



Written by [Raven Clabough](#) on September 1, 2011

Idaho Woman Challenges Fetal Pain Abortion Ban

A woman in Idaho has filed the first ever lawsuit against the “fetal pain” abortion ban. Filed by Jennie Linn McCormack against Bannock County, the lawsuit contends that the new law that bans abortion after 20 weeks of pregnancy because of fetal pain is a violation of the Constitution.



Idaho is one of six states — the others being Kansas, Alabama, Indiana, Oklahoma, and Nebraska — to enact the fetal pain abortion ban in six years. Nebraska was the first to pass legislation that bans abortions after 20 weeks because of fetal pain at that stage of development. LifeSiteNews.com explains the premise behind the bans:

The science behind the concept of [fetal pain](#) is fully established and Dr. Steven Zielinski, an internal medicine physician from Oregon, is one of the leading researchers into it. He first published reports in the 1980s to validate research showing evidence for it.

He has testified before Congress that an unborn child could feel pain at “eight-and-a-half weeks and possibly earlier” and that a baby before birth “under the right circumstances, is capable of crying.”

McCormack is the first to legally contest the ban. It began when she was briefly charged with having received an illegal abortion, but has turned it around and now seeks class-action status in her lawsuit against the prosecutor Mark Hiedeman.

The Blaze reports:

McCormack was charged with a felony in June after police said she took pills to terminate her pregnancy last December. Police found the fetus in a box at McCormack’s Pocatello home Jan. 9, and an autopsy determined it was between five and six months gestation. Police said McCormack told them she didn’t have enough money to go to a licensed medical professional, so her sister helped her access abortion-inducing drugs online.

McCormack escaped prosecution when the case was dismissed for “lack of evidence.”

Other aspects of the abortion law are being challenged in McCormack’s lawsuit as well.

For example, Idaho law prevents women from receiving abortions from anyone other than licensed Idaho physicians, and requires that all second-trimester abortions take place in hospitals. Women who perform abortions on themselves, or receive abortions from unlicensed physicians, face prison and fines. McCormack’s lawsuit is asking the judge to find those criminal sanctions unconstitutional.

McCormack’s lawsuit also addresses what she dubs “lack of access to abortions for women in her region,” asserting that there are no elective abortion providers in southeastern Idaho, forcing women to



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travel to seek abortions.

She also claims that banning abortions after 20 weeks may place the mother's life at risk, as the law does not carve out exceptions for when a women's life is endangered. McCormack adds that the law prevents abortions even before the fetus is viable, which she contends is in direct contradiction to the *Roe v. Wade* decision.

McCormack's attorney Richard Hearn contends that a victory in the case could be significant. "If we're successful, they'll be able to access legal and safe abortions in southeastern Idaho."

According to Arthus Caplan, a professor of medical ethics at the University of Pennsylvania School of Medicine, a change in abortion methods may add to the fetal pain debate, as "the future of abortion is pharmaceuticals, not surgical procedures." Whether pills are capable of inducing painful abortions will be the next subject of debate, notes Caplan.

Idaho has already spent nearly \$1 million defending its restrictive abortion laws, only to see them struck down by the courts eventually. Such experiences have prompted legislators to encourage all abortion-related bills be reviewed by the Idaho Attorney General.

Still, the National Right to Life Committee contends the law should be upheld without issue:

Unborn children recoil from painful stimuli, their stress hormones increase when they are subjected to any painful stimuli, and they require anesthesia for fetal surgery. We are confident that the Supreme Court will ultimately agree and will recognize the right of the state to protect these children from the excruciatingly painful death of abortion.

But Janet Crepps of the Center for Reproductive Rights claims that fetal pain abortion bans are unconstitutional and "demeaning to women and their doctors" because they do not take into account how each women's situation is different.

Photo: The Bannock County courthouse in Pocatello, Idaho



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