

Majority of Texas abortion clinics to close following court ruling

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Nearly two-thirds of abortion clinics in Texas were forced to close immediately following a federal appeals court decision Thursday. A three-judge panel of the US Fifth Circuit Court of Appeals ruled that the state could enforce its law requiring abortion clinics to be built to the same stringent standards as hospitals, forcing the closures.

Texas has 5.4 million women of reproductive age, ranking second of US states. The federal appeals court's ruling means that only eight clinics in Texas remain in operation—all of them in Houston, Austin, San Antonio and Dallas-Ft. Worth—while another 13 were shut down overnight. No abortion facilities will be open in south and west Texas, more than half the state's land area.

“Today's ruling has gutted Texas women's constitutional rights and access to critical reproductive health care and stands to make safe, legal abortion essentially disappear overnight,” said Nancy Northrup, president of the Center for Reproductive Rights, in a statement. The center sued Texas in April on behalf of a coalition of abortion clinics to stop the so-called ambulatory surgical center requirement.

The surgical standard requirement is part of Texas House Bill 2 (HB2), a sweeping piece of legislation that undermines women's access to abortion. Judge Lee Yeakel of the US District Court in Austin, Texas, ruled in late August that the surgical standard is unconstitutional because it places an undue burden on women seeking abortion services.

Yeakel said that the effect of clinic closures and the reduced geographic availability of clinics operates “just as drastically as a complete ban on abortion.” His ruling put the surgical center requirement on hold, allowing the state's 20-plus abortion clinics to continue operating while the state appealed the decision.

The district judge also blocked a requirement that doctors performing abortions have admitting privileges at local hospitals. In March, a different Fifth Circuit panel overturned this ruling, upholding the requirement as constitutional.

Before passage of HB2 by the Texas state legislature in 2013, the state had 41 facilities providing abortions. The bill cut that number nearly in half by restricting abortion rights in four ways:

- Nearly all abortions after 20 weeks of pregnancy are banned.
- Abortion-inducing drugs must be administered in the presence of a doctor. (Administration of drugs such as mifepristone can require three separate clinic visits.)
- All abortion clinics are mandated to have the same equipment and building requirements as ambulatory surgery centers, even if they only administer oral abortion drugs.
- Finally, the bill requires that physicians performing abortion procedures have admitting privileges within 30 miles of the clinic where they practice.

In its ruling Thursday, the New Orleans-based Fifth Circuit said the central question it considered was “whether the state has shown likelihood of success” in fighting Yeakel's ruling on the unconstitutionality of the ambulatory surgical-center provision. “We conclude that it has,” they wrote, calling Yeakel's decision “unclear” and “confusing.”

The court also sided with Texas state lawyers who said there was insufficient evidence that a “large fraction” of women seeking abortions would face an unconstitutional burden due to the clinic closures and surgical-center requirements. In fact, the decision could force nearly 1 million Texas women of reproductive age to drive a minimum of 300 miles round trip to access their constitutionally protected rights.

The Center for Republican Rights noted: “All Texas women have been relegated today to a second class of citizens whose constitutional rights are lesser than those in states less hostile to reproductive autonomy, and women facing difficult economic circumstances will be particularly hard hit by this devastating blow.”

Women forced to travel long distances and make multiple visits to clinics over several days will also be burdened with lodging costs. These financial burdens will fall particularly hard on working class and poor women.

The ruling was expected, since the Fifth Circuit is regarded as one of the nation’s most conservative appellate courts and has given Texas favorable rulings in the past in abortion cases. It was also somewhat unusual in a legal sense, as courts generally refrain from enforcing a law until an appeal is decided.

“This is not how courts operate,” Elizabeth Nash, senior state issues associate at the Guttmacher Institute, reproductive rights advocates, said in an interview with the *Los Angeles Times*. “If these clinics close immediately and are closed for any amount of time, it’s going to be very difficult to rebuild this system,” she said. “If this law is ultimately knocked down a year from now, reopening these clinics is going to be incredibly hard.”

The office of Texas Attorney General Greg Abbott, Republican nominee in the Texas governor’s race, praised the ruling: “This decision is a vindication of the careful deliberation by the Texas Legislature to craft a law to protect the health and safety of Texas women.” In fact, HR2 will undoubtedly lead to unwanted births and a return to back-alley abortions, posing a threat to the health and lives of Texas women.

The Fifth Circuit panel’s decision is temporary, and leaves open the possibility that the abortion clinics could reopen as the case proceeds. Abortion providers and their lawyers are considering all legal options, including an appeal to the full Fifth Circuit or the US Supreme Court.



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