15-17517

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

A WOMAN'S FRIEND PREGNANCY RESOURCE CLINIC, et al.,

Appellants,

v.

KAMALA HARRIS, Attorney General of the State of California, in her Official Capacity,

Appellee.

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

No. 2:15-cv-02122-KJM-AC
The Honorable Kimberly J. Mueller, Judge

APPELLEE'S BRIEF

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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] As in the companion case *LivingWell Medical Clinic, Inc. v. Harris*, No. 15-17497, Appellants challenge California's legislative response to these practices. In addition to free speech arguments that echo those offered by the appellants in *LivingWell*, Appellants claim the legislation violates the Free Exercise Clause. This additional argument fails, as explained below.

Assembly Bill No. 775, also known as the Reproductive FACT (Freedom, Accountability, Comprehensive Care, and Transparency) Act, effective January 1, 2016, requires medical clinics licensed by the State of California that provide pregnancy-related services to give notice to their patients that publicly-funded family-planning programs (including contraception, prenatal care, and abortion) are available to patients.[2] The

[1] Assem. Comm. on Health, at 3. Appellants' Excerpts of Record ("ER") 164.

[2] Licensed primary care clinics enrolled as Medi-Cal providers and as providers in the Family Planning, Access, Care, and Treatment program are (continued…)

information contained in the notice is not subject to factual dispute, and does not promote or disparage any particular practice or form of reproductive healthcare. The Legislature found that the notice is "[t]he 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 medical clinics providing pregnancy-related medical services. They are opposed to providing the notice required by the Act. Appellants sought an injunction preventing the Act from taking effect until after this action is fully litigated, claiming that mandated distribution of the notice would infringe upon their First Amendment free speech and free exercise rights.

The district court denied the motion for preliminary injunction, holding that while Appellants may have raised serious questions going to the merits of their First Amendment free speech claim, they were unlikely to succeed on the merits. The district court also held that Appellants were unlikely to succeed on the merits of their First Amendment free exercise claim.

(…continued)
exempt from the Act's notice provisions, because such clinics themselves provide such services at public expense. Assem. Comm. on Judiciary, Analysis of Assembly Bill No. 775, at 4, 8-9. ER 172, 176-177.

[3] Assem. Bill No. 775, § 1(a)-(d). ER 207-208.

The district court also determined that an injunction would cause harm by undermining California's legislative efforts to ensure that women possess information necessary to make informed reproductive health care decisions in a timely manner. The district court found that while Appellants would suffer irreparable harm in the absence of a preliminary injunction, the harm was not sufficient to tip the balance of hardships in their favor. While Appellee disagrees that Appellants would suffer cognizable harm, the district court in any case correctly determined that the balance of hardships and the public interest strongly counsel in favor of upholding AB 775.

Because the district court's determination that Appellants are not entitled to a preliminary injunction is correct, this Court should affirm the order denying the motion for preliminary injunction.

JURISDICTIONAL STATEMENT

The district court had federal question jurisdiction under 28 U.S.C. § 1331, and this Court has jurisdiction under 28 U.S.C. § 1292(a)(1) to review the district court's order denying the motion for preliminary injunction.

ISSUES PRESENTED

Whether the district court erred when it denied Appellants' motion for preliminary injunction based on its determinations that:

1. The notice requirement constitutes a permissible regulation of professional speech in the context of pregnancy-related medical clinics licensed by the California Department of Public Health;

2. The notice requirement is a neutral law of general applicability; and

3. The public interest weighs against the injunctive relief sought.

STATEMENT OF THE CASE

I. THE REPRODUCTIVE FACT ACT

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] According to the legislative findings:

> 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 every year and one half of these pregnancies are unintended. Yet, at the moment they learn that they are

[4] Assem. Bill No. 775, § 1(a)-(d). ER 66-67.

> pregnant, thousands of women remain unaware of the public programs available to provide them with contraception, health education and counseling, family planning, prenatal care, abortion, or delivery.[5]

The Reproductive FACT Act's legislative history also describes the nearly 200 licensed and unlicensed crisis pregnancy centers (CPCs) operating in California "whose goal is to interfere with women's ability to be fully informed and exercise their reproductive rights" while posing as full-service women's health clinics. The CPCs' principal aim is to discourage or prevent women from seeking abortions, and they do so through "intentionally deceptive advertising and counseling practices [that] often confuse, misinform, and even intimidate women from making fully-informed, time-sensitive decisions about critical health care."[6]

To address this conduct, and to fulfill the Legislature's goal to inform women of these resources in a timely manner, 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

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[5] Assem. Bill No. 775, § 1(a)-(d). ER 66-67.

[6] Assem. Comm. on Health, Analysis of Assembly Bill No. 775, at 3. ER 34.

§ 123471(a) & (b). This case involves only the requirements applicable to licensed facilities.

Under the Act, a "licensed covered facility" is one "licensed under Section 1204 [of the Health & Safety Code] 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] For a medical clinic to be licensed, it must provide diagnostic, therapeutic, radiological, laboratory, or other services for the care and treatment of patients in the clinic, or it must arrange for such services with other licensed, certified, or registered providers. Cal. Code Regs. tit. 22, § 75026.

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].

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

§ 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). The Legislature determined that the notice requirement is the most effective way to ensure that women quickly obtain the information they need to make timely reproductive decisions:

> The most effective way to ensure that women quickly obtain the information and services they need to make and implement timely reproductive decisions is to ensure licensed health care facilities that are unable to immediately enroll patients into the Family PACT and Medi-Cal programs advise each patient at the time of her visit of the various publicly funded family planning and pregnancy-related resources available in California and the manner in which to directly and efficiently access those resources.[8]

The Act supplements the State's other efforts to advise California women of available reproductive health programs.[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

[8] Assem. Bill No. 775, § 1(d). ER 67.

[9] Assem. Bill No. 775, § 1(a)-(d). ER 66-67.

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).

II. APPELLANTS

Appellants are three religiously-affiliated entities that are licensed by the California Department of Public Health to provide health services. They maintain that they are subject to the Act as "licensed covered facilities," and that they oppose the Act's application to them.

A Woman's Friend Pregnancy Resource Clinic, a California religious non-profit corporation under § 501(c)(3) of the Internal Revenue Code, is licensed by the California Department of Public Health. ER 282. According to Carol Dodds, the clinic's Chief Executive Officer, the clinic's "express" purpose is to provide alternatives to abortion for women experiencing unplanned pregnancies. ER 282.

The clinic offers medical consultations, pregnancy testing, ultrasound examinations, education related to sexually transmitted diseases, parental education, nutrition information, fetal development education, medical referrals, and other practical support related to pregnancy. ER 284-294, 340-341. The clinic neither performs abortions nor refers patients for an abortion. ER 292.

Crisis Pregnancy Center of Northern California is also a religious non-profit corporation under § 501(c)(3) of the Internal Revenue Code, and is also licensed by the California Department of Public Health. ER 297, 302, 343. Like A Woman's Friend Pregnancy Resource Clinic, Crisis Pregnancy Center of Northern California identifies its purpose as providing woman alternatives to abortion. ER 297-305, 343-345. The clinic offers medical consultations, pregnancy testing, and ultrasound examinations. ER 297-305, 343-345. The clinic neither performs abortions nor refers patients for an abortion. ER 297, 343-345.

Alternatives Women's Center is likewise a California religious non-profit corporation under § 501(c)(3) of the Internal Revenue Code, licensed by the California Department of Public Health. ER 272. Again, the primary purpose of the clinic is to offer pregnant women an alternative to abortion.

ER 272-280, 345-347. The clinic offers pregnancy tests, ultrasounds, counseling and emotional support. ER 272- 280, 345-347.

STANDARD OF REVIEW

Review of an order denying a motion for preliminary injunction is "limited and deferential;" the order will be affirmed absent an abuse of discretion. *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003) (en banc) (per curiam). Thus, when the district court applies the correct legal rule to the relief requested, this Court will reverse "only when the district court reaches a result that is illogical, implausible, or without support in the inferences that may be drawn from the record." *N.D. ex rel. Parents Acting as Guardian Ad Litem v. Haw. Dep't of Educ.*, 600 F.3d 1104, 1111 (9th Cir. 2010). This Court will not reverse the district court simply because it "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, Inc.* 686 F.2d 750, 752 (9th Cir. 1982).

SUMMARY OF ARGUMENT

The district court correctly denied Appellants' motion for a preliminary injunction based on its determination that Appellants are not likely to succeed on the merits of their First Amendment free speech and free

exercise claims, that the balance of equities did not tip in their favor, and that an injunction is not in the public interest. See ER 1-59.

In determining that Appellants were unlikely to prevail on their First Amendment free speech claim, the district court correctly determined that the Act's notice requirement constitutes a permissible regulation of professional speech, imposed in the context of a professional relationship that is subject to the state's regulation as a function of licensure. ER 33-47. The district court's conclusion is correct.

In determining that Appellants were unlikely to prevail on their First Amendment free exercise claim, the district court correctly determined that the Act is operationally neutral and generally applicable to licensed covered facilities. ER 48-54. This, too, is correct.

Additionally, the district court did not abuse its discretion in weighing the equities and concluding that the public interest does not weigh in favor of injunctive relief.

Enjoining the Act would have harmed the millions of California women who "are in need of publicly funded family planning services, contraception services and education, abortion services, and prenatal care and delivery," but are unaware of the public programs available to provide

them with those vital services.[10] It would have prevented those women in California who seek professional pregnancy-related goods and services from Appellants, or other licensed pregnancy clinics, from receiving a full range of truthful information necessary to make informed decisions about their medical care. Under these circumstances, the district court did not abuse its discretion in denying Appellants' motion for preliminary injunction. This Court should affirm the district court's order.

ARGUMENT

I. APPELLANTS FAILED TO DEMONSTRATE A LIKELIHOOD OF SUCCESS ON THE MERITS

The district court correctly concluded that the Reproductive FACT Act's notice requirement is a regulation of professional speech that will be upheld under an intermediate level of scrutiny. The district court also correctly concluded that as a neutral law of general applicability, its provisions did not offend the First Amendment's free exercise clause.

A. The Notice Is a Permissible Regulation of Professional Speech

This Court has established that a sliding scale applies to the review of speech restrictions imposed on licensed health care professionals. *Pickup v.*

[10] Assem. Bill No. 775, § 1(b). ER 207-208.

Brown, 740 F.3d 1208, 1227 (9th Cir. 2014). Where the professional "is engaged in a public dialogue" via public advocacy, "First Amendment protection is at its greatest." *Id.* at 1227. At the other end of the continuum is regulation of professional *conduct*, where the government's regulatory power is greatest, and First Amendment protection weakest. *Id.* at 1229. 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; see also *King v. Governor of the State of New Jersey*, 767 F.3d 216, 232-235 (2014) (departing from *Pickup's* analysis of sexual orientation change therapy as conduct rather than professional speech but agreeing that state regulation of professional speech is subject to intermediate scrutiny if it advances client protection).

Based on the limited record before it, the district court correctly located the Reproductive FACT Act disclosure at the mid-point of the *Pickup* continuum because it concerns the provision of medical services by a licensed clinic. ER 37-39. That the Act may be complied with by providing the required notice in the patient waiting room—rather than as part of the physician's examination—does not remove the disclosure from the ambit of professional speech. On that basis, the district court correctly applied

intermediate scrutiny to conclude that Appellants were unlikely to show any violation of their free speech rights. ER 47.

1. The Notice Is Provided in the Context of a Professional Relationship

Pursuant to its police power, the State may regulate medical professions. *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."). The First Amendment permits the state leeway to regulate professionals to protect the health 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). When professionals, by virtue of their state-issued licenses, form relationships with clients or patients, the purpose of those relationships is to advance the interest and welfare of the client or patient, rather than to contribute to a public debate. *See Pickup v. Brown*, 740 F.3d at 1228-29 (9th Cir. 2014). 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 by the Department of Public Health pursuant to 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. ER 35-36. These and other forms of state regulation of such clinics are routine and expected by those who seek medical services. California has the authority and responsibility 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.

Appellants accept responsibility for providing medically-supervised treatment for patients, pursuant to their California licenses. The district court did not abuse its discretion in finding that the notice is a permissible regulation of professional speech: the notice is required only in the context of the provision of services to women seeking professional medical attention from licensed medical providers.

Appellants contend that the Act cannot be a professional speech regulation because it is implemented such that the notice is delivered to a woman before she meets a doctor or nurse—for instance, when the notice is posted in the waiting room where women wait to see the clinic's healthcare professionals. Appellants are incorrect for two reasons.

First, it is up to Appellants to decide whether they wish to provide the required written disclosure to patients in the waiting room or later in the course of a physician examination. If Appellants believe it would be less burdensome for the clinic's licensed physician to provide the disclosure to each woman, there is nothing in the Act preventing them from doing so.

Second, it is not dispositive for First Amendment purposes whether the disclosure is provided by clinic staff or by a physician. Appellants acknowledge that they exercise judgment on behalf of their patients in a variety of ways. They offer their patients pregnancy testing and verification, limited obstetrical ultrasounds, pregnancy options education and consultation, STI/STD testing, education and treatment, and counseling and support, both emotional and material. ER 276-278, 284-286, 300. "A holistic (whole person) approach to healthcare is followed using PIESS [**P**hysical (Medical needs, physical needs), **I**ntellectual, **E**motional, psycho-**S**ocial and **S**piritual] assessment." ER 276.

The fact that some people who are not professional clients may view a required notice does not raise a First Amendment bar to requiring such notices for the benefit of professional clients. That is why the State may, for instance, require pharmacists to post notices alerting their patients as to important information, notwithstanding the notice will be visible not only to patients purchasing prescription drugs but also to delivery personnel, cleaning staff, and those buying other goods. *See* Cal. Business & Prof. Code § 4122(a) (requiring pharmacies to publicly post notice regarding, inter alia, "the availability of prescription price information" and "the possibility of generic drug product selection"); Cal. Code. Reg. tit. 16, § 1707.6 (requiring public notice about the availability of interpreter services and about the customer's right to receive large-font drug labels).

2. The Court Correctly Applied Intermediate Scrutiny in its Professional Speech Analysis

The district court correctly applied intermediate scrutiny in its analysis of the notice as a regulation of professional speech. To survive intermediate scrutiny, the Act's notice provision must directly advance a substantial governmental interest and be drawn to achieve that interest. *Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653 at 2667-68 (2011). "There must be a fit between the Legislature's ends and the means chosen to accomplish those

ends." *Id.* at 2668 (citation and quotation marks omitted). This level of scrutiny seeks to ensure "not only that the State's interests are proportional to the resulting burdens placed on speech but also that the law does not seek to suppress a disfavored message." *Id.*

The stated purpose of the Act is to ensure California women know their reproductive rights, and the healthcare resources available to them, when they make their personal reproductive healthcare decisions. ER 207-208. "The State has a strong interest in protecting a woman's freedom to seek medical and counseling services in connection with her pregnancy." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 767 (1994). The Federal Affordable Care Act has made millions of Californians—53 percent of them women—newly eligible for the State's Medi-Cal program.[11] More than 700,000 California women become pregnant each year, and approximately half of those pregnancies are unintentional.[12] The Legislature found that thousands of California women remain unaware of the public health programs available to them.[13] Accordingly, the Legislature correctly

[11] Assem. Comm. on Health, at 3. ER 164.

[12] AB 775, § 1. ER 207-208.

[13] *Id.*

recognized the State's compelling interest in ensuring that California women receive accurate and timely information about healthcare services.

The district court determined that the Act's notice provision survives intermediate scrutiny because it directly advances California's interest in informing women of the availability of publicly-funded health care resources and the manner in which they may access those resources. ER 43-44. The incontrovertible information contained in the notice is no more than a neutral list of reproductive health care services available. And, the inclusion of the telephone number for the local county services office provides women with a direct and efficient method of accessing the government body that will enable them to take advantage of those services. The notice goes no further than necessary to meet these important goals. Thus, the district court did not abuse its discretion in determining that the Act's notice provision was properly drawn to achieve the government's interest in keeping women informed of the medical information they needed.

Nor may it be argued that the Act cannot survive intermediate scrutiny because the notice provisions are too broadly drawn to combat deceptive practices by some crisis pregnancy centers. Legislative findings do indeed demonstrate that despite their professional obligations, some crisis pregnancy clinics are unwilling to provide incontrovertibly truthful

information to their patients that is relevant to fully-informed medical decision making. ER 215-216. In addition, the Legislature found that many women are unaware of the resources and services available to them when they make time-sensitive decisions about their medical care. ER 207-210. The Act addresses such findings narrowly by limiting the notice to truthful, incontrovertible information, and provides facilities with alternatives as to the time and manner of delivery. *Cf. Stuart v. Camnitz*, 774 F.3d 238, 252 (4th Cir. 2014) (holding provision of North Carolina's Woman's Right to Know Act requiring physicians to perform ultrasound, display sonogram, and describe fetus to women seeking abortions failed to satisfy intermediate scrutiny because the disclosure could not be "divorce[d] … from its moral or ideological implications" and was required at a moment "when the intended recipient is most vulnerable"—partially unrobed and shortly before the time of decision.).

B. The Notice Is a Permissible Regulation of Commercial Speech

The commercial speech doctrine provides an independent basis on which to conclude Appellants have not met their burden to demonstrate a likelihood of success on the merits. Here, the district court determined that Appellants' speech would not be characterized as commercial speech. ER

27-33. However, the district concluded otherwise in the related matter of *LivingWell Medical Clinic, et al. v. Kamala Harris, et al.* (9th Cir. 15-17497) (N.D. Cal 4:15-cv-04939-JSW). There, the district court determined that the Act's mandated notice may be commercial speech, providing information to consumers of pregnancy-related medical services, and concluded that the notice could be a permissible regulation of commercial speech.[14]

The Constitution accords the government greater deference to regulate commercial speech, relative to other safeguarded forms of expression, because such speech "occurs in an area traditionally subject to government regulation." *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 562 (1980). This is especially true when the government action is intended to increase, rather than restrict, the free flow of accurate information to consumers. *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 646 (1985). For that reason, although restrictions on commercial speech are generally subject to intermediate scrutiny, *Central Hudson*, 447 U.S. at 563-566, the Supreme Court has applied rational basis review where the challenged law

[14] *LivingWell Medical Clinic, et al. v. Kamala Harris, et al.* (9th Cir. 15-17497). Appellants' ER 16-17.

compels the disclosure of only factual and uncontroversial information, *Zauderer*, 471 U.S. at 651. This deference benefits the consumer, whose interest in the free flow of commercial information may be as keen "if not keener by far, than his interest in the day's most urgent political debate." *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 763 (1976); *see Zauderer*, 471 U.S. at 646 (1985).

1. Appellants' Speech May Constitute Commercial Speech

Under the governing test from *Bolger v. Youngs Drug Products Corp*, 463 U.S. 60 (1983), three factors are relevant when determining whether speech may be characterized as commercial: (1) whether the speech is admittedly advertising; (2) whether the speech references a specific product or service; and (3) whether the speaker has an economic motive for engaging in the speech. *Am. Acad. of Pain Mgmt. v. Joseph*, 353 F.3d 1099, 1106 (9th Cir. 2004) (citing *Bolger*, 463 U.S. at 66-67.) It is not necessary that each of the characteristics "be present in order for speech to be commercial," *Bolger*, 463 U.S. at 67 n.14, although "[t]he combination of all of these characteristics … provides strong support for the … conclusion that [the speech is] properly characterized as commercial speech," *id.* at 67.

The first *Bolger* factor raises no bar to the speech at issue here being treated as commercial speech. Courts commonly apply the commercial speech doctrine to speech that is not traditional advertising, on the basis that "the precise form of the speech does not determine whether it qualifies as 'commercial speech.'" *National Ass'n of Manufacturers v. S.E.C.*, 800 F.3d 518, 534-35 (D.C.Cir. 2015) (corrective disclosures on corporate websites are commercial speech); *see also United States v. Philip Morris USA, Inc.*, 566 F.3d 1095 (D.C.Cir. 2009) (per curiam) (similar); *Riley v. National Federation of the Blind of North Carolina, Inc.* (1988) 487 U.S. 781, 796 (assuming, without deciding, that economically-motivated speech outside the context of advertising may qualify as commercial speech). As the District of Columbia Circuit explained, commercial speech "include[s] material representations about the efficacy, safety, and quality of the advertiser's product, and other information asserted for the purpose of persuading the public to purchase" (or, given the corrective disclosures at issue, not to purchase) "the product." *National Ass'n of Manufacturers*, 800 F.3d at 535 (quoting *Philip Morris USA*, 566 F.3d at 1095). The fact that the Act's disclosures need not occur in the course of traditional advertising thus is not dispositive because the required disclosures occur at the location and approximate time when Appellants are providing or about to

provide their services to clients—and, around the time when one clinic claims to provide its own service disclosures to patients. ER 276.

The second *Bolger* factor is also satisfied: the Act's disclosure references specific reproductive health services. ER 209.

Appellants acknowledge that they advertise to prospective patients a variety of related commercial goods and services: pregnancy testing; first trimester obstetrical ultrasounds; sexually transmitted diseases testing, education, and treatment; maternity clothes and baby supplies through thrift stores. ER 271-305. Thus, the disclosure is likely to be perceived as commercial expression by the women who visit Appellants' clinics.

Appellants state that they offer their services free of charge and would likely contend that they have no economic motive for their speech. Even if true, such would not be dispositive in analyzing the third *Bolger* factor, as other courts to consider this question have concluded.

Appellants have situated themselves in the commercial marketplace. They acknowledge that they advertise to prospective patients a variety of goods and services. ER 271-305. The clinic-provided goods and services fulfill their patients' commercial needs and function as substitutes for goods and services that other operators provide in the commercial marketplace. As the Fourth Circuit has reasoned, a speaker's lack of a profit motive cannot be

dispositive of the commercial speech question, because "context matters." *Greater Baltimore Center for Pregnancy Concerns, Inc. v. Baltimore*, 721 F.3d 264, 286 (4th Cir. 2013). "[T]hat context includes the viewpoint of the listener, for '[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.'" *Id.* at 286 (citing *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*, 447 U.S. 557, 561-62.). Similarly, in *Fargo Women's Health Organization, Inc. v. Larson*, 381 N.W.2d 176 (N.D. 1986), an argument was made that the advertising of a health clinic that offered its services for free could not be considered commercial speech. *Id.*, at 180. The North Dakota Supreme Court acknowledged some uncertainty about whether the clinic was receiving money in exchange for the clinic's services. *Id.* Nonetheless, the court concluded that whether the clinic's services were offered for free was not dispositive of whether the clinic's speech was commercial, because the clinic's advertisements were placed into a commercial context in order to promote the clinic's services and solicit patronage. *Id.*, at 181.

On this record, the Act could be a permissible regulation of commercial speech.

2. The Notice Is Reviewed Under the Rational Basis Test Because it Includes Only Factual and Uncontroversial Information.

The Supreme Court has applied rational basis review where a challenged law compels the disclosure of only factual and uncontroversial information. *Zauderer*, 471 U.S. at 651; *see Milavetz, Gallop & Milavetz, P.A. v. U.S.*, 559 U.S. 229, 250 (2010) (rational basis review proper where compelled disclosures require only accurate statement of advertiser's legal status and the character of assistance provided.)

The information that the Reproductive FACT Act requires licensed covered facilities to provide is not subject to debate. Although people certainly may disagree about whether California law *should* cover reproductive healthcare services, Appellants do not dispute that California *does* cover those services. Nor do Appellants dispute that particular county health departments can be reached at the phone numbers to be listed in the notice. Indeed, the required disclosure is akin to the type of "accurately and readily determined" facts that would be subject to judicial notice because their accuracy cannot be reasonably questioned. Fed. R. Evid. 201(b)(2); *see, e.g.*, *Reese v. Malone*, 747 F.3d 557, 570 (9th Cir. 2014) (taking judicial notice of undisputed information made available on a public website); *Matthews v. National Football League Management Council*, 688 F.3d

1107, 1113 (9th Cir. 2012) (taking judicial notice that a particular football team played 13 games in California). The disclosure thus does not raise the sorts of concerns that could be raised regarding required statements of opinion, *United States v. United Foods, Inc.*, 533 U.S. 405, 411 (2001), advice on "metaphysical matters," *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, 530 F.3d 724, 741 (8th Cir. 2008), or statements taking sides in an expert debate, *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, 686 F.3d 889, 900 (8th Cir. 2012) (acknowledging "degree of 'medical and scientific uncertainty'" regarding link between abortion and suicide).

Under the rational basis standard, the notice is constitutional because it directly advances the government interest in keeping pregnant women fully informed of their inherently time-sensitive options. Indeed, as discussed above, the statute directly advances important goals in a manner that would allow it to survive intermediate scrutiny as well. Permitting the State to further such disclosure is congruent with the overall purposes of the First Amendment and the commercial speech doctrine, since this is not a statute that threatens to inhibit the free flow of information. To the contrary, by ensuring that women receive, in a timely manner, non-ideological background information relevant to their immediate circumstances, the

notice furthers the First Amendment goal of the discovery of truth and contributes to the efficiency of the marketplace of ideas.

Finally, the Reproductive FACT Act is not subject to the "heightened judicial scrutiny" under which content- and speaker-based restrictions on commercial speech might be analyzed. *Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653, 2664; *see also Retail Digital Network, LLC v. Appelsmith*, 810 F.3d 638, 648 (9th Cir. 2016). In *Sorrell*, Vermont enacted a ban on the sale, disclosure, and use of information that identified physicians and the prescription medications they prescribed to their patients. But the ban was a narrow one, designed to prevent pharmaceutical manufacturers from using the information to market their brand-name drugs, while making the information available to almost anyone else. 131 S. Ct. at 2664; *see Id.* at 2668 ("[t]he explicit structure of the statute allows the information to be studied and used by all but a narrow class of disfavored speakers"). That meant both that the Act was subject to heightened scrutiny, and that it was not appropriately tailored to survive such scrutiny.

Here, by contrast, the Reproductive FACT Act requires *all* licensed medical clinics providing pregnancy-related services to provide the pertinent notice. The sole exception—for clinics enrolled as Medi-Cal providers or as providers in the Family Planning, Access, Care, and Treatment program—

are exempt for a good reason: because those clinics themselves provide such services at public expense, providing the notice to patients already at those clinics would be superfluous.[15] Consequently, even assuming, *arguendo*, that the notice was subject to heightened scrutiny—which Appellees do not concede is warranted—the notice would survive such scrutiny.

C. Appellants Failed to Demonstrate the Likelihood of Success on Their First Amendment Free Exercise Claim

In determining that Appellants were unlikely to prevail on their First Amendment free exercise claim, the district court correctly determined that the Reproductive FACT Act is operationally neutral and generally applicable to licensed covered facilities. ER 48-54. The district court's conclusion is correct.

A rationally based, neutral law of general applicability does not violate the right to free exercise of religion even where the law incidentally burdens a religious belief or practice. *Employment Division v. Smith*, 494 U.S. 872, 879 (1990); *see also Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993); *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1075 (9th Cir. 2015). "The right of free exercise does not relieve an

[15] See Assem. Comm. on Judiciary, Analysis of Assembly Bill No. 775, at 4, 8-9. ER 42, 46-47.

individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." *Smith*, 494 U.S. at 879 (internal quotations and citations omitted).

The Reproductive FACT Act is a rationally based, neutral law of general applicability. It requires licensed covered facilities to provide factual information about the availability of pregnancy-related public health services. The Act was based on findings 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.[16] This is particularly true in light of the expansion of the Affordable Care Act, which made millions of Californians—more than half of them women—newly eligible for services provided through the Medi-Cal program.

The Act exempts some licensed clinics from its notice provisions. Those exemptions do not, however, undermine its general applicability. Section 12472(c)(2) exempts clinics conducted and operated by the United States or any of its departments and licensed primary care clinics enrolled as

[16] *See* Assem. Bill No. 775, § 1(a)-(d). ER 207-208.

a Medi-Cal provider and a provider in the Family Planning, Access, Care, and Treatment Program (FPACT). The legislative history explains the reason for the exemption. According to the Assembly Committee Judiciary, "a licensed primary care clinic that is both a Medi-Cal provider and a Family PACT provider" already offers "the full continuum of health care services." Assem. Comm. on Judiciary, Analysis of Assembly Bill No. 775, at 9. More specifically,

> [u]nder Medi-Cal, a patient is covered for pregnancy-related services, maternity and new born care, prenatal care, and emergency and abortion services. Under Family PACT, a patient is covered for comprehensive clinical family planning services, including but not limited to methods and services to limit or enhance fertility (including contraceptives); natural family planning; abstinence methods; limited fertility management; preconception counseling; maternal and fetal health counseling; general reproductive health care (including diagnosis and treatment of infections and conditions, including cancer, that threaten reproductive capability); medical family planning treatment; and family planning procedures.

Id. Thus, because the entire spectrum of services, as specified in the licensed facilities notice requirement, is already provided by a Medi-Cal and Family PACT provider, a notice telling such clinics' patients how to find those services would serve little purpose. *Id*.; *cf. Stormans*, 794 F.3d at 1077-1078 (holding Washington's requirement that all pharmacies deliver Plan B prescriptions, notwithstanding any religious, moral, or personal

objection by the owners, was neutral and generally applicable even though statute provided certain non-religious exemptions).

Even though the Act is facially neutral, Appellants contend that the Legislature impermissibly focused on religious entities, specifically "crisis pregnancy clinics," singling them out for their refusal to perform abortions or provide referrals for such services. Appellants' Brief, 42-46; *see Church of the Lukumi Babalu Aye*, 508 U.S. at 546 (if "the object of the law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, and must undergo the most rigorous scrutiny"). But where *Church of the Lukumi Babalu Aye* concerned a "religious gerrymander" that drew a fence around a particular religious practice without regard to the legislation's otherwise neutral purposes, 508 U.S. at 535, the Act here applies to all licensed facilities, regardless of religious affiliation, that have a primary purpose of providing family planning or pregnancy-related services and that are not otherwise capable of enrolling women in the State's Medi-Cal program. *Cf. Central Rabbinical Congress of U.S. & Canada v. New York City Dept. of Health & Mental Hygiene* (2d Cir. 2014) 763 F.3d 183, 186 (finding a Free Exercise violation where the Regulation applied only to specific religious conduct associated with a small

percentage of infection cases and did not address secular conduct associated with a much larger percentage of infection).

The district court did not abuse its discretion in concluding that Appellants failed to demonstrate a likelihood of success on the merits of their First Amendment free exercise claim. This Court should affirm that determination.

II. THE BALANCE OF HARMS AND THE PUBLIC INTEREST WEIGHED HEAVILY AGAINST AN INJUNCTION PENDING APPEAL

The third and fourth *Winter* factors required Appellants to show in the court below "that the balance of equities tips in [their] favor, and that an injunction is in the public interest." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008); *see Klein v. City of San Clemente*, 584 F.3d 1196, 1201 (9th Cir. 2009) (moving party has burden of establishing elements necessary to obtain injunctive relief). Where, as here, the government is a party, these two factors "merge" into a single inquiry. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) *cert. denied*, 134 S. Ct. 2877.

The district court properly weighed the equities and reasonably found that the public interest weighs against the injunctive relief sought. If the court had enjoined the Act, it would have harmed the millions of California

women who "are in need of publicly funded family planning services, contraception services and education, abortion services, and prenatal care and delivery," but are unaware of the public programs available to provide them with those vital services.[17] It also would have prevented those women in California who seek professional pregnancy-related goods and services from Appellants, or other licensed pregnancy clinics, from receiving an incontrovertible statement about the availability of publicly-funded care at the moment the Legislature determined it was most necessary for women to receive it. The district court correctly declined to interfere with the Legislature's intention that California women eligible for free or low cost publicly-funded family planning services have access to such care and that those women have timely and accurate information when they seek family-planning or pregnancy-related services from licensed pregnancy clinics.

The district court also correctly found that Appellants failed to establish an equivalent harm, much less harm that outweighs the fact that "any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977);

[17] Assem. Bill No. 775, § 1(b). ER 207-208.

see also Clark v. Coye, 60 F.3d 600, 603-04 (9th Cir. 1995) ("[d]ue to concerns of comity and federalism, the scope of federal injunctive relief against an agency of state government" is carefully scrutinized). Indeed, the Act does not prohibit Appellants from voicing criticisms of the publicly-funded services listed in the notice. Nor does it require them to provide abortions or even, as Appellants claim, refer patients to clinics that do provide such services. Under the Act, Appellants remain free to advance their viewpoint or express any kind of opinion.

Appellants argue that the balance of equities tips in their favor simply because this case involves First Amendment concerns. Not so. Even though in most cases the public interest favors the exercise of First Amendment rights, "where an injunction is asked which will adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate, the court may [then] in the public interest withhold relief until a final determination of the rights of the parties, even though the postponement may be burdensome to the plaintiff." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312-13 (1982). Enjoining the Act during the pendency of litigation would have adversely affected the ability of Californian women who are or may be pregnant from accessing neutral,

factual information vital to their time-sensitive reproductive decisions—harm for which no bond could have compensated.

Accordingly, the district court did not abuse its discretion in concluding that Appellants failed to carry their burden to show that issuing an injunction was in the public interest. This Court should affirm that decision.

CONCLUSION

For all of the reasons set forth above, this Court should affirm the district court's denial of Appellants' motion for preliminary injunction.

Dated: February 17, 2016

Respectfully submitted,

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15-17517

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

A WOMAN'S FRIEND PREGNANCY RESOURCE CLINIC, et al.,

Appellants,

v.

KAMALA HARRIS, Attorney General of the State of California, in her Official Capacity,

Appellee.

STATEMENT OF RELATED CASES

The following related case is pending: *LivingWell Medical Clinic, et al v. Kamala Harris, et al (*9th Cir. 15-17497) (N.D. Cal 4:15-cv-04939-JSW).

Dated: February 17, 2016

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 15-17517

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 7,169 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

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[ ] 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.

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

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This brief is being filed in a capital case pursuant to the type-volume limitations set forth at Circuit Rule 32-4 and is

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☐ 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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☐ 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).

February 17, 2016
Dated

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

CERTIFICATE OF SERVICE

Case Name:	**A Woman's Friend Pregnancy Resource Clinic, et al. v. Kamala Harris (APPEAL)**	No.	**15-17517**

I hereby certify that on February 17, 2016, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

APPELLEE'S BRIEF

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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 February 17, 2016, at Sacramento, California.

Janice Titgen	s/ Janice Titgen
Declarant	Signature

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ADDENDUM TO BRIEFS

PURSUANT TO CIRCUIT RULE 28-2.7

Pertinent constitutional provisions, treaties, statutes, ordinances, regulations or rules.

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U.S.C.A. Const. Amend. I-Full text

AmendmentI. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances

Currentness

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

<This amendment is further displayed in three separate documents according to subject matter>

<see USCA Const Amend. I, Religion>

<see USCA Const Amend. I, Speech>

<see USCA Const Amend. I, Assemblage>

U.S.C.A. Const. Amend. I-Full text, USCA CONST Amend. I-Full text

Current through P.L. 114-114 (excluding 114-92, 114-94, 114-95 and 114-113) approved 12-28-2015

End of Document

Effective: January 1, 2016

West's Ann.Cal.Health & Safety Code § 123470

§ 123470. Short title

Currentness

This article shall be known and may be cited as the Reproductive FACT (Freedom, Accountability, Comprehensive Care, and Transparency) Act or Reproductive FACT Act.

Credits

(Added by Stats.2015, c. 700 (A.B.775), § 3, eff. Jan. 1, 2016.)

West's Ann. Cal. Health & Safety Code § 123470, CA HLTH & S § 123470

Current with urgency legislation through Ch. 1 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

End of Document

Effective: January 1, 2016

West's Ann.Cal.Health & Safety Code § 123471

§ 123471. Definitions; applicability of article

Currentness

(a) For purposes of this article, and except as provided in subdivision (c), "licensed covered facility" means a facility 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 following:

(1) The facility offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant women.

(2) The facility provides, or offers counseling about, contraception or contraceptive methods.

(3) The facility offers pregnancy testing or pregnancy diagnosis.

(4) The facility advertises or solicits patrons with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling.

(5) The facility offers abortion services.

(6) The facility has staff or volunteers who collect health information from clients.

(b) For purposes of this article, subject to subdivision (c), "unlicensed covered facility" is a facility that is not licensed by the State of California and does not have a licensed medical provider on staff or under contract who provides or directly supervises the provision of all of the services, whose primary purpose is providing pregnancy-related services, and that satisfies two or more of the following:

(1) The facility offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant women.

(2) The facility offers pregnancy testing or pregnancy diagnosis.

(3) The facility advertises or solicits patrons with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling.

(4) The facility has staff or volunteers who collect health information from clients.

(c) This article shall not apply to either of the following:

(1) A clinic directly conducted, maintained, or operated by the United States or any of its departments, officers, or agencies.

(2) A licensed primary care clinic that is enrolled as a Medi-Cal provider and a provider in the Family Planning, Access, Care, and Treatment Program.

Credits

(Added by Stats.2015, c. 700 (A.B.775), § 3, eff. Jan. 1, 2016.)

West's Ann. Cal. Health & Safety Code § 123471, CA HLTH & S § 123471

Current with urgency legislation through Ch. 1 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

End of Document

Effective: January 1, 2016

West's Ann.Cal.Health & Safety Code § 123472

§ 123472. Required notice; licensed covered facilities; unlicensed covered facilities

Currentness

(a) A licensed covered facility shall disseminate to clients on site the following notice in English and in the primary threshold languages for Medi-Cal beneficiaries as determined by the State Department of Health Care Services for the county in which the facility is located.

(1) The notice shall state:

"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]."

(2) The information shall be disclosed in one of the following ways:

(A) A public notice posted in a conspicuous place where individuals wait that may be easily read by those seeking services from the facility. The notice shall be at least 8.5 inches by 11 inches and written in no less than 22-point type.

(B) A printed notice distributed to all clients in no less than 14-point type.

(C) A digital notice distributed to all clients that can be read at the time of check-in or arrival, in the same point type as other digital disclosures. A printed notice as described in subparagraph (B) shall be available for all clients who cannot or do not wish to receive the information in a digital format.

(3) The notice may be combined with other mandated disclosures.

(b) An unlicensed covered facility shall disseminate to clients on site and in any print and digital advertising materials including Internet Web sites, the following notice in English and in the primary threshold languages for Medi-Cal beneficiaries as determined by the State Department of Health Care Services for the county in which the facility is located.

(1) The notice shall state: "This facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provision of services."

(2) The onsite notice shall be a sign at least 8.5 inches by 11 inches and written in no less than 48-point type, and shall be posted conspicuously in the entrance of the facility and at least one additional area where clients wait to receive services.

(3) The notice in the advertising material shall be clear and conspicuous. "Clear and conspicuous" means in larger point type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

Credits

(Added by Stats.2015, c. 700 (A.B.775), § 3, eff. Jan. 1, 2016.)

West's Ann. Cal. Health & Safety Code § 123472, CA HLTH & S § 123472

Current with urgency legislation through Ch. 1 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

End of Document

Effective: January 1, 2016

West's Ann.Cal.Health & Safety Code § 123473

§ 123473. Violation of article; civil penalty

Currentness

(a) Covered facilities that fail to comply with the requirements of this article are liable for a civil penalty of five hundred dollars ($500) for a first offense and one thousand dollars ($1,000) for each subsequent offense. The Attorney General, city attorney, or county counsel may bring an action to impose a civil penalty pursuant to this section 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).

(b) The civil penalty shall be deposited into the General Fund if the action is brought by the Attorney General. If the action is brought by a city attorney, the civil penalty shall be paid to the treasurer of the city in which the judgment is entered. If the action is brought by a county counsel, the civil penalty shall be paid to the treasurer of the county in which the judgment is entered.

Credits

(Added by Stats.2015, c. 700 (A.B.775), § 3, eff. Jan. 1, 2016.)

West's Ann. Cal. Health & Safety Code § 123473, CA HLTH & S § 123473

Current with urgency legislation through Ch. 1 of 2016 Reg.Sess. and Ch. 1 of 2015-2016 2nd Ex.Sess.

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