FAMILY ISSUE FACT SHEET

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SB 1324 – ABORTION CLINICS; MEDICATION ABORTIONS

EXECUTIVE SUMMARY

In 2012 the Arizona legislature enacted safety standards to protect women from the dangerous abortion pill. Planned Parenthood filed two separate lawsuits against this common sense measure. SB 1324 clarifies the legislative intent of the law to resolve one of the court cases and allow the other case to move forward so that women's health and safety can be protected.

BACKGROUND

Currently in Arizona, abortion providers do not dispense the dangerous and deadly abortion pill in compliance with the protocol approved by the United States Food and Drug Administration (FDA). The abortion pill, also known as RU-486, Mifeprex, or mifepristone, was approved under a special section of the FDA's rules reserved for drugs that the FDA does not believe can be distributed safely without following certain restrictions.[1] Thus, the FDA approved mifepristone only if it is dispensed following specific guidelines, which are contained in the drug's prescribing information and label.[2]

Yet abortion providers ignore even these most basic safety requirements, cutting corners to cut costs at the expense of women's safety. The protocol approved by the FDA permits use of mifepristone up to 7 weeks gestational age (or 49 days after the woman's last menstrual period). However, Planned Parenthood openly admits – on their website[3] – that they dispense the abortion pill through 9 weeks gestational age (or 63 days after the woman's last menstrual period). Because the risks associated with the abortion pill increase with increasing gestational age, this departure from the protocol approved by the FDA places women in greater danger of facing a serious complication such as infection or hemorrhage.

Legal Background

In 2012 the Arizona legislature passed HB 2036 to require abortion clinics to dispense any abortion medication in compliance with the protocol approved by the FDA. In 2014 Planned Parenthood filed two separate lawsuits (one in federal court and one in state court) challenging the law before Department of Health Services rulemaking could take effect.

The first lawsuit was filed in federal court and made the typical abortion "undue burden" constitutional claims. At the time, both the Fifth and Sixth Circuit Courts of Appeals had ruled that requiring the FDA protocol for medication abortion was completely constitutional and permissible for states to require. In April 2014 Federal District Court Judge David Bury ruled in favor of the State of Arizona, but an immediate appeal to the Ninth Circuit Court of Appeals

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resulted in that ruling being overturned. After an unsuccessful appeal to the U.S. Supreme Court, the case would normally return to Federal District Court for a full trial, but that case has been stayed pending the state court case.

In Planned Parenthood's state court case, Planned Parenthood argued that the legislature unconstitutionally delegated authority away from the legislature by adopting a standard that the FDA could change in the future. Maricopa County Superior Court Judge J. Richard Gama ruled against the State of Arizona in October 2015 and said that because the law does not require medication abortions to be administered according to the FDA protocol "as of the date of the enactment," that the legislature adopted a standard that can change at any time in the future, essentially delegating away its authority.

In lieu of an appeal of Judge Gama's decision, SB 1324 simply clarifies the intent of the legislature that the protocol to be followed is the current protocol as it exists on December 31, 2015. Once passed, SB 1324 will resolve the state court case and allow the federal court case to continue.

TALKING POINTS

- **SB 1324 is a simple clarification of a law already vetted and passed by the legislature in 2012.** Both the Fifth and Sixth Circuit Courts of Appeals have upheld similar laws.

- **Protecting public health and safety is a core function of government.** SB 1324 simply clarifies a 2012 law focused on protecting the health and safety of Arizona women.

- **Abortion providers shouldn't be experimenting with women's lives by using abortion drugs in a way not approved by the FDA.** Once again, abortion providers have demonstrated they are more concerned with their bottom line than with the health and safety of women.

CONCLUSION

The FDA rightfully recognized how dangerous abortion drugs are, which is why it only approved abortion drugs for use with post-marketing restrictions. To ensure abortion providers keep women's health and safety as the foremost concern, SB 1324 clarifies Arizona's 2012 requirement.

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[1] This section is called "Subpart H" and is found at 21 C.F.R. § 314.520 ("Approval with restrictions to assure safe use").
[2] *See* Mifeprex Medication Guide, Danco Laboratories (June 8, 2011), *available at* www.accessdata.fda.gov/drugsatfda_docs/label/2011/020687s014lbl.pdf; Mifeprex (mifepristone) Prescribing Information, Danco Laboratories (July 2005), *available at* www.accessdata.fda.gov/drugsatfda_docs/label/2005/020687s013lbl.pdf.
[3] Planned Parenthood, The Abortion Pill (Medication Abortion), www.plannedparenthood.org/learn/abortion/the-abortion-pill (last visited Feb. 2, 2016).

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