

ERLC applauds Texas high court ruling on heartbeat ban

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AUSTIN (BP)—Southern Baptist and other pro-life advocates commended the latest setback to a legal challenge to Texas' prohibition on abortion if fetal cardiac activity can be detected.

The Texas Supreme Court ruled unanimously March 11 only private citizens, not the state's medical licensing officials, may enforce the Texas Heartbeat Act. The opinion effectively halts a legal challenge to the ban by abortion rights advocates and clinics.

It also permits the law to remain in effect while the case returns to the U.S. Fifth Circuit Court of Appeals in New Orleans.

The law, which has been in effect almost every day since Sept. 1, prohibits abortions as early as five to six weeks into pregnancy. Compared to September 2020, the number of abortions in the state declined by 50 percent in the first month the ban was in effect, according to a study by researchers at the University of Texas-Austin.

The Texas Heartbeat Act has been criticized because of its unusual means of enforcement, as well as the earliness of the abortion ban. The law authorizes any private citizen to bring a civil lawsuit against someone who performs a prohibited abortion or assists in the performance of such a procedure. It bars government officials from enforcing the ban. Under the law, a court is to award at least \$10,000 to a successful plaintiff.

Court also to consider Mississippi law

The U.S. Supreme Court has agreed to rule in its current term on another state law that prohibits early abortions and provides the justices with the opportunity to reconsider and even reverse the right to abortion established in its 1973 *Roe v. Wade* opinion and affirmed in the 1992 *Planned Parenthood v. Casey* decision.

A ruling in the *Dobbs v. Jackson Women's Health* case regarding the constitutionality of a Mississippi law that prohibits the abortion of an unborn child whose gestational age is more than 15 weeks is expected by this summer.

Chelsea Sobolik, director of public policy for the Southern Baptist Ethics & Religious Liberty Commission, said the Texas high court issued “the right ruling” regarding “a law that protects the lives of vulnerable preborn babies.”

“And as more laws pass that protect the most vulnerable among us, we are eagerly awaiting a decision in the monumental Dobbs case, that could overturn the disastrous precedents set in Roe and Casey,” she said. “We must work toward a day when the laws of our land promote the dignity and worth of the preborn, and abortion is unthinkable and unnecessary.”

Advocate says Texas law should be replicated

Chelsey Youman, state director and national legislative advisor with Human Coalition Action, applauded the court's decision and described the Texas Heartbeat Act as “the most successful piece of pro-life legislation in 50 years, and should be replicated everywhere in states that are serious about rescuing preborn lives.”

“Texas is a pioneer for what a post-Roe pro-life culture should look like,” she said in a written statement. “The state appropriated \$100 million to supporting alternatives to abortion for expectant mothers, showing that Texas truly cares about both mother and child. We will not rest as we continue to work for a society where all preborn lives are protected and all women are cared for and empowered to choose life.”

The Center for Reproductive Rights, which helped bring the lawsuit on behalf of abortion-rights supporters, lamented the court ruling. President Nancy Northup stated: “With this ruling, the sliver of this case that we were left with is gone. The courts have allowed Texas to nullify a constitutional right.”

The abortion rights advocates bringing suit acknowledge state officials cannot directly enforce the ban, but they argue other Texas laws enable agency executives to enforce it indirectly through actions against licensed health care professionals, Justice Jeffrey Boyd wrote in the opinion for the Texas Supreme Court.

The nine-member court disagreed, however, Boyd said.

The Texas Heartbeat Act “provides that its requirements may be enforced by a private civil action, that no state official may bring or participate as a party in any such action, that such an action is the exclusive means to enforce the requirements, and that these restrictions apply notwithstanding any other law,” Boyd wrote.

“Based on these provisions, we conclude that Texas law does not grant the state-agency executives named as defendants in this case any authority to enforce the Act’s requirements, either directly or indirectly.”

The case is *Whole Woman’s Health v. Jackson*.

All levels of the federal court system have already issued rulings regarding

the Texas Heartbeat Act. A federal court halted enforcement of the law in early October, but the Fifth Circuit Court of Appeals in New Orleans stayed that injunction within two days.

The U.S. Supreme Court ruled in December the legal challenge to the law could advance against medical licensing officials for the state. The high court allowed the state ban to stay in effect when it returned the case to the Fifth Circuit Court. A three-judge panel of the appeals court voted 2-1 in January to send the case to the Texas Supreme Court for its determination of whether any state officials could enforce the ban.

In the Dobbs case, the ERLC, other pro-life organizations and the state of Mississippi have filed briefs in support of the 15-week ban that urged the high court to reverse the Roe and Casey rulings.