

Supreme Court lets stand Texas fetal heartbeat law

September 2, 2021

In a 5-4 decision, a divided U.S. Supreme Court refused to block the new Texas law banning abortions after a fetal heartbeat can be detected.

The law—which went into effect Sept. 1—prohibits abortion as early as six weeks into a pregnancy, and it authorizes anyone in the general public to sue for damages anybody they believe is “aiding and abetting” an abortion.

The Texas Legislature approved the law at the end of the regular legislative session in May. It makes no exceptions for rape or incest, but it does allow an exception for “medical emergencies.”

In a statement on its [website](#), Texas Right to Life said it is “thrilled with the outcome,” calling the court’s decision “a massive victory for the pro-life movement.”

Rachel Laser, president and CEO of Americans United for Separation of Church and State, issued a [statement](#) denouncing the new Texas abortion law.

“Abortion bans are the result of the crumbling of church-state separation. The First Amendment prohibits the government from imposing one set of religious beliefs on others, but Texas’ new draconian law and other attempts by states to ban reproductive freedom do just that,” Laser said.

A majority of Supreme Court justices denied an application for an injunction against the law’s implementation. They stated Whole Women’s Health and other applicants presented “complex and novel antecedent procedural questions on which they have not carried their burden.”

No ruling on the law's constitutionality

However, the matter may not be settled for the long term.

“In reaching this conclusion, we stress that we do not purport to resolve definitively any jurisdictional or substantive claim in the applicants’ lawsuit,” the majority opinion [stated](#). “In particular, this order is not based on any conclusion about the constitutionality of Texas’ law, and in no way limits other procedurally proper challenges to the Texas law, including in Texas state courts.”

Chief Justice John Roberts—joined by Justice Stephen Breyer and Justice Elena Kagan—dissented from the majority, writing: “The statutory scheme before the Court is not only unusual, but unprecedented. The legislature has imposed a prohibition on abortions after roughly six weeks, and then essentially delegated enforcement of that prohibition to the populace at large. The desired consequence appears to be to insulate the State from responsibility for implementing and enforcing the regulatory regime.”

In a blistering dissent, Justice Sonia Sotomayor called the court’s majority order “stunning.”

“Presented with an application to enjoin a flagrantly unconstitutional law engineered to prohibit women from exercising their constitutional rights and evade judicial scrutiny, a majority of Justices have opted to bury their heads in the sand.”

In their application, the abortion providers and abortion rights advocates who asked for the emergency injunction asserted the new law would block 85 percent of the procedures previously performed in the state and force most clinics to close.