

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

LORA JOYCE DAVIS and WANDA STAPLETON, as residents and taxpayers of the State of Oklahoma,)	
)	
Plaintiffs,)	Case No. _____
v.)	
)	
(1) W.A. DREW EDMONDSON, in his official capacity as Attorney General of Oklahoma;)	Judge _____
(2) TERRY L. CLINE, Ph.D, in his official capacity as Oklahoma Commissioner of Health;)	
(3) LYLE KELSEY, in his official capacity as Executive Director of the Oklahoma State Board of Medical Licensure and Supervision; and)	
(4) CHERYL A. VAUGHT, in her official capacity as President of the Oklahoma State Board of Osteopathic Examiners,)	
)	
Defendants.)	
)	

PETITION

1. Plaintiffs Lora Joyce Davis and Wanda Stapleton, 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

2. Plaintiffs bring this action to challenge the validity of House Bill 1595 (the “Act” or “H.B. 1595”)¹ under the Oklahoma Constitution. A copy of the Act is attached hereto as Exhibit (“Ex.”) A.

3. H.B. 1595 is a statute composed of thirteen sections, which address at least four distinct subjects with no readily apparent common theme or purpose. Accordingly, it

¹ 2009 Okla. Sess. Laws ch. 36 (to be codified at OKLA. STAT. tit. 63, §§ 1-730, 1-731.1, 1-738a-h).

violates the single subject rule embodied in the Oklahoma Constitution. *See* OKLA. CONST. art. V, § 57.

4. Plaintiffs seek declaratory and injunctive relief from this constitutional violation.

II. JURISDICTION AND VENUE

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

6. Plaintiffs' claims for declaratory and injunctive relief are authorized by OKLA. STAT. tit. 12, §§ 1651 and 1381 (2004) and by the general equitable powers of this Court.

7. Venue is appropriate under OKLA. STAT. tit. 12, § 133 (2000) because the Defendants have official residences in Oklahoma County.

III. THE CHALLENGED STATUTE

8. H.B. 1595 addresses at least four distinct subjects: (1) the enactment of several new statutory definitions; (2) a ban on the performance of abortions sought "solely on account of the sex of the unborn child"² ("sex selective abortions"); (3) the imposition of new reporting requirements on physicians who perform abortions or treat patients with abortion-related complications; and (4) the creation of numerous new responsibilities for the State Department of Health ("Health Department"), the State Board of Medical Licensure and Supervision ("Medical Licensure Board"), and the State Board of Osteopathic Examiners ("Osteopathic Examiners Board") relating to abortion data-gathering, analysis, and reporting, and the enforcement of State laws concerning abortion.

9. Section 1 of the Act adds new definitions for three terms applicable to Article 7 of Title 63 of the Oklahoma Code. 2009 Okla. Sess. Laws ch. 36 § 1 (to be codified at OKLA. STAT. tit. 63, § 1-730). One of those terms is "certified technician." 2009 Okla. Sess. Laws ch. 36 § 1(A)(3) (to be codified at OKLA. STAT. tit. 63, § 1-730(A)(3)). That term was used,

² 2009 Okla. Sess. Laws ch. 36 § 2 (to be codified at OKLA. STAT. tit. 63, § 1-731.1).

but not defined, in Senate Bill 1878, a law which was enacted on April 17, 2008 and invalidated by the District Court of Oklahoma County without ever going into effect.³ Other than the definition of the term set forth in Section 1, however, the only use of the term “certified technician” in H.B. 1595 is a reference to the inoperative Senate Bill 1878.⁴ Moreover, the term “certified technician” appears nowhere else in Article 7 of Title 63 of the Oklahoma Code.⁵ Thus the definition of “certified technician” provided in H.B. 1595 serves no purpose, and is unrelated to any of the various subjects addressed in the Act.

10. Section 1 of H.B. 1595 also provides new definitions for the terms “unemancipated minor” and “attempt to perform an abortion.” 2009 Okla. Sess. Laws ch. 36 §§ 1(A)(2), 1(A)(5) (to be codified at OKLA. STAT. tit. 63, §§ 1-730(A)(2), 1-730(A)(5)). These two terms are used in the section of the Act imposing a ban on sex selective abortion. 2009 Okla. Sess. Laws ch. 36 §§ 2(A), 2(B)(4) (to be codified at OKLA. STAT. tit. 63, §§ 1-731.1(A), 1-731.1(B)(4)). However, they are not used in Sections 3 through 8 of the Act, styled the “Statistical Reporting of Abortion Act,” which contain their own separate set of definitions. 2009 Okla. Sess. Laws ch. 36 § 4(A) (to be codified at OKLA. STAT. tit. 63, § 1-738b(A)). Thus it is apparent that the statutory definitions of “unemancipated minor” and “attempt to perform an abortion” set forth in Section 1 of the Act are relevant only to Section 2 of the Act, the ban on sex selective abortion, and are entirely distinct and separable from

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

⁴ 2009 Okla. Sess. Laws ch. 36 § 7(C)(16) (to be codified at OKLA. STAT. tit. 63, § 1-738e(C)(16)) (directing the Health Department to include in its annual abortion report “the number of abortions before which an ultrasound was performed . . . by a certified technician as defined by Section 1-730 of Title 63 of the Oklahoma Statutes”).

⁵ In fact, there are only two other uses of the term “certified technician” throughout the entire Oklahoma Code, neither of which has any relevance to the provision of health care: (1) in the Oklahoma Highway Code of 1968, OKLA. ST. ANN. tit 69, § 1958(B); and (2) in the Alternative Fuels Technician Certification Act, 74 OKLA. ST. ANN. tit. 74, § 130.16 (D)-(E).

the remaining 11 sections of the Act.

11. Lastly, Section 1 of the Act rearranges the order of the existing statutory definitions section for Article 7 of Title 63 of the Oklahoma Code; this essentially administrative function is clearly distinct and separable from the subjects addressed in the remainder of the Act. 2009 Okla. Sess. Laws ch. 36 § 1 (to be codified at OKLA. STAT. tit. 63, § 1-730). Section 1 of the Act becomes effective on November 1, 2009. 2009 Okla. Sess. Laws ch. 36 § 13.

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

13. Sections 3 through 8 of the Act are collectively titled the “Statistical Reporting of Abortion Act.” 2009 Okla. Sess. Laws ch. 36 §§ 3-8 (to be codified at OKLA. STAT. tit. 63, §§ 1-738a-f). This moniker notwithstanding, these sections of the Act address at least two distinct subjects.

14. First, the “Statistical Reporting of Abortion Act” (“Reporting Act”) imposes a host of new reporting requirements on physicians who perform abortions and on physicians who treat patients experiencing abortion-related complications, in lieu of the considerable

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

15. Second, the Reporting Act directs the Health Department, the Medical Licensure Board, and the Osteopathic Examiners Board to develop and implement new mechanisms for abortion data-gathering, analysis, and reporting, and for additional enforcement of State laws concerning abortion. For example, the Act requires the Health Department to create and publish on its website certain annual abortion reports, including an "Annual Abortion Report," based on the extensive abortion-related data to be provided by physicians to the

⁶ The Act repeals the abortion reporting requirements set forth in OKLA. STAT. tit. 63, §§ 1-738, and its implementing regulations. 2009 Okla. Sess. Laws ch. 36 § 12.

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

16. The Health Department is required to publish the abortion reporting forms and abortion-related statutes and regulations on its website by March 1, 2011, and to publish annual reports based on the abortion data gathered from physicians beginning on June 1, 2012. 2009 Okla. Sess. Laws ch. 36 §§ 4(B)-(C), 6(A), 7(A), 7(D) (to be codified at OKLA. STAT. tit. 63, §§ 1-738b(B)-(C), 1-738d(A), 1-738e(A), 1-738e(D)). The Medical Licensure Board and the Osteopathic Examiners Board are required to notify all licensed Oklahoma physicians of the Act’s reporting requirements by March 1, 2011. 2009 Okla. Sess. Laws ch. 36 § 8(A)(1) (to be codified at OKLA. STAT. tit. 63, § 1-738f(A)(1)).

17. Sections 9 through 13 of the Act address the severability of the Act and set forth the effective dates for the various sections of the Act. 2009 Okla. Sess. Laws ch. 36 §§ 9-13.

18. Based on the foregoing, it is clear that the Act addresses at least four distinct

subjects, with no readily apparent common theme or purpose.

IV. PARTIES

19. Plaintiff Lora Joyce Davis is an Oklahoma resident and taxpayer. She asserts her right as an Oklahoma taxpayer to challenge the Act as unconstitutional and on the ground that its enforcement will result in an unlawful expenditure of public funds.

20. Plaintiff Wanda Stapleton is an Oklahoma resident and taxpayer. She asserts her right as an Oklahoma taxpayer to challenge the Act as unconstitutional and on the ground that its enforcement will result in an unlawful expenditure of public funds.

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

22. Defendant Terry L. Cline, Ph.D, is the Oklahoma Commissioner of Health. He oversees the Oklahoma State Department of Health. He is sued in his official capacity.

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

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

VI. FACTUAL ALLEGATIONS

25. Plaintiff Wanda Stapleton is a life-long Oklahoma resident and taxpayer. As such, Ms. Stapleton has a strong interest in ensuring that Oklahoma laws, as well as her elected State representatives, comply with the mandates of the Oklahoma Constitution. Similarly, Ms. Stapleton has a strong interest in ensuring that the Oklahoma State government uses her taxpayer funds, and all other Oklahoma taxpayers' funds, in compliance with the Oklahoma Constitution and State laws.

26. Plaintiff Lora Joyce Davis is a life-long Oklahoma resident and taxpayer. As such, Ms. Davis has a strong interest in ensuring that Oklahoma laws, as well as her elected State representatives, comply with the mandates of the Oklahoma Constitution. Similarly, Ms. Davis has a strong interest in ensuring that the Oklahoma State government uses her taxpayer funds, and all other Oklahoma taxpayers' funds, in compliance with the Oklahoma Constitution and State laws.

27. H.B. 1595 was passed by the State House of Representatives on May 13, 2009, passed by the State Senate on May 15, 2009, and signed into law by Governor Brad Henry on May 21, 2009.

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

29. The enforcement of H.B. 1595 will therefore result in an unlawful, substantial, and ongoing expenditure of Plaintiffs’ taxpayer funds, as well as of the public funds contributed by other residents and taxpayers of Oklahoma.

30. In addition, if H.B. 1595 is permitted to go into effect, it will cause significant harm to Plaintiffs, as well as to the other residents and taxpayers of Oklahoma, by violating the Oklahoma Constitution.

VII. CLAIMS FOR RELIEF

Single-Subject Rule

31. The allegations of paragraphs 1 through 30 are incorporated as though fully set forth herein.

32. The Act violates OKLA. CONST. art. V, § 57 because it addresses more than one subject.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

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

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

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

Dated: September 29, 2009

Respectfully submitted,

Anne E. Zachritz, OBA # 15608
ANDREWS DAVIS
A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELLORS AT LAW

100 N. Broadway, Suite 3300
Oklahoma City, OK 73102-8812
Telephone: (405) 272-9241
Fax: (405) 235-8786

and

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

and

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

ATTORNEYS FOR PLAINTIFF