**IN THE SUPREME COURT OF FLORIDA**

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|---|---|---|
| STATE OF FLORIDA, ATTORNEY GENERAL CHARLES J. CHRIST, JR., in his official capacity, FLORIDA DEPARTMENT OF HEALTH, JOHN AGWUNABI, M.D. SECRETARY, in his official capacity, and FLORIDA BOARD OF MEDICINE, | ) | |
| Appellants, | ) | Case No. SC02-2186 |
| vs. | ) | LT No. 4D02-4485 |
| PRESIDENTIAL WOMEN'S CENTER, MICHAEL BENJAMIN, M.D., NORTH FLORIDA WOMEN'S HEALTH AND COUNSELING SERVICES, INC., ET AL., | ) | |
| Appellees. | ) | |

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# AMENDED RESPONSE BRIEF OF APPELLEE, NORTH FLORIDA WOMEN'S HEALTH AND COUNSELING SERVICES, INC.

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On Appeal From a Decision of the District Court of Appeal, Fourth District, State of Florida

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## STATEMENT OF THE CASE AND FACTS

Appellants incorrectly state in their statement of the facts (page 2) that violation of the Act constitutes grounds for "non-criminal disciplinary proceedings against physicians' licenses…". Paragraph 9 (a) of the Act provides "Any person who willfully performs, or actively participates in, a termination of a pregnancy procedure in violation of the requirements of this section commits a felony of the third degree, punishable as provided in s.775.082, s. 775.083, or 775.084." The act does not require that the violation be willful, but only that the performance of the termination of the pregnancy be willful, which of course would occur every time that a physician performs a "termination of pregnancy".

As discussed in detail herein, the Act never defines the term "termination of pregnancy", thus the physician is left to guess as to the definition of this term. While the Act provides an irrational definition of the term "abortion", this does not help the physician understand the requirements of the Act, since the term described, i.e. "abortion" is not the term used in the body of the Act. This subjects the physician to criminal liability under a vague law.

In its Statement of the Facts, Appellants concede that there is no compelling reason or any reason at all to implement

the Act. On page 17 of their brief when discussing the current general medical consent law, which applies in the absence of the Act, Appellants acknowledge "That law does not excuse a physician from explaining to a patient the risks of surgery and its alternatives." Nowhere in their statement of the facts or argument do Appellants allege that there is anything defective in the current general medical consent law, or that they have been unable to use existing law to deal with the type of improprieties that they claim have occurred.

Appellants describe procedures at abortion facilities that they allege show that the patients of these facilities do not give a knowing and willful consent. Nowhere in the Appellants' brief do they indicate why the current law is insufficient to deal with such alleged improprieties. The question is not, whether anyone has ever had an abortion without giving proper consent, the question for this Honorable Court is whether the current law is inadequate to deal with such a situation, and if so, whether the Act is any better in dealing with this alleged problem.

## SUMMARY OF ARGUMENT

The Act is beyond vague and is overbroad. It is nonsensical and incomprehensible. If implemented, the Act would lead to bizarre and ghoulish consequences and would obliterate abortion rights in this state.

The State cannot credibly argue that the Act is not vague since its own Attorney General was incapable of answering basic questions about its meaning at the hearing on temporary injunction. The Act seeks to replace the general law of medical consent, which has worked well in the past, with a law of consent for abortion which is plagued with difficulties and which is indecipherable to the highest legal officer in the state, i.e. our Attorney General.

Not only does the Act serve no useful purpose, if implemented, it would deny women their fundamental rights.

Abortion is a fundamental right in this state. Thus, the Appellate Court acted properly when it struck down a law which would make abortion exceptionally difficult, if not impossible to obtain in the state of Florida.

The Plaintiffs are entitled to recover their reasonable costs and attorney's fees to compensate them for protecting the fundamental rights of women in Florida against this indefensible law, and for serving the public interest.

## ARGUMENT

### I. Appellants were incapable of answering basic questions about the Act nearly eight years ago, and they have yet to provide an answer to the basic questions posed about the Act in July 1997.

On July 2, 1997, the Trial Court, after an extensive hearing, entered a temporary injunction which prevented enforcement of The Act. This Court affirmed the temporary injunction finding The Act unconstitutionally vague and a violation of women's rights. State v. Presidential Women's Center, 707 So.2d 1145, 1151 (Fla. 4th DCA 1998).

In its order of July 2, 1997, the Trial Court cited numerous provisions of The Act that were incomprehensible. In fact, when the Trial Court inquired of the two assistant attorney generals who attended the hearing, they were at a loss to explain the basics of The Act, because they too could not decipher its meaning (see Transcript of July 2, 1997 hearing page 50:6-15, 52:3-8, 52:22-25, 53:5-20, 56:4-10, 57:6-25, 58:6-10, 62:7-63:8, 63:13-64:6).

Since 1997, the Appellants have yet to provide any answer to the most basic questions about the meaning and enforcement of The Act. In fact, in their initial brief the Appellants still do not even attempt to answer the basic questions posed by the

Trial Court nearly five years ago. The reason for this silence is simple, there is no way to explain this hopelessly vague law.

Providing affidavits from physicians who claim that they understand The Act, without offering any answers to the Trial Court's numerous inquiries and concerns about The Act, does nothing to render The Act any less vague. These physicians could claim to understand the Oracle of Delphi, but without providing such an explanation, their opinion is of no avail.

Because the law is hopelessly vague and overbroad as described at length herein, the Act is unconstitutional and unenforceable. State of Florida vs. Fuchs 751 So.2d 603 (Fla. 5th DCA 1999).

## II. The Act is beyond vague.

### A. Even the attorney general's office cannot understand The Act

At the hearing held on July 1, 1997, the two assistant attorney generals who were sent to argue in favor of The Act could not explain the basic provisions of The Act (see Transcript of July 1, 1997 hearing T-50:6-15, 52:3-8, 52:22-25, 53:5-20, 56:4-10, 57:6-25, 58:6-10, 62:7-63:8, 63:13-64:6).

If the top legal officers of the State, i.e., the Attorney General's office, cannot decipher the meaning of a law, then it stands to reason that most others would be befuddled by the law. The Attorney General sent representatives from his office who

had studied The Act, and were prepared to argue its meaning and enforceability. It would be patently unfair, unjust and unconstitutional to subject physicians to criminal prosecution and loss of their license to practice medicine, merely because they were unable to understand what the top legal officers in the State cannot understand, i.e. the provisions of The Act.

One of many exchanges between Appellants' attorney and the Trial Judge demonstrates the impossibility even for the top legal office in the State, to fathom this cryptic law and unintelligible law (T-49:25-51:7).

> **The Court:** When you read "A", the nature and risks of undergoing or not undergoing the proposed procedure that a reasonable patient would consider material to making a knowing and willful decision, what would be in your mind what a reasonable patient would consider material to making a knowing and willful decision?
>
> **AG:** I think that's up to the doctor and the patient, Your Honor, to decide or at least up to the doctor to decide.
>
> **The Court:** If that's true, how would you ever enforce that law? If everyone is making their own decision what a reasonable patient would consider material to making a knowing and willful decision, then how are you going to enforce that?
>
> **AG:** *Well, that's the State's problem in enforcing it. That's not the doctor's problem and* (Emphasis added)–
>
> **The Court:** Why isn't it vague?
>
> **AG:** Because, Your Honor, I mean, the criminal statutes are replete with references to a reasonable person and --

> **The Court:** We're not talking about criminals here. We're talking about people making a medical decision to do something.
>
> **AG:** *Well, the point is, Your Honor, I don't think that you can have any one definition.* (emphasis added) I think that a reasonable patient and any woman's circumstances are going to be determined by the doctor who has the relationship with that patient. I don't think that it's something the—
>
> **The Court:** So it would be up to each doctor?
>
> **AG:** State can determine. And I think that's an example of the State leaving this decision to the woman and her doctor.

In the foregoing exchange, Appellants concede that the State will have trouble enforcing The Act, but that this isn't the doctor's problem. Actually, due to the heavy criminal penalties and loss of one's medical license which awaits a physician who runs afoul of The Act, it is the doctor's problem if he can't understand what The Act requires. This is precisely the type of vague law that the courts abhor, due to the fundamental unfairness of holding someone criminally liable for violating a law that no one, including the Attorney General, can understand.

Appellants' attorney is correct that it is the State's problem in enforcing the law. However, the State's "problem" in enforcing The Act does not first arise after a physician and his patient are arrested, it first arises when the State tries to defend the law which is under attack. To suggest that it's

proper to pass a law with criminal penalties that no one can understand, because the law can be tested in court, is to stand constitutional safeguards on their head and to violate every notion of fairness and due process that our constitution holds dear.

The Appellants are quite cavalier about replacing the current abortion consent law which they admit is working well, with a law which they concede is difficult, if not impossible to enforce due to its vagueness. Not only the doctor, but his staff and his patient are all criminally liable under this law if the doctor guesses wrong about what the law requires (See paragraph (9)(a) of The Act).

Moreover, due to the enormous controversy swirling around the abortion issue, this consent law is even more problematic than a similar law would be which dealt with some other medical procedure.

The Act does not indicate what a physician is supposed to tell the patient about the nature of a termination of pregnancy and its alternatives. To some who consider this controversial issue, the nature of abortion is murder, to others responsible family planning, to others the exercise of fundamental constitutional rights available to all Americans, to others selfishness and/or irresponsibility in the extreme, and to some a great moral catastrophe of our nation which rivals the most

barbaric carnage in all of human history. If the doctor believes that abortion is the responsible act of an enlightened woman who is exercising one of her most sacred and cherished rights, but the State and/or the patient holds a different view, such as that abortion is wrong, evil, or simply a matter of convenience, what must a physician tell the patient about the nature of abortion. In short, must he give his point of view, the State's or the patient's perspective, or all three? Or must he play theologian and give the religious perspective? If so, which religion, his own, the patient's, a cross-section of religious and philosophical views? There is nothing in a physician's training to qualify him to answer such a question from a philosophical, bioethical, religious, or metaphysical point of view. When the State government changes, must the physician then give a different point of view about the nature of abortion to fit the current ideology in order to avoid criminal prosecution and to keep his license?

And how does a physician under The Act describe the alternatives? What are the alternatives contemplated? Childbirth? Adoption? If a pregnancy is the result of rape, incest or some other unfortunate circumstance, does the physician under The Act then give a different explanation of the nature of abortion and the alternatives? If a couple has been trying to produce offspring for twenty years, does he say that childbirth

is a blessed event? Should he still describe the alternative of childbirth as a blessed event if the couple is not married? If the pregnant woman is a fourteen year old girl, does the physician still describe the alternative of childbirth as a blessed event? What if the young girl looks upon the pregnancy with dread, and fears the social ostracism from her peers and the possibility of having to drop out of school to raise a child? What if her pregnancy was the result of criminal conduct, such as rape or incest, how does the physician describe the nature of a termination of pregnancy and its alternatives in this situation? The Act provides no helpful hints in order to assist the physician in determining these and a myriad of other questions not addressed, or apparently not even contemplated by those who promulgated this law.

The Act is also unconstitutionally vague where it attempts to advise a physician under what circumstances he can perform a termination of pregnancy without informed consent on an unconscious woman to protect her health. Appellants contend, "Well I think that that's really something to be fleshed out in the litigation of this case. I don't think that that's really relevant to the issue of whether or not Plaintiff is entitled to a preliminary injunction." (T-58:6-10). Again our constitution prohibits such a cavalier attitude toward criminal prosecution, the loss of one's professional license and the possible

inability of a woman to obtain vitally needed medical care because the doctors in a given field are afraid to perform a necessary procedure because they are concerned that depending upon how certain terms are “fleshed out” they may go to jail and have to look for a new job after they serve their time.

**B. Among other fatal flaws, The Act defines the term abortion, yet never uses this term in the body of The Act. Instead the term “termination of pregnancy” is used throughout The Act but this term is never defined.**

The Act defines “abortion” but never uses the term “abortion” in the body of The Act. Instead, the Act uses the term “termination of pregnancy” throughout its provisions, but never defines this term. This oversight does more than simply reveal the sloppiness of the drafters of the law and their haste in promulgating The Act. This failure to define the principal term used in The Act renders it impossibly vague. All of the provisions of The Act are triggered by the “termination of a pregnancy” by a physician. Without defining the term “pregnancy” or “termination of pregnancy”, there is no way to determine when a termination of pregnancy takes place.

At the hearing held on July 1, 1997, it became clear just how serious this defect in the law really is (T-62:7-63:8).

> **The Court:** How do you define ‘abortion’ in the law and not use the word in the law? … You don’t know?

**Assistant Attorney General (AG):** I'm getting predictable in my answers, aren't I?

**The Court:** Okay.

**AG:** I do think, Your Honor, that termination of pregnancy by its commonly understood meaning does not apply to a case where a woman is no longer pregnant and is having a medical procedure to remove a dead fetus or is getting birth control or something along those lines.

I don't think termination of pregnancy can in any way, shape or form be construed as—

**The Court:** Well, an IUD works by failure to implant.

**AG:** But again, I don't think that's termination of a pregnancy. That's a woman who is not pregnant—

**The Court:** It's the joining of a sperm and an egg that doesn't plant.

**AG**: **So then is the woman pregnant or not at that point?**

**The Court:** Medically, I assume they are.

**AG:** I don't know; it would seem to me that – and then you get into the case of in vitro fertilization and you're going back to Roe vs. Wade and viability --

**The Court:** It's a very difficult area to –

**AG:** Yeah, and we're getting into a whole area that is really beyond the scope of what we're addressing today.

Several glaring concessions against interest are made by appellants in this exchange between appellants and the Court. First of all, appellants have no explanation for why the term "abortion" is defined in The Act, but not used in the body of

The Act. More significantly, appellants, represented by the top legal officers in the State, ask the Court if a woman is pregnant upon the joining of the egg and sperm but before implantation. The assistant attorney general is not the only one who cannot answer such a question. The appellants offer no medical information in their brief or throughout the nearly eight years of litigation to help solve this age old question. The question is about as baffling as the age old conundrum of "which came first the chicken or the egg?" In this case the question that the defenders of the Act must answer is "which comes first the onset of pregnancy or the egg? However, the question need not be answered to expose the vagueness and/or inanity of The Act. If as Appellants concede the I.U.D. terminates the union of an egg and a sperm, then the appellants are wrong that the use of an I.U.D. would not trigger the requirements of The Act. If so, the Appellants are rather confused about the definition of the term "termination of pregnancy" as are any others who attempt to decipher The Act.

The appellants also agree with the Court in this exchange that this is a very difficult area. Perhaps, if The Act had defined the correct terms, instead of terms found nowhere in The Act, this would not be difficult at all to understand. The fact that the Attorney General's office finds this a difficult area confirms the vagueness of The Act, and makes it all the more

unconstitutional and problematic to hold a physician criminally liable and subject to the loss of his license if he is no more successful than our State's top legal officer in deciphering the meaning of this indecipherable law.

Another exchange at the hearing on preliminary injunction further demonstrates the complete hopelessness of Appellant's position (T-63:22-64:6)

> **AG:** An IUD is not a doctor terminating a pregnancy. That's a birth control device terminating a pregnancy, assuming the woman is considered pregnant at the time the IUD is working.
>
> But as we all know, a birth control pill prevents a woman from producing an egg in the first place or at least when it works, at least that's my understanding of the birth control pill.
>
> ***The Court:*** *I don't think you're so correct on that, but let's not get into the medical part of it* (emphasis added).

Here, the Appellants state a so-called fact that "we all know" which apparently, the Judge, as well as the medical community, does not know. More importantly, Appellants take a position which flies in the face of the clear reading of the law, and which shows once again how impossibly vague this law really is. Appellants claim that the Act doesn't apply to the doctor's providing an IUD device to a woman to terminate her pregnancy, because "an IUD is not a doctor terminating a pregnancy. That's a birth control device terminating a pregnancy…"This distinction ignores the clear provision of The

Act which holds that anyone *participating* in a termination of pregnancy without complying with The Act will face criminal prosecution. Apparently, the Attorney General's office doesn't believe that prescribing, fitting and providing an IUD meets the definition of "actively participating" in the woman's termination of pregnancy as described in Paragraph (9)(a) of The Act. If so, then the normal meaning of words do not apply to The Act, and it is thus impossible to interpret its provisions.

**C. A physician has no way of knowing what the Act requires him to do in order to "provide" the required information to a woman.**

The Act offers no guidance in helping a physician to understand what is meant under The Act by the requirement that a physician must provide the information in the pamphlet to a woman considering the termination of her pregnancy. The Act provides that a physician must provide the information to a woman considering the termination of her pregnancy "if she chooses to view these materials". It further provides a termination of pregnancy cannot be performed in the State of Florida unless "The woman acknowledges in writing, before the termination of pregnancy, that the information required to be provided under this subsection has been provided." The

incomprehensibility of this provision was conceded by the Appellants in the following exchange (T-56:4-10).

> **The Court:** Is that the State's position that it's okay if they're in a box in the lobby and there's a sign, "Take this if you want"?
>
> **AG:** Again, Your Honor, I think it's up to the doctor to decide how to make the pamphlet available to the woman. We're not going to tell him how to do that.

In this exchange, the appellants concede that "We're not going to tell him [the physician] how to do that [provide the information to his patient]. While this sounds like a very conciliatory gesture towards the physician, in actuality, by failing to provide any guidelines to the physicians and forcing them to guess at what they must do to comply with The Act, the law does them no favors, and potentially holds them criminally liable and subject to the loss of their license to practice medicine if they guess wrong about what was intended by the Legislature when they enacted The Act. Moreover, the patient and physician's assistants are also criminally liable under The Act, if the physician makes the wrong interpretation of the law since they have "actively participated" in the termination of a pregnancy in violation of the requirements of The Act (See appendix B to Appellants' brief, p.4, paragraph (9)(a).

The Appellants became so accustomed to telling the Court they didn't know how to interpret The Act that their counsel

even joked about her inability to understand anything about The Act while also conceding that a physician could not possibly be expected to understand this exceptionally vague law (T-57:15-25).

> **The Court:** And so I'm asking for three, "Acknowledges in writing before the termination of the pregnancy that the information required to be provided under this subsection has been provided."
>
> Am I signing that yeah, I saw the box over there or am I signing that I read it or--
>
> **AG:** Again—
>
> **The Court:** You don't know? Okay.
>
> *AG: I'll just rely on my standard answer. I guess I'll just hit 'play' on the recording, but I don't know the answer to that* (emphasis added)*.*

In this exchange the Appellants admit that they are incapable of understanding the most basic concept under The Act, i.e., what must a physician do in order to comply with The Act and provide the pamphlet to a woman. Must the physician read the pamphlet to the woman, paraphrase it, make it available to the woman who may read it if she so chooses, advise the woman to read the pamphlet or not read the pamphlet, or make the pamphlet available in some other way. If the pamphlet is only printed in English, and the patient speaks Spanish or Creole, can the patient "acknowledge in writing before the termination of pregnancy, that the information required to be provided under this subsection has been provided"?

If a physician does not speak the language of the patient, must he learn the language of the patient to comply with the

provision that he “orally, in person, inform the woman of” the information required to be provided under The Act?

III. The Act mandates the bizarre and callous requirement that in the event of a miscarriage, the physician must detail the pros and cons of removal of the dead fetus and further requires that the physician provide a detailed description of the dead fetus as well as the alternatives to this “termination of pregnancy” and much other grizzly information.

Only one exception is made to the obligation of the physician to carry out the provisions of The Act, which is contained in paragraph 8: EXCEPTION.- The provisions of this section shall not apply to the performance of a procedure which terminates a pregnancy in order to deliver a live child.

While some may believe it is unnecessary to include this “exception” to The Act because everyone knows that the normal delivery of a live child is not what is meant by a “termination of pregnancy”, since “termination of pregnancy” is not described in The Act, and since technically, a live birth does terminate a pregnancy, the drafters of the law saw fit to include this exception. Unfortunately, the drafters did not include an exception “for the termination of a pregnancy to deliver a dead child”, i.e. a miscarriage. This oversight was pointed out by the Trial Judge who observed in her temporary restraining order that under The Act, women in Florida would “suffer needless emotional stress in receiving needless information in cases

where a medical necessity (i.e. miscarriage) has mandated the termination of a pregnancy. The legal principle, inclusio unios est exclusio alterios, bears out the Trial Court's interpretation of The Act, which is the law of the case and which has never been challenged.

## IV. The Act provides misinformation, not information and thus achieves the opposite result as its intended purpose.

Judge Kathleen Kroll, who entered the temporary injunction after a lengthy hearing, determined that The Act disseminated misinformation, not accurate information as was presumably its intended purpose. "It is the 'truthfulness' and not 'misleading' aspect of the State's 'Interim Edition' brochure (Plaintiff's Exhibit 1) which concerns the Court.";… "If the main purpose of the law is to give knowledge then it would benefit all parties if that information was accurate and not haphazardly gathered"… "The Court also finds the Plaintiffs will suffer irreparable injury if the injunction is not granted in that women seeking to terminate pregnancies will be subjected to inaccurate and/or misleading information…" (Language from Preliminary Injunction entered July 2, 1997).

The Appellants have never attempted to refute these findings of the only trier of fact who has ever attempted to determine the accuracy of the information required to be provided by physicians under The Act. While the Appellants

embarked on lengthy and extensive discovery efforts against the Appellees as they concede in their initial brief, Appellants have offered no new testimony or evidence in nearly eight years to refute the findings of Judge Kroll in this, or any other respect.

V. There is no need for the Act

Appellants concede that the current law of consent in the abortion context, is enforced very well and is a very effective tool as currently utilized to give women extensive information prior to obtaining an abortion in Florida (T-65:15-24).

While the Appellants make many claims about how terrible the consent forms are that are currently utilized at one facility in Florida, even if this were true, which Appellees vigorously deny, this would have nothing to do with whether The Act is necessary or serves any useful purpose. As indicated above, Appellants concede that even without The Act, the current laws governing medical consent are working well, especially in the abortion context. Appellants present no evidence that they or anyone else has attempted to utilize the existing abortion consent laws to "cure" the alleged defective consent forms formerly used at one abortion facility. If a physician were to commit malpractice or otherwise fail to comply with existing law, this would not justify a change in the law, unless it was

alleged and proven that existing law would not provide a remedy for the alleged wrongdoing.

In nearly eight years of litigation over the State's efforts to rewrite the medical consent procedures for abortion in Florida, Appellants have failed to produce a single witness, document, or evidence of any other kind indicating that there exists even one woman who claims that she was not given proper information or gave uninformed consent before undergoing an abortion procedure. Replacing a procedure which has worked quite well, as Appellants concede from personal experience, with a procedure which has been determined by the Trial Court to provide misinformation, does not serve the public interest.

"The Court also finds the Plaintiffs will suffer irreparable injury if the injunction is not granted in that women seeking to terminate pregnancies will be subjected to inaccurate and/or misleading information, be subjected to costly (both in time and emotion) delays waiting for physicians to personally, orally give the information required, and suffer needless emotional stress in receiving needless information in cases where a medical necessity (a miscarriage) has mandated the termination of a pregnancy." Finally, it is as clear to this Court as the forest is from the tree that the granting of this preliminary injunction will not disserve the public interest (Preliminary Injunction entered July 2, 1997 p. 5-6).

Since the entry of this temporary injunction on July 2, 1997, not one scintilla of evidence has been introduced by Appellants which would refute or even challenge in any way all of the findings of the Trial Court.

VI. At the hearing on temporary injunction, the assistant attorney general was completely unable to answer virtually all of the Trial Court's inquiries about the meaning of the law. She should not be embarrassed for her inability in this regard. None of the other assistant attorney generals have been able to make heads or tails of this indecipherable law either.

To date, there has never been an answer even suggested to the myriad questions posed by the Trial Judge which the assistant general could not answer. Instead, appellants embarked on a fruitless and vexatious course of discovery which has nothing to do with any issue in this case. To date, appellees have not produced one person who says that she was not fully informed prior to giving her consent for an abortion and more importantly, have failed to answer any of the basic questions making enforcement of The Act impossible.

Appellee challenges the assistant attorney general once again to answer the basic questions posed by the undersigned and the Trial Court after a nearly eight year "pregnant silence" regarding these inquiries. If the assistant in its reply brief still can't explain when "pregnancy" begins for the purposes of defining "termination of pregnancy", under The Act, what does

The Act require of a doctor and her patient in order for a woman to “acknowledge in writing” that she has been “provided” with the information required by The Act, what must a physician convey to his patient about the “nature of abortion and the alternatives” in order to comply with The Act, does a physician need to provide all the information required by The Act in the case of a miscarriage, and if not, why is this exception not written into The Act as the exception for a live birth is, what light can the assistant attorney general shed on the information contained in the pamphlet to refute the uncontested findings of the Trial Court that The Act provides misinformation and confusion rather than correct information, and why does a law which defines “abortion” but not “termination of pregnancy” only refer to the undefined “termination of “pregnancy” and never to the defined “abortion” in The Act. Until the Attorney General can answer these and a host of other questions raised by The Act, appellees should spend their time helping the Legislature craft a better law rather than continuing to try to defend a law which has already been consistently rejected by the lower courts. If there is nothing wrong with the current law of consent regarding abortion procedures as evidenced by the lack of evidence from even one woman in Florida who claims she was not fully informed, the current abortion consent law should not be tampered with at all.

## CONCLUSION

The Act is unconstitutionally vague, is overbroad and works against any valid State interest. The vagueness of this law is especially problematic, because it threatens to impose criminal penalties against doctors and their patients, who attempt to exercise or to assist women in exercising their basic, fundamental right to abortion. The plaintiffs are entitled to recover their reasonable attorney's fees and costs as determined by the appellate court. This determination is strengthened by the fact that the Plaintiffs in this case served the public interest and protected the fundamental rights of women in the State of Florida.

Therefore, the opinion of the Appellate Court should be affirmed in all respects including the award of attorney's fees and costs to the Plaintiffs.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by US Mail to, this 17th day of March 2005, to:

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**CERTIFICATE OF TYPE FACE COMPLIANCE**

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