

Kentucky Supreme Court Preserves 2 Pro-Life Laws

The Kentucky Supreme Court has upheld that the state's two pro-life laws should remain in place and sent the case back to a lower court for further consideration of constitutional issues related to the trigger ban.

In *Daniel Cameron in his official capacity as Attorney General of the Commonwealth of Kentucky v. EMW Women's Surgical Center, ., et al.*, the legal challenge before the state Supreme Court was initially filed in a circuit court just days after the U.S. Supreme Court overturned *Roe v. Wade* and *Planned Parenthood v. Casey* on June 24, 2022. Kentucky's two abortion facilities, EMW Women's Surgical Center and Planned Parenthood and an OB-GYN doctor, Dr. Ernest Marshall, sued the state after the state's trigger law and six-week abortion ban became law. The trigger law criminalizes abortion in all circumstances except in medical emergencies that threaten the life of a woman and the six-week heartbeat law which bans abortion after the sixth week of pregnancy, typically when the baby's heartbeat is first detected.

On June 30, 2022, three days after the complaint was filed, the circuit court issued a temporary restraining order against the enforcement of the trigger ban and the heartbeat ban.

Justice Debra Lambert authored the opinion. Justice Conley concurred; Justice VanMeter concurred in the result only; Justice Bisig concurred in part and dissented in part; Justice Keller concurred in part and dissented in part; Justice Nickell concurred in part and dissented in part; and Justice Thompson concurred in part and dissented in part.

Yesterday, the Kentucky Supreme Court wrote, "We affirm the Court of Appeals' holding that the circuit court abused its

discretion by granting the abortion providers' motion for a temporary injunction and remand to the circuit court for further proceedings consistent with this opinion.

"The abortion providers do not have third-party standing to challenge the trigger ban or the heartbeat ban on the grounds that those statutes violated their patients' constitutional rights, and they do not have first-party, constitutional standing to challenge the heartbeat ban. However, the abortion providers have first-party constitutional standing to challenge the trigger ban. This matter is accordingly remanded to the circuit court for the determination of the first-party constitutional claims of the abortion providers as to the trigger ban."

The Court ruled that there is no standing to challenge the heartbeat ban and that the Dobbs case eliminated third-party standing regarding abortion.

"The abortion providers do not have third-party standing to assert the constitutional rights of their patients. They therefore have presented no arguments against the heartbeat ban that this Court can address to provide them relief leaving the redressability prong of constitutional standing unsatisfied as to the heartbeat ban.

"The U.S. Supreme Court clearly expressed that its abortion jurisprudence's misapplication of its third-party standing doctrine was significant enough to cite as one of the reasons why fifty years of abortion precedent should no longer be followed. And in doing so the Court specifically acknowledged that its previous practice of granting abortion providers third-party standing on behalf of their patients to challenge state abortion statutes was a misapplication of its third-party standing doctrine. Following its statement regarding its misapplication of third-party standing, the Dobbs Court cited two cases, *June Medical* and *Whole Woman's Health*, in which abortion providers were permitted to challenge a state

abortion statute on behalf of their patients. This Court can therefore not so easily disregard the U.S. Supreme Court's denouncement of permitting abortion providers third-party standing in cases such as the one now before us. And, after thorough review, we respectfully agree that its rebuke was proper," the Court wrote.

Liberty Counsel filed an amicus brief at the Kentucky Supreme Court in *Cameron v. EMW Surgical Center* on behalf of the National Hispanic Christian Leadership Conference (NHCLC) and the Frederick Douglass Foundation in defense of the state's pro-life laws by arguing that the Kentucky Constitution protects life and not abortion.

Liberty Counsel's amicus brief emphasizes "the eugenics-based abortion industry denies the fact that each human being has inherent value and dignity that is bestowed on them by their Creator. Instead, it leaves to government decisionmakers the determination of when or if human life has worth and value."

This broad group of African Americans and Hispanics represent tens of millions of constituents. These minority communities have been the direct target of abortion, and most Planned Parenthood's abortion clinics are located in black and Hispanic neighborhoods. Liberty Counsel also filed an amicus brief on behalf of the NHCLC and the Frederick Douglass Foundation at the U.S. Supreme Court in the Dobbs abortion case. In overturning *Roe v. Wade* and *Planned Parenthood v. Casey*, the High Court cited to this brief acknowledging that abortion has disproportionately impacted the black community.

Liberty Counsel Founder and Chairman Mat Staver said, "The tide is finally turning in favor of protecting all human life. The right to life is the right of all rights. Without the right to life, all other rights are meaningless." {eo}

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