

US appeals court keeps Texas anti-abortion law in effect

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A federal appeals court sided with Texas late Thursday and kept in effect an unprecedented anti-abortion law that was signed into law by Texas Governor Greg Abbott on May 19.

The US Court of Appeals for the Fifth Circuit in New Orleans ruled 2-to-1 that it would not hear a motion from the US Department of Justice (DoJ) to reinstate the October 6 decision of an Austin, Texas federal judge who had issued a preliminary injunction blocking enforcement of the law as unconstitutional.

The Justice Department motion was an appeal against an order issued last week by the Fifth Circuit overturning the October 6 lower court ruling halting enforcement of the Texas anti-abortion law.

Thursday's appeals court ruling, which will be appealed to the US Supreme Court, was supported by Judge James C. Ho, a nominee of Donald Trump, and Judge Catharina Haynes, a nominee of George W. Bush. Opposing the court majority was Judge Carl E. Stewart, nominee of Bill Clinton.

In its four-sentence decision, the appeals court did not make any legal arguments, but permitted the anti-abortion law to remain in force pending the outcome of the court case filed by the Biden administration's DoJ and Attorney General Merrick Garland against the State of Texas in September.

When he issued his ruling on October 6, US District Judge Robert Pitman called the Texas law—which bans abortions if there is detectable embryonic cardiac activity, after about six weeks of pregnancy—an “aggressive scheme” to deprive the state's citizens of “a significant and well established constitutional right.”

Judge Pitman also wrote in his 113-page decision that “this court will not sanction one more day of this offensive deprivation of such an important right.” The law makes no exceptions for abortions in the case rape

or incest.

In an earlier challenge to the law by a group of women's clinics and abortion rights groups, the Supreme Court declined in a 5-4 decision not to block the Texas Heartbeat Act (SB8), while also refusing to rule on its constitutionality.

Other states that have passed laws similar to the one in Texas have been blocked by federal judges for contravening the rights established in *Roe v. Wade* and other rulings. The Texas law has been written specifically to avoid judicial review by making it difficult for abortion providers and individuals to challenge it in court.

The point of law that makes it difficult to block the measure in federal court is the fact that it does not permit Texas state officials to enforce the abortion ban. Instead, the law deputizes private citizens and authorizes civil damages of \$10,000 or more for successfully suing a defendant accused of performing or aiding in such an abortion, and the courts have stated it is not clear when or how the law can be challenged in a federal court.

In the 48-hour period between Judge Pitman's October 6 injunction and the restoration of the law by the appeals court, some clinics—including Whole Woman's Health, which brought the case against the State of Texas—rushed to perform abortions for women who were past six weeks pregnant. Many of the appointments were cancelled after the Fifth Circuit court intervened. The reactionary Texas law also includes a provision for prosecution of providers who perform abortions under a temporary court order.

When the law went into effect in September, Whole Woman's Health began turning away approximately 80 percent of patients seeking abortions, according to the organization's founder, Amy Hagstrom Miller.

The Biden administration said on Friday that it would appeal the decision of Fifth Circuit Court to the US Supreme Court. The DoJ's chief spokesman, Anthony Coley, said, "The Justice Department intends to ask the Supreme Court to vacate the Fifth Circuit's stay of the preliminary injunction against Texas Senate Bill 8."

It is unlikely that the Supreme Court will rule in favor of the Justice Department's emergency motion to reinstate the lower court's injunction. On the contrary, it is moving toward overturning *Roe v. Wade*. The high court is scheduled to hear a case in December on a Mississippi abortion law that is a direct challenge to the abortion rights established in *Roe v. Wade*.

In that case, the Biden administration has urged the Supreme Court to uphold the 1973 landmark decision legalizing abortion nationwide prior to approximately 24 weeks of pregnancy and invalidate the Mississippi law that bans most abortions after 15 weeks.



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