

CRIME & COURTS

Iowa Supreme Court will rule on state's 6-week abortion ban. What are the main arguments?



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Des Moines Register

Published 6:15 a.m. CT Feb. 26, 2024 | Updated 6:15 a.m. CT Feb. 26, 2024

For the third time in three years, the Iowa Supreme Court is preparing to decide whether and how the Iowa Constitution protects the right to get an abortion.

The court ruled in 2022 that there is not a "fundamental right" to abortion. The decision overturned its own 2018 precedent. But in 2023, the court deadlocked 3-3 on whether to revive the state's so-called six-week "fetal heartbeat" abortion ban, passed by the Legislature in 2018 but blocked by a Polk County judge from taking effect. The tie vote left the law permanently enjoined.

In response, Gov. Kim Reynolds called the Iowa Legislature into a special session to swiftly pass a new ban on abortions after about the sixth week of pregnancy. Once again, a judge in Polk County blocked the ban, granting abortion provider Planned Parenthood a temporary injunction.

Now the Supreme Court is preparing to hear the state's appeal of that ruling. The case is not yet scheduled for oral arguments, but all the parties have submitted their final written briefs. Here are the positions they've staked out.

State wants all abortion laws evaluated for 'rational basis'

In Reynolds' view, the Iowa Constitution does not guarantee any special protections for the right to an abortion. That means that so long as the state can articulate a rational basis for a restriction, such as the government's interest in preserving life, the law is constitutional.

Iowa's Supreme Court in 2015 recognized an Iowa right to an abortion "coextensive" with that protected by the U.S. Constitution. At the time, courts used an "undue burden" standard to evaluate abortion laws, meaning that a law is unconstitutional if it is too burdensome or restrictive of one's fundamental rights.

But when the U.S. Supreme Court in 2022 overturned Roe v. Wade, the landmark 1973 decision that legalized abortion nationwide, it rejected the constitutional right to an abortion and the undue burden standard. That means the Iowa Constitution doesn't protect abortion either, the state's attorneys argue.

"This court now works from a clean slate and should hold explicitly that abortion laws in Iowa are reviewed for a rational basis," the state argues in its briefs. "The slate is clean because the court never adopted the ... undue-burden test as a standard of review under the Iowa Constitution."

Analysis: Iowa Supreme Court's tie vote on 6-week abortion ban puts focus on Justice Dana Oxley

Nor should the court adopt the undue burden test, the state argues, citing prior opinions from both the Iowa and U.S. supreme courts describing that standard as "completely unreasoned," "inherently standardless" and "unworkable" as well as constitutionally dubious. Going further, the state argues Iowa should not adopt any standard that hinges on whether a fetus is old enough to be viable outside the womb, saying the state has an interest in preserving life at all stages of pregnancy.

"This court should not embrace a test rejected by its authors for being ambiguous, unworkable, and leading to further confusion for courts and litigants alike," the attorneys for the state write.

The state also argues that, for various procedural reasons, Planned Parenthood should not even have been able to sue to block the law. It argues in its brief that the challenge, filed before Reynolds signed the 2023 law, was premature, and that clinics like Planned Parenthood's lack standing to sue on behalf of their patients.

Planned Parenthood: Send the case back to district court

The 2023 law prohibits nearly all abortions after doctors detect cardiac activity in the embryo, which can occur about six weeks into a pregnancy, often before people realize they're pregnant. The law includes narrowly defined exceptions for rape, incest and fatal fetal abnormalities as well as cases of medical emergency.

To defend the injunction blocking the six-week ban, Planned Parenthood offers several procedural reasons why the court should deny the state's request that it rule on the standard for abortion laws.

The district court order that the state is appealing is not a final ruling, but a preliminary injunction, and the plaintiffs argue that an appeal on the merits of the law should wait until the district court process has played out. Planned Parenthood in its brief argues that the standard

of review to overturn a preliminary injunction is whether the district court abused its discretion — and since the district judge who granted the injunction was obligated to follow Supreme Court precedent, Planned Parenthood says, the court should reject the appeal and let the rest of the lawsuit play out.

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If the court takes that path, it would almost certainly mean yet another appeal after District Judge Joseph Seidlin enters his final decision, which would put the issue back on the Supreme Court's docket in 2025 for the fourth year in a row.

Why Planned Parenthood favors 'undue burden' test

If the court does decide to consider the legal standard for abortion laws, though, Planned Parenthood argues that Iowa should keep the undue burden standard in place.

Its brief leans heavily on Iowa Supreme Court Justice Thomas Waterman's nonbinding opinion from last year's deadlocked case, in which he and two other justices signaled support for the undue burden test. The standard "balances the state's interest in protecting unborn life and maternal health with a woman's limited liberty interest in deciding whether to terminate an unwanted pregnancy," Waterman wrote in a passage Planned Parenthood quotes in its filing.

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"Unlike the rational basis test that the state promotes, the undue burden standard accounts for the competing interests at stake in the abortion context," Planned Parenthood's attorneys write.

And while the U.S. Supreme Court no longer recognizes a federal constitutional right to abortions, Planned Parenthood — again citing Waterman's opinion from last year — argues that Iowa is not required to follow that court's lead, and that the Iowa Supreme Court should independently decide what the state's constitution requires.

State responds to Planned Parenthood's arguments

Responding to Planned Parenthood's filings, the state argues that "there is no reason to invent a special tier of scrutiny for laws protecting unborn life under the Iowa Constitution," and that the court should not "evade" the question of what Iowa's standard should be, once and for all.

"Like the U.S. Supreme Court, this court should abandon the ... undue-burden test and apply rational basis under the established tiers of constitutional scrutiny," it says in its reply brief.

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