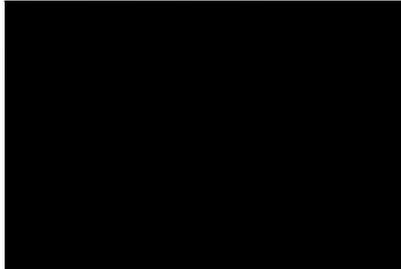


Francis J. Manion\*  
Geoffrey R. Surtees\*  
AMERICAN CENTER FOR LAW & JUSTICE



8 Counsel for Plaintiffs  
9 *\*Pro hac vice applications forthcoming Additional*  
10 *Counsel on Signature Page*

11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 LIVINGWELL MEDICAL CLINIC, INC.;  
14 PREGNANCY CARE CENTER OF THE NORTH  
15 COAST, INC.; and CONFIDENCE PREGNANCY  
16 CENTER, INC.,

17 Plaintiffs,

18 v.

19 KAMALA HARRIS, Attorney General of the State  
20 of California, in her official capacity; KAREN  
21 SMITH, M.D., Director of California Department of  
22 Public Health, in her official capacity; MICHAEL  
23 COLANTUONO, City Attorney of Grass Valley,  
24 California, in his official capacity; ALISON  
25 BARRAT-GREEN, County Counsel of Nevada  
26 County, California, in her official capacity; CINDY  
27 DAY-WILSON, City Attorney of Eureka,  
28 California, in her official capacity; JEFFREY S.  
BLANCK, County Counsel of Humboldt County,  
California, in his official capacity; CHRISTOPHER  
A. CALLIHAN, City Attorney of Salinas,  
California, in his official capacity; CHARLES J.  
MCKEE, County Counsel of Monterey County,  
California, in his official capacity,

Defendants.

Case No.

**COMPLAINT**

1 Plaintiffs, LivingWell Medical Clinic, Inc., Pregnancy Care Center of the North Coast, Inc., and  
2 Confidence Pregnancy Center, Inc., by their undersigned counsel, bring this Complaint against the  
3 Defendants, their agents, servants, officers, employees, and successors in office and all those persons in  
4 active concert and participation with them, and for their Complaint state as follows:

5 This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the  
6 constitutionality of the so-called “Reproductive FACT Act” (hereafter “the Act”), Article 2.7 of  
7 Chapter 2 of Part 2 of Division 106 of the California Health and Safety Code. The Act, by requiring  
8 Plaintiffs to post a government-dictated message they do not wish to communicate, violates Plaintiffs’  
9 fundamental rights as guaranteed by the First and Fourteenth Amendments to the United States  
10 Constitution, as well as state constitutional provisions.

11 **JURISDICTION AND VENUE**

12 1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331,  
13 1343, 1367, 2201, 2202 and 42 U.S.C. § 1983.

14 2. Venue for this action is proper in the United States District Court for the Eastern District  
15 of California pursuant to 28 U.S.C. § 1391(b).

16 **PARTIES**

17 **The Plaintiffs**

18 **LivingWell Medical Clinic, Inc.**

19 3. Plaintiff, LivingWell Medical Clinic, Inc. (hereafter “LivingWell”), is a California non-  
20 profit corporation under § 501(c)(3) of the Internal Revenue Code. LivingWell is licensed by the State  
21 of California as a primary care medical clinic and is located at 105 Catherine Lane in Grass Valley,  
22 California.

23 4. LivingWell’s mission is to help women with unplanned pregnancies meet and accept the  
24 stresses and challenges that come with unplanned pregnancies. Its services include such things as  
25 pregnancy options education and consultation, pregnancy testing and verification, limited obstetrical  
26 ultrasounds, STI/STD testing, education, and treatment, and material support. LivingWell’s services  
27 extend to partners and family members and provide support both during and after pregnancy.

28 ///

1           5.       LivingWell provides services for approximately 600 first-time clinic clients per year, as  
2 well as thousands of others through its thrift store and community education presentations.

3           6.       All of LivingWell’s services are provided free of charge and LivingWell never asks  
4 clients for donations.

5           7.       LivingWell does not, and will not, refer for, recommend, encourage, or facilitate clients  
6 to obtain abortions or contraceptives based on its religious beliefs.

7       **Pregnancy Care Center of the North Coast, Inc.**

8           8.       Plaintiff, Pregnancy Care Center of the North Coast (hereafter “PCC”) is a non-profit  
9 corporation under § 501(c)(3) of the Internal Revenue Code. PCC is located at 2390 Myrtle Avenue,  
10 Eureka, California, and was established in 1994. PCC is also licensed to and operates a free clinic  
11 called J. Rophe Medical, at 2458 Buhne St., Eureka, California established in 2011. PCC also operates  
12 a JRM Mobile Medical Unit.

13           9.       PCC’s purpose is to encourage through education and outreach the recognition of human  
14 life from the moment of conception and to minister in the name of Jesus Christ to women and men  
15 facing unplanned pregnancies by providing support and medical services to them that will empower  
16 them to make healthy life choices.

17           10.      In the past 12 months, PCC has seen over 880 clients and has had over 3,400 client  
18 visits. PCC has provided over 610 ultrasound and 290 pregnancy tests, along with ongoing support  
19 services.

20           11.      All of PCC’s services are free and clients are never asked for donations.

21           12.      PCC does not, and will not, refer for, recommend, encourage, or facilitate clients to  
22 obtain abortions based on PCC’s religious beliefs.

23       **Confidence Pregnancy Center, Inc.**

24           13.      Plaintiff, Confidence Pregnancy Center, (hereafter “CPC”), originally incorporated  
25 under the name “Crisis Pregnancy Center of Salinas,” is a non-profit § 501(c)(3) corporation under the  
26 Internal Revenue Code and is licensed as a community clinic by the California Department of Health.  
27 CPC is located at 780 E. Romie Ln., Ste. C, Salinas, California. CPC was founded in 1985.

28       ///



1 24. On or about October 9, 2015, Governor Brown signed the bill into law.

2 25. Pursuant to California law, the Act is scheduled to go into effect on January 1, 2016.

3 26. The Act, in pertinent part, requires “licensed covered facilities” to do the following:

4 123472 (a) A licensed covered facility shall disseminate to clients on site the following  
5 notice in English and in the primary threshold languages for Medi-Cal beneficiaries as  
6 determined by the State Department of Health Care Services for the county in which the  
7 facility is located.

8 (1) The notice shall state:

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

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

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

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

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

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

23 27. The Act provides exemptions from its disclosure requirement for (1) clinics conducted  
24 and operated by the United States or any of its departments; and (2) a licensed primary care clinic that is  
25 enrolled as a Medi-Cal provider and a provider in the Family Planning, Access, Care, and Treatment  
26 Program (FPACT).

27 ///

28 ///

1           28.     On information and belief, the exemption for Medi-Cal/FPACT providers applies to  
2 approximately 1,700 entities that provide services similar to those offered by plaintiffs with the  
3 exception of contraceptive and abortion services or referrals.

4           29.     The Act had two co-sponsors in the Legislature: Black Women for Wellness and  
5 NARAL Pro-Choice California. The latter co-sponsor has for many years led a campaign specifically  
6 intended to interfere with, control, harass, and suppress the right of entities such as Plaintiffs to engage  
7 freely in their constitutionally protected rights of freedom of speech, assembly, and religion based on  
8 such entities' religious beliefs. In furtherance of that campaign, the Act targets entities such as Plaintiffs  
9 herein while exempting numerous other organizations that do not share Plaintiffs' beliefs, mission, and  
10 goals.

11           30.     Failure to comply with the Act carries with it a civil penalty of \$500 for a first offense  
12 and \$1,000 for each subsequent offense.

13           31.     The Act provides that the Attorney General, city attorney, or county counsel may bring  
14 an action to impose a civil penalty on any licensed covered facility that fails to comply with the Act's  
15 disclosure provision.

16           32.     Each of the Plaintiffs meets the definition of a "licensed covered facility" as set forth in  
17 the Act and thus must comply with the Act's disclosure provision.

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

22           34.     The Plaintiffs believe that posting the required notice would undermine the patient/client  
23 and medical provider relationship by requiring them to provide a referral to an agency that determines  
24 eligibility for state-funded abortion before the patient/client is seen by a medical provider. This gives  
25 patients and clients the impression that a recommendation for treatment has been made by the clinician  
26 before the patient/client has been evaluated.

27           35.     Being compelled to post the notice required by the Act would require Plaintiffs to  
28 disseminate a message that contradicts their organizational missions and beliefs.

1 **ALLEGATIONS OF LAW**

2 36. The Defendants are “persons” for purposes of the claims set forth in this Complaint, as  
3 that term is used in 42 U.S.C. § 1983.

4 37. All of the conduct of the Defendants as set forth in this Complaint, whether taken or  
5 threatened to be taken, constitutes conduct “under color of state law” as that phrase is used in 42 U.S.C.  
6 § 1983.

7 38. The First Amendment to the U.S. Constitution protects the freedoms of speech and  
8 assembly, and the free exercise of religion.

9 39. The First Amendment is applicable to state and local government through the Fourteenth  
10 Amendment.

11 40. Both the Act and the threat of civil penalties for violations thereof injure rights protected  
12 by the U.S. Constitution and the California Constitution.

13 41. By compelling the Plaintiffs to post and/or disseminate the notice in question, the Act  
14 unlawfully compels Plaintiffs, against their wishes, to speak a message that contradicts their beliefs and  
15 mission.

16 42. By compelling the Plaintiffs to post and/or disseminate the notice in question, the Act  
17 unlawfully interferes with and infringes upon Plaintiffs’ ability to meet and speak with pregnant women  
18 unless Plaintiffs comply with the Act.

19 43. Plaintiffs have no adequate remedy at law, as the violation of their constitutional rights  
20 imposes irreparable harm.

21 **CAUSES OF ACTION**

22 **Count One**

23 **(Federal Free Speech)**

24 44. Plaintiffs repeat and re-allege the preceding paragraphs of this Complaint.

25 45. The Act unconstitutionally burdens, restricts, and infringes upon Plaintiffs’ right of Free  
26 Speech guaranteed by the First Amendment, as applied to the Defendants by the Fourteenth  
27 Amendment, and protected by 42 U.S.C. § 1983.

28 ///



1 WHEREFORE, Plaintiffs request the relief set forth below in the prayer for relief.

2 **PRAYER FOR RELIEF**

3 On their foregoing causes of action, Plaintiffs respectfully request the Court to grant the  
4 following relief:

5 A. A preliminary and permanent injunction barring the Defendants and all persons in active  
6 concert with them from enforcing the Act against Plaintiffs.

7 B. A declaratory judgment that the Act violates the First Amendment to the United States  
8 Constitution and Article I, §§ 2 and 3 of the California Constitution.

9 C. Attorney's fees and costs pursuant to 42 U.S.C. § 1988.

10 D. Any further relief the Court deems just.

11 Respectfully submitted this 27th day of October, 2015.

12  
13 Respectfully submitted,

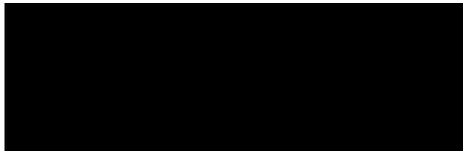
14 TYLER & BURSCH, LLP

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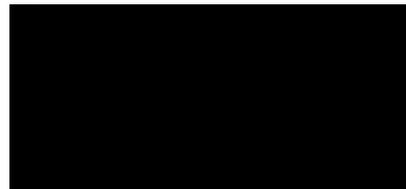
17 Dated: October 27, 2015

18 By: \_\_\_\_\_

19 Robert H. Tyler, Esq.  
20 Jennifer L. Bursch



21  
22 Francis J. Manion\*  
23 Geoffrey R. Surtees\*  
24 AMERICAN CENTER FOR LAW & JUSTICE



25  
26  
27 Counsel for Plaintiffs  
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