

Journal and Courier

Federal judge throws out state's abortion ultrasound requirement

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A federal judge has prohibited Indiana from forcing women to undergo an ultrasound at least 18 hours prior to an abortion procedure — a decision hailed as a “major victory” for abortion rights advocates.

The requirement, included in a state law passed last year, was struck down by U.S. District Judge Tanya Walton Pratt in her 53-page opinion issued late Friday after a hearing last November.

Indiana Attorney General Curtis Hill said he is considering whether to appeal the decision.

The law was challenged by Planned Parenthood of Indiana and Kentucky, which argued it was unconstitutional because it put an undue burden on women seeking an abortion and serves no purpose other than to block their right to an abortion.

The state argued the rule does not create such a burden, but gives women time to reflect on a momentous life decision.

Prior to the adoption of House Enrolled Act 1337 last year, women seeking abortions in Indiana were required to obtain an ultrasound, but it could be done on the same day as the abortion procedure. The 18-hour mandate applied additional “informed-consent appointments,” during which abortion providers were required to give women information regarding pregnancy and abortion.

While the informed consent appointments could be completed at any of Planned Parenthood's 17 Indiana health centers, only six its centers provide ultrasounds. So the 18-hour requirement would have forced some Indiana women in rural areas to travel “400 miles” to attend two required appointments, rather than one, according to court documents.

Pratt wrote that the state “has not provided any convincing evidence that requiring an ultrasound to occur 18 hours prior to an abortion rather than on the day of an abortion makes it any more likely that a woman will choose not to have an abortion.”

Her decision came in response to Planned Parenthood's 2016 suit against the Commissioner of the Indiana Department of Health and the prosecutors of Marion, Lake, Monroe and Tippecanoe counties.

Pratt wrote that women face “clearly undue” burdens, including lengthy travel. She added that low-income women would be particularly affected by the requirement. She also cited what she called an “almost complete lack of evidence that the law furthers the State's asserted justifications of promoting fetal life and women's mental health outcomes.”

“This creates a substantial obstacle that disproportionately affects low-income women,” Ken Falk, legal director for the American Civil Liberties Union of Indiana, said in federal court last November. The ACLU filed the federal lawsuit on behalf of Planned Parenthood. Falk also argued that Planned Parenthood does not have the resources to comply with the new rule.

The state argued that the 18-hour requirement does not create an additional burden on women seeking an abortion, said Thomas Fisher, the state's solicitor general.

Fisher dismissed Planned Parenthood's argument that the accumulated burdens of multiple regulations, a lack of physicians, resources and personnel, and personal circumstances of some patients render the statute unconstitutional.

"The United States Supreme Court has recognized that the abortion choice is often a difficult and painful moral decision with lasting significance, and that states have an interest in ensuring the decision is well informed," Fisher said. "Courts have found no constitutional infirmity in laws that give women time and resources to make such a weighty choice."

HEA 1337 has been described as one of the nation's most restrictive abortion laws. The law went into effect on July 1, 2016, and was signed by then Gov. Mike Pence, who is now vice president.

It also required funerals for fetal remains, and the identities of abortion providers must be public information. Also, individual doctors can be liable for violating a state statute. Pratt has already suspended those provisions of the law.

At a news conference on the recent ruling, Betty Cockrum, CEO and president of Planned Parenthood of Indiana and Kentucky, said the ruling was a "major victory."

"Politicians need to get out of our doctors' offices," she said. "Our doctors know the best medical protocol is to perform an ultrasound closer to the time of the procedure, not 18 hours in advance.

"The law was passed purely to further burden access to safe legal abortion and is in fact counter to best medical practice."

Later in the day, Mike Fichter, Indiana Right to Life president and CEO, said in an email that he hopes Hill will appeal the decision to a higher court.

"Hill is solidly pro-life and we believe he will fight for Indiana's constitutional right to put a time requirement on our state's ultrasound law," Fichter wrote.

The state has 30 days to appeal the decision.

Hill's office replied to IndyStar requests for interview with a statement that read in part: "While I do not agree with the Court's decision, my office is considering our next steps in the litigation."

Call IndyStar reporter Fatima Hussein at (317) 600-4659. Follow her on Twitter: @fatimathefatima.

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