

In 1973, the U.S. Supreme Court ruled in *Roe v. Wade* that state laws prohibiting abortion violated a woman's right to privacy. Since then, pro-life advocates have searched for ways to undo *Roe*. At the heart of the issue for pro-life supporters is the argument that all life is sacred. A secondary issue is whether the national government or the state governments have the power to decide whether or not to allow abortions. Pro-choice advocates argue that basic rights, from voting rights to privacy rights, must be protected at the national level to protect interests that may face discrimination locally. Indeed, James Madison argued in *Federalist* No. 10 that minority rights are more likely to be protected when a government covers an expanded sphere. Yet critics argue that abortion is a states' rights issue. From this point of view, issues such as abortion that are not directly addressed in the U.S. Constitution are left to state governments, which should adopt policies that reflect their state's cultural preferences.

Supporters of states' rights realized a significant victory when the U.S. Supreme Court ruled in *Webster v. Reproductive Health Services* (1989) that states could place restrictions on abortion. Since then, numerous states have attempted to limit or deny abortions by passing onerous legal requirements on facilities that provide abortions. In 2013, the Texas Legislature passed House Bill 2, which, among other things, required that doctors who provide abortions have admitting privileges at nearby hospitals and that clinics that provide abortions meet the same standards as ambulatory surgical centers. The effect of the law was immediate—nearly half of the thirty-four abortion providers in the state closed or stopped providing abortions once the requirement that doctors have nearby hospital privileges went into effect. Since most of the remaining facilities would have to undergo multimillion-dollar renovations to meet the standards required of an ambulatory surgical center, only a few clinics are expected to remain open once that

requirement also goes into effect. In 2014, the Supreme Court ordered Texas to stop enforcing the law until the appeals process was exhausted. The closure of these clinics disproportionately affects rural and poor Texans. Texans who live in the South and the West have been hit particularly hard, as it can now take them more than five hours to drive to a clinic. The affected clinics are also key providers of contraception, sexually transmitted disease (STD) testing, and cancer screening.

Initial estimates suggest that the number of abortions in Texas has fallen by 13 percent since the law went into effect.ⁱ Yet there is also preliminary evidence of a rise in sales of misoprostol, a drug sold over the counter in Mexico that is sometimes used to self-induce an abortion.ⁱⁱ

- ★ To what extent is abortion a federalist issue?
- ★ How should government weigh the predominant political culture against minority rights?
- ★ In drafting its restrictions against abortion, does the Texas Legislature have a responsibility to consider the impact of the legislation on women's access to other services offered at these facilities?
- ★ Who wins and who loses when the effects of legislation are felt beyond the specific activity or group a bill was meant to address?

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- i. Brian M. Rosenthal, "Texas Abortions Down 13% Due to New Law, Study Says," *Houston Chronicle*, July 23, 2014.
 - ii. Erica Hellerstein, "The Rise of the DIY Abortion in Texas: A Pill That Revolutionized Reproductive Rights in Latin America Is Now Gaining Ground on the Black Market in South Texas," *The Atlantic*, June 27, 2014, www.theatlantic.com/health/archive/2014/06/the-rise-of-the-diy-abortion-in-texas/373240/ (accessed August 23, 2014).