

40 years after Roe, abortion remains legal — but restricted

by [Richard Wolf](#)

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WASHINGTON (RNS) Forty years after the Supreme Court legalized abortion, the constitutional right many Americans take for granted is coming under increased scrutiny.

State legislatures are passing limits on abortion-related services. More abortion providers face stepped-up regulations, and more patients face strictly worded counseling sessions or ultrasound tests. At least four states have just one clinic performing abortions.

As a result, dozens of challenges to those laws have been lodged in state and federal courts, and it may not be long before the issue is before the high court again.

"There's a lot of states that are just one clinic away from having no services altogether," said Nancy Northup, president of the Center for Reproductive Rights. "I think the next couple of years are going to be critical."

Despite winning many battles over the past four decades, anti-abortion forces may be losing the war. The landmark 1973 Roe v. Wade decision still stands. The Supreme Court's slim majority in favor of abortion rights remains intact. And at least for another four years, presumably, President Obama will ensure that doesn't change.

"So many factors play a role in whether or not we will have the majority on the Supreme Court," said Mary Spaulding Balch, state legislation director for the National Right to Life Committee. "But we're working to get all those factors lined up so that sometime in the future, we will have the ability to reverse Roe."

In the meantime, the number and rate of abortions have declined over the past decade, according to the Centers for Disease Control and Prevention, because of a drop in teen pregnancies and increased use of birth control. The impact of the state restrictions isn't clear.

Although public opinion polls have been relatively steady for two generations in favor of legal abortion, one trend is growing: Among the majority of Americans born since Roe was decided, nearly four in 10 don't know it's about abortion, the Pew Research Center found. Support for Roe, though strong, is giving way ever so gradually to ambivalence.

Taken together, all those trends – legislative, legal, political, medical, public opinion – show why both sides continue to fight like it's still 1973. Ask Teresa Collett, an abortion opponent and scholar at the University of St. Thomas School of Law in Minnesota, who's winning and she has a ready answer: "nobody."

A new president in the White House or a change on the Supreme Court could change things. But after 40 years, legal abortion has become a way of life in America.

"Roe v. Wade is considered now to be the law of the land," said Cecile Richards, president of Planned Parenthood. "Voters consistently, no matter what state, believe that women should be making decisions about their own pregnancies. I really do believe that this country is not going to go backwards."

In the court's 7-2 decision issued on Jan. 22, 1973, Justice Harry Blackmun declared all state abortion bans unconstitutional because they interfered with the rights to privacy and liberty. Any future decision reversing Roe would not end legal abortion; rather, the authority would return to the states.

Less understood is the pregnancy timetable set by the decision. It allowed states to regulate abortions once the fetus reaches a state of viability capable of living outside the womb – providing for exceptions when the mother's health is at risk.

In the decades since, limitations have increased. A 1980 case restricted the use of Medicaid funds for abortions to cases involving rape, incest or the life of the mother.

Then, in 1992's Planned Parenthood v. Casey decision, the high court granted states broad authority to require counseling and waiting periods, and parental consent for minors, before any abortions – as long as such laws didn't constitute an "undue

burden."

The last major ruling came in 2007, when the court upheld a federal ban on so-called partial-birth abortions, usually performed between 20 and 24 weeks of pregnancy.

"That was a real turning point for Supreme Court observers, 'They allowed this prohibition, what else will they allow?'" said Charmaine Yoest, president of Americans United for Life.

Since then, states have experimented with tougher restrictions, and supporters of abortion rights have challenged many in court. The trickle of state restrictions on abortion became a deluge in 2011, when 92 provisions passed in 24 states. Last year produced 43 more, according to a survey by the Guttmacher Institute, a sexual and reproductive health think tank that supports abortion rights.

At the same time, the abortion rights cause has had victories at the federal level. Last month, Congress lifted the ban that had prohibited women in the military from using their federal health insurance to get abortions after rape or incest.

Even with the limitations, an average of 3,300 abortions are performed daily in the U.S., according to the Guttmacher Institute.

"Abortions are still constitutionally protected," said Caitlin Borgmann, a City University of New York law professor who maintains a blog on reproductive rights. "They're still widely available in the U.S., and the polling has not changed."