

Most Idaho abortions banned if Roe v. Wade is overturned

By KEITH RIDLER

Associated Press

BOISE — An Idaho law banning nearly all abortions would take effect if the U.S. Supreme Court overturns Roe v. Wade, the landmark 1973 ruling that declared a nationwide right to abortion.

The court with a 6-3 conservative majority on Wednesday, Dec. 1 heard arguments over a Mississippi law that bans abortions after 15 weeks. That law is on hold following a 5th U.S. Circuit Court of Appeals ruling.

The Mississippi law is also at odds with a 1992 Supreme Court ruling that states can't prevent women from terminating pregnancies before viability, around 24 weeks.

If those rulings are overturned, as Mississippi officials argue they should be, states would decide whether to regulate abortion before a fetus can survive outside the womb.

That would trigger an Idaho law, passed in 2020, banning all abortions except in cases of rape, incest or to protect the life of the mother. That law would take effect in Idaho 30 days after the Supreme Court decision.

That law passed the Republican-dominated Idaho House and Senate with no Democratic support, and was signed into law by Republican Gov. Brad Little. Under the law, criminal punishment would be a felony and apply to the person performing the abortion, not the woman.

Little in July signed onto an amicus brief with Republican governors from 11 other states supporting the Mississippi law now before the Supreme Court.

Then-President Donald Trump appointed three conservative justices to the U.S. Supreme Court, including last year appointing Justice Amy Coney Barrett after the death of Justice Ruth Bader Ginsburg. Before that, the court had never before agreed to hear a case over a pre-viability abortion ban.

Idaho lawmakers seeing the change on the Supreme Court the last several years have passed abortion-ban laws with trigger mechanisms.

"I'm optimistic," said Republican Sen. Todd Lakey, who sponsored the 2020 law. "I think the situation on the Supreme Court has improved in regard to pro-life issues. But you're talking about precedent and other things the court will evaluate, so I can't really predict where they'll come down. But I'm hopeful that they will eventually, if not in this case then in another case, overturn Roe v. Wade."

Only one justice, Clarence Thomas, has publicly called for Roe to be overruled.

Mistie DelliCarpini-Tolman, Idaho State Director for Planned Parenthood Alliance Advocates, said whether Idaho's abortion law is triggered could depend on how broad or narrow the Supreme Court rules on the Mississippi case.

"We are entering the most dangerous time for abortion rights in decades," she said. "We're going to do everything we can to keep fighting for abortion access. We refuse to let abortion access go by the wayside on our watch."

A different law passed earlier this year by Republicans in the House and Senate and signed by Little, which also has a 30-day trigger mechanism, would ban abortions once a fetal heartbeat can be detected.

It does not appear that law would be triggered by the Mississippi case. It would be superseded by the more restrictive 2020 law if Roe v. Wade is overturned. If the court doesn't overturn Roe v. Wade but upholds the Mississippi abortion ban at 15 weeks, it would not appear to be restrictive enough to trigger the Idaho law. The Idaho law also contains language that causes it to be triggered by an appeals court ruling, not a Supreme Court ruling.

According to the Guttmacher Institute, a research organization that supports abortion rights, a ruling that overturned Roe and the 1992 case of Planned Parenthood v. Casey would lead to outright bans or severe restrictions on abortion in 26 states.

The institute said that states unlikely to ban abortion that would have the nearest provider for people from Idaho would be Washington, Oregon, Nevada and Colorado.



Jackie Jensen/Contributed Photo, File

Baker City steer wrestler Jesse Brown competing in the 2020 National Finals Rodeo. Brown also qualified for this year's National Finals Rodeo, which returned to its traditional venue at the Thomas & Mack Center in Las Vegas.

RODEO

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Dirk Tavenner and Riley Duvall tied for first in the opening round Thursday with times of 3.7 seconds. They each walked away with \$24,167.

Brown, who was sitting second in the world standings before the NFR, slid a little in the standings, but there are still nine more rounds to go, and he started off right with a legal run and a few dollars to add to his earnings.

"I don't really pay attention to that," he said.

Brown, who was compet-

ing with a back strain, was happy with his first run.

"I had to make a horse change at the last minute," he said of riding his own horse, Gunner. "He did well. It was good. The anticipation leading up to tonight was a rush. I can't wait until tomorrow."

The steer ropers had a fresh pen of steers on Friday, Dec. 3. There are four pens, which means they won't see Thursday's steers again until Round 4 on Sunday, Dec. 5.

While Las Vegas can be a fun place to visit, Brown said his day before the evening performance is jam packed.

"I had a packed day," he said of Thursday. "I had physi-

cal therapy in the morning, then they had us doing signings and meet and greets. It's an honor they even want me to do something like that."

Brown, 29, had his best professional rodeo season in 2021, earning \$92,358.49 to place second in the world standings behind only Jacob Talley of Keatchie, Louisiana, who won \$117,256.41.

Brown is a 2011 Baker High School graduate.

He had a solid debut at the National Finals Rodeo in 2020, finishing tied for first on the first of the 10 consecutive daily competitions. He ended the season ranked 13th in the world, with earnings of \$88,558.

LAWSUIT

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James said he was content to merely grumble about the program but his wife convinced him to take action.

"Don't just complain about something unless you're doing something about it," Kathryn said.

Is program constitutional?

With the help of the Pacific Legal Foundation, a libertarian public interest law firm, the Dunlaps have filed a lawsuit challenging the USDA's minority loan forgiveness program as unconstitutional based on race.

"Righting past discrimination with more discrimination is not the way to go about it," she said. "It should be based on individual circumstances."

The couple's lawsuit is one of 12 similar complaints filed across the nation that argue USDA's \$4 billion loan forgiveness program violates the Constitution's promise of equal protection under the law.

The litigation has been consolidated as a class action lawsuit in federal court in Texas, where U.S. District Judge Reed O'Connor has issued a preliminary injunction halting the program. Similar orders against it have been entered in three other states.

O'Connor wrote that "the government's claim that new race-based discrimination is needed to remedy past race-based discrimination is unavailing," meaning that it is ineffective.

Few topics are more sensitive or uncomfortable than race and money, especially in the current politically tense atmosphere. The litigation against USDA tackles both subjects head-on.

The allegations of prejudice against white farmers may seem awkward, since the USDA itself has admitted to "decades of discrimination" against Blacks and other minorities.

The new loan forgiveness program is needed because American growers haven't equally benefited from FSA's

lending practices in the past, the agency said in court documents.

"In fact, the evidence indicates just the opposite: that throughout USDA's history and up to present day, minority farmers have been 'hurt' more than helped due to discrimination in USDA's farm loan programs," the agency said.

The federal government won't comment on the litigation beyond legal arguments filed on behalf of the USDA in court briefs, according to a U.S. Department of Justice representative.

Frustrating situation

For minority farmers who stood to benefit from the loan forgiveness program before it was blocked, the situation is personally frustrating.

The litigation represents "more greed from white farmers in this country," said John Boyd, founder of the National Black Farmers Association and a fourth-generation grower in Mecklenburg County, Va.

Boyd said that in the past he'd been spat on by an FSA employee and had his loan application torn up, which aren't experiences the plaintiffs can comprehend.

"They don't know what discrimination is. They don't know what it looks like or what it feels like," Boyd said. "I just feel it's shameful white farmers are doing this to us."

White farmers have historically been able to write down their debt, refinance it or have it forgiven by USDA while Black farmers have instead faced foreclosure, he said.

Discrimination against Black farmers still exists but the lawsuits and injunctions don't acknowledge that reality, Boyd said.

"In some fashion, you have to recognize this terrible history that occurred on American soil," he said. "Why not support a group of people that has just been dogged by the government?"

Black farmers represent about 1.4% of the agricultural producers in the nation, down from roughly 14% a century

ago, according to USDA's Census of Agriculture data.

The proportion of Black farmers has plummeted over time due to a "bad taste in their mouth for the farm," going back to sharecropping and slavery, Boyd said. Even so, some remain committed to the industry.

"I love being a farmer. I'm going to die being a farmer," he said. "I love the smell of the land when I throw that disc harrow in the ground."

'Structural problem'

The bias experienced by Blacks and other minorities isn't just a matter of individual FSA employees with a racist agenda, said Cassandra Havard, a law professor at the University of Baltimore who's studied the issue.

"It's a structural problem within the USDA," she said.

FSA's loan decisions are influenced by county committees elected by the local populace, Havard said. The arrangement can perpetuate racial bias because these committees are generally dominated by white farmers.

"You're in competition with other people who are also farming nearby," she said. "It was basically a way of cutting out the competition."

Boyd characterizes the situation facing Black farmers less diplomatically: "They know when you're in trouble with the USDA, they can purchase your farm for pennies on the dollar."

The USDA was accused of discrimination against minorities in several lawsuits, including two class actions by Black farmers that were settled for \$2.4 billion.

However, the agency admits in court filings that the payments "did not cure the problems faced by minority farmers."

Many farmers were unaware of deadlines to file claims or faced problems qualifying for payments, raising concerns about whether the compensation was adequate, Havard said. "Farmers felt like it was difficult for them to be successful."

Banking records are private, which stifles compari-

sons between how Black and white farmers are treated by FSA, said Susan Schneider, a law professor at the University of Arkansas who studied the issue. The USDA's civil rights office was dismantled in 1983 and wasn't reinstated until 1996, so many complaints were neglected.

"You had to be able to prove a very specific instance of discrimination," she said. "It's really difficult to prove these kinds of cases."

Different approach

The USDA's minority loan forgiveness program, which Congress passed earlier this year as part of broader coronavirus relief legislation, takes a different approach, said Stephen Carpenter, deputy director and senior staff attorney at the Farmers Legal Action Group, a nonprofit that provides legal services to growers.

"Let's do something without a lawsuit, programmatically to remedy past discrimination," Carpenter said, summarizing the program's intent.

The preliminary injunctions against the loan forgiveness program bodes well for the plaintiffs' chances of winning, he said. "If you support the program, it's not a good sign the courts have suspended this program. But it's not the end of the story."

The litigation is ongoing and the injunctions against the program aren't permanent.

The USDA can still prove that loan forgiveness specifically for minority farmers passes constitutional muster, "but there's a very rigorous examination of it by courts," he said. The government must show that the program is "narrowly tailored" to help people left behind by race-neutral approaches.

"You have to show you tried in the past to remedy the problem without using race to determine who gets the benefit," Carpenter said.

'Pattern and practice'

The argument that USDA's program fits those legal parameters is backed

by statistical evidence that other COVID-19 relief measures almost exclusively helped white farmers, said Dania Davy, director of land retention and advocacy for the Federation of Southern Cooperatives, a nonprofit that wants to intervene in the lawsuit to support the program.

The "pattern and practice" of discrimination against minority farmers has continued to this day, she said. "It's not relegated to history, it's an ongoing issue."

The loan forgiveness program is sufficiently "narrowly tailored" because it only benefits farmers of color who've taken out loans through USDA, Davy said. "It was limited to 17,000 farmers and ranchers."

The FSA's loan portfolio includes roughly \$28 billion in direct and guaranteed loans to 126,000 borrowers, according to a 2021 Congressional Research Service report on agricultural credit.

The plaintiffs are attempting to "manufacture a narrative" that white farmers — who disproportionately gain from USDA programs — are being denied equal protection under the law, she said.

The constitutional amendment that guarantees equal protection has a long history of redeeming the rights of people of color, Davy noted.

"It's a bit of a disrespect to that legacy," she said of the lawsuits.

Equal under the law

The Pacific Legal Foundation, the nonprofit law firm that represents the Dunlaps, doesn't deny the "sad and unfortunate history of discrimination" at USDA. However, the organization also believes that equality under the law means everyone is treated the same as an individual, regardless of race.

The USDA's loan forgiveness strategy doesn't protect "equality" but rather promotes the concept of "equity," under which people are entitled to certain outcomes based on race, said Wen Fa, the attorney for the Dunlaps.

This philosophy relies on "crude racial stereotypes" and discounts the accomplishments of successful minority farmers, said Fa.

"Just because a farmer is a minority doesn't mean the farmer is disadvantaged," he said. "It's demeaning and it's wrong."

The legal dispute over USDA's loan forgiveness program involves "fundamental equal protection principles" and has a higher-than-average chance of getting reviewed by the U.S. Supreme Court, Fa said. If the program wasn't challenged in court, it would encourage more racial discrimination by the government, he said.

"Programs like this will be replicated all across the country," he said. "A person's opportunity is not based on achievement but on membership in a racial group."

The federal government has three options to correct the problem: Either eliminate the loan forgiveness program, expand it to include everyone with USDA loans, or change the eligibility to be race-neutral, Fa said.

Under the race-neutral option, eligibility could be decided based on such factors as financial need, loss of revenue due to COVID-19 or a lack of access to other coronavirus relief funds, he said.

A need-based loan forgiveness program would be acceptable to the Dunlaps, who depend on outside sources of income to keep their ranch afloat.

"If they want to pass a plan like that, then great," James said. "It shouldn't be based on your skin color."

Kathryn works in sales for a marketing and research company. Until he was laid off, James was employed as a railroad engineer. He's now considering a career in real estate.

Their eventual goal is to make the ranch self-sustaining.

"It's a frustrating business. You don't necessarily do it to make much money," he said. "Our heart goes out to any grower in dire straits. I don't care what color you are."