



The New Wave of State Laws Targeting Abortion Providers

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Across the United States, state legislatures are passing restrictions on abortion care at a dizzying pace. After Republicans made historic gains in the 2010 elections, GOP-led states passed a record 92 abortion-related provisions, a six-fold increase since 1985. And the pace of such enactments continues. In the first half of 2013, many states passed 43 laws restricting abortion – as exemplified in high-profile battles that played out in Texas, North Carolina, and Wisconsin.

Old and New Abortion Restrictions

The numbers of new restrictive laws are startling – but numbers alone do not tell the story. The kinds of legal restrictions currently being introduced and passed – not just in solid Republican states, but also in swing states like Pennsylvania and Virginia – are more consequential for abortion care than those passed in earlier years. The first generation of restrictions passed after the 1973 landmark Supreme Court decision in *Roe v Wade* usually focused on making it harder for individual patients to get abortions. They featured provisions such as waiting periods, and parental notification and consent laws for teens. The doctors and nurses that provided abortions were certainly inconvenienced by early laws. For example, they had to read to patients from government-imposed counseling scripts that contained blatantly untrue statements – such as discredited claims about links between abortion and breast cancer or infertility. Or providers were forced to describe the results of ultrasounds, whether women wanted to hear them or not. Laws frequently increased costs by requiring physicians to perform procedures technicians can safely do.

But disruptive as the early anti-abortion laws were, recent enactments are more devastating. Unless courts intervene, the new enactments can achieve the total closure of clinics that include abortion services in their offerings. ***State legislatures have fashioned two kinds of legal provisions that are virtually impossible for abortion doctors and clinics to meet.***

- ***Doctors who provide abortions through clinics are required to have admitting privileges in local hospitals.*** This sounds reasonable, until we realize that public protests surrounding abortion make hospital boards reluctant to accept abortion providers, and often force clinics to fly in doctors from out of town who do not have local admitting privileges. What is more, hospital admitting privileges are often granted only to doctors who guarantee at least ten admissions a year. But outpatient abortions are so safe that, as the director of the sole clinic serving the entire state of North Dakota explained, “If a doctor had ten hospital admissions a year, he or she would not be working here!” In fact, abortions are much safer than childbirth. Tellingly, other kinds of medical clinics are not subjected to this admitting requirement.
- ***Clinics that offer abortions are being required to conform to physical and staffing specifications tailored for ambulatory surgical centers.*** In addition to staffing rules that clinics argue are unnecessary, the new codes involve specifications for the width of hallways, the size of rooms for various procedures, and the size of closet for janitor supplies. Most existing clinics would have to spend millions on renovations to meet these rules, and already a number have had to close, for example, in Virginia and Pennsylvania. New Texas rules will reduce abortion clinics across that vast state from forty-two to just five, unless the courts intervene.

Anti-Abortion Forces are Flexing New Organizational Muscle

American public opinion about abortion and women’s right to make health care choices has not greatly shifted, and Republicans elected in 2010 said they would give priority to economic growth and jobs. The public is often skeptical of lawmakers who emphasize abortion. Indeed, recent polls revealed that even Texas Republicans feel their legislature is spending too much time on this issue. So why has there been such an outpouring of highly restrictive legislation?

Some would say that Republican-dominated legislatures focus on abortion because they do not favor active government steps to influence the economy. But in my assessment, the new wave of tough and targeted abortion restrictions reflect the electoral strength of the national anti-abortion movement and its growing capacity to provoke competition between states and among Republican officeholders. Many of the restrictions currently being enacted have been drafted by a Washington-based group called Americans United for Life that distributes model legislative provisions to conservative politicians in many states. In turn, this advocacy group ranks the states according to their success at imposing abortion restrictions. As one Americans United official recently told *Bloomberg BusinessWeek*, "People come to us and say, 'What else do we need to do to boost our ranking?'" Similarly, state-level anti-abortion groups "score" each abortion vote taken by individual legislators, and any Republican who does not vote correctly, especially on major restrictions, is likely to face a primary challenger.

What Comes Next?

What are the prospects for maintaining access to legal abortion in the United States? The answer depends on both judicial decisions and social movements.

The Supreme Court promulgated a constitutionally protected right to choose abortion up through 24 weeks of pregnancy. For years, the Center for Reproductive Rights and the American Civil Liberties Union have mounted successful challenges to restrictions, especially to laws blocking abortions at various points of gestation before 24 weeks. But some lower courts have already permitted the new surgical facility requirements, and the ultimate judicial fate of the hospital admitting rule is unclear. If the admitting requirement is not blocked by the courts, North Dakota and Mississippi are two states where the only clinic offering abortion services will have to close.

From the perspective of organizations and movements fighting to protect abortion rights, there is some good news. The new restrictions are not only extreme; they have often been engineered in sudden, shady and highly polarizing moves that provoke public skepticism and mobilize advocates of abortion rights. Think of the massive protests surrounding Texas state Senator Wendy Davis's extraordinary filibuster, when the state legislature pushed draconian restrictions at the eleventh hour; and note the plummeting popularity of North Carolina officials who have incorporated new abortion restrictions in bills ostensibly about other topics. Perhaps the long-dormant abortion rights movement will again become a major force. But tough new legal restrictions are now on the books, so practical access to abortion services remains in doubt in many states.