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U.S. SUPREME COURT RULING RE INTERSTATE COMMERCE SPEAKS TO WV GENBIOPRO CASE

A law in California prohibits the sale of pork meat that is sourced from pigs that are “confined in a cruel manner.” The National Pork Producers Council sued, and the case went to the U.S. Supreme Court. In early May, the Court upheld the California law. “A six-justice majority held...that the law didn’t violate the commerce clause, because it didn’t unduly burden interstate commerce or discriminate against out-of-state pork producers.”¹

How might this affect a pro-life case in West Virginia?

West Virginia has banned almost all abortions. This means that, except in rare cases, the abortion drug mifepristone is not allowed to be sold in the state for the purpose of inducing abortions. GenBioPro Inc. makes a generic version of the drug. The company is suing the state of West Virginia, claiming that the state’s law violates a commerce clause by interfering with interstate sales of its product.

This month’s SCOTUS decision gave West Virginia’s pro-life lawyers a solid foothold in their assertion that the state’s law does not violate GenBioPro’s rights. States are allowed to ban items that are legal in other states (e.g., fireworks, plastic grocery bags, etc.). Even so, West Virginia has not banned mifepristone. Its legality is unchanged for circumstances that do not involve an unborn child. Neither is it banned as an abortifacient; rather, its use has been limited to the first eight weeks of pregnancies that resulted from sexual assault.

GenBioPro has asserted that the recent SCOTUS decision is not applicable to their case. But their argument rests on a gossamer claim that the pro-life community has repeatedly refuted: Namely, that abortion should be classified as “healthcare.” The reality is that abortion does *not* care for the health of the unborn child, and it *does* cause substantive risks for the mother.^{2,3} Nor do abortion laws interfere with genuine healthcare for mothers in circumstances such as miscarriage and ectopic pregnancy.³

“The pro-life community in West Virginia is hopeful that the recent SCOTUS ruling creates a precedent that will help uphold a legitimate state law that protects the safety of its residents,” said WVFL Program Director Alicia Martin.

End Notes

¹ Pazanowski, Mary Anne, Top Court’s Pork-Producer Ruling Could Affect Abortion-Pill Suit, May 22, 2023, <https://news.bloomberglaw.com/health-law-and-business/genbiopro-west-virginia-address-top-court-commerce-clause-case>.

² Risk After Abortion Data, <https://www.wvforlife.org/publications-current/>, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/<https://www.wvforlife.org/wp-content/uploads/sites/5/2022/12/Risk-After-Abortion.pdf>.

³ Reardon, Dr. David C., The Embrace of the Proabortion Turnaway Study: Wishful Thinking? or Willful Deceptions? The Linacre Quarterly, 2018, Vol. 85(3) 204-212, Catholic Medical Association 2018, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6161227/>.

⁴ The American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG.org), see statements and information at <https://www.AbortionIsNot.com>.

West Virginians for Life, the state affiliate of the National Right to Life Committee, is the state’s largest pro-life group with more than 30 local pro-life chapters. West Virginians for Life works through education, legislation, and political action to protect those threatened by abortion, infanticide, and euthanasia.