

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

MKB MANAGEMENT CORP, d/b/a RED RIVER
WOMEN'S CLINIC, and KATHRYN L.
EGGLESTON, M.D.,

Plaintiffs,

vs.

BIRCH BURDICK, in his official capacity as State
Attorney for Cass County; WAYNE STENEHJEM,
in his official capacity as Attorney General for the
State of North Dakota; and LARRY JOHNSON,
M.D., ROBERT TANOUS, D.O.; KATE LARSON,
P.A.C., NORMAN BYERS, M.D.; CORY MILLER,
M.D.; KAYLEEN WARDNER; GAYLORD
KAVLIE, M.D.; KENT MARTIN, M.D.; KENT
HOERAUF, M.D.; BURT RISKEDAHL;
JONATHAN HAUG, M.D.; GENEVIEVE GOVEN,
M.D.; AND ROBERT J. OLSON, M.D., in their
official capacities as members of the North Dakota
Board of Medical Examiners,

Defendants.

Case No. *1:13-cv-071*

COMPLAINT

Plaintiffs, by and through their undersigned attorneys, bring this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof allege the following:

I. PRELIMINARY STATEMENT

1. Plaintiffs bring this civil rights action under the United States Constitution and 42 U.S.C. § 1983 to challenge the constitutionality of two bills enacted this year by the North Dakota legislature: House Bills 1456 and 1305 (to be codified as new sections to N.D. Cent. Code § 14-02.1 and amendments to N.D. Cent. Code §§ 14-02.1-02 and 43-17-31). The bills (hereinafter collectively referred to as "the bans") are scheduled to take effect August 1, 2013.

House Bill 1456 (“HB 1456”) is attached hereto as Exhibit A. House Bill 1305 (“HB 1305”) is attached hereto as Exhibit B.

2. The bans prohibit abortions prior to viability in violation of clearly established United States Supreme Court precedent that protects the substantive due process rights of women seeking abortions.

3. Plaintiffs seek a declaration that the bans are unconstitutional and injunctive relief prohibiting their enforcement as to previability abortions.

II. JURISDICTION AND VENUE

4. This court has jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

5. Plaintiffs’ action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure.

6. Venue in this Court is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this action occurred in this district and some of the Defendants are located in this district.

III. PARTIES

A. Plaintiffs

7. Plaintiff Red River Women’s Clinic (“the Clinic”), located in Fargo, North Dakota, has been in operation since 1998. The Clinic provides a range of reproductive health care to women, including medication and surgical abortions. The Clinic brings claims on behalf of itself, its staff, and its patients.

8. Plaintiff Kathryn Eggleston, M.D., is a physician licensed to practice in North Dakota. Dr. Eggleston is the Clinic’s medical director, and she provides abortions to the Clinic’s patients. Dr. Eggleston brings claims on behalf of herself and her patients.

B. Defendants

9. Defendant Birch Burdick is the State's Attorney for Cass County where the Clinic is located. The State's Attorney's office is charged with prosecuting all public offenses on behalf of the State of North Dakota. N.D. Cent. Code § 11-16-01(1). Both HB 1456 and HB 1305 provide criminal penalties. He is sued in his official capacity.

10. Defendant Wayne Stenehjem is the Attorney General of the State of North Dakota. The Attorney General must "appear and defend all actions against any state officer," and "advise the several state's attorneys in matters relating to the duties of their office." N.D. Cent. Code §§ 54-12-01.3, 54-12-01.4. He is sued in his official capacity.

11. Defendants Larry Johnson, M.D.; Robert Tanous, D.O.; Kate Larson, P.A.C., Norman Byers, M.D.; Cory Miller, M.D.; Kayleen Wardner; Gaylord Kavlie, M.D.; Kent Martin, M.D.; Kent Hoerauf, M.D.; Burt Riskedahl; Jonathan Haug, M.D.; Genevieve Goven, M.D.; and Robert J. Olson, M.D., are the members of the North Dakota Board of Medical Examiners (the "Board"). The Board is authorized to take disciplinary action against the license of a physician. N.D. Cent Code § 43-17-07.1. HB 1456 provides for such disciplinary actions based on violations in some circumstances. Board members are sued in their official capacity.

IV. THE CHALLENGED BANS

12. Current North Dakota law prohibits abortions "[a]fter the point in pregnancy when the unborn child may reasonably be expected to have reached viability," unless "in the medical judgment of the physician the abortion is necessary to preserve the life of the woman" or if "continuation of her pregnancy will impose on her substantial risk of grave impairment of her physical or mental health." N.D. Cent. Code § 14-02.1-04.3. A fetus is viable when it has

the ability “to live outside of the mother’s womb, albeit with artificial aid.” N.D. Cent. Code § 14-02.1-02.14 (to be recodified by HB 1305 as N.D. Cent. Code § 14-02.1-02.16).

(A) House Bill 1456

13. Under House Bill 1456, “an individual may not perform an abortion on a pregnant woman before determining, in accordance with standard medical practice,” if the “unborn child” “has a detectable heartbeat.” HB 1456 § 1.1. The only exception to the requirement is if the woman is experiencing a medical emergency. *Id.* Performance of an abortion in violation of this requirement is grounds for disciplinary action against the physician by the state board of medical examiners. HB 1456 § 1.2.

14. House Bill 1456 further provides:

Notwithstanding any other provision of law, an individual may not knowingly perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn child the pregnant woman is carrying and whose heartbeat has been detected according to the requirements of section 1 of this Act.

HB 1456 § 2.1.

15. Thus, House Bill 1456 bans abortions in North Dakota after the point in pregnancy when the “heartbeat” can be detected. As described in greater detail below, cardiac activity can be detected very early in pregnancy, usually about two weeks after a woman might first miss her menstrual period.

16. The only exception to the ban when a heartbeat has been detected is for procedures performed “to prevent the death of a pregnant woman, to prevent serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman, or to save the life of an unborn child.” HB 1456 § 2.2(a).

17. Willing performance of an abortion in violation of the ban is a class C felony, punishable by up to five years imprisonment. N.D. Cent. Code § 12.1-31-01.4.

(B) House Bill 1305

18. House Bill 1305 prohibits the knowing performance of an abortion “that the pregnant woman is seeking . . . solely [o]n account of the sex of the unborn child; or [b]ecause the unborn child has been diagnosed with either a genetic abnormality or a potential for a genetic abnormality.” HB 1305 § 2.

19. House Bill 1305 defines “genetic abnormality” to mean: “any defect, disease, or disorder that is inherited genetically. The term includes any physical disfigurement, scoliosis, dwarfism, Down syndrome, albinism, Amelia, or any other type of physical or mental disability, abnormality, or disease.” HB 1305 § 1 (amending N.D. Cent. Code § 14-02.1-02).

20. Violation of HB 1305 is a class A misdemeanor, punishable by up to one year imprisonment. N.D. Cent. Code § 12.1-31-01.5.

V. STATEMENT OF FACTS

21. Pregnancy is commonly measured from the first day of a woman’s last menstrual period (“lmp”). Fertilization typically occurs around two weeks lmp. Pregnancy is generally considered to begin around three weeks lmp, when a fertilized egg typically implants in the uterus. Pregnancy typically lasts until forty weeks lmp.

22. In a normally developing embryo, cells that form the basis for development of the heart later in gestation produce cardiac activity that can be detected with ultrasound.

23. In early pregnancy, standard medical practice for detecting cardiac activity requires the use of vaginal ultrasound.

24. Using vaginal ultrasound, cardiac activity is generally detectable beginning at approximately 6 weeks lmp.

25. Viability, the time when a fetus has a reasonable chance for sustained life outside the womb, does not occur until approximately twenty-four weeks lmp, some four months later.

26. By 6 weeks lmp, many women do not know they are pregnant. Some women, including those who have irregular periods, who have certain medical conditions, who have been using contraceptives, or who are breastfeeding, may not yet realize that they have missed a period. Some women mistake the light bleeding that often occurs early in pregnancy as a period.

27. Even for women with highly regular periods, 6 weeks lmp will be just two weeks after they have missed their period.

28. Red River Women's Clinic is the sole abortion provider in the state of North Dakota. The Clinic provides abortion care up to approximately sixteen weeks lmp. The Clinic typically provides abortions one day per week.

29. Approximately eighty-nine percent of the Clinic's patients obtain abortions at or after 6 weeks of pregnancy.

30. The Clinic's patients obtain abortions for a variety of reasons. Fifty-eight percent already have children and many do not feel they can adequately parent and support additional children. Some younger patients believe that parenthood will prevent completion of their education, which would hinder both their own development and their ability to provide for their children. Other patients seek abortions because they are pregnant as a result of rape, are victims of domestic violence, or because the pregnancy threatens their health.

31. The Clinic serves patients from North Dakota, South Dakota and Minnesota. Many patients travel significant distances for their abortion care.

32. Legal abortion is one of the safest medical procedures in the United States. The risk of carrying a pregnancy to term carries much higher risks of both morbidity and mortality than does obtaining an abortion through around twenty weeks. The mortality rate associated with pregnancy in the United States is approximately fifteen times higher than the risks associated with abortion. Access to safe and legal abortion benefits the health and wellbeing of women and their families.

33. A variety of tests may be performed to check for fetal genetic abnormalities. These include amniocentesis, which is typically performed at fifteen to twenty weeks Imp, and chorionic villus sampling and nuchal translucency screening, which are typically performed at ten to twelve weeks Imp.

34. Over the past forty years, safe and legal abortion has been important to facilitating women's equal participation in society, including in the economic and social life of the nation. The availability of abortion enables women to decide whether or not to forego educational and economic opportunities due to unplanned pregnancy, whether to raise children with an absent or unwilling partner, and whether to accept the risk of carrying medically-compromised or non-viable pregnancies to term.

35. Pregnant women are capable of deciding whether to terminate a pregnancy, taking into account all relevant factors. Forcing women to carry to term promotes the stereotyped notions that motherhood is the preferred, natural, and proper state for women, and that women are not capable of making decisions about the timing, number, and spacing of children, but rather must be protected from the consequences of making decisions that others see as wrong.

VI. THE IMPACT OF THE BANS ON PLAINTIFFS AND THEIR PATIENTS

36. House Bill 1456 and House Bill 1305 bar women from obtaining pre-viability abortions in contravention of their constitutional rights. Immediately upon taking effect, House Bill 1456 would prohibit approximately eighty-nine percent of the abortions currently performed at the Clinic, creating a near-total ban on abortion in North Dakota.

37. Moreover, faced with a loss of patient revenue of such magnitude, the Clinic would almost certainly have to close. Because the Clinic is the only clinic providing abortions in North Dakota, House Bill 1456 would thus have the practical effect of completely banning abortions in the state.

38. The bans present Dr. Eggleston with an untenable choice: to face criminal prosecution for continuing to provide abortion care in accordance with her best medical judgment, or to stop providing the care her patients seek.

39. These harms constitute irreparable harm to Plaintiffs and their patients.

FIRST CLAIM FOR RELIEF

(HB 1456 Substantive Due Process)

40. Plaintiffs reallege and hereby incorporate by reference Paragraphs 1 through 39 above.

41. House Bill 1456 bans abortion prior to viability, in violation of the substantive due process rights of Plaintiffs' patients, guaranteed by the Fourteenth Amendment of the United States Constitution.

SECOND CLAIM FOR RELIEF

(HB 1456 Equal Protection)

42. Plaintiffs reallege and hereby incorporate by reference Paragraphs 1 through 41 above.

43. By enacting a near-complete ban on abortion in North Dakota, thereby all but eliminating access to health care that is needed only by women, and by denying women the autonomy to determine the number, timing and spacing of their children, thereby reinforcing outmoded stereotypes of women's role in society, House Bill 1456 discriminates against women on the basis of sex in violation of their right to equal protection guaranteed by the Fourteenth Amendment.

THIRD CLAIM FOR RELIEF

(HB 1305 Substantive Due Process)

44. Plaintiffs reallege and hereby incorporate by reference Paragraphs 1 through 43 above.

45. House Bill 1305 bans some previability abortions, in violation of the substantive due process rights of plaintiffs' patients, guaranteed by the Fourteenth Amendment.

FOURTH CLAIM FOR RELIEF

(HB 1305 Equal Protection)

46. Plaintiffs reallege and hereby incorporate by reference Paragraphs 1 through 45 above.

47. By preventing only women from choosing medically appropriate health care treatment and by denying women autonomy to determine whether and when to carry a pregnancy to term, including cruelly forcing women to carry a pregnancy to term in situations where the fetus has no reasonable chance for sustained life, and thereby reinforcing outmoded stereotypes of women's primary role as mothers, House Bill 1305 discriminates against women

on the basis of sex in violation of their right to equal protection guaranteed by the Fourteenth Amendment.

REQUEST FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court:

1. Issue a declaratory judgment that HB 1456, to be codified within N.D. Cent. Code § 14-02.1, is unconstitutional as applied to previability abortions, under the substantive due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution and in violation of 42 U.S.C. § 1983;
2. Issue preliminary and permanent injunctive relief restraining Defendants, their employees, agents, and successors from enforcing HB 1456 as to previability abortions.
3. Issue a declaratory judgment that HB 1305, to be codified within N.D. Cent. Code § 14-02.1, is unconstitutional as applied to previability abortions, under the substantive due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution and in violation of 42 U.S.C. § 1983;
4. Issue a permanent injunction restraining Defendants, their employees, agents, and successors from enforcing HB 1305 as to previability abortions.
5. Issue an order prohibiting Defendants, their employees, agents, and successors from bringing enforcement actions for previability abortions performed while a Preliminary Injunction is in effect against HB 1456;
6. Award Plaintiffs their reasonable costs and attorney's fees pursuant to 42 U.S.C. § 1988; and
7. Grant such other or further relief as the Court deems just, proper and equitable.

RESPECTFULLY SUBMITTED this 25th day of June, 2013.



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*Motion for Admission Pending

Exhibit A
House Bill 1456

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1456

(Representatives Grande, Brabandt, Heller, Hunskor, Rohr, Toman)
(Senators Berry, Burckhard, Kilzer, Laffen, Luick, Unruh)

AN ACT to create and enact two new sections to chapter 14-02.1 and a new subsection to section 43-17-31 of the North Dakota Century Code, relating to limitations on abortion after determination of detectable heartbeat in an unborn child and to grounds for disciplinary action for physicians; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

Determination of detectable heartbeat in unborn child before abortion - Exception.

1. Except when a medical emergency exists that prevents compliance with this subsection, an individual may not perform an abortion on a pregnant woman before determining, in accordance with standard medical practice, if the unborn child the pregnant woman is carrying has a detectable heartbeat. Any individual who performs an abortion on a pregnant woman based on the exception in this subsection shall note in the pregnant woman's medical records that a medical emergency necessitating the abortion existed.
2. If a physician performs an abortion on a pregnant woman before determining if the unborn child the pregnant woman is carrying has a detectable heartbeat, that physician is subject to disciplinary action under section 43-17-31.

SECTION 2. A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

Abortion after detectable heartbeat in unborn child prohibited - Exception - Penalty.

1. Notwithstanding any other provision of law, an individual may not knowingly perform an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the unborn child the pregnant woman is carrying and whose heartbeat has been detected according to the requirements of section 1 of this Act.
2.
 - a. An individual is not in violation of subsection 1 if that individual performs a medical procedure designed to or intended, in that individual's reasonable medical judgment, to prevent the death of a pregnant woman, to prevent a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman, or to save the life of an unborn child.
 - b. Any individual who performs a medical procedure as described in subsection 1 shall declare in writing, under penalty of perjury, that the medical procedure is necessary, to the best of that individual'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 individual also shall provide in that written document, under penalty of perjury, the medical condition of that pregnant woman that the medical procedure performed as described in subdivision a assertedly will address, and the medical rationale for the conclusion that the medical procedure is 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.

H. B. NO. 1456 - PAGE 2

- c. The individual who performs a medical procedure as described in subdivision a shall place the written documentation required under subdivision b in the pregnant woman's medical records and shall maintain a copy of the written documentation in the individual's own records for at least seven years.
3. An individual is not in violation of subsection 1 if that individual has performed an examination for the presence of a heartbeat in the unborn child utilizing standard medical practice and that examination does not reveal a heartbeat in the unborn child or the individual has been informed by a physician who has performed the examination for the unborn child's heartbeat that the examination did not reveal a heartbeat in the unborn child.
4. It is a class C felony for an individual to willingly perform an abortion in violation of subsection 1. The pregnant woman upon whom the abortion is performed in violation of subsection 1 may not be prosecuted for a violation of subsection 1 or for conspiracy to violate subsection 1.
5. This section does not prohibit the sale, use, prescription, or administration of a measure, drug, or chemical designed for contraceptive purposes.

SECTION 3. A new subsection to section 43-17-31 of the North Dakota Century Code is created and enacted as follows:

The performance of an abortion on a pregnant woman prior to determining if the unborn child the pregnant woman is carrying has a detectable heartbeat, as provided in subsection 1 of section 1 of this Act.

H. B. NO. 1456 - PAGE 3

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1456.

House Vote: Yeas 63 Nays 28 Absent 3

Senate Vote: Yeas 26 Nays 17 Absent 4

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State

Exhibit B
House Bill 1305

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1305

(Representatives Grande, Brabandt, K. Koppelman, Laning, Rohr, Steiner)
(Senators Berry, Burckhard, Campbell, Dever, Erbele, Hogue)

AN ACT to create and enact a new section to chapter 14-02.1 of the North Dakota Century Code, relating to the prohibition on abortions for sex selection or genetic abnormalities; to amend and reenact section 14-02.1-02 of the North Dakota Century Code, relating to definitions; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-02. Definitions.

As used in this chapter:

1. "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable intrauterine pregnancy of a woman, including the elimination of one or more unborn children in a multifetal pregnancy, with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:
 - a. Save the life or preserve the health of the unborn child;
 - b. Remove a dead unborn child caused by spontaneous abortion; or
 - c. Treat a woman for an ectopic pregnancy.
2. "Abortion facility" means a clinic, ambulatory surgical center, physician's office, or any other place or facility in which abortions are performed or prescribed, other than a hospital.
3. "Abortion-inducing drug" means a medicine, drug, or any other substance prescribed or dispensed with the intent of causing an abortion.
4. "Drug label" means the pamphlet accompanying an abortion-inducing drug which outlines the protocol tested and authorized by the federal food and drug administration and agreed upon by the drug company applying for the federal food and drug administration authorization of that drug. Also known as "final printing labeling instructions", drug label is the federal food and drug administration document that delineates how a drug is to be used according to the federal food and drug administration approval.
5. "Down syndrome" refers to a chromosome disorder associated with an extra chromosome twenty-one, in whole or in part, or an effective trisomy for chromosome twenty-one.
6. "Genetic abnormality" means any defect, disease, or disorder that is inherited genetically. The term includes any physical disfigurement, scoliosis, dwarfism, Down syndrome, albinism, amelia, or any other type of physical or mental disability, abnormality, or disease.
7. "Hospital" means an institution licensed by the state department of health under chapter 23-16 and any hospital operated by the United States or this state.

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- 6-8. "Human being" means an individual living member of the species of homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.
- 7-9. "Infant born alive" means a born child which exhibits either heartbeat, spontaneous respiratory activity, spontaneous movement of voluntary muscles or pulsation of the umbilical cord if still attached to the child.
- 8-10. "Informed consent" means voluntary consent to abortion by the woman upon whom the abortion is to be performed or induced provided that:
- a. The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by the physician's agent, at least twenty-four hours before the abortion:
 - (1) The name of the physician who will perform the abortion;
 - (2) The abortion will terminate the life of a whole, separate, unique, living human being;
 - (3) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies, and infertility;
 - (4) The probable gestational age of the unborn child at the time the abortion is to be performed; and
 - (5) The medical risks associated with carrying her child to term.
 - b. The woman is informed, by the physician or the physician's agent, at least twenty-four hours before the abortion:
 - (1) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care and that more detailed information on the availability of that assistance is contained in the printed materials given to her as described in section 14-02.1-02.1;
 - (2) That the printed materials given to her and described in section 14-02.1-02.1 describe the unborn child and list agencies that offer alternatives to abortion;
 - (3) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion; and
 - (4) That she is free to withhold or withdraw her consent to the abortion at any time without affecting her right to future care or treatment and without the loss of any state or federally funded benefits to which she might otherwise be entitled.
 - c. The woman certifies in writing, prior to the abortion, that the information described in subdivisions a and b has been furnished to her.
 - d. Before the performance of the abortion, the physician who is to perform or induce the abortion or the physician's agent receives a copy of the written certification prescribed by subdivision c.
 - e. The physician has not received or obtained payment for a service provided to a patient who has inquired about an abortion or has scheduled an abortion before the twenty-four-hour period required by this section.
- 9-11. "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that it necessitates an immediate abortion to

avert her death or for which the twenty-four-hour delay will create serious risk of substantial and irreversible physical impairment of a major bodily function. A condition may not be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct that would result in her death or in substantial and irreversible physical impairment of a major bodily function.

- ~~40-12.~~ "Physician" means an individual who is licensed to practice medicine or osteopathy under chapter 43-17 or a physician who practices in the armed services of the United States or in the employ of the United States.
- ~~41-13.~~ "Probable gestational age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed.
- ~~42-14.~~ "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- ~~43-15.~~ "Unborn child" means the offspring of human beings from conception until birth.
- ~~44-16.~~ "Viable" means the ability of an unborn child to live outside the mother's womb, albeit with artificial aid.

SECTION 2. A new section to chapter 14-02.1 of the North Dakota Century Code is created and enacted as follows:

Prohibition - Sex-selective abortion - Abortion for genetic abnormality - Penalty.

1. Notwithstanding any other provision of law, a physician may not intentionally perform or attempt to perform an abortion with knowledge that the pregnant woman is seeking the abortion solely:
 - a. On account of the sex of the unborn child; or
 - b. Because the unborn child has been diagnosed with either a genetic abnormality or a potential for a genetic abnormality.
2. Any physician who performs an abortion in violation of this section is guilty of a class A misdemeanor.

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Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1305.

House Vote: Yeas 64 Nays 27 Absent 3

Senate Vote: Yeas 27 Nays 15 Absent 5

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,
at _____ o'clock _____ M.

Secretary of State

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 MKB Management Corp. d/b/a Red River Women's Clinic & Kathryn L. Eggleston, M.D.

DEFENDANTS
 Please see Attachment 2.

(b) County of Residence of First Listed Plaintiff Cass
 (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Please see Attachment 1.

Attorneys (If Known)
 n/a

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983
 Brief description of cause:
This is a constitutional challenge to 2013 North Dakota House Bills 1305 and 1456.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____ **CHECK YES only if demanded in complaint:**
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
 06/25/2013

SIGNATURE OF ATTORNEY OF RECORD

Rebecca S. Thies

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Attachment 1

Plaintiffs' attorneys

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*Motion for Admission Pending

Attachment 2

Defendants

1. Cass County State's Attorney's Office, Birch Burdick, State's Attorney for Cass County
2. North Dakota Attorney General, Wayne Stenehjem, Attorney General
3. North Dakota Board of Medical Examiners, Larry Johnson, M.D., Chair
4. North Dakota Board of Medical Examiners, Robert Tanous, D.O., Vice-Chair
5. North Dakota Board of Medical Examiners, Kate Larson, P.A.C., Treasurer
6. North Dakota Board of Medical Examiners, Norman Byers, M.D., Member
7. North Dakota Board of Medical Examiners, Cory Miller, M.D., Member
8. North Dakota Board of Medical Examiners, Kayleen Wardner, Member
9. North Dakota Board of Medical Examiners, Gaylord Kavlie, M.D., Member
10. North Dakota Board of Medical Examiners, Kent Martin, M.D., Member
11. North Dakota Board of Medical Examiners, Kent Hoerauf, M.D., Member
12. North Dakota Board of Medical Examiners, Burt Riskedahl, Member
13. North Dakota Board of Medical Examiners, Jonathan Haug, M.D., Member
14. North Dakota Board of Medical Examiners, Genevieve Goven, M.D., Member
15. North Dakota Board of Medical Examiners, Robert J. Olson, M.D.,