

Utah signs on to support Supreme Court case that could topple Roe vs. Wade

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SALT LAKE CITY — The Utah Attorney General’s Office has given its support to a Mississippi case now before the U.S. Supreme Court that could overturn the 1973 ruling that legalized abortion.

If the case goes as anti-abortion groups hope it does, striking down the 48-year-old Roe v. Wade standard also would unlock Utah’s strict 2019 anti-abortion law, which is blocked by a lawsuit at the moment.

The high court, with conservatives in control 6-3 after three appointments by former president Donald Trump, said in May it would hear arguments over a Mississippi law that would ban elective abortions after 15 weeks’ gestation.

Utah’s law says abortions can be prohibited after 18 weeks.

“It seems our law would clearly be constitutional” if the court upholds the Mississippi law, Utah Solicitor General Melissa Holyoak said Tuesday. Such a ruling, Holyoak said, “would recognize that the state does have an interest in protecting the unborn prior to viability.”

Holyoak said that after strides in science over the nearly five decades since Roe v. Wade, “we understand maternal health and fetal health much better and that (the fetus) can endure and will endure much pain in those procedures.”

In a prepared statement earlier, Holyoak said regardless of one’s view of the Supreme Court’s abortion precedent, it is the attorney general’s duty to defend the laws of the state — hence, the joining with the amicus brief.

Utah and 24 other states are backing the Mississippi case and their brief was filed at the Supreme Court last week.

“We support the petition to the Supreme Court because similar to Mississippi’s law, Utah’s law prohibiting elective abortions after 18 weeks is constitutional,” Holyoak said.

The Utah law and the court fight over it has been ordered stayed by U.S. District Judge Clark Waddoups in Salt Lake City pending the outcome of the Supreme Court case.

The Planned Parenthood Association of Utah, backed by the American Civil Liberties Union of Utah, sued to block the Utah law on April 10, 2019, two weeks after then-Gov. Gary Herbert signed it until law.

“No fetus is viable at 18 weeks of pregnancy,” Planned Parenthood said in the suit. “Accordingly, the 18-week ban is in flagrant violation of more than four decades of settled Supreme Court precedent, starting with Roe v. Wade.”

The U.S. 10th Circuit Court of Appeals in 1996 shut down a previous Utah law that prohibited abortion at 22 weeks' gestation.

The 2019 law, House Bill 136, says violators of the 18-week ban could be punished with a second-degree felony, which carries a 1-to-15-year prison term.

If the law survives the court actions, "the overwhelming majority of (Planned Parenthood's) patients seeking abortions at or after 18 weeks will not be able to obtain them in Utah," Planned Parenthood said.

According to state records, the state budgets at least \$22,500 per year to defend itself in the litigation over the 2019 law.

The amicus brief supporting the Mississippi law is led by Texas and its attorney general, Ken Paxton.

"Dogmatic abortion maximalists, unsatisfied by any legal regime short of nationwide abortion on demand, challenge these restrictions reflexively," the brief said. "This challenge to Mississippi's 15-week law presents the court with an opportunity to remedy those problems by reconsidering and overruling their source," *Roe v. Wade* and a related case in the 1990s, it said.

"Unlawful from the day each was decided, both have kept amici states in continual litigation as the court changes the constitutional test and rules," brief said. "The time has come to return the question of abortion to where it belongs — with the states."

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