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Utah



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Planned Parenthood Association of Utah

This FAQ addresses questions about the legal challenge to H.B. 136, the 18-week abortion ban passed by the Utah Legislature in 2019.

General Questions

Did Gov. Gary Herbert sign H.B. 136 into law?

Yes, despite repeated warnings that the bill is unconstitutional, Gov. Herbert signed the 18-week abortion ban into law on March 25, 2019.

Will H.B. 136 take effect in Utah?

The ACLU of Utah Foundation (ACLU of Utah) and Planned Parenthood Association of Utah (PPAU) will file a lawsuit on April 10, 2019, seeking a preliminary injunction to prevent the state from enforcing H.B. 136 while the legal challenge continues. Without the lawsuit, the 18-week abortion ban would go into effect on May 14, 2019, the activation date for most bills passed during the recent legislative session.

Which court will ACLU/PPAU file the lawsuit in?

The U.S. District Court for the District of Utah, Central Division, a federal district court based in Salt Lake City.

Will women in Utah still be able to access safe and legal abortions during the lawsuit?

The ACLU of Utah and PPAU will ask a federal judge to issue a preliminary injunction barring enforcement of H.B. 136 in advance of the date the law would go into effect (May 14, 2019). If a preliminary injunction is issued by that time, women in Utah will be able to seek abortion health care as before without any interference from this legislation. We are confident the law is clearly unconstitutional under decades of unbroken Supreme Court precedent.

The Utah Legislature passed two bills restricting abortion during the 2019 session. Which one is the target of this lawsuit?

Our lawsuit targets H.B. 136 (Abortion Amendments), the 18-week abortion ban sponsored by Rep. Cheryl Acton. Lawmakers also passed H.B. 166 (Down Syndrome Nondiscrimination Abortion Act), sponsored by Rep. Karianne Lisonbee, which prohibits abortions for the sole reason of a Down Syndrome diagnosis. However, the Down Syndrome abortion ban will not take effect or be enforced unless a court of binding authority, such as the U.S. Court of Appeals for the Tenth Circuit or the U.S. Supreme Court, allows this type of abortion restriction. As a result, we do not need to file a lawsuit against H.B. 166 at this time.

Who is the plaintiff in the lawsuit?

The plaintiff in this lawsuit is Planned Parenthood Association of Utah, on behalf of itself, its patients, physicians and staff. The legal team will consist of local attorneys from the ACLU of Utah, along with national legal staff from Planned Parenthood Federation of America.

Who are the defendants in the lawsuit?

We will sue state officials who have a role in enforcing H.B. 136 should it go into effect. The officials will be represented in court by the Attorney General's office, along with any outside legal counsel they decide to hire.

Was there a similar lawsuit filed against the state several decades ago?

Yes. In 1991, the ACLU of Utah, Planned Parenthood Federation of America, and the Center for Reproductive Law & Policy sued then-Governor Norman Bangerter to invalidate a Utah law that banned nearly all abortions. Federal courts held that the law violated a woman's right to decide to end a pregnancy, and the law never took effect. The 1991 case was called [Jane L. v. Bangerter](#).

How long will the lawsuit take?

We are hopeful that a federal judge will issue a preliminary injunction against H.B. 136 within a few weeks, but the lawsuit could last several years, especially if the side that loses at the federal district court appeals to the Tenth Circuit Court of Appeals. We will fight as long as it takes to ensure that Utahns retain access to abortion care on which they depend.

Legal Questions

Why is H.B. 136's 18-week abortion ban unconstitutional?

Nearly 50 years ago, the U.S. Supreme Court ruled in *Roe v. Wade* that states may not ban abortion prior to viability. The Court has reaffirmed that principle repeatedly, most recently in *Whole Woman's Health v. Hellerstedt* in 2016. And a federal court of appeals already invalidated a Utah law adopted in 1991 that banned abortion. The court of appeals faulted the state for its deliberate decision to disregard Utahns' constitutional rights. These court decisions make clear that H.B. 136, which bans abortion at 18 weeks, is unconstitutional.

Why did Utah lawmakers pass a bill that is blatantly unconstitutional?

We wonder about that, too. It is clear that politicians in Utah have one motive in mind — to ban abortion in any way, at any cost. Multiple federal courts in Utah and across the country have held these types of abortion restrictions are unconstitutional. We told them we would sue, and now we are heading to court.

If California and New York can have liberal abortion laws, why can't Utah ban abortion?

Lawmakers don't get to pick and choose which constitutional rights apply in their states. Every person deserves the right to access reproductive health care, including safe, legal abortion, no matter where they live.

How much will the lawsuit cost Utah taxpayers?

States that pass unconstitutional abortion bans can be required to pay the attorney's fees for health clinics and patients forced to defend their constitutional rights in court. The Utah Attorney General's office estimates a lawsuit over H.B. 136 could cost the state \$2 million or more. In Kentucky, where a federal judge struck down an anti-abortion law last September, health clinics are seeking to recoup \$1.5 million in legal expenses.

What happened during 1990s lawsuit over Utah's abortion ban?

In 1991, the Utah State Legislature passed a law that effectively banned abortions. The ACLU of Utah and Planned Parenthood Association of Utah [sued to protect its patients' right to end their pregnancies, and it ultimately stopped the ban from taking effect](#). The state defendants did not appeal the court decision as applied to abortions before 22 weeks' gestation. And in 1996, the U.S. Court of Appeals for the Tenth Circuit held that the ban on viability abortions after 22 weeks [was unconstitutional as well](#). The battle over the 1991 law finally ended in 1997 when the U.S. Supreme Court refused to hear Utah's appeal.

What will happen next in the lawsuit?

When we file the lawsuit on April 10, we will also ask the judge to enter a preliminary injunction, a type of court order that would bar Utah from enforcing the 18-week abortion ban while the lawsuit is pending. Because the law is set to take effect on May 14, we will ask the judge to rule on our motion before that time to ensure Utahns seeking abortion at or after 18 weeks have access to the critical care they need.

Will the lawsuit go all the way the U.S. Supreme Court?

It shouldn't. Since *Roe v. Wade*, no court anywhere in the country has upheld a ban on viability abortion, and the Supreme Court has repeatedly declined to reconsider *Roe*. There is no reason to do so to consider Utah's extreme measure.

Are supporters of H.B. 136 hoping that the U.S. Supreme Court will use this restriction to overturn *Roe v. Wade*?

That appears to be one motivating factor behind this legislation and similar abortion bans in other states. Supporters likely hope that the addition of new justices to the U.S. Supreme Court will make it more likely that the Court will restrict or overturn *Roe v. Wade* and allow states to ban abortion.

Who will win this lawsuit?

Federal courts have consistently ruled that viability abortion bans are unconstitutional, giving us confidence that we will prevail in court. For example, on March 26, a federal judge in North Carolina overturned a 20-week abortion ban in that state, citing *Roe v. Wade* as well as the Tenth Circuit decision striking down Utah's abortion ban in the 1990s.