

Texas Abortion Law to Be First Major Test of 8-Member Supreme Court

The Supreme Court was set to hear its first abortion rights case in nearly a decade on Wednesday as it weighs a Texas law that the state contends protects a woman's health but abortion providers assert is aimed at shutting down their clinics.

Eight justices will hear the case, not the usual nine. The Feb. 13 death of conservative Justice Antonin Scalia, who opposed abortion and backed restrictions on it, means the court no longer has five conservatives who might support more restrictive abortion regulations nationwide.

The court potentially could split 4-4, with its four liberal justices opposing the abortion restrictions and its four conservatives backing the regulations, an action that would let stand a lower-court ruling that affirmed the Texas law but would not set a nationwide legal precedent.

There is also a chance that conservative Justice Anthony Kennedy, who often casts the deciding vote in close cases, could join the liberals for a majority invalidating the law, or parts of it. Kennedy in past cases has supported a fundamental right to abortion but has endorsed restrictions including bans on a late-term abortion procedure.

The 2013 Texas law, adopted by a Republican-led legislature and signed by a Republican governor, requires abortion doctors to have "admitting privileges" at a hospital within 30 miles (48 km) of the clinic so they can treat patients needing surgery or other critical care.

Because this formal hospital affiliation is not easy to obtain, abortion providers say it has already prompted clinics

to close.

The abortion providers also are challenging provisions in the law, not yet in effect, that mandate that clinics have costly, hospital-grade facilities with standards for corridor width, plumbing, parking spaces, room size, the spacing of beds and many other attributes.

Texas now has 19 abortion clinics, down from 41 just before the law passed.

The Supreme Court found a constitutional right to end a pregnancy in the landmark 1973 Roe v. Wade case. That decision was affirmed in 1992, as the justices ruled that any regulation must not impose an “undue burden” on women seeking an abortion.

At issue in Wednesday’s case is whether the Texas requirements violate that principle by putting a “substantial obstacle” in the path of a woman before a fetus becomes viable.

The clinics stated that complications rarely occur during abortions and the law provides no health benefits to patients. Texas contended that state legislators have considerable leeway to protect the health of women who seek to end a pregnancy.

A ruling is due by the end of June. The Supreme Court’s last major abortion ruling was in 2007 when it upheld a federal law banning a late-term abortion procedure.

© 2016 Thomson Reuters. All rights reserved.