

# Texas Supreme Court hears arguments in abortion case

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The Texas Supreme Court heard [oral arguments](#) Nov. 28 in a case challenging the state's ban on abortions except when a pregnant woman's life is at risk.

[Zurawski v. State of Texas](#) is the nation's first lawsuit brought on behalf of women who were denied access to abortions since the U.S. Supreme Court [overturned Roe v. Wade](#) in June 2022.

The lawsuit claims pregnant women in Texas “have been denied necessary and potentially life-saving obstetrical care because medical professionals throughout the state fear liability under Texas’ abortion bans.”

The Center for Reproductive Rights filed the suit March 6, asking the state to clarify the scope of the “medical emergency” exceptions in its abortion ban.

In August, a Travis County judge granted the plaintiffs request for a temporary injunction that exempted pregnant women with life-threatening pregnancies—or lethal fetal diagnoses—from the state's abortion ban. The Texas attorney general's office [appealed](#) that ruling to the Texas Supreme Court.

“Protecting the health of mothers and babies is of paramount importance to the people of Texas, a moral principle enshrined in the law which states that an abortion may be performed under limited circumstances, such as in the event of ‘a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy’ that places the pregnant woman ‘at risk of death or poses a serious risk of substantial impairment of a major bodily

function unless the abortion is performed or induced,” the attorney general’s office said in a [public statement](#) issued at the time of the appeal.

The Center for Reproductive Rights originally filed the suit on behalf of Amanda Zurawski and six other women who said they were denied medically necessary abortions and two obstetrician-gynecologists. Another 13 women later joined the lawsuit.

“Abortion bans are hindering or delaying necessary obstetrical care. And, contrary to their stated purpose of furthering life, the bans are exposing pregnant people to risks of death, injury, and illness, including loss of fertility—making it *less* likely that every family who wants to bring children into the world will be able to do so and survive the experience,” the lawsuit stated.

## **Attorneys offer opposing arguments**

Appearing before the Texas Supreme Court for about one hour, Beth Lusmann with the attorney general’s office presented arguments on behalf of the state, and Molly Duane with the Center for Reproductive Rights presented arguments for the plaintiffs.

Lusmann asserted the question of whether exemptions to the state’s abortion ban are clear is a matter for the Texas Legislature—not the courts—to address. However, she did not fault lawmakers for the way the law was drafted, saying they “set the bar high.”

“What the legislature has done is choose to value unborn life and prohibit abortion in all circumstances unless that life is going to conflict with the life of the mother,” she said.

Lusmann also asserted the plaintiffs lacked standing to sue the state, saying they instead should have pressed any legal claims against their

physicians.

“Some of these women seem to have fallen within the exemption, but their doctors still said ‘no’” to an abortion, she said. “That’s not the fault of the law. That’s a decision of the doctor.”

When asked if the abortion ban put physicians in peril, she replied, “I don’t think it does, if they are allowed to use reasonable medical judgment, which is presumably a judgment they use when treating a patient in any given circumstance.”

Arguing on behalf of the plaintiffs, Duane said the abortion ban subjects physicians to “the most extreme penalties imaginable—life in prison and the loss of their medical license.”

“While there is technically a medical exception to the bans, no one knows what it means, and the state won’t tell us,” she added.

Duane objected to the state’s assertion that the women who brought the lawsuit lack standing because they do not face an “impending” circumstance. Instead, the state insisted, they are seeking an advisory opinion regarding “a hypothetical or contingent claim” on behalf of other women.

Duane asserted the lead plaintiff Zurawski became septic “while waiting to become sick enough to receive an abortion.” Zurawski subsequently had to undergo multiple operations to reconstruct her uterus, and the ordeal left her with compromised fertility, she added.

“We’re not talking about hypothetical harms,” Duane said. “These are real patients, many of whom are sitting in the courtroom today.”