As some state legislatures pass laws contradicting Roe v. Wade in the hope the Supreme Court will overturn the 1973 decision, all eyes are on anything the Supreme Court has to say about abortion.

In a per curiam (unauthored) opinion in a case decided without oral argument, Box v. Planned Parenthood, the Supreme Court held that Indiana’s law disallowing fetal remains to be incinerated along with surgical byproducts is constitutional. The Seventh Circuit had invalidated this provision.

According to the Court, Planned Parenthood didn’t argue that this provision of Indiana law creates an undue burden on a woman’s right to obtain an abortion. Had Planned Parenthood argued so and had the Court agreed accepted its argument, it would have applied a more rigorous legal test, less deferential to Indiana’s law. Applying “ordinary rational basis review” the Court concluded the law was “rationally related to legitimate government interests.” The Supreme Court had previously acknowledged that a state has a “legitimate interest in the proper disposal of fetal remains.” According to the Court, Indiana’s law is rationally related, if not “perfectly tailored” to that interest.

The Court didn’t decide whether Indiana may prohibit the “knowing provision of sex-, race-, and disability selective abortions by abortion providers.” The Court noted that only one federal circuit court of appeals has decided a case involving this issue. “We follow our ordinary practice of denying petitions insofar as they raise legal issues that have not been considered by additional Courts of Appeals.” The Seventh Circuit stuck down this provision and its ruling will remain in effect.

The decision in this case, unlike many per curiam opinions, wasn’t unanimous. Justice Sotomayor would not have decided either question in this case (allowing the Seventh Circuit’s ruling striking down both provisions to stand). Justice Ginburg dissented on the fetal remains issue and would not have applied rational basis review. But she agreed with the Court’s decision not to review the Seventh Circuit’s ruling on selective abortions.

Justice Thomas agreed with the Court’s ruling on the fetal remains issue and its decision to stay out of the selective abortion issue to allow it to further “percolate” in the lower courts. He wrote “this law and other laws like it promote a State’s compelling interest in preventing abortion from becoming a tool of modern-day eugenics,” and spent many pages describing eugenics.
Links