

The Consequences of June 29

In one stroke of the pen, unelected judges flipped Iowa from the most pro-life state to among the least.

Background:

- In May 2018, Gov. Kim Reynolds signed the “Heartbeat” Law, a measure banning abortions in Iowa after an unborn child’s heartbeat can be detected.
 - Recognized as the toughest abortion law in the nation. ⁱ
- In June 2018, Iowa’s State Supreme Court issued a ruling on a different law, Iowa’s 72-hour waiting period for abortions. **The Court declared that “implicit in the concept of ordered liberty” ⁱⁱ there was a “fundamental right” ⁱⁱⁱ to abortion in the Iowa Constitution that can only be regulated if the state can pass the “strict scrutiny” test. ^{iv}**
- Iowa’s Supreme Court furthered the argument that it is not bound by constitutional restraints.
 - The 5-2 opinion quoted both federal and its own rulings in recent years to claim that Iowa’s State Supreme Court judges have now **“freed ourselves from the private views of the Constitution’s founders” ^v and that the Constitution can now be interpreted according to “current prevailing [and] evolving standards.” ^{vi}**
 - In effect, the Iowa Supreme Court seized for itself the power to amend the Iowa Constitution – without a vote of ‘We the People’ or even their elected representatives. Then it used its newly declared power to add a new ‘right’ to Iowa’s Constitution. That’s outrageous judicial activism. Even if it wasn’t about abortion, it would still be wrong.

The Iowa Supreme Court conveniently avoided drawing public attention to the ruling. They published their opinion on Friday, June 29, the last workday before a long 4th of July holiday weekend.

This Ruling Goes Beyond *Roe v. Wade*:

When abortion is considered a “fundamental right,” far more is at stake.

- **This decision is more radical than any federal decision:** *Roe* allowed limits to abortion based on ‘viability’ and trimesters. The later *Casey* decision said abortion could be regulated, unless it created an ‘undue burden’ on women. ^{vii} In its June decision, Iowa’s Supreme Court disregarded the limits on abortion permitted by the federal Supreme Court. ¹
- **Virtually all abortion restrictions can now be declared ‘unconstitutional.’** “The majority’s requirement of ‘strict scrutiny’ and ‘narrow tailoring’—combined with its rejection of *Casey*’s undue burden standard—would make any abortion restriction very difficult to sustain.” - Justice Mansfield of the Iowa Supreme Court, dissenting. ^{viii}
- **The Iowa Supreme Court opened the door to requiring Iowa taxpayers to fund abortions.** “Thus, I wonder if the majority is laying groundwork instead, perhaps a stepping stone toward a ruling that Iowa’s Medicaid program must fund abortions.” - Justice Mansfield, dissenting. ^{ix}

continued...

¹ In his opinion striking down the Heartbeat Law, Judge Huppert noted the court’s opinion was more restrictive than the Federal standard: “The Iowa Supreme Court expressly rejected the undue burden standard fashioned in *Casey* and held that any legislative restrictions on a woman’s fundamental right to decide to terminate a pregnancy should be measured solely by a strict scrutiny analysis.” (Planned Parenthood of the Heartland v. Reynolds, No. EQCE083074, slip op. at 5 (Iowa Dist. Ct. Polk Cty. Jan. 22, 2019).)

- Every pro-life law passed in Iowa's history will likely be deemed "unconstitutional" based on this ruling.
 - Even if *Roe v. Wade* is overturned at the federal level, because the 72-hour ruling is a state Supreme Court decision, abortion restrictions will be invalidated in Iowa.

Solutions:

A constitutional amendment is the surest way to overturn a Supreme Court ruling.

- **Tennessee won the same fight that the Iowa Supreme Court started with its June 2018 ruling.**^x
 - In 2000, the Tennessee Supreme Court ruled the Tennessee Constitution protected the right to abortion.
 - In 2009 and 2011, the Tennessee Legislature approved an abortion "neutrality" amendment, which stated, "Nothing in this Constitution secures ... a right to abortion."
 - In 2014, the amendment was approved by vote of the people.
 - In 2018, the U.S. Supreme Court declined to hear a challenge to the amendment.
- **West Virginia and Alabama both passed abortion neutrality amendments in November 2018.**^{xi}

Suggested wording for Iowa, based on other states' success:

"Nothing in this Constitution secures or protects a right to abortion or requires the funding of an abortion."

This position is not radical. This kind of "neutrality" amendment simply restores the Legislature's authority to regulate abortion.

Judicial selection reform is needed in the state of Iowa, but it is not enough.

- Even if perfect Supreme Court judges are picked following reform, it could still take decades for a majority to form willing to reverse the June 2018 decision.
- Failure to directly repudiate the recent Supreme Court creation of a right to abortion acquiesces to the existence of that right.

ⁱ Manchester, Julia. "Iowa Lawmakers Pass Strictest Abortion Law in the US." TheHill. May 02, 2018. Accessed January 22, 2019. <https://thehill.com/homenews/state-watch/385799-iowa-lawmakers-passed-strictest-abortion-law-in-the-us> .

ⁱⁱ Planned Parenthood of the Heartland v. Reynolds, No. 17-1579 slip op. at 51 (June 29, 2018) (Iowa Courts, Dist. file) Accessed January 22, 2019. <https://www.iowacourts.gov/courtcases/439/embed/SupremeCourtOpinion> .

ⁱⁱⁱ *Id.* at 55

^{iv} *Id.* at 67

^v *Id.* at 49 (quoting Pitcher v. Lakes Amusement Co., 236 N.W.2d 333, 335–36 (Iowa 1975))

^{vi} *Id.* at 48-49 (quoting Griffin v. Pate, 884 N.W.2d 182, 186 (Iowa 2016) (quoting Trop v. Dulles, 356 U.S. 86, 100–01, 78 S. Ct. 590, 598 (1958)))

^{vii} Liu, Joseph, and Joseph Liu. "A History of Key Abortion Rulings of the U.S. Supreme Court." Pew Research Center's Religion & Public Life Project. May 06, 2013. Accessed January 22, 2019. <http://www.pewforum.org/2013/01/16/a-history-of-key-abortion-rulings-of-the-us-supreme-court/> .

^{viii} *Id.* at 84

^{ix} *Id.* at 92

^x Wadhvani, Anita. "US Supreme Court Won't Hear Challenge to Tennessee's Abortion Measure, Amendment 1." The Tennessean. October 01, 2018. Accessed January 22, 2019. <https://www.tennessean.com/story/news/2018/10/01/u-s-supreme-court-declines-hear-challenge-tennessee-abortion-measure/1485439002/> .

^{xi} Weixel, Nathaniel. "Alabama, W.Va. Voters Approve Anti-abortion Amendments." TheHill. November 07, 2018. Accessed January 22, 2019. <https://thehill.com/policy/healthcare/415417-alabama-passes-an-anti-abortion-amendment> .