IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

AMY BRYANT, M.D., M.S.C.R.; BEVERLY GRAY, M.D., ELIZABETH DEANS, M.D., on behalf of themselves and their patients seeking abortions; and PLANNED PARENTHOOD SOUTH ATLANTIC, on behalf of itself, its staff, and its patients seeking abortions, Plaintiffs, v. JIM WOODALL, in his official capacity as District Attorney ("DA") for Prosecutorial District ("PD") 15B; ROGER ECHOLS, in his official capacity as DA for PD 14; ELEANOR E. GREENE, M.D., M.P.H., in her official capacity as President of the North Carolina Medical Board; RICK BRAJER, in his official capacity as Secretary of the North Carolina Department of Health and Human Services; and their employees, agents, and successors, Defendants.	CIVIL ACTION Case No. [] **COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiffs, by and through their undersigned attorneys, bring this complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following:

I. INTRODUCTORY STATEMENT

1. Plaintiffs bring this civil rights action under the United States Constitution and 42 U.S.C. § 1983 to challenge the constitutionality of state statutes that criminalize previability abortion. When construed together, N.C. Gen. Stat. §§ 14-44, 14-45, and provisions of 14-45.1 (collectively the "20-week ban") ban abortion after the twentieth week of pregnancy, as measured from the woman's last menstrual period ("lmp"), which is at least several weeks prior to viability. The only exception is for medical emergencies. The 20-week ban prevents Plaintiffs from providing some previability abortions to their patients. Copies of the challenged provisions are attached as Exhibits 1–3.

2. Under clearly established United States Supreme Court precedent, the State of North Carolina cannot ban abortion prior to viability, regardless of what exceptions are provided to the ban. Accordingly, the 20-week ban is unconstitutional as applied to all women seeking previability abortion after the twentieth week of pregnancy.

3. Plaintiffs, therefore, seek a declaration that the 20-week ban is unconstitutional and permanent injunctive relief prohibiting its enforcement as to previability abortions.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

5. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

6. Venue in this Court is proper under 28 U.S.C. §1391(b) because a substantial part of the events giving rise to this action occurred in this district and Defendants Jim Woodall and Roger Echols are located in this district.

III. PLAINTIFFS

7. Plaintiff Amy Bryant, M.D., M.S.C.R., is a physician licensed to practice medicine in the State of North Carolina and is board-certified in obstetrics and gynecology. She currently provides a full range of obstetric services to her patients, including previability abortions, in Chapel Hill. But for the 20-week ban, Dr. Bryant would provide previability abortions after the twentieth week of pregnancy to her patients. Dr. Bryant is appearing as a plaintiff in this action in her individual capacity, and she sues on behalf of herself and her patients.

8. Plaintiff Beverly Gray, M.D., is a physician licensed to practice medicine in the State of North Carolina and is board-certified in obstetrics and gynecology. She currently provides a full range of obstetric services to her patients, including previability abortions, in Durham. But for the 20-week ban, Dr. Gray would provide previability

abortions after the twentieth week of pregnancy to her patients. Dr. Gray is appearing as a plaintiff in this action in her individual capacity, and she sues on behalf of herself and her patients.

9. Plaintiff Elizabeth Deans, M.D., is a physician licensed to practice medicine in the State of North Carolina and is board-certified in obstetrics and gynecology. She currently provides a full range of obstetric services, including previability abortions, in Durham. But for the 20-week ban, Dr. Deans would provide previability abortions after the twentieth week of pregnancy to her patients. Dr. Deans is appearing as a plaintiff in this action in her individual capacity, and she sues on behalf of herself and her patients.

10. Plaintiff Planned Parenthood South Atlantic ("PPSAT") is a nonprofit corporation headquartered in Raleigh, North Carolina that provides a wide range of reproductive health care services to approximately 35,000 women, men, and teens each year at fourteen health centers located in North Carolina, South Carolina, Virginia, and West Virginia. The services PPSAT provides include contraception and contraceptive counseling, cancer screenings, STD testing, prevention and treatment, and abortion. In North Carolina, PPSAT provides abortions at its health centers in Asheville, Chapel Hill, Fayetteville, and Winston-Salem. But for the 20-week ban, PPSAT would provide previability abortions after the twentieth week of pregnancy to patients at its Chapel Hill health center. PPSAT sues on its own behalf and on behalf of its staff and patients.

11. Absent injunctive relief from this Court, each of the Plaintiffs is being forced to turn away patients seeking previability abortions, as described herein, or face the risk of civil suits, administrative penalties, and/or criminal penalties.

IV. DEFENDANTS

12. Defendant Jim Woodall is the District Attorney for Prosecutorial District 15B. He is responsible for criminal prosecutions of the ban occurring within Prosecutorial District 15B, including in the town of Chapel Hill. *See* N.C. Const. art. IV, § 18(1); N.C. Gen. Stat. §§ 7A-60, 7A-61. Defendant Woodall is sued in his official capacity.

13. Defendant Roger Echols is the District Attorney for Prosecutorial District 14. He is responsible for criminal prosecutions of the ban occurring within Prosecutorial District 14, including in the city of Durham. *See* N.C. Const. art. IV, § 18(1); N.C. Gen. Stat. §§ 7A-60, 7A-61. Defendant Echols is sued in his official capacity.

14. Defendant Eleanor E. Greene, M.D., M.P.H., is the President of the North Carolina Medical Board ("the Board"). The Board has the power to place physicians on probation, impose other sanctions, or suspend or revoke their licenses for a variety of acts or conduct, including "[p]roducing or attempting to produce an abortion contrary to law." N.C. Gen. Stat. § 90-14(a)(2). Defendant Greene is sued in her official capacity.

15. Defendant Rick Brajer is the Secretary of the North Carolina Department of Health and Human Services ("the Department"). The Department regulates abortion clinics in North Carolina and is authorized to investigate complaints "relative to the care,

treatment, or complication of any patient." 10A N.C. Admin. Code 14E.0111; *see also id.* 14E.0101–.0402. Defendant Brajer is sued in his official capacity.

V. THE CHALLENGED PROVISIONS

16. North Carolina imposes a general criminal ban on abortion. N.C. Gen. Stat. §§ 14-44, 14-45.

17. There are two exceptions to this general prohibition. The first authorizes a physician to perform an abortion during the first 20 weeks of a woman's pregnancy. *Id.* § 14-45.1(a). The second exception authorizes a physician to perform an abortion after the twentieth week of a woman's pregnancy if there is a medical emergency. *Id.* § 14-45.1(b).

18. Construed together, North Carolina's N.C. Gen. Stat. §§ 14-44, 14-45, and provisions of 14-45.1 ban abortion in North Carolina after the twentieth week of pregnancy.

19. The only exception to the 20-week ban is for women facing a medical emergency, which is narrowly defined as:

> A condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including any psychological or emotional conditions. For purposes of this definition, no condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

Id. § 90-21.81(5).

20. The present version of § 14-45.1(b), which contains the ban's medical emergency exception, went into effect on January 1, 2016. Prior to that amendment, the

statute provided a health condition exception that allowed a physician to perform an abortion after twenty weeks "if there is substantial risk that the continuance of the pregnancy would threaten the life or gravely impair the health of the woman." *Id.* § 14-45.1(b) (amended 2015).

21. This preexisting health exception, like the current emergency exception, banned some previability abortions. The 2016 amendment narrowed the scope of the exception even further so that it now applies only in medical emergencies. Under the current law, Plaintiffs cannot perform certain previability abortions after the twentieth week of pregnancy that were authorized under the preexisting health exception. However, both prior to and after the amendment, the ban prohibited some previability abortions.

VI. STATEMENT OF FACTS

22. In the United States, nearly one out of three women will have an abortion in her lifetime. As is true nationwide, approximately sixty percent of North Carolina women obtaining abortions already have one child or more.

23. Abortion is an extremely safe medical procedure.

24. The vast majority of abortions performed in the United States and in North Carolina occur in the first trimester of pregnancy. Only a small number of abortions are performed in the United States after 20 weeks.

25. Women seek abortions for many different reasons, relating to their individual situations at the time of that pregnancy.

26. In a normally progressing pregnancy, viability typically does not occur before approximately 24 weeks from the woman's last menstrual period.

27. Viability is a determination that must be made by a physician, and it will vary from pregnancy to pregnancy, depending on the health of the woman and the fetus.

28. Some fetuses are never viable, such as those with fatal anomalies, including anencephaly, severe brain anomalies, and severe cardiac anomalies.

29. No fetus is viable during the first 20 weeks of pregnancy.

30. A ban on abortion after the twentieth week of pregnancy prohibits some previability abortions.

31. All North Carolina women seeking a previability abortion after the twentieth week of pregnancy in a situation other than a medical emergency as defined in North Carolina law are prohibited from doing so by the 20-week ban.

32. Women seek abortion after 20 weeks for the same reasons they seek abortion at other gestational ages, including difficulties or concerns related to relationship, financial or other issues in their lives, family circumstances, and the health of the woman or fetus.

33. Among the women the ban impacts are women seeking abortions after the twentieth week of pregnancy because continuation of the pregnancy poses a risk to their health, as well as women who have been unable to access the procedure at an earlier point in pregnancy.

34. For example, the majority of abortion patients in the U.S. indicated that they would have liked to have had their abortion earlier in the pregnancy but were delayed.

Nearly sixty percent of women who experience a delay in obtaining an abortion cite the time it took to make arrangements and raise money. At present, North Carolina imposes a mandatory delay of at least 72-hours on women seeking abortions, with the same narrow emergency exception contained in the 20-week ban. *See* N.C. Gen. Stat. §§ 90-21.81(5), 82.

35. Some women impacted by the ban have pre-existing medical conditions that become exacerbated during pregnancy; some women have been diagnosed with a fetal anomaly; other women experience health risks as a result of a condition related to or brought on by the pregnancy itself.

36. In many instances, although the threat to the woman's health is serious, and may become more so over time, it does not constitute a medical emergency under the definition in N.C. Gen. Stat. § 90-21.81(5) and would not fall within the exception to the 20-week ban.

37. As a result, under the 20-week ban, a woman seeking abortion care after the twentieth week of pregnancy due to a medical condition that threatens her health may either be prohibited from doing so altogether or have to delay the procedure until her condition worsens to the point where immediate action is necessary, and the abortion therefore meets the medical emergency exception's exacting requirements.

38. Forcing a woman who needs medical treatment to wait until her condition deteriorates to the point that it poses a medical emergency is contrary to the standard of care and will expose her to significant health risks.

39. Additionally, many women undergo prenatal screening to evaluate fetal development at approximately 18 to 20 weeks lmp.

40. As a result of this screening, some women will receive a diagnosis of a serious fetal anomaly.

41. Women who receive this diagnosis typically have follow-up testing and consult with multiple professionals to make the decision that is right for them about whether to continue the pregnancy.

42. It can take at least several days and up to two weeks to receive results from follow-up testing.

43. These deeply personal decisions must be made with sufficient time to gather professional opinions and engage in careful consideration.

44. For some women who make the decision to terminate, the 20-week ban would prohibit them from doing so.

45. Moreover, imposing an arbitrary 20-week ban on the decision about whether to continue or end the pregnancy is counter to the standard of medical care and medical ethics.

VII. THE IMPACT OF THE BAN ON PLAINTIFFS AND THEIR PATIENTS

46. By prohibiting all abortions after the twentieth week of pregnancy except those that come within the narrow definition of medical emergency, the 20-week ban harms Plaintiffs' patients by denying access to previability abortions and violating their constitutional rights.

47. Neither the medical emergency exception nor the health exception previously in place is sufficient to cure the constitutional violation created by the ban.

48. Moreover, the ban forces patients suffering from health indications to wait until their conditions significantly worsen to meet the narrow medical emergency exception, needlessly exposing them to additional medical risk and potential complications.

49. As a result of the 20-week ban, some women who find out about fetal conditions or anomalies close to or after the 20-week cutoff have inadequate time to obtain additional information and to weigh their options of carrying to term or seeking a previability abortion before they are foreclosed from obtaining an abortion.

50. Each of these harms constitutes irreparable harm to Plaintiffs' patients.

51. The 20-week ban presents physicians with an untenable choice: face criminal prosecution for providing medical care in accordance with their best medical judgment, or refuse to provide the critical care their patients seek.

52. Plaintiffs and their patients do not have an adequate remedy at law, and they will suffer irreparable injury if the 20-week ban is permitted to stay in effect.

FIRST CLAIM FOR RELIEF

(Substantive Due Process)

53. Plaintiffs reallege and hereby incorporate by reference Paragraphs 1 through 52 above.

54. The ban on previability abortions after the twentieth week of pregnancy, except in narrowly defined medical emergencies, violates the substantive due process rights of Plaintiffs' patients, guaranteed by the Fourteenth Amendment, by banning previability abortions.

REQUEST FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court:

55. Issue a declaratory judgment that the statutes criminalizing abortion, N.C. Gen. Stat. §§ 14-44 and 14-45, and the exceptions, § 14-45.1(a)–(b), collectively the 20-week ban, are unconstitutional as applied to previability abortions, under the Fourteenth Amendment to the United States Constitution and in violation of 42 U.S.C. § 1983;

56. Issue a permanent injunction restraining Defendants, their employees, agents, and successors from enforcing in any way state law limiting Plaintiffs' ability to provide previability abortions;

57. Award Plaintiffs their reasonable costs and attorney's fees pursuant to 42 U.S.C. § 1988; and,

58. Grant such other or further relief as the Court deems just, proper, and equitable.

Dated: November 30, 2016

Respectfully submitted,

/s/ Christopher Brook
Christopher Brook, NC Bar #33838
ACLU of North Carolina

P. O. Box 28004
Raleigh, NC 27611-8004
(919) 834-3466
cbrook@acluofnc.org
COUNSEL FOR PLAINTIFFS

Genevieve Scott*
Julie Rikelman*
Center for Reproductive Rights
199 Water Street, 22nd Fl.
New York, NY 10038
(917) 637-3605
(917) 637-3666 Fax
gscott@reprorights.org
jrikelman@reprorights.org
COUNSEL FOR AMY BRYANT, M.D., M.S.C.R.

Andrew Beck*
American Civil Liberties Union Foundation
125 Broad Street, 18th Fl.
New York, NY 10004
(212) 549-2633
abeck@aclu.org
COUNSEL FOR BEVERLY GRAY, M.D., AND ELIZABETH DEANS, M.D.

Carrie Y. Flaxman*
Planned Parenthood Federation of America
1110 Vermont Avenue, NW, Suite 300
Washington, D.C. 20005
carrie.flaxman@ppfa.org
(202) 973-4830

Maithreyi Ratakonda*
Planned Parenthood Federation of America
123 William Street, 9th Fl.
New York, NY 10038
(212) 261-4405
mai.ratakonda@ppfa.org
COUNSEL FOR PLANNED PARENTHOOD SOUTH ATLANTIC

*By Special Appearance