



Written by [Raven Clabough](#) on August 14, 2019

Appeals Court Reverses Lower Court Ruling Against 24-hour Waiting Period for Abortions

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Pro-life advocates celebrated a small victory earlier this month as a Florida appeals court reversed a ruling that declared the state's 2015 law requiring a 24-hour waiting period before an abortion "unconstitutional." The *Miami Herald* notes the case could be a "barometer" for abortion-related legal issues for the Florida Supreme Court, which has recently undergone some changes.



Former Florida Governor Rick Scott signed the mandatory waiting period bill, HB 633, into law June 10, 2015, but it has never gone into effect as it has been embroiled in legal disputes ever since. But a 2-1 decision earlier this month by a panel of the First District Court of Appeal could change that. The panel determined a lower court's blocking of the state's 24-hour waiting period in *State of Florida v. Gainesville Woman Care* should be reversed and sent the case back to the lower court, [Life Site News reports](#).

Writing for the majority, Judge Timothy Osterhaus cited state arguments that a 24-hour waiting period is necessary to ensure "informed consent."

"Rather than singling out and burdening abortion procedures with arbitrary requirements, the state's evidence indicates that the 24-hour law brings abortion procedures in Florida into compliance with medical informed consent standards and tangibly improves health outcomes for women," Osterhaus wrote.

The court's ruling overturns Leon County Circuit Judge Terry Lewis's 2018 ruling that determined the waiting period to be unconstitutional. According to Judge Lewis, the state failed to prove there was a "compelling state interest" for the waiting period.

"The essential problem is that the language of the act — what's in it and what's not — belies the claimed compelling nature of the state interest being advanced, and demonstrates ambivalence, if not outright hostility, to the mandate that the least restrictive measures be utilized to advance that interest," Lewis wrote.

Lewis's decision made permanent a temporary injunction granted by the Florida Supreme Court in 2017.

Lewis declared the waiting period unconstitutional in his ruling, but Osterhaus contends Lewis used the wrong standard to make his determination.

"Women claiming particular harms from the 24-hour law based on their specific circumstances may



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challenge the law's application to them. But those would be as-applied constitutional challenges. No such challenge has been made here," Osterhaus wrote. "For this facial challenge, the correct legal test is not whether the 24-hour law violates the constitutional rights of some women in some circumstances, but whether it violates the rights of all women in all circumstances."

Plaintiffs in the case have the option to appeal the ruling to Florida's Supreme Court, which became solidly conservative earlier this year following the departure of three pro-abortion justices — Barbara Pariente, R. Fred Lewis, and Peggy Quince. The state's Republican governor, Ron DeSantis, has since appointed three conservative replacements — Barbara Lagoa, Robert Luck, and Carlos Muniz.

The plaintiffs can also ask the appellate court for a full-court rehearing, or could have a Tallahassee judge reconsider the lawsuit, the *Miami Herald* reports.

Pro-lifers are celebrating the court's ruling as a victory for both women's health and the right to life.

Denise Harle of Alliance Defending Freedom observed, "Abortion is a life-altering decision, and no woman should be rushed or pressured into it.... The appeals court noted evidence from medical experts that the standard of care for significant, non-emergency medical procedures is that they are not and should not be done on a drop-in basis."

Florida Right to Life President Lynda Bell made a similar argument in defense of the law.

"An abortion takes the life of an unborn child and could affect the woman/girl for the rest of her life. It is certainly not unreasonable to provide time to reflect before making that life-altering decision," she observed.

Mat Staver, founder and chairman of Liberty Counsel, contends the appeals court ruling "breathed new life" into the law requiring a 24-hour waiting period, an important protection for the unborn.

"The 24-hour waiting period is critical because abortion is a life and death decision," Staver continued. "Abortion advocates oppose a waiting period because they fear the mother will choose life. How sad that a mother can kill her pre-born child without waiting even 24 hours, and yet, when someone other than the mother kills the same child, it is a criminal offense."

According to the Henry J. Kaiser Family Foundation, 27 states currently have waiting-period requirements similar to Florida's, some as long as 72 hours.



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