IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

PLANNED PARENTHOOD OF ARKANSAS & EASTERN OKLAHOMA, d/b/a PLANNED PARENTHOOD GREAT PLAINS and STEPHANIE HO, M.D., on behalf of themselves and their patients, Plaintiffs, v. LARRY JEGLEY, Prosecuting Attorney for Pulaski County, in his official capacity, his agents and successors; MATT DURRETT, Prosecuting Attorney for Washington County, in his official capacity, his agents and successors, Defendants.	No. 4:15-cv-00784-KGB

AMENDED COMPLAINT

Plaintiffs Planned Parenthood of Arkansas & Eastern Oklahoma, d/b/a Planned Parenthood Great Plains ("PPAEO"), and Stephanie Ho, M.D., by and through their undersigned attorneys, bring this Complaint against the above-named Defendants, their employees, agents, delegates, and successors in office, and in support thereof allege the following:

I. PRELIMINARY STATEMENT

1. Plaintiffs bring this action seeking declaratory and injunctive relief on behalf of themselves and their patients under the United States Constitution and 42 U.S.C. § 1983, to challenge section 1504(d) ("contracted physician requirement") of Arkansas Act 577, Reg. Sess. (2015), codified at Ark. Code Ann. § 20-16-1501 *et seq.*, which, unless enjoined by this Court, will impair the health and safety of women seeking abortions in Arkansas and violate their constitutional rights. A copy of Act 577 is attached here as Exhibit A.

2. The contracted physician requirement requires all physicians who provide medication abortion (i.e., an abortion using medication alone) to have a signed contract with a physician (the "contracted physician") who agrees to handle complications and emergencies and who maintains specific admitting privileges at a hospital, as described in the Act.

3. Because PPAEO cannot comply—despite diligent efforts to do so—with the contracted physician requirement, enforcement of the Act will result in a dramatic reduction of women's access to abortion in Arkansas. Today, abortions are available at three health centers in Arkansas: PPAEO offers medication abortion at its health centers in Fayetteville and Little Rock, and another provider offers surgical and medication abortion in Little Rock. Without relief from this Court, PPAEO will be forced to stop providing abortions entirely, leaving only one health center in the state, which will offer only surgical abortion. Due to this unnecessary law, women in Fayetteville will be forced to travel three hours each way to Little Rock to have a surgical abortion, and women statewide will lose access to a safe, early method of abortion using medications alone.

4. The contracted physician requirement imposes significant burdens without any medical benefit, violating the constitutional rights guaranteed to Plaintiffs and their patients by the Fourteenth Amendment to the United States Constitution. Injunctive relief is necessary to protect the health of Arkansas women and the constitutional rights of Plaintiffs and their patients.

II. JURISDICTION AND VENUE

5. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1343(a)(3). Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

6. Venue in this judicial district is appropriate under 28 U.S.C. § 1391.

III. THE PARTIES

A. Plaintiffs

7. Plaintiff PPAEO is an Oklahoma not-for-profit corporation licensed to do business in Arkansas. It operates two of the three abortion-providing health centers in the state, located in Little Rock and Fayetteville. PPAEO or predecessor organizations have provided high quality reproductive healthcare in Arkansas for more than thirty years. The healthcare services provided by PPAEO at its two Arkansas health centers include well-women exams, testing and treatment for sexually transmitted infections, provision of birth control and emergency contraception, HIV testing, pregnancy testing, screening for vaginal infections, and HPV vaccinations. PPAEO also provides medication abortions in Arkansas. PPAEO brings this action on behalf of itself, its patients, and the physicians it employs to provide services to its patients.

8. Plaintiff Ho is a licensed family practice physician who provides medication abortions through 70 days LMP and other healthcare services to patients at PPAEO's Little Rock and Fayetteville health centers. Dr. Ho brings this action on behalf of herself and her patients.

B. Defendants

9. Defendant Larry Jegley is the Prosecuting Attorney in Pulaski County, where PPAEO's Little Rock health center is located. Defendant Jegley has the authority to criminally prosecute any person who violates the Act. Ark. Code Ann. § 20-16-1506(a). Defendant Jegley is sued in his official capacity.

10. Defendant Matt Durrett is the Prosecuting Attorney in Washington County, where PPAEO's Fayetteville health center is located. Defendant Durrett has the authority to criminally prosecute any person who violates the Act. *Id.* Defendant Durrett is sued in his official capacity.

IV. FACTUAL ALLEGATIONS

A. Medication Abortion Background and Practice at PPAEO Health Centers

11. Women seek abortions for a variety of medical, psychological, emotional, familial, economic, and personal reasons. Approximately one in three women in the United States will have an abortion by age 45.

12. Currently, Arkansas women in the first ten weeks of pregnancy (through 70 days LMP) have the option of choosing a medication abortion, an extremely safe and effective procedure, at PPAEO's two Arkansas health centers. In calendar year 2017 alone, PPAEO's physicians provided over 800 medication abortions at its Arkansas health centers. Over 600 of these abortions were performed at the Fayetteville health center.

13. A medication abortion involves a combination of two prescription pills: mifepristone and misoprostol. Mifepristone, commonly known as "RU-486" or by its commercial name Mifeprex, works by blocking the hormone progesterone, which is necessary to maintain pregnancy, and by increasing the efficacy of the second medication in the regimen, misoprostol. Misoprostol, sometimes known by its brand name Cytotec, causes the uterus to contract and expel its contents.

14. Mifepristone is the only medication approved by the U.S. Food and Drug Administration ("FDA") for use as an abortifacient. It was approved in 2000 and as part of that approval, as with all medications, the FDA approved a final printed label ("FPL"). The FPL is an informational document that provides physicians with guidance about the use for which the drug sponsor requested and received FDA approval.

15. On March 29, 2016, the FDA approved an updated FPL for Mifeprex that reflects the medication abortion regimen followed by most abortion providers, including PPAEO: i.e., 200

mg of mifepristone taken orally, followed 24 to 48 hours later by 800 μg self-administered buccally.

16. Women choose medication abortion for a variety of reasons. For some women, it offers important advantages over surgical abortion. In particular, some women have medical conditions that make medication abortion a significantly safer option, with a lower risk of both complications and failure than a surgical abortion. These conditions include extreme obesity, and anomalies of the reproductive and genital tract, such as large uterine fibroids, vaginismus, cervical stenosis, genital mutilation, or an extremely flexed uterus, which make it difficult to access the pregnancy inside the uterus as part of a surgical abortion.

17. Many women choose medication abortion because they fear any procedure with surgical instruments. Victims of rape, or women who have experienced sexual abuse or molestation, may choose medication abortion to feel more in control of the experience and to avoid the trauma of having instruments placed in their vagina.

18. Additionally many women prefer medication abortion because it feels more natural, like a miscarriage, and/or because they can complete a medication abortion in the privacy of their homes, with the company of loved ones, and at a time of their choosing. Medication abortion with mifepristone and misoprostol is increasingly prevalent, chosen by more women each year.

B. Challenged Provision of the Arkansas Law

19. In its 2015 legislative session, the Arkansas General Assembly passed and Governor Asa Hutchinson signed into law Act 577, which places new restrictions on the provision of medication abortion, effective on January 1, 2016.

20. Section 1504(d) of the Act requires physicians who provide or prescribe abortion-inducing drugs to "have a signed contract with a physician who agrees to handle complications,"

and furthermore that "[t]he physician who contracts to handle emergencies shall have active admitting privileges and gynecological/surgical privileges at a hospital designated to handle any emergencies associated with the use or ingestion of the abortion-inducing drug." Additionally, every pregnant woman who is provided with abortion-inducing drugs "shall receive the name and phone number of the contracted physician and the hospital at which that physician maintains admitting privileges and which can handle any emergencies." The contracted physician requirement applies only to the provision of medication abortions, not surgical abortions.

21. Anyone who violates the Act is guilty of a Class A misdemeanor. The Act also provides for civil remedies, including malpractice actions, against violators.

C. The Act's Requirements Are Medically Unnecessary

22. Legal abortion is one of the safest and most common procedures in contemporary medical practice. Medication abortion is an extremely safe and effective method of abortion, one of the safest procedures in medical practice today. Major complications from medication abortion are extremely rare, and far rarer than those associated with pregnancy and childbirth. A recent study found that out of 233,805 medication abortions performed in the United States, only 0.16% of patients experienced a significant adverse event and fewer than six out of every 10,000 experienced complications resulting in hospital admission.

23. The contracted physician requirement is unnecessary because PPAEO's policies and protocols, as well as the skill and experience of its medical staff, ensure that patients receive the same level and quality of care in the event of a complication as they would if PPAEO had a contracted physician.

24. PPAEO employs three physicians who provide medication abortions at its Arkansas health centers. Dr. Ho, one of PPAEO's physicians, is licensed to practice medicine in Arkansas.

25. Because the medications used in a medication abortion do not take effect immediately, there is no circumstance, except for an allergic reaction to mifepristone—which has never been reported—that would require a medication abortion patient to be transferred from a health center to a hospital. Indeed, PPAEO has never had to transfer a medication abortion patient from its health centers to a hospital. Rather, the rare complications that follow a medication abortion occur once a woman has gone home.

26. Because of this, upon discharge, all of PPAEO's medication abortion patients are provided with a phone number for a 24-hour hotline staffed by a registered nurse or a physician, which they can call regarding any complications, questions, and concerns that arise after they have left the health center. In most cases, the patients' questions and concerns can be addressed over the phone; many patients just need reassurance that their symptoms are normal and will subside. If a return visit to the health center is necessary, the patient is given an appointment. The nurse who answers the hotline is able to contact PPAEO physicians at all times, should the need arise.

27. In the exceedingly rare cases that the nurse determines that a patient who contacts the after-hours hotline should be treated or evaluated by a physician immediately, she or he will refer the patient to a local emergency room. All patients referred to the emergency room will be contacted by health center staff within 24 hours, and a physician at PPAEO will be notified.

28. The Act requires the contracted physician to have privileges at a hospital, but does not specify a location for that hospital. PPAEO patients come from all over the state of Arkansas, and even from other states. Consistent with the accepted standard of care, if any of these patients were to experience a complication after returning home, they would be referred to a local hospital in their area, which is most likely not the hospital where a contracted physician would have privileges.

29. Emergency room physicians and on-call OB-GYNs are trained to treat any gynecological complications that may occur after a medication abortion.

30. The Act does not require PPAEO to involve, or even notify, its contracted physician in the event of a complication that requires hospital-based care.

31. If PPAEO does contact the contracted physician, unless he or she is a patient's personal OB-GYN, that physician will have no prior relationship with the patient and will rely entirely on information provided by PPAEO and/or the PPAEO physician who provided care to the patient. The contracted physician requirement does not increase patient safety and is medically unnecessary.

D. The Impact of the Act

32. Allowing the contracted physician requirement of the Act to go into effect will result in the elimination of medication abortion entirely in Arkansas. The two PPAEO health centers will no longer be able to offer medication abortion services because PPAEO cannot comply with the contracted physician requirement. Because PPAEO has no surgical abortion provider in Arkansas, it will be unable to offer abortion at all. Little Rock Family Planning Services, the only other abortion provider in the state, also intends to stop providing medication abortion if the Act goes into effect.

33. PPAEO had tried to find a physician with the requisite admitting privileges to contract with it and satisfy the Act, but had been unsuccessful. Many physicians PPAEO contacted did not want to contract with PPAEO because of fear of stigma and harassment from being associated with an abortion provider, employers or partners did not want to be associated with an abortion provider, or because they do not support a woman's right to choose.

34. More than 600 women sought medication abortion at the Fayetteville health center in calendar year 2017. The Act will completely eliminate abortion access in Fayetteville. Women who can now access abortion there will have to make the six hour roundtrip to Little Rock to access surgical abortion services. And they will have to make this 380-mile roundtrip more than once, or stay away from home for several days, because Arkansas law requires that a woman receive certain state-mandated information in-person and then wait at least 48 hours until she may have an abortion. Ark. Code Ann. § 20-16-1703.

35. Women will need to arrange the necessary funds, transportation, childcare or time off work required to travel these distances and make these separate trips. Especially for low-income women, women who have limited access to transportation, or women who are victims of abuse, these increased travel distances will, at a minimum, impose delays on their accessing care and, in some cases, will prevent them entirely from obtaining an abortion. While abortion is an incredibly safe procedure, its risk increases with gestational age, as does the cost of the procedure.

36. A complete ban on medication abortion in the state would substantially burden Arkansas women, particularly those women described above who have important personal reasons for choosing a medication abortion or have medical conditions that make medication abortion a significantly safer option. Some women with these medical conditions, moreover, could have other health complications arising out of, or exacerbated by, being forced to continue unwanted pregnancies. Such complications could threaten the life or the health of these women.

37. All of these burdens caused by the Act come with no medical benefit whatsoever. To the contrary, eliminating the availability of abortion services in Fayetteville, and of medication abortion statewide, will harm women's health.

V. CLAIMS FOR RELIEF

COUNT I – RIGHT TO DUE PROCESS OF LAW

(Liberty/Privacy)

38. Plaintiffs hereby reaffirm and reallege each and every allegation made in paragraphs 1-37 above as if set forth fully herein.

39. The contracted physician requirement violates Plaintiffs' patients' rights to liberty and privacy as guaranteed by the Fourteenth Amendment to the United States Constitution by imposing an unconstitutional burden on their right to choose abortion.

COUNT II – RIGHT TO DUE PROCESS OF LAW

(Bodily Integrity)

40. Plaintiffs hereby reaffirm and reallege each and every allegation made in paragraphs 1-37 above as if set forth fully herein.

41. The contracted physician requirement violates Plaintiffs' patients' rights to bodily integrity guaranteed by the Fourteenth Amendment to the United States Constitution by depriving women access to a safe and medically accepted non-surgical abortion procedure.

COUNT III – RIGHT TO DUE PROCESS OF LAW

(Right to Pursue Profession)

42. Plaintiffs hereby reaffirm and reallege each and every allegation made in paragraphs 1-37 above as if set forth fully herein.

43. The contracted physician requirement violates Plaintiffs' right to pursue their profession guaranteed under the Fourteenth Amendment to the United States Constitution because it makes Plaintiffs' ability to maintain their business and pursue their profession contingent entirely on the willingness of third parties to be publicly associated with and contracted with an abortion provider.

COUNT IV – RIGHT TO EQUAL PROTECTION

44. Plaintiffs hereby reaffirm and reallege each and every allegation made in paragraphs 1-37 above as if set forth fully herein.

45. The contracted physician requirement violates Plaintiffs' right to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution, because it imposes requirements on medication abortion providers that the State does not impose on other medical providers or medications without adequate justification.

VI. REQUEST FOR RELIEF

Plaintiffs respectfully request that this Court:

A. Issue a declaratory judgment that the contracted physician requirement is unconstitutional and unenforceable;

B. Issue injunctive relief restraining Defendants and their employees, agents, and successors in office from enforcing the contracted physician requirement;

C. Grant Plaintiffs attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988; and;

D. Grant such other and further relief as this Court may deem just, proper, and equitable.

Dated: September 17, 2018

Respectfully submitted,

/s/ Maithreyi Ratakonda

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