

State abortion limit advances

Ban for when fetus has heartbeat clears Senate panel

SARAH D. WIRE ARKANSAS DEMOCRAT-GAZETTE

A bill that would ban abortions as soon as six weeks after conception passed out of a Senate Committee on Wednesday, prompting a lawsuit threat from the American Civil Liberties Union.

If it becomes law, supporters and opponents say, Arkansas can count on it being challenged in court.

Senate Bill 134 by Sen. Jason Rapert, R-Bigelow, would prohibit a doctor from performing an abortion if the fetus has a heartbeat, except to save the mother's life or in cases where pregnancy resulted from rape or incest.

Doctors who violate the law would be guilty of a Class D felony, punishable by up to six years in prison and a \$10,000 fine.

It cleared the Senate Public Health, Welfare and Labor Committee by a voice vote and next goes before the full Senate.

"The presence of a heartbeat has always been a key indicator of life," Rapert said. "Using currently available medical equipment, doctors can distinguish a fetal heartbeat from the mother's heartbeat as early as the sixth week of pregnancy."

The state Department of Health would set rules defining the method used to determine whether a fetus has a heartbeat. A fetal heartbeat can generally be heard after six weeks of development.

There were 4,033 abortions performed in Arkansas in 2011, according to the department.

Of those abortions, 33 percent took place before seven weeks of pregnancy, 53.43 percent between seven and 14 weeks, and 13.46 percent between 14 and 21 weeks. Two abortions occurred after 21 weeks, according to the Health Department.

Little Rock Family Clinic nurse Lori Williams told committee members that a heartbeat is detected early in pregnancy using a vaginal probe ultrasound.

She then showed the committee the probe which is inserted into the uterus to perform the ultrasound. It's a gray, wandlike device about 9 inches long with a bulb on the end.

"This is what we're asking for a physician to do to every woman considering an abortion regardless of her age, whether this test is necessary. This will require a woman to go through an invasive, medically unnecessary test that has been mandated by the Legislature," Williams said. "Decisions about which tests a woman needs should be made by her doctor or her medical profession, not by the Legislature."

Little Rock Family Clinic is the only facility licensed by the state to perform surgical abortions. Planned Parenthood operates two locations in the state, one in Little Rock and one in Fayetteville. It performs only medically induced abortions in Arkansas.

Similar legislation has been filed in Mississippi and Wyoming. Rapert said he is confident he has enough votes to pass the bill through both legislative chambers.

The U.S. Supreme Court's 1973 Roe v. Wade decision stated that a woman can legally have an

abortion until the fetus is viable, or able to live outside the mother, generally around the start of the third trimester.

Bettina Brownstein, an attorney representing the Arkansas chapter of the ACLU, said the bill is not consistent with *Roe v. Wade* and other Supreme Court decisions.

“If this passes, you might as well write a check to the ACLU and Planned Parenthood because we will feel the necessity to go to court to protect the rights of women. I can guarantee that if passed into law, it will be overturned, and it will be expensive for the state of Arkansas,” she said.

Rapert said a 1992 U.S. Supreme Court decision in the *Planned Parenthood v. Casey* case set a standard that states may have an interest in restricting abortion once a fetus is viable.

“There is no viability without a heartbeat, and so it seems that, in all of the discussion over the past few years and decades, no one has really settled on when do you stand up for viability. I simply recognize that without a heartbeat there is no life, and I think that life must be protected,” Rapert said.

Brownstein argued that the medical definition of viability has shifted with medical advances, but not as early as six weeks from conception.

According to the Arkansas Department of Health’s Abortion Decision book, six weeks after fertilization an embryo is three-quarters of an inch long. It is beginning to form a brain and lungs as well as eyes, ears, a liver and an intestine. Muscles and skeleton develop eight weeks after fertilization, when the fetus is 1 1/2 inches long.

University of Arkansas at Little Rock law professor and Associate Dean Terri Beiner agreed with Brownstein.

“To me, this is a fairly easy law to attack,” she said after the committee meeting. “You could write the ACLU a check if this passes: I think I’d agree with that.”

She said the *Casey* case also found that states cannot set an undue burden on women’s access to abortion before the fetus is viable.

“Certainly saying she can’t have an abortion at all after six weeks is an undue burden. It basically prohibits you from getting one altogether,” Beiner said.

“With the heartbeat being detectable so early, this is going to cause an undue burden on a very common form of abortion.”

Rapert brushed off the ACLU’s threat of a lawsuit.

“We have found that no matter what you do, when it comes to protecting life, the ACLU is consistent; they threaten a lawsuit. You know what, I believe life is worth fighting for,” Rapert said. “There is a time when you have to stand up for what is right.”

Gov. Mike Beebe, a Democrat, said he needs to determine whether the bill would comply with federal law before he decides whether he would sign or veto it.

“We’ll just wait and see on that,” Beebe said. “There’s always a concern to ensure that we don’t do anything that ... violates the law in some fashion that costs the taxpayers. You’ve got to be very careful about all that all the time.”

Attorney general spokesman Aaron Sadler said the office has spoken with the sponsors of several abortion related bills about whether the bills would be constitutional.

“We expect the Legislature to pass many of these bills this session, and we will prepare for the litigation that will result,” Sadler said.

