

Supreme Court Upholds Indiana Law on Aborted Baby Remains

The U.S. Supreme Court on Tuesday sent a mixed message on abortion, refusing to consider reinstating Indiana's ban on abortions performed because of fetal disability or the sex or race of the fetus while upholding the state's requirement that fetal remains be buried or cremated after the procedure is done.

Both provisions were part of a Republican-backed 2016 law signed by Vice President Mike Pence when he was Indiana's governor. The action by the justices comes at a time when numerous Republican-governed states including Alabama are approving restrictive abortion laws that the Supreme Court may be called upon to rule on in the future.

In an unsigned ruling, with two of the nine-member court's liberals dissenting, the Supreme Court decided that a lower court was wrong to conclude that Indiana's fetal burial provision, which imposed new requirements on abortion clinics, had no legitimate purpose. The court has a 5-4 conservative majority.

While the fetal burial provision was not a direct challenge to the 1973 *Roe v. Wade* decision that legalized abortion, the ruling gave anti-abortion proponents a victory at the Supreme Court, which soon may have to decide whether various state laws violate the rights recognized in that landmark ruling.

But the court also indicated a reluctance to directly tackle the abortion issue at least for now, rejecting Indiana's separate attempt to reinstate its ban on abortions performed because of fetal disability or the sex or race of the fetus. The court left in place the part of an appeals court ruling that struck down that the provision.

“While this ruling is limited, the law is part of a larger trend of state laws designed to stigmatize and drive abortion care out of reach. Whether it’s a total ban or a law designed to shut down clinics, politicians are lining up to decimate access to abortion,” said Jennifer Dalven, a lawyer with the American Civil Liberties Union, which was part of the legal challenge to the Indiana law.

The fetal burial ruling stated that the Supreme Court has previously said that states have a legitimate interest in the disposal of fetal remains. The court noted that in challenging the law, women’s healthcare and abortion provider Planned Parenthood did not allege that the provision implicated the right of women to obtain an abortion.

“This case, as litigated, therefore does not implicate our cases applying the undue burden test to abortion regulations,” the ruling said.

The Indiana case was one of the court’s first major tests in abortion context following the retirement last year of Justice Anthony Kennedy, who was pivotal in defending abortion rights. Kennedy was replaced by President Donald Trump’s conservative appointee Brett Kavanaugh.

Anti-abortion activists hope the high court will be more receptive to abortion restrictions following Kennedy’s departure. Alabama, Georgia, Missouri, Mississippi and other states have passed restrictive abortion laws in recent months.

‘Treated With Dignity’

The Alliance Defending Freedom, a conservative Christian group that opposes abortion, welcomed the fetal burial ruling.

“Tragically, many states do not ensure that the bodies of miscarried, stillborn or aborted infants are treated with dignity. Unborn infants shouldn’t be disposed of as ‘medical waste’ when they die before birth, regardless of whether their

deaths are spontaneous, accidental or induced,” said Denise Burke, the group’s senior counsel.

Liberal justices Ruth Bader Ginsburg and Sonia Sotomayor said they disagreed with the Supreme Court’s decision to reinstate Indiana’s fetal remains provision.

The Chicago-based 7th U.S. Circuit Court of Appeals upheld a 2017 permanent injunction issued by U.S. District Judge Tanya Walton Pratt against both provisions of Indiana’s law. She found the measure violated the constitutional privacy rights recognized in the 1973 abortion ruling.

The law forbade women from obtaining an abortion if the decision to terminate the pregnancy was based on a diagnosis or “potential diagnosis” of fetal abnormality such as Down syndrome or “any other disability” or due to the race, color, national origin ancestry or sex of the fetus. Indiana said the state has an interest in barring discrimination against fetuses and in protecting the “dignity of fetal remains.”

A similar fetal burial law from Minnesota was upheld by a federal appeals court in 1990 but the Indiana law and another like it in Texas, enacted in 2016, have been struck down by the courts.

Conservative Justice Clarence Thomas wrote in his own lengthy opinion that the court will need to weigh in on whether states can ban abortions based on disability, race and gender. Indiana’s law promotes “a state’s compelling interest in preventing abortion from becoming a tool of modern-day eugenics,” Thomas wrote.

The Supreme Court is currently weighing whether to hear the Indiana’s appeal seeking to revive another law that requires women to undergo an ultrasound at least 18 hours before they undergo an abortion.

The Supreme Court on Dec. 10 declined to take up another

abortion-related case when it rebuffed two other conservative-leaning states—Louisiana and Kansas—that wanted to deny public funding to Planned Parenthood. {eoa}

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