

EXHIBIT 1

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

OKLAHOMA CALL FOR REPRODUCTIVE JUSTICE, on behalf of itself and its members; TULSA WOMEN'S REPRODUCTIVE CLINIC, LLC, on behalf of itself, its physicians, its staff, and its patients; ALAN BRAID, M.D., on behalf of himself and his patients; COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS, INC., on behalf of itself, its physicians, its staff, and its patients; and PLANNED PARENTHOOD OF ARKANSAS & EASTERN OKLAHOMA, on behalf of itself, its physicians, its staff, and its patients,

Plaintiffs,

v.

JOHN O'CONNOR, in his official capacity as Attorney General for the State of Oklahoma; DAVID PRATER, in his official capacity as District Attorney for Oklahoma County; 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; KATIE TEMPLETON, in her official capacity as President of the Oklahoma State Board of Osteopathic Examiners; KEITH REED, in his official capacity as the Commissioner of the Oklahoma State Board of Health; and JUSTIN WILSON, in his official capacity as the President of the Oklahoma State Board of Pharmacy; as well as their employees, agents, and successors,

Defendants.

CASE NO. CV-2021-2072

FIRST SUPPLEMENTAL PETITION

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

I. PRELIMINARY STATEMENT

1. “Every woman in this country has a constitutionally protected right to choose whether to terminate her pregnancy before viability.” *Burns v. Cline*, 2016 OK 121, ¶ 8, 387 P.3d 348, 351. Seeking to entirely eliminate this right, the Oklahoma Legislature passed Senate Bill 612 in its 2022 legislative session. Plaintiffs file this First Supplemental Petition pursuant to 12 Okla. Stat. § 2015(D) to raise allegations based on events that have occurred since Plaintiffs filed their original Verified Petition on September 2, 2021, and hereby incorporate by reference the factual and legal allegations in that Petition, as permitted by 12 Okla. Stat. 2010.

2. A copy of S.B. 612 is attached hereto as Exhibit A. S.B. 612 is scheduled to take effect 90 days following adjournment of the legislature, which will put the effective date likely in August 2022. *See* Okla. Const. Art. 5, § 58

3. S.B. 612 (the “Total Criminal Ban”) makes providing any abortions a felony. Physicians who provide abortions can face up to ten years in prison and/or a fine of up to \$100,000.

4. This case originally challenged five bills enacted during the 2021 legislative session: House Bill 1102, 2021 Okla. Sess. Law Serv. Ch. 205 (the “Total Ban”), House Bill 2441, 2021 Okla. Sess. Law Serv. Ch. 219 (the “6-Week Ban”), House Bill 1904, 2021 Okla. Sess. Law Serv. Ch. 211 (the “OB/GYN Requirement”), Senate Bill 778, 2021 Okla. Sess. Law Serv. Ch. 577, and Senate Bill 779, 2021 Okla. Sess. Law Serv. Ch. 578 (the “Medication Abortion Restrictions”). These five laws are currently enjoined. *See* Order, No. 2021-2072 (Oct. 7, 2021) (enjoining the Total Ban and the 6-Week Ban); October 25, 2021 Order Granting Emergency Temporary Injunction, No. IN-119918 (Oct. 25, 2021) (continuing the trial court’s temporary injunction of the Total Ban and the 6-Week Ban and temporarily enjoining the OB/GYN Requirement and Medication Abortion Restrictions).

5. S.B. 612 is a more draconian version of one of the bills already enjoined in this case—H.B. 1102, the Total Ban—because it carries criminal penalties. H.B. 1102 declares that providing abortions is unprofessional conduct by physicians that carries a penalty of, at a minimum, suspension of medical licensure for one year.

6. In its briefing before this Court and at argument, the State conceded as to this *less* draconian total ban *without* criminal penalties, that a total ban on abortion violates binding precedent. September 24, 2021 State’s Response to Motion for Temporary Injunction (“TI Resp.”) at 11-12; Oct. 4, 2021 Temporary Injunction Hearing Transcript, *Oklahoma Call for Reproductive Justice, et al., v. O’Connor, et al.*, 15:13-21 (filed with this Court on appeal on March 4, 2022, No. IN-119918).

7. The only response the State has offered to support the constitutionality of a total abortion ban is its speculation that the U.S. Supreme Court could reverse *Roe v. Wade*. See TI Resp. at 11-12. But the State’s predictions are just guesswork, and such speculation about what the law may be in the future is no basis to deviate today from what is unequivocally binding, directly applicable precedent directing that the Total Criminal Ban is unconstitutional like the other laws presently enjoined by the Oklahoma Supreme Court in this case.

8. The Total Criminal Ban has no legislative findings, but the State’s clear purpose is to deprive people in Oklahoma of their constitutionally protected right to choose whether to terminate their pregnancy before viability.

9. To protect Oklahomans from the devastating effects of S.B. 612, and to avoid irreparable harm, Plaintiffs seek declaratory and injunctive relief to block enforcement of the Total Criminal Ban.

II. JURISDICTION AND VENUE

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

11. 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.

12. Venue is proper under Okla. Stat. tit. 12, § 133 because Defendants O'Connor, Prater, Kelsey, Templeton, Reed, and Wilson have official residences in Oklahoma County.

III. PARTIES

A. Plaintiffs

13. Plaintiffs include the Oklahoma Call for Reproductive Justice, an organization that represents Oklahomans seeking abortion care, as well as abortion providers representing their interests and the interests of their patients, Tulsa Women's Reproductive Clinic, Dr. Alan Braid, Comprehensive Health of Planned Parenthood Great Plains, and Planned Parenthood of Arkansas & Eastern Oklahoma. Plaintiffs are described in greater detail in paragraphs 15-29 of Plaintiffs' September 2, 2021 Verified Petition.

B. Defendants

14. Defendants include John O'Connor, the Attorney General of the State of Oklahoma and the "chief law officer of the state," 74 O.S. § 18, David Prater, the District Attorney for Oklahoma County, and Steve Kunzweiler, the District Attorney for Tulsa County, sued in their individual capacities. These defendants are responsible for enforcement of criminal laws like S.B. 612. 74 O.S. § 18; Okla. Stat. tit. 19, § 215.4; S.B. 612 § 1(B)(2). Defendants are described in greater detail in paragraphs 30-36 of Plaintiffs' September 2, 2021 Verified Petition.

IV. FACTUAL ALLEGATIONS

15. The Total Criminal Ban bans abortion entirely. Under the Total Criminal Ban, a physician who provides an abortion may be convicted of a felony "punishable by a fine not to exceed One Hundred Thousand Dollars (\$100,000), or by confinement in the custody of the Department of Corrections for a term not to exceed ten (10) years, or by such fine and

imprisonment.” S.B. 612 § 1(B)(2). The Total Criminal Ban has only one narrow exception for abortions performed “to save the life of a pregnant woman in a medical emergency,” which the Act defines as “a condition which cannot be remedied by delivery of the child in which an abortion is necessary to preserve the life of a pregnant woman” *Id.* § 1(A)(2).

16. The Total Criminal Ban allows providers to raise as an affirmative defense that they provided medical care to a pregnant person “which results in the accidental or unintentional injury or death to the unborn child.” S.B. 612 § 1(B)(4).

17. Under the Oklahoma Constitution, “[n]o person shall be deprived of life, liberty, or property, without due process of law.” Okla. Const. art. II, § 7. The Oklahoma Supreme Court has repeatedly recognized that this guarantee protects a person’s ability to choose to terminate a pregnancy prior to viability, consistent with the U.S. Constitution and U.S. Supreme Court precedent. *Cline IV*, 2019 OK 33 ¶¶ 16, 25, 43, 441 P.3d 1145, 1151, 1153-54, 1161 (citations omitted); *Cline III*, 2016 OK 121 ¶ 8, 387 P.3d 348, 351-52.

18. The Total Criminal Ban is clearly unconstitutional because it outright prohibits physicians from performing pre-viability abortions.

19. If permitted to take effect, the Total Criminal Ban will stop Plaintiffs from providing abortions and effectively end the provision of abortion care in Oklahoma, preventing most Oklahomans, including patients of the Provider Plaintiffs and members of OCRJ, from accessing constitutionally protected abortion care in the state. Patients who can do so will be forced to attempt to seek care out of state, and many others will be forced to carry a pregnancy to term against their will or seek ways to end their pregnancies without medical supervision, some of which may be unsafe. The harms stemming from banning abortions, harms that will disproportionately

impact the majority of patients who are low-income and people of color, are set forth in greater detail in paragraphs 54-79, and 145-54 of Plaintiffs' September 2, 2021 Verified Petition.

20. The Total Criminal Ban's narrow exception does not cure its constitutional violations.

21. Plaintiffs have no adequate remedy at law.

V. CLAIMS FOR RELIEF

First Claim for Relief (Substantive Due Process)

22. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-21, and 1-154 of Plaintiffs' September 2, 2021 Verified Petition.

23. The Total Criminal Ban violates the fundamental right to choose to terminate a pregnancy and to bodily integrity in violation of Okla. Const. art. II, § 7.

Second Claim for Relief (Substantive Due Process)

24. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-21, and 1-154 of Plaintiffs' September 2, 2021 Verified Petition.

25. The Total Criminal Ban was enacted with the improper purpose of burdening the fundamental right to choose to terminate a pregnancy and to bodily integrity in violation of Okla. Const. art. II, § 7.

Third Claim for Relief (Substantive Due Process - Violation of the Right to Health)

26. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-21, and 1-154 of Plaintiffs' September 2, 2021 Verified Petition.

27. The Total Criminal Ban violates the right to health in violation of Okla. Const. art. II, § 7.

Fifth Claim for Relief
(Special Law)

28. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-21, and 1-154 of Plaintiffs' September 2, 2021 Verified Petition.

29. The Total Criminal Ban 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, and singling out women and a medical service women require.

Sixth Claim for Relief
(Declaratory Judgment - Unconstitutional and Void)

30. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-21, and 1-154 of Plaintiffs' September 2, 2021 Verified Petition.

31. Because the Total Criminal Ban 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 the Total Criminal Ban is unconstitutional and void. 12 O.S. § 1651.

Seventh Claim for Relief
(Temporary Injunction - Unconstitutional and Void)

32. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-21, and 1-154 of Plaintiffs' September 2, 2021 Verified Petition.

33. Temporary injunctive relief is warranted because Plaintiffs, and those whose interests Plaintiffs represent, will suffer irreparable injury if the Total Ban is allowed to take effect.

Eighth Claim for Relief
(Permanent Injunction - Unconstitutional and Void)

34. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1-21, and 1-154 of Plaintiffs' September 2, 2021 Verified Petition.

35. Because the Total Criminal Ban violates the Oklahoma Constitution, warranting a declaratory judgment stating that the Challenged Laws are unconstitutional and void, Defendants should be permanently enjoined from enforcing them.

VI. PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

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

Dated: April 28, 2022

Respectfully Submitted,

J. Blake Patton, Oklahoma Bar No. 30673

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EXHIBIT A

An Act

ENROLLED SENATE
BILL NO. 612

By: Dahm, Jett, Bullard,
Stephens, Rogers, Taylor,
and Bergstrom of the Senate

and

Olsen, Crosswhite Hader,
West (Kevin), McDugle,
Hardin (David), Grego, West
(Rick), Humphrey, Stearman,
Boles, Kendrix, Lawson,
Sneed, Roberts (Sean), and
Frix of the House

An Act relating to abortion; defining terms;
prohibiting performance of or attempt to perform
abortion except under certain condition; providing
penalties; providing certain construction; providing
affirmative defense; and providing for codification.

SUBJECT: 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 1-731.4 of Title 63, unless
there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. The terms "abortion" and "unborn child" shall have the same
meaning as provided by Section 1-730 of Title 63 of the Oklahoma
Statutes; and

2. "Medical emergency" means a condition which cannot be remedied by delivery of the child in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness or physical injury including a life-endangering physical condition caused by or arising from the pregnancy itself.

B. 1. Notwithstanding any other provision of law, a person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency.

2. A person convicted of performing or attempting to perform an abortion shall be guilty of a felony punishable by a fine not to exceed One Hundred Thousand Dollars (\$100,000.00), or by confinement in the custody of the Department of Corrections for a term not to exceed ten (10) years, or by such fine and imprisonment.

3. This section does not:

- a. authorize the charging or conviction of a woman with any criminal offense in the death of her own unborn child, or
- b. prohibit the sale, use, prescription or administration of a contraceptive measure, drug or chemical if the contraceptive measure, drug or chemical is administered before the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure, drug or chemical is sold, used, prescribed or administered in accordance with manufacturer instructions.

4. It is an affirmative defense to prosecution under this section if a licensed physician provides medical treatment to a pregnant woman which results in the accidental or unintentional injury or death to the unborn child.

Passed the Senate the 10th day of March, 2021.

Presiding Officer of the Senate

Passed the House of Representatives the 5th day of April, 2022.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of April, 2022, a true and correct copy of the foregoing was served via hand delivery to all Defendants through their attorneys:

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