



FOR IMMEDIATE RELEASE | June 29, 2022

Delaware Department of Justice

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AG Jennings wins Seaford lawsuit *Chancery ruling invalidates illegal fetal tissue ordinance*

A fetal tissue ordinance enacted by Seaford City Council late last year has been overturned following a successful legal challenge by Attorney General Kathy Jennings and the Delaware Department of Justice.

The ordinance, enacted on December 14 with an original effective date of January 22, would have forced anyone who had a surgical abortion at an “abortion facility” or a miscarriage at a “health care facility” to have the fetal tissue interred or cremated at their own expense, despite the hardship on patients and clear preemption by State law.

In a ruling released Wednesday morning, Vice Chancellor J. Travis Laster of the Delaware Court of Chancery ruled that the City of Seaford, as a junior sovereign, cannot enact a law that conflicts directly with law established by the State as the senior sovereign.

“The U.S. Supreme Court has unleashed a wave of extremist, draconian laws across our country. That wave stops here,” said **Attorney General Kathy Jennings**. “This ruling firmly rejects a clearly illegal and harmful attempt to nullify State law and to use dark money to return us to the Dark Ages. It protects residents and visitors of Seaford from a cruel and frankly hateful policy. And it makes clear that Delaware remains a safe haven for choice and reproductive freedom exactly when those sanctuaries are needed most. I am grateful to the Court for its wisdom and to our team for their quick response and tireless work on this case.”

Jennings filed suit on January 11 after twice warning Seaford City Council that State law preempted the ordinance. Council passed the ordinance despite those warnings, with a promise that an anonymous outside donor would fund the defense against the State’s incoming lawsuit. The Court’s ruling awards costs to the State.

“Even after last week’s devastating Dobbs decision, abortion remains a codified right in Delaware,” said **Mike Brickner, executive director of the ACLU of Delaware**. “Yesterday, our General Assembly fortified that right by expanding access to abortion, and today, the Delaware Chancery Court also reinforced that right, making it clear that municipal attacks on our state-guaranteed right to abortion won’t stand. ACLU-DE applauds Attorney General Kathy Jennings, and her team, for their swift and effective legal action against Seaford’s city council to permanently block the city’s illegal fetal remains ordinance.”

“Planned Parenthood of Delaware is pleased with this decision,” said **Ruth Lytle-Barnaby, president and CEO of Planned Parenthood of Delaware**. “As we expected, Vice Chancellor Laster recognized state law forbids local regulations of the type the city attempted to pass. We are hopeful

that we can now focus on providing care to the Seaford area rather than defending ourselves against unnecessary, harmful, and legally questionable ordinances. Our sincere thanks go to the Department of Justice for their hard work on this case and their commitment to defending reproductive rights. PPDE will continue to offer top-notch care to all and to fight for your ability to receive sexual and reproductive health services.”

“This decision is a victory for women and for the rule of law in Delaware,” said **Melissa Froemming, president of Delaware NOW**. “We thank the Delaware Department of Justice for standing up for women in our state, and for fighting to ensure that women’s right to privacy and right to make decisions regarding their bodies remain protected. Our legislators have codified Roe — abortion is legal in Delaware — but legislators change. The Seaford ordinance and Friday’s *Dobbs* decision by the Supreme Court have reinforced the importance of protecting and expanding the right to abortion as health care in Delaware using every tool possible. We are grateful to have a champion in Attorney General Jennings.”

Since the DOJ’s arguments were premised on State law, the State’s case, and the Court of Chancery’s ruling, are unaffected by the U.S. Supreme Court’s recent ruling in *Dobbs v. Jackson Women’s Health Organization*.

The lawsuit against Seaford was led by Director of Impact Litigation Christian Douglas Wright with support from the attorneys and staff of the Fraud and Consumer Protection Division: Deputy Attorney General Vanessa L. Kassab, Assistant Attorney General Deepinder K. Goraya, and Paralegals Zuri Ramsey and Michele Porter.

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