



Court upholds Ohio law criminalizing physician participation in abortions based on Down syndrome

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A federal appeals court issued a [decision](#) on April 13, 2021, upholding an [Ohio law](#) that prohibits providers from performing abortions based on a fetal diagnosis of Down syndrome, or on the possibility of a diagnosis. The Sixth Circuit Court of Appeals narrowly ruled to reverse earlier decisions blocking enforcement of the law in a nine-to-seven decision, holding that the Ohio law did not “create a substantial obstacle to a woman’s ability to choose or obtain an abortion.”

The law, which was passed by the Ohio legislature in 2017, imposes criminal penalties on physicians who perform abortions when they are aware that a patient is seeking the abortion “in whole or in part” because of a diagnosis or belief that the fetus has Down syndrome. Physicians who violate the law face a fourth degree felony and potential civil liability, including attorney fees. Penalties for fourth degree felonies include six to 18 months in prison, a fine of up to \$5,000 and mandatory revocation of the provider’s professional license.

The majority opinion describes the law as applying to a woman “(1) who is pregnant with a child whom she has good reason to believe has Down syndrome, (2) who does not want a child with Down syndrome and, therefore, wants to abort her pregnancy for that reason, and (3) who wants her abortion performed by a doctor who knows that is her reason.” Chief Judge Cole’s dissent describes the law as a “don’t ask, don’t tell law,” meaning “so long as doctors don’t ask and women don’t tell” women can still seek an abortion where doing so is in compliance with Ohio’s other abortion laws.

The law was initially challenged by the American Civil Liberties Union of Ohio in a federal district court, which issued a preliminary injunction that has been in effect since March of 2018. The Sixth Circuit overturned the injunction and is the first

circuit court to uphold a restriction based on a fetal diagnosis of Down syndrome. The decision conflicts with decisions in the [Seventh](#) and [Eighth](#) circuits, which struck down similar laws in Indiana and Arkansas that banned abortion on the basis of disability as unconstitutional. The circuit split will likely lead to further review by the U.S. Supreme Court.

Ohio providers who see obstetric patients should understand this law when counseling obstetric patients and documenting discussions.

Authors
