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Principles of Public Policy

Fall 2020

Dr. James

In-Class Activity

Abortion Law Case Study

Federalism's Role in Shaping Public Policy Making and Implementation in the States

Part 1:

Describe THREE abortion laws in ONE of the following states: Georgia, Alabama, Mississippi, Texas, or Ohio.

Texas

Law 1: Abortion is legal in Texas. Doctors are allowed to provide abortions if they have submitted the required certifications to the Texas Health and Human Services Commission. You have a constitutionally protected right to decide whether and when to become a parent, including the right to terminate a pregnancy. At the same time, while Texas cannot prohibit abortions outright, the state can impose some restrictions, which might make it more difficult or expensive [1]

Law 2: Texas bans abortions after 20 gestation, unless you have a life-threatening medical condition, or the fetus has a severe abnormality. Under Texas law, after 16 weeks gestation, your abortion can only be performed at an ambulatory surgical center or hospital.

Law 3: According to Texas law, the patient is required to make at least two trips to the abortion provider. Not only that, the state laws make it easy for the patient by informing them about the medical risks and development stages of the fetus, along with requiring them to undergo a sonogram.

Part 2:

For each of the three, is the law constitutional? (This may be your opinion based on our discussion of the undue burden standard or you may base your answer on federal or state court rulings.)

Law 1: This Texan law is constitutional. As long as the doctor performing the abortion has submitted the proper certifications, which should be required of anyone attempting to do any invasive procedure, they can perform the procedure on any consenting adult. In terms of the right to be or not be a parent, I believe that it is constitutional, and a given right due to the massive responsibility that is raising a child.

Law 2: At 20 weeks gestation the baby is about the size of a banana. I believe that this is completely constitutional. Besides the fact that you have had a lot of time to think about your decision at this time, the baby has mostly developed and can even hear and swallow. Unless there is a medical emergency, I agree that at this time period an abortion cannot be performed. The actual law states that abortion may not be done after 28 weeks of pregnancy but Texas limits it to 20 weeks, while that could be seen as unconstitutional, I believe that different states can put into play different rules on such topics.

Law 3: This law is the closest to undue burden. While it is completely constitutional and not a undue burden to make sure that the person receiving the abortion is completely informed on what is actually happening, the wait time seems to be a rule only to try to get the women to sit and think hard about what they are truly doing after receiving information from the sonogram and what the fetus is capable of doing at this stage in the womb. I also believe that it is good to offer the mother alternatives such as adoption services and let her know that there are other options.

Part 3:

How are the three laws that you described being implemented at the state level? (How do you think they are being implemented based on the descriptions of the law?)

Law 1: Though Texas cannot prohibit abortion outright, they can and do, in fact, impose restrictions. These restrictions generally make abortions more difficult to attain and are very expensive in Texas. For the first law, which is primarily about abortion facilities and practitioners, a certificate from the Texas Health and Human Services Commission needs to be obtained. Simply put, any facility or practitioner that want to perform abortions must be approved by the state and only by the state. Without the correct licensing or certification, these facilities will not

be permitted to practice abortions. This law is directly implemented by the state's health and human services committee, and they have the power to approve or disapprove these requests.

Law 2: In the state of Texas, abortions are not permitted after 20 gestations. After 16 weeks gestation, an abortion is only permitted in a surgical center, urgent care, or hospital. This law is implemented directly by specialists and doctors who can appropriately monitor the condition and the progress of the fetus. If these specialists permit the abortion, then they must provide proof and further evaluation of any defects or dangers to the carrier or the fetus. Doctors and abortion clinics are only sanctioned to provide legal abortions before the 16-week gestation period, if they violate these laws, then the practitioner and/or facility will be prone to legal disputes and possible sentencing by the state.

Law 3: The third law requires the carrier or person seeking an abortion to make two separate trips to the appropriate abortion provider. They must go through a sonogram and state-mandated paperwork containing information about the procedure, adoption alternatives, medical risks, and the fetus. After receiving the sonogram and state-mandated paperwork, they must wait 24 hours until the procedure. One effective way this law is being implemented is by requiring you to see the same doctor for the sonogram and the abortion. This means that you cannot go to a doctor to perform a sonogram and then schedule an abortion with a different provider. The state also requires you to schedule any follow-up appointments with the same doctor. The state law also mandates the doctor perform your sonogram to display the images, make any heartbeats audible, and verbally explain the results of the sonogram.

Part 4:

Overall, do the people have a voice in the policy making and/ or implementation process in the state that you were assigned? Explain.

I think people have a voice in the policy making and/or implementation process in Texas. Texas Abortion Law was first passed in the late 19th century, and there was also a time when abortion was banned and illegal. Doctors and women who participated in or helped during that time with abortions were punished. The late 20th century was the period of abortion reform in Texas. This also gave birth to the movement for sexual liberation and women's rights. Also, with the improvement of medical technology, people started paying attention to abortion law and started understanding the severity and consequences of it.

One of the most recent examples of how women raised their voice against it was by participating in a march in May 2019, supporting the abortion rights, namely "StoptheBans" movement [2]. In Texas, Jane's Due Process is an organization which has successfully assisted many minor women in the state who have gone through the process of abortion without parental consent [3]. This organization has made a statement by supporting fellow women who have had hard times. Not only that, since 1995, the Abortion Access Project has organized Rosie Jimenez

Day every October 3, as well as sponsored speak-outs and other events every year that month to remember her [4]. There have been countless protests and activities done to help anyone in need, which gives us a deep insight into how people have been raising their voices and fighting for their rights.

Even after abortion was legalized, some opponents of the law have been trying to overturn the decision. In 2013, Texas introduced a law banning abortions for women older than 20 weeks and placing restrictions on the clinics and doctors that perform the procedure. But around 2016, the 2013 law was overturned after protests, street demonstrations and lawsuits. The Supreme Court's decision has given a boost to those who believe abortion should be legalized.

Texas is the home to many abortion rights communities. People have raised their voices in support or in denial with the state laws. In short, I think the opinions of the people are indispensable in the process of the laws being overturned and established. Because only when supporters and opponents speak up and sue, and pass the Supreme Court's vote, can a bill finally be established.

References:

- [1]: "Texas Abortion Laws", FindLaw's team of legal writers and editors, 1 January 2020, <https://statelaws.findlaw.com/texas-law/texas-abortion-laws.html>
- [2]: Bloom, Marcy. "Remembering Rosie: We Will Not Forget You", Rewire, 3 October 2007, <https://rewirenewsgroup.com/article/2007/10/03/remembering-rosie-we-will-not-forget-you/>
- [3]: Co, Jackson. "In Good Faith", bitchMedia, 25 March 2019, <https://www.bitchmedia.org/article/in-good-faith/Christ-was-there-for-me-abortion/3>
- [4]: Bacon, John. "Abortion rights supporters' voices thunder at #StopTheBans rallies across the nation", USA TODAY, 21 May 2019, <https://www.usatoday.com/story/news/nation/2019/05/21/abortion-laws-stopthebans-rallies-set-a-cross-nation-today/3750913002/>