Access to Abortion Falling as States Pass Restrictions

By ERIK ECKHOLM
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A three-year surge in anti-abortion measures in more than half the states has altered the landscape for abortion access, with supporters and opponents agreeing that the new restrictions are shutting some clinics, threatening others and making it far more difficult in many regions to obtain the procedure.

Advocates for both sides are preparing for new political campaigns and court battles that could redefine the constitutional limits for curbing the right to abortion set by the 1973 Roe v. Wade decision and later modifications by the Supreme Court.

On Monday, in a clash that is likely to reach the Supreme Court, a federal appeals court in New Orleans will hear arguments on a Texas requirement that abortion doctors have admitting privileges at local hospitals — a measure that caused one-third of the state’s abortion clinics to close, at least temporarily.

Advocates for abortion rights, taking heart from recent signs in Virginia and New Mexico that proposals for strong or intrusive controls may alienate voters, hope to help unseat some Republican governors this year as well as shore up the Democratic majority in the United States Senate.

Anti-abortion groups aim to consolidate their position in dozens of states and to push the Senate to support a proposal adopted by the Republican-controlled House for a nationwide ban on most abortions at 20 weeks after conception.

“I think we are at a potential turning point: Either access to abortion will be dramatically restricted in the coming year or perhaps the pushback will begin,” said Suzanne Goldberg, director of the Center for Gender and Sexuality Law at Columbia University.

The anti-abortion groups, for their part, feel emboldened by new tactics that they say have wide public appeal even as they push the edges of Supreme Court guidelines, including costly clinic regulations and bans on late abortions.
“I’m very encouraged,” said Carol Tobias, president of National Right to Life. “We’ve been gaining ground in recent years with laws that are a stronger challenge to Roe.”

“I think it is more difficult to get an abortion in the country today,” she said.

The new laws range from the seemingly petty to the profound. South Dakota said that weekends and holidays could not count as part of the existing 72-hour waiting period, meaning that in some circumstances women could be forced to wait six days between their first clinic visit and an abortion.

Laws passed last year by Arkansas and North Dakota to ban abortions early in pregnancy, once a fetal heartbeat was detected, were hailed by some as landmarks if quickly rejected by federal courts. But bans on abortion at 20 weeks, also an apparent violation of constitutional doctrine, remain in force in nine states.

In Roe and later decisions, the Supreme Court said that women have a right to an abortion until the fetus is viable outside the womb — at about 24 weeks of pregnancy with current technology — and that any state regulations must not place an “undue burden” on that right.

In 2013 alone, 22 states adopted 70 different restrictions, including late-abortion bans, doctor and clinic regulations, limits on medication abortions and bans on insurance coverage, according to a new report by the Guttmacher Institute, a research group that supports abortion rights.

Anti-abortion legislation in the states exploded after the major conservative gains in the 2010 elections, the report said, resulting in more than 200 measures in 30 states over the last three years.

Americans United for Life, an anti-abortion group, has a similar count, describing the flood of new laws as “life-affirming legislation designed to protect women from the harms inherent in abortion.”

Twenty-four states have barred abortion coverage by the new health exchanges and nine of them forbid private insurance plans, as well, from covering most abortions.
A dozen states have barred most abortions at 20 weeks of pregnancy, based on a theory of fetal pain that has been rejected by major medical groups. Such laws violate the viability threshold and have been struck down in three states, but proponents hope the Supreme Court will be open to a new standard.

A partial test is expected this month, when the Supreme Court announces whether it will hear Arizona’s appeal to reinstate its 20-week ban, which was overturned by federal courts.

Many legal experts expect the court to decline the case, but this would not affect the status of similar laws in effect in Texas and elsewhere. Still, those on both sides are watching closely because if the court does take it, the basis of four decades of constitutional law on abortion could be upended.

“If they take the Arizona case, it seems like at least four of the justices are willing to reconsider the viability line as the point at which states can ban abortions,” said Caitlin Borgmann, an expert on reproductive rights at the City University of New York School of Law.

The many strands of attack came together in Texas, which in a tumultuous special session in July required doctors performing abortions to have local hospital admitting privileges, imposed costly surgery-center standards on abortion clinics, sharply limited medication abortions and adopted a 20-week ban.

The admitting privileges requirement immediately forced about one-third of some 30 clinics in the state to stop performing abortions and left much of South Texas without any abortion clinics.

A federal judge called the rule medically unnecessary and halted enforcement, but the state appealed successfully to the United States Court of Appeals for the Fifth Circuit to reinstate it pending a trial.

On Monday, that appeals court, in New Orleans, will hear arguments. The case against the rule, being argued by groups including Planned Parenthood, the Center for Reproductive Rights and the American Civil Liberties Union, was supported in a brief by the American Medical Association and the American College of Obstetricians and Gynecologists, which said it served no valid purpose.
Texas officials asserted that the requirement promotes safety and that any burdens on women have been exaggerated. Some Supreme Court justices have already said that they expect eventually to hear the case.

Courts have temporarily blocked similar admitting-privilege requirements in Alabama, Mississippi, North Dakota and Wisconsin.

Another provision of the Texas law with potentially vaster impact, set to take effect in September, imposes surgery-center standards for clinics, even those that perform only the safest early-stage procedures or nonsurgical medication abortions. The requirement could leave the state with as few as eight abortion centers, according to Planned Parenthood.

“Any one of the restrictions passed in the last several years would be bad, but taken together, we are witnessing a catastrophe for Texas women,” said Cecile Richards, president of the Planned Parenthood Federation of America.

Amid all the setbacks, abortion rights groups say they see encouraging signs.

A referendum to impose a 20-week ban in Albuquerque was defeated. Although Texas adopted some of the country’s most stringent controls, State Senator Wendy Davis’s filibuster in June energized women and led to her campaign for governor.

In Virginia, these groups say, Attorney General Kenneth T. Cuccinelli II’s strong anti-abortion stance became a liability, contributing to his defeat in the governor’s race.

“I honestly believe we have shifted the momentum,” said Ilyse Hogue, the president of Naral Pro-Choice America.

Ms. Hogue predicted that candidates less hostile to abortion rights would put up strong races against Republicans running for governor in, for example, Ohio, Michigan, Wisconsin and Kansas.

Ms. Tobias, of National Right to Life, responded, “The other side is getting more people activated, but so are we.”

The proliferation of state restrictions is recreating a legal patchwork.
“Increasingly, access to abortion depends on where you live,” said Jennifer Dalven, director of the reproductive freedom project at the American Civil Liberties Union.

She added, “That’s what it was like pre-Roe.”