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House panel supports unannounced inspections of abortion clinics



Howard Fischer

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PHOENIX -- Saying they're looking out for women's health, a House panel voted along party lines Thursday to allow unannounced inspections of abortion clinics despite a 1995 court ruling saying they're unconstitutional.

Rep. Debbie Lesko, R-Peoria, pointed out that state law already allows the Department of Health Services to conduct such inspections of hospitals, clinics and all other health facilities. She said there is no reason to require health inspectors to first get permission or a court-issued search warrant.

"I see no reason why supporters of abortion would be against having health inspections just like every other health industry,' she said. "I would think that you would want to protect the women's health.'

Foes said this is just another in a series of efforts by abortion foes to put another hurdle in the path of women who want to terminate a pregnancy. Rep. Lela Alston, D-Phoenix, said she fears HB 2284 would lead to invasion of privacy.

Thursday's 5-3 vote by the Committee on Reform and Human Services is far from the last word on the matter, and not just because it still needs approval by the full House, Senate and signature of the governor.

Bryan Howard, president of Planned Parenthood Arizona said the legislation "will undoubtedly lead to litigation.' He pointed out the last time lawmakers voted for unannounced inspections in 1999 it was overturned by the 9th U.S. Circuit Court of Appeals.

Cathi Herrod, president of the anti-abortion Center for Arizona Policy, acknowledged that. But she told lawmakers that ruling was based on the court's finding that Arizona was trying to inspect abortion facilities when it had no rules to actually regulate them.

She said the new clinic regulations that took effect in 2010 take care of that problem.

Howard, however, said the basics of that 2004 appellate court ruling remain -- and the ruling is still enforceable.

"Both the health care providers of abortion services and women seeking abortion have a constitutionally protected heightened right to privacy,' Howard said of the court's findings. And he said that right to privacy trumps that precedent.

Lesko, sponsor of the legislation, dismissed claims that claim that inspections compromise privacy.

Colby Bower, lobbyist for the Department of Health Services, told lawmakers that his agency's employees inspect all sorts of health facilities. And in doing that, he said, they have access to raw patient information, including names and diagnoses.

But Bower said the only information released to the public has all identifying information removed.

Howard, however, said that assurance is not enough.

"That's not addressing the privacy of patients who are in the middle of care, patients who are in the recovery room,' he said. Howard said that a state health inspector who is opposed to abortion could use unannounced inspections to poke around and even harass patients and doctors.

Rep. Sally Gonzales, D-Tucson, said there is a need for greater privacy about abortions and the people who provide them.

"People have been killed outside abortion clinics,' she said, something that does not occur at other health facilities. "It's because of the emotion and the political arena that abortions bring to this because of the different philosophies that people have.'

Lesko, however, said she is convinced that health inspectors will respect privacy. She said any violence outside of abortion clinics has nothing to do with the Department of Health Services releasing information.

"I mean, if people are going around killing people, they're going to do it regardless if DHS goes in and be able to inspect a facility,' she said.

The original 1999 law was an outgrowth of two incidents at a Phoenix abortion clinic.

In one case, a 33-year-old woman bled to death following an abortion. In another, a nearly full-term baby was delivered injured, after a botched abortion when the doctor did not recognize that the pregnancy was that far along.

The doctor, John Biskind, was eventually convicted in connection with the woman's death.

In a 2004 ruling, the 9th Circuit said the provisions violate the rights of both patients and doctors. The court specifically said the law's authorization of "boundless, warrantless search of physicians' offices' by state health officials violates the constitutional protections against unreasonable search and seizure.

The plaintiffs in that case included the Tucson Woman's Clinic and its owner, Dr. Damon Raphael, who said they were suing on behalf of themselves and their patients seeking abortions. Others include Dr. William Richardson and Old Pueblo Family Planning, which he operates, and Simat Corp. which operates Abortion Services of Phoenix.

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