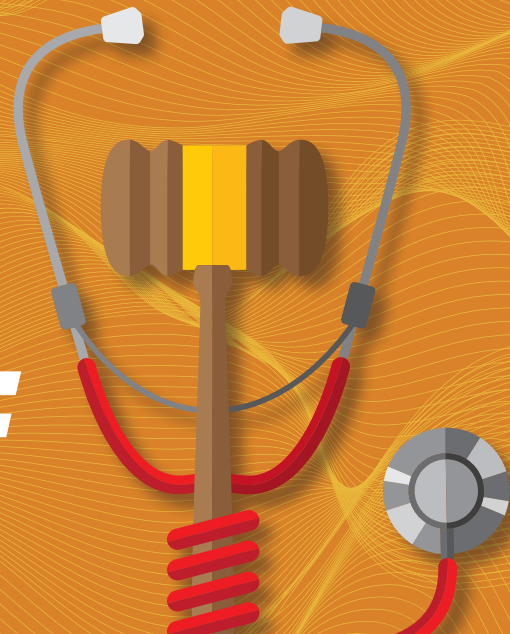




Beyond Roe: TRAP Laws



Targeted restrictions on abortion providers — known as TRAP laws — impose medically unnecessary requirements on providers and clinics under the guise of protecting patient's health. These laws are costly to providers and can lead to clinic closures and/or limitations of services when providers are unable to accommodate the requirements, making it more difficult for people to access abortion services.

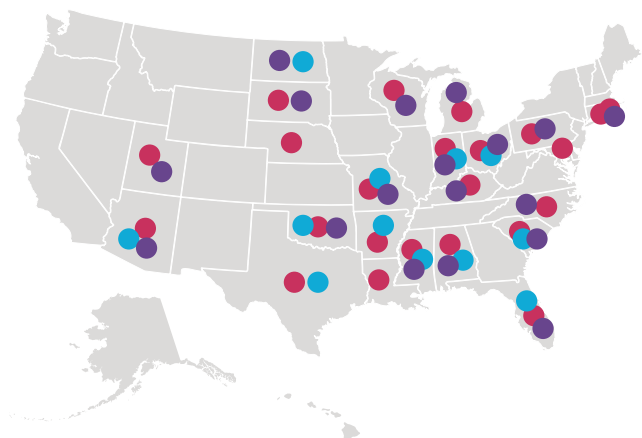
State Laws and Policies

To ensure patient safety, abortion providers in the U.S. are rightfully subject to strict, evidence-based regulations such as state licensing requirements, federal workplace safety requirements, association requirements, and medical ethics.¹ However, nearly half of states have imposed additional requirements that go beyond what is necessary to ensure patient safety.² Most TRAP laws apply standards comparable to those required for ambulatory surgical centers (ASCs) to abortion clinics, even though ASCs provide more invasive procedures that tend to be riskier.³ These standards can include minimum dimensions for a procedure room, hospital-grade ventilation systems, and corridor width requirements.⁴ Some states even require that all tenants in the building comply with certain ASC regulations, placing the abortion provider in a position of having to ensure that all other building tenants are compliant, which potentially gives other tenants the power to close clinics should they choose to not comply.⁵

TRAP laws often also require that abortion providers have admitting privileges at a hospital within a certain distance of the clinic. Admitting privileges grant authorization to a doctor by a hospital to admit patients and provide services to their patients in that hospital as medical staff.⁶ Hospitals are not required to grant admitting privileges to physicians and can deny admitting privileges for any reason.⁷ Some hospitals grant admitting privileges only if a physician agrees to admit a minimum quota of patients per year, which may be impossible for an abortion provider to meet as abortion rarely results in complications that require hospital admission.⁸ These requirements do little to improve patient care, but instead give hospitals veto power over whether abortion providers can offer

care in that area. This is especially troublesome when the only hospitals nearby are religiously affiliated. Ultimately, admitting privileges are unnecessary, as the need for emergency care following an abortion is highly unlikely.⁹ In the rare instances when emergency services are needed, the *Emergency Medical Treatment and Labor Act* of 1986 requires hospitals to provide such care.¹⁰

States With TRAP Laws in The U.S.¹¹



- Regulations on Surgical or Medication Abortion Sites
- Facility Requirements
- Clinician Requirements

Under False Pretenses

Many of these state-level TRAP restrictions are passed with the justification that they make abortion safer. However, complications during abortion procedures are rare, occurring in only 2.1 percent of procedures.¹² That means that abortion is safer than other common procedures, such as wisdom teeth removal, which has a complication rate of eight percent.^{13,14} And yet, anti-choice policymakers continue to impose medically unnecessary regulations that go beyond what is necessary to ensure patient safety when it comes to abortion procedures. Instead of improving care, these laws can endanger patients by reducing the number of abortion providers and/or facilities that are able to provide services under these medically unnecessary constraints.¹⁵

The Undue Burdens of TRAP Laws

TRAP laws place unreasonable burdens on abortion providers and health clinics, and in turn, create an undue burden on individuals seeking abortion services. TRAP laws can result in providers being unable to perform their jobs as well as the closure of clinics. If clinics close due to TRAP laws, especially in rural areas, delays for those seeking abortion services may increase.¹⁹ The impact of clinic closures is compounded by the barriers many individuals already face in seeking an abortion as people have to travel longer distances, organize arrangements, and cover the additional associated costs.

TRAP LAWS AT THE SUPREME COURT

In 2013, Texas legislature passed House Bill 2 (HB 2), a law that required: (a) physicians performing abortions have admitting privileges at a hospital within 30 miles of the facility, (b) medication abortion be administered according to the mifepristone label approved by the Food and Drug Administration (with some dosage exceptions), (c) most abortions at or after 20 weeks “postfertilization” to be banned, and (d) all abortions be performed in facilities that meet the requirements of an ASC. Whole Woman’s Health challenged this law in a case that made its way to the Supreme Court. **During the period where no injunction had been placed on the enforcement of the law, however, the number of abortion clinics that provided care drastically reduced by half from about 40 clinics to about 20 clinics.**^{16,17} In 2016, the Supreme Court, in its decision in *Whole Woman’s Health v. Hellerstedt*, held that the admitting privileges and the ASC requirements of the law did not advance the state’s interest in protecting people’s health but instead placed a substantial burden in the path of those seeking a previable abortion by leading to the closure of half of Texas’ abortion clinics.¹⁸ Therefore, these TRAP laws were held in violation of the Constitution. Justice Ruth Bader Ginsburg wrote in her concurrence that modern abortions are extremely safe compared to other medical procedures, and any law creating a substantial obstacle in the path of those seeking an abortion in the name of safety would not pass judicial review. And yet, a nearly identical case — *June Medical Services, LLC v. Russ o*— went before the Supreme Court in 2020. While the TRAP law was also defeated, the Court’s willingness to consider it leaves the door open for consideration of additional TRAP laws in the future.

TRAP laws alone are harmful; but when working in tandem with other restrictive policies, the barriers to accessing abortion can become insurmountable and deepen existing inequalities — even under *Roe*.

Endnotes

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- 12 Upadhyay, U. D., Desai, S., Zlidar, V., Weitz, T. A., Grossman, D., Anderson, P., & Taylor, D. (2015). Incidence of emergency department visits and complications after abortion. *Obstetrics & Gynecology*, 125(1), 175–183. <https://doi.org/10.1097/aog.0000000000000603>
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- 15 University of Texas. (2014, May). *Rapidly Changing Access to Abortion in Texas*. https://liberalarts.utexas.edu/txpep/_files/pdf/Rapidly-Changing-Access-to-Abortion-in-TX-18Jul2014.jpg.
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- 18 *ibid*
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