

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PLANNED PARENTHOOD OF)	
INDIANA AND KENTUCKY, INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:16-cv-1807
)	
COMMISSIONER, INDIANA STATE)	
DEPARTMENT OF HEALTH, in his)	
official capacity;)	
PROSECUTORS OF MARION, LAKE,)	
MONROE, and TIPPECANOE COUNTIES,)	
INDIANA,)	
)	
Defendants.)	

Complaint for Declaratory and Injunctive Relief / Notice of Challenge to Constitutionality of Indiana Statute

Introduction

1. Planned Parenthood of Indiana and Kentucky, Inc. (“PPINK”) operates 23 health centers throughout Indiana. In addition to providing a host of reproductive health services to both men and women, staff at the centers have always provided the so-called “informed consent” information that Indiana law requires that women receive at least 18 hours before an abortion. Ind. Code § 16-34-2-1.1. Inasmuch as PPINK provides surgical abortions in only three locations in Indiana and medication abortions in one other, the ability to receive the informed consent information in local PPINK health centers minimized the burdens that would occur if the women had to travel the often lengthy distance to the place where they obtained the abortion in order to receive this mandatory information. It also allowed PPINK to more promptly schedule abortions if necessary as the mandatory notice could be provided at numerous locations.

2. Prior to obtaining an abortion a woman must receive an ultrasound and before July 1, 2016, although Indiana law required the ultrasound, it did not specify when the ultrasound had to be provided. Indiana Code § 16-34-2-1.1(b) (repealed eff. July 1, 2016). However, as of July 1, 2016, Indiana law was changed to provide that the ultrasound has to be obtained more than 18 hours before the abortion, at the same time that the informed consent information is provided. Ind. Code § 16-34-2-1.1(a)(5). Because ultrasound equipment is expensive, and because specially trained staff must operate the ultrasound, PPINK, prior to the passage of the law, only performed ultrasounds in the clinics where abortions were performed. There women would receive ultrasounds immediately prior to the abortions and the results would be interpreted by physicians at that time. Following passage of the law, PPINK made plans to provide ultrasounds in two additional Indiana health centers. However, the new requirement that a woman must obtain the ultrasound 18 hours in advance, and at the same time as the informed consent information, means that many women will have to make two lengthy trips to obtain an abortion or pay for an overnight stay. It will also cause the few clinics with ultrasound equipment to become more crowded causing abortions to be delayed, and cause other burdens on women seeking abortions.

3. There is no medical justification for the requirement that the ultrasound be obtained at least 18 hours before the abortion and the requirement represents an undue burden. It is unconstitutional and appropriate injunctive and declaratory relief should issue.

Jurisdiction, venue, cause of action

4. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331, 1343.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

6. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rule 57 of the

Federal Rules of Civil Procedure.

7. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

Parties

8. Planned Parenthood of Indiana and Kentucky, Inc., is a not-for-profit corporation with its principle place of business in Indiana. It brings this action on its own behalf and on behalf of its patients.

9. The Commissioner of the Indiana State Department of Health is the duly appointed official in charge of that agency, which is responsible for licensing abortion clinics pursuant to Indiana law. He is sued in his official capacity and is designated by his official title pursuant to Fed. R. Civ. P. 17(d).

10. The Prosecutors of Marion, Lake, Monroe, and Tippecanoe Counties, Indiana, are the duly elected prosecutors of the counties in which Planned Parenthood of Indiana and Kentucky health centers that provide abortion services are located and the prosecutors are responsible for prosecuting crimes occurring in their respective counties. They are sued in their official capacities and are designated by their official title pursuant to Fed. R. Civ. P. 17(d).

Legal background

11. Indiana Code § 16-34-2-1.1 provides that an abortion is not to be performed “except with the voluntary and informed consent of the pregnant woman upon whom the abortion is to be performed.”

12. The statute further provides that consent to an abortion is voluntary and informed only if at least 18 hours before the abortion is performed the woman receives certain information as explicitly provided by the statute. Ind. Code § 16-34-2-1.1(a)(1).

13. Prior to July 1, 2016, Indiana law provided, in addition to receiving the state-mandated information, that “[b]efore an abortion is performed, the provider shall perform, and the pregnant woman shall view, the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible” unless the woman certifies that she did not want to hear the fetal heart tone or view the ultrasound imaging. Ind. Code § 16-34-2-1.1(b) (repealed).

14. Effective July 1, 2016, the statute has been amended to provide:

At least eighteen (18) hours before an abortion is performed and at the same time that the pregnant woman receives the information required by subdivision (1), the provider shall perform, and the pregnant woman shall view, the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible unless the pregnant woman certified in writing, on a form developed by the state department, before the abortion is performed, that the pregnant woman:

- (A) does not want to view the fetal ultrasound imaging; and
- (B) does not want to listen to the auscultation of the fetal heart tone if the fetal heart tone is audible.

Ind. Code § 16-34-2-1.1(a)(5).

15. Indiana law also provides that performing an abortion not allowed by Indiana law is a felony. Ind. Code § 16-34-2-7(a).

16. Additionally, performing an abortion without the “informed consent” required by Indiana Code § 16-34-2-1.1 is a Class A infraction. Ind. Code § 16-34-2-7(c).

17. The performing of an illegal abortion may lead to the denial of the licenses issued to abortion clinics by the Indiana State Board of Health that are required under Indiana law for the clinics to remain in operation. Ind. Code § 16-21-2-2.5; 410 IAC 26-2-5.

Factual allegations

18. Planned Parenthood of Indiana and Kentucky, Inc. (“PPINK”), currently operates 23 health centers in Indiana where thousands of women, men, and teens receive reproductive health care services and comprehensive sexuality education.

19. However, financial considerations are requiring PPINK to close and consolidate a number of its health centers.

20. At the current time PPINK operates three health care centers in Indiana, located in Bloomington, Merrillville, and Indianapolis, which offer surgical abortion services.

21. Additionally, PPINK operates a health center in Lafayette, Indiana, that provides abortions using medications alone (*i.e.*, “medication” or “non-surgical” abortions).

22. At PPINK, surgical abortions are available through the first trimester of pregnancy, 13 weeks and 6 days after the first day of a woman’s last menstrual period, as determined by ultrasound. The fetus cannot be viable at this point.

23. Medication abortions are currently available through 63 days (9 weeks) after the first day of a woman’s last menstrual period as determined by ultrasound.

24. Ultrasound scans are devices that use high frequency sound waves to create an image of the fetus or embryo.

25. PPINK uses ultrasound to confirm that there is an intrauterine pregnancy and to verify fetal age to insure that abortions are performed within PPINK’s time limits noted above.

26. Although Indiana law requires that women be offered the opportunity to view the ultrasound and hear the fetal heart tone, if it is audible, PPINK’s experience is that the large majority of women refuse this offer and certify this in writing, as required by former and current law.

27. The ultrasound machine is expensive, costing at least \$25,000, and it must be operated by trained ultrasound operators.

28. Although the ultrasound is performed by technicians, it must be ultimately interpreted by physicians.

29. PPINK's health centers are located throughout the State of Indiana and are placed to maximize the ease of access for Indiana's population.

30. Because there are only four health centers where abortions are performed the center that a woman has to travel to obtain an abortion may be at a great geographical distance from a woman's home.

31. For instance, Fort Wayne is Indiana's second-largest city. PPINK therefore has a clinic in the city. However, the closest PPINK clinic performing abortions is more than 100 miles away.

32. It is a burden for many women to travel to obtain an abortion at a remote health center. The majority of PPINK's patients seeking abortions are low-income women. Requiring them to travel to a distant city will force many to lose a day of work. Many women who obtain abortions have children and the travel to a remote health center requires the difficult task of arranging childcare. Additionally, some women seeking abortions are in abusive relationships where it would be dangerous to the woman if her partner discovered she was pregnant and obtaining an abortion. Other women may, for many other reasons, wish to keep confidential the fact that they are obtaining an abortion. The risk of discovery increases as women must rearrange their lives and travel to distant health centers. In some cases, women are forced to disclose their pregnancy and/or abortion decision to people to whom they do not wish to disclose it in order to seek help with these arrangements.

33. To minimize the burden of having to make two potentially lengthy and difficult trips – one to receive the so-called informed consent information at least 18 hours before the abortion and another to obtain the abortion – PPINK has provided the informed consent information to women in their local PPINK health clinics. Therefore, only one lengthy and disruptive trip – to

obtain the abortion – had to occur prior to July 1, 2016.

34. The physicians who are employed or contracted by PPINK are generally physically located only at the clinics where abortions are performed. The other clinics are staffed by nurse practitioners and nursing personnel.

35. The physicians are not present at all times when the health centers are open and are generally present only on days when abortions are performed. Nurse practitioners and nursing personnel are present when patients are being seen and physicians are not there.

36. Because ultrasound equipment is extremely costly, and because it must be used by persons with specialized training and ultimately interpreted by physicians, at the time that Indiana Code § 16-34-2-1.1(a)(5) passed the General Assembly PPINK provided ultrasound examinations only in the health centers where abortions were performed.

37. Prior to July 1, 2016, PPINK's patients who obtained abortions generally received their ultrasound examinations immediately prior to their abortions.

38. This had the advantage of allowing the physician who actually provided the abortion to immediately interpret the ultrasound and discuss it with the woman, so she could have any questions answered by her physician without delay.

39. As noted, the new Indiana Code § 16-34-2-1.1(a)(5) requires that the ultrasound be performed 18 hours before the abortion.

40. PPINK cannot afford to have ultrasound equipment and trained ultrasound technicians in each of its health centers.

41. In order to attempt to minimize the burden that the new requirement will impose on its patients PPINK has purchased ultrasound equipment for its Mishawaka health center and has trained staff there to perform the ultrasound examinations. It will also train staff to utilize

ultrasound equipment that is located in its Evansville health center.

42. However, women will no longer be able to go to their local, and more easily accessible, PPINK health centers to obtain the informed consent information before traveling the greater distance to obtain the abortion because ultrasounds will not be available locally.

43. The difficulty of making the two trips to distant clinics will force some women to delay obtaining abortions and will result in some women not being able to obtain abortions at all.

44. Moreover, the requirement that the ultrasound be performed at least 18 hours prior to the abortion will result in more women coming to the clinics where abortions are provided to receive the required informed consent and ultrasound.

45. This will strain these clinics' capacities and will result in the delaying of abortions and may result in some women not being able to be seen for an abortion within the gestational age limitations observed by PPINK.

46. PPINK has already noted that the waiting time for provision of ultrasound and the informed consent information has lengthened from where it was prior to July 1. Moreover, the concentration of appointments in the few centers providing ultrasound makes it extremely difficult, if not impossible, to "fit in" women who seek an abortion at the very end of the period in which these women may receive abortions from PPINK. The wait engendered by the new ultrasound requirement will result in women not being able to obtain abortions.

47. Although PPINK's patients are, as of July 1, 2016, obtaining the ultrasounds at least 18 hours before their abortions, a physician is usually not present to interpret the ultrasound and to discuss it with the patient.

48. The interpretation of the ultrasound is still being performed immediately prior to the abortion by the physician who is providing the abortion.

49. There are no medical benefits to the performance of the ultrasound 18 hours before the abortion as opposed to immediately prior to the abortion and the requirement does nothing except make it more difficult for women to obtain an abortion.

50. PPINK and its patients are being caused irreparable harm for which there is no adequate remedy at law.

51. At all times defendants have acted under color of state law.

Legal claims

52. To the extent that Indiana Code § 16-34-2-1.1(a)(5) mandates that women obtain an ultrasound 18 hours before the abortion, it establishes an unnecessary requirement that creates a substantial obstacle to a woman seeking to obtain an abortion. It is therefore an undue burden and is unconstitutional.

Request for relief

WHEREFORE, plaintiff requests that this Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
2. Declare Indiana Code § 16-34-2-1.1(a)(5) to be unconstitutional for the reason noted above.
3. Enter a preliminary injunction, later to be made permanent, enjoining Indiana Code § 16-34-2-1.1(a)(5) to the extent that it requires an ultrasound to be performed at least 18 hours before an abortion.
4. Award plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
5. Award all other proper relief.

s/ Kenneth J. Falk

Kenneth J. Falk
No. 6777-49

s/ Gavin M. Rose

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No. 26565-53

s/ Jan P. Mensz

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2. Prior to obtaining an abortion a woman must receive an ultrasound and before July 1, 2016, although Indiana law required the ultrasound, it did not specify when the ultrasound had to be provided. Indiana Code § 16-34-2-1.1(b) (repealed eff. July 1, 2016). However, as of July 1, 2016, Indiana law was changed to provide that the ultrasound has to be obtained more than 18 hours before the abortion, at the same time that the informed consent information is provided. Ind. Code § 16-34-2-1.1(a)(5). Because ultrasound equipment is expensive, and because specially trained staff must operate the ultrasound, PPINK, prior to the passage of the law, only performed ultrasounds in the clinics where abortions were performed. There women would receive ultrasounds immediately prior to the abortions and the results would be interpreted by physicians at that time. Following passage of the law, PPINK made plans to provide ultrasounds in two additional Indiana health centers. However, the new requirement that a woman must obtain the ultrasound 18 hours in advance, and at the same time as the informed consent information, means that many women will have to make two lengthy trips to obtain an abortion or pay for an overnight stay. It will also cause the few clinics with ultrasound equipment to become more crowded causing abortions to be delayed, and cause other burdens on women seeking abortions.

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s/ Kenneth J. Falk

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s/ Jan P. Mensz

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6. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rule 57 of the

Federal Rules of Civil Procedure.

7. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

Parties

8. Planned Parenthood of Indiana and Kentucky, Inc., is a not-for-profit corporation with its principle place of business in Indiana. It brings this action on its own behalf and on behalf of its patients.

9. The Commissioner of the Indiana State Department of Health is the duly appointed official in charge of that agency, which is responsible for licensing abortion clinics pursuant to Indiana law. He is sued in his official capacity and is designated by his official title pursuant to Fed. R. Civ. P. 17(d).

10. The Prosecutors of Marion, Lake, Monroe, and Tippecanoe Counties, Indiana, are the duly elected prosecutors of the counties in which Planned Parenthood of Indiana and Kentucky health centers that provide abortion services are located and the prosecutors are responsible for prosecuting crimes occurring in their respective counties. They are sued in their official capacities and are designated by their official title pursuant to Fed. R. Civ. P. 17(d).

Legal background

11. Indiana Code § 16-34-2-1.1 provides that an abortion is not to be performed “except with the voluntary and informed consent of the pregnant woman upon whom the abortion is to be performed.”

12. The statute further provides that consent to an abortion is voluntary and informed only if at least 18 hours before the abortion is performed the woman receives certain information as explicitly provided by the statute. Ind. Code § 16-34-2-1.1(a)(1).

13. Prior to July 1, 2016, Indiana law provided, in addition to receiving the state-mandated information, that “[b]efore an abortion is performed, the provider shall perform, and the pregnant woman shall view, the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible” unless the woman certifies that she did not want to hear the fetal heart tone or view the ultrasound imaging. Ind. Code § 16-34-2-1.1(b) (repealed).

14. Effective July 1, 2016, the statute has been amended to provide:

At least eighteen (18) hours before an abortion is performed and at the same time that the pregnant woman receives the information required by subdivision (1), the provider shall perform, and the pregnant woman shall view, the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible unless the pregnant woman certified in writing, on a form developed by the state department, before the abortion is performed, that the pregnant woman:

- (A) does not want to view the fetal ultrasound imaging; and
- (B) does not want to listen to the auscultation of the fetal heart tone if the fetal heart tone is audible.

Ind. Code § 16-34-2-1.1(a)(5).

15. Indiana law also provides that performing an abortion not allowed by Indiana law is a felony. Ind. Code § 16-34-2-7(a).

16. Additionally, performing an abortion without the “informed consent” required by Indiana Code § 16-34-2-1.1 is a Class A infraction. Ind. Code § 16-34-2-7(c).

17. The performing of an illegal abortion may lead to the denial of the licenses issued to abortion clinics by the Indiana State Board of Health that are required under Indiana law for the clinics to remain in operation. Ind. Code § 16-21-2-2.5; 410 IAC 26-2-5.

Factual allegations

18. Planned Parenthood of Indiana and Kentucky, Inc. (“PPINK”), currently operates 23 health centers in Indiana where thousands of women, men, and teens receive reproductive health care services and comprehensive sexuality education.

19. However, financial considerations are requiring PPINK to close and consolidate a number of its health centers.

20. At the current time PPINK operates three health care centers in Indiana, located in Bloomington, Merrillville, and Indianapolis, which offer surgical abortion services.

21. Additionally, PPINK operates a health center in Lafayette, Indiana, that provides abortions using medications alone (*i.e.*, “medication” or “non-surgical” abortions).

22. At PPINK, surgical abortions are available through the first trimester of pregnancy, 13 weeks and 6 days after the first day of a woman’s last menstrual period, as determined by ultrasound. The fetus cannot be viable at this point.

23. Medication abortions are currently available through 63 days (9 weeks) after the first day of a woman’s last menstrual period as determined by ultrasound.

24. Ultrasound scans are devices that use high frequency sound waves to create an image of the fetus or embryo.

25. PPINK uses ultrasound to confirm that there is an intrauterine pregnancy and to verify fetal age to insure that abortions are performed within PPINK’s time limits noted above.

26. Although Indiana law requires that women be offered the opportunity to view the ultrasound and hear the fetal heart tone, if it is audible, PPINK’s experience is that the large majority of women refuse this offer and certify this in writing, as required by former and current law.

27. The ultrasound machine is expensive, costing at least \$25,000, and it must be operated by trained ultrasound operators.

28. Although the ultrasound is performed by technicians, it must be ultimately interpreted by physicians.

29. PPINK's health centers are located throughout the State of Indiana and are placed to maximize the ease of access for Indiana's population.

30. Because there are only four health centers where abortions are performed the center that a woman has to travel to obtain an abortion may be at a great geographical distance from a woman's home.

31. For instance, Fort Wayne is Indiana's second-largest city. PPINK therefore has a clinic in the city. However, the closest PPINK clinic performing abortions is more than 100 miles away.

32. It is a burden for many women to travel to obtain an abortion at a remote health center. The majority of PPINK's patients seeking abortions are low-income women. Requiring them to travel to a distant city will force many to lose a day of work. Many women who obtain abortions have children and the travel to a remote health center requires the difficult task of arranging childcare. Additionally, some women seeking abortions are in abusive relationships where it would be dangerous to the woman if her partner discovered she was pregnant and obtaining an abortion. Other women may, for many other reasons, wish to keep confidential the fact that they are obtaining an abortion. The risk of discovery increases as women must rearrange their lives and travel to distant health centers. In some cases, women are forced to disclose their pregnancy and/or abortion decision to people to whom they do not wish to disclose it in order to seek help with these arrangements.

33. To minimize the burden of having to make two potentially lengthy and difficult trips – one to receive the so-called informed consent information at least 18 hours before the abortion and another to obtain the abortion – PPINK has provided the informed consent information to women in their local PPINK health clinics. Therefore, only one lengthy and disruptive trip – to

obtain the abortion – had to occur prior to July 1, 2016.

34. The physicians who are employed or contracted by PPINK are generally physically located only at the clinics where abortions are performed. The other clinics are staffed by nurse practitioners and nursing personnel.

35. The physicians are not present at all times when the health centers are open and are generally present only on days when abortions are performed. Nurse practitioners and nursing personnel are present when patients are being seen and physicians are not there.

36. Because ultrasound equipment is extremely costly, and because it must be used by persons with specialized training and ultimately interpreted by physicians, at the time that Indiana Code § 16-34-2-1.1(a)(5) passed the General Assembly PPINK provided ultrasound examinations only in the health centers where abortions were performed.

37. Prior to July 1, 2016, PPINK's patients who obtained abortions generally received their ultrasound examinations immediately prior to their abortions.

38. This had the advantage of allowing the physician who actually provided the abortion to immediately interpret the ultrasound and discuss it with the woman, so she could have any questions answered by her physician without delay.

39. As noted, the new Indiana Code § 16-34-2-1.1(a)(5) requires that the ultrasound be performed 18 hours before the abortion.

40. PPINK cannot afford to have ultrasound equipment and trained ultrasound technicians in each of its health centers.

41. In order to attempt to minimize the burden that the new requirement will impose on its patients PPINK has purchased ultrasound equipment for its Mishawaka health center and has trained staff there to perform the ultrasound examinations. It will also train staff to utilize

ultrasound equipment that is located in its Evansville health center.

42. However, women will no longer be able to go to their local, and more easily accessible, PPINK health centers to obtain the informed consent information before traveling the greater distance to obtain the abortion because ultrasounds will not be available locally.

43. The difficulty of making the two trips to distant clinics will force some women to delay obtaining abortions and will result in some women not being able to obtain abortions at all.

44. Moreover, the requirement that the ultrasound be performed at least 18 hours prior to the abortion will result in more women coming to the clinics where abortions are provided to receive the required informed consent and ultrasound.

45. This will strain these clinics' capacities and will result in the delaying of abortions and may result in some women not being able to be seen for an abortion within the gestational age limitations observed by PPINK.

46. PPINK has already noted that the waiting time for provision of ultrasound and the informed consent information has lengthened from where it was prior to July 1. Moreover, the concentration of appointments in the few centers providing ultrasound makes it extremely difficult, if not impossible, to "fit in" women who seek an abortion at the very end of the period in which these women may receive abortions from PPINK. The wait engendered by the new ultrasound requirement will result in women not being able to obtain abortions.

47. Although PPINK's patients are, as of July 1, 2016, obtaining the ultrasounds at least 18 hours before their abortions, a physician is usually not present to interpret the ultrasound and to discuss it with the patient.

48. The interpretation of the ultrasound is still being performed immediately prior to the abortion by the physician who is providing the abortion.

49. There are no medical benefits to the performance of the ultrasound 18 hours before the abortion as opposed to immediately prior to the abortion and the requirement does nothing except make it more difficult for women to obtain an abortion.

50. PPINK and its patients are being caused irreparable harm for which there is no adequate remedy at law.

51. At all times defendants have acted under color of state law.

Legal claims

52. To the extent that Indiana Code § 16-34-2-1.1(a)(5) mandates that women obtain an ultrasound 18 hours before the abortion, it establishes an unnecessary requirement that creates a substantial obstacle to a woman seeking to obtain an abortion. It is therefore an undue burden and is unconstitutional.

Request for relief

WHEREFORE, plaintiff requests that this Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
2. Declare Indiana Code § 16-34-2-1.1(a)(5) to be unconstitutional for the reason noted above.
3. Enter a preliminary injunction, later to be made permanent, enjoining Indiana Code § 16-34-2-1.1(a)(5) to the extent that it requires an ultrasound to be performed at least 18 hours before an abortion.
4. Award plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
5. Award all other proper relief.

s/ Kenneth J. Falk

Kenneth J. Falk
No. 6777-49

s/ Gavin M. Rose

Gavin M. Rose
No. 26565-53

s/ Jan P. Mensz

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PLANNED PARENTHOOD OF)	
INDIANA AND KENTUCKY, INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:16-cv-1807
)	
COMMISSIONER, INDIANA STATE)	
DEPARTMENT OF HEALTH, in his)	
official capacity;)	
PROSECUTORS OF MARION, LAKE,)	
MONROE, and TIPPECANOE COUNTIES,)	
INDIANA,)	
)	
Defendants.)	

Complaint for Declaratory and Injunctive Relief / Notice of Challenge to Constitutionality of Indiana Statute

Introduction

1. Planned Parenthood of Indiana and Kentucky, Inc. (“PPINK”) operates 23 health centers throughout Indiana. In addition to providing a host of reproductive health services to both men and women, staff at the centers have always provided the so-called “informed consent” information that Indiana law requires that women receive at least 18 hours before an abortion. Ind. Code § 16-34-2-1.1. Inasmuch as PPINK provides surgical abortions in only three locations in Indiana and medication abortions in one other, the ability to receive the informed consent information in local PPINK health centers minimized the burdens that would occur if the women had to travel the often lengthy distance to the place where they obtained the abortion in order to receive this mandatory information. It also allowed PPINK to more promptly schedule abortions if necessary as the mandatory notice could be provided at numerous locations.

2. Prior to obtaining an abortion a woman must receive an ultrasound and before July 1, 2016, although Indiana law required the ultrasound, it did not specify when the ultrasound had to be provided. Indiana Code § 16-34-2-1.1(b) (repealed eff. July 1, 2016). However, as of July 1, 2016, Indiana law was changed to provide that the ultrasound has to be obtained more than 18 hours before the abortion, at the same time that the informed consent information is provided. Ind. Code § 16-34-2-1.1(a)(5). Because ultrasound equipment is expensive, and because specially trained staff must operate the ultrasound, PPINK, prior to the passage of the law, only performed ultrasounds in the clinics where abortions were performed. There women would receive ultrasounds immediately prior to the abortions and the results would be interpreted by physicians at that time. Following passage of the law, PPINK made plans to provide ultrasounds in two additional Indiana health centers. However, the new requirement that a woman must obtain the ultrasound 18 hours in advance, and at the same time as the informed consent information, means that many women will have to make two lengthy trips to obtain an abortion or pay for an overnight stay. It will also cause the few clinics with ultrasound equipment to become more crowded causing abortions to be delayed, and cause other burdens on women seeking abortions.

3. There is no medical justification for the requirement that the ultrasound be obtained at least 18 hours before the abortion and the requirement represents an undue burden. It is unconstitutional and appropriate injunctive and declaratory relief should issue.

Jurisdiction, venue, cause of action

4. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331, 1343.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

6. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rule 57 of the

Federal Rules of Civil Procedure.

7. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

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8. Planned Parenthood of Indiana and Kentucky, Inc., is a not-for-profit corporation with its principle place of business in Indiana. It brings this action on its own behalf and on behalf of its patients.

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12. The statute further provides that consent to an abortion is voluntary and informed only if at least 18 hours before the abortion is performed the woman receives certain information as explicitly provided by the statute. Ind. Code § 16-34-2-1.1(a)(1).

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18. Planned Parenthood of Indiana and Kentucky, Inc. (“PPINK”), currently operates 23 health centers in Indiana where thousands of women, men, and teens receive reproductive health care services and comprehensive sexuality education.

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43. The difficulty of making the two trips to distant clinics will force some women to delay obtaining abortions and will result in some women not being able to obtain abortions at all.

44. Moreover, the requirement that the ultrasound be performed at least 18 hours prior to the abortion will result in more women coming to the clinics where abortions are provided to receive the required informed consent and ultrasound.

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51. At all times defendants have acted under color of state law.

Legal claims

52. To the extent that Indiana Code § 16-34-2-1.1(a)(5) mandates that women obtain an ultrasound 18 hours before the abortion, it establishes an unnecessary requirement that creates a substantial obstacle to a woman seeking to obtain an abortion. It is therefore an undue burden and is unconstitutional.

Request for relief

WHEREFORE, plaintiff requests that this Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
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3. Enter a preliminary injunction, later to be made permanent, enjoining Indiana Code § 16-34-2-1.1(a)(5) to the extent that it requires an ultrasound to be performed at least 18 hours before an abortion.
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s/ Kenneth J. Falk

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s/ Gavin M. Rose

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PLANNED PARENTHOOD OF)	
INDIANA AND KENTUCKY, INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:16-cv-1807
)	
COMMISSIONER, INDIANA STATE)	
DEPARTMENT OF HEALTH, in his)	
official capacity;)	
PROSECUTORS OF MARION, LAKE,)	
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INDIANA,)	
)	
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- (A) does not want to view the fetal ultrasound imaging; and
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16. Additionally, performing an abortion without the “informed consent” required by Indiana Code § 16-34-2-1.1 is a Class A infraction. Ind. Code § 16-34-2-7(c).

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24. Ultrasound scans are devices that use high frequency sound waves to create an image of the fetus or embryo.

25. PPINK uses ultrasound to confirm that there is an intrauterine pregnancy and to verify fetal age to insure that abortions are performed within PPINK’s time limits noted above.

26. Although Indiana law requires that women be offered the opportunity to view the ultrasound and hear the fetal heart tone, if it is audible, PPINK’s experience is that the large majority of women refuse this offer and certify this in writing, as required by former and current law.

27. The ultrasound machine is expensive, costing at least \$25,000, and it must be operated by trained ultrasound operators.

28. Although the ultrasound is performed by technicians, it must be ultimately interpreted by physicians.

29. PPINK's health centers are located throughout the State of Indiana and are placed to maximize the ease of access for Indiana's population.

30. Because there are only four health centers where abortions are performed the center that a woman has to travel to obtain an abortion may be at a great geographical distance from a woman's home.

31. For instance, Fort Wayne is Indiana's second-largest city. PPINK therefore has a clinic in the city. However, the closest PPINK clinic performing abortions is more than 100 miles away.

32. It is a burden for many women to travel to obtain an abortion at a remote health center. The majority of PPINK's patients seeking abortions are low-income women. Requiring them to travel to a distant city will force many to lose a day of work. Many women who obtain abortions have children and the travel to a remote health center requires the difficult task of arranging childcare. Additionally, some women seeking abortions are in abusive relationships where it would be dangerous to the woman if her partner discovered she was pregnant and obtaining an abortion. Other women may, for many other reasons, wish to keep confidential the fact that they are obtaining an abortion. The risk of discovery increases as women must rearrange their lives and travel to distant health centers. In some cases, women are forced to disclose their pregnancy and/or abortion decision to people to whom they do not wish to disclose it in order to seek help with these arrangements.

33. To minimize the burden of having to make two potentially lengthy and difficult trips – one to receive the so-called informed consent information at least 18 hours before the abortion and another to obtain the abortion – PPINK has provided the informed consent information to women in their local PPINK health clinics. Therefore, only one lengthy and disruptive trip – to

obtain the abortion – had to occur prior to July 1, 2016.

34. The physicians who are employed or contracted by PPINK are generally physically located only at the clinics where abortions are performed. The other clinics are staffed by nurse practitioners and nursing personnel.

35. The physicians are not present at all times when the health centers are open and are generally present only on days when abortions are performed. Nurse practitioners and nursing personnel are present when patients are being seen and physicians are not there.

36. Because ultrasound equipment is extremely costly, and because it must be used by persons with specialized training and ultimately interpreted by physicians, at the time that Indiana Code § 16-34-2-1.1(a)(5) passed the General Assembly PPINK provided ultrasound examinations only in the health centers where abortions were performed.

37. Prior to July 1, 2016, PPINK's patients who obtained abortions generally received their ultrasound examinations immediately prior to their abortions.

38. This had the advantage of allowing the physician who actually provided the abortion to immediately interpret the ultrasound and discuss it with the woman, so she could have any questions answered by her physician without delay.

39. As noted, the new Indiana Code § 16-34-2-1.1(a)(5) requires that the ultrasound be performed 18 hours before the abortion.

40. PPINK cannot afford to have ultrasound equipment and trained ultrasound technicians in each of its health centers.

41. In order to attempt to minimize the burden that the new requirement will impose on its patients PPINK has purchased ultrasound equipment for its Mishawaka health center and has trained staff there to perform the ultrasound examinations. It will also train staff to utilize

ultrasound equipment that is located in its Evansville health center.

42. However, women will no longer be able to go to their local, and more easily accessible, PPINK health centers to obtain the informed consent information before traveling the greater distance to obtain the abortion because ultrasounds will not be available locally.

43. The difficulty of making the two trips to distant clinics will force some women to delay obtaining abortions and will result in some women not being able to obtain abortions at all.

44. Moreover, the requirement that the ultrasound be performed at least 18 hours prior to the abortion will result in more women coming to the clinics where abortions are provided to receive the required informed consent and ultrasound.

45. This will strain these clinics' capacities and will result in the delaying of abortions and may result in some women not being able to be seen for an abortion within the gestational age limitations observed by PPINK.

46. PPINK has already noted that the waiting time for provision of ultrasound and the informed consent information has lengthened from where it was prior to July 1. Moreover, the concentration of appointments in the few centers providing ultrasound makes it extremely difficult, if not impossible, to "fit in" women who seek an abortion at the very end of the period in which these women may receive abortions from PPINK. The wait engendered by the new ultrasound requirement will result in women not being able to obtain abortions.

47. Although PPINK's patients are, as of July 1, 2016, obtaining the ultrasounds at least 18 hours before their abortions, a physician is usually not present to interpret the ultrasound and to discuss it with the patient.

48. The interpretation of the ultrasound is still being performed immediately prior to the abortion by the physician who is providing the abortion.

49. There are no medical benefits to the performance of the ultrasound 18 hours before the abortion as opposed to immediately prior to the abortion and the requirement does nothing except make it more difficult for women to obtain an abortion.

50. PPINK and its patients are being caused irreparable harm for which there is no adequate remedy at law.

51. At all times defendants have acted under color of state law.

Legal claims

52. To the extent that Indiana Code § 16-34-2-1.1(a)(5) mandates that women obtain an ultrasound 18 hours before the abortion, it establishes an unnecessary requirement that creates a substantial obstacle to a woman seeking to obtain an abortion. It is therefore an undue burden and is unconstitutional.

Request for relief

WHEREFORE, plaintiff requests that this Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity.
2. Declare Indiana Code § 16-34-2-1.1(a)(5) to be unconstitutional for the reason noted above.
3. Enter a preliminary injunction, later to be made permanent, enjoining Indiana Code § 16-34-2-1.1(a)(5) to the extent that it requires an ultrasound to be performed at least 18 hours before an abortion.
4. Award plaintiffs their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
5. Award all other proper relief.

s/ Kenneth J. Falk

Kenneth J. Falk
No. 6777-49

s/ Gavin M. Rose

Gavin M. Rose
No. 26565-53

s/ Jan P. Mensz

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PLANNED PARENTHOOD OF)	
INDIANA AND KENTUCKY, INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 1:16-cv-1807
)	
COMMISSIONER, INDIANA STATE)	
DEPARTMENT OF HEALTH, in his)	
official capacity;)	
PROSECUTORS OF MARION, LAKE,)	
MONROE, and TIPPECANOE COUNTIES,)	
INDIANA,)	
)	
Defendants.)	

Complaint for Declaratory and Injunctive Relief / Notice of Challenge to Constitutionality of Indiana Statute

Introduction

1. Planned Parenthood of Indiana and Kentucky, Inc. (“PPINK”) operates 23 health centers throughout Indiana. In addition to providing a host of reproductive health services to both men and women, staff at the centers have always provided the so-called “informed consent” information that Indiana law requires that women receive at least 18 hours before an abortion. Ind. Code § 16-34-2-1.1. Inasmuch as PPINK provides surgical abortions in only three locations in Indiana and medication abortions in one other, the ability to receive the informed consent information in local PPINK health centers minimized the burdens that would occur if the women had to travel the often lengthy distance to the place where they obtained the abortion in order to receive this mandatory information. It also allowed PPINK to more promptly schedule abortions if necessary as the mandatory notice could be provided at numerous locations.

2. Prior to obtaining an abortion a woman must receive an ultrasound and before July 1, 2016, although Indiana law required the ultrasound, it did not specify when the ultrasound had to be provided. Indiana Code § 16-34-2-1.1(b) (repealed eff. July 1, 2016). However, as of July 1, 2016, Indiana law was changed to provide that the ultrasound has to be obtained more than 18 hours before the abortion, at the same time that the informed consent information is provided. Ind. Code § 16-34-2-1.1(a)(5). Because ultrasound equipment is expensive, and because specially trained staff must operate the ultrasound, PPINK, prior to the passage of the law, only performed ultrasounds in the clinics where abortions were performed. There women would receive ultrasounds immediately prior to the abortions and the results would be interpreted by physicians at that time. Following passage of the law, PPINK made plans to provide ultrasounds in two additional Indiana health centers. However, the new requirement that a woman must obtain the ultrasound 18 hours in advance, and at the same time as the informed consent information, means that many women will have to make two lengthy trips to obtain an abortion or pay for an overnight stay. It will also cause the few clinics with ultrasound equipment to become more crowded causing abortions to be delayed, and cause other burdens on women seeking abortions.

3. There is no medical justification for the requirement that the ultrasound be obtained at least 18 hours before the abortion and the requirement represents an undue burden. It is unconstitutional and appropriate injunctive and declaratory relief should issue.

Jurisdiction, venue, cause of action

4. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331, 1343.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

6. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rule 57 of the

Federal Rules of Civil Procedure.

7. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the Constitution of the United States.

Parties

8. Planned Parenthood of Indiana and Kentucky, Inc., is a not-for-profit corporation with its principle place of business in Indiana. It brings this action on its own behalf and on behalf of its patients.

9. The Commissioner of the Indiana State Department of Health is the duly appointed official in charge of that agency, which is responsible for licensing abortion clinics pursuant to Indiana law. He is sued in his official capacity and is designated by his official title pursuant to Fed. R. Civ. P. 17(d).

10. The Prosecutors of Marion, Lake, Monroe, and Tippecanoe Counties, Indiana, are the duly elected prosecutors of the counties in which Planned Parenthood of Indiana and Kentucky health centers that provide abortion services are located and the prosecutors are responsible for prosecuting crimes occurring in their respective counties. They are sued in their official capacities and are designated by their official title pursuant to Fed. R. Civ. P. 17(d).

Legal background

11. Indiana Code § 16-34-2-1.1 provides that an abortion is not to be performed “except with the voluntary and informed consent of the pregnant woman upon whom the abortion is to be performed.”

12. The statute further provides that consent to an abortion is voluntary and informed only if at least 18 hours before the abortion is performed the woman receives certain information as explicitly provided by the statute. Ind. Code § 16-34-2-1.1(a)(1).

13. Prior to July 1, 2016, Indiana law provided, in addition to receiving the state-mandated information, that “[b]efore an abortion is performed, the provider shall perform, and the pregnant woman shall view, the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible” unless the woman certifies that she did not want to hear the fetal heart tone or view the ultrasound imaging. Ind. Code § 16-34-2-1.1(b) (repealed).

14. Effective July 1, 2016, the statute has been amended to provide:

At least eighteen (18) hours before an abortion is performed and at the same time that the pregnant woman receives the information required by subdivision (1), the provider shall perform, and the pregnant woman shall view, the fetal ultrasound imaging and hear the auscultation of the fetal heart tone if the fetal heart tone is audible unless the pregnant woman certified in writing, on a form developed by the state department, before the abortion is performed, that the pregnant woman:

- (A) does not want to view the fetal ultrasound imaging; and
- (B) does not want to listen to the auscultation of the fetal heart tone if the fetal heart tone is audible.

Ind. Code § 16-34-2-1.1(a)(5).

15. Indiana law also provides that performing an abortion not allowed by Indiana law is a felony. Ind. Code § 16-34-2-7(a).

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