

**Associated Press**

## **Federal appeals court declares Michigan's abortion law unconstitutional, rules too sweeping**

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By DAVID EGGERT, Associated Press Writer

LANSING Mich.

A federal appeals court Monday rejected Michigan's attempt to ban a procedure opponents call partial-birth abortion, ruling the law unconstitutional because it could also prohibit other abortion procedures.

A three-judge panel of the 6th U.S. Circuit Court of Appeal in Cincinnati said the Michigan Legislature would have been "virtually guaranteed" a favorable result on appeal had it copied an Ohio law that the 6th Circuit already has upheld.

"It instead opted to use statutory language that pushed almost every boundary that the Supreme Court has imposed for these types of laws," the judges said.

Previous attempts by Michigan lawmakers to stop the procedure were struck down by federal courts in 1997 and 2001.

The U.S. Supreme Court in April upheld the federal Partial-Birth Abortion Ban Act, with the majority opinion carefully distinguishing the controversial procedure from a more common abortion method used in the second trimester of pregnancy. The latter was unaffected by the ruling.

The appeals panel affirmed a Detroit district judge's opinion that the 2004 Legal Birth Definition Act in Michigan places an "undue burden" on a woman's right to have an abortion.

Abortion rights groups have said the law unlike the federal ban and the law in Ohio overreached and would have banned pre-viable abortions, including the most common method of second-trimester abortion. The appeals court agreed.

"The Michigan statute contains no similar exception or clear definitions that would avoid sweeping up protected abortion procedures within its prohibition," the court wrote.

The Michigan Legislature approved the abortion law in June 2004. Hundreds of thousands of voters signed petitions that allowed the bill to become law with only the approval of the House and Senate both of which were controlled by Republicans at the time after Democratic Gov. Jennifer Granholm vetoed it.

The office of Republican Attorney General Mike Cox said he is considering an appeal.

Pam Sherstad, spokeswoman for Right to Life of Michigan, said it tried a new approach when helping to craft the latest ban. Rather than name the procedure specifically, it defined birth as the moment any portion of the fetus emerges from a woman's body and said the fetus then is a legally born person.

"We're disappointed. We will continue to look at other ways we can protect children who are in the process of being born," Sherstad said. "We wanted to test the waters with this approach."

Abortion rights groups applauded the ruling, saying the law failed to provide an adequate exception to safeguard women's health.

"Women, not politicians, should make decisions regarding pregnancy," said **Nancy Northup**, president of the **Center for Reproductive Rights**. "Politicians crafted this ban in an attempt to eliminate safe, legal abortions at any cost."

The banned procedure affects only a small number of cases. The procedure is formally known as dilation and extraction and is also referred to as late-term abortion, D&X or Intact D&X.

**The Washington Post**  
**Plan B Use Surges, And So Does Controversy**  
**Friday, July 13, 2007**

Rob Stein; Washington Post Staff Writer

The popularity of the morning-after pill Plan B has surged in the year since the federal government approved the sale of the controversial emergency contraceptive without a prescription.

Plan B sales have doubled since the Food and Drug Administration authorized the switch for women 18 and older last August, rising from about \$40 million a year to what will probably be close to \$80 million for 2007, according to Barr Pharmaceuticals, which makes Plan B.

The sharp rise was hailed by women's health and family-planning advocates, who say it illustrates the value of easing access to birth control to help prevent unwanted pregnancies.

"This is exactly what we hoped would happen," said Susan F. Wood of the George Washington University School of Public Health. As assistant commissioner for women's health and director of the Office of Women's Health at the FDA, Wood pushed for the switch. "What we're seeing is women who needed this product now finally having access to it. For a woman in that position, it can make a real difference in her life."

But conservative groups that fought the change say they are disturbed by the surging use.

"This is very concerning," said Charmaine Yoest of the Family Research Council, which is among several groups suing the FDA to reverse the decision. "We think this is putting women's health at risk."

Plan B consists of higher doses of the hormones found in standard birth control pills. Taken within 72 hours of unprotected sex, Plan B has been shown to be highly effective at preventing pregnancies.

With strong support from women's health groups and family-planning advocates, Barr asked the FDA to allow Plan B's sale without a prescription so women would not have to overcome the obstacle of getting a doctor's permission before they could get the drug.

Conservative members of Congress and advocacy groups strongly opposed the move. They questioned the drug's safety and argued that easier availability could encourage sexual activity and make it easier for men to have sex with underage girls. They also

maintain the pill can cause the equivalent of an abortion.

The FDA delayed the move for three years despite endorsements by the agency's outside advisers and internal reviewers, leading to intense criticism that the agency was allowing politics to influence the decision.

The Aug. 25 ruling that finally permitted the change was criticized both by conservatives and by proponents, who were disappointed that the agency limited the easier availability to women 18 and older. The agency said there was too little safety data to approve the drug for teenagers younger than 18. The requirement means women must show proof of their age, which could make it more difficult for some women, such as illegal immigrants, to obtain the pill.

"There's no medical basis for restricting teenagers' access to emergency contraception," said Nancy Northup, president of the Center for Reproductive Rights in New York, which is suing the FDA to remove the age restriction. "This not about morality, it's about public health and cutting America's alarmingly high teenage pregnancy rates."

Advocates attribute the increased use despite the limitation both to the easier access and greater awareness of the drug's availability due to educational campaigns by family-planning advocates and media coverage of the controversy.

At the same time, Barr has been advertising Plan B in women's magazines and trying to educate pharmacists about the drug. More than 54,000 pharmacists have completed an online training program about Plan B.

"The impetus for us wanting Plan B to be made available over the counter was to increase women's access to the product. Even with this interim step, it appears that has enabled more women to have access," said Amy Niemann, Barr's senior vice president of proprietary marketing. "That's the good news."

The company would not release the actual number of units being sold for Plan B, which retails for about \$50.

Sarah, 27, a school counselor who lives in the District, was glad she did not need a prescription after the condom her boyfriend was using came off last month.

"I just went to the pharmacy, and it was so easy," she said, asking that her last name not be used. "It's a really good option."

Despite the change, Plan B remains the focus of intense debate, particularly over whether pharmacists who oppose its use on moral grounds should be required to provide it and whether Catholic hospitals should be required to provide women with either information about the drug or the medication itself.

Several states have passed laws either requiring pharmacists to provide Plan B or

protecting those who refuse. Fourteen states now require hospitals to provide women with information about emergency contraception or the medication. At least 19 other states are considering legislation, and a bill was recently introduced in Congress that would require pharmacies to make sure women get access to all forms of birth control, including Plan B.

Surveys and anecdotal reports indicate that some pharmacies refuse to stock the drug, some pharmacists refuse to provide it to women and some pharmacy workers mistakenly believe only the pharmacist can dispense the drug.

"Even though it's now available without a prescription, there are still significant obstacles that customers are facing around the country," said Ted Miller of NARAL Pro-Choice America, which has been surveying pharmacies around the country. "The over-the-counter access is not a cure-all."

Tashina Byrd, 24, said she was turned away by a pharmacist in Springfield, Ohio, in January after her fiance's condom broke and she tried to buy Plan B.

"He just laughed and told the attendant to tell me no one would give it to me," Byrd said. "I was enraged and humiliated."