



*This FAQ addresses questions about the ongoing 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.

### **Did H.B. 136 take effect in Utah?**

No. On April 10, 2019, the ACLU of Utah Foundation (ACLU of Utah) and Planned Parenthood Association of Utah (PPAU) filed a lawsuit seeking a preliminary injunction to prevent the state from enforcing H.B. 136. This injunction was ordered on April 18, 2019, stopping enforcement of H.B. 136. The injunction will be in place for the duration of the lawsuit and will prevent any disruption in care for the Utah women seeking abortion services at or after 18 weeks. Without the lawsuit, the 18-week abortion ban would have gone into effect on May 14, 2019, the activation date for most bills passed during the recent legislative session.

### **Which court did 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.

### **Which judge is hearing the lawsuit?**

The case is being heard by Senior United States District Court Judge Clark Waddoups, a federal judge based in Salt Lake City.

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

Yes. The temporary injunction to stop enforcement of H.B. 136 means that there will be no disruption in care for the Utah women seeking abortion services at or after 18 weeks during the duration of the lawsuit.

### **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 consists 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 sued 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?**

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 in 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 pre-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 has happened so far in the lawsuit?**

We filed the lawsuit on April 10. Over the following month, the federal court entered preliminary injunctions to stop enforcement of H.B. 136. The injunctions will be in place for the duration of the lawsuit, meaning that abortions after 18 weeks will still be allowed to continue in the state of Utah.

On June 20, the federal court granted the State Defendants'; request for permission to seek documents and other information from Planned Parenthood Association of Utah as part of a limited discovery process. However, the Court stressed the decision did not reflect how it will ultimately rule in the case. We believe the limited discovery process will also lengthen the duration of the lawsuit.

On July 8, the parties filed a scheduling motion with the federal court indicating that the chances for a settlement were "poor" and projecting that the parties would gather evidence through the end of 2019.

### **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 pre-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 pre-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.