

**METRO NEWS**

# Ohio Supreme Court upholds state order to shut down Toledo abortion clinic

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The Ohio Supreme Court on Tuesday ruled that state regulators were within their

## rights to revoke a Toledo abortion clinic's license to operate.(Cleveland.com )

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COLUMBUS, Ohio -- The Ohio Supreme Court on Tuesday upheld a state order to close Toledo's only abortion clinic for failing to follow state law, and rejected a challenge from Cleveland's Preterm clinic over the same law.

The court ruled 5-2 to overturn lower court rulings that said state restrictions on abortion clinics were unconstitutional, but the court did not rule on the constitutionality of the law.

The Department of Health revoked Capital Care Network's license in 2014 because its hospital transfer agreement with the University of Michigan in Ann Arbor did not comply with the department's 30-minute transport time standard.

Capital Care Network sued the state, arguing a 2013 law barring clinics from obtaining transfer agreements with a public hospital created an undue burden on women seeking abortions.

Two lower courts sided with Capital Care Network, concluding the regulation was an undue burden on a woman's right to abortion access. Those courts also found the transfer agreement law, which was inserted into a wide-ranging state budget bill, violated the state constitution's single-subject rule.



The state's highest court did not examine the constitutional issues.

"Because [the department] had authority to revoke Capital Care's license based on the failure to comply with the administrative rule requiring a written transfer agreement with a nearby hospital, it is not necessary to reach those constitutional issues," Justice Terrence O'Donnell wrote in a majority opinion.

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In a dissenting opinion, Chief Justice Maureen O'Connor wrote that Capital Care Network's transfer agreement was rejected for violating the 2013 law, not the department's administrative rules, and the court should therefore weigh the constitutional issues. Justice William O'Neill, the court's sole Democrat who resigned Jan. 26, joined the dissent.

O'Connor wrote that there is no benefit to requiring transfer agreements because hospitals would accept emergency patients transferred regardless of whether there is an agreement in place.

In a separate case, the court found Preterm did not have standing to challenge the 2013 law because it did not prove it suffered or was threatened with a "direct and concrete injury" from the law.



## The case

Abortion clinics in Ohio are classified as ambulatory surgical facilities and have to follow the same rules as laser eye treatment centers and plastic surgery clinics. Each must have an agreement with a hospital willing to accept a transfer patient for care after treatment at the surgical facility.

The University of Toledo Medical Center did not renew its transfer agreement with Capital Care Network in 2013 in light of a GOP-backed state budget bill provision banning agreements with public institutions. Capital Care Network went five months without an agreement before negotiating one with a University of Michigan Health System hospital in Ann Arbor, 52 miles from the clinic.

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The Ohio Department of Health in 2014 revoked the clinic's license because transporting a patient to Ann Arbor would take longer than the department's 30-minute standard.

Since 2013, four abortion providers including another Toledo clinic have closed, citing difficulty complying with the law. Capital Care Network's closure would leave seven abortion clinics open statewide, down from 16 in 2011.

## **The majority opinions**



O'Donnell wrote in a majority opinion that the clinic was not in compliance with the department's transfer agreement rules for five months, and allowing transfer via helicopter still would not meet the department's 30-minute rule.

"In short, the evidence plainly established that the Ann Arbor agreement would not allow for the transfer of patients 'in the event of medical complications, emergency situations, and for other needs as they arise,'" O'Donnell wrote.

O'Donnell was joined by Justices Sharon Kennedy, Pat Fischer, Pat DeWine, and Judith French.

In a concurring opinion, French wrote that courts should not decide whether a law violates the single-subject rule. French wrote that the framers of Ohio's constitution intended the rule to be advisory for legislators and enforced by the General Assembly.

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"This court lost sight of the fact that the constitutional provision had long been understood to recognize that the General Assembly may have legitimate reasons for combining topics into a substantial bill that pertains to one broad subject -- a subject that might appear disjointed from a judicial perspective but that would serve legislative goals of cohesion, order, or improvement," French wrote.



Kennedy and DeWine joined French's opinion.

## The dissent

In a dissenting opinion, O'Connor wrote that she would have found the clinic in compliance with state rules and the 2013 law unconstitutional.

She wrote that the transfer agreements offer only "limited and speculative benefits" that do not justify the burdens caused on women seeking abortion services.

"There is ample evidence [the law] will cause northwestern Ohio's only remaining abortion clinic to close," O'Connor wrote. "Toledo will be left without an abortion clinic, forcing women from northwestern Ohio to travel to clinics in Cleveland or Columbus to obtain an abortion at a clinic."

O'Connor also concluded the law unconstitutionally delegates authority to a third-party -- doctors and hospitals -- to refuse to join transfer agreements.

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"The statutory scheme, if allowed to stand, permits the legislature to do through private actors what it may not legally do following [Roe v. Wade] and its progeny: wholly prevent a woman from exercising her fundamental right to a previability abortion," she wrote.



## Reaction

NARAL Pro-Choice Ohio Executive Director Kellie Copeland said the decision abandons 45 years of case law in favor of Gov. John Kasich's "anti-abortion agenda." Copeland said the decision, like the transfer agreement law, does nothing to protect women's health.

"In fact, it does quite the opposite. This decision pushes abortion out of reach and punishes women for their decision to end a pregnancy," Copeland said in a statement. "Today's politically-motivated decision is devastating to women who can't afford to leave town, who can't find child care for an extended time, or can't pay for the increased costs that come with delayed care."

Ohio Right to Life, the state's largest anti-abortion organization, said the ruling affirms abortion should not be advanced at the expense of women's health and safety.

"Ohio Right to Life is grateful that a super majority of the Supreme Court agreed that this abortion clinic's so-called safety proposal was preposterous at best," President Mike Gonidakis said in a statement. "Clearly, the abortion clinic callously disregarded the health and safety of women with a ridiculous proposal to fly women out of state for emergency medical attention. The court, like our pro-life government, got it right."



*Mobile readers, [click here to read the court opinions.](#)*

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