

Missouri Attorney General Aggressively Defends Pro-Life Laws

There's been a flurry of activity since last Friday, when the full 8th Circuit Court of Appeals placed a temporary stay on an order requiring the state of Missouri to issue licenses to additional abortion clinics. What follows is an overview of many actions, responses and responses to the responses from the state, Planned Parenthood and the Supreme Court.

Very briefly, here's the background:

Citing the 2016 Supreme Court *Whole Woman's Health v. Hellerstedt* decision [critiqued here], last April, U.S. District Judge Howard Sachs struck down two Missouri laws—one requiring abortionists to have admitting privileges at a hospital within 30 miles, the other requiring abortion clinics to meet the requirements of ambulatory surgical centers. Two weeks later, he issued an order directing abortion clinic license applications “to be processed promptly, in light of patient needs, and without effective influence from opponents of abortion.”

The Missouri Department of Health and Senior Services had no choice but to issue a license to the Midtown Kansas City health center which would offer chemical (RU-486) abortions. However, the effect of the appeals court's temporary stay was to temporarily halt the abortion industry's plans to begin providing abortions elsewhere—in Columbia, Springfield and Joplin.

Which brings us to Planned Parenthood's appeal to the Supreme Court to reinstate Judge Sach's lower court order blocking the state from enforcing the requirements. Their argument was simple:

The two Missouri abortion requirements are “virtually identical” to the Texas regulations the Supreme Court struck down in *Whole Woman’s Health v. Hellerstedt*.

The appeal went to the newest justice, Neil Gorsuch, because he had been assigned the U.S. Eighth Circuit, which includes Missouri.

According to the *News-Leader*:

This gives Gorsuch the power to grant or reject applications for stays and injunctions emanating from Missouri.

If Gorsuch accepts Planned Parenthood’s application and vacates the appellate court ruling, the organization would seem free to continue pursuing its abortion expansion. If not, Planned Parenthood could appeal to the Supreme Court.

Justice Gorsuch ordered the state of Missouri to respond this week, which Attorney General Josh Hawley did Thursday in a 45-page brief.

Hawley said in a statement, “Missouri’s flexible, commonsense regulations promote women’s health and safety, and I will vigorously defend them,” adding, “Today, my office is doing exactly that in the United States Supreme Court.”

There have been a bewildering series of moves which are procedurally important but not essential to the core of the story. But before we summarize Hawley’s explanation of how and why Missouri’s laws differ from those the Supreme Court struck in *Whole Woman’s Health v. Hellerstedt* decision, it’s significant to remember “The appellate ruling did not stop the Kansas City clinic from offering abortions and does not prevent the St. Louis Planned Parenthood clinic from continuing to perform abortions,” as the *News-Leader*’s Will Schmitt noted. “But it threw plans [to perform chemical abortions] for the Springfield, Joplin and Columbia clinics into limbo.”

According to Schmitt:

Hawley's office argues Missouri's Department of Health and Senior Services allows prospective abortion providers to seek waivers of the surgical-center requirement. The state says no waiver applications have ever been denied, citing a previous settlement through which facilities in Kansas City and Columbia obtained abortion licenses.

Texas and its regulations were "rigid" and "inflexible" by contrast, Missouri contends.

In addition, because Planned Parenthood had not exhausted all administrative attempts with the Missouri Department of Health and Senior Services to be licensed as ambulatory surgical centers, it lacked standing, the state of Missouri maintained.

But, most interesting—ingenious, actually—Hawley turned Sachs's argument inside out. Hawley's office produced testimony upon testimony attesting to the particular risks that abortions performed in Missouri present to women.

Judge Sachs (who is no longer involved in the case) said it was against the holdings in *Whole Woman's Health v. Hellerstedt* to even consider health risks abortion poses to women.

Not so, Hawley rejoins. Lost in most commentary about *Hellerstedt* is that lower courts are supposed to make fact-intensive inquiries on the safety of abortion procedures, not in general but in a specific state. What is happening on the ground?

Note the exquisite timing. Earlier this week, we reported on a case from Arkansas.

Back in July, a three-judge panel of The 8th U.S. Circuit Court of Appeals in St. Louis had vacated a preliminary injunction issued by U.S. District Judge Kristine Baker. It

prevented Arkansas from enforcing its law requiring abortion clinics providing chemical abortifacients to have a contract with another physician with admitting privileges at a local hospital who agrees to handle any complications. That decision was upheld by the full 8th U.S. Circuit Court of Appeals just this week.

Note that in vacating Judge Baker's preliminary injunction and remanding the case back to her for further proceedings, the three-judge panel said Judge Baker had failed to "make factual findings estimating the number of women burdened by the statute."

"Factual findings," not pro-abortion propaganda and talking points.

Kudos to Attorney General Hawley's office and any court which refuses to mindlessly accept pro-abortion dogma. {eo}

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