US appeals court upholds sweeping Texas abortion restrictions

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A three-member panel of the 5th Circuit Court of Appeals ruled unanimously on Tuesday to uphold nearly all of the provisions of a reactionary Texas abortion law that severely restricts access to the procedure.

Since House Bill 2 (HB2) passed in 2013, about half of Texas's 40 clinics have shut down. If the ruling stands, abortion providers say another dozen could close in the next few weeks, leaving nearly a million women in the state at least 150 miles from the nearest abortion provider.

On Wednesday, a coalition of abortion providers asked the appeals court for a stay of its ruling so they can appeal the decision to the US Supreme Court, arguing that if the lower court's ruling goes into effect, clinics and women seeking an abortion would suffer "irreparable harm."

Under HB2's provisions, all abortions after 20 weeks of pregnancy are banned except in the case of rape or incest with a minor. Doctors who perform abortions must have admitting privileges at a hospital within 30 miles of the clinic, and clinics are required to have the same equipment and building requirements as ambulatory surgery centers, even if they only administer oral drugs.

In addition, abortion-inducing medications must be administered in the presence of a doctor, which would require most patients to visit clinics on numerous occasions. Women, particularly those in rural areas, would be forced to travel long distances, leading to delays in getting the procedure or making it impossible to obtain it at all.

The Center for Reproductive Rights, which filed the stay request with the 5th Circuit on behalf of Texas abortion clinics, stated in court documents, "Although abortion is safe throughout pregnancy, its risks increase with gestational age. As a result, women who are delayed in obtaining an abortion face greater risks than those who are able to obtain early abortions."

HB2 is among a host of anti-abortion laws in recent years in US states that seek to limit the constitutional right of women to an abortion as ruled by the US Supreme Court in *Roe v. Wade* in 1973. These efforts are part of a well-orchestrated campaign by the religious right and its political supporters to ultimately overturn the right to an abortion.

The 5th Circuit decision reverses a ruling by US District Court Judge Lee Yeakel last summer, which struck down the surgical center requirement statewide and the admitting privileges requirement for two facilities.

In 1992, the US Supreme Court in *Planned Parenthood v. Casey* upheld Pennsylvania's 24-hour waiting period, saying that such restrictions were constitutional unless they were an "undue burden" for women seeking abortions. In the ensuing decades, states have seized on this "undue burden" threshold to pass increasingly restrictive rules.

The three judges writing the 5th Circuit opinion—all of whom were appointed by George W. Bush—pointed to the *Casey* decision. They noted that the high court justices acknowledged that Pennsylvania's 24-hour waiting requirement would be "particularly burdensome" for poor rural women and would have "the effect of increasing the cost and risk of delay of abortions," but that this was not an "undue burden."

The 5th Circuit ruled that in most cases HB2 does not put an unconstitutional burden on women seeking abortions. They made only one exception for a remote clinic in McAllen, near the border with Mexico. However, that clinic's owner says the exception is so narrow that it may not be able to stay open.

Another part of the circuit court's ruling exposes the claim of HB2's supporters that the legislation is aimed at protecting the health and welfare of Texas women. The court ruled that it was acceptable for a clinic in El Paso to close, since women there can receive the procedure across the state line in New Mexico.

Stephanie Toti, a lawyer with the Center for

Reproductive Rights, which has challenged the Texas law, told National Public Radio, “The ruling is absurd because the court is essentially saying it you want to have an abortion you have to travel to other states that don’t have these laws.” She added, “The court is essentially recognizing that these laws don’t provide any health or safety benefit. The point is to try to make Texas an abortion-free state.”

The provisions in HB2 stand in sharp contrast to the views of a majority of Texans and will exacerbate the health care crisis and poverty conditions in the state if fully implemented. Texas, where schools are not required to teach sex education, has the fifth-highest teenage birth rate in the nation and the highest rate of repeat births among those aged 15 to 19.

At 16.2 percent in 2014, Texas had the fifth highest poverty rate in the US, behind the District of Columbia, Mississippi, Louisiana, New Mexico and Alabama, according to the US Census Bureau. A quarter of the nation’s low-income adults without insurance, more than a million people, live in Texas.

As HB2 was making its way through the Texas legislature in 2013, a poll by Greenberg Quinlan Rosner found that 63 percent of registered voters believed the state already had enough anti-abortion laws on the books, and 71 percent thought state politicians should be more focused on jobs and the economy than on policing women’s reproductive rights.

The Texas legislation demonstrates the extent to which the principle of separation of church and state has been eroded within the political establishment. Numerous anti-abortion statutes based on religious conceptions and pseudo-science have been placed on the books in states across the US in the four decades since *Roe v. Wade* in an effort to chip away at and ultimately dismantle women’s abortion and reproductive rights.

According to Guttmacher Institute, as of June 1, 2015, 19 states have laws in effect that prohibit “partial birth” abortion, a term not recognized by the American Medical Association.

A Kansas law adopted in 2013 defined the moment of “fertilization” as the beginning of life. The law also further restricted the distribution of educational materials on human sexuality and sexually transmitted diseases.

Parental involvement in a minor’s decision to have an abortion is required in 38 states. In 25 states, one or both parents must consent to the procedure, while 13 states require that one or both parents be notified.

Seventeen states mandate that women be given counseling before an abortion that includes information on at least one of the following: the purported and unproven link between abortion and breast cancer (5 states), the ability of a fetus to feel pain (12 states), or the long-term mental health consequences for the woman receiving an abortion (7 states). Texas already mandates that women seeking an abortion receive counseling in all three of these scientifically unfounded categories.

While these laws have generally been spearheaded by the Republican Party, the Democrats—and the Obama administration, in particular—have continually sought to accommodate the religious right on abortion rights, contraception and other issues.

The Supreme Court is expected to indicate next week whether it will hear two abortion-related cases: Mississippi’s appeal of a federal court ruling that it cannot force the closing of the state’s only abortion clinic, and a North Carolina appeal of a federal ruling striking down a law that requires abortion providers to describe the fetus to a woman during a mandatory ultrasound.

It is unclear whether the high court will take on the appeal of the 5th Court’s ruling on HB2. If it does not, the reactionary provisions of the Texas law will be implemented in full, resulting in undue hardship for women in the form of unwanted pregnancies, births and associated medical conditions and deaths. Working class women, and those in rural areas, stand to be most affected, while wealthy women will continue to have access to abortions and the best reproductive medical care.