



Written by [C. Mitchell Shaw](#) on March 24, 2022

Did Pro-life Gov. Little Just Scuttle New Idaho Pro-life Law?

On Wednesday, Idaho Republican Governor Brad Little signed into law a statewide ban on abortion once a heartbeat is detected. Since that is around six weeks, and most mothers do not even know they are pregnant by that time, the law could eliminate most abortions in Idaho. But statements by Little call the law's fate into question.

The Idaho "fetal heartbeat law" has an enforcement mechanism modeled after the recent (and already famous) Texas "fetal heartbeat law" that helped spur the Supreme Court into taking another look at *Roe v. Wade*. The new law goes into effect April 22 (30 days after becoming law) and allows relatives of a pre-born child to sue the doctor who committed the abortion for a minimum of \$20,000 plus legal fees.



AP Images
Brad Little

And while the law was modeled after Texas's S.B. 8, which became law last September and has — so far — stood up to legal challenges, Governor Little expressed doubts that the Idaho law would withstand legal scrutiny. In a statement on the signing, Little said, "I stand in solidarity with all Idahoans who seek to protect the lives of preborn babies," adding, "I firmly believe those decisions were incorrectly decided and that federalism mandates the regulation of abortion be returned to the states."

But he also said,

While I support the pro-life policy in this legislation, I fear the novel civil enforcement mechanism will in short order be proven both unconstitutional and unwise. Deputizing private citizens to levy hefty monetary fines on the exercise of a disfavored but judicially recognized constitutional right for the purpose of evading court review undermines our constitutional form of government and weakens our collective liberties. None of the rights we treasure are off limits.

So, while Little signed the bill into law and has a reputation for being pro-life, his expression of concern about the law's fate may be the kindling the law's opponents need to burn it down. By describing abortion as "a disfavored but judicially recognized constitutional right," Little may tell us more about himself than about the bill he just signed into law.

Little also addressed the provision in the law that allows for abortion in cases of rape or incest, so long as the mother files a police report and presents that report to the doctor committing the abortion. He said, "I appreciate the exception provided for victims of rape and incest, but the challenges and delays inherent in obtaining the requisite police report render the exception meaningless for many," adding, "I



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am particularly concerned for those vulnerable women and children who lack the capacity or familial support to report incest and sexual assault.”

Given Little’s squishy statements — which provide ammunition for those who would challenge the law in the courts — one could be forgiven for thinking Little may have signed the bill to protect his pro-life creds while working to scuttle the bill at the same time.

And while the Idaho law is the first in the nation to be modeled after the Texas law, there are differences that could make Idaho’s law less susceptible to legal challenges. First, as noted above, Idaho’s law has exceptions for rape and incest, if that claim is validated by a police report. Second, while the Texas law allows almost any private citizen to sue any Texas doctor who commits an abortion, the Idaho law limits that enforcement to certain family members of the child against whom the abortion is committed — such as father, grandparents, siblings, aunts, or uncles.

MSN [reports](#) that the law will face almost immediate challenges. In typical liberal-speak, the MSN article uses clunky phrases dripping with euphemism to avoid calling the law a “fetal heartbeat law.” Since many have come — at long last — to see “fetal” as referring to babies in the womb, and “heartbeat” clearly indicates a heart, MSN appears willing to serve up a mashed-together word salad to avoid using that phrase. The article begins:

Republican Gov. Brad Little signed into law the measure that allows people who would have been family members to sue a doctor who performs an abortion after cardiac activity is detected in an embryo.

After that introduction, the article quotes Little’s likely self-fulfilling doomsday prophecy noted above. It then addresses the challenges the law will likely face before it can even take effect:

The law in the conservative state is scheduled to take effect 30 days after the signing, but court challenges are expected. Opponents call it unconstitutional, and note that six weeks is before many women know they’re pregnant.

And:

“The vigilante aspect of this bill is absurd,” said Idaho Democratic Rep. Lauren Necochea. “Its impacts are cruel, and it is blatantly unconstitutional.”

A Planned Parenthood official called the law unconstitutional and said the group was “committed to going to every length and exploring all our options to restore Idahoans’ right to abortion.”

In all likelihood, Little’s statements about the law will be part of Planned Parenthood’s challenge when it comes — and it will probably come within days.

And ABC News likewise [reported](#):

The law will go into effect, but opponents said they are already preparing to challenge the bill.

One criticism is that prenatal scans often detect cardiac activity very early in pregnancies,



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but they're not heartbeats. They're signs of what will eventually become a heart.

Another criticism is that family members can sue for a minimum of \$20,000 within four years of an abortion. While a rapist wouldn't be allowed to sue, their family members could.

Kim Clark, senior attorney at Legal Voice — a non-profit organization advocating for the legal rights of women, girls and LGBTQ people in the Northwest — said this could lead to women in abusive relationships being further harassed by their partners.

"This essentially makes the state complicit in intimate partner violence," Clark told ABC News in an interview last week. "Allowing a member of the person's family to bring a claim, that could include an abuser where the survivor hasn't reported the assault."

So, as Idahoans and the legislators attempt to protect the lives of pre-born babies, Governor Little has likely empowered the law's opponents in their challenges to the law. His statement at signing the bill into law sounds as if it were taken directly from their talking points.

However, with *Roe* expected to be overturned by the Supreme Court when it issues its decision in June, the issue of abortion will almost certainly return to the states. If — God grant — that happens, Idaho's position will almost certainly be that of a pro-life state. And no statement from Little will likely keep that from happening.



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