

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Planned Parenthood Arizona, Inc.; William
 Richardson, M.D.; and William H. R.
 Richardson M.D., P.C., doing business in Tucson)
 Women's Center,

CV 14-1910 TUC DCB

Plaintiffs,

v.

Will Humble, Director of the Arizona
 Department of Health Services, in his official
 capacity,

ORDER

Defendant.

On March 4, 2014, Plaintiffs filed this Complaint and filed a Motion for Temporary Restraining Order on March 7, 2014. Plaintiffs are Arizona health care providers, who provide surgical and medication abortions. They challenge HR 2036, A.R.S. 36-449.03: Abortion clinics; rules; civil penalties, subsection (E)(6),¹ which mandates: "That any medication, drug or other substance used to induce an abortion is administered in compliance with the protocol that is authorized by the United States Food and Drug Administration (FDA) and that is outlined in the final printing labeling instructions[, the FDL,] for that medication, drug or substance." The Director adopted such a regulation on January 27, 2014.

¹Section 2 of Arizona House Bill 2036, H.R. 2036, 50th Leg., 2d Reg. Sess. (Ariz. 2012).

1 The law and regulations become effective on April 1, 2014, unless the Court issues a
2 preliminary injunction. The Court denies the Motion for a Preliminary Injunction.

3 Standard for Preliminary Relief:

4 According to the Supreme Court, the proper standard for granting or denying a
5 preliminary injunction is as follows:

6 A plaintiff seeking a preliminary injunction must establish that he is
7 likely to succeed on the merits, that he is likely to suffer irreparable
8 harm in the absence of preliminary relief, that the balance of equities
tips in his favor, and that an injunction is in the public interest.

9 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Stormans, Inc. v.*
10 *Selecky*, 586 F.3d 1109, 1126–27 (9th Cir.2009) (abandoning the Ninth Circuit’s prior
11 preliminary injunction test and applying *Winter*).

12 Prior to *Winter*, the Ninth Circuit recognized an alternative sliding-scale standard
13 requiring a plaintiff to demonstrate either a combination of probable success on the merits
14 and the possibility of irreparable injury or that serious questions are raised and the balance
15 of hardships tips sharply in his favor. *Taylor v. Westly*, 488 F.3d 1197, 1200-1201 (9th Cir.
16 2007). Post-*Winter*, the “sliding scale” approach to preliminary injunctions remains only to
17 the extent “the elements of the preliminary injunction test are balanced, so that a stronger
18 showing of one element may offset a weaker showing of another.” *Pimentel v. Dreyfus*, 670
19 F.3d 1096, 1105 -1106 (9th Cir. 2012) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632
20 F.3d 1127, 1131 (9th Cir. 2011)). Plaintiffs “must establish that irreparable harm is “likely,
21 not just possible,” regardless of the strength of Plaintiffs’ showing on the other three
22 elements. *Alliance for the Wild Rockies*, 632 F.3d at 1131 (applying *Winters*). The sliding
23 scale supports a preliminary injunction when there are “serious questions going to the
24 merits”² and the hardship balance tips sharply toward the plaintiff, assuming the other two

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26 ²Alternatively, “serious questions,” means ““at an irreducible minimum,” ““ a fair
27 chance of success on the merits.”” *Pimentel*, 670 F.3d at 1106 (quoting *Guzman v. Shewry*,
552 F.3d 941, 948 (9th Cir.2009)).

1 elements of the *Winter* test are also met. *Drakes Bay Oyster Co. v. Jewell*, ___ F.3d ___,
2 2014 WL 114699 (9th Cir. Jan. 14, 2014) (citing *Alliance*, 632 F.3d at 1131-32)).

3 HR 2036: RU-486 medication abortion:

4 The statute and corresponding regulation involves a medication abortion protocol
5 using a combination of two prescription drugs: mifepristone (RU-486 or Mifeprex) and
6 misoprostol (Cytotec). The first drug kills the embryo/fetus and the second causes the uterus
7 to contract and expel the embryo/fetus, completing the abortion.

8 The protocol mandated by HR 2036 is from 2000, when the FDA approved
9 marketing mifepristone as an abortion-inducing drug and is based on clinical trials from the
10 1990s. The FDA found RU-486 to be safe and effective through 49 days (7 weeks) lmp (last
11 menstrual period): the patient takes three 200 mg tablets (600 mg) of mifepristone orally at
12 the health center, returns two days later to take two 200 mcg tablets (400 mcg) of misoprostal
13 orally, and then has a follow-up visit. A.R.S. 36-449.03(G)(1), Regulation R9-10-1508(G),
14 (J)(3).

15 The differences between the FDL, HR 2036, protocol and the current protocol is the
16 availability of medication abortions in the 8th and 9th week of pregnancy, a higher (600 mg
17 versus 200 mg) first dose of mifepristone, the requirement that the second dose of
18 misoprostal be administered at the clinic instead of being taken at home, and the oral
19 administration of two 200 mcg tablets (400 mcg) of misoprostal, as compared to the current
20 buccal, sublingual, administration of one 800 mcg tablet.

21 On its face, the law reflects a legitimate purpose to: 1) “protect women from the
22 dangerous and potentially deadly off-label use of abortion-inducing drugs, such as, for
23 example, mifepristone,” and 2) “to ensure that physicians abide by the protocol tested and
24 approved by the United States Food and Drug Administration for such abortion-inducing
25 drugs, as outlined in the drug labels.” (Response (Doc. 22) at 8 (citing HB 2036, Sec. 9 ¶¶
26 25-26)). In other words, the primary, if not the sole, purpose of the statute is maternal health.

1 The government has “a legitimate interest in advancing the state of medical knowledge
2 concerning maternal health and prenatal life[.]” *Planned Parenthood of Southeastern*
3 *Pennsylvania v. Casey*, 505 U.S. 833, 976 (1992).

4 The government’s interest before viability ““may not prohibit any woman from
5 making the ultimate decision to terminate her pregnancy.”” *Gonzales v. Carhart*, 550 U.S.
6 124, 146 (2007) (quoting *Casey*, 505 U.S. at 879 (plurality opinion). “It also may not impose
7 upon this right an undue burden, which exists if a regulation’s ‘purpose or effect is to place
8 a substantial obstacle in the path of a woman seeking an abortion before the fetus attains
9 viability.’” *Id.* (citing *Casey*, 505 U.S. at 878).

10 “A finding of an undue burden is a shorthand for the conclusion that a state
11 regulation has the purpose or effect of placing a substantial obstacle in the path of a woman
12 seeking an abortion of a nonviable fetus. . . And a statute which, while furthering the interest
13 in potential life or some other valid state interest, has the effect of placing a substantial
14 obstacle in the path of a woman’s choice cannot be considered a permissible means of serving
15 its legitimate ends.” *Casey*, 505 U.S. at 877. The law must be unduly burdensome, i.e.,
16 unconstitutional, in a large fraction of relevant cases. *Gonzales*, 550 U.S. at 167-168 (citing
17 *Casey*, 505 U.S. at 895.

18 In *Gonzales*, the Supreme Court considered the Partial Birth Abortion Ban passed
19 by Congress in 2003, which proscribes performing an “intact” D & C (dilation and cutilage)
20 procedure, but allows D & C procedures where the fetus is removed from the uterus in parts.
21 Admittedly, the regulation did not protect fetal life because it allowed the alternative D&C
22 method of abortion. The sole purpose of the regulation was to send a message of the
23 government’s profound respect for the life of the unborn by precluding a method likened to
24 infanticide. *Gonzales*, 550 U.S. at 157-158.³ The Supreme Court in *Gonzales* assumed *Casey*

26 ³“Regulations which do no more than create a structural mechanism by which the
27 State, or the parent or guardian of a minor, may express profound respect for the life of the

1 and its progeny to be controlling and found the regulation would be unconstitutional if it
2 “subject[ed] [women] to significant health risks.” *Id.* at 161 (quoting *Ayotte v. Planned*
3 *Parenthood of Northern England*, 546 U.S. 320, 328 (2007) (finding health exception to the
4 parental-involvement statute was necessary “to avert serious and often irreversible damage
5 to pregnant minor's health). And, while the medical evidence suggested that removing the
6 fetus intact is a safer procedure with less potential for tearing and puncturing of the uterus,
7 infection, and other complications, medical evidence showed a “non-intact” D&C procedure
8 never imposes any significant health risks.

9 The law did not include a health exception. The Court reasoned the premise in
10 *Casey*, that from the inception of the pregnancy, the government has a regulatory interest in
11 protecting the life of the fetus that may become a child, “cannot be set at naught by
12 interpreting *Casey*'s requirement of a health exception so it becomes tantamount to allowing
13 a doctor to choose the abortion method he or she might prefer.” “Where it has a rational
14 basis to act, and it does not impose an undue burden, the State may use its regulatory power
15 to bar certain procedures and substitute others, all in furtherance of its legitimate interests in
16 regulating the medical profession, . . .” *id.* at 158, which in *Gonzales* it did to promote
17 respect for life, including life of the unborn.

18 The Sixth Circuit in *Planned Parenthood Southwest Ohio v. DeWine*, 696 F.3d 490
19 (6th Cir. 2012) considered a substantially similar statute to the one presented to this Court.
20 Following *Gonzales*, the Sixth Circuit concluded that the right to choose abortion does not
21 encompass the right to choose a particular abortion method. *Id.* at 514-515. Under Supreme
22 Court precedent the sole question is whether the regulation unduly burdens a woman's right
23 to choose to have an abortion. *Id.* at 516. The court in *DeWine* found that surgical abortions
24 remained a viable alternative to medication abortions and, therefore, the statute passed
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26 unborn are permitted, if they are not a substantial obstacle to the woman's exercise of the
27 right to choose.” *Id.* at 146 (quoting *Casey*, 505 U.S. at 877).

1 constitutional muster. *Id.* Evidence of women's preferences regarding methods was not
2 enough to create a material question of fact pertaining to whether the law imposed a
3 substantial obstacle to a woman's right to choose to have an abortion. *Id.* at 514 n.1, 515-
4 516.

5 Of course the same remains true here, the same alternative to medication abortions
6 remains available to women in Arizona: a surgical procedure— vacuum aspiration or suction
7 curettage.

8 The Fifth Circuit has also considered the constitutionality of a RU-486 regulation
9 that restricts its use to the instructions provided in the FDL. The court explained that when
10 regulating abortion, the legislature need only provide a rational basis for its law. The Court
11 must presume the law to be rational. Any conceivable rationale and even rational speculation
12 suffices as a basis for state regulatory action, and the legislature need not produce any
13 evidence to sustain the rationality of its statute. *Planned Parenthood v. Abbott*, No. 13-
14 51008, slip op. at 14-17 (5th Cir. March 27, 2014) opinion issued March 27, 2014 (citing
15 *Heller v. Doe*, 509 U.S. 312, 320 (1993); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S.
16 432, 440 (1985), *but see*, *Planned Parenthood v. Van Hollen*, 738 F.3d 786, 787 (7th Cir.
17 2013) (granting preliminary injunction because evidentiary record was sparse regarding
18 evidence supporting rational basis for imposing admitting privileges requirement on abortion
19 clinics). The Court notes that preliminary injunctions were granted in both *DeWine* and
20 *Abbott*, but these courts ruled preliminarily without the benefit their dispositive rulings
21 afford this Court.

22 The State follows *DeWine* and *Abbott* and stands on the legislative findings of fact
23 to support the rational basis for HR 2036. Legislative finding #13 reflects that abortion-
24 inducing drugs are associated with increased risk of complications by failure to complete the
25 two-step medication dosage process and findings of fact 14 and 15, reflect various negative
26 outcomes related to medication abortions based on an FDA Mifepristone United States
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1 Postmarketing Adverse Events Summary through 4/30/2011. There is no evidence before
2 the Court regarding any supporting evidence for any asserted legislative fact, but the State
3 bears no such burden.

4 Plaintiffs have come forward with evidence that reflects medication abortion is
5 extremely safe and safer than the alternative surgical procedure, which is also a very safe
6 procedure. The current medication abortion protocol being precluded by HR 2036 is
7 considered the best practices, “evidence-based”⁴ medicine by practicing doctors in Arizona
8 and elsewhere, and endorsed by American College of Obstetricians and Gynecologists
9 (ACOG) and the American Medical Association (AMA). *See* (Motion (Doc. 8), Ex. 2:
10 Grossman Decl. ¶ 29, 35.) Plaintiffs’ evidence reflects there is a clear advantage to the
11 current protocol because it may be used through the 9th week of pregnancy, not just through
12 the 7th week, which is significant because many women do not discover their pregnancies
13 until approximately 49 days, which is the end of 7th week. *Id.* Also, risk factors from medical
14 abortions, such as those cited in the legislative findings from the FDA 2011 report have been
15 reduced or eliminated by the current buccal regimen; medication abortion now has a lower
16 rate of ongoing pregnancies and fewer surgical interventions are necessary to complete the
17 abortion procedure. *Id.* ¶ 33, 43, 44, 46.

18 This evidence does not, however, suggest that there is no rational basis for the
19 State’s regulation. The State need not legislate the best means by which to achieve a goal.
20 There is no least restrictive means component to rational basis review; rational speculation
21 will suffice. An imperfect fit can be rational, and it is not for the Court to “improve” or
22 “cleanse” the legislative process. *Abbott* at 15. Where legislative predictions prove wrong,
23 the legislation can be changed. *Abbott* at 14-15) (citing *Heller v. Doe*, 509 U.S. at 319-321).
24 Importantly, “the determination does not lend itself to an evidentiary inquiry in court, the
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27 ⁴Less accurately described as “off-label” use.

1 state is not required to ‘prove’ that the objective of the law would be fulfilled.” *Id.* at 14
2 (citing *F.C.C. v. Beach Commc’ns, Inc.*, 508 U.S. 307, 313 (1993)).

3 Plaintiffs specifically challenge the correctness of all the legislative findings of fact,
4 *id.* ¶¶ 36-48. But, it is not enough that the legislature may have incorrectly predicted that a
5 law will benefit the community. *Abbott* at 14. Plaintiffs strongest argument is that the risks
6 associated with medication abortions, relied on by the State as the reason for adopting the
7 FDL protocol, have been substantially reduced or eliminated by the sublingual administration
8 of one 800 mcg tablet of misoprostol, which will be precluded under HR 2036. Additionally,
9 the FDL protocol requires a dose of mifepristone three times higher than necessary. To
10 prevail, however, Plaintiffs must show more than a disagreement that the MDL is a less safe
11 protocol, *Gonzales*, 550 U.S. at 162-64, and more than simply an imperfect fit, *Heller*, 509
12 U.S. at 321. Where reasonable minds can disagree, there is a rational basis, *Beach*
13 *Commc’ns*, 508 U.S. at 315.

14 Before turning to the undue burden analysis, the Court notes that the *DeWine* court
15 concluded there can be no separate constitutionally asserted violations under the equal
16 protection clause or of the right to bodily-integrity because under *Casey* the test for the
17 constitutionality of a law regulating abortion is undue burden. In other words, these claims
18 become “part and parcel” of the “undue-burden framework,” subject to rational basis review.
19 *DeWine*, 696 F.3d at 507-508. The Court must also consider the Plaintiffs’ claim that the
20 statute is void for vagueness.

21 Plaintiffs assert that the express language of the statute lends itself to two different
22 interpretations. First, the statute requires that “any medication, drug or other substance used
23 to induce an abortion” be administered in compliance with the “protocol” that is authorized
24 by the FDA and that is outlined in the FDL “for that medication, drug or substance.” A.R.S.
25 § 36-449.03(E)(6). Misoprostol is such a drug and has been approved by the FDA only for
26 use on ulcers. *Cf. Cline v. Oklahoma Coalition for Reproductive Justice*, 313 P.3d 253, 260
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1 (Okla. 2013) (finding state statute substantially similar to Arizona’s law prohibits the use of
2 misoprostol to induce abortions because express language reflected legislative intent to reach
3 all abortion-inducing drugs, including misoprostol). Therefore, physicians will believe the
4 use of misoprostal is precluded because it has not been approved as an abortifacient.

5 Second, Plaintiffs present evidence that the FDA does not approve or authorize drug
6 protocols. It’s approval allows drug manufacturers to advertise and promote the drug for a
7 particular use. (Motion (Doc. 8), Ex. 3: Rarick ¶ 8.) The FDL is an informational document
8 that provides physicians with guidance about how to use a drug based on use information
9 prepared and submitted by the drug sponsor to the FDA. *Id.* ¶ 11. The FDA requires FDL
10 updates for safety, but not for new uses. *Id.* ¶ 12.

11 After a drug is approved by the FDA, physicians generally do and are generally
12 expected to use it “off-label,” or more accurately described: “evidence based” use. This is
13 considered: “Good medical practice and the best interests of the patient” and physicians are
14 required to use legally available drugs, biologics and devices according to their best
15 knowledge and judgment. *Id.* ¶ 18. (citing FDA Information Sheet, “*Off-Label*” and
16 *Investigational Use of Marketed Drugs, Biologics, and Medical Devices*,” see also *Cline*, 313
17 P.3d at 260 (finding FDA-approved labeling is “not intended to limit or interfere with the
18 practice of medicine nor to preclude physicians of medicine from using their best judgment
19 in the interest of the patient”) (citing FDA Drug Bulletin 12:4-5, 59 Fed. Reg. 59,820, 59,
20 821 (Nov. 18, 1994); *Weaver v. Reagen*, 886 F.2d 194, 198 (8th Cir.1989) (rejecting
21 argument that Medicaid could rely on FDA approval statement in limiting coverage of AZT
22 as reasonable because FDA approval not intended to interfere with practice of medicine nor
23 preclude physicians from using their best judgment in the best interest of patient).

24 Plaintiffs assert that a physician knowledgeable regarding the FDA approval process
25 will be confused in regard to the statute’s requirement to administer the drug under the
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1 protocol authorized by the FDA because no such protocol exists, and therefore, believe they
2 cannot use RU-486 under any circumstances.

3 The State submits any confusion or ambiguity in the statute is clarified by legislative
4 fact #9, which expressly and specifically defines the, “as approved by the FDA and outlined
5 in the FDL,” protocol for mifepristone to consist of: 1) three 200 mg tablets of mifepriston
6 taken orally, followed by two 200 mcg tablets of misopristol taken orally. This Court finds
7 there is little likelihood Plaintiffs will prevail on the vagueness challenge. The finding of fact
8 #9 expresses the clear legislative intent to preclude the use of these two drugs, except for by
9 giving: 1) three 200 mg tablets of mifepriston to be taken orally, followed by two 200 mcg
10 tablets of misoprostol to be taken orally. For example, the current protocol of administering
11 only one 200 mg tablet of mifepriston is precluded. Likewise, the current protocol of
12 administering, buccally, one 800 mcg of misoprostol is precluded.

13 The Court turns to the undue burden balancing test prescribed in *Casey*.
14 Defendants explain that a common alternative method of abortion is available: a surgical
15 procedure commonly known as vacuum aspiration or suction curettage. Before 2000, this
16 was the mainstay first-trimester abortion procedure. “[S]urgical abortions in the first trimester
17 are extremely safe and, for most healthy women, can take less than five to ten minutes at an
18 outpatient clinic, usually with only local anesthesia and often sedation. Briefly, a surgical
19 abortion is performed by inserting a speculum into the woman's vagina, dilating the cervix,
20 and then inserting a tube into her uterus that empties the contents by suction. Side effects
21 include bleeding and cramping. Surgical abortions have been performed for decades, and the
22 mortality rate is extremely low at roughly .1 per 100,000.” *DeWine*, 695 F.3d at 493.
23 Currently, vacuum aspiration or suction curettage remains the most common first trimester
24 abortion procedure, with RU-486 being used by approximately 41 percent of women. (Reply
25 (Doc. 24), Ex. 2L Kress Decl. ¶ 6.)

1 Plaintiffs assert the FDL protocol precluding medication abortions in the 8th and 9th
2 week of pregnancy imposes an undue burden on some women who, for medical reasons, can
3 not safely have a surgical abortion. These medical conditions include the following::
4 anomalies of the reproductive and genital tract, large uterine fibroids, female genital
5 mutilation, vaginismus, or cervical stenosis, severe obesity or extremely flexed uterus. *Id.*
6 ¶ 21. Some women have psychological conditions that make a medication abortion better
7 than a surgical abortion, including: those who fear surgical procedures, victims of rape, or
8 women who have experienced sexual abuse or molestation. *Id.* ¶ 20. A medication abortion
9 is substantially similar to a miscarriage and, consequently, less traumatic than a surgical
10 proceeding to terminate a pregnancy. *Cf., Gonzales*, 550 U.S. at 159-160 (discussing
11 psychological implications of abortion method in the context of “intact” D&C as most
12 potentially traumatic because it is like infanticide). The statute does not contain a health
13 exception allowing these women to obtain medication abortions at the 8 and 9 gestational
14 stage in their pregnancies. Plaintiffs assert the statute is unconstitutional because it lacks a
15 health exception for these women. Additionally, as for these women who do not discover
16 their pregnancy until late in the 8th week,⁵ they are banned from choosing to have an abortion
17 if a surgical proceeding is precluded by their medical condition.

18 Plaintiffs submit evidence supporting their assertion that in respect to all women
19 seeking medication abortions, the FDL protocol is an undue burden because it increases cost,
20 will result in unavailability of medication abortions due to clinic shut downs, and other
21 burdens which have generally not been held substantial obstacles to a women’s access to
22 abortion. *Abbott* at 27 n. 15 (citing *DeWine*, 696 F.3d at 514-15 relying on *Casey*, 505 U.S.
23 at 885-886, 901). The State’s response is simple: there is little substantive difference
24 between the two medication abortion protocols, and in every instance except perhaps for
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26 ⁵Many women do not detect pregnancy until close to 49 days LMP: week seven (43
27 days through 49 days). (Motion (Doc. 8), Ex. Grossman Decl. ¶ 34.)

1 women with certain medical conditions, women are free to obtain a safe and readily available
2 method of abortion: vacuum aspiration or suction curettage.

3 The Sixth Circuit found evidence that women preferred one method of abortion over
4 another was not sufficient to even raise a triable question of fact. To create a substantial
5 obstacle to the abortion right, the law must “impose an undue burden on ‘a woman’s ability
6 to make th[e] decision to have an abortion.’” *DeWine*, 696 F.3d at 514. The court
7 considered whether in a large fraction of the cases in which the law is relevant, it will operate
8 as a substantial obstacle to a woman’s choice to have an abortion. The answer was no. In
9 a large fraction of cases, the law will simply change the method of abortion. *Id.* at 514-515.
10 The Court realizes that the evidence in this case may differ from the evidence presented to
11 the Sixth Circuit, but the principals and logic remain the same. Given the ready availability
12 of a safe alternative method of abortion, Plaintiffs have a difficult evidentiary burden to
13 establish HR 2036 is a substantial obstacle to a woman’s right to obtain a first trimester
14 abortion in Arizona.

15 The remaining question is whether the 8th and 9th week limitation in HR 2036 is a
16 substantial obstacle for some women with certain medical conditions, who cannot safely
17 undergo the alternative surgical procedure. To prevail on this claim if the statute is,
18 otherwise, constitutional, the Plaintiffs must establish that the lack of a health exception
19 imposes a significant health risk. *Gonzales*, 550 U.S. at 161. It is not enough to show that
20 there is simply a medical disagreement as to whether prohibiting medication abortions in the
21 8th and 9th week of pregnancy would actually impose a significant health risk. *Id.* at 162-164.
22 At this time, Plaintiffs proffer no more than a list of medical conditions, without any
23 explanation regarding significant health risks. More importantly, Plaintiffs should have
24 brought an “as-applied challenge, which is the proper means for challenging the lack of an
25 exception to the regulations at issue, ‘the nature of the medical risk can be better quantified
26 and balanced than in a facial attack.’” *Abbott* at 33 (citing *Gonzales*, 550 U.S. at 167).

1 Conclusion:

2 Given the rational basis analysis applicable in this case and the availability of a safe
3 and common method of abortion for women in the first trimester of pregnancy, the Court
4 finds that it is not likely the Plaintiffs will prevail on the merits of their Complaint.

5 For these same reasons the Court finds that Plaintiffs are not likely to suffer
6 irreparable harm in the absence of preliminary relief. In the context of irreparable harm, the
7 Court has considered that some women, especially those in Flagstaff, will have greater
8 difficulty securing medication abortions when the law is implemented. Women in northern
9 Arizona, who are eight and nine weeks pregnant, will have to travel several hundred extra
10 miles and may have to secure overnight lodging to obtain a surgical procedure because the
11 clinic in Flagstaff only provides medication abortions. If the Flagstaff clinic closes entirely,
12 all women in northern Arizona will have to do the same to obtain any abortion procedure.
13 As for all women throughout the state, medication abortions will cost more and require more
14 time and effort to secure. Women will have to make two trips to the clinic, instead of one.
15 This obviously increases the difficulty in obtaining the procedure because it requires them
16 to twice take off work, get day care, etc. Whether or not these factors are substantial
17 obstacles to abortion remains to be seen, but based on the limited record before the Court
18 they do not qualify as irreparable harm. These type of burdens may become substantial
19 obstacles in the aggregate, (Reply (Doc. 28) at 14 (citation omitted), but in and of themselves
20 are not sufficient to tip the balance of equity for Plaintiffs. Because the Court finds it
21 unlikely that Plaintiffs will prevail on the merits of the constitutional claims, it rejects that
22 notion as irreparable injury. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (finding
23 a violation of constitutional rights ‘unquestionably constitutes irreparable injury’).
24 Accordingly, the Court finds that the injunction is not in the public interest. *Cf.*, *Sammartano*
25 *v. First Judicial District Court*, 303 F.3d 959, 974 (9th Cir. 2002) (describing public interest
26 in protecting constitutional right under the First Amendment).

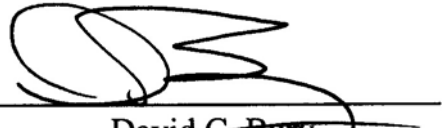
1 The Court finds that the Plaintiffs are not entitled to preliminary relief because they
2 have not established serious questions going to the merits nor that the hardship balance tips
3 sharply towards them.

4 **Accordingly,**

5 **IT IS ORDERED** that the Motion for Temporary Restraining Order/Motion for
6 Preliminary Injunction (Doc. 14) is DENIED.

7 **IT IS FURTHER ORDERED** that the Court shall set a Scheduling Conference,
8 pursuant to Fed. R. Civ. P. 16.

9 DATED this 31st day of March, 2014.

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13 David C. Bury
14 United States District Judge
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