



This updated 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

When did Gov. Gary Herbert sign H.B. 136 into law?

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, Planned Parenthood Association of Utah (PPAU), which is represented by the ACLU of Utah Foundation (ACLU of Utah) and Planned Parenthood Federation of America (PPFA), filed a lawsuit seeking a preliminary injunction to prevent state officials from enforcing H.B. 136. This injunction was entered 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 Utahns seeking abortion services at or after 18 weeks of pregnancy. Without the lawsuit, the 18-week abortion ban would have gone into effect on May 14, 2019, the effective date for most bills passed during the 2019 legislative session.

Which court is the lawsuit in?

The U.S. District Court for the District of Utah, Central Division, a federal district court based in Salt Lake City.

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

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

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 government officials who have roles in enforcing H.B. 136 should it go into effect. The state officials are being represented in court by the Utah Attorney General's office.

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 brought suit on behalf of abortion providers and others against then-Governor Norman Bangertter to invalidate a Utah law that banned nearly all abortions. Federal courts held that the law violated a person's right to decide to end a pregnancy, and the law never took effect. The 1991 case was called [*Jane L. v. Bangertter*](#).

How long will the lawsuit take?

The lawsuit has already been pending for more than two years and could last significantly longer, especially if the side that loses at the federal district court appeals to the U.S. Court of Appeals for the Tenth Circuit. The ACLU of Utah will fight as long as it takes to ensure that Utahns retain access to abortion care on which they depend.

Why does this case continue to be put on hold?

The court has stayed, or paused, the case twice because it believed that pending U.S. Supreme Court cases might impact the Utah court's legal analysis of the 18-week ban. Currently, there is a stay in place pending the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, which involves a Mississippi ban on abortion starting at 15 weeks of pregnancy. *Jackson Women's Health* was heard on December 1, 2021, and likely decided in June 2022. Once the Court rules in that case, the litigation over the 18-week ban in Utah should resume.

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. H.B. 166 prohibits abortions for the sole reason of a Down Syndrome diagnosis but will not take effect or be enforced unless a federal court of binding authority, i.e., the U.S. Court of Appeals for the Tenth Circuit or the U.S. Supreme Court, allows this type of abortion restriction. Because there is no authority allowing for such a ban, litigation to stop this law is not needed at this time.

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. The federal court of appeals that applies to Utah invalidated a Utah law passed in 1991 that essentially banned abortion, faulting 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?

It is clear that politicians in Utah had 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 which state or court district 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 estimated a lawsuit over H.B. 136 could cost the state \$2 million or more.

What happened during the 1990s lawsuit over Utah's abortion ban?

In 1991, the Utah State Legislature passed a law that effectively banned abortions. Abortion providers and other patient supporters [sued to protect patients' right to end their pregnancies, and the courts 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 affirmed 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 officials' appeal.

What has happened so far in the current lawsuit?

We filed the lawsuit on April 2019 and obtained a preliminary injunction that stopped any enforcement of H.B. 136. The injunction 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.

Since that time, the parties have engaged in discovery (the exchange of documents and other information) and fully briefed the issues in the case. On July 1, 2021, following the Supreme Court's decision to consider *Jackson Women's Health*, in which Mississippi asks the Court to overturn *Roe v. Wade*, the district court again stayed the Utah case until *Jackson Women's Health* is decided. The Supreme Court heard oral arguments in *Jackson Women's Health* on December 1, 2021, and likely decide the case by June 2022. Following that decision, we expect the district court in Utah to turn its attention back to the 18-week ban challenge.

Despite all of these delays, because the Utah court issued an injunction blocking enforcement of H.B. 136, abortion access in Utah has not been changed. Abortion remains safe and legal in Utah.

Should Utahns be worried because of what is happening in the U.S. Supreme Court?

Numerous challenges against abortion bans across the country have been put on pause because of the Supreme Court's decision to hear *Jackson Women's Health*. If the Court allows the Mississippi law to stand, it would be a shocking reversal in Supreme Court precedent and devastating for abortion access and public health in Mississippi and other states where politicians seek to restrict reproductive health care services. Regardless of the outcome, we will continue to fight to defend access to abortion in Utah.