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Appeals court lets Texas enforce coronavirus-related abortion ban, for now

By Chuck Lindell Austin American-Statesman (TNS)

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AUSTIN, Texas — One day after a federal judge blocked Texas from banning most abortions during the coronavirus emergency, an appeals court put that ruling on hold Tuesday to give its judges time to weigh a challenge filed by state officials.

The decision will allow Texas officials to resume enforcing a policy that bans abortions unless a woman's life or health are at risk, an exception that applies to very few abortions.

On Monday, U.S. District Judge Lee Yeakel barred enforcement of the policy, ruling that it amounted to a ban on abortion in violation of the U.S. Constitution.

Texas Attorney General Ken Paxton quickly appealed, arguing that an emergency order from Gov. Greg Abbott prohibited elective procedures, including abortions, to increase hospital capacity and conserve medical equipment during the pandemic.

On Tuesday afternoon, a divided three-judge panel of the 5th U.S. Circuit Court of Appeals temporarily blocked Yeakel's ruling and gave both sides until 5 p.m. Friday to submit their legal briefs on the matter.

Judge James Dennis dissented, saying he opposed delaying Yeakel's ruling.

“A federal judge has already concluded that irreparable harm would flow from allowing the Executive Order to prohibit abortions during this critical time,” wrote Dennis, who was appointed to the court by Democratic President Bill Clinton.

The two judges who supported the delay — Republican appointees Jennifer Walker Elrod, named by President George W. Bush, and Stuart Kyle Duncan, named by President Donald Trump — did not explain their reason for halting Yeakel's order.

Paxton, a staunch opponent of abortion, praised the decision.

“I thank the court for their immediate and careful attention to the health and safety needs of Texans suffering from the spread of COVID-19,” he said.

The delay in Texas came shortly after federal judges in Ohio and Alabama acted quickly to overturn similar coronavirus-related abortion bans in those states.

The late-Monday rulings came on the same day abortion providers filed suit to challenge the policies. Lawsuits against similar policies in Oklahoma and Iowa, also filed Monday, were still pending.

All states that have taken steps to limit abortion are led by Republicans, including Mississippi, where Gov. Tate Reeves has said abortion should be considered a banned elective surgery under a coronavirus emergency order.

In Texas, abortion providers said Tuesday that they will ask the 5th Circuit to let Yeakel's ruling stand until the Austin judge can hold a planned hearing on April 13 to discuss whether to convert his temporary restraining order into an injunction barring enforcement of the Texas policy.

Meantime, abortion-rights advocates said Tuesday's reversal played havoc with providers — where several hundred appointments had been canceled in the past week — and patients who were struggling to reschedule and have begun looking to travel out of state for an abortion.

“The 5th Circuit is escalating the fear and confusion women seeking abortion in Texas are already experiencing,” said Nancy Northup, president and CEO of the Center for Reproductive Rights.

In his appeal, Paxton told the 5th Circuit Court that Yeakel's ruling “hampers the state's ability to respond to an unprecedented public health emergency.”

State officials, Paxton argued, “have a compelling interest in requiring that elective abortions be delayed until the COVID-19 crisis has passed, in order to preserve (medical equipment) and hospital beds and to prevent the further spread of the disease.”

“The Supreme Court has never held that the right to previability abortion is absolute, and this Court has already recognized that public-health reasons can justify shutting down all clinics in a state,” the appeal said.

Abortion providers argued that the abortion ban will do little to advance the goals of Abbott's emergency order. Very few abortions are done in hospitals and clinics use little of the personal protection equipment — breathing masks, face shields, gloves and gowns — that the order seeks to conserve for future COVID-19 treatment, they said.

Yeakel agreed, ruling that the benefit of conserving a limited amount of medical equipment “is outweighed by the harm of eliminating abortion access in the midst of a pandemic that increases the risks of continuing an unwanted pregnancy, as well as the risks of traveling to other states in search of time-sensitive medical care.”

Delays also can increase the health risks associated with abortion and could put the procedure out of reach for some women, the judge said. Texas bans abortion beyond the 20th week of pregnancy.

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