

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

LITTLE ROCK FAMILY PLANNING SERVICES,
PLANNED PARENTHOOD OF ARKANSAS &
EASTERN OKLAHOMA, D/B/A PLANNED
PARENTHOOD GREAT PLAINS, and JANET
CATHEY, M.D., on behalf of themselves and their
patients,

Plaintiffs,

v.

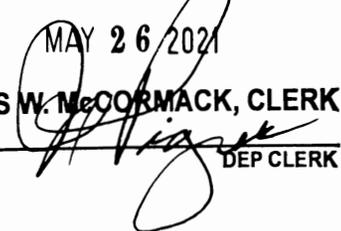
LARRY JEGLEY, in his official capacity as
Prosecuting Attorney of Pulaski County; SYLVIA
D. SIMON, M.D., in her official capacity as
Chairman of the Arkansas State Medical Board;
ROBERT BREVING JR., M.D., VERYL D. HODGES,
D.O., JOHN H. SCRIBNER, M.D., ELIZABETH
ANDERSON, RHYS L. BRANMAN, M.D., EDWARD
GARDNER, M.D., RODNEY GRIFFIN, M.D., BETTY
GUHMAN, BRIAN T. HYATT, M.D., TIMOTHY C.
PADEN, M.D., DON R. PHILLIPS, M.D., WILLIAM
L. RUTLEDGE, M.D., and DAVID L. STAGGS,
M.D., in their official capacities as officers and
members of the Arkansas State Medical Board;
JOSÉ R. ROMERO, M.D., in his official capacity
as Secretary of the Arkansas Department of
Health; PHILLIP GILMORE, PH.D., M.S., M.H.A.,
J. LOY BAILEY, PERRY AMERINE, O.D., MARSHA
BOSS, P.D., LANE CRIDER, P.E., BRAD ERNEY,
D.M.D., P.L.C., MELISSA FAULKENBERRY, D.C.,
ANTHONY N. HUI, M.D., BALAN NAIR, M.D.,
GREG BLEDSOE, M.D., STEPHANIE BARNES
BEERMAN, GLEN BRYANT, M.D., DWAYNE
DANIELS, M.D., DARREN FLAMIK, M.D., DAVID
KIESSLING, D.P.M., CARL RIDDELL, M.D., CLAY
WALISKI, TERRY YAMAUCHI, M.D., DONALD
RAGLAND, SUSAN WEINSTEIN, D.V.M., and
JAMES ZINI, D.O., in their official capacities as
officers and members of the Arkansas State
Board of Health, and their successors in office,

Defendants.

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAY 26 2021

JAMES W. McCORMACK, CLERK

By:  DEP CLERK

CIVIL ACTION

Case No. 4:21cv453-KGB

This case assigned to District Judge Baker
and to Magistrate Judge Valpey

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Little Rock Family Planning Services (“LRFP”), Planned Parenthood of Arkansas & Eastern Oklahoma, d/b/a Planned Parenthood Great Plains (“PPAEO”), and Dr. Janet Cathey, on behalf of themselves and their patients, by and through their undersigned attorneys, bring this Verified Complaint for Declaratory and Injunctive Relief against the above-named Defendants, their employees, agents, and successors in office, and in support thereof state the following:

INTRODUCTION

1. For nearly a decade, the Arkansas legislature has engaged in an unrelenting, targeted campaign to eliminate legal abortion in Arkansas.
2. That campaign reached its zenith this March, when the legislature passed, and Governor Asa Hutchinson signed into law, Act 309 (hereinafter “Act 309” or “the Ban”), which bans nearly all abortions in Arkansas. *See* Act 309, to be codified at Ark. Code Ann. §§ 5-61-401 to 404 (attached hereto as Exhibit A).
3. The Ban is a direct affront to almost half a century of unbroken Supreme Court precedent, starting with *Roe v. Wade* in 1973, holding that the Constitution protects the fundamental right to make the profoundly important and personal decision whether to terminate a pregnancy prior to viability. 410 U.S. 113 (1973).
4. Over the course of nearly five decades—including as recently as last summer—the Supreme Court has repeatedly reaffirmed the bright-line rule first set forth in *Roe*: that “a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 879 (1992); *see also June Med. Servs. L.L.C. v. Russo*, 140 S. Ct. 2103, 2135 (2020) (Roberts, C.J., concurring)

(“*Casey* reaffirmed the most central principle of *Roe v. Wade*, a woman’s right to terminate her pregnancy before viability”) (internal quotations and citation omitted).

5. The U.S. Court of Appeals for the Eighth Circuit has consistently applied this binding precedent to strike down attempts by Arkansas and other states to ban pre-viability abortion. See *Little Rock Fam. Plan. Servs. v. Rutledge*, 984 F.3d 682, 687–90 (8th Cir. 2021) (affirming preliminary injunction against enforcement of Arkansas statutes banning pre-viability abortion starting at eighteen weeks of pregnancy and based on patient’s reason for seeking care), *petition for cert. filed*, No. 20-1434 (U.S. Apr. 13, 2021) (review sought only on law prohibiting abortion based on patient’s reason and not on 18-week ban); *Edwards v. Beck*, 786 F.3d 1113, 1117 (8th Cir. 2015) (affirming permanent injunction against enforcement of Arkansas statute banning pre-viability abortion starting at twelve weeks), *cert. denied*, 577 U.S. 1102 (2016); *MKB Mgmt. Corp. v. Stenehjem*, 795 F.3d 768, 772–73 (8th Cir. 2015) (affirming permanent injunction against enforcement of North Dakota statute banning pre-viability abortion starting at six weeks), *cert. denied*, 577 U.S. 1119 (2016).

6. Indeed, just five months ago, in affirming the district court’s decision to preliminarily enjoin Arkansas’s two pre-viability bans on abortion, the Eighth Circuit made clear that the Supreme Court’s “pre-viability rule is categorical,” and that it is “well established in this Circuit” that “[b]efore viability, a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy.” *Little Rock Fam. Plan. Servs.*, 984 F.3d at 687 (citing *MKB Mgmt. Corp.*, 795 F.3d at 772).

7. Act 309 is just as unconstitutional as all of the other pre-viability abortion bans struck down before it—a truth acknowledged by Governor Hutchinson, who, in signing the bill

into law, conceded that it is “not constitutional.”¹

8. The Ban is also an attack on the equality, dignity, autonomy, and bodily integrity of Arkansans, and a particular attack on Black Arkansans, low-income Arkansans, and rural Arkansans, who already face inequities in access to medical care and higher pregnancy-related mortality rates. Instead of acting to remedy these inequities, put an end to these preventable deaths, and respect Arkansans’ reproductive health care decisions, the Arkansas legislature has chosen to criminalize nearly all abortions.

9. The Ban is currently scheduled to take effect on July 28, 2021.² Absent an order from this Court, Plaintiffs will be forced to turn away patients seeking abortion care as of that date. This will inflict immediate and irreparable harm upon Plaintiffs’ patients by blatantly violating their constitutional rights under the Fourteenth Amendment to the United States Constitution, threatening their health and well-being, and forcing them to continue their pregnancies against their will.

10. Accordingly, Plaintiffs request that this Court declare Act 309 unconstitutional

¹ Devan Cole, *Arkansas governor says he signed near-total abortion ban so Supreme Court can decide if it’s a ‘direct challenge’ to Roe*, CNN (Mar. 21, 2021), <https://www.cnn.com/2021/03/21/politics/arkansas-asa-hutchinson-abortion-law-supreme-court-cnntv/index.html>.

² Under the Arkansas Constitution, Acts of the General Assembly without an emergency clause or specified effective date, like Act 309, become effective ninety days after adjournment of the session at which they were enacted. However, the 93rd General Assembly did not adjourn the 2021 session; instead, the legislature took extended recess starting on April 28, 2021. Attorney General Rutledge has since opined that, provided the General Assembly recesses for longer than 90 days, all Acts passed prior to the April 28, 2021 recess that do not contain an emergency clause or specified effective date shall become effective on July 28, 2021. *See* Ark. Att’y Gen. Op. No. 2021-029 (May 20, 2021). Accordingly, Defendants could begin enforcing the Ban as early as July 28, 2021.

under nearly five decades of binding Supreme Court precedent and enjoin its enforcement.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over Plaintiffs' federal claims under 28 U.S.C. §§ 1331 and 1343(a)(3).

12. 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.

13. Venue is appropriate under 28 U.S.C § 1391(b), because a substantial part of the events or omissions giving rise to Plaintiffs' claims occur in this judicial district and the majority of the Defendants, who are sued in their official capacities, carry out their official duties at offices located in this district.

PLAINTIFFS

14. Plaintiff LRFP is a professional limited liability corporation that is licensed to do business in Arkansas. LRFP has provided safe and legal abortion services in Little Rock, Arkansas, for more than four decades. In addition to providing abortions, which would be banned by Act 309, LRFP provides a range of high-quality reproductive health-care services, including miscarriage care (which, in cases where embryonic or fetal demise has not yet occurred, would also be prohibited by the Ban), pap smears, testing for sexually transmitted infections, and contraceptive counseling and services. LRFP brings this action on behalf of itself, its patients, and the physicians and staff it employs to provide services to its patients.

15. Plaintiff PPAEO is an Oklahoma not-for-profit corporation licensed to do business in Arkansas. PPAEO operates a health center in Little Rock. In addition to providing abortion care, which would be banned by Act 309, PPAEO provides a range of other high-

quality reproductive health-care services at its health center, including miscarriage care, routine gynecological exams, testing and treatment for sexually transmitted infections, provision of birth control and emergency contraception, HIV testing and prevention, pregnancy testing, screening for vaginal infections, human papillomavirus (“HPV”) vaccinations, transgender health services, and menopausal services. PPAEO and its predecessor organizations have provided high-quality reproductive health care in Arkansas for decades and have provided abortion care since 2008. PPAEO brings this action on behalf of itself, its patients, and the physicians and staff it employs to provide services to its patients.

16. Plaintiff Janet Cathey, M.D., is a highly experienced, board-certified obstetrician-gynecologist (“OBGYN”), licensed to practice medicine in Arkansas and Oklahoma. She provides full-time medical services, including abortion, which would be banned by Act 309, at Plaintiff PPAEO’s health center in Little Rock, and provides occasional support to Plaintiff LRFP. Dr. Cathey brings this action on behalf of herself and her patients.

DEFENDANTS

17. Defendant Larry Jegley is the Prosecuting Attorney for Pulaski County, located at 224 South Spring Street, Little Rock, AR 72201. Prosecuting attorneys “shall commence and prosecute all criminal actions in which the state or any county in his district may be concerned.” Ark. Code Ann. § 16-21-103. Defendant Jegley is therefore responsible for criminal enforcement of the Ban in Pulaski County. Plaintiffs’ health centers are located in Pulaski County. Defendant Jegley and his agents and successors in offices are sued in their official capacities.

18. Defendant Sylvia D. Simon, M.D., is Chairman of the Arkansas State Medical Board. Defendants Robert Breving Jr., M.D.; Veryl D. Hodges, D.O.; John H. Scribner, M.D.;

Elizabeth Anderson; Rhys L. Branman, M.D.; Edward Gardner, M.D.; Rodney Griffin, M.D.; Betty Guhman; Brian T. Hyatt, M.D.; Timothy C. Paden, M.D.; Don R. Phillips, M.D.; William L. Rutledge, M.D.; and David L. Staggs, M.D., are members of the Arkansas State Medical Board. The State Medical Board is responsible for licensing medical professionals under Arkansas law. *See* Ark. Code Ann. §§ 17-95-403, 409, 410. The Board and its members are responsible for imposing licensing penalties for unprofessional conduct, which includes, *inter alia*, the “[c]onviction of a felony” and “[p]rocurring or aiding or abetting in procuring a wrongful and criminal abortion.” *See* Ark. Code Ann. § 17-95-409(a)(2)(A), (D). Defendants and their agents and successors in office are sued in their official capacities.

19. Defendant José R. Romero, M.D., is the Secretary of the Arkansas Department of Health. Defendants Phillip Gilmore, Ph.D., M.S., M.H.A.; J. Loy Bailey; Perry Amerine, O.D.; Marsha Boss, P.D.; Lane Crider, P.E.; Brad Erney, D.M.D., P.L.C.; Melissa Faulkenberry, D.C.; Anthony N. Hui, M.D.; Balan Nair, M.D.; Greg Bledsoe, M.D.; Stephanie Barnes Beerman; Glen Bryant, M.D.; Dwayne Daniels, M.D.; Darren Flamik, M.D.; David Kiessling, D.P.M.; Carl Riddell, M.D.; Clay Waliski; Terry Yamauchi, M.D.; Donald Ragland; Susan Weinstein, D.V.M.; and James Zini, D.O., are members of the Arkansas State Board of Health. The Department of Health’s members are charged with enforcing licensing penalties against Plaintiffs LRF and PPAEO, including license denial, suspension or revocation, for violation of any provision of law or rule, including the Ban. Ark. Code Ann. § 20-9-302(b)(3)(A). Defendants and their agents and successors in office are sued in their official capacities.

STATUTORY FRAMEWORK

20. The Ban makes it a crime for any person to “purposely perform or attempt to

perform an abortion” at any point in pregnancy, except “to save the life of a pregnant woman”³ in a “medical emergency.” Act 309 §§ 5-61-404(a), 403.

21. The Ban defines “medical emergency” to mean only “a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.” Act 309 §§ 5-61-404(a), 403(3).

22. The Ban excludes from the definition of “abortion” acts performed that may result in the termination of a pregnancy where the purpose is to “to save the life or preserve the health of the” embryo/fetus, “remove a dead [embryo/fetus] caused by spontaneous abortion,” or “remove an ectopic pregnancy.” Act 309 § 5-61-403(1)(A)–(B). Thus, unless a “spontaneous abortion” (sometimes called miscarriage) has already caused embryonic/fetal demise, Act 309 would also prohibit physicians from completing the miscarriage.

23. Performance or attempted performance of an abortion in violation of the Ban constitutes an unclassified felony, which is punishable by up to ten years in prison and/or a fine of up to one hundred thousand dollars (\$100,000). *See* Act 309 § 5-61-404(b).

24. Any physician who performs or attempts to perform an abortion in violation of the Ban may also be subject to medical license revocation, suspension, probation, and/or fines or other disciplinary action. *See* Ark. Code Ann. §§ 17-95-409(a), 410(e)(3).

25. An abortion clinic wherein an abortion is performed or attempted to be performed in violation of the Ban may also be subject to license denial, suspension or revocation, and/or

³ The statute refers to the “pregnant woman,” but Plaintiffs recognize that people of other gender identities, including transgender men, gender non-binary individuals and gender-diverse individuals, may also become pregnant and seek abortion services, and thus would also suffer irreparable harm under Act 309.

financial penalties. *See* Ark. Code Ann. §§ 20-9-302(b)(3)(A), 20-7-101(b)(1)(A).

26. The Ban is currently scheduled to take effect on July 28, 2021.⁴ Starting on that date, absent court ordered relief, Plaintiffs and their staff will be forced to stop providing abortions or otherwise face severe criminal penalties and the risk of adverse licensure and/or disciplinary action.

FACTUAL ALLEGATIONS

Abortion in Arkansas

27. Plaintiffs LRFP and PPAEO operate the only outpatient clinics currently providing abortions in the state of Arkansas.

28. Legal abortion is one of the safest medical procedures in the United States and is far safer than continuing a pregnancy through to childbirth: A person's risk of death associated with childbirth is approximately 14 times higher than that associated with abortion.⁵

29. Abortion is also extremely common—approximately one in four women in this country will have an abortion by age forty-five.⁶

30. Some people have abortions because they conclude that it is not the right time in their lives to have a child. For example, some people decide to end a pregnancy given their age, desire to pursue their education or career, or because they feel they lack the necessary financial

⁴ *See* Ark. Att'y Gen. Op. No. 2021-029 (May 20, 2021).

⁵ Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *Obstetrics & Gynecology* 215, 215 (2012).

⁶ *See Abortion Is a Common Experience for U.S. Women, Despite Dramatic Declines in Rates*, Guttmacher Inst. (Oct. 19, 2017), <https://www.guttmacher.org/news-release/2017/abortion-common-experience-us-women-despite-dramatic-declines-rates>.

resources or level of partner or familial support or stability.

31. Many others are already parents; indeed, a majority of people having abortions in the United States already had at least one previous birth,⁷ and in 2019 approximately 65% of women who obtained abortion in Arkansas had one or more previous live births.⁸ These people may already be struggling to adequately provide for their existing children and may be concerned about their ability to make ends meet if they add another child to their family.

32. Some people seek abortions because continuing with the pregnancy could pose a risk to their life or health; some because they have become pregnant as a result of rape or incest; and others because they decide not to have children at all.

33. Some people who have suffered trauma, such as sexual assault or domestic violence, may be concerned that pregnancy, childbirth, and/or an additional child may exacerbate already extremely difficult and dangerous situations for them and put them at risk of greater sexual or physical violence or worse.

34. Other people may decide to have an abortion because of an indication or diagnosis of a fetal medical condition or anomaly. Some families simply do not feel that they have financial, medical, educational, or emotional resources to care for a child with a disability or to do so alongside providing for the children they already have.

35. Ultimately, the decision to terminate a pregnancy is motivated by a complex constellation of diverse, interrelated, and deeply personal factors that are closely tied to each individual person's values, culture and religion, health and reproductive history, family situation

⁷ Jenna Jerman, Rachel K. Jones & Tsuyoshi Onda, *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, Guttmacher Inst. (May 2016), <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014>.

⁸ Ark. Ctr. of Health Stat., Ark. Dep't of Health, *Induced Abortion Report 2019*, at 12 (2020), https://www.healthy.arkansas.gov/images/uploads/pdf/Induced_Abortion_final_2019-closed.pdf.

and support system, educational or career goals, and resources and financial stability.

36. The Ban would prohibit abortions in almost all circumstances.

Arkansas's Repeated Attempts to Eliminate Abortion

37. The Ban is the culmination of a near decade-long campaign by the Arkansas legislature to eliminate legal abortion in the state.

38. In addition to enacting a multitude of laws over the years aimed at obstructing access to and further stigmatizing abortion,⁹ the Arkansas legislature has ignored Supreme Court precedent in its repeated attempts to ban abortion in the State.

39. For example, in 2013, the legislature attempted to ban abortion starting at 12 weeks of pregnancy, as measured by the first day of a patient's last menstrual period ("LMP"). *See* Ark. Code Ann. § 20-16-1304. That ban was found unconstitutional by a court in this District. *Edwards v. Beck*, 8 F. Supp. 3d 1091, 1097 (E.D. Ark. 2014), *aff'd*, 786 F.3d 1113 (8th Cir. 2015).

40. In 2017, Arkansas banned the safest and most common method of second-trimester abortion, and the only second-trimester method available in the outpatient setting, which is provided

⁹ *See, e.g.*, Ark. Code Ann. § 20-16-1703 (extending mandatory waiting period between doctor providing state-mandated information to patient seeking abortion and provision of abortion from 48 to 72 hours and maintaining existing requirement that patient receive the information in person, necessitating two trips to the clinic); *id.* § 23-79-156 (banning health-insurance policies offered in the state health-insurance exchange from including coverage for abortion, with limited exceptions); *id.* § 20-16-606 (prohibiting qualified physicians from providing abortion care unless they are board-certified or -eligible in obstetrics and gynecology); *id.* §§ 20-17-801, 802 (imposing burdensome and confusing requirements regarding the disposal of fetal tissue that require patients' partners or other family members be notified of their abortion). Moreover, the Ban challenged here is one of the twenty abortion restrictions that the Arkansas legislature passed in *this session alone*, tying Louisiana's 1978 record for most restrictions passed in a single year. *See* Elizabeth Nash & Lauren Cross, *2021 Is on Track to Become the Most Devastating Antiabortion State Legislative Session in Decades*, Guttmacher Inst. (Apr. 2021), <https://www.guttmacher.org/article/2021/04/2021-track-become-most-devastating-antiabortion-state-legislative-session-decades>.

as early as 14 weeks LMP. Ark. Code Ann. §§ 20-16-1801–1807. A court in this District preliminarily enjoined the law as unconstitutional. *Hopkins v. Jegley*, No. 4:17-CV-00404-KGB, 2021 WL 41927, at *70–71 (E.D. Ark. Jan. 5, 2021), *appeal filed*, No. 21-1068 (8th Cir. Jan. 11, 2021).

41. In 2019, Arkansas enacted *two laws* attempting to ban abortion prior to viability: one ban on abortion starting at 18 weeks LMP and another ban based on a person’s reason for seeking care. *See* Ark. Code Ann. § 20-16-2004; *id.* § 20-16-2103. Once again, both of these bans were preliminarily enjoined as unconstitutional by a court in this District, a decision that was recently affirmed by the Eighth Circuit. *See Little Rock Fam. Plan. Servs. v. Rutledge*, 397 F. Supp. 3d 1213 (E.D. Ark. 2019) (granting preliminary injunction), *aff’d in relevant part*, 984 F.3d 682 (8th Cir. 2021).

42. That same year, the legislature also enacted a “trigger ban,” which provides that, upon *Roe*’s reversal or the passage of a federal constitutional amendment that permits Arkansas to prohibit abortion, Arkansas law will ban all abortions, except to save the life of a pregnant person. Ark. Code Ann. §§ 5-61-301–304.

43. The Ban is simply the latest attack in the legislature’s relentless drive to deny Arkansans their fundamental right to terminate a pregnancy prior to viability.

44. State Representative Mary Bentley, co-sponsor of the Ban in the Arkansas House of Representatives, admits that the Ban is intended to bring about “the start to the end of abortion in America.”¹⁰

45. These sentiments are echoed in the text of Act 309 itself, which states that “the

¹⁰ *Arkansas Unborn Child Protection Act: Hearing on Sen. B. 6 Before the H. Pub. Health, Welfare, & Labor Comm.*, 93rd Gen. Assemb., at 3:57:30 (Ark. 2021) (statement of Rep. Mary Bentley), <http://sg001->

intent of this [statute is] to ensure that abortion in Arkansas is abolished,” and “urgently pleads with the United States Supreme Court to . . . reverse, cancel, overturn, and annul Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey.” Act 309 § 5-61-402(a)(12), (b).

The Ban’s Impact on Plaintiffs’ Patients

46. If allowed to take effect, the Ban will essentially eliminate legal abortion in Arkansas.

47. This will subject all of Plaintiffs’ patients who wish to terminate their pregnancies to serious and irreparable harm.

48. Being forced to continue a pregnancy against one’s will can pose a risk to a person’s physical, mental, and emotional health, and even their life, as well as to the stability and well-being of their family, including existing children.

49. Even for someone who is otherwise healthy and has an uncomplicated pregnancy, being forced to carry that pregnancy to term and give birth poses serious medical risks and can have both short- and long-term consequences on physical health and mental and emotional well-being. For someone with a medical condition caused or exacerbated by pregnancy, these risks are increased.

50. Forced pregnancy poses a heightened risk of harm in Arkansas. Between 2013 and 2017, Arkansas’s maternal mortality rate was 50% higher than the maternal mortality rate for the nation overall, and more than twice the rate of the state with the lowest maternal mortality

harmony.sliq.net/00284/Harmony/en/PowerBrowser/PowerBrowserV2/20210302/-1/21259?viewMode=1#agenda_.

rate.¹¹

51. Act 309 would also increase the risk of injury or death to many patients who experience a miscarriage.

52. In some cases of miscarriage (also called “spontaneous abortion”), the process of pregnancy loss itself ends embryonic/fetal cardiac activity. In those cases, Act 309 would allow the patient to access medical care to empty the uterus. *See* Act 309 § 5-61-403(1)(A)–(B).

53. However, in other cases of miscarriage, cardiac activity persists while the patient is actively miscarrying. In those cases, the standard of care is also to offer the patient medical treatment to empty the uterus. However, by its terms, the Ban would prohibit physicians from providing such care—regardless of how desperately the patient wants to complete the inevitable loss of their pregnancy, and regardless of the medical risks—unless and until the patient’s condition deteriorates to such an extent that the very narrow “medical emergency” exception is triggered. This would pose serious risk to physical, mental, and emotional health of these patients.

54. While all people who seek abortion in Arkansas will be harmed by Act 309, the Ban will have a disproportionately devastating impact on Black Arkansans, poor and low-income Arkansans, and rural Arkansans.

55. In 2019, Black people made up just over 15% of Arkansas’s population,¹² but

¹¹ Ark. Dep’t of Health, *Arkansas Maternal Mortality Review Committee Legislative Report*, at 8 (Dec. 2020), https://www.healthy.arkansas.gov/images/uploads/pdf/FINAL_MMRC_Legislative_Report_12.09.20_PDF.pdf.

¹² *QuickFacts: Arkansas, Population Estimates*, U.S. Census Bureau (July 1, 2019), <https://www.census.gov/quickfacts/AR>.

more than 46% of people who obtained abortions in Arkansas were Black.¹³ If the Ban were to take effect, these patients would be forced to continue pregnancies that statistics show are two-to-three times deadlier to them than to their white counterparts.¹⁴

56. Arkansas is the fifth poorest state in the nation, with a poverty rate of 16.2%.¹⁵

57. Poverty also disproportionately affects Black Arkansans: approximately 27.1% Black Arkansans live below the poverty line, as compared to approximately 13.6% of their white counterparts.¹⁶

58. The majority of Plaintiffs' patients are poor or low-income.

59. These patients are least likely to be able to afford to travel out of state to obtain abortion care, and also face a higher risk of harm from forced pregnancy: higher poverty rates have been shown to be associated with higher maternal mortality risks among both white and Black women.¹⁷

60. Arkansas is also an extremely rural state: according to 2019 population estimates,

¹³ Ark. Ctr. of Health Stat., *supra* note 8, at 4.

¹⁴ Ark. Dep't of Health, *supra* note 11, at 8–9; *Racial and Ethnic Disparities Continue in Pregnancy-Related Deaths*, Ctrs. for Disease Control & Prevention (Sept. 5, 2019), <https://www.cdc.gov/media/releases/2019/p0905-racial-ethnic-disparities-pregnancy-deaths.html>.

¹⁵ *2019 Poverty Rate in the United States*, U.S. Census Bureau (Sept. 17, 2020), <https://www.census.gov/library/visualizations/interactive/2019-poverty-rate.html>.

¹⁶ *Arkansas Poverty Status in the Past 12 Months*, U.S. Census Bureau (2019), <https://data.census.gov/cedsci/table?q=Arkansas%20poverty&tid=ACSST1Y2019.S1701>.

¹⁷ Gopal K. Singh, *Maternal Mortality in the United States, 1935–2007: Substantial Racial/Ethnic, Socioeconomic, and Geographic Disparities Persist*, U.S. Dep't of Health & Human Servs., <http://www.hrsa.gov/ourstories/mchb75th/mchb75maternalmortality.pdf>.

41% of Arkansans live in rural counties.¹⁸

61. Rural counties in Arkansas not only have higher poverty rates than urban counties,¹⁹ they also tend to have less direct access to health-care resources than their urban counterparts.²⁰

62. According to the Arkansas Department of Health, 74 of Arkansas's 75 counties have been designated partially or fully medically underserved areas.²¹

63. A person's inadequate access to medical care in rural areas can have devastating consequences on maternal health: indeed, publicly available data from the U.S. Center for Disease Control and Prevention show that in 2015, rural areas had a pregnancy-related mortality ratio of 29.4 per 100,000 live births as compared to 18.2 in urban areas.²²

64. Thus, the Ban will disproportionately harm those for whom forced pregnancy is particularly dangerous, those least likely to be able to access medical care, and those who have

¹⁸ Univ. of Ark. Div. of Agric., *Rural Profile of Arkansas*, at 7 (2021), <https://www.uaex.edu/publications/pdf/MP564.pdf>.

¹⁹ *Id.* at 27.

²⁰ See *Rural Health Programs*, Ark. Dep't of Health, <https://www.healthy.arkansas.gov/programs-services/topics/rural-health-programs> (last visited May 21, 2021); *About Rural Health*, Ctrs. for Disease Control & Prevention, <https://www.cdc.gov/ruralhealth/about.html> (last updated Aug. 2, 2017).

²¹ Naomi Sweeney, *Arkansas Medically Underserved Areas (MUA)*, Ark. Dep't of Health (Aug. 21, 2020), https://www.healthy.arkansas.gov/images/uploads/pdf/Medically_Underserved_Area_Map_2020.pdf.

²² See Dina Fine Maron, *Maternal Health Care Is Disappearing in Rural America*, *Scientific Ame.* (Feb. 15, 2017), <https://www.scientificamerican.com/article/maternal-health-care-is-disappearing-in-rural-america/>; see also Ctrs. for Medicare & Medicaid Servs., *Improving Access to Maternal Health Care in Rural Communities*, at 4 (2019), <https://www.cms.gov/About-CMS/Agency-Information/OMH/equity-initiatives/rural-health/09032019-Maternal-Health-Care-in-Rural-Communities.pdf>; Nat'l Advisory Comm. on Rural Health & Human Servs., U.S. Dep't of Health & Human Servs., *Maternal and Obstetric Care Challenges in Rural America* (May 2020), <https://www.hrsa.gov/sites/default/files/hrsa/advisory-committees/rural/publications/2020-maternal-obstetric-care-challenges.pdf>.

the least resources to navigate the harms imposed by the Ban.

INJUNCTIVE RELIEF

65. If permitted to take effect, the Ban will subject Plaintiffs' patients to significant and irreparable harm to their constitutional rights for which no remedy at law exists. By preventing Plaintiffs' patients from obtaining an abortion in Arkansas, the Ban will also inflict significant and irreparable medical, emotional, dignitary, and other harms for which no remedy at law exists.

66. Enforcement of the Ban will also cause irreparable harm to Plaintiffs and their staff by threatening them with substantial criminal and/or licensure or disciplinary penalties for providing abortion services.

CLAIM FOR RELIEF

(Substantive Due Process—Plaintiffs' Patients' Rights to Liberty and Privacy)

67. Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 66.

68. By prohibiting an individual from making the ultimate decision whether to terminate a pregnancy prior to viability, the Ban violates Plaintiffs' patients' rights to liberty and privacy guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask this Court:

A. To enter a judgment declaring that Act 309 violates the Fourteenth Amendment to the U.S. Constitution and issue a preliminary and permanent injunction restraining Defendants, their

employees, agents, and successors in office from enforcing Act 309;

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

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

Dated: May 26, 2021

Meagan Burrows*
Rebecca Chan*
Brigitte Amiri*
American Civil Liberties Union Foundation
125 Broad St, 18th Floor
New York, NY 10004
mburrows@aclu.org
rebeccac@aclu.org
bamiri@aclu.org
Tel: (212) 549-2633

Attorneys for Plaintiff LRF

O'MELVENY & MYERS LLP

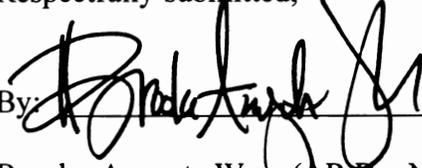
Leah Godesky*
1999 Avenue of the Stars
Los Angeles, California 90067
lgodesky@omm.com
Tel: (301) 246-8501
Fax: (212) 326-2061

Kendall Turner*
1625 Eye St. NW
Washington, DC 20006
kendallturner@omm.com
Tel: (202) 383-5300

Attorneys for Plaintiffs LRF, PPAEO & Janet Cathey, M.D.

** Motion for admission pro hac vice forthcoming*

Respectfully submitted,

By:  _____

Brooke-Augusta Ware (AR Bar No. 2004091)
Mann & Kemp PLLC
221 West 2nd Street, Suite 408
Little Rock, AR 72201
brooke@mannkemp.com
Tel: (501) 222-7378

Breean Walas (AR Bar No. 2006077)
Walas Law Firm, PLLC
P.O. Box 4591
Bozeman, MT 59772
breean@walaslawfirm.com
Tel: (501) 246-1067

On Behalf of the Arkansas Civil Liberties Union Foundation, Inc.

Attorneys for Plaintiffs LRF, PPAEO & Janet Cathey, M.D.

Maithreyi Ratakonda*
Susan Lambiase*
Planned Parenthood Federation of America
123 William St., 9th Fl.
New York, NY 10038
mai.ratakonda@ppfa.org
susan.lambiase@ppfa.org
Tel: (212) 261-4405

Attorneys for Plaintiffs PPAEO and Janet Cathey, M.D.

DECLARATION

I declare under penalty of perjury under the laws of the United States of America that the statements contained in the Complaint are true and correct to the best of my knowledge and belief.

Lori Williams APRN

Lori Williams, M.S.N., A.P.R.N.
Clinical Director
Little Rock Family Planning Services

Executed on: 05-19-2021

DECLARATION

I declare under penalty of perjury under the laws of the United States of America that the statements contained in the Complaint are true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "B. Hill", enclosed within a large, hand-drawn oval.

Brandon Hill, Ph.D.
President & CEO
Planned Parenthood of Arkansas & Eastern
Oklahoma d/b/a Planned Parenthood Great Plains

Executed on: May 19, 2021

DECLARATION

I declare under penalty of perjury under the laws of the United States of America that the statements contained in the Complaint are true and correct to the best of my knowledge and belief.


Janet Cathey, M.D.

Executed on: 5-20-2021

EXHIBIT A

Stricken language would be deleted from and underlined language would be added to present law.
Act 309 of the Regular Session

1 State of Arkansas As Engrossed: S1/21/21 S2/8/21 S2/9/21

2 93rd General Assembly

A Bill

3 Regular Session, 2021

SENATE BILL 6

4

5 By: Senators Rapert, T. Garner, G. Stubblefield, B. Ballinger, Bledsoe, A. Clark, L. Eads, J. English,
6 Flippo, Gilmore, K. Hammer, Hester, Hill, Irvin, B. Johnson, D. Sullivan, D. Wallace, Beckham, M.
7 Johnson

8 By: Representatives Bentley, Gazaway, M. Berry, Bragg, Breaux, Brooks, Cloud, C. Cooper, Cozart,
9 Crawford, Dotson, Evans, Hillman, Lowery, J. Mayberry, McCollum, McNair, Milligan, Payton,
10 Pilkington, Ray, B. Smith, Tosh, Underwood, Vaught, Wardlaw, Watson, Beaty Jr., Lundstrum, Richmond

11

12

For An Act To Be Entitled

13

AN ACT TO CREATE THE ARKANSAS UNBORN CHILD PROTECTION
14 ACT; TO ABOLISH ABORTION IN ARKANSAS AND PROTECT THE
15 LIVES OF UNBORN CHILDREN; TO PROTECT ALL HUMAN LIFE;
16 AND FOR OTHER PURPOSES.

17

18

19

Subtitle

20

TO CREATE THE ARKANSAS UNBORN CHILD
21 PROTECTION ACT; TO ABOLISH ABORTION IN
22 ARKANSAS AND PROTECT THE LIVES OF UNBORN
23 CHILDREN; AND TO PROTECT ALL HUMAN LIFE.

24

25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

27

28 SECTION 1. Arkansas Code Title 5, Chapter 61, is amended to add an
29 additional subchapter to read as follows:

30

Subchapter 4 – Arkansas Unborn Child Protection Act

31

32 5-61-401. Title.

33 This subchapter shall be known and may be cited as the “Arkansas Unborn
34 Child Protection Act”.

35

36 5-61-402. Legislative findings and intent.



As Engrossed: S1/21/21 S2/8/21 S2/9/21

SB6

1 (a) The General Assembly finds that:

2 (1) It is time for the United States Supreme Court to redress
3 and correct the grave injustice and the crime against humanity which is being
4 perpetuated by its decisions in Roe v. Wade, Doe v. Bolton, and Planned
5 Parenthood v. Casey;

6 (2) The United States Supreme Court committed a grave injustice
7 and a crime against humanity in the Dred Scott decision by denying personhood
8 to a class of human beings, African-Americans;

9 (3) The United States Supreme Court also committed a grave
10 injustice and a crime against humanity by upholding the “separate but equal”
11 doctrine in Plessy v. Ferguson, which withdrew legal protection from a class
12 of human beings who were persons under the United States Constitution,
13 African-Americans;

14 (4) A crime against humanity occurs when a government withdraws
15 legal protection from a class of human beings, resulting in severe
16 deprivation of their rights, up to and including death;

17 (5) In Brown v. Board of Education, the United States Supreme
18 Court corrected its own grave injustice and crime against humanity created in
19 Plessy v. Ferguson by overruling and abolishing the fifty-eight-year-old
20 “separate but equal” doctrine, thus giving equal legal rights to African-
21 Americans;

22 (6) Under the doctrine of stare decisis, the three (3) abortion
23 cases mentioned in subdivision (a)(1) of this section meet the test for when
24 a case should be overturned by the United States Supreme Court because of
25 significant changes in facts or laws, including without limitation the
26 following:

27 (A) The cases have not been accepted by scholars, judges,
28 and the American people, as witnessed to by the fact that these cases are
29 still the most intensely controversial cases in American history and at the
30 present time;

31 (B) New scientific advances have demonstrated since 1973
32 that life begins at the moment of conception and that the child in a woman’s
33 womb is a human being;

34 (C) Scientific evidence and personal testimonies document
35 the massive harm that abortion causes to women;

36 (D) The laws in all fifty (50) states have now changed

As Engrossed: S1/21/21 S2/8/21 S2/9/21

SB6

1 through "Safe Haven" laws to eliminate all burden of child care from women
2 who do not want to care for a child; and

3 (E) Public attitudes favoring adoption have created a
4 culture of adoption in the United States, with many families waiting long
5 periods of time to adopt newborn infants;

6 (7) Before the United States Supreme Court decision of Roe v.
7 Wade, Arkansas had already enacted prohibitions on abortions under § 5-61-101
8 et seq., and authorized the refusal to perform, participate, consent or
9 submit to an abortion under § 20-16-601;

10 (8) Arkansas Constitution, Amendment 68, states that the policy
11 of Arkansas is to protect the life of every unborn child from conception
12 until birth and that public funds shall not be used to pay for any abortion,
13 except to save the life of the mother;

14 (9) Arkansas passed the Arkansas Human Heartbeat Protection Act,
15 § 20-16-1301 et seq., in 2013, which shows the will of the Arkansas people to
16 save the lives of unborn children;

17 (10) Arkansas has continued to pass additional legislation in
18 2015, 2017, and 2019 that further shows the will of the Arkansas people to
19 save the lives of unborn children;

20 (11)(A) Since the decision of Roe v. Wade, approximately sixty
21 million sixty-nine thousand nine hundred seventy-one (60,069,971) abortions
22 have ended the lives of unborn children.

23 (B) In 2015, six hundred thirty-eight thousand one hundred
24 sixty-nine (638,169) legal induced abortions were reported to the Centers for
25 Disease Control and Prevention from forty-nine (49) reporting areas in the
26 United States.

27 (C) The Department of Health reports that two thousand
28 nine hundred sixty-three (2,963) abortions took place in Arkansas during
29 2019, including abortions performed on out-of-state residents; and

30 (12) The State of Arkansas urgently pleads with the United
31 States Supreme Court to do the right thing, as they did in one of their
32 greatest cases, Brown v. Board of Education, which overturned a fifty-eight-
33 year-old precedent of the United States, and reverse, cancel, overturn, and
34 annul Roe v. Wade, Doe v. Bolton, and Planned Parenthood v. Casey.

35 (b) It is the intent of this subchapter to ensure that abortion in
36 Arkansas is abolished and to protect the lives of unborn children.

As Engrossed: S1/21/21 S2/8/21 S2/9/21

SB6

1

2 5-61-403. Definitions.3 As used in this subchapter:

4 (1)(A) "Abortion" means the act of using, prescribing,
5 administering, procuring, or selling of any instrument, medicine, drug, or
6 any other substance, device, or means with the purpose to terminate the
7 pregnancy of a woman, with knowledge that the termination by any of those
8 means will with reasonable likelihood cause the death of the unborn child.

9 (B) An act under subdivision (1)(A) of this section is not
10 an abortion if the act is performed with the purpose to:

11 (i) Save the life or preserve the health of the
12 unborn child;

13 (ii) Remove a dead unborn child caused by
14 spontaneous abortion; or

15 (iii) Remove an ectopic pregnancy;

16 (2) "Fertilization" means the fusion of a human spermatozoon
17 with a human ovum;

18 (3) "Medical emergency" means a condition in which an abortion
19 is necessary to preserve the life of a pregnant woman whose life is
20 endangered by a physical disorder, physical illness, or physical injury,
21 including a life-endangering physical condition caused by or arising from the
22 pregnancy itself; and

23 (4) "Unborn child" means an individual organism of the species
24 Homo sapiens from fertilization until live birth.

25

26 5-61-404. Prohibition.

27 (a) A person shall not purposely perform or attempt to perform an
28 abortion except to save the life of a pregnant woman in a medical emergency.

29 (b) Performing or attempting to perform an abortion is an unclassified
30 felony with a fine not to exceed one hundred thousand dollars (\$100,000) or
31 imprisonment not to exceed ten (10) years, or both.

32 (c) This section does not:

33 (1) Authorize the charging or conviction of a woman with any
34 criminal offense in the death of her own unborn child; or

35 (2) Prohibit the sale, use, prescription, or administration of a
36 contraceptive measure, drug, or chemical if the contraceptive measure, drug,

As Engrossed: S1/21/21 S2/8/21 S2/9/21

SB6

1 or chemical is administered before the time when a pregnancy could be
2 determined through conventional medical testing and if the contraceptive
3 measure, drug, or chemical is sold, used, prescribed, or administered in
4 accordance with manufacturer instructions.

5 (d) It is an affirmative defense to prosecution under this section if
6 a licensed physician provides medical treatment to a pregnant woman which
7 results in the accidental or unintentional physical injury or death to the
8 unborn child.

9

10

11

/s/Rapert

12

13

14

APPROVED: 3/9/21

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36