

First Hand Report: Federal Court Hears Abortion Ultrasound Case

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Last Wednesday, a panel of judges from the US 6th Circuit Court of Appeals met in Cincinnati to hear arguments in a lawsuit filed by the ACLU. Judges Alan Norris, Bernice Donald, and John Bush served on the panel.

Chad Meredith argued the case for HB 2, which simply stipulates that the state of Kentucky has the right to regulate the use of an ultrasound for a woman before an abortion is performed. Simply put, this bill requires the physician to display and explain the ultrasound to the patient. For the sake of the full disclosure of information, the doctor is also required to make audible to the patient the heartbeat of her unborn child. The woman can elect to avert her eyes or ask for the audio to be muted.

Louisville's EMW Clinic acquired the ACLU to contest this lawsuit citing the law as unconstitutional in that it "violates free speech." According to their attorney, Alexa Kolbi-Molinas, *"such an intrusion by the government violates the first amendment. It forces a woman who is naked on a table, sobbing uncontrollably to view an ultrasound that she may not want to see. That is not free speech, that is compelled speech to a captive audience. The ultrasound can be offered, but it should not be required for the patient to see."*

Judge Bernice Donald concurred with her rather slanted questions to Meredith. *"Is this not a woman's choice to see the ultrasound? This adds more trauma to the woman. Whether it takes 5 or 10 minutes it is imposing the State upon a doctor and patient relationship. Why is what we have now insufficient? (i.e., the offer to see the ultrasound)*

Meredith replied, *"This is about requiring FULL disclosure by physicians. The legislature, including many women in the legislature, concluded that more information is needed for a woman in this situation."*

"But nothing prohibits a woman from getting that information." returned Judge Donald.

Meredith asserted, *"But many women don't know about what the ultrasound depicts. Some doctors will not offer that information. Not every patient understands the development of the fetus or that the fetus looks like a human at the time. Many find trauma after the abortion is performed after they get this kind of information. Some regret to have made this choice."*

ACLU attorney Kolbi-Molinas continued, *"Informed consent is not designed for physicians to stop a patient from a procedure. It is for the sake of information. The ultrasound can be offered, but not required."*

Judge Bush inquired, *“Is there a standard of care to offer through viewing the images with the chance to ask questions? If I was a smoker and the doctor saw cancer on my X-ray, could the government require the doctor to show me the X-ray?”*

“It depends on what information needs to be conveyed to the patient.” Kolbi-Molinas responded.

Judge Donald said, *“This is undue burden. All a woman needs is information that is truthful and non-misleading. This law has nothing to do with informed consent.”*

“Does the physician provide an explanation of the ultrasound?” asked Judge Norris. *“At this point, what does not the physician do to explain what the ultrasound depicts? It has to be displayed in a way that she can see it. The State cannot require the doctor to say anything but ‘it all looks good to me.’”*

Judge Bush then asked the question, *“Could a doctor pressure a woman to have an abortion? Certainly that could happen if the doctor adds additional language.”*

In his closing rebuttal, Meredith asserted what he called *“an overarching question: ‘Are states going to continue to regulate standards for medical practice, professional conduct...scientific fact and accuracy?’ It is not a case of free speech to require or guarantee vital information, for the patient to receive the fullest information. We must respect the state’s responsibility to insure informed consent.”*

Judge Donald concluded the 45-minute session by saying that the court would rule its decision *“in due course,”* which may mean several months.

HB2 requires the fullest information be given to the patient contemplating abortion. By the nature of the procedure it is already a traumatic one. That experience cannot be minimized by ignoring or denying what is happening to the unborn child in the womb by shifting away one’s eyes or turning a deaf ear. Viewing the ultrasound dispels the delusion that this procedure is not the extinguishing of actual life. It is still an extraordinary medical procedure.

Giving the fullest information to a woman in this situation should be regulated by the state in order to meet the exceptional nature of that procedure. We are not talking about a commonplace medical practice. Abortion is a multi-dimensional medical procedure involving more than one patient. Certainly the standards through which that patient acquires the fullest information possible should be of interest to those who provide watch-care for all persons of our communities.