



TOP ARTICLES 1/5

SHARE [Facebook icon] [Twitter icon] [Email icon]

CREDIT: CAIAIMAGE/ROBERT DALY EDIT: ADAM PECK/THINKPROGRESS

Nurse Practitioner Mary Stark has performed countless vacuum aspiration procedures for Idaho patients who have miscarriages. Vacuum aspiration is basically, by another name, a suction abortion. Because of Idaho's physician-only abortion law, Stark cannot perform a vacuum aspiration for patients who choose to end their pregnancies.

"I could complete a procedure to empty out the uterus, but only if the pregnancy had ended on its own," Stark told ThinkProgress.

About Contact Us Membership Newsletter Tips Pitch X

A nearly two [decades-old law](#) says "[i]t is unlawful for any person other than a physician to cause or perform an abortion." It doesn't matter if Stark knows what she's doing: she was trained on uterine aspiration in Idaho and provides the abortion pill in Washington and Oregon, where there are no physician-only laws and where she's also licensed to practice advanced nursing. If she provides abortion care in Idaho, she's guilty of a felony.

"I've absolutely had to say [to a patient], 'sorry, the state does not allow me to provide that care for you. We will reschedule you,'" said Stark. "[I'm] always in the back of my mind, thinking, 'gosh, I really hope that this person can make their life schedule work around the limited time we have a physician available for this procedure... that I can absolutely be providing for them.'"



.st0{fill:#FFFFFF;}.st1{fill:#0099FF;}

When she's told patients about the law, they've said — and she's paraphrasing — “that's stupid.”

Stark, on behalf of herself and patients, along with Idaho's Planned Parenthood affiliate, sued the state in December over its physician-only law, arguing that it “imposes an undue burden on abortion access.” In total, 33 states limit abortion providers to physicians. Lawsuits aiming to eliminate these types of laws exist in 10 states (Kansas, Idaho, Indiana, Louisiana, Maine, Mississippi, Montana, Texas, Virginia, and most recently, Wisconsin).

Advertisement

Loading...

Altogether, the lawsuits represent a covert way reproductive health advocates are aiming to expand abortion access, using Supreme Court precedents. At the same time, there are currently various lawsuits in the federal court pipeline that would give Supreme Court justices an opportunity to further hobble or overturn *Roe v. Wade*, a 1973 ruling establishing the right to abortion, which celebrates its anniversary Tuesday. But groups challenging physician-only laws, instead, point to recent abortion precedent as proof that the law sides with improving the current sorry state of access.



### Remembering the real women in ‘Roe v. Wade’

“I think that with this case it's showcasing the fact that we are not content to play defense while states try to shut down abortion access all across the country,” said Julia Kaye, staff attorney with the ACLU Reproductive Freedom Project, of a lawsuit filed in September 2017 she's litigating that challenges Maine's physician-only law.

“We're also going on offense to expand access by taking on longstanding restrictions that have been harming patients for decades,” Kaye told ThinkProgress.

### The undue burden

“The State does not single out any other health care service as beyond an [advanced practice registered nurse's] scope of practice—only abortion,” the Maine lawsuit states — and this has consequences, the complaint goes on to explain.

Advertisement

Loading...

Right now, in Maine, suction abortion is only available in three major cities. If someone living in Aroostook County, among the poorest counties statewide, wants or needs this in-clinic procedure, they have to travel over 150 miles south to the nearest clinic in Bangor.

But if the lawsuit prevails and Maine's 1979 physician-only law is invalidated, the number of providers would grow to 18, including a provider in Fort Kent, a town in Aroostook County.

Patients would also gain flexibility when scheduling their appointments, as there's generally only three days out of the week that abortion care is available due to physicians' schedules. Patients who visit the Planned Parenthood affiliate, for example, currently have to wait up to two to three weeks to schedule the time-sensitive appointment.

The affiliate has four nurse practitioners who are already trained in medication abortion and two trained in aspiration; meaning, services could quickly expand. The Portland clinic could expand services from Friday until 1:40 p.m. to six days each week, and add evening hours.

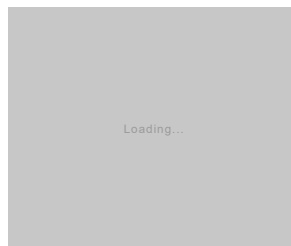
The harms of the law outweigh the risks because, as the lawsuit says, there are none. Indeed, [numerous peer-reviewed studies](#) show nurse practitioners can perform safe and effective first-trimester abortions. Oftentimes, these providers perform comparable or even more complex procedures. In Maine, nurse practitioners, for example, can perform an excisional biopsy (a wide local incision to test for cancer) and nurse midwives can deliver babies.

---

PORTLAND, ME - SEPTEMBER 20: ALISON BATES, A NURSE PRACTITIONER AT PLANNED PARENTHOOD IN PORTLAND, POSES FOR A PORTRAIT IN ONE OF THE EXAM ROOMS AT THE OFFICE. BATES IS ONE OF THE PLAINTIFFS IN A LAWSUIT, ALONG WITH PLANNED PARENTHOOD, MAINE FAMILY PLANNING AND THREE OTHER NURSE PRACTITIONERS, FILED AGAINST THE STATE OF MAINE ON WEDNESDAY. IF SUCCESSFUL, IT WOULD ALLOW NURSE PRACTITIONERS AND NURSE-MIDWIVES TO PERFORM ABORTIONS. (STAFF PHOTO BY BRIANNA SOUKUP/PORTLAND PRESS HERALD VIA GETTY IMAGES)

"It's a skill set that involves clinical interpretation of findings and the ability to prescribe and follow-up with a patient," said Alison Bates, a nurse practitioner based in Portland and plaintiff in the lawsuit, of providing the abortion pill.

Advertisement



"Clinically and technically, I routinely instrument uteruses for IUD insertions and endometrial biopsies... things that carry different sets of risks in terms of reproductive health. And so, suffice it to say, a technical skill such as those things surpass the challenge or difficulty in ordering and prescribing medication."

However, there is contention among medical groups. The American College of Obstetricians and Gynecologists, the country's leading organization for reproductive health, opposes physician-only abortion laws. But the American Medical Association, the country's largest physician lobbying group, [says abortions](#) should only be performed by licensed physicians. ThinkProgress contacted AMA to ask if new research has swayed the group or prompted members to have a conversation — as the group has had about other topics it opposes, [like Medicare For All](#). But AMA did not immediately respond.

### Using — not refuting — abortion precedents

In 2016, the Supreme Court decided in *Whole Woman's Health v. Hellerstedt* that two

provisions in Texas law place "an 'undue burden' on a woman's right to decide to have an abortion." Moreover, it concluded "that neither of these provisions confers medical benefits sufficient to justify the burdens upon access."

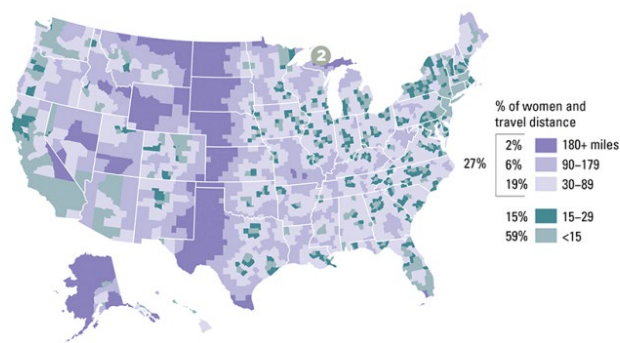
Every lawsuit to expand access — with the exception of Kansas' and Montana's — argue that physician-only laws don't adhere to the federal Constitution and, specifically, the new standard created by *Whole Woman's Health*.

"These are precisely the kind of laws that fail the test the Supreme Court clarified in our 2016 case *Whole Woman's Health v. Hellerstedt*," said Hillary Schneller, staff attorney for the Center for Reproductive Rights (CRR). CRR litigated the landmark 2016 abortion rights case, and is currently challenging physician-only laws in Kansas, Louisiana, Mississippi, Montana, and Virginia.

"Laws that prohibit qualified clinicians from providing abortion care have no benefit whatsoever, and only restrict access to abortion and harm patients," said Schneller in a statement to ThinkProgress.

GUTTMACHER INSTITUTE

## 2 Many women live close to an abortion clinic, but a substantial minority would need to travel 30 or more miles to access services



Source: Guttmacher Institute. Notes: Women aged 15-44; median distance to nearest abortion provider by county, 2014.

gu.tt/ProactiveStatePolicies

©2019

The state of Maine, in its reply to the lawsuit, acknowledged that plaintiffs present "strong public policy reasons for repealing the Physician-Only Law" and demonstrated nurse practitioners "are competent to provide abortion services." But it added that the federal court should not apply the undue burden test here — and even if the judge did, the burden "consists largely of speculation, generalizations, and conclusory statements about the adverse impact."

"There's clear burden," said Bates, when ThinkProgress asked her about the state's position.

"People face the burden of stigma associated with the service, which is actually shaped by the limited access in state's like my own, Maine," she added.

## States are already pre-filing 'fetal heartbeat' bans for the new year

Oral arguments for Maine's lawsuit begin this spring and Idaho's haven't been scheduled yet, but plaintiffs in both lawsuits are optimistic that federal courts will expand access. This comes as reproductive rights and justice advocates also have warned the public against solely depending on the judiciary given the Trump administration's record-breaking appointments to the federal bench and the confirmation of two conservative Supreme Court justices during the president's term.

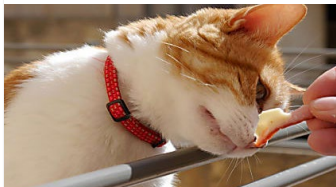
"This is the fight of our time with this Supreme Court," Planned Parenthood President Dr. Leana Wen told ThinkProgress. "We are going to continue fighting with our new champions in state legislatures and state houses and in Congress."

But for now, the most immediate fight — the one most likely to produce results — is in the courts.

#ABORTION. #HEALTH

### You May Like

Sponsored Links



**If Your Indoor Cat Vomits (Do This Every Day)**  
Ultimate Pet Nutrition



**U.S. Cardiologist: It's Like a Pressure Wash for Your Insides**  
Health Headlines

**T Kellyanne Conway says she won't leave her job over Trump's feud with her husband because of feminism**



"What message would that send to the feminists everywhere who pretend they're independent thinkers, and men don't make decisions for them?"

READ MORE

**Charlottesville residents say 'ethnic cleansing' threat proves ongoing danger of white nationalism**

About

Masthead

Careers

Pitch Us

Tips

Newsletter

Membership

Donate

Advertise

Think Progress Footer Logo

© 2019 ThinkProgress

Powered by WordPress.com VIP