that the Court issue a temporary restraining order enjoining enforcement of the Act pending the determination of the motion for a temporary injunction.

II. Statement of Facts

H.B. 1595 is a statute composed of thirteen sections, which address at least four distinct subjects with no readily apparent common theme or purpose. It was enacted on May 21, 2009.

Section 1 of the Act adds new definitions for three statutory terms; those definitions are applicable to Article 7(C) of Title 63 of the Oklahoma Code, which governs abortion. 2009 Okla. Sess. Laws ch. 36 § 1 (to be codified at OKLA. STAT. tit. 63, § 1-730). First, the Act provides a definition of the term “certified technician.” 2009 Okla. Sess. Laws ch. 36 § 1(A)(3) (to be codified at OKLA. STAT. tit. 63, § 1-730(A)(3)). That term was used, but not defined, in Senate Bill 1878 (“S.B. 1878”), which was enacted on April 17, 2008 and invalidated by the District Court of Oklahoma County before it took effect.¹ Other than the definition of the term

¹ See OKLA. STAT. tit. 63, § 1-738.3b (2008) (setting forth certain requirements for the provision of ultrasound by a “certified technician” working in conjunction with an abortion provider); *Nova Health Systems v. Edmondson*, No. CJ-2008-9119 (Okla. Sept. 3, 2009) (order invalidating Senate Bill 1878, a law with six distinct provisions, on the ground that it violates the Oklahoma Constitution’s single subject rule).

set forth in Section 1, the only use of the term “certified technician” in H.B. 1595 is a reference to the inoperative S.B. 1878.² The term “certified technician” appears nowhere else in Article 7(C) of Title 63 of the Oklahoma Code.³ Section 1 of H.B. 1595 also provides definitions for the terms “unemancipated minor” and “attempt to perform an abortion.” 2009 Okla. Sess. Laws ch. 36 §§ 1(A)(2), 1(A)(5) (to be codified at OKLA. STAT. tit. 63, §§ 1-730(A)(2), 1-730(A)(5)). Lastly, Section 1 of the Act rearranges the order of the existing statutory definitions section for Article 7 of Title 63 of the Oklahoma Code. 2009 Okla. Sess. Laws ch. 36 § 1 (to be codified at OKLA. STAT. tit. 63, § 1-730). Section 1 of the Act becomes effective on November 1, 2009. 2009 Okla. Sess. Laws ch. 36§ 13.

Section 2 of the Act prohibits the knowing or reckless performance, or attempted performance, of an abortion where the abortion provider has knowledge that the woman “is seeking the abortion solely on account of the sex of the unborn child” (“sex selective abortion”). 2009 Okla. Sess. Laws ch. 36 § 2 (to be codified at OKLA. STAT. tit. 63, § 1-731.1). Under this provision, actual and punitive damages, injunctive relief, and the suspension or revocation of a medical license may be imposed as penalties for the performance of a sex selective abortion. 2009 Okla. Sess. Laws ch. 36 § 2(B)-(C) (to be codified at OKLA. STAT. tit. 63, § 1-731.1 (B)-(C)). Section 2 of the Act becomes effective on November 1, 2009. 2009 Okla. Sess. Laws ch. 36 § 13.

Sections 3 through 8 of the Act are collectively titled the “Statistical Reporting of Abortion Act” (“Reporting Act”). 2009 Okla. Sess. Laws ch. 36 §§ 3-8 (to be codified at OKLA.

² 2009 Okla. Sess. Laws ch. 36 § 7(C)(16) (to be codified at OKLA. STAT. tit. 63, § 1-738e(C)(16) (directing the Health Department to include in its annual abortion report “the number of abortions before which an ultrasound was performed . . . by a certified technician as defined by Section 1-730 of Title 63 of the Oklahoma Statutes”).

³ In fact, there are only two other uses of the term “certified technician” throughout the entire Oklahoma Code, neither of which has any relevance to the provision of health care: (1) in the Oklahoma Highway Code of 1968, OKLA. STAT. tit 69, § 1958(B) (1999); and (2) in the Alternative Fuels Technician Certification Act, OKLA. STAT. tit. 74, § 130.16 (D)-(E) (2002).

STAT. tit. 63, §§ 1-738a-f). The Reporting Act imposes burdensome new reporting requirements on Oklahoma physicians and assigns costly new responsibilities to the State Department of Health (“Health Department”), the State Board of Medical Licensure and Supervision (“Medical Licensure Board”), and the State Board of Osteopathic Examiners (“Osteopathic Examiners Board”).

First, the Reporting Act imposes a host of new reporting requirements on physicians who perform abortions and on physicians who treat patients experiencing abortion-related complications, in lieu of the considerable abortion reporting requirements currently in place under Oklahoma law.⁴ Generally, the Reporting Act requires abortion providers to report extensive, detailed information to the State about their patients, their patients’ reasons for seeking abortions, and various aspects of the providers’ compliance with State laws. 2009 Okla. Sess. Laws ch. 36 §§ 5-7 (to be codified at OKLA. STAT. tit. 63, §§ 1-738c-e). The Reporting Act also requires every physician in the State to file a report, within sixty (60) days of the incident, each time the physician “encounters an illness or injury that a reasonably knowledgeable physician would judge is related to an induced abortion.” 2009 Okla. Sess. Laws ch. 36 § 6(C) (to be codified at OKLA. STAT. tit. 63, § 1-738d(C)). The Reporting Act allows for a range of civil, criminal, and administrative penalties to be imposed on physicians who fail to comply with its reporting requirements. 2009 Okla. Sess. Laws ch. 36 §§ 6(C), 8(B)-(C) (to be codified at OKLA. STAT. tit. 63, §§ 1-738d(C), 1-738f(B)-(C)). Oklahoma physicians will be required to comply with the Act’s reporting requirements as of either April 1, 2011 or thirty (30) calendar days after the Health Department develops the relevant reporting forms and procedures, whichever comes later. 2009 Okla. Sess. Laws ch. 36 § § 5(A) (to be codified at OKLA. STAT.

⁴ The Act repeals the abortion reporting requirements formerly in effect pursuant to OKLA. STAT. tit. 63, § 1-738. 2009 Okla. Sess. Laws ch. 36 § 12.

tit. 63, §§ 1-738c(A)).

Second, the Reporting Act directs the Health Department, the Medical Licensure Board, and the Osteopathic Examiners Board to develop and implement new mechanisms for abortion data-gathering, analysis, and reporting, and for additional enforcement of State laws concerning abortion. For example, the Act requires the Health Department to create and publish on its website certain annual abortion reports, including an “Annual Abortion Report,” based on the extensive abortion-related data to be provided by physicians to the Health Department, and an “Annual Judicial Bypass of Abortion Parental Consent Summary Report,” compiling a variety of data about minors’ petitions to seek abortions without parental consent. 2009 Okla. Sess. Laws ch. 36 § 7 (to be codified at OKLA. STAT. tit. 63, § 1-738e). In addition, the Reporting Act charges the Health Department, the Medical Licensure Board, and the Osteopathic Examiners Board with ensuring compliance with the Reporting Act, by directing either the Medical Licensure Board or the Osteopathic Examiners Board to notify all licensed Oklahoma physicians about the Act’s abortion reporting requirements, requiring the Health Department to make State statutes, regulations, and reporting forms related to abortion available on its website, and requiring the Health Department to conduct periodic inspections of places where abortions are performed. 2009 Okla. Sess. Laws ch. 36 §§ 4(B)-(C), 5(D), 8(A), 8(D) (to be codified at OKLA. STAT. tit. 63, §§ 1-738b(B)-(C), 1-738c(D), 1-738f(A), 1-738f(D)).

The Health Department is required to publish the abortion reporting forms and abortion-related statutes and regulations on its website by March 1, 2011, and to publish annual reports based on the abortion data gathered from physicians beginning on June 1, 2012. 2009 Okla. Sess. Laws ch. 36 §§ 4(B)-(C), 6(A), 7(A), 7(D) (to be codified at OKLA. STAT. tit. 63, §§ 1-738b(B)-(C), 1-738d(A), 1-738e(A), 1-738e(D)). The Medical Licensure Board, and the

Osteopathic Examiners Board are required to notify all licensed Oklahoma physicians of the Act's reporting requirements by March 1, 2011. 2009 Okla. Sess. Laws ch. 36 § 8(A)(1) (to be codified at OKLA. STAT. tit. 63, § 1-738f(A)(1)).

Bringing the Health Department into compliance with the Act will "require the development of two new reporting forms, complete rebuilding of the existing electronic reporting system, and the implementation of a compliance oversight unit." H.B. 1595 Bill Summary, Conference Committee Substitute version, dated May 11, 2009, attached hereto as Ex. 2. According to the fiscal analysis of the Act presented to the State Legislature, the "[p]ersonnel and travel costs, software expenses, and web-site development" related to implementation of the Act's reporting requirements will cost the State \$281,285 during the first year that the provision is effective and \$256,285 in each subsequent year. *Id.* at Fiscal Analysis. Pursuant to the Act, the Health Department must begin this undertaking on November 1, 2009 and complete it by March 1, 2011. 2009 Okla. Sess. Laws ch. 36 §§ 4(B), 6(A) (to be codified at OKLA. STAT. tit. 63, §§ 1-738b(B), 1-738d(A)).

Plaintiffs Lora Joyce Davis and Wanda Stapleton are both life-long Oklahoma residents and taxpayers. *See* Affidavit of Lora Joyce Davis ("Davis Aff.") ¶ 1; Affidavit of Wanda Stapleton ("Stapleton Aff.") ¶ 1. They filed this lawsuit to challenge the Act, which will cause a substantial and unlawful expenditure of public funds, on the ground that it violates the Oklahoma Constitution's single subject rule. Davis Aff. ¶ 7; Stapleton Aff. ¶ 7.

III. Argument and Authorities

A. Standard for Temporary Injunctive Relief

Oklahoma courts may issue a temporary injunction when it appears that "the plaintiff is entitled to the relief demanded," all or part of which consists of restricting the commission of an

act that “would produce injury to the plaintiff.” OKLA. STAT. tit. 12, § 1382 (1993). One critical function of a temporary injunction is to preserve the *status quo* pending resolution of a case. *Hastings v. Kelly*, 2008 OK CIV APP 36, ¶ 13, 181 P.3d 750, 753. In ruling on a motion for temporary injunctive relief, the court must consider four factors: “(1) the applicant’s likelihood of success on the merits; (2) irreparable harm to the party seeking relief 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.” *Tulsa Order of Police Lodge No. 93 v. City of Tulsa*, 2001 OK CIV APP 153, ¶ 24, 39 P.3d 152, 158. As set forth below, each of these factors weighs in favor of granting a temporary injunction.

B. Absent an Injunction, Plaintiffs Will Suffer Irreparable Harm.

Oklahoma law defines harm as “irreparable” where it “is incapable of being fully compensated by money damages, or where the measure of damages is so speculative that arriving at an amount of damages would be difficult or impossible.” *Id.* at ¶ 28, 159. Here, if the Act is permitted to take effect, Plaintiffs will suffer irreparable harm for two reasons: (1) the Act will violate the State Constitution; and (2) enforcement of the Act will result in an unlawful, substantial, and ongoing expenditure of Plaintiffs’ taxpayer funds.

It is well established that Oklahoma taxpayers have standing to challenge State laws as violative of the State Constitution. *See, e.g., Fent v. State ex rel. Okla. Tax Com’n*, 2004 OK 59, 99 P.3d 241 (taxpayer sought declaratory judgment that Oklahoma’s earned income tax credit statute was unconstitutional); *Fent v. Okla. Capitol Improvement Auth.*, 1999 OK 64, 984 P.2d 200 (taxpayers challenged the constitutionality of statutes authorizing the Oklahoma Capitol Improvement Authority to issue over \$300 million in bonds to fund various governmental projects); *Okla. Ass’n for Equitable Taxation v. City of Okla. City*, 901 P.2d 800 (Okla. 1995)

(taxpayer sought declaratory and injunction relief, challenging the constitutionality of a city-approved sales tax refund provision). By permitting taxpayers to seek injunctive relief against unconstitutional State laws, Oklahoma courts have recognized that the enactment or enforcement of an unconstitutional statute represents irreparable harm to the people of Oklahoma. Moreover, courts have widely acknowledged that deprivation of one's constitutional rights constitutes *per se* irreparable harm. *See generally* 11A CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 2948.1 (2d ed.1995) (“When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”); *accord Entm’t Merch. Ass’n v. Henry*, 2006 WL 2927884, at *2 (W.D. Okla. Oct. 11, 2006) (enforcement of recently enacted State law, which was to go into effect in the following month, would cause Plaintiffs irreparable harm by violating their constitutional rights); *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) (“When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”). Accordingly, because H.B. 1595 violates the Oklahoma Constitution, Plaintiffs will suffer irreparable harm if the Act is permitted to take effect.

Furthermore, in the absence of an injunction, substantial taxpayer funds will be expended to enforce the Act. *See* Ex. 2. That, too, will cause irreparable harm to Plaintiffs. *See Okla. Pub. Employees Ass’n v. Okla. Dep’t of Central Serv.*, 2002 OK 71, ¶¶ 10-14, 55 P.3d 1072, 1078-79; *State v. Huston*, 113 P. 190 (Okla. 1910). Indeed, Oklahoma courts have said that injunctive relief is justified where “public funds are about to be applied in a manner prohibited by the Constitution.” *Huston*, 113 P. at 194; *see also Bd. of Educ. of Territory v. Territory*, 12 Okla. 286, 70 P. 792 (Okla. 1902) (holding that the district court has the power to enjoin the “expenditure of public money at a place or for a purpose not authorized by law, or expending

public funds at an unauthorized place or for unauthorized purposes.”). As the *Huston* court explained: “[T]he Legislature . . . holds the public funds in trust for the people . . . [W]hen it undertakes to apply such funds in a manner . . . prohibited by the organic law, it is not only exercising a power expressly withheld, but violating its trust, and a court of equity will interfere . . . to prevent or restrain such an application without being required to show any other injury.” *Huston*, 113 P. at . Accordingly, absent a temporary injunction, Plaintiffs will suffer irreparable harm during the pendency of this litigation that cannot be remedied by money damages.

C. The Balance of Equities and the Public Interest Weigh in Favor of a Temporary Injunction.

The potential harm to Defendants of a temporary injunction is greatly outweighed by the injury that Plaintiffs will suffer if the Act is permitted to take effect. Defendants will suffer no harm if a temporary injunction is granted. The only possible disadvantage to Defendants is a delay in enforcement of the Act, during which taxpayer funds will continue to be used for other, lawful State objectives. Delayed enforcement of the Act will do nothing more than preserve the *status quo*, the very purpose of temporary injunctive relief. *Hastings*, 2008 OK CIV APP at ¶ 13, 181 P.3d at 753. If, on the other hand, the Act is allowed to take effect, public funds will be unlawfully expended by the Health Department, the Medical Licensure Board, and the Osteopathic Examiners Board, causing Plaintiffs an injury that cannot be remedied.

Moreover, the public interest will be served by the issuance of a temporary injunction. It is well-settled that the enforcement of an unconstitutional law is contrary to the public interest. *See, e.g., Entm't Merch. Ass'n*, 2006 WL 2927884, at *3 (internal citations omitted); *Am. Civil Liberties Union v. Johnson*, 194 F.3d 1149, 1163 (10th Cir. 1999) (internal citations omitted). In addition, it is in the best interest of the people of Oklahoma to have the Court prevent public funds from being spent on the enforcement of H.B. 1595 until it has determined whether or not

the Act accords with the State Constitution. In *Fent v. State ex. rel. Okla. Capitol Improvement Auth.*, for example, the Court did not adjudicate Plaintiff's claim regarding the constitutionality of a statute authorizing public bond offerings until one of the bonds already had been issued; consequently, although the Court determined that the statute violated the State Constitution's single subject rule and enjoined the remaining bond offerings, it was unable to prevent the injury to the public that had resulted from the initial unlawful public expenditures. 2009 OK 15, ¶ 2, 214 P.3d 799. The Court should enjoin H.B. 1595 to prevent a similar outcome. Thus, the balance of equities and the public interest weigh heavily in Plaintiffs' favor and supports the issuance of temporary injunctive relief.

D. Plaintiffs Have a Strong Likelihood of Success on the Merits of Their Claim that the Act Violates the Oklahoma Constitution's Single-Subject Rule.

The Act violates the single subject rule set forth in Article V, Section 57, of the Oklahoma Constitution because it addresses at least four distinct subjects with no readily apparent common theme or purpose. *See* OKLA. CONST. art. V, § 57. The single subject rule prohibits a statute from addressing more than one subject and requires that the subject be clearly addressed in the statute's title. *Id.* The rule has two purposes: (1) to ensure that the legislators of Oklahoma are adequately notified of the potential effect of a piece of legislation; and (2) to prevent "logrolling," the practice of assuring the passage of a law by creating a proverbial "Hobson's 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. In re *Initiative Petition No. 382*, 2006 OK 45, ¶ 8, 142 P.3d 400, 405.

Oklahoma courts apply a "germaneness" test to determine whether a statute complies with the single subject rule: that is, the provisions of the statute must be "germane, relative, and

cognate to a readily apparent common theme and purpose.” *Fent v. State ex rel. Okla. Capitol Improvement Auth.*, 2009 OK at ¶ 16, 214 P.3d at 805. The most relevant questions under this analysis are whether a legislator would be: (1) able to make a choice without being misled; and (2) forced to choose between two unrelated provisions contained in one measure. In re *Initiative Petition No. 382*, 2006 OK at ¶ 9, 142 P.3d at 405. A statute will not satisfy the germaneness test merely because “one can articulate some rational connection between the provisions of a proposed law;” instead, courts will reject a statute as violative of the single subject rule if “it appears that either the [proposed law] is misleading or provisions in the proposal are so unrelated that many of those voting on the law would be faced with an unpalatable all-or-nothing choice.” *Fent v. State ex rel. Okla. Capitol Improvement Auth.*, 2009 OK at ¶ 16, 214 P.3d at 805. See also In re *Initiative Petition No. 382*, 2006 OK at ¶ 14, 142 P.3d at 408; accord *Campbell v. White*, 856 P.2d 255, 260 (Okla. 1993) (“[T]he adoption of an approach which would allow unrelated legislation to be included in a single enactment simply by the skillful drafting of a broad topic would defeat the purpose of the single-subject mandate.”).⁵

The Oklahoma Supreme Court has repeatedly held that courts have a duty to enforce the single subject rule by invalidating laws that violate its mandate. See, e.g., *Nova Health Systems v. Edmondson*, No. CJ-2008-9119 (Okla. Sept. 3, 2009) (law that imposed unrelated restrictions on the performance of abortions was invalidated on single-subject rule grounds); *Weddington v. Henry*, 2008 OK 102, 202 P.3d 143 (law that regulated, *inter alia*, the commercial code, limited partnerships, and organ donation was invalidated on single-subject rule grounds); In re *Initiative Petition No. 382*, 2006 OK at ¶ 15, 142 P.3d at 408 (ballot initiative that (1) limited public bodies’ power to take private property by eminent domain and (2) required public bodies to pay

⁵ *Campbell* addressed the single-subject rule contained in OKLA. CONST. art. V, § 56, which applies to special appropriations bills. That rule follows the same standard as the single-subject rule contained in Okla. Const. art. V, § 57, which applies to general legislation. See *Campbell*, 856 P.2d at 259.

landowners compensation when property values were adversely affected by zoning laws was stricken from the ballot on single-subject rule grounds); *Johnson v. Walters*, 819 P.2d 694, 698 (Okla. 1991) (law that (1) empowered the legislature to allocate space in the state capitol building, (2) relocated the offices of various officials, and (3) authorized the sale of surplus water from the Sardis Reservoir was invalidated on single-subject rule grounds).

In this case, the Act addresses at least four distinct subjects: (1) the enactment of several new statutory definitions; (2) a ban on sex selective abortions; (3) the imposition of new reporting requirements on physicians who perform abortions or treat patients with abortion-related complications; and (4) the creation of numerous new responsibilities for the Health Department, the Medical Licensure Board, and the Osteopathic Examiners Board relating to abortion data-gathering, analysis, and reporting, and the enforcement of State laws concerning abortion. The Act's multiple subjects are not germane, relative, and cognate to a readily apparent common theme and purpose. *See Okla. Capitol Improvement Auth.*, 2009 OK at ¶ 16, 214 P.3d at 805; *In re Initiative Petition No. 382*, 2006 OK at ¶ 8, 142 P.3d at 405.

For example, the ban on sex selective abortion is not germane to either the burdensome new reporting requirements imposed on physicians by the Reporting Act or the costly new responsibilities assigned to the Health Department, Medical Licensure Board, and Osteopathic Examiners Board by the Reporting Act. It is wholly independent of and completely unrelated to those provisions. A legislator could easily have supported the ban on sex selective abortion while opposing one or both of the measures contained in the Reporting Act, or vice versa.

Likewise, the definition of "certified technician" is not germane to any of the other provisions of H.B. 1595. The term "certified technician" was added to the Oklahoma statutory code in 2008 by S.B. 1878, but was not defined in that law. *See OKLA. STAT. tit. 63, § 1-738.3b*

(2008). A definition of the term was hastily added to H.B. 1595 after S.B. 1878 was challenged in court, *inter alia*, on the ground that the term “certified technician” was unconstitutionally vague. 2009 Okla. Sess. Laws ch. 36 § 1(A)(3) (to be codified at OKLA. STAT. tit. 63, § 1-730(A)(3); Petition at ¶¶ 73-74, *Nova Health Systems v. Edmondson*, No. CJ-2008-9119 (Okla. Oct. 9, 2008). A legislator could well have favored enacting a definition of the term “certified technician” to correct a constitutional flaw in a previously enacted statute, while opposing the other, unrelated provisions of H.B. 1595.

The other two definitions contained in Section 1 of H.B. 1595 are wholly unrelated to the measures contained in the Reporting Act. Indeed, the Reporting Act contains its own definitional section. Thus, legislators could have voted to adopt the definitions contained in Section 1, while opposing one or both of the measures contained in the Reporting Act, or vice versa, had they been permitted to vote on all of the provisions separately.

The political divisiveness of the abortion issue and the complex body of constitutional law concerning the State’s ability to burden the right to abortion make it likely that legislators would take careful, nuanced positions on legislation related to abortion, supporting certain kinds of regulation while opposing others. *Cf. In re Initiative Petition No. 382*, 2006 OK at ¶ 15, 142 P.3d at 408. H.B. 1595 did not allow legislators to do that. Instead, it presented them with an unpalatable all-or-nothing choice concerning a hodgepodge of abortion regulations. The dilemma posed by H.B. 1595 to Oklahoma legislators is well-illustrated by the Act’s legislative history. At the February 25, 2009 hearing on H.B. 1595, for example, individual legislators expressed opposition to some provisions of the Act but not others. One legislator, Rep. Jeannie McDaniel, expressed reservations about granting a woman’s family members, health care providers, and state officials the power to enjoin her from having an abortion through the ban on

sex selective abortion, but did not address the other provisions of the Act. *See Partial Transcript*⁶ of February 25, 2009 Oklahoma House of Representatives Hearing on H.B. 1595, attached as Ex. 3, at p. 1. Similarly, Rep. Ryan Kiesel described the Act's reporting requirements as an intrusion on a woman's privacy and a threat to the safety of survivors of sexual and domestic violence. He went on to point out that the ban on sex selective abortion, the only portion of the Act which he found not to violate a woman's right to privacy and confidential medical treatment, constituted only three of the Act's 36 pages. *Id.*, at p. 2. Thus, in voting on the Act, Reps. McDaniel and Kiesel, and likely their fellow legislators, were forced to decide whether to support the Act as a whole, notwithstanding their opposition to certain specific provisions. That is precisely the type of "unpalatable all-or-nothing choice" that the single subject rule was intended to prevent. *Okla. Capitol Improvement Auth.*, 2009 OK at ¶ 16, 214 P.3d at 805 (Oklahoma Constitution's single-subject rule is intended to ensure that "[e]ach subject brought into the deliberation of the legislative department is to be considered and voted on singly, without having associated with it any other measure to give it strength"); *In re Initiative Petition No. 382*, 2006 OK at ¶ 8, 142 P.3d at 405.

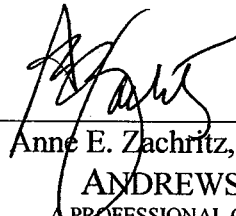
Accordingly, Plaintiffs have a strong likelihood of success on the merits of their claim that the Act violates the single subject rule.

IV. Conclusion

For the foregoing reasons, Plaintiffs respectfully request that this Court temporarily enjoin enforcement of the Act and, if necessary to preserve the *status quo* pending determination of this motion, grant a temporary restraining order preventing enforcement of the Act pending the final adjudication by this Court of Plaintiffs' claims.

⁶ Upon request by the Court, Plaintiffs will provide a recording of the full February 25, 2009 Oklahoma House of Representatives hearing on H.B. 1595.

Dated: September 29~~th~~th, 2009



Anne E. Zachritz, OBA # 15608
ANDREWS DAVIS
A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELLORS AT LAW
100 N. Broadway, Suite 3300
Oklahoma City, OK 73102-8812
Telephone: (405) 272-9241
Fax: (405) 235-8786

and

Martha M. Hardwick, OBA No. 3847
HARDWICK LAW OFFICE
P.O. Box 35975
Tulsa, Oklahoma 74153
Telephone: (918) 749-3313

and

Jennifer Mondino*
New York Bar No. 4141636
Stephanie Toti*
New York Bar No. 4270807
CENTER FOR REPRODUCTIVE RIGHTS
120 Wall Street, 14th Floor
New York, NY 10005
Telephone: (917) 637-3687
Facsimile: (917) 637-3666
(Out-of-State Attorney Applications filed)

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE


I hereby certify that on the 29th day of September, 2009, a true and correct copy of the above and foregoing was hand-delivered to the following:

W.A. Drew Edmondson
Attorney General of Oklahoma
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105

Terry L. Cline, Ph.D
In his official capacity as Oklahoma Commissioner of Health
1000 N.E. 10th Street
Oklahoma City, Oklahoma 73117

Lyle Kelsey
In his official capacity as Executive Director
Oklahoma State Board of Medical Licensure and Supervision
5104 N. Francis Avenue, Suite C
Oklahoma City, Oklahoma 73118-6020

Cheryl A. Vaught
In her capacity as President
Oklahoma State Board of Osteopathic Examiners
4848 N. Lincoln Blvd.
Oklahoma City, Oklahoma 73105-3335



ANNE E. ZACHRITZ

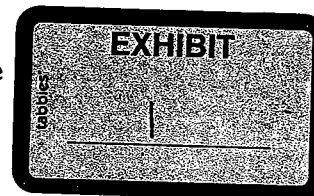
ENROLLED HOUSE
BILL NO. 1595

By: Sullivan, Peterson, Denney,
Terrill, Ritze, Ownbey, Billy,
Osborn, Faught, Reynolds,
Thompson, Cooksey, Kern, Dank,
Wright (Harold), Ortega, Enns,
Sanders, Liebmann, Derby, Nelson,
Christian, Moore, Walker, Coody,
Duncan, Tibbs, McCullough and
Joyner of the House

and

Lamb, Brown, Mazzei, Crain,
Newberry, Sykes, Brogdon,
Aldridge, Russell, Schulz and
Marlatt of the Senate

An Act relating to public health and safety; amending 63 O.S. 2001, Section 1-730, as amended by Section 1, Chapter 161, O.S.L. 2007 (63 O.S. Supp. 2008, Section 1-730), which relates to abortion; modifying definitions; prohibiting the performance of an abortion solely on account of the sex of the unborn child; specifying liability; authorizing injunctive relief; specifying those persons authorized to bring an action; specifying penalties; providing for civil action; providing for the suspension or revocation of a license; providing for certain privacy; creating the Statistical Reporting of Abortion Act; providing short title; defining terms; providing for the State Department of Health to make an Individual Abortion Form and a Complications of Induced Abortion Report on its website; specifying content of forms; providing for electronic submission; specifying time in which reports are due; requiring certain public reports; specifying time in which public reports shall be filed; providing for enforcement of reporting requirements; requiring notification of all newly licensed physicians of reporting requirements;



stating penalties for late submission, no submission and incomplete submission of forms or reports; requiring periodic inspections of certain facilities; authorizing the promulgation of rules; authorizing certain action for failure to issue public reports; providing for certain intervention in litigation; providing for certain laws to be of nonbinding force in certain circumstance; repealing 63 O.S. 2001, Section 1-738, which relates to abortion reporting; providing for severability; providing for codification; providing for noncodification; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-730, as amended by Section 1, Chapter 161, O.S.L. 2007 (63 O.S. Supp. 2008, Section 1-730), is amended to read as follows:

Section 1-730. A. As used in this article:

1. "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to remove an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous miscarriage, accidental trauma, or a criminal assault on the pregnant female or her unborn child;

2. "Attempt to perform an abortion" means an act, or an omission of a statutorily required act, that under the circumstances as the actor believes them to be constitutes a substantial step in a course of conduct planned to culminate in the performance of an abortion;

3. "Certified technician" means a Registered Diagnostic Medical Sonographer who is certified in obstetrics and gynecology by the American Registry for Diagnostic Medical Sonography (ARDMS) or a Nurse Midwife or Advance Practice Nurse Practitioner in Obstetrics with certification in obstetrical ultrasonography;

4. "Unborn child" means the unborn offspring of human beings from the moment of conception, through pregnancy, and until live birth including the human conceptus, zygote, morula, blastocyst, embryo and fetus;

~~3-~~ 5. "Unemancipated minor" means any person less than eighteen (18) years of age who is not or has not been married or who is under the care, custody, and control of the person's parent or parents, guardian, or juvenile court of competent jurisdiction;

6. "Viable" means potentially able to live outside of the womb of the mother upon premature birth, whether resulting from natural causes or an abortion;

~~4-~~ 7. "Conception" means the fertilization of the ovum of a female individual by the sperm of a male individual;

~~5-~~ 8. "Health" means physical or mental health;

~~6-~~ 9. "Department" means the State Department of Health; and

~~7-~~ 10. "Inducing an abortion" means the administration by any person, including the pregnant woman, of any substance designed or intended to cause an expulsion of the unborn child, effecting an abortion as defined above, ~~and~~.

~~8-~~ B. Nothing contained herein shall be construed in any manner to include any birth control device or medication or sterilization procedure.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-731.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No person shall knowingly or recklessly perform or attempt to perform an abortion with knowledge that the pregnant female is seeking the abortion solely on account of the sex of the unborn child. Nothing in this section shall be construed to proscribe the performance of an abortion because the unborn child has a genetic disorder that is sex-linked.

B. Any person who knowingly or recklessly violates a provision of this section shall be liable for damages as provided in this subsection and may be enjoined from such acts in accordance with this section in an appropriate court.

1. A cause of action for injunctive relief against any person who has knowingly or recklessly violated a provision of this section may be maintained by:

- a. the female upon whom an abortion was performed or attempted to be performed in violation of this section,
- b. any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the female upon whom an abortion has been performed or attempted to be performed in violation of this section,
- c. a district attorney with appropriate jurisdiction, or
- d. the Attorney General.

2. The injunction shall prevent the abortion provider from performing further abortions in violation of this section in this state.

3. Any person who knowingly violates the terms of an injunction issued in accordance with this section shall be subject to civil contempt and shall be fined Ten Thousand Dollars (\$10,000.00) for the first violation, Fifty Thousand Dollars (\$50,000.00) for the second violation, and One Hundred Thousand Dollars (\$100,000.00) for the third violation and for each succeeding violation. The fines shall be the exclusive penalties for civil contempt pursuant to this paragraph. Each performance or attempted performance of an abortion in violation of the terms of an injunction is a separate violation. These fines shall be cumulative. No fine shall be assessed against the female upon whom an abortion is performed or attempted.

4. A pregnant female upon whom an abortion has been performed in violation of this section, or the parent or legal guardian of the female if she is an unemancipated minor, may commence a civil action against the abortion provider for any knowing or reckless violation of this section for actual and punitive damages.

C. An abortion provider who performed an abortion in violation of this section shall be considered to have engaged in unprofessional conduct for which the certificate or license of the provider to provide health care services in this state shall be

suspended or revoked by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners.

D. In every proceeding or action brought under this section, the anonymity of any female upon whom an abortion is performed or attempted shall be preserved unless she gives her consent to such disclosure. The court, upon motion or sua sponte, shall issue orders to the parties, witnesses, and counsel, and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms, to the extent necessary to safeguard her identity from public disclosure. In the absence of written consent of the female upon whom an abortion has been performed or attempted, anyone who brings an action under subsection B of this section shall do so under a pseudonym.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738a of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Statistical Reporting of Abortion Act".

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738b of Title 63, unless there is created a duplication in numbering, reads as follows:

A. As used in the Statistical Reporting of Abortion Act:

1. "Abortion" means the term as defined in Section 1-730 of Title 63 of the Oklahoma Statutes;

2. "Complication" means any adverse physical or psychological condition arising from the performance of an abortion, which includes but is not limited to: uterine perforation, cervical perforation, infection, bleeding, hemorrhage, blood clots, failure to actually terminate the pregnancy, incomplete abortion (retained tissue), pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa, preterm delivery in subsequent pregnancies, free fluid in abdomen, adverse reaction to anesthesia and other drugs, and mental and psychological complications such as depression, anxiety, sleeping disorders, psychiatric hospitalization, and emotional problems; and

3. "Stable Internet website" means a website that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the State Department of Health.

B. By March 1, 2011, the State Department of Health shall make available, on its stable Internet website, an Individual Abortion Form as required by Section 5 of this act, and a form for a Complications of Induced Abortion Report as required by Section 6 of this act.

C. By March 1, 2011, the State Department of Health shall, on its stable Internet website, provide the language of all Oklahoma Statutes and regulations directly relating to abortion, and shall promptly update its website to reflect subsequent statutory and regulatory changes. The Department shall also, by March 1, 2011, provide, on its stable Internet website, the means by which physicians may electronically submit the reports required by the Statistical Reporting of Abortion Act. The Department shall include instructions on its stable Internet website regarding electronic submission. The Department shall take all necessary precautions to ensure the security of the electronically submitted reports so that the data they include is able to be accessed only by specially authorized departmental personnel during and following the process of transmission.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738c of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Subsections B and C of this section shall become operative on the later of:

1. April 1, 2011; or

2. Thirty (30) calendar days following the date on which the State Department of Health posts on its website the Individual Abortion Form and instructions concerning its electronic submission referenced in this section.

B. 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.

C. In cases in which a physician or the agent of a physician:

1. Mails the printed materials described in Section 1-738.3 of Title 63 of the Oklahoma Statutes to a female specifically to comply with division (1) of subparagraph d of paragraph 2 of subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes;

2. Gives or mails the printed materials described in Section 1-738.10 of Title 63 of the Oklahoma Statutes to a female specifically to comply with subsection A of Section 1-738.8 of Title 63 of the Oklahoma Statutes; or

3. Provides notice to a parent in compliance with Section 1-740.2 of Title 63 of the Oklahoma Statutes,

but does not subsequently perform an abortion on the female or minor, the physician shall electronically submit an Individual Abortion Form to the State Department of Health, and shall mark as "not applicable" those items of information that may accurately be provided only when an abortion is performed. The physician shall not submit such a form if the physician knows that an abortion was subsequently performed on the female or minor by another physician. Individual Abortion Forms required by this subsection shall be submitted by the last business day of the second calendar month following the calendar month in which the physician mails the printed materials or provides notice to a parent.

D. The Department shall post the required Individual Abortion Form on its stable Internet website. Nothing in the Individual Abortion Form shall contain the name, address, or information specifically identifying any patient. The Department's Individual Abortion Form shall be substantially similar to, but need not be in the specific format, provided in subsection F of this section.

E. The Individual Abortion Form shall contain a notice containing an assurance that, in accordance with subsection F of Section 7 of this act, public reports based on the form submitted will not contain the name, address, or any other identifying information of any individual female, that the State Department of Health will take care to ensure that none of the information included in its public reports could reasonably lead to the identification of any individual female about whom information is reported in accordance with the Statistical Reporting of Abortion Act or of any physician providing information in accordance with the

Statistical Reporting of Abortion Act, and that such information is not subject to the Oklahoma Open Records Act.

F. Individual Abortion Form. The Department's Individual Abortion Form shall be substantially similar to, but need not be in the specific format of, the following form:

Individual Abortion Form

(TO BE COMPLETED FOR EACH ABORTION PERFORMED)

1. Date of abortion _____
2. County in which abortion performed _____
3. Age of mother _____
4. Marital status of mother _____
(married, divorced, separated, widowed, or never married)
5. Race of mother _____
6. Years of education of mother _____
(specify highest year completed)
7. State or foreign country of residence of mother _____
8. Total number of previous pregnancies of the mother

Live Births _____
Miscarriages _____
Induced Abortions _____
9. Approximate gestational age in weeks, as measured from the last menstrual period of the mother, of the unborn child subject to abortion _____
10. Method of abortion used:
Suction Aspiration _____

Dilation and Curettage _____

RU 486 _____

Methotrexate _____

Other drug/chemical/medicine (specify) _____

Dilation and Evacuation _____

Saline _____

Urea _____

Prostaglandins _____

Partial Birth Abortion _____

Hysterotomy _____

Other (specify) _____

11. Was there an infant born alive as a result of the abortion?

If yes:

Were life-sustaining measures undertaken? _____

How long did the infant survive? _____

12. Was anesthesia administered to mother? _____

If yes, what type? _____

13. Was anesthesia administered to the fetus? _____

If yes:

What type? _____

How was it administered? _____

14. Method of fetal tissue disposal _____

15. The abortion provider or agent shall ask the pregnant female to provide, orally or in writing, the reason(s) she is seeking the abortion.

REASON GIVEN FOR ABORTION (check all applicable):

Having a baby:

Would dramatically change the life of the mother _____

Would interfere with the education of the mother _____

Would interfere with the job/employment/career of the mother _____

Mother has other children or dependents _____

Mother cannot afford the child _____

Mother is unmarried _____

Mother is a student or planning to be a student _____

Mother cannot afford child care _____

Mother cannot afford the basic needs of life _____

Mother is unemployed _____

Mother cannot leave job to care for a baby _____

Mother would have to find a new place to live _____

Mother does not have enough support from a husband or partner _____

Husband or partner is unemployed _____

Mother is currently or temporarily on welfare or public assistance _____

Mother does not want to be a single mother _____

Mother is having relationship problems _____

Mother is not certain of relationship with the father of the child _____

Partner and mother are unable to or do not want to get married _____

Mother is not currently in a relationship _____

The relationship or marriage of the mother may soon break up _____

Husband or partner is abusive to the mother or her children _____

Mother has completed her childbearing _____

Mother is not ready for a, or another, child _____

Mother does not want people to know that she had sex or became pregnant _____

Mother does not feel mature enough to raise a, or another, child _____

Husband or partner wants mother to have an abortion _____

There may be possible problem affecting the health of the fetus _____

Physical health of the mother is at risk _____

Parents want mother to have an abortion _____

Emotional health of the mother is at risk _____

Mother suffered from a medical emergency as defined in Section 1-738.1 of Title 63 of the Oklahoma Statutes _____

Mother wanted a child of a different sex _____

Abortion is necessary to avert the death of the mother _____

Pregnancy was a result of forcible rape _____

Pregnancy was a result of incest _____

Other (specify) _____

Patient was asked why she is seeking an abortion, but she declined to give a reason _____

16. Method of payment (check one):

Private insurance _____

Public health plan _____

Medicaid _____

Private pay _____

Other (specify) _____

17. Type of medical health insurance coverage, if any (check one):

Fee-for-service insurance company _____

Managed care company _____

Other (specify) _____

18. Sum of fee(s) collected _____

19. Specialty area of medicine of the physician _____

20. Was ultrasound equipment used before, during, or after the performance of this abortion?

Before? _____ Vaginal, abdominal, or both? _____

During? _____ Vaginal, abdominal, or both? _____

After? _____ Vaginal, abdominal, or both? _____

21. If ultrasound equipment was used, was the ultrasound, as required by Section 1-738.3b of Title 63 of the Oklahoma Statutes, performed by a:

Physician _____

Certified Technician as defined in Section 1-730 of Title 63 of the Oklahoma Statutes _____

22. Was the information required by paragraph 1 of subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes provided to the mother? _____

a. If yes, was it provided:

In person _____

By telephone _____

b. Was it provided by:

A referring physician _____

The physician performing the abortion _____

An agent of a referring physician _____

An agent of the physician performing the abortion

23. Was the information required by paragraph 2 of subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes provided to the mother? _____

a. If yes, was it provided:

In person _____

By telephone _____

b. Was it provided by:

A referring physician _____

An agent of a referring physician _____

The physician performing the abortion _____

An agent of the physician performing the abortion

24. Did the mother avail herself of the opportunity to have the printed materials described in Section 1-738.3 of Title 63 of the Oklahoma Statutes mailed to her? _____

25. Were the informed consent requirements of subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes dispensed with because of a medical emergency necessitating an immediate abortion:

To avert death _____

To avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy _____

26. Was the probable gestational age of the unborn child twenty (20) weeks or more? _____

a. If yes, was the mother provided the information described in subsection A of Section 1-738.8 of Title 63 of the Oklahoma Statutes? _____

(1) If yes, was the information provided:

In person _____

By telephone _____

(2) If yes, was the information provided by:

A referring physician _____

An agent of a referring physician _____

The physician performing the abortion _____

An agent of the physician performing the abortion _____

b. Did the mother choose to be given or mailed the materials described in Section 1-738.10 of Title 63 of the Oklahoma Statutes? _____

c. To the best of the information and belief of the reporting physician, did the mother go on to obtain the abortion? _____

27. Was the abortion performed within the scope of employment of an Oklahoma state employee or an employee of an agency or political subdivision of the state? _____

28. Was the abortion performed with the use of any public institution, public facility, public equipment, or other physical asset owned, leased, or controlled by this state, its agencies, or political subdivisions? _____

29. If the answer to question 27 or 28 is yes:

a. Was the abortion necessary to save the life of the mother? _____

If yes, what was the life-endangering condition?

b. Did the pregnancy result from an act of forcible rape?

If yes, list the law enforcement authority to which the rape was reported _____

List the date of the report _____

c. Did the pregnancy result from an act of incest committed against a minor? _____

If yes, list the law enforcement authority to which the perpetrator was reported _____

List the date of the report _____

THIS PORTION TO BE COMPLETED IN CASE OF MINOR

30. Minor's age _____

31. Was a parent of the minor provided notice prior to the abortion as described in Section 1-740.2 of Title 63 of the Oklahoma Statutes? _____

a. If yes, how was the notice provided?

In person _____

By mail _____

- b. If yes, to the best of the reporting physician's knowledge and belief, did the minor go on to obtain the abortion? _____

32. Was informed written consent of one parent obtained as described in Section 1-740.2 of Title 63 of the Oklahoma Statutes? _____

If yes, how was it secured?

In person _____

Other (specify) _____

33. If no notice was provided nor consent obtained, please indicate which of the following apply:

Minor was emancipated _____

Abortion was necessary to prevent the death of the minor _____

Medical emergency, as defined in Section 1-738.1 of Title 63 of the Oklahoma Statutes, existed _____

Minor received judicial authorization to obtain abortion without parental notice or consent _____

34. If no notice was provided nor consent obtained because a medical emergency existed, please indicate:

Whether parent was subsequently notified (state period of time elapsed before notice was given) _____

Whether judicial waiver of notice requirement was obtained _____

35. If the minor received judicial authorization to obtain an abortion without parental notice or consent, please indicate which of the following applies:

Judge ruled that minor was mature enough to give informed consent on her own _____

Judge ruled that abortion was in the best interest of the minor

36. If the female was a minor at the time of conception, please indicate the age of the father of the unborn child at the time of conception _____
37. If at the time of conception the ages of the mother and father were such that a violation of Section 1111, 1112, 1114, or 1123 of Title 21 or Section 7115 of Title 10 of the Oklahoma Statutes occurred, was the rape or abuse reported to the proper authorities _____

Filed this ____ day of _____, ____ by:

(Name of physician)

(Physician's license number)

NOTICE: In accordance with subsection F of Section 6 of this act, public reports based on this form will not contain the name, address, or any other identifying information of any individual female. The State Department of Health shall take care to ensure that none of the information included in its public reports could reasonably lead to the identification of any individual female about whom information is reported or of any physician providing information in accordance with the Statistical Reporting of Abortion Act. Such information is not subject to the Oklahoma Open Records Act.

Please be advised that any complication(s) shall be detailed in a "Complications of Induced Abortion Report" and submitted to the Department as soon as is practicable after the encounter with the induced-abortion-related illness or injury, but in no case more than sixty (60) days after such an encounter. In addition, there is a specific requirement promptly to provide a written report of specified complications associated with RU-486, mifepristone, to the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners, in accordance with paragraph 1 of subsection D of Section 1-729 of Title 63 of the Oklahoma Statutes.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738d of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Complications of Induced Abortion Report. By March 1, 2011, the State Department of Health shall prepare and make available, on its stable Internet website, a Complications of Induced Abortion Report for all physicians licensed and practicing in the State of Oklahoma.

B. Subsection C of this section shall become operative on the later of:

1. April 1, 2011; or

2. Thirty (30) calendar days following the date on which the State Department of Health posts on its website the Individual Abortion Form and instructions concerning its electronic submission referenced in Section 5 of this act.

C. Any physician practicing in Oklahoma who encounters an illness or injury that a reasonably knowledgeable physician would judge is related to an induced abortion shall complete and submit, electronically or by regular mail, a Complications of Induced Abortion Report to the Department as soon as is practicable after the encounter with the induced-abortion-related illness or injury, but in no case more than sixty (60) days after such an encounter. Nothing in the Complications of Induced Abortion Report shall contain the name, address, or any other information specifically identifying any patient. Knowing or reckless unreasonable delay or failure to submit a Complications of Induced Abortion Report shall be sanctioned according to the provisions of the Statistical Reporting of Abortion Act.

D. The Complications of Induced Abortion Report shall contain a notice containing an assurance that in accordance with subsection F of Section 5 of this act, public reports based on the form submitted will not contain the name, address, or any other identifying information of any individual female, that the State Department of Health will take care to ensure that none of the information included in its public reports could reasonably lead to the identification of any individual female about whom information is reported in accordance with the Statistical Reporting of Abortion Act, and that such information is not subject to the Oklahoma Open Records Act.

E. Complication(s) of Induced Abortion Report. The Complications of Induced Abortion Report shall be substantially similar to, but need not be in the specific format of, the following form:

Complications of Induced Abortion Report

1. Name and specialty field of medical practice of the physician filing the report: _____;

2. Did the physician filing the report perform or induce the abortion: _____;

3. Name, address, and telephone number of the health care facility where the induced abortion complication was discovered or treated: _____;

4. Date on which the complication was discovered: _____;

5. Date on which, and location of the facility where, the abortion was performed, if known: _____;

6. Age of the patient experiencing the complication: _____;

7. Describe the complication(s) resulting from the induced abortion: _____;

8. Circle all that apply:

- a. Death
- b. Cervical laceration requiring suture or repair
- c. Heavy bleeding/hemorrhage with estimated blood loss of greater than or equal to 500cc
- d. Uterine Perforation
- e. Infection requiring inpatient transfusion
- f. Failed termination of pregnancy (continued viable pregnancy)
- g. Incomplete termination of pregnancy (Retained parts of fetus requiring re-evacuation)

h. Other (May include psychological complications, future reproductive complications, or other illnesses or injuries that in the physician's medical judgment occurred as a result of an induced abortion. Please specify Diagnosis.) _____;

9. Type of follow-up care, if any, recommended:
_____;

10. Will the physician filing the Complications of Induced Abortion Report be providing such follow-up care (if not, the name of the medical professional who will, if known):
_____;

11. Name and license number of physician filing the Complications of Induced Abortion Report: _____.

F. The Complications of Induced Abortion Report shall contain information advising physicians of their independent duty promptly to provide a written report of specified complications associated with RU-486, mifepristone, to the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners, in accordance with paragraph 1 of subsection D of Section 1-729 of Title 63 of the Oklahoma Statutes.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738e of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Beginning in 2012, by June 1 of each year, the Department shall issue, on its stable Internet website, a public Annual Abortion Report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with the Statistical Reporting of Abortion Act.

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

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

1. The number of induced abortions performed in the previous calendar year, broken down by month and county in which the abortion was performed;
2. The number of abortions classified by:
 - a. the state or foreign country of residence of the mother,
 - b. the age, marital status, and race of the mother, and
 - c. the number of years of education of the mother;
3. The number of abortions classified by:
 - a. the number of previous pregnancies of the mother,
 - b. previous live births to the mother,
 - c. previous miscarriages, and
 - d. previous induced abortions;
4. The number of abortions by week of gestational age;
5. The number of abortions performed by each reported method;
6. The number of abortions resulting in an infant born alive; of these, the number of cases in which life-sustaining measures were taken; and a statistical summary of the length of survival of such infants;
7. The number of cases in which anesthesia was administered to the mother and the number of each type of anesthesia;
8. The number of cases in which anesthesia was administered to the unborn child, and the number of each type of anesthesia and of each method of administration;
9. The number of each reported method of fetal disposal;
10. The reasons reported for the abortions, and the number of times each reported reason was cited;
11. The number of abortions paid for by:

- a. private insurance,
- b. public health plan,
- c. Medicaid,
- d. private pay, or
- e. other (please specify);

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

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

13. A statistical summary of the fees collected;

14. Specialty area of medicine of the physician;

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

16. The number of abortions before which an ultrasound was performed, as required by Section 1-738.3b of Title 63 of the Oklahoma Statutes, by:

- a. the physician, or
- b. a certified technician as defined by Section 1-730 of Title 63 of the Oklahoma Statutes;

17. The number of abortions performed without first explaining, displaying, and describing ultrasound images as provided under paragraphs 2 through 4 of subsection B of Section 1-738.3b of Title 63 of the Oklahoma Statutes because of a medical emergency determination;

18. The number of abortions resulting in reported complications, and of those, how many were reported by the physician

who performed the abortion, and how many were reported by another physician, the types of reported complications, and the number of each type, including, based on data which shall be compiled and transmitted to the State Department of Health by the State Boards of Medical Licensure and Supervision and of Osteopathic Examiners, the complications related to RU-486, mifepristone, reported under paragraph 1 of subsection D of Section 1-729 of Title 63 of the Oklahoma Statutes;

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

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

21. The number of females to whom physicians or agents of physicians provided the information in paragraph 2 of subsection B of Section 1-738.2 of Title 63 of the Oklahoma Statutes; of that number, the number provided by telephone and the number provided in person; of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion; and of each of those numbers, the number provided by the physician and the number provided by an agent of the physician;

22. The number of females who availed themselves of the opportunity to have a copy of the printed information described in Section 1-738.3 of Title 63 of the Oklahoma Statutes mailed to them; and of that number, the number who, based on the submitted reports, did and did not obtain an abortion;

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

24. The number of females to whom physicians or their agents provided the information described in subsection A of Section 1-738.8 of Title 63 of the Oklahoma Statutes; of that number:

- a. the number provided by telephone and the number provided in person; and of each of those numbers, the number provided in the capacity of a referring physician and the number provided in the capacity of a physician who is to perform the abortion, or by the agent of such physician, and
- b. the number of females who availed themselves of the opportunity to be given or mailed the materials described in Section 1-738.10 of Title 63 of the Oklahoma Statutes, and the number who did not; and of each of those numbers, the number who, to the best of the information and belief of the reporting physician, went on to obtain the abortion;

25. The number of females to whom the information described in subsection A of Section 1-738.8 of Title 63 of the Oklahoma Statutes would have had to be provided but for a medical emergency determination; of that number, the number for whom an immediate abortion was necessary to avert the death of the female, and the number for whom a delay would have created serious risk of substantial and irreversible impairment of a major bodily function;

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

- a. the number of abortions reported as necessary to save the life of the mother, the life-endangering conditions identified, and the number of each such condition reported,
- b. the number of abortions reported from pregnancies resulting from forcible rape, the number of such rapes reported to law enforcement authorities, general categories of law enforcement authorities to whom reports were made and the number made to each

category, and a statistical summary of the length of time between the dates of reporting to law enforcement authorities and the dates of the abortions, and

- c. the number of abortions reported from pregnancies resulting from incest committed against a minor, the number of perpetrators of incest in such cases reported to law enforcement authorities, general categories of law enforcement authorities to whom reports were made and the number made to each category, and a statistical summary of the length of time between the dates of reporting to law enforcement authorities and the dates of the abortions;

27. The number of females to a parent of whom the physician provided notice as required by Section 1-740.2 of Title 63 of the Oklahoma Statutes; of that number, the number provided personally as described in that section, and the number provided by mail as described in that section, and of each of those numbers, the number of females who, to the best of the information and belief of the reporting physician, went on to obtain the abortion;

28. The number of females upon whom the physician performed an abortion without the notice to or consent of the parent of the minor required by Section 1-740.2 of Title 63 of the Oklahoma Statutes; of that number, the number who were emancipated minors and the number who suffered from a medical emergency, and of the latter, the number of cases in which a parent was notified subsequently and the number of cases in which a judicial waiver was obtained. In the case of medical emergencies in which a parent was informed subsequently, a statistical summary of the period of time elapsed before notification;

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

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

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

D. Beginning in 2012, by June 1 of each year, the State Department of Health shall post, on its stable Internet website, a public Annual Judicial Bypass of Abortion Parental Consent Summary Report providing statistics which shall be compiled and supplied to the Department by the Administrative Office of the Courts giving the total number of petitions or motions filed under Section 1-740.3 of Title 63 of the Oklahoma Statutes and of that number, the number in which:

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

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

F. The Department's public reports shall not contain the name, address, or any other identifying information of any individual female, and shall take care to ensure that none of the information included in its public reports could reasonably lead to the identification of any individual female about whom information is reported in accordance with the Statistical Reporting of Abortion

Act or of any physician providing information in accordance with the Statistical Reporting of Abortion Act. Nor shall the information described in the preceding sentence be subject to the Oklahoma Open Records Act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738f of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners shall notify the following of the requirements of the Statistical Reporting of Abortion Act and of the addresses of the pages on the State Department of Health website providing access to the forms it requires and instructions for their electronic submission:

1. By March 1, 2011, all physicians licensed to practice in this state; and

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

B. Individual Abortion Forms or Complications of Induced Abortion Reports that are not submitted by the end of a grace period of thirty (30) days following the due date shall be subject to a late fee of Five Hundred Dollars (\$500.00) for each additional thirty-day period the forms or reports are overdue. Any monies collected under this subsection shall be deposited into an account created within the Department, which shall be used for the administration of the Statistical Reporting of Abortion Act. Any physician required to report in accordance with the Statistical Reporting of Abortion Act who has not completed and electronically submitted a form or report, or has submitted only an incomplete form or report, more than one (1) year following the due date shall be precluded from renewing his or her license until such fines are paid in full and outstanding forms or reports are submitted, and may, in an action brought by the State Department of Health, be directed by a court of competent jurisdiction to electronically submit completed forms or reports within a period stated by court order or be subject to sanctions for civil contempt.

C. Anyone who knowingly or recklessly fails to submit an Individual Abortion Form or Complications of Induced Abortion

Report, or submits false information under the Statistical Reporting of Abortion Act, shall be guilty of a misdemeanor.

D. The Department shall ensure compliance with the Statistical Reporting of Abortion Act and shall verify the data provided by periodic inspections of places where abortions are performed.

E. The Department may promulgate rules in accordance with the Administrative Procedures Act to alter the dates established by the Statistical Reporting of Abortion Act to achieve administrative convenience, fiscal savings, or to reduce the burden of reporting requirements, so long as the forms and reports are made available, on its stable Internet website, to all licensed physicians in this state, and the public reports described in Section 7 of this act are issued at least once every year.

F. If the Department fails to issue the public reports described in Section 7 of this act, an action pursuant to Chapter 26 of Title 12 of the Oklahoma Statutes may be initiated. If judgment is rendered in favor of the plaintiff in any action described in this subsection, the court shall also render judgment for a reasonable attorney fee in favor of the plaintiff against the defendant. If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney fee in favor of the defendant against the plaintiff.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738g of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Legislature, by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this act, in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this law is challenged.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738h of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Sections 1-738.3a, 1-738.13 and 1-740.4a of Title 63 of the Oklahoma Statutes shall become ineffective and of no binding force on the date specified in subsection B of this section, but if the Statistical Reporting of Abortion Act is ever temporarily or permanently restrained or enjoined by judicial order, these sections

shall become effective and enforceable; provided, however, that if such temporary or permanent restraining order or injunction is ever stayed or dissolved, or otherwise ceases to have effect, these sections shall again become ineffective and of no binding force until or unless an injunction or restraining order against the Statistical Reporting of Abortion Act is again in effect. If and to the extent the Statistical Reporting of Abortion Act is restrained or enjoined in part, then only those provisions of these sections that neither conflict with nor substantively duplicate the provisions of the Statistical Reporting of Abortion Act that are not enjoined shall have effect. As promptly as feasible following the issuance of any restraining order or injunction that enjoins part but not all of the Statistical Reporting of Abortion Act, the Attorney General shall issue an opinion specifically identifying those provisions of these sections that are effective and enforceable in accordance with the preceding sentence.

B. The date specified in this subsection is the later of:

1. April 1, 2011; or

2. Thirty (30) calendar days following the date on which the State Department of Health posts on its website the Individual Abortion Form and instructions concerning its electronic submission referenced in Section 5 of this act.

SECTION 11. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

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

SECTION 12. REPEALER 63 O.S. 2001, Section 1-738, is hereby repealed.

SECTION 13. This act shall become effective November 1, 2009.

Passed the House of Representatives the 13th day of May, 2009.

Presiding Officer of the House of
Representatives

Passed the Senate the 15th day of May, 2009.

Presiding Officer of the Senate

BILL SUMMARY
1st Session of the 52nd Legislature

Bill No.:	HB 1595
Version:	CCS (7995)
Author:	Rep. Sullivan/Sen. Lamb
Date:	May 11, 2009
FY-10 Impact:	\$0
FY-11 Impact:	\$281,285
FY-12 Impact:	\$256,285

Bill Summary

Research Analyst: Marcia Goff

The Conference Committee Substitute restores the title and enacting clause and modifies certain dates.

CCS for HB 1595 prohibits a person from performing an abortion on a woman who is seeking the abortion solely because of the sex of the child and creates the Statistical Reporting of Abortions Act, which requires physicians who perform abortions to report certain information to the Oklahoma State Department of Health (OSDH).

The bill also requires the department to make state statutes and regulations related to abortion and the reporting forms available on its website and to notify physicians in the state about the requirements to report abortion-related information. Finally, the measure directs OSDH to publish certain annual abortion reports on its website and to ensure compliance with the provisions of the act by conducting periodic inspections of places where abortions are performed.

Fiscal Summary

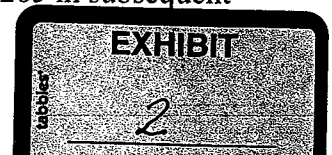
Fiscal Analyst: Mark Newman

The CCS for HB 1595 amends Title 63 by modifying definitions related to abortion and prohibits the performance of an abortion solely on the basis of the sex of the unborn child.

The CCS for HB 1595 also contains both amendatory and new language related to the creation of the Statistical Reporting of Abortion Act and a Complications of Induced Abortion Report. This legislation requires the Oklahoma State Department of Health (OSDH) to include an Individual Abortion Form and a Complications of Induced Abortion Report on their internet website. OSDH is also required to provide the language of all Oklahoma Statutes and regulations relating to abortion on the website and by June 1 of each year issue an Annual Abortion Report, including all data required by the Statistical Reporting of Abortion Act, on the website.

Fiscal Analysis

Based on information provided by OSDH, the CCS for HB 1595, will require the development of two new reporting forms, complete rebuilding of the existing electronic reporting system, and the implementation of a compliance oversight unit. Personnel and travel costs, software expenses, and web-site development will require \$281,285 during the first year and \$256,285 in subsequent



years. Because the dates for initiation or completion of support components have been changed to 2011, the cost requirements for OSDH do not occur until FY-11 and subsequent years.

Long Term Fiscal Considerations

None

Fiscal Analysis Reviewed by:

Mark Tygret

House Fiscal Director

Partial Transcript of February 25, 2009 Oklahoma House of Representatives
Hearing on House Bill 1595

Excerpts of Remarks by State Representative Jeannie McDaniel:

So, every day in Oklahoma, 140 babies are born. Six of the babies are born to children. Fifty-three (53) of the babies are born without adequate prenatal care, and 11 of the babies are born too small. And we all know what that's costing us, not just their families and their siblings, but all of us, as we hope to raise them.

Our brains don't disengage when we get pregnant. And our hearts are located between our uterus and our brain. And this is really a matter of the heart to me. We're voting on legislation about feelings and families. We're talking about when someone faces an unintended pregnancy, just when they need their relatives, friends, and family to go to, to put their arms around them, and talk about the situation, the challenges ahead – we are passing legislation today that is going to say those very people – your siblings, your grandparents, your parents, your ex-spouses, will have – and your district attorney and your attorney general – will have the right to intervene with an injunction on your behalf, whether you want it or not. I can't think of any other legislation that's taken away more of my rights, and I realize it's couched in only if I choose to have an abortion because I don't want the sex of the child I'm told I'm having. But I can tell you all, many young people and women don't think about at the time when they're faced with an unintended pregnancy, they're looking for answers. Right now, the clinics you and I have visited in our state offer counseling on adoption. They offer prenatal care, they have pediatricians, you can get WIC. And one of the choices, yes, is how to terminate the unintended pregnancy.

But I can tell you with what we're doing today, as we put up more barriers, and this is just one more barrier to perhaps one person who might decide to take RU-486. They might go out here in the lobby and take a drink of water and take that pill, which will terminate the pregnancy. Or they could do it at a McDonald's drive-through while they're drinking a Coke. But they won't have their families with them, and they won't have people in these clinics who are set up to talk to them about reproductive health care. They may not go in and get the DNC they need, or the follow-up they need, after they take RU-486.

Fourteen percent of the abortions in the United States are now performed through this method. They don't need to go to a clinic. Physicians are prescribing this medicine for women. They're also prescribing far more – filling far more prescriptions for the day-after pill. So all I'm asking you to think about is what we're doing. Are we sending people away from the clinics that we've set up to try to help them get care, get educated, and get good accurate information – or are we doing what people had to do in many years past, and that is taking resources into their own hands and perhaps having consequences that we hadn't intended with this bill? Thank you.



Excerpts of Remarks by State Representative Ryan Kiesel:

Thank you Mr. Speaker and members. I know that Representative McDaniel touched on the gender selection part of this bill. I'd like to point out that, you know, that would be a good debate for this body to have. But three pages out of 36, less than ten percent of this bill, deals with gender-selection abortions. The vast majority of this bill has very real implications for the medical practice and the privacy of patients in the state of Oklahoma. Of those 36 pages, I'll turn your attention to page 24.

Page 24 says that the annual abortion report, which is going to be put upon the Internet for any of us to look at, not just health care professionals, but for any Oklahoman, or heck, someone in China could go online and pick it up and read it if they want to. In that report, it's going to show for the previous calendar year, broken down by month and county. Now consider, like many of you, I represent counties that don't have a very large population. That's why I have to represent all of one and parts of three others, just to get my requisite number of constituents. And there are members here that represent even more sparsely populated counties than I do. But broken down by month and county, it's going to show the number of abortions classified by the state or foreign country of residence of the mother, the mother's age, marital status, and race, the number of years of education she has, the number of previous pregnancies, number of previous live births, number of previous miscarriages, and previous induced abortions.

I don't know about you, but in my county, I think that someone, with a little bit of effort, could sit down and determine just who those women are. So, we have to determine whether the privacy interests of those women are outweighed by this bill. Whether the privacy interests of those women, who may be victims of incest, may be victims of rape, are going to be subjected to the public knowledge that they had an abortion. If the privacy interests are outweighed, then why not forgo this bill altogether? Because obviously, I think it violates HIPAA. But let's forgo the bill altogether and let's just ask these women to walk around with a giant scarlet A on their chest. Because we're going to know, with this bill, in small counties, who has and hasn't had an abortion. Now will you know whether or not that person was a victim of rape or incest? Will you know the circumstances of that abortion? No, we won't. But it will, it will allow for them to be identified.

So, when you're voting on this bill, I know that it's very difficult to vote against language that prohibits abortion for the sex of the child, and I think we should have that debate and I'd like to see it in a standalone bill. And I think it would be a productive debate and deliberation on this body. But that's only one twelfth of this bill, one twelfth of this bill. The rest of this bill is going to have serious consequences for the privacy of Oklahoma women and will have no regard for the circumstances that led to the decision for them to have an abortion. I urge you to take that into consideration whatever you vote, and respectfully ask for your opposition to this measure. Thank you and I yield my time to the Chair.