

# Texas abortion providers go back to Supreme Court to expedite challenge to six-week ban



File photo

(CNN) — A coalition of Texas abortion providers went back to the Supreme Court Thursday, asking the justices to expedite a review of the state law that bars abortions after six weeks of pregnancy.

The law has been in effect for 23 days, but the federal appeals court hearing the challenge has only set a tentative hearing schedule for December. The providers are asking the justices to — in effect — step in and decide a key issue in the case now, instead of waiting for a federal appeals court to rule on the issue.

The new court papers mark the latest furious attempt on behalf of providers to stop a law that bars most abortions before a woman even knows she is pregnant. The law, which challengers say was drafted with the specific intent to evade judicial review, is now being challenged by providers in federal and state courts,

as well as by the Department of Justice.

In the new brief, the providers say the law is written in a way that makes it almost impossible to challenge because it bars Texas officials from enforcing it and instead allows private individuals to bring suit against anyone who may assist in helping a person obtain an abortion performed after six weeks. The clinics are asking the Supreme Court to decide “whether a State can insulate from federal-court review a law that prohibits the exercise of a constitutional right by delegating to the general public the authority to enforce that prohibition through civil actions.”

Separately, they have filed papers asking the court to put their request on a fast track. Under normal circumstances supporters of the law would have had about 30 days to respond, and the process could drag into the winter months. Instead, the clinics want the justices to consider the case October 29 and hear oral arguments in December.

That timing would coincide with the Supreme Court hearing another, completely separate challenge to a Mississippi law that bars most abortions after 15 weeks. Mississippi is asking the court to overturn *Roe v. Wade* and the court has set arguments for December 1.

If the court were to grant the request from the Texas providers, it could hear the two challenges in the same month.

“Texas intentionally outsourced enforcement of S.B. 8’s blatantly unconstitutional six-week abortion ban to the populace at large as a ploy to insulate the State from responsibility for enacting a law that violates a clearly established federal right,” the clinics wrote.

Under normal circumstances the Supreme Court does not like to rule on an issue until the normal appeals process has played out.

“We’re asking the Supreme Court for this expedited appeal because the Fifth Circuit has done nothing to change the dire circumstances on the ground in Texas,” said Nancy Northup of the Center for Reproductive Rights. “We’re doing everything we can to block this ban and restore abortion access in Texas.”

In making the unusual request, the clinics noted that providers in neighboring

states have reported increases of patients traveling across state lines and other states have begun to push copycat laws.

The clinics had previously asked the justices to block the law before it went into effect, but the high court declined to do so on September 1.

Back then, in an unsigned 5-4 order, the majority wrote that while the clinics had raised “serious questions regarding the constitutionality of the Texas law,” they had not met a burden that would allow the court to block it due to “complex” and “novel” procedural questions. Chief Justice John Roberts joined the three liberal justices in dissent.

Roberts said that he voted to block the law pending appeal to give the courts more time to consider the unusual statute.

Roberts said that the state Legislature had imposed a “prohibition on abortions after roughly six weeks” and then “essentially delegated enforcement of that prohibition to the populace at large” with the consequence of insulating the state from the responsibility of enforcing the law.

Justice Sonia Sotomayor called the majority’s order “stunning.”

“Presented with an application to enjoin a flagrantly unconstitutional law engineered to prohibit women from exercising their constitutional rights and evade judicial scrutiny, a majority of Justices have opted to bury their heads in the sand,” Sotomayor wrote.

“No federal appellate court has upheld such a comprehensive prohibition on abortions before viability under current law,” she wrote. “Taken together, the Act is a breathtaking act of defiance — of the Constitution, of this Court’s precedents, and of the rights of women seeking abortions throughout Texas.”

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*This story has been updated with additional details.*

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