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**Pro hac vice applications forthcoming*

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

ALOHA PREGNANCY CARE AND
COUNSELING CENTER, INC.,

Plaintiff,

v.

DOUGLAS S. CHIN, Attorney General
of the State of Hawaii, in his official
capacity,

Defendant.

CIVIL ACTION NO. _____

COMPLAINT

ADDITIONAL COUNSEL

CARLY F. GAMMILL*

[REDACTED]

ABIGAIL A. SOUTHERLAND*

[REDACTED]

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Plaintiff, Aloha Pregnancy Care and Counseling Center, Inc., by and through its undersigned counsel, brings this Complaint against the Defendant, Douglas S. Chin, his agents, servants, officers, employees, and successors in office and all those persons in active concert and participation with him, and for its Complaint states as follows:

INTRODUCTION

1. This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the constitutionality of an Act known as Hawaii Senate Bill 501, amending Chapter 321 of Hawaii Revised Statutes (hereafter “the Act”) which became effective on July 12, 2017. (A copy of the Act is attached hereto as Exhibit A.) The Act, by requiring Plaintiff to post a government-dictated message it does not wish to communicate, violates Plaintiff’s fundamental rights as guaranteed by the First and Fourteenth Amendments to the United States Constitution, as well as provisions of the Hawaii Constitution.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the federal claims in this action pursuant to 28 U.S.C. §§ 1331 and 1343. The Court has authority to grant injunctive relief under 28 U.S.C. § 1343, and declaratory relief under 28 U.S.C. §§ 2201 and 2202. The Court has authority to grant attorney’s fees under 42 U.S.C. § 1988(b). Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over

Plaintiff's claims under the Hawaii State Constitution.

3. Venue for this action is proper in the United States District Court for the District of Hawaii pursuant to 28 U.S.C. § 1391(b). A substantial part of the actions or omissions giving rise to this case occurred within the District, and the Defendant resides in this district.

IDENTIFICATION OF PARTIES

The Plaintiff

4. Plaintiff, Aloha Pregnancy Care and Counseling Center, Inc. (hereafter "Aloha"), is a Hawaii non-profit corporation under § 501(c)(3) of the Internal Revenue Code. Aloha is located at [REDACTED]

5. The mission of Aloha is to help mothers choose life for their unborn children and to choose eternal life for themselves through the message of Christ's love. Its services include such things as free resources for needy families (clothing for expectant mothers and babies, diapers/wipes, larger equipment for taking care of babies, toys, and books); counseling (pregnancy, crisis pregnancy, post-abortive, parenting, and sexual responsibility); free pregnancy tests, free ultrasounds, and resource referrals for mothers' shelters, charities, insurance, etc.

6. Aloha provides services for approximately 200 clinic clients per year.

7. All of Aloha's services are provided free of charge.

8. Based on its religious principles and beliefs, as well as its view that abstinence is the best way to prevent unwanted pregnancy, specifically outside of marriage, Aloha does not perform, counsel for, provide referrals for, or offer education about contraceptives or abortion, and believes that there are safer and better alternatives to both of these.

9. Aloha is not a licensed medical facility and is not regulated by state health regulations. It uses the services of a volunteer OB/GYN who limits her services to performing ultrasounds and interpreting the results for clients. She does not offer any advice or opinions, does not provide consultations, and does not write prescriptions for clients.

The Defendant

10. Defendant, Douglas S. Chin, is Attorney General of Hawaii, charged with enforcement of the Act. He is sued in his official capacity.

ALLEGATIONS OF FACT

11. On or about May 24, 2017, the Hawaii legislature enacted Senate Bill 501, an Act amending Chapter 321 of the Hawaii Revised Statutes.

12. The Act became effective on or about July 12, 2017.

13. The Act, in pertinent part, provides that “[e]very limited service pregnancy center in the State shall disseminate on-site to clients or patients the following written notice in English or another language requested by client or

patient:

Hawaii has public programs that provide immediate free or low-cost access to comprehensive family planning services, including, but not limited to, all FDA-approved methods of contraception and pregnancy-related services for eligible women.

To apply online for medical insurance coverage, that will cover the full range of family planning and prenatal care services, go to mybenefits.hawaii.gov.

Only ultrasounds performed by qualified healthcare professionals and read by licensed clinicians should be considered medically accurate.”

Exhibit A.

14. In addition, the foregoing notice “shall contain the internet address for online medical assistance applications and the statewide phone number for medical assistance applications.” Exhibit A.

15. One of the “comprehensive family planning services” that Med-Quest pays for, depending on eligibility, but is not specifically named in the notice, is elective abortions. *See* <http://humanservices.hawaii.gov/mqd/quest-overview>.

16. The Act provides that the foregoing notice “shall be disclosed in at least one of the following ways:

(1) A public notice on a sign sized at least eight and one-half inches by eleven inches, written in no less than twenty-two point type, and posted in a clear and conspicuous place within the center’s waiting area so that it may be easily read by individuals seeking services from the center; or

(2) A printed or digital notice written or rendered in no less than fourteen point type that is distributed individually to each patient

or client at the time of check-in for services; provided that a printed notice shall be available to all individuals who cannot or do not wish to receive the notice in a digital format.”

Exhibit A.

17. By its terms, the Act defines a “limited service pregnancy center” as a facility that:

(A) Advertises or solicits clients or patients with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling;

(B) Collects health information from clients or patients; and

(C) Provides family planning or pregnancy-related services, including but not limited to obstetric ultrasound, obstetric sonogram, pregnancy testing, pregnancy diagnosis, reproductive health counseling, or prenatal care.

Exhibit A.

18. That definition of a “limited service pregnancy center,” however, does not include “a health care facility.” Exhibit A.

19. For the purposes of the Act, a “health care facility” means

any facility designed to provide comprehensive health care, including but not limited to hospitals licensed pursuant to chapter 321, intermediate care facilities, organized ambulatory health care facilities, emergency care facilities and centers, health maintenance organizations, federally qualified health centers, and other facilities providing similarly organized comprehensive health care services.

Exhibit A.

20. Failure to comply with the Act subjects violators to a civil penalty of \$500 for a first offense and \$1000 for each subsequent offense in an action brought

by the attorney general following “reasonable notice of noncompliance” and failure to correct the violation within thirty days. Exhibit A.

21. The Act further provides that “any person who is aggrieved by a limited service pregnancy center’s violation of section 321-A” may bring a civil action against the center to enjoin further violations and to recover actual damages together with costs and attorney’s fees, in addition to which a court adjudicating such private enforcement actions is authorized to increase the amount of damages threefold and impose a \$1,000 fine to be paid to the plaintiff. Exhibit A.

22. Aloha meets the definition of a “limited service pregnancy center” contained in the Act, in that it advertises pregnancy options counseling, collects health information from clients, and provides family planning or pregnancy-related services. Aloha must therefore comply with the Act’s mandatory disclosure provision or risk being subjected to the foregoing penalties for violations of the Act.

23. Aloha strongly objects to being compelled to speak the message required by the Act’s disclosure provision. Aloha considers the required notice to be the equivalent of implicitly approving, providing counseling, and referring for, contraception and abortion services that Plaintiff does not provide or refer for based on its religious beliefs and organizational purposes.

24. Aloha wishes to continue to address with its clients the subject matters of pregnancy, sexual abstinence and behavior, contraception and abortion, among

others, without direction from the government and without the government intruding upon how, when, or even whether Aloha chooses to frame its discussions of all or parts of such issues.

25. Aloha believes that by presenting clients, at the very outset of contact, with the Act's government mandated "seal of approval" of "comprehensive family planning services, including, but not limited to, all FDA-approved methods of contraception and pregnancy-related services," Aloha's right to address such matters in a manner consistent with its own beliefs will be sharply compromised.

26. The Act requires Aloha to disseminate the notice in any "language requested by client or patient." Exhibit A. According to a recent statistical report issued by the State of Hawaii, at least 130 different languages have been spoken in the State.

ALLEGATIONS OF LAW

27. Defendant is a "person" for purposes of the claims set forth in this Complaint, as that term is used in 42 U.S.C. § 1983.

28. All of the conduct of the Defendant as set forth in this Complaint, whether taken or threatened to be taken, constitutes conduct "under color of state law" as that phrase is used in 42 U.S.C. § 1983.

29. The First Amendment to the U.S. Constitution protects the freedoms of speech and the free exercise of religion.

30. The First Amendment is applicable to state and local governments through the Fourteenth Amendment.

31. Article I, § 4 of the Hawaii Constitution protects, *inter alia*, the rights of free speech and freedom of religion.

32. Both the Act and the threat of civil penalties for violations thereof injure rights protected by the U.S. Constitution and the Hawaii Constitution.

33. By compelling Plaintiff to post and/or disseminate the notice in question, the Act unlawfully compels Plaintiff, against its wishes, to speak a message that contradicts its beliefs and mission.

34. By compelling Plaintiff to post and/or disseminate the notice in question, the Act unlawfully interferes with and infringes upon Plaintiff's ability to meet and speak with its clients unless Plaintiff complies with the Act.

35. By compelling Plaintiff to provide the notice in any "language requested by client or patient," the Act imposes an onerous and impossible burden on Plaintiff that it cannot satisfy.

36. The Act requires Plaintiff to advertise government programs that the government can advertise itself.

37. The Act is a content-based regulation of speech that cannot satisfy any level of judicial scrutiny.

38. The Act is a viewpoint-based regulation of speech that cannot satisfy

any level of judicial scrutiny.

39. The Act's compulsion of private speech cannot satisfy any level of judicial scrutiny.

40. Plaintiff is chilled in the exercise of its First Amendment liberties in that must choose either (1) to comply with the law, and violate its religious commitments and purpose, or (2) violate the law, and risk prosecutions, financial penalties, and being forced to close its doors.

41. The Act exempts a "health care facility" from having to disseminate the Act's notice. The term "health care facility" is impermissibly vague under the Fourteenth Amendment to the U.S. Constitution because the Act's definition of that term as "any facility designed to provide comprehensive health care," is itself impermissibly vague. The Act nowhere defines the term "comprehensive health care."

42. Plaintiff has no adequate remedy at law, as the violation of its constitutional rights imposes irreparable harm.

CAUSES OF ACTION

Count One (First Amendment Free Speech Claim)

43. The foregoing allegations are re-alleged and incorporated by reference herein.

44. The Act unconstitutionally burdens, restricts, and infringes upon Plaintiff's right of Free Speech guaranteed by the First Amendment, as applied to the Defendants by the Fourteenth Amendment, and protected by 42 U.S.C. § 1983.

45. The Act unconstitutionally compels Plaintiff to speak messages it has not chosen for itself, with which it does not agree, and that detract from, undermine, and interfere with messages it has chosen to speak.

46. The Act unconstitutionally burdens Plaintiff's speech in mandating that Plaintiff provide the notice in any language requested by a client or patient of Plaintiff.

WHEREFORE, Plaintiff requests the relief set forth below in the prayer for relief.

Count Two
(First Amendment Free Exercise of Religion Claim)

47. The foregoing allegations are re-alleged and incorporated by reference herein.

48. The Act unconstitutionally infringes upon, burdens, and interferes with Plaintiff's right to the free exercise of religion guaranteed by the First Amendment, as applied to the Defendant by the Fourteenth Amendment, and protected by 42 U.S.C. § 1983, in that it targets, singles out, and penalizes Plaintiff for acting in accordance with its religious beliefs and practices which prohibit it from

encouraging, facilitating, and making direct or indirect referrals for certain services as required by the Act.

WHEREFORE, Plaintiff requests the relief set forth below in the prayer for relief.

Count Three
(State Constitutional Rights Claim)

49. The foregoing allegations are re-alleged and incorporated by reference herein.

50. The Act unlawfully burdens, interferes with, restricts, and undermines Plaintiff's rights under Art. I, § 4 of the Hawaii Constitution which protects, *inter alia*, the rights of free speech and freedom of religion.

WHEREFORE, Plaintiff requests the relief set forth below in the prayer for relief.

Count Four
(Fourteenth Amendment Due Process Claim)

51. The foregoing allegations are re-alleged and incorporated by reference herein.

52. Due Process under the Fourteenth Amendment to the U.S. Constitution requires that a law or regulation not be impermissibly vague.

53. The Act is void for vagueness in that the terms "health care facility"

and “comprehensive health care” are not adequately defined and are therefore void for vagueness.

WHEREFORE, Plaintiff requests the relief set forth below in the prayer for relief.

PRAYER FOR RELIEF

On its foregoing causes of action, Plaintiff respectfully requests the Court to grant the following relief:

A. A preliminary and permanent injunction barring the Defendant and all persons in active concert with him, and all other persons whether or not acting in concert with Defendant, from enforcing the Act against Plaintiff;

B. A declaratory judgment that the Act violates the First and Fourteenth Amendments to the United States Constitution and Art. I, § 4 of the Hawaii Constitution;

C. Attorney’s fees and costs pursuant to 42 U.S.C. § 1988; and

D. Any further relief the Court deems just.

Dated this 19th day of July 2017.

s/ Robert K. Matsumoto
Robert K. Matsumoto



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