

# Abortion ban based on heartbeat rejected by appeals court (Update)

27 May 2015, by Allen Reed

A federal appeals court struck down one of the nation's toughest abortion restrictions on Wednesday, agreeing with a lower court that ruled an Arkansas law unconstitutionally burdens women by banning abortions after the 12th week of pregnancy if a doctor can detect a fetal heartbeat.

The 8th U.S. Circuit Court of Appeals sided with doctors who challenged the law, ruling that abortion restrictions must be based on a fetus' ability to live outside the womb, not the presence of a fetal heartbeat that can be detected weeks earlier. The court said that standard was established by previous U.S. Supreme Court rulings.

The ruling upholds a decision of a federal judge in Arkansas who struck down the 2013 law before it could take effect, shortly after legislators approved the change. But the federal judge left in place other parts of the law that required doctors to tell women if a fetal heartbeat was present; the appeals court also kept those elements in place.

Attorney General Leslie Rutledge's office was reviewing the decision "and will evaluate how to proceed," office spokesman Judd Deere said Wednesday afternoon.

Rita Sklar, executive director of the American Civil Liberties Union of Arkansas, which represented the two doctors challenging the law, said the decision leaves medical decisions to doctors and their patients, rather than politicians. She also said the case was a waste of taxpayer time.

"We were kind of surprised it took as long as it did, frankly," Sklar said. "From our point of view it was a pretty simple case."

The law was among several abortion restrictions Republicans pushed through the Arkansas Legislature shortly after they took control of both the Senate and House for first time since

Reconstruction. Republican Sen. Jason Rapert, who introduced the 12-week ban, said Wednesday that he was disappointed the ban wasn't upheld but glad that the appeals court kept other provisions in place.

A similar law restricting abortions to 20 weeks' gestation is still in effect in Arkansas, as are similar bans in 11 other states, according to the nonprofit Guttmacher Institute, which supports abortion rights.

This year, legislation to restrict abortion at 20 weeks or another specific gestational age has been enacted in West Virginia and proposed in 12 other states. In Alabama, Ohio, and New York, proposed legislation would ban abortions once a fetal heartbeat can be detected, which can be as early as six weeks into a pregnancy.

The 8th Circuit heard arguments in the Arkansas case in January, on the same day it heard arguments over a North Dakota law that also bans abortions if a fetal heartbeat can be detected but didn't include a specific number of weeks. The appeals court has yet to rule on the North Dakota law, which was struck down by a federal judge in that state.

In rejecting Arkansas' fetal heartbeat law, the appeals court cautioned that the viability standard used to decide abortion-restriction cases is becoming increasingly difficult to apply because of advances in medicine.

The ruling noted that in 1973, a fetus was considered viable after 28 weeks of pregnancy, but that the doctors challenging Arkansas' law said viability was at 24 weeks' gestation. The court also noted the birth last year of a girl in Florida at 21 weeks and six days' gestation.

"Undeniably, medical and technological advances along with mankind's ever increasing knowledge of

prenatal life ... make application of (the) viability standard more difficult," the court wrote.

**More information:** Link to order:

[media.ca8.uscourts.gov/opndir/15/05/141891P.pdf](https://media.ca8.uscourts.gov/opndir/15/05/141891P.pdf)

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APA citation: Abortion ban based on heartbeat rejected by appeals court (Update) (2015, May 27) retrieved 30 August 2022 from <https://medicalxpress.com/news/2015-05-federal-appeals-court-arkansas-week.html>

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