

Abortion Rights in the United States

An Overview of Federal and State Law on Abortion Access

Maya Manian, JD
Professor

University of San Francisco School of Law

UCSF

University of California
San Francisco

advancing health worldwide™

UCSF

 innovating education
in reproductive health

Introduction & Outline

I. Overview of the Constitutional Framework Regulating Abortion

- *Roe v. Wade*
- *Planned Parenthood v. Casey*

II. Overview of Federal and State Laws Restricting Abortion Access after *Casey*

- *Gonzales v. Carhart* & “Partial-Birth” Abortion Bans
- Bans on Abortion at 20 Weeks Post-Fertilization
- State Mandated Counseling & Waiting Period Laws
- “TRAP” Laws (Targeted Regulation of Abortion Providers)

III. Conclusion

I. The U.S. Supreme Court and Constitutional Protection for Abortion Rights

Roe v. Wade

410 U.S. 113 (1973)

- The constitution protects women's right to seek abortion care
- *Roe* grounded its decision in a line of “privacy” cases
- Abortion is a “fundamental right”
- Strict trimester-based framework for state regulation of abortion
 - No restrictions in first trimester
 - Restrictions protecting maternal health in second trimester
 - Ban on abortion allowed in third trimester as long as contains an exception to protect women's health

Planned Parenthood v. Casey

505 U.S. 833 (1992)

- A woman has a right to choose to have an abortion pre-viability (approximately 24 weeks into pregnancy)
- However, the State can put limits on abortion access pre-viability as long as the law does not pose an “undue burden” on a woman’s right to access abortion care
- An “undue burden” is a government regulation that has the “purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus” [*Casey*, 505 U.S. at 877]

II. Legal Restrictions on Access to Abortion After *Casey*

Legislation Restricting Abortion Access After *Casey*

- Reduced funding for abortion services
 - e.g. Hyde Amendment, restrictions on private insurance coverage
- Bans on types of abortion procedures
- Controlling information surrounding abortion care
- Bans on later abortions
- Burdensome regulations targeted solely at abortion providers and abortion facilities

Focus on Four Types of Laws Restricting Abortion Access

- “Partial-Birth” Abortion Bans
- Bans on Abortion at 20 Weeks Post-Fertilization
- State Mandated Counseling & Waiting Period Laws
- “TRAP” Laws (Targeted Regulation of Abortion Providers)

The Roberts Court



Gonzales v. Carhart

550 U.S. 124 (2007)

- Upheld Federal Statute banning “Partial-birth” Abortion
- The ban does not contain an exception to protect women’s health and applies to pre-viability abortions

Gonzales v. Carhart

550 U.S. 124 (2007)

- The “Partial-birth” Abortion Ban does not unduly burden women’s right to seek abortion care after the first trimester since other methods of abortion remain available
- A health exception is not required where there is “medical uncertainty” as to the need for the banned procedure, although the alleged medical uncertainty was heavily disputed

Bans On Abortion After 20 Weeks Post-Fertilization

- As of July 2014, nine states ban abortion at 20 weeks post-fertilization
- Nebraska: “The Pain-Capable Unborn Child Protection Act”
 - Total ban on abortion at 20 weeks post-fertilization
 - Health exemption only to avert death or “a serious risk of substantial and irreversible physical impairment of a major bodily function”
 - No exemption for other physical health risks, mental health, cases of rape or incest, or for lethal fetal anomalies

State Mandated Counseling and Waiting Period Laws

- 26 states mandate a 24- to 48-hour waiting period between state mandated counseling and the abortion
- Ten of these states require two separate trips to the abortion clinic

South Dakota State Mandated Counseling & Waiting Period

- South Dakota State Mandated Counseling:

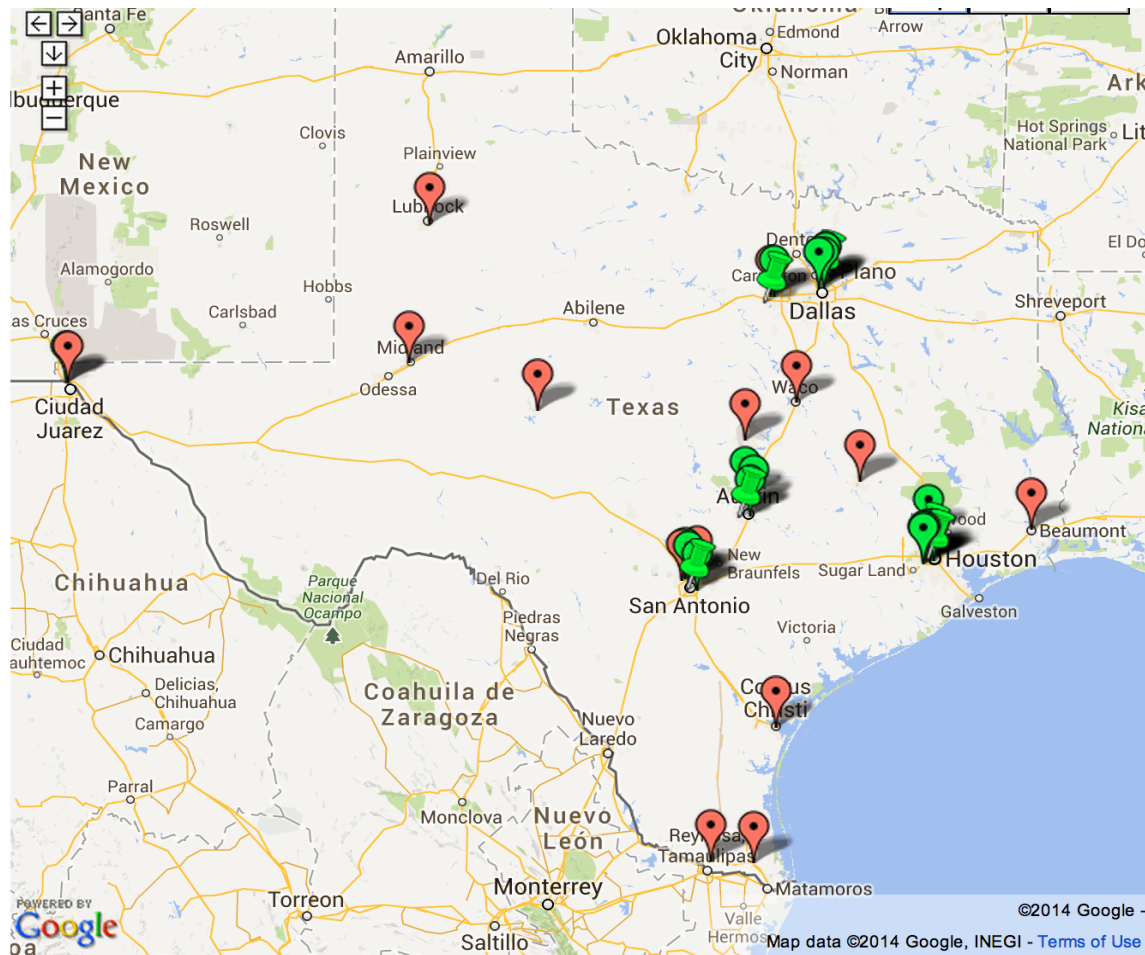
“Abortion will terminate the life of a whole, separate, unique, living human being” and may increase risk of suicide
- 72-hour waiting period [currently enjoined]




“TRAP” Laws

(Targeted Regulation of Abortion Providers)

- Burdensome regulations that go beyond what is medically necessary for safe abortion care
- Example: Admitting Privileges Requirements
 - » Mississippi (one clinic remaining)
 - » Texas (half of clinics closed)

Texas Abortion Clinics Map (2014)



-  **Open abortion clinic**
-  **Open ambulatory surgical center (ASC)**
-  **Closed abortion clinic (closed since HB 2 was passed)**

III. Conclusion

Summary of Constitutional Protection for Abortion Rights in the U.S.

- Pursuant to *Casey*, laws restricting access to abortion are constitutionally permissible prior to viability as long as they do not amount to an “undue burden” on a woman’s right to seek abortion care
- Numerous types of laws restricting access to abortion have survived constitutional challenge under the “undue burden” test
- These laws tend to particularly limit access to abortion for poor women who cannot afford to travel long distances for healthcare