US appeals court upholds reactionary Texas anti-abortion law

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On Thursday, the Fifth US Circuit Court of Appeals upheld a reactionary anti-abortion law passed by the legislature of the state of Texas. The ruling represents a significant further attack on the principle of the separation of church and state and on basic democratic rights.

The case, *Planned Parenthood of Greater Texas v. Abbott*, involved a challenge by Planned Parenthood as well as other clinics, physicians, and patients to the Texas law on the grounds that it placed an "undue burden" on the basic right of women to obtain an abortion.

In a 34-page decision, a three-judge panel of the Fifth Circuit found that the Texas law did not constitute an undue burden: "Although some clinics may be required to shut their doors, there is no showing whatsoever that *any* woman will lack reasonable access to a clinic within Texas." This is a remarkable finding, considering that 11 of the state's 36 abortion clinics have been forced to close. This leaves only 25 clinics currently providing access to abortion in a state of 26 million people, which has roughly twice the land area of Germany.

After the remaining portions of the law go into effect in September, there are expected to be only six clinics that can remain open. Thus, according to the Fifth Circuit panel, six clinics in this vast area are sufficient to provide "reasonable access" to abortion.

The Fifth Circuit's decision (available here), authored by Circuit Judge Edith H. Jones, will likely be appealed to the Supreme Court.

The basic democratic right of access to abortion was recognized in the US Supreme Court case of *Roe v. Wade* (1973). The court held that a woman's right to an abortion fell within the right to privacy protected by the Fourteenth Amendment to the Constitution. The *Roe v. Wade* decision, which overturned attempts by Texas and Georgia to criminalize abortion, has been under sustained attack by right-wing and religious forces ever since.

The Texas anti-abortion law (also known as H.B. 2) is only the most brazen among a spate of attacks against the right to abortion at the state level. States like Mississippi and South Dakota have passed similar laws. The recent Texas law was passed despite significant popular opposition (according to one poll, only 38 percent of respondents supported stricter abortion laws), and was rammed through a special session of the legislature featuring dubious procedural maneuvers.

Because the state legislatures cannot directly abolish women's access to abortion in light of the *Roe v. Wade* decision, they are targeting for harassment the medical facilities that provide abortions. States are also singling out particular abortion procedures and medications for regulations. These state anti-abortion laws—couched in the language of protecting "women's health" and "patient safety"—are intended to regulate abortion out of existence by intimidating doctors and by imposing frivolous obstacles on the ability of women to exercise their rights.

One of the most infamous features of the Texas law is the arbitrary requirement that doctors cannot administer or perform abortions without obtaining admitting privileges at a hospital within 30 miles of their practice. This measure was opposed by both the Texas Hospital Association and the American Medical Association. Because many remote areas of the state are hundreds of miles from any such hospital, the law effectively forces the closure of abortion clinics across vast swaths of territory.

The law includes a battery of other restrictions, including the limitation of certain abortion medications to 49 days following a pregnant patient's last menstrual period. Another restriction requires women to see a doctor four times before taking the abortion pill RU486. All of these restrictions are supposedly justified by trumped-up concerns about "women's health."

The Texas state government, while it professes concern about "women's health" and "patient safety," presides over some of the worst social conditions in the country. According to a 2013 study by the Texas Legislative Study Group, Texas ranks among the worst out of all 50 states in terms of the percentage of individuals without health insurance, in terms of non-elderly women with health insurance, and in terms of the percentage of women with

first trimester prenatal care. While the state has among the highest rates of teen pregnancies in the country, the state promotes an "abstinence-only" approach to sex education without any mention of contraception.

The closures of abortion clinics will have the largest impact on the more rural areas of the state where women will now be forced to travel hundreds of miles and make overnight accommodations to try to get an appointment with one of the few massively overburdened clinics remaining. The east Texas city of Beaumont, for example, has had its only clinic shuttered, leaving a 150-mile stretch between Houston and the Louisiana border without any remaining clinics.

Similarly, the only remaining clinic in the south Texas town of McAllen has been forced to close. This leaves residents in the Rio Grande Valley, along the Mexican border with no option but to drive for four to five hours to larger cities such as San Antonio or Austin. The highways traveling north in these areas are dotted with Border Patrol checkpoints, placing undocumented women at a high risk of being detained just for attempting the trip.

The two facilities at McAllen and Beaumont alone used to see 3,000 patients annually before closing their doors.

In the more sparsely populated west Texas area, the situation is even more dire. The town of Lubbock has seen its Planned Parenthood facility, the only clinic in town that provided abortions, closed overnight as a result of the new law. Residents in the area will have to travel some 350 miles to the east to reach the nearest remaining Texas clinic in Dallas or decide to travel a comparable distance out of state to Albuquerque, New Mexico.

The Fifth Circuit accepts at face value the absurd claims that the law is not designed to obstruct access to abortions and is instead designed to "protect women." In fact, the Texas law is actually based on model legislation prepared by anti-abortion group Americans United for Life.

The Texas law was passed in July 2013. In October 2013, following a trial, a federal district court struck down the "admitting privileges" portion of the law, together with other provisions, on the grounds that they constituted an undue burden on the right to abortion and had no "rational basis."

On appeal, the Fifth Circuit granted a stay of the district court's decision, preventing it from going into effect. In November 2013, this stay was upheld on an emergency appeal to the Supreme Court in a 5-4 decision. (See "US Supreme Court refuses to block Texas anti-abortion law.") The Fifth Circuit decision Thursday reverses the district court's decision and upholds the Texas law.

Over the recent period, the government of the state of Texas has sought to place itself at the forefront of the social counterrevolution, opening up the state as a sort of laboratory for testing out the most provocative attacks on the social conditions of the working class. While they bang on their bibles and boast that the state has the most "business-friendly" climate in the nation, the Texas political establishment, dominated by the right wing of the Republican Party, ensures that the state also maintains among the highest poverty and illiteracy rates in the country.

Even before the passage of the anti-abortion law, the Texas legislature had already slashed funding for education and health care in general by billions of dollars, implementing some of the largest budget cuts in the country. The Republican-controlled state legislature, a den of backwardness and religious obscurantism, specifically targeted family planning and women's reproductive services for the harshest treatment.

The Fifth Circuit decision comes days after the Supreme Court entertained arguments on whether the federal Obamacare program must recognize a corporation's refusal to provide medical care for employees on religious grounds. (See "US Supreme Court hears corporate challenge to Obamacare contraception provision.") The Obama administration, throughout the implementation of its health care "reform," has kowtowed before the religious right, granting concession after concession to religion. (See "Obama caves in to Catholic Church, religious right on contraceptives.")

Democratic Texas state senator Wendy Davis—the state gubernatorial candidate whose filibuster of the Texas anti-abortion law last year drew praise from liberal and "left" circles—epitomizes the Democrats' prostration before the religious right. In an interview last month with the *Dallas Morning News*, Davis made clear that her differences with the anti-abortion law's supporters were not that fundamental. She stated that she opposes late-term abortions and that she would have supported the new law's complete prohibition of all abortions after 20 weeks of pregnancy, provided that adequate protections were given to the woman and her doctor. Davis claimed that the prohibition of abortions after 20 weeks of pregnancy was the "least objectionable" provision of the reactionary law.

Thursday's decision is a further blow to the right to abortion around the country, and it further emboldens those forces mounting a direct assault on the separation of church and state.