

Supreme Court decision reignites the fight over Utah's 18-week abortion law

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So far, Utah has spent more than \$86,000 defending [the state's 18-week abortion ban in court](#), as advocacy groups argue it is unconstitutional.

State officials are likely to start racking up new costs as the case emerges from a period of dormancy and continues to inch through the federal court system. And the plaintiffs contend that — particularly with the [pandemic pinching government budgets](#) — the state shouldn't be devoting taxpayer money to block abortion access.

"As a taxpayer, I'm frustrated," said Karrie Galloway, president and CEO of the Planned Parenthood Association of Utah. "Because I believe in the fact that a woman has a right to make her own decisions about reproductive health care and her destiny."

The sponsor of the 2019 law says the cost of the court fight so far is "very minimal" compared with what's at stake.

"We're talking about human life here," said Rep. Cheryl Acton, who [offered up the legislation banning elective abortions after 18 weeks of gestation](#).

The abortion ban contains several exceptions for cases of rape or incest, when the life of the mother is at stake or if the fetus has a severe brain abnormality or lethal defect. A federal judge [has issued an injunction that keeps the law from being enforced](#) while the court case is pending.

Acton acknowledged during the legislative debate over [HB136](#) that it would almost certainly draw a legal challenge and could cost the [state \\$1 million to \\$3 million to defend](#) if it makes its way to the Supreme Court. With the case still on the first rung of the federal court system, the state has spent about \$26,500 on expert witnesses and invested about \$60,000 of staff attorney time, according to a spokesman for the Utah attorney general's office.

The 18-week ban is one of many abortion restrictions approved in recent years by lawmakers in red states, as part of a bid to test the Supreme Court's landmark decision in *Roe v. Wade*. Acton, a West Jordan Republican, sees an opportunity in the court's recent shift to the right and hopes for a ruling that gives states full control over their abortion policies.

But Planned Parenthood, the [plaintiff in the lawsuit against HB136](#), and their legal counsel, the ACLU of Utah, contend that the bill is unconstitutional because it goes against case law protecting the right to abortion before a fetus can survive outside the womb. Opinions differ about exactly when this point occurs in a pregnancy, but many experts put it at around 24 weeks.

Representatives of these groups are adamant that Acton's bill fails the viability standard, with Galloway arguing there's little logic behind setting 18 weeks as a cutoff point for abortion access.

"It's just numbers to [Acton]," she said. "To me, it's women's lives. It's the health of the family. It's women's self-autonomy over their bodies."

However, Acton has said she chose 18 weeks to reflect scientific advancements since the *Roe v. Wade* ruling in 1973. Now, society has a better understanding of what goes on inside the womb, the bill's supporters have said, and the very definition of viability has changed with medical improvements that have allowed more premature infants to survive.

Acton and an attorney for the ACLU say there are a number of abortion cases ahead of the Utah lawsuit in line to the Supreme Court. But one recent ruling by the nation's highest court did reactivate the HB136 litigation, which had been on pause since December.

The Supreme Court in late June [overturned a Louisiana law restricting abortions](#), and in so doing, affirmed that abortion providers do have the standing to file such challenges on behalf of clients. With that question resolved, a judge earlier this week lifted the stay on the Utah case, allowing it to proceed. The decision in the Louisiana case was the first abortion ruling since President Donald Trump's two judicial nominees — Justices Neil Gorsuch and Brett Kavanaugh — have taken the bench and it came as a disappointment to conservatives eager to see the new court uphold abortion restrictions.

Leah Farrell, a senior staff attorney with the ACLU, said she and others who opposed Acton's bill are pleased by the Supreme Court's recent decision on the Louisiana law — which would've required abortion providers to have admitting privileges at a local hospital — but remain watchful to see what the justices will do next.

"There are quite a few legal challenges, quite a few cases that are procedurally ahead of ours that will in some way or other sort of test how the Supreme Court might treat future abortion cases," she said. Farrell said parties in the lawsuit are preparing a scheduling order that will set deadlines for the rest of the case and will then move on to the discovery phase, in which the two sides will exchange information about their evidence.

Correction: July 22, 10:20 a.m. • This story has been updated to clarify that the ACLU of Utah is legal counsel in the court case over the abortion ban.