

Supreme Court refuses to block Texas abortion ban for second time

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The Supreme Court refused to block the unconstitutional Texas abortion ban for the second time on Friday. The court has decided to defer a request from the Department of Justice (DOJ) to place the law on hold. Arguments are set to be heard on November 1 on whether the DOJ has the right to challenge the Texas law in court.

The 6-3 conservative majority of the Supreme Court has evaded the constitutional violations of the Texas abortion ban since it was signed into law two months ago. This has been conducted on the flimsy ground that the Supreme Court should not rule on a case while lower courts are still debating its legality, and because the Texas law has an unprecedented form of legal enforcement for its abortion ban.

The Texas law bans all abortions after a fetal heartbeat can be detected, at around just six weeks into pregnancy. Six weeks is well before an embryo may be scientifically considered a fetus, and is considerably before most women even know that they are pregnant. Reports from women's health providers show that abortions in the state have dropped by 80 percent since the law went into effect.

Republican-led states have attempted to pass similar laws in the past, all struck down by the Supreme Court for violating the 1973 ruling in *Roe v. Wade*.

However, this new law does not have direct government enforcement. Rather, it bars state employees from enforcing the law as a crime and instead passes enforcement on to private citizens, who are encouraged to take vigilante action and sue women and women's health care providers for receiving or providing an abortion.

Because the state government has shifted enforcement into civil courts, anti-abortion advocates and far-right judges have argued that the Department of

Justice cannot sue to obtain a court order preventing enforcement of the law.

If the Supreme Court rejects the arguments of the DOJ and allows the Texas law to remain in effect it will effectively be a soft overturn of *Roe v. Wade*. While still in effect, *Roe* will be circumvented by additional laws in states across the country employing similar tactics, using civil law to enforce a criminal ban on abortion rights.

Federal District Judge Robert Pitman—who temporarily blocked the law for two days before the higher ruling of the Fifth Circuit Court reimposed it—warned that Texas had “deliberately circumvented the traditional process” and had “drafted the law with the intent to preclude review by federal courts that have the obligation to safeguard the very rights the statute likely violates.”

This form of constitutional loophole would not only have dire consequences for women's reproductive rights, but for democratic rights in general. If the law is allowed to remain in effect then “no decision of this Court is safe,” warned the DOJ in a statement released Friday. “States need not comply with, or even challenge, precedents with which they disagree. They may simply outlaw the exercise of whatever rights they disfavor; disclaim state enforcement; and delegate to the general public the authority to bring harassing actions threatening ruinous liability. ... Texas should not obtain a different result simply by pairing its unconstitutional law with an unprecedented enforcement scheme designed to evade the traditional mechanisms for judicial review.”

Issuing similar warnings, the DOJ released a statement Friday urging the Supreme Court not to entertain arguments from anti-abortion proponents arguing for the overturn of *Roe v. Wade* and the 1992

case *Planned Parenthood v. Casey*, which upheld the right of women to an abortion up to 26 weeks into pregnancy.

Despite the risk to abortion rights nationwide, the Biden administration has done nothing but offer empty words of concern. Just as the Democrats have abandoned any defense of voting rights as Republican state legislatures restrict voting access across the country, they have offered no solution beyond the mercy of the courts in the defense of abortion rights.

Nearly 50 years since *Roe v. Wade*, the Democratic Party has made no concerted effort to codify abortion rights in law. In fact, abortion rights have been consistently put under attack by reactionary politicians who have imposed more federal restrictions on abortion than there have been protections.

The mass protests that took place on October 2 against the attacks on abortion rights demonstrate the overwhelming support among the population for the defense of the right to an abortion. Hundreds of thousands of people took to the streets determined to demonstrate their commitment to defending democratic rights.

The same cannot be said about the Democratic Party-aligned leadership of these protests. They have consistently worked to channel mass outrage over attacks on abortion behind the electoral campaigns of the Democrats, who have cynically used abortion as an electoral crutch for decades.

A genuine defense of abortion rights cannot take place through the Democratic Party or the courts.

In the Supreme Court's decision to defer a ruling on the Texas abortion ban, only Associate Justice Sonya Sotomayor expressed any dissent. In her dissension she wrote: "For the second time, the court is presented with an application to enjoin a statute enacted in open disregard of the constitutional rights of women seeking abortion care in Texas. For the second time, the court declines to act immediately to protect these women from grave and irreparable harm."

Other justices appointed by Democratic presidents held their tongues, potentially swayed by the promise to hear arguments on November 1. Until then the working-class women of Texas will be forced to live under a draconian law in blatant violation of the Constitution.

Looming in the near distance is another scheduled hearing on Mississippi's anti-abortion law, which

attempts to ban abortion after 15 weeks, on December 1. In this case, the state of Mississippi is asking for the Supreme Court to repeal *Roe* directly.

There is a real potential that the conservative majority may use either law as a justification to overturn *Roe v. Wade*, in one of the greatest rollbacks of democratic rights in the United States in the 21st century.



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