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STATE RESTRICTIONS ON ABORTION: ADMITTING PRIVILEGES AT ISSUE

Forty years after the U.S. Supreme Court issued *Roe v. Wade*, legalizing abortion throughout the nation, significant changes to abortion laws are being implemented at the state level. Opponents of the practice have been moving to enact restrictions through state legislatures, and Wisconsin has become a center of controversy. In 2013, the Wisconsin Legislature passed a bill that requires a woman to receive an ultrasound prior to an abortion, and requires the physician who is performing the abortion to have admitting privileges at a nearby hospital. After passage and enactment, health care providers immediately challenged the new law in federal court, which placed parts of it under injunction until trial in May 2014.

2013 WISCONSIN ACT 37

Senator Mary Lazich introduced 2013 Senate Bill 206 on June 4, 2013. It passed along partisan lines in both houses and was signed into law by Governor Scott Walker on July 5, 2013. 2013 Wisconsin Act 37 requires a woman seeking abortion services to undergo an ultrasound procedure, in which she is made aware of the health of the fetus, both visually on screen and orally by her physician. The ultrasound requirement does not apply to victims of rape. This portion of Act 37 has not been challenged, but is criticized by pro-choice advocates who cite a recent study that claims an ultrasound makes little difference in a woman's decision to proceed with an abortion. Twenty-three states have passed laws relating to ultrasound requirements.

The section of Act 37 currently under injunction involves the qualifications of the physician performing an abortion. According to the law, a physician must have admitting privileges at a hospital within 30 miles of the facility where he or she performs the abortion. "Admitting privileges" refers to the right of a physician to admit a patient into a specific hospital for treatment.

Proponents of the law cite the safety of the patient in the case of complications from the procedure, which may require emergency action and access to a nearby hospital. Opponents of the law claim it is a backdoor effort to shut down abortion clinics without outlawing abortion outright.

Planned Parenthood sued in federal court, obtaining a temporary restraining order (later converted to a preliminary injunction). According to court documents, Planned Parenthood operates three health centers in Wisconsin that provide abortions, in Appleton, Madison, and Milwaukee, while another plaintiff also provides abortion services in Milwaukee. Opponents of the 30-mile requirement claim that the law will force at least two of these facilities to shut down, because their physicians have not attained admitting privileges at nearby hospitals. They argue that the law places an undue burden on abortion providers, as well as on the women seeking access to those services, and would eliminate access to abortion providers in the area of the state north of Madison and Milwaukee.

The preliminary injunction was challenged by the state's attorney general and affirmed by the Seventh Circuit Court of Appeals in December 2013. In March 2014, the state petitioned the U.S. Supreme Court to review the appeals court decision. The federal district court has scheduled a trial on the law itself at the end of May 2014.

FEDERAL CASES IN OTHER STATES

Similar laws relating to an admitting privileges requirement were passed in Alabama, North Dakota, and Texas during 2013. The legislation is said to be modeled on a Mississippi law enacted in 2012. Cases are currently making their way through federal courts over these laws. The North Dakota lawsuit was settled in March 2014, after doctors working at an abortion clinic were granted admitting privileges to a nearby hospital in Fargo. A nonjury trial on Alabama's law will be held in mid-May. The trial will focus on due process rights of women seeking abortions.

Mississippi's law would effectively cut off access to legal abortion services in the entire state, because local hospitals have refused to grant admitting privileges to doctors at the state's only abortion clinic; a federal judge allowed the law to take effect after a lawsuit was filed, but also allowed the clinic to stay open while it tries to comply with the law. Oral arguments in the case are expected to be heard in late April 2014.

In the Texas case, the Fifth Circuit Court of Appeals ruled in late March that the law does not pose an undue burden on women seeking an abortion. Plaintiffs had argued that some patients would have to travel 150 miles to the nearest abortion clinic. According to the *New York Times*, 24 clinics were still operating in Texas after the law took effect. Texas and Mississippi are in the same federal circuit. It is expected that at least one of the cases described above will be appealed to the U.S. Supreme Court.

ABORTION-RELATED STATE PROPOSALS

Other measures have been introduced in the Wisconsin Legislature during the 2013 session on the wider debate around abortion. They include a joint resolution that would amend the state constitution to include words related to "the right to life" as applied to "every human being at every stage of development." 2013 Assembly Joint Resolution 49, often referred to as the "personhood" amendment, would declare rights for the unborn. The proposal has been in the Assembly Committee on State Affairs and Government Operations since its introduction in August.

2013 Assembly Bill 216 would prohibit the state's Group Insurance Board from entering into a contract for group insurance that provides abortion services. This bill would also exempt religious employers, institutions, or organizations from insurance coverage of contraceptives. The bill passed the assembly, with one amendment, on June 13, 2013, by a vote of 58-39. The Senate Committee on Health and Human Services recommended it for passage, but it was not taken up by the full senate.

A bill also passed by the assembly on June 13, 2013, would create a civil liability for performing a sex-selective abortion. 2013 Assembly Bill 217 would allow a mother, father, or grandparent of an unborn child to sue the individual performing a sex-selective abortion for compensatory damages, exemplary damages up to \$10,000, and attorneys' fees. The bill passed 58-39 and was also recommended for passage by the Senate Committee on Health and Human Services but did not get to the senate floor.

A bill that has remained in the Assembly Committee on Criminal Justice would prohibit the sale and use of fetal body parts that are the result of an induced abortion. Current federal law prohibits the sale of fetal tissue. No public hearing has been scheduled for 2013 Assembly Bill 224. The same committee has

not held a hearing on 2013 Assembly Bill 252, which would require a physician performing an abortion to arrange for the final disposition of the fetal remains, and would define fetal remains as a fetus at 10 weeks gestation or at a specific stage of development of the skeletal structure. With the end of regular legislative business in early April 2014, these measures are expected to expire with the session.

Wisconsin still has a statute that makes performing an abortion a felony, Section 940.04, Wisconsin Statutes, but the *Roe v. Wade* decision in 1973 rendered it unenforceable. The last attempt to repeal the statute section was during the 2007 legislative session.

RESOURCES

“Court Panel Upholds Texas Law on Abortion.” *New York Times*. Accessed March 27, 2014.

Grovum, Jake. “Fight Over Abortion Rules Could Reverberate Widely.” *Stateline*. Accessed April 16, 2013. <http://www.pewstates.org/projects/stateline/headlines/fight-over-abortion-rules-could-reverberate-widely-85899468604>.

Guttmacher Institute: www.guttmacher.org.

- “Targeted Regulation of Abortion Providers.” *State Policies in Brief*. Accessed March 27, 2014.
- “Requirements for Ultrasound.” *State Policies in Brief*. Accessed March 27, 2014.

Milwaukee Journal Sentinel: link to injunction order issued by Western District of Wisconsin, case 13-cv-465-wmc, <http://media.jrn.com/documents/Order++granting+Injunction+070813.pdf>.

Mississippi House Bill 1390 (2012) at: <http://billstatus.ls.state.ms.us/2012/pdf/history/HB/HB1390.xml>.

National Women’s Law Center: www.nwlc.org.

- “2013 State Level Abortion Restrictions.” *Fact Sheet*. Last updated January 2014.

“Relationship Between Ultrasound Viewing and Proceeding to Abortion.” *Obstetrics and Gynecology* 123, issue 1 (January 2014): 81–87.

2013 Wisconsin Act 37 at: <http://docs.legis.wi.gov/2013/related/acts/37>.