

Judge allows Utah to gather evidence to defend abortion ban

State's prohibition on the procedure after 18 weeks stayed during court process

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ACLU Press Release: <https://www.acluutah.org/newsroom/item/1550-press-statement-on-today-s-court-decision-in-18-week-ban-case>

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FILE - Members of the new group Abortion-Free Utah launch a campaign to end elective abortion in the state during at the Capitol in Salt Lake City on Wednesday, June 19, 2019.

SALT LAKE CITY — A federal judge on Thursday agreed to let Utah state attorneys gather evidence as they defend a new abortion ban, a step that creates a record for future appeals amid optimism from anti-abortion advocates nationwide about new conservative U.S. Supreme Court justices.

U.S. District Judge Clark Waddoups said the ruling isn't a signal of his ultimate decision on whether the ban on abortions after 18 weeks should stand. Implementation of the new law has been stayed until the case winds through the courts.

"I think everyone would be well-served to have a complete discovery record that forms the basis of the decision by this court and the basis for any appeal," Waddoups said. Whichever side loses is expected to appeal to a higher court.

The Planned Parenthood Association of Utah had argued there's no need to go through the evidence-gathering process. The ban clearly runs afoul of the Supreme Court's longtime stance that states cannot ban abortion before the fetus is viable outside the womb, lawyers for the group and the American Civil Liberties Union of Utah said in court documents.

The evidence-gathering process will add time to the case, said ACLU attorney Leah Farrell.

"It makes the case drag out a little longer, however it doesn't reflect on where this case will ultimately go," she said.

Utah is one of a number of conservative states that passed abortion bans this year. Arkansas also passed an 18-week ban, and other states have passed more restrictive laws. Several states have passed bans on abortions after a fetal heartbeat is detectable, as early as six weeks. Alabama has gone even further, outlawing virtually all abortions, even in cases of rape or incest.

None of the bans has taken effect, and all are expected to face legal challenges. Abortion opponents hope to challenge *Roe v. Wade*, the 1973 case that legalized abortion nationwide, in front of a U.S. Supreme Court with two justices appointed by President Donald Trump.

Utah Republicans like Gov. Gary Herbert have said their approach, which also includes exceptions for things like rape and incest, strikes a balance between a woman's right to choose and protecting fetuses. State attorneys argue the law doesn't create an "undue burden" because they are still accessible before 18 weeks.

Utah wants to show why the law is needed by gathering evidence on things like fetal development and pain sensitivity, the procedures used in second-term abortions and what risks the procedure could present for the mother's health.

Planned Parenthood had said those topics are irrelevant to the viability standard, and pointed to the state's own educational materials for women seeking abortions that say a fetus cannot survive outside the woman before 22 weeks.

Waddoups' ruling allowed limited discovery. He said some information the state wanted should already be available, including procedures used, the gestational age and how many women who get them are from Utah.