

## Tucson Woman's Clinic v. Eden (2004) <sup>[1]</sup>

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The case *Tucson Woman's Clinic v. Eden* (2004) established that some of Arizona's [abortion](#) <sup>[3]</sup> clinic laws violated physicians' and patients' rights to privacy, and it required Arizona's [abortion](#) <sup>[3]</sup> laws to be rewritten. The laws required most [abortion](#) <sup>[3]</sup> providers to be licensed with the Arizona Department of Health Services and to submit to all the regulations the Department established for [abortion](#) <sup>[3]</sup> clinics. The regulations allowed the state to search [abortion](#) <sup>[3]</sup> clinics without warrants and to access patient records and [ultrasound](#) <sup>[4]</sup> prints, among other provisions. Following the US Court of Appeals decision in *Tucson Woman's Clinic v. Eden*, the settlement agreement rewrote the regulations to create rules that lessened the burden on women's access to abortions, while still allowing the Department to oversee [abortion](#) <sup>[3]</sup> clinics.

Throughout the 1990s, the Arizona Department of Health Services (ADHS), headquartered in Phoenix, Arizona, had the authority to regulate licensed healthcare facilities in which patients were administered general anesthesia or were kept overnight. Those facilities included hospitals and many outpatient surgical centers. However, the ADHS did not have the authority to regulate the practices of private physician who did not keep patients overnight or provide general anesthesia.

In 1999, the Arizona State Legislature in Phoenix passed House Bill (HB) 2706. It was an instance of a larger national trend for which state legislatures throughout the US passed legislation that applied only to clinics or doctors that provided abortions. Such laws widely became called targeted [regulation](#) <sup>[5]</sup> of [abortion](#) <sup>[3]</sup> providers (TRAP) laws. HB 2706 amended the sections of the Arizona Revised Statutes (ARS) that dealt with the [regulation](#) <sup>[5]</sup> of [abortion](#) <sup>[3]</sup> clinics. The bill amended ARS 36-449.01, 36-449.02, and 36-449.03. ARS 36-449.01 stated that any facility that provides five or more first [trimester](#) <sup>[6]</sup> abortions in a month, or any second or third [trimester](#) <sup>[6]</sup> abortions, must be licensed as an [abortion](#) <sup>[3]</sup> clinic. ARS 36-449.02 stated that those newly classified clinics must meet the same ADHS requirements and regulations for [abortion](#) <sup>[3]</sup> clinics. Under the revised laws, physician practices that qualified as [abortion](#) <sup>[3]</sup> clinics were required to submit to an initial inspection by ADHS, to grant ADHS consent to searches of the facilities without warrants, and ADHS received the power to suspend or revoke a practice's license if the facility violated any regulations. ARS 36-449.03 stated that the ADHS must create rules and regulations for [abortion](#) <sup>[3]</sup> clinics in regards to administration, personnel qualifications, staffing requirements, the [abortion](#) <sup>[3]</sup> procedure, patient transfer, patient discharge, medications, medical records, equipment, and physical facilities. Physician who violated the law faced criminal and civil prosecution and penalties including up to thirty days in jail, \$500 in fines for each day the offense occurred, and possible revocation of their licenses to practice medicine. The laws were set to take effect 1 April 2000.

On 14 December 1999, the ADHS issued the regulations for [abortion](#) <sup>[3]</sup> clinics pursuant to section 36-449.03 of the new law. The regulations set by ADHS included unannounced, warrantless searches and access to unredacted patient records. In 2000, the Arizona State

Legislature passed House Bill 2647 which required the ADHS to add another provision to the [regulation](#) [5] list to require physicians who perform abortions past 12 weeks of [gestation](#) [7] to submit an [ultrasound](#) [4] print to ADHS for review.

On 1 March 2000, a group of individuals and organizations concerned with reproductive health filed a lawsuit in the United States District Court for the District of Arizona in Tucson, Arizona, to test the constitutionality of the new laws. The group was led by the Tucson Woman's Clinic, which provided reproductive healthcare including abortions to women in southern Arizona. Two other reproductive healthcare clinics joined the lawsuit: Old Pueblo Family Planning of Tucson and Simat Corp Abortion Services of Phoenix. Physicians Robert Tamis, William Richardson, and Damon Raphael, who specialized in obstetrics and gynecology in Phoenix and Tucson, also joined the suit. Bonnie Scott Jones, a lawyer from the Center for Reproductive Rights based in New York City, New York, represented the group.

Jones requested the Arizona District Court to issue an injunction against the law, which would prevent the state from enforcing the law, and a declaratory judgment on the constitutionality of the laws. Jones filed the lawsuit against Catherine Eden, the Director of the Arizona Department of Health Services, Richard Romley, the Maricopa County Attorney, and Janet Napolitano, the Arizona Attorney General. Those members of the state were represented by Kevin Ray and Lynne Adams, attorneys from the Office of the Attorney General, Denise Burke, the special deputy attorney of Maricopa County, and Nicholas Nikas, a deputy Maricopa County attorney. All of their offices were headquartered in Phoenix. On 23 March 2000 the District Court issued an injunction against the law, preventing the state from enforcing the law. In 2001, the United States District Court of Arizona in Tucson heard the case set forth by the Tucson Woman's Clinic.

During the case, Jones argued that the laws were unconstitutional for several reasons. First, she argued that the laws created an undue burden on women's rights to choose abortions. She stated that the law lessened Arizona women's access to abortions because the law would force many physicians who provide abortions to stop performing abortions in their private practices. Jones argued that the laws violated the equal protection rights in the Fourteenth Amendment to the US Constitution. She argued that the law wrongly created a distinction between physicians who provide [abortion](#) [3] services and physicians who provide comparably risky medical services. Jones also argued that the law wrongly distinguished between physicians who provided fewer than five first [trimester](#) [6] abortions and month, and those physicians who provided more than five first [trimester](#) [6] abortions. She also argued that the law unfairly distinguished between the medical services sought by women, and the comparably risky medical services sought by men.

Jones also argued that the regulations violated patients right to informational privacy. She argued that the regulations violated the right to physicians to be free from unreasonable searches and seizures. She stated that by allowing the ADHS to perform unannounced, warrantless searches of [abortion](#) [3] facilities, and by allowing ADHS unbound access to patient records and ultrasounds, the law threatened patient-physician confidentiality.

Finally, Jones argued that the law contained vague terms and standards. She argued that ultimately the vagueness of the language would not give physicians adequate information to know what conduct would be in violation of the law. She also argued that the vagueness would lead to arbitrary enforcement of the law.

The state argued that the law was created in response to the highly publicized death of Lou Anne Herron. In 1998, Herron underwent a surgical [abortion](#) [3] in Phoenix and bled to death while recovering. The physician was convicted of manslaughter after an investigation demonstrated that the [abortion](#) [3] procedure was not performed to medical standards.

On 1 October 2002, the District Court ruled that some parts of the Arizona laws were constitutional and some parts were not. The District Court ruled that the law violated the Fourth Amendment to the US Constitution, which protects citizens from unreasonable searches and seizures without a warrant. The Court also ruled that the law violated patients' rights to privacy by allowing the ADHS to view unredacted patient records and [ultrasound](#) [4] images. Additionally, the District Court found that the law was unconstitutionally vague, violating the due process clause of the Fourteenth Amendment.

However, the District Court did not find that the whole law was unconstitutional. The court disagreed with the claims that the law violated the equal protection clause, and ruled that the law did not violate equal protection, as it did not discriminate arbitrarily against any persons or groups. The District Court also ruled that the law did not create an undue burden on women's rights to terminate pregnancies. Ultimately, the court found that though parts of the law were unconstitutional, those parts could be removed to make the overall law constitutional.

Both parties appealed the District Court's decision. By 2002, Terry Goddard had been elected as the Arizona Attorney General. Goddard replaced Napolitano in the case after Napolitano's term ended and she was elected the state's governor. The decision was appealed to the Ninth Circuit of the United States Court of Appeals in San Francisco, California. On 4 December 2003, judges Atsushi Tashima, Sidney Thomas, and Barry Silverman heard the case *Tucson Woman's Clinic v. Eden* in the Court of Appeals, Ninth Circuit.

On 18 June 2004, the Court of Appeals issued its decision, also ruling that some parts of the law were unconstitutional and some parts were constitutional. Judge Thomas authored the opinion of the Court. The Court of Appeals validated the District Court's ruling that the law did not violate the equal protection clause of the Fourteenth Amendment, and in that way was constitutional. The Court of Appeals also agreed with the District Court that Arizona's law violated the Fourth Amendment and other parts of the Fourteenth Amendment. The Court of Appeals ruled that by authorizing warrantless searches of private physician practices, the law violated the Fourth Amendment. The Court ruled that by requiring the ADHS to have access to patient identifying information and [ultrasound](#) [4] prints, the law violated the Fourteenth Amendment's implicit right to privacy. Finally, the Court ruled that the vague language of the law created unconstitutional uncertainty in the law that violated the due process clause of the Fourteenth Amendment.

While the Court of Appeals partly agreed with the District Court, the Court of Appeals also disagreed with some of the District Court's decisions. Unlike the District Court, the Court of Appeals found that the Tucson Woman's Clinic had provided enough evidence to show that the law could create an undue burden on women's rights to seek abortions, violating the right to privacy protected in the Fourteenth Amendment. Therefore, the Court of Appeals ruled that the District Court needed to readdress the undue burden claim. The Court of Appeals ruled that a trial was needed to resolve the claim that the law imposed an undue burden.

The Court of Appeals sent the case back to the US District Court in Tucson to determine

whether or not the law as a whole was an undue burden on women's rights to choose abortions. Jones, on behalf of the Tucson Woman's Clinic and ADHS, negotiated a settlement to resolve the claim that the law as a whole created an unconstitutionally undue burden on women's access to abortions. The settlement removed the rules that gave the ADHS unbound access to patient records and permission to conduct unannounced and warrantless searches. Under the new regulations, the ADHS received access only to patient records and it needed a warrant to obtain records that included information that identified patients. Additionally, the ADHS needed to schedule inspections with the [abortion](#) <sup>[3]</sup> clinics.

In September 2008, the District Court approved the new regulations under the settlement agreement. Following the District Court's approval, the ADHS wrote a new list of rules and regulations to implement the 1999 statute. In April 2010, Arizona Governor's Regulatory Review Council passed the list with the new inspection requirements. On 1 November 2010, the licensing division of ADHS began licensing and inspecting [abortion](#) <sup>[3]</sup> providers based on the new rules.

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The case *Tucson Woman's Clinic v. Eden* (2004) established that some of Arizona's abortion clinic laws violated physicians' and patients' rights to privacy, and it required those laws to be rewritten. The laws required most abortion providers to be licensed with the Arizona Department of Health Services and to submit to all the regulations the Department established for abortion clinics. The regulations allowed the state to search abortion clinics without warrants and to access patient records and ultrasound prints, among other provisions. Following the US Court of Appeals decision in *Tucson Woman's Clinic v. Eden*, the settlement agreement rewrote the regulations to create rules that lessened the burden on women's access to abortions, while still allowing the Department to oversee abortion clinics.

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