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*Applications for admission pro hac vice forthcoming
**Admitted pursuant to Ariz. Sup. Ct. R. 38(f)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Planned Parenthood Arizona, Inc.; Eric Reuss,
M.D., M.P.H.; Paul A. Isaacson, M.D.; Desert
Star Family Planning, LLC; DeShawn Taylor,
M.D.,

Plaintiffs,

v.

Mark Brnovich, Arizona Attorney General, in
his official capacity; Cara M. Christ, Director of
the Arizona Department of Health Services, in

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

Civil Action No. _____

1 her official capacity; Patricia E. McSorley,
2 Executive Director of the Arizona Medical
3 Board, in her official capacity; Richard T. Perry,
4 M.D., Medical Board Chair, in his official
5 capacity; James Gillard, M.D., Medical Board
6 Vice Chair, in his official capacity; Jodi A. Bain,
7 Medical Board Member, in her official capacity;
8 Marc D. Berg, M.D., Medical Board Member, in
9 his official capacity; Donna Brister, Medical
10 Board Member, in her official capacity; R.
11 Screven Farmer, M.D., Medical Board Member,
12 in his official capacity; Gary R. Figge, M.D.
13 Medical Board Member, in his official capacity;
14 Robert E. Fromm, M.D., Medical Board
15 Member, in his official capacity; Paul S.
16 Gerding, Medical Board Member, in his official
17 capacity; Lois Krahn, M.D., Medical Board
18 Member, in her official capacity; Edward G.
19 Paul, M.D., Medical Board Member, in his
20 official capacity; Wanda J. Salter, Medical
21 Board Member, in her official capacity; Jenna
22 Jones, Executive Director of the Arizona Board
23 of Osteopathic Examiners in Medicine and
24 Surgery, in her official capacity; Scott Steingard,
25 D.O., Board of Osteopathic Examiners in
26 Medicine and Surgery President, in his official
27 capacity; Douglas Cunningham, D.O., Board of
28 Osteopathic Examiners in Medicine and Surgery
Vice President, in his official capacity; Gary
Erbstoesser, D.O., Board of Osteopathic
Examiners in Medicine and Surgery Member, in
his official capacity; Jerry G. Landau, Board of
Osteopathic Examiners in Medicine and Surgery
Member, in his official capacity; Martin B.
Reiss, D.O., Board of Osteopathic Examiners in
Medicine and Surgery Member, in his official
capacity; Lew Riggs, Board of Osteopathic
Examiners in Medicine and Surgery Member, in
his official capacity; Vas Sabeeh, D.O., Board of
Osteopathic Examiners in Medicine and Surgery
Member, in his official capacity,

Defendants.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1
2 Plaintiffs Planned Parenthood Arizona, Inc. (“PPAZ”); Eric Reuss, M.D., M.P.H.;
3 Paul A. Isaacson, M.D.; Desert Star Family Planning, LLC; and DeShawn Taylor, M.D.
4 (collectively “Plaintiffs”), by and through their attorneys, bring this Complaint against
5 the above-named Defendants and their employees, agents, delegates, and successors in
6 office, and in support thereof state the following:

7 **I. PRELIMINARY STATEMENT**

8 1. Plaintiffs are Arizona health care providers who bring this civil rights action,
9 seeking declaratory and injunctive relief, on behalf of themselves, their physicians, and
10 their patients, under the United States Constitution and 42 U.S.C. § 1983, to challenge
11 portions of S.B. 1318, 52nd Leg., 1st Reg. Sess. (AZ 2015) (“S.B. 1318”) (to be codified
12 at Ariz. Rev. Stat. §§ 36-2153(A)(2)(h), (i)) (“the Act”), which, unless enjoined by this
13 Court, will violate their and their patients’ constitutional rights.¹ The Act is scheduled to
14 take effect July 3, 2015.

15 2. The Act compels Arizona health care providers to tell every abortion patient,
16 orally and in person, that a medication abortion may be reversed, even though no credible
17 evidence exists to support this statement, and even though the information is completely
18 irrelevant to patients that cannot have or do not want to have a medication abortion. The
19 Act also forces Plaintiffs to steer their patients toward an experimental practice that has
20 not been shown to work or to be safe, that violates the standard of care, and that is
21 opposed by the American College of Obstetricians and Gynecologists (“ACOG”).
22 Because the Act compels Plaintiffs, against their medical judgment and in violation of
23 medical ethics, to convey to their patients a state-mandated message that is not medically
24 or scientifically supported and that is antithetical to the purpose of informed consent, the
25 Act violates Plaintiffs’ First Amendment rights.

26
27 ¹ A copy of the Act is annexed hereto as Exhibit 1.
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1 3. In addition, the Act requires that women seeking an abortion receive false,
2 misleading, and/or irrelevant information, which is harmful to Plaintiffs' patients, in
3 violation of those patients' Fourteenth Amendment rights.

4 4. To protect their constitutional rights and the rights of their patients, Plaintiffs
5 seek a judgment declaring that these new requirements of Arizona law are
6 unconstitutional and enjoining their enforcement.

7 **II. JURISDICTION AND VENUE**

8 5. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1343(a)(3).
9 Plaintiffs' claims for declaratory and injunctive relief are authorized by
10 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure,
11 and by the general legal and equitable powers of this Court.

12 6. Venue is appropriate under 28 U.S.C. §§ 1391(b)(1) and (2) because events
13 giving rise to this action occur in this District and Defendants are located in this District.

14 **III. THE PARTIES**

15 **A. Plaintiffs**

16 7. Plaintiff PPAZ is a nonprofit corporation organized under the laws of Arizona
17 and is the largest provider of reproductive health services in Arizona, operating 11 health
18 centers throughout the state and providing a broad range of reproductive and sexual
19 health services, including cervical cancer screening, breast exams, testing and treatment
20 for sexually transmitted infections, contraception, and surgical and medication abortion.
21 PPAZ also provides abortion services, both surgical and medication abortion, at four of
22 its health centers, which are licensed by the Arizona Department of Health Services
23 ("ADHS"). In 2014, PPAZ provided more than 6500 abortions, approximately 32 percent
24 of which were early medication abortions using a regimen comprised of the medications
25 mifepristone and misoprostol and 68 percent of which were surgical. PPAZ brings this
26 action on behalf of itself, its patients, and the physicians it employs to provide services to
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1 its patients, who are licensed to practice medicine by the Arizona Medical Board and the
2 Arizona Board of Osteopathic Examiners in Medicine and Surgery.

3 8. Plaintiff Eric Reuss, M.D., M.P.H., is a board-certified obstetrician and
4 gynecologist licensed to practice medicine in Arizona. He has a private, solo, general
5 obstetrics and gynecology practice, Scottsdale Obstetrics & Gynecology, P.C., in
6 Scottsdale, Arizona. Dr. Reuss has practiced medicine for 15 years. He is a Diplomate of
7 the American College of Obstetrics and Gynecology, Treasurer of that organization's
8 Arizona Section, and immediate past Chair of Obstetrics and Gynecology at Scottsdale
9 Healthcare Osborn. Dr. Reuss provides his patients with the full range of general
10 obstetrics and gynecology care, including well-woman care; prenatal care; labor and
11 delivery care for approximately 150 women per year; family planning services; and
12 abortion care, both medication and surgical, for approximately 20 women per year. Dr.
13 Reuss sues as an individual on his own behalf and on behalf of his patients seeking
14 abortion.

15 9. Plaintiff Paul A. Isaacson, M.D., is a board-certified obstetrician and
16 gynecologist licensed to medicine practice in Arizona. For more than twenty years, Dr.
17 Isaacson has provided reproductive health care to thousands of women in Phoenix,
18 including delivering babies and providing abortions. He is currently a physician at Family
19 Planning Associates Medical Group, a private medical practice in Phoenix, of which he is
20 the co-owner. At Family Planning Associates, Dr. Isaacson provides a wide range of
21 reproductive health care services, including both surgical and medication abortion. Last
22 year, Family Planning Associates provided approximately 1900 abortions, of which about
23 17 percent were medication abortions. Dr. Isaacson sues on his own behalf and on behalf
24 of his patients seeking abortion.

25 10. Plaintiff Desert Star Family Planning, LLC, is a private physician practice
26 located in Phoenix, Arizona, which provides comprehensive family planning, well
27 woman, and basic men's sexual health services. This includes medication and surgical
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1 abortion, and miscarriage management. Desert Star Family Planning is licensed by
2 ADHS. Plaintiff DeShawn Taylor, M.D., is Desert Star's owner and medical director, and
3 is a board-certified obstetrician and gynecologist licensed to practice medicine in
4 Arizona. Desert Star and Dr. Taylor sue on their own behalves and on behalf of their
5 patients seeking abortion.

6 **B. Defendants**

7 11. Defendant Mark Brnovich is the Attorney General of the State of Arizona,
8 and is sued in his official capacity. Defendant Brnovich has the authority to enforce the
9 Act. As "chief legal officer of the state," he is "the legal advisor of the departments of
10 this state and render[s] such legal services as the departments require." Ariz. Rev. Stat. §
11 41-192. The Attorney General is charged with certain obligations in connection with
12 enforcement of licensing provisions for all health care institutions (including abortion
13 clinics), including bringing actions to revoke a license or enjoin the operation of a
14 licensee, *id.* § 36-429(B), and actions to recover civil penalties for violation of licensing
15 obligations, *id.* § 36-431.01(E). Further, the Attorney General may petition to enjoin the
16 practice of osteopathic medicine by a physician to prevent irreparable damage to the
17 public health and safety. *Id.* § 32-1857.

18 12. Defendant Cara Christ, M.D., is the Director of ADHS, and is sued in her
19 official capacity. She has the power and duty to administer and enforce licensure
20 requirements for healthcare institutions, including abortion clinics. *See, e.g., id.* § 36-
21 427(A)(1) ("The director may . . . suspend or revoke, in whole or in part, the license of
22 any health care institution if its owners, officers, agents, or employees . . . [v]iolate this
23 chapter or the rules of the department adopted pursuant to this chapter."); § 36-431.01(A)
24 ("The director may assess a civil penalty against a person who violates this chapter or a
25 rule adopted pursuant to this chapter"); § 36-449.02 ("If an inspection . . . reveals
26 that an abortion clinic is not adhering to this article or any other law or rule concerning
27 abortion, the director may take action").

1 13. Defendant Patricia E. McSorley, is the Executive Director of the Arizona
2 Medical Board (“AMB”), and, as such, has the duty to “[i]nitiate an investigation if
3 evidence appears to demonstrate that a physician may be engaged in unprofessional
4 conduct,” *id.* § 32-1405(C)(12). In addition, Defendant McSorley must “sign and execute
5 disciplinary orders, rehabilitative orders and notices of hearings as directed by the
6 board[,]” and review any complaint alleging unprofessional conduct. *Id.* § 32-
7 1405(C)(14) and (21). Defendant McSorley is sued in her official capacity.

8 14. Defendants Richard T. Perry, M.D., AMB Chair; James Gillard, M.D., AMB
9 Vice Chair; Jodi A. Bain; Marc D. Berg, M.D.; Donna Brister; R. Screven Farmer, M.D.;
10 Gary R. Figge, M.D.; Robert E. Fromm, M.D.; Paul S. Gerding; Lois Krahn, M.D.;
11 Edward G. Paul, M.D.; and Wanda J. Salter, are members of the AMB, an agency of the
12 State of Arizona. Each is named herein and sued herein in his or her official capacity. The
13 AMB has the primary duty to ensure the safe and appropriate practice of allopathic
14 medicine “through licensure, regulation and rehabilitation of the profession in this state,”
15 *id.* § 32-1403. The AMB member Defendants have the power and duty to initiate
16 investigations, to determine if a physician has engaged in unprofessional conduct, and to
17 discipline and rehabilitate licensed medical doctors. *See id.* § 32-1403(A)(2) and (5).

18 15. Defendant Jenna Jones is the Executive Director of the Arizona Board of
19 Osteopathic Examiners in Medicine and Surgery (“BOE”), and, as such, has the duty to
20 “[i]nitiate an investigation if evidence appears to demonstrate that a physician may be
21 engaged in unprofessional conduct,” *id.* § 32-1804(B)(14). In addition, Defendant Jones
22 shall also “provide assistance to the attorney general in preparing and executing
23 disciplinary orders, rehabilitation orders and notices of hearings” as directed by the BOE.
24 *Id.* § 32-1804(B)(16). Defendant Jones is sued in her official capacity.

25 16. Defendants Scott Steingard, D.O., BOE President; Douglas Cunningham,
26 D.O., BOE Vice President; Gary Erbstoesser, D.O.; Jerry G. Landau; Martin B. Reiss,
27 D.O.; Lew Riggs; and Vas Sabeeh, D.O., are members of the BOE, an agency of the State
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1 of Arizona. Each is named herein and sued in his official capacity. The BOE member
2 Defendants are charged with the power and duty to ensure the safe and appropriate
3 practice of osteopathic medicine, *id.* § 32-1803(A)(1), which includes the power and duty
4 to “conduct hearings, place physicians on probation, revoke or suspend licenses, enter
5 into stipulated orders, issue letters of concern or decrees of censure and administer and
6 enforce [chapter 17],” *id.* § 32-1803(A)(2). Further, the BOE member Defendants have
7 the duty and power to “[d]iscipline and rehabilitate osteopathic physicians,” *id.* § 32-
8 1803(A)(6).

9 **IV. FACTUAL ALLEGATIONS**

10 **A. State-Mandated Informed Consent Process in Arizona**

11 17. Existing Arizona law states that an abortion shall not be performed or
12 induced without the voluntary and informed consent of a patient. Specifically, the law
13 requires that patients seeking an abortion meet in person with a physician at least 24
14 hours before their abortion to receive certain state-mandated information, including
15 accurate medical information about a patient’s individual pregnancy, and various
16 statements about Arizona law and policy, including that ADHS maintains a website about
17 abortion. Ariz. Rev. Stat. § 36-2153(A).

18 18. The Act challenged here would radically expand this requirement,
19 compelling physicians, or designated health care professionals acting on their behalf, to
20 “inform” *every* woman seeking an abortion, orally and in person, at least 24 hours before
21 the procedure, that “it may be possible to reverse the effects of a medication abortion if
22 the woman changes her mind but that time is of the essence,” and that “information on
23 and assistance with reversing the effects of a medication abortion is available on the
24 department of health services’ website.” S.B. 1318, § 4 (to be codified at Ariz. Rev. Stat.
25 § 36-2153(A)(2)(h), (i)).

26 19. The Act also directs the ADHS to post on its website “information on the
27 potential ability of qualified medical professionals to reverse a medication abortion,
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1 including information directing women where to obtain further information and
2 assistance in locating a medical professional who can aid in the reversal of a medication
3 abortion.” *Id.* (to be codified at Ariz. Rev. Stat. § 36-2153(C)(8)).

4 20. Plaintiffs face extreme consequences if they do not comply with the Act.
5 Under Ariz. Rev. Stat. § 36-2153(I), a physician’s failure to comply with the Act
6 constitutes “an act of unprofessional conduct and the physician is subject to license
7 suspension or revocation.” Under Ariz. Rev. Stat. § 36-449.02 and § 36-449.03, ADHS
8 has the authority to assess a penalty, revoke a clinic license, or take other disciplinary
9 action against a clinic for violating the Act. Plaintiffs face severe licensing consequences
10 enforceable by other state agents as well. *See, e.g.*, Ariz. Rev. Stat. §§ 36-429, 36-430,
11 32-1857(C). The Act also confers a private right of action on patients, their spouses, and
12 the parents of patients under the age of 18, enabling potential litigation against Plaintiffs
13 and others similarly situated. Ariz. Rev. Stat. § 36-2153(J).

14 **B. Medical Facts About Abortion**

15 21. Women seek abortions for a variety of medical, psychological, emotional,
16 familial, economic, and personal reasons.

17 22. Approximately one in three women in the United States will have an
18 abortion by age 45.

19 23. Plaintiffs provide their patients with both surgical and medication (i.e. non-
20 surgical) abortion options.

21 24. About three-fourths of abortions provided in Arizona are surgical.

22 25. The most common form of medication abortion is a regimen of a
23 combination of two prescription drugs, mifepristone and misoprostol, which is available
24 through the first 9-10 weeks of pregnancy measured from the first day of the woman’s
25 last menstrual period (the “mifepristone/misoprostol regimen” or “early medication
26 abortion”).

1 26. Mifepristone, also known as “RU-486” or by its commercial name Mifeprex,
2 works first by temporarily blocking the hormone progesterone, which is necessary to
3 maintain pregnancy, and by increasing the efficacy of the second medication in the
4 regimen, misoprostol. Misoprostol, which is taken up to 72 hours after mifepristone,
5 causes the uterus to contract and expel its contents.

6 27. This regimen is extremely effective.

7 28. Both mifepristone and misoprostol are also each independently capable of
8 terminating a pregnancy in a smaller percentage of cases. However, because the
9 combination of the drugs, using the regimen provided by Plaintiffs, is far more effective
10 in terminating a pregnancy, Plaintiffs only administer the drugs in combination when
11 providing an early medication abortion.

12 29. In addition to providing early medication abortion, Plaintiffs sometimes
13 provide abortions later in pregnancy using only medications to terminate the pregnancy.
14 For example, sometimes misoprostol alone is used to induce abortion in a hospital
15 setting; this is called an “induction.” Another abortion method sometimes performed later
16 in pregnancy involves using a medication called digoxin to cause fetal demise prior to the
17 surgical removal of the pregnancy.

18 30. As part of their ethical and legal obligation to obtain informed consent
19 before performing an abortion, Plaintiffs discuss with each patient relevant information to
20 assist her with the decision of whether to have an abortion. The discussion includes the
21 patient’s options and alternatives (including carrying the pregnancy to term, adoption,
22 and abortion), the abortion procedures that are available to her depending on the
23 gestational age of the pregnancy and her medical history, and the risks and benefits
24 associated with each procedure. The goal of the informed consent process is to provide
25 each of Plaintiffs’ patients with the information necessary to enable her to make the right
26 decision for herself.

1 31. Plaintiffs advise each of their patients that the decision to have an abortion is
2 hers alone to make, and not to start an abortion, medication or surgical, unless and until
3 she is firm in her decision to terminate the pregnancy.

4 32. Although mifepristone is not considered an effective abortifacient on its own
5 (as compared to the combined regimen), Plaintiffs counsel their patients to be certain in
6 their decision to terminate their pregnancies when starting the mifepristone/misoprostol
7 regimen, mainly because mifepristone alone will cause termination in a significant
8 percentage of pregnancies.

9 **C. Facts About “Medication Abortion Reversal”**

10 33. Although the Act directs ADHS to post on its website “information on the
11 potential ability of qualified medical professionals to reverse a medication abortion,
12 including information directing women where to obtain further information and
13 assistance in locating a medical professional who can aid in the reversal of a medication
14 abortion,” SB 1318 § 4 (to be codified at Ariz. Rev. Stat. § 36-2153(C)(8)), ADHS has
15 not yet done so.

16 34. On April 21, 2015, Plaintiff PPAZ’s President and CEO wrote to ADHS
17 then-Interim Director Cory Nelson requesting information about what ADHS intends to
18 post on its website in response to the Act’s directive, and requested a response by May
19 22, 2015. After receiving no response to its first letter, on May 22, Plaintiff PPAZ’s
20 President and CEO followed up again, this time with current ADHS Director Christ, to
21 request the same information. Plaintiff PPAZ requested a response by May 29.

22 35. On June 1, Plaintiff PPAZ’s President and CEO received a letter from
23 ADHS Director Christ stating, “[g]iven the impact of [S.B. 1318] the Department is still
24 working through the requirements and vetting potential language,” and that the
25 information required under the Act would be posted by July 3, and possibly available
26 sooner, by June 19.

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1 36. There is no credible evidence that a medication abortion can be reversed.
2 This is true as to the most common type of medication abortion (the combined
3 mifepristone/misoprostol regimen) as well as a medication abortion via labor induction or
4 digoxin.

5 37. Indeed, once an abortion has occurred, whether by medication abortion or by
6 any other means, a woman is no longer pregnant, which cannot be reversed.

7 38. Upon information and belief, there are no physicians in Arizona offering any
8 treatment to reverse a medication abortion after a woman has taken the combined
9 mifepristone/misoprostol regimen.

10 39. Upon information and belief, there are no physicians in Arizona offering any
11 treatment to reverse a medication abortion via induction or digoxin.

12 40. As the Legislature considered and debated the Act, a physician from Arizona
13 testified about an experimental practice proposed by a physician in San Diego, who
14 believes he can “reverse” the effects of mifepristone.

15 41. Upon information and belief, a small number of physicians in Arizona, and
16 other physicians elsewhere, have experimented with this practice, which involves
17 injecting large doses of progesterone in patients who have taken mifepristone, but have
18 not yet taken the second drug in the regimen, misoprostol.

19 42. The fact that there are physicians experimenting with using progesterone to
20 counteract mifepristone does not constitute credible, medically accepted evidence that the
21 experimental practice is effective or safe.

22 43. Upon information and belief, the use and/or study of this experimental
23 practice has not been reviewed or sanctioned by any independent ethics committee or
24 board or any major medical association.

25 44. This experimental practice is opposed by the nation’s leading women’s
26 medical association, ACOG, because its safety and efficacy have not been established.
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1 45. Because there is no evidence that a medication abortion can be reversed,
2 Plaintiffs do not tell their patients that it may be possible to reverse a medication
3 abortion, nor do they tell their patients that information and assistance is available to
4 reverse a medication abortion.

5 **D. Impact of the Act**

6 46. The Act compels Plaintiffs, unwillingly and against their best medical
7 judgment, to convey to their patients, orally and in person, in a private medical setting, a
8 state-mandated message that is neither medically nor scientifically supported.

9 47. The law forces Plaintiffs to discuss with their patients the possibility of
10 reversing a medication abortion, and to refer patients to information about where to get
11 assistance with possible reversal—despite the fact that there is no evidence that a
12 medication abortion can be reversed. The Act thus forces Plaintiffs to violate their ethical
13 obligations to their patients, undermines the establishment of a relationship of trust and
14 confidence between a patient and her physician, and distorts the informed consent
15 process.

16 48. The Act also compels Plaintiffs, against their best medical judgment, to
17 endorse and advertise to their patients an experimental practice that violates the standard
18 of care and that is opposed by ACOG.

19 49. The Act's mandated discussion about "medication abortion reversal" and
20 about the fact that assistance and information is available from ADHS's website
21 encourages patients to wrongly believe that "medication abortion reversal" is an
22 established medical treatment, when no reliable, medically accepted evidence exists that
23 the experimental practice works. Therefore, the Act requires patients to receive untruthful
24 and/or misleading information.

25 50. The Act thus harms Plaintiffs' patients who are considering an early
26 medication abortion.

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1 51. The Act compels Plaintiffs to convey, as part of the informed consent
2 process, the medically unsupported message that a medication abortion may be reversible
3 and that information and assistance is available to do so. The state-mandated message
4 directly contradicts the critical message Plaintiffs seek to convey to their patients: that
5 they must be certain about terminating their pregnancy before they begin the abortion
6 process.

7 52. Thus, the Act creates a risk that a patient will choose to begin an abortion
8 before she is ready to do so, and conflicts with the purpose of the informed consent
9 process. In this additional respect, the Act is harmful to women.

10 53. Because the Act compels Plaintiffs to tell *every* abortion patient about the
11 possibility of reversing a medication abortion, it compels Plaintiffs to convey a state
12 message that is completely irrelevant (in addition to being untruthful) to patients who are
13 only eligible for or interested in a surgical abortion. The majority of Plaintiffs' abortion
14 patients receive a surgical abortion.

15 54. The Act's mandated information is also completely irrelevant (in addition to
16 being untruthful) for patients receiving a medication abortion via induction or with
17 digoxin.

18 55. The Act thus undermines the informed consent process by forcing Plaintiffs
19 to provide to patients confusing, distracting and untruthful information that is not tailored
20 to their specific medical situations.

21 **V. CLAIMS FOR RELIEF**

22 **COUNT I – FIRST AMENDMENT RIGHTS OF PHYSICIANS**

23 56. The allegations of paragraphs 1 through 55 are incorporated as though fully
24 set forth herein.

25 57. The Act violates Plaintiffs' rights under the First Amendment to the U.S.
26 Constitution by compelling them to tell their patients, orally and in person, in a private
27 medical setting, a state-mandated message about an experimental medical treatment that
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1 is not supported by credible evidence, that violates accepted ethical standards and best
2 practices for medical informed consent, and that they would not otherwise tell their
3 patients.

4 **COUNT II – FOURTEENTH AMENDMENT RIGHTS OF PATIENTS**

5 58. The allegations of paragraphs 1 through 55 are incorporated as though fully
6 set forth herein.

7 59. The Act violates the rights of patients seeking abortions in Arizona under the
8 Fourteenth Amendment to the U.S. Constitution by forcing them to receive information
9 from their physician that is untruthful, misleading, and/or irrelevant to the decision to
10 have an abortion.

11 **VI. REQUEST FOR RELIEF**

12 Plaintiffs respectfully request that this Court:

- 13 A. Issue a declaratory judgment that the Act is unconstitutional and
14 unenforceable;
- 15 B. Issue preliminary and permanent injunctive relief restraining Defendants, and
16 their employees, agents, and successors in office from enforcing the Act;
- 17 C. Grant Plaintiffs attorneys' fees, costs and expenses pursuant to 42 U.S.C.
18 § 1988; and;
- 19 D. Grant such other and further relief as this Court may deem just, proper, and
20 equitable.

21
22 Dated: June 4, 2015

23 Respectfully submitted,

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25 By: s/Lawrence J. Rosenfeld

26 Lawrence Rosenfeld
27 AZ Bar No. 004426

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**Applications for admission pro hac vice forthcoming*

***Admitted pursuant to Ariz. Sup. Ct. R. 38(f)*

Planned Parenthood Arizona, Inc., et al. v. Mark Brnovich, et al.

INDEX OF EXHIBITS

Exhibit 1: Arizona S.B. 1318, 52nd Leg., 1st Reg. Sess. (AZ 2015) (“S.B. 1318”), to be codified at Ariz. Rev. Stat. §§ 36-2153(A)(2)(h), (i)

EXHIBIT 1

House Engrossed Senate Bill

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

CHAPTER 87
SENATE BILL 1318

AN ACT

AMENDING SECTIONS 20-121, 36-404, 36-449.02 AND 36-2153, ARIZONA REVISED
STATUTES; RELATING TO ABORTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

S.B. 1318

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-121, Arizona Revised Statutes, is amended to
3 read:

4 20-121. Health care exchange; abortion coverage; prohibition;
5 exceptions

6 A. Consistent with the provisions of the patient protection and
7 affordable care act (P.L. 111-148), any qualified health insurance policy,
8 contract or plan offered through any ~~state~~ health care exchange ~~established~~
9 ~~OPERATING~~ in this state shall not provide coverage for abortions ~~unless the~~
10 ~~coverage is offered as a separate optional rider for which an additional~~
11 ~~insurance premium is charged.~~

12 B. Subsection A ~~OF THIS SECTION~~ does not apply to coverage for any
13 abortion ~~that is necessary to either:~~

14 1. ~~THAT IS NECESSARY TO~~ save the life of the woman having the
15 abortion.

16 2. ~~THAT IS NECESSARY TO~~ avert substantial and irreversible impairment
17 of a major bodily function of the woman having the abortion.

18 3. ~~WHEN THE PREGNANCY IS THE RESULT OF RAPE OR INCEST.~~

19 Sec. 2. Section 36-404, Arizona Revised Statutes, is amended to read:

20 36-404. Limitation of disclosure of information

21 A. Information received and records kept by the department for the
22 purpose of administering this chapter are available to the public except:

23 1. Information obtained for purposes of articles 4 and 5 of this
24 chapter.

25 2. Personally identifiable medical information or any information from
26 which a patient or the patient's family might be identified.

27 3. Sources of information that cause the department to believe that an
28 inspection of an institution is needed to determine the extent of compliance
29 with this chapter and rules adopted pursuant to this chapter.

30 4. ~~PERSONALLY IDENTIFIABLE INFORMATION OF A PHYSICIAN THAT IS RECEIVED~~
31 ~~AND ANY RECORDS KEPT REGARDING THE PHYSICIAN'S ADMITTING PRIVILEGES PURSUANT~~
32 ~~TO SECTION 36-449.02.~~

33 B. The department may release information listed under subsection A ~~OF~~
34 ~~THIS SECTION~~ to an officer of the court pursuant to a court order, a
35 department or agency of this state or the federal government, a law
36 enforcement agency or a county medical examiner if the release of this
37 information is necessary and pertinent to an investigation or proceeding
38 unless the release of this information is prohibited by federal or state law.
39 The recipient shall maintain patient and source name confidentiality.

40 Sec. 3. Section 36-449.02, Arizona Revised Statutes, is amended to
41 read:

42 36-449.02. Abortion clinics; licensure requirements; rules;
43 inspections; standing to intervene; legal counsel

44 A. Beginning on April 1, 2000, an abortion clinic shall meet the same
45 licensure requirements as prescribed in article 2 of this chapter for health
46 care institutions. ~~ON INITIAL LICENSURE AND ANY SUBSEQUENT RENEWAL, AN~~

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1 ABORTION CLINIC SHALL SUBMIT TO THE DIRECTOR ALL DOCUMENTATION REQUIRED BY
2 THIS ARTICLE, INCLUDING VERIFICATION THAT THE CLINIC'S PHYSICIANS WHO ARE
3 REQUIRED TO BE AVAILABLE HAVE ADMITTING PRIVILEGES AT A HEALTH CARE
4 INSTITUTION AS REQUIRED BY SECTION 36-449.03, SUBSECTION C, PARAGRAPH 3.

5 B. An abortion clinic that holds an unclassified health care facility
6 license issued before August 6, 1999 may retain that classification until
7 April 1, 2000 subject to compliance with all laws that relate to unclassified
8 health care facilities.

9 C. Beginning on April 1, 2000, abortion clinics shall comply with
10 department requirements for abortion clinics and department rules that govern
11 abortion clinics.

12 D. If the director determines that there is reasonable cause to
13 believe an abortion clinic is not adhering to the licensing requirements of
14 this article or any other law or rule concerning abortion, the director and
15 any duly designated employee or agent of the director, including county
16 health representatives and county or municipal fire inspectors, consistent
17 with standard medical practices, may enter on and into the premises of the
18 abortion clinic that is licensed or required to be licensed pursuant to this
19 article during regular business hours of the abortion clinic to determine
20 compliance with this article, rules adopted pursuant to this article, local
21 fire ordinances or rules and any other law or rule relating to abortion.

22 E. An application for licensure pursuant to this article constitutes
23 permission for, and complete acquiescence in, an entry or inspection of the
24 premises during the pendency of the application and, if licensed, during the
25 term of the license.

26 F. If an inspection conducted pursuant to this section reveals that an
27 abortion clinic is not adhering to the licensing requirements prescribed
28 pursuant to this article or any other law or rule concerning abortion, the
29 director may take action authorized by this article.

30 G. An abortion clinic whose license has been suspended or revoked
31 pursuant to this article or section 36-424 is subject to inspection on
32 application for relicensure or reinstatement of the license.

33 H. In any proceeding in which the constitutionality, legality or
34 application of this section is challenged, the attorney general or any county
35 or city attorney who wishes to defend the law has the right to intervene as a
36 party and is deemed to have proper standing in the matter. The only
37 objection that may be raised to a motion to intervene as of right pursuant to
38 this subsection is that the proposed intervenor does not have a good faith
39 intention to defend the law. Any party or proposed intervenor may raise this
40 objection. Notwithstanding section 41-192, the department may employ legal
41 counsel and make an expenditure or incur an indebtedness for legal services
42 for the purposes of defending this section.

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1 Sec. 4. Section 36-2153, Arizona Revised Statutes, is amended to read:
2 36-2153. Informed consent; requirements; information; website;
3 signs; violation; civil relief; statute of
4 limitations

5 A. An abortion shall not be performed or induced without the voluntary
6 and informed consent of the woman on whom the abortion is to be performed or
7 induced. Except in the case of a medical emergency and in addition to the
8 other requirements of this chapter, consent to an abortion is voluntary and
9 informed only if all of the following are true:

10 1. At least twenty-four hours before the abortion, the physician who
11 is to perform the abortion or the referring physician has informed the woman,
12 orally and in person, of:

13 (a) The name of the physician who will perform the abortion.

14 (b) The nature of the proposed procedure or treatment.

15 (c) The immediate and long-term medical risks associated with the
16 procedure that a reasonable patient would consider material to the decision
17 of whether or not to undergo the abortion.

18 (d) Alternatives to the procedure or treatment that a reasonable
19 patient would consider material to the decision of whether or not to undergo
20 the abortion.

21 (e) The probable gestational age of the unborn child at the time the
22 abortion is to be performed.

23 (f) The probable anatomical and physiological characteristics of the
24 unborn child at the time the abortion is to be performed.

25 (g) The medical risks associated with carrying the child to term.

26 2. At least twenty-four hours before the abortion, the physician who
27 is to perform the abortion, the referring physician or a qualified physician,
28 physician assistant, nurse, psychologist or licensed behavioral health
29 professional to whom the responsibility has been delegated by either
30 physician has informed the woman, orally and in person, that:

31 (a) Medical assistance benefits may be available for prenatal care,
32 childbirth and neonatal care.

33 (b) The father of the unborn child is liable to assist in the support
34 of the child, even if he has offered to pay for the abortion. In the case of
35 rape or incest, this information may be omitted.

36 (c) Public and private agencies and services are available to assist
37 the woman during her pregnancy and after the birth of her child if she
38 chooses not to have an abortion, whether she chooses to keep the child or
39 place the child for adoption.

40 (d) It is unlawful for any person to coerce a woman to undergo an
41 abortion.

42 (e) The woman is free to withhold or withdraw her consent to the
43 abortion at any time without affecting her right to future care or treatment
44 and without the loss of any state or federally funded benefits to which she
45 might otherwise be entitled.

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1 (f) The department of health services maintains a website that
2 describes the unborn child and lists the agencies that offer alternatives to
3 abortion.

4 (g) The woman has a right to review the website and that a printed
5 copy of the materials on the website will be provided to her free of charge
6 if she chooses to review these materials.

7 (h) IT MAY BE POSSIBLE TO REVERSE THE EFFECTS OF A MEDICATION ABORTION
8 IF THE WOMAN CHANGES HER MIND BUT THAT TIME IS OF THE ESSENCE.

9 (i) INFORMATION ON AND ASSISTANCE WITH REVERSING THE EFFECTS OF A
10 MEDICATION ABORTION IS AVAILABLE ON THE DEPARTMENT OF HEALTH SERVICES'
11 WEBSITE.

12 3. The information in paragraphs 1 and 2 of this subsection is
13 provided to the woman individually and in a private room to protect her
14 privacy and to ensure that the information focuses on her individual
15 circumstances and that she has adequate opportunity to ask questions.

16 4. The woman certifies in writing before the abortion that the
17 information required to be provided pursuant to paragraphs 1 and 2 of this
18 subsection has been provided.

19 B. If a medical emergency compels the performance of an abortion, the
20 physician shall inform the woman, before the abortion if possible, of the
21 medical indications supporting the physician's judgment that an abortion is
22 necessary to avert the woman's death or to avert substantial and irreversible
23 impairment of a major bodily function.

24 C. The department of health services shall establish ~~a website within~~
25 ~~ninety days after the effective date of this amendment to this section~~ and
26 shall annually update ~~the A website. The website must include~~ THAT INCLUDES
27 a link to a printable version of all materials listed on the website. The
28 materials must be written in an easily understood manner and printed in a
29 typeface that is large enough to be clearly legible. The website must
30 include all of the following materials:

31 1. Information that is organized geographically by location and that
32 is designed to inform the woman about public and private agencies and
33 services that are available to assist a woman through pregnancy, at
34 childbirth and while her child is dependent, including adoption agencies.
35 The materials shall include a comprehensive list of the agencies, a
36 description of the services they offer and the manner in which these agencies
37 may be contacted, including the agencies' telephone numbers and website
38 addresses.

39 2. Information on the availability of medical assistance benefits for
40 prenatal care, childbirth and neonatal care.

41 3. A statement that it is unlawful for any person to coerce a woman to
42 undergo an abortion.

43 4. A statement that any physician who performs an abortion on a woman
44 without obtaining the woman's voluntary and informed consent or without
45 affording her a private medical consultation may be liable to the woman for
46 damages in a civil action.

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1 5. A statement that the father of a child is liable to assist in the
2 support of that child, even if the father has offered to pay for an abortion,
3 and that the law allows adoptive parents to pay costs of prenatal care,
4 childbirth and neonatal care.

5 6. Information that is designed to inform the woman of the probable
6 anatomical and physiological characteristics of the unborn child at two-week
7 gestational increments from fertilization to full term, including pictures or
8 drawings representing the development of unborn children at two-week
9 gestational increments and any relevant information on the possibility of the
10 unborn child's survival. The pictures or drawings must contain the
11 dimensions of the unborn child and must be realistic and appropriate for each
12 stage of pregnancy. The information provided pursuant to this paragraph must
13 be objective, nonjudgmental and designed to convey only accurate scientific
14 information about the unborn child at the various gestational ages.

15 7. Objective information that describes the methods of abortion
16 procedures commonly employed, the medical risks commonly associated with each
17 procedure, the possible detrimental psychological effects of abortion and the
18 medical risks commonly associated with carrying a child to term.

19 8. INFORMATION ON THE POTENTIAL ABILITY OF QUALIFIED MEDICAL
20 PROFESSIONALS TO REVERSE A MEDICATION ABORTION, INCLUDING INFORMATION
21 DIRECTING WOMEN WHERE TO OBTAIN FURTHER INFORMATION AND ASSISTANCE IN
22 LOCATING A MEDICAL PROFESSIONAL WHO CAN AID IN THE REVERSAL OF A MEDICATION
23 ABORTION.

24 D. An individual who is not a physician shall not perform a surgical
25 abortion.

26 E. A person shall not write or communicate a prescription for a drug
27 or drugs to induce an abortion or require or obtain payment for a service
28 provided to a patient who has inquired about an abortion or scheduled an
29 abortion until the expiration of the twenty-four-hour reflection period
30 required by subsection A of this section.

31 F. A person shall not intimidate or coerce in any way any person to
32 obtain an abortion. A parent, a guardian or any other person shall not
33 coerce a minor to obtain an abortion. If a minor is denied financial support
34 by the minor's parents, guardians or custodian due to the minor's refusal to
35 have an abortion performed, the minor is deemed emancipated for the purposes
36 of eligibility for public assistance benefits, except that the emancipated
37 minor may not use these benefits to obtain an abortion.

38 G. An abortion clinic as defined in section 36-449.01 shall
39 conspicuously post signs that are visible to all who enter the abortion
40 clinic, that are clearly readable and that state it is unlawful for any
41 person to force a woman to have an abortion and a woman who is being forced
42 to have an abortion has the right to contact any local or state law
43 enforcement or social service agency to receive protection from any actual or
44 threatened physical, emotional or psychological abuse. The signs shall be
45 posted in the waiting room, consultation rooms and procedure rooms.

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1 H. A person shall not require a woman to obtain an abortion as a
2 provision in a contract or as a condition of employment.

3 I. A physician who knowingly violates this section commits an act of
4 unprofessional conduct and is subject to license suspension or revocation
5 pursuant to title 32, chapter 13 or 17.

6 J. In addition to other remedies available under the common or
7 statutory law of this state, any of the following may file a civil action to
8 obtain appropriate relief for a violation of this section:

9 1. A woman on whom an abortion has been performed without her informed
10 consent as required by this section.

11 2. The father of the unborn child if married to the mother at the time
12 she received the abortion, unless the pregnancy resulted from the plaintiff's
13 criminal conduct.

14 3. The maternal grandparents of the unborn child if the mother was not
15 at least eighteen years of age at the time of the abortion, unless the
16 pregnancy resulted from the plaintiff's criminal conduct.

17 K. A civil action filed pursuant to subsection J of this section shall
18 be brought in the superior court in the county in which the woman on whom the
19 abortion was performed resides and may be based on a claim that failure to
20 obtain informed consent was a result of simple negligence, gross negligence,
21 wantonness, wilfulness, intention or any other legal standard of care.
22 Relief pursuant to subsection J of this section includes the following:

23 1. Money damages for all psychological, emotional and physical
24 injuries resulting from the violation of this section.

25 2. Statutory damages in an amount equal to five thousand dollars or
26 three times the cost of the abortion, whichever is greater.

27 3. Reasonable attorney fees and costs.

28 L. A civil action brought pursuant to this section must be initiated
29 within six years after the violation occurred.

APPROVED BY THE GOVERNOR MARCH 30, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 31, 2015.

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

**Planned Parenthood Arizona, Inc. ;
Plaintiff Eric Reuss , M.D.; Desert Star
(s): Family Planning LLC ; DeShawn
Taylor , M.D.**

**Mark Brnovich , Arizona Attorney
General; Richard T. Perry , M.D.;
James Gillard , M.D.; Jodi A.
Bain ; Donna Brister ; R. Screven
Farmer , M.D.; Gary R. Figge ,
M.D.; Robert E. Fromm , M.D.;
Paul S. Gerding ; Lois Krahn ,
Defendant M.D.; Edward G. Paul , M.D.;
(s): Wanda J. Salter ; Patricia E.
McSorley ; Scott Steingard , D.O.;
Douglas Cunningham , D.O.; Gary
Erbstoesser , D.O.; Jerry G.
Landau ; Martin B. Reiss , D.O.;
Lew Riggs ; Vas Sabeeh , D.O.;
Jenna Jones ; Cara M. Christ ;
Marc D. Berg**

County of Residence: Maricopa

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Lawrence J. Rosenfeld , Esq. (Planned
Parenthood Arizona, Inc.)
Squire Patton Boggs LLP
1 East Washington Street
Phoenix, Arizona 85003
602-528-4000**

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **950 Constitutionality of State Statute**

VI.Cause of Action: **U.S. Constitution First and Fourteenth Amendments**

VII. Requested in Complaint

Class Action: **No**

Dollar Demand: **n/a**

Jury Demand: **No**

VIII. This case is not related to another case.

Signature: Lawrence J. Rosenfeld

Date: 6/3/15

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014