

Justices agree to hear first abortion case since 2007

November 13 2015, by Mark Sherman

The Supreme Court is giving an election-year hearing to a dispute over state regulation of abortion clinics in the court's first abortion case in eight years.

The justices said Friday they will hear arguments, probably in March, over a Texas law that would leave about 10 abortion clinics open across the state. A decision should come by late June, four months before the presidential election.

The issue split the court 5-4 the last time the justices decided an abortion case in 2007, and Justice Anthony Kennedy is expected to hold the controlling vote on a divided court.

The case tests whether tough new standards for clinics and the doctors who work in them are reasonable measures intended to protect women's health or a pretext designed to make abortions hard, if not impossible, to obtain.

Texas clinics challenged the 2013 law as a violation of a woman's constitutional right to an abortion.

The high court previously blocked parts of the Texas law. The court took no action on a separate appeal from Mississippi, where a state law would close the only abortion clinic, in Jackson.

States have enacted a wave of measures in recent years that have placed

restrictions on when in a pregnancy abortions may be performed, imposed limits on abortions using drugs instead of surgery and raised standards for clinics and the doctors who work in them.

The new case concerns the last category. In Texas, the fight is over two provisions of the law that Gov. Rick Perry signed in 2013. One requires abortion facilities to be constructed like surgical centers. The other allows doctors to perform abortions at clinics only if they have admitting privileges at a local hospital.

Twenty-two states have surgical center requirements for abortion clinics, according to the Guttmacher Institute, which supports legal access to abortion. Eleven states impose admitting privileges requirements on doctors who perform abortions in clinics, the institute said.

The measures go beyond what is necessary to ensure patients' safety because the risks from abortions in the first trimester of pregnancy, when the overwhelming majority of abortions are performed, are minimal, the institute said.

Nancy Northup, president and CEO of the Center for Reproductive Rights, said Texas is one of several states that have enacted "sham laws" to restrict access to abortion." This law does not advance women's health and in fact undermines it," Northup said.

But National Right to Life president Carol Tobias said the clinics are more interested in preserving their cash flow than protecting women. "The abortion industry doesn't like these laws because abortion clinics would be forced to spend money to meet basic health and safety standards," Tobias said.

There is no dispute that the law has had a significant impact on Texas clinics. The state had 41 abortion clinics before the clinic law. More than

half of those closed when the admitting privileges requirement was allowed to take effect. Nineteen clinics remain.

Northup said the effect of the law has been to increase wait times for women in the Dallas area from an average of five days to 20 days.

The focus of the dispute at the Supreme Court is whether the law imposes what the court has called an undue burden on a woman's constitutional right to an abortion. If allowed to take full effect, the law would leave no abortion clinics west of San Antonio and only one operating on a limited basis in the Rio Grande Valley.

The state has argued that women in west Texas already cross into New Mexico to obtain abortions at a clinic in suburban El Paso.

In its decision in *Planned Parenthood v. Casey*, in 1992, the court ruled that states generally can regulate abortion unless doing so places an undue burden on women. *Casey* was a huge victory for abortion-rights advocates because it ended up reaffirming the constitutional right to an abortion that the court established in *Roe v. Wade* in 1973.

In 2007, a divided court upheld a federal law that bans an abortion procedure that opponents call partial-birth abortion and opened the door to new limits on abortion.

Kennedy was one of three authors of the *Casey* opinion and he wrote the majority opinion in 2007.

Public opinion polls have consistently shown a slight edge for abortion rights. Fifty-one percent of Americans think abortion should be legal in most or all cases and 45 percent think it should be illegal in most or all cases, according to an Associated Press-GfK poll in January and February.

The case is Whole Woman's Health v. Cole, 15-274.

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Citation: Justices agree to hear first abortion case since 2007 (2015, November 13) retrieved 3 May 2024 from <https://medicalxpress.com/news/2015-11-justices-abortion-case.html>

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