

South Carolina Supreme Court reinstates 6-week abortion ban

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The South Carolina Supreme Court reversed itself on Wednesday and upheld an anti-abortion law passed by the state legislature that bans the procedure after embryonic cardiac activity, which usually begins around six weeks of pregnancy.

The 4-1 decision was widely expected after the Republican-dominated legislature replaced Justice Kaye Hearn, who had reached the state's mandatory retirement age, with Gary Hill.

The legal argument advanced by Justice John Kittridge, who wrote for the majority, agreed that the South Carolina abortion ban infringes on “a woman's right of privacy and bodily autonomy.” However, he argued, the state legislature reasonably determined that those interests do not outweigh “the interest of the unborn child to live.”

Judge Kittredge also wrote, “As a Court, unless we can say that the balance struck by the Legislature was unreasonable as a matter of law, we must uphold the Act.” In other words, the unpopular and reactionary attack on the fundamental democratic right to an abortion passed by the South Carolina legislature in May in a 27-19 vote, has been declared fully legitimate and endorsed by the court.

The law, which went into effect immediately upon the court's decision, effectively ends all abortions in the state of South Carolina. This is because the six-week time limit includes the requirement that a woman must have two doctor visits and two ultrasounds prior to authorization of the procedure, and most women will not even realize they are pregnant before the legal time limit has passed.

In South Carolina, there are just three abortion clinics, and these facilities have waiting periods of two to three weeks for an appointment. The law includes exceptions for rape, incest, fetal abnormalities or life-

threatening situations for woman, but even then, the procedure must be performed within 12 weeks.

The law also includes other aggressive provisions which are designed to discourage women and girls under the age of 16 from obtaining an abortion, as well as a requirement that the biological father must pay child support beginning at conception. It also allows anyone to file a complaint against abortion providers whom they accuse of violating the 6-week ban.

The South Carolina Supreme Court had ruled 3-2 in January of this year, in a ruling written by Hearn, that a similar law passed by the State Legislature in 2021—which took effect when the US Supreme Court overturned *Roe v. Wade*—was unconstitutional.

That case was the product of a lawsuit filed by abortion advocates, who said the Constitution protected the right to an abortion under rules in the state constitution protecting the right to privacy. However, even in the early 2023 decision, the South Carolina court majority wrote that the right to abortion “was not absolute, and must be balanced against the state's interest in protecting unborn life.”

The January ruling said the legislature had failed to take into account whether the restrictions on abortion were reasonable enough to infringe upon the privacy rights of women. From that point forward, Republican legislators began working on a bill that addressed these objections, and a new law was passed on May 23, awaiting the new court to reverse its previous decision which it did on Wednesday.

The lone dissenter was Chief Justice Donald Beatty, who argued that the 2023 law is nearly identical to the 2021 law, except for the inclusion of definitions for terms including “fetal heartbeat” and “conception” that provide no clarity on when the ban begins.

Judge Beatty wrote that doctors would be exposed to

criminal charges if law enforcement disagrees with their medical expertise. The chief justice warned that the court majority's failure to address the key question of when conception and fetal heartbeat activity begin could lead to political retribution. He also added that judicial independence and integrity were weakened by the decision to reverse a prior ruling.

The dissenting opinion included the following devastating exposure of the politically motivated anti-science behind the court's decision, "The terminology is medically and scientifically inaccurate. As such, it is the quintessential example of political gaslighting; attempting to manipulate public opinion and control the reproductive health decisions of women by distorting reality."

Doctors typically date pregnancy to the first day of a woman's last monthly period, so six weeks is approximately two weeks after missing a regular period. Clearly, six weeks is too early for many women to know they are pregnant much less make arrangements for an abortion, making the new law an effective ban.

The South Carolina court ruling is the latest in the right-wing rampage against democratic rights since the Supreme Court's *Dobbs* decision overturning federal government protection of the right to abortion in June 2022. Currently, 42 states in the US prohibit some abortions after a certain point during a pregnancy, including 13 states that ban all abortion. South Carolina now joins Georgia as the two states with a 6-week ban.

Jenny Black, the chief executive of Planned Parenthood South Atlantic, told the *New York Times* that the ruling would force women to carry pregnancies against their will and puts the "dangerous politicization of South Carolina's highest court on full display. This abortion ban is nearly identical to the ban struck down by this court just months ago—the only thing that has changed is the makeup of the court."

A poll of South Carolina residents taken in May by Winthrop University showed 43 percent of the public opposed the 6-week ban and 37 percent in favor. An earlier survey by Public Policy Polling following the overturning of *Roe v. Wade* showed 70 percent of South Carolinians believe the decision to have an abortion should be left to a woman and her doctor, not state lawmakers. This poll also showed 60 percent were opposed to charging doctors with a felony for

performing an abortion.



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