

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**LOUIS JERRY EDWARDS, M.D., TOM
TVEDTEN, M.D., on behalf of themselves
and their patients,**)
)
)

PLAINTIFFS)
)
)

v.)

CASE NO.

**Joseph M. Beck, M.D., President
of the Arkansas State Medical Board;
Omar Atiq, M.D.; Harold B. Betton, M.D.;**)
Steven L. Cathey, M.D.; M.D., Jim Citty, M.D.;)
Bob Cogburn, M.D., William F. Dudding, M.D.;)
Roger Harmon, P.D.; John E. Hearnberger)
II, M.D., Verly D. Hodges, D.O.; Scott Pace,)
Pharm.D., J.D.; John H. Scribner, M.D.;)
Sylvia D. Simon, M.D.; John B. Weiss, M.D.,)
officers and Members of the Arkansas State)
Medical Board, and their)
successors in office, in their official capacity,)

DEFENDANTS.

COMPLAINT

Plaintiffs, by and through their attorneys, bring this Complaint against Defendants in their official capacity, and their successors in office, and in support thereof state the following:

INTRODUCTION

1. This is a constitutional challenge under 42 U.S.C. § 1983 to Act 301 of the Arkansas General Assembly of 2013, to be codified as Ark. Code Ann. §§ 20-16-1301-1307 (“the Act”). In violation of over forty years of settled United States Supreme Court precedent, the Act bans abortion care starting at 12 weeks of pregnancy, threatening the rights, liberty, and well-being of

Arkansas women and their families. Flouting the protections of the Fourteenth Amendment to the United States Constitution, the Act violates the right to be free from unwarranted intrusion by politicians into matters so fundamentally affecting the course of a woman's life as the decision whether and when to have a child, and whether or not to carry a preivable pregnancy to term. The Act would usurp this decision that – as a constitutional matter – must rest with a woman, her family, and her doctor. A copy of Act 301 is attached hereto as Exhibit A.

2. Under Ark. Const. art. 5, § 1 and *Fulkerson v. Refunding Bd.*, 147 S.W.2d 980, 983 (Ark. 1941), the Act is set to take effect ninety (90) days after *sine die* adjournment of the General Assembly. Because that adjournment is currently scheduled to take place April 19, 2013, the Act is currently scheduled to take effect July 18, 2013.

3. Under the Act, Plaintiffs, medical doctors, are subject to the severe sanction of license revocation for providing abortion care starting at 12 weeks of pregnancy. The Act thus denies Plaintiffs' patients their constitutionally-guaranteed right to decide to end a previability pregnancy. To prevent this irreparable harm, Plaintiffs seek declaratory and injunctive relief to prevent enforcement of the Act.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343.

5. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, Rules 57 and 65 of the Federal Rules of Civil Procedure, and the general legal and equitable powers of this Court.

6. Venue is appropriate under 28 U.S.C § 1391(b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurs in this judicial district.

PARTIES

7. Plaintiff Louis Jerry Edwards, M.D, is a board-certified obstetrician-gynecologist licensed to practice medicine in Arkansas. He is an associate physician at Little Rock Family Planning Services, Inc., in Little Rock, Arkansas, where he provides and/or supervises a broad range of reproductive health services, including physical exams, testing for HIV and sexually transmitted infections, screening for cervical and breast cancer, pregnancy testing and options education, contraception and contraceptive education, and abortion care. Among the health care services he provides is abortion care at and after 12 weeks. Dr. Edwards sues on behalf of himself and his patients seeking abortion care at and after 12 weeks.

8. Plaintiff Tom Tvedten, M.D., is a physician licensed to practice medicine in Arkansas. As Medical Director of Little Rock Family Planning Services, Inc., in Little Rock, Arkansas, he provides and/or supervises a broad range of reproductive health services, including physical exams, testing for HIV and sexually transmitted infections, screening for cervical and breast cancer, pregnancy testing and options education, contraception and contraceptive education, and abortion care. Among the health care services he provides is abortion care at and after 12 weeks. Dr. Tvedten sues on behalf of himself and his patients seeking abortion care at and after 12 weeks.

9. Defendants., Joseph M. Beck, M.D., Omar Atiq, M.D, Harold B. Betton, M.D., Steven L. Cathey, M.D., Jim Citty, M.D., Bob Cogburn, M.D., William F. Dudding, M.D., Roger Harmon, P.D. , John E. Hearnberger II, M.D., Veryl D. Hodges, D.O., Scott Pace, Pharm. D., J.D., John H. Scribner, M.D., Sylvia D. Simon, M.D., and John B. Weiss, M.D., are members of the Arkansas State Medical Board. The State Medical Board is responsible for licensing medical professionals under Arkansas law. Defendants and their successors in office are sued in their official capacity.

THE ACT

10. The Act adds a new provision to the Arkansas Code, which – except “in the case of a medical emergency,” Ark. Code Ann. §§ 20-16-1303(c)(1)(A)(ii) – requires “an abdominal ultrasound test” for the presence of fetal cardiac activity before providing a woman with abortion care, Act § 1303(a).

11. If the woman is 12 or more weeks pregnant and the ultrasound test detects fetal cardiac activity, the Act bans abortion, punishable by license revocation. Act § 1304.

12. The only exceptions to the ban are to save the woman’s life, Act § 1302(6)(A); 1305(a)(1), (b)(1), b(3); to prevent “substantial and irreversible impairment of a major bodily function,” Act § 1302(6)(A); 1305(b)(3); and for cases of statutorily defined rape or incest, Act § 1305(b)(2), or of “highly lethal fetal disorder,” Act § 1302(6)(B); 1305(b)(3).

FACTUAL ALLEGATIONS

13. Under current Arkansas law, “No abortion of a viable fetus shall be performed unless necessary to preserve the life or health of the woman” or unless “the pregnancy is the result of rape or incest perpetrated on a minor.” Ark. Code Ann. § 20-16-705(a), (c). “Viable fetus” means a fetus which can live outside the womb,” and for these purposes, “a fetus shall be presumed not to be viable prior to the end of the twenty-fifth week of the pregnancy,” *id.* §§ 20-16-702(3), 703.

14. Twelve weeks is a previability point in pregnancy. The earliest that fetuses can become viable is months after this point.

15. At 12 weeks, fetuses have cardiac activity detectable via abdominal ultrasound.

16. In Arkansas, 20% of abortions take place at and after 12 weeks.

17. The Act will prohibit most of these post-12 week, previability abortions.

18. Absent an injunction, Plaintiffs will have no choice but to turn away patients in need of abortion care. The constitutional rights of Arkansas women would suffer irreparably, as would their well-being and dignity.

19. The Act presents physicians in Arkansas with an untenable choice: to face license revocation for continuing to provide abortion care in accordance with their best medical judgment, or to stop providing the critical care their patients seek.

FIRST CLAIM FOR RELIEF

20. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 19.

21. By banning abortion care starting at 12 weeks, the Act violates Plaintiffs' patients' substantive due process rights guaranteed by the Fourteenth Amendment to the United States Constitution.

INJUNCTIVE RELIEF

22. The Act would subject Plaintiffs and their patients to irreparable harm for which no adequate remedy at law exists.

23. Enforcement of the Act would cause irreparable harm by threatening Plaintiffs with substantial penalties for providing constitutionally protected abortion care.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A. To issue a preliminary injunction and a permanent injunction, restraining Defendants and their successors in office from enforcing the Act.

B. To enter a judgment declaring that the Act violates the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

C. To award Plaintiffs their attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

D. To grant such other and further relief as the Court deems just and proper.

Dated: April 16, 2013

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*Application for admission *pro hac vice* pending