

Georgia high court rejects challenge to 20-week abortion ban

June 19 2017, by Kate Brumback

Georgia's highest court on Monday rejected a challenge to a state law banning most abortions after 20 weeks, saying the courts are barred from considering lawsuits against the state without the state's consent.

The 2012 law bans doctors from performing abortions five months after an egg is fertilized, except when a fetus has a defect so severe it is unlikely to live. The law also makes an exception to protect the life or health of the mother, but not for cases of rape or incest.

The American Civil Liberties Union filed a lawsuit challenging the measure on behalf of three obstetricians. It said the law violates state privacy protections and argued the exceptions are too narrow and that doctors could face prison even when treating patients "in accordance to the best medical judgment."

The lawsuit sought to stop enforcement of the law by challenging its constitutionality and was filed against Gov. Nathan Deal and other state officials in their official capacities.

The concept of sovereign immunity shields the state and state agencies from being sued in their official capacity unless the state waives that protection, Justice Keith Blackwell wrote in the unanimous opinion. But he added, "we recognize the availability of other means by which aggrieved citizens may obtain prospective relief from threatened enforcement of unconstitutional laws."

Since the state officers were sued in their official capacities, the lawsuit is considered to target the state itself and citizens don't have that right without the state's consent, Blackwell wrote. Citizens do, however, generally have the right to sue state officers in their individual capacities if those officials are pursuing official actions that are alleged to be unconstitutional.

That means the obstetricians could pursue a lawsuit against the state officers in their individual capacities, the opinion says. The high [court](#) said in a footnote that lawsuits against individual state officers may be less convenient than suing the state and suggested the state General Assembly could fix that "by enacting a statutory waiver of sovereign immunity for suits like this one."

A lawyer who argued the case for the ACLU did not immediately respond to an email Monday seeking comment on the ruling.

The ACLU filed the [lawsuit](#) on Nov. 30, 2012, about a month before the law was to take effect. Fulton County Superior Court Judge Doris Downs entered an order about three weeks later putting the law on hold until the legal challenge could be resolved.

Ultimately, Fulton County Superior Court Judge Kimberly Esmond Adams, who had taken over the case, ruled in May 2016 that the suit was barred by sovereign immunity and the ACLU appealed to the state Supreme Court.

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