



Written by [Raven Clabough](#) on September 9, 2019

## Texas AG Office Continues Fight for Dignity of the Unborn in Fetal Remains Case

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The office of Texas Attorney General Ken Paxton continued the fight to defend the dignity of aborted babies on Thursday in arguments before a panel of the Fifth Circuit Court of Appeals in defense of Senate Bill 8, the AP reports.

Senate Bill 8 was signed into law on June 6, 2017 by Texas Governor Greg Abbott, and is considered one of the most sweeping pro-life laws in the country. It bans facilities from donating aborted fetal tissue to medical researchers, outlaws partial-birth abortions, bans gruesome dismemberment abortions, and requires healthcare facilities to bury or cremate any fetal remains, rather than disposing of them as medical waste. Previous law permitted fetal remains to be treated like medical waste and discharged into sewer systems or incinerated and sent to a landfill.

Almost immediately, the Whole Woman's Health abortion chain sued the state to challenge the law. The ban on the dilation and evacuation dismemberment abortions was permanently enjoined by a federal court in *Whole Woman's Health v. Paxton* after U.S. District Judge Lee Yeakel [ruled](#) the provision placed "a substantial obstacle in the path of a woman's choice" and is therefore "facially unconstitutional."

In a separate lawsuit, Whole Woman's Health is claiming the burial/cremation requirement has also placed a substantial burden on abortion access. The law was [blocked](#) last year by U.S. District Judge David Ezra, who claimed the law imposed a burden on women seeking abortion as it "increases the grief, stigma, shame, and distress of women experiencing an abortion, whether induced or spontaneous."

Plaintiffs in the case argued the requirement for burial or cremation of fetal remains created a burden because facilities in the state are unwilling to accept fetal remains for those purposes.

"The implementation of this law, as I have pointed out, would cause and, if allowed to go into effect, would be a violation of a woman's right to obtain a legal abortion under the law as it stands today," U.S. District Judge David Alan Ezra said, according to reporters in his courtroom last September.

But when the Texas Catholic Conference of Bishops offered to allow the free burial of aborted fetal remains in Catholic cemeteries in Texas, Whole Woman's Health attempted to [intimidate](#) the pro-life group by demanding access to the bishops' private communications regarding the topic of abortion. According to Life News, a federal district court upheld the abortion chain's demand for the private documents, but the Fifth Circuit Court of Appeals halted the ruling, affirming that burying fetal remains



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was well within the group's constitutional rights and that the request for church records was part of an intimidation tactic.

Writing for the majority in the Fifth Circuit panel's [ruling](#), Judge Edith Jones argued that requiring the Texas Conference of Catholic Bishops to turn over internal communications would create a dangerous precedent and violates the First Amendment.

In a brief concurring opinion, Judge James Ho not only agreed with Judge Jones's determination, but articulated his support of the burial/cremation requirements of Senate Bill 8:

The First Amendment expressly guarantees the free exercise of religion — including the right of the Bishops to express their profound objection to the moral tragedy of abortion, by offering free burial services for fetal remains. By contrast, nothing in the text or original understanding of the Constitution prevents a state from requiring the proper burial of fetal remains.

Earlier this year, the U.S. Supreme Court refused to hear an appeal by Whole Woman's Health of the Fifth Circuit's ruling, laying the pro-abortion group's case against the bishops to rest.

But the future of Senate Bill 8 remains in question. Texas attorneys are asking the Fifth U.S. Circuit Court of Appeals in New Orleans to reverse Judge Ezra's ruling. Texas lawyers assert the plaintiffs have been unable to prove clinics and healthcare facilities would be unable to comply with the law. The lawyers also argue the law does not create an undue burden on women seeking abortions in the state of Texas.

Joe Pojman, Ph.D., the Texas Alliance for Life executive director, said the law provides an opportunity to restore dignity to the unborn child without restricting access to abortions.

"We understand that the Supreme Court prevents Texas from making abortion substantially more difficult to obtain before viability, and this law does not do that," Pojman said. "This law merely requires that the dignity of the unborn child is recognized after abortion and that their remains are not treated as medical waste."

Last week, Assistant Solicitor General Beth Klusmann argued Texas has an interest in "respecting the dignity of unborn life" and asserted that treating aborted babies as medical waste is "the literal definition of devaluing them."

AG Paxton's office is reportedly emboldened by the U.S. Supreme Court's [ruling](#) in favor of a similar law in Indiana earlier this year. The court allowed the Indiana law to go into effect after determining that the plaintiffs who were suing to stop the law did not sufficiently prove it created an "undue burden" on women seeking abortions.

"The U.S. Supreme Court has repeatedly recognized that states have an interest in the lives of the unborn. This latest ruling honors the dignity of the unborn and prevents fetal remains from being treated as medical waste," Paxton said following the Supreme Court's May ruling. "My office is awaiting oral argument in our state's own fetal remains case. We look forward to demonstrating that Texas' law is constitutional and does not impact the abortion procedure or the availability of abortion in Texas."

According to the AP, it's not clear when a ruling will come down from the Fifth Circuit as one panel member has even raised the possibility of delaying a decision until after the Supreme Court rules in a pending Louisiana case pertaining to an abortion regulation that requires any doctors performing an abortion to have admitting privileges at a nearby hospital.



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