15-17497

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LIVINGWELL MEDICAL CLINIC, INC., et al.,

Plaintiffs,

v.

KAMALA HARRIS, et al.,

Defendants.

On Appeal from the United States District Court
for the Northern District of California

No. 4:15-cv-04939-JSW
The Honorable Jeffrey S. White, Judge

OPPOSITION TO EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

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INTRODUCTION

There are crisis pregnancy centers in California that pose as full-service women's health clinics, but through "intentionally deceptive advertising and counseling practices confuse, misinform, and even intimidate women from making fully-informed, time-sensitive decisions about critical health care."[1] This case challenges California's legislative response to these practices.

Assembly Bill No. 775, also known as the Reproductive FACT (Freedom, Accountability, Comprehensive Care, and Transparency) Act, effective January 1, 2016, will require medical clinics licensed by the State of California that provide pregnancy-related services, whether religiously affiliated or not, to give notice to their patients that comprehensive publicly-funded family-planning programs (including contraception, prenatal care, and abortion) are available to patients.[2] It is indisputable that the notice required by the Act is true. The Legislature found that the notice is "[t]he

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[1] Assem. Comm. on Health, at 3. (Declaration of Noreen P. Skelly, Exhibit 1 (Skelly Declaration in Support of Opposition to Motion for Preliminary Injunction, Exhibit A.).)

[2] Licensed primary care clinics enrolled as a Medi-Cal provider and a provider in the Family Planning, Access, Care, and Treatment programs are exempt from the Act's notice provisions because they provide the full continuum of healthcare services. Assem. Comm. on Judiciary, Analysis of Assembly Bill No. 775, at 4, 8. (Skelly Declaration, Exhibit 1 (Skelly Declaration, Exhibit B.).)

most effective way to ensure that women quickly obtain the information and services they need to make and implement timely reproductive decisions."[3]

Appellants are state-licensed crisis pregnancy centers employing licensed medical professionals. Notwithstanding their professional obligations, Appellants are opposed to providing their patients with this true, factual information that would allow fully-informed, time-sensitive medical decisions. Appellants seek an injunction preventing the Act from taking effect until after this action is fully litigated. They claim that mandated distribution of the notice would infringe upon their First Amendment rights.

In the trial court, the Honorable Jeffrey S. White denied Appellants' motion for preliminary injunction on December 18, 2015. Judge White held that Appellants are unlikely to succeed on the merits of their claims. He recognized that an injunction would cause harm by undermining California's legislative efforts to ensure all women have access to the full spectrum of reproductive health care options, and possess the information necessary to make informed reproductive health care decisions in a timely manner. Order, at 11:22-28; 12:1; 22:18-22. Judge White additionally found Appellants have established no risk of irreparable injury if their request for

[3] Assem. Bill No. 775, § 1(a)-(d). (Skelly Declaration, Exhibit 2.)

injunctive relief is denied. *Id.*, at 12:7-9. Finally, he concluded that the balance of hardships and the public interest strongly counsel in favor of upholding the operation of AB 775. *Id.*, at 12:10-12; 21:4-28; 22:1-22.

The district court's conclusions were correct, and for these reasons, this Court should deny Appellants' motion for an injunction pending their appeal of Judge White's Order denying the motion for preliminary injunction.

BACKGROUND

The California Legislature passed AB 775 on October 9, 2015, based on findings that all California women, regardless of income, should have access to reproductive health services; that many women are unaware of the free or low-cost public programs available to provide them with such services; and that women need to be notified of those resources as soon as possible because pregnancy decisions are time sensitive.[4]

The Reproductive FACT Act's legislative history indicates that:

> there are nearly 200 licensed and unlicensed clinics known as crisis pregnancy centers (CPCs) in California whose goal is to interfere with women's ability to be fully informed and exercise their reproductive rights, and that CPCs pose as full-service women's health clinics, but aim to discourage and prevent women from seeking abortions. The author concludes that these intentionally deceptive advertising and counseling

[4] Assem. Bill No. 775, § 1(a)-(d). (Skelly Declaration, Exhibit 2.).

> practices often confuse, misinform, and even intimidate women from making fully-informed, time-sensitive decisions about critical health care.[5]

To achieve its goals, AB 775 imposes two notice requirements upon clinics that provide pregnancy-related services. One applies to any clinic that is a "licensed covered facility" and the other applies to any "unlicensed covered facility." *See* Cal. Health & Safety Code § 123471(a) & (b).[6] This case implicates only the requirements applicable to licensed facilities.

Under the Act, a "licensed covered facility" is one "licensed under Section 1204 or an intermittent clinic operating under a primary care clinic pursuant to subdivision (h) of Section 1206, whose primary purpose is providing family planning or pregnancy-related services, and that satisfies two or more" of the criteria specified in the Act.[7] Appellants have stated that they qualify as licensed covered facilities under that definition. Order,

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[5] Assem. Comm. on Health, Analysis of Assembly Bill No. 775, at 3. (Skelly Declaration, Exhibit 1 (Skelly Declaration, Exhibit A.).)

[6] All further statutory references in this brief are to the California Health and Safety Code unless otherwise indicated.

[7] Section 1204 and 1206(h), referenced in this provision, pertain to nonprofit community clinics and nonprofit free clinics.

at 2:11; 16:17-21. Appellants are non-profit organizations that do not charge patients for their services. [8] Order, at 16:1-2; 16:17-21.

Under the Act a licensed covered facility shall disseminate the following notice:

> California has public programs that provide immediate free or low-cost access to comprehensive family planning services (including all FDA-approved methods of contraception), prenatal care, and abortion for eligible women. To determine whether you qualify, contact the county social services office at [insert the telephone number].

§ 123472(a)(1).

The notice for licensed facilities must be disclosed in one of three ways, as a public notice posted at the facility, as a printed notice distributed to a patient at any time during her visit, or as a digital notice to be read by clients upon arrival. § 123472(a)(2)(A)-(C). It is undisputed that the notice's contents are "only factual and incontrovertibly true information" and "do not include language endorsing or recommending such services." Order, 17:19-26. Nevertheless, the Act does not prohibit Appellants from disagreeing with, or even disparaging, the notice and the incontrovertibly true information it contains. The Legislature determined that the notice

[8] Appellants have not disclosed their economic model, but in order to provide goods and services they certainly receive funding from some source.

requirement is the most effective way to ensure that women quickly obtain the information they need to make timely reproductive decisions.[9]

Covered facilities that fail to comply with the requirements are liable for a civil penalty of five hundred dollars for a first offense and one thousand dollars for each subsequent offense. § 123473(a). Under the Act, "[t]he Attorney General, city attorney, or county counsel may bring an action to impose a civil penalty," but only after doing both of the following:

> (1) Providing the covered facility with reasonable notice of noncompliance, which informs the facility that it is subject to a civil penalty if it does not correct the violation within 30 days from the date the notice is sent to the facility.
>
> (2) Verifying that the violation was not corrected within the 30-day period described in paragraph (1).

§ 123473(a)(1)-(2).

ARGUMENT

A party seeking an injunction or stay of a state action that the district court has declined to enjoin must demonstrate: (1) a strong showing of likelihood of success on the merits of the appeal; (2) irreparable injury absent a stay; (3) that the issuance of a stay would not substantially injure the other interested parties; and (4) that the stay is in the public interest.

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[9] Assem. Bill No. 775, § 1(d). (Skelly Declaration, Exhibit 2.).

Golden Gate Rest. Ass'n v. City & Cnty. of San Francisco, 512 F.3d 1112, 1115 (9th Cir. 2008); *see also Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Appellants cannot meet this burden.

I. APPELLANTS HAVE NOT MET THEIR BURDEN TO DEMONSTRATE LIKELIHOOD OF SUCCESS ON THE MERITS OF THE APPEAL.

On review, it must be determined, "whether the court employed the appropriate legal standards governing the issuance of a preliminary injunction and whether the district court correctly apprehended the law with respect to the underlying issues in the case." *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001). A district court's order is reversible for legal error if the court does not employ the appropriate legal standards governing the issuance of a preliminary injunction. *Benda v. Grand Lodge of International Association of Machinists & Aerospace Workers*, 584 F.2d 308, 314-15 (9th Cir. 1978), cert. dismissed, 441 U.S. 937 (1979). Abuse of discretion may also occur where the district court rests its conclusions on clearly erroneous factual findings. *Buchanan v. United States Postal Service*, 508 F.2d 259, 267 n.24 (5th Cir. 1975). However, "[a]s long as the district court got the law right, it will not be reversed simply because the appellate court would have arrived at a different

result if it had applied the law to the facts of the case." *Sports Form, Inc. v. United Press, Int'l*, 686 F.2d 750, 752 (9th Cir. 1982).

A. The Notice is a Permissible Regulation of Professional Speech

The trial court determined that the notice constitutes a permissible regulation of professional speech. Although Appellants contend the trial court erred by not affording them "full First Amendment protection for their religious and political speech," Motion, at 9-10, this ignores the professional context in which their communications with their patients occur. The notice is required only in the context of the provision of services to women seeking professional medical attention from licensed medical providers. There is no analogy to "pamphleteering," as Appellants suggest. Motion, at 7.

Pursuant to its police power, California has the authority to regulate licensed pregnancy centers so that California women are adequately informed of publicly-funded family planning and reproductive health care services in a timely and effective manner. *See, e.g., Gonzales v. Carhart*, 550 U.S. 124, 157 (2007) ("Under our precedents it is clear the State has a significant role to play in regulating the medical profession."); *Pickup*, 740 F.3d at 1229 ("Pursuant to its police power, California has authority to

regulate licensed mental health providers' administration of therapies that the legislature has deemed harmful.").

Patients who seek medical services from licensed professionals at a licensed clinic do so with the expectation that the licensing process itself assures a degree of reliability in the information they will receive. As the district court noted, because Appellants are licensed medical clinics, there is "the imprimatur of the State on the legitimacy of the clinics and their medical services offerings." Order, at 18:11-13. It is well-settled that the government has a legitimate and significant role to play in regulating those who accept responsibility for providing medically-supervised services to patients. The First Amendment permits the state leeway to regulate professionals to protect the health, morals, and general welfare of its citizens, even where the state's regulation has an incidental effect on protected speech. *See* e.g., *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 881-84 (1992) (plurality opinion); *Shea v. Bd. of Med. Examiners*, 81 Cal.App.3d 564, 577 (1978). It is regulatory oversight that provides clients with the confidence to put their health in the hands of medical professionals. *See King v. Governor of the State of New Jersey*, 767 F.3d 216, 232 (3rd Cir. 2014). Here, the clinics are licensed and regulated under California's Health & Safety Code. Such

clinics must provide certain services, must have a licensed physician designated as the clinic's medical director, and for certain enumerated medical procedures, must provide a medical professional to be present. Order, at 19:16-22.

Regulation of professional speech must withstand intermediate scrutiny, requiring the challenged law directly advance a substantial governmental interest. *Ass'n of Nat'l Advertisers, Inc. v. Lundgren*, 44 F.3d 726, 729 (9th Cir. 1994). One of the central purposes of AB 775 was to provide women who are or might be pregnant with timely notice of the availability of the pregnancy-related medical services available to them. The Act was based on findings and declarations that many women are unaware of the free or low-cost public programs available to provide them with reproductive health services; and that patients benefit from being notified of those resources as early in their pregnancy as possible because pregnancy decisions are time sensitive. [10]

The Ninth Circuit has rejected a First Amendment challenge to California's statute banning licensed mental health providers from administering Sexual Orientation Change Effort therapy to child-patients.

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[10] Assem. Bill No. 775, § 1(a)-(d). (Skelly Declaration, Exhibit 2).

Pickup v. Brown, 740 F.3d 1208 (9th Cir. 2014).[11] *Pickup* established that a sliding scale applies to review of speech restrictions imposed on licensed health care professionals. Where the professional "is engaged in a public dialogue" via public advocacy, "First Amendment protection is at its greatest." *Id.* at 1227. By contrast, "[a]t the midpoint of the continuum, within the confines of a professional relationship, First Amendment protection of a professional's speech is somewhat diminished." *Id.* at 1228 (citing *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 882 (1992) as upholding a requirement that doctors disclose "truthful, nonmisleading information about the nature of the procedure"). Finally, at the other end of the continuum is regulation of professional

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[11] Plaintiffs question whether *Pickup* remains good law in light of the Supreme Court's decision in *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015). Motion, at 9-10. But *Reed* had nothing to do with the regulation of professional speech within a doctor-patient relationship; *Reed* concerned restrictions on signs and billboards aimed at the general public. *Reed* cast no doubt on precedents holding that the First Amendment permits the state some leeway to regulate professionals to protect the health, morals, and general welfare of its citizens, even where the state's regulation has an incidental effect on protected speech. *See* e.g., *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 881-84 (1992) (plurality opinion). Indeed, California's Act, which does not require that covered professionals or facilities communicate any particular view on the desirability or consequences of any particular reproductive choice, imposes far less of a burden on free speech than did the speech requirements upheld in *Casey*. *Id.*

conduct, where the government's regulatory power is greatest, and First Amendment protection weakest. *Id.*, at 1229.

Here, the state regulations being challenged do not limit any of Appellants' expression; instead, they require only the delivery of a notice which contains neutral factual information regarding services available to women in the State of California. This limited informational disclosure occurs within the context of professional services that are undeniably subject to close state regulation.

Significantly, the Act "does not restrain Plaintiffs from imparting information or disseminating opinions." *See Pickup*, 740 F.3d at 1230. California's statute does nothing to prohibit a pregnancy center from mentioning, discussing, or advocating for its pro-life viewpoint, or even communicating disagreement with the Act, the notice, or the undeniably truthful information it contains. Nor does the requirement prevent pregnancy centers from communicating with the public about any issue, prevent them from expressing their views to patients about abortion, or prevent them from recommending against abortion. *See id.* at 1229 (law's constitutionality supported by its avoidance of First Amendment impacts).

Because the Act's notice requirement is a permissible regulation of professional speech, Appellants' motion should be denied.

B. The Notice is also a Permissible Regulation of Commercial Speech

Judge White found that the notice mandated by the Act may also be "commercial speech providing information to consumers or pregnancy-related medical services," Order, at 15:25-27, and concluded that the notice could pass the test for permissible commercial speech, Order, at 16-17. These conclusions were no abuse of discretion.

Commercial speech has been defined by the Supreme Court as "expression related solely to the economic interests of the speaker and its audience," *Central Hudson Gas & Elec. Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 561 (1980), and as speech that "does no more than propose a commercial transaction," *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 752 (1976). The Supreme Court has, however, recognized the challenge inherent in "drawing bright lines that will clearly cabin commercial speech as a distinct category." *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 419 (1993).

A free speech analysis requires consideration of the context from the viewpoint of the listener because '[c]ommercial expression not only serves the economic interest of the speaker, but also assists consumers and furthers the societal interest in the fullest possible dissemination of information."

Order, at 15:16-18 (quoting *Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor and City Council of Baltimore*, 721 F.3d 264, 286 (4th Cir. 2013)). Although Appellants are non-profit entities claiming a religious motivation to deny their patients factual information, they do provide valuable pregnancy-related goods and services such as pregnancy testing and baby supplies, Order, at 16:17-18, which are no doubt perceived as commercial offerings by their patients. This is why speech related to such valuable goods and services can be considered commercial in nature even where no money changes hands. For example, a Maine non-profit corporation that operates a summer camp for the benefit of children of the Christian Science faith could engage in commercial activity even where the cost of the summer camp was borne by contributions from private donors and an endowment. *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Me.*, 520 U.S. 564, 573 (1997). Indeed, the women who seek out Appellants' clinics likely do so precisely because of the value of the goods and services offered. *See Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor and City Council of Baltimore*, 721 F.3d 264, 286 (4th Cir. 2013). The district court concluded that Appellants "failed to make a strong showing . . . that the mandatory notice does not fall within the ambit of commercial speech." Order, at 17:9-10.

Compelled commercial speech is subject to either intermediate scrutiny, *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 563-66 (1980) or, where the challenged law compels disclosure of factual and uncontroversial information, rational basis review, *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985).

Below, the trial court applied the rational basis test to this commercial speech because the notice provides only factual and uncontrovertibly true information. It concluded that "viewed as commercial speech, the regulation directly advances the rational government interest of keeping pregnant women fully informed of their inherently time-sensitive options while being provided pregnancy-related medical care." Order, at 18:1-4. The court noted that the notice "furthers, rather than hinders, the First Amendment goal of the discovery of truth and contributes to the efficiency of the 'marketplace of ideas.'" Order, at 17:17-19.

The trial court's commercial speech analysis is correct, and demonstrates that Appellants cannot demonstrate a likelihood of success on the merits. Accordingly, the motion should be denied.

C. The Act's Notice Provisions Would Survive Even Strict Scrutiny

Even if this Court were to apply strict scrutiny to the Act, it would survive such review because it is narrowly tailored to support a substantial governmental interest. Appellants concede for purposes of their motion that the Act's notice provisions advance a substantial governmental interest. Motion, at 13. However, they contend that the Act's notice requirements cannot withstand scrutiny—whether intermediate or strict—because the means chosen to advance the governmental interest are not proportional to the burdens placed on speech.

Appellants describe the Act's notice provisions as a broad prophylactic measure to address deceptive conduct by some crisis pregnancy centers. Motion, at 13. This is a mischaracterization of the Act and its purposes. The legislative findings demonstrate, at a minimum, that despite their professional obligations, crisis pregnancy clinics are unwilling to provide uncontrovertibly truthful information to their patients that is relevant to fully-informed medical decision making. The Reproductive FACT Act addresses such conduct narrowly. The notice, by its terms, is designed to inform women who need pregnancy-related services, that such services are available. As the trial court noted, the mandated disclosures mention an array of services available to pregnant women in a collective list, including family planning, contraception, prenatal care, and abortion. The disclosures

do not include language endorsing or recommending such services. Rather, the notice only alerts consumers to the existence of publicly-funded options. Order, at 17:23; 18:1. Pregnancy is a time-sensitive condition. Ensuring that women receive the notice at licensed pregnancy clinics will help ensure they have the information they need to make timely medical decisions, when they are seeking medical assistance for pregnancy. The regulation thus is narrowly tailored, and would survive even strict scrutiny.

II. APPELLANTS HAVE DEMONSTRATED NO THREAT OF IRREPARABLE HARM IN THE ABSENCE OF AN INJUNCTION

Injunctive relief is an extraordinary remedy, which may be granted only upon a clear showing that the plaintiff is entitled to such relief. *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008). The trial court determined correctly that Appellants had not established they would suffer irreparable harm in the absence of injunctive relief. Order, at 21:12-14.

On December 7, 2015, the trial court issued an Order seeking the parties' responses to a set of questions, which mostly related to whether Appellants had standing to assert their claims, and if so, whether their claims were ripe for adjudication. In response to the inquiry regarding the existence of a threat of harm, Appellants failed to prove the existence of more than a mere generalized threat of any enforcement of the Act against them.

For example, Appellants have not actually stated that they will refuse to comply with the notice requirements. The First Amended Complaint contains the following allegations:

Each of the Plaintiffs strongly objects to being compelled to speak the message required by the Act's disclosure provision. Each Plaintiff considers the required notice to be the equivalent of directly referring clients for abortions and other services that Plaintiffs do not provide or refer for based on their religious beliefs and organizational purposes. (FAC, § 33.)

The complaint also contains parallel allegations for each Appellant that indicates they will not refer clients for abortions: LivingWell does not, and will not, refer for, recommend, encourage, or facilitate clients to obtain abortions or contraceptives based on its religious beliefs. (FAC, §§ 7, 12, 17.)

These allegations fall short of a plain statement that "Plaintiffs will not comply with the notice requirement" because the notice does not require a "referral" for services. And the trial court also found that the notice does not endorse or recommend the services it references. Order, 17:19-26. Therefore, Appellants' claim of "equivalence" (that the notice is equivalent to a referral) is not plausible, and their allegations that they "will not, refer

for, recommend, encourage, or facilitate clients to obtain abortions or contraceptives," do not equate to a clear refusal to provide the notice.

III. THE BALANCE OF HARMS AND THE PUBLIC INTEREST WEIGH HEAVILY AGAINST AN INJUNCTION PENDING APPEAL

The balance of harms tips strongly in the State's favor and also for this reason Appellants' emergency motion for an injunction should be denied. Additionally, the public interest weighs heavily in favor of denying Appellants injunctive relief.

If the Act is enjoined, the injunction will harm those women in California who would seek professional pregnancy-related goods and services from Appellants, or other licensed pregnancy clinics, but who would not receive a full range of truthful information necessary to make informed decisions about their medical care. As highlighted in the legislative history of the Act, in 2012, more than 2.6 million California women were in need of publicly-funded family planning services. More than 700,000 California women become pregnant each year, and half of these pregnancies are unintended.[12] If the Court were to grant an injunction pending the resolution of this appeal, the California women eligible for free

[12] AB 775 § 1. (Skelly Declaration, Exhibit 2.).

or low cost publically-funded family planning services will have reduced access to care. There is no equivalent harm to Appellants: the Act does not prohibit them from voicing criticisms of the publicly-funded services listed in the notice, nor does it require them to provide abortions or refer patients to clinics that do provide such services.

As the trial court recognized, the public interest is best served in these circumstances by "application of the Act in full." Order, at 21:16-17. Granting an injunction would interfere with the Legislature's explicit intention to provide timely and accurate information to all women seeking family-planning or pregnancy-related services from licensed pregnancy clinics. "Maintaining the effectiveness of the Act bestows upon the democratic process its due respect and affords due deference to the carefully detailed legislative purpose of providing women full information regarding their time-sensitive health care choices." *Id.*, at 21:16-20.

CONCLUSION

For all of the reasons set forth above, this Court should deny Appellants' emergency motion for a preliminary injunction pending their appeal of Judge White's Order denying the motion for preliminary injunction.

Dated: December 28, 2015

Respectfully submitted,

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15-17497

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LIVINGWELL MEDICAL CLINIC, INC., et al.,

Plaintiffs,

v.

KAMALA HARRIS, et al.,

Defendants.

STATEMENT OF RELATED CASES

The following related case is pending: *A Woman's Friend Pregnancy Resource Clinic, et al v. Kamala Harris* (9th Cir. 15-17517) (E.D. Cal 2:15-cv-02122-KJM).

There is one other case that, while not technically related pursuant to the definition of a related case contained in Rule 28-2.6, raises the same or closely related issues: *National Institute of Family and Life Advocates, et al v. Harris, et al* (S.D. Cal. 3:15-cv-02277).

Dated: December 28, 2015

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

PURSUANT TO FED.R.APP.P 32(a)(7)(C) AND CIRCUIT RULE 32-1 FOR 4:15-cv-04939-JSW

I certify that: (check (x) appropriate option(s))

[ ] 1. Pursuant to Fed.R.App.P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached **opening/answering/reply/cross-appeal** brief is

[X] Proportionately spaced, has a typeface of 14 points or more and contains 3,760 words (opening, answering and the second and third briefs filed in cross-appeals must not exceed 14,000 words; reply briefs must not exceed 7,000 words

or is

[ ] Monospaced, has 10.5 or fewer characters per inch and contains ____ words or ___ lines of text (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 14,000 words or 1,300 lines of text; reply briefs must not exceed 7,000 words or 650 lines of text).

[ ] 2. The attached brief is **not** subject to the type-volume limitations of Fed.R.App.P. 32(a(7)(B) because

[ ] This brief complies with Fed.R.App.P 32(a)(1)-(7) and is a principal brief of no more than 30 pages or a reply brief of no more than 15 pages.

or

[ ] This brief complies with a page or size-volume limitation established by separate court order dated _____ and is

[ ] Proportionately spaced, has a typeface of 14 points or more and contains _____ words,

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[ ] Monospaced, has 10.5 or fewer characters per inch and contains __ pages or __ words or __ lines of text.

[ ] 3. Briefs in **Capital Cases**.
This brief is being filed in a capital case pursuant to the type-volume limitations set forth at Circuit Rule 32-4 and is

[ ] Proportionately spaced, has a typeface of 14 points or more and contains _____ words (opening, answering and the second and third briefs filed in cross-appeals must not exceed 21,000 words; reply briefs must not exceed 9,800 words).

or is

[ ] Monospaced, has 10.5 or fewer characters per inch and contains __ words or __ lines of text (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 75 pages or 1,950 lines of text; reply briefs must not exceed 35 pages or 910 lines of text).

☐ 4. **Amicus Briefs.**

☐ Pursuant to Fed.R.App.P 29(d) and 9th Cir.R. 32-1, the attached amicus brief is proportionally spaced, has a typeface of 14 points or more and contains 7,000 words or less,

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☐ Monospaced, has 10.5 or few characters per inch and contains not more than either 7,000 words or 650 lines of text,

or is

☐ Not subject to the type-volume limitations because it is an amicus brief of no more than 15 pages and complies with Fed.R.App.P. 32 (a)(1)(5).

12/28/15
Dated

/s/ Noreen P. Skelly
Noreen P. Skelly
Deputy Attorney General

CERTIFICATE OF SERVICE

Case Name: **Livingwell Medical Clinic, Inc., et al. v. Kamala Harris, et al.** No. **15-17497**

I hereby certify that on December 28, 2015 I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

OPPOSITION TO EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

I further certify that some of the participants in the case are not registered CM/ECF users. On December 28, 2015 I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

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Defendant

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 28, 2015, at Sacramento, California.

Tracie Campbell	/s/ Tracie Campbell
Declarant	Signature

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