

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

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

Plaintiff,

v.)

BRAD HENRY, in his official capacity as Governor)
of Oklahoma; W.A. DREW EDMONDSON, in his)
official capacity as Attorney General of Oklahoma;)
TIM HARRIS, in his official capacity as Tulsa)
County District Attorney; JAMES MICHAEL)
CRUTCHER, in his official capacity as Oklahoma)
Commissioner of Health; LYLE KELSEY, in his)
official capacity as Executive Director of the)
Oklahoma State Board of Medical Licensure and)
Supervision; and CHERYL A. VAUGHT, in her)
official capacity as President of the Oklahoma)
State Board of Osteopathic Examiners,)

Defendants.)

CJ-2008-9119

Case No. _____

Judge _____

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

OCT - 9 2008

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

PETITION

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

I. PRELIMINARY STATEMENT

2. Reproductive Services brings this action to challenge the validity of Senate Bill 1878 (the “Act” or “S.B. 1878”)¹ under the Oklahoma Constitution. S.B. 1878 is attached hereto as Exhibit A. It was enacted on April 17, 2008 and is scheduled to take effect on November

¹ 2008 Okla. Sess. Laws ch. 36 (to be codified at Okla. Stat. tit. 63, §§ 1-728-728.5, 1-729, 1-737.1-737.3, 1-738.1, 1-738.3b-c, 1-741.11).

1, 2008. This omnibus measure contains several provisions that impose burdensome restrictions on the performance of abortions. It subjects abortion providers to criminal and civil liability and administrative penalties.

3. The statute violates the single-subject rule and non-delegation doctrine embodied in the Oklahoma Constitution. It is void-for-vagueness, constitutes an impermissible special law, and violates Plaintiff's right to equal protection of the law. In addition, it impermissibly burdens several inherent and fundamental rights of Plaintiff's patients, including the right to terminate a pregnancy, the right to bodily integrity, the right to privacy, and the right to free speech.

4. Plaintiff seeks declaratory and injunctive relief from these constitutional violations.

II. JURISDICTION AND VENUE

5. Jurisdiction is conferred on this Court by Okla. Const. art. VII, § 7(a).

6. Plaintiff's claims for declaratory and injunctive relief are authorized by Okla. Stat. tit. 12, §§ 1651 and 1381 and by the general equitable powers of this Court.

7. Venue is appropriate under Okla. Stat. tit. 12, § 133 because several Defendants have official residences in Oklahoma County.

III. THE CHALLENGED STATUTE

8. On April 17, 2008, the Oklahoma Legislature enacted S.B. 1878, overriding a veto by Governor Brad Henry. S.B. 1878 is a compilation of five bills that were introduced separately, four in the House and one in the Senate. S.B. 1878; H.B. 2181; H.B. 3059; H.B. 3144; H.B. 2814. S.B. 1878 passed the Senate as a stand alone bill dealing with employment discrimination. It was amended in the House to include the text of four other bills then pending in the House. Three of those bills had failed to meet the legislative deadline for

passage from their house of origin, and therefore could only have advanced further in the session if approved by a two-third's majority vote.

9. The Act contains 15 sections. It establishes a new criminal offense with felony penalties, creates several completely new civil actions and civil penalties, and bars other civil actions. The measure covers several diverse and unrelated topics, including employment discrimination, health care regulation, and tort law.

10. Sections 1-6 of the Act comprise the "Freedom of Conscience Act," which addresses employment discrimination. The Freedom of Conscience Act authorizes individuals and health care facilities to refuse to perform or participate in (1) an abortion; (2) an experiment or medical procedure that destroys an in vitro human embryo or uses cells or tissue derived from the destruction of an in vitro human embryo; (3) an experiment or medical procedure on an in vitro human embryo that is not related to the beneficial treatment of the in vitro human embryo; (4) an experiment or medical procedure on a developing child in an artificial womb, at any stage of development, that is not related to the beneficial treatment of the developing child; (5) a procedure, including a transplant procedure, that uses fetal tissue or organs that come from a source other than a stillbirth or a miscarriage; or (6) an act that intentionally causes or assists in causing the death of an individual by assisted suicide, euthanasia, or mercy killing. The Act prohibits employment discrimination on the basis of such refusal. S.B. 1878, 2008 Okla. Sess. Laws ch. 36, §§ 1-6 (to be codified at Okla. Stat. tit. 63, §§ 1-728 – 1.728.5)).

11. Section 7 of the Act (the "Mifepristone Provision") imposes limitations on the administration of mifepristone, which is sold under the brand name Mifeprex and also known as RU-486. Mifepristone is a medication that is used to induce abortions. It has been

approved for use in the United States since 2000. First, the Mifepristone Provision provides that only a physician “who satisfies all the criteria established by federal law” for the provision of mifepristone may “give, sell, administer, prescribe or otherwise provide” mifepristone. S.B. 1878, 2008 Okla. Sess. Laws ch. 36, § 7(B) (to be codified at Okla. Stat. tit. 63, § 1-729(B)). Second, it provides that a physician who provides mifepristone must comply with “the applicable requirements of any federal law that pertain to follow-up examinations or care for any female” to whom mifepristone is provided. Senate Bill 1878, 2008 Okla. Sess. Laws ch. 36, § 7(C) (to be codified at Okla. Stat. tit. 63, § 1-729(C)). Third, it imposes certain reporting requirements on physicians who provide mifepristone. Senate Bill 1878, 2008 Okla. Sess. Laws ch. 36, § 7(D)(1) (to be codified at Okla. Stat. tit. 63, § 1-729(D)(1)). “Federal law” is defined as “any law, rule, or regulation of the United States or any drug approval letter of the United States Food and Drug Administration that governs or regulates the use of RU-486, mifepristone, for the purpose of inducing abortions.” S.B. 1878, 2008 Okla. Sess. Laws ch. 36, § 7(A)(1) (to be codified at Okla. Stat. tit. 63, § 1-729(A)(1)).

12. The Mifepristone Provision establishes both a new criminal offense and new civil causes of action for violation of its prohibitions. It provides that: “Any person who violates [the Mifepristone Provision], upon conviction, shall be guilty of a felony.” S.B. 1878, 2008 Okla. Sess. Laws ch. 36, § 7(H) (to be codified at Okla. Stat. tit. 63, § 1-729(H)). It further provides that: “Any female upon whom an abortion has been performed” or attempted, “the father of the unborn child who was the subject of the abortion, if the father was married to the woman who received the abortion at the time the abortion was performed,” and “the maternal; grandparent of the unborn child” may sue a physician who violates the

Mifepristone Provision for actual and punitive damages. S.B. 1878, 2008 Okla. Sess. Laws ch. 36, § 7(F) (to be codified at Okla. Stat. tit. 63, § 1-729(F). In addition, “[i]f the offender is a professionally licensed health care provider,” he or she shall be subject to sanction “by the licensing board having administrative authority over that professionally licensed person.” S.B. 1878, 2008 Okla. Sess. Laws ch. 36, § 7(H) (to be codified at Okla. Stat. tit. 63, § 1-729(H)).

13. Sections 8-9 of the Act require abortion providers to post signs in designated areas of their facilities informing patients of their right to be free from coercion in the abortion decision. Specifically, the signs must state: “Notice: It is against the law for anyone, regardless of his or her relationship to you, to force you to have an abortion. By law, we cannot perform, induce, prescribe for, or provide you with the means for an abortion unless we have your freely given and voluntary consent. It is against the law to perform, induce, prescribe for, or provide you with the means for an abortion against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence.” S.B. 1878, 2008 Okla. Sess. Laws ch. 36, § 8(A) (to be codified at Okla. Stat. tit. 63, § 1-737.1(A)). Any abortion provider that fails to post the required signs shall be subject to an administrative penalty of \$10,000 per day and to civil suit “by or on behalf of an individual injured by the failure to post the required sign.” S.B. 1878, 2008 Okla. Sess. Laws ch. 36, § 9(A) (to be codified at Okla. Stat. tit. 63, § 1-737.2(9)(A)).

14. Section 10 of the Act requires abortion providers to orally inform minor patients of their right to be free from coercion in the abortion decision and to obtain written certification from the minor that the information was provided. S.B. 1878, 2008 Okla. Sess. Laws ch. 36,

§§ 10(A), (B) (to be codified at Okla. Stat. tit. 63, §§ 1-737.3(10)(A), (B)). The written certification must be kept on file “for at least seven (7) years or for five (5) years after the minor reaches the age of majority, whichever is greater.” S.B. 1878, 2008 Okla. Sess. Laws ch. 36, §§ 10(B) (to be codified at Okla. Stat. tit. 63, §§ 1-737.3(10)(B)).

15. Sections 11-13 of the Act (the “Ultrasound Provision”) require that, “[i]n order for the woman to make an informed decision, at least one (1) hour prior to a woman having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the woman, the physician who is to perform the abortion or induce the abortion, or the certified technician working in conjunction with the physician” must (1) “[p]erform an obstetric ultrasound on the pregnant woman, using either a vaginal transducer or an abdominal transducer, whichever would display the embryo or fetus more clearly;” (2) “[p]rovide a simultaneous explanation of what the ultrasound is depicting;” (3) “[d]isplay the ultrasound images so that the pregnant woman may view them;” and (4) “[p]rovide a medical description of the ultrasound images, which shall include the dimensions of the embryo or fetus, the presence of cardiac activity, if present and viewable, and the presence of external members and internal organs, if present and viewable.” S.B. 1878, 2008 Okla. Sess. Laws ch. 36, §§ 12(B)(1)-(4) (to be codified at Okla. Stat. tit. 63, §§ 1-737.3b(12)(B)(1)-(4)). The physician or certified technician performing the ultrasound must also obtain a written certification of compliance from the patient and retain it in the patient’s file for a specified period of time. S.B. 1878, 2008 Okla. Sess. Laws ch. 36, §§ 12(B)(5),(6) (to be codified at Okla. Stat. tit. 63, §§ 1-737.3b(12)(B)(5),(6)).

16. An abortion provider who “knowingly or recklessly performs or attempts to perform an abortion” in violation of the Ultrasound Provision is subject to felony criminal liability

pursuant to Okla. Stat. § 1-738.5. S.B. 1878, 2008 Okla. Sess. Laws ch. 36, § 12(E) (to be codified at Okla. Stat. tit. 63, § 1-737.3b(12)(E)).

17. An abortion provider who commits “any knowing or reckless” violation of the Ultrasound Provision may also be sued for “actual and punitive damages” by the patient or, if the patient is an unemancipated minor, her parents. S.B. 1878, 2008 Okla. Sess. Laws ch. 36, § 13(D) (to be codified at Okla. Stat. tit. 63, § 1-737.3c(13)(D)). Furthermore, an abortion provider who violates the Ultrasound Provision “shall be considered to have engaged in unprofessional conduct for which the provider’s certificate or license to provide health care services in this state may be suspended or revoked by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners.” S.B. 1878, 2008 Okla. Sess. Laws ch. 36, § 13(E) (to be codified at Okla. Stat. tit. 63, § 1-737.3c(13)(E)).

18. In addition, an abortion provider who “knowingly” violates these requirements may be enjoined from committing future violations through a lawsuit by the abortion provider’s patient; her spouse, parent, sibling, guardian, current or former licensed health care provider; a district attorney with appropriate jurisdiction; or the State Attorney General. S.B. 1878, 2008 Okla. Sess. Laws ch. 36, § 13(B) (to be codified at Okla. Stat. tit. 63, § 1-737.3c(13)(B)). An abortion provider who violates such an injunction “shall be subject to civil contempt” penalties and shall be fined \$10,000 for the first violation, \$50,000 for the second violation, \$100,000 for the third violation, and an amount in excess of \$100,000 for each subsequent violation. S.B. 1878, 2008 Okla. Sess. Laws ch. 36, § 13(C) (to be codified at Okla. Stat. tit. 63, § 1-737.3c(13)(C)).

19. Section 14 of the Act provides that, in civil actions based on “wrongful life” or “wrongful birth,” “no damages may be recovered for any condition that existed at the time of

a child's birth if the claim is that the defendant's act or omission contributed to the mother's not having obtained an abortion." S.B. 1878, 2008 Okla. Sess. Laws ch. 36, § 14(C) (to be codified at Okla. Stat. tit. 63, § 1-741.11(14)(C)).

20. Section 15 of the Act provides that the Act's effective date shall be November 1, 2008. S.B. 1878, 2008 Okla. Sess. Laws ch. 36, § 15.

IV. PARTIES

21. Reproductive Services, as part of NOVA Health Systems, is a non-profit charitable corporation that has operated a medical clinic in Tulsa, Oklahoma, since 1974. Reproductive Services provides a range of reproductive health care services, including surgical and medical abortions, contraception counseling and services, pregnancy testing, options counseling, adoption counseling, and referrals for other medical and social services, including referrals to an on-site licensed adoption agency. It is a member of the National Abortion Federation ("NAF") and is licensed as an abortion facility by the Oklahoma State Department of Health. Reproductive Services brings claims on behalf of itself, its staff and its patients.

22. Defendant Brad Henry is the Governor of Oklahoma. He is sued in his official capacity.

23. Defendant W.A. Drew Edmondson is the Attorney General of Oklahoma. He is sued in his official capacity.

24. Defendant Tim Harris is the Tulsa County District Attorney. He is sued in his official capacity.

25. James Michael Crutcher is the Oklahoma Commissioner of Health. He oversees the Oklahoma State Department of Health. He is sued in his official capacity.

26. Lyle Kelsey is the Executive Director of the Oklahoma State Board of Medical Licensure and Supervision. He is sued in his official capacity.

27. Cheryl A. Vaught is the President of the Oklahoma State Board of Osteopathic Examiners. She is sued in her official capacity.

V. EXISTING REGULATORY FRAMEWORK

28. In Oklahoma, the State Department of Health regulates the performance of abortions. *See* Okla. Stat. tit. 63, § 1-737; Okla. Admin. Code §§ 310:600-1-1 - 310:600-13-3. An “abortion facility” is defined as “a specialized hospital that provides abortions on an out-patient basis during the first trimester of pregnancy.” Okla. Admin. Code § 310:600-1-2. All abortion facilities must be licensed by the State Department of Health.

29. Only a physician licensed to practice medicine in the State of Oklahoma may perform abortions in Oklahoma. Okla. Stat. tit. 63, § 1-731(A).

30. An abortion may not be performed unless the patient gives her “voluntary and informed consent” to the procedure. Okla. Stat. tit. 63, § 1-738.2(A). Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if, at least 24 hours prior to the performance of the procedure, the patient is told that “ultrasound imaging and heart tone monitoring that enable the pregnant woman to view her unborn child or listen to the heartbeat of the unborn child are available to the pregnant woman.” Okla. Stat. tit. 63, § 1-738.2(B)(1)(a)(5).

31. The State Board of Medical Licensure and Supervision is required, on an annual basis, to publish “materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term,” including “pictures or

drawings representing the development of unborn children at two-week gestational increments, provided that the dimensions of the unborn child and shall be realistic and appropriate for the stage of pregnancy depicted.” Okla. Stat. tit. 63, § 1-738.3(A)(2)(a)(2). The State Board of Medical Licensure and Supervision must make the materials available both in print form and on the Internet. Okla. Stat. tit. 63, §§ 1-738.3(B),(C). At least 24 hours before an abortion is performed, a patient must be informed of the availability of the materials. Okla. Stat. tit. 63, §§ 1-738.2(B)(2)(c),(d).

32. Any physician who performs an abortion without first obtaining the voluntary and informed consent of the patient is subject to felony criminal liability and disciplinary action by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners. Okla. Stat. tit. 63, § 1-738.5.

VI. FACTUAL ALLEGATIONS

33. Reproductive Services performs approximately 200 abortions per month.

34. Two physicians perform the abortions at Reproductive Services. Those physicians divide their time between working at Reproductive Services and at their own private medical practices.

35. Reproductive Services has not been able to recruit any additional physicians to perform abortions at its facility.

36. Reproductive Services is one of only three licensed abortion facilities in the State of Oklahoma. In addition to the physicians at Reproductive Services, only two other physicians in the State perform abortions. One of those physicians is located in Oklahoma City and the other is located in Norman.

37. Approximately 40% of the abortions performed at Reproductive Services are medical

abortions. Medical abortions are induced using medication rather than through a surgical procedure. Reproductive Services performs medical abortions up to 8.4 weeks of gestation, as measured by a woman's last menstrual period ("LMP").

38. The physicians at Reproductive Services follow the evidence-based regimen for medical abortion recommended by the American College of Obstetricians and Gynecologists ("ACOG"). It consists of the oral administration of 200 milligrams ("mg") of mifepristone followed by the vaginal administration of 800 micrograms ("µg") of misoprostol.

39. Mifepristone works to terminate a pregnancy by blocking the hormone progesterone, which is needed to maintain a pregnancy. It is sold in the United States under the brand name Mifeprex and is also known as RU-486.

40. Misoprostol is a prostaglandin that causes the cervix to open and the uterus to contract and expel its contents.

41. The United States Food and Drug Administration ("FDA") approved Mifeprex for use in the United States in September 2000. The FDA's approval was based on the agency's review of three medical trials demonstrating the safety and efficacy of mifepristone, which had been submitted to the FDA with the drug's new drug application ("NDA") in 1996. All three trials followed the same dosage regimen: oral ingestion of 600 mg of mifepristone followed two days later by 400 µg of misoprostol. The trials demonstrated that this regimen is safe and effective for terminating pregnancies through 49 days of gestation, as measured by LMP.

42. The FDA issued an approval letter for Mifeprex to Population Council on September 28, 2000. That letter is available on the FDA's website at <http://www.fda.gov/cder/foi/appletter/2000/20687appltr.pdf>. The FDA issued a second approval letter for Mifeprex to

Danco Laboratories, LLC on November 15, 2004. That letter is available on the FDA's website at <http://www.fda.gov/cder/foi/appltr/2004/20687s010ltr.pdf>. Neither letter sets forth any requirements that pertain to follow-up examinations or care following the administration of mifepristone.

43. No law, rule, or regulation of the United States sets forth requirements that pertain to follow-up examinations or care following the administration of mifepristone.

44. The final printed label ("FPL") for Mifeprex contains dosage and administration instructions that include instructions pertaining to follow-up examinations and care. The FPL for Mifeprex is available on the FDA's website at <http://www.fda.gov/cder/foi/label/2005/020687s013lbl.pdf>. The dosage and administration instructions are not mandatory under federal law for physicians who administer mifepristone.

45. In 2005, ACOG published a Practice Bulletin stating that, "compared with the FDA approved regimen, mifepristone-misoprostol regimens using mifepristone, 200 mg orally, and misoprostol, 800 µg vaginally, are associated with a decreased rate of continuing pregnancies, decreased time to expulsion, fewer side effects, improved complete abortion rates, and lower cost for women with pregnancies up to 63 days of gestation based on LMP."

46. The World Health Organization ("WHO") and the Cochrane Collaboration also recognize the inferiority of the FDA approved regimen.

47. ACOG is the nation's leading association of medical professionals providing health care to women.

48. The WHO is a specialized agency of the United Nations that acts as a coordinating authority on international public health. Its objective is the attainment by all peoples of the highest possible level of health.

49. The Cochrane Collaboration is an international not-for-profit and independent organization, dedicated to making up-to-date, accurate information about the effects of healthcare readily available worldwide. It produces and disseminates systematic reviews of healthcare interventions and promotes the search for evidence in the form of clinical trials and other studies of interventions. The major product of the Collaboration is the Cochrane Database of Systematic Reviews which is published quarterly as part of *The Cochrane Library*. It is a key resource in evidence-based medicine.

50. The dosage and administration instructions contained in the FPL for Mifeprex state: "Patients will return for a follow-up visit approximately 14 days after the administration of Mifeprex." Reproductive Services instructs all medical abortion patients to return for a follow-up visit approximately 14 days after the administration of mifepristone; but it has no control over whether a patient actually returns for such a visit. At Reproductive Services, the show-rate for follow-up visits after a medical abortion is high, but it is less than one-hundred percent.

51. Because the requirements imposed by the Mifepristone Provision with respect to follow-up examinations and care after the administration of mifepristone are not clear, the physicians at Reproductive Services will cease performing medical abortions if the Act takes effect, rather than risking criminal conviction, civil liability, and licensure penalties.

52. Ultrasounds are performed for every woman seeking an abortion at Reproductive Services, solely for the purpose of determining the gestational age of the pregnancy, and never for the purpose of medical diagnosis.

53. At Reproductive Services, ultrasounds are performed by licensed practical nurses who have received on-site training in the use of both trans-abdominal and trans-vaginal

ultrasound. That training consisted of a course with both didactic and clinical elements, taught by the Director of Medical Imaging Education at Red Rocks Community College in Arvada, Colorado, as well as several clinical training sessions conducted by a technologist affiliated with NAF. In addition, the nursing staff relies on the Reproductive Services physicians for advice and review of the ultrasounds performed at the clinic.

54. At Reproductive Services, ultrasound imaging for an abortion patient is completed before the physician who will perform the abortion arrives at the facility. Requiring the physician to perform the ultrasound imaging himself or herself, or requiring that the ultrasound imaging be performed while the physician is on-site, would drastically limit the number of abortions that Reproductive Services could perform. Reproductive Services would not be able to meet the demand for abortions from its patients and might not be able to remain in business.

55. Reproductive Services is unfamiliar with the term "certified technician." Reproductive Services does not know whether the licensed practical nurses who perform ultrasounds at its facility qualify as certified technicians under the Ultrasound Provision.

56. Reproductive Services uses both trans-abdominal and trans-vaginal ultrasound for pregnancy dating. A trans-abdominal ultrasound is performed by passing a small, handheld device, known as a transducer, back and forth across the patient's abdomen, while a trans-vaginal ultrasound is performed by placing a transducer into the patient's vagina.

57. The decision about which method of ultrasound to use for a given patient is based on the gestational age of the pregnancy and clinical judgment. In some cases, it is not possible to predict with certainty which method of ultrasound will produce the clearest image of the pregnancy.

58. The Act singles out abortion providers for different and more burdensome treatment than all other physicians and health care providers regulated by the State. Such differential treatment is not rationally related to the promotion of women's health or any other important governmental interest.

VII. CLAIMS FOR RELIEF

First Claim for Relief **(Single-Subject Rule)**

59. The allegations of paragraphs 1 through 58 are incorporated as though fully set forth herein.

60. The Act violates Okla. Const. art. V, § 57 because it embraces more than one subject.

Second Claim for Relief **(Improper Delegation)**

61. The allegations of paragraphs 1 through 58 are incorporated as though fully set forth herein.

62. The Mifepristone Provision impermissibly delegates legislative authority to the federal government in violation of the non-delegation doctrine derived from Okla. Const. art. IV and V.

Third Claim for Relief **(Vagueness)**

63. The allegations of paragraphs 1 through 58 are incorporated as though fully set forth herein.

64. The Mifepristone Provision is vague in violation of Okla. Const. art. II, § 7 because it fails to afford a person of ordinary intelligence a reasonable opportunity to know what is prohibited by its terms.

Fourth Claim for Relief
(Special Law)

65. The allegations of paragraphs 1 through 58 are incorporated as though fully set forth herein.

66. The Mifepristone Provision constitutes an impermissible special law in violation of Okla. Const. art. V, § 59.

Fifth Claim for Relief
(Equal Protection)

67. The allegations of paragraphs 1 through 58 are incorporated as though fully set forth herein.

68. The Mifepristone Provision violates Plaintiff's right to equal protection of the law, which is guaranteed by Okla. Const. art. II, § 7, by subjecting Plaintiff to an unreasonable classification that serves no important governmental objective.

Sixth Claim for Relief
(Right to Terminate a Pregnancy)

69. The allegations of paragraphs 1 through 58 are incorporated as though fully set forth herein.

70. The Mifepristone Provision violates the right of Plaintiff's patients to terminate a pregnancy, which is protected as an inherent right by Okla. Const. art. II, § 2 and as a fundamental right by Okla. Const. art II, § 7.

Seventh Claim for Relief
(Right to Bodily Integrity)

71. The allegations of paragraphs 1 through 58 are incorporated as though fully set forth

herein.

72. The Mifepristone Provision violates the right of Plaintiff's patients to bodily integrity, which is protected as an inherent right by Okla. Const. art. II, § 2 and as a fundamental right by Okla. Const. art II, § 7, because it will require Plaintiff's patients to submit to an unwanted surgical procedure when a safe, non-surgical alternative is available.

Eighth Claim for Relief
(Vagueness)

73. The allegations of paragraphs 1 through 58 are incorporated as though fully set forth herein.

74. The Ultrasound Provision is vague in violation of Okla. Const. art. II, § 7 because it fails to afford a person of ordinary intelligence a reasonable opportunity to know what is prohibited by its terms.

Ninth Claim for Relief
(Free Speech)

75. The allegations of paragraphs 1 through 58 are incorporated as though fully set forth herein.

76. The Ultrasound Provision violates Okla. Const. art. II, § 22 because it requires Plaintiff's patients to listen to unwelcome speech by the government while in a private setting.

Tenth Claim for Relief
(Right to Privacy)

77. The allegations of paragraphs 1 through 58 are incorporated as though fully set forth herein.

78. The Ultrasound Provision violates the right of Plaintiff's patients to privacy, which is protected as an inherent right by Okla. Const. art. II, § 2 and as a fundamental right by Okla. Const. art. II, § 7, because it requires Plaintiff's patients to listen to unwelcome speech by the government while in a private setting.

Eleventh Claim for Relief
(Right to Terminate a Pregnancy)

79. The allegations of paragraphs 1 through 58 are incorporated as though fully set forth herein.

80. The Ultrasound Provision violates the right of Plaintiff's patients to terminate a pregnancy, which is protected as an inherent right by Okla. Const. art. II, § 2 and as a fundamental right by Okla. Const. art II, § 7.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

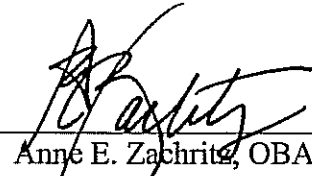
81. Issue a declaratory judgment that the Act violates the Oklahoma Constitution and is void and of no effect; and

82. Issue permanent injunctive relief, without bond, restraining Defendants, their employees, agents, and successors in office from enforcing the Act; and

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

Dated: October 9, 2008

Respectfully submitted,



Anne E. Zachritz, OBA # 15608

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Facsimile: (917) 637-3666
(Out-of-State Attorney Applications filed)

ATTORNEYS FOR PLAINTIFF

MESSAGE FROM THE
OKLAHOMA STATE SENATE

4/17/2008

TO THE SECRETARY OF STATE VETO OVERRIDE

Transmitting Enrolled SB 1878, and advising that under the provisions of Section 11, Article VI, of the Constitution of the State of Oklahoma, the Senate and the House of Representatives has reconsidered and passed said Bill, over the Governor's Veto, by a two-thirds vote of each House.

By order of the Senate of the State of Oklahoma, this message is sent:

Respectfully,
State

MICHAEL CLINGMAN

Secretary, Oklahoma State Senate

Received by the Secretary of

Date _____

By M. Susan Lovey

7

12:21:00

RECEIVED

APR 17 2008

OKLAHOMA SECRETARY
- OF STATE

12:35 pm
[Signature]

EXHIBIT A



OFFICE OF

No. SB 1878

THE GOVERNOR
STATE OF OKLAHOMA

OKLAHOMA CITY, OKLA. April 16, 2008

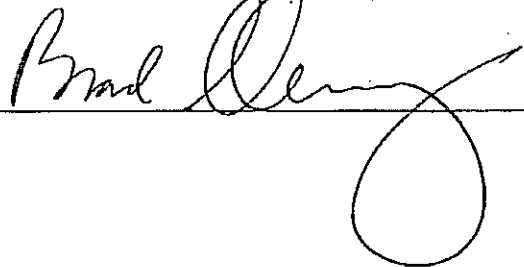
TIME SIGNED: 7:45pm

TO THE HONORABLE PRESIDENT PRO TEMPORE
AND MEMBERS OF THE OKLAHOMA SENATE
SECOND EXTRAORDINARY SESSION OF THE
FIFTY FIRST OKLAHOMA LEGISLATURE

ENROLLED SENATE BILL NO. 1878:

This is to advise you that on this date, pursuant to the authority vested in me by Section 11 and 12 of Article VI of the Oklahoma Constitution to approve or object to legislation presented to me, I have VETOED Senate Bill 1878. While I support reasonable restrictions on abortion, this legislation does not provide an essential exemption for victims of rape and incest. By forcing the victims of such horrific acts to undergo and view ultrasounds after they have made such a difficult and heartbreaking decision, the state victimizes the victim for a second time. It would be unconscionable to subject victims of rape and incest to such treatment. Because of this critical flaw, I can not in good conscience sign this legislation.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA



By B. McCune

Date/Time 4-16-8
7:50pm

An Act

ENROLLED SENATE
BILL NO. 1878

By: Lamb, Williamson, Barrington,
Jolley, Mazzei, Brown, Ford,
Crain, Wilcoxson, Coates,
Laughlin, Justice, Sykes,
Bingman, Johnson (Mike),
Reynolds, Brogdon, Myers, Coffee
and Aldridge of the Senate

and

Peterson (Pam), McCullough,
Banz, Billy, Cooksey, Denney,
Duncan, Hamilton, McNiel,
Reynolds, Steele, Sullivan,
Terrill, Thompson, Thomsen,
Tibbs, Trebilcock, Worthen and
Wright of the House

An Act relating to public health and safety;
creating the Freedom of Conscience Act; providing
short title; defining terms; prohibiting employers
from discriminating against certain persons for
refusing to perform specified acts based on certain
beliefs; making certain provisions inapplicable
under certain circumstances; providing defense;
prohibiting forced participation in specified acts
by certain persons under certain circumstances;
providing immunity from liability; providing for
equitable relief and damages; providing statute of
limitations; defining terms; prohibiting the sale or
distribution of mifepristone except by a physician
in certain circumstances; requiring compliance with
certain federal laws; requiring the preparation of
written report in certain circumstances; providing
for inspection of certain reports; providing for
confidentiality of certain persons; specifying

exceptions; providing for civil action; authorizing attorney fees; providing for certain punishment; authorizing sanctions by certain licensing boards; mandating certain sign posting for facilities that perform, induce, or prescribe for abortions or where the means for an abortion are provided; specifying wording of sign; specifying typeface of sign; specifying areas of sign posting; establishing penalty for noncompliance; providing for certain disclosure to minors; providing for certain certification by minors; authorizing certain civil actions; amending Section 6, Chapter 200, O.S.L. 2005, as amended by Section 2, Chapter 161, O.S.L. 2007 (63 O.S. Supp. 2007, Section 1-738.1), which relates to definitions; defining term; requiring performance of an ultrasound and explanation of the ultrasound prior to a pregnant woman having an abortion; providing for aversion of eyes from ultrasound; excepting compliance with requirement in a medical emergency; providing for certification; requiring retention of records; providing penalty for false certification; providing for damages; authorizing injunctive relief; specifying persons who may bring action for noncompliance with act; providing penalty; providing penalties for noncompliance with injunction; authorizing private right of action; providing for revocation of license or certificate; stating legislative intent; defining terms; prohibiting recovery of damages in certain circumstances for wrongful birth and wrongful life actions; excepting specific circumstances; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-728 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 "Freedom of Conscience Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-728.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Freedom of Conscience Act:

1. "Health care facility" means any public or private organization, corporation, authority, partnership, sole proprietorship, association, agency, network, joint venture, or other entity that is involved in providing health care services, including a hospital, clinic, medical center, ambulatory surgical center, private physician's office, pharmacy, nursing home, university hospital, medical school, nursing school, medical training facility, inpatient health care facility, or other place where health care services are provided;

2. "Human embryo" means a human organism that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells;

3. "In vitro human embryo" means a human embryo, whether cryopreserved or not, living outside of a woman's body;

4. "Participate in" means to perform, practice, engage in, assist in, recommend, counsel in favor of, make referrals for, prescribe, dispense, or administer drugs or devices or otherwise promote or encourage; and

5. "Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-728.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

An employer shall not discriminate against an employee or prospective employee by refusing to reasonably accommodate the

religious observance or practice of the employee or prospective employee, unless the employer can demonstrate that the accommodation would pose an undue hardship on the program, enterprise, or business of the employer, in the following circumstances:

1. An abortion as defined in Section 1-730 of Title 63 of the Oklahoma Statutes. The provisions of this section shall not apply if the pregnant woman suffers from a physical disorder, physical injury, or physical illness which, as certified by a physician, causes the woman to be in imminent danger of death unless an abortion is immediately performed or induced and there are no other competent personnel available to attend to the woman. As used in this act, the term "abortion" shall not include the prescription of contraceptives;

2. An experiment or medical procedure that destroys an in vitro human embryo or uses cells or tissue derived from the destruction of an in vitro human embryo;

3. An experiment or medical procedure on an in vitro human embryo that is not related to the beneficial treatment of the in vitro human embryo;

4. An experiment or medical procedure on a developing child in an artificial womb, at any stage of development, that is not related to the beneficial treatment of the developing child;

5. A procedure, including a transplant procedure, that uses fetal tissue or organs that come from a source other than a stillbirth or miscarriage; or

6. An act that intentionally causes or assists in causing the death of an individual by assisted suicide, euthanasia, or mercy killing.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-728.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No health care facility is required to admit any patient or to allow the use of the health care facility for the purpose of performing any of the acts specified in Section 3 of this act.

B. A physician, physician's assistant, registered nurse, practical nurse, pharmacist, or any employee thereof, or any other person who is an employee of, member of, or associated with the staff of a health care facility in which the performance of an activity specified in Section 3 of this act has been authorized, who in writing, refuses or states an intention to refuse to participate in the activity on moral or religious grounds shall not be required to participate in the activity and shall not be disciplined by the respective licensing board or authorized regulatory department for refusing or stating an intention to refuse to participate in the practice with respect to the activity.

C. A physician, physician's assistant, registered nurse, practical nurse, pharmacist, or any employee thereof, or any other person who is an employee of, member of, or associated with the staff of a health care facility is immune from liability for any damage caused by the refusal of the person to participate in an activity specified in Section 3 of this act on moral or religious grounds.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-728.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No health care facility, school, or employer shall discriminate against any person with regard to admission, hiring or firing, tenure, term, condition, or privilege of employment, student status, or staff status on the ground that the person refuses or states an intention to refuse, whether or not in writing, to participate in an activity specified in Section 3 of this act, if the refusal is based on religious or moral precepts.

B. No person shall be required to:

1. Participate in an activity specified in Section 3 of this act if the individual's participation in the activity is contrary to the person's religious beliefs or moral convictions;

2. Make facilities available for an individual to participate in an activity specified in Section 3 of this act if the person

prohibits the activity from taking place in the facilities on the basis of religious beliefs or moral convictions; or

3. Provide any personnel to participate in an activity specified in Section 3 of this act if the activity is contrary to the religious beliefs or moral convictions of the personnel.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-728.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of this section, "damages" do not include noneconomic damages, as defined in Section 1-1708.1C of Title 63 of the Oklahoma Statutes.

B. A person who is adversely affected by conduct that is in violation of the Freedom of Conscience Act may bring a civil action for equitable relief, including reinstatement or damages, or both reinstatement and damages. An action under this subsection may be commenced against the state and any office, department, independent agency, authority, institution, association, or other body in state government created or authorized to be created by the state constitution or any law. In an action under this subsection, the court shall award reasonable attorney fees to a person who obtains equitable relief, damages, or both. An action under this subsection shall be commenced within one (1) year after the cause of action accrues or be barred.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-729 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Federal law" means any law, rule, or regulation of the United States or any drug approval letter of the United States Food and Drug Administration that governs or regulates the use of RU-486, mifepristone, for the purpose of inducing abortions;

2. "Personal identifying information" means any information designed, commonly used or capable of being used, alone or in conjunction with any other information, to identify a person; and

3. "Physician" means a doctor of medicine or osteopathy legally authorized to practice medicine in this state.

B. No person shall knowingly give, sell, dispense, administer, prescribe or otherwise provide RU-486, also known as mifepristone, for the purpose of inducing an abortion in a pregnant female, unless the person who gives, sells, dispenses, administers, prescribes or otherwise provides the RU-486, mifepristone, is a physician who satisfies all the criteria established by federal law that a physician must satisfy in order to provide RU-486, mifepristone, for inducing abortions.

C. No physician who provides RU-486, mifepristone, for the purpose of inducing an abortion shall knowingly fail to comply with the applicable requirements of any federal law that pertain to follow-up examinations or care for any female for whom RU-486, mifepristone, is provided for the purpose of inducing an abortion.

D. 1. If a physician provides RU-486, mifepristone, for the purpose of inducing an abortion and if the physician knows that the female who uses the RU-486, mifepristone, for the purpose of inducing an abortion experiences during or after the use of RU-486, mifepristone, an incomplete abortion, severe bleeding, or an adverse reaction to the RU-486, mifepristone, or is hospitalized, receives a transfusion, or experiences any other serious event, the physician shall promptly provide a written report of the incomplete abortion, severe bleeding, adverse reaction, hospitalization, transfusion, or serious event to the State Board of Medical Licensure and Supervision or State Board of Osteopathic Examiners. The Board shall compile and retain all reports it receives pursuant to this subsection. Except as otherwise provided in this subsection, all reports the Board receives under this subsection are public records open to inspection pursuant to the Oklahoma Open Records Act; however, the Board shall not release the name or any other personal identifying information regarding a person who uses or provides RU-486, mifepristone, for the purpose of inducing an abortion and who is the subject of a report the Board receives under this subsection.

2. No physician who provides RU-486, mifepristone, to a pregnant female for the purpose of inducing an abortion as

authorized under subsection B of this section shall knowingly fail to file a report required under paragraph 1 of this subsection.

E. Subsection B of this section shall not apply to any of the following:

1. A pregnant female who obtains or possesses RU-486, mifepristone, for the purpose of inducing an abortion to terminate her own pregnancy;

2. The legal transport of RU-486, mifepristone, by any person or entity and the legal delivery of the RU-486, mifepristone, by any person to the recipient. This paragraph shall not apply to any conduct related to the RU-486, mifepristone, other than its transport and delivery to the recipient; or

3. The distribution, provision, or sale of RU-486, mifepristone, by any legal manufacturer or distributor of RU-486, mifepristone, provided the manufacturer or distributor made a good-faith effort to comply with any applicable requirements of federal law regarding the distribution, provision, or sale.

F. Any female upon whom an abortion has been performed without this section having been complied with, the father of the unborn child who was the subject of the abortion, if the father was married to the woman who received the abortion at the time the abortion was performed, or the maternal grandparent of the unborn child, may maintain an action against the person who performed the abortion in knowing or reckless violation of this section for actual and punitive damages. Any female upon whom an abortion has been attempted in knowing or reckless violation of this section may maintain an action against the person who attempted to perform the abortion for actual and punitive damages.

G. If judgment is rendered in favor of the plaintiff in any action described in this section, 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.

H. Any person who violates this section, upon conviction, shall be guilty of a felony. If the offender is a professionally licensed health care provider, in addition to any other sanction imposed by law for the offense, the offender is subject to sanctioning as provided by law by the licensing board having administrative authority over that professionally licensed person.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any private office, freestanding outpatient clinic, or other facility or clinic in which abortions, other than abortions necessary to prevent the death of the pregnant female, are performed, induced, prescribed for, or where the means for an abortion are provided shall conspicuously post a sign in a location defined in subsection C of this section so as to be clearly visible to patients, which reads:

Notice: It is against the law for anyone, regardless of his or her relationship to you, to force you to have an abortion. By law, we cannot perform, induce, prescribe for, or provide you with the means for an abortion unless we have your freely given and voluntary consent. It is against the law to perform, induce, prescribe for, or provide you with the means for an abortion against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence.

B. The sign required pursuant to subsection A of this section shall be printed with lettering that is legible and shall be at least three-quarters-of-an-inch boldfaced type.

C. A facility in which abortions are performed, induced, prescribed for, or where the means for an abortion are provided that is a private office or a freestanding outpatient clinic shall post the required sign in each patient waiting room and patient consultation room used by patients on whom abortions are performed, induced, prescribed for, or who are provided with the means for an abortion. A hospital or any other facility in which abortions are performed, induced, prescribed for, or where the means for an

abortion are provided that is not a private office or freestanding outpatient clinic shall post the required sign in each patient admission area used by patients on whom abortions are performed, induced, prescribed for, or by patients who are provided with the means for an abortion.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any private office, freestanding outpatient clinic or other facility or clinic that fails to post a required sign in knowing, reckless, or negligent violation of this act shall be assessed an administrative fine of Ten Thousand Dollars (\$10,000.00). Each day on which an abortion, other than an abortion necessary to prevent the death of the pregnant female, is performed, induced, prescribed for, or where the means for an abortion are provided in a private office, freestanding outpatient clinic or other facility or clinic in which the required sign is not posted during any portion of business hours when patients or prospective patients are present is a separate violation.

B. An action may be brought by or on behalf of an individual injured by the failure to post the required sign. A plaintiff in an action under this subsection may recover damages for emotional distress and any other damages allowed by law.

C. The sanctions and actions provided in this section shall not displace any sanction applicable under other law.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-737.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. If the pregnant female is a minor, the attending physician shall orally inform the female that no one can force her to have an abortion and that an abortion cannot be performed, induced, prescribed for, or that the means for an abortion cannot be provided unless she provides her freely given, voluntary, and informed consent.

B. The minor female shall certify in writing, prior to the performance of, induction of, receiving the prescription for, or provision of the means for the abortion, that she was informed by the attending physician of the required information in subsection A of this section. A copy of the written certification shall be placed in the minor's file and kept for at least seven (7) years or for five (5) years after the minor reaches the age of majority, whichever is greater.

SECTION 11. AMENDATORY Section 6, Chapter 200, O.S.L. 2005, as amended by Section 2, Chapter 161, O.S.L. 2007 (63 O.S. Supp. 2007, Section 1-738.1), is amended to read as follows:

Section 1-738.1 As used in Sections 1-738.1 through 1-738.5 of this title:

1. "Abortion" means the term as is defined in Section 1-730 of this title;

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 in this state in violation of this act;

3. "Board" means the State Board of Medical Licensure and Supervision;

4. "Medical emergency" means the existence of any physical condition, not including any emotional, psychological, or mental condition, which a reasonably prudent physician, with knowledge of the case and treatment possibilities with respect to the medical conditions involved, would determine necessitates the immediate abortion of the pregnancy of the female to avert her death or to avert substantial and irreversible impairment of a major bodily function arising from continued pregnancy;

5. "Physician" means a person licensed to practice medicine in this state pursuant to Sections 495 and 633 of Title 59 of the Oklahoma Statutes;

6. "Probable gestational age of the unborn child" means what, in the judgment of the physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed;

7. "Stable Internet web site" means a web site that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the State Board of Medical Licensure and Supervision; and

8. "Unborn child" means the term as is defined in Section 1-730 of this title; and

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

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.3b of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any abortion provider who knowingly performs any abortion shall comply with the requirements of this section.

B. In order for the woman to make an informed decision, at least one (1) hour prior to a woman having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the woman, the physician who is to perform or induce the abortion, or the certified technician working in conjunction with the physician, shall:

1. Perform an obstetric ultrasound on the pregnant woman, using either a vaginal transducer or an abdominal transducer, whichever would display the embryo or fetus more clearly;

2. Provide a simultaneous explanation of what the ultrasound is depicting;

3. Display the ultrasound images so that the pregnant woman may view them;

4. Provide a medical description of the ultrasound images, which shall include the dimensions of the embryo or fetus, the presence of cardiac activity, if present and viewable, and the presence of external members and internal organs, if present and viewable; and

5. Obtain a written certification from the woman, prior to the abortion, that the requirements of subsection B have been complied with; and

6. Retain a copy of the written certification prescribed by paragraph 5 of this subsection. The certification shall be placed in the medical file of the woman and shall be kept by the abortion provider for a period of not less than seven (7) years. If the woman is a minor, then the certification shall be placed in the medical file of the minor and kept for at least seven (7) years or for five (5) years after the minor reaches the age of majority, whichever is greater.

C. Nothing in this section shall be construed to prevent a pregnant woman from averting her eyes from the ultrasound images required to be provided to and reviewed with her. Neither the physician nor the pregnant woman shall be subject to any penalty if she refuses to look at the presented ultrasound images.

D. Upon a determination by an abortion provider that a medical emergency, as defined in Section 1-738.1 of Title 63 of the Oklahoma Statutes, exists with respect to a pregnant woman, the provider shall certify in writing the specific medical conditions that constitute the emergency. The certification shall be placed in the medical file of the woman and shall be kept by the abortion provider for a period of not less than seven (7) years. If the woman is a minor, then the certification shall be placed in the medical file of the minor and kept for at least seven (7) years or for five (5) years after the minor reaches the age of majority, whichever is greater.

E. An abortion provider who willfully falsifies a certification under subsection D of this section shall be subject to all penalties provided for under Section 13 of this act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-738.3c of Title 63, unless there is created a duplication in numbering, reads as follows:

A. An abortion provider who knowingly violates a provision of Section 12 of this act shall be liable for damages as provided in this section and may be enjoined from such acts in accordance with this section in an appropriate court.

B. A cause of action for injunctive relief against any person who has knowingly violated a provision of Section 12 of this act may be maintained by the woman upon whom an abortion was performed or attempted to be performed in violation of this act; 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 act; by a district attorney with appropriate jurisdiction; or by the Attorney General. The injunction shall prevent the abortion provider from performing further abortions in violation of this act in the State of Oklahoma.

C. 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, One Hundred Thousand Dollars (\$100,000.00) for the third violation, and for each succeeding violation an amount in excess of One Hundred Thousand Dollars (\$100,000.00) that is sufficient to deter future violations. The fines shall be the exclusive penalties for such contempt. 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 woman on whom an abortion is performed or attempted.

D. A pregnant woman upon whom an abortion has been performed in violation of Section 12 of this act, or the parent or legal guardian of the woman if she is an unemancipated minor, as defined in Section 1-740.1 of Title 63 of the Oklahoma Statutes, may commence a civil action against the abortion provider for any knowing or reckless violation of this act for actual and punitive damages.

E. An abortion provider who performed an abortion in violation of Section 12 of this act shall be considered to have engaged in unprofessional conduct for which the provider's certificate or license to provide health care services in this state may be suspended or revoked by the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-741.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. It is the intent of the Legislature that the birth of a child does not constitute a legally recognizable injury and that it is contrary to public policy to award damages because of the birth of a child or for the rearing of that child.

B. For the purposes of this section:

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

2. "Wrongful life action" means a cause of action that is brought by or on behalf of a child, which seeks economic or noneconomic damages for the child because of a condition of the child that existed at the time of the child's birth, and which is based on a claim that a person's act or omission contributed to the mother's not having obtained an abortion; and

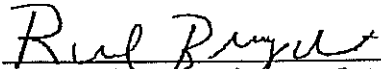
3. "Wrongful birth action" means a cause of action that is brought by a parent or other person who is legally required to provide for the support of a child, which seeks economic or noneconomic damages because of a condition of the child that existed at the time of the child's birth, and which is based on a claim that a person's act or omission contributed to the mother's not having obtained an abortion.

C. In a wrongful life action or a wrongful birth action, no damages may be recovered for any condition that existed at the time of a child's birth if the claim is that the defendant's act or omission contributed to the mother's not having obtained an abortion.

D. This section shall not preclude causes of action based on claims that, but for a wrongful act or omission, maternal death or injury would not have occurred, or handicap, disease, or disability of an individual prior to birth would have been prevented, cured, or ameliorated in a manner that preserved the health and life of the affected individual.

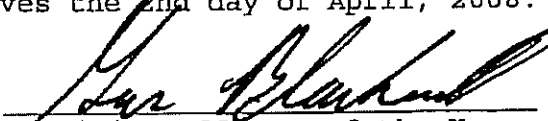
SECTION 15. This act shall become effective November 1, 2008.

Passed the Senate the 9th day of April, 2008.



Presiding Officer of the Senate

Passed the House of Representatives the 2nd day of April, 2008.



Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 10th
day of April, 2008,
at 3:51 o'clock P M.

By: 

Approved by the Governor of the State of Oklahoma the _____ day of _____, 20____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this
17th day of April, 2008,
at 12:35 o'clock P M.

By: 