

FILED
JUN 27 2022

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

EDDIE JEAN CARR, CHANCERY CLERK
BY B. Robinson D.C.

JACKSON WOMEN’S HEALTH ORGANIZATION,
on behalf of itself and its patients; **SACHEEN CARR-**
ELLIS, M.D., M.P.H., on behalf of herself and her
patients

PLAINTIFFS

VS.

CASE NO. G2022-739013

THOMAS E. DOBBS, M.D., M.P.H., in his official
capacity as State Health Officer of the Mississippi
Department of Health; **MISSISSIPPI BOARD OF**
MEDICAL LICENSURE; KENNETH CLEVELAND,
M.D., in his official capacity as Executive Director of
the Mississippi State Board of Medical Licensure;
JODY E. OWENS, II, in his official capacity as
District Attorney for Hinds County; **GERALD A.**
MUMFORD, in his official capacity as County
Attorney for Hinds County; **CATORIA P. MARTIN,**
in her official capacity as City Attorney for the City of
Jackson

DEFENDANTS

COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF

Although the U.S. Supreme Court’s June 24 decision in *Dobbs v. Jackson Women’s Health Organization* overruled that Court’s decision in *Roe v. Wade*, Mississippians still have a separate and independent right to privacy under the Mississippi Constitution that the Mississippi Supreme Court held encompasses a right to abortion. The Court reaffirmed in *Pro-Choice Mississippi v. Fordice* that “[n]o right is held more sacred . . . than the right of every individual to the possession and control of his own person,” and “no aspect[] of life is more personal and private than those having to do with one’s [own] reproductive system,” and ruled that “the state constitutional right to privacy includes an implied right to choose whether or not to have an abortion.” 716 So. 2d 645, 653–54 (Miss. 1998) (internal quotations omitted). This holding by the Mississippi Supreme

Court in 1998 is still standing and is binding precedent that prevents the State of Mississippi from outlawing abortion regardless of the status of the current federal law. Accordingly, the Plaintiffs bring this case to enjoin and prevent enforcement of any law that the State would invoke to prohibit Mississippians from exercising their right under the Mississippi Constitution to obtain an abortion before 15 weeks of pregnancy.

The Plaintiffs are the Jackson Women's Health Organization, on behalf of itself and its patients, and Dr. Sacheen Carr-Ellis, M.D., M.P.H., on behalf of herself and her patients. They bring this suit for declaratory judgment and injunctive relief prohibiting the enforcement of two Mississippi abortion bans: namely, Miss. Code Ann. § 41-41-45 (the "Trigger Ban") and Miss. Code Ann. § 41-41-34.1 (the "6-Week Ban"), (collectively, the "Bans"), as well as any other existing law that the State attempts to enforce that would, like the Bans, infringe upon the Mississippi constitutional right to abortion. Enforcement of the Trigger Ban would effectively prohibit all abortions in the state, and enforcement of the 6-Week Ban would prohibit most abortions in the state, all in violation of the right to privacy encompassed within the Mississippi Constitution, which would cause imminent and irreparable injury to Plaintiffs and their patients.

INTRODUCTION

1. The Mississippi Constitution protects a right to abortion. This was confirmed twenty-four years ago by the Mississippi Supreme Court. See *Pro-Choice Miss. v. Fordice*, 716 So. 2d 645 (Miss. 1998) (“*Fordice*”). In *Fordice*, the Mississippi Supreme Court held that “abortion is protected within the penumbras of the right to privacy” under the Mississippi Constitution. *Id.* at 666. That precedent prohibits the State of Mississippi from banning abortions or imposing an undue burden on a woman’s ability to obtain an abortion. Given that the decision was issued by the Mississippi Supreme Court based on the Mississippi Constitution, it is not dependent upon the U.S. Supreme Court’s interpretation of the U.S. Constitution. Thus, the precedent established in *Fordice* remains good law.

2. On June 24, 2022, the U.S. Supreme Court abandoned 50 years of unbroken federal precedent in *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392, 597 U.S. __ (2022) (the “*Dobbs* decision”), overturning *Roe* and *Casey*, which had recognized a right to abortion under the U.S. Constitution.

3. However, while the June 24 decision has no bearing on the Mississippi Constitution, Mississippi will seek to enforce two laws in light of the *Dobbs* decision, one of which would effectively eliminate abortion access in Mississippi and the other of which would prohibit most abortions in Mississippi:

- (1) The Trigger Ban (Miss. Code Ann. § 41-41-45): A near-total ban on abortion with severe criminal penalties on any person (other than the pregnant person) who performs or attempts to perform or induces an abortion in the State of Mississippi. The Trigger Ban is set to take effect on July 7, 2022, ten (10) days after the Attorney General published her determination that the U.S. Supreme Court has overruled *Roe*

and that it is “reasonably probable” that the Trigger Ban “would be upheld by the Court as constitutional.”¹

- (2) The 6-Week Ban (Miss. Code Ann. § 41-41-34.1): The 6-Week Ban prohibits abortion after a “fetal heartbeat” is detected, approximately six weeks of pregnancy, or two weeks after a missed period. Many people do not even know they are pregnant before six weeks. That ban was preliminarily enjoined by a federal district court in the Southern District of Mississippi and that injunction was affirmed by the U.S. Court of Appeals for the Fifth Circuit. However, that injunction could be lifted in the wake of the U.S. Supreme Court’s ruling in *Dobbs*.

4. Because the Trigger Ban would have the effect of eliminating nearly all abortion access in Mississippi, and the 6-Week Ban would prohibit most abortions in Mississippi, the Bans violate the state constitutional right to abortion as protected under the Mississippi Constitution.

5. Enforcement of the Bans, individually or collectively, will cause imminent and irreparable harm to Mississippians, who have, for decades, relied on their ability to make decisions

¹ Before *Roe v. Wade* was decided in 1973, Mississippi had an abortion ban that was codified at Miss. Code Ann. § 97-3-3. It was subsequently declared unconstitutional in relevant part by the Mississippi Supreme Court in *Spears v. State*, 278 So. 2d 443, 444 (Miss. 1973). Instead of attempting to revive it, the Mississippi Legislature in 2007 enacted the Trigger Ban, which was designed specifically for the situation that now exists: the overruling of *Roe* by the U.S. Supreme Court. The Trigger Ban is explicit in providing that abortion will not become illegal in Mississippi until ten days after the Mississippi Attorney General certifies that *Roe* has been overruled. Thus, the Trigger Ban, and the 6-Week Ban, are the focus of this case. If the Trigger Ban is enjoined by this Court and the Defendants seek to enforce Section 97-3-3 in its place, the enforcement of that law should be enjoined as well.

concerning their reproductive health and their ability to access safe and essential abortion care, in organizing their lives, relationships, and families.

6. The availability of abortion care benefits the health and well-being of Mississippians. It allows them to make decisions about their lives and bodies without interference from the state.

7. Plaintiff Jackson Women's Health Organization ("JWHO" or the "Clinic") is the last abortion clinic in Mississippi. If the Bans are enforced, the Clinic will be forced to stop providing abortion care, and Mississippians will no longer have access to essential abortion care within the state.

8. Plaintiffs bring this action to safeguard the constitutional rights of their patients to obtain safe and lawful abortions. Plaintiffs request a declaratory judgment that the Bans are unconstitutional for violating the state constitutional right to privacy and an injunction prohibiting their enforcement.

THE PARTIES

A. Plaintiffs

9. Plaintiff Jackson Women's Health Organization, located at 2903 North State Street, Jackson, MS 39216, has been in operation since 1996. The Clinic provides reproductive health care to its patients, including medication and aspiration abortions. The Clinic brings claims on behalf of itself, its staff, and its patients.

10. Plaintiff Sacheen Carr-Ellis, M.D., M.P.H., is a physician licensed to practice medicine in Mississippi. Dr. Carr-Ellis is the Clinic's Medical Director, and she provides abortions at the Clinic. But for the Bans, Dr. Carr-Ellis would provide abortions up to 14 weeks and 6 days after her patients' last menstrual periods ("LMP"). Dr. Carr-Ellis brings claims on behalf of herself and her patients.

11. The Clinic has been providing this essential medical care in Mississippi for over 25 years.

12. Absent injunctive relief from this Court, Plaintiffs will be forced to turn away patients seeking abortions or face the risk of substantial professional sanctions and criminal and civil penalties, including imprisonment for up to ten years for violating the Trigger Ban and the loss of licenses to practice medicine.

B. Defendants

13. Defendant Thomas E. Dobbs, M.D., M.P.H., is the State Health Officer of the Mississippi Department of Health, which is located at 570 East Woodrow Wilson Drive, Jackson, MS 39216. Among other things, he is responsible for supervising and directing all activities of the Department of Health, pursuant to Miss. Code Ann. §§ 41-3-5.1, 41-3-15(1)(c). He is sued in his official capacity.

14. Defendant Mississippi State Board of Medical Licensure has the authority to suspend or revoke a physician's license to practice medicine in the State of Mississippi if the physician violates an abortion ban, pursuant to Miss. Code Ann. § 73-25-29(16). The State Board is located at 1867 Crane Ridge Drive, Suite 200-B, Jackson, MS 39216.

15. Defendant Kenneth Cleveland, M.D., is the Executive Director of the Mississippi State Board of Medical Licensure. He is responsible for the day-to-day operations of the Board, pursuant to 30-2645 Miss. Code R. 1.2(F). He is sued in his official capacity.

16. Defendant Jody E. Owens, II is the District Attorney for Hinds County, Mississippi. His office is located at 407 East Pascagoula Street, Jackson, MS 39201. He is authorized to prosecute felony criminal cases in Hinds County, Mississippi. He is sued in his official capacity.

17. Defendant Gerald A. Mumford is the County Attorney for Hinds County, Mississippi. His office is located at 820 North Street, Jackson, MS 39202. He is authorized to

prosecute misdemeanor criminal cases in Hinds County, Mississippi. He is sued in his official capacity.

18. Defendant Catoria P. Martin is the City Attorney for the City of Jackson, Mississippi. Her office is located at Jackson City Hall, 219 South President Street, Jackson, MS 39201. She is responsible for prosecuting misdemeanor criminal cases for the City of Jackson, Mississippi. She is sued in her official capacity.

JURISDICTION AND VENUE

19. Pursuant to Miss. Code Ann. § 9-5-81 and § 11-45-1 and Miss. Const. art. VI, § 159, jurisdiction and venue are proper in this Court because this Complaint challenges the constitutionality of these Mississippi state laws.

20. Venue is proper in this county, pursuant to Miss. Code Ann. § 11-45-1, because the action is against the State and the seat of government is located in this county.

21. Plaintiffs seek equitable relief, including declaratory judgment and injunctive relief, which this Court has jurisdiction over pursuant to art. VI, § 159 of the Mississippi Constitution.

FACTUAL BACKGROUND

A. Mississippi's Constitution Protects Mississippians' Right to Access Abortion Care

22. The Mississippi Constitution protects Mississippians' right to abortion. The Mississippi Supreme Court has held that this right is protected by the right to privacy that all Mississippians enjoy pursuant to the Mississippi Constitution, including Article III, Section 32, which states: "[t]he enumeration of rights in this constitution shall not be construed to deny and impair others retained by, and inherent in, the people." Miss. Const. art. III, § 32. The Mississippi Supreme Court has held that "[t]his right [to privacy] has no necessary connection with any organized religion nor any personal religious beliefs. It is secured to each person within the

constitution—saint or sinner, Christian or Jew, agnostic or atheist. It may be claimed for motives noble or base.” *In re Brown*, 478 So. 2d 1033, 1040 (Miss. 1985).

23. The right to privacy under the Mississippi Constitution encompasses the right to autonomous bodily integrity; this right includes the freedom to decide whether or not to obtain medical care, including abortion care—a decision recognized as being inherently private and central to one’s bodily autonomy. In *Pro-Choice Mississippi v. Fordice*, the Mississippi Supreme Court held that the right to privacy is “the most comprehensive and guarded right emanating from the Mississippi Constitution,” and that “[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” *Fordice*, 716 So. 2d at 653–54 (internal quotations omitted). The Mississippi Supreme Court then stated that “[i]t requires little awareness of personal prejudice and human nature to know that, generally speaking, no aspects of life are more personal and private than those having to do with one’s . . . reproductive system.” *Id.* at 653 (internal quotations omitted). Thus, the Mississippi Supreme Court explicitly held that, in Mississippi “the state constitutional right to privacy includes an implied right to choose whether or not to have an abortion.” *Id.* at 654.

24. Therefore, as the Mississippi Supreme Court recognized in *Fordice*, Mississippians have a constitutionally protected right to abortion under the State Constitution. Through the Bans, Defendants seek to revoke this constitutional right to abortion by imposing unlawful governmental intervention that would prohibit abortion and impose certain civil and criminal penalties.

B. The Challenged Bans

THE TRIGGER BAN

25. In 2007, Mississippi passed the Trigger Ban, attached hereto as Exhibit 1. In relevant part, the preamble to the Trigger Ban states that the substance of the statute will become the law as codified in Miss. Code Ann. § 41-41-45 “[f]rom and after ten days following the date of publication by the Attorney General of Mississippi that the Attorney General has determined that the United States Supreme Court has overruled the decision of *Roe v. Wade*, and that it is reasonably probable that this section would be upheld by the Court as constitutional[.]” Miss. Code Ann. § 41-41-45. The substance of the Trigger Ban imposes a near-total ban on abortion: “[n]o abortion shall be performed or induced in the State of Mississippi, except in the case where necessary for the preservation of the mother’s life or where the pregnancy was caused by rape,” if a formal charge of rape has been filed with law enforcement. Miss. Code Ann. § 41-41-45(2), (3). The Trigger Ban also imposes criminal sanctions on “[a]ny person, except the pregnant woman, who purposefully, knowingly or recklessly performs or attempts to perform or induce an abortion in the State of Mississippi,” providing for “imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than ten (10) years.” Miss. Code Ann. § 41-41-45(4).

26. The Trigger Ban infringes on Mississippians’ right to abortion by imposing a near-total ban on abortion. The threat of severe criminal sanctions on providers will significantly chill the provision of abortion care in Mississippi. If the Trigger Ban were to be enforced, the Clinic would be forced to close, leaving Mississippians without access to abortion care in the state.

27. On June 27, 2022, Mississippi’s current Attorney General, Lynn Fitch, published her determination that the U.S. Supreme Court in its decision in *Dobbs*, No. 19-1392, 597 U.S. ___ (2022) has overruled *Roe*, 410 U.S. 113 (1973), and that it is reasonably probable that the Trigger

Ban would be upheld as constitutional. Attorney General's Determination Regarding Section 41-41-45, Mississippi Code Annotated, No. 26438 (proposed June 27, 2022) (available at <https://www.sos.ms.gov/adminsearch/ACProposed/00026438b.pdf>).

THE 6-WEEK BAN

28. On March 21, 2019, Mississippi's Governor signed into law S.B. 2116, codified in part as Miss. Code Ann. § 41-41-34.1, attached hereto as Exhibit 2, which effectively bans abortions after just six (6) weeks from a woman's LMP, at which point many pregnant persons may not even know they are pregnant.

29. The 6-Week Ban prohibits most abortions sought in the state of Mississippi. Specifically, it states: "no person shall knowingly perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual that the pregnant woman is carrying and whose fetal heartbeat has been detected," Miss. Code § Ann. 41-41-34.1(2)(a), except when the abortion is performed "to prevent the death of a pregnant woman" or "a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman." Miss. Code Ann. § 41-41-34.1(2)(b)(i).

30. Violations of the 6-Week Ban are punishable as a misdemeanor "by a fine of One Thousand Dollars (\$1,000.00), by imprisonment in the county jail for a period of time not to exceed six (6) months or both such fine and imprisonment." Miss. Code Ann. § 41-41-39.

31. Physicians also risk loss of their medical license for violation of the 6-Week Ban. Miss. Code Ann. § 73-25-29(16) provides in relevant part, "[t]he grounds for the nonissuance, suspension, revocation or restriction of a [medical] license or the denial of reinstatement or renewal of a license [include] . . . [p]erforming an abortion on a pregnant woman after determining that the unborn human individual that the pregnant woman is carrying has a detectable fetal heartbeat as provided in Section 41-41-34.1."

32. Plaintiffs had previously challenged the constitutionality of the 6-Week Ban under the U.S. Constitution and obtained a preliminary injunction from the U.S. District Court for the Southern District of Mississippi enjoining the ban. *Jackson Women's Health Organization v. Dobbs*, 379 F. Supp. 3d 549 (S.D. Miss. 2019). That injunction was affirmed by the U.S. Court of Appeals for the Fifth Circuit. *Jackson Women's Health Organization v. Dobbs*, 951 F.3d 246 (5th Cir. 2020). The injunction, which is based on federal law, could be lifted in light of the *Dobbs* decision.

33. Nonetheless, the 6-Week Ban violates the Mississippi Constitution as it violates the state constitutional right to abortion care. Under the 6-Week Ban, all Mississippians seeking an abortion after 6 weeks LMP, except under very narrow exceptions, will be prohibited from obtaining one. Even persons who become pregnant by rape or incest will be prohibited from obtaining abortions as the 6-Week Ban includes no such exceptions.

C. The Bans Are Unconstitutional

34. If either the Trigger Ban or the 6-Week Ban are permitted to take effect in Mississippi, each of the Bans will infringe on the constitutionally protected right of Mississippians to abortion under the Mississippi Constitution.

35. For decades, the Clinic had been providing safe abortion care to Mississippians. The Clinic wishes to continue providing abortion care before 15 weeks. If the Bans are not enjoined, the Clinic will be unable to serve its patients. The Bans will effectively make it impossible for most Mississippians to obtain essential abortion care in the state.

36. The Bans violate the constitutional rights of the people of Mississippi by stripping them of their autonomy to make the most personal and private decisions concerning their bodily integrity. Pregnant people in Mississippi have the right to decide whether and when to end or continue a pregnancy by taking into account circumstances that are unique to each individual—

such as health, family situation, economic stability, education, or other circumstances that shape the lives of pregnant Mississippians, and the lives of those who depend on them. Denying Mississippians the right to bodily autonomy regardless of the individual circumstances that shape their lives denies them their constitutionally protected right to privacy.

37. The Trigger Ban and the 6-Week Ban therefore harm Plaintiffs' patients by denying them access to safe and essential abortion care and violating their constitutionally protected right to abortion under the Mississippi Constitution.

38. The exceptions to the Bans, where they exist, do not cure the constitutional violations.

39. The Bans present Plaintiffs with an untenable choice—face professional sanctions and criminal and civil penalties for continuing to provide the abortion care their patients seek, or refrain from providing Mississippians access to a constitutionally protected right and safe and vital healthcare.

40. These conditions constitute immediate and irreparable harm to Plaintiffs and their patients.

CLAIM

The Trigger Ban and the 6-Week Ban Are Unconstitutional Under the Mississippi Constitution Because They Violate the Right to Privacy

41. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

42. The Mississippi Constitution guarantees a right to privacy to the people of Mississippi. That right to privacy includes the right to obtain an abortion.

43. If the Bans are enforced, individually or collectively, they will violate the state constitutional right to privacy and prevent the people of Mississippi from making decisions about

personal matters, including reproductive medical care, and whether and when to have children. Enforcement of these Bans would prevent the Clinic from serving its patients and make it impossible for Mississippians to obtain essential abortion care in the state.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that the Trigger Ban and the 6-Week Ban violate the Mississippi Constitution;
- B. Issue a preliminary and permanent injunction that enjoins enforcement of the Trigger Ban and the 6-Week Ban;
- C. Award Plaintiffs' attorneys' fees in this action;
- D. Award Plaintiffs their costs of suit; and
- E. Grant such other and further relief as this Court deems just and proper.

Dated: June 27, 2022

Respectfully submitted,

/s/ Robert B. McDuff
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Counsel for Plaintiffs

Exhibit 1

Miss. Code Ann. § 41-41-45

Current through 2022 Regular Session legislation signed by the Governor and effective upon passage through April 26, 2022, not including changes and corrections made by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation. The final official version of the statutes affected by 2022 legislation will appear on Lexis Advance in the fall of 2022.

Mississippi Code 1972 Annotated > Title 41. Public Health (Chs. 1 – 135) > Chapter 41. Surgical or Medical Procedures; Consents (§§ 41-41-1 – 41-41-419) > Performance of Abortion; Consent (§§ 41-41-31 – 41-41-45)

§ 41-41-45. Abortion prohibited; exceptions.

[From and after ten days following the date of publication by the Attorney General of Mississippi that the Attorney General has determined that the United States Supreme Court has overruled the decision of *Roe v. Wade*, and that it is reasonably probable that this section would be upheld by the Court as constitutional, this section will read as follows:]

- (1)** As used in this section, the term “abortion” means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus.
- (2)** No abortion shall be performed or induced in the State of Mississippi, except in the case where necessary for the preservation of the mother’s life or where the pregnancy was caused by rape.
- (3)** For the purposes of this section, rape shall be an exception to the prohibition for an abortion only if a formal charge of rape has been filed with an appropriate law enforcement official.
- (4)** Any person, except the pregnant woman, who purposefully, knowingly or recklessly performs or attempts to perform or induce an abortion in the State of Mississippi, except in the case where necessary for the preservation of the mother’s life or where the pregnancy was caused by rape, upon conviction, shall be punished by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than ten (10) years.

History

Laws, 2007, ch. 441, § 2, eff from and after ten days following the date of publication by the

Attorney General of Mississippi that the Attorney General has determined that the United States Supreme Court has overruled the decision of *Roe v. Wade*, and that it is reasonably probable that this section would be upheld by the Court as constitutional.

Annotations

Notes

Editor's Notes —

Laws of 2007, ch. 441, §§ 4 through 6 provide:

“SECTION 4. At such time as the Attorney General of Mississippi determines that the United States Supreme Court has overruled the decision of *Roe v. Wade*, 410 U.S. 113 (1973), and that as a result, it is reasonably probable that Section 2 of this act would be upheld by the court as constitutional, the Attorney General shall publish his determination of that fact in the administrative bulletin published by the Secretary of State as provided in Section 25-43-2.101, Mississippi Code of 1972.

“SECTION 5. (1) If any provision of Chapter 441, Laws of 2007, is found to be unconstitutional, the provision is severable; and the other provisions of Chapter 441, Laws of 2007 remain effective, except as provided in other sections of Chapter 441, Laws of 2007.

“(2) Nothing in Chapter 441, Laws of 2007, may be construed to repeal, by implication or otherwise, any provision not explicitly repealed.

“(3) If any provision of Chapter 441, Laws of 2007 is ever declared unconstitutional or its enforcement temporarily or permanently restricted or enjoined by judicial order, the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be enforced. However, if such temporary or permanent restraining order or injunction is subsequently stayed or dissolved or such declaration vacated or any similar court order otherwise ceases to have effect, all provisions of Chapter 441, Laws of 2007, that are not declared unconstitutional or whose enforcement is not restrained shall have full force and effect.

“(4) Nothing in the provisions of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, shall be construed to permit any action that is prohibited by Chapter 441, Laws of 2007, and to the extent that any provision of Sections 41-41-31 through 41-41-91, Mississippi Code of 1972, would be so construed, then the provisions of Senate Bill No. 2391, 2007 Regular Session, shall take precedence.

“SECTION 6. Sections 1, 3, 4 and 5 of this act shall take effect from and after July 1, 2007. Section 2 of this act shall take effect and be in force from and after ten (10) days following the date of publication by the Attorney General of Mississippi in the administrative bulletin published by the Secretary of State as provided in Section 25-43-2.101, Mississippi Code of 1972, that the Attorney General has determined that the United States Supreme Court has overruled the

decision of Roe v. Wade, 410 U.S. 113 (1973), and that it is reasonably probable that Section 2 of this act would be upheld by the court as constitutional.”

Mississippi Code 1972 Annotated
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Exhibit 2

KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or Preempted Held Unconstitutional by Jackson Women's Health Organization v. Dobbs, 5th Cir.(Miss.), Feb. 20, 2020

KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's Annotated Mississippi Code
Title 41. Public Health (Refs & Annos)
Chapter 41. Surgical or Medical Procedures; Consents
Performance of Abortion; Consent (Refs & Annos)

Miss. Code Ann. § 41-41-34.1

§ 41-41-34.1. Prohibition of abortion of unborn human individual with a detectable fetal heartbeat

Effective: July 1, 2019

Currentness

(1) As used in this section:

(a) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(b) "Physician" means a person licensed to practice medicine under Section 73-25-1 et seq.

(c) "Unborn human individual" means an individual organism of the species homo sapiens from fertilization until live birth.

(2)(a) Except as provided in paragraph (b) or (c) of this subsection (2), no person shall knowingly perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn human individual that the pregnant woman is carrying and whose fetal heartbeat has been detected. Any person who acts based on the exception in paragraph (b) or (c) of this subsection (2) shall so note in the pregnant woman's medical records and shall specify in the pregnant woman's medical records which of the exceptions the person invoked.

(b)(i) A person is not in violation of paragraph (a) of this subsection (2) if that person performs a medical procedure designed to or intended, in that person's reasonable medical judgment, to prevent the death of a pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(ii) Any person who performs a medical procedure as described in paragraph (b)(i) of this subsection (2) shall declare in writing, under penalty of perjury, that the medical procedure was necessary, to the best of that person's reasonable medical judgment, to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman. That person shall also provide in that written document, under penalty of perjury, the medical condition of that pregnant woman that the medical procedure performed as described in paragraph (b)(i) of this subsection (2) will assertedly address, and the medical rationale for the conclusion that the

medical procedure was necessary to prevent the death of the pregnant woman or to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman.

(iii) The person who performs a medical procedure as described in paragraph (b)(i) of this subsection (2) shall place the written documentation required under paragraph (b)(ii) of this subsection (2) in the pregnant woman's medical records, and shall maintain a copy of the written documentation in the person's own records for at least seven (7) years.

(c) A person is not in violation of paragraph (a) of this subsection (2) if that person has performed an examination for the presence of a fetal heartbeat in the unborn human individual using standard medical practice and that examination does not reveal a fetal heartbeat or the person has been informed by a physician who has performed the examination for a fetal heartbeat that the examination did not reveal a fetal heartbeat.

(d) This subsection (2) does not repeal any other provision of the Mississippi Code that restricts or regulates the performance of an abortion by a particular method or during a particular stage of a pregnancy.

(e) Any person who violates this subsection (2) is guilty of performing an abortion after the detection of a fetal heartbeat, a violation punishable as provided in Section 41-41-39.

Credits

Added by Laws 2019, Ch. 349 (S.B. No. 2116), § 1, eff. July 1, 2019.

Editors' Notes

VALIDITY

<For validity of this section, see Jackson Women's Health Organization, on behalf of itself and its patients, et al., v. Thomas E. Dobbs, in his official capacity as State Health Officer of the Mississippi Department of Health, et al., S.D. Miss., May 24, 2019, 379 F.Supp.3d 549; Jackson Women's Health Organization, on behalf of itself and its patients, et al., v. Thomas E. Dobbs, in his official capacity as State Health Officer of the Mississippi Department of Health, et al., 5th Cir., February 20, 2020, 951 F.3d 246.>

Notes of Decisions (2)

Miss. Code Ann. § 41-41-34.1, MS ST § 41-41-34.1

The Statutes and Constitution are current with laws from the 2022 Regular Session effective through June 30, 2022. Some statute sections may be more current, see credits for details. The statutes are subject to changes provided by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

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