No. 14-1891

IN THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

LOUIS JERRY EDWARDS, M.D., on behalf of himself and his patients, ET AL.

Appellees,

vs

JOSEPH M. BECK, M.D., President of the Arkansas State Medical Board, and his successors in office. in their official capacities, ET AL.

Appellant.

AN APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS RULING BY THE HONORABLE SUSAN WEBBER WRIGHT

BRIEF IN SUPPORT OF APPELLANT

Supporting vacating the District Court mistake.

FAX RECEIVED

Statement of Interest and Authority

1. Curtis J Neeley Jr. is an interested but extremely unique "mentally" and physically disabled Arkansas citizen who supported and supports Act 301 but recognizes the fundamental human right of females to artificially terminate pregnancies for a time of 12-weeks after conception.

2. Mr Neeley has impregnated several AR females who did not abort and has female offspring. Mr Neeley has grandchildren due to these AR females choosing not to artificially terminate at least four pregnancies.

3. Mr Neeley is aware pregnancy can now be detected and terminated privately without involving the rights of anyone but the impregnated female for a time (*e.g.* 12-weeks). A husband has no right to require or forbid a spouse or daughter to terminate a pregnancy for a time.

4. After 12-weeks of gestation, the right to preserve developing sperm is constitutionally recognized in Arkansas as was encouraged in *Roe v Wade.* Mr Neeley contacted counsel for each party and was told they would wait to read the filed *amicus* before deciding to oppose of welcome.

Authorship and fiscal support for brief

No party authored any of this brief and no fiscal support for this brief was provided by anyone. One party, one District Court judge, and one governor believes in egregious error a fundamental right to abortion was created by *Roe v Wade.* Many Arkansas citizens may hope this is the first step in making abortion criminal. This should never occur. The Eighth Circuit should noq vacate the error made by the District Court and end the legal debate regarding abortion. A private moral decision in AR for 12-weeks per Act 301 is allowed though this law will surely now be fine tuned.

SUMMARY AND STATEMENT REGARDING ORAL ARGUMENT

1. *Roe v Wade* remains an extremely well done consideration of the rights of the female to privately control the body and abort unwanted pregnancies. This consideration was done considering the importance of exclusively the State protections required for the rights of the unborn to exist and the pregnant female's right to privacy. Contrary to the hasty opinions of many, including governor Huckabee, Arkansas did not pass a law remotely in conflict with *Roe v Wade*. This brief will cite from only this case to elucidate this clear fact not contemplated properly in any of the progeny of *Roe v Wade* thus far. -including citations by Plaintiffs alleging a fundamental human right exists that only exists as the controlling right for a time.

2. The right of a female to abort a pregnancy is not called or even alleged as a fundamental human right in *Roe v Wade* as follows from Hon. Blackmun's ruling.

> "*some amici argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. with this we do not agree*" | *Roe v Wade*, 410 US 113(1973)

> "*a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute.*" | *Roe v Wade*, 410 US 113(1973)

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> "*We, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified, and must be considered against important state interests in regulation.*"
> *Roe v Wade*, 410 US 113(1973)

No right alleged to exist by any <u>just party</u> may violate the laws of nature like abortions; in fact, undeniably violate. *Roe v Wade* respected the laws of nature and Arkansas law respects the "*important state interests*" more completely than the *Roe v Wade* ruling where first encouraged. See cites above for this clear guidance by the Supreme Court.

3. Every pregnancy occurring in nature will result in a new life or death of the pregnant female, the offspring, or both. The human species is unique from other species in many ways and now has acquired the ability to safely end unwanted pregnancies after an imperceptible moral choice.

4. Obedience to natural law today is a moral choice made after sexual intercourse by females. Sexual intercourse for the human female no longer requires the procreation risk. This moral choice can be seen as the natural choice allowed already in several species killing and eating or abandoning undesired offspring after birth result from sexual intercourse.

5. Humanity has not generally considered the decision to kill a newborn offspring moral but recently acquired the ability to choose killing offspring safely and <u>imperceptibly</u> after a conscious moral decision made <u>before</u> birth by the female alone. This places the desires of the pregnant human female to procreate on par with the natural rights of other species.

6. *Roe v Wade* was the first consideration of this newly developed ability to decide if fertilization required procreation. When this consideration was made, *Roe v Wade* balanced ONLY this new moral individual choice against the duties of the State to protect the life of the fertilized egg though recognizing other interests existed as seen in quotes above. This fact was ignored by the progeny of *Roe v Wade* and blatantly ignored by the Plaintiffs, Defendants, and all US media.

7. The constitutional Arkansas law, called unconstitutional by mistake in the Eastern District of Arkansas, followed the honorable *Roe v Wade* ruling precisely and augments this ruling by protecting the rights of other impacted parties and the State's duty to protect these implied in the honorable *Roe v Wade* decision. The State law requires citizens of Arkansas to accept sexual intercourse as the weighty, non-frivolous, natural agreement or contract this should be.

8. The constitutional Arkansas law, however, makes exceptions for when sexual intercourse was not due to an agreement. This brief is concise and should make the law's constitutionality self-evident. The state of Arkansas should request one hour oral argument before the Eighth Circuit judges *en banc* for each party given the nationwide impact of this appeal.

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STATEMENT OF THE ISSUES FOR REVIEW

The issue citizens of Arkansas respectfully ask the the Eighth Circuit Court of Appeals to consider *en banc* is whether the State law proscribing abortions after twelve weeks gestation was improperly alleged to violate the fundamental rights of females to control their bodies despite the *Roe v Wade* recognition of other interests limiting this right as gestation progresses.

STATEMENT OF THE CASE

Nature of Case, Course of Proceedings, and Dispositions Below

This appeal arises from the decision of Susan Webber Wright in the Eastern District of Arkansas determining Act 301 was an unconstitutional infringement on the fundamental rights of pregnant females despite *Roe v Wade.* This ruling was made after Governor Mike Huckabee vetoed Act 301 alleging the same unconstitutionality by mistake . This veto was overridden by Arkansas citizens wishing protection for other parties allowed in the controlling *Roe v Wade* ruling though never yet considered by any US Court.

STATEMENT OF THE FACTS

1. The citizens of Arkansas passed legislation regulating the artificial termination of human pregnancy. This law was then vetoed by Governor Mike Huckabee alleging unconstitutionality. This veto was then overridden by the citizens of Arkansas. This regulation was then ruled an unconstitutional limit of pregnant female rights despite the *Roe v Wade* recognition of various "*important state interests in regulation*".

2. The relevant portions of Act 301 follow from the constitutional Act that will be in the joint appendix.

20-16-1302. Definitions.
As used in this subchapter: …
[*irrelevant text omitted*]

(8) "Viability" means a medical condition that begins with a detectible fetal heartbeat.

20-16-1303. Testing for heartbeat.
(a) A person authorized to perform abortions under Arkansas law shall not perform an abortion on a pregnant woman before the person tests the pregnant woman to determine whether the fetus that the pregnant woman is carrying possesses a detectible heartbeat.

(b)(1) A person authorized to perform abortions under Arkansas law shall perform an abdominal ultrasound test necessary to detect a heartbeat of an unborn human individual according to standard medical practice, including the use of medical devices as determined by standard medical practice.

20-16-1304. Prohibitions.
(a) A person authorized to perform abortions under Arkansas law shall not perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human individual whose heartbeat has been detected under § 20-16-1303 and is twelve (12) weeks or greater gestation.

STANDARD OF REVIEW

1. Arkansas asks the Eighth Circuit to review this case *en banc* and *de novo* and not repeat the District Court affirmation of mistakes made in cases cited from the progeny of *Roe v Wade* and consider allowing the State to protect the rights of those impacted by the decision to abort pregnancy despite the prior decision made to perhaps procreate by a male and female Arkansas citizen.

2. The rights of other affected parties were not adequately addressed by *Roe v Wade* except in recognizing these rights do, in fact, exist. The rights of others have never been considered whatsoever in any of the progeny.

3. *Roe v Wade* does not, in fact, need to be overturned to find Act 301 to be constitutional regulation of pregnancy. The State duty to regulate public behavior was considdered better by Act 301 considering the impacts on others while remaining wholly consistent with *Roe v Wade* from 1973.

ARGUMENT

Act 301 addresses the suggestion of the Supreme Court to address the various rational warranting State regulation of abortion besides: 1) the rights to privacy of the pregnant female; and 2) the duty of the State to protect the rights of the fertilized egg cells. These other ignored but impacted parties should now be protected instead of mistakenly ignored since 1973.

I. STATE DUTY TO PROTECT RIGHTS OF LIVING CELLS

1. The living cells have no natural rights to life until a live birth though these living cells have been recognized in laws to be human lives since laws first existed though not recognized in the honorable *Roe v Wade* ruling in an error of omission though this clear error was recognized by AR voters and has been common knowledge for millennia but was not before the court in *Roe v Wade*. *See* Exodus 21:22-25 or see most any State law today.

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2. Act 301 regulation of pregnancy is not done exclusively to protect the rights of these "cell groups" but to respect the rights of others impacted by the artificial termination of a natural pregnancy.

II. STATE DUTY TO PROTECT RIGHTS OF THE FATHER

1. The artificial termination of a pregnancy violate the rights of a male seeking to protect cells of his body after a female agrees to nurture these cells and use these living cells to procreate. The female agreed with much more assurance than a notarized signature or a solemn handshake in what is the most intimate type human agreement assurance once reserved for marriage exclusively.

2. The private female right to artificially end pregnancy, recognized in *Roe v Wade*, is still allowed to supplant these male rights for 12-weeks in Act 301.

III. STATE DUTY TO ENFORCE PRIVATE AGREEMENTS

1. The State has a duty to enforce court orders such as child custody, visitation, and support and has a similar duty to enforce private agreements that are signed and notarized. The joint agreement to procreate made by the male and female via sexual intercourse gives the male and female joint duties after Act 301 is found constitutional.

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2. The male and females in Arkansas have jointly agreed to determine if pregnancy occurs long enough before twelve weeks pass to commit to procreation or chose artificially ending the undesired pregnancy and each bearing the fiscal and moral costs of this violation of natural law.

IV. DUTY TO PROTECT RIGHTS OF CITIZENS TO FORBID FRIVOLOUS AGREEMENTS AND PROTECT MINOR CHILDREN

1. The citizens of Arkansas have considered the ruling of *Roe v Wade* for over forty years and have now required treatment of the agreement to possibly procreate made by a male and female choosing to have sexual intercourse as a decision requiring weighty consideration. This decision was made in order to prevent minor children from being taught indirectly that human sexual intercourse is not a serious act. Modern science now makes procreation after sexual intercourse a wholly human decision but this moral choice did not once exist. *See* Luke 23:29.

2. Artificially ending pregnancy after 12-weeks is no longer legal with exceptions in Arkansas though some pregnancies reaching "viability" sooner than the 12-week "viability" defined in Act 301 may be artificially ended despite heartbeat detection. This constitutional statute or regulation becomes "viable[1]" when heartbeats are detected and now requires notification though the pregnancy may still be artificially ended since life outside the womb is not yet possible.

1 capable of being done or carried out <more research will be required to see if this is a viable solution> wordcentral.com/cgi-bin/thesaurus?book=Thesaurus&va=viable

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CONCLUSION

1. The natural decision to risk procreation is no longer required in Arkansas before females engage in sexual intercourse. Act 301 establishes the fundamental right to abort for 12-weeks after conception.

2. Many "pro-life" Arkansas citizens may not like this aspect and might hope this law was just a first step to banning all abortions. Act 301 is NOT an attempt to do this nor is it a "first step" toward this goal.

3. Act 301 is a constitutional moral decision made by Arkansas citizens to raise children and protect growing children from treating sexual intercourse as not requiring the most serious of human considerations possible like is required by natural law. The 12-week period allowed by Act 301 gives adequate time to artificially end unwanted pregnancies while not risking the pregnant state being detected due to hearing a heartbeat or other symptom of pregnancy.

3. The abortion debate will never end but Act 301 is constitutional and augments *Roe v Wade* as suggested therein while complying precisely as citizens of Arkansas pray the Eighth Circuit Court of Appeals now realizes sitting *en banc*.

Respectfully and humbly submitted.

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Certificate of Compliance with Rule 32(a)

1) This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because: this brief contains 2,700 words, including the parts of the brief exempted by Fed., . R. App. P. 32(a)(7)(B)(iii).

2) This brief complies with the typeface requirements of Fed. R. App. P.32(a)(5) and the type style requirements of Fed. R. App. P.32(a)(6) because this brief is prepared in a proportionally spaced typeface using Open Office 3 in 14 point type in Times New Roman typeface with Arial typeface for the titles and is 2,700 words.

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