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Abortion

Trouble Down in Texas (and elsewhere)

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The US Supreme Court, on March 2nd, heard arguments in the case of Whole Women's Health vs. Hellerstedt. The judges will be deciding the constitutionality of a 2013 Texas bill (HB2) that places restrictions on clinics where abortions are performed â€" most within the first eight weeks of pregnancy.

Before the law was passed, Texas had 41 reproductive health clinics where abortions, contraceptives and tests for identifying cervical or breast cancer were offered. When the law first went into effect half shut down.

While the requirements were motivated by anti-abortion organizations and politicians, they were justified on the lying pretext of supporting women's welfare.

Since the 1973 Roe v. Wade decision established that women have the legal right to control their reproductive lives, the right wing has found that invoking support for women's health and safety is more effective that emphasizing fetal "rights."

HB2 requires that clinics must meet building specifications as if they were ambulatory surgical centers, and its doctors required to obtain admitting privileges at local hospitals. These unnecessary rules target only clinics where abortions are performed, not other medical clinics.

The fact is that these clinics have been operating safely under licensing requirements and annual inspections. Texas' solicitor General Scott A. Keller maintained HB2 was necessary for women's health and cited the statistic that annually 210 women (out of 72,500) suffer complications that required hospitalization. That means a complication rate of approximately three-tenths of one percent.

Before the new law eliminated a transfer agreement, women who needed to be hospitalized were able to receive the followup medical attention they needed.

Texas politicians, in passing the bill, hung their hat on the U.S. Supreme Court decision in 1992, Planned Parenthood v. Casey. This decision modified the Roe v. Wade decision by saying that since the state had an interest in unborn life, it could take certain steps to protect it, as long as it did not place an "undue burden" on a woman.

This decision opened the door to imposing mandated counseling (often with erroneous "facts"), a waiting period, and even banned a late-term procedure. The Casey decision allowed the state to persuade a woman to change her decision, but not to prevent her from exercising her rights. The right wing ran with that ruling, passing hundreds of laws that blatantly interfere with women's decisions.

Expert Opinions

Forty-five amicus briefs by a broad group of organizations and individuals â€" including leading medical experts, social scientists, legal experts, reproductive rights and other civil rights advocates â€" were submitted in opposition to the law. The briefs argued that neither requirement is medically necessary.

A dozen reproductive justice organizations highlighted the problems African-American women would face. Nine local and national Latina organizations explained how these restrictions reinforce barriers to Latina women's healthcare, violating the principle of human rights.

Legal and scientific experts pointed out that the acceptance of these restrictions by the Fifth Circuit's decision to uphold the law was in error. That court ruled that so long as "any conceivable rationale" for a regulation exists (even unsupported by data), judges should accept the justification.

The appeals court sharply disagreed with an earlier ruling, when Judge Lee Yeakel of the Federal District Court in Austin said the restrictions created not only an undue burden but "a brutally effective system of abortion regulation."

Many of the amicus briefs go beyond the issue of abortion to talk about the need for high quality women's health. Prominent historians argued that the court should carefully scrutinize abortion regulations in the light of a long history of "protecting women" as a pretext to deny them rights.

At the one-hour hearing in March, Justice Samuel A. Alito Jr. questioned whether the clinics had demonstrated they would be forced to close if the HB2 law was upheld.

But Justice Elena Kagan noted that 12 clinics did shut down when the law went into effect, reopening only when the ambulatory clinic portion of the bill was temporarily blocked. She remarked "it's almost like the perfect controlled experiment as to the effect of the law, isn't it?"

Justice Anthony M. Kennedy wondered, if the law were upheld, would the remaining clinics be able to handle that many abortions? But an even more important question is the one Kagan attempted to discover from a series of questions: What would happen to the 900,000 Texas women who live farther than 150 miles from a provider? Justice Stephen G. Breyer concluded that the consequence would be women dying of complications from self-induced abortions.

Shortly after the hearing Abby GoodÂ-nough's article "Under Texas Law, Women Pay More and Wait Longer for Abortions" ran in the New York Times (3/20/16).

She reported on the long drives, women sleeping in their cars in clinic parking lots, packed waiting rooms and â€" because of waiting for an appointment â€" more second-trimester abortion procedures. The dark side of the story is that with the closing of clinics near the Mexican border, more women attempt to induce abortions with herbs or misoprostol, a drug they can obtain across the border.

Justice Ruth Bader Ginsburg noted that even a woman who took an abortifacient pill early in her pregnancy would have to use an ambulatory surgical center (ASC), commenting "Even if a complication arises, it will be after the woman is back home."

Both Justices Sotomayor and Kagan commented that other, more risky procedures, such as dental surgery, liposuctions and colonoscopies, are safely performed in a doctor's office. Justice Stephen Breyer flatly remarked that he couldn't see any basis under which to uphold the restrictions.

High Stakes

If the U.S. Supreme Court were to split in a 4-4 decision, the Fifth Circuit Court ruling that the Texas law was constitutional would stand. It could also opt for putting a decision off to another term or send the case back to the lower court.

Given that there seem to be at least four votes to throw out the law, there is the possibility of a 5-3 decision, in which case it would be binding on the 24 other states with similar legislation. However, given the presence of at least three anti-abortion judges (Chief Justice John G. Roberts Jr., Judges Clarence Thomas and Samuel Anthony Alito, Jr.), it's unlikely that the court would rule that the undue burden standard adopted in 1992 is just a ruse.

From the moment Roe v. Wade was announced, the right has worked diligently to block access to abortion through hundreds of state laws. Many seek to ban abortion after 12-20 weeks, ban specific techniques used in second-semester abortion, prescribe how medical abortion can be performed, regulate clinics where abortions are performed, and demand that teenagers seeking abortion have secured parental consent.

Another set of laws that have been used to thwart first-trimester abortions have insisted that clinics use outdated protocols for an abortion-inducing drug. Ohio, North Dakota and Texas mandate that abortion providers stick to procedures adopted by the Food and Drug Administration in 2000. Arizona, Arkansas and Oklahoma passed similar laws that are pending legal challenge.

At the end of March the FDA approved an updated, evidence-based protocol that can be used up to 70 days after the beginning of the last menstrual period (instead of the earlier 49-day limit), and the second drug can be taken by a woman at home rather than being administered at a clinic.

Nancy Northup, president of the Center for Reproductive Rights, noted that this change "underscores just how medically unnecessary and politically motivated restrictions on medication abortion in states like Texas and Oklahoma truly are…."

Chris France, executive director of Preterm, Ohio's largest abortion provider, said that before the state's restrictive law was passed, 10-15% of patients elected a medication abortion; afterwards only 2% were able to obtain one.

France noted, "Combined with other restrictions in our state, medication abortion has required four-in-person clinic visits, making this method too costly and cumbersome for most people….Now our providers will no longer be forced to practice medicine mandated by politicians whose goal is to shut us down." ("FED OKs new label for abortion drug," Sean Murphy, Detroit News, 3/31/16)

Already the fight for medical abortion is being challenged â€" the Arizona legislature moved within days of the FDA decision to enact a measure that would limit its impact.

Between 2011 and 2015 state legislatures enacted 288 restrictions on abortion. Currently 57% of U.S. women live in a state that is hostile to womens' legal rights. Whenever abortion is illegal, some desperate women will choose self-induced abortion. It's way past time to end the use of women's bodies as a political football.

Donald Trump screwed up badly when he opined that "there must be punishment" for women who get abortions if they become illegal. Of course that's the real "right to life" agenda, but their political strategy depends on hiding it.

However, last year Indiana did sentence Purvi Patel to 20 years in prison on charges of feticide (causing the death of a fetus) and neglect of a dependent. Patel, who miscarried at six months, is the first woman in the country to be

charged, convicted and sentenced on a feticide charge.

Prosecutors claimed she delivered a live baby after ordering abortion-inducing drugs online and attempting to terminate her pregnancy. A toxicology report found no evidence of drugs in her system.

Lynn Paltrow, executive director for National Advocates for Pregnant Women. stated that “What this conviction means is that anti-abortion laws will be used to punish pregnant woman.”

The Journal of Health Politics, Policy and Law 2013 study on arrests and forced interventions on pregnant U.S. women found that approximately 71% were low-income women and 59% were women of color.

Ted Cruz, true to form as the most vicious rightwinger in the 2016 presidential race, has exposed his own lie of standing as a “Constitutional conservative.” He’s not content with stripping hundreds of thousands of women of the basic health services that they depend on Planned Parenthood to provide. In itself that’s a standard conservative policy, which of course would result in more â€” not fewer â€” abortions.

But Cruz goes further, saying that on “Day One” as president he’d “instruct the Justice Department to open a criminal investigation of Planned Parenthood.” No probable cause, just an open-ended witch hunt. That’s neither Constitutional nor conservative; it’s Richard Nixon’s Watergate White House â€” or perhaps in the context of the 2016 GOP presidential nominating contest, Cruz’s contribution to the remake of “Animal House.”

Women in the 1960s raised the slogan: “Our bodies, our lives, our right to decide.” The state’s job is to help make that dream come true, not block the way.

Against the Current

