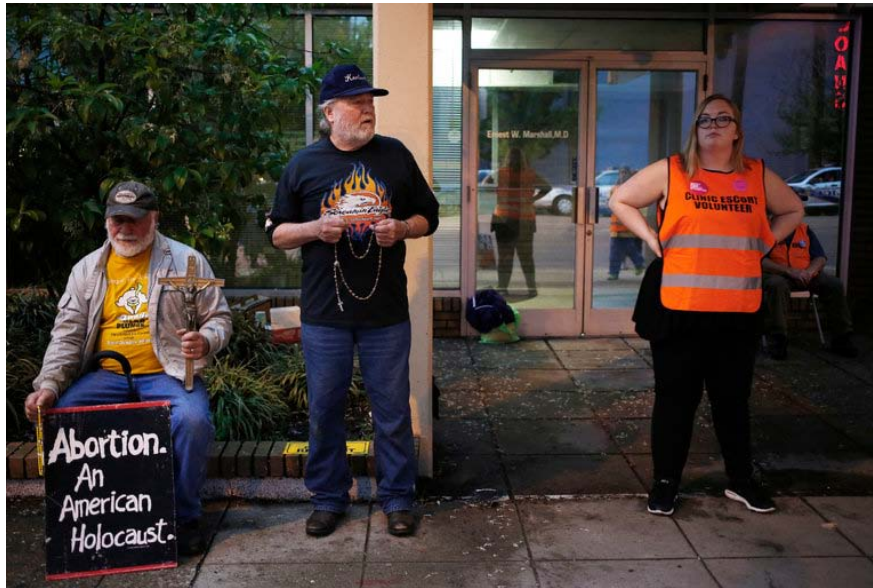


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Legal Fight Could Make Kentucky Only State With No Abortion Clinic

By [SHERYL GAY STOLBERG](#) MAY 2, 2017



Anti-abortion demonstrators said the rosary beside a clinic volunteer outside the E.M.W. Women's Surgical Center in Louisville, Ky. The clinic is the only abortion provider remaining in the state. Credit Luke Sharrett for The New York Times

LOUISVILLE, Ky. — As states across the nation enact increasingly aggressive restrictions on abortion, perhaps nowhere has the political climate shifted as much as here in Kentucky, where the E.M.W. Women's Surgical Center, a squat tan brick building on Market Street, is the state's sole abortion clinic.

Over the past year, Gov. Matt Bevin, a Republican who calls himself “unapologetically pro-life,” has blocked a new Planned Parenthood clinic from performing abortions, shuttered E.M.W.'s satellite clinic in Lexington and threatened to close the existing one in Louisville. Backed by the [American Civil Liberties Union](#), the clinic has sued the state; a trial is set for September.

The governor's forceful moves have rattled reproductive rights advocates, made him a hero among abortion opponents and prompted both sides in the debate to ask a question: Could Kentucky become America's only state to lack a single abortion clinic?

“Kentucky literally stands on the verge of making redemptive history,” said the Rev. Rusty Thomas, director of Operation Save America, a Dallas-based anti-abortion group that will host its annual national meeting in Louisville in July. “It could be the first surgically abortion-free state in the United States of America.”

Dr. Ernest Marshall, 66, who founded E.M.W. in 1981 and has performed abortions here for 37 years, portrayed the situation from his perspective this way: “We are under assault.”

Across the country, the number of abortion providers has been steadily dropping for decades, partly because of better access to birth control — which means fewer unplanned pregnancies, and thus fewer abortions — but also because of restrictions that make it difficult for clinics to stay open.

Kentucky, which had 17 abortion providers in 1978, is today among seven states — the others are North Dakota, South Dakota, Missouri, Mississippi, Wyoming and West Virginia — with just one.

Mr. Bevin’s election in 2015 was only the beginning of the shift in the abortion landscape here. Republicans, riding Donald J. Trump’s coattails, took control of the Kentucky House in November for the first time in 95 years. Their first order of business in January was to pass two measures restricting abortion — one banning the procedure after 20 weeks into a pregnancy, and the other requiring doctors to narrate ultrasounds in detail, regardless of patients’ wishes.



State Senator Julie Raque Adams delivered a bill adding requirements for those seeking an abortion to Gov. Matt Bevin of Kentucky in February 2016. It was the first bill Mr. Bevin signed as governor. Credit Adam Bevin/Associated Press

The A.C.L.U. is also challenging the ultrasound measure, on the grounds that it violates doctors’ First Amendment rights. In signing it, Mr. Bevin vowed to “end this scourge that is the taking of innocent life,” adding, “Kentucky will lead the way.”

For Elizabeth Nash, who tracks state abortion legislation for the Guttmacher Institute, a nonprofit research organization, Kentucky’s turnabout is striking. “Kentucky for a long time was not on the policy radar,” Ms. Nash said. “Now Kentucky is following the model of Texas and Ohio, where they are adopting restrictions or making it very difficult to keep clinic doors open.”

At 7:30 in the morning, every Tuesday through Saturday, Kentucky’s intensifying battle over abortion plays out in downtown Louisville, along the sidewalk in front of the E.M.W. clinic.

The clinic's mirrored doors are guarded by a volunteer corps of orange-vested escorts, who station themselves strategically at street corners so they can usher patients to the center from nearby parking lots, past a phalanx of protesters.

Men in ball caps finger rosary beads and recite the Lord's Prayer. Some hold grisly signs depicting bloody fetuses or shout religious messages through megaphones. On a recent weekday morning, a young woman arrived, accompanied by her grandmother and carrying a toddler in her arms.

"You're bringing a baby into an abortion clinic!" a man shouted, as escorts hustled them inside. "Where they're going to murder the other baby!"

Inside the clinic, soothing music played. Eleven patients were scheduled that day, roughly half for "medical abortions" in which pills are used to induce miscarriage. One by one, they visited with the clinic's director and counselor, Anne Ahola, who joined the center 17 years ago after working with abused children.

Kentucky law requires that women receive counseling, either in person or by video, at least 24 hours before an abortion. Their stories offered a glimpse into the varied reasons, and often painful decisions, involved in ending pregnancies — especially in a state like Kentucky, where, Dr. Marshall said, many of his colleagues in obstetrics and gynecology oppose abortion.



A statue of the Virgin Mary in the back seat of an anti-abortion demonstrator's car outside the E.M.W. Women's Surgical Center in Louisville. Credit Luke Sharrett for The New York Times

One 37-year-old woman tearfully confessed that she had had an affair with a co-worker, who was married: "I'm his boss, and this is strictly forbidden; we could both lose our jobs." She quietly asked for a copy of her ultrasound picture.

Another, 29, appeared nonchalant. "I'm working," she said flatly. "It's not in my plan right now."

A third, 31 and a mother of two, said she was trying to escape an abusive relationship. "It's been a struggle for me," she told Ms. Ahola. "I am a religious person, I've been crying and battling

with my beliefs, but I also think God understands.” She said she worried that the clinic would close: “We need this option.”

Ms. Ahola ended each talk with the same question: “Are you sure this is the right decision for you, and did you reach this decision yourself?”

Reproductive rights advocates say women in Kentucky, especially those in poor rural parts of the state, have long faced economic and geographic barriers to obtaining abortions. Many cannot afford to travel or to pay for the procedure. And as surrounding states have enacted restrictions, their options are narrowing.

“We used to have people who lived in Bowling Green; the Nashville clinic was closer than Louisville,” said Patricia Canon, who volunteers with the Kentucky Health Justice Network, a nonprofit that helps women pay for abortions and transports them to clinics. “But then Tennessee decided to enact a 48-hour, in-person waiting period. That means two trips, two days.”

Yet until recently, advocates hoped abortion services would expand in Kentucky.

When Mr. Bevin’s Democratic predecessor, Gov. Steve Beshear, was in office, Planned Parenthood built a new health care center in Louisville. After Mr. Bevin became governor, the center briefly offered abortions, following standard state procedures to obtain a license, said Tamarra Wieder, a spokeswoman for Planned Parenthood here.

The Bevin administration promptly sued, claiming the center was performing abortions illegally. A judge dismissed the case, but the state appealed. So while the Planned Parenthood center is open and offers an array of reproductive health services, it is obeying the state’s “cease and desist” order not to perform abortions.



A demonstrator, Joseph Spurgeon, used a microphone to speak to women outside the waiting room of the E.M.W. Women’s Surgical Center. Credit Luke Sharrett for The New York Times

“For a state as big as Kentucky, one abortion provider is not enough,” Ms. Wieder said.

Dr. Marshall’s conflict with the state began about a year ago, when state inspectors showed up at his Lexington clinic, which he says operated as a physician’s office and thus did not require a license. The state insisted it did.

A legal battle ensued, but as the case dragged on, E.M.W. in Lexington could not afford to stay open without seeing patients, and its landlord refused to renew its lease, said Dona Wells, the former clinic administrator. It closed in January.

The Kentucky National Organization for Women declared the clinic “a permanent casualty” of the governor, while abortion opponents, long beleaguered under Governor Beshear, cheered.

“Kentucky is a very pro-life state,” said Mike Janocik, assistant director of the Kentucky to Right Life Association. “Abortion providers tend to fly under the radar, especially when they are in administrations favorable to their position, as ours has been for a long time in Kentucky.”

The dispute in Louisville revolves around the state’s assertion that E.M.W. lacks adequate “transfer agreements” with hospitals and ambulance services to get women help in case of medical emergency. Amanda Stamper, a spokeswoman for Mr. Bevin, said the governor was “working diligently to protect the health, welfare and lives of women in Kentucky.”

But Donald Cox, a lawyer for the Louisville clinic, said the state’s complaint was rooted in a technicality: A Catholic health care organization, part owner of the nearby University of Louisville Hospital, will not sign the center’s longstanding agreements because of religious objections to abortion.

Last month, the state threatened to close E.M.W. within 10 days; Judge Greg N. Stivers of United States District Court here issued an emergency order blocking the closing, writing that the clinic had “a strong likelihood of success.”

The case will be an early test of how federal courts interpret a 2016 Supreme Court ruling, in which the justices [struck down parts of a Texas law](#) that imposed similar requirements to Kentucky’s, saying they posed an “undue burden” on women, said Brigitte Amiri, a lawyer with the A.C.L.U.’s Reproductive Freedom Project, which also represents the clinic.

“The burden on women in Kentucky if E.M.W. closed down would be extreme,” Ms. Amiri said. “There would be an effective ban on abortion.”

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