

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SAMUEL G. EUBANKS, M.D.,
et al.,
Plaintiffs-Appellees,

v.

R. DAVID STENGEL,
Commonwealth Attorney for
Jefferson County, *et al.*,
Defendants,

A. B. CHANDLER, III,
Attorney General of the
Commonwealth of Kentucky,
in his official capacity and his
successors in office,
Defendant-Appellant.

No. 98-6671

Appeal from the United States District Court
for the Western District of Kentucky at Louisville.
No. 98-00383—John G. Heyburn, II, District Judge.

Argued: December 15, 1999

Decided and Filed: July 31, 2000

Before: GUY and CLAY, Circuit Judges; BECKWITH,*
District Judge.

COUNSEL

ARGUED: D. Brent Irvin, OFFICE OF THE ATTORNEY GENERAL, CIVIL DIVISION, Frankfort, Kentucky, for Appellant. A. Stephen Hut, Jr., WILMER, CUTLER & PICKERING, Washington, D.C., for Appellees. **ON BRIEF:** D. Brent Irvin, OFFICE OF THE ATTORNEY GENERAL, CIVIL DIVISION, Frankfort, Kentucky, for Appellant. A. Stephen Hut, Jr., Kimberly A. Parker, Matthew P. Previn, WILMER, CUTLER & PICKERING, Washington, D.C., Carrie Y. Flaxman, DECHERT, PRICE & RHOADS, Philadelphia, Pennsylvania, Eve C. Gartner, PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., New York, New York, David A. Friedman, FERNANDEZ, FRIEDMAN, GROSSMAN & KOHN, Louisville, Kentucky, Catherine Weiss, Jennifer Dalven, AMERICAN CIVIL LIBERTIES UNION FOUNDATION, New York, New York, for Appellees. Ann K. Benfield, Louisville, Kentucky, Adam L. Frank, SCHULTE ROTH & ZABEL, New York, New York, Paul Benjamin Linton, Northbrook, Illinois, Theodore H. Amshoof, Jr., AMSHOFF & AMSHOFF, Louisville, Kentucky, for Amici Curiae.

OPINION

PER CURIAM. After reviewing the briefs and the record and having heard oral argument, we held this case in abeyance pending the decision by the United States Supreme Court in *Stenberg v. Carhart*, __ S. Ct. __, 2000 WL 825889 (June 28,

* The Honorable Sandra S. Beckwith, United States District Judge for the Southern District of Ohio, sitting by designation.

2000). The appeal in *Carhart* involved a challenge to Nebraska's partial birth abortion statute and presented issues very similar to those involved in this challenge to the Kentucky partial birth abortion statute.

After carefully reviewing the decision in *Carhart* we conclude that it is controlling in this case, and that the district court was correct when it held that the Kentucky statute is unconstitutional.

AFFIRMED.