

Will Supreme Court Side Pro-Life or Pro-Abortion?

A steady stream of **abortion** cases is heading toward the **Supreme Court**, making it only a matter of time before the justices are likely to consider a new wave of state restrictions.

Although the justices have refused to consider two major cases from Oklahoma in the past two weeks, more states are seeking the high court's blessing for restrictions that have been struck down by state and federal appeals courts.

As conflicting decisions at those courts pile up, it becomes more likely that the justices will agree to consider laws such as those banning abortions after 20 weeks, regulating the use of **abortion-inducing drugs**, imposing restrictions on clinics and doctors, and requiring that women receive counseling and testing before ending their pregnancies.

"It's a pivotal moment," says Caitlin Borgmann, a City University of New York law professor who writes a blog on reproductive rights. "The restrictions are now getting to a point where they're actually shutting down clinics."

The court already has on its January calendar a challenge to Massachusetts' 35-foot buffer zone around **abortion clinics**. Early next month, justices are likely to agree to consider another case, challenging the requirement under President Barack Obama's health care law that nearly all employers provide insurance coverage for contraceptives.

Those two cases represent conservatives' challenges to state and federal laws aimed at providing added protections for women's health. But the overwhelming majority of cases headed to the high court focus on efforts by states to restrict or limit **abortions**.

The court refused Tuesday to consider Oklahoma's appeal of a state **Supreme Court** ruling striking down a requirement that women have ultrasound tests performed, displayed and explained before getting abortions. But a North Carolina case working its way through lower courts eventually could reach the justices.

Last week, the court turned away another Oklahoma appeal of a state **Supreme Court** decision, striking down a law that restricts abortion-inducing drugs to the uses approved by the Food and Drug Administration. Because doctors prefer off-label uses in most cases, the law would have banned almost all medication abortions.

Whatever cases the justices ultimately agree to hear, they will offer the court a chance to clarify its 1992 ruling in *Planned Parenthood v. Casey*, which upheld abortion rights but gave states broader authority to impose restrictions such as 24-hour waiting periods and parental consent.

"The stakes have been ratcheted up," says Teresa Collett, a law professor at the University of St. Thomas in Minneapolis who had hoped to defend Oklahoma's mandatory ultrasound law at the Supreme Court. "The stakes are higher for both sides."

Since its landmark 1973 decision in *Roe v. Wade* established a woman's right to abortion, the Supreme Court has revisited the issue on a sporadic basis, and limits have increased.

A 1980 case restricted the use of Medicaid funds for abortions to cases involving rape, incest or the woman's health. *Casey* approved a range of restrictions in 1992. And in 2007, the justices upheld a federal ban on so-called **partial-birth abortions**, usually performed between 20 and 24 weeks of pregnancy.

Since then, state restrictions have multiplied. In 2011, 92 provisions passed in 24 states. Last year there were 43 more, according to a survey by the Guttmacher Institute, a sexual

and reproductive health think tank that supports abortion rights.

While opponents of **abortion** may be winning in state legislatures, backers of **abortion rights** have beaten back many of those laws in court. That has led state officials to appeal their cases to the Supreme Court in hopes that Justice Anthony Kennedy, who wrote the Casey opinion with two colleagues who have since retired, will side with other conservative justices and approve more restrictions.

“If the court decides to take an abortion case, it could certainly use the case to further elaborate on the standard that should be applied to evaluate abortion restrictions,” says Jennifer Dalvin of the American Civil Liberties Union.

Among the cases headed toward the high court:

- A Texas law banning most abortions from medications such as Mifepristone, also known as RU-486, and requiring doctors who perform abortions to get hospital admitting privileges. A district court judge struck down the hospital provision, but an appeals court said it could take effect pending the state’s challenge. That ruling has been appealed to the Supreme Court.
- An Arizona law banning most abortions after 20 weeks of pregnancy, by which point the fetus may feel pain. That is before the fetus becomes capable of surviving outside the womb, making it a direct challenge to Roe and Casey. Similar laws are being challenged in Idaho and Georgia.