US Supreme Court refuses to block Texas anti-abortion law, declines to hear NSA surveillance case

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The Supreme Court on Tuesday refused to block a reactionary Texas law imposing arbitrary restrictions on abortion clinics, while on Monday it declined to hear a case challenging NSA surveillance.

In *Planned Parenthood of Greater Texas v. Abbott*, the Supreme Court denied an application by a group of health care providers and doctors who sought to halt the implementation of Texas anti-abortion legislation.

In July, federal district judge Lee Yeakel entered an order enjoining enforcement of the Texas legislation on the grounds that it is "without a rational basis and places a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." The Fifth Circuit Court of Appeals, at the request of attorneys for the state of Texas, issued a stay preventing Lee Yeakel's order from going into effect while their appeal is being decided. The Supreme Court refused to modify the Fifth Circuit's stay, so for all practical purposes, the Supreme Court's decision clears the way for the Texas law to go into effect.

The Texas law bans abortions after 20 weeks of pregnancy and imposes new and arbitrary restrictions on abortion providers beginning in October 2014. The legislation—actually two additional amendments to existing Texas anti-abortion legislation—requires expensive mandatory facility upgrades for abortion clinics and requires that doctors performing abortions obtain hospital admitting privileges.

The cumulative effect of these arbitrary and vindictive provisions have resulted in nearly a third of the state's abortion clinics announcing plans to shut down—which is what the law was designed to accomplish.

According to ABC News, 12 Texas abortion providers have been unable to gain hospital access for their doctors as a result of the law. Taking these into account, only 20 abortion clinics would remain throughout the entire state of Texas, which comprises nearly twice the geographic area of Germany. Given that Texas has a population of 26 million, approximately one abortion clinic would remain for every 1.3 million people.

The issue in the case before the Supreme Court was whether the legislation should be prevented from going into effect while its constitutionality could be litigated in the Fifth Circuit. Accordingly, in declining to modify the stay, the Supreme Court did not actually render a decision as to the constitutionality of the Texas law. That decision is being left for the moment to the Fifth Circuit, which will determine the case on an expedited basis. The Fifth Circuit has already indicated that Texas is "likely to prevail on the merits," and the next hearing is scheduled for January.

Justice Antonin Scalia was joined by Chief Justice John Roberts and Justices Clarence Thomas, Samuel Alito, and Anthony Kennedy in refusing to modify the Fifth Circuit's stay on the grounds of "deference" to the lower court (decision available here).

"Reasonable minds can perhaps disagree about whether the court of appeals should have granted a stay in this case. But there is no doubt that the applicants have not carried their heavy burden of showing that doing so was a clear violation of accepted legal standards—which do not include a special 'status quo' standard for laws affecting abortion," Scalia wrote in his opinion.

Supreme Court Justice Stephen Breyer, whose dissenting opinion was joined by Justices Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan, noted that allowing the law to go into effect "seriously disrupts [the] status quo." Specifically, Breyer observed that, as a direct result of the implementation of the reactionary law, residents of 24 Texas counties will be immediately left without access to abortion clinics. Breyer noted one estimate that 20,000 women in Texas would be denied access to abortion as a result of the law, and concluded that "the balance of harms tilts in favor of" those challenging the stay.

"I would maintain the status quo while the lower courts consider this difficult, sensitive, and controversial legal matter," Breyer wrote, citing "public interests." Scalia responded: "Many citizens of Texas, whose elected representatives voted for the law, surely feel otherwise. But their views go un-acknowledged by the dissent...."

The Supreme Court recognized in *Roe v. Wade* (1973) that abortion is a fundamental constitutional right.

Unable to directly outlaw the procedure itself, state legislatures are attempting to force abortion providers to shut down by imposing onerous restrictions and regulations, thereby preventing women from having the ability to exercise their rights. In addition to Texas, the states of Ohio, West Virginia, North Dakota, Iowa, Oklahoma and Kentucky have all seen recent legislative efforts to limit access to abortion.

A Kansas law adopted in the spring of this year defined the moment of "fertilization" as the beginning of life, laying the basis for further attacks on the right to abortion. This measure was passed by the Kansas House of Representatives 90 to 30. The bill further restricted distribution of educational materials regarding human sexuality and sexually transmitted diseases, and prohibited women and families from deducting abortion expenses from their income taxes.

The impact of the Texas law will be disproportionately felt in the working class. Rich women, of course, will have the resources to travel to obtain the procedure. Meanwhile, the prohibitive costs and other arbitrary restrictions will effectively cut off access for many working class women to the procedure, forcing many to risk illegal or unsafe alternatives.

Texas governor Rick Perry praised the Supreme Court's decision. "This is good news both for the unborn and for the women of Texas, who are now better protected from shoddy abortion providers operating in dangerous conditions. As always, Texas will continue doing everything we can to protect the culture of life in our state," Perry said.

The reactionary Texas law (and the Supreme Court's refusal to block it) represents a further step in the assault by the political establishment on the separation of church and state, as part of the ongoing attack on democratic rights in general.

Attacks on the separation of church and state have taken the form of open concessions to religion implemented in Obamacare regulations, the promotion of prayer at schools and at public functions, the establishment of special privileges for "faith-based" and religious organizations, and funding cuts designed specifically to target family planning services.

The attacks on the right to abortion are taking a toll. CDC statistics show that the abortion rate dropped 5 percent from 2008 to 2009. The average cost of an abortion is already between $350 and $500, and these rates will rise all the more rapidly as new arbitrary restrictions are imposed on abortion clinics.

NSA spying

In a routine order on Monday, the US Supreme Court exercised its discretion to decline to hear a petition from the Electronic Privacy Information Center (EPIC) that sought to challenge the collection of domestic telephone communications by the National Security Agency (NSA).

EPIC argued that "exceptional ramifications" generated by the NSA surveillance warranted immediate review of a decision by the Foreign Intelligence Surveillance Court (FISC) purporting to authorize certain aspects of the NSA domestic spying program. The Supreme Court declined to hear EPIC's case without providing any comment.

EPIC challenged the NSA's bulk data collection from sources including Verizon, Microsoft, Apple, Google, Yahoo and Facebook. These surveillance activities, which flagrantly violate the letter and spirit of the Fourth Amendment, have been purportedly authorized by the FISC from as early as 2006 (see "FISA court renews NSA spying program").

Described as a "parallel Supreme Court," the FISC convenes in secret, issues secret decisions on the basis of secret evidence and secret interpretations of the law, and only one side—the government side—is ever represented. An institution that would sit comfortably in the framework of any totalitarian police state, the FISC approves virtually all of the government's requests.

The EPIC Supreme Court petition sought to raise the issue of how the decisions of the FISC could ever be challenged, since only the government side is ever represented. The rejection of EPIC's petition can be interpreted as a signal that FISC decisions are not subject to challenge in the Supreme Court.

"The import of the Supreme Court's denial is both trivial and momentous," wrote CUNY law professor Ruthann Robson on her blog. "On the one hand, there is little if anything to be read into the Court's refusal to exercise its highly discretionary power to grant a petition for a writ as it does in 1 percent of cases. On the other hand, there is something to be inferred about the Court's interest in and willingness to supervise the unusual [FISC] given constitutional rights."

In response to EPIC's suit, the Obama administration had filed a response arguing that the FISC decisions were not subject to review by the Supreme Court in the form of EPIC's petition.

The American Civil Liberties Union has launched a similar challenge against the telephone surveillance, *ACLU v. Clapper*, which is currently pending before federal district judge William Pauley in New York.

The Obama administration has filed a motion to dismiss the case, which will be heard on November 22. Citing the recent Supreme Court decision in *Amnesty International v. Clapper*, Obama administration lawyers urged that the judicial branch should refuse "to review actions of the political branches in the fields of intelligence gathering and foreign affairs."