

LOCAL // TEXAS POLITICS

# Unconstitutional anti-abortion law costs Texas another \$2.5 million

**Andrea Zelinski**

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WASHINGTON, DC - MARCH 2: Pro-choice advocates (left) and anti-abortion advocates (right) rally outside of the Supreme Court, March 2, 2016 in Washington, DC. On Wednesday morning, the Supreme Court will hear oral arguments in the Whole Woman's Health v. Hellerstedt case, where the justices will consider a Texas law requiring that clinic ...

Photo: Drew Angerer, Stringer / Getty Images

AUSTIN — As Texas defends abortion laws in federal court that mandate fetal burials and seek to outlaw certain medical procedures, the state has been ordered to pay pro-abortion attorneys \$2.5 million — fortifying women's reproductive rights groups that have repeatedly sued over restrictions passed by the state Legislature.

down as medically unnecessary and thus unconstitutional. The law, which was in effect for three years, required abortion providers to comply with all the regulations for ambulatory surgical centers, forcing many to undergo expensive renovations, and required their physicians to obtain admitting privileges at a nearby hospital.

The judge's order brings the state's total cost for defending those now-defunct pieces of the law to an estimated \$3.6 million.

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“Passing regulations that are blatantly unconstitutional, and then wasting people's resources to fight them, costs money and precious resources and time. And people are harmed in the process,” said Amy Hagstrom Miller, CEO of Whole Woman's Health, an abortion provider and lead plaintiff in the case who notes that half of the state's abortion clinics closed before the Supreme Court's 2016 ruling. “That is a precious resource of Texans' dollars being used toward that.”

Because the state lost the case, U.S. District Judge Lee Yeakel ruled it must pay the plaintiffs \$2,297,860 attorney's fees, \$170,142 in nontaxable expenses and \$95,873 in other costs. The amount represents nearly half of the \$4.7 million in costs the plaintiffs say they incurred preparing and trying the case. The Texas attorney general's office did not contest the judge's ruling.

The award for the opposing attorneys is more than double the nearly \$1.1 million the attorney general's office reported spending on its own attorney's salary, overhead, travel expenses and other costs associated with defending the law, according to open records obtained by the [Texas Tribune in 2016](#).

The attorney general's office declined to comment.

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years increasing regulations on abortion providers and patients, including mandatory ultrasound pictures of the fetus and required wait times before a woman can undergo the procedure.

The 2016 Whole Woman's Health v. Hellerstedt ruling was a landmark decision that reverberated across the country, changing the national debate about abortions as it affected some two dozens states that had or were considering comparable laws.

The Supreme Court ruled in favor of abortion providers in a 5-3 decision, deciding the regulations created a significant and unconstitutional obstacle for women seeking an abortion and nullified those parts of the law. The ruling set precedent that laws hindering women's access to abortion without providing health benefits will be found unconstitutional.

Not only did the court battle cost the state millions of dollars, but it also set back the anti-abortion movement by making it harder for states to pass certain regulations for abortion facilities without running afoul of the high court's decision, said Joe Pojman, executive director of the Texas Alliance for Life which advocates for stiffer abortion regulations.

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Anti-abortion advocates had miscalculated the leanings of the Supreme Court, he said. Since then, he said his group has resisted the urge to support far-reaching anti-abortion proposals in the Legislature in favor of others they believe would survive a federal court challenge.

Pojman said anti-abortion advocates need to think long-term if they want to overturn Roe v. Wade, which established legal precedent protecting a woman's right to an abortion. The long-time activist said he is not confident the makeup of the U.S. Supreme Court is favorable to overturning Roe v. Wade — but it could be in a few years.

“We are telling our people that they need to stay focused on re-electing President Donald Trump because he has a track record of nominating justices who are possibly willing to take an honest look at Roe v. Wade,” said Pojman.

Before the 2013 law was passed, women’s health advocates opposed lawmakers’ call for abortion clinics to resemble ambulatory surgical centers, saying the procedure does not require surgery or incisions, rendering it unnecessary to be performed in a space equipped like an emergency room. They also argued requiring abortion physicians to have admitting privileges at a hospital within 30 miles of the clinic was unnecessary because some women travel 100 miles or more for an abortion and return home afterward, making it more likely they would visit their local hospital if they experienced complications.

Although the Supreme Court struck down those parts of the law, nearly half of Texas’ abortion clinics – in both rural and urban areas – closed before the high court ruled. Of the 44 clinics open when the 2013 law was passed, 19 were open when the court ruled. Twenty-three abortion clinics are open today, according to the University of Texas at Austin’s Texas Policy Evaluation Project, which studies trends in the state’s abortion policies.

Women who live in West Texas and the Panhandle now face at least a 250-mile drive to the nearest abortion clinics in Fort Worth, Dallas, El Paso or others out-of-state, according to The Associated Press.

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were enacted but have been stayed by the courts.

One law passed in 2017 bans the use of a common second-trimester procedure known as dilation and evacuation, which anti-abortion advocates and the state refer to as “dismemberment abortions” and describe as gruesome and inhumane. Abortion advocates say the procedure is the safest and most common method of ending a pregnancy after 15 weeks. The case was heard in November and the court has yet to issue a ruling.

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Another law before the circuit court of appeals requires the burial or cremation of fetal and embryonic remains from abortions, miscarriages and ectopic pregnancies, regardless of the woman’s wishes or religious beliefs. The law does not apply to at-home abortions or miscarriages. Abortion providers argue the law creates an undue burden on women, although the state contends the law preserves the dignity of the unborn and will not increase the cost of an abortion. That case was heard by the court early this month.

“Those things really add up to give the message to women that their health care is somehow second class or don’t matter,” said Miller, of Whole Woman’s Health.

Texas lawmakers passed additional law targeting abortion in 2019. One sought to cut off funding to abortion providers by banning government agencies from contracting with them. Another created additional penalties for abortion providers to [fail to care for a baby](#) born following a botched abortion. Such births are extremely rare.

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