IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

TULSA WOMEN'S REPRODUCTIVE CLINIC, LLC, an Oklahoma limited liability company, on behalf of itself, its physicians, and staff; and ALAN BRAID, M.D.,	)
Plaintiffs,	)
v.	)
MICHAEL HUNTER, in his official capacity as Attorney General for the State of Oklahoma, STEVE KUNZWEILER, in his official capacity as District Attorney for Tulsa County, LYLE KELSEY, in his official capacity as Executive Director of the Oklahoma State Board of Medical Licensure and Supervision, DENNIS CARTER, in his official capacity as President of the Oklahoma State Board of Osteopathic Examiners, and TOM BATES, in his official capacity as Interim Commissioner of Health for the Oklahoma State Board of Health, as well as their employees, agents, and successors,	)
Defendants.	)

CJ-2019-2176
CASE NO.

VERIFIED PETITION

Plaintiffs, by and through their undersigned attorneys, bring this Petition against the above-named Defendants, their employees, agents and successors in office, and in support thereof allege the following:

I. PRELIMINARY STATEMENT

1. Plaintiffs bring this action challenging Oklahoma Senate Bill 614, 2019 Okla. Sess. Laws Serv. Ch. 174 (West) (hereinafter "S.B. 614" or "the Act"), under the Constitution of the State of Oklahoma. S.B. 614, a copy of which is attached hereto as Exhibit A, is scheduled to take effect on November 1, 2019.

2. S.B. 614 is an unconstitutional intrusion on physicians' rights to free speech that will harm the medical profession and the patients they serve.

3. The Act forces physicians to tell their patients that medication abortion may be reversible, a claim wholly unsupported by reliable scientific evidence, contravening physicians' ethical and legal obligations as medical providers. Plaintiffs object to this forced speech, which requires physicians (i) to deliver to their patients false, misleading, non-medical information with which they disagree, (ii) to repeatedly and directly refer their patients to a hotline and website that encourages patients to partake in experimental treatments that run counter to their patients' best interests, and (iii) to violate their medical ethics.

4. By compelling physician speech, the Act deprives physicians of their fundamental right to free speech. The Oklahoma Constitution is highly protective of free speech, providing that "[e]very person may freely speak, write, or publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press." Okla. Const. art. 2, § 22. The Oklahoma Supreme Court has repeatedly found that the protections afforded by the Oklahoma Constitution are coextensive with, or greater than, the protections guaranteed by the federal constitution. *See In re Initiative Petition No. 366*, 2002 OK 21, ¶ 7, 46 P.3d 123, 126; *Gaylord Entm't Co. v. Thompson*, 1998 OK 30 ¶ 13 n.23, 958 P.2d 128, 138 n.23; *Gerhart v. State*, 2015 OK CR 12, ¶ 6, 360 P.3d 1194, 1196. Yet S.B. 614 not only forces Plaintiffs to provide patients with a government message with which they disagree and to refer patients to an organization that provides an experimental, and potentially harmful, medical treatment which they oppose, but the law also compels physicians and physicians' agents, including Plaintiff Dr. Braid and the Clinic's staff, to *personally speak* a government-sanctioned message. More than that, the Act forces the Clinic to advertise to its patients a medical service that

is scientifically unsupported and that may subject its physicians and staff, including Dr. Braid, to ethical and legal liability.

5. Ultimately, S.B. 614 will force Oklahoma physicians, including Dr. Braid, to violate their medical ethics and unnecessarily inflict harm on their patients.

6. To protect physicians from these constitutional violations, and to avoid irreparable harm, Plaintiffs seek declaratory and injunctive relief to prevent enforcement of S.B. 614.

II. JURISDICTION AND VENUE

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

8. Plaintiffs' 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.

9. Venue is proper under Okla. Stat. tit. 12, § 133 because Defendants Hunter, Kelsey, Carter, and Bates have official residences in Oklahoma County.

III. PARTIES

A. Plaintiffs

10. Plaintiff Tulsa Women's Reproductive Clinic, LLC ("the Clinic"), located in Tulsa, Oklahoma, has been in operation since 1974, first through its predecessor in interest, Nova Health Systems, and since June 2018 under its current name and ownership. The Clinic provides reproductive health care services to women in Oklahoma, including medication and surgical abortions. It is licensed as an abortion facility by the Oklahoma State Department of Health. The Clinic employs, among other licensed healthcare providers, physicians licensed by the Oklahoma State Board of Medical Licensure and Supervision, and the Oklahoma State Board of Osteopathic Examiners. Every member of the Clinic's staff acts as an agent for the Clinic's physicians for various purposes, including communications with patients. The Clinic brings claims on behalf of itself, its physicians, and its staff.

11. Plaintiff Alan Braid, M.D., is a physician licensed to practice medicine in Oklahoma. He is an obstetrician and gynecologist who is board-certified by the American College of Obstetricians and Gynecologists. Dr. Braid is the principal owner of the Clinic and provides medication and surgical abortions to the Clinic's patients.

B. Defendants

12. Defendant Michael Hunter is the Attorney General of the State of Oklahoma. The Attorney General is the "chief law officer of the state," 74 O.S. § 18, whose duties include "appear[ing] in any action in which the interests of the state or the people of the state are at issue. . . ." 74 O.S. § 18b(A)(3). He is sued in his official capacity.

13. Defendant Steve Kunzweiler is the District Attorney for Tulsa County. Defendant Kunzweiler is the prosecuting attorney authorized to maintain a cause of action against a person who has performed or attempted to perform an abortion in violation of S.B. 614in Tulsa County. S.B. 614, § 1(F) (Ex. A). He is sued in his official capacity.

14. Defendant Lyle Kelsey is the Executive Director of the Oklahoma State Board of Medical Licensure and Supervision (the "Medical Board"). The Medical Board, among other things, issues medical licenses, publishes materials and maintains the website containing information that must be offered to women seeking abortion, and has the authority to take disciplinary action against licensees, including the Clinic's physicians. S.B. 614, §§ 1(F), (G); 59 O.S. §§ 495, 503, 509. He is sued in his official capacity.

15. Defendant Dennis Carter is the President of the Oklahoma State Board of Osteopathic Examiners (the "Osteopathic Board"). The Osteopathic Board, among other things, issues licenses to osteopathic physicians and has authority to take disciplinary action against licensees, including the Clinic's osteopathic physician. 59 O.S. §§ 622(A)(1), 633, 637.

16. Defendant Tom Bates is the Oklahoma Interim Commissioner of Health. He oversees the Oklahoma State Board of Health, which issues licenses to facilities at which abortions are performed and oversees compliance with the regulation of such facilities. 63 O.S. §§ 1-706(A),(B); O.A.C. §§ 310:600-7-3, -13-2. He is sued in his official capacity.

IV. FACTUAL ALLEGATIONS

A. Background Facts About Abortion in Oklahoma.

17. Legal abortion is among the safest, most common medical procedures American women undergo. In fact, nearly one in four women in the United States (23.7%) will have had an abortion by the time she is 45 years old.[1] Access to safe and legal abortion benefits the health and wellbeing of women and their families, including women who already have children. Over the past forty years, safe and legal abortion has been important to facilitating women's equal participation in society, including in the economic and social life of the nation.

18. Facilities providing abortion care in Oklahoma must be licensed, O.A.C. § 310:600-3-1(a), and are subject to extensive regulations governing administration, staffing, clinical services, recordkeeping, physical plant requirements, and compliance with all applicable federal, state, and local laws. O.A.C. §§ 310:600-1-1 et seq. No public facilities or hospitals may be used for abortions, and no public employees may provide abortions, except when necessary to save the woman's life or if the pregnancy was a result of rape or incest. 63 O.S. § 1-741.1(A).

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[1] Guttmacher Institute, *Induced Abortion in the United States*, *available at* https://www.guttmacher.org/fact-sheet/induced-abortion-united-states (last visited Sept. 23, 2019); *see also The Safety and Quality of Abortion Care in the United States*, National Academy of Sciences, Engineering, Medicine (Mar. 16, 2018), *available at* http://nationalacademies.org/hmd/reports/2018/the-safety-and-quality-of-abortion-care-in-the-united-states.aspx.

19. Aside from the Clinic, there are only three other licensed abortion facilities in Oklahoma: one in Norman and two in Oklahoma City. All three facilities are about a two-hour drive from the Clinic's location in Tulsa. The Clinic provides medication abortion care up to approximately ten weeks of pregnancy, as dated from the first day of a woman's last menstrual period ("LMP"),[2] and surgical abortion care. Women who reside throughout the state of Oklahoma, as well as women from Missouri, Kansas, Arkansas, and Texas travel to the Clinic to access high quality abortion services, including medication abortion.

20. Four physicians, including Dr. Braid, provide abortion care at the Clinic. Three of the physicians are medical doctors licensed by the Medical Board and one is a osteopathic physician licensed by the Osteopathic Board. The Clinic provides abortions six days a week. Approximately 70 percent of the Clinic's abortion patients choose medication abortion.

21. The Clinic's patients obtain abortions for a variety of reasons. Many are low income and/or already have children and do not feel they can adequately parent and support additional children. Other patients seek abortion care because the pregnancy threatens their health or safety. Regardless of their reasons for seeking abortion care, the vast majority of the Clinic's patients are firm in their decision to receive an abortion by the time they arrive at the Clinic for their procedure.

22. The most common form of medication abortion is a regimen of two prescription drugs, mifepristone and misoprostol, which are pills taken orally. Mifepristone, also known as "RU-486" or by its commercial name Mifeprex, was first approved by the U.S. Food and Drug Administration ("FDA"), as an effective alternative to surgical abortion in early pregnancy when

[2] Pregnancy is commonly measured from the first day of a woman's last menstrual period ("LMP"). Fertilization typically occurs around two weeks LMP. Pregnancy is generally considered to begin around three weeks LMP, when a fertilized egg typically implants in the uterus. Pregnancy typically lasts until forty weeks LMP.

used in conjunction with misoprostol, in 2000. As with other prescription drugs, the combined use of mifepristone and misoprostol—collectively referred to as "medication abortion"—is regulated by the FDA.

23. Mifepristone works first by temporarily blocking the hormone progesterone, which is necessary to maintain pregnancy, and by increasing the efficacy of the second medication in the regimen, misoprostol. Misoprostol, which is taken 24 to 48 hours after mifepristone, causes the uterus to contract and expel its contents.

24. Since 2000, approximately three million women in the United States have had a medication abortion.[3]

25. The FDA updated the drug label for mifepristone in 2016 to bring it up to date with the current evidence-based protocol used by medical professionals for the provision of medication abortion.[4] As provided by the 2016 label, the protocol for the administration of medication abortion is as follows: on day 1, the patient takes 200 mg of mifepristone orally; twenty-four to forty-eight hours later, the patient takes 800 mcg of misoprostol buccally (meaning, held inside the cheek while the pills dissolve). The 2016 label approves the use of medication abortion through seventy days, or ten weeks LMP.

26. The FDA has confirmed that this protocol is extremely safe and effective in terminating pregnancy.[5]

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[3] *Mifeprex Effectiveness and Advantages*, Danco Laboratories, https://www.earlyoptionpill.com/is-mifeprex-right-for-me/effectiveness-advantages/ (last visited Sept. 18, 2019).

[4] FDA Label for Mifeprex, https://www.accessdata.fda.gov/drugsatfda_docs/label/2016/020687s020lbl.pdf, (last visited Sept. 23, 2019).

[5] *Id.* at Table 3.

27. Both surgical abortion and medication abortion will fail to terminate pregnancy in a small minority of cases. According to the FDA, the success rate for medication abortion in the United States, when administered using mifepristone and misoprostol in accordance with the 2016 label protocol, is 97.4%.[6]

28. The standard of medical care before starting any abortion procedure is for physicians to counsel their patients to be certain in their decision to terminate their pregnancies.

29. Although mifepristone on its own is not considered effective in ending a pregnancy by the FDA or by the medical community more broadly, Plaintiffs counsel their patients to be certain in their decision to terminate their pregnancies before starting the mifepristone/misoprostol regimen because mifepristone alone will cause termination in a significant percentage of pregnancies.

B. Oklahoma's Existing Regulatory Requirements Governing Abortion.

30. Oklahoma has an existing scheme of speech requirements that abortion providers or their agents (collectively "Physicians") must follow during pre-abortion counseling as a precondition to providing either surgical or medication abortion. This scheme of government-mandated speech requirements is generally described as "informed and voluntary consent" laws, although only some of the requirements are related to the process of a patient receiving information about the details, risks, and benefits of the procedure and its alternatives in order to provide informed consent to that medical procedure.

31. Oklahoma law divides its government-mandated speech requirements for Physicians into two categories: (1) information that Physicians must orally tell their patients; and (2) printed materials written by the Medical Board that Physicians must offer to their patients.

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[6] *Id.*

32. The government-mandated information that Physicians must orally provide to their patients at least 72 hours before the abortion is performed includes the information necessary to obtain the patient's voluntary and informed consent, namely: (1) the medical risks associated with the particular abortion procedure to be employed; (2) the probable gestational age of the fetus at the time of the abortion; and (3) the medical risks associated with carrying a child to term. 63 O.S. §§ 1-738.2(B)(1)(a)(2-4).

33. The remainder of the existing government-mandated information Physicians must orally tell their patients is unrelated to the process of obtaining the patient's informed consent for a particular medical procedure. For example, Physicians must tell patients "that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care" and "that the father is liable to assist in the support of her child." 63 O.S. §§ 1-738.2(B)(2)(a-b).

34. Oklahoma law also requires that "the State Board of Medical Licensure and Supervision shall cause to be published, in English and in Spanish, and shall update on an annual basis" printed materials that Physicians must offer to their patients. 63 O.S. § 1-738.3(A). The current printed materials—not challenged here—require Physicians to offer their patients information about "public and private agencies" that assist pregnant individuals and medical information for pregnant patients.

35. Before a Physician performs an abortion, he or she must receive certification in writing from the patient that the patient has been told all of the mandatory oral information by the Physician and that she "has been informed of her option to review or reject" the State-created printed materials. 63 O.S. § 1-738.2(B)(3).

36. Additionally, if the pregnancy is at least eight weeks LMP, the patient cannot give informed consent under Oklahoma law unless the Physician has informed the patient that it may

be possible to hear fetal cardiac activity and asked if she would like to listen. If the patient answers affirmatively, the Physician must project the cardiac activity on a fetal heart rate monitor for the patient to hear. 63 O.S. § 1-745.14.

37. In performing pre-abortion counseling, Physicians are guided not only by their legal obligations, but by their ethical obligations to provide candid, complete, and accurate information to their patients about their health status and all medically relevant health care options. As required by Oklahoma law, this discussion begins at least 72 hours before the patient's procedure, when Physicians discuss with the patient—either over the phone or in person—the patient's options and alternatives (including carrying the pregnancy to term, adoption, and abortion), and the abortion procedures that are available to her depending on the gestational age of the pregnancy and her medical history. While these discussions begin when the patient first contacts the clinic to schedule an appointment, they continue throughout the patient's interactions with the clinic, up to the time when the patient's abortion procedure begins.

38. As part of that pre-abortion counseling, Physicians also perform the specific task of obtaining the patient's "informed consent" to a specific medication or surgical abortion procedure. The informed consent process includes describing the risks, benefits, and medical details associated with the specific abortion procedure to the patient so that she can provide informed consent to the procedure she chooses. Physicians' ethical and legal obligations thus include, but are not limited to, obtaining informed consent from the patient.

39. Informed consent, as understood within the medical profession, does not follow a rigid, governmentally proscribed protocol. It is a give and take between an individual patient and an individual physician. It is based on trust and open, forthright communication, intended to further the patient's understanding of her medical care. Recitation of a government-scripted message

unrelated to her actual medical care only hinders that process. The purpose of informed consent is to further the interests of the patient—not to further political objectives.

40. The vast majority of the Clinic's patients are certain of their decision to obtain an abortion by the time they call the Clinic to schedule their abortion procedure. By the time they arrive at the Clinic for their procedure, they have already made the initial phone call to the Clinic, received the state-mandated counseling either by phone or in person, and made all of the necessary arrangements to come to the appointment, including taking time off work or school, arranging for childcare for patients who already have children, and coming up with the necessary funds to pay for their abortion care. Most of the Clinic's patients have considered their options and made up their mind several days, if not weeks, before they arrive at the Clinic to have the abortion.

41. In the extremely rare event that a woman is uncertain of her decision to have an abortion on the day of her scheduled procedure, the Clinic will not perform the abortion. Rather, the Clinic staff will encourage that patient to take more time to consider her options, and if she wishes, to reschedule her appointment.

C. The Challenged Compelled Reversal Mandate.

42. Under free speech protections, the government cannot force medical professionals to supply their patients with any government message, much less a controversial and/or ideological message, without violating the free speech rights of the physicians.

43. The Act piles additional layers onto Oklahoma's scheme of government-mandated speech requirements for Physicians in ways that are inconsistent with existing Oklahoma law and with Plaintiffs' right to freedom of speech.

44. First, any facility that provides medication abortions using mifepristone must post a sign in each patient waiting room and each patient consultation room used by medication abortion patients with specific language about medication abortion reversal. *See* S.B. 614, § 1(B)(3) (Ex.

A). The sign must be written in "at least three-fourths (3/4) of an inch boldfaced type," § 1(B)(2), and must be "clearly visible to patients."§ 1(B)(1). The sign must read:

> NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS WHICH USE MIFEPRISTONE: Mifepristone, also known as RU-486 or Mifeprex, alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can get immediate help by calling the Abortion Pill Reversal 24-hour Hotline at 877-558-0333 or going to website https://www.abortionpillreversal.com/. Additional information is available on the State Board of Medical Licensure and Supervision's website, www.awomansright.org, which provides informed consent materials under the Woman's Right-to-Know Act, including information about the development of the unborn child and video of ultrasound images of the unborn child at various stages of development. § (1)(B)(1).

45. Second, except in the case of a medical emergency,[7] 72 hours before a medication abortion, Physicians must (1) inform the patient that "it may be possible to reverse the intended effects of a medication abortion that uses mifepristone if the woman changes her mind but that time is of the essence," and (2) inform the patient of "information on reversing the effects of a medication abortion that uses mifepristone, which is available on the website of the State Board of Medical Licensure and Supervision, and included in such information is the Abortion Pill Reversal 24-hour Hotline number: 877-558-0333 and website address: https://www.abortionpillreversal.com." S.B. 614 §1(C)(1).

46. Third, after the patient has taken mifepristone, Physicians must give the patient written instructions that include the same statement about reversing medication abortion that use

[7] "'Medical emergency' means a condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function." § 1(A)(2).

mifepristone and the same mandatory language directing patients to the Abortion Pill Reversal website and hotline as is required on the signs. S.B. 614 §1(C)(2).

47. Fourth, within 90 days after S.B. 614's enactment, the Medical Board must publish "comprehensive materials," "in English and in each language which is the primary language of two percent (2%) or more of the state's population," in print and on their website that are "designed to inform the female of the possibility of reversing the effects of a medication abortion that uses mifepristone, also known as RU-486 or Mifeprex, and information on resources that may be available to help her reverse its effects. The website shall include the Abortion Pill Reversal 24-hour Hotline number 877-558-0333 and the Abortion Pill Reversal website address https://www.abortionpillreversal.com." S.B. 614 §1(E).

48. Any person, excluding the patient, who provides or attempts to provide an abortion in violation of the Act is guilty of a felony. S.B. 614, §1(F).

49. Any facility that fails to post the required signage will be fined $10,000 per day by the Medical Board. S.B. 614, §1(G).

50. Physicians who provide a medication abortion using mifepristone in violation of the Act are also subject to civil damages in a lawsuit brought by the patient, the "father" of the fetus or embryo, or the parents of a minor patient or a deceased patient. S.B. 614, §1(H).

D. Facts about So-Called "Medication Abortion Reversal."

51. There is no credible evidence that a medication abortion administered via the combined mifepristone/misoprostol regimen can be reversed.

52. Indeed, once an abortion has occurred, whether by medication abortion or by any other means, a woman is no longer pregnant, which cannot be reversed.

53. Upon information and belief, S.B. 614's concept of "medication abortion reversal" is based on an experimental practice proposed by Dr. George Delgado and Dr. Mary Davenport, physicians based in San Diego who have alleged that they can "reverse" the effects of mifepristone prior to administration of misoprostol. Upon information and belief, a small number of other physicians around the United States have experimented with this practice, which involves either injecting or prescribing large doses of progesterone to patients who have taken mifepristone, but have not yet taken misoprostol, the second drug in the medication abortion regimen. While there is no consensus on the protocol for these doses of progesterone, this small number of physicians has experimented with weekly injections, in some cases until the end of pregnancy, as well as oral and vaginal routes of progesterone administration.

54. Progesterone injections are typically administered by a physician, while oral and vaginal progesterone, available by prescription only, can be administered by the patient. Although progesterone is generally considered a low-risk medication, it does carry risks. Progesterone has been associated with maternal complications such as depression, cholestatic jaundice, and hypertension. And while some data support the general safety of progesterone in pregnancy, other studies have raised concerns about possible associations with second trimester miscarriage, stillbirth, and certain birth defects.[8]

55. Significantly, progesterone has not been approved by the FDA for use in "reversing" the effects of mifepristone or any other abortion-inducing drug. There is no FDA-

[8] *See, e.g.*, Paul J. Meiss et al., *Prevention of Recurrent Preterm Delivery by 17 Alpha-Hydroxyprogesterone Caproate*, 348 N. Eng. J. Med. 2379, 2382 (2003); Suzan L. Carmichael et al., *Maternal Progestin Intake and Risk of Hypospadias*, 159(10) Archives of Pediatric & Adolescent Med. 957 (2005).

approved protocol for the administration of progesterone after mifepristone to reverse its effects, nor is there an FDA protocol for any other method of medication abortion "reversal."

56. That a small number of physicians in Oklahoma or other states are experimenting with using progesterone to counteract mifepristone does not constitute credible, medically accepted evidence that the experimental practice is effective or safe.

57. In fact, this experimental practice is opposed by the American Congress of Obstetricians and Gynecologists ("ACOG"),[9] the nation's premier professional organization of women's health providers, because its safety and efficacy have not been established.[10] ACOG "unequivocally opposed" S.B. 614.[11]

58. Medication abortion is more effective when both mifepristone and misoprostol are used together because mifepristone alone will not always cause abortion. As ACOG has recognized, as many as half of women who take only mifepristone continue their pregnancies.[12]

59. S.B. 614 requires Physicians and the Clinic to repeatedly advertise and refer patients to a hotline and website run by Abortion Pill Reversal ("APR"), a program that was founded by Dr. Delgado and is now run by Heartbeat International, an anti-abortion organization that supports crisis pregnancy centers. The APR hotline connects women with members of the Abortion Pill Rescue Network ("APRN"). According to the website, APRN is a network of professional healthcare providers in the U.S. who assist women who want to reverse their

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[9] ACOG is also known as the American College of Obstetricians and Gynecologists.

[10] Statement of the American Congress of Obstetricians and Gynecologists, *Facts Are Important: Medication Abortion "Reversal" Is Not Supported by Science* (Aug. 2017), *available at* https://www.acog.org/-/media/Departments/Government-Relations-and-Outreach/FactsAreImportantMedicationAbortionReversal.pdf?dmc=1&ts=20180206T1955451745.

[11] *Stitt signs controversial abortion 'reversal' bill*, THE DAILY OKLAHOMAN, Apr. 27, 2019, *available at* https://oklahoman.com/article/5629831/stitt-signs-controversial-abortion-reversal-bill.

[12] *Id.*

medication abortions. Patients are charged directly by the providers for this service. Abortion Pill Reversal does not publicly disclose the identities of these "professional healthcare providers," their qualifications, or even the details of the progesterone regimens they are allegedly administering to patients.

60. Because there is no credible, scientific evidence that a medication abortion can be reversed, Physicians do not and cannot tell their patients that it may be possible to reverse a medication abortion without misleading them. Similarly, Physicians do not tell their patients that information and assistance is available to reverse a medication abortion or refer them to the Abortion Pill Reversal hotline or website, and Physicians could not do so without misleading their patients or exposing them to potential harm.

61. As the Legislature considered and debated S.B. 614, several Oklahoma representatives argued against S.B. 614 because the "reversal" theory is not rooted in science or facts. For example, Representative Cyndi Munson voiced concerns raised to her by constituent physicians, stating that "physicians have [ ] shared with me that they feel that [ ] they will be mandated to lie to their [ ] patients," and asked S.B. 614 co-sponsor, Representative Mark Lepak, "how would you respond to that, that we as a legislature may mandate physicians to lie to their patients with no scientific background on this medication?"[13] Representative Lepak dismissed her concern.[14] Similarly, Representative David Perryman read from an email from the Oklahoma State Medical Association in which the 4,000 physicians and medical student members urged the legislature to vote no on Senate Bill 614.[15]

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[13] Oklahoma State House of Representatives, *First Regular Session of the 57th Legislature, Day 41 Afternoon Session Debate, SB 614* (Apr. 16, 2019), *available at* http://bit.ly/2mWASj3, 10:20:55AM – 10:21:13AM.
[14] *Id.* at 10:21:14AM – 10:21:20AM.
[15] *Id.* at 10:45:05AM – 10:45:41AM.

62. Representative Merlyn Bell also urged the Legislature to take the intermediate step of convening a panel of experts to study whether medication abortions can actually be reversed, so that the Legislature could make a more informed decision about S.B. 614. Representative Lepak declined to consider this option.[16]

63. Representative Forrest Bennet criticized S.B. 614 on somewhat different grounds, noting that "[p]hysicians who believe in this can already tell their patients about [medication abortion reversal]" and that the bill "penalizes physicians for doing their job." [17]

V. THE IMPACT OF S.B. 614 ON PHYSICIANS

64. S.B. 614 compels Physicians, unwillingly and against their best medical judgment, to convey orally to their patients content-based and viewpoint-based government-mandated messages and affirmatively direct their patients to government-created materials and referral information, with which Plaintiffs and the overwhelming consensus of the medical profession vehemently disagree.

65. The Act also compels Physicians, against their best medical judgment, to endorse controversial and ideological views in their own voice and advertise to their patients an experimental practice that violates the standard of care.

66. Additionally, the Act requires the Clinic to post Oklahoma's precise notice and provide it in print to patients following administration of mifepristone. This notice requirement only applies to facilities in which medication abortion care using mifepristone is provided. The Act thus requires facilities in which abortion care is provided, and the staff and physicians

[16] *Id.* at 10:28:10 AM – 10:29:13 AM.
[17] *Id.* at 11:20:50 a m-11:22:06 A M; 11:25:23 AM-11:26:30 AM.

providing such care, to post a government-scripted notice advertising an experimental medical procedure and referring patients to an organization promoting that procedure.

67. By compelling Physicians to speak and otherwise provide their patients with information, materials, and referrals that are not medically credible or scientifically established, the Act forces Physicians to violate their ethical obligations to their patients and undermines the establishment of a relationship of trust and confidence between a patient and her physician.

68. Specifically, by forcing Physicians to inform patients "that it may be possible to reverse the intended effects of a medication abortion that uses mifepristone if the woman changes her mind but that time is of the essence,"and to direct their patients to the Abortion Pill Reversal hotline and website, S.B. 614 §(1)(C)(1), the Act forces Physicians to provide their patients with information that is untruthful, misleading, and irrelevant to their medical decision-making. The government-mandated message required by the Act also directly contradicts the critical message Physicians seek to convey to their patients: that they must be certain about terminating their pregnancy before they begin the abortion process. Indeed, the Act forces Physicians to create the risk that a patient will choose to begin an abortion before she is ready to do so, under the mistaken belief that the abortion can be reversed if the patient later chooses.

69. Not only does this message threaten emotional harm to patients, but it also exposes patients to unknown side effects from an unverified medical procedure. The treatment contemplated by the Act, by its unproven, experimental nature, also risks potential birth defects in children born to patients who might attempt abortion "reversal."

70. The Act thus impedes Physicians' ability to provide abortions to their patients under the highest standard of care, compels Physicians to lie to their patients, and potentially forces Physicians to inflict harms on their patients.

71. S.B. 614 also fails to provide clear guidance to Physicians regarding how to comply with long-established Oklahoma laws prohibiting licensed physicians (including osteopathic physicians) from misleading or lying to their patients and S.B. 614—which is particularly constitutionally suspect given that it threatens the exercise of Physicians' constitutional rights to free speech—imposes criminal penalties, and targets abortion providers who are already especially vulnerable to arbitrary and discriminatory enforcement of the law.

72. The State Board "may suspend, revoke or order any other appropriate sanctions against the license of any physician or surgeon ... for unprofessional conduct." 59 O.S. § 503. Unprofessional conduct includes, "[d]ishonorable or immoral conduct which is likely to deceive, defraud, or harm the public." 59 O.S. § 509. The "Board [of Medical Licensure and Supervision] can also revoke or take other disciplinary action against a licensee or certificate holder for unprofessional conduct," which includes "[m]aking a false or misleading statement regarding skill or the efficacy or value of the medicine, treatment, or remedy prescribed by a physician or at a physician's direction in the treatment of any disease or other condition of the body or mind" and "[t]he use of any false, fraudulent, or deceptive statement in any document connected with the practice of medicine and surgery." O.A.C. 435:10-7-4.

73. Similarly, the "State Board of Osteopathic Examiners . . . may refuse to issue or reinstate or may suspend or revoke any license issued or reinstated by the Board upon proof that the applicant or holder of such a license" has engaged in "dishonesty, fraud, misrepresentation, false promise, false pretense" by, for example, "misrepresenting that any disease, ailment, or infirmity can be cured by a method, procedure, treatment, medicine or device." 59 O.S. § 637.

74. S.B. 614 places Physicians in an impossible Catch-22 situation—a physician cannot follow one Oklahoma law without violating other laws and risking professional discipline,

including loss of professional licensure. The Act simply does not provide clarity about what conduct the state of Oklahoma prohibits.

75. The Act alters the content of Plaintiffs' speech to, at best, compel Plaintiffs to speak the government's controversial messages, and at worst, lie to their patients about their options, undermine their patients' ability to consent to medical care, and harm their patients. No other healthcare providers in Oklahoma are forced to do this.

76. The Act also forces Physicians, under threat of criminal penalty, to run the risk of civil liability and other repercussions, including potentially malpractice, for lying to their patients and failing to uphold their ethical duties to their patients. No other healthcare providers in Oklahoma are subject to these penalties.

77. S.B. 614 distorts and undermines the process of informed consent, dictated both by Oklahoma law and by professional medical ethics, by forcing Physicians who provide medication abortion care—and only those physicians—to provide their patients with confusing, distracting, and untruthful information that is neither tailored to their specific medical situations nor related to the risks, benefits, and details of the relevant abortion procedure.

78. The Act singles out physicians providing abortion and limits their ability to practice medicine in the manner that they believe is in the best interests of their patients.

VI. IRREPARABLE HARM AND INJUNCTIVE RELIEF

79. The Act imposes an impermissible penalty and chill on Physicians' speech, subjecting Plaintiffs to irreparable harm.

80. Enforcement of S.B. 614 will irreparably harm Plaintiffs by infringing on Physicians' rights to free speech under the Okla. Const. art. II, § 22, and by failing to provide clarity about the conduct the law prohibits and inviting arbitrary and discriminatory enforcement, in violation of Okla. Const. art. II, § 7.

81. S.B. 614 subjects Plaintiffs to irreparable harm for which there exists no adequate remedy at law, and threatens Plaintiffs with substantial penalties for exercising their constitutional right to freedom of speech, which includes the right to refuse to speak a government-dictated message, and their constitutional right to due process, which includes the right to clarity regarding what conduct is prohibited by law and the right to be free from arbitrary and discriminatory enforcement of the law.

VII. CLAIMS FOR RELIEF

First Claim for Relief
(Free Speech)

82. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 81.

83. S.B. 614 violates Plaintiffs' rights under Okla. Const. art. 2, § 22, by compelling Physicians, under the threat of criminal penalty, civil fines, and liability for civil damages, to orally speak a content-based, viewpoint-based, and/or controversial government-mandated message that they would not otherwise recite, to repeat that message in posted signs and in written instructions provided to the patient, and refer and expose their patients to government-created materials and government-sanctioned referrals about an experimental medical treatment that has not been proven safe and effective or approved by the FDA, that violates accepted ethical standards and best practices in medical care, that undermines Physicians' ability to provide their patients with the highest standard of medical care, and that contradicts Physicians' viewpoints.

Second Claim for Relief
(Void for Vagueness)

84. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 83.

85. S.B. 614 does not provide Plaintiffs with clarity regarding how to comply both with its mandate to inform patients that medication abortion may be reversed and with separate Oklahoma laws that forbid Physicians from lying to or misleading their patients, failing to provide clarity about the conduct the law prohibits and inviting arbitrary and discriminatory enforcement, in violation of Okla. Const. art. II, § 7.

Third Claim for Relief
(Special Law)

86. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 85.

87. S.B. 614 creates a special law where general laws could be made applicable in violation of Okla. Const. art. V, § 59 by, among other things, singling out for special treatment physicians who provide medical treatment to patients seeking abortion care.

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

88. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 87.

89. Because S.B. 614 violates the Oklahoma Constitution, and declaratory judgment would terminate the controversy giving rise to this proceeding, Plaintiffs request a declaration from this Court stating that S.B. 614 is unconstitutional and void. 12 O.S. §1651.

Fifth Claim for Relief
(Temporary Injunction – Unconstitutional and Void)

90. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 89.

91. Temporary injunctive relief is warranted because Plaintiffs, and those whose interests Plaintiffs represent, will suffer irreparable injury if S.B. 614 is allowed to take effect.

Sixth Claim for Relief
(Permanent Injunction – Unconstitutional and Void)

92. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 91.

93. Because S.B. 614 violates the Oklahoma Constitution, warranting a declaratory judgment stating that S.B. 614 is unconstitutional and void, Defendants should be permanently enjoined from enforcing S.B. 614.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Issue a declaratory judgment that S.B. 614 violates the Oklahoma Constitution and is void and of no effect; and
2. Issue permanent injunctive relief, without bond, restraining Defendants, their employees, agents, and successors in office from enforcing S.B. 614; and
3. Grant such other and further relief as the Court may deem just and proper, including reasonable attorney's fees and costs.

Dated: September 25, 2019

Respectfully Submitted,

J. Bake Patton, Oklahoma Bar No. 30673

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ATTORNEYS FOR PLAINTIFFS

VERIFICATION

The undersigned Plaintiff has read the contents of the Verified Petition. The undersigned hereby verifies, under penalty of perjury, that the contents of the Verified Petition are true and correct to the best of his present knowledge.

Alan Braid, M.D.

Sworn to before me this 24th day of September, 2019

NOTARYPUBLIC

ABIGAIL MUNOZ
Notary Public, State of Texas
Comm. Expires 04-25-2022
Notary ID 131543524

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 25th day of September, 2019, a true and correct copy of the foregoing was served via U.S. Mail to the following:

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Oklahoma Attorney General

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President

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J. Blake Patton, Esq.

EXHIBIT A

An Act

ENROLLED SENATE
BILL NO. 614

By: Daniels of the Senate

and

Lepak and Sanders of the House

An Act relating to abortion; defining terms; requiring certain signage; requiring certain informed consent; providing procedure in case of emergency; requiring State Board of Medical Licensure and Supervision to maintain certain website; providing criminal and administrative penalties; providing civil remedies; requiring certain protection of privacy in court hearings; providing severability; providing for codification; and providing an effective date.

SUBJECT: Medication abortion

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 1-756 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device:

(a) to intentionally kill the unborn child of a woman known to be pregnant; or

(b) to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other than to remove a dead unborn child or, after viability, to produce a live birth and preserve the life and health of the child born alive;

2. "Medical emergency" means a condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function; and

3. "Medication abortion" means the use or prescription of an abortion-inducing drug or drugs dispensed with the intent to cause the death of the unborn child.

B. 1. Any private office, freestanding outpatient clinic, hospital or other facility or clinic in which medication abortions that use mifepristone are provided shall conspicuously post a sign in a location defined in paragraph 3 of this subsection so as to be clearly visible to patients, which reads:

"NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS WHICH USE MIFEPRISTONE: Mifepristone, also known as RU-486 or Mifeprex, alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can get immediate help by calling the Abortion Pill Reversal 24-hour Hotline at 877-558-0333 or going to website https://www.abortionpillreversal.com/. Additional information is available on the State Board of Medical Licensure and Supervision's website, www.awomansright.org, which provides informed consent materials under the Woman's Right-to-Know Act, including information about the development of the unborn child and video of ultrasound images of the unborn child at various stages of development."

2. The sign required pursuant to paragraph 1 of this subsection shall be printed with lettering that is legible and shall be at least three-fourths (3/4) of an inch boldfaced type.

3. A facility in which medication abortions that use mifepristone 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 to whom such medication abortions are provided. A hospital or any other facility in which medication abortions are performed 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.

C. 1. Except in the case of a medical emergency, a medication abortion that uses mifepristone shall not be provided or induced or attempted to be provided or induced without informing the female, by telephone or in person, by the physician who is to dispense or provide the abortion drug or drugs, by a referring physician or by an agent of either physician at least seventy-two (72) hours before the abortion:

a. that it may be possible to reverse the intended effects of a medication abortion that uses mifepristone if the woman changes her mind but that time is of the essence, and

b. of information on reversing the effects of a medication abortion that uses mifepristone, which is available on the website of the State Board of Medical Licensure and Supevision, and included in such information is the Abortion Pill Reversal 24-hour Hotline number: 877-558-0333 and website address: https://www.abortionpillreversal.com.

2. After the first drug, mifepristone, is dispensed or provided to the patient, the physician or an agent of the physician shall provide written instructions to the pregnant woman which shall include the statement:

"NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS WHICH USE MIFEPRISTONE: Mifepristone, also known as RU-486 or Mifeprex, alone