

# Rivals prepare for legal battle over abortion bans

March 31 2013, by David Crary

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In this April 16, 2012 file photo, North Dakota Gov. Jack Dalrymple speaks in Bismarck, N.D. Dalrymple signed legislation on March 26, 2013 that would make North Dakota the nation's most restrictive state on abortion rights, banning the procedure if a fetal heartbeat can be detected—something that can happen as early as six weeks into a pregnancy. Rival legal teams, each well-financed and highly motivated, are girding for high-stakes court battles in the coming months over this law and one enacted in Arkansas that would ban most abortions from the 12th week of pregnancy onward. (AP Photo/Dale Wetzel, File)

Rival legal teams, well-financed and highly motivated, are preparing for court battles over the coming months on laws enacted in Arkansas and North Dakota that would impose the toughest bans on abortion in the U.S.

For all their differences, attorneys for the two states and the abortion-rights supporters opposing them agree on this: The laws represent an unprecedented frontal assault on the Supreme Court's 1973 *Roe v. Wade* decision that established a nationwide right to abortion.

The Arkansas law, approved March 6 when legislators overrode a veto by Democratic Gov. Mike Beebe, would ban most abortions from the 12th week of pregnancy onward. On March 26, North Dakota went further, with [Republican Gov. Jack Dalrymple](#) signing a measure that would ban abortions as early as six weeks into a pregnancy, when a [fetal heartbeat](#) can first be detected and before some women even know they're pregnant.

Abortion-rights advocates plan to challenge both measures, contending they are unconstitutional violations of the *Roe* ruling that legalized abortion until a fetus could viably survive outside the womb. A fetus is generally considered viable at 22 to 24 weeks.

"I think they're going to be blocked immediately by the courts—they are so far outside the clear bounds of what the Supreme Court has said for 40 years," said Nancy Northup, president of the Center for Reproductive Rights.

The center will be leading the North Dakota legal challenge and working in Arkansas alongside the [American Civil Liberties Union](#)'s state and national offices. Both Northup and ACLU lawyers say they have ample resources to wage the battles, and they expect victories that would require their attorneys' fees to be paid by the two states.

The last few years have been intensely busy for the Center for Reproductive Rights, the ACLU and other abortion-rights legal groups as Republican-controlled state legislatures have enacted scores of laws seeking to restrict access to abortion. At least two dozen such measures are currently the target of lawsuits, said Northup, who vowed that her organization "will not let unconstitutional laws go unchallenged."

Some of the recent laws place new requirements on abortion clinics, others require abortion providers to perform certain procedures or offer state-mandated counseling before an abortion can take place.

At least 10 states have passed bills banning abortions after 20 weeks of pregnancy on the disputed premise that a fetus can feel pain at that stage. One of those laws, in Idaho, was struck down by a U.S. district judge on March 6, while the laws in Georgia and Arizona have been temporarily blocked by judges pending further court proceedings.

North Dakota's Dalrymple, in signing the ban, acknowledged that its chances of surviving a court challenge were questionable, but said it was worth the eventual price tag—at this point unknown—in order to test the boundaries of the Roe decision.

North Dakota's attorney general, Wayne Stenehjem, initially said lawyers from his office would defend any lawsuits but is now considering hiring outside help. His office is working on a cost estimate for the litigation that could be presented to lawmakers soon.

"We're looking at a sufficient amount to adequately defend these enactments," Stenehjem said.

A lead sponsor of the Arkansas ban, Republican state Sen. Jason Rapert, said threats of lawsuits "should not prevent someone from doing what is right."

He contended that the ban had a chance of reaching the U.S. Supreme Court through the appeals process and suggested that the victory predictions made by abortion-rights lawyers amounted to "posturing" aimed at deterring other states from enacting similar bans.

In both Arkansas and North Dakota, the states' lawyers will be getting pro bono assistance from lawyers with Liberty Counsel, a conservative Christian legal group.



In this Feb. 7, 2013 file photo, Sen. Jason Rapert, R-Conway, explains his bill dealing with abortion at the Arkansas state Capitol in Little Rock, Ark. The bill, which was passed into law on March 6 when legislators overrode a veto by Democratic Gov. Mike Beebe, would ban most abortions from the 12th week of

pregnancy onward. Rival legal teams, each well-financed and highly motivated, are girding for high-stakes court battles over the coming months on this law and one in North Dakota that would impose the nation's toughest bans on abortion. (AP Photo/Danny Johnston, File)

Mathew Staver, the group's chairman, said supporters of the bans were resolved to fight the legal battles to the end, and issued a caution to the rival side.

"They ought to hold off on their celebrations," he said. "The cases have a long way to go through the court system."

The North Dakota ban is scheduled to take effect Aug. 1, along with two other measures that have angered abortion-rights backers. One would require abortion providers to have admitting privileges at a local hospital, the other would make North Dakota the first state to ban abortions based on genetic defects such as Down syndrome.

The Center for Reproductive Rights is reviewing its options regarding the latter two bills, but definitely plans to challenge the 6-week ban before Aug. 1. Northup said her team is pondering whether to file suit in state court or U.S. district court.

In Arkansas, where the 12-week ban would take effect 90 days after the end of the legislative session, abortion-rights lawyers plan to file their challenge in federal court within the next few weeks.

Bettina Brownstein, who will be representing the ACLU of Arkansas in the case, said the U.S. district court with jurisdiction over Little Rock had issued rulings in past abortion-related cases that gave her confidence of victory this time.





In this March 25, 2013 file photo, Kris Kitko leads chants of protest at an abortion-rights rally at the state Capitol in Bismarck, N.D. Rival legal teams, each well-financed and highly motivated, are girding for high-stakes court battles over the coming months on laws enacted in Arkansas and North Dakota that would impose the nation's toughest bans on abortion. The Arkansas law, approved March 6 when legislators overrode a veto by Democratic Gov. Mike Beebe, would ban most abortions from the 12th week of pregnancy onward. On March 26, North Dakota went even further, with Republican Gov. Jack Dalrymple signing a measure that would ban abortions as early as six weeks into a pregnancy, when a fetal heartbeat can first be detected. (AP Photo/James MacPherson, File)

"Eventually it could go to U.S. Supreme Court on appeal, but that would take a while, and they may not want to hear it," she said. "It's a question of how much money the state wants to spend."

Northup chided officials in both Arkansas and North Dakota for their willingness to spend taxpayers' money on difficult and divisive legal cases.

"It's important that the citizens of those states realize that every dollar spent to defend blatantly unconstitutional laws is taxpayers' dollars wasted," she said.

Attorneys' fees for the upcoming cases are impossible to estimate at this stage, but Northup said her organization received \$1.3 million in fees from Alaska after that state lost a recent case regarding an abortion-related law.

Abortion-rights advocates, while eager to defeat the new bans in North Dakota and Arkansas, worry about the impact of the broader surge of restrictions.

"I don't believe these bans are going to take effect, but the danger is that they make the other laws look reasonable," said Talcott Camp, deputy director of the ACLU's Reproductive Freedom Project. "The ultimate goal is to take this decision away from a woman and her doctor and give it to the politicians."

One of the most frequent targets of the anti-abortion laws is the Planned Parenthood Federation of America, which—in addition to providing a range of other health services—is the nation's leading provider of abortions.

Planned Parenthood's president, Cecile Richards, said she found it frustrating that women "continue to be a political punching bag." But she saw an upside to the wave of anti-abortion legislation: more members and more donations for her organization.

"These attacks have served to energize our supporters," she said. "We've gained 2 million members in the past two years."

There's new energy on the other side as well.

The tough North Dakota laws have been welcomed by the protesters who gather weekly in Fargo outside the state's lone abortion clinic.

Among those on hand for the latest protest at the Red River Women's Clinic was Scott Carew, 50, who had brought two anti-[abortion](#) posters nailed to pieces of wood.

"Certainly, we're proud of the governor standing up for life," Carew said. "We're going to keep standing up for life until we can't stand up anymore."

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