



Written by [Raven Clabough](#) on January 27, 2016

U.S. Supreme Court Strikes Down North Dakota's "Fetal Heartbeat" Law

On Monday, the Supreme Court struck down a controversial North Dakota law that banned abortions after a fetal heartbeat was detected, maintaining the "viability standard" set by the high court, which permits abortions to take place until a fetus is deemed viable, at approximately 23 to 24 weeks, *The Hill* reports.

Under that North Dakota law, enacted in 2013, abortions could have been illegal as early as six weeks into the pregnancy.



Supporters viewed the restriction as a direct challenge to the 1973 *Roe v. Wade* ruling that legalized abortion until a fetus is considered viable. As explained by North Dakota's Republican Governor Jack Dalrymple, the law was a "legitimate attempt by a state Legislature to discover the boundaries of *Roe v. Wade*."

Opponents argued that the fetal heartbeat standard was an unfair one as many women are not even aware that they are pregnant until that time.

On Monday, the justices refused to review the law, upholding a [July 2015 ruling](#) from the Eighth Circuit Court of Appeals, wherein a three-judge panel voted unanimously to affirm an April 2014 ruling by U.S. District Court Judge Daniel Hovland that declared the law unconstitutional.

The three-judge panel wrote,

Because there is no genuine dispute that [North Dakota's law] generally prohibits abortions before viability — as the Supreme Court has defined that concept — and because we are bound by Supreme Court precedent holding that states may not prohibit pre-viability abortions, we must affirm the district court's grant of summary judgment to the plaintiffs.

However, the lower court suggested that it was perhaps time for the Supreme Court to revisit its viability standard. "The continued application of the Supreme Court's viability standard discounts the legislative branch's recognized interest in protecting unborn children," the court wrote, adding that "good reasons exist for the [Supreme] Court to reevaluate its jurisprudence." The judges observed that in the 1970s a 24-week-old baby in the womb may have been deemed nonviable, but advancements in the medical field have increased survivability for younger unborn children. The Supreme Court, they noted, has tied viability to "developments in obstetrics, not to developments in the unborn."

The judges determined that a more defined benchmark than viability would better serve states and their "interest in protecting unborn children."

But the Supreme Court did not take the opportunity to do so.

North Dakota Attorney General Wayne Stenehjem, who petitioned the Supreme Court in November to take up the case, was prepared for disappointment from the Supreme Court, he said, after justices last



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week refused to review the ban by Arkansas on abortion at 12 weeks of pregnancy, and declined to review Arizona's 20-week abortion ban.

"We knew just going in it was going to be a long shot," he said, adding, "This is the end of what we can do."

Similarly, former state Representative Bette Grande of Fargo, who introduced the six-week ban in 2013, said she was not surprised by the Supreme Court's decision, but that she believes the legal battle is "absolutely worth it."

"It has given so much to the mothers and the people to know what is in the womb. It's to help make the proper decisions for life," she said.

In addition to signing [this measure](#) into law, Governor Dalrymple also signed other restrictive abortion bills, including one known as the "fetal pain" bill that bans abortions after 20 weeks, another outlawing abortion for sex selection or in cases of genetic abnormalities, and a third that requires an abortionist to be a doctor with admitting privileges at a local hospital. The U.S. Supreme Court is expected to rule by June on a similar law in Texas that could affect North Dakota's law, that also requires abortion doctors to have admitting privileges.



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