



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OKLAHOMA COALITION FOR
REPRODUCTIVE JUSTICE, on behalf
of itself and its members; and
NOVA HEALTH SYSTEMS, D/B/A
REPRODUCTIVE SERVICES, on behalf
of itself, its staff, and its patients

Plaintiffs,

v.

TERRY L. CLINE, 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
CATHERINE C. TAYLOR, in her official
capacity as the President of the Oklahoma
State Board of Osteopathic Examiners,

Defendants.

Case No. CV-2011-1722

Judge Donald L. Worthington

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

MAY 11 2012

PATRICIA PRESLEY, COURT CLERK
by *Patricia White*
DEPUTY

FINDINGS OF FACT

1. In the year 2000 the United States Food and Drug Administration (FDA) approved the abortion inducing drug RU-486 (also known as Mifeprex and Mifepristone) for marketing in the United States subject to a regimen of use described in the FDA final printed labeling (FPL) that accompanied the approval of the drug.
2. On May 11, 2011, Governor Mary Fallin signed into law Oklahoma House Bill 1970 (The Act) amending Section 1, Chapter 48, O.S.L. 2010 (codified as 63 O.S. Supp. 2010, § 1-729a) to become effective November 1, 2011 relating to the drug RU-486 or "any other abortion-inducing drug, medicine or other substance" prescribed or dispensed with the intent of terminating the clinically diagnosable pregnancy of a woman.
3. Plaintiffs on October 5, 2011 filed this case in this court seeking declaratory judgment that The Act violates the Oklahoma Constitution and seeking an injunction prohibiting enforcement of The Act.

4. On December 2, 2011, the Honorable Daniel L. Owens, a judge of this court entered an Order Granting Injunction temporarily enjoining the enforcement of The Act.
5. The Act provides a ban on medication abortion in the State of Oklahoma except as provided and in the manner and regimen set forth in the RU-486 FPL and it explicitly prohibits the "off label" use of RU-486 or any abortion drug or medication.
6. Good medical practice and the best interests of the patient often includes drug use that is not displayed in the FPL of that drug and requires physicians use legally available drugs according to their best knowledge and judgment.
7. Since the RU-486 FPL was issued by the FDA in 2000, a regimen different from that set forth in the FPL has been used in a great majority of cases of medication abortions in the United States demonstrated by scientific research to be safer and more effective than the regimen provided in the RU-486 FPL.

CONCLUSIONS OF LAW

1. The due process clause of the United States Constitution protects the right to bodily integrity as a fundamental right. *Washington v. Glucksberg*, 521 U.S. 702 (1997); *Planned Parenthood v. Casey* 505 U.S. 833 (1992).
2. Rights that are protected as fundamental by the United States Constitution are protected as fundamental rights by the Oklahoma Constitution to at least the same extent, *Eastern Oklahoma Building and Construction Trades Council v. Pitts*, 2003 OK 113, 82 P.3d 1008; *Messenger v. Messenger*, 1992 OK 27, 827 P.2d 865 (Okla 1992).
3. The due process clause of the United States Constitution protects the right to terminate a pregnancy as a fundamental right, *Roe V. Wade*, 410 U.S. 113 (1973).
4. The due process clause of the Oklahoma Constitution protects the right to terminate a pregnancy as a fundamental right. *Article II § 7, Oklahoma Constitution*; *Roe v. Wade*, ante; *Eastern Oklahoma Building and Construction Trades Council v. Pitts*, ante; *Messenger v Messenger*, ante.
5. A state regulation that has the effect of placing a substantial obstacle in the path of a woman seeking an abortion creates an "undue burden" on her ability to make that decision. *Planned Parenthood v. Casey*, ante; *Jane L. V. Bangerter*, 102 F.3d 1112 (10th Cir. 1995); *Davis v. Fieker*, 1997, OK 156, 952 P.2d 505.
6. A law violates the undue burden standard if its purpose is to impose a substantial obstacle in the path of women seeking a previable abortion. *Planned Parenthood v. Casey*, ante; *Jane L. V Bangerter*, ante
7. The Act's restriction of the use of the drug RU-486 or "any other abortion inducing drug, medicine or other substance" in the manner and to the regimen set forth in the medication FPL when used for abortion is so completely at odds with the standard that governs the practice of medicine that it can serve no purpose other than to prevent women from

obtaining abortions and to punish and discriminate against those women who do. *Planned Parenthood v. Casey, ante*.

8. No material fact is in dispute in this case and Plaintiffs are entitled to judgment as a matter of law.

ORDER

The Motions for Summary Judgment of Plaintiffs and of Defendants come on this date for decision. The court heard argument of the attorneys on April 27, 2012, has reviewed and considered that argument, and the authority and material submitted by the parties, has found the facts as set forth herein and has reached the conclusions of law above noted.

It is therefore ordered that the Motion for Summary Judgment of Plaintiffs is sustained and the Motion for Summary Judgment of Defendants is overruled.

It is further ordered that Plaintiffs are granted judgment that Oklahoma House Bill 1970, 2011 Session Laws 1276 is an unconstitutional law in violation of the fundamental rights of women to privacy and bodily integrity guaranteed by Article II, § 7 of the Constitution of the State of Oklahoma.

It is further ordered that the Temporary Injunction issued by this court on December 2, 2011 is converted into a Permanent Injunction without bond and Defendants, their employees, agents and successors in office are restrained and prohibited from enforcing the said Oklahoma House Bill 1970, 2011 Sessions Law 1276.

The clerk is directed to send a copy of this order to the attorneys for the parties.

Dated this 11th day of May, 2012.


Donald L. Worthington
Judge of the District Court