



# LAWSUIT CHALLENGING ARIZONA'S ABORTION CONSENT ACT FREQUENTLY ASKED QUESTIONS

In July 2009, Governor Jan Brewer signed into law the Abortion Consent Act (HB 2564). The provisions were scheduled to go into effect on September 30, 2009, at 12:01 a.m., but pro-abortion attorneys sued the state over the law.

## **How many lawsuits are there?**

Two lawsuits were originally filed. However, on March 5, 2010, the lawsuit filed in federal court by the Center for Reproductive Rights was voluntarily dismissed by the plaintiffs. The second lawsuit, filed by Planned Parenthood in state court is still ongoing. That lawsuit is challenging the in-person informed consent, notarized parental consent, physician-only law, rights of conscience, and payment provisions of the Abortion Consent Act. In October 2010, Planned Parenthood asked the court to also include the abortion clinic regulations in its challenge, but the judge denied that request, so Planned Parenthood filed a separate lawsuit over those provisions.

## **Who is defending these laws?**

Neither CAP nor Alliance Defense Fund is a defendant in the case. The lawsuit is filed against the State of Arizona. Tom Horne, Arizona's Attorney General, defends the state in these types of lawsuits. Mr. Horne has appointed Solicitor General Dave Cole, and attorneys in his office are defending the case.

Attorneys from CAP, ADF, Bioethics Defense Fund, and Life Legal Defense Fund are working together to represent various parties asking to intervene in the lawsuit. Our clients are: American Association of Pro-Life Obstetricians and Gynecologists, Catholic Medical Association, Christian Medical and Dental Association, Christian Pharmacists Fellowship International, Ave Maria Pharmacy, The Crisis Pregnancy Centers of Greater Phoenix, Arizona Catholic Conference, Representative (now Senator) Nancy Barto, and Senator Linda Gray. If successful, intervening would allow our clients to defend the law in addition to the Attorney General.

So far, the state court has denied our motion to intervene. We have asked the Court of Appeals to review that decision.

In 2009, the Speaker of the Arizona House of Representatives Kirk Adams also asked the court for an opportunity to intervene in the lawsuit. The judge also denied Speaker Adams' request to participate in the lawsuit. However, legislation passed in 2010 clarified that the Speaker is permitted to intervene, so current Speaker Andy Tobin will like be a party and defend the laws.

CAP's work in passing family-friendly laws is only part of the work required to protect and defend families. Often, passing the law is the easiest part of the process. Overseeing the law's implementation is the most critical task of all. CAP typically has played a role in any litigation challenging CAP-supported laws. We have an obligation to our constituents, legislators, and most of all to preborn babies and their mothers, to make sure the best legal defense is made for these new laws.

### **What is the current status of the Abortion Consent Act?**

Maricopa County Superior Court Judge Donald Daughton ruled that many of the provisions of the law – as of now – will not come into effect. Those provisions include: not allowing non-doctors to perform surgical abortions, that a *physician* must meet with the patient *in person* 24 hours before the abortion, requiring a parent's notarized consent for a minor's abortion, and protecting the rights of conscience of pharmacists and other medical professionals to not perform abortions or dispense abortifacients. Judge Daughton's ruling, however, does allow the following provisions to go into effect:

1. 24-hour waiting period after the woman is provided information by a "qualified staff member" (although not necessarily in person), including the name of the doctor performing the abortion, the nature of the procedure, its risks and alternatives.
2. Women cannot be coerced into having an abortion.
3. Women cannot be forced to pay for an abortion before the 24-hour waiting period.
4. Women have a right to sue if the information is not provided.
5. Parents have a right to sue if the abortion clinic violates the parental consent statute.

### **If a woman wants to receive an abortion today, what is different than before?**

For the first time in Arizona history, a woman must have a 24-hour reflection period after receiving informed consent information before she has an abortion. However, unlike what the new law actually requires, because of the state court order, a woman can receive the informed consent information over the phone from any "qualified staff member" – not necessarily a doctor (or anyone with medical training).

### **What are the next steps of the lawsuit?**

The case was argued before the Arizona Court of Appeals on June 14, 2011. The court will issue a decision in the next few months.

All parties defending the law have asked the Court of Appeals to review the lower court's decision to keep the laws from going into effect. CAP's clients are also asking to be permitted to intervene in the lawsuit.

### **Is there anything we can do to help?**

This will be a large battle that will possibly drag out for many years. CAP continues to ask for your prayers as we work to have this law upheld. As with every project we take on, we need resources to withstand this legal attack. Consider making a gift to support our work.